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

+ **CS(OS) 727/2022**

ATUL SHARMA

.....Plaintiff

Through: Mr. M. Sufian Siddiqui, Mr. Rakesh Bhugra, Md. Niyazuddin and Ms. Alya Veronica, Advocates.

versus

SEEMA SHARMA & ORS.

.....Defendant

Through:

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

% **16.01.2025**

I.A. 1112/2025 (Application under Order XII Rule 6 of CPC)

1. This application has been filed under Order XII Rule 6 of CPC seeking preliminary partition declaring plaintiff's 1/3rd undivided share in the suit property, residential plot of land bearing no.4, situated at Ambica Vihar, Paschim Vihar, New Delhi-110087 ("**suit property**"), in her favour along with corresponding rights.

2. In the suit, plaintiff has alleged that the suit property was purchased through a registered conveyance of Late Smt. Asha Sharma (*mother of the plaintiff*), Late Sh. Manoj Sharma (*brother of the plaintiff*) and the plaintiff in equal undivided shares i.e. 1/3rd each by conveyance deed dated 06th March 1995.



3. During her lifetime, Smt. Asha Sharma/the mother executed a gift deed dated 01st December 2021, gifting her 1/3rd share to the defendant/Seema Sharma (*sister in-law of the plaintiff and wife of late Sh. Manoj Sharma*). Upon the demise of Sh. Manoj Sharma, on 20th January 2021, his 1/3rd share devolved upon defendant as well, making her the owner of 2/3rd share in the suit property. The plaintiff continued as the owner of the remaining of the 1/3rd undivided share.

4. Having stated their case as such in the plaint, defendant filed the written statement and replied to *para 4* of the plaint, stating that it was correct that the plaintiff is mentioned as one of the co-owners in the conveyance deed dated 06th March 1995. On this basis, the plaintiff claims that a preliminary decree can be passed.

5. The defendant does make another statement stating that it is denied that plaintiff has 1/3rd share on the suit property, since there was an oral partition between family members.

6. Plaintiff's counsel relies upon various decisions of this Court and the Supreme Court, where it is enunciated that transfer of immovable property cannot be done by unregistered or oral partition.

7. On this basis, issue notice to the defendant to be served through the counsel appearing on behalf of the defendant, returnable on 03rd April 2025.

8. Order be uploaded on the website of this Court.

ANISH DAYAL, J

JANUARY 16, 2025/RK