



2025:DHC:10610-DB



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

Date of decision: 27.11.2025

+ RFA(OS) 80/2018

KAMAL KANT JAIN

.....Appellant

Through: Mr Hrishikesh Baruah, Mr
Kumar Kshitij, Ms. Pragya
Agarwal, Mr Utkarsh Dwivedi,
Ms. Nishtha Sachan and Mr
Yashaswy Ghosh, Advocates.

versus

SUSHMA JAIN & ORS

.....Respondents

Through: Mr. Shreshth Jain, Ms.Neha
Bhutan and Mr. Nadeem Malik,
Advocates for R-1A to 1D, 4
and 5.
Mr. I.S. Kohli, Advocate for D-
3.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

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JUDGEMENT (ORAL)

ANIL KSHETARPAL, J.

1. The present Appeal has been filed against an **Order dated 29.08.2018** ["Impugned Order"] passed by learned Single Judge in CS(OS) No. 1827/2014 titled "*Sushma Jain v. Vinay Kumar Jain & Ors.*" while passing a preliminary decree for partition of the property.

2. The parties herein shall be referred to in the same rank as they



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are arrayed in the original suit.

3. The Plaintiff, namely Smt. Sushma Jain, filed a suit for possession, partition, and rendition of account and injunction.

4. Written Statement was filed by the Defendants. Thereafter, the Plaintiff filed Replication to the same.

5. The Court, however, before framing the issues and calling upon the parties to lead evidence, proceeded to pass the Impugned Order, which reads as under:

“1. Counsels for the Plaintiff and Defendants No.1 (a) to (d) as also Defendants No. 3 to 5 submit that they are agreeable for a preliminary decree being passed in the present suit where equal shares are given to all the legal heirs of Late Sh. Bimal Kishore Jain and his wife Smt. Jaiwanti Jain. However, Defendant No.2 submits that there is a family arrangement and the matter ought to be sent to trial.

2. A perusal of the family arrangement relied upon by the Defendant No.2, purportedly dated 18th November, 2011, shows that it is a hand written page which bears the signatures of Sh. Kamal Kant Jain, Sh. Vijay Jain, Sh. Swatanter Jain, Sh. Vinay Kumar Jain, Sh. Subhash Chand Jain, Dr. Nirmal Jain and Sh. Manoj Jain. When this arrangement was purportedly entered into, the father was alive. However, he has not signed the said family arrangement. It is the admitted position that the Plaintiff Smt. Sushma Jain or her husband Sh. Paritosh Jain have not signed the same. As per the written statement, it is the stand of Defendant No.2 that Sh. Subhash Chand Jain – *Mama* of the Defendant No.2 had informed the Plaintiff and her husband and they have consented to the said family arrangement.

3. Since, the family arrangement is in writing, no oral evidence can be adduced to add to the same. Admittedly, the father who was alive was not a party to the arrangement. It is the settled position that for any family arrangement to be binding, all the legal heirs have to accept the terms and conditions and append their signatures. There being no arrangement which is signed by all the legal heirs, the said family arrangement cannot be binding on the Plaintiff. Thus, no useful purpose is served in sending the matter to trial.

4. Under these circumstances, a preliminary decree is passed



declaring that each of the legal heirs i.e. the Plaintiff and all the five Defendants along with their father have equal shares of 1/7th each, in the estate of Late Smt. Jaiwanti Jain in respect of properties as contained in para (a) of the prayer in the plaint.

5. Defendants No.1 and 3 to file an affidavit disclosing the movables of Smt. Jain, including jewellery, bank accounts, etc. if any.

6. Mr. Vivek Chibb, Advocate (09899601523) is appointed as a Local Commissioner to interact with the parties to suggest the mode of partition of all the assets mentioned in para (a) of the prayer clause. The fees of the Local Commissioner is fixed at Rs. 1 lakh, to be equally borne by Defendants 1 to 5 i.e., Rs.20,000/- each.

7. Insofar as the 1/7th share of the father is concerned, the devolution of the same shall be determined in suit no.2592/2014 titled *Sushma Jain V. Vinay Kumar Jain & Ors.*

8. List for perusal of the Local Commissioner's report on 12th December, 2018."

6. It is evident from a reading of Paragraph No. 1 of the Impugned Order that Defendant No. 2 (Appellant herein) had claimed that there is a family arrangement and that the matter is required to be decided after the parties are permitted to lead evidence. Thus, the Impugned Judgment has not been passed under Order XII Rule 6 of the Civil Procedure Code, 1908.

7. It is further evident from Paragraph Nos. 2 and 3 of the Impugned Order that the learned Single Judge has proceeded to record findings of fact with regard to correctness and binding effect of a document which bears the signatures of Sh. Kamal Kant Jain, Sh. Vijay Jain, Sh. Swatanter Jain, Sh. Vinay Kumar Jain, Sh. Subhash Chand Jain, Dr. Nirmal Jain, and Sh. Manoj Jain.

8. This Court is of the considered opinion that the effect of such finding could be arrived at by the Court only after the parties were



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permitted to lead evidence. The manner in which the preliminary decree has been passed is not known to law.

9. Consequently, the Impugned Order is set aside, and the matter is remitted back to the learned Single Judge for a fresh decision.

10. It has been brought to the notice of the Court that, in the meantime, a final decree has also been passed on the basis of the preliminary decree.

11. Since preliminary decree has been set aside, therefore, the final decree passed on the basis of preliminary decree would cease to have any effect.

12. The parties through their respective counsels are directed to appear before the learned Single Judge on 09.12.2025.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
NOVEMBER 27, 2025/v/kr