

**IN THE COURT OF DISTRICT JUDGE-08 WEST, TIS HAZARI
COURTS, DELHI**

Presided by: Ms. Susheel Bala Dagar

Civ DJ 706/20

CNR Number: DLWT01-006392-2020

In the matter of:

1. Ms. Manorma

D/o Late Sh. Ram Kirat

2. Sh. Prem Narayan Rai

S/o Sh. Ram Kirat

Both R/o EX-B-34 & 35,

BE-Block, Gali No.1,

Hari Nagar, New Delhi-64.

.....Plaintiffs

Versus

1. Smt. Shobha

W/o Sh. Vansh Narayan

2. Sh. Deepak Kumar

S/o Late Sh. Chanderhas Rai

Both R/o EX-B-35, Back Side,

Hari Nagar, New Delhi-64

3. Smt. Seema

W/o Sh. Nem Narayan

D/o Late Sh. Chanderhas

R/o B-165, Budh Nagar,

Loni Dehat, Ghaziabad, U.P.-201102.

..... Defendants

Date of institution : 15.12.2020

Date of reserved for judgment : 01.04.2026

Date of judgment : 07.04.2026

Suit for partition and permanent injunction

JUDGMENT

Brief facts of the case

1. The plaintiffs, who are law abiding citizens of India, along with their deceased brother Chanderhas, are the legal heirs of Smt. Shiv Mona

Devi, while the defendants are the legal heirs of Chanderhas. Smt. Shiv Mona Devi owned property bearing No. EX-B-34 & 35, measuring 75 sq. yards, located in BE-Block, Hari Nagar, New Delhi, and passed away intestate on 28-09-2010. After her death, the plaintiffs became entitled to a 2/3rd share of the property, while the defendants inherited a 1/3rd share through Chanderhas, making both parties joint owners in possession of the property.

2. The plaintiffs allege that after the death of their parents, the defendants' behavior changed, and they began creating disputes, threatening the plaintiffs, and attempting to reconstruct and sell the property without their consent. Despite a prior settlement in 2016 where the defendants agreed to partition the property, they failed to honor the agreement and continued to delay the matter. The defendants are also accused of occupying more than their rightful share, harassing the plaintiffs, using abusive language, and making repeated threats to sell the property and create third-party interests.

3. The plaintiffs state that no formal partition deed has been executed, and the property still remains in the name of the deceased Smt. Shiv Mona Devi. Multiple requests and a legal notice sent in October 2020 for partition were ignored or met with false replies. The cause of action arose from the time of Shiv Mona Devi's death and continued due to the defendants' refusal to partition the property and their ongoing threats.

4. Accordingly, the plaintiffs have filed the present suit seeking a decree for partition of the property according to their 2/3rd share and a

permanent injunction restraining the defendants from selling, transferring, or creating any third-party interest in the property without their consent.

Written Statement of all defendants.

5. The defendants have raised preliminary objections stating that the present suit is a misuse of the legal process and should be dismissed with costs, arguing that the plaintiffs lack locus standi and that the suit is barred by the principle of res judicata. They allege that the plaintiffs have not approached the Court with clean hands, have suppressed material facts, and have filed the suit with malafide intentions to harass and unlawfully grab the property. The defendants claim to be the absolute owners in possession of the suit property and assert that Plaintiff No. 1 is already in illegal and unauthorized possession of another ancestral property, while also accusing the plaintiffs of illegally transferring and selling ancestral properties in Uttar Pradesh without their consent. They further contend that the plaintiffs are habitual litigants who file false complaints and cases to harass them.

6. On merits, the defendants have generally admitted only those facts which are matters of record and have denied all other allegations as false, fabricated, and baseless. They specifically deny that the plaintiffs are co-owners or entitled to any 2/3rd share in the suit property and reject all claims regarding threats, harassment, proposed illegal sale, or refusal to partition. The defendants maintain that no cause of action has arisen, that the suit is not maintainable due to improper Court fees and lack of proper documentation such as a site plan, and that the plaintiffs have relied on

false and fictitious documents.

Replication by the plaintiff to the WS of all defendants.

7. In reply to the preliminary objections, the plaintiffs have denied all allegations made by the defendants, stating that the objections are false, baseless, and without merit. The plaintiffs assert that the suit property is a joint property, admit their possession, and maintain that it is liable to be partitioned according to their respective shares, while contending that allegations regarding other properties are irrelevant to the present case. They further emphasize that as co-owners, they are entitled to relief and that possession by one legal heir is deemed possession on behalf of all.

Issues :-

8. From the pleadings of the parties and material on record, following issues were framed by the Ld. Predecessor vide order dated 20.12.2022 :-

Issue no. 1 Whether plaintiff is entitled to seek partition of properties nos. EX-B-34 & 35, BE Block, Hari Nagar, New Delhi ? OPP

Issue no. 2 in case issued no. 1 is decided in favour of the plaintiff, is she entitled to 2/3 rd share each in the above said properties? OPP

Issue no. 3. Whether plaintiff is entitled to permanent injunction thereby restraining the defendants and their associates from creating third party interest in the above said properties? OPD

Issue no. 4. Whether the suit is without any cause of action in as much as the defendants are absolute owners of the properties sought to be partitioned? OPD

Issue no. 5. Relief

Plaintiff Evidence:-

PW1/Manorama

9. She tendered her evidence by way of affidavit Ex. PW1/A and relied upon the following documents : copy of the sale deed of the property bearing no. EX-B-34 & 35, BE Block, Gali No.1, Hari Nagar, New Delhi 64 Ex. PW1/1, copy of the relinquishment deed Mark A, certified copy of the suit, orders and statement from the Court of Ld. Civil Judge-01 West are collectively Mark B, the copy of the legal notices dispatched on 05.10.2020 and postal receipts of 12.10.2020 Ex. PW 1/5, the death certificates of her parents i.e Smt. Shiv Mona Devi who expired on 28.09.2010 and her father who expired on 31.03.2010 are de-exhibited.

10. During cross-examination, PW-1 stated that she is educated and understands Hindi and English but not Urdu. Despite the defendant's request to defer the cross-examination to produce Urdu documents, the Court declined the adjournment due to lack of valid grounds. She deposed that she currently resides in property No. B-338A, Hari Nagar, which she claims to have purchased from her mother through valid documents, and denied that it is ancestral or that she is in illegal possession. She affirmed that the suit property (B-34 & 35, Hari Nagar) stands in the name of her deceased mother and that she, being a legal heir, is entitled to a share, while denying all suggestions that the property was exclusively given to the defendants or that she has no rights therein.

11. PW-1 further stated that she had earlier resided in the suit property until 2020 and denied allegations of illegal possession, fabrication of

documents, or any prior settlement restricting her rights. She admitted filing a previous suit for injunction but denied any compromise as alleged by the defendants. She produced documents including sale deed, GPA, agreement to sell, affidavit, receipt, possession letter, and Will related to property No. B-338A, which were exhibited in evidence, and explained minor discrepancies as typographical errors. Throughout the cross-examination, she consistently denied all allegations of forgery, illegality, false claims, or lack of ownership, and maintained that she has lawful rights, title, and interest in both the suit property and the property in her possession, while asserting that the defendants are not absolute owners.

12. **PW2/Sh. Sevajit, Record Attendant from the office of Department of Delhi Archives** proved the original summoned record pertaining to the registration dated 22.01.1964, registered under registration no. 276 in Book No. 1, Volume 235, pages 383 to 386, and explained that such records relate to title documents of property; however, he was unable to compare the original record with Ex. PW-1/1 as both were in Urdu. He produced a copy of the said document, which was exhibited as Ex. PW-2/1 (OSR). During cross-examination, he clarified that he could not independently confirm whether the document was a sale deed from the original record itself and had referred to it as a sale deed in his examination-in-chief only after relying on a translated version of the document.

After cross-examination, plaintiff evidence was closed.

Defendant Evidence:-

DW1/ Sh. Deepak Kumar

13. He tendered his evidence by way of affidavit as Ex.DW1/A.

During cross-examination, the defendant stated that she is 12th pass and belongs to a family of two sisters and one brother, all married, and that the suit property measures about 75 sq. yards, out of which she claims to be in possession of approximately 34–35 sq. yards while alleging that Plaintiff No. 1 is illegally occupying another property (BE-338A). She admitted that the suit property stands in the name of her grandmother, late Smt. Shiv Mona Devi, and acknowledged that no document exists in her name proving exclusive ownership, no house tax, electricity, or water bills are in her name, and no partition has taken place till date.

14. She claimed that the property was given by her grandmother to her father, late Sh. Chander Has Rai, making him the absolute owner, and after his death, the defendants became owners and are in possession; however, she admitted that her father had not executed any document in her favour. She denied execution of any relinquishment deed by her sisters in her favour and also denied that the plaintiffs are co-owners or entitled to any share or partition. Throughout her testimony, she repeatedly denied the plaintiffs' claims of joint ownership and possession, alleged that Plaintiff No. 1 is in illegal possession of another ancestral property, and asserted her own possession while denying suggestions of false evidence or fabricated claims.

DW2/Smt. Seema

15. She tendered her evidence by way of affidavit Ex. DW2/A

During cross-examination, the defendant (DW-2) stated that she was married in 2002, resides at her in-laws' house in Loni, Ghaziabad, and has been living in one room of the suit property since 2008 due to personal circumstances. She admitted that the suit property, measuring 75 sq. yards, stands in the name of her deceased grandmother, Smt. Shiv Mona Devi, and that she has no documentary proof to establish that she or her siblings are absolute owners. She further admitted that after the death of her parents in 2009, she and her siblings became entitled only to their father's share, though no partition or formal documentation regarding such share has been executed.

16. She claimed that her grandmother had orally given the property to her father but denied that she and her siblings are exclusive owners or that they executed any registered relinquishment deed in favour of her brother. She acknowledged that a document (Ex. DW2/P1) bears her photograph but denied knowledge of signatures on it, citing illiteracy. Throughout her testimony, she denied the plaintiffs' claim for equal share and partition, denied making false statements, and maintained that she has rights in the suit property while also disputing the plaintiffs' entitlement and ownership claims.

After cross examination, defendant evidence was closed.

Final arguments

17. I have heard Shri Sumit Gaba Ld. Counsel for plaintiff and Shri Shivanand Thakur, Ld. Counsel for defendants and perused the record.

Both plaintiff and defendant have filed written synopsis of their arguments.

Plaintiff arguments

18. It is argued that the plaintiffs are claiming a 2/3rd share while the defendants, being heirs of deceased Chanderhas, are entitled to 1/3rd share of the suit property which was a earlier in the name of late Smt. Shiv Mona Devi, making all parties joint owners in possession. The plaintiffs alleged that despite repeated requests and even a prior settlement in 2016, the defendants failed to partition the property, instead creating disputes, threatening to sell the property, and attempting to create third-party interests without consent, which led to issuance of a legal notice in October 2020.

19. The plaintiffs further argued that they have duly proved their case through oral and documentary evidence, including the sale deed and testimony of witnesses PW-1 and PW-2, while the defendants have taken false and contradictory defenses. They emphasized that even the defendants' witnesses DW-1 and DW-2 admitted key facts such as the ownership of the property in the name of Shiv Mona Devi, absence of any partition, lack of documents proving exclusive ownership, and entitlement only to their father's share. On this basis, the plaintiffs argued that they have successfully established their legal right and are entitled to a decree for partition and injunction, while the defense raised by the defendants is false and liable to be rejected.

Defendant arguments

20. The defendant argue that the plaintiffs have no locus standi to file the suit, as it is barred by the principle of res judicata, and that the plaintiffs are attempting to take advantage of their own wrongful acts.

21. The defendants allege that the plaintiffs have not approached the Court with clean hands and have deliberately suppressed material facts to harass them. They claim that the defendants are the absolute owners and in possession of the suit property, while plaintiff No. 1 is allegedly in illegal and unauthorized possession of another property in Hari Nagar, which is claimed to be ancestral and jointly owned.

22. It is further alleged that the plaintiffs are habitual litigants who have previously usurped ancestral properties in Uttar Pradesh by illegally transferring and selling them without the consent of the defendants, thereby depriving them of their rightful share. The defendants also claim that the plaintiffs have filed false and frivolous police complaints to harass them.

23. The defendants argue that the present suit is based on false and fabricated facts, lacks essential ownership documents, and is not maintainable due to concealment of material facts, absence of cause of action, improper Court fees, and failure to file a correct site plan. They also point out contradictions in the plaintiffs' statements regarding ownership and nature of properties, particularly concerning documents executed by the parents.

24. The defendants argue that the plaintiffs were never in possession of the suit property, as admitted during cross-examination, and therefore are

not entitled to relief. They maintain that the defendants are the lawful owners in possession, and that the plaintiffs have filed the suit with mala fide intent to illegally grab the property.

Court observation and findings

Issue no. 1 Whether the plaintiffs are entitled to seek partition of properties bearing Nos. EX-B-34 & 35, BE Block, Hari Nagar, New Delhi? (OPP)

25. The onus to prove this issue was upon the plaintiffs. It is not in dispute that the suit property originally stood in the name of late Smt. Shiv Mona Devi. Both DW-1 and DW-2, in their respective cross-examinations, have categorically admitted that the suit property was owned by their grandmother, Smt. Shiv Mona Devi, and that no document of exclusive ownership exists in their favour. It is further an admitted position that Smt. Shiv Mona Devi expired intestate on 28.09.2010.

26. Once the ownership of the property in the name of a common ancestor and her intestate death is admitted, the legal consequence follows by operation of law. As per Section 8 of the Hindu Succession Act, 1956, the property of a Hindu female dying intestate devolves upon her legal heirs in accordance with the statutory scheme. In the present case, the plaintiffs as well as the predecessor-in-interest of the defendants (late Chanderhas) fall within the category of Class-I legal heirs. Accordingly, they inherit the estate as co-owners.

27. It is a settled proposition of law that co-ownership implies unity of

title and possession. Each co-owner is entitled to every inch of the joint property, subject to adjustment at the time of partition. In ***Kartar Singh v. Harjinder Singh AIR 1990 SC 854***, the Hon'ble Supreme Court held that a co-owner has a right to seek partition and separate possession of his share unless such right is legally barred. Similarly, in ***Anathula Sudhakar v. P. Buchi Reddy AIR 2008 SC 2033***, it was reiterated that where title is admitted and parties are co-owners, a suit for partition is the appropriate remedy.

28. In the present case, the defendants have failed to establish any legal bar to the right of partition. Their primary defence is that they are absolute owners on the basis of an alleged oral transfer by their grandmother in favour of their father. However, such a plea is wholly untenable in law. Transfer of immovable property of the nature in question cannot be effected by way of an oral arrangement in the absence of any registered document, particularly when it pertains to ownership rights. The defendants have admittedly not produced any document evidencing such transfer. Even DW-1 and DW-2 have admitted that no document exists in their favour or in favour of their father. The plea of absolute ownership raised by the defendants, therefore, remains unsubstantiated and is liable to be rejected.

29. Further, the defendants have raised objections regarding locus standi, res judicata, and absence of cause of action. However, no prior judgment or decree has been placed on record to substantiate the plea of res judicata. Mere filing of an earlier suit for injunction, as admitted by PW-1, does not bar the present suit for partition, as the cause of action

and reliefs are distinct. It is well settled that a co-owner can seek partition at any time, as the right to partition is a continuing right.

30. The contention that the plaintiffs are in possession of another property or have allegedly dealt with other ancestral properties is wholly irrelevant for adjudication of the present issue. The rights in the present suit property are to be determined independently.

31. Moreover, the evidence on record clearly establishes that no partition has taken place till date. Both DW-1 and DW-2 have admitted that no formal partition has ever been effected. In such circumstances, the property continues to remain joint.

32. It is a cardinal principle that every co-owner has a right to demand partition of joint property. In the absence of any legal impediment, such right cannot be denied. The plaintiffs, being co-owners by succession, are therefore fully entitled to seek partition of the suit property.

33. In view of the above discussion, the plaintiffs and the defendants are legal heirs of Late Smt. Shiv Mona Devi who died intestate, and are thus co-owners of the property. No valid document of exclusive ownership in favour of the defendants has been proved. No prior partition has taken place. There exists no legal bar to the maintainability of the present suit.

34. Accordingly, Issue No. 1 is decided in favour of the plaintiffs and against the defendants, holding that the plaintiffs are entitled to seek partition of the suit properties bearing Nos. EX-B-34 & 35, BE Block, Hari Nagar, New Delhi.

Issue no. 2 In case Issue No. 1 is decided in favour of the plaintiffs,

***whether the plaintiffs are entitled to 2/3rd share in the suit properties?
(OPP)***

35. The onus to prove this issue was upon the plaintiffs. Since Issue No. 1 has already been decided in favour of the plaintiffs, holding that the parties are co-owners and the suit for partition is maintainable, the next question that arises is the determination of the respective shares of the parties in the suit property.

36. The foundation of the plaintiffs' claim is that late Smt. Shiv Mona Devi, the admitted owner of the suit property, died intestate on 28.09.2010, leaving behind three children, namely the plaintiffs and one son, late Chanderhas (predecessor of the defendants). This factual position has not been specifically disputed by the defendants. Rather, the relationship between the parties and their status as legal heirs stands admitted on record.

37. In such a situation, the devolution of property is governed by Section 8 read with the Schedule of the Hindu Succession Act, 1956, which provides that the property of a Hindu dying intestate devolves equally upon the Class-I legal heirs. In the present case, the estate of late Smt. Shiv Mona Devi would devolve equally upon her three children. Consequently, each child would be entitled to 1/3rd share in the suit property.

38. It is an admitted position that one of the legal heirs, namely late Chanderhas, has expired. Upon his death, his undivided 1/3rd share would devolve upon his legal heirs, i.e., the defendants, in accordance with the law of succession. Thus, the defendants collectively step into the

shoes of late Chanderhas and are entitled to his share only.

The plaintiffs, being the surviving two children of late Smt. Shiv Mona Devi, would therefore be collectively entitled to 2/3rd share in the suit property.

39. It is well settled that succession opens only upon the death of the owner and the shares of the legal heirs are determined as per the statute. In *Commissioner of Wealth Tax v. Chander Sen* 1986 SCR (3) 254, the Hon'ble Supreme Court clarified that succession to property after the death of an individual is governed strictly by the provisions of the Hindu Succession Act. Further, in *Gurupad Khandappa Magdum v. Hirabai Khandappa Magdum* 1978 SCR (3) 761, it was held that the share of each heir must be ascertained in accordance with the statutory scheme and cannot be altered on the basis of vague or unsubstantiated claims.

40. In the present case, the statutory scheme clearly mandates equal distribution among the children of the deceased. There is no evidence on record to suggest that any of the legal heirs were excluded or that the shares were altered by any valid testamentary disposition.

41. In view of the above discussion, it is held that Late Smt. Shiv Mona Devi died intestate, leaving behind three children. Each child was entitled to 1/3rd share in the suit property. The defendants, being legal heirs of late Chanderhas, are collectively entitled to his 1/3rd share; and the plaintiffs, being the remaining two children, are collectively entitled to 2/3rd share in the suit property.

42. Accordingly, Issue No. 2 is decided in favour of the plaintiffs and against the defendants, holding that the plaintiffs are entitled to 2/3rd

share (collectively) in the suit properties bearing Nos. EX-B-34 & 35, BE Block, Hari Nagar, New Delhi, while the defendants are entitled to the remaining 1/3rd share.

Issue no. 3 Whether the plaintiffs are entitled to a decree of permanent injunction restraining the defendants and their associates from creating third party interest in the suit properties? (OPD)

43. The onus to prove this issue was upon the defendants; however, since the relief of injunction has been sought by the plaintiffs, the Court is required to examine whether the plaintiffs have established a case for grant of such equitable relief.

44. It is now well settled that in a suit for partition, where the property is joint and undivided, each co-owner is deemed to be in possession of every part of the property, and no co-owner can deal with or alienate the entire property to the prejudice of the other co-owners.

45. In the present case, while deciding Issue Nos. 1 and 2, the Court has already held that the plaintiffs and defendants are co-owners of the suit property, with the plaintiffs having 2/3rd share and the defendants having 1/3rd share. It is also an admitted position that no partition has taken place till date.

46. The plaintiffs have specifically pleaded and deposed that the defendants have been threatening to sell the suit property and create third-party interests without their consent. Though the defendants have denied these allegations, they have simultaneously claimed themselves to be absolute owners of the property. Such a stand, in itself, raises a reasonable apprehension that the defendants may attempt to alienate the

property as if they were exclusive owners.

47. It is a settled principle of law that one co-owner cannot transfer or create third-party interest in the entire joint property so as to bind the shares of other co-owners. In *Ramesh Chand Ardawatiya v. Anil Panjwani AIR 2003 SC 2508*, the Hon'ble Supreme Court held that a co-owner cannot deal with the joint property in a manner prejudicial to the interest of other co-owners. Similarly, in *Maharwal Khewaji Trust v. Baldev Dass AIR 2005 SC 104*, it was held that where there is a dispute regarding title and possession, and the property is likely to be alienated, the Court ought to preserve the property by granting injunction to prevent multiplicity of proceedings and irreparable injury.

48. Further, the three essential ingredients for grant of permanent injunction are:

- (i) existence of a legal right;
- (ii) infringement or threatened infringement of such right; and
- (iii) likelihood of irreparable harm in absence of injunction.

49. In the present case the plaintiffs have established their legal right as co-owners of the suit property. The stand taken by the defendants claiming exclusive ownership gives rise to a credible threat of infringement of the plaintiffs' rights; and if third-party interests are created, it would lead to multiplicity of litigation and complications in effecting partition, thereby causing irreparable injury to the plaintiffs.

50. It is also pertinent to note that allowing any party to create third-party interest in an undivided property during the pendency of a partition suit would defeat the very purpose of the suit and render the final decree

ineffective.

51. However, it must also be clarified that a co-owner is legally entitled to transfer his undivided share, though such transfer would be subject to the rights of other co-owners and the outcome of the partition proceedings. Therefore, the injunction must be suitably tailored so as to restrain alienation of the entire property or creation of third-party interest affecting the shares of other co-owners, while not absolutely restraining lawful transfer of an undivided share in accordance with law.

52. In view of the above discussion, the plaintiffs have successfully established their status as co-owners. There exists a reasonable apprehension that the defendants may create third-party interest in the suit property; and such action would prejudice the rights of the plaintiffs and complicate the partition proceedings.

53. Accordingly, Issue No. 3 is decided in favour of the plaintiffs and against the defendants, and it is held that the plaintiffs are entitled to a decree of permanent injunction.

54. The defendants, their agents, representatives, or any person claiming through them are hereby restrained from selling, transferring, alienating, or creating any third-party interest in the entire suit property in a manner prejudicial to the plaintiffs' rights, till the property is partitioned by metes and bounds.

55. However, it is clarified that any transfer, if made, shall be strictly limited to the undivided share of the defendants and shall remain subject to the final outcome of the present partition proceedings.

Issue no. 4 Whether the suit is without any cause of action in as much as

the defendants are absolute owners of the properties sought to be partitioned? (OPD)

56. The onus to prove this issue was upon the defendants. The defendants have contended that the present suit is without any cause of action on the ground that they are the absolute owners of the suit property and, therefore, no right accrues in favour of the plaintiffs to seek partition. It is further their case that the plaintiffs have filed the present suit on false and fabricated grounds and are not entitled to any relief. It is necessary to examine the concept of “cause of action.” A cause of action comprises a bundle of essential facts which the plaintiff must prove to entitle him to a decree. It is well settled that while determining the existence of a cause of action, the Court has to look at the averments made in the plaint and assume them to be correct for that limited purpose. In ***A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies AIR 1989 SC 1239***, the Hon’ble Supreme Court held that cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment.

57. In the present case, the plaintiffs have specifically pleaded that the suit property was owned by late Smt. Shiv Mona Devi, she died intestate. The plaintiffs and the predecessor of the defendants are her legal heirs. The parties are joint owners in possession. Despite repeated requests, the defendants have refused to partition the property and have threatened to create third-party interest. These averments, taken at face value, clearly disclose a cause of action for filing a suit for partition and injunction.

58. The principle defence of the defendants is that they are absolute

owners of the suit property on the basis of an alleged oral transfer by late Smt. Shiv Mona Devi in favour of their father. However, this plea has already been examined and rejected while deciding Issue Nos. 1 and 2. The defendants have failed to produce any documentary evidence to substantiate their claim of exclusive ownership. On the contrary, both DW-1 and DW-2 have admitted in their cross-examination that the suit property stands in the name of late Smt. Shiv Mona Devi, no document exists in their favour showing exclusive ownership; and no partition has taken place till date.

59. In the absence of any registered document, the plea of oral transfer of ownership of immovable property is legally unsustainable. The defendants have thus failed to establish their claim of absolute ownership. It is also a settled principle that a co-owner has a continuing and recurring cause of action to seek partition of joint property until the property is actually partitioned. In ***S. Sai Reddy v. S. Narayana Reddy AIR 1990 AP 263***, the Hon'ble Supreme Court held that the right to partition is a continuing right and subsists so long as the property remains joint.

60. Further, the defendants have raised objections regarding lack of locus standi, suppression of facts, and alleged disputes relating to other properties. However, such contentions do not negate the existence of a cause of action in respect of the present suit property. The alleged disputes concerning other properties are extraneous and irrelevant for deciding the present issue.

61. The plea of res judicata has also been raised by the defendants; however, no previous judgment or decree between the parties on the same

cause of action has been placed on record. Mere filing of an earlier suit for injunction does not bar the present suit for partition, as the reliefs and cause of action are distinct.

62. Thus, from the pleadings as well as the evidence on record, it is evident that the plaintiffs have a subsisting legal right as co-owners and that there exists a clear dispute regarding partition of the suit property, giving rise to a valid and enforceable cause of action. The defendants have failed to discharge the onus cast upon them to prove that the suit is without cause of action or that they are absolute owners of the suit property.

63. In view of the above discussion, the plaint discloses a clear and valid cause of action for filing the present suit. The plaintiffs, being co-owners, have a continuing right to seek partition. The defendants have failed to prove their plea of absolute ownership. No legal bar has been established to show that the suit is not maintainable. Accordingly, Issue No. 4 is decided against the defendants and in favour of the plaintiffs.

Relief

64. Accordingly, the suit of the plaintiffs is decreed in the following terms:

(i) A preliminary decree of partition is passed in respect of property bearing Nos. EX-B-34 & 35, BE Block, Hari Nagar, New Delhi, measuring 75 sq. yards, declaring that:

The plaintiffs are entitled to 2/3rd share (collectively) in the suit property; and

The defendants are entitled to 1/3rd share (collectively) in the suit

property.

(ii) A decree of permanent injunction is also passed in favour of the plaintiffs and against the defendants, restraining the defendants, their agents, representatives, or any person claiming through them from selling, transferring, alienating, or creating any third-party interest in the entire suit property so as to prejudice the rights of the plaintiffs. However, it is clarified that any transfer, if effected by the defendants, shall be strictly limited to their undivided 1/3rd share and shall remain subject to the outcome of the final partition proceedings.

In the facts and circumstances of the case, there shall be no order as to costs. Decree sheet be prepared accordingly.

Put up for filing affidavit by both the parties regarding partition of the suit property by metes and bounds for 07.05.2026.

**Announced in open Court
on 07th Day of April 2026**

**(Susheel Bala Dagar)
District Judge-08, West
Tis Hazari Courts, Delhi.**

(This judgment contains 22 pages.)