



\$~

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

%

Reserved on: 15.01.2026

Date of decision: 27.01.2026

Uploaded on: 28.01.2026

+ RFA(OS)2/2026 & CM APPL.117/2026, CM APPL.118/2026, CM APPL.119/2026

SAVITRI SHARMA & ANR.

.....Appellants

Through: Mr. N. S. Dalal, Ms. Nidhi Dalal, Mr. Alok Kumar, Ms. Rachna Dalal, Advs.

versus

BHAGWANI DEVI NOW DECEASED THROUGH ALL LEGAL HEIRS & ORS.

.....Respondents

Through: Ms. Chandrika Prasad Mishra, Mr. Ankit Pandey, Ms. Prashasti Singh, Ms. Harshita Bhardwaj, Advs.

CORAM:

HON'BLE MR. JUSTICE VIVEK CHAUDHARY

HON'BLE MS. JUSTICE SHAIL JAIN

J U D G M E N T

SHAIL JAIN, J.

1. The present Appeal has been preferred under Section 96 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"), *inter alia*, assailing the Order dated 12th November, 2025 (hereinafter referred to as "Impugned Order") and seeking the following reliefs:

"i) Set-aside the impugned order dated 12.11.2025 passed by the Ld. Single Judge in C.S. (O.S.) No.411 of 2022 titled as "Savitri Sharma & Another Vs. Bhagwani Devi (Since Deceased) & Others";

(ii) Decree the Suit being C.S. (O.S.) No.411 of 2022 titled as "Savitri Sharma & Another Vs. Bhagwani Devi (Since Deceased) & Others" and grant the relief as prayed for therein, in the interest of justice:

(iii) Award costs of the present Appeal in favour of the Appellants and



against the Respondents:

(iv) Pass any such other or further orders as this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case in favour of the Appellants and against the Respondents."

2. By way of the Impugned Order, the learned Single Judge has allowed the two Applications being I.A. 16884/2022 and I.A. 3665/2023, seeking amendment of the plaint, and while considering the Suit being CS (OS) 411/2022 along with Application being I.A.10980/2022, filed under Order XXXIX Rule 1 and 2 of the CPC, the learned Single Judge rejected the Suit under Order VII Rule 11 of the CPC on the ground that no cause of action was disclosed.

3. The case set up by the Plaintiffs/Appellants is that Respondent No.1/Late Smt. Bhagwani Devi, was their mother; Respondent Nos. 2 to 5 are their brothers; Respondent No.6 is their sister-in-law; and Respondent Nos. 7 and 8 are their nieces.

4. The properties, which are the subject matter of the present appeal, are stated to be ancestral in nature. The said properties originally belonged to Late Sh. Aasa Ram, the grandfather of the Plaintiffs/Appellants, and upon his demise in the year 1987, such properties devolved upon his five (5) sons, including Late Sh. Dayanand Sharma, father of the Plaintiffs/Appellants. The particulars of the properties-in-question are as follows:

- I. Property bearing Khata No. 188/2 Kharsa No. 41/10, 11/1, 12/3, 19, measuring 3252.48 Gaj Appx, situated in the Revenue Estate of Village Mehrauli, Delhi, the property known as Mehruali, Delhi.;
- II. One Residential Property bearing no. 626/27/28, Village & PO Rajokri, New Delhi- 110038, Area measuring 500 Sqr Yards



Appx.’

- III. Property bearing Khatauni No. 40/36 Khasra No. 1108(4-3), 1109(4-16), 1111/1(2-0); Khatauni No. 42/39, Khasra No. 1102(4-5), 1110 (3-18) at Rajokri, Delhi;
- IV. Property bearing Khasra No. 152/140 Khasra No. 15555(4-16), 1556(4-16), 1560(4-4), 15621/1(3-1); Khatauni No. 41/37 Khasra no. 1559(4-16), 1561 (2-6); Khatauni No. 190/178 Khasra No. 1557(4-16), 1558(4-16), 1562/2(1-9) at Rajokri, Delhi.

5. According to the Appellants, the properties which came to the share of their father were Joint Hindu Undivided Family (“HUF”) properties and he became the *Karta* of the HUF in respect of the one-fifth (1/5th) share that devolved upon him. Thereafter, Late Sh. Dayanand Sharma expired on 3rd October, 2017.

6. After the demise of their father, the Appellants sought partition of the properties, however, the Respondents, in whose favour the mutation of the properties had been sanctioned, did not accede to the said request. Aggrieved thereby, the Appellants filed a Suit for Declaration, Partition & Permanent Injunction before the learned Single Judge of this Court.

7. From the pleadings of the Respondents before the learned Single Judge, it came to the knowledge of the Plaintiffs/Appellants that Late Sh. Dayanand Sharma had executed a Will dated 16th December, 1999, in favour of Respondent Nos. 2, 3, 4, 5, 7 and 8; and a Sale Deed dated 11th December, 1986, in respect of certain properties in favour of Respondent No.1. Consequently, the plaint was amended and the Plaintiffs/Appellants sought a declaration of the said Will dated 16th December, 1999 and Sale



Deed dated 11th December, 1986 as null and void.

8. The learned Single Judge, *vide* Impugned Order rejected the suit filed by the Plaintiffs/Appellants on the ground that no cause of action was disclosed in the plaint. Aggrieved thereof, the Appellants preferred the present Appeal.

9. We have heard the learned counsel for the parties and perused the record.

10. The principal reasoning adopted by the learned Single Judge was that no HUF existed at the time of the death of the Late Sh. Dayanand Sharma, and, therefore, the Plaintiffs/Appellants could neither be treated as coparceners nor members of an HUF. Consequently, it was held that they did not inherit any right in the properties-in-question.

11. Relying upon the judgment in ***Sunny (Minor)&Anr. v. Sh. Raj Singh&Ors., 2015 SCC OnLine Del 13446***, the learned Single Judge further observed that after coming into force of Hindu Succession Act, 1956, any property inherited by a Hindu male from his predecessor-in-interest would be treated as his individual property and not as coparcenary property.

12. The learned Single Judge also observed that after the institution of the suit, the Plaintiffs/Appellants had amended the plaint on two occasions, and that in the latest amendment it was merely pleaded that since the suit properties were HUF properties, the father of the Plaintiffs/Appellants could not have executed the Will dated 16th December, 1999. It was further noted that even in the amended plaint, no specific challenge had been laid to the validity or genuineness of the Will under the Indian Succession Act.

13. Accordingly, the learned Single Judge held, *first*, that no HUF existed in which the Plaintiffs/Appellants could claim any right, and *secondly*, that



the Plaintiffs/Appellants had not challenged the Will executed by Late Sh. Dayanand Sharma in favour of Respondent Nos. 2 to 5, 7 and 8. On the basis of the aforesaid, it was held that no cause of action was made out, and the plaint was rejected.

14. The Impugned Order has been challenged primarily on three grounds. *First*, that there existed a Hindu Undivided Family comprising Late Sh. Dayanand Sharma and his legal heirs and, therefore, the properties inherited by him from his ancestors could not have been alienated by him in favour of Respondent No.1. *Secondly*, it is contended that the Will dated 16th December, 1999, allegedly executed by the Late Sh. Dayanand Sharma in favour of Respondent Nos. 2 to 5, 7 and 8, is a sham and fictitious document. *Thirdly*, it is submitted that post the 2005 amendment in the Hindu Succession Act, 1956, the status of the daughters has been elevated to that of a coparcener in every respect, at par with the sons, and the right of the daughters cannot be curtailed on the mere ground of non-existence of a Hindu Undivided Family, since they are Class-I legal heirs. Reliance is placed on *Nirmala &Ors. vs. Govt. of NCT of Delhi &Ors.*, 2010 SCC OnLine Del 2232.

15. Undisputedly, in the present case, the question of existence of a cause of action in favour of the Appellant is a mixed question of law and fact, which cannot ordinarily be determined merely on a plain reading of the plaint.

16. The observation of the learned Single Judge that the Plaintiffs/Appellants did not challenge the Will in the amended plaint, *prima facie*, does not appear to be correct. Our attention was drawn to Paragraph 14 of the amended plaint, which contains categorical pleadings alleging that



the Will dated 16th December, 1999, is sham, fictitious, and fraudulently brought into existence, and that Late Sh. Dayanand Sharma lacked the competence to execute such Will in respect of the ancestral coparcenary properties. The relevant paragraph of the Amended Plaint on record is extracted hereunder-

“14. That as learnt from the written statement filed by the defendant No. 1, 2, 5 to 8 that Sh. Dayanand had also executed alleged Will dated 16.12.1999 in favour of defendant No. 2 to 5.7 und 8 which infact is again a sham and fictitious document so fraudulently got created by the beneficiaries and the other defendants and their associates as legally late Sh. Dayanand was not competent and capable to execute the alleged Will in respect of Joint Hindu undivided coparcenary ancestral properties and thus the exceeding of right by late Sh. Dayanand by executing the said Will is legally untenable and depicts that deliberately in order to deprive the plaintiffs, the fraud has been perpetuated by the defendants with deceased Sh. Dayanand knowingly well that the subject properties as mentioned in the alleged Will do not belongs to deceased Dayanand as it was Joint Hindu undivided coparcenary ancestral properties wherein the plaintiffs' right have accrued being coparceners on account of their respective birth in the Joint Hindu undivided coparcenary family and further the alleged impugned Will ought not to have been executed as the same was not even for the benefit of the management of the joint Hindu ancestral coparcenary properties and when the alleged execution of Will is without legal necessity and not for the benefit of the management of the joint Hindu ancestral coparcenary properties then the alleged Will dated 16.12.1999 allegedly registered in the Office of Joint Sub-Registrar, Gurgaon, vide document No. 579 in book No. 3. Zild No. 142 on pages 96-97 on 16.12.1999 is sham and fictitious. The defendants till the filing of the written statement have concealed and have kept secretly the alleged Will and had not shown the light of the day nor it was ever brought to the notice of the plaintiffs and even the plaintiffs are sure in their person that where ever the alleged Will has been used in a clandestine manner, the plaintiffs were not informed to those authorities being the legal heirs of deceased Dayanand and hence, the alleged Will dated 16.12.1999 being based on a fraudulent act is liable to be declared null and void being ineffective qua the rights of the plaintiffs and thus the plaintiffs are entitled for the relief of declaration in this context, the properties which have been made part and parcel of alleged sale deed dated 11.12.1986 and the alleged Will dated 16.12.1999 are



infact legally having undivided coparcenary right of the plaintiffs with their ownership rights coupled with possession in the said subject properties being Joint Hindu undivided coparcenary ancestral properties which are being used, occupied at the spot in which the plaintiffs have their share by birth being co-owner/ coparcener/co-sharer and have every right, title and interest therein which is being threatened by the defendants is thus required to be separated by way of decree of partition and further the said undivided right, title and interest of the plaintiffs in the subject properties is required to be protected by way of decree of permanent injunction during the pendency of the suit.”

17. A bare perusal of the amended plaint clearly reveals that the Plaintiffs/Appellants have specifically challenged the Will dated 16th December, 1999, and have categorically pleaded that the said Will is a sham and fictitious document and sought a declaration to that effect. We are of the view that unless the parties are afforded an opportunity to lead evidence, such question of the genuineness and validity of the Will-in-question cannot be conclusively determined at the threshold.

18. At this juncture, it is imperative to refer to the judgment of *Nirmala (supra)*, wherein it has been held by the Co-ordinate bench that the Section 4 has an overriding effect over Section 50 of the Delhi Land Reforms Act, 1954, and the daughter will have equal rights in succession of the agricultural property. The relevant paragraph thereof is as under:

“28. It is in the light of these arguments, that the questions posed in paragraph 10 above need to be answered. We may straightaway say that the answers to the questions are that the rule of succession contained in Section 50 of the DLR Act has been repealed by virtue of the omission of Section 4(2) of HSA in 2005 and that, as a result, the rule of succession would be the one prescribed under the HSA (as amended). Consequently, the petitioners, being female, have the right to succeed to the disputed agricultural land inasmuch as succession opened out, in this case, on 15.12.2006 on the death of Late Inder Singh.”

(emphasis added)



19. In light of the aforesaid position of law, the Appellant/daughters, being the Class-I legal heir, are also entitled to assert their rights in the subject property, even being the agricultural land, however, determination of such rights is also required to be adjudicated on the basis of the evidence adduced by them.

20. Thus, in the considered opinion of this Court, in the facts and circumstances of the present case, the plaint cannot be rejected at the threshold on the ground of absence of cause of action, The Appellants ought to be afforded an opportunity to establish their case by leading evidence.

21. Accordingly, the present Appeal is allowed and the Impugned Order dated 12th November, 2025 is set aside.

22. The matter is remanded back to the learned Single Judge for afresh consideration on merits, after affording due opportunity to all parties to lead evidence, in accordance with law.

23. The parties, through their counsels, are directed to appear before the learned Single Judge on 03.02.2026.

24. In view of the above, the present appeal, along with pending applications, stands disposed of.

**SHAIL JAIN
(JUDGE)**

**VIVEK CHAUDHARY
(JUDGE)**

JANUARY 27, 2026/Pallavi/MM/kp