

**IN THE COURT OF SHRI DHARMENDER SINGH
DISTRICT JUDGE-01, WEST, TIS HAZARI COURTS,
DELHI**



Civ DJ No. 12922/16

Pawan Gujral
S/o Late Sh. Mangat Ram Gujral
R/o D-167, Tagore Garden Extension,
New Delhi-110027

Also At:-
H.No.44, Gali No.2,
South Anarkali Chander Nagar,
Near Geeta Colony, Delhi-110051

... Plaintiff

Versus

1. Smt. Sita Rani Gujral (Since Deceased)
2. Sh. Harish Gujral
S/o Late Sh. Mangat Ram Gujral
R/o D-167, Tagore Garden Extension,
New Delhi-110027
3. Sh. Vinod Gujral
S/o Late Sh. Mangat Ram Gujral
R/o D-167, Tagore Garden Extension,
New Delhi-110027
4. Smt. Motiya Bhasin
W/o Sh. Subhash Bhasin

R/o Orchid Petals,
Tower No. 6, Flat No. 702, Sohna Road,
Sector-49, Gurgaon-122018

5. Smt. Veena Arora
W/o Sh. Kuldeep Arora
R/o H.No. 6/64, Sector-2,
Rajinder Nagar, Sahibabad,
Ghaziabad, U.P.

... Defendants

Date of Institution	:	28.04.2014
Date of Reserving Judgment	:	04.08.2025
Date of Judgment	:	20.08.2025

JUDGMENT

1. Vide this judgment, this court shall decide the present suit filed by plaintiff against defendants seeking the relief of partition.

2. As per case of plaintiff, he and defendants are the legal heirs of late Sh. Mangat Ram Gujral, who died intestate on 13.12.2004. It is submitted that present suit has been filed qua the immovable property bearing no. D-167, Tagore Garden Extension, New Delhi (hereinafter referred as “suit property”), which is consisting of three storeyed super structure constructed on a plot of 80 sq. yds. It is submitted that suit property was the self acquired

property of late Sh. Mangat Ram Gujral as same was allotted to him by Slum and JJ Department, MCD under JJR Scheme vide allotment letter dated 20.11.1962.

3. It is submitted that after death of Sh. Mangat Ram Gujral, suit property devolved by way of succession upon his legal heirs i.e. plaintiff and defendants, in equal share and they became co-owner of the same. It is submitted that plaintiff alongwith defendant no.1 to 3 are in actual possession of the suit property. It is submitted that defendant no. 4 and 5 are the sisters of plaintiff and defendant no. 2 and 3, who are married and settled in their respective matrimonial homes. It is submitted that intention of defendant no.3 is dishonest and he does not want to give the share to plaintiff in the suit property and retaining the major portion of the same on first and second floor. Feeling aggrieved, present suit has been filed by plaintiff against defendants seeking the relief of partition.

4. In pursuance of the suit, summons were issued to defendants. Defendant no. 1, 2, 4 and 5 filed the joint written statement and defendant no.3 filed the separate written statement.

5. In their written statement, defendant no.1, 2, 4 and 5 have not denied the case of plaintiff and they submitted that they have no objection, if the suit is decreed as per the prayer of plaintiff.

6. In his written statement, defendant no.3 took the plea that present suit

is not maintainable as plaintiff is not in the possession of suit property, however, he has not paid the advalorem Court fees. It is submitted that second floor of suit property is owned by defendant no.3 and remaining portion of the same was orally bequeathed by late Sh. Mangat Ram Gujral. It is submitted that plaintiff has not approached the Court with clean hands and has concealed the material facts.

7. It is submitted that late Sh. Mangat Ram Gujral had sold out the second floor of suit property to one Sh. Suraj Prakash Grover and subsequently, defendant no.3 purchased the same from Sh. Suraj Prakash Grover. It is submitted that before his death, Sh. Mangat Ram Gujral bequeathed an oral Will in favour of defendant no.3 in respect of ground floor, first floor (except the portion in the possession of defendant no.2) and the roof right above second floor and in this way the remaining legal heirs of late Sh. Mangat Ram Gujral are not having any right, title or interest in the above portion of suit property. It is submitted that plaintiff left the suit property about 20 years ago and residing in Geeta Colony, Delhi. Prayer has been made for dismissal of the suit.

8. Plaintiff filed the replication to the written statement of defendant no.3, in which he reiterated the same case as mentioned in plaint. He further stated that late Sh. Mangat Ram Gujral never sold the second floor of suit property to Sh. Suraj Prakash Grover, so there is no question of further transfer of said floor by Sh. Suraj Prakash Grover in favour of defendant no.3.

9. In this matter, one application u/o 12 Rule 6 CPC was moved on behalf of plaintiff and vide order dated 01.05.2017, said application was allowed and preliminary decree of partition was passed qua ground and first floor of suit property and it was held that each party is entitled to 1/6th share in ground and first floor of the suit property. It is relevant to mention here that after said order, defendant no.1 passed away and all the remaining parties are her only legal heirs, so in view of the death of defendant no.1, the share of remaining parties have increased from 1/6th to 1/5th in respect of ground and first floor of suit property.

10. On the basis of pleadings, following issues were framed :-

- (i) **Whether suit has not been properly valued for the purpose of Court fees ? OPD-3**
- (ii) **Whether suit of plaintiff regarding second floor of property in question/ suit property is not maintainable in view of para no.4 of the written statement of defendant no.3 ? OPD-3**
- (iii) **Whether plaintiff is entitled for the relief of partition regarding second floor of the suit property ? OPP**
- (iv) **Relief**

11. Said issues were framed on 01.05.2017, and vide same order, it was directed that since the onus of issues mainly is upon defendant no.3, therefore, defendant's evidence (DE) shall be led first and accordingly, matter was fixed for DE.

12. In DE by defendant no.3, only one witness i.e. defendant no.3 himself was examined. He was examined as D3W1. His affidavit of evidence is Ex.D3W1/A, in which he deposed in terms of the facts as mentioned in the written statement of defendant no.3. He relied upon following documents:-

- (1) Title Documents executed by father of parties in favour of Sh. Suraj Prakash Grover Ex.D3W1/1 (colly)
- (2) Documents executed by Sh. Suraj Prakash Grover in favour of defendant no. 3 Ex.D3W1/2 (colly)
- (3) Photographs Ex.D3W1/3

13. Defendant no. 3/ D3W1 was cross-examined by ld counsel for plaintiff.

14. After DE, matter was fixed for plaintiff's evidence (PE), however, despite opportunity, plaintiff did not lead PE and stated that he does not want to examine any witness and accordingly, PE was closed.

15. During proceedings of the case, defendant no.1 passed away and this fact was brought on record, however, as all the legal heirs of defendant no.1 were already parties in the case, so no impleadment of any new party was made.

16. Afterthat, final arguments were heard.

17. The issue-wise findings of this Court are as following:-

Issue No. (i) Whether suit has not been properly valued for the purpose of

Court fees ? OPD-3

The onus to prove this issue was upon defendant no. 3 as in his written statement defendant no. 3 has taken the plea that plaintiff is not in the possession of suit property despite that he has not paid the advalorem Court fees. Perusal of record shows that in the plaint, plaintiff has claimed that he alongwith defendant no. 1 to 3 are in actual possession of suit property. This Court is of the considered view that as onus to prove this issue was upon defendant no.3, he was required to bring the necessary document / material on record to prove the same, however, he has not brought on record any material / evidence to prove the same. Even he has not examined any witness to prove the said fact. In these circumstances, this issue is decided in favour of plaintiff and against defendant no.3.

18. Issue No. (ii) Whether suit of plaintiff regarding second floor of property in question/ suit property is not maintainable in view of para no.4 of the written statement of defendant no.3 ? OPD-3

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Issue No. (iii) Whether plaintiff is entitled for the relief of partition regarding second floor of the suit property ? OPP

This Court will decide the issue no. 2 and 3 together as both are interconnected. The onus to prove issue no. 2 was upon defendant no. 3 and onus to prove issue no.3 was upon plaintiff. As per case of plaintiff, he and defendants are the legal heirs of late Sh. Mangat Ram Gujral, who died intestate on 13.12.2004. It is submitted that suit property was the self

acquired property of late Sh. Mangat Ram Gujral as same was allotted to him by Slum and JJ Department, MCD under JJR Scheme vide allotment letter dated 20.11.1962. It is submitted that after death of Sh. Mangat Ram Gujral, suit property devolved by way of succession upon his legal heirs i.e. plaintiff and defendants, in equal share and they became co-owner of the same. It is submitted that plaintiff alongwith defendant no.1 to 3 are in actual possession of the suit property. It is submitted that defendant no. 4 and 5 are the sisters of plaintiff and defendant no. 2 and 3, who are married and settled in their respective matrimonial homes. It is submitted that intention of defendant no.3 is dishonest and he does not want to give the share to plaintiff in the suit property. Feeling aggrieved, present suit for partition has been filed by plaintiff.

19. On the other hand, in para no. 4 of reply on merits of written statement, defendant no.1 has taken the plea that late Sh. Mangat Ram Gujral / father of defendant no. 3 had sold out the second floor of suit property on 20.01.1994 to one Sh. Suraj Prakash Grover and subsequently, defendant no.3 purchased the same from Sh. Suraj Prakash Grover on 25.07.2005.

20. This Court is of the considered view that this is admitted case of the parties that suit property was the self acquired property of late Sh. Mangat Ram Gujral as same was allotted to him by MCD and parties to the suit are his only legal heirs. During cross-examination of defendant no. 3, one document was filed on record, which is Ex.D3W1/P1. Said document is Allotment Letter qua suit property, which was issued in favour of late Sh.

Mangat Ram Gujral by MCD. Defendant has taken the plea that second floor of suit property was sold out to one Sh. Suraj Prakash Grover by late Sh. Mangat Ram Gujral and Sh. Suraj Prakash Grover sold out the same to defendant no. 3. In order to prove his plea, defendant no. 3 has filed on record certain documents. Said documents are Ex.D3W1/1 i.e. documents executed by late Sh. Mangat Ram Gujral in favour of Sh. Suraj Prakash Grover and Ex.D3W1/2 i.e. documents executed by Sh. Suraj Prakash Grover in favour of defendant no.3.

21. This Court is of the view that defendant no. 3 is claiming that he is owner of suit property in view of the documents Ex.D3W1/2. Said documents are perused. Perusal of said documents shows that none of said document is Conveyance Deed or Sale Deed. This Court is of the considered view that ownership title to an immovable property accrues only through Sale Deed or Conveyance Deed. The law in this regard has been clearly laid down by Hon'ble Supreme Court of India in case titled '*Suraj Lamp & Industries (P) Ltd vs. State of Haryana & Anr* 'AIR 2012 SUPREME COURT 206 . So, in view of absence of said document in favour of defendant no.3, it cannot be held that he is owner of second floor of suit property. In these circumstances, as suit property was self acquired property of late Sh. Mangat Ram Gujral, who has passed away, his all the legal heirs are entitled to the share in the same. Accordingly, issue no.2 & 3 are decided in favour of plaintiff and against defendant no.3.

22. Relief.

In view of aforementioned discussion, plaintiff is entitled for preliminary decree of partition qua suit property bearing no.D-167, Tagore Garden Extension, New Delhi. Plaintiff, defendant no.2, defendant no.3, defendant no.4 and defendant no.5 are entitled to 1/5th share each in the suit property. Plaintiff is also entitled to the cost of the suit. Decree sheet be drawn accordingly.

Matter be put up for further proceeding qua the final decree on the next date of hearing.

**Announced in the open Court
on this 20th day of August, 2025.**

**(Dharmender Singh)
District Judge-01, (West)
Tis Hazari Courts, Delhi**