



2025:DHC:5516-DB



\$~31

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

***Date of decision: 11.07.2025***

+ **FAO(OS) 78/2025**  
**LALIT KUMAR** .....Appellant  
Through: Mr.Shekhar Nanavaty, Adv.  
  
versus

**SUNITA & ORS.** .....Respondents  
Through: None.

**CORAM:**  
**HON'BLE MR. JUSTICE NAVIN CHAWLA**  
**HON'BLE MS. JUSTICE RENU BHATNAGAR**

**NAVIN CHAWLA, J. (ORAL)**

**CM APPL. 40358/2025 & CM APPL. 40359/2025 (Exemptions)**

1. Allowed, subject to all just exceptions.

**FAO(OS) 78/2025 & CM APPL. 40357/2025**

2. This appeal has been filed by the appellant, challenging the Order dated 29.05.2025 passed by the learned Single Judge of this Court in I.A. 14056/2025 in CS(OS) 494/2022, titled ***Sunita v. Dinesh Kumar & Ors.***, whereby the application filed by the appellant herein under Order VII Rule 11 of the Code of Civil Procedure, 1908 (in short, 'CPC'), was dismissed.

3. The brief background of the facts in which this present appeal that arises is that the respondent no.1 has filed the above suit praying for a decree of partition in respect of the suit property bearing no. RZ-



2C/4, Sector-8, Palam Colony, Indra Park, New Delhi-110045 (hereinafter referred to as the, 'Suit property'), left behind by the late father of the respondent no.1 as well as the appellant, Shri Har Prasad.

4. In the plaint, she has stated that the appellant has set up a registered Will dated 10.07.2018. The respondent no. 1 has made averments as to why the said Will is *void-ab-initio* and liable to be ignored. However, there is no prayer seeking a declaration that the said Will is void.

5. The appellant did not file any written statement in the suit.

6. A Preliminary Decree dated 27.08.2024 was passed by the learned Single Judge, declaring therein, *inter alia*, that the appellant and the respondent no.1 each have a 1/7<sup>th</sup> share in the suit property. The appellant has challenged the same by way of an appeal before this Court.

7. Simultaneously, the appellant also filed the above application under Order VII Rule 11 of the CPC, contending therein that the suit is barred by limitation inasmuch as the respondent no.1, despite challenging the Will, did not seek the relief of a declaration. The said application has been dismissed by the learned Single Judge of this Court by the impugned order, observing therein that, after the passing of the Preliminary Decree, the issue of limitation now sought to be raised is barred by the principle of res-judicata. The learned Single Judge further observed that there is an Order dated 28.11.2019 passed by the learned District Court in Suit No.4/2001, recording that it is the party who obtains orders of the court or probate of the Will who shall



be entitled to the release of the title documents. It was held that a party which relies upon a Will to contest the intestate succession, is obliged to obtain the probate of the Will once he becomes aware of a dispute to the validity of the Will.

8. Aggrieved by the above findings, the appellant has challenged the same by way of the present appeal.

9. The learned counsel for the appellant, drawing reference to the contents of the plaint, reiterates that as the respondent no.1 was aware of the registered Will set up by the appellant and had made allegations against the validity thereof in the Suit, she was obliged to seek a decree of declaration, without which the prayer for partition could not have been granted. In support of his plea, he places reliance on the Judgment of the Supreme Court in **Ramti Devi v. Union of India**, 1995 (1) SCC 198, and of this Court in **Sangeeta Sehgal & Ors. v. Gautam Dev Sood & Ors.**, 2022:DHC:3397.

10. We have considered the submissions made by the learned counsel for the appellant, and we find no merit in the same.

11. It is trite law that a person who sets up a Will has to prove it in accordance with Section 63 of the Indian Succession Act, 1925, and Section 68 of the Indian Evidence Act, 1872. The onus to disprove the Will cannot be placed on the respondent no.1. The respondent no.1 also does not have to seek a decree of declaration for declaring the Will as void. Once the respondent no. 1 has disputed the Will in her pleadings, it was for the appellant to either obtain Probate of the same or to prove the same in the Suit. If the appellant intended to rely on the



Will, it was incumbent upon him to prove the same in accordance with law. As noted hereinabove, the appellant, in fact, did not even file a written statement in the suit, let alone seek probate or otherwise prove the Will in the suit.

12. In **Ramti Devi** (supra), the plaintiff therein was claiming to be the absolute owner and in possession of the suit property. She had knowledge of the execution and registration of the sale deed in favour of the defendant. It was in those facts that the Supreme Court held that, as the plaintiff therein was seeking to have the document avoided or cancelled, it was necessary for her to also pray for a decree of declaration to be given by the court in that behalf. It was held that until the document is avoided or cancelled by a proper declaration, the duly registered document remains valid and binding on the parties. The judgment cannot be of any assistance to the appellant, as it was for the appellant to prove the Will. Mere registration of the Will does not amount to proof of its validity. Without proof of the same, unlike a registered Sale Deed, it is also not a document that can be relied upon or have any legal sanctity in the eyes of law.

13. In **Sangeeta Sehgal** (supra), the defendant therein had set up Gift Deeds. The Court, therefore, held that until a declaration is prayed for declaring the Gift Deeds as void, they remain valid and are binding on the parties. The said judgment, therefore, was again on a Gift Deed and not on a Will, which must be specifically proved by the person who sets it up in defence to a suit for partition.

14. In view of the above, we find no merit in the present appeal.



2025:DHC:5516-DB



The same is dismissed. The pending application is also disposed of as being rendered infructuous.

15. The appellant shall pay costs of Rs.25,000/-, to be deposited with the Delhi High Court Bar Clerks' Association (A/c No.15530100006282) within a period of four weeks from today.

**NAVIN CHAWLA, J**

**RENU BHATNAGAR, J**

**JULY 11, 2025/ns/DG**