

17 CS DJ 895/25

Rahul Aggarwal Vs. Preeti Bansal

12.11.2025

Present : Ld. Counsel for plaintiff.

None for defendant no.1 whose defence already struck off on account of non-filing of WS vide order dt. 29.10.2025.

Ld. Counsel for defendant no.2 (through VC).

By virtues of this order, the application under Order 39 Rule 1 & 2 CPC moved on behalf of the plaintiff stands allowed.

Brief facts necessary for the disposal of the application are as under:-

1. The suit property is described as property-A, admeasuring 168 sq. yards, First Floor towards Bank Street of property no. 2115-2116, Ward No. XVI, Plot No. 498, Block-J, Bank Street, Naiwala, Karol Bagh, New Delhi-05.
2. The plaintiff and defendant no.1 are real brother and sister.
3. The defendant no.2 is stated to be the purchaser of part of the property from defendant no.1.
4. As per the plaintiff, the suit property originally belonged to his mother who died leaving behind a Will dt. 23.12.2021 thereby bequeathing the suit property exclusively to the plaintiff.

5. It is submitted that after the demise of his mother, the plaintiff, defendant and other legal heir also executed a relinquishment deed/affidavit confirming and admitting the Will dt. 23.12.2021.
6. It is submitted that subsequently the intention of the defendant turned hostile and she accordingly claimed herself to have inherited 20% undivided share of the suit property and accordingly sold her alleged undivided 20% share to the defendant no.2 vide sale deed 07.03.2025, despite having no right, as claimed by the plaintiff.
7. The sole contesting defendant i.e. defendant no.2 claimed to be a bonafide purchaser of the suit property having purchased the same from defendant no.1.
8. The defendant no.2 took the preliminary objection of the suit being barred by virtue of provision of Commercial Courts Act, 2015.
9. Now by virtue of application under consideration, the plaintiff is seeking to restrain both the defendants from creating any third party interest qua the suit property.

After giving a considerable thought to the pleadings of the parties, indeed, in view of the registered Will dt. 23.12.2021 executed by the mother of plaintiff and defendant no.1, thereby

bequeathing the suit property in favour of the plaintiff, there is a legal presumption in favour of the plaintiff of he being the sole owner of the suit property.

There is no challenge to the said registered Will dt. 23.12.2021 by any of the legal heirs of testator Smt. Kanta Aggarwal and it is a settled law that in Delhi the probate of a Will is not mandatory.

In these circumstances, even though the defendant no.2 is a bonafide purchaser, his rights are much lesser than the rights of the plaintiff prima facie in the light of registered Will.

In these circumstances, the balance of convenience do lie in favour of plaintiff and the fact that irreparable loss which cannot be compensated in terms of money will occur to the plaintiff if the defendants are not restrained from creating any third party interest in the suit property till the pendency of the suit is there.

As far as the preliminary objection taken by defendant no.2 of the suit being barred by the provisions of Commercial Courts Act, 2015, is concerned, prima facie the present suit being a suit seeking the relief of declaration and permanent injunction based on the registered Will, in the opinion of the court, is not barred as such.

The application under Order 39 Rule 1 & 2 according stands disposed of in favour of the plaintiff and both the defendants are restrained from creating any third party interest of

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any nature whatsoever qua the suit property till the pendency of the suit.

Put up for admission-denial of documents and framing of issues on **27.02.2026**.

(Vinay Singhal)
District Judge-09 (Central)
Tis Hazari Courts, Delhi.
12.11.2025(hk)