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

+ **FAO 98/2026**

VINOD SHARMA

.....Appellant

Through: Mr. Manish Bansal, Mr. Robin
Bansal, Ms. Rhythm Goel, Ms. Nancy
Garg, and Ms. Shruti Mittal,
Advocates.

versus

SUSHMA SHARMA

.....Respondents

Through: Appearance not given.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **06.04.2026**

CM APPL. 21519/2026 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

FAO 98/2026 and CM APPL. 21518/2026 (stay)

1. The present appeal has been preferred under Order XLIII read with Section 104 CPC, challenging the order dated 31.01.2026 passed by the learned DJ-01, North East, *Karkardooma* Courts, in CS No. 357/25.
2. The respondent/plaintiff filed the underlying suit for partition and permanent injunction regarding the property bearing no. *C-102/A, Gali No. 4 and 5, Block C, Bhajan Pura, Delhi-110053* (hereinafter the "suit property") against her brother, the appellant/defendant. The suit property admeasures



approximately 92 sq. yards and is comprised of two portions: 50 sq. yards originally owned by the parties' father, *Sh. Ram Saran Sharma*, and 42 sq. yards originally owned by their mother, *Smt. Bimla Sharma*.

3. The case of the respondent is that the parties' parents died intestate, leaving the respondent with a half-undivided share in the suit property. Along with the suit, the respondent filed an application under Order XXXIX Rules 1 & 2 CPC seeking to restrain the appellant from selling or creating any third-party interest in the suit property till the final decree of partition.

4. The case of the appellant is that their mother had executed an unregistered Will dated 22.10.2008 in his favour. By virtue of the said Will, the appellant claims to be the sole owner of the mother's 42 sq. yards portion as well as the mother's proportionate share in the father's 50 sq. yards portion.

5. *Vide* the impugned order, the respondent's application under Order XXXIX Rules 1 & 2 CPC seeking to restrain the appellant from selling or creating any third-party interest in the suit property was allowed.

6. A perusal of the impugned order reveals that the relationship between the parties is admitted, and the original ownership of the parents is not in dispute. The appellant's challenge to the partition is based on an unregistered Will, the execution and contents of which are yet to be established through evidence. In the facts of the present case, the mere propounding of this disputed unregistered document cannot, at this stage, oust the respondent's rights as a Class-I legal heir. The respondent has thus established a strong *prima facie* case for the protection of her claimed share.



7. Learned counsel for the appellant contends that the appellant's case, premised upon the testamentary document, has not been properly considered. However, it is observed that this plea *qua* the unregistered Will was introduced for the first time in his Written Statement, and the impugned order reveals that the underlying suit is at a relatively nascent stage, with the matter next listed for completion of pleadings, admission/denial, and framing of issues. Since the validity of the Will is a matter of trial, allowing the appellant to alienate the property at this stage may cause irreparable loss to the respondent. The balance of convenience also lies in favour of the respondent, as any third-party interest would lead to a multiplicity of proceedings. Accordingly, this Court finds no reason to interfere with the discretion exercised by the Trial Court in restraining the appellant from creating third-party interests during the pendency of the suit.

8. Finding no infirmity with the impugned order, the present appeal is dismissed.

9. The present appeal, along with the pending application, is disposed of in the above terms.

MANOJ KUMAR OHRI, J

APRIL 06, 2026

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