



2025:DHC:6052-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 24.07.2025**

+ FAO(OS) 81/2025, CM APPL. 44088/2025 (Stay) & CM APPL. 44089/2025 (Ex.)

ASHA JAIN

.....Appellant

Through: Mr. Praveen Agrawal, Mr. Sunil Kumar & Ms. Lucky Rani, Advs.

versus

SAJJAN PASARI & ANR.

.....Respondents

Through: Mr. Harish Salve, Mr. Ratnanko Banerji, Mr. Rajiv Nayar & Mr. Darpan Wadhwa, Sr. Advs. with Ms. Ruby Singh Ahuja, Mr. Arunabha Deb, Mr. Vishal Gehrana, Ms. Ashika Daga, Ms. Kritika Sachdeva, Ms. Uzma Sheikh & Mr. Tribhuvan N. Singh, Advs. for Respondent/Defendant No. 1.

CORAM:**HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

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JUDGEMENT (ORAL)**ANIL KSHETARPAL, J.**

1. Through this appeal, the Appellant herein assails the correctness of the Judgment dated 14.05.2025, passed by the learned Single Judge in two applications being I.A. No. 6201/2022 and I.A. No. 9027/2023



filed in CS(OS) 225/2022, titled as *Asha Jain vs. Sajjan Pasari and Anr.*, wherein the *ex parte ad-interim* Order dated 01.08.2022 directing the Respondents/Defendants to maintain *status quo* with regards to title of all the properties listed in Schedule A of the plaint, was vacated.

2. On 21.04.2022, as alleged by the learned Senior Counsel for the Respondents, the Plaintiff/Appellant herein filed a suit for partition against the Respondents, asserting her claim as a co-sharer in the properties left behind by her deceased father, late Shri Banwari Lal Pasari, who passed away on 22.05.1999.

3. It is claimed that late Shri Banwari Lal Pasari was survived by two daughters, namely, Asha/Appellant and Sarita/Respondent No. 2 and a foster son, namely, Sajjan Pasari/Respondent No. 1.

4. At the outset, the learned counsel appearing for the Appellant submitted that this Court has territorial jurisdiction to entertain the suit as one of the suit properties is located in Delhi.

5. Respondent No.1 filed a written statement in the suit, submitting that most of the suit properties were transferred by late Shri Banwari Lal Pasari in favour of the Defendants through deeds. Details of the property and its owners were disclosed as follows:

Sl. No.	Property Details	Ownership	List of Documents
A.	Item A of Schedule A: W-52, Second Floor, Greater Kailash-II, New Delhi	Mr. Sandeep Kataria and Ms. Bhavna Kataria	NA



B.	Item B of Schedule A: H. No. 4 and 4-A, Rainey Park, Kolkata - 700019	Purushottam Das Shankar Lal HUF	<p>a. Registered Indenture dated 19th December, 1946 executed in favour of Laxmi Devi Pasari.</p> <p>b. The Last Will and Testament of Laxmi Devi Pasari dated 11th 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.</p> <p>c. Probate of Laxmi Devi Pasari dated 18th 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 21st 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.	Item C of Schedule A : 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 22nd 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>



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			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.
D.	Item D of Schedule A: 62-A, Hazara Road, Kolkata, Approx 122 Katha	I.A. Builders (P) Ltd	a. Registered Indenture dated 27 th December, 1960 by virtue of which India Automobiles (1960) Limited became the absolute owner. b. Order dated 16 th May, 2005 passed by the High Court of Calcutta sanctioning a Scheme of Arrangement where outgoing business undertaking 1 of India Automobiles (1960) Limited was transferred to I.A. Builders (P) Ltd.
E.	Item E of Schedule A: 2, Ripon Street, Kolkata (35,000 sq.ft. office block)	I.A. Property Developers (P) Ltd.	a. Registered Indenture dated 12 th March, 1965 by virtue of which India Automobiles (1960) Limited became the absolute owner. b. Order dated 16 th 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.	Item F of Schedule A: Shop No. G-3C, Ground Floor, Shree Manjari Building 8/1A Sir William Jones Sarani, Camac Street, Kolkata –	West Wing Estates Pvt. Ltd.	a. Registered Indenture dated 16 th January, 1996 in favour of Parmeswar Estates Private Limited. b. Name Change ROC



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	700071 (Airtel Showroom)		Certificate of Parmeswar Estates Private Limited to West Wing Estates Pvt. Ltd. with effect from 16 th November, 2011.
G.	Item G of Schedule A: India Automobiles 1960 Ltd. 9, Old Post Office Street, opposite High Court Full Building	India Automobiles (1960) Ltd.	a. Registered Indenture dated 5 th June, 1964 in favour of India Automobiles (1960) Ltd.
H.	Item H of Schedule A: FMC Fortuna Plot No. 234/3A, 3rd Floor, AJC Bose Road, Kolkata 6000 sq.ft. area	M/s. Banwari Lal Pasari [a registered partnership firm]	a. Registered Indenture dated 5 th February, 1997 in regard to Flat A1 purchased directly by the said partnership firm. b. Registered Indenture dated 5 th February, 1997 in regard to Flat A2 purchased directly by the said partnership firm. c. Registered Indenture dated 5 th February, 1997 in regard to Flat A3 purchased directly by the said partnership firm. Also see: d. Deed of Reconstituted Partnership dated 25 th May, 1999. e. Deed of Reconstituted Partnership dated 1 st April, 2002. f. Deed of Reconstituted Partnership dated 1 st April, 2013. g. Supplementary Deed of Partnership dated 1 st April, 2015.
I.	Item I of Schedule A: Chirawa, Rajasthan, Villa Ancestral Property	Owned jointly by three members of the Pasari family being Rahul Pasari, Chandrakant Pasari and Sajjan Pasari	a. Registered Indenture dated 13 th October, 1958 executed in favour of Gayatri Devi Pasari (wife of Late Purshottam Das Pasari brother of Banwari Lal Pasari). b. Probate dated 18 th



			<p>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 28th 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 Probate in terms thereof was granted on 24th November, 2022.</p>
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6. It was further submitted that late Shri Banwari Lal Pasari bequeathed the entire property in favour of Sajjan Pasari *vide* Will dated 04.05.1999, which was duly probated in proceedings being PLA No. 315/2000 instituted before the High Court of Calcutta.

7. Taking into account all these facts, it is contended that the learned Single Judge came to the conclusion that the Plaintiff/Appellant has failed to make out a *prima facie* case in her favour and also lacks balance of convenience, and therefore, will not suffer any irreparable loss and injury in case the interim order dated 01.08.2022 is vacated.

8. Learned counsel representing the Appellant has made the following submissions in the present appeal:

8.1 Respondent No. 1/ Defendant No. 1 had no locus to seek vacation of interim order dated 01.08.2022 through an application under Order XXXIX Rule 4 read with Section 151 of the Code of Civil Procedure, 1908, as he was not an affected party.

8.2 The preservation of the suit property should be maintained during



the pendency of the suit, and hence, the learned Single Judge ought to have continued the interim stay granted *vide* Order dated 01.08.2022.

8.3 An application for recall of the Probate Order dated 15.09.2000 is pending before the High Court of Calcutta, and therefore, the learned Single Judge ought to have waited for the conclusion of the recall of Probate proceedings before vacating the injunction.

8.4 The Plaintiff/Appellant was not granted an adequate opportunity to examine the affidavit of Defendant No. 1/ Respondent No. 1 filed in his defence.

9. *Per contra*, the learned Senior Counsel for Respondent No. 1, while drawing our attention to the information compiled in the table extracted hereinbefore, submits that the Appellant has also filed an application for grant of injunction, while filing an application for recall of the Probate Order dated 15.09.2000. However, no injunction has been granted.

10. It is further contended that the prayer for vacation of stay was submitted by Respondent No. 1 before the learned Single Judge, as the continuation of the stay was adversely impacting him. He submits that the rights of Respondent No. 1 were prejudiced because of the said interim Order.

11. This Court has considered the submissions made on behalf of the parties.

12. We have had the benefit of the able assistance of the learned counsel representing the parties at length and, with their able assistance, also perused the paperbook.

13. It is evident from the tabulated information that late Shri Banwari Lal Pasari was not the owner of most of the suit properties on



the day of his death, and in any case, he bequeathed the property in favour of Sajjan Pasari/Respondent No. 1, which was later probated in his favour. The judgment passed by a Probate Court is a judgment in rem and not in personam. Even if the Appellant was not a party to the probate proceedings before the High Court of Calcutta, it is still binding on her unless it is recalled.

14. Before an injunction can be granted, the Appellant must establish the three well-settled tests: (i) a *prima facie* case in her favour, (ii) a balance of convenience in her favour, and (iii) that she will suffer irreparable loss and injury if the injunction is not granted at this stage. However, she has failed to make out a case for grant of injunction because as of now she neither has a *prima facie* case in her favour nor the balance of convenience lies in her favour. She would also not suffer any irreparable loss if injunction is not granted.

15. The Appellant further prays for restraining the Respondents from alienating the property in any manner. Section 52 of the **Transfer of Property Act, 1882**¹ protects the Appellant and encapsulates that any alienation of property during the pendency of the suit shall not affect her rights.

16. The sole Appellant is a married daughter of the testator, namely, late Shri Banwari Lal Pasari. To the best of the parties' knowledge, the second daughter has not filed any suit. Moreover, admittedly, there was only one property located within the jurisdiction of Delhi, which was sold by the parties including the Appellant, on 10.05.2022, that is, during the pendency of the suit.

17. Additionally, the Appellant has already applied for an interim order while filing an application for recall of probate in favour of



Respondent no. 1. The High Court of Calcutta has not granted any injunction in her favour. By way of a separate suit for partition, the Appellant seeks to achieve the same objective that has not been permitted by the learned Probate Court.

18. Concerning the last submission, it will be noticed that the affidavit of Defendant No. 1/Respondent No. 1 was served on the Appellant on 16.04.2025, whereas the impugned Judgement was passed on 14.05.2025; therefore, nearly one month was available to the Appellant to respond. In any case, the suit for partition filed by the Appellant is pending before the learned Single Judge, and Section 52 of the TP Act continues to be applicable, even after vacating the injunction order.

19. Hence, finding no merit, the present appeal alongwith pending application(s), if any, is dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

JULY 24, 2025/v/er

¹ TP Act