



2026:DHC:971



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of decision : 29th January, 2026***+ **RFA 105/2026, CM APPL. 6185/2026****SMT. SUMITRA AHLAWAT**Widow of Late Shri Narendra Singh,
R/o House No.48, Sector-14,
Rohtak, Haryana-1240001.

.....Appellant

Through: Mr. Trilok Nath Saxena & Dr. Shiv
Kumar Tiwari, Advocates.

versus

1. SMT. HARDEEP SAINIW/o Shri U. S. Saini,
R/o B-103, Westend Heights,
DLF Phase-V, Gurugram,
Haryana-122009.**2. SHRI PRITHVI RAJ DUA,**S/o Late Shri O. P. Dua,
SFS Flat No.60, Punjabi Bagh Apartment,
Rohtak Road, New Delhi.

.....Respondents

Through:

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)****CM APPL. 6184/2026**

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

RFA 105/2026

3. Regular First Appeal under Section 96 CPC has been filed on behalf of the Appellant challenging the Judgment and Order dated 26.09.2025



wherein Learned District Judge has granted *Preliminary Decree of Partition* declaring 1/3rd share of each party to the Suit.

4. Plaintiff / Respondent No. 1 / Smt. Hardeep Saini had filed a Suit bearing CS DJ2606/2017 *for Partition and Rendition of Accounts*, against Defendant No. 1 / Appellant / Smt. Sumitra Ahlawat and Defendant No. 2 / Respondent No. 2 / Sh. Prithvi Raj Dua. The basic averments in the Plaint were that Plaintiff Smt. Hardeep Saini along with Late Sh. Narender Singh (husband of Defendant No.1) and Sh. Prithvi Raj Dua (Defendant No.2) had purchased the Suit Property by virtue of two registered GPAs dated 11.04.2000 and 11.05.2000 aside from Agreement to Sell, Receipt & Will, executed by Sh. Bansi Lal and Sh. Dalip Kumar (erstwhile owners). The Plaintiff was thus, the Joint Owner of Property bearing No.487-488, Rameshwari Nehru Nagar, Delhi-110005, now bearing Municipal No. 7020 along with Defendant Nos. 1 and 2, and entitled to 1/3rd undivided share in Suit Property, as the property was never partitioned among the co-owners.

5. It was further explained that the consideration for the purchase of the property had been paid to all the three Parties in equal share and the Property was purchased with an intent to earn money by Leasing it on Rent, as none of them required the same. Therefore, all the co-sharers were in symbolic Possession of the Suit Property, as it was let out with mutual consent.

6. It has been explained that the First Floor of the Property was occupied by Tenant M/s. Shippley Tailors, which is now known to the Plaintiff, but as per market rate it should be @ Rs.15,000/- per month, which was being collected by Defendant Nos. 1 and 2.

7. There was another shop on the first floor under the tenancy of M/s.



Gurnoor Collections and rent @ Rs.25,000/- per month, which was also being collected by Defendant Nos. 1 and 2. Another Tenant on the first floor was namely M/s. B. R. Graphics were also paying rent and was also being collected by Defendant Nos. 1 and 2. The exact rent is not known to the Plaintiff, though as per market rate it should be about Rs. 15,000/- per month. Entire second floor is in possession of M/s. Yamini Traders, rent of which was also being collected by Defendant Nos. 1 and 2 and as per market rate it should be about Rs. 40,000/- per month.

8. On 05.11.2001, the Plaintiff and Defendants jointly sold Shop No.2 on the ground floor and Sale consideration was equally shared amongst Co-Sharers and Title Documents were executed in favour of Sh. Rajesh Kumar.

9. It is further asserted that Sh. Narender Singh used to collect rent on behalf of all the Co-Sharers and Plaintiff used to get her share during the lifetime of Sh. Narender Singh. However, things took a turn after demise of Sh. Narender Singh, when Smt. Sumitra Ahlawat / Defendant No.1 and other Legal Heirs started collecting rent from the Tenants and refused to give the share of the Plaintiff.

10. After much persuasion, Smt. Sumitra Ahlawat / Defendant No.1 issued a Cheque bearing No.025057 of Rs. 15,800/- drawn on Central Bank of India, which got credited on 15.02.2017, as part payment of collected rent with a promise to pay the balance later as per the account. It was claimed that Defendant Nos. 1 and 2 had been collecting rent from the Tenants on behalf of all the parties but are not distributing the same since October, 2010, despite repeated requests. They were avoiding to pay share in the rent.

11. It has further explained that the entire chain of documents was initially kept by Late Shri Narender Singh and thereafter, the same is in



Possession of his Legal Heir / wife Smt. Sumitra Ahlawat / Defendant No. 1 / Appellant. Plaintiff has placed on record the copies of two Registered GPAs executed by Shri Bansi Lal and Shri Dalip Chand, but the Unregistered Documents, i.e. Agreement to Sell, Receipt and Will are in her Possession, who has failed to provide the photocopies of the same to the Plaintiff, despite repeated requests. Hence, it was claimed that Smt. Sumitra Ahlawat / Defendant No.1 is trying to usurp the Suit Property and create third party interest.

12. *Thus, Plaintiff filed the Suit for Decree of Partition and for Rendition of Accounts, to claimed Partition of the first and second floors of the Suit Property, since ground floor had already been sold by the Co-Sharers.*

13. The **Defendant No.1 and 2/respondents in their respective Written Statement** took the objection that the Suit was not maintainable on account of deficit Court Fee, Jurisdiction, lack of cause of action and that the Property cannot be divided by meets and bounds and also for Non-Joinder of the necessary parties.

14. *Smt. Sumitra Ahlawat / Defendant No. 1 / Appellant*, in her Written Statement, admitted that the Suit Property was purchased jointly by the Plaintiff and Defendant Nos. 1 and 2. However, it was denied that Plaintiff and Defendant No.2 are the owners of 1/3rd share of the Suit Property.

15. It was explained that the Suit Property had three floors, i.e. ground, first and second floor. Ground floor was sold by Plaintiff and Defendant No. 2 to her husband Sh. Narender Singh as they were in need of money, and got money from her husband, of which the Tenants in the Suit Property were Witness.

16. Furthermore, since Plaintiff and Defendant No.2 were in need of



money, they got more money from the husband of Defendant No.1 and left their share in first and second floors of the Suit Property, pursuant to Oral Settlement / Agreement of which the Tenants were witness. Rents are being collected by Plaintiff and Defendant No.2 in accordance with their respective shares of 16% and 20% respectively.

17. Plaintiff and Defendant No.2 have been taking rent as per their remaining share, in the Suit Property from the Tenants, for the last 15 years. Plaintiff and Defendant No. 2 are not having alleged 1/3rd share in the Suit Property, but now Plaintiff has only 16 % and Defendant No. 2 has 20 %.

18. It is further claimed that Plaintiff and Defendant No. 2 were aware of the rent being paid by the Tenant, as they are getting the rent, as per their share. The rent of M/s. Shippley Tailors is Rs. 12,000/- per month, which is being collected by the Plaintiff from its Proprietor, as per his remaining share with the consent of all the partners. It has been explained that prior to August, 2016, as per the requirements of the Plaintiff, she used to collect the entire rent from M/s. Shippley Tailors, in advance, including the share of Defendant No.1, which used to be adjusted later by Defendant No.1.

19. Defendant No. 2 is collecting his share from another tenant M/s B. R. Graphics, as per his remaining share and it is not being collected by Defendant No.1. It was admitted that Smt. Sumitra Ahlawat / Defendant No.1 was collecting rent from M/s. Gurnoor Collections, as per her share and rent of second floor from M/s Yamini Traders @ Rs.35,000/- per month. However, it was asserted that Defendant No.2 has no concern with the rent of second floor. Defendant No. 1 gives the rent amount to Plaintiff and Defendant No. 2, in case, the amount in excess of her share, is received by



her.

20. It was further submitted that the parties to the Suit, are having their possession as per their shares and have let out the shops with consent of each other. Additional pleas were taken that Plaintiff has suppressed material facts and Suit was bad for Mis-Joinder and Non-Joinder of the parties and the Suit was filed only for harassing Defendant No.1, therefore, the same may be dismissed.

21. The Plaintiff Hardeep Saini filed Suit CS DJ2606/2017 for Partition and Rendition of Accounts. **Brief facts** are that plaintiff is resident of B-103, Westend Heights, DLF Phase-V, Gurugram, Haryana. The Plaintiff claimed that Narender Singh (deceased), his wife and Prithivi Raj Dua had purchased the property bearing No.487-488, Rameshwari Nehru Nagar, also known as Tank Road, Karol Bagh, Delhi, now bearing new Municipal No. 7020, by virtue of two registered General Power of Attorney, Agreement to Sell, Receipt & Will executed by Sh. Bansi Lal and Sh. Dalip Kumar.

22. *Ms. Sumitra Ahlawat*, defendant No. 1 is the Legal heir/wife of Sh. Narender Singh, while Plaintiff is the Legal heir of her husband Sh. U.S. SAINI. Plaintiff and Defendants are thus, the co-sharers of 1/3rd undivided share in the property, which had never been Partitioned amongst the co-owners.

23. The First Floor of the property was occupied by tenant M/s Shippley Tailors @ Rs. 15,000/- per month, which was collected by Defendant No.1 legal heir of Sh. Narender Singh and Defendant No.2 Prithvi Raj Dua. The Second Floor was occupied by *M/s Yamini Traders*, the exact rent of which was unknown to the Plaintiff as it was collected by Defendant No.1 and 2. However, as per the prevailing market rate, the rent of the property was



about Rs. 40,000/- per month. On 05.11.2001, the Plaintiff and Defendants jointly sold Shop No.2 (two side open) on the Ground Floor to Shri Rajesh Kumar and the sale consideration was equally distributed.

24. The **Plaintiff/ Respondent No.1 Hardeep Saini** had filed a Suit for Partition of First Floor and Second Floor of the Suit property on the assertion that the Defendants had refused to give the share in the property and the rent to the Plaintiff.

25. The **Defendant No.1/Appellant Ms. Sumitra Ahlawat** also objected to the Partition by claiming that subsequent to the purchase of the Property jointly by the Plaintiff and Defendants, it was sold by the Plaintiff and Defendant No. 2, to her husband Narender Singh as they were in need of money, through an Oral Settlement and Agreement.

26. An Application under **Order XII Rule 6 CPC** was filed on behalf of **the Plaintiff/Hardip Saini seeking Preliminary Decree of Partition**. The Learned District Judge, considered the admissions made by the parties and the rival contentions of the parties and observed that the factum of purchase of Joint Property by Plaintiff and Defendants being admitted and the defence of Oral Sale of Property not been legally sustainable, allowed the Application under Order XII Rule 6 CPC and passed a Preliminary Decree of Partition holding that each party was entitled to 1/3rd share in the property in question.

27. Aggrieved by the Impugned Order dated 26.09.2025, **present Appeal has been filed by Smt. Sumitra Devi/ Defendant no.1** on the grounds that the Suit for Partition was not maintainable, as it rested on GPAs dated 11.04.2000, 11.05.2000 and 19.12.2001 respectively, in view of Suraj Lamps & Industries vs. State of Haryana, (2012) 1 SCC 656.



28. It is asserted that Learned Trial Court has held that defence raised by Defendant Nos.1 and 2 is barred as no documents as envisage under Section 84 Transfer of Property Act, 1954 read with Section 17 of the Registration Act, 1908 were executed in the light of Suraj Lamps (*supra*), but the Suit of Partition by the Plaintiff as co-owner, is based upon the same set of documents.

29. Ld. Trial Court has failed to consider and take into account all the documents filed by Plaintiff, i.e. three registered GPAs and relied over documents, i.e. Agreement to Sale, Receipt & Will, filed with the Plaintiff without appreciating that they did not create any joint-title as claimed by the Plaintiff in suit property.

30. Furthermore, without noting the Objections of Defendant No. 2 Prithvi Raj Dua that the Ground Floor of the Property, was sold to some third party with mutual consent, it was taken as creating an impression that the alleged Admission of Joint Ownership of the whole Suit Property. However, it is neither clear nor unconditional Admission, which can be considered while deciding Application under Order XII Rule 6 CPC.

31. Ld. Trial Court despite referring to Objection of Defendant No. 1 Smt. Sumitra Ahlawat that Plaintiff and Defendant No.2 Prithvi Raj Dua were in dire need of money and had sold their respective Shares in the Suit Property (First & Second floor) after taking consideration amount / money from her husband *vide* Oral Settlement / Agreement, took it as the alleged Admission of Joint Ownership in respect of the entire Suit Property, even though it neither clear nor unconditional Admission and could not have acted upon in Application under Order XII Rule 6 CPC.

32. Ld. Trial Court further recorded the Objections of



Appellant/Defendant No. 1 Smt. Sumitra Ahlawat that Plaintiff and Defendant No. 2 Prithvi Raj Dua do not have the alleged share of 1/3rd each in the Suit Property and that Plaintiff now has 16% share and Defendant Prithvi Raj Dua has 20% in the Suit Property and the Parties are receiving rent in terms of their share, as alleged Admission of Joint Ownership in respect of entire Suit Property, which is again not correct.

33. There were no categorical / unambiguous submissions in the Written Statement of Defendant Nos. 1 and 2, which could have been basis of Preliminary Decree of Partition under Order XII Rule 6 CPC.

34. Ld. Trial Court has wrongly placed reliance on Delhi Jal Board vs. Surendra P. Malik, 104 (2003) DLT 151, which pertains to Landlord-Tenant Disputes, wherein Preliminary Decree of Possession was passed in favour of Landlord. The said Judgment is not applicable to the facts, in present case. **A Prayer is therefore, made that the Impugned Judgment, be set aside.**

35. Written submissions were filed by Defendant No. 2 / Respondent No. 2 / Sh. Prithvi Raj Dua, who took *Preliminary Objection* that the Suit had not been valued properly for Court Fee and Jurisdiction that the Suit was without Cause of Action as Defendant No. 2 has never refused to Partition the Suit Property amicably and the Suit Property is incapable of being Partitioned by metes and bounds.

36. The factum of purchase of the Property by the Plaintiff and Sh. Narender Singh and Defendant No. 2, is admitted. It is claimed that after Sh. Narender Singh expired in 2010, his wife Smt. Sumitra Ahlawat / Plaintiff started claiming herself to be the Sole Beneficiary of the entire Property. Defendant No. 2 is one of the co-sharers of the Suit Property. He further stated that the Title Documents of the Suit Property always remained



in the custody of Late Sh. Narender Singh and Defendant No. 2 never had the copy of the Title documents.

37. It is stated that it is not in Dispute that the Parties are entitled to 1/3rd undivided share in the Suit Property. It is further stated that after the purchase of the Property, old structure was demolished and fresh construction comprising of Basement, Ground Floor, First Floor and Second Floor was made. The Basement and Ground Floor were sold, while Tenants were inducted in the First and Second Floor of Suit Property.

38. It is emphatically denied that the Suit Property was being leased out with mutual consent. Earlier, Mr. Narender Singh had been leasing out the Property and collecting the Rent from Tenants, which was being shared in equal ratio amongst all three parties and there was never any dispute. However, after his demise, his wife Smt. Sumitra Ahlawat through her brother started collecting the rent, but has been irregular in giving respective shares of the Plaintiff and Defendant No.2.

39. It is admitted that there are three Tenants on the First Floor. Defendant No. 2 is getting rent of Rs. 40,000/- from one Tenant. Both, second Tenant M/s. Shippley Tailor and third Tenant Sh. Amar Vishnu of M/s Cranberry Passion, are paying rent @ Rs.15,000/- and Rs.45,000/- per month to Defendant No. 1.

40. It is further admitted that Sh. Des Raj, (Tenant on the Second Floor) is carrying on the business in the name and style of M/s Hitesh Footwear, is also paying rent @ Rs.45,000/- per month to Defendant No. 1. Whenever, Defendant No. 2 demanded his share of rent, the brothers of the Defendant No. 1, extended threats and refused to clear the accounts. Defendant No. 2 was in the process of filing a similar Suit, however, present Suit got filed by



the Plaintiff.

41. It is further stated that Defendant No.1 is not the Sole Surviving Legal Heir of Sh. Narender Singh and all the Legal Heirs of Sh. Narender Singh are required to be Impleaded as Defendants, in order to avoid any controversy / dispute in the future.

42. *Defendant No. 2* also admitted that Basement and Ground Floor of the Suit Property were disposed of by all the three Co-Owners during the lifetime of Sh. Narender Singh, who had fairly distributed the Rent / Sale Consideration. It is further stated that Defendant No. 2 was also offered a sum of Rs. 1,50,000/-, sometime in the month of October, 2017, but when he demanded the details of the accounts, Defendant No.1 and her brother became offensive and started abusing him and did not pay any amount.

43. Defendant No. 2 claims that he is also suffering on account of not receiving his due share of Rent from Defendant No.1 and that Defendant No. 1 is liable to render the accounts.

44. *Plaintiff / Smt. Hardeep Saini had filed her Replications to the Written Statements of Defendant Nos. 1 and 2,* after an Application under Order XII Rule 6 of C.P.C. filed by the Plaintiff / Respondent No. 1.

45. *The Preliminary Decree, declaring all three parties as entitled to 1/3rd share has been passed under Order XII Rule 6 of C.P.C. by the Impugned Order dated 26.09.2025.*

Submissions heard and record perused.

46. It is admitted case of the Parties that Suit Property was purchased by Plaintiff, Sh. Narender Singh (husband of Defendant No.1 / Appellant) and Defendant No.2 Prithvi Raj Dua in equal share. It is also not in dispute that during lifetime of Sh. Narender Singh, he was essentially handling the



Property and giving it on rent to various tenants and was being distributed amongst the Plaintiff and Defendants. It is also not in dispute that the Basement and Ground Floor were admittedly sold during lifetime of Sh. Narender Singh and the Sale Consideration was equally shared between three parties.

47. Dispute admittedly arose after the demise of Sh. Narender Singh in 2010, wherein Defendant No.1 / Appellant / Smt. Sumitra Ahlawat became irregular in paying rent share to Plaintiff and Defendant No.2, despite repeated requests.

48. Defendant Nos.1 and 2 have admitted that share of three parties was $1/3^{\text{rd}}$ each in the Suit Property. The only defence, that was taken by the Appellant was that the Plaintiff and Defendant No. 2 both needed money and they both, pursuant to an Oral Settlement, sold their right in First and Second floors to Sh. Narender Singh and thereafter, they were left with the share of 16% and 20% respectively in the Suit Property and have been receiving Rent in the said proportion.

49. Pertinently, while a defence of Oral Settlement has been taken by Defendant No. 1, but it neither states the date on which this Oral Settlement took place or the terms of the Settlement. Bald assertion of an Oral Settlement, cannot be considered as a legally tenable contention. Moreover, Ld. Trial Court in the Impugned Judgment has rightly observed that the Relinquishment or creation of the Right and Title in the Immovable Property, cannot be created by virtue of an Oral Settlement.

50. Pertinently, it is claimed that Plaintiff and Defendant No. 2 are now entitled to receive 16% and 20% share in the Rent respectively, but on what basis such claim has been made, is not comprehensible. There is nothing in



the Defence of the Appellant to show, what part of share of Plaintiff and Defendant No. 2 was allegedly sold to Sh. Narender Singh, so as to be left with 16% and 20% share respectively.

51. Therefore, Learned Trial Court rightly referred to Section 17 of the Registration Act, 1908 and to Sections 91 and 92 of the Indian Evidence Act, to disbelieve the **Plea of Oral Settlement and sale of the respective share of Plaintiff and Defendant No. 2 to Sh. Narender Singh.** The Sole Defence taken by Defendant No. 1 was therefore, rightly rejected by the Learned Trial Court.

52. A challenge was also made by Appellant/Defendant No. 1 that admittedly, the Suit Property was purchased vide two registered GPAs dated 11.04.2000 and 11.05.2000 executed by Sh. Bansi Lal and Sh. Dalip Kumar (erstwhile owners) aside from Agreement to Sell, Receipt & Will, which does not create any Ownership in the Suit Property and the Suit for Partition, was not maintainable

53. While it is correct that the documents, namely GPA, Agreement to Sell, etc. do not create any Title in the Suit Property, but it is correct and true for all three Parties, in the light of Suraj Lamps (*supra*).

54. However, the Suit had been filed for Partition on the basis of the documents, which are not only admitted by the parties but also all three parties are resting their claim to the Property on the same documents. Their *inter se* dispute is not in respect of Purchase of Suit Property *vide* these documents, but the Suit for Partition is interse the parties, on the basis of documents which are admittedly executed. The partition is based on the rights of the Parties, who admittedly entered into the transaction for Joint Purchase of the Property. The determination of Rights are interse the Parties



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and not viz-a-viz. third party, wherein this Objection would have assumed relevance.

55. Having concluded that these documents are not dispute and admittedly, they all three had 1/3rd share, it is established that the Plaintiff as Defendant No. 2 are entitled to 1/3rd share. There are no documents to show that they ever sold any part of their share, to Sh. Narender Singh.

56. In view of aforesaid observations, it is held that there is no infirmity in the Impugned Order dated 26.09.2025, granting preliminary Decree of Partition, declaring all the three parties entitled to 1/3rd share each, in the Suit property.

57. There is no merit in the Appeal, which is hereby, dismissed. The pending Applications are disposed of, accordingly.

NEENA BANSAL KRISHNA, J.

JANUARY 29, 2026/R