

2 Civ DJ 238/18

IA No. 3/26

SUBHASH DIWAN Vs. SUNIL DIWAN AND ANR

23.05.2026

All the proceeding conducted through VC.

Present Plaintiff with Ld. Counsel Shri Gurjeet Singh.

Shri Pankaj Gaba and Shri Harsh Kumar, Ld. Counsel for defendant Sunil Diwan.

Shri S.C. Aggarwal, Ld. Counsel for applicant Surender Goel.

Shri Ajay Kumar, Ld. LC through VC.

Ld. LC has apprised that without demolition or construction, the property cannot be divided by metes and bounds.

Ld. Counsel for the applicant Surender Goel submits that inadvertently the application under Order 1 Rule 10 CPC r/w Section 151 CPC has been efiled in the counter claim in the CIS whereas it has to be e-filed in the main suit and he will do the needful regarding e-filing the application in this suit today itself.

Reply to the application filed by the plaintiff. Copy supplied.

Arguments on the application under Order 1 Rule 10 CPC heard.

Put up for orders on the application under Order 1 Rule 10 CPC

SUSHEEL BALA DAGAR
DISTRICT JUDGE-08
WEST/DELHI/23.05.2026

At 4.00 pm.

Present None for plaintiff.

 Shri Pankaj Gaba, Ld. Counsel for defendant Sunil Diwan through VC.

 Shri S.C. Aggarwal, Ld. Counsel for applicant Surender Goel through VC.

Order on application under Order 1 Rule 10 read with Section 151 CPC

By way of the present order, the Court shall decide an application moved by the applicant, Surender Goel, under Order I Rule 10 read with Section 151 CPC, seeking impleadment as defendant no. 3 in the present suit for partition and permanent injunction pertaining to property bearing Shop No. B-4/1, Shop No. 1 and Shop No. 2, Ramesh Nagar, West Delhi, Delhi (hereinafter referred to as the “suit property”).

Reply has been filed by the non-applicant/plaintiff, Subhash Diwan, opposing the prayer for impleadment. Arguments addressed by both sides have been heard and the record perused.

Brief facts relevant for adjudication

The present suit was instituted by the plaintiff seeking partition of the suit property, claiming that the same devolved upon the legal heirs of Late O.P. Dewan and Late Chander Kante Diwan, who died intestate. During the pendency of the proceedings, a preliminary decree of partition came to be passed whereby the Court held that the plaintiff was entitled to one-third undivided share in the suit property, while defendant no. 1 became entitled to two-third share in view of the relinquishment of defendant no. 2's share in his favour.

It is the case of the applicant that in execution proceedings titled

Devraha Communications Ltd. vs. Subhash Diwan, pending before the Court of learned District Judge (Commercial Court-04), Central District, Tis Hazari Courts, Delhi, the plaintiff's one-third share in the suit property was auctioned and purchased by him. The applicant submits that the entire bid amount stands paid and the executing Court has directed issuance of No Objection Certificate by L&DO for execution of the sale deed through Court. It is contended that by virtue of such auction purchase, he has acquired interest in the one-third undivided share of the plaintiff and therefore is a necessary and proper party to the present proceedings.

The plaintiff has opposed the application contending, inter alia, that the auction proceedings are themselves illegal and without jurisdiction; that no registered sale deed has yet been executed in favour of the applicant; that mandatory requirements of L&DO have not been fulfilled; and therefore the applicant has not acquired any enforceable legal right in the suit property. It is further argued that the decree-holder itself had earlier failed in seeking impleadment and the present applicant stands on no better footing.

Points for consideration

The short question falling for consideration is whether the applicant has demonstrated such interest in the subject matter of the suit as would justify his impleadment under Order I Rule 10 CPC.

Court observations and findings

The provision empowers the Court to add a person as party at any stage of proceedings where such person is either a necessary party,

without whom no effective decree can be passed, or a proper party, whose presence would enable the Court to effectively and completely adjudicate upon the questions involved in the suit.

It is equally settled that in a suit for partition, a transferee or person claiming through a co-sharer during pendency of litigation is not altogether excluded from participation in proceedings merely because final conveyance documentation is pending. The Court is required to examine whether the applicant claims a substantial interest in the very share which forms the subject matter of adjudication and whether his absence may lead to multiplicity of proceedings.

In the present case, certain facts remain undisputed. Firstly, a preliminary decree of partition has already been passed by the Court declaring the plaintiff to be owner of an undivided one-third share in the suit property. Secondly, the present proceedings have now entered the stage of working out the final decree, including determination of the mode of partition. Thirdly, the applicant's claim arises specifically from auction proceedings allegedly concerning the plaintiff's adjudicated one-third share.

The objections raised by the plaintiff primarily pertain to the legality of the auction proceedings, territorial jurisdiction of the executing Court, alleged non-compliance of L&DO formalities, and absence of a registered sale deed. However, the present proceedings under Order I Rule 10 CPC are not intended to conclusively adjudicate the validity of the auction sale or determine title inter se the applicant and plaintiff.

Whether the execution proceedings were lawfully conducted,

whether the auction sale is liable to be challenged, whether L&DO formalities stand complied with, or whether the applicant ultimately acquires perfected title are issues which either fall within the domain of the executing Court or may be independently agitated in appropriate proceedings. At the stage of impleadment, the Court is only required to examine whether the applicant has disclosed a prima facie and direct interest in the subject matter sufficient to warrant his participation in proceedings.

The applicant has specifically pleaded that he has purchased the plaintiff's one-third undivided share through Court auction in execution proceedings and has paid the entire bid amount. The documents relied upon by the applicant indicate that the claim is neither speculative nor remote. The share allegedly purchased by the applicant is the very same undivided share which is presently under consideration in final decree proceedings for actual partition.

The present suit has admittedly progressed beyond the stage of determination of shares and presently concerns the mode of partition and eventual separation of possession. A Local Commissioner has already submitted report regarding feasibility of division of the property by metes and bounds. In such circumstances, any order ultimately passed in the final decree proceedings may directly affect the rights claimed by the applicant qua the plaintiff's alleged one-third share.

If the applicant is excluded from the proceedings at this stage and subsequently succeeds in establishing his rights arising from auction proceedings, it may result in avoidable multiplicity of litigation and

reopening of issues concerning final partition. The presence of the applicant would therefore assist the Court in complete and effective adjudication of disputes relating to allotment and working out of shares.

The contention of the plaintiff that absence of a registered sale deed defeats the applicant's locus at this stage is also not persuasive. In partition proceedings, the Court is concerned with the existence of a direct and substantial claim in the undivided share, and not necessarily with final adjudication of title at the stage of impleadment. The applicant is not seeking declaration of ownership through the present application; rather, he seeks opportunity to participate in proceedings affecting the share claimed by him.

Reliance placed by the plaintiff on dismissal of an earlier impleadment application by the decree-holder does not advance his case. The decree-holder and the present auction purchaser stand on distinct footings. A decree-holder claiming merely enforcement of decretal dues cannot be equated with a person asserting rights as purchaser of an undivided share in the suit property through judicial sale.

At the same time, the Court deems it necessary to clarify that impleadment of the applicant shall not amount to recognition or adjudication of absolute title in his favour. The rights, validity, and legal effect of the alleged auction purchase shall remain subject to proof and to outcome of any challenge available in law. The applicant shall merely step into proceedings to the limited extent of asserting the rights claimed by him in relation to the plaintiff's one-third share.

Having regard to the stage of proceedings, the nature of relief

sought in the suit, the preliminary decree already passed, and the direct nexus of the applicant's claim with the plaintiff's adjudicated one-third share, the Court is of the opinion that the applicant qualifies at least as a proper party, if not a necessary party, whose presence would enable complete and effective adjudication of the controversy in the final decree proceedings. Consequently, the application under Order I Rule 10 read with Section 151 CPC filed by Surender Goel stands **allowed**. The applicant, Surender Goel, is impleaded as defendant no. 3 in the present suit, subject to the clarification that such impleadment shall not be construed as adjudication or confirmation of title in his favour and shall remain subject to the outcome of proceedings concerning validity and legal effect of the alleged auction purchase. Amended memo of parties be filed within one week.

Put up for filing WS of defendant no. 3 confining to the issues arising subsequent to the preliminary decree and relevant to the final decree proceedings in other words the limited inquiry shall only concern the question as to whether the plaintiff's adjudicated 1/3rd share continues to vest in him or stands lawfully transferred to defendant no. 3, according, the WS, if any shall be confined the same.

Put up for filing WS, if any by defendant no. 3 for 20.07.2026.

SUSHEEL BALA DAGAR
DISTRICT JUDGE-08
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