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

% *Date of Decision: 6<sup>th</sup> August, 2025*

+ CS(OS) 152/2023 & I.A. 4356/2023

VIJAY MALHOTRA

.....Plaintiff

Through: Mr. Kapil Gupta and Mr. Pushpendra  
Jadon, Advocates.

versus

SUNIL MALHOTRA AND ORS

.....Defendants

Through: Mr. K.N. Singh and Mr. Prabhnoor  
Singh, Advocates for D-1.  
Mr. Arvind Kr. Pandey, Advocate for  
D-2 to D-6.  
D-1 present-in-person.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT BANSAL**

**AMIT BANSAL, J. (ORAL)**

1. The present suit has been filed seeking partition, possession and permanent injunction in respect of the property I-63, Kirti Nagar, New Delhi, measuring 356.5 sq. mtrs. ('suit property').
2. The family pedigree chart of the parties to the suit is set out below:



Sh. K.C. Malhotra (Died on 28.08.1972)

Smt. Primla Malhotra-Wife (Died on 18.05.2005)				
Ravi Malhotra (Died on 18.01.14)	Sunil Malhotra (Defendant No.1)	Uma Dhir (Defendant No.2)	Poonam Luthra (Defendant No.3)	Reggie Malhotra (Died on 15.11.20)
Vijay Malhotra-Wife (Plaintiff)		Anita Malhotra-Wife Defendant No.4		
Hemant Malhotra-Son (Defendant No.8)		Prateek Malhotra Defendant No.5		
Rachna Verma-Daughter (Defendant No.9)		Tanvi Sachdeva Defendant No.6		
Vikram Malhotra-Son (Defendant No.7)				

3. The suit property was the self-acquired property of late Mr. KC Malhotra, father of the plaintiff's husband and of defendants no.1 to 3. Mr. KC Malhotra died intestate on 28<sup>th</sup> August 1972.

4. With the consent of all the legal heirs of late Mr. KC Malhotra, the suit property was bequeathed to Ms. Primla Malhotra and she became the sole and absolute owner of the suit property.

5. Ms. Primla Malhotra expired intestate on 18<sup>th</sup> May 2005, leaving behind three sons and two daughters.

6. On 21<sup>st</sup> May 2005, a settlement was arrived at between the legal heirs of Ms. Primla Malhotra, which was later reduced into writing as Memorandum of Family Settlement on 8<sup>th</sup> June 2005. In terms of the said



settlement, it was agreed that the structure standing on the suit property would be demolished and then fresh construction shall be carried out.

7. Mr. Ravi Malhotra, husband of the plaintiff, filed a suit bearing no. Suit No.04/2012 for specific performance of the Memorandum of Family Settlement.

8. During the pendency of the said suit, a settlement dated 21<sup>st</sup> November 2008 was entered into between the parties. However, the said settlement yielded no result.

9. Mr. Ravi Malhotra filed another suit for partition bearing CS No. 805/2012, however, the same was returned for want of pecuniary jurisdiction *vide* the order dated 28<sup>th</sup> January 2013.

10. On 18<sup>th</sup> January 2014, Mr. Ravi Malhotra died intestate.

11. *Vide* order dated 15<sup>th</sup> February 2016, Suit No.04/2012 was also returned for want of pecuniary jurisdiction.

12. Counsel for the defendant no.1 submits that the present suit is barred by limitation. It is submitted that the limitation would have to be reckoned from the date when the cause of action first accrued upon the plaintiff, i.e. 18<sup>th</sup> January, 2014, the date on which the plaintiff's husband expired.

13. It is a settled position of law that the right to seek partition is a recurring right, therefore, a suit seeking partition cannot be barred by limitation.

14. In *Sri Kishan v. Shri Ram Kishan*, 2009 (159) DLT 470, it has been held as under:

*“17. The right to enforce partition is a legal incident of a co-ownership and as long as such co-ownership subsists, the right to seek partition continues. The mere fact that a co-owner files a suit for*



*partition and then abandons or withdraws it will not deprive him of his right to seek partition of the joint property....”*

15. The aforesaid judgment was followed by this Court in ***Renu Mathur v. Uma Narula***, CS(OS) 1133/2015.

16. In light of the discussion above, it cannot be stated that the present suit is barred by limitation.

17. Written statement has been filed on behalf of the defendants no.1 to 6. Defendants no.7 to 9 are the children of the plaintiff, supporting the case of the plaintiff and they, along with the plaintiff, claim 1/20<sup>th</sup> share each in the suit property.

18. In the written statements filed on behalf of the remaining defendants, the plaintiff's 1/20<sup>th</sup> share in the suit property is not denied.

19. In view of the above, a preliminary decree of partition is passed defining the shares of the plaintiff and the defendants in respect of the suit property in the following ratio:

S.No.	Details	Undivided Share
1.	Sunil Malhotra-Defendant No.1	1/5 <sup>th</sup>
2.	LRs of Smt. Uma Dhir-Defendants No.2 (a) and 2 (b)	1/10 <sup>th</sup> each
3.	Poonam Luthra-Defendant No.3	1/5 <sup>th</sup>
4.	Anita Malhotra-Defendant No.4	1/15 <sup>th</sup>
5.	Prateek Malhotra-Defendant No.5	1/15 <sup>th</sup>
6.	Tanvi Sachdeva-Defendant No.6	1/15 <sup>th</sup>
7.	Vijay Malhotra-Plaintiff	1/20 <sup>th</sup>
8.	Vikram Malhotra-Defendant No.7	1/20 <sup>th</sup>



2025:DHC:6939



9.	Hemant Malhotra-Defendant No.8	1/20 <sup>th</sup>
10.	Rachna Verma-Defendant No.9	1/20 <sup>th</sup>

20. Counsel for the parties seek time to make submissions with regard to a final decree of partition to be passed in the suit.

21. Renotify on 27<sup>th</sup> November, 2025.

**AMIT BANSAL, J.**

**AUGUST 6, 2025**

*Vivek/-*