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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 28th JANUARY, 2026IN THE MATTER OF:+ **I.A. No. 9218/2025****IN****CS(OS) 651/2019****HARBIR SINGH YADAV****.....Plaintiff**

Through: Mr. Arun Baali and Ms. Arisha Ahmad, Advocates

versus

SUMAN & ORS.**.....Defendants**Through: Mr. S.S.Parasher, Ms. Shruti Sharma, Advocate for Defendant No.1 to 5
Mr. Anish Dhingra, Mr. Arihant Nowlkha, Mr. Mohit Kumar, Advs for D-7**CORAM:****HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****JUDGMENT (ORAL)****I.A. No. 9218/2025**

1. This Application under Order XVIII Rule 1 of the CPC has been filed by the Plaintiff for a direction to the Defendants to lead evidence before the Plaintiff.
2. The instant Suit is one for partition of a property bearing Plot No. 143, Pocket-B, Sector-26, Rohini, Delhi, admeasuring 335 square metres (*hereinafter referred to as 'the Suit Property'*).
3. The case set up by the Plaintiff is that the Suit Property was allotted by the Delhi Development Authority/Defendant No.7 herein (*hereinafter*



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referred to as '*the DDA* ') to Late Shri Ram Mehar Yadav, who was father of the Plaintiff. It is stated that the Suit Property was mutated in the name of the father of the Plaintiff by the DDA. Thereafter, Shri Ram Mehar Yadav died intestate on 01.06.2010, leaving behind three legal heirs, namely the Plaintiff herein, another son - Late Satish Yadav, and daughter - Urmila Yadav (Defendant No.6 herein). It is stated that since Satish Yadav also passed away, his legal heirs, who are Defendants No.1 to 5 herein, have been impleaded in the array of parties.

4. It is stated that on the death of Late Shri Ram Mehar Yadav, his legal heirs, namely, the Plaintiff herein, Late Satish Yadav and Urmila Yadav/Defendant No. 6, were entitled to an undivided $1/3^{\text{rd}}$ share in the Suit Property. It is stated that on the death of Late Satish Yadav his $1/3^{\text{rd}}$ undivided share devolved upon his widow and children, who are Defendants No. 1 to 5 herein. It is stated that during his lifetime, Late Satish Yadav allegedly attempted to fraudulently secure exclusive rights over the Suit Property by procuring an illegal mutation in his favour in collusion with certain officials of the DDA on the basis of fabricated documents. However, upon objections raised by the Plaintiff, the attempt at illegal mutation was cancelled, the Suit Property was reverted back and presently, continues to stand mutated in the name of Late Shri Ram Mehar Yadav in DDA records.

5. It is stated that the Suit Property has never been partitioned by metes and bounds and has at all times remained joint and undivided among the co-owners.

6. In the third week of February 2018, the Plaintiff came to know through a property dealer that Defendants No. 1 to 5 were negotiating to sell and transfer the entire Suit Property to third parties without the Plaintiff's



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consent, by falsely claiming exclusive ownership over the Suit Property. Resultantly, the Plaintiff objected to this act and proceeded to lodge complaints in February 2018 with the DDA and concerned Sub-Registrar offices, requesting that no sale, transfer, or mutation documents be entertained. However, the authorities expressed their inability to intervene in the absence of a court order. On 25.02.2018, the Plaintiff again requested Defendant No. 1 not to deal with the Suit Property, but they refused and allegedly threatened to create third-party rights over the Suit Property. Thereafter, the Plaintiff filed a Suit, being Suit No. 274/2018 before the Court of the Senior Civil Judge, Rohini, Delhi, seeking permanent and mandatory injunction, wherein DDA admitted the ownership of Late Shri Ram Mehar Yadav, and the Plaintiff also sought leave under Order II Rule 2 CPC to file a separate partition suit. Consequently, the present Suit was filed seeking partition of the Suit Property by metes and bounds, declaration of respective shares, and consequential relief of permanent injunction restraining the Defendants from creating third-party interests in the joint property.

7. Summons in the Suit were issued on 19.02.2020. Written Statements have been filed.

8. In the Written Statement filed by Defendant Nos. 1 to 5, it is stated that the Suit Property, though stood in the name of Late Shri Ram Mehar Yadav, but was never intended to be jointly owned by all legal heirs of Late Shri Ram Mehar Yadav after his death. It is the case of the Defendants No.1-5 that the Suit Property was originally allotted *vide* allotment letter dated 04.07.2003 in the names of Late Shri Ram Mehar Yadav along with other co-allottees, and thereafter, on the basis of relinquishment deeds, the



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mutation was allowed exclusively in favour of Late Shri Ram Mehar Yadav. It is stated that during his lifetime, Late Shri Ram Mehar Yadav allegedly distributed his properties between his two sons, namely the Plaintiff and Late Shri Satish Yadav, and under a mutual family understanding, the Suit Property was agreed to be given exclusively to Late Shri Satish Yadav. It is further stated that the Plaintiff agreed to relinquish his share in the Suit Property in lieu of monetary consideration, and accordingly, Late Shri Ram Mehar Yadav executed conventional sale documents, namely an Agreement to Sell and receipt dated 26.08.2003, in favour of Late Shri Satish Yadav, which were witnessed by the Plaintiff himself. It is stated that pursuant to the said arrangement, the Plaintiff allegedly received a total amount of Rs. 2,02,491/-, comprising Rs. 69,156/- on 26.08.2003, Rs. 1,00,000/- on 14.01.2004, and Rs. 33,335/- on 21.11.2004, against duly executed cash receipts.

9. Thereafter, to avoid future disputes, Late Shri Ram Mehar Yadav executed a registered Will dated 08.01.2010 in favour of Late Shri Satish Yadav, conferring upon him exclusive ownership rights in respect of the Suit Property. It is stated that on the basis of the said Will and an affidavit of the Plaintiff, the Suit Property was mutated in the name of Late Shri Satish Yadav *vide* DDA mutation letter dated 24.09.2010, and all dues were paid to DDA, as reflected from a certificate dated 11.06.2011 issued by Punjab National Bank. The Defendants assert that Late Shri Satish Yadav thus became the absolute owner of the Suit Property during his lifetime and, after his death, Defendants No. 1 to 5, being his legal heirs, inherited the Suit Property exclusively.

10. In their Written Statement, the Defendants No.1-5 also deny all



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allegations of fraud, collusion, or manipulation and contend that the Plaintiff has raised false claims only after the death of his father and brother, with the sole intention of harassing the widow and children of Late Shri Satish Yadav.

11. The Plaintiff has filed the present Application seeking a direction from this Court that the Defendants No.1 to 5 be examined first. It is the case of the Plaintiff that the entire defense of Defendants No. 1 to 5 rests solely on a photocopy of an alleged Will dated 08.01.2010, purportedly executed by Late Shri Ram Mehar Yadav. It is stated that despite repeated opportunities, the Defendants have not filed the original copy of the said Will till date. It is further stated that the intention of Defendants No. 1 to 5 is only to delay and frustrate the lawful claim of the Plaintiff, whereas the admitted factual position is that Late Shri Ram Mehar Yadav died intestate, and no will was ever validly executed by him during his lifetime. The Plaintiff asserts that since Defendants No. 1 to 5 have themselves propounded the alleged Will dated 08.01.2010 and are claiming exclusive ownership of the Suit Property on its basis, the entire burden of proof squarely lies upon Defendants No.1-5 to prove the existence, execution, and validity of the said Will in accordance with law. It is stated that the Plaintiff cannot be compelled to disprove a document which the Defendants themselves have set up but have failed to prove by primary evidence.

12. It is further stated that in view of the provisions of Order XVIII Rule 1 CPC, since Defendants No. 1 to 5 have introduced the alleged Will as a new and foundational fact, they are legally bound to lead evidence first for proving the alleged Will dated 08.01.2010, before calling upon the Plaintiff to adduce his evidence.



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13. Learned Counsel appearing for Defendant Nos. 1 to 5 opposes the present Application and submits that the defence raised by the Defendants is not confined only to the Will dated 08.01.2010. He states that the Defendants No.1 to 5 have also specifically pleaded that during the lifetime of Late Shri Ram Mehar Yadav, the properties were divided between his sons and the Suit Property was agreed to be given exclusively to Late Shri Satish Yadav. It is further submitted that the Plaintiff had agreed to relinquish his share in the Suit Property for a consideration and had received amounts under receipts dated 26.08.2003, 14.01.2004 and 21.11.2004, and therefore, the Plaintiff must first enter the witness box to answer these foundational pleas.

14. Heard the learned Counsels for the parties and perused the material on record.

15. This Court notes that though the Defendants have relied upon the Will dated 08.01.2010, the defence taken by Defendant Nos. 1 to 5 is not based solely on the said Will. The Written Statement clearly sets up a case of prior family arrangement, division of properties during the lifetime of Late Shri Ram Mehar Yadav, relinquishment of rights by the Plaintiff, and receipt of consideration by the Plaintiff under specific receipts. These assertions go to the root of the matter and directly impinge upon the Plaintiff's claim of joint ownership.

16. At this stage, this Court is of the considered opinion that the Plaintiff is required to first subject himself to examination with respect to the factual assertions made against him, particularly regarding the alleged family arrangement, execution of receipts, and receipt of monetary consideration. These are matters within the special knowledge of the Plaintiff and cannot



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be tested unless the Plaintiff himself steps into the witness box. The Plaintiff cannot avoid leading evidence merely on the ground that the Defendants have also relied upon a Will.

17. It is well settled that Order XVIII Rule 1 CPC does not create an absolute or inflexible rule that the party upon whom the burden of proof lies in respect of a particular document must necessarily lead evidence first. The Court must examine the pleadings as a whole and determine which party must begin, keeping in view the nature of the defence and the issues framed. In the present case, several issues arising from the Written Statement require the Plaintiff to first lead evidence.

18. This Court also finds merit in the contention of the Defendants that the Plaintiff cannot selectively seek a direction for the Defendants to begin evidence while avoiding cross-examination on material facts pleaded against him. The sequence of evidence cannot be altered merely to suit the convenience of a party, particularly when such alteration would prejudice the fair adjudication of the dispute.

19. In view of the above, this Court is of the opinion that the Plaintiff must first lead his evidence. Only thereafter would the occasion arise for Defendants No. 1 to 5 to adduce their evidence, including evidence, if any, in support of the Will dated 08.01.2010.

20. Accordingly, the present Application is dismissed.

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21. List before the Joint Registrar on 24.03.2026.

SUBRAMONIUM PRASAD, J

JANUARY 28, 2026/Rahul