



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 24th AUGUST, 2026

IN THE MATTER OF:

CNR No. DLHC010313052019

+ **CS(OS) 372/2019 & I.A. 10136/2019**

SH. RAMESH KUMAR

.....Plaintiff

Through: Ms. Pooja Sarwal, Advocate

versus

SH. KRISHAN LAL KAPOOR & ORS.

.....Defendants

Through: Mr. Deepak Singh Thakur, Advocates
LRs of D-2

Ms. Upasna Kapoor, Defendant No.2
(In person)

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The instant Suit has been filed on behalf of the Plaintiff seeking partition of the Suit Property bearing No.11/240, Geeta Colony, Delhi measuring 100 sq. yds.
2. To adjudicate the present Application, it is necessary to bring out the Plaint averments to see as to whether the Plaint is liable to be rejected under Order VII Rule 11 of the CPC or not. The averments in the Plaint are as under
 - a. The facts of the case reveal that the Plaintiffs and the Defendants are children and grandchildren of Late Sh. Bagga Ram and Late Smt. Jeevan Devi, who passed away intestate leaving behind three sons,



- i.e., Sh. Ramesh Kumar, Sh. Krishan Lal Kapoor, and Sh. Kashmiri Lal Kapoor and two daughters Smt. Sheelawati and Smt. Raj Kumari.
- b. The facts of the case further reveal that the Plaintiff, Defendant No.2 Defendant No.3, and Defendant No.4 have already passed away and they are now being represented by their legal heirs. It is stated that the mother of the Plaintiff and Defendants No.1 to 4, Smt. Jeevan Devi was the absolute owner of Suit Property bearing No. 11/240, Geeta Colony, Delhi.
- c. During the lifetime of the Late Smt. Jeevan Devi and Late Sh. Bagga Ram, the Plaintiff, Defendants No.1 and 2 along with Smt. Jeevan Devi and Late Sh. Bagga Ram were living in a joint family. It is further stated that after the demise of Smt. Jeevan Devi, the property was not divided, however, temporary arrangement was in place, under which the Plaintiff and the Defendant No.1 started residing in the front portion of the first and ground floor respectively and Defendant No.2 occupied the rear portions of the ground and first floor of the Suit property without any formal partition.
- d. Subsequently, disputes arose between the parties due to which several suits were filed by the parties in respect of suit property. It is further stated that Defendant No.3 and 4 after their marriage started residing in the matrimonial home and it is stated that they had also orally relinquished their rights in the suit property.
- e. The Defendant No.1 herein filed a Civil Suit bearing no. 27/2002 seeking partition in respect of the suit property against his brothers and sisters who are Plaintiff and Defendants in the present Suit. It is further stated that the said Suit got dismissed vide Order dated



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07.11.2003 due to a compromise arrived at between the parties. It is further stated that the Plaintiff in the present Suit also filed a Suit for partition in this Court and vide an Order dated 16.10.2006 dismissed the Suit by relying on the mutual agreement arrived between the parties in Civil Suit bearing no. 27/2002.

- f. It is stated in the Plaint that egress and ingress of the Plaintiff is getting hindered because the way to the First Floor is from the ground floor which is in the possession of the Defendant No.1. It is further stated that the mutual arrangement between the parties is a temporary settlement and the Suit property is still not partitioned by metes and bounds.
 - g. The Defendant no.1 filed another Suit bearing no. 378/10/07 in the Karkardooma Court, Delhi seeking permanent and mandatory injunction which came to be decided on 30.07.2015 whereby the Plaintiff herein was restrained from creating any third party rights or transferring or alienating or parting with the possession of the roof of the first floor of the Suit property which was in the possession of the Defendant No.1 herein and further directed the Plaintiff herein to remove the lock from the gate of roof of the First Floor of the Suit Property so that Defendant No.1 herein and his family can visit the roof of the First Floor.
 - h. It is the contention of the Plaintiff that since the arrangement/settlement arrived at between the parties is oral and temporary in nature, therefore, formal partition of the suit property is being prayed for by way of the present Suit.
3. Summons in the present Suit were issued on 29.07.2019. Issues are



yet not framed.

4. The Compromise Decree passed in the Suit No.27/2002 is being reproduced as under:-

*“Suit for permanent injunction
27/2002
DW-1*

State of Sh. Ramesh S/o Sh. Bagga Ram Kapoor R/o 1st Floor, H.No. 11/240, Geeta Colony, Delhi, I have voluntarily compromised the matter with the plaintiff as the plaintiff is my real brother, defendant no.2 is my wife, defendant no.3 & 4 are my sons. I and my family members will not dispose the defendant and his family members from the front portion of the ground floor of the premises bearing no. 11/240, Geeta Colony, New Delhi specifically shown in red in the site plan without you process of law and I alongwith my family members shall not part with the possession of front portion of the first floor of the said premises specifically shown in green in the site plan and we shall also not create any third party interest in any manner whatsoever in respect of the portion shown in green colour in the site plan. I also undertake that we will not use the front ground portion of the said property as shown in Red colour. However, I will not create any hindrances in the said portion which is in the possession of the plaintiff. However, I have the right to enter the front portion of the ground floor only for purposes of using the stair cases, which lead upto the first floor of the property. I shall not use any other portion of the ground floor for any other purpose the suit of the plaintiff may therefore, be disposed of accordingly, the site plan filed by the plaintiff is correct and the same is Exhibit-DW-1/A.

RO & AC.

CS Delhi

Ramesh Kapoor



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*Statement of Sh. Pratyush Chiranton, Advocate
Ch. No. Y-Block, 2-A, Civil Side, Tis Hazari Court,
Delhi without oath. I am the counsel for all the
defendants and I am authorized to make the statement
before this Court on behalf of the defendant. The
defendants have voluntarily compromised the matter
with the plaintiff. Defendant no.2 is the wife and the
defendant no.3 & 4 are the son of the defendant. All the
defendants shall be bound by the statement given by
the defendant no.1 in the court today. The suit of the
defendant may be disposed of accordingly.*

RO & AC

CS Delhi

Pratyush Chiranton,

*Statement of Sh. Kishan La Kapoor S/o Late Sh. Bagga
Kapoor, R/o 11/240, Ground Floor, Geeta Colony,
Delhi On SA.*

*I have heard the statement of the defendant no.1 and of
counsel for the defendants and I am satisfied with their
statements. I have voluntarily compromise the matter
with the defendants. I will not create any hindrance for
the defendants in the use of the stair case shown in Red
Colour in the site plan of the ground floor of property
no. 11/240. The stair cases are to be use commonly by
all the parties. My suit may be disposed off as
compromise/satisfied.*

RO & AC

Krishan Lal

Amarjeet Singh, Advocate

CS Delhi

23.07.2002

Attested

Sd/-



26.07.

27/02

23.07.03

Sh. Amarjeet Singh Advocate with plaintiff with plaintiff in person Sh. Pratyush Chiranton, Advocate for defendant. It has been reported at the matter has already been compromised. The statement of the parties are recorded separately. In view of their statement, the suit of the plaintiff is disposed off as compromise/satisfied. File be consigned to record room.

CS Delhi

Brijest Kumar 23.07.03

Sd/-

Attested

Sd/-

26.07.03”

5. It is contention of the Defendants that the present Suit cannot proceed further for the reason that the property stands partitioned in a suit being CS(OS) No.1143/2005. It is also recorded that the said Suit has been filed by the Plaintiff for partition, which stands disposed of by this Court *vide* Order dated 16.10.2006 and therefore, once the property stands partitioned, the present Suit is not maintainable.

6. Even though no formal application under Order VII Rule 11 of the CPC has been filed in the present Suit, the arguments have advanced from both the sides and the judgment was reserved by this Court *vide* Order dated 10.08.2026.

7. The Order dated 16.10.2006 passed by this Court disposing of the Suit being CS(OS) No.1143/2005 filed by the Plaintiff herein for partition is reproduced to read as under:-



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“1. Original plaint which was filed in the District Court has since been placed on record.

2. Noting that while filing the present suit, contents of the original plaint have been retained, the only fault committed by the learned counsel for the plaintiff is in not re-filing the original plaint which was returned to be refiled in this court and thereafter seeking amendments as required by law to conform to the maintainability of the plaint in this court he has filed a new plaint, I proceed ahead in the matter.

3. Issues have to be framed.

4. On going through pleadings of the parties, issues are not required to be framed for the reason, the real cause of the dispute has not been correctly projected by the plaintiff.

5. Suit seeks partition of property no. 11/240, Geeta Colony, Delhi.

6. Plaintiff and defendants are the children of Late Smt. Jeevan Devi. Plaintiff and defendants 1 and 2 are the three sons born to her. Defendants 3 and 4 are the 2 daughters.

7. It is stated in para 8 of the plaint that in respect of the property in question, defendant no. 1 had filed a suit for permanent injunction against the plaintiff and his family members which was disposed of by the learned trial judge after recording statements of the



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parties to the effect that suit property had been obtained.

8. In the written statement filed, factum of said suit and its disposal on 23.07.2003 has not been denied.

9. A perusal of the reply filed shows that a suit registered as Suit No.27/02 was filed in the court of the civil judge which was disposed of on statements made by the parties on 23.07.2003.

10. Statement made by the parties recorded by the learned civil judge show that parties accepted an oral understandings/mutual agreement to partition the property and enjoy different portions as per the oral statement.

11. Dispute between the parties was the common areas wherefrom ingress and egress had to be made to different portions of the suit property.

12. Learned civil judge disposed of the earlier suit requiring parties not to interfere with the right of each other to enjoy the suit property as per statement made by the parties which included no interference or obstruction by either party to prevent the other to have egress and ingress.

13. Learned counsel for the parties do not dispute that the site plan of the property is the one which has been filed along with the plaint. The same has been exhibited as Ex.P-1.



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14. From a perusal of Ex. P-1, it is apparent that there are two entrances to the property, one from the gali having width of 20 feet and other is from a road facing the park. The two entrances lead into an open area in the plot wherefrom stair case each leads up to the first floor.

15. Plaintiff who is present in person states that the problem is that the defendants place a lock on the gate at the entrance leading to the open area on the ground floor from the road abutting the park. Further, obstructions are caused in the access of the stair case by the plaintiffs who as per the family settlement have been given two rooms on the first floor.

16. Facts are not in dispute between the parties pertaining to the partition. Therefore, no decree for partition needs to be”

8. A perusal of the Order dated 16.10.2006 passed by this Court in Suit being CS(OS) No.1143/2005 and Compromise Decree in Suit No.27/2002 clearly discloses that the property has not been divided by metes and bounds, only temporary arrangements have been entered into between the parties and the same is still continuing.

9. In this view of the matter, the contention raised by the Defendants that the present Suit is hit by provisions of Order VII Rule 11 of the CPC or that the Parties cannot be at any issue of law or fact under Order XV of CPC as the Suit property already stands partitioned and, therefore, the Suit property



cannot be partitioned again cannot be accepted. This Court has not divided the properties by metes and bounds and has only disposed the Suit being CS(OS) No.1143/2005 for partition looking into nature of the difficulties faced by the parties by holding that the parties will be continued to be bound by the compromise entered into the Suit being CS(OS) No.1143/2005 by which the parties are living in the respective properties. The shares of the parties are yet to be demarcated, the properties have formally not divided by metes and bounds and therefore, the present Suit cannot be dismissed on the ground that the present Suit is not maintainable.

10. List before Court on 07.10.2026 for framing of issues.

SUBRAMONIUM PRASAD, J

AUGUST 24, 2026

Prateek/KG