



2025:DHC:3973



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

*Date of decision: 14.05.2025*

+ CS(OS) 225/2022 & I.A. 6201/2022 I.A. 6202/2022 I.A. 20074/2022  
I.A. 9027/2023

ASHA JAIN

....Plaintiff

Through: Mr. Praveen Aggarwal, Mr. Sunil  
Kumar, Advocates

versus

SAJJAN PASARI AND ANR

....Defendants

Through: Mr. Ratnanko Bannerjee, Sr.  
Advocate with Ms. Ruby Singh  
Ahuja, Mr. Arunabha Deb and Mr.  
Deepan Kumar Sarkar, Advs.

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+ CS(OS) 200/2023 & I.A. 5858/2023 I.A. 5860/2023 I.A. 22063/2023

ASHA JAIN

....Plaintiff

Through: Mr. Praveen Aggarwal, Mr. Sunil  
Kumar, Advocates

versus

SANDEEP KATARIA AND OTHERS

....Defendants

Through: Mr. Ratnanko Bannerjee, Sr.  
Advocate with Ms. Ruby Singh  
Ahuja, Mr. Arunabha Deb and Mr.  
Deepan Kumar Sarkar, Advs.  
Mr. Lalitaksh Joshi and Ms. Ananya  
Sanjiv, Advocates for D-9

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**CORAM:**  
**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**J U D G M E N T**

**MANMEET PRITAM SINGH ARORA, J (ORAL):**

**I.A. 6201/2022(application under Order XXXIX Rules 1 and 2 CPC on behalf of plaintiff for ad-interim ex-parte injunction)**

**I.A. 9027/2023(application under Order XXXIX Rule 4 CPC on behalf of defendant no. 1 for vacating ex-parte interim order dated 01.08.2022)**

1. The present suit has been filed seeking partition of the estate of late Shri Banwari Lal Pasari ('deceased'), who passed away on 22.05.1999. It is stated that the plaintiff along with defendant nos. 1 and 2 are the Class-I legal heirs of the deceased and are entitled to 1/3<sup>rd</sup> share each in the estate of late Shri Banwari Lal Pasari. It is stated in the plaint that late Shri Banwari Lal Pasari died intestate.

2. The suit has been filed with respect to properties mentioned in Schedule A to the plaint. It is a matter of record that Schedule A was amended vide I.A. 12007/2022 and was taken on record by the Court vide order dated 01.08.2022.

3. This Court vide order dated 01.08.2022 had granted an ex-parte ad-interim order directing the defendants to maintain status quo as to title of all the properties listed in Schedule A of the plaint.

4. The amended Schedule A of the plaint comprises of nine (9) properties, and reads as under: -

**“Schedule A**

A. W-52, Second Floor, Greater Kailash-II, New Delhi.

B. H.No. 4 and 4-A, Rainey Park, Kolkata-700019.

C. Property at: 12-A and 12-B, Russel Street Kolkata.

D. 62-A, Hazara Road, Kolkata. Approx. 122 Katha.



- E. 2, Ripon Street, Kolkata. (35,000 sq. ft office block)  
F. Shop No. G 3C Ground Floor, Shree Manjari Building 8/1A Sir William Jones Sarani, Camac Street, Kolkata-700071. (Airtel Showroom)  
G. India Automobiles 1960 Ltd. ... 9 Old Post Office Street, opposite High Court Full Building  
H. FMC Fortuna Plot No. 234/3A, 3<sup>rd</sup> floor AJC Bose Road, Kolkata 6000sq.ft. area  
I. Chirawa, Rajasthan. Villa Ancestral Property”

***Submissions on behalf of defendant no. 1***

5. Mr. Harish Salve, learned senior counsel appearing on behalf of defendant no. 1 has placed on record a ‘Tabular Note’ to demonstrate that the scheduled properties mentioned in Schedule A do not form part of the estate of late Shri Banwari Lal Pasari but are owned by third-parties. The submission has been supported with registered documents filed with affidavit dated 14.04.2025 evidencing the title of the scheduled properties in favour of third-parties. The details of the property and the third-party owner of each property is as under: -

Sl. No.	Property Details	Ownership	List of Documents
A.	<b>Item A of Schedule A:</b> W-52, Second Floor, Greater Kailash-II, New Delhi	Mr. Sandeep Kataria and Ms. Bhavna Kataria	NA
B.	<b>Item B of Schedule A:</b> H. No. 4 and 4-A, Rainey Park, Kolkata - 700019	Purushottam Das Shankar Lal HUF	a. Registered Indenture dated 19 <sup>th</sup> December, 1946 executed in favour of Laxmi Devi Pasari.  b. The Last Will and Testament of Laxmi Devi Pasari dated 11 <sup>th</sup> September, 1991 with Bhagirath Pasari as the named Executor. The said property has been bequeathed to the HUF which has already been given effect to.  c. Probate of Laxmi Devi



			<p>Pasari dated 18<sup>th</sup> May, 2001 granted to Bhagirath Pasari by the High Court of Calcutta as a result of which the said property vested in the said HUF.</p> <p>d. Mutation Certificate dated 21<sup>st</sup> February, 2024 issued by the Kolkata Municipal Corporation.</p> <p>e. Latest Tax Receipt for the four quarters of FY 2024-2025 issued by the Kolkata Municipal Corporation on 3rd May, 2024.</p>
C.	<b>Item C of Schedule A :</b> Property at : 12-A and 12-B, Russel Street Kolkata	<p>Purushottam Das Pasari for 12-A Russel Street</p> <p>[Uncle of the Plaintiff]</p> <p>Hindustan Auto Distributors is the recorded owner for 12-B Russel Street</p>	<p>a. Registered Indenture dated 22<sup>nd</sup> January, 1960 executed in favour of Purshottam Das Pasari.</p> <p>b. Tax Receipts issued by the Kolkata Municipal Corporation for the period of the Financial Year 2024-2025 showing Purshottam Das Pasari as the recorded owner of 12A Russel Street.</p> <p>c. Tax Receipts issued by the Kolkata Municipal Corporation for the period of the Financial Year 2024-2025 showing HAD as the recorded owner of 12B Russel Street.</p>
D.	<b>Item D of Schedule A:</b> 62-A, Hazara Road, Kolkata, Approx 122 Katha	I.A. Builders (P) Ltd	<p>a. Registered Indenture dated 27<sup>th</sup> December, 1960 by virtue of which India Automobiles (1960) Limited became the absolute owner.</p> <p>b. Order dated 16<sup>th</sup> May, 2005 passed by the High Court of Calcutta sanctioning a</p>



			Scheme of Arrangement where outgoing business undertaking 1 of India Automobiles (1960) Limited was transferred to I.A. Builders (P) Ltd.
E.	<b>Item E of Schedule A:</b> 2, Ripon Street, Kolkata (35,000 sq.ft. office block)	I.A. Property Developers (P) Ltd.	a. Registered Indenture dated 12 <sup>th</sup> March, 1965 by virtue of which India Automobiles (1960) Limited became the absolute owner.  b. Order dated 16 <sup>th</sup> May, 2005 passed by the Hon'ble High Court of Calcutta sanctioning a Scheme of Arrangement where outgoing business undertaking 1 of India Automobiles (1960) Limited was transferred to I.A. Property Developers (P) Ltd.
F.	<b>Item F of Schedule A:</b> Shop No. G-3C, Ground Floor, Shree Manjari Building 8/1A Sir William Jones Sarani, Camac Street, Kolkata – 700071 (Airtel Showroom)	West Wing Estates Pvt. Ltd.	a. Registered Indenture dated 16 <sup>th</sup> January, 1996 in favour of Parmeswar Estates Private Limited.  b. Name Change ROC Certificate of Parmeswar Estates Private Limited to West Wing Estates Pvt. Ltd. with effect from 16 <sup>th</sup> November, 2011.
G.	<b>Item G of Schedule A:</b> India Automobiles 1960 Ltd. 9, Old Post Office Street, opposite High Court Full Building	India Automobiles (1960) Ltd.	a. Registered Indenture dated 5 <sup>th</sup> June, 1964 in favour of India Automobiles (1960) Ltd.
H.	<b>Item H of Schedule A:</b> FMC Fortuna Plot No. 234/3A, 3rd Floor, AJC Bose Road, Kolkata 6000 sq.ft. area	M/s. Banwari Lall Pasari [a registered partnership firm]	a. Registered Indenture dated 5 <sup>th</sup> February, 1997 in regard to Flat A1 purchased directly by the said partnership firm.  b. Registered Indenture dated 5 <sup>th</sup> February, 1997 in regard



			<p>to Flat A2 purchased directly by the said partnership firm.</p> <p>c. Registered Indenture dated 5<sup>th</sup> February, 1997 in regard to Flat A3 purchased directly by the said partnership firm.</p> <p>Also see:</p> <p>d. Deed of Reconstituted Partnership dated 25<sup>th</sup> May, 1999.</p> <p>e. Deed of Reconstituted Partnership dated 1<sup>st</sup> April, 2002.</p> <p>f. Deed of Reconstituted Partnership dated 1<sup>st</sup> April, 2013.</p> <p>g. Supplementary Deed of Partnership dated 1<sup>st</sup> April, 2015.</p>
I.	<b>Item I of Schedule A:</b> Chirawa, Rajasthan, Villa Ancestral Property	Owned jointly by three members of the Pasari family being Rahul Pasari, Chandrakant Pasari and Sajjan Pasari	<p>a. Registered Indenture dated 13<sup>th</sup> October, 1958 executed in favour of Gayatri Devi Pasari (wife of Late Purshottam Das Pasari brother of Banwari Lal Pasari.</p> <p>b. Probate dated 18<sup>th</sup> December, 2009 granted by this High Court of Calcutta. Originally, the property was bequeathed to the Purushottam Das Shankar Lal HUF.</p> <p>c. By a Codicil dated 28<sup>th</sup> July, 2006 the said property was bequeathed to three members of the Pasari family being Rahul Pasari, Chandrakant Pasari and Sajjan Pasari and a fresh</p>



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			Probate in terms thereof was granted on 24 <sup>th</sup> November, 2022.
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5.1. He states that documents evidencing the said factual status of ownership of third-parties through registered documents has been placed on record vide an affidavit dated 14.04.2025 filed by defendant no. 1. He states that in view of the said documents the ad-interim order dated 01.08.2022 be vacated forthwith.

5.2. In addition, he states that late Shri Banwari Lal Pasari had executed a Will dated 04.05.1999, which was duly probated in probate proceedings being PLA No. 315/2000 instituted before the High Court of Calcutta. He states that in the said probate proceedings, both the plaintiff and defendant no. 2 had filed separate affidavits dated 15.09.2000, thereby giving their 'No Objection' to the grant of the probate in terms of the Will dated 04.05.1999. He states that said proceedings were concluded by grant of probate on 14.12.2021.

5.3. He states that in view of the said proceedings, the assertion made by the plaintiff in the plaint (at paragraph 18) that late Shri Banwari Lal Pasari died without executing any testament is false and misleading. He states that the probate is a judgment in rem and no suit can be instituted during the subsistence of the judgment dated 14.12.2021 passed in the said probate proceedings. He states that the said probate is conclusive of the validity of the Will dated 04.05.1999.

5.4. He states that all the assets enlisted at Sr. No. (b) to (i) of Schedule A are outside the territorial jurisdiction of this Court, as the said properties are situated in Kolkata. He states that all the defendants reside outside the



jurisdiction of this Court. He states that late Shri Banwari Lal Pasari was himself a resident of Kolkata and has never resided in Delhi.

5.5. He states that the suit has been filed before this Court by relying upon the existence of the solitary property in Delhi mentioned at Sr. No. (a) of Schedule A, which property has been disposed of by the plaintiff herself by a registered sale deed dated 10.05.2022. He states that the said property was disposed of even prior to the registration of the plaint and issuance of summons on 01.08.2022. He refers to paragraph 19 of the plaint. He states that a separate application i.e. I.A. 20074/2022 has been filed seeking return of the plaint for lack of territorial jurisdiction.

***Submissions on behalf of the plaintiff***

6. In reply, Mr. Aggarwal, learned counsel for the plaintiff states that he has three-fold submissions to the application of the defendant no. 1 seeking vacation of the injunction order dated 01.08.2022: (i) defendant no. 1 has no locus to maintain this application since on his own showing he is not the owner of any of the properties enlisted at Sr. No. (a) to (i) of Schedule A; (ii) defendant no. 1 has played a fraud on plaintiff and defendant no. 2; and (iii) defendant no. 1 has approach this Court with unclean hands.

6.1. He states that defendant no. 1 has relied upon Will(s) executed by late Smt. Laxmi Devi Pasari, late Smt. Gayatri Devi Pasari and late Shri Banwari Lal Pasari. He states that all the three (3) Wills were purportedly executed few months before the demise of the respective testator/testatrix.

6.2. He states that the plaintiff and defendant no. 2 reposed implicit faith in defendant no. 1 and were persuaded to execute documents at defendant no. 1's instance to the detriment of the plaintiff and defendant no. 2.



6.3. He states that with respect to property at Sr. No. (b) of Schedule A, as per the stand of defendant no. 1, the said property belongs to Purushottam Das Shankar Lal HUF and as per defendant nos. 1's affidavit dated 14.04.2025 itself, the plaintiff, defendant no. 1 and defendant no. 2 are members or coparceners in the said HUF. He states that therefore plaintiff's right in the said property is admitted by defendant no. 1.

He states that this property belonged to late Smt. Laxmi Devi Pasari i.e., the grandmother of the plaintiff. He states that defendant no. 1 has submitted that said late Smt. Laxmi Devi Pasari, during her lifetime had executed a Will dated 11.09.1991 and a Codicil dated 23.10.1991, which have been probated on 18.05.2001 and 07.03.2013 respectively. He states however that the plaintiff as the legal heir of late Shri Banwari Lal Pasari and thus, of late Smt. Laxmi Devi Pasari, has not received any notice in the said probate proceedings. He states that therefore no probate could have been granted by the High Court of Calcutta and thus, the grant of probate in terms of Will dated 11.09.1991 and a Codicil dated 23.10.1991 is invalid.

6.4. He states that with respect to property at Sr. No. (c) of Schedule A, defendant no. 1 has placed on record a title record executed in favor of Purushottam Das Pasari i.e., the uncle of the plaintiff. He states that the plaintiff believes that this property also forms part of the Purushottam Das Shankar Lal HUF. He states however that the plaintiff does not have any document in her possession to support this submission.

6.5. He states that with respect to properties at Sr. No. (d) and Sr. No. (e) of Schedule A; he states that it is a matter of record that the sale deed of those properties is in favour of the corporate entities, as pleaded by defendant no. 1. He states however that late Shri Banwari Lal Pasari i.e., the



father of the plaintiff held shares in these corporate entities. He relies upon the contents of the Will dated 04.05.1999. He states that since these are closely held family run companies, the Court may lift the corporate veil and entertain the claim for partition.

6.6. He states that similarly with respect to properties at Sr. No. (f) and Sr. No. (g) of Schedule A, though the title deeds are in favour of corporate entities, the plaintiff contends that the shares of the said corporate entities were held by late Shri Banwari Lal Pasari, and thus, the Court may lift the corporate veil. In addition, he states that with respect to property at Sr. No. (f) there is no document on record to show that the name of Parmeswar Estates Pvt. Ltd. was changed to West Wing Estates Pvt. Ltd. as alleged in defendant no. 1's affidavit dated 14.04.2025.

6.7. He states that with respect to property at Sr. No. (h) of Schedule A, defendant no. 1 admits that it is owned by a partnership firm of M/s Banwari Lal Pasari. He states that since the plaintiff is a legal heir of late Shri Banwari Lal Pasari, the plaintiff would be entitled to seek a claim in the said immovable property as a legal heir. He states that defendant no. 1 has submitted that late Shri Banwari Lal Pasari ceased to be a partner since the year 1999; since Shri Banwari Lal Pasari expired on 22.05.1999. He states that the purported Will dated 04.05.1999 of late Shri Banwari Lal Pasari states that all shares will devolve upon defendant no. 1; he states that the Will dated 04.05.1999 does not specifically bequeath the shares of the said partnership firm. He states that thus, the plaintiff as natural legal heir of late Shri Banwari Lal Pasari would succeed to share of her father.

6.8. He states that with respect to property at Sr. No. (i) of Schedule A, whereas defendant no. 1 has placed on record title documents executed in



favour of Smt. Gayatri Devi, the aunt of the plaintiff; however, in the Will dated 04.05.1999 executed by late Shri Banwari Lal Pasari there is a reference to this property. He states however that the plaintiff does not have in her possession any title documents to show that this property belonged to late Shri Banwari Lal Pasari.

6.9. He states that the plaintiff has perused the affidavit dated 15.09.2000 placed on record by defendant no. 1, recording plaintiff's 'No Objection' to grant of probate for the Will dated 04.05.1999 executed by Shri Banwari Lal Pasari. He states that he has no instructions vis-à-vis the said affidavit. He states however that the plaintiff has approached the High Court of Calcutta for revocation of the probate granted on 14.12.2021 for the said Will and the proceedings are next listed on 19.05.2025.

7. This Court has heard the submissions of the parties and perused the record.

8. The 'Tabular Note' submitted by defendant no. 1 to canvas the details of the ownership of the properties enlisted at Sr. no. (a) to (i) of Schedule A, is based on the affidavit dated 14.04.2025 filed by defendant no. 1. The defendant no. 1 has set out in this affidavit the facts showing that the immovable properties at Sr. No. (a) to (i) belongs to third-parties and do not form part of the estate of late Shri Banwari Lal Pasari. Defendant no. 1 has placed on record the registered title documents for each of the properties at Sr. no. (b) to Sr. No. (i) with this affidavit.

9. The defendant no. 1 has elected not to file any reply to the affidavit dated 14.04.2025. The plaintiff along with the plaint has also not filed any documents to support plaintiff's assertion that the properties enumerated at Sr. No. (b) to Sr. No. (i) belonged to late Shri Banwari Lal Pasari.



10. The properties at Sr. No. (d), (e), (f), and (g) admittedly belongs to an incorporated legal entity which has a separate juristic entity. The plaintiff has not disputed the title documents *qua* the said properties recording the ownership of the juristic entity. The only submission of the plaintiff is that since late Shri Banwari Lal Pasari was the shareholder of these companies, the present suit for *inter-se* partition between the legal heirs of late Shri Banwari Lal Pasari is maintainable for those immovable properties.

10.1. This Court is unable to accept this submission. Firstly, there is no document on record that late Shri Banwari Lal Pasari was a shareholder in these companies. The plaintiff admits that she is unaware about the shareholding of this company. Secondly, assuming late Shri Banwari Lal Pasari was a shareholder in these companies, it is trite law that ownership of an immovable property by an incorporate entity does not make the shareholder of the company, the owner of the said immovable property. (Re: **NDMC v. Ram Kishan Kulwant Rai & Sons**<sup>1</sup>). The said properties thus, do not form part of the estate of late Shri Banwari Lal Pasari.

10.2. Thus, no suit for partition of an immovable property owned by a corporate entity can be maintained *inter-se* the legal heirs of a shareholder. The legal heirs of a shareholder are only entitled to seek a claim in the shareholding of the company. The plaintiff has therefore failed to make out any prima facie case in her favour vis-à-vis the said properties and therefore the ad-interim order dated 01.08.2022 is liable to be vacated *qua* the said properties.

11. The properties at Sr. No. (i) of Schedule A, as per the affidavit dated 14.04.2025 belongs to Mr. Rahul Pasari, Mr. Chandrakant Pasari and



defendant no. 1 herein. The defendant has referred to a registered title deed in favour of Smt. Gayatri Devi Pasari i.e., the aunt of the plaintiff. The defendant has referred to a Codicil dated 28.07.2006 executed by Smt. Gayatri Devi Pasari which was probated by the High Court of Calcutta on 24.11.2022 to contend that this immovable property devolved upon Mr. Rahul Pasari, Mr. Chandrakant Pasari and defendant no. 1 herein.

In reply, the plaintiff states that she does not have any contra document to dispute the title of Smt. Gayatri Devi Pasari *qua* this property. The plaintiff also admits that she does not have any document in her possession to show that this immovable property belonged to late Shri Banwari Lal Pasari. The plaintiff admits that she is not the legal heir of late Smt. Gayatri Devi Pasari.

11.1. The plaintiff has thus failed to show any prima facie title to the property at Sr. No. (i) of Schedule A and therefore the ad-interim order dated 01.08.2022 *qua* property listed at Sr. No. (i) of Schedule A is liable to be vacated.

12. The property at Sr. No. (c) of Schedule A, as per the affidavit of defendant no. 1 dated 14.04.2025 belonged to late Shri Purushottam Das Pasari. The defendant no. 1 has placed on record a registered title deed executed in favour of late Shri Purushottam Das Pasari. It is stated that the said immovable property has been used in course of business of a partnership firm, Hindustan Auto Distributors ('HAD'). It is stated that late Shri Banwari Lal Pasari has never been a partner in the said firm. It is stated that therefore the said immovable asset does not form part of the estate of late Shri Banwari Lal Pasari. In addition, it is stated that late Shri

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<sup>1</sup> 2012 SCC OnLine Del 4389 [Para 15]



Purushottam Das Pasari is the uncle of the plaintiff and therefore the plaintiff is not his Class I legal heir.

The plaintiff has not disputed the title documents filed by defendant no. 1 showing that the property stands in the name of late Shri Purushottam Das Pasari. The learned counsel for the plaintiff has mildly argued that this property may also form part of the Shri Purushottam Das Pasari HUF.

12.1. In the considered opinion of this Court, the plaintiff has failed to make out any prima facie case that the title to this property at Sr. No. (c) of Schedule A belonged to late Shri Banwari Lal Pasari. Defendant no. 1 has placed on record documentary evidence showing that this property was owned by late Shri Purushottam Das Pasari and it does not form part of the estate of late Shri Banwari Lal Pasari. Therefore, the ad-interim order dated 01.08.2022 vis-à-vis property listed at Sr. No. (c) of Schedule A is liable to be vacated.

13. The property at Sr. No. (h) of Schedule A, as per the affidavit of defendant no. 1 dated 14.04.2025 belongs to a registered partnership firm M/s Banwari Lal Pasari. The title documents in favour of the said partnership firm have been placed on record and it is stated that the said immovable asset has been used in course of the partnership firm. It is stated that late Shri Banwari Lal Pasari has not been a partner in the firm since 1999.

The plaintiff has contended that she as a legal heir of late Shri Banwari Lal Pasari is entitled to seek a claim in the said immovable property since he was a partner. However, the plaintiff during arguments admits that defendant no. 1 may have succeeded to the share of late Shri Banwari Lal



Pasari on the strength of Will dated 04.05.1999, which has been granted probate by the High Court of Calcutta on 14.12.2021.

13.1. In the considered opinion of this Court, the plaintiff has not disputed the ownership of the partnership firm M/s Banwari Lal Pasari vis-à-vis the property at Sr. No. (h) of Schedule A. The plaintiff therefore, in these proceedings, has failed to make out a prima facie case that the title to the said property belonged to late Shri Banwari Lal Pasari and therefore the interim order dated 01.08.2022 *qua* the property listed at Sr. No. (h) of Schedule A is liable to be vacated.

13.2. As per the affidavit dated 14.04.2025, the said partnership firm has been re-constituted on 25.05.1999 and thereafter, on three (3) separate occasions. The issue of devolution of share of late Shri Banwari Lal Pasari in the said firm is not the subject matter of this suit.

14. The property at Sr. No. (b) of Schedule A, as per the affidavit of defendant no. 1 dated 14.04.2025, belongs to Purushottam Das Shankar Lal HUF ('HUF'). It is stated that the recorded title holder of the said property was late Smt. Laxmi Devi Pasari i.e., the grandmother the plaintiff. However, the said property as per the Will dated 11.09.1991 executed by late Smt. Laxmi Devi Pasari vested in the said HUF. It is stated that the Will was probated by the High Court of Calcutta on 18.05.2001. It is stated that this property does not form part of the individual estate of late Shri Banwari Lal Pasari.

The plaintiff has orally contended during arguments that the Will dated 11.09.1991 is suspicious and has not admitted its validity. In the alternative, plaintiff has contended that even as per the affidavit dated



14.04.2025 plaintiff is admittedly a coparcener and/or member of the said HUF.

14.1. In the considered opinion of this Court, the plaintiff has not disputed that the title of this property at Sr. No. (b) of Schedule A vested in late Smt. Laxmi Devi Pasari through a registered document. The plaintiff has sought to orally dispute the validity of the Will dated 11.09.1991 executed by late Smt. Laxmi Devi Pasari which vests the said immovable property in favour of the HUF. The Will dated 11.09.1991 has been granted probate by the High Court of Calcutta on 18.05.2001 and thus, the plaintiff cannot dispute the said probate by oral submissions in these proceedings. This Court finds merit in the submission of the defendant that to seek a claim in the said immovable property plaintiff would have to seek partition of the said HUF in separate proceedings by impleading all the coparceners and/or members of the said HUF. The said property cannot be partitioned in these proceedings between three (3) legal heirs of late Shri Banwari Lal Pasari. There is no pleading *qua* the said HUF in this suit. Thus, the plaintiff has failed to make out a case for grant of ad-interim injunction *qua* the said property in these proceedings and therefore the interim order dated 01.08.2022 *qua* the said property is vacated.

15. The property at Sr. No. (a) of Schedule A, admittedly has been sold by the plaintiff herself on 10.05.2022 by a registered conveyance deed along with defendant nos. 1 and 2 to Mr. Sandeep Kataria and Ms. Bhawna Kataria. Pertinently, the fact that this property already stood sold was not brought to the attention of this Court when the ex-parte interim order dated 01.08.2022 was prayed for and granted. The said order is therefore liable to be vacated even *qua* the said property.



16. The suit has been filed on the specific premise that late Shri Banwari Lal Pasari expired on 22.05.1999 without executing any testament. This assertion has been made categorically at paragraph nos. 2 and 18 of the plaint. However, defendant no. 1 has placed on record the fact that late Shri Bansari Lal Pasari has executed a Will dated 04.05.1999 in terms of which a probate has been granted by the High Court of Calcutta on 14.12.2021.

16.1. The defendant no. 1 has placed on record affidavit(s) dated 15.09.2000 executed by defendant nos. 1 and 2 confirming the validity of the Will dated 04.05.1999, which were submitted in the High Court of Calcutta in the testamentary proceedings being PLA No. 315/2000. The stand of the learned counsel for the plaintiff during arguments vis-à-vis these affidavits is absolutely vague and he stated that he has no instructions from the plaintiff about these affidavits.

In the considered opinion of this Court, prima facie the affidavits dated 15.09.2000 executed by the plaintiff and defendant no. 2, shows that the plaintiff had knowledge of the Will dated 04.05.1999 executed by late Shri Banwari Lal Pasari and the proceedings before the High Court of Calcutta for grant of probate of the said Will. The non-disclosure of the said affidavit and the probate while filing the present suit in fact shows that the plaintiff suppressed material facts from this Court and deposed falsely in paragraph nos. 2 and 18 of the plaint, while contending that late Shri Banwari Lal Pasari died without executing any testament.

17. The present suit has been filed by the plaintiff in view of Section 8 of the Hindu Succession Act, 1956 claiming to be a natural legal heir of late Shri Banwari Lal Pasari, who died intestate. Section 3 (f) and (g) of the said Act defines legal heir and intestate. However, during the subsistence of the



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probate dated of 15.09.2000 granted by High Court of Calcutta to the Will dated 04.05.1999 of late Shri Banwari Lal Pasari, the present suit claiming partition on the plea of intestacy is without any cause of action and has no basis in law. There can be no dispute that plaintiff is bound by the said probate dated 15.09.2000 unless it is revoked by the High Court of Calcutta. (Re: **Section 41 of Indian Evidence Act, 1872**).

18. In view of the aforesaid findings, the ex-parte ad-interim order dated 01.08.2022 is hereby vacated. I.A. 6201/2022 filed by the plaintiff is dismissed and I.A. 9027/2023 filed by the defendant is hereby allowed.

**I.A. 20074/2022** (under Order VII Rule 10 CPC) in CS(OS) 225/2022

19. List for arguments on 17.09.2025.

**CS(OS) 200/2023**

20. List on 17.09.2025.

**MAY 14, 2025/mt/MG**

**MANMEET PRITAM SINGH ARORA, J**

*[Click here to check corrigendum, if any](#)*