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

\+ CS(OS) 78/2023

MRS SUNITA KUMARI GANOTRA .....Plaintiff

Through: Mr. Krish Gandhi, Adv. along with plaintiff (through VC)

versus

SHRI VINOD KUMAR & ORS. .....Defendants

Through: Mr. Manish Batra and Mr. Pawan Kumar, Advocate for D-1 and D-3 along with D-1 and D-3 in person.
Mr. Prateek Gandotra, Ms Neha Rao and Mr. Saket Saurabh, Advs. for D-2.

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

O R D E R

% **22.07.2025**

1. This order is being passed in continuation of the preliminary decree dated 28.08.2024 and hearing dated 18.07.2025.

2. The present suit has been filed by the plaintiff seeking partition, and permanent injunction with respect to the properties of Late Sh. Suraj Prakash who died intestate on 23.05.2000. The subject properties of late Sh. Suraj Prakash [suit properties] which are to be partitioned are as under:

a. House No. 813, 813/1, 814, 815/1 (from ground to sky), Kedar Building, situated in Shora Kothi, Clock Tower, Sabzi Mandi, Malika Ganj, Delhi-110007 (measuring approx. 148.5 sq. yds.). [hereinafter referred to as 'Kedar Building']

b. Commercial property bearing number 201/4a and 201 (from ground to sky) Gali number 6, Padam Nagar, Kishan Ganj, Delhi 110007 (measuring approx. 320 sq. yds.). [hereinafter referred to as 'Padam Nagar Property']

3. This Court on 28.08.2024 has passed a preliminary decree declaring that plaintiff, defendant nos. 1, 2 and 3 are equal owners entitled to 1/4th share each. The matter was taken up on 18.07.2025 and today for passing the final decree.

4. Learned counsel for defendant nos. 1 and 3 stated that there is no dispute that plaintiff, defendant nos. 1, 2 and 3 are equal owners of the suit properties to the extent of 1/4th share each.

4.1 He states that defendant no. 1 is in possession of the entire second floor of the suit property at Kedar Building and also has control over Shop no. 813/1 and Shop no. 813 of the ground floor of the same.

4.2 He states that defendant no. 3 is in possession of the entire third floor at Kedar Building, as his residence. He states that defendant no. 3 is in exclusive possession of Shop no. 814 of the ground floor and is in joint possession with the remaining three co-owners for Shop no. 813 and Shop no. 813/1 at Kedar Building.

4.3 He states that first floor above the Kedar Building is lying vacant and no particular owner has control over there.

4.4 He states that with respect to the Padam Nagar Building, except for the working hall which is on the rear side of the Padam Nagar Building, the remaining constructed area is in the possession of defendant no. 1. He states that working hall on the rear side is in the possession of the defendant no. 2.

4.5 He states that it is the plea of defendant nos. 1 and 3 that parties are in possession of the suit properties as per mutual agreement.

5. Learned counsel for defendant no. 2 states that defendant no. 2 has control only over Shop no. 813/1 and Shop no. 813 at Kedar Building and defendant no. 2 has control over the working hall on the rear side in the Padam Nagar Building.

6. Learned counsel for the plaintiff states that plaintiff is in possession of the first floor of the Kedar Building and has control over Shop no. 813 and Shop no. 813/1 at Kedar Building.

6.1 He states that plea of oral partition raised by defendant nos. 1 and 3 in their written statement is a bald averment and states that in view of the law settled by Supreme Court in **Vineet Sharma v. Rakesh Sharma and Others**[1] at paragraph 135 in the absence of the tangible record of partition and such a plea ought not be put at trial. Paragraph 135 of the judgment reads as under: -

> 135. A special definition of partition has been carved out in the Explanation. The intendment of the provisions is not to jeopardise the interest of the daughter and to take care of sham or frivolous transaction set up in defence unjustly to deprive the daughter of her right as coparcener and prevent nullifying the benefit flowing from the provisions as substituted. The statutory provisions made in Section 6(5) change the entire complexion as to partition. However, under the law that prevailed earlier, an oral partition was recognised. In view of change of provisions of Section 6, the intendment of the legislature is clear and such a plea of oral partition is not to be readily accepted. The provisions of Section 6(5) are required to be interpreted to cast a heavy burden of proof upon proponent of oral partition before it is accepted such as separate occupation of portions, appropriation of the income, and consequent entry in the revenue records and invariably to be supported by other contemporaneous public documents admissible in evidence, may be accepted most reluctantly while exercising all safeguards. The intendment of Section 6 of the Act is only to accept the genuine partitions that might have taken place

[1] (2020) 9 SCC 1

> under the prevailing law, and are not set up as a false defence and only oral ipse dixit is to be rejected outrightly. The object of preventing, setting up of false or frivolous defence to set at naught the benefit emanating from amended provisions, has to be given full effect. Otherwise, it would become very easy to deprive the daughter of her rights as a coparcener. When such a defence is taken, the court has to be very extremely careful in accepting the same, and only if very cogent, impeccable, and contemporaneous documentary evidence in shape of public documents in support are available, such a plea may be entertained, not otherwise. We reiterate that the plea of an oral partition or memorandum of partition, unregistered one can be manufactured at any point in time, without any contemporaneous public document needs rejection at all costs. We say so for exceptionally good cases where partition is proved conclusively and we caution the courts that the finding is not to be based on the preponderance of probabilities in view of provisions of gender justice and the rigour of very heavy burden of proof which meets the intendment of Explanation to Section 6(5). It has to be remembered that the courts cannot defeat the object of the beneficial provisions made by the Amendment Act. The exception is carved out by us as earlier execution of a registered document for partition was not necessary, and the court was rarely approached for the sake of family prestige. It was approached as a last resort when parties were not able to settle their family dispute amicably. We take note of the fact that even before 1956, partition in other modes than envisaged under Section 6(5) had taken place.
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> (Emphasis supplied)

6.2 He also relies upon the judgment of the coordinate bench in **Veeru Prashad Gupta v. Jogeshwari Devi**[2] wherein on similar facts the bald averments of oral partition were disregarded by the Court. Paragraph 4 of the judgment reads as under: -

> 4. I need not narrate the facts in detail because it is an undisputed position that the suit property was owned by the father of the parties Sh. Rama Shanker. It is also not disputed that the father Sh. Rama Shanker died intestate on 13.1.1998. The mother of the

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[2] 2018 SCC OnLine Del 10130

> parties and the wife of Sh. Rama Shanker also has died intestate and consequently the appellant/defendant and the respondent/plaintiff being the Class-I legal heirs under the Hindu Succession Act, 1956, would each be half owner of the property inherited from their father Sh. Rama Shanker. Appellant/defendant however pleaded that between the parties there was an oral partition in the year 2002-03. Trial court has on this defence held that self-serving averments/depositions of oral partition cannot be believed, and with which I completely agree because valuable immovable property cannot be held by Courts to have been lost to a party simply because there is a case set up of an oral partition and supported only by oral averments/depositions.
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> (Emphasis supplied)

6 Learned counsel for the plaintiff and defendant no. 2 jointly contend that though the suit properties have remained joint; there has been no partition by metes and bounds by the parties.

6.1 They state that the parties have relied upon the relinquishment deeds that are admitted between the parties and the recitals of the relinquishment deeds show that properties are undivided no party has any preferential right of retaining possession of any specific portion in the suit properties.

6.2 They state that defendant nos. 1 and 3 have the lion's share of actual physical possession in both the suit properties currently and despite the preliminary decree of the Court dated 28.08.2024, they are wrongfully denying plaintiff and defendant no. 2 their right to enjoy the 1/4th share in the suit properties.

7. At the hearing dated 18.07.2025, defendant nos. 1 and 3 had sought an adjournment to revert with the proposal for final partition. At request the matter was adjourned and has been taken up today.

8. The defendant no. 3 is personally present in Court and Mr. Anuj Gandotra, son of defendant no. 1 is present in Court.

9. Learned counsel for the defendant no. 1 and defendant no. 3 states on instructions that the said defendants are agreeable to a final partition for both the suit properties by way of re-development and/or sale so as to equitably give effect to the preliminary decree declaring all the parties as co-owners.

9.1 He states that with respect to the property located at Kedar Building defendant no. 1 and defendant no. 3 propose that, in the first instance, an earnest endeavour should be made by the parties jointly to demolish the existing structure and re-develop the property in collaboration with a developer, wherein defendant no. 1 and defendant no. 3 may be given option to negotiate with the developer to retain their share of built up area in the proposed new building. He states that negotiation with the prospective developer can be held jointly so that plaintiff and defendant no. 2 can also participate. He states that in case parties cannot find an acceptable developer or in case a mutually acceptable collaboration agreement cannot be executed, then the Kedar Building property shall be put up for an outright sale to a third party at the highest possible price. He states that Court may fix time limits for exercising these options. He states that a period of nine (9) months may be granted as defendant nos. 1 and 3 are residing in this building.

10. In response, learned counsel for the plaintiff and defendant no. 2 state that this offer is acceptable to them, however, it should be time bound. They state that in case a mutually agreeable collaboration agreement cannot be entered into with a developer within nine (9) months, then this property be put up for sale to a third party by private sale or through public auction, so as to fetch the highest price.

11. The aforesaid response of plaintiff and defendant no. 2 is acceptable to defendant nos. 1 and 3.

12. Learned counsel for the defendant no. 1 and defendant no. 3 states that similarly defendant no. 1 and defendant no. 3 are ready and willing to have the Padam Nagar Property sold and sale proceeds divide amongst all the four parties. He states however there are certain disclosures that defendant no. 1 and defendant no. 3 would like to make with respect to receipt of show cause notices/notices received from statutory bodies such as DUSIB and MCD including pendency a writ PIL i.e., W.P.(C) No. 4654/2024.

12.1 He states that all documents pertaining to the show cause notices/notices and the said PIL will be placed on record within one (1) week.

12.2 He states that, for this property as well defendant no. 1 and defendant no. 3 would like to explore initially a collaboration agreement with a prospective developer so that defendant no. 1 and defendant no. 3 can retain built up area equal to their share. He states that negotiation with the prospective developer can be held jointly so that plaintiff and defendant no. 2 can also participate. He states that in case a mutually acceptable collaboration agreement is not executed with the consent of all the parties to this suit within six (6) months, then this property shall be put to sale to a mutually accepted buyer or through public auction to ensure highest price.

12.3 He states that this property can be sold on 'as is where is' basis after making a full disclosure to the prospective buyer about the aforesaid facts regarding notices and pending writ.

13. Learned counsels for the plaintiff and defendant no. 2 state that aforesaid proposal is agreeable to them and they reiterate that within six (6) months if mutually acceptable collaboration agreement is not executed with a prospective developer, then the property will be sold on 'as is where is' basis to the prospective buyer. They state that the time lines agreed should be made

binding on the parties.

14. The parties jointly state that final decree may be passed in terms of the submissions recorded hereinabove.

15. This Court has considered the submission of the parties.

16. Accordingly, the final decree for partition is passed in terms of submissions recorded hereinabove, of the following immovable properties:

a. House No. 813, 813/1, 814, 815/1 (from ground to sky), Kedar Building, situated in Shora Kothi, Clock Tower, Sabzi Mandi, Malika Ganj, Delhi-110007 (measuring approx. 148.5 sq. yds.). ['Kedar Building']

b. Commercial property bearing number 201/4a and 201 (from ground to sky) Gali number 6, Padam Nagar, Kishan Ganj, Delhi 110007 (measuring approx. 320 sq. yds.). ['Padam Nagar Property'].

17. The parties within nine (9) months will be at liberty to find a prospective developer for reconstructing a new building at property known as Kedar Building. The timeline of nine (9) months is the outer limit. In case, a collaboration agreement is not executed within nine (9) months, the parties will proceed to sale by mutual consent to a third party and in case a mutual sale is not possible within three (3) months thereafter, the parties will proceed to sale by public auction.

18. Subject to legal compliances, the parties will similarly be at liberty to find a prospective developer for reconstructing a new building at property known as Padam Nagar Property within six (6) months. The timeline of six (6) months is the outer limit. In case, a collaboration agreement is not executed within six (6) months, the parties will proceed to sale by mutual consent to a third party and in case a mutual sale is not possible within three (3) months thereafter, the parties will proceed to sale by public auction on as

is where is basis. The pendency of the show cause notices/notices from statutory authorities and the PIL will be disclosed to the third parties.

19. Since, plaintiff and defendant no. 2 are not enjoying the possession of the properties equal to their respective $1/4^{th}$ share, the time bound implementation of the final decree of partition is acknowledged and understood by defendant nos. 1 and 3. Thus, neither party will be entitled to seek any extension of time directed hereinabove and at the end of the stipulated time if no collaboration agreement has been executed, the property shall be put to sale.

20. In addition, during the process of negotiating collaboration agreement, the co-owner intending to retain the built-up area will ensure that the terms of the collaboration agreement should be equally beneficial to the co-owner selling its share to the developer. Thus, the consideration charged by the developer for the collaboration agreement will be borne equally by all the four parties. Illustratively, the developer may charge its consideration by retaining built-up area or by demanding payment. This consideration will be borne or paid by all the parties equally.

21. Final decree for partition by re-development and/or sale is passed in the aforesaid terms.

22. If the party in possession/occupation of any of the properties fails to deliver possession thereof to the developer or purchaser or to the highest bidder, such party shall be liable to be dispossessed therefrom as if in execution of a decree for recovery of possession of immovable property.

23. The order has been passed with the consent of the parties.

24. It is observed that at the hearing dated 18.07.2025, the defendant nos. 1 and 3 had raised a bald plea that property is already stand partitioned by

metes and bounds by virtue of an oral partition. However, this plea has been specifically withdrawn by the defendants at the hearing today. Even otherwise plaintiff and defendant no. 2 have shown this Court the relinquishment deeds which evidence that the properties are joint and thus plea of oral partition has no substance.

25. The suit stands decreed. Final decree for partition be drawn up.

26. Pending application stands disposed of.

27. Interim order shall stand merged to the final orders.

28. The stamp duty payable on the decree will be payable by all the parties in as per their respective $1/4^{th}$ share.

29. All future dates stand cancelled.

MANMEET PRITAM SINGH ARORA, J

JULY 22, 2025/hp/AM