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

+ RFA 389/2026, CM APPL. 26149/2026 & CM APPL. 26150/2026

SANTOSH KUMAR AND ORSAppellants

Through: Mohd. Akram and Mr. Ammar
Akhtar, Advocates

versus

MAYA DEVI AND ORSRespondents

Through:

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

21.04.2026

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1. Regular First Appeal under Section 96(2) read with Order XLIII(d) of the Code of Civil Procedure, 1908 (CPC) has been filed against the judgment and decree dated 09.01.2026 whereby the Suit of the Plaintiff for partition and permanent injunction has been rejected under Order VII Rule 11 CPC.

2. The facts in brief are that the Defendant No. 1 is the mother of deceased wife of Plaintiff No. 1 Sh. Santosh Kumar. It is claimed that the wife Sunita, died on 22.06.2021.

3. Sh. Jamuna Prasad, father-in-law of Plaintiff No. 1 was the owner of built up property bearing No. 217/C, Gali No. 6, Nehru Nagar, Anand Parbat, New Delhi which was constructed up to three floors measuring about 100 sq. yards (*hereinafter referred to as the "Suit Property"*). Most of the



rooms in the Suit Property, were occupied by the tenant and Defendant No.1 was getting huge rent every month from the tenant.

4. Jamuna Prasad died on 30.03.200 intestate and was survived by his wife Smt. Maya Devi, Dharamvir and Amar, the two sons and Seema and Sunita (now deceased), the two daughters. The wife and children thus, inherited the Suit Property. It is claimed that the share of the wife Sunita, who died on 22.06.2021, has devolved upon Plaintiff No. 1, the husband and Plaintiff No. 2 and 3 who are the children of late Smt. Sunita.

5. The Plaintiff No. 1 claims that he is in constructive possession because till date, the Suit Property has not been partitioned. The Plaintiffs are entitled to 1/5th share, i.e., 20% of the Suit Property.

6. The Plaintiffs further claimed that in first week of November 2022, Defendant No.1 in collusion with all other Defendants, intended to sell the Suit Property to third party and started negotiation with the prospective buyers and some strangers. The Plaintiff No. 1 objected, on which he was threatened with dire consequences by the Defendants.

7. The Plaintiff No. 1 approached the Defendants on 18.11.2022 seeking partition of the Suit Property, but the Defendants flatly refused. Left with no alternative, the Plaintiffs had filed the present Suit seeking Partition and 1/5th share in the Suit Property and to restrain the Defendants by way of Permanent Injunction from creating third party interest.

8. The Written Statement was filed by the Defendants/Respondents who took a preliminary objection that the Suit Property belongs exclusively to Defendant No. 1, who had purchased the property on



22.03.1994 from her own funds. She has been in actual physical possession of the Suit Property. Late Sh. Jamuna Prasad had no right, title or interest whatsoever, in the property which belonged exclusively to Defendant No. 1.

9. It was further asserted that no relief of possession has been sought, in the absence of which the Suit for partition was not maintainable. Further objection was taken that the Plaintiff No. 1 has shown the excessive market value of the Suit Property when in fact, its value is Rs.40 lakhs. The ad-volrum Court fee has not been paid on the alleged valuation of Rs.80 lakhs, as he is not in possession of the Suit Property. Furthermore, the Suit is not maintainable in its present form as Plaintiff No. 2 and 3 are minors and are since long in the custody of Defendant No. 1, being the Nani. She has been maintaining and taking care of Plaintiff No. 2 and 3. The Plaintiff No. 1 has intentionally and deliberately impleaded the minor children without the consent of their guardian, who is Defendant No. 1 and with whom the children are living since 2018.

10. It was claimed that the Plaintiff No. 1 has no *locus standing* to file the Suit on behalf of the Plaintiff No. 2 and 3, being the minor children who are not in his custody.

11. The present Suit is claimed to be a sheer misuse and abuse of process of law which has been filed with an intent to harass, humiliate, torture and extort money from the Defendants. A prayer is made that the Suit is liable to be rejected. ***On merits***, all the averments made in the plaint was denied.



12. An Application under Order VII Rule 11 CPC was filed on behalf of the Defendant No. 1-Smt. Maya Devi asserting that the Suit for the Partition by husband as her deceased daughter, for the reasons stated in the preliminary objection taken I the Written Statement, was liable to be rejected.

13. Learned District Judge considered the averments made in the plaint and noted that there was no document whatsoever that has been placed on record, to establish the title in the Suit Property. The Suit Property was *prima facie* was shown to be in the name of Defendant No. 1. Admittedly, the Plaintiff No. 2 and 3 are in custody of Defendant No. 1, their grandmother (Nani).

14. The document further revealed that the Suit Property was in exclusive name of Defendant No. 1 who was admittedly alive. No partition can be sought by the Plaintiffs against the living person, who hold absolute title in the Suit Property. Mere expectancy of succession does not confer any unforeseeable right. Even if it is for the sake of arguments, it was believed that the wife of Plaintiff No. 1, had acquired any share in the Suit Property, Plaintiff No. 1 being the husband, was not entitled to any share.

15. The conduct of the Plaintiff clearly demonstrates that the Suit was not instituted for the welfare of the children, but to indirectly seek control over the property, to which he is legally not entitled. Hence, the Suit of the Plaintiff was rejected.

16. Learned Counsel for the Appellants has addressed arguments after the judgment was dictated. He seeks permission to withdraw the present Appeal.



17. The present Appeal along with pending Applications, is permitted to be withdrawn.

NEENA BANSAL KRISHNA, J

APRIL 21, 2026

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