

CS No. 76/25
Hemlata vs. Sumit

09.01.2026

Present: Sh. Parikshit Mahipal, counsel for plaintiff in VC.
Sh. Rajender Kumar Chauhan, counsel for defendant
no.1 in VC.
Defendants no. 2 to 4 are exparte vide order dated
04.08.2025.

Affidavit of admission/denial of plaintiff has already come on record but defendant no.1 has not filed affidavit of admission/denial of the documents of the plaintiff. Hence, it is ordered that plaintiff will prove the documents as per law and can recover the cost of proving the same from the defendant no. 1 at the final stage.

Plaintiff has filed the present suit for partition, damages, injunction and declaration. The suit property admittedly belonged to Sh. Prem Chand Rathore and parties to the suit are his legal heirs. Plaintiff is claiming partition of the suit property whereas defendant no.1 is claiming that the deceased Sh. Prem Chand Rathore had executed a Will in his favour on 27.12.2023 and thus, he has become the exclusive owner of the suit property. Plaintiff has also challenged the legality and validity of this Will.

My ld. Predecessor vide order dated 29.04.2025 directed the parties to maintain status quo qua the suit property. Plaintiff claimed constructive possession of the suit property whereas the defendant no.1 claimed its actual possession. Counsel for defendant no.1 stated that he has no objection, if the interim order dated 29.04.2025 is confirmed till the disposal of the suit as

defendant no.1 has no intention to transfer or part with the possession of the suit property to anyone and he will use the same for his own purposes. In view of the same, the interim order dated 29.04.2025 is confirmed till the disposal of the suit and application under Order 39 Rule 1 & 2 CPC is thus disposed off. However, if the defendant no.1 wants to let out the property or to transfer the suit property to anyone, then prior permission of the court should be taken.

On the basis of pleadings of the parties, following issues are framed:-

1. Whether Sh. Prem Chand Rathode executed legal & valid Will dated 27.12.2023 in sound disposing mind. If so, its effect ? (OPD-1)
2. Whether the plaintiff is entitled to relief of declaration regarding the Will dated 27.12.2023 as forged and fabricated document, as prayed for? (OPP)
3. Whether the plaintiff is entitled for the partition of the suit property ? OPP
4. Whether the plaintiff is entitled for relief of permanent injunction as prayed for ? (OPP)
5. Whether the plaintiff is entitled for relief of mandatory injunction as prayed for ? (OPP)
6. Relief

Since the exclusive ownership of the suit property is claimed by the defendant no. 1 on the basis of the Will dated 27.12.2023, so it is required that he should lead the evidence first to prove the Will because in case the Will is not proved, then the

right of the plaintiff to claim share in the suit property and to seek its partition most probably will be established as her status of being one of the legal heir of the deceased Sh. Prem Chand Rathore is not disputed.

Put up this matter for DE on **11.03.2026**. Both the parties are directed to file their list of witnesses within 15 days. Affidavit of evidence be filed but advance copy be given to the counsel for plaintiff atleast seven days prior to the date fixed.

(Ashwani Kumar Sarpal)
Principal District & Sessions Judge
North-East District, KKD Delhi/09.01.2026