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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Delivered on: 29.05.2026

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CS(OS) 447/2021**ANIL KUMAR GUPTA**

.....Plaintiff

Through: Mr. Jai Sahai Endlaw and Ms.
Shambhavi Kala, Advs.

versus

LAXMI DEVI & ORS.

.....Defendants

Through: Mr. Mannu Dayma, Mr. Pranav Bhatt
and Mr. Anukool Chawla, Advs. for
D-1 to D-6.
Mr. Anand Varma and Ms. Apoorva
Pandey, Advs. for D-7/IDBI Bank.

CORAM:**HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J (ORAL)**

[The matter is taken up today as 28.05.2026 was declared as holiday on account of Id-Ul-Zuha (Bakrid)]

BRIEF FACTS & PLEADINGS

1. The present suit has been filed by the plaintiff seeking partition of immovable property being a three storey built up house, built on a plot area of 324.2 sq. yds. bearing plot no. 9, Block C-7, Model Town-III, Delhi – 110009 (hereinafter the 'suit property').
2. It is the case of the plaintiff that the suit property was owned by the father of the plaintiff namely, late Sh. Jagdish Prasad Gupta who died intestate at Delhi on 17.12.1993. He left behind his following Class-I legal heirs:



- i. Savitri Devi (wife) - died on 07.03.1997
- ii. Anil Kumar Gupta (son) - plaintiff.
- iii. Ashok Kumar Gupta (son) – died on 05.08.2012
- iv. Sheela Mittal (daughter) - defendant no. 7
- v. Usha Jain (daughter) - defendant no.8
- vi. Anita Gupta (daughter) - defendant no.9
- vii. Laxmi Devi (daughter) - died on 04.10.2019

3. Since Ashok Kumar Gupta had expired prior to the filing of the present suit, his widow and children have accordingly, been impleaded as defendant nos. 1 to 6. Likewise, late Smt. Laxmi Devi, daughter of late Jagdish Prasad Gupta, also pre-deceased the filing of the suit, and her legal representatives have been impleaded as defendant nos. 10 to 12. Late Smt. Savitri Devi, wife of late Jagdish Prasad Gupta, also passed away on 07.03.1997, without leaving any Will.

4. It is stated that all the six children of late Jagdish Prasad Gupta inherited $1/6^{\text{th}}$ share each in the suit property. However, defendant nos. 7 to 9, being the sisters of the plaintiff, and late Smt. Laxmi Devi, another sister and predecessor-in-interest of defendant nos. 10 to 13 (mother of defendant nos. 10 to 12 and wife of defendant no. 13), together executed registered Relinquishment Deeds dated 03.12.2011 and 22.02.2018, thereby relinquishing their respective shares in favour of the plaintiff. Thus, the plaintiff became owner to the extent of $5/6^{\text{th}}$ share in the suit property.

5. In the backdrop of above pleaded facts, the Plaintiff has prayed for following reliefs in the present suit:

“(a) *Pass a preliminary decree of partition thereby defining the $5/6^{\text{th}}$ Share of the plaintiff in the suit property i.e. House No.*



9, Block C-7, Model Town-Ill, Delhi-110009 measuring 324.2 sq. yds as shown in the site plan attached herewith and the super structure erected thereupon.

- (b) *Appoint a Local Commissioner with the direction to visit the suit property and suggest the mode of partition of the suit property and other valuables, keeping in mind the site plan filed with the plaint.*
- (c) *Pass a final decree of partition thereby partitioning the entire suit property i.e. House No. 9, Block C-7, Model Town-Ill, Delhi-110009 measuring 324.2 sq. yds as shown in the site plan attached herewith and the super structure erected thereupon by metes and bonds or as per the report of the Local Commissioner appointed by this Hon'ble Court or as may be agreed upon between the parties direct that the parties.*
- (d) *A decree of permanent injunction in favour of the plaintiff and against the defendants thereby restraining the defendants, their agents, representatives, relatives, assigns, friends, associates etc. from selling, transferring, alienating or parting with the possession or creating any third party interest in the suit property i.e. House No.9, Block C-7, Model Town-Ill, Delhi-110 009 measuring 324.2 sq. yds. as shown in the site plan attached herewith and the super structure erected thereupon and further restrain them from making any addition, alteration, construction, demolition in any manner whatsoever in the suit property.*
- (e) *A decree of mandatory injunction in favour of the plaintiff and against the defendants nos. 1 to 6 thereby directing them to handover the original title documents of the suit property i.e. House No.9, Block C-7, Model Town-Ill, Delhi-110009 measuring 324.2 sq. yds. as shown in the site plan attached herewith to the plaintiff.*
- (f) *Cost of the suit may also be awarded in favour of the plaintiff and against the defendant nos. 1 to 6."*

6. Summons were issued in the suit vide order dated 20.09.2021, whereby this Court also directed the parties to maintain *status quo* in respect



of the title and possession of the suit property.

7. Defendant nos. 1 to 3 filed a common written statement, whereas defendant no.4 filed a separate written statement; and defendant nos. 5 and 6 filed yet another joint written statement. In their respective written statements, defendant nos. 1 to 6 (i.e. LRs of late Ashok Kumar) took a concurrent stand to the effect that there was an oral partition, pursuant to which the family members of Late Ashok Kumar were residing on the first and second floors of the suit property. It has been further averred in the written statement of defendant nos. 1 to 3 that the suit property was gifted by late Sh. Jagdish Prasad Gupta to both his sons, namely, the plaintiff, as well as Ashok Kumar Gupta. In the para-wise replies of their written statements, the defendant nos. 1 to 6 admitted the execution of two separate relinquishment deeds dated 03.12.2011 and 22.02.2018 executed by defendant nos. 7 to 9 and late Smt. Laxmi Devi, respectively.

8. In the written statements, a further stand was taken that it was decided amongst the children of Late Sh. Jagdish Prasad Gupta that the plaintiff and deceased Sh. Ashok Kumar Gupta would pay a settled amount to their four sisters and thereafter a relinquishment deed was executed by all the four sisters in favour of the plaintiff with respect to their half shares in the suit property which was 1/12th each. However, the relinquishment deed in respect of the remaining half share in favour of deceased Sh. Ashok Kumar Gupta could not be executed as he was suffering from some ailment and underwent multiple surgeries so it was decided that the deed would be executed as and when Late Sh. Ashok Kumar Gupta would recover but unfortunately Sh. Ashok Kumar Gupta died on 05.08.2012 and the relinquishment deed in his favour could not be executed.



9. Defendant nos. 7 to 9 (three sisters of the plaintiff), filed separate yet identically worded written statements, wherein they have corroborated and supported the case of the plaintiff. Likewise, defendant nos. 10 to 13 (LRs of fourth sister of plaintiff namely, late Smt. Laxmi Devi), also supported the case of the plaintiff by filing a common written statement.

10. The plaintiff thereafter filed a replication to the written statements of defendant nos.1 to 6, controverting the averments made with regard to the oral partition as well as the gift deed, and reiterated the case as pleaded in the plaint.

ISSUES FRAMED

11. On the basis of pleadings of the parties, this Court framed issues *vide* order dated 08.05.2024, which were subsequently modified *vide* order dated 02.08.2024. The issues, post modification reads thus:

“a) Whether the petitioner is entitled for partition of suit property bearing Plot no. 9, Block-C-7, Model Town-III, Delhi – 110009? **OPP**

b) Whether the petitioner is entitled to 5/6th share of the suit property? **OPP**

c) Whether the petitioner is entitled for permanent and mandatory injunction? **OPP**

d) Whether Lt. Sh. Jagdish Prasad Gupta has orally partitioned the suit property and allotted first and second floor to Lt. Sh. Ashok Kumar Gupta and ground floor along with three Mezzanine floor to the plaintiff? **OPD 1 to 6**

e) Relief.”

EVIDENCE LED BY THE PARTIES

12. The plaintiff examined himself as PW-1 and referred to the following documents in his affidavit filed by way of examination-in-chief:

(i) Site Plan of suit property i.e. House no. 9, Block-C-7, Model Town-III,



Delhi-110009, measuring 324.2 sq. yds. [Ex.-PW-1/1].

- (ii) Copy of Sale Deed dated registered on 23.03.1957 along with true typed copy. [Ex. P-1].
- (iii) Copy of Sale Deed registered on 24.07.1959 along with true typed copy. [Ex. P-2].
- (iv) Copy of Relinquishment Deed dated 23.11.2011 along with its true typed copy. [Ex. P-3].
- (v) Copy of Relinquishment Deed dated 22.02.2018 along with its true typed copy. [Ex. P-4].
- (vi) Copy of Death Certificate of Shri Jagdish Prasad Gupta along with true typed copy. [Ex. P-5].
- (vii) Copy of Death Certificate of Smt. Savitri Devi along with its true copy. [Ex. P-6].

13. The plaintiff further examined the following witnesses:

- (i) Sh. Naveen Gandas, an official from the Department of Delhi Archives was examined as PW-2, who proved the Sale Deeds dated 23.03.1957 and 24.07.1959, as **Ex.P-1** and **Ex.P-2**, respectively.
- (ii) Sh. Gulshan an official from the Sub-Registrar's Office (Births and Deaths) was examined as PW-3, who proved Smt. Savitri Devi's death certificate as **Ex.P-6**.
- (iii) Sh. Pawan Kumar an official from the Sub-Registrar's Office (Births and Deaths) was examined as PW-4, who proved late Jagdish Prasad Gupta's death certificate as **Ex.P-5**.
- (iv) Sh. Manish Kumar, Junior Assistant from the Sub-Registrar office



was examined as PW-5, who proved the two Relinquishment Deeds dated 03.12.2011 and 22.02.2018, as **Ex.P-3** and **Ex.P-4**, respectively.

(v) Sh. Mohammad Noor Alam (Saif), Draftsman, was examined as PW-6, who proved the site plan of the suit property, as **Ex.P-1/1**.

14. As far as defendants are concerned, evidence was led only by defendant nos. 1 to 6. Sh. Sumit Gupta (Defendant no. 2) and Ms. Jyoti Jindal (Defendant no.4) had stepped into the witness box and examined themselves as DW-1 and DW-2, respectively.

15. Sh. Sumit Gupta, who was examined as DW-1, proved copy of property tax payment receipt dated 23.11.2016, which is part of **Ex-PW-1/2** (colly.). Further, following documents produced by him, could not be exhibited, and were only marked:

- (i) Property tax payments receipts dated 30.10.2009 and 27.12.2001, marked as D-1 (Colly).
- (ii) Copy of Water bill marked as D-2.
- (iii) Copy of MTNL bill marked as D-3
- (iv) Copies of passport of Smt. Laxmi Devi, Mr. Sumit Gupta and Mr. Yash Gupta are marked as D-4.

16. Ms. Jyoti Jindal was examined as DW-2, however, no document was proved by her. Both witnesses, DW-1 & DW-2, deposed on the lines of the written statements filed by them.

SUBMISSIONS

17. At the outset, Mr. Jai Sahai Endlaw, learned counsel for the plaintiff made his submissions on issue no. (d). He submits that defendant nos. 1 to 6 examined defendant nos. 2 and 4 as DW-1 and DW-2, however, the said



defendants failed to prove oral partition.

18. Elaborating further, he submits that the plea of oral family partition has been set up only by defendant nos. 1 to 6 and other legal heirs have denied the plea of oral partition. Further, on one hand defendant nos. 1 to 6 have claimed that Late Jagdish Prasad Gupta orally partitioned the suit property between the plaintiff and Late Sh. Ashok Kumar Gupta but at the same time, the said defendants are claiming that all the four sisters had agreed to relinquish their 1/6th share in the suit property in favour of the plaintiff and Late Sh. Ashok Kumar Gupta but relinquishment deed could not be executed in favour of Late Sh. Ashok Kumar Gupta due to his illness and subsequent death in 2012, which shows that defendant nos. 1 to 6 admitted that at least until 03.12.2011 when sisters executed the first relinquishment deed, they were having 1/6th share in the suit property, thereby negating the plea of oral partition by Late Sh. Jagdish Prasad Gupta whereby he allegedly gave the suit property only to the plaintiff and Late Ashok Kumar Gupta.

19. He further submits that defendant nos. 1 to 6 in their written statements have alleged that oral partition took place thirty (30) years ago i.e. in 1991 whereas defendant no.2 (DW-1) admitted that oral partition did not take place in his presence and volunteered that his father told him about the oral partition. He submits that such a statement is hearsay evidence and not admissible. Likewise, defendant no.2 (DW-2) admitted that she has no proof of oral partition.

20. He submits that 30 years ago prior to the filing of written statement i.e. in December 1991, DW-1 was barely 06 months old and DW-2 was 09 years old, therefore, they could not have possibly known of any alleged oral



settlement. He further submits that no public document has been filed by defendant nos. 1 to 6 in support of their claim for partition.

21. He places reliance on the decision of this Court in **Anjana Kumar vs. Vivek Goel & Anr., 2024 SCC OnLine Del 4135**, to contend that only where oral partition is supported by public documents and partition is evinced as if it was a decree of the Court can the plea of oral partition be accepted.

22. He submits that the documents which have been placed on record by defendant nos. 1 to 6 are photocopies and were not exhibited during evidence. In any case, Mark D-1 (Colly.) being MCD House Tax Receipts of 30.03.2009 and 23.11.2016 and Mark D-2 (being water bill dated 11.01.1996) are in the name of Late Sh. Jagdish Prasad Gupta as admitted by DW-1 in his cross-examination dated 19.12.2024, which do not support the plea of oral partition rather, Mark D-1 (Colly.) shows that the entire suit property was jointly assessed to property tax and was not partitioned. Likewise, Mark D-3 being Telephone Bills do not prove the case of the oral partition.

23. He submits that the plaintiff also during his cross-examination has denied that any oral partition of the suit property took place during the lifetime of his father.

24. He further contends that besides oral partition, defendant nos. 1 to 3 have pleaded that Late Sh. Jagdish Prasad Gupta gifted first and second floors of the suit property to Late Sh. Ashok Kumar Gupta. He submits that gift can be affected only by a registered document signed by or on behalf of the donor and attested by at least two witnesses. In the present case, no written document executed by Late Sh. Jagdish Prasad Gupta has been



placed on record, therefore, the claim of gift is of an oral gift which is not permissible under the law.

25. In so far as issue nos. (a), (b) and (c) are concerned, Mr. Endlaw submits that the title of Late Sh. Jagdish Prasad Gupta in the suit property has been proved by PW-2 by bringing the summoned record being sale deed dated 23.03.1957 (Ex.P-1). Likewise, the death certificates of Late Sh. Jagdish Prasad Gupta, as well as, of his wife Smt. Savitri Devi have also been proved. Further, the two relinquishment deed dated 03.12.2011 and 22.02.2018 executed by the sisters have also been proved and exhibited as Ex.P-3 and Ex.P-4.

26. He submits that from the evidence on record, it stands proved that Late Sh. Jagdish Prasad Gupta was the owner of the suit property who died intestate. Subsequently, his wife Late Smt. Savitri Devi also expired. Thus, the plaintiff along with his brother and four sisters became entitled to 1/6th share each in the suit property. Thereafter, all the four daughters of Late Sh. Jagdish Prasad Gupta i.e. defendant nos. 7 to 9 and Late Smt. Laxmi Gupta, predecessor in interest of defendant nos. 10 to 13 relinquished their 1/6th share each in the suit property in favour of the plaintiff by executing two relinquishment deeds, thereby the plaintiff became entitled to 5/6th share in the suit property.

27. He, thus, urges that the plaintiff is entitled to preliminary decree of partition declaring that the plaintiff is entitled to 5/6th share and defendant nos. 1 to 6 are collectively having 1/6th share in the suit property.

28. *Per contra* Mr. Mannu Dayma, learned counsel for the defendant nos. 1 to 6, who joined through VC, submits that he has filed the written submissions and has nothing else to add.



29. I have heard Mr. Endlaw, learned counsel for the plaintiff and have perused the written submissions filed on behalf of the defendant nos. 1 to 6, as well as the material on record.

ISSUE-WISE ANALYSIS AND FINDINGS

ISSUE No. (d)

30. The defendant nos. 1 to 6 had pleaded the oral partition and issue no.(d) was framed in that behalf, the burden to prove which has been placed on the said defendants. The issue no.(d) is taken up first for consideration for the reason that in case the said issue is decided in favour of defendant nos. 1 to 6, then the plaintiff, and defendant nos. 1 to 6 together, will be entitled to the extent of half share each in the suit property. However, in the event the defendant nos. 1 to 6 failed to prove the said issue of oral partition, the plaintiff would be entitled to 5/6th share in the suit property, as claimed.

31. This Court notes that only Defendant no. 2 and Defendant no.4 had stepped into the witness box and examined themselves as DW-1 and DW-2, respectively, on behalf of defendant nos. 1 to 6, to prove their defence of oral partition. No other defendant stepped into the witness box to support the theory of oral partition.

32. Defendant nos. 1 to 6 in their written statements stated that the oral partition took place almost 30 years ago. The said defendants had filed their written statements on 13.12.2021, which means the purported oral partition was allegedly arrived 30 years prior to that i.e. in or about December 1991.

33. A perusal of the statement of DW-1 shows that his date of birth is 29.05.1991. He was, therefore, barely six months old at the time of the alleged oral partition. DW-1 has further admitted in his cross-examination that the alleged oral partition had not taken place in his presence, and the



information in that behalf was shared with him by his father. Thus, the statement of DW-1 on the aspect of oral partition is only hearsay and thus, inadmissible in evidence.

34. Likewise, the date of birth of DW-2 is 04.08.1982, and she was merely 9 years old when the alleged oral partition is stated to have been effected. The said witness had also admitted in her cross-examination that she has no proof to show that the suit property had been orally partitioned. She also admitted that the electricity connection of the suit property stands in the name of late Sh. Jagdish Prasad Gupta, and documents filed by the DW-1 are also bills & receipts in the name of late Sh. Jagdish Prasad Gupta.

35. The plaintiff/PW-1 in his cross-examination has also denied the factum of oral partition of the suit property having taken place during the lifetime of his father.

36. Taking overall conspectus of the evidence on record and testing the same on the preponderance of probabilities, this court finds that apart from the self-serving statements of DW-1 and DW-2 in their examination-in-chief, which also could not withstand the cross-examination, there is not an iota of evidence brought on record by the defendant nos. 1 to 6 to establish the factum of alleged oral partition of the suit property having taken place.

37. In their written submissions, defendant nos. 1 to 6 have stated that the oral partition was acted upon immediately, inasmuch as the ground and mezzanine floor were given to the plaintiff and the first and second floors were given to late Sh. Ashok Kumar Gupta, now represented by defendant nos. 1 to 6. However, in their written statements, the said defendants have also admitted the execution of two Relinquishment Deeds by the four sisters of the plaintiff, but at the same time it has also been stated that there was an



understanding that the sisters would execute the second Relinquishment Deed in favour of late Ashok Kumar. This stand of defendant nos. 1 to 6 itself shows that they are admitting the shares of the sisters in the suit property as on date of execution of first relinquishment deed dated 03.12.2011, which knocks out their plea of oral partition, whereby the property was divided by late Jagdish Prasad in two parts viz. only between the plaintiff and late Sh. Ashok Kumar Gupta, and immediate implementation thereof. Furthermore, the two Relinquishment Deeds have also not been challenged by the defendant nos. 1 to 6 till date, exposing hollowness in the plea of oral partition.

38. Insofar as the stand of defendant nos.1 to 3 with regard to the gift made by late Sh. Jagdish Prasad Gupta in favour of their predecessor-in-interest namely, late Ashok Kumar Gupta, is concerned, there is no specific issue framed in respect of the same. This stand is otherwise, noted to be rejected, inasmuch as the law is well settled that a gift of immovable property can be effected only in writing by way of a registered document. A bare perusal of Section 123¹ of the Transfer of Property Act, 1882 makes it evident that a gift of immovable property cannot pass any title to the donee if it is not registered and signed by or on behalf of the donor, as well as attested by at least two witnesses, which means that no oral gift could be made. Reference in this regard may be had to the decision of the Hon'ble

¹**123. Transfer how effected.**

- For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

Explanation. - The word "attest" has the same meaning in this section as in section 59.



Supreme Court in **Gomtibai vs. Mattulal, (1996) 11 SCC 681**, wherein it was observed to the effect that there can be no gift without a written instrument. The relevant extracts from the said decision reads thus:

“4. Thus, it is seen that the gift of immovable property should be made only for transferring the right, title and interest by the donor to the donee by a registered instrument signed by or on behalf of the donor and must be attested by at least two witnesses. The pre-existing right, title and interest of donor thereby stand divested in the donee by operation of Section 17 of the Registration Act only when the gift deed is duly registered and thereafter the donor would lose title to the property. It must also be proved that the donee had accepted the property gifted over under the instrument. In this case, though the transfer of gift was acted upon by Kusturibai as per the correspondence and evidence on record, but, admittedly, there is no written instrument executed by the donor, namely, the plaintiff and the defendant in favour of their cousin sister Kusturibai and it was got attested by at least two witnesses and registered in accordance with the provisions of the Stamp Act and the Registration Act. In the absence of compliance of these formalities, at best what could be seen from the partition deed is that the original plaintiff and the defendant have expressed their intention to gift over the land to their cousin sister Kusturibai. As held earlier, in the absence of any registered instrument of gift and acceptance thereof by the donee, the said property could not be said to have been legally transferred in favour of their cousin sister; in other words, the gift is not complete in the eye of law. Therefore, the District Court has rightly set aside the decree of the trial court which was later confirmed by the High Court. We do not find any error of law warranting interference.”

(emphasis supplied)

39. Likewise, a coordinate Bench of this Court in **R.N. Dawar v. Ganga Ram Saran Dhama, 1992 SCC OnLine Del 446**, had also held that an oral gift of immovable property cannot be made in view of the provision of section 123 of the Transfer of Property Act, 1882. The relevant extract from



the said decision reads thus:

“.....Under Section 123 of the Transfer of Property Act, a gift of immoveable property which is not registered is bad in law and cannot pass any title to the donee. Any oral gift of immoveable property cannot be made in view of the provisions of Section 123 of the Transfer of Property Act. Mere delivery of possession without written instrument cannot confer any title. The plea of the defendants that defendant No. 2 of this plot of land became owner by virtue of the gift from Pritam Singh is not tenable reject the same.”

(emphasis supplied)

40. In view of the above discussion, this Court is of the view that the defendant nos. 1 to 6 have failed to substantiate or prove their claim of oral partition as well as gift, therefore, the issue no. (d) is decided against them.

ISSUE Nos. (a), (b) & (c)

41. The issue nos. (a), (b), and (c) on the plaintiff's claim for partition; apportionment of shares; and relief of injunction, being of analogous to each other are taken up together.

42. It is an admitted position between the parties that late Sh. Jagdish Prasad was owner of the suit property having purchased the same vide registered sale deed dated 24.07.1959. Sh. Naveen Gandas / PW-2, record lifter at the Office of the Department of Delhi Archives, produced the summoned record and proved the Sale Deed dated 24.07.1959 executed in favour of late Jagdish Prasad Gupta, as **Ex. P-2**.

43. Late Sh. Jagdish Prasad died on 17.12.1993, and his wife namely, Savitri Devi also expired on 07.03.1997, and their death certificates which have duly been proved on record are **Ex. P-5** and **Ex.P-3**, respectively.

44. Upon his demise, late Sh. Jagdish Prasad was survived by seven



Class-I legal heirs, including his wife and six children, as enumerated in para 2 above. Wife of late. Sh. Jagdish Prasad namely, Savitri Devi, also died subsequently on 07.03.1997, which leaves six legal heirs, two sons i.e. the Plaintiff and Sh. Ashok Kumar; and four daughters. Sh. Ashok Kumar also died on 05.08.2012 and is survived by his LR's, who have been impleaded as defendant nos. 1 to 6. The three daughters are defendant nos. 7 to 9. The fourth daughter namely, Smt. Laxmi Gupta also expired on 04.10.2019 and her LR's are defendant nos. 10 to 13.

45. Insofar as the demise of Smt. Laxmi Gupta is concerned, the plaintiff has made a specific averment regarding the factum and date of her death in para 6 of the plaint. Since this averment has not been denied, rather the same is admitted by all the defendants in their respective written statements, therefore, death of Smt. Laxmi Devi is not in dispute.

46. None of the defendants have set up any Will, either of late Sh. Jagdish Prasad or of late Smt. Savitri Devi, therefore, there appears to be no dispute that late Sh. Jagdish Prasad died intestate, thus, each of six LR's or their respective branch inherited $1/6^{\text{th}}$ share in the suit property.

47. Defendant nos. 7 to 9, and late Smt. Laxmi Gupta (fourth sister, now deceased) executed two separate Relinquishment Deeds viz., dated 03.12.2011 and 22.02.2018, that have been proved on record as **Ex.P-4** and **Ex.P-5**, respectively, whereby all the four sisters of the plaintiff relinquished their respective shares in the suit property i.e. $1/6^{\text{th}}$ share each in favour of the plaintiff, thereby making the plaintiff owner to the extent of $5/6^{\text{th}}$ share in the suit property. Defendant nos. 1 to 6 being LR's of sixth sibling of plaintiff, namely, Late Ashok Kumar, are together entitled to $1/6^{\text{th}}$ share in the suit property.



48. In the written submissions filed by defendant nos. 1 to 6, an attempt has also been made to clarify that the plea taken by them was of family settlement and not oral gift deed.

49. Pertinently, in the written submissions, the plea of family settlement has been put forth by the defendant nos. 1 to 6 for the first time, without even spelling out the details thereof. From the written statements of defendant nos. 1 to 6 and examination-in-chief of DW-1 and DW-2, it is borne out that the case pleaded by defendant nos. 1 to 6 was one of oral partition and gift and not of family settlement. Therefore, the plea of family settlement now articulated on behalf of the defendant nos. 1 to 6 for the first time in the written submissions is beyond the pleadings, therefore, an issue in that behalf was rightly not struck. So far so, no evidence has been led by the said defendants on the aspect of family settlement. Thus, the decision of the ***Kale and Ors. vs. Deputy Director of Consolidation, (1976) 3 SCC 119***, relied upon by defendant nos. 1 to 6 is of no avail.

50. Insofar as the prayer for decree of mandatory injunction seeking direction to the defendant no. 1 to 6 to hand over the original title documents of the suit property is concerned, it is to be noted that the case of the plaintiff is that Late Shri Ashok Kumar during his lifetime had filed a suit for permanent injunction against one neighbour and for the said suit, he took possession of the title deeds of the suit property from the plaintiff, which remained in his possession till his death, and even thereafter, the title deeds of the suit property were never returned by his legal heirs to the plaintiff. The averment with regard to the defendant nos. 1 to 6 having custody of the title deeds, has been denied by the said defendants in their written statements. Rather, it has been alleged that title documents are with the



plaintiff only.

51. The plaintiff in his examination-in-chief has deposed on the lines of the stand taken in the plaint, however, in the cross-examination a suggestion was put to the plaintiff that he (plaintiff) has the original title documents of the suit property in his possession, which was denied by the plaintiff. Thus, the statement of the plaintiff was controverted by way of suggestion, and the plaintiff failed to place any cogent evidence on record, in the form of receipt/acknowledgement etc. executed by late Ashok Kumar, to establish that the title documents were handed over by him to his brother Late Shri Ashok during his lifetime. On the other hand, DW-1 and DW-2, in their respective affidavits filed by them by way of examination-in-chief have stated that title documents of the suit property are with the plaintiff and not in their custody. The DW-1 and DW-2 were not cross-examined on this aspect nor any suggestion was put to them in that behalf. Therefore, their said statements have gone unrebutted. In that view of the matter, this court is of the view that the plaintiff has failed to prove that the title documents were handed over by him to his brother Late Shri Ashok Kumar during his lifetime. Accordingly, the plaintiff is not entitled to the relief of mandatory injunction.

52. To sum up, issue nos. (a) and (b) are decided in favour of the plaintiff, whereas and issue no. (c) is partly decided in favour of the plaintiff, and partly against him.

53. Upshot of the above discussion is that the plaintiff is entitled to a preliminary decree as prayed. Accordingly, preliminary decree is passed declaring that the plaintiff has $5/6^{\text{th}}$ share, while defendant nos. 1 to 6 together have $1/6^{\text{th}}$ share, in the suit property. Consequently, the plaintiff is



also entitled to decree of permanent injunction as prayed. Let decree sheet be drawn accordingly.

54. Further, this Court deems it appropriate to appoint Local Commissioner for ascertaining as to whether the suit property could be divided by metes and bounds. Accordingly, Mr. Abhishek Mohan Goel, Advocate [Mob.: 9172569818], is appointed as Local Commissioner to visit the property and to suggest whether the suit property could be divided by metes and bounds, and following further directions are passed:

- (i) The Local Commissioner will visit the aforesaid property after giving due notice to the counsels for the parties. The parties and/or their respective counsels may remain present at the time of execution of commission.
- (ii) The Local Commissioner shall be at liberty to engage the services of an Architect for the purpose of deciding whether the property can be partitioned by metes and bounds. He may also take photographs and prepare video, if required, while executing the commission. Fee of the Architect, as well as, other incidental and out of pocket expenses shall be borne by all the parties in proportion to their share in the suit property.
- (iii) All the parties shall extend support and cooperation to the Local Commissioner and give him access to portions of the suit properties in their respective possession to enable him to carry out inspection, and provide all necessary documents/site plan etc. as requested by the Local Commissioner.
- (iv) In case, exact division of suit property by metes and bounds is not possible as per the respective shares of the parties, the Local



Commissioner will suggest other ways and means to offset any extra area/portion for and against any of the parties, if possible.

- (v) The fee of the Local Commissioner is fixed at Rs. 2,50,000/- to be paid by the plaintiff and defendants proportionate to their shares in the suit property. The Local Commissioner shall be paid his fee in advance.
- (vi) The Local Commissioner shall file his report before the next date. A copy of the report shall also be furnished to the learned counsels for the parties, who shall then be at liberty to file their objections thereto, if any, before the next date of hearing.

55. List for considering the report of the learned Local Commissioner and further proceedings, on 06.08.2026.

IA 12179/2021 (under Order XXXIX Rules 1&2 by plaintiff)

56. The interim order passed *vide* order dated 20.09.2021 is made absolute.

57. The application stands disposed of.

VIKAS MAHAJAN, J

MAY 29, 2026/jg/dss