

Ashok Garg Vs. STATE THROUGH CHIEF SECRETARY

16.02.2026

Present: Sh. Parmod Kumar Singhal, Ld. counsel for the petitioner.
Sh. Ashish Singh, ld. counsel for the respondent no. 2 as well as objector/ Ms. Sunita Garg alongwith R-2.

No objection by way of affidavit has been filed on behalf of R-3 on 02.12.2025.

Rejoinder along with reply of application under Section 10 CPC has been filed on behalf of the petitioner. Copy supplied.

Ld counsel for the petitioner submits that respondent no. 2 has not filed any document, so, there is no need to file affidavit of admission/denial of documents.

Affidavit of admission/denial of documents has been filed on behalf of the defendant. Ld counsel for the respondent no. 2 undertakes to file the same on the e-portal.

Statement of the respondent no. 2 has been recorded regarding the admission/denial of the documents of the petitioner.

In the present case, Smt Sunita is not a party, however, joint objections have been filed on behalf of the respondent no. 2 and Smt Sunita. Smt Sunita is claiming interest in the property of the deceased, on the ground that she has purchased the suit property from her husband/respondent no. 2.

Ld counsel for the petitioner submits that he has no objections, if the objections of Smt Sunita are taken on record and she is made party in the present case.

In view of the abovesaid facts, Smt Sunita is impleaded as respondent in the present case and her objections are taken on record.

Amended memo of parties be filed before NDOH.

Arguments heard on the application filed under Section 10 CPC.

Put up for order on the application filed under Section 10 CPC, during the course of day.

(SHIV KUMAR)
DJ-02 (W)THC:Delhi
16.02.2026

At 3:00 PM

Present: None.

1) Vide this order, I shall decide the application filed by the respondent no. 2 and respondent no. 4/Ms. Sunita Garg under Section 10 CPC for staying the proceedings of the present probate petition.

2) It is alleged in the application that before filing the present probate petition by the petitioner, the petitioner has already instituted Civil Suit bearing no. CS DJ no. 17/2025 titled Ashok garg Vs Anil Kumar @ Anil Garg & Ors seeking declaration of ownership based on the Will in question.

3) It is further averred in the application that the applicants have disputed the validity and genuineness of the said Will in their written statement filed in the abovesaid suit.

4) It is further averred in the application that in both matters, the same evidence has to be led by the petitioner for proving the Will in question and the court has to decide the validity and genuineness of the Will in question in the present petition and in the abovesaid suit.

5) It is further averred in the application that the matter directly and substantially in issue in both cases is same and parties are also same, so, the present petition may be stayed.

6) It is further averred in the application that permitting trial of both civil suit and probate petition simultaneously would give rise to the possibility of passing of two contradictory judgments by two courts regarding the validity and genuineness of the Will in question.

7) Reply of the said application has not been filed by the petitioner.

8) Arguments heard. Case file perused.

9) **Section 10 of the CPC states as follows:-**

‘Stay of suit: No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in having jurisdiction to grant the relief claimed, or in any Court beyond the limits of established or continued by and having like jurisdiction, or before [the supreme court]’.

10) For the applicants/respondents to succeed in their claim regarding staying the present probate petition, the aforesaid essential ingredients mentioned in Section 10 of CPC are needed to be satisfied by the applicants/respondents. For the same, it is important for this court to examine whether the present probate proceedings constitute as a suit’ as mandated under section 10 CPC and further whether the matter in issue in the present probate petition is also directly and substantially in issue in civil suit bearing Civ DJ no. 17/2025 .

11) In a case titled **Ravi Khanna Vs Pankaj Khanna 2008, SCC OnLine Del 979**, the Hon’ble High Court of Delhi has observed as follows:

“3. Mere pendency of a suit for partition puts no bar for grant of probate or letter of administration under the Provisions of the Succession Act. It is settled law that probate Court has jurisdiction to determine about the genuineness of the Will and whether the petitioner who applied for the probate was entitled to grant of probate of the Will or not. The order of the Probate Court does not decide as to title of the property mentioned in the Will and whether or not a testator had a right to bequeath the property by way of a Will or not. The Court where the suit for possession and partition of the property is pending would be determining the rights of the parties qua the property. In such a suit even if a Will is produced either by plaintiffs or by the defendant to claim title over any portion of the property, the Civil Court will have to adjudicate about the title of the property, whether the Will could be executed or not and whether any right was conferred by the Will or not. While the probate Court can give findings only about the genuineness of the Will”

12) In case **Praveen Chandra v. Aparajita & Ors.** 2019 SCC Online Del 10820 the Hon’ble High Court of Delhi has observed as follows :-

“13. A probate petition, strictly speaking, cannot be considered to be a ‘previous suit’ under Section 10 CPC.”

“15. From the above it is clear that both the probate petition and the suit for partition can proceed.”

13) The Hon'ble High Court of Delhi by considering the above said judgments in a case titled Parminder Gujral & Ors (Supra) has held in para no. 40 & 50 as follows:

“40. Therefore, it is crystal clear from the above discussion that the pending probate proceedings cannot be considered as a ‘previously instituted suit’ as mandated under Section 10 of the CPC”.

“50. In view of the above said discussion on facts as well as law, I do not find any cogent reason to stay the proceedings in the instant petition as the petition pending in the courts below cannot be termed as ‘previously instituted suit’ as mandated under Section 10 of the CPC. The court cannot also invoke its inherent power under Section 151 of the CPC as Section 10 of the CPC is exhaustive in nature and section 151 of the CPC cannot override the express statutory provisions mandated in Section 10 of CPC.

14) The respondents have not filed copy of plaint and copy of the issues framed in the said civil suit. So it cannot be ascertained what are the pleadings of the parties and what issues have been framed in the said civil suit.

15) In the present probate petition the petitioner has sought relief regarding grant of probate of Will dated 25.01.2024 executed by Sh. Ruldu Ram.

16) This court being probate court has not to decide the right, title and ownership of the parties in the properties of the deceased. It is settled law that the determination of issues regarding right, title and ownership of the parties in the properties of the deceased are alien to the probate proceedings.

17) In the present petition, this court has to decide whether Will dated 25.01.2024 executed by the deceased is the genuine Will and has been duly executed by the deceased. This court has also to decide whether the petitioner is entitled to obtain probate certificate of the abovesaid Will or not.

18) The relief regarding grant of probate of will dated 25.01.2024 can be granted only by a probate court. The civil suit is pending before Ld. Distict Judge and the Id. District Judge being not a probate court, cannot grant relief which is sought by the petitioner in the present petition.

19) Moreover, as per judgment given by the Hon'ble High Court of Delhi in cases titled Praveen Chandra (Supra) and case titled Paminder Gujral (Supra), a probate petition strictly speaking cannot be considered to be a suit as mandated under Section 10 of the CPC. In the above said both judgments, it is held that probate petition and suit for partition can proceed together. In the above said both cases, on the ground of filing of probate petition before the filing of partition suit, the partition suit has not been stayed by the Hon'ble High Court of Delhi by observing that probate petition cannot be

considered to be a previously instituted suit as mandated under section 10 of CPC. In view of the above said judgments, the present probate petition cannot be considered as suit as mandated under section 10 of the CPC.

20) In view of the foregoing discussions, there is no merit in the application of applicants/respondent no. 2 and respondent no. 4, filed under section 10 CPC for staying the proceedings of the present probate petition and hence, the same is accordingly stands dismissed with cost of Rs. 3000/- to be paid to the petitioner.

Put up for framing of issues on **28.02.2026**.

(SHIV KUMAR)
DJ-02 (W)THC:Delhi
16.02.2026