



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

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Reserved on: 10th February, 2026

Pronounced on: 16th April, 2026

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RFA 302/2025, CM APPL. 18795/2025, 18797/2025 & 18798/2025

JAGDISH (Deceased)

Through his LRs:

- (i) Arun (Son)
- (ii) Ajay (Son)

Both R/o:

B-152/15-16, First Floor,
Amrit Puri, Garhi, New Delhi-110065.

- (iii) Ranu Kumari (Daughter)
W/o Sh. Kamal Kumar
R/o House No. 13, Street No. 9A,
Anand Nagar-B, Patiala, Punjab- 147001.

- (iv) Shalu Kohli (Daughter)
W/o Kapil Kohli
R/o B-74, DDA Flats,
Double Storey, East of Kailash Garhi,
Srinivas Puri, New Delhi-110065

- (v) Madhu Dhiman (Daughter)
W/o Sh. Rupendra Kumar Dhiman
R/o F-142, 13th Floor, Gulshan Belina,
Greater Noida, West Greater Noida,
Distt. Gautam Budh Nagar,
U.P.- 201308

.....Appellant

Through: Mr. Asit Kumar Roy, Advocate Ms.
Rani Bhardwaj Advocate for
Appellant No. 3, 4 And 5.

Versus

Smt. KAMLA (Deceased)

Through her LRs:

- (i) Sh. Dev Anand (Husband)
- (ii) Amit Kumar (Son)
- (iii) Sumit Kumar (Son)



(iv) Vishali (Daughter)

All R/o B-152/15-16, Ground Floor,
Amrit Puri, Garhi, New Delhi-110065.Respondent
Through: Nirvikar verma advocate

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

C.M. Appl. 18795/2025: Application for condonation of delay:

1. The Appellant has moved an Application under Section 5 of the Limitation Act seeking condonation of this delay of 72 days in filing the present Appeal
2. For the reasons stated in the Application, the delay is condoned **and the Application for condonation of delay, is hereby allowed.**

RFA 302/2025:

3. Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) has been filed against the Judgment and Preliminary Decree dated 27.05.2024 whereby *the Plaintiff filed a Suit for Partition, Mesne Profits, Permanent and Mandatory Injunction.*
4. ***The brief facts as per Plaint are*** that the Defendant is the real brother of the Plaintiff, and he has been residing in the property bearing No. B-152/ 15-16. Amrit Puri, Garhi, East of Kailash, New Delhi, ad measuring 100 sq. yds. (*hereinafter referred to as 'Suit Property'*), since 1980. The father of the Plaintiff and Defendant, i.e. Late Sh. Digambar, during his lifetime, had bought the Suit Property by way of a Sale Deed dated 20.03.1961. The Plaintiff out of her own funds, along with her parents, had



jointly constructed the Suit Property consisting of ground floor, first floor, second floor and third floor along with terrace.

5. The father of the Plaintiff had expired on 17.06.2005, leaving behind the Plaintiff (daughter), Defendant (son) and his wife Late Smt. Sukh Devi only as his Class I legal heirs under Hindu succession Act, with 1/3rd share each. After the death of the Late Sh. Digambar, all the legal heirs continued to live in the Suit Property, the Plaintiff and her mother on the ground floor and the Defendant at the first floor, the remainder of the Suit property was let out on rent by Smt. Sukh Devi and the rent was collected by the Smt. Sukh Devi herself. Thereafter, on 07.02.2018, Smt. Sukh Devi expired intestate, thus, her 1/3rd share was divided amongst the Plaintiff and the Defendant, as being the only legal heirs of the deceased, as 1/6th of the share each, which calculates as 1/2nd share each of the entire Suit Property.

6. However, after the death of Smt. Sukh Devi, the Defendant along with his sons tried to oust the Plaintiff out of the Suit Property, and one such attempt was made by the Defendant when he forcibly took possession of one of the rooms at ground floor from the Plaintiff along with her belongings like almirah with valuable articles, a study table, bed, refrigerator, side tables, books etc., to which effect, written complaint to this effect was made to police *vide* Written Complaints dated 29.05.2018 and 24.07.2018.

7. Further, the Defendant along with his sons Ajay and Arun, has occupied two rooms along with kitchen at first floor and two rooms along with kitchen at third floor of the suit property, the remaining rooms on first, second and third floors are on rent and the terrace above third floor is in joint-possession of the Plaintiff and the Defendant.



8. The Defendant, after the death of his mother, had been collecting the rent out of the two rooms at first floor, four rooms at second floor and two rooms at third floor of the suit property at the rate of Rs. 4000/- per room per month approx., i.e. total rent out of the rented premises is about Rs. 28,000/- to 30,000/- per month. However, despite demands by the Plaintiff, the Defendant has denied sharing the rent/ profits derived out of the rented premises with the Plaintiff.

9. Thus, the Plaintiff is entitled for Rs. 1,05,000/- as her shares out of rent received by the defendant from February, 2018 to August, 2018 which has been misappropriated by the Defendant in collusion and connivance with his sons. The Plaintiff is also entitled to 50% of total monthly rental amount to be derived from the part/ portion of the suit property on rent from September, 2018 till partition of suit property.

10. The **Defendant in his Written Statement** took a defense that the entire construction of the Suit Property was done by their father, i.e. Sh. Digamber with the help of the Defendant, as they both were working together, and denied any contribution from the Plaintiff, from her funds.

11. Further, it was submitted that the Plaintiff used to live with their mother, but it was the Defendant, his wife, sons and daughters who had taken care of his mother, the Plaintiff resided with her mother only to show that property as her rented accommodation, to take benefit of house allowances from MTNL, with which her husband was working.

12. During the last days of Smt. Sukh Devi, the Plaintiff started living with her and grabbed the control of all the bank accounts of Smt. Sukh Devi and got included as the joint holder in the account and withdrew all the money. Thereafter, out of that withdrawn amount the Plaintiff has bought 08



different properties and verbally promised to the Defendant that she will give share to the Defendant, in those properties.

13. Thereafter, the Defendant moved an *Application under Order VIII Rule 3 of CPC* to bring on record the documents and photographs of the 08 properties bought by the Plaintiff with the withdrawn amount from the joint account of Plaintiff and her mother, out of which the Defendant was only able to procure electricity bills and photographs of 06 properties, and sought more time to put the photographs of the other two properties and the bank account of their mother.

14. Therefore, **the Learned District Judge after appreciating the evidence held** that the Plaintiff and the Defendant both are entitled to the 1/2nd share in the entire Suit Property.

15. Aggrieved by the Impugned Judgment dated 27.05.2024, the present Appeal has been preferred by the Defendant *on the grounds* that the Suit Property was purchased by the father of the Plaintiff and the lifetime investment of the Defendant was spent in the construction of the Suit Property alongside his father and none of monetary contribution was given by the Plaintiff is the construction of the Suit Property; and the learned Trial Court did not consider the 08 properties bought by the Plaintiff, i.e. Kamla Devi with the money in the bank account of their mother.

Submissions heard and record perused.

16. On merits, it is an admitted position that the suit property bearing No. B-152/15-16, Amrit Puri, Garhi, East of Kailash, New Delhi, admeasuring 100 sq. yds., was purchased under a registered Sale Deed dated 20.03.1961, in the name of Late Sh. Digambar.



17. Thereafter, Late Sh. Digambar died intestate on 17.06.2005 leaving behind his wife, i.e. Late Smt. Sukh Devi, Plaintiff and Defendant as his only Class I legal heirs. Therefore, all three legal heirs, simultaneously and equally, each being entitled to $1/3^{\text{rd}}$ share in the Suit Property.

18. Furthermore, upon the subsequent death of Late Smt. Sukh Devi on 07.02.2018, who died intestate, her $1/3^{\text{rd}}$ undivided share in the suit property devolved upon her children, i.e. the Plaintiff and the Defendant, as her Class I heirs under Section 15(1)(a) of the Hindu Succession Act, each taking equal half of her share, i.e. $1/6^{\text{th}}$ of the entire Suit Property, in addition to the $1/3^{\text{rd}}$ share already inherited from their father, and accordingly, **each party now holds a $1/2^{\text{nd}}$ undivided share in the entire suit property.**

19. Pertinently, although the title stood in the name of Late Sh. Digambar, the entire or substantial construction on the suit property was allegedly raised by the Defendant from his 'lifetime investments' and earnings, and that the Plaintiff did not contribute any funds. Even if such contribution is assumed for the sake of the argument, mere financial assistance in construction of a building standing on land owned by another, it does not *ipso facto* confer proprietary title or an enlarged share in the immovable property; moreover, the Defendant has never denied the ownership of Sh. Digambar.

20. The character of self-acquired property of a Hindu male, does not change merely because another family member resides therein or contributes to its construction or improvement, unless there is clear evidence of blending of the property with the joint family or an overt act demonstrating intention to throw it into the common hotchpotch.



21. In the present case, the bare assertion of the Defendant that he assisted his father in construction of the Suit Property which in law, cannot, defeat the statutory devolution of succession. At best, such alleged contribution, if proved with cogent evidence and properly pleaded by way of a counter-claim, might have permitted the Defendant to claim some equitable adjustment at the stage of final accounts, however, no such substantive relief was claimed.

22. The suit before the learned Trial Court was a Partition Suit confined to the suit property and *no counter-claim was filed by the Defendant seeking partition or declaration in respect of the alleged 08 properties said to be purchased from the account of their mother.* The electricity bills and photographs, even if taken on record, do not by themselves establish that the consideration for those properties came from the bank accounts of Late Smt. Sukh Devi.

23. Thus, **Appellant has not been able to point out any infirmity in the Impugned Judgment** dated 27.05.2024 where in the Learned District Judge has rightly appreciated the evidence and held that both the Plaintiff and the Defendant are entitled to 1/2nd share each in the Suit Property.

24. Hence, here is no merit in the Appeal, which is hereby dismissed. Pending Applications, if any, stands disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 16, 2026

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