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

**BEFORE**

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

+ **CS(OS) 2092/2010 and CC 108/2011**

**1. SMT. SHEETAL SURI,**  
W/O SH. ARUN KUMAR  
D/O LATE S. BALDEV SINGH  
R/O HOUSE NO. 1586, XV,  
MAIN BAZAR PAHARGANJ,  
NEW DELHI.

**2. SMT. DOLLY**  
W/O SH. BALWINDER SINGH  
D/O LATE S. BALDEV SINGH  
R/O HOUSE NO. 1586, XV,  
MAIN BAZAR PAHARGANJ,  
NEW DELHI.

....PLAINTIFFS

*(Through: Mr. R.S. Lathwal and Mr. Amit Mittal, Advocates.)*

Versus

**1. SH. SUKHDEV SINGH**  
S/O LATE S. BALDEV SINGH  
R/O E-156, FIRST FLOOR,  
NARAINA VIHAR, NEW DELHI.

**2. SH. RAGHUBIR SINGH**  
S/O LATE S. SARAM SINGH  
R/O E-156, GROUND FLOOR,  
NARAINA VIHAR, NEW DELHI



2025:DHC:5292



**3. SMT. JASMINE KAUR**  
W/O SH. RAJENDER SINGH  
D/O LATE S. BALDEV SINGH  
R/O 30/8, FIRST FLOOR,  
OLD RAJENDER NAGAR,  
NEW DELHI.

....DEFENDANTS

*(Through: Mr. Sanjeev Anand Sr. Advocate with Mr. Jasbir Singh, Mr. Rahul Thukral, Advocates for D-1 with D-1 in person.  
Mr. Pramod Ahuja, Mr. Anshul Sharma and Mr. Aadish Jain, Advocates for D-2.  
Mr. Binay Kumar Das, Ms. Priyanka Das, Ms. Neha Das and Mr. Vikas Bharti, Advocates for D-3.)*

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Reserved on: 19.05.2025

Pronounced on: 03.07.2025  
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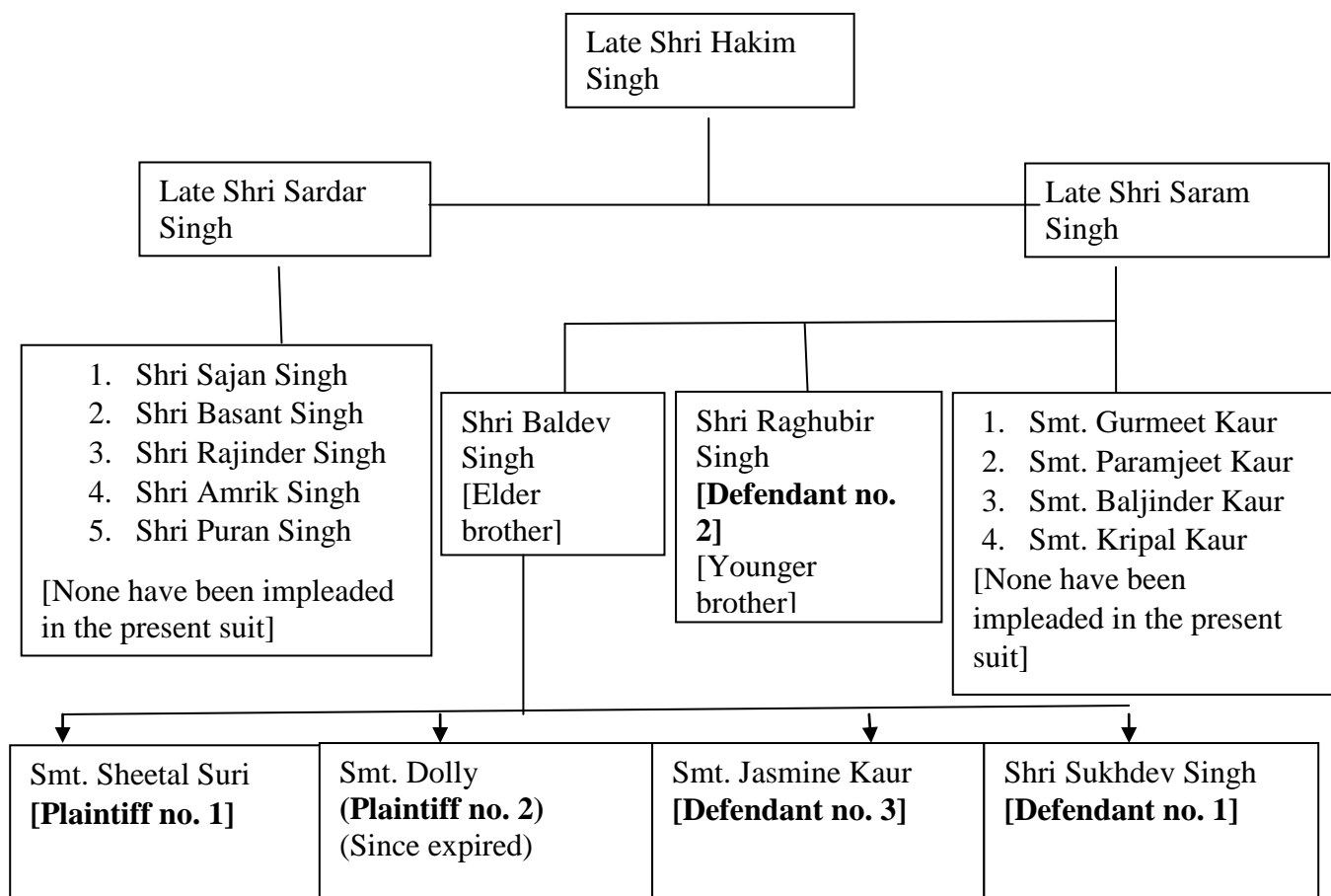
## **JUDGMENT**

### **Brief Facts**

The present suit is one for partition of properties purported to be the self-acquired properties of one late Shri Baldev Singh. The plaintiffs and defendant no.3 herein, are his daughters, whereas, defendant no.1 and defendant no.2 are his son and brother, respectively. Late Shri Baldev Singh was the grandson of one late Shri Hakim Singh. Late Shri Hakim Singh had two sons, namely, late Shri Sardar Singh and late Shri Saram Singh. Late Shri Baldev Singh was one of the sons of the aforesaid late Shri Saram Singh.



2. The family tree of late Shri Hakim Singh and his sons late Shri Sardar Singh and late Shri Saram Singh, as admitted by the plaintiffs in their cross-examination, is reproduced below, for reference:



3. The suit properties consist of two immovable properties, which are, House No. E-156, Naraina Vihar, New Delhi (hereinafter referred to as '*the Naraina Vihar property*'), and a building consisting of residential houses and shops bearing Municipal No. 1584-1586, XV, Main Bazar Paharganj, New Delhi (hereinafter referred to as '*the Paharganj property*'). A passing reference to certain movable properties of late Shri Baldev Singh which, allegedly, have been taken away by defendant no.1 after his death, is also



made in the plaint, however, no relief has been claimed in respect of these movable properties. In his counter-claim, defendant no.1 alleged that late Shri Baldev Singh had left behind jewellery and other movable properties and that the same were retained by plaintiff no.1 and her husband. He sought partition of the aforesaid movable properties as well. These averments were opposed by plaintiff no.1 in her written statement to the counter-claim.

4. The Paharganj property, at the time of filing the present suit, was in the possession of the plaintiffs. A portion of the Paharganj property, bearing Municipal No. 1587, is not included in the present suit and the same is in the possession of the descendants of late Shri Sardar Singh. A portion of the Paharganj property has also been let out to various tenants.

5. The Naraina Vihar property is in the possession of defendant no.1 and defendant no.2. The aforesaid property was bought in the name of late Shri Baldev Singh and he had gifted fifty percent share in the said property to defendant no.2 who is in possession of, approximately, half of the said property. The rest of the Naraina Vihar property is in the possession of defendant no.1.

6. The present suit is contested mainly by defendant no.1 on the ground that the suit is bad for non-joinder of necessary parties and for partial partition. He asserts that the entire Paharganj property, including the part bearing Municipal No.1587, which is currently in the possession of the descendants of Shri Sardar Singh, was the self-acquired property of late Shri Hakim Singh and his two sons, late Shri Sardar Singh and late Shri Saram Singh. The aforesaid property was never partitioned and devolved on their



heirs upon their death. Thus, according to him, late Shri Baldev Singh inherited only his undivided share in the property, and a partition suit, if instituted, should have been in respect of the entire Paharganj property. This being the case, the legal heirs of late Shri Sardar Singh and the daughters of late Shri Saram Singh ought to have been impleaded as parties to the present suit, since they are necessary parties. While admitting that defendant no.2 is currently in possession of a portion of the Naraina Vihar property, he asserts that late Shri Baldev Singh had not gifted it to defendant no.2.

7. Defendant no.2 and defendant no. 3 have not substantially opposed the present suit, but defendant no. 2 only prays that the gift of the fifty percent share in the Naraina Vihar property be respected while partitioning the suit properties.

8. Pending disposal of the present suit, plaintiff no.2 passed away, and the factum of her death was placed on record by plaintiff no. 1 on 22.05.2014. However, the legal representatives of plaintiff no.2 have not been impleaded in the present suit. Defendant no.1 had even filed I.A. 1900/2015 under Order XXII Rule 3(2) of the Code of Civil Procedure, 1908 (*hereinafter referred as "CPC"*), praying that the present suit be dismissed as the legal representatives of the deceased plaintiff no.2 had not been impleaded as parties to the suit. However, the aforesaid application was dismissed by this Court *vide* its order dated 15.05.2015 after plaintiff no.1 placed on record, copies of relinquishment deeds purportedly executed by plaintiff no.2 in favour of defendant no.1 in respect of the suit properties. The Court, while dismissing the said application, also noted that defendant no.1, in his counter-claim, had averred that plaintiff no.2 had relinquished



her interest in the suit properties in his favour. However, it is important to note that none of the parties have got the aforesaid relinquishment deeds marked as exhibits.

9. In light of the averments of the parties, on 07.02.2014, the following issues were framed for consideration:

- (I) *Whether the plaintiffs are entitled to partition of properties bearing No.1584-1586, XV, Main Bazaar Paharganj, New Delhi and E-156, Naraina Vihar, New Delhi? If so, to what share? OPP*
- (II) *Relief.*

9.1 This Court, *vide* its order dated 29.11.2023, framed the following additional issue:

- (Ia) *Whether the Suit is bad for non-joinder of necessary and proper parties? OPD*

9.2 In Counter-Claim bearing no. 108/2011, the following issues were framed on 07.02.2014:

- (I) *Whether the counter claimant is entitled to recovery of \$5 lacs (sic Rs. 5,00,000/-) from the plaintiffs? If so, to what effect? OPD .*
- (II) *Whether the counter claimant is entitled to interest? If so, at what rate and for what period? OPD*
- (III) *Relief*

### **Evidence led by the parties**

10. Plaintiff no.1 entered the witness box as PW-1. In her examination in-chief, she reiterated the averments made in the plaint, and exhibited the following documents:

- i. Exhibit P-1- Death Certificate of late Shri Baldev Singh.
- ii. Exhibit PW-1/1- Certified copy of Perpetual Lease Deed dated 21.03.1968



- iii. Exhibit PW-1/1B- Death certificate of late Smt. Kulwant Kaur.
- iv. Exhibit PW-1/2- Relinquishment Deed dated 10.09.2002.
- v. Exhibit PW-1/3 - True copy of Gift Deed dated 30.01.1979
- vi. Exhibit PW-1/3A - Certificate of Registrar in respect of certified copies of the Gift Deed dated 30.01.1979
- vii. Exhibit PW-1/4 - True copy of the Will dated 09.06.1987.
- viii. Exhibit PW-1/7A - Site plan of Pahar Ganj property
- ix. Exhibit PW-1/7B - Site plan of Naraina Vihar property
- x. Exhibit PW-1/X-1 and Exhibit PW-1/X-2- Certified copies of applications for mutation filed by the plaintiffs.
- xi. Exhibit PW-1/X-3 and Exhibit PW-1/X-4- Certified copies of mutation orders.
- xii. Exhibit PW-1/X-5 and Exhibit PW-1/X-6- Certified copies of affidavits filed by the plaintiffs in the mutation proceedings.
- xiii. Exhibit PW-1/X-7- Certified copy of the plaint in CS(OS) 231/2004.
- xiv. Exhibit PW-1/X-8- Copy of the written statement in CS(OS)231/2004.
- xv. Exhibit PW-1/X-9- Certified copy of the statement of late Shri Baldev Singh, recorded by the Court in CS(OS) 231/2004.
- xvi. Exhibit PW-1/X-10- Certified copy of the order of the Court in CS(OS) 231/2004.

10.1 Plaintiff no.1, as PW-1, was cross-examined by defendant no.1 and defendant no.2. The plaintiffs also examined one Shri Basant Singh S/o late



Shri Sardar Singh, as PW-2. However, he did not subject himself to cross-examination by the defendants.

11. Although defendant no.1 filed his evidence/examination-in-chief as D-1W-1, he did not subject himself to cross-examination by any party. He also chose not to lead any evidence in support of his counter-claim. Defendant no.2 got himself examined as D-2W-1 and led evidence in support of his pleadings. He was cross-examined by the other parties. He produced and exhibited the following documents:

1. Exhibit D-2W-1/D-1-X (Colly)-Certified copies of orders, pleadings, etc, in Suit No. 107/2008.

12. Defendant no.3 got herself examined as D-3W-1, and led evidence in support of her pleadings. She was cross-examined by the other parties. She produced and exhibited the following documents:

1. Exhibit D-3W-1/1-Copy of letter bearing no. 438, dated 17.07.1997, issued by Municipal Corporation of Delhi for mutation of property no. 1584-1587/XV.
2. Exhibit D-3W-1/3- Copy of letter bearing no. 251, dated 23.06.2003 issued by the Municipal Corporation of Delhi to late Shri Baldev Singh for mutation of property no. 1584-1587/XV.

### **Submissions of the parties**

13. Arguments were advanced on behalf of the plaintiffs by learned counsel, Mr. R.S. Lathwal and on behalf of Defendant No. 1, by Mr. Sanjeev Anand, learned senior counsel.





14. Defendant no.1 raised preliminary objections on the maintainability of the present suit for non-joinder of necessary parties and for seeking partial partition. It was contended that the suit properties were not the self-acquired properties of late Shri Baldev Singh, as the Paharganj property was bought jointly by late Shri Hakim Singh and his two sons, and undivided shares had been inherited by their legal heirs upon their death. Admittedly, neither has the entire Paharganj property been included in the present suit, nor have all the legal heirs of late Shri Sardar Singh and late Shri Saram Singh been impleaded as parties herein.

15. Defendant no.1 placed reliance on the judgment of the Supreme Court in ***Mumbai International Airport Pvt. Ltd v. Regency Convention Centre and Hotels Pvt Ltd***<sup>1</sup>, wherein, the Supreme Court had observed that if a ‘necessary party’ has not been impleaded in a suit, the same is liable to be dismissed. The relevant portion of the aforesaid judgment is extracted below for reference:

*“15. A ‘necessary party’ is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a ‘necessary party’ is not impleaded, the suit itself is liable to be dismissed. A ‘proper party’ is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”*

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<sup>1</sup> (2010) 7 SCC 417



16. The plaintiffs sought to counter this objection of defendant no.1 by asserting that although late Shri Sardar Singh and late Shri Saram Singh had not partitioned their properties *inter-se*, their legal heirs had partitioned the same in 2006 and are in possession of their respective shares. The plaintiffs, by way of the present suit, seek partitioning of the undivided shares of the descendants of late Shri Saram Singh in the Paharganj property. They further assert that late Shri Saram Singh had bequeathed his share in the entire Paharganj property to late Shri Baldev Singh and defendant no.2 herein, to the exclusion of his daughters *vide* the unregistered Will dated 09.06.1987, which is marked as Exhibit PW-1/4. Defendant no.2 had relinquished his share in the Paharganj property in favour of late Shri Baldev Singh *vide* registered Relinquishment Deed dated 10.09.2002, which is marked as Exhibit PW-1/2. Thus, according to the plaintiffs, only the suit properties are now available for partition and only the parties herein, are entitled to a share therein. Hence, according to the plaintiffs, the suit includes all the available properties for partition and all persons entitled to a share therein.

17. Defendant no.1 also took objection to the assertion of the other parties that fifty percent of the Naraina Vihar property was gifted by late Shri Baldev Singh to defendant no.2, on the ground that no share out of the Naraina Vihar property could have been gifted to others as it was not late Shri Baldev Singh's self-acquired property.

18. The preliminary objection of non-maintainability of the present suit on the grounds of non-joinder of necessary parties and partial partition, being fundamental to the decision in the present suit, the same, being issue



No. I(a) will be analysed first, before delving into the other questions that may require adjudication.

### **Analysis**

19. **Issue No. I(a):** In the plaint, the plaintiffs have based the entire suit on the premise that the suit properties were the self-acquired properties of late Shri Baldev Singh. Defendant no.1 refuted this averment in his written statement and defendant no.2 averred that the suit properties were bought by late Shri Saram Singh, the father of late Shri Baldev Singh. Plaintiff no.1, who deposed as PW-1, also admitted that the Paharganj property was not bought by late Shri Baldev Singh, rather, it was bought by late Shri Hakim Singh and his sons, after whose deaths, the property devolved on their legal heirs. At this stage, it merits consideration that late Shri Saram Singh had seven children, but instead of equal devolution of the said property upon all the seven legal heirs, his interest in the said property was bequeathed only to late Shri Baldev Singh and defendant no.2, each having half-share therein, *vide* Will dated 09.06.1987, executed by his father late Shri Saram Singh, which has been marked as Exhibit PW-1/4. At this juncture, it is of utmost importance to note that in the plaint, the plaintiffs maintain that the suit properties were the self-acquired properties of late Shri Baldev Singh and the factum of execution of the aforesaid Will is not averred in the plaint. Thus, the plaintiffs, by getting exhibited Exhibit PW-1/4, have sought to lead evidence to prove a fact beyond their pleadings.

20. It is settled law that the evidence to be led by a party is controlled by his pleadings in the suit. Any evidence contrary to or beyond pleadings



cannot be looked into by the Court. The Court is duty bound to take notice of any inconsistency between the evidence led by the parties and their pleadings. This trite position of law finds support in the decision of the Supreme Court in ***Biraji @ Brijraji and another v. Surya Pratap and Others***<sup>2</sup>. It has been held therein, that in the absence of pleadings, no evidence led by a party can be relied upon to advance its case.

21. Considering the aforementioned position of law, in the present suit, Exhibit PW-1/4, being the Will dated 09.06.1987, cannot be appreciated by the Court since it is not supported by the plaintiffs' pleadings. The plaintiffs, having got the aforesaid Will marked, were in a position to seek amendment of their plaint to incorporate the execution of the aforesaid Will in their pleadings. However, they failed to do so.

22. *Arguendo*, even if Exhibit PW-1/4 is taken into consideration, it cannot be said to have been proved in view of Section 68 of Indian Evidence Act, 1872 (*hereinafter referred as "the Evidence Act"*). Section 68 prescribes the mode and manner of proving a document which is required by law to be attested in the Court. The afore-mentioned provision is reproduced below for reference:

*"68. Proof of execution of document required by law to be attested.— If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:*

*Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian*

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<sup>2</sup> (2020) 10 SCC 729



*Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”*

23. In the present case, none of the attesting witnesses to the aforesaid Will have been examined and the Will has not been sought to be proved in any other manner. Furthermore, in her cross examination, PW-1 has admitted that the Will was unregistered and she did not obtain any probate in respect of the same. Thus, irrespective of the fact that evidence *qua* Exhibit PW-1/4 could not have been led by the plaintiffs owing to the absence of pleadings to that effect, the said document has not been proved in accordance with the law and the plaintiffs have failed to discharge the evidentiary burden in that regard.

24. We may now advert to the issue of non-joinder of necessary parties in the present suit. In ***Kanakarathnammal v. Loganatha Mudaliar and Another***<sup>3</sup>, the Supreme Court had held that in partition suits, all co-sharers are necessary parties and their non-inclusion in the suit would render the same as not maintainable. The relevant portion of the aforesaid judgment is extracted below, for reference:

*“It is unfortunate that the appellant’s claim has to be rejected on the ground that she failed to implead her two, brothers to her suit, though on the merits we have found that the property claimed by her in her present suit belonged to her mother and she is one of the three heirs on whom the said property devolves by succession under s. 12 of the Act. That, in fact, is the conclusion which the trial Court had reached and yet no action was taken by the appellant to bring the necessary parties on the record. It is true that under O. 1 R. 9 of the Code of Civil Procedure no suit shall be defeated by reason of the misjoinder or non-joinder of parties; but there can be no doubt that if the parties who are not joined are not only proper but also necessary parties to it, the infirmity in the suit is bound to be fatal. Even in such cases, the*

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<sup>3</sup> 1964 SCR (6) 1



*Court can under O. 1 r. 10, sub-rule 2 direct the necessary parties to be joined, but all this can and should be done at the stage of trial and that too without prejudice to the said parties' plea of limitation. Once it is held that the appellant's two brothers are co-heirs with her in respect of the properties left intestate by their mother, the present suit filed by the appellant partakes of the character of a suit for partition, and in such a suit clearly the appellant alone would not be entitled to claim any relief against the respondents. The estate can be represented only when all the three heirs are before the Court."*

25. In the present case, PW-1 has admitted in her cross-examination that the Paharganj property initially belonged to the brothers, late Shri Saram Singh and late Shri Sardar Singh. Late Shri Saram Singh had seven children, i.e., four daughters and three sons. In the ordinary course, the property ought to have devolved equally upon all the legal heirs. However, this is refuted by PW-1. It is the version of PW-1, in her cross-examination, that the property was bequeathed only to late Shri Baldev Singh and defendant no.2 on the strength of the Will dated 09.06.1987, which is Exhibit PW-1/4. Thus, it is quite evident that the said Will was the only document, which appears to have deprived the daughters of late Shri Saram Singh of their respective shares in his properties. Since the said document is to be disregarded by the Court, as noted above, this Court is constrained to conclude that the daughters of late Shri Saram Singh ought to have been impleaded as necessary parties in the instant suit. In the absence of the daughters of late Shri Saram Singh as parties in the instant suit, partitioning of the Paharganj property is neither possible nor permissible.

26. Besides the aforementioned fatal infirmity in the present suit, the objection raised by defendant no. 1 regarding the non-inclusion of the entire Paharganj property, including the part bearing Municipal No. 1587, also



holds merit. The fact that the entire Paharganj property has not been included in the suit property sought to be partitioned by way of this suit, also obstructs the Court from decreeing the instant suit. PW-1 has deposed, in her cross-examination, that the property bearing Municipal No. 1587 was given by her father to one Shri Basant Singh in 2010. The mode and manner of this alienation is not specified and the present suit has been filed only in respect of the properties bearing Municipal Nos. 1584 to 1586, despite it being an admitted fact that property bearing Municipal No. 1587 also formed a part of the property purchased jointly by late Shri Hakim Singh and his sons. In the same context, it is also relevant to note that in her cross-examination by defendant no.2, PW-1 has admitted that late Shri Saram Singh had also left behind various other properties besides the suit property. Thus, in light of the evidence on record, the present suit appears to be a suit seeking partial partition, which is impermissible.

27. Furthermore, assuming that the Paharganj property is complete in all respects, it needs to be noted that the said property was originally bought jointly by late Shri Hakim Singh and his two sons. Admittedly, the same was never partitioned during the life of late Shri Hakim Singh and his two sons. Although the plaintiffs have submitted that the Paharganj property was partitioned between the descendants of late Shri Sardar Singh and late Shri Saram Singh thereafter, in the year 2006, however, they have not placed on record any material to conclusively prove that the Paharganj property was ever subjected to a valid partition. Thus, there is nothing on record to suggest that late Shri Baldev Singh held any defined share in the said property. In view thereof, the descendants of late Shri Sardar Singh are also



necessary for partitioning of the entire Paharganj property. However, since they have not been impleaded in the present suit, it renders the suit, not maintainable insofar as the Paharganj property is concerned.

28. As far as the Naraina Vihar property is concerned, appreciation of the evidence adduced leads the Court to conclude that the same was a self-acquired property of late Shri Baldev Singh. Plaintiff no.1, as PW-1, produced Exhibit PW-1/1, being a certified copy of the Perpetual Lease Deed dated 21.03.1968 executed in favour of late Shri Baldev Singh. PW-1 was cross-examined on this document only on behalf of defendant no.2. During the said cross-examination, there was no suggestion to PW-1 that the aforesaid property was anything other than the self-acquired property of late Shri Baldev Singh, except a limited suggestion that the plot of the said property was purchased jointly by late Shri Baldev Singh and defendant no. 2, and that the construction therein, was funded by contribution from both of them. However, the self-acquired nature of the property in the eyes of law was not disputed. Furthermore, PW-1 did not depart from her position taken in the plaint regarding the same. Defendant no.3 was also cross-examined on her position, in her written statement, that the Naraina Vihar property was the self-acquired property of late Shri Baldev Singh, and she maintained this position in her cross-examination.

29. Defendant no.2, in his written statement and his examination-in-chief affidavit, maintains that the suit properties were bought by late Shri Saram Singh, the father of late Shri Baldev Singh. However, in his cross-examination by defendant no.1, when confronted with these averments, he asserted that the averments had been made inadvertently, and that the





Naraina Vihar property was the self-acquired property of late Shri Baldev Singh. Defendant no.1, who is the only party contesting the self-acquired nature of the Naraina Vihar property, did not lead any evidence in support of this contention. Exhibit PW-1/1 raises a presumption that the Naraina Vihar property was the self-acquired property of late Shri Baldev Singh, and defendant no.1, having asserted that the same was not his self-acquired property, failed to discharge his burden to prove the same.

30. Exhibit PW-1/3 produced by PW-1 is the registered Gift Deed executed by late Shri Baldev Singh in favour of defendant no.2, *vide* which the former gifted a fifty percent share in the Naraina Vihar property to the latter. The said document is admitted by defendant no.2 and defendant no.3; it is opposed only by defendant no.1 on the ground that the same could not have been executed by late Shri Baldev Singh. Having concluded that the Naraina Vihar property was the self-acquired property of late Shri Baldev Singh, the Court is inclined to conclude that Exhibit PW-1/3, being registered under the Registration Act, 1872, is a validly executed document and late Shri Baldev Singh, being the owner of the said property, was duly empowered to execute a gift deed with respect to the same.

31. Upon his death, the interest of late Shri Baldev Singh in the Naraina Vihar property, being his self-acquired property, would devolve upon his Class-I legal heirs under Section 8 of the Hindu Succession Act, 1956 (*hereinafter referred as "HSA"*); and his Class-I legal heirs would be the plaintiffs, defendant no.1 and defendant no.3. Plaintiff no.2 passed away pending disposal of the suit. Following her death, under Section 8, HSA, her



interest would devolve on her Class-I legal heirs. However, her Class-I legal heirs have not been made party to the present suit, despite being necessary parties. Although, plaintiff no.1 has brought on record two relinquishment deeds purportedly executed by plaintiff no.2 in favour of defendant no.1, the same have not been marked as exhibits and cross-examination in respect of the aforesaid documents has not taken place. The purported relinquishment deeds ought to have been proved, especially considering that the documents, if proved, would disentitle the Class-I legal heirs of plaintiff no.2 from claiming their interest in the suit properties. Any reliance upon the said documents would have the effect of deprivation of rights of the Class-I legal heirs of plaintiff no.2 and thus, they cannot be admitted just as a matter of course. Thus, having not been subjected to the rigours of evidence, the aforesaid relinquishment deeds purportedly executed by plaintiff no.2 in favour of defendant no.1 cannot be appreciated as evidence in the main suit. Consequently, the suit suffers from the fatal defect of non-joinder of necessary parties i.e., Class-I legal heirs of plaintiff no.2.

32. Generally, suits for partial partition are not maintainable. However, this Court, in its judgment in *Sara Carriere Dubey @ Sara Marie Madeline v. Ashish Dubey*<sup>4</sup>, concluded that the aforesaid rule is applicable only to partition of coparcenary property and inapplicable to partition of shares held by tenants-in-common. By virtue of the provision in Section 19, HSA, the legal heirs of late Shri Baldev Singh hold their interest in the Naraina Vihar property as tenants-in-common. The aforesaid provision is reproduced below, for reference:

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<sup>4</sup>2023 DHC 7661



*“19. Mode of succession of two or more heirs.—If two or more heirs succeed together to the property of an intestate, they shall take the property,— (a) save as otherwise expressly provided in this Act, per capita and not per stripes; and (b) as tenants-in-common and not as joint tenants.”*

33. Therefore, the instant suit would have been maintainable for partitioning of the Naraina Vihar property only, had all the necessary parties been impleaded. The Class-I legal heirs of plaintiff no.2 are also tenants-in-common in respect of Naraina Vihar property, and are thus, necessary for its partition. However, since they are not impleaded as parties to the present suit, partitioning of the Naraina Vihar property is also not possible herein. Accordingly, issue no.I(a) is answered in the affirmative.

34. **Issues No. I and II:** In view of the aforesaid observations and discussion, issues No. I and II are answered in the negative.

35. **Issues No. I, II and III in Counter-Claim No. 108/2011:** These three issues, being interconnected, are taken together for consideration. Defendant no. 1, in his counter-claim alleged that late Shri Baldev Singh had also left behind certain movable properties and that the same had been taken by plaintiff no.1 and her husband. However, neither did he lead any evidence in support of his contentions, nor did he cross-examine any of the parties in this regard. Considering the fact that the counter-claim is resisted by plaintiff no.1, defendant no.1 was required to lead evidence and establish his case. He has failed to establish his case as per his counter-claim. Accordingly, issues No. I, II, and III of the counter-claim no.108/2011 are answered in the negative.



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36. In light of the foregoing discussion, the present suit filed by the plaintiffs under Section 26 read with Order VII Rule 1 of CPC is hereby dismissed. The counter-claim no. 108/2011 filed by defendant no.1 under Order VIII Rule 6A of CPC also stands dismissed. Parties to bear their own costs.

**(PURUSHAINDRA KUMAR KAURAV)**  
**JUDGE**

**JULY 03, 2025**

*Nc*