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

+ **CS(OS) 299/2023**

JYOTI AND ANR.

.....Plaintiffs

Through: Mr. Apoorv Sarvaria (DHCLSC), Ms. Shalini Koppula, Advocates along with the Plaintiff No. 1 in person.

versus

SUSHIL KUMAR AND ORS.

.....Defendants

Through: Mr. Harnaman Singh, Mr. Amitoj Pal Singh, Ms. Guneet Kaur, Mr. Rahul Tiwari, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

20.01.2026

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I.A. 18535/2025

1. The instant suit is one for partition of an immovable property, declaration and permanent and mandatory injunction. It is for the partition of ancestral properties. Undoubtedly, Defendant No.1 through whom the Plaintiffs claim their right is still alive.
2. The Plaintiffs and Defendant No.7 are children of Defendant No.1 through one Smt. Poonam and Defendant Nos. 2 to 6 are siblings of Defendant No.1.
3. The present application under Order VII Rule 11 of CPC has been filed by the Defendant No.1 stating that the rights of the Plaintiffs to claim the shares in the ancestral property would arise only on the death of the



Defendant No.1.

4. Reliance has been placed on the judgment of the Co-ordinate Bench of this Court Amit Sethi v. Lalit Sethi, **2025 SCC OnLine Del 6028**. The relevant excerpts of the aforesaid judgment have been reproduced hereinbelow:

“25. Thus, it is trite that under the traditional Hindu Law, a male Hindu by virtue of his birth is vested with a right in any property inherited by his father. However, by reason of Section 8 of HSA, the grandson gets excluded, and the son alone inherits the property to the exclusion of his son. Therefore, by operation of provisions under Section 8 of HSA, the property of the father who dies intestate devolves on his son in his individual capacity and not as Karta of his own family.

26. Therefore, so long as the father is alive, the son cannot claim any right in his father's property, since Section 8 of HSA excludes the concept of survivorship or birthright in the case of intestate succession. A cause of action in favour of the son would arise only upon the father's death, intestate, when succession actually opens under Section 8 of HSA.”

5. Even otherwise, the law regarding this point is well settled that while claiming a partition of the property, the right would arise only when the person through whom the parties claim, passes away.

6. The shares of parties are demarcated on birth or death of a party, however, the right to claim partition only arises on the death of the party or the person through whom the party claims the shares.

7. Confronted with this, Ms. Jyoti, who is Plaintiff No.1, present in Court today, seeks permission to withdraw the suit including cancellation of any gift deed made by the Defendant No.1 *qua* the ancestral property which



also includes the shares of the Plaintiffs, with liberty to file any other suit available to her in accordance with law. Plaintiff No.1 also represents interests of Plaintiff No.2.

8. Leave and liberty, as prayed for, is granted.

9. The present suit is dismissed as withdrawn under Order XXIII Rule 1(3) of CPC.

SUBRAMONIUM PRASAD, J

JANUARY 20, 2026

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