

23.12.2025

Present: Sh. Balram and Sh. Puneet Kumar, Ld. Counsels for plaintiff along with plaintiff in person.
Sh. Sunnirudh Kumar and Ms. Ruby Rani, Ld. Counsels for defendant.

Final arguments heard.

Present suit for partition and permanent injunction is filed by the plaintiff against the defendant.

It is the case of the plaintiff that both the plaintiffs and defendant no. 1 are siblings and children of Sh. Prakash. By way of present suit have sought partition in the property of Sh. Prakash.

The present suit is defended by the defendant on the ground that Sh. Prakash has left behind a Registered Will dated 31.08.2017 whereby devolving his property in favour of defendant no. 1.

Ld. Counsel for plaintiff argued that on 23.12.2022, seven issues were framed by ld. Predecessor Court, and burden to prove issue no. 1 to 4 lies upon defendant while that of remaining issues lies upon plaintiffs.

It is further argued that no evidence have been led by the defendant to prove issue nos. 1 and 2 nor any questions with respect to the same was asked.

With respect to the Will in question, the validity of same is challenged by plaintiff on following grounds:

- a) That the Will mentions testators having three daughters, while it is admitted by defendant no. 1 and testator was having two daughters and one son.
- b) That the Will also mentions that share of daughter was given to them, however same does not prescribed the extent of share.
- c) That the Will bears thumb impression of testator, while testator was an educated man and used to sign document, which is placed on record by the plaintiff along with the replication.
- d) That both DW-1 and DW-2 have stated that they have not got prepared the affidavit in evidence.
- e) That no document is placed by the defendant on record to show that the share of plaintiff in property of Sh. Prakash is already allotted to them.
- f) That although, in cross examination of DW-1 it is stated that Sh. Prakash was a illiterate person, however same is contradiction with para 8 of affidavit in evidence.
- g) That DW-1 during cross examination has admitted to the fact that property is an ancestral property.
- h) That admittedly defendant, who is also beneficiary to the Will was present along with the testator at the time of execution of the same.
- i) That the attesting witnesses to the Will does not state that the testator was of sound mind at the time of execution of Will.
- j) That their contradiction in cross examination of DW-2 from that of his affidavit in evidence, with regards to use of mobile phone by Sh. Prakash.

It is further argued that DW-3 who was a witness from Sub-Registrar Office has appeared from office of Sub-Registrar 7A,

however the summons were issued upon the Office of Sub-Registrar 2 and not 7A. It is further argued that there was no authority with the witness to depose from the office of Sub-Registrar 2.

It is argued by Ld. Counsel for plaintiff that the plaintiffs are not in possession of any documents as to the ownership of property in question and same lies within the possession of defendant. It is further argued that the defendant herein admitted the documents i.e. bills, DDA etc. so placed on record by the plaintiff whereby name of testator is shown as owner of the property. It is further argued that neither any question was put to the witnesses at the time of cross examination.

On the contrary it is argued by Ld. Counsel for defendant that Sh. Prakash has three daughters in total and same is duly admitted by the plaintiff in para 6 of their replication, since, Gyano Devi has one daughter from her previous marriage with Sh. Sultan Singh.

It is further argued that no documents have placed on record by the plaintiff to show that testator was not of sound mind at the time of execution of Will.

That the testator has placed his thumb impression on the Will due to old age, which is also admitted by the plaintiff's witnesses in cross examination.

That the witness from Sub-Registrar Office produced all the relevant documents to show that the Will was registered.

That the property in question was allotted in favour of testator and thereby, same was self acquired property and not an ancestral property.

The same is rebutted by counsel for plaintiff on the ground that once it is already stated by defendant that testator was illiterate,

they cannot now claim that the Will was not signed due to old age of testator. It is further stated that nowhere it is admitted by the plaintiff that testator could not signed due to his old age.

Ld. Counsel for the defendant stated that no family pedigree is placed on record by the plaintiff with respect to property in dispute nor any revenue record for the same are filed.

Final arguments heard.

Parties shall be at liberty to file their written submissions, if any, not more than 2-3 pages, atleast 10 days prior before the NDOH.

Now to come up for judgment/clarifications, if any on 18.02.2026.

(Anubhav Jain)
District Judge -05, NDD,
PHC/ND/23.12.2025