

Preeti Mathur & Anr Vs Mr. Puneet Dilwaria & Ors.

21.04.2026

Present: Sh. Shubham, Ld counsel for the plaintiff through VC.
None for the defendant.

ORDER

1. Vide this order, I shall pass the final decree in the present partition suit.
2. Vide order dated 27.11.2024, preliminary decree regarding the shares of the parties in the suit property i.e. Property bearing no. 148, Defence Apartment, Inder Enclave, Rohtak Road, New Delhi-110087 has already been passed.
3. As per preliminary decree, the parties have following shares in the suit property.
 - a. Smt. Preeti Mathur (plaintiff no. 1) 1/6th share.
 - b. Ms. Prapti Mathur (Plaintiff no. 2) 1/6th share.
 - c. Mr. Puneet Dilwaria (D-1) 1/3rd share.
 - d. Mr. Archit Mathur (defendant no. 2) 1/6th share.
 - e. Mr. Anubhav Mathur (defendant no.3) 1/6th share.
4. Affidavits suggesting the mode of partition have been filed by plaintiffs as well as by defendant no. 1 to 3.
5. On 07.03.2026, status report has been filed on behalf of the DDA by stating that the suit property was originally allotted to Late Sh. Krishan Murari vide membership no. 362

and thereafter, the mutation of the suit property has been entered in the name of the legal heirs of Late Sh. Krishan Murari, who are plaintiffs and defendants in the present case. It is further mentioned in the report that all the legal heirs applied for conversion of the suit property from lease hold to free hold and which was allowed on 15.12.2025 but the process for execution of conveyance deed in their favour has been put on hold by the competent authority due to revision of conversion charges.

6. On 27.03.2026, Ld counsels for the parties submitted that there is no possibility of partition of the suit property by metes and bounds and suit property may be sold by way of Public Auction. They further stated that the parties may be allowed to participate in the auction and may be allowed to make bids for purchasing the suit property.
7. From the submissions of Ld counsels for the parties, it is clear that the suit property cannot be partitioned by metes and bounds. Therefore, the suit property is required to be sold, in terms of Section 2 of the Partition Act, 1893 and under Order XX Rule 18 (2) of CPC.
8. Section 2 of the Partition Act, 1893 is reproduced hereinbelow:

“2. Power to Court to order sale instead of division in partition suits: Whenever in any suit for partition in which, if instituted prior to the commencement of this

Act, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.”

9. It is held by the Hon’ble High Court of Delhi in a case titled “Indu Singh and Ors. Vs. Prem Chaudhary and Ors”, 2018, SCC online DEL 8951, decided on 11.05.2018 has held that the Court, under Order XX Rule 18 (2) of CPC can pass an order for sale of the suit property, if the same is not capable of being partitioned by metes and bounds. The relevant paras of the said judgement are reproduced hereinbelow:

“16.(i) At this stage it will be extremely relevant to note two important aspects.

(ii) First aspect is that while Sub-Rule (2) of Order XX Rule 18 CPC provides that a court may on account of the facts and circumstances as regards the properties which are subject matter of the suit for partition, find that straightaway a final decree for partition cannot be passed giving physical shares in the joint properties to the joint owners, then therefore in such cases, the court passes only a preliminary decree declaring the shares of the parties, and that after passing of the preliminary decree, a court has; as per the last line and set of words of Sub-Rule (2) of Order XX Rule 18 CPC; powers to pass "such further directions as may be required". These words appearing at the end of the Sub-Rule (2) of Order XX Rule 18 CPC are very important and of great significance because these words in my opinion has removed the shortcoming which had still remained in

spite of passing of the Partition Act as regards the situation when moiety or upwards of the shareholders did not want sale of the suit properties. With respect to properties which were not subject matter of payment of land revenue to the government, then with respect to such properties which are subject matter of Order XX Rule 18 Sub-Rule (2) CPC, court was given intendedly the power to pass such further directions as may be required, and such a wide expression therefore in my opinion will entitle a civil court to order for sale of the joint property/properties even if moiety or upwards of the shareholders do not want sale of the joint property/properties. This language of the last few words at the end of Order XX Rule 18 Sub-Rule (2) in my opinion becomes very important and relevant in today's age and date because a considerable number of immovable properties which are subject matter of suits for partition are properties which have been constructed many decades earlier and which is the next aspect which is being immediately adverted to hereinafter.

(iii) The second aspect is that over a period of time in urban areas the covered area of construction which is permissible on a plot has been steadily increasing. For example in Delhi previously on a plot ordinarily a ground floor, first floor and a barsati floor (part second floor) was only allowed to be constructed. Barsati floor means that the entire second floor is not allowed to be covered but the second floor which is called as a barsati floor is allowed to be only partly covered. The municipal law thereafter changed whereby almost the entire second floor was allowed to be covered. Thereafter, the municipal law has further changed and a third floor was allowed to be constructed, besides allowing construction of a basement on a property. Now in addition to a plot having a basement and four floors, in view of the scarcity of parking of vehicles in a city like Delhi on account of the existence of unending number of vehicles, stilt parking is also permitted to be made below the ground floor and above the basement floor. Since the ultimate object and the real intention of the joint properties being partitioned is to give a person his monetary value equivalent of his percentage share in the joint property/properties, and since now additional Floor Area Ratio (FAR)/covered area is permissible, therefore in old constructed properties,

simply by physically dividing the existing construction the same does not result in a person getting his monetary value of his percentage share in the joint property/properties. Partition therefore really in today's date and age in urban areas is a partition in terms of FAR/covered area, and once that is so, then on such FAR/covered area being available to a co-owner/joint owner then such a person may/would/could want to reconstruct for enjoying more constructed area falling to his share, and which will necessarily require bringing down the old construction and thereafter making fresh construction on the plot of basement plus four floors and stilt parking. Thus in very old constructed properties simply physically partitioning of such joint property/properties is not the answer, and the joint property/properties in many cases have necessarily to be sold so as to give a person his actual monetary share value in the joint property/properties. At this stage I would hasten to add that with respect to sale of a joint property, the entitlement of a co-owner in terms of Sections 3, 4, 6 and 7 of the Partition Act come in, whereby on an order being passed of sale of a joint property, the sale is not necessarily and firstly by public auction/sale, because firstly in the sale proceedings, one or more co-owners can buy out the other co-owner/co-owners i.e., rights of pre-emption. (iv) Therefore in my opinion the words as found in the last line of Sub-Rule (2) of Order XX Rule 18 CPC would result in a position that as of today there no longer exists any gap or shortcoming or failing which would result in a stalemate if joint owner(s), having less than a 50% share, ask for his/their share by filing a suit for partition of the joint property/properties.”

10. In view of the abovesaid judgment of Hon'ble High court of Delhi, this Court is empowered to pass an order of sale of the suit property, in the facts and circumstances of the present case, under Section 2 of Partition Act, 1893, as well as under Order XX Rule 18 (2) of CPC.

11. It has been further held in “Indu Singh and Ors. Vs. Prem Chaudhary and Ors. (SUPRA), that an Order of sale under Section 2 of the Partition Act, 1893 shall be a final decree and all proceedings towards sale of the property which is subject matter of the final decree of partition, have to take place in execution proceedings of this final decree.
12. Accordingly, a final decree of partition is passed for the sale of the suit property by way of public auction and the parties shall share the sale proceeds as well as expenses of auction sale in terms of their respective shares, as determined by the preliminary dated 27.11.2024. The manner of the sale shall be determined in the execution proceedings and the parties shall be entitled to make bids in the auction and are permitted to purchase the suit property .
13. The parties are directed to file valuation report and requisite stamp duty. Any of the parties can file full stamp duty with right to receive the amount of share of stamps duty of other parties.
14. The Decree sheet be drawn accordingly, subject to filing of valuation report with respect to suit property and upon payment of the requisite stamp duty.
15. **File be consigned to record room after due compliance.**

(SHIV KUMAR)
DJ-02 (W)THC:21.04.2026