



2026:DHC:8014



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

% ***Reserved on: 15th September, 2026***

Pronounced on: 18th September, 2026

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CNR No. DLHC010435362026

+ **RFA 1007/2026, CM APPL. 62450/2026 & 62452/2026**

BINA ARORA

R/o H. No.320, Naraina Vihar, New Delhi.

....Appellant

Through: Mr. K. S. Rekhi, Mr. Kush
Mudgal, Mr. Pawas
Kulshrestha, Mr. Jai Vardhan
and Mr. Siddharth Garg,
Advocates.

versus

1. **SUNIL KUMAR ARORA**

R/o EB-153, Maya Enclave,
Hari Nagar, New Delhi.

2. **NAMAN ARORA**

R/o H. No.320, Naraina Vihar, New Delhi.

3. **VANDANA MURGAI**

R/o F. No.2103, Tower-L,
Logi Blossom County,
Sector- 137 Naida, U. P.

....Respondents

Through: Mr. Uttam Datt, Sr. Advocate
with Mr. Kumar Bhaskar,
Mr. Naman Kumar and
Ms. Katyayani Shekhar,
Advocates for R-1.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T



NEENA BANSAL KRISHNA, J.

1. Regular First Appeal under Section 96 read with Order XLI read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*), has been filed on behalf of the Appellant against Judgment and Preliminary Decree dated 21.04.2026, *whereby the Suit bearing CS No. 45/2019 filed by the Plaintiff / Respondent No.1 / Sunil Kumar Arora for Partition of the Suit Property, has been allowed under Order XII Rule 6 CPC and a preliminary decree of partition has been passed, holding the Plaintiff, Defendants No.1 and 2 jointly, and Defendant No.4 entitled to one-third share each in the Suit Property.*

2. The ***facts in brief***, as stated in the Plaint, are that Plaintiff / Respondent No.1 Mr. Sunil Kumar Arora is the eldest son of Late Sh. R. L. Arora, who died intestate on 04.06.1988 in New Delhi and was survived by the Plaintiff and Defendants as his Legal Heirs.

3. Defendant No.1 Ms. Bina Arora and Defendant No.2 Mr. Naman Arora are wife and son of Late Mr. Devender Kumar Arora (son of Late Sh. R. L. Arora); Defendant No.3, Ms. Rama Arora is the wife of Late Sh. R. L. Arora and mother of the Plaintiff Mr. Sunil Kumar Arora; and Defendant No.4, Ms. Vandana Murgai is the daughter of Late Sh. R. L. Arora and sister of the Plaintiff.

4. It is stated that Late Sh. R. L. Arora had purchased Flat No. H-320, Naraina Vihar, New Delhi (*hereinafter referred to as 'the Suit Property'*) from his own funds in the year 1971; it was allotted to him on leasehold basis and later, a Conveyance Deed dated 27.07.1987 was executed between DDA and Late Sh. R. L. Arora, Plaintiff's father.



5. Plaintiff claimed that he along with Defendants was enjoying possession of the suit property, since its allotment. Defendant No.4 Ms. Vandana Murgai got married on 22.10.1993 and shifted to her matrimonial home. Since then, the Plaintiff claimed to be in constructive possession of the suit property, as a co-owner.

6. Late Mr. Devender Kumar Arora (Plaintiff's younger brother) got married to Defendant No.1 Ms. Bina Arora on 20.11.1983, but he shifted out of the suit property along with his wife in the year 1985-86 and started residing separately at C-91, 1st Floor, Naraina Vihar, Delhi. Plaintiff's father, Mr. R. L. Arora expired on 04.06.1988 and his younger brother Mr. Devender Kumar Arora along with his family returned to the suit property in the year 1996 and started living there, against the wishes of their mother Defendant No.3 Ms. Rama Arora.

7. Mr. Devender Kumar Arora expired on 03.03.2006 and after his demise, his wife (Defendant No.1) continued to occupy the suit property.

8. After the death of Mr. R. L. Arora, the suit property devolved equally amongst his four Legal Heirs, i.e. his wife, two sons and one daughter, who all became entitled to 1/4th share in the Suit Property.

9. Plaintiff and Defendant Nos.3 and 4 permitted Defendant Nos.1 and 2 to stay in the suit property, after the demise of Late Sh. Devender Kumar Arora. It was claimed that Defendant Nos.1 and 2 are in joint possession of the suit property, while the Plaintiff, being the co-owner, is in constructive joint possession.

10. It was asserted that Defendant No.3 is a senior citizen suffering from Alzheimer and has been illegally confined by Defendant No.1, in the suit property. Plaintiff frequently visits the suit property to take care of his ailing



mother, but is restrained by Defendant No.1 from entering the suit property on the alleged ground of harassment. Defendant No.1 is not even permitting the Plaintiff, who is a Doctor, to provide medical care to Defendant No.3. After the demise of Sh. R. L. Arora, Defendant No.3 has been looked after by the Plaintiff and has been completely ignored by Defendant No.1.

11. On 14.08.2018, Defendant No.1 sent a Legal Notice to the Plaintiff, falsely accusing and alleging harassment by the Plaintiff. The Plaintiff sent a Reply dated 29.08.2018 denying all the allegations made therein and claimed his share in the suit property. However, *vide* Letter dated 10.09.2018, Defendant No.1 illegally denied and refused to give the Plaintiff his share in the suit property.

12. Later, Defendant No.1 filed a false Complaint against the Plaintiff in Delhi Commission for Women, where he appeared on 12.11.2018 and explained that the allegations made against him were false and retaliatory, on his asking for the partition in the suit property. He also informed about Defendant No.3 being illegally confined by Defendant No.1 and being denied medical aid. He sought permission from the Commission to take his mother with him, to ensure her well-being.

13. Consequently, Defendant No.3 has been with the Plaintiff, since 14.11.2018 and was alleged to have been cleverly forced out of her own house by Defendant No.1. **The Plaintiff thus, filed the present Suit claiming Partition of the suit property.**

14. **Defendant Nos.1 and 2, in their joint Written Statement,** asserted that the Suit was barred under Article 113 of the Limitation Act and that no proper Court Fee had been paid. The Suit was alleged to have been filed mala fide. It was explained that on 12.05.2017, Plaintiff took all the



Defendants to the office of the Sub-Registrar for getting a Relinquishment Deed of the suit property registered, whereby Defendant Nos.3 and 4 were releasing their rights in the suit property in favour of the Plaintiff and Defendant No.1. But, it could not be registered as Defendant No.3 was unable to answer even the formal questions asked by the Sub-Registrar, because of her physical health.

15. The Plaintiff had been withdrawing the pension of the father from the Bank and has been using it for his personal benefit, despite the fact that Defendant No.3 was residing and was being properly taken care of, by Defendant No.1 from her own expenses.

16. Defendant No.1 was in service and after her retirement in October, 2017, she asked the Plaintiff to pay some expenses for the maintenance of Defendant No.3, but he flatly refused and she reluctantly took the help of Mr. S. S. Kaushal, Assistant Vice President of Residents Welfare Association, who accompanied her to the Bank and after verifying the fact, Bank stopped releasing the pension in favour of the Plaintiff and started giving it to Defendant No.3, from May, 2018.

17. *On merits*, Defendants admitted that Defendant No.4 was married on 22.10.1993 and shifted to her matrimonial home. It was however, claimed that the entire expenditure in her marriage was borne by Defendant Nos.1 and 3, with no contribution or financial support from the Plaintiff. He attended the wedding only as a guest.

18. It was denied that Plaintiff was never in possession of the suit property since 1993 and the ownership of the suit property was being enjoyed by Defendant Nos.1 and 2, to the total exclusion of the Plaintiff.



19. Defendants further asserted that the suit property was the *matrimonial home of Defendant No.1*. It was admitted that Defendant No.1 had initially shifted out of the suit property, because of shortage of accommodation, but after the marriage of Defendant No.4, she along with her husband, was requested by Defendant No.3 to stay with her in the suit property, as she became alone and there was none to take care of her. Thus, Defendant No.1 and her husband started living in the suit property, as per the wishes and desire of Defendant No.3.

20. It was further explained that Plaintiff got married on 18.04.1992, but he and his wife created nuisance and tension by their words and deeds, on account of which Defendant No.3 was compelled to tell them to leave the suit property and reside elsewhere. Since July 1993, the Plaintiff has been out of the suit property and has never returned.

21. It was claimed that since Plaintiff was ousted from the suit property since 1993, he has no right in the suit property and the *Suit for Partition is barred by limitation and is without cause of action*. Defendant No.1 has enjoyed the exclusive ownership of the suit property since July, 1993. It was claimed that Defendant Nos.1 and 2 are in the joint possession of the suit property and the entitlement of the Plaintiff was totally denied.

22. The medical health and the age of Defendant No.3 was admitted, but it was denied that she had been confined in the suit property by Defendant No.1. It was claimed that she has been taking proper care of Defendant No.3 and has even employed a lady for taking care of her round the clock, at her own expenses. It was denied that Plaintiff intends to take care of Defendant No.3 or that he visited the suit property frequently for any purpose, but was illegally restrained by the Defendants.



23. It was alleged that Plaintiff's misbehaviour, harassment and use of defamatory words, lowering the reputation of Defendant No.1 in public, has crossed all limits of human endurance and Defendant No.1 was compelled to send Legal Notice to the Plaintiff through her Advocate. The contents of the Notice are admitted to be correct and true. However, it was claimed that the contents of the Reply sent by the Plaintiff, were totally incorrect.

24. Though, it was admitted that a Complaint was filed in DCW, but it was vehemently denied that the Plaintiff ever took care of his mother in the last 25 years. It is claimed that the claim that Defendant No.3 was residing with the plaintiff since 14.11.2018, is falsified from the Memo of Parties, where the address of Defendant No.3 is given as that of the suit property and even the service upon her was effected, at the same address. It was thus, asserted that the Suit for Partition was not maintainable.

25. *Thereafter, Defendant Nos.1 and 2 filed an Application under Order VII Rule 11 CPC seeking rejection of the Plaint on the ground that the Suit for Partition, was barred by limitation.*

26. Learned District Judge, after considering the averments made in the Plaint, observed that in Paragraph 19 of the Plaint, Plaintiff had stated that Defendant No.1 had continued to reside in the suit property and Plaintiff was assured that shares in the suit property would be eventually distributed. It was further observed that the Plaintiff had asked for a share in the Suit property in his Reply dated 29.08.2018, which had been denied by Defendant No.1 vide Letter dated 10.09.2018. *Therefore, it could not be said that the Suit was barred by limitation and the Application under Order VII Rule 11 CPC, was dismissed.*



27. Thereafter, an Application under Order XII Rule 6 CPC was filed by the Plaintiff for a Preliminary Decree of Partition, on the basis of the admissions made in the Written Statement.

28. **Learned District Judge**, on consideration of the rival assertions made in the pleadings, observed that the property in question was admittedly owned by Late Sh. R. L. Arora, who died intestate on 04.06.1988 and was survived by Plaintiff, the eldest son, Defendant Nos.1 and 2 (wife and son, respectively, of his deceased son Mr. Devender Kumar Arora), Defendant No.3, his wife and Defendant No.4, his daughter; a fact, which is not in dispute.

29. It was observed that the Suit for Partition was well within the period of limitation, as had been observed in Judgment dated 17.03.2025, while dismissing the Application under Order VII Rule 11 CPC.

30. The Plea of Ouster, as claimed by the Defendant Nos.1 and 2, was not sufficient to demonstrate a clear intent to exclude the co-owner. It must be clearly established that possession of the party was hostile to the other co-owners and that such possession was being held, with the knowledge of other co-owners to their exclusion.

31. Reliance was made to Nagabhushanammal (D) By LRs. vs. C. Chandikeswaralingam, Civil Appeal Nos.1858-1859/2016 decided on 26.02.2016, wherein it was held that unless it is established that the possession of the co-owner is in denial to the title of the other co-owners and the possession is in hostility to co-owners by exclusion of them, the one co-owner cannot claim exclusive ownership.

32. Merely because the Plaintiff had been driven out of the suit property, would not amount to ouster. There were no facts pleaded in the Written



Statement to show that the possession of Defendant No.1 was hostile and to the exclusion of the Plaintiff. Even if Plaintiff had been driven out of the suit property by Defendant No.3, the mother, then too, it would not make Defendant Nos.1 and 2 the exclusive owners of the suit property, to the exclusion of the Plaintiff. Defendant No.1 had entered the suit property as the wife of Late Sh. D.K. Arora, who was a co-sharer at the relevant time, and there were no facts pleaded to show that the nature of her possession subsequently changed, so as to make her the exclusive owner, to the exclusion of the other co-sharers.

33. Defendant Nos.1 and 2 had admitted in their Written Statement that during the lifetime of Defendant No.3, mother, Plaintiff had been visiting the suit property, though it was alleged that he used to create nuisance and trouble for Defendant No.3. *It was concluded that the plea of ouster was not established from the averments made in the Written Statement.*

34. Defendant Nos.1 and 2 had asserted that during pendency of the present Suit, Defendant No.3 expired and Defendant No.4 relinquished her share in favour of the Plaintiff. These facts have altered the shares of the parties and no amendment to this effect has been made by the Plaintiff.

35. It was observed that the demise of Defendant No.3, mother had been taken into account and it was observed that the Class-I representatives of deceased Defendant No.3, were already on record. The Relinquishment Deed executed by Defendant No.4 in favour of Plaintiff has also been placed on record by the Plaintiff. Thus, change of shares in the suit property can be considered by the Court, in view of the subsequent events, the plaint need not be rejected, merely because the Plaintiff failed to amend the Plaint.



36. Learned District Judge, **vide impugned Judgment dated 21.04.2026, held that Plaintiff, Defendant Nos.1 and 2 jointly and Defendant No.4 are entitled to one-third share each in the suit property and passed the preliminary decree of Partition, accordingly.**

37. *Aggrieved by this Judgment, the Appellant / Defendant No.1 has filed the present Appeal.*

38. The **grounds of challenge** are that the Appellant / Defendant No.1 / Ms. Bina Arora had specifically pleaded in her Written Statement that the *Suit was barred under Article 113 of the Limitation Act*. Moreover, the Plaintiff / Respondent No.1 / Mr. Sunil Kumar Arora was ousted from possession of the suit property, since 1993 and had been excluded from the family's movable as well as immovable properties. Plaintiff had no actual, joint or constructive possession of the suit property and it is the Appellant and other family members, who had continued in the possession and enjoyment of the Suit Property.

39. Plaintiff had completely separated himself from the suit property in July, 1993 and never returned to reside in the Suit Property and thus, he also, for all practical purposes, did not assert or exercise his right to possession, control or enjoyment of the suit property for several years. It is only Defendant No.1, who has been in settled, continuous and exclusive possession of the suit property.

40. Several triable issues have been raised, which require evidence and the preliminary decree of partition, could not have been passed under Order XII Rule 6 CPC.

41. It is further explained that Order dated 17.03.2025, whereby learned District Judge had dismissed the Application under Order VII Rule 11 CPC,



had been challenged by the Appellant vide **C.R.P. No.195/2025**, which was dismissed by this Court vide Order dated 10.07.2025, by observing that *limitation is a mixed question of law and fact requiring trial and evidence*. Therefore, the Plaint could not have been rejected, at the threshold under Order VII Rule 11 CPC.

42. This Court while dismissing C.R.P. No.195/2025, titled Bina Arora vs. Sunil Kumar Arora & Ors., had nowhere finally adjudicated the issue of limitation on merits nor did it extinguish the rights of the Appellant to raise the objections of limitation, ouster, exclusion and hostile possession, during the trial.

43. Once this Court had observed that limitation was a mixed question of fact and law, it could not have been adjudicated under Order XII Rule 6 CPC, without giving an opportunity to the Appellant to lead evidence.

44. Reliance is placed on Balasaria Construction Private Limited vs. Hanuman Seva Trust and Others, Civil Appeal No.4539/2003 decided by Hon'ble Supreme Court on 08.11.2005, wherein it was held that Suit cannot be dismissed as barred by limitation, without proper pleadings, framing of issue of limitation and taking of evidence.

45. Reliance is also placed on Brigadier (Retd.) Shyam Prasada vs. Smt. Dayavati & Others, CS(OS)1113/2008, wherein this Court, in the context of Suit for Partition and Plea of Limitation, noted that limitation was a mixed question of fact and law and could not be adjudicated at the pre-trial stage, without trial.

46. Furthermore, it has not been appreciated that in the pleadings of the Appellant, when read as a whole, no clear, unequivocal or unconditional



admissions are made, which would entitle the Plaintiff to a decree of partition. *There is a specific plea of exclusion of the Plaintiff, since 1993.*

47. Reliance is also placed on Ramesh Kumar vs. Kishori Lal and Others, CS(OS) 2723/2014, wherein this Court referred to the Judgement in the case of Amrit Kaur vs. Sarabjeet Singh & Others, 153 (2008) DLT 392, to observe that '*exclusion*' is a *fact-specific circumstance*, to be seen in the light of the material on record in every case. However, what should be seen by the Court is the intention of the parties so seeking to exclude the Plaintiff from the enjoyment of his or her share.

48. It is therefore, submitted that the impugned Judgment dated 21.04.2026, whereby a Preliminary Decree of partition was passed under Order XII Rule 6 CPC, be set aside.

Submission heard and record perused.

49. In order to maintain a Decree of Partition, the first essential fact is that there is a property in which the Plaintiff and the Defendants, have a share. It is not denied that the suit property had been purchased by late Sh. R. L. Arora from his own funds and the Conveyance Deed was executed in his favour by the DDA, on 27.07.1987.

50. It is further not under challenge that late Sh. R. L. Arora had two sons, namely, the Plaintiff, the eldest son and late Sh. Devender Kumar Arora (survived by his wife and son, who are Defendant Nos. 1 and 2 respectively), his wife, Defendant No. 3, and one married daughter, Defendant No. 4. There is no denial that Sh. R. L. Arora died intestate and, therefore, all the four legal heirs became entitled to equal shares in the suit property.



51. It is further an admitted fact that Defendant No. 3, the Plaintiff's mother died during the pendency of the Suit, whereas late Sh. Devender Kumar Arora had already expired on 03.03.2006, prior to the institution of the Suit. The devolution of the share of Defendant No. 3 upon her death was thereafter taken into consideration by the learned Trial Court, while determining the shares of the parties.

52. The Defendant, while not disputing the ownership, *has taken a plea that the Plaintiff had left the Property in 1993 and since then he had been ousted from the possession of the Suit Property and has no legal right therein.* The **principal basis of the plea of ouster** is that the Plaintiff has not been physically residing in the suit property since 1993 and had also failed to take care of his mother, Defendant No. 3, during her lifetime, and has, therefore, allegedly ceased to have any right in the Suit property.

53. At no point of time did Defendant No. 1 specifically establish that her possession was hostile and to the exclusion of the Plaintiff, nor did she establish that she had acquired exclusive ownership of the suit property. Merely because she has been enjoying the physical possession of the suit property and has been residing therein would not, by itself, make her the exclusive owner of the suit property.

54. The learned District Judge has rightly observed that Defendant No. 1 could have claimed exclusive ownership, only if she could establish her possession to be open, continuous and hostile to that of the Plaintiff, to his knowledge and to his exclusion, which was conspicuously neither pleaded nor established from the material on record.

55. It is, therefore, evident that merely because the Plaintiff was not in physical possession of the suit property, it would not deprive him of his



ownership. He was the co-owner and there is no specific averment or material sufficient to establish that Defendant No. 1 was enjoying the suit property as an owner, in denial of the title of the Plaintiff, or that her possession was open and hostile to that of the Plaintiff.

56. Merely because she had been residing in the suit property after her marriage to late Sh. Devender Kumar Arora and subsequently continued to occupy it, the physical possession would not ipso facto, get converted into ownership. The Plaintiff may not have been living in the suit property, but being a co-owner, *he was in constructive legal possession along with the other co-sharers.*

57. Furthermore, the learned District Judge referred to the admissions of Defendant Nos. 1 and 2 in their Written Statements that during the lifetime of Defendant No. 3, the Plaintiff had been visiting the suit property, though it was asserted that he used to create nuisance and trouble Defendant No. 3, their mother. However, merely because one co-owner decided to remain out of possession of the suit property, it would not deprive him of his ownership rights. The plea of ouster, was not established from the pleaded facts.

58. *It is, thus, concluded that the Plaintiff is a co-owner of the Suit Property along with Defendant Nos. 1 and 2 together and Defendant No. 4.*

59. **The second ground of challenge is that the suit for Partition is barred by limitation.**

60. However, Article 110 is not applicable to the present case, for the simple reason that there was no legal ouster of the Plaintiff prior to 2018 and there was no established denial of his co-ownership in the suit property. In the absence of any ouster from ownership, either alleged or established by the Appellant, Article 110 would have no application.



61. The Plaintiff, in fact, had claimed partition in the suit property vide his Reply dated 29.08.2018 to the Legal Notice dated 14.08.2018 issued by Defendant No. 1, which was denied by Defendant No. 1 vide Letter dated 10.09.2018. The cause of action, thus, accrued only in the year 2018 and the present Suit was instituted on 10.01.2019, and is, therefore, well within the period of limitation.

62. It has been contended by the Appellant that this Court, while dismissing **C.R.P. No.195/2025**, by which dismissal of Application under OVII Rule 11 CPC, on the ground of Limitation, was dismissed, but it was *noted that the question of limitation was a mixed question of fact and law*, despite which the Preliminary Partition decree has been passed, without giving an opportunity to the Appellant, to adduce evidence in regard to the issue of the limitation.

63. This contention is of little assistance to the Appellant, inasmuch as the observations were made, while considering the challenge to the rejection of the Application under Order VII Rule 11 CPC. In N. Asha Devi v. R. Aravind Kumar & Anr, 2026 INSC 908, the Supreme Court has reiterated that although limitation is ordinarily a mixed question of fact and law, *where the bar of limitation is glaringly apparent from the averments in the Plaint itself, the Court can reject the Plaint under Order VII Rule 11 CPC*.

64. In the present case, from the pleadings and the stand taken by Defendant No. 1, it has been established that there was no ouster of the Plaintiff from the legal ownership and that the Plaintiff had expressly claimed partition in 2018. The Appellant had denied the Plaintiff's share in 2018, and, thus, the cause of action arose in 2018 and the Suit has been filed within the period of limitation.

**Conclusion:**

65. The Preliminary Decree of Partition has, therefore, been rightly passed by declaring the Plaintiff, Defendant Nos. 1 and 2 together, and Defendant No. 4, entitled to one-third share each in the suit property.

66. However, in the impugned Order, it has been observed that Defendant No. 3 had died and Defendant No. 4 had executed a *Relinquishment Deed* in favour of the Plaintiff. The record shows that Defendant No. 4, Ms. Vandana Murgai, had admitted the genuineness of the registered Relinquishment Deed Ex.D-4/B, *vide* her statement dated 22.08.2025, and the said Deed is duly on record.

67. Therefore, if it is found that Defendant No. 4 has genuinely relinquished her share *vide* registered Relinquishment Deed Ex.D-4/B, a modified preliminary decree may be drawn, giving the 1/3rd share of Defendant No. 4 to the Plaintiff, thereby making the share of the Plaintiff 2/3rd, while that of Defendant Nos. 1 and 2 together 1/3rd.

68. There is no merit in the present Appeal, which is hereby dismissed, along with the pending Applications.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 18, 2026/R