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

Date of decision: 22nd May, 2025

+ CS(OS) 55/2018 & I.A. 2010/2018

MRS. VINOD KUMARI BHALLAPlaintiff

Through: Mr. Naveen Sharma and Ms. Ayushi
Agarwal, Advs.

versus

MR. ANIL PRAKASH (DECEASED) THROUGH HIS L.RS. &
ORSDefendants

Through: Mr. P.N. Gautam & Mr. Shivam
Ujjainwal, Advs for D-1(a), (b) & (c)

Ms. Charu Sachdeva, Adv. for D-2
and D-6 with D-6 in person (Ms.
Nisha Vats) and Mr. Yuvraj Vats'
SPA Holder of D-2 in person.

Mr. Vaibhav Bharti, Adv. for D-4 (a),
(b) & (c) and D-5
Defendant no. 3 since deceased and
represented by its legal heirs.

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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):

1. The present suit has been filed seeking declaration, partition, permanent and mandatory injunction with respect to the property bearing no. C-185, Sarvodaya Enclave, New Delhi, 110017 admeasuring 300 sq. yds. ('suit property').



Brief facts

2. The parties to the suit are the legal heirs of late Sh. Bal Swarup Saxena Kharena (father) and late Smt. Prem Lata (mother).

2.1 It is stated that while the mother of the parties died on 25.10.1992, the father of the parties died on 15.03.1999.

2.2 It is stated that late Sh. Bal Swarup Saxena Kharena was the recorded title holder of the suit property and as on date the property shall devolve in seven (7) equal shares, as follows:

Plaintiff - Mrs. Vinod Kumari Bhalla - (Daughter)

Defendant No. 1 - Mr. Anil Prakash (Now deceased) - (Son)
Through L.Rs.

1(a) Smt. Neelam Prakash (Wife)

1(b) Akash Chander (Son)

1(c) Akansha (Daughter)

Defendant No.2 - Mr. Prakash Chander - (Son)

Defendant No.3 - Mr. Rajiv Prakash (Now deceased) - (Son)
Through L.Rs.

3(a) Mrs. Vinod Kumari Bhalla

3(b) Mr. Prakash Chander

3(c) Mrs. Minnu Arvind Jauhri

3(d) Mrs. Nisha Vats

Defendant No.4 - Dr. Mrs. Usha Chandra (Now deceased) -
(Daughter)

Through LRs

4(a) Dr. Prem Chandra (Husband)

4(b) Sumeet Chandra (Son)

4(c) Puneet Chandra (Son)

Defendant No.5 - Mrs. Minnu Arvind Jauhri - (Daughter)

Defendant No.6 - Mrs. Nisha Vats - (Daughter)

2.3 It is stated that defendant nos. 1 to 3 are brothers and the plaintiff and defendant nos. 4 to 6 are sisters. It is also stated that defendant nos. 1(a to c) and defendant nos. 4(a to c) are the legal representatives of the late



defendant nos. 1 and 4 respectively.

2.4 It is stated that prior to the institution of these proceedings, Mr. Anil Prakash/defendant no. 1 passed away in 2017, leaving behind his widow and two (2) children who are on record, and Dr. (Mrs.) Usha Chandra/defendant no. 4 also passed away in 2017, and her legal heirs are on record.

2.5 It is stated that during the pendency of these proceedings, Mr. Rajiv Prakash/defendant no. 3 also passed away on 11.02.2024. His legal heirs were brought on record vide order dated 07.01.2025 by allowing I.A. 120/2025. The plaintiff was directed to file an amended memo of parties, which has been filed on 17.03.2025 vide e-diary no. 1171426/2025.

2.6 It is stated in the plaint that the father of the parties executed a registered Will dated 28.04.1998, in which the plaintiff and defendant no. 2 were appointed as executors. It is also stated that the property was bequeathed vide Will dated 28.04.1998, amongst the parties.

Submissions by the parties

3. In the written statement filed by defendant nos. 1(a to c), and defendant nos. 5 and 6, they have contested the validity and existence of the Will dated 28.04.1998. Defendant no. 2 has not filed a separate written statement and has adopted the stand of defendant no. 6 during arguments. Defendant no. 3 and defendant nos. 4(a to c) did not enter a contest.

4. However, vide order dated 23.04.2025, the plaintiff, defendant nos. 1(a to c), defendant nos. 4(a to c), and defendant no. 5 stated that they are willing to accept a partition and declaration of shares as per Section 8 of the Hindu Succession Act, 1956 ('HSA Act'). The plaintiff also agreed to the said submission and undertook to abandon her claim under the Will dated 28.04.1998. Thus, defendant nos. 2 and 6 were the only remaining legal



heirs, who were not agreeable. However, since defendant nos. 2 and 6 were disputing the existence and validity of the Will dated 28.04.1998, the necessary corollary is that the said defendants admit that late Shri Bal Swarup Saxena Karena died intestate.

5. By the same order, defendant no. 2 and defendant no. 6 were directed to remain present today.

6. Defendant no. 6 is present along with her husband, Mr. Yuvraj Vats, who is also the SPA holder of defendant no. 2. Defendant no. 6 has apprised this Court that in the suit property, presently there is a constructed ground floor and first floor. The ground floor has two independent residential units, one in front portion and one in rear portion; similarly, the first floor has two independent residential units, one in front portion and one in rear portion.

6.1 She states that the rear portion on the first floor is in the joint possession of defendant nos. 5 and 6. She states that her husband Mr. Yuvraj Vats, with the consent of defendant no. 5, has his office on the front portion of the first floor.

6.2 She states that she resides on the rear portion of the ground floor.

6.3 She states that the front portion of the ground floor is in joint possession of defendant nos. 1(a to c) and defendant no. 2. She states that there are two bedrooms in this residential unit and the keys to these rooms are with defendant no. 1 (a to c) and the possession of the drawing, dining, kitchen etc. are with defendant no. 2. She states that she has the keys of defendant no. 2 to this unit; and she regularly maintains and upkeep the said unit by supervising sweeping and cleaning.

7. Learned counsel for defendant nos. 1(a to c) states that the said defendants have keys to only one room in the front portion residential unit of



the ground floor.

8. Learned counsel for the plaintiff states that plaintiff has keys to one room on this residential unit in the front portion of the ground floor. He states that these keys were handed over to the plaintiff by late Mr. Anil Prakash/defendant no. 1.

9. Learned counsel appearing for defendant nos. 2 and 6 states that defendant nos. 2 and 6 have contributed towards the construction of the suit property.

9.1 She states that defendant nos. 2 and 6 are in the process of collecting evidence from banking records to place on record to show the monetary contributions in construction of the suit property.

9.2 She states that monetary contribution towards the construction on the first floor was made by defendant no. 6 during the lifetime of the deceased.

9.3 She states that defendant no. 2 contributed towards construction of the entire building.

10. In response, learned counsel for the plaintiff states that in paragraph 10 of the written statement of defendant no. 6, it is admitted that during the lifetime of the deceased, the ground floor and half first floor of the property already stood constructed.

Findings

11. This Court has heard the parties and perused the records.

12. The entitlement of plaintiff, legal heirs of defendant no. 1 (together), defendant no. 2, legal heirs of defendant no. 4 (together), defendant no. 5 and defendant no. 6 for 1/7th share each is not in dispute.

13. With respect to defendant no. 3, it is noted that he was a bachelor and died issueless on 11.02.2024. Consequently, his share, as per Schedule I



Class II Entry IV to Section 8 of the HSA Act has devolved upon his surviving siblings, who were alive at the time of his death which are plaintiff along with defendant nos. 2, 5 and 6.

The amended memo of parties filed vide e-diary no. 1171426/2025 is erroneous to the extent it wrongly records the details of legal heirs of defendant no. 3.

14. In the aforementioned facts, the surviving class-I legal heirs who are entitled to succeed to the estate of late Sh. Bal Swarup Saxena Kharena are as under:

Plaintiff - Mrs. Vinod Kumari Bhalla

Defendant No. 1 - Mr. Anil Prakash (Now deceased)

Through L.Rs.

1(a) Smt. Neelam Prakash (Wife)

1(b) Akash Chander (Son)

1(c) Akansha (Daughter)

Defendant No.2 - Mr. Prakash Chander

Defendant No.3 - Mr. Rajiv Prakash (Now deceased)

Through L.Rs.

3(a) Mrs. Vinod Kumari Bhalla

3(b) Mr. Prakash Chander

3(c) Mrs. Minnu Arvind Jauhri

3(d) Mrs. Nisha Vats

Defendant No.4 - Dr. Mrs. Usha Chandra (now deceased)

Through L.Rs.

4(a) Dr. Prem Chandra (Husband)

4(b) Sumeet Chandra (Son)

4(c) Puneet Chandra (Son)

Defendant No.5 - Mrs. Minnu Arvind Jauhri

Defendant No.6 - Mrs. Nisha Vats

15. The plaintiff has propounded a Will dated 28.04.1998, which was accepted by some of the legal heirs and denied by some of the legal heirs.



However, subsequently, vide order dated 23.04.2025, the plaintiff, defendant nos. 1(a to c), defendant nos. 4(a to c), and defendant no. 5 stated that they are willing to accept a partition as per Section 8 of the HSA Act read with the Schedule, that specifies the order in which the deceased's property will devolve upon his legal heirs.

16. The plaintiff has categorically agreed to abandon her claim under the Will dated 28.04.1998.

17. In **Vikram Singh & Anr. v. Ajit Inder Singh**¹, the coordinate bench of this Court held that legal heirs have the right to choose between inheriting under the terms of a Will or as legal heirs of the deceased as per intestate succession. It held that the doctrine of election allows the parties to mutually agree and decide to inherit the estate according to the deceased's Will or as deceased's legal heirs.

18. Similarly, the coordinate bench of this Court in **Ms. Uma Ghate v. Mr. Umesh Phalpher**², held that a plaintiff has a legal right to confine their claims under the HSA Act even when a Will is present, and thus, the parties have the right to abandon a Will in favour of claims under the HSA Act.

19. Therefore, the parties herein as well can abandon the said Will dated 28.04.1998 and pursue the relief of partition under Section 8 of the HSA Act.

20. The issue to be determined in the present proceedings pertains to the respective shares of the parties in the suit property forming part of the estate of late Sh. Bal Swarup Saxena Kharena.

21. The fact that the parties to the present suit are his class-I legal heirs

¹ 2014 SCC OnLine Del 847 at para 34.

² 2016 SCC OnLine Del 6179 at para 11-14; The decision was upheld by the division bench in *Umesh*



and entitled to succession as per Section 8 of the HSA Act is not in dispute. Thus, by applying the law of Section 8 of the HSA Act, the parties in the present suit are held entitled to 1/7th share each in their deceased father's suit property.

22. As per Section 8 of the HSA Act, plaintiff, defendant no. 2, defendant no. 5, and defendant no. 6 are entitled to 1/7th share each. Legal heirs of late Mr. Anil Prakash/defendant no.1 are together entitled to 1/7th share, legal heirs of late Mr. Rajiv Prakash/defendant no. 3 are together entitled to 1/7th share and legal heirs of late Dr. (Mrs.) Usha Chandra/defendant no. 4 are together entitled to 1/7th share.

23. The submission of the plaintiff during the course of the argument that the parties are entitled to 1/6th share is factually incorrect. In its written submissions, the plaintiff omitted the share of late Mr. Rajiv Prakash, who was impleaded as defendant no. 3. Late Mr. Rajiv Prakash's legal heirs are also entitled to an equal share in the estate of his late father, which is 1/7th.

24. In the considered opinion of this Court, the contention of defendant nos. 2 and 6, that they have contributed to the construction of the suit property, cannot be a defence for not passing a decree for partition.

Firstly, in the joint written statement filed by defendant nos. 5 and 6, there is an assertion that funds for construction of rear portion of the first floor was contributed by defendant no. 5; and funds for construction of the front portion of the first floor was contributed by defendant no. 6. There is no mention of any contribution by defendant no. 2 towards construction.

Defendant no. 5 has abandoned the said claim. Defendant no. 6 has not placed on record any proof of the said contribution even though the



present suit was filed in 2018; written statements stood filed in April, 2018 and has remained pending for 6 years. Thus, the assertions of contributions are bald averments unsubstantiated from record.

Secondly, even assuming, defendant nos. 2 and 6 have contributed funds in the construction of the suit property, they can have a limited right to recover the said costs; and no more. On account of the said contribution, no title is created in favour of defendant no. 6 in the suit property and thus, they cannot deny partition rights to other co-owners. Reference in this regard may be made to **M.K. Govil v. Harish Chand Govil & Ors.**³, wherein the coordinate bench of this court held that any amount spent on construction can be recovered (subject to proof), but it does not grant any additional right to deny partition. The relevant portion of the said judgment reads as under:

“18. ...Though no particulars of the cost of construction of the second floor claimed to have been borne by defendant No. 2 have been pleaded but even if it were to be believed that the defendant No. 2 has indeed contributed to or borne the cost of construction of the second floor, the same would still not vest any additional right in the defendant No. 2 to deny partition to other co-owners. The said amount would at best constitute a loan by the defendant No. 2 to his father and the defendant No. 2 could have recovered the same...”

(‘Emphasis Supplied’)

25. Moreover, looking at the facts of the case, it is apparent that the suit property has been substantially and exclusively enjoyed by defendant no. 2 and defendant no. 6. Thus, assuming that they have contributed anything towards construction; they have substantially enjoyed the property to the exclusion of other legal heirs.



26. The plaintiff is directed to file a fresh memo of parties in conformity with the details set out in paragraph 14 of this order, within one week.

27. In these facts, a preliminary decree is hereby passed declaring plaintiff, defendant nos. 2, 5 and 6 as owners with undivided 1/7th share each; so also, legal heirs of late Mr. Anil Prakash/defendant no.1 together have 1/7th share, legal heirs of late Mr. Rajiv Prakash/defendant no.3 together have undivided 1/7th share and legal heirs of late Sh. Mrs. Usha Chander/defendant no.4 together have undivided 1/7th share.

28. The registry is directed to draw up a preliminary decree in terms thereof.

The suit property is not partible by metes and bounds

29. During the hearing, defendant no. 6 stated that the ground floor of the property was constructed in 1971 and half of the first floor was constructed in the year 1998 and the other half of the first floor was partially constructed later. Defendant no. 6 conceded that the construction has become old. The number of legal heirs is large, and the suit property cannot be partitioned meaningfully between them by metes and bounds. Moreover, with the new building byelaws the suit property which admeasures 300 sq. yards has potential for much more construction after demolition. In these facts, this Court is satisfied the best way to enable the parties to enjoy their share in the suit property is by selling the property. Therefore, the suit property would have to be sold off to realize the shares of the parties.

30. It is directed that in the first instance parties can explore a private sale by mutual consent. The parties will be at liberty to enter a private sale by joint consent to sell to the highest bidder. In case parties are not arrived at a

³ 2017 SCC OnLine Del 6954



consent for private sale, then the suit property will be sold by public auction to the highest bidder. The parties will be entitled to participate in the said bidding at public auction.

31. In view of the fact that the shares of the parties have now been determined, all the parties who have physical possession will have to vacate the suit premises to enable the sale of suit property.

32. Defendant no. 6 states that defendant no. 6 and Mr. Yuvraj Vats, SPA of defendant no. 2 is willing to consider an amicable resolution for working out the mode of final partition and states that the matter be referred to mediation.

33. Accordingly, with the consent of the parties, the parties are referred to Delhi High Court Mediation and Conciliation Centre ('Mediation Centre') for working out the modalities for passing of the final decree.

34. It is clarified that since defendant no. 6 is enjoying the property substantially to the exclusion of other co-owners, this Court intended to award mesne profits in favour of the other co-owners, however since defendant no. 6 has offered to amicably resolve the matter, no orders for payment of mesne profits is being passed.

35. The Mediation Centre is requested to appoint Ms. Veena Ralli, Sr. Mediator in this matter. The learned Mediator is requested to conclude the mediation proceedings before 15.08.2025.

36. Mr. Pramod Saigal, Advocate (Enrl. No. D-437/1988, Contact no. 9810027366, e-mail – saigal.pramod@gmail.com) is appointed as a Local Commissioner/Court Auctioneer. The parties will first make an endeavour to settle the matter through mediation till 31.07.2025 and in case the mediation fails then the Local Commissioner/Court Auctioneer will proceed after



16.08.2025 to auction the suit property by public sale.

37. At this stage, the fees of the Local Commissioner/Court Auctioneer is fixed at Rs. 2 lakhs to be borne by the parties equally. In case any of the defendants default in making payment of their share towards Local Commissioner/Court Auctioneer's fee, the plaintiff will pay the fee and recover the same from the sale proceeds along with 9% interest.

38. List before the Mediation Centre on **27.05.2025** at **03:30 PM**.

39. List before the Court on **17.09.2025**.

40. The registry is directed to send a copy of this order to the Local Commissioner/Court Auctioneer and to the Secretary, Delhi High Court Mediation and Conciliation Centre.

MAY 14, 2025/rhc/AM

MANMEET PRITAM SINGH ARORA, J

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