



2025:DHC:9807



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

Date of decision: 30<sup>th</sup> OCTOBER, 2025

IN THE MATTER OF:

+ **CS(OS) 567/2024 & I.A. 13602/2025, I.A. 17685/2025**

MR VISHAL GUPTA .....Plaintiff

Through: Mr. Abinash Kumar Mishra and  
Mr. Gaurav Kumar Pandey,  
Advocates

versus

SMT RADHA AGGARWAL & ORS. ....Defendants

Through: Ms. Sunila Choudhary, Advocate  
for D-3 & 5

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT (ORAL)**

1. By this Order, this Court seeks to dispose of IA No.3938/2025, IA No.9378/2025, IA No.13602/2025 and IA No.17685/2025.
2. IA No.9378/2025 and IA No.17685/2025 are applications under Order XXXIX Rule 2A CPC for initiating action against the Defendants No. 1 & 2 for violating the Orders dated 23.07.2024 and 28.04.2025, by which this Court had directed the parties to maintain the *status quo* with respect to the Property admeasuring 3 Bigha 18 Biswa [Khasra Nos. 19/22 (1-08) and 19/23/2(2-18)] in the Revenue Estate of Kamruddin Nagar, New Delhi-110041 [“**Suit Property**”].
3. IA No.13602/2025 has been filed by the Plaintiff seeking permission to put temporary fencing over the green portion of the Suit



Property as shown in the Site Plan filed as Document No. P-4 by the Plaintiff.

4. IA No. 3938/2025 has been filed by the Plaintiff seeking direction for sealing of the entire Suit Property shown in Site Plan filed as Document No. P-4 by the Plaintiff (Document No.2 filed by the Defendant).

5. Shorn on unnecessary details, the facts of the case reveal that Defendant No.1 is the wife of Defendant No.2. Defendant No.6 is the mother of the Plaintiff and Defendants No.2 to 5. The fight is, therefore, essentially one between the members of the family. However, unfortunate it may be, the present Suit is one for declaration, injunction, partition and rendition of accounts of the suit properties belonging to the family.

6. All these applications are related primarily to Prayer No.4 of the Plaintiff which reads as under:-

*“4. restraining Defendant No. 2, by way of mandatory and perpetual injunction, from interfering with the peaceful enjoyment of possession and ownership rights of the Plaintiff with respect to the property [mentioned as Western Side portion of area 01 Bigha 19 Biswa (out of total area of 03 Bigha 18 Biswa) out of Khsra No. 19/22, (1-08) & 19/23/2 (2-18) situated in Revenue estate of Village Kamruddin Nagar, Delhi State, Delhi] mentioned in Will dated 16.12.2022 (which was registered on 19.12.2022 vide Registration No. 7046 in Book No. 3 Vol. No. 894 at Page No. 91 to 94 in the office of Sub-Registrar-IIA, Punjabi Bagh, New Delhi) as shown in the Green Colour area of Document-P-4.”*

7. Prayer No.4 is described in Document No. 4 filed by the Plaintiff and Document No.2 filed by the Defendant.

8. The Document No.4 filed by the Plaintiff is reproduced as under:-



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## Document-P-4



### AREA STATEMENT :-

S.NO	SQMT	SQY
<b>TOTAL AREA</b>	<b>3307.133</b>	<b>3955.298</b>
PLOT 01	1579.239	1866.754
PLOT 02	1727.894	2066.544



9. The portion which is shaded and is dark in colour is claimed by the Plaintiff by virtue of a Will dated 16.12.2022.

10. In the Plaintiff, it is stated that the shaded portion has been built for



the Plaintiff which is Western portion and the Eastern portion has been given to Defendant No.2.

11. This Court on 23.07.2024 has passed interim directions. Paragraph 11 to 13 of the said Order reads as under:-

*“11. The plaintiff asserts that the properties mentioned in the suit are the self acquired properties of his father, late Sh. Ram Partap Aggarwal. The plaintiff further asserts that the said properties were bequeathed in favour of various parties to the suit by Will(s) executed by late Sh. Ram Partap Aggarwal, except the Will dated 16.12.2022, registered on 19.12.2022, as mentioned in the prayer clause no.3 of the Plaintiff and is disputed by the plaintiff.*

*12. Having considered the contents of the Plaintiff and the documents filed therewith, and also having heard the learned counsel for the plaintiff, I am of the opinion that the plaintiff has been able to make out a good *prima facie* case in his favour. The balance of convenience is also in favour of the plaintiff and against the defendants. The plaintiff is likely to suffer a grave irreparable injury in case an *ex parte* order of interim injunction is not granted.*

*13. Accordingly, the parties to the Suit, are directed to maintain the *status quo* with respect to the suit properties, till further order. ”*

12. The Plaintiff claims that Defendant No. 1 & 2 have violated the injunction order by encroaching upon the portions of the Plaintiff and are now making constructions on the said portion of the Suit Property. *Per contra*, Defendant No.1 & 2 claim that there have been no encroachments on the portion of the Suit Property belonging to the Plaintiff.

13. Police complaints have been also filed and there is a lot of acrimony



between the parties. In fact, this Court on 09.04.2025 appointed a Local Commissioner to visit the Suit Property in order to verify the status of constructions to ascertain as to whether the *status quo* orders have been violated or not.

14. The Order dated 09.04.2025 was passed in IA No.9378/2025. Paragraphs No. 4 to 7 of the said Order read as under:-

*“4. Mr. Mishra, learned counsel for the Plaintiff submits that present suit was filed inter alia for injunction, declaration, partition and rendition of accounts of the subject properties. With respect to the property situated on western side of area 1 Bigha 19 Biswa out of Khasra No. 19/22, in revenue estate of Village Kamruddin Nagar, Delhi, this Court had by order dated 23.07.2024 directed the parties to maintain status quo till further order. It is urged that prior to the order of this Court, learned Sub-Divisional Magistrate, Punjabi Bagh, had issued a restraint order against unauthorized construction on the subject property but despite the said order and order of this Court, Defendants No. 1 and 2 are continuously constructing not only on their side of the property but also on part of the property that belongs to the Plaintiff and this amounts to wilful disobedience and violation of the orders of this Court.*

*5. Learned counsel for Defendants No. 1, 2 and 6, per contra, submits that by Plaintiff's own showing in the documents filed with the plaint, his part of the property is shown in green colour and the answering Defendants have neither carried out nor are carrying out any construction on the green coloured part of the site plan and urges the Court to appoint a Local Commissioner to visit the site so that the actual truth is known. It is further submitted that Defendants No. 1, 2 and 6 have the highest regards for the orders of this Court and there is no violation least of all wilful*



*disobedience or violation, as alleged by the Plaintiff.*

*6. In my view, learned counsel for Defendants No. 1, 2 and 6 is correct in his submission that a Local Commissioner's report may throw light on the actual facts on ground. Accordingly, Mr. Rakohit Pandey, Advocate (Mobile No. 9999914110) is appointed as a Local Commissioner to visit the aforementioned property and verify the status of construction. Local Commissioner will examine whether the alleged unauthorized construction is being carried out in the western part of the property shown in green colour of Document No. 4 filed with the plaint by the Plaintiff and if so, the extent thereof as also the approximate time when the construction started. Local Commissioner will take photographs and also record video of the construction and the same shall be filed along with the report.*

*7. Local Commissioner will visit the site at 11:00 AM on 10.04.2025. Authorized representative/counsel of the parties will be present during the execution of the commission and no party will obstruct the execution in any manner whatsoever. In case, any Police assistance is required by the Local Commissioner, he may contact the SHO of the concerned area and in case, any assistance is sought the SHO shall ensure that the assistance is given so that the commission is executed.”*

15. In compliance of the said Order, a Report dated 21.04.2025 has been filed by the Local Commissioner. Paragraphs No. 4 to 8 of the said Report reads as under:-

*“4. That the undersigned after receiving the colored copy of the Document no. 4, started measuring the western side of the property (as directed by this Hon'ble Court) with the assistance of caretakers of the plaintiff and of the defendant as well and the*



*video/ photographs of the same were taken from the mobile phone of the undersigned, which is attached with the present report as DOCUMENT 2 for the kind perusal of this Hon'ble Court. Accordingly, the measurement of the green portion was conducted in the presence of all the aforesaid persons.*

<b><i>Total area of western portion = 1 Bigha and 19 Biswa</i></b>
<i>1 Bigha = 20 Biswa</i>
<i>1 Biswa = 435.6 square feet</i>
<i>Total area = 20 Biswa + 19 Biswa = 39 Biswa</i>
<i>435.6 X 39 = 16989 square feet</i>
<i>Length of western portion was 182.5 feet</i>
<i>Breadth of western portion = Area/Length</i>
<i>16989/182.5 = 92.7 feet approx.</i>

5. After measuring the length and the breadth, the Length of western portion of the property came around 182.5 feet and the breadth of the entire front portion of the property (including the western portion) came around 137.5 feet.

Thereafter, the plaintiff and defendant, calculated the breadth of western portion in the presence of counsel of both parties, according to the both counsel and parties calculated the breadth of the western area which was 93.7 feet However, as per the calculation of the undersigned breadth of the western portion was 92.7 feet approximately. It is submitted that the undersigned subtracted breadth of the front portion of the property from the breadth calculated by the undersigned to verify and identify the measurement of the western portion area. The photograph and video of the same are annexed along with the report in DOCUMENT 2.

6. After the measurement of breadth of the western portion, it was found that a wall which was fully



*constructed up to 9.11 feet in height, having built up rooms at ground floor, a shop which was partly coming under the western portion, raw materials like pipes, iron garter and wall of bricks (standing around 6 feet). All the above mentioned items including wall, shop were found to be within the green portion on the western side of the property. The photograph and video of the same were taken by the mobile phone of the undersigned and the same is plunged along with the report for the kind perusal of this Hon'ble Court.*

*7. That the rough proceeding were prepared on the spot by the undersigned and same were signed by all persons present at the spot is also annexed with the report for the kind perusal of this Hon'ble Court as Document 3.*

*8. It is submitted that as per the statement of the Defendant no.2 the wall, rooms, shop and the unconstructed wall of bricks was an old construction and the same was constructed approximately 2 years back prior to the order of the status quo passed by this Hon'ble Court. That as per the statement of the plaintiff the wall, rooms, shop and unconstructed wall of bricks were built after the order of status quo passed by the Hon'ble High Court in CS(OS) 567/2024 dated 23.07.2024. That the plaintiff and defendant had provided the photograph, video and screenshots of the property and the same is annexed along with the report as DOCUMENT NO. 4 & 5 for the kind perusal of this Hon'ble Court.”*

16. The Will dated 12.12.2022 reads as under:-



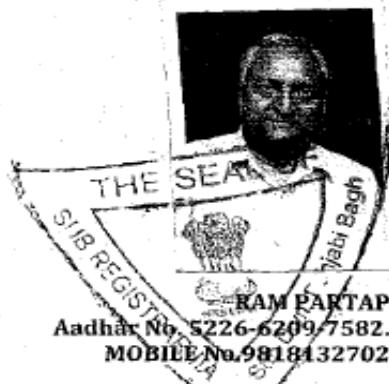
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16683  
12/12/22

Document-P-2



## FAMILY-WILL

THIS WILL is made at New Delhi by Shri RAM PARTAP S/o. Late Shri SURAJ-BHAN R/o. 5C/76, SECOND FLOOR, NEW ROHTAK ROAD, KAROL BAGH, NEW DELHI-110005, aged about 79 years, having Aadhar No.5226-6209-7582 (hereinafter called the Testator).

I, the testator, am the owner PLOT AREA MEASURING 3 BIGHAS 18 BISWAS, out of Khsara No.19/22 (1-08) & 19/23/2 (2-18), situated in the Revenue estate of Village KAMRUDDIN NAGAR, Delhi State, Delhi, By virtue of Sale Deed Registered as Document No.917, in Addl. Book No.1, volume No.24, on pages 180 to 185, dated 01.04.1999, with the office of Sub-Registrar, Punjabi Bagh, New Delhi and also read with Supplementary Deed registered as Document No.11608, in Addl. Book No.1, Volume No.10518, on pages 44 to 45, dated 13.08.2002, with the office of Sub-Registrar, Janakpuri, New Delhi.

Whereas I got married once in my lifetime to Smt. Bimla Devi and I have the following legal heirs:-

Sl.No.	Name	Relationship	Age
1.	Smt. Bimla Devi	Wife.	73 Yrs.
2.	Shri Kamal Aggarwal	Son.	55 Yrs.
3.	Shri Amit Aggarwal	Son.	49 Yrs.
4.	Shri Vishal Aggarwal	Son.	42 Yrs.
5.	Smt. Monika Goel W/o. Shri Raj Kumar Goyal	Daughter	52 Yrs.
6.	Smt. Alka Gupta W/o. Shri Rajesh Gupta	Daughter.	48 Yrs.



My above said daughters mentioned at Sl.No.5 & 6 are married. They are well settled in their lives with their husband and children. My above said both the daughters shall not have any claim in my above said property.

Life is short and uncertain. God knows when it may come to an end. Hence I with my free WILL, without any pressure, duress, influence, coercion from any side, am making this WILL in good health and sound disposing mind. As long as I am alive I shall be the sole owner of the above Property. To avoid any Litigation or dispute after my death, I hereby devise, give and bequeath that after my death all my rights, title and interest whatsoever I possess in the **WESTERN SIDE PORTION AREA MEASURING 1 BIGHAS 19 BISWAS, out of total area 3 Bigha 18 Biswas, out of Khsara No.19/22 (1-08) & 19/23/2 (2-18), situated in the Revenue estate of Village KAMRUDDIN NAGAR, Delhi State, Delhi, bounded on its four side as under:-**

EAST	: REMAINING PORTION OF SAID PLOT.
WEST	: OTHER'S PLOT.
NORTH	: OTHER'S PROPERTY.
SOUTH	: ROAD 40 FT. WIDE.

(HEREINAFTER CALLED THE PROPERTY) shall go and devolve upon my Son namely **Mr. VISHAL AGARWAL S/o RAM PARTAP R/o. HOUSE NO.1/11652, NEAR TANK ROAD, SAT NAGAR, KAROL BAGH, NEW DELHI-110005, having Voter I-Card No.FMR0860429** (HEREINAFTER CALLED THE BENEFICIARY). In case any of my said Beneficiary/ies in the said property as mentioned hereinabove, shall automatically go and devolve upon the legal heirs of the said respective Beneficiary/ies after my death.

THE above mentioned Portion of Plot may be transferred and mutated accordingly in the concerned records by presenting this DEED OF WILL OR its true copy. The above mentioned Beneficiary/ies i.e **Mr. VISHAL AGARWAL** shall be at liberty to use, enjoy and utilize the above mentioned Portion of the Plot as mentioned above and also have right, power and absolute authority to sell, to dispose off the same to anyone in any manner as he may like as his own property.

IN CASE anyone including any of my legal heir raise any objection or create any charge or demand any share in the above said property, then that shall be considered as NULL and VOID in any court of law and or in any syndicate.

Cont'd on page ....3.



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This is my last WILL in respect to my above property and if any WILL is found prior to this relating to the above said Floor of the property, then the same shall be treated as cancelled and revoked.

IN WITNESS WHEREOF, I have signed this WILL on this 12 day of December 2022, after understanding the contents which have been explained to me in vernacular which admitted by me as true and correct and without any compulsion or pressure from any source or person and in sound health and disposing nature of mind, in the presence of the following witnesses who have also signed this DEED OF WILL before my presence.

WITNESSES:

1. Shri Adarsh Kumar Aggarwal  
S/O Late Sh. Om Prakash Aggarwal  
R/O 4297/59, REGHAR PURA,  
PADAM SINGH ROAD,  
KAROL BAGH, DELHI-110005  
AADHAR NO. 4057- 9114-4627

R  
TESTATOR

2. SH. PAWAN KUMAR JAIN  
S/O SH. G.S JAIN  
R/O 6/27, SHIVAJI NAGAR,  
GURGAON, HARYANA, 122001  
AADHAR NO. 7954- 5033- 5585

17. The Will dated 16.12.2022 reads as under:-



SCANNED

16877  
1617122RAM PARTAP  
Aadhar No. 5226-6209-7582.  
MOBILE No.9818132702

## FAMILY-WILL

THIS WILL is made at New Delhi by Shri RAM PARTAP S/o. Late Shri SURAJ BHAN R/o. 5C/76, SECOND FLOOR, NEW ROHTAK ROAD, KAROL BAGH, NEW DELHI-110005, aged about 79 years, having Aadhar No.5226-6209-7582 (hereinafter called the Testator).

I, the testator, am the owner PLOT AREA MEASURING 3 BIGHAS 18 BISWAS, out of Khsara No.19/22 (1-08) & 19/23/2 (2-18), situated in the Revenue estate of Village KAMRUDDIN NAGAR, Delhi State, Delhi, By virtue of Sale Deed Registered as Document No.917, in Addl. Book No.1, volume No.24, on pages 180 to 185, dated 01.04.1999, with the office of Sub-Registrar, Punjabi Bagh, New Delhi and also read with Supplementary Deed registered as Document No.11608, in Addl Book No.1, Volume No.10518, on pages 44 to 45, dated 13.08.2002, with the office of Sub-Registrar, Janakpuri, New Delhi.

Whereas I got married once in my lifetime to Smt. Bimla Devi and I have the following legal heirs:-

RAM PARTAP  
MOBILE NO.9818132702

No.	Name	Relationship	Age
1.	Smt. Bimla Devi	Wife.	73 Yrs.
2.	Shri Kamal Aggarwal	Son.	55 Yrs.
3.	Shri Amit Aggarwal	Son.	49 Yrs.
4.	Shri Vishal Gupta	Son.	42 Yrs.
5.	Smt. Monika Goel W/o. Shri Raj Kumar Goyal	Daughter	52 Yrs.
6.	Smt. Alka Gupta W/o. Shri Rajesh Gupta	Daughter	48 Yrs.

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My above said daughters mentioned at Sl.No.5 & 6 are married. They are well settled in their lives with their husband and children. My above said both the daughters shall not have any claim in my above said property.

Life is short and uncertain. God knows when it may come to an end. Hence I with my free WILL, without any pressure, duress, influence, coercion from any side, am making this WILL in good health and sound disposing mind. As long as I am alive I shall be the sole owner of the above Property. To avoid any Litigation or dispute after my death, I hereby devise, give and bequeath that after my death all my rights, title and interest whatsoever I possess in the **WESTERN SIDE PORTION AREA MEASURING 1 BIGHAS 19 BISWAS, out of total area 3 Bigha 18 Biswas, out of Khsara No.19/22 (1-08) & 19/23/2 (2-18), situated in the Revenue estate of Village KAMRUDDIN NAGAR, Delhi State, Delhi, bounded on its four side as under:-**

EAST : REMAINING PORTION OF SAID PLOT.  
WEST : OTHER'S PLOT.  
NORTH : OTHER'S PROPERTY.  
SOUTH : ROAD 40 FT. WIDE.

(HEREINAFTER CALLED THE PROPERTY) shall go and devolve upon my Son namely **Mr. VISHAL GUPTA S/o RAM PARTAP R/o. HOUSE NO.1/11652, NEAR TANK ROAD, SAT NAGAR, KAROL BAGH, NEW DELHI-110005, having Aadhar No.7415-5330-5621 (HEREINAFTER CALLED THE BENEFICIARY).** In case any of my said Beneficiary/ies in the said property as mentioned hereinabove, shall automatically go and devolve upon the legal heirs of the said respective Beneficiary/ies after my death.

THE above mentioned Portion of Plot may be transferred and mutated accordingly in the concerned records by presenting this DEED OF WILL OR its true copy. The above mentioned Beneficiary/ies i.e **Mr. VISHAL GUPTA** shall be at liberty to use, enjoy and utilize the above mentioned Portion of the Plot as mentioned above and also have right, power and absolute authority to sell, to dispose off the same to anyone in any manner as he may like as his own property.

IN CASE anyone including any of my legal heir raise any objection or create any charge or demand any share in the above said property, then that shall be considered as **NONE** and **VOID** in any court of law and or in any syndicate.

Cont'd on page....3.



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This is my last WILL in respect to my above property and if any WILL is found prior to this relating to the above said Floor of the property, then the same shall be treated as cancelled and revoked.

IN WITNESS WHEREOF, I have signed this WILL on this 16<sup>th</sup> day of December 2022, after understanding the contents which have been explained to me in vernacular which admitted by me as true and correct and without any compulsion or pressure from any source or person and in sound health and disposing nature of mind, in the presence of the following witnesses who have also signed this DEED OF WILL before my presence.

WITNESSES:

1. NARESH JAIN  
S/O Late Sh. LAL CHAND JAIN  
R/O H.No.9953, STREET NO.5,  
NEW ROHTAK ROAD, KAROL BAGH,  
NEW DELHI-110005  
AADHAR NO. 6743-0872-4494.

TESTATOR

2. Shri. Pradeep Kumar  
S/O Late Sh. Ved Prakash  
R/O 5746/B1 REGHAR PURA,  
KAROL BAGH, NEW DELHI 110005  
AADHAR NO. 9925-7386- 3323

18. A reading of the Will dated 16.12.2022 shows that the Western portion of the Suit Property has in fact been apportioned to the Plaintiff.
19. This Court has heard the learned Counsel for the Plaintiff and learned Counsel for the Defendants in detail.
20. Learned Counsel for the Plaintiff asserts that the Defendants have carried out construction on the portion which has been marked to him while the learned Counsel for the Defendants asserts that no such encroachment has taken place.



21. There is nothing on record to show that the Suit Property has been demarcated in accordance with the Will and till the property is not demarcated properly, the shares of the parties cannot be ascertained and without the Suit Property being properly demarcated by fixing the boundary stones for the Plaintiff and the Defendants, the problem cannot be solved.
22. In order to put a quietus to the entire issue on this Suit Property and to answer Prayer No.4 in the Plaintiff, with the consent of the parties, this Court directs the concerned Sub-Divisional Magistrate to take a Surveyor for demarcating the Suit Property in question in accordance with the portions apportioned in the Will dated 12.12.2022 and the Will dated 16.12.2022, whereby the Western portion has been given to the Plaintiff and the Eastern portion has been given to the Defendants.
23. The concerned SDM is entitled to take the assistance of a qualified Surveyor. It is made clear that the demarcation be shall not be done in accordance with the documents on which the Plaintiff relies on, but on basis of the plan of the area as available in the revenue records.
24. The SDM is directed to give notice to the parties before the SDM and the Surveyor goes for the purpose of demarcating the Suit Property by fixing boundary stones.
25. The SDM is also directed to file a Report within six weeks from the receipt of the copy of this Order.
26. Let a copy of this Order be sent to the concerned SDM for compliance.
27. Since the boundaries are not ascertained, there is no question of passing any orders on the applications under Order XXXIX Rule 2A CPC.



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28. With these observations, the aforementioned applications are disposed of.

**SUBRAMONIUM PRASAD, J**

**OCTOBER 30, 2025**

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