



\$~17

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

+ RFA(OS) 14/2024 & CM APPL. 24877/2024 (Stay)

SUNIL GUPTA & ANR.Appellants

Through: Mr. Harpreet Singh &
Mr. Rajesh Gupta, Advocates.

versus

SEEMA GUPTA & ORS.Respondents

Through: Mr. Sitab Ali Chaudhary &
Mr. Sadik, Advocates along
with R-1/Seema Gupta in
person.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

ORDER

% **02.09.2025**

1. Through this Appeal, the Appellants assail the correctness of order passed on 21.03.2024 by learned Single Judge of this Court whereby a preliminary decree has been passed for partition of the property on account of default in filing the written statement by the Defendants.
2. The property in question was owned by Late Mr. Nand Kumar Gupta [Defendant No. 1], who was survived by his wife, a daughter [Respondent No. 1/Plaintiff] and a son [Appellant No. 1/Defendant No. 2].
3. Since Mr. Nand Kumar Gupta (Defendant No. 1) died on 27.01.2024, he is, in the present appeal, represented through his wife, Smt. Veena Gupta (Appellant No. 2).



4. For the sake of convenience, the parties shall be referred to hereinafter in terms of their original description in the suit.

5. The Plaintiff therein instituted a suit seeking, *inter alia*, the following reliefs:-

(a) Pass a preliminary decree of partition in favour of the Plaintiff and against the Defendants thereby declaring the respective shares of the parties in respect of the suit property;

(b) Appoint a local commissioner to suggest the mode of partition of the suit property by metes and bounds or even otherwise;

(c) On determination of the shares of the parties pass a final decree in favour of the Plaintiff and against the Defendants, in respect of the suit properties, granting 1/3rd share therein to the Plaintiff by possession or otherwise of the suit properties i.e. 1103, Kucha Harjasmal, Bazar Sita Ram, Delhi - 110006, ad-measuring around 320 sq. yards. as shown in Red colour in the site plan annexed herewith, by metes and bounds in accordance with law and thereby separating the undivided share of the Plaintiff in the built-up suit properties thereof and a final decree of partition may kindly be drawn in accordance with law, in the interest of justice;

(d) Pass a Decree for Possession in favour of the Plaintiff and against the Defendants, in regard to the earmarked share i.e. 1/3rd share of the Plaintiff in the suit property i.e. 1103, Kucha Harjasmal, Bazar Sita Ram, Delhi-110006, ad-measuring around 320 sq. yards as shown in Red Colour in the site plan attached herewith;

(e) Pass a decree of declaration in favour of the Plaintiff and against the Defendants, their agents, servants, Legal Representatives, family members, nominees, attorneys and assignees etc. thereby declaring as null & void ab initio, non-est, sham & bogus transactions, and illegal without sanctity in the eyes of law as transferring no legal rights & interests thereof by the following documents namely (i) Gift Deed dated 20.02.2001 registered in the office of Sub-Registrar, SD-III, Asaf Ali Road, New Delhi as Regd. Document No. 944, in Additional Book No.1, Volume No.10179 on page 99-03 registered on 20.02.2001, (ii) Gift Deed dated 01.11.2013 registered in the office of Sub-Registrar, SD-III, Asaf Ali Road, New Delhi as Regd. Document No. 8590, in Additional Book No.1, Volume No.15354 on page 01-12 registered on 04.11.2013, (iii) Sale Deed dated 09.10.2019, Registration No. 8957 in Book. No.1, Vol-18118 on Page No.14-31, Registered at Sub-Registrar-III, Asaf Ali Road, New Delhi, and (iv) Sale Deed dated 17.09.2021, Registration No. 7417 in Book No. 1, Vol-18935 on Page No.38-49, Registered at Sub-Registrar-III, Asaf Ali Road, New Delhi, all four documents with respect to



the suit property i.e. 1103, Kucha Harjasmal, Bazar Sita Ram, Delhi-110006, ad-measuring around 320 sq. yards and shown in Red Colour in the site plan annexed herewith;

(f) Pass a decree of Permanent Injunction in favour of the Plaintiff and against the Defendants, their agents, servants, Legal Representatives, family members, nominees, attorneys and assignees etc. thereby restraining them from selling, transferring, disposing, destroying with, parting with, and assigning with the suit property i.e. 1103, Kucha Harjasmal, Bazar Sita Ram, Delhi-110006 ad-measuring around 320 sq. yds. as shown In Red Colour in the site plan annexed herewith;

(g) Pass a decree of mandatory injunction in favour of the Plaintiff and against the Defendants, their agents, servants, Legal Representatives, family members, nominees, attorneys and assignees etc. thereby restraining them from interfering with the share and/or possession of the Plaintiff In the earmarked share of the Plaintiff in the suit property i.e. 1103, Kucha Harjasmal, Bazar Sita Ram, Delhi-110006, ad-measuring around 320 sq. yds. or any part thereof in any manner whatsoever, as shown In Red Colour in the site plan annexed herewith;

(h) Award the cost of the present suit in favour of the Plaintiff and against the Defendants;

(i) Pass such other or further order (s) and relief (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the Plaintiff and against the Defendants, in the interest of the justice.

6. In fact, the Plaintiff while filing the suit disclosed that Defendant No. 1 executed two registered gift deeds in the year 2001 & 2013 transferring his rights in favour of his son, i.e. Defendant No. 2. Subsequently, Defendant No. 2 sold the aforesaid rights in favour of Defendant Nos. 3 & 4 in the year 2019.

7. It is for this reason the Plaintiff sought decree of declaration that such gift deeds and the sale deeds are not binding on her.

8. As already noticed, learned Single Judge ordered passing a preliminary decree after taking note of the fact that Defendant No. 1 passed away and remaining Defendants have not filed any written statement.

9. Heard learned counsels for the parties at length along with their



rival submissions and also perused the paperbook along with the record.

10. It is evident that learned Single Judge has erred in overlooking the complete prayers made in the suit. In this suit, first of all, the Court is required to pass a decree with respect to relief of declaration. In absence thereof, the preliminary decree for partition could not be passed.

11. The Plaintiff wants to avoid registered documents which were executed by Defendant No. 1 and Defendant No. 2.

12. Even if, the Plaintiff wants to claim that such documents are not binding, she is required to seek declaration which in fact has already been sought. However, as noticed, learned the Single Judge appears to have overlooked this aspect.

13. Hence, the impugned order is set aside and the matter is remitted to the learned Single Judge to proceed in accordance with law.

14. The parties through their counsels are directed to appear before the learned Single Judge on 16.09.2025.

15. Accordingly, the present Appeal along with pending application(s), if any, stands disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
SEPTEMBER 2, 2025/tk/kr