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

+ RFA 583/2025, CM APPL 39057 & CM APPL 39058

RAJNESH KUMAR & ORS.

.....Appellants

Through: Mr. Satender Kr. Vashistha, Mr.
Birendra Kr. Agarwal and Mr.
Sanchit Vashistha, Advocates.

versus

UMESH KUMAR

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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07.07.2025

CM APPL. 39056/2025 (exemption)

Exemption allowed, subject to just exceptions.

The application stands disposed-of.

RFA 583/2025

By way of the present regular first appeal filed under section 96 read with Order XLI and section 151 of the Code of Civil Procedure 1908 ('CPC'), the appellants impugn judgement and preliminary decree dated 01.04.2025 passed by the learned District Judge, Karkardooma District Courts, Delhi in civil bearing CS No. 93/2018, whereby the learned District has passed a preliminary decree of partition granting $\frac{1}{4}$ share of the property bearing No. I-66, Gali No. 10, Brahampuri, Delhi ('Brahampuri property') to each of the parties to CS No. 93/2018.

2. Mr. Satender Kr. Vashistha, learned counsel appearing for on behalf of the appellants submits, that the appellants and the respondent are brothers and their late father Mr. Sita Ram owned two properties, one



being the subject property in the present proceedings *i.e.*, the Brahampuri property; and the other being property bearing No. C-8, Lal Mandir Road, Param Hans Vihar, Village : Dharauti Khurd, Tehsil Loni, District Ghaziabad, Uttar Pradesh ('Loni property').

3. Mr. Vashistha submits, that during his life time their father had 'orally partitioned' his two properties with a certain disposition as between the brothers; that their father passed-away on 30.07.2015; and that pursuant to such 'partition' the 03 appellants started residing in the Brahampuri property, whereas the respondent (their fourth brother) started residing in the Loni property. For completeness, it is recorded, that the respondent only occupies $\frac{1}{2}$ of the property in Loni *i.e.*, 75 sq yds of the total 150 sq yds.
4. Learned counsel submits, that the respondent is now canvassing a Will dated 22.06.2015 of their late father; and is claiming absolute rights to the Loni property based on that alleged Will.
5. In the circumstances, it is submitted that the impugned judgement and preliminary decree ought not to have been passed since the overall estate of their late father comprised the Brahampuri property *and* the Loni property; and that the issuance of a preliminary decree of partition only in respect of the Brahampuri property would not amount to an equitable partition of the estate of their father.
6. Upon being queried, Mr. Vashistha submits, that a separate suit has been filed by appellant No.1 claiming $\frac{1}{2}$ of the Loni property to the extent of 75 sq. yds., which suit is pending adjudication before the learned Civil Judge (Senior Division), Ghaziabad, Uttar Pradesh; and is at the stage of evidence.



7. In this backdrop, a perusal of the impugned judgement shows that it has come to be passed on the following basis:

“20. There is no dispute between the parties that the suit property/property No. 1 was actually the property of late Sita Ram/father of parties. There is no dispute that at the time of death of Sita Ram on 30.07.2015, only four class-1 legal heirs of Sita Ram were alive i.e. plaintiff and three defendants.

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“23. This brings me to the defence of defendants qua oral partition during the lifetime of Sita Ram. Presuming that Sita Ram had actually settled his four sons in different share in the two properties referred above, the same shall, at best, mean that there was a tentative settlement made by Sita Ram at that point of time. Even though, it not clearly stated by the defendants as to when did Sita Ram actually settled his sons into different shares of two properties described above, presuming the same was done prior to the death of Sita Ram in 2015, it shall only mean that Sita Ram had simply settled his four sons to occupy different portions of two properties described above during the lifetime when Sita Ram was alive.

“24. Admittedly, two properties described above were originally in name of Sita Ram. If that be the case, there could not have been any partition giving separate ownership to the parties to the suit when Sita Ram was alive by way of any oral partition/settlement by Sita Ram with respect to his self-acquired properties. This is because, it is nobody’s case that two properties referred above were ancestral properties of the parties. Both parties agree that they were properties of Sita Ram and thus, even if Sita Ram gave some portion in the said property to one or the other son, still, the actual and legal ownership of both the properties will still lie and be vested with Sita Ram only.

“25. It means that the claim of defendants that Sita Ram had orally partitioned the two suit properties is of no legal value in as



much as during the lifetime of Sita Ram there could not have been any oral partition of the self-acquired properties of Sita Ram which Sita Ram could divest orally. Thus, till his death, Sita Ram was the owner of the said properties and the ownership rights of the said two properties never vested in any of his four sons during his lifetime.

“26. It means that even if there was any alleged settlement between the four sons of Sita Ram (with Sita Ram being alive and both the properties being self-acquired properties of Sita Ram), there was no actual partition of two properties in the manner claimed by the defendants. This would mean that if Sita Ram died intestate on 30.07.2015, both the said two suit properties shall devolve upon his four sons with each son having 1/4th undivided share in each of the two properties.

“27. Now, it may be noted that plaintiff has claimed that Sita Ram has left Will in his favour dated 22.06.2015 qua property No. 2/Loni property. During the narration of facts, I have already noted that the original of the said Will was never produced before this court by the plaintiff. Even the attesting witness of the said Will/Sunil Kumar/PW-2 was never shown the said Will during the evidence and thus, the said Will has not been proved on record as per section 63 of Indian Succession Act, 1925 r/w section 68 of Indian Evidence Act, 1872. But, I may note that this court is not called upon to test the veracity of the Will dated 22.06.2015 or to decide upon the question of partition qua the said property No. 2/Loni property. The only fact in issue before this court is pertaining to property No. 1/suit property.

“28. I have already concluded that even if the case of the defendants qua oral partition during the lifetime of Sita Ram is taken on its face value, still, none of the parties can be said to have had acquired any right, title or interest in the suit property on the strength of the alleged oral settlement/partition done purportedly during the lifetime of Sita Ram. If that be the case, Sita Ram shall have to be treated to have died intestate on 30.07.2015 qua the suit



property. This is because, the alleged oral partition is legally untenable in the facts of this case and no written Will/testament has been produced or set up by any of the parties qua the suit property before this court.

“29. If that be the case, each of the four sons of Sita Ram i.e. plaintiff and three defendants are class-I legal heirs of Sita Ram and shall succeed to 1/4th share in the suit property on his death. If that be the case, plaintiff is entitled to 1/4th share in the same and thus, entitled to a decree of partition by metes and bounds of the suit property and consequently the possession of his share after such partition. Accordingly, issue under consideration is decided in favour of the plaintiff and against the defendants.”

(emphasis supplied)

8. Furthermore, it is also noticed that the learned District Judge has taken a view as regards the Will dated 22.06.2015, which Will is being canvassed by the respondent, and relates only to the Loni property. On this aspect, the learned District Judge has observed the following :

“30. Before parting with issue under consideration, I may note that since issue under consideration was only with respect to suit property/property No. 1 and the question of validity of Will dated 22.06.2015 (purportedly executed by Sita Ram in favour of plaintiff qua property No.2/Loni property) was not a fact in issue necessary for adjudication of this suit, the same is not decided by this court. Needless to say that parties shall be at liberty to raise the said issue independently as per law and nothing stated herein shall be treated to be an expression on the merits of the authenticity of the said Will or with respect to respective rights of the parties in property No. 2/Loni property. The same shall have to be litigated by the parties in an independent suit and would obviously be then adjudicated by a court of competent jurisdiction as per law.”

(emphasis supplied)



9. It was on the basis of the foregoing reasoning that the learned District Judge has passed a preliminary decree of partition, awarding $\frac{1}{4}^{\text{th}}$ share in the Brahampuri property to each of the 04 parties, being the 03 appellants and 01 respondent, all of whom are real brothers.
10. Upon a conspectus of the facts and circumstances of the case, after hearing learned counsel appearing on behalf of the appellants, and perusing the impugned judgment and the material on record, this court finds no infirmity in the impugned judgement and decree dated 01.04.2025.
11. The appeal is accordingly dismissed *in limine*.
12. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J.

JULY 7, 2025

V.Rawat