



\$~134

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

+ RFA 625/2025

SURESH KUMAR & ORS.

.....Appellants

Through: Mr. B.B. Singh and Mr. Rohit,
Advocates.

versus

SATENDER KUMAR

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **16.07.2025**

CM APPL. 41438/2025 (exemption)

Exemption allowed, subject to just exceptions.

The application stands disposed-of.

CM APPL. 41441/2025 (for condonation of delay in re-filing the appeal)

By way of the present application filed under section 151 of the Code of Civil Procedure 1908 ('CPC'), the appellant seeks condonation of about 17 days' delay in *re-filing* the regular first appeal.

2. For the reasons stated in the application, which is duly supported by affidavit, the delay is condoned.
3. The application is allowed and disposed-of.

CM APPL. 41440/2025 (exemption from filing decree-sheet)

4. By way of the present application filed under Order XLI Rule 1(2) read with section 151 of the CPC, the appellants seek exemption from filing the decree-sheet.



5. By reason of the order that this court proposes to pass in the appeal, the application is disposed-of.

RFA 625/2025 & CM APPL. 41439/2025 (stay)

6. By way of the present regular first appeal filed under section 96 read with Order XLI of the CPC, the appellants impugn judgment and preliminary decree dated 18.01.2025 passed by the learned District Judge-03, East District, Karkardooma Courts, Delhi in Suit No.353/2018.
7. After a brief hearing in the matter, it transpires that the appellants' case is that the suit property had already been partitioned, first by an oral partition and subsequently by a written document *vide* Partition Deed dated 12.12.2007, under which the parties *viz.* appellant No.1, appellant No.2, appellants Nos. 3 and 4 together, and the respondent, had received 1/4th share each, which portions the parties are occupying ever-since.
8. Counsel submits however, that now, by way of the impugned preliminary decree dated 18.01.2025, the learned trial court has sought to be apportion the shares of the parties in the suit *again* in an equal 1/4th share.
9. Upon being queried as to what the appellants' grievance is, considering that the preliminary decree (again) grants a 1/4th share to the parties just as was done under the partition deed, counsel submits that partitioning the suit property by metes and bounds for the second time would upset the settled possession of the parties.
10. A perusal of Partition Deed dated 12.12.2007 shows that by that document specific portions have been mentioned only for 03 out of



the 04 parties; though the appellants admit that even under the partition deed their share was 1/4th, just as it is in the Preliminary Decree dated 18.01.2025.

11. In the circumstances, this court is of the view, that it is available to the appellants to raise the issue of partitioning of the suit property by metes and bounds, based on an equal 1/4th share at the stage when the physical partitioning is done by metes and bounds through the agency of a Local Commissioner.
12. In the circumstances, this appeal is disposed-of as premature, granting to the appellants the liberty to raise the issue of the existing settled possession of the suit property before the learned trial court, as referred-to above.
13. Pending applications, if any, also stand disposed-of.
14. Needless to add that the appellants shall be at liberty to agitate any grievance that may arise subsequently in the partition suit, in accordance with law, and the disposal of the present appeal would not bar them from doing so.

ANUP JAIRAM BHAMBHANI, J

JULY 16, 2025

V.Rawat