



2025:DHC:8428-DB



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

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Judgment reserved on: 15.09.2025

Judgment pronounced on: 23.09.2025

+ EFA(OS) 15/2025, CM APPL. 58421/2025, CM APPL. 58422/2025 & CM APPL. 58423/2025

ROOPA KHANNA

....Appellant

Through: Mr. Raj Shekhar Rao, Sr. Adv.
with Mr. Nakul Gandhi, Mr.
Mujeeb, Ms. Tanish Gupta &
Mr. Harshil Wason, Advs.

versus

ANIL VARMA & ORS.

.....Respondents

Through: Mr. Ateev Mathur & Mr. Amol
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through the present Appeal, the Appellant [Judgment Debtor before the learned Single Judge] assails the correctness of order passed by the learned Single Judge on 25.08.2025 [hereinafter referred to as 'Impugned Order'], wherein an application filed by the Appellant seeking clarification/modification of the order dated 08.07.2025 was dismissed.

2. In order to comprehend the issues involved in the present case,



the relevant facts in brief are required to be noticed.

3. The Appellant purchased the front side flat admeasuring approx. 1360 sq. ft. and half of the common area admeasuring 114 sq. ft., of the property bearing No.3/24, First Floor, Shanti Niketan, New Delhi [hereinafter referred to as 'suit property'] *vide* Agreement to Sell ('ATS') dated 25.08.1994 and General Power of Attorney ('GPA') dated 25.08.1994. Whereas, the mother of the Appellant, namely Smt. Santosh Varma, purchased the rear portion, admeasuring approx. 1090 sq. ft., of the suit property and half of the common area admeasuring 114 sq. ft. *vide* ATS and GPA of the even date. Both the portions were merged for convenient living of the family members.

4. On 09.10.2010, Smt. Santosh Varma died, leaving behind the following Class-I Heirs:

- i. Smt. Roopa Khanna (the Appellant);
- ii. Sh. Sunil Varma; and
- iii. Sh. Anil Varma (the Respondent No.1)

5. After the demise of Smt. Santosh Varma, the Appellant became owner of the 5/9th share of the suit property, whereas her two brothers, namely Sh. Sunil Varma and Sh. Anil Varma (Respondent No.1 herein) became owner of the 2/9th share of the suit property each.

6. Thereafter, the Appellant filed a civil suit bearing CS(OS) 2554/2010, whereas Sh. Sunil Varma and the Respondent No.1 also filed a civil suit bearing CS(OS) 116/2011. During the pendency of the said civil suits, the following consent order was passed on



17.02.2016:

"1. The suits were argued at length not only for the purpose of framing of issues but on the two applications under Order 7 Rule 11 of Code of Civil Procedure, 1908 (CPC). In fact, this Court also more or less completed dictating the order of dismissing the application under Order 7 Rule 11 CPC in CS(OS) No.2554/2010 being I.A. No.13013/2015 besides considering the requirement of framing of issues in both the suits inasmuch as the suits were listed for framing of issues today.

2. I am happy to note that counsel for the parties have in terms of admitted facts in the present cases and the pleadings of the two suits have agreed and accordingly both the suits are disposed of in terms of the following consent order:-

(i) Plaintiff in CS(OS) No.2554/2010 namely Smt. Roopa Khanna, and who is the sister of the two defendants in this suit being her two brothers Sh. Anil Varma and Sh. Sunil Varma (since deceased now represented by his legal heirs), is declared as owner of 1/3rd share in the first floor flat bearing no.3/24, Shanti Niketan, New Delhi (hereinafter referred to as 'suit property) as also of the additional 1/3rd share out of the 2/3rd share of the mother in the suit property. Plaintiff therefore is declared to be the owner of 5/9th share in the suit property.

(ii) Defendant nos.1 and 2 in CS(OS) No.2554/2010, and who are the plaintiffs in CS(OS) No.116/2011, are declared to be the owner of remaining 4/9th share with the branch of Sh. Sunil Varma (since deceased and represented by legal heirs) will be the owner of 2/9th share in the property and Sh. Anil Varma will be the owner of 2/9th share in the suit property.

(iii) A preliminary decree is accordingly passed in CS(OS) No.116/2011 in terms of the shares of Smt. Roopa Khanna being 5/9th share and Sh. Anil Varma having 2/9th share and the estate of Sh. Sunil Varma having 2/9th share of the property being the first floor of 3/24, Shanti Niketan, New Delhi.

3. CS(OS) No.2554/2010 will stand accordingly decreed not only for the declaration as sought by the plaintiff with respect to her share which has been agreed to be 5/9th share but the plaintiff will also be first offered a right of pre-emption of 2/9 share of Sh. Anil Varma and 2/9th share of estate of Sh. Sunil Varma, of course, as per the market value as on the date when the total of 4/9th share of suit property of defendants in CS(OS) No.2554/2010 is sold or part of it is to be sold or either of the shares is to be sold ie in case, either of Sh. Anil Varma or any other legal heir of Sh. Sunil Varma want to sell the shares which have fallen to them, the first right of pre-emption will be of the sister Smt. Roopa Khanna. Detailed modalities of terms including time



of payment of price by Smt. Roopa Khanna to Sh. Anil Varma and legal heirs of late Sh. Sunil Varma need to be fixed today inasmuch as that aspect will arise on the date when Sh. Anil Varma or legal heirs of late Sh. Sunil Varma want to sell their respective shares in the suit property. The method and manner of payment of sale consideration by Smt. Roopa Khanna to either Sh. Anil Varma and/or the legal heirs of late Sh. Sunil Varma will be an aspect which will either be mutually decided or will be in terms of the provisions of the Punjab Pre-Emption Act as applicable to Delhi though strictly the said Act does not apply to the premises in question inasmuch as the said Act only applies to the specific areas in the walled city of the Delhi as stated in the said Act.

4. In view of the passing of the preliminary decree as stated above and giving a right of pre-emption to the sister Smt. Roopa Khanna under Section 22 of the Hindu Succession Act, 1956 (hereinafter referred to as 'the Act') an injunction order follows that neither Sh. Anil Varma nor the legal heirs of deceased Sh. Sunil Varma will sell their shares in the suit property unless first offering their shares to Smt. Roopa Khanna pursuant to Smt. Roopa Khanna's right of pre-emption under Section 22 of the Act.

5. Accordingly, both the suits are disposed of firstly by giving the necessary declaration and injunctions to Smt. Roopa Khanna in terms of the prayer clauses of Smt. Roopa Khanna in CS(OS) No.2554/2010, and passing a preliminary decree in CS(OS) 116/2011 as stated above.

6. Simultaneously it is observed that if for some reason Smt. Roopa Khanna fails to exercise her rights of pre-emption under Section 22 of the Act, at that stage, the plaintiffs in CS(OS) No.116/2011 can revive their suit for taking further steps in terms of the preliminary decree passed today declaring the shares of the parties.

7. It is also further agreed, and which will form part of the decree to be drawn up by this Court, that, for the shares of Sh. Anil Varma and the share falling to the estate of Sh. Sunil Varma by Smt. Roopa Khanna will exercise her rights and obligations of pre-emption under Section 22 of the Act within nine months from today's date with the fact that Smt. Roopa Khanna within a period of three months from today will make an offer in writing to the defendants or their counsel appearing in the suits today in this Court as to the price at which Smt. Roopa Khanna wants to purchase the 2/9th share of Sh. Anil Varma and 2/9th share falling to the estate of late Sh. Sunil Varma. On receiving the offer by the defendants to the extent of their shares, the defendants will give their counter offer with further clarification that none of the parties are entitled to give any offer or counter offer which is below the circle rates fixed by the competent authority for the area in which the suit property is situated.



8. Any other issue with respect to exercise, valid exercise, failing to exercise etc of the pre-emption right will be subject matter of appropriate independent proceedings.

9. Suits are accordingly disposed of and a decree be drawn up by granting the reliefs of declarations and injunctions to the plaintiff in CS(OS) No.2554/2010 and passing a preliminary decree in favour of the parties in terms of the shares as stated above in CS(OS) No.116/2011. Parties are left to bear their own costs.”

7. As noticed, the Appellant was granted right of pre-emption to purchase the 4/9th share of the Respondents within a period of nine months. In pursuance thereof, the Appellant offered a sum of Rs.3 crores for the said share, which was declined by the Respondents. Subsequently, the Respondents reiterated the rejection, but corrected the calculation error with respect to rate of the suit property as per the Collector's rate. On 22.10.2016, the Appellant stated that she does not wish to sell her share in the suit property and proposed partition of the suit property by metes and bounds.

8. Thereafter, the Respondents filed an application seeking auction of the suit property. On 30.05.2017, the Appellant stated that she had “no objection” to partitioning the property by metes and bounds. Accordingly, the Court appointed Mr. Naveen Malhotra, Architect, as Local Commissioner to examine the partitionability.

9. The Local Commissioner, in his report dated 25.07.2017, submitted that the partition of the suit property by metes and bounds in the ratio of 5:4 is feasible. The Respondents filed an application raising objections to the report of the Local Commissioner. By order dated 03.04.2018, the Court dismissed the application filed by the Respondents on the ground that the decree passed on 17.02.2016 was a final decree and hence, there is no requirement to pass a fresh



decree.

10. Subsequently, the Respondents filed an Execution Petition being EX.P. 14/2023 seeking auction of the suit property. The Appellant filed her objections to the said Execution Petition, while claiming that the suit property should be divided by metes and bounds.

11. However, by order dated on 07.08.2024, the Court found that the suit property was one composite dwelling unit with a single kitchen and one main entrance. Hence, the sale of the suit property is the only method to implement the decree.

12. Thereafter, on 08.02.2025, the Appellant offered to purchase the 4/9th share of the Respondents for a sum of Rs.6 crores. On 11.02.2025, the following order was passed:

“1. Pursuant to order dated 22nd January 2025, judgment debtor has placed a written offer to the decree holder for purchase of 4/9th share which they have valued at Rs. 6 cores. Since the decree holder is a resident abroad, counsel for decree holder seeks some more time take instructions in this regard.

2. List on 04th March, 2025.

3. Order be uploaded on the website of this Court.”

13. On 04.03.2025, the Respondents accepted the offer made by the Appellant and the following order was passed:

“1. Pursuant to order dated 11th February 2025, a written offer to Judgment Debtor (‘JD’) for purchase of 4/9th share valued at Rs.6 crore approximately, has been accepted by the Decree Holders (‘DH’s). A letter to this effect has also been sent by DHs on 2nd March 2025. The terms and conditions of sale of shall be discussed and settled between the parties.

2. Counsel for DHs states that all the three DHs are residents of United Kingdom and only one of them has a bank account in India.



3. Accordingly, as part of terms and conditions, the JD may deposit the sale consideration in account of DH No.2 (details of bank a/c to be provided by counsel for DHs to counsel for JD), which will subsequently be distributed amongst DHs.

4. For this purpose, the DHs shall furnish an affidavit of 'No Objection' in that regard, within next 3 weeks, to the counsel for JD, in order that this aspect can be considered as part of terms and conditions of sale.

5. List for compliance on 16th April 2025.

6. Order be uploaded on the website of this Court."

14. Thereafter, the Appellant moved an application for modification of earlier order, contending that the Respondents should first get the suit property converted from leasehold to freehold before the Appellant purchases their share. The Court, however, dismissed the said application. Thereafter, the Appellant refused to deposit Rs.6 crores, as was offered by her and accepted by the Court on 11.02.2025. Thus on 08.07.2025, the Court directed the auction of the suit property on an 'as is where is' basis and appointed a former District Judge as a Court Auctioneer for the said purposes. The Appellant filed an application for further clarification of the said order and the same was dismissed on 25.08.2025.

15. This Court has heard learned counsel for the parties at length and with their able assistance, perused the paperbook.

16. Learned senior counsel for the Appellant submits that the decree was drawn on 17.02.2016 permitting the Respondents to sell their 4/9th share of the suit property and that the Executing Court cannot go behind the decree. It is further submitted that the learned Single Judge has overlooked the report of the Local Commissioner, wherein it was reported that the partition by metes and bounds is



possible in the ratio of 5:4. Lastly, learned senior counsel submits that the Appellant is prepared to restore the suit property into the original position i.e. two separate independent units, as purchased by the parties in the year 1994, however, the share of the Appellant should not be permitted to be sold.

17. *Per contra*, learned counsel for the Respondent submits that the Appellant has been playing hide and seek with the Court and using dilatory tactics to keep the litigation pending as the Appellant is in control of the entire suit property.

18. Upon consideration of the entire matter, this Court now proceeds to analyse the arguments made by the learned counsel for the parties.

19. It is evident from a careful reading of the order dated 17.02.2016 that the suit property was directed to be partitioned, treating it to be 'one unit'. It was for this reason, the Court declared that the Appellant is entitled to 5/9th share of the suit property, whereas the Respondents are jointly entitled to 4/9th share of the suit property. By order dated 03.04.2018, the order dated 17.02.2016 has been treated as final decree, which is not assailed by the Appellant.

20. It is also evident that the Appellant has been granted sufficient opportunities to exercise her right of pre-emption under Section 22 of the Hindu Marriage Act, 1955. However, *vide* order dated 17.02.2016, the Appellant was granted a period of nine months to avail this right. Thereafter, on 08.02.2025, the Appellant proposed to purchase the Respondents' share for a consideration of Rs. 6 crores, which was



accepted by the Respondents, and subsequently, on 04.03.2025, the Court duly approved the said offer.

21. However, on 08.07.2025, the Appellant resiled from her offer to pay Rs.6 crores. Thereafter, the Court passed the following order:

“13. In terms of EX.APPL.(OS) 107/2025, this Court hereby appoints a former District Judge as a Court Auctioneer to proceed with the auction of this flat on ‘as is where is’ basis.

14. At this stage, learned counsel for the judgment debtor states that he as well has no objection to the appointment of the Court Auctioneer for sale of the subject property.

15. With the consent of the parties, Mr. J.R. Aryan, District Judge (Retd.) (M. No. 9958697034) District Judge, is hereby appointed as a Court Auctioneer to initiate the process for sale of the property.”

22. It is evident from the order dated 08.07.2025 that the learned counsel for the Judgment Debtor (the Appellant) stated that he has no objection to the appointment of the Court Auctioneer for sale of the suit property, as observed in paragraph no.14 of order dated 08.07.2025. The relevant portion is reproduced below:

“14. At this stage, learned counsel for the judgment debtor states that he as well has no objection to the appointment of the Court Auctioneer for sale of the subject property.”

In other words, the Appellant also agreed to the sale of the suit property. Hence, there is no substance in the argument of the learned senior counsel for the Appellant that only 4/9th share of the suit property belonging to the Respondents can be sold because the decree is to the aforesaid effect.

23. A careful perusal of the order dated 17.02.2016 shows that the Court did not pass any decree, allowing the Respondents to sell their share. Moreover, while contesting the partition suit, the Appellant



asserted that the suit property was one composite dwelling unit with a single entry, single kitchen, single water supply, single electricity connection, single servant quarter, rendering it incapable of being occupied by more than one family. In such circumstances, it was contended that partition of the property by metes and bounds was not feasible. Paragraph no.9 of the Written Statement filed on behalf of the Appellant is extracted as under:

“9. It is submitted that the Suit Property comprises of a single dwelling unit consisting of a single entry, single kitchen, single water supply, single electricity connection, single servant quarter which cannot be inhabited by more than a single family unit. In such circumstances it is not feasible to partition the Suit Property between the Plaintiffs and the Defendant. It is categorically stated that the Suit Property was bought only for the Defendant and her late mother to live in. It was well known in the family and also between the Defendant and the Defendant's late mother that after her demise the Suit Property would devolve on the Defendant. The only reason for the late mother wanting to have the Suit Property given to the Defendant was that she was the only one who wanted to live in India. In fact, the Defendant's daughter, Nashira, had even applied to the American School at New Delhi for admission. The application for her admission in the said school was filled up by late Mr. Sukhdev Varma who filled in the Application Form himself by hand as he was anxious that the Defendant and Defendant's daughter should live in India in the Suit Property. However, the fact that the late father was unwell and was undergoing treatment in Geneva, prevented the Defendant from permanently shifting to Delhi as she was the only caretaker of her parents. The late father was required to visit Geneva four times a year for check ups as per the doctor's prescription. It was to the knowledge of all family members that the Suit Property was indeed intended to be given to the Defendant after the death of Mrs Santosh Varma. This is more than evident from the letter dated April 7, 2009 which the Plaintiff No.1 had drafted for Mrs Santosh Varma to sign. The Plaintiffs have made false allegations in their affidavit before this Hon'ble Court and therefore are guilty of perjury. The Plaintiff's whole suit is based on concocted facts and false statements and the Plaintiffs should be subject to appropriate punishment by this Hon'ble Court.”

24. The report of the Local Commissioner was not accepted by the Court, as is evident from the order dated 07.08.2024. Hence, the



Appellant cannot derive any benefit from the aforesaid report. It is pertinent to note that the Appellant holds a 5/9th share in the suit property.

25. Moreover, the Appellant is now estopped from challenging the proposed auction in view of the fact that, on 04.03.2025, the Court had accepted the Appellant's offer to purchase the 4/9th share of the Respondents for a consideration of Rs.6 crores. Having subsequently resiled from this commitment, the Appellant cannot now be permitted to contend that the suit property should be subjected to partition by metes and bounds, particularly when on 08.07.2025, the Appellant's counsel agreed to sell the suit property. In fact, the Appellant has never challenged the correctness of the order dated 07.08.2024, wherein the Court recorded a finding that the suit property is one composite dwelling unit being a first floor flat in a super structure with a single kitchen and one main entrance, hence, the suit property can be partitioned only by sale. This finding, having attained finality, precludes the Appellant from advancing a contrary position at this stage.

26. It is pertinent to note that neither the Appellant nor the Respondents are residing in the country and the suit property has been locked by the Appellant. The record further reflects that a period of nine years has already elapsed since the final decree for partition was passed, yet the decree continues to remain unexecuted.

27. In such circumstances, this Court does not deem it appropriate to permit the Appellant to further prolong the Execution Petition.



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28. Hence, finding no merit, the present Appeal, along with the pending applications, is dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

SEPTEMBER 23, 2025

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