



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

% ***Reserved on: 7th May, 2026***

Pronounced on: 3rd July, 2026

+ **RFA 344/2024**

PAWAN KUMAR

S/o Late Shri Inderjeet,
R/o4/1515 Gali No. 13
Dalhai Mohalla Bhola Nath Nagar
Shahdara East Delhi-110032

.....Appellant

Through: Mr. Ishan Sanghi, Ms. Poorvashi
Kalra, Mr. Sachin Sharma,
Advocates.

versus

RAJENDER KUMAR

S/o Late Shri Inderjeet,
R/o 4/1515 Gali No. 13
Dalhai Mohalla Bhola Nath Nagar
Shahdara East Delhi-110032

....Respondent

Through: Mr. Aayush Agarwala Adv., Ms.
Utkarshani Srivastava Adv., Mr.
Gaurav Verma Adv.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular First Appeal under Order XLI read with Sections 96 and 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') has been filed on behalf of the Plaintiff/ Appellant against Judgment dated 27.02.2024, whereby the Learned Additional District Judge *rejected the Suit*



for Partition, Possession and Permanent Injunction of the Plaintiff, under Order VII Rule 11 (a) CPC.

2. The Plaintiff filed **CS No.51/2019** *seeking Partition, Possession and Permanent Injunction against Respondent No. 1 Inderjeet and Respondent No. 2 Rajender Kumar, in respect of the property bearing No. 4/1515 Gali No. 13 Dalhai Mohalla Bhola Nath Nagar Shahdara East Delhi-110032 admeasuring 50 Sq. Yards (herein referred to as the “suit property”).*

3. **The Facts, as stated in the plaint,** are that the Plaintiff, *Pawan Kumar is the son of Defendant No. 1, Inderjeet and real brother of Defendant no. 2 Rajender Kumar. Smt. Janak Rani, mother of the Plaintiff and Defendant No. 2 was the owner of the suit property, consisting of ground floor, first floor and Second floor. The Plaintiff with his family, was residing in one room, on the ground floor.*

4. Smt. Janak Rani died intestate, on 23.08.2017. The Plaintiff and the Defendants were the only surviving legal heirs of Late Smt. Janak Rani. Thus, Plaintiff stated that he has an undivided 1/3 share, as the suit property is an ancestral property. Plaintiff requested the Defendants to partition the suit property and to give his 1/3 share out of the suit property, but the Defendants avoided the same, on one pretext or the other.

5. On 01.01.2019, one property dealer contacted the Plaintiff and informed that the Defendants were going to sell the suit property to some prospective purchaser and asked the Plaintiff to sign the “*No Objection Certificate*” for the said purpose. The Plaintiff refused and informed the property dealer that he has his share in the suit property, and therefore, it



cannot be sold to any third party without his knowledge, consent and permission.

6. The Plaintiff requested the Defendants to give his due share in the suit property and not to dispose of the same to the exclusion of the Plaintiff, but the Defendants did not pay any heed to the request of the Plaintiff.

7. Thus, Plaintiff thus, filed the *Civil Suit for Partition, Possession and Permanent Injunction, against Defendant No. 1 Inderjeet and Defendant No. 2 Rajender Kumar.*

8. *The Defendant No. 1, Sh. Inderjeet, died on 30.10.2022 during the pendency of the Suit. His name was deleted since his two legal heirs Sh. Pawan Kumar, the Plaintiff and Sh. Rajender Kumar, Defendant No. 2, were already on record.*

9. **Defendant No. 1, Sh. Inderjeet** had explained in his **Written Statement** that their mother, Smt. Ram Pyari, was the owner, as Inderjeet as well as his brother, Sh. Krishan Lal had relinquished their share in her favour by virtue of a Relinquishment Deed dated 25.04.1994, who had acquired absolute ownership in the suit property. Smt. Ram Pyari, mother executed a Will dated 25.04.1994 and a GPA dated 04.05.1994, in favour of Sh. Inderjeet, on the same day. An Agreement to Sell had also been executed by his mother on 25.04.1994, after receiving due consideration of the value of the suit property. *After the demise of Smt. Ram Pyari, he became the absolute owner of the suit property, by virtue of the Will. Therefore, the suit property could not be called as ancestral property.*

10. Sh. Inderjeet, the Defendant No. 1, further explained that he had executed a Will in favour of his wife, Smt. Janaki Rani on 04.08.1998, but



she died during the lifetime of Sh. Inderjeet, who then revoked the Will in favour of his wife on 30.08.2017. *Thus, Janak Rani never became the owner of the suit property.*

11. Sh. Inderjeet further explained that he had two sons, namely, Sh. Pawan Kumar, the Plaintiff and Sh. Rajender Kumar, the Defendant No. 2. On account of misbehavior, mishandling and abusive language of the Plaintiff, Sh. Pawan Kumar, Sh. Inderjeet and his wife, had filed an *Application before Maintenance and Welfare of Parents and Senior Citizen Act, 2007, before the ADM, for the maintenance and eviction of the Plaintiff from the Suit Property.* His Petition was disposed of by the learned ADM on 04.12.2018 whereby the Plaintiff, Sh. Pawan Kumar was directed to pay Rs.1,000/- per month to Sh. Inderjeet, while the Defendant No. 2/younger son, Sh. Rajender Kumar was directed to pay Rs.3,000/- per month to Sh. Inderjeet.

12. The Order was not complied by the Plaintiff, who started further harassment and using abusive language and threatening Sh. Inderjeet who reported the matter to the local Police i.e. Police Station Farsh Bazar, vide Complaint dated 16.07.2019.

13. Sh. Inderjeet again approached the learned ADM stating that the Plaintiff, Sh. Pawan Kumar has failed to comply with the Order of the learned ADM. The detailed proceedings were held before the learned ADM and were disposed of on 31.10.2019. The Plaintiff, Sh. Pawan Kumar preferred an Appeal before the learned DM, which is pending disposal before the DM, Nand Nagri.



14. Sh. Inderjeet further claimed that the Plaintiff, Pawan Kumar is trying to mislead the Court by not disclosing the true facts. Sh. Inderjeet claimed that he had acquired the property in question by virtue of a Will dated 25.04.1994, executed by his deceased mother, Smt. Ram Pyari. It is, therefore, submitted that the suit property was the exclusive property of Sh. Inderjeet and the Suit was not maintainable.

15. **Written Statement was filed by Defendant No. 2 Rajender Kumar** affirming and explaining that suit property was *first purchased by Shri Ganda Mal, grandfather of Plaintiff and Defendant No. 2, vide registered Sale Deed dated 14.01.1966*. After his death, Smt. Ram Pyari, wife of Ganda Mal and his two sons, namely Krishan Lal and Defendant No. 1, Inder Jeet became the absolute owners of the said property. Thereafter, Shri Krishan Lal and Inder Jeet executed a registered *Relinquishment Deed* in favour of Smt. Ram Pyari, their mother, on 25.04.1994. On the same day, i.e. 25.04.1994, Smt. Ram Pyari executed a registered Will Deed in favour of her son Inderjeet. After her death on 26.08.1997, ***Defendant no. 1, Sh. Inderjeet became the absolute owner of the suit property.***

16. Inderjeet then executed a Will in favour of his wife, namely Smt. Janak Rani on 04.08.1998. Unfortunately, Smt. Janak Rani expired on 23.08.2017 during the lifetime of Sh. Inderjeet, who was the executant of the said Will. Therefore, the Will was revoked on 30.08.2017, and has no legal value or force.

17. **On merits**, it was stated that the suit was liable to be dismissed because the Plaintiff failed to file any title documents in respect of the property in question, in favour of Smt. Janak Rani.



18. The Defendant No. 2, Sh. Rajender Kumar thereafter, filed an Application under Order 7 Rule 11A CPC for rejection of the Suit.

19. He reiterated the detailed facts as stated by him in his Written Statement, to explain that Sh. Inderjeet, the Defendant No. 1 was the absolute owner of the property. He further explained that Sh. Inderjeet died on 30.10.2022. *However, he during his lifetime, had executed a registered Will dated 30.08.2017 in favour of Sh. Rajender Kumar, the Defendant No. 2, who thereafter has become the absolute owner of the Suit Property. It is thus, claimed that the Suit was liable to be rejected.*

20. The Plaintiff in Reply to the said Application under Order 7 Rule 11 CPC, while essentially admitted the acquisition of the Suit Property by Sh. Inderjeet, through a Will of their mother, Smt. Ram Pyari but claimed that because the Property which belonged originally to their grandfather, Sh. Gainda Mal, had come to Sh. Inderjeet through a Will. Therefore, the suit property in the hands of Sh. Inderjeet, was ancestral in nature. Therefore, the Plaintiff was entitled to 1/3rd share in the Property.

21. He further questioned that the *Defendant No. 2, Sh. Rajender Kumar may have intentionally and deliberately got the Will executed in his favour, with an intent to usurp the share of the Plaintiff in the suit property.* However, once it is evident that the Suit Property was ancestral in nature and not an exclusive Property of their father, Sh. Inderjeet, the Plaintiff is entitled to 1/3rd share in the Suit Property.

22. It was also contended that the Will of the suit property executed by Late Smt. Ram Pyari in favour of Defendant No. 1, Inderjeet *was not probated by any Court.* Therefore, the plaintiff has all the rights to inherit



the suit property/ ancestral property. He is thus, legally entitled to 1/2 share of the suit property, after the death of Defendant No. 1 Late Sh. Inderjeet. *Therefore, Application under Order 7 Rule 11 CPC is liable to be rejected.*

23. The *Learned Additional District Judge* upon consideration of the contentions of the parties, placed reliance on *Harish Chander Gupta v. Rakesh Gupta* (Hon'ble High court of Delhi) wherein it was held that “*In law, HUF comes into existence if a person inherits property from his parental ancestors prior to the year 1956 and thereafter property continues in the name of such person, and after his death after the year 1956, such property would be inherited as HUF... only other way, an HUF can come into existence after the year 1956 is if the property is thrown in common hotchpotch... but if a person inherits from his parental ancestors after the year 1956 (when the Hindu Succession Act came into existence), it will deemed as his self-acquired property*”

24. The Learned Additional District Judge rejected the argument that the Will executed by Late Smt. Ram Pyari in favour of Defendant No. 1 Inderjeet Singh was not valid as the same had not been probated, since 27.08.1997. It was held that there is no mandatory requirement in Delhi to seek probate of a Will before the same is being acted upon or that without Probate, the Will cannot be considered valid.

25. The Plaintiff had not challenged the veracity of the title documents of the suit property, including the registered Will dated 25.04.1994 executed by Smt. Ram Pyari in favour of Defendant no. 1 Sh. Inderjeet till date. Therefore, now the plaintiff could not seek any right, title or interest in the suit property.



26. *Thus, Application under Order 7 Rule 11 CPC filed on behalf of Defendant No. 2 Rajender Kumar was allowed, and the suit filed by the Plaintiff was rejected under Order 7 Rule 11 (a) CPC.*

27. *Aggrieved, the Plaintiff/ Appellant has preferred the present Appeal.*

28. **The grounds of challenge** are that the Ld.Additional District Judge failed to appreciate that the Late Smt. Janak Rani, mother of the Plaintiff and Defendant No. 1, was the owner of the Suit Property and after her demise, the Plaintiff became entitled to 1/3rd share in the Suit Property.

29. It was contended that Ld. Additional District Judge wrongly relied on the defendants' Written Statement and the documents filed by them, while rejecting the plaint under Order VII Rule 11 CPC. Only the plaint and the documents filed by the plaintiff, could have been considered while exercising jurisdiction to reject the plaint under Order VII Rule 11 of CPC.

30. Reliance is placed on Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success, 2004 (9) SCC 512 wherein it was held that only the averments made in the Plaint, are to be considered and presumed to be correct at that stage.

Submissions heard and the record perused.

31. The Suit was instituted by the plaintiff seeking *Partition, Possession and Permanent Injunction in respect of the suit property*. It is admitted by the parties that the suit property was first purchased by Ganda Mal, grandfather of Plaintiff and Respondent No. 2, by registered sale deed dated 14.01.1966. After his death intestate on 07.06.1967, his two sons, Krishan Lal and Defendant No. 1 Inderjeet, executed a registered Relinquishment



Deed dated 25.04.1994 in favour of their mother *Smt. Ram Pyari*, who in turn executed a registered Will in favour of Defendant No. 1 Inderjeet on 25.04.1994.

32. Defendant No. 1 Inderjeet eventually executed a Will dated 04.08.1998 in favour of his wife Janak Rani. However, due to her demise on 23.08.2017, the Will was revoked by Sh. Inderjeet on 30.08.2017. *Defendant No. 1 Inderjeet thereafter, executed another registered Will dated 30.08.2017, in favour of Defendant No. 2 Rajender Kumar.*

33. The Plaintiff had claimed that the property in question *had been received by Smt. Ram Pyari the property, after relinquishment of their shares by the two sons and thereafter, a Will was executed in favour of Inderjeet.* The entire claim of Plaintiff Pawan Kumar for 1/3rd share in the Suit Property and consequently for partition and possession, solely on the ground that the suit property in the hands of Sh. Inderjeet, was ancestral.

34. *The technical ground on which the Will has been challenged, is that it was not probated.*

35. However, this contention regarding probate, is misconceived. The Learned Additional District Judge rightly observed that there is no mandatory requirement in Delhi to obtain probate of a Will before it is acted upon, and absence of probate, by itself, does not invalidate the Will or prevent reliance upon it. Therefore, even if the Will was not probated, the fact remains that the authenticity of the Will, has not been challenged by the Plaintiff and therefore, it has full force.

36. Therefore, the plaintiff could not derive any advantage from the mere fact that probate was not obtained. Reliance may be placed on *Kanta Yadav*



v. Om Prakash Yadav AIR 2019 SC 749 wherein the Supreme Court has reinforced the principle that probate requirements are geographically limited and do not extend to regions like Delhi.

37. The **main substantive ground** on which the Partition has been sought by the plaintiff is that, even though the Property came by virtue of a Will of his mother, the nature of the suit property in the hands of Sh. Inderjeet, continued to be ancestral. Merely because the suit property came in the hands of the Plaintiff, through a Will, does not change the nature of the Property from being ancestral having been handed down by their grandfather, Sh. Ganda Mal.

38. It is correct and admitted by the Plaintiff as well, that the Property was originally acquired by Sh. Ganda Mal by virtue of a registered Sale Deed and on his demise on 07.06.1967, the Suit Property was inherited by his wife, Smt. Ram Pyari and his two sons, Sh. Krishan Kumar and Sh. Inderjeet in equal 1/3rd share. However, both, Sh. Krishan Lal and Sh. Inderjeet, the two sons admittedly executed a relinquishment Deed dated 25.04.1994 in favour of their mother, Smt. Ram Pyari.

39. The suit property admittedly came in the hands of Smt. Ram Pyari by virtue of a Relinquishment Deed dated 25.04.1994 executed in her favour by her two sons, Sh. Krishan Kumar and Sh. Inderjeet. ***Section 14 of the Hindu Succession Act, 1956*** states that *any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.* Thus, the acquisition by Smt. Ram Pyari was as her independent property and she had an absolute right of dealing with it as per her own wish and desire.



40. She admittedly executed a Will dated 25.04.1994 in favour of Sh. Inderjeet, the Defendant No. 1. *The bequest having been made by the mother of her own individual property in favour of her son, can by no stretch of interpretation, be termed as ancestral in his hands.*

41. The Supreme Court in the case of Commissioner of Wealth Tax, Kanpur v. Chander Sen (1986) 3 SCC 567 and Yudhishter v. Ashok Kumar (1987) 1 SCC 204 has held that after passing of the Hindu Succession Act, 1956 the traditional view that on inheritance of an immovable property from paternal ancestors up to three degrees, automatically an HUF came into existence, no longer remained the legal position in view of Section 8 of the Hindu Succession Act, 1956.

42. Merely because property passes through a family line, does not automatically make it ancestral in the strict legal sense. Thus, the Learned Additional District Judge correctly placed reliance on Harish Chander Gupta v. Rakesh Gupta wherein it was held that if a person inherits property from parental ancestors after the coming into force of the Hindu Succession Act, 1956, such property is ordinarily treated as self-acquired unless there is something more showing blending, throw into common hotchpotch, or some other legally recognized mode of conversion into HUF property.

43. Seen in that light, the Plaintiff's assertion that Janak Rani was the owner of the suit property, but it was ancestral and that the plaintiff therefore, inherited a share, is not legally sustainable.

44. The entire claim of the Plaintiff, is based on assertion that the Suit Property was ancestral in nature, which is not established even from the admitted facts, as stated in the Plaint. This conclusion emerges solely from



the averments made in the Plaint by the Plaintiff, without having any reference to the assertions made in the Written Statement.

45. During the pendency of the Suit, Sh. Inderjeet died in 2022 and has left a registered Will dated 21.08.2017 in favour of Sh. Defendant No. 2 Rajender Kumar by invoking the earlier Will dated 04.08.1998 executed by him in favour of Wife, Smt. Janak Rani, who had died on 23.08.2017.

46. The Plaintiff has not challenged or questioned this Will in his Reply to the Application under Order 7 Rule 11 (a) CPC but has merely stated that it may have been procured by Sh. Rajender Kumar from their father, Sh. Inderjeet. At no point, has he questioned the authenticity of the Will in favour of Sh. Rajender Kumar, Defendant No. 2.

47. The Plaintiff has failed to disclose any cause of action for seeking Partition and Possession. *The Suit has been rightly rejected under Order VII Rule 11 (a) CPC by the learned Additional District Judge.*

48. There is **no merit in the present Appeal, which is hereby dismissed.** The pending Applications, if any, are also disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

JULY 3, 2026/RS