



2026:DHC:7029-DB



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

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Reserved on: 28.07.2026

Date of decision: 22.08.2026

CNR No. : DLHC010124622026

+ **FAO(OS) 39/2026**

SONIA SAHNI & ANR.

.....Appellants

Through: Mr. Tushar Mahajan, Mr. Bhaavan
Mahajan & Mr. Tanmay Surana,
Advs.

versus

KAMLESH KAPOOR (SINCE DECD) THR LRS & ORS.

.....Respondents

Through: Ms. Raavi Birbal, Adv./Respondent
Nos. 2 & 3 (present in-person)

CORAM:

HON'BLE MR. JUSTICE VIVEK CHAUDHARY

HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

1. The present appeal has been preferred by the Appellants under Section 10(1) of the Delhi High Court Act, 1996, assailing the Judgment dated 17.02.2026, passed by the learned Single Judge in I.A. No.4679/2023 in CS(OS) 747/2022, whereby the application of the Appellants under Order XII Rule 6 of the Code of Civil Procedure, 1908 ("CPC"), seeking a preliminary decree of partition on the basis of admissions, was dismissed.

2. Briefly stated facts are that the Appellants instituted Civil Suit bearing CS(OS) No.747/2022 seeking partition of property bearing No. H-18-19, Kirti Nagar, New Delhi, measuring approximately 200 square yards



(hereinafter referred to as “the Suit Property”), which was purchased by Late Smt. Harbans Kaur Oberoi, the grandmother of the Appellants through a registered sale deed dated 26.03.1962. During her lifetime Late Smt. Harbans Kaur Oberoi executed a registered Will dated 30.10.1998, whereby she bequeathed the Suit Property to her children floor-wise: the entire ground floor along with the roof rights above the second floor jointly to respondent No.1 (Late Smt. Kamlesh Kapoor), Smt. Nirmal Mehta and Smt. Poonam Wasan. The entire first floor to respondent No. 4 (Sh. Surender Oberoi) and the entire second floor to the Appellants’ father. At the time of the bequest, the second floor stood constructed to the extent of approximately 80 square yards, out of the total permissible 200 square yards, in accordance with the building bye-laws then in force. The Will further stipulated that the staircase and passage on the ground floor would remain common for the use of all beneficiaries.

3. For the sake of convenience, relevant portions of the Will are being reproduced herein and the same reads as under:-

“So long as I am alive, I will remain the undisputed owner and in possession of my abovesaid immoveable property bearing no. H-18- 19, Kirti Nagar, New Delhi, and after my death I hereby bequeath the abovesaid property amongst my two sons and 3 daughters in the following manner:

i) Entire ground floor and the roof of the second floor of the said property built on land measuring 200 sq. yards to my three daughters namely Smt. Kamlesh Kapoor w/o Late Shri K.L. Kapoor rio H-18-19 (GF), Kirti Nagar, New Delhi, Smt. Nirmal Mehta w/o Shri S.L. Mehta rio 1-130, Kirti Nagar, New Delhi and Smt. Poonam Wasan



w/o Shri K.N. Wason rio B- 11270, Janakpuri, New Delhi in equal shares.

ii) Entire first floor of the said property no. H-18-19, built on land measuring 200 sq. yards shall go to my son Shri Surinder Oberoi who is already residing in the said first floor.

iii) Entire second floor of the said property no. H-18- 19 built on land measuring 200 sq. yards without roof rights of the said second floor shall go to my another son Shri Radhey Shyam who is also residing in the said second floor.

The staircase and passage on ground floor will remain common against all the beneficiaries except first floor. Each beneficiary shall hold use and enjoy the portion/ share of the property given to him/ her by this will with full right and power of disposal and to receive the rents and profits as an absolute owner of the same and to get the same mutated in his/ her name in the records of MCD”

4. Late Smt. Harbans Kaur Oberoi passed away on 03.01.2007, after which the Appellants’ father became absolute owner of the second floor and continued residing there with the Appellants, but disputes thereafter arose, with the Appellants alleging that respondent No.2 obstructed their use of the common passage and staircase compelling them to construct an external spiral staircase. Following the death of the Appellants’ father in 2021, the Appellants issued a legal notice dated 29.09.2022 calling upon the respondents to partition the Suit Property by sale, in reply to which respondent Nos.2 and 3 disclosed that they had *vide* registered sale deed dated 31.01.2019 purchased the shares of respondent No.1, Smt. Nirmal Mehta and Smt. Poonam Wasan.



5. The Appellants thereafter filed for partition of the Suit Property by sale and distribution of the sale proceeds. During the pendency of the Suit, the Appellants filed I.A. No.4679/2023 under Order XII Rule 6 CPC seeking a preliminary decree of partition, on the ground that respondent Nos. 2 to 4 had, in their respective Written Statements, admitted the Appellants' share and right in the second floor of the Suit Property as well as the factum of the Will dated 30.10.1998, leaving nothing further to be adjudicated for the purpose of a preliminary decree. The said application was dismissed by the learned Single Judge *vide* the impugned Judgment dated 17.02.2026, leading to the filing of the present appeal.

6. By way of the impugned Judgment, the learned Single Judge dismissed the said application and held that the jurisdiction to render judgment on admissions under Order XII Rule 6 CPC is discretionary and is to be exercised only where the admission is clear, unambiguous, unconditional, and made with an intention to be bound by it. In the absence of any admission on this aspect in the Written Statements, the learned Single Judge declined to exercise jurisdiction under Order XII Rule 6 CPC. Further held that a perusal of the Will showed that the suit property was already demarcated floor-wise and already stood partitioned and the only surviving question, whether the Appellants were able to effectively enjoy the property, could be answered only after evidence was led.

7. Learned counsel for the Appellants submits that the second floor is a barsati structure and is in a dilapidated condition. The construction is more than sixty years old and any attempt to fully utilise the 200 square yard area would require fresh structural foundation work and renovation which is not possible due to financial constraints. Further submits that the intention of the



joint properties being partitioned is to give a person the monetary value equivalent of his percentage share in the joint property and if physical division of the existing construction is not possible, then a person will not get the monetary value of his percentage share. Also states that there is no proper staircase leading to their portion because of which they have to use an external spiral staircase to reach the second floor. In view of these circumstances, it is averted that there is no practical option left except to sell their share in the suit property.

8. *Per contra*, learned counsel appearing for respondent Nos. 2 and 3 submits that the Suit itself is highly belated and is used as a device to pressurise them into a sale for the Appellants' benefit. Further submits that Suit Property having been bequeathed floor-wise under the Will dated 30.10.1998, already stands divided and distributed amongst the parties, with each beneficiary in possession of and holding full right of disposal over his/her respective share, no further partition is therefore maintainable. Respondent Nos. 2 and 3 deny having obstructed the Appellants' access to the common passage or staircase, asserting that a cemented staircase at the rear of the Suit Property has existed since inception and that it was the Appellants themselves who constructed the spiral staircase.

9. We have heard the learned counsel for the parties and perused the material placed on record.

10. The question that arises for consideration is whether the Appellants are entitled to a preliminary decree of partition in respect of the Suit Property or not?

11. A perusal of the Will shows that specific floors were allotted to each beneficiary, while the staircase and passage were kept common. Each



beneficiary was given the right to hold, enjoy and dispose of his/her portion as an absolute owner. The Appellants' father accepted the bequest under the Will, took exclusive possession of the second floor and continued to enjoy it during his lifetime. He neither claimed any right over the other floors nor challenged the Will or the division made under it. The Appellants do not dispute or challenge the Will either, rather their claim for partition rests entirely upon it. Such a long and undisputed conduct shows that the different specific portions allotted under the Will were actually accepted and acted upon by the beneficiaries. The grievances raised by the Appellants regarding obstruction of the common staircase, the dilapidated condition of the second floor and their inability to reconstruct it, do not change this position. These are at best, grievances relating to the exercise of individual ownership over an already partitioned portion which cannot be called for fresh partition and can only be decided after the parties have led evidence, and not merely on the basis of the allegations made by the Appellants.

12. Since the Will is not disputed, and has never been challenged by any party at any point in time, there is no basis left to treat this property as undivided. A beneficiary who accepts a Will without disputing it, and enjoys specific portions of property inherited by him/her, cannot thereafter seek a partition of a property treating it to be joint. A partition suit, and more so a preliminary decree of partition, can only be sought where a property continues to be held jointly and still needs to be divided, that stage in the present case is already over. For this reason, the very foundation on which a preliminary decree of partition would rest is absent, and the claim of the Appellants cannot succeed.



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13. For the reasons aforesaid, we are of the considered view that the Impugned Judgment dated 17.02.2026 does not call for any interference and the present appeal being devoid of merit, stands dismissed.

14. All pending applications, if any, also stand disposed of.

VIVEK CHAUDHARY
(JUDGE)

RENU BHATNAGAR
(JUDGE)

AUGUST 22, 2026/tr