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

+ **EX.P. 57/2023 & EX.APPL.(OS) 1087/2023**

KAMLESH SHARMA

.....Decree Holder

Through: Mr. Aaditya Vijay Kumar, Ms.
Akshita Katoch and Mr. Anirudh
Anand, Advocates.

versus

DEVENDER KUMAR KAUSHIK & ANR.Judgement Debtors

Through: Mr. Ravi Namsaut, Advocate for JD-2
along with son of JD-2.
Ms. Apoorva Singh, Local
Commissioner/Receiver.

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+ **EX.P. 61/2023 & EX.APPL.(OS) 1107/2023**

DEVENDER KUMAR KAUSHIK

.....Decree Holder

Through:

versus

OMKAR

.....Judgement Debtor

Through: Mr. Ravi Namsaut, Advocate for JD
along with son of JD
Ms. Apoorva Singh, Local
Commissioner/Receiver

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

26.11.2025

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1. The suit from which the present execution petitions arise was decreed by this Court on 16th December, 2009 in terms of the Settlement Agreement dated 17th November, 2009 arrived at between the parties.



2. Relevant extracts from the Settlement Agreement are set out below:

6. The following settlement has been arrived at between the Parties hereto:

a) Smt. Kamlesh will be entitled to ownership rights of an area of 180 sq. yds. Out of the property bearing Khasra No. 13, Village Khirki, Tehsil Hauz Kaus, Delhi, now known as property No. S-27, Khirki Extension, Malviya Nagar, New Delhi, which is presently in possession of Shri Devender Kumar Kaushik and Shri Onkar. Shri Devender Kumar Kaushik and Shri Onkar will hand over the possession of a plot having area of 180 sq. yds to Smt. Kamlesh within one week from today. In addition, Shri Nutesh shall pay a sum of Rs. 40,000/- (Rupees forty thousand only) by Pay Order to

1) *K Kamlesh* *कमलेश दामा* *श्री देवेंद्र कुमार काUSHIK* *श्री ओंकार* *श्री नुतेश*

b) Shri Devender Kumar Kaushik shall be entitled to the ownership rights of an area of 165 sq. yds in property bearing Khasra No.13, Village Khirki Extension, Malviya Nagar, New Delhi. Shri Devender Kumar Kaushik shall also be entitled to property bearing No. 163A/5, Village Khirki, Old Lal Dora Abadi, which is having an area of 15 sq. yds.

c) Shri Omkar shall be entitled to the ownership rights in respect of the property bearing No. 171, Village Khirki, Old Lal Dora Abadi, which is having an area of 50 sq. yds. Shri Omkar shall also be entitled to the ownership rights of an aorea of 130 sq. yds in property bearing Khasra No.13, Khirki Extension, Malviya Nagar, New Delhi-110017.

3. This Court on 16th February, 2024 appointed Local Commissioner to visit the premises along with a representative of the decree holder to identify 165 sq. yds. and 15 sq. yds. area, out of the properties which are to be partitioned and be handed over to the decree holders in both the petitions.

4. In the Order passed on 21st April, 2025, it was noted that the property had to be divided between the decree holder, judgment debtor no.1 and judgment debtor no.2. Paragraphs 3 and 4 of the said order are set out below:



3. As per the settlement agreement dated 17.11.2009, the property situated at Khasra No. 13, Village Khirki, Tehsil Haus Khas, Delhi, now known as property No. S-27, Khirki Extension, Malviya Nagar, New Delhi ('suit property') had to be allocated to the Decree Holder, JD-1 and JD-2 in the following proportions (measured in yards) 180:165:130 which equals to 475 sq. yards.

4. The Local Commissioner, however, upon physical inspection at site found that the total area actually available in the property is only 411 sq. yards. The Local Commissioner has accordingly recommended allocation in the proportion of (measured in yards) 154:154:101 in favour of all the three parties. The allocation is duly set out at 'Annexure E' of the report of the Local Commissioner dated 04.04.2024. The area in the aforesaid proportion to be allocated to the three (3) persons is also duly demarcated in the said site plan. Thus, the allocation of the subject property between the parties as recommended by the Local Commissioner vis-à-vis the settlement agreement stands as under:

	Kamlesh	Devender	Omkar	Plot size
As per the settlement agreement	180	165	130	475
As per the Local Commissioner	154	154	101	411

5. After hearing the submissions of the parties, the following findings were recorded:



Findings

10. In view of the aforesaid submissions of the parties, this Court finds merit in the submissions of Mrs. Kamlesh Sharma [Decree Holder] and Mr. Devender Kumar Kaushik [JD-1] that Mr. Omkar [JD-2] is prolonging these proceedings to deprive Mrs. Kamlesh Sharma and Mr. Devender Kumar Kaushik of their ownership and possession rights in the suit property under the settlement agreement dated 17.11.2009.

11. Mr. Omkar (JD-2) has two options either to accept the recommendation of the Local Commissioner as set out as Annexure E to the report dated 10.01.2024 which is fair and reasonable; or agree to the sale of the suit property so that the sale proceeds can be divided between the parties as per their allocation under the settlement agreement. However, JD-2 has failed to agree to either.

12. However, in the meantime to stop the prejudice being caused to Mrs. Kamlesh Sharma [Decree Holder] and Mr. Devender Kumar Kaushik [JD-1] who are being deprived of enjoying the usufruct of the suit property, therefore, Mr. Omkar [JD-2] is hereby injuncted forthwith from collecting any rent and/or license fee from any room and/or shop of the suit property.

13. Ms. Apoorva Singh, Advocate (Enrl. No. D/8367/2023, Mob. No. 7060103875) is directed to re-visit the suit property on **24.04.2025** and carry out the following mandate:

- (i) To make a record of every person who is in occupation of every room and/or shop of the suit property.



- (ii) To make a list of persons who are licensees and/or tenants in the suit property.
- (iii) To document the amounts that are being paid by the occupants to JD-2 Mr. Omkar; and to inform occupants that henceforth the said amounts shall be paid over to Local Commissioner by way of cheques, which shall be drawn in favour of the Registrar General of this Court and will be deposited with this Court.
- (iv) The Local Commissioner will also ascertain from the occupants, the time since they have been in occupation of the room and/or shop in the suit property and the rental paid by them in the past.
- (v) In case, the occupants offer to pay the rent and/or license fee in cash, the cash will be collected by the Local Commissioner against receipt and deposited in the account of the Registrar General.

6. In the Order passed by this Court on 11th August, 2025, it was recorded that Receiver has put locks on the 18 rooms of the property.

7. In terms of the report of the Local Commissioner dated 4th April, 2024, a site plan has been filed as Annexure-7 suggesting the manner in which the suit property can be partitioned by metes and bounds in favour of two decree holders and judgment debtor no.2. Paragraphs 8 and 9 of the said report is set out below:

8. Upon receipt and review of the site planner's map, it was duly observed that the total area of the property measured 411 square yards, contrary to the previously presumed 475 square yards. This discrepancy significantly hindered the feasibility of dividing the property into parcels of 180, 165, and 130 square yards respectively, as a portion measuring 101.68 square yards was already constructed upon or



encumbered by constructions that precluded its partitioning.

9. In light of the aforementioned circumstances, subject to the decision of the court and deemed fit by the court, and with the agreement of the parties involved, the property may be partitioned into parcels, with an adjustment allocating 154.82 square yards to each of the decree holders and 101.68 square yards to the judgment debtor. The site plan, prepared by the site planner, for the property bearing Khasra No. 13, Village Khirki, Tehsil Hauz Khas, New Delhi, is attached hereto as **Annexure 8.**

8. The reference to Annexure-8 in paragraph 9 of the aforesaid report as set out above should read as Annexure-7.

9. In terms of the aforesaid report and the site plan attached thereto, portion 'a', *i.e.* area admeasuring 154.82 square yards has to go to the decree holder in EX. P. 57/2023; portion 'b', *i.e.* area admeasuring 154.82 square yards has to go to the decree holder in EX.P. 61/2023; and portion 'c', *i.e.* area admeasuring 101.68 square yards is to go to Sh. Omkar, the judgment debtor in both the petitions.

10. Counsel for the judgment debtor no.2, on instructions from judgment debtor no.2, Mr. Omkar, who is present in Court along with his son, Mr. Ravinder Kaushik, submits that they have no objection to the division of the property in terms of the site plan filed by the Local Commissioner as Annexure-7 to her report dated 4th April, 2024.

11. Counsel for the judgment debtor no.2 submits that judgment debtor no.2 is not in occupation or possession of portion 'a' and portion 'b' in terms of the aforesaid site plan.



12. The Local Commissioner who is present in Court submits that in the various rooms which are part of portion 'a' and portion 'b', locks have been put by the Local Commissioner.

13. In view thereof, the Local Commissioner is directed to hand over possession of portion 'a' to the decree holder in EX. P. 57/2023 viz. Smt. Kamlesh Sharma and portion 'b' to the decree holder in EX. P. 61/2023 viz. Sh. Devender Kumar Kaushik in terms of the aforesaid site plan.

14. The judgment debtor no.2, viz. Sh. Omkar or his family shall not create any hinderance or obstruction in handing over the aforesaid portions to the decree holders.

15. It is stated that the entire property continues to be in the name of the father of the parties.

16. Parties shall cooperate with each to affect mutation of the properties in their respective names.

17. Both the execution petitions stand disposed of with the aforesaid directions.

18. Consequently, all pending applications stand disposed of in aforesaid terms.

AMIT BANSAL, J

NOVEMBER 26, 2025

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