



2026:DHC:7860



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

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Judgment Reserved on: 13th August, 2026
Judgment pronounced on: 16th September, 2026

+ **RFA 858/2017 & CM APPL. 36615/2017, CM APPL. 15483/2018,**
CM APPL. 38475/2023, CM APPL. 34438/2026

MANJIT SINGH & ANR

.....Appellants

Through: Mr. Shiv Prakash Pandey, Mr. Raghav Pandey, Advocates with appellant in-person.

versus

NIRMAL & ORS

.....Respondents

Through: Mr. Darpan Wadhwa, Senior Advocate and Mr. D.K. Rustagi, Senior Advocate with Mr. Mayank Rustagi, Ms. Prakriti Kapoor & Ms. Divita Vyas, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present Appeal under Section 96 of the Code of Civil Procedure, 1908 ('CPC') has been preferred by the appellants against the judgment and decree dated 11th July, 2017 passed by the Additional District Judge-04, South-East District, Saket Courts, New Delhi in Civil Suit No. 7580/2016, titled as *Manjit Singh & Anr. v. Nirmal & Ors.*

2. The appellants shall hereinafter be referred to as the appellants/plaintiffs, as the case may be, and the respondents shall hereinafter be referred to as the respondents/defendants as the case may be.



BRIEF FACTS

3. The brief facts as stated in the plaint are as follows:

3.1. The plaintiffs, namely S. Manjit Singh and S. Harjinder Singh, are the sons of Late S. Swaran Singh from his first wife, Smt. Swinder Kaur. The marriage between Late S. Swaran Singh and Smt. Swinder Kaur was dissolved in the year 1961, whereafter Late S. Swaran Singh married defendant no.1, Smt. Nirmal.

3.2. Defendant no.2, S. Ravinder Singh, is the son of Late S. Swaran Singh and defendant no.1 Late S. Swaran Singh died on 20th June, 2003.

3.3. The plaintiffs instituted a suit seeking partition of the estate of Late S. Swaran Singh, claiming that he had died intestate and that the plaintiffs and defendants no.1 and 2 were his legal heirs.

3.4. The suit concerned Plot No.27, Surya Niketan, Delhi ('Surya Niketan Property') and Flat No.407, 4th Floor, Shakuntala Apartments, Nehru Place, New Delhi ('Nehru Place Property'). The aforesaid two properties are hereinafter referred to collectively as suit properties. The plaintiffs claimed that Late S. Swaran Singh had acquired Nehru Place Property and Surya Niketan Property from his own funds and that the suit properties formed part of his estate.

4. In the written statement dated 10th September, 2003, the case set up by defendants no.1 and 2 was as follows:

4.1. Through a Will dated 8th May, 2002, Late S. Swaran Singh had bequeathed all his movable and immovable properties, including the suit properties, in favour of the defendant no.1.



4.2. Nehru Place Property had already been agreed to be sold by Late S. Swaran Singh in favour of S. Kapil Kumar Chopra and S. Narinder Pal Singh, for a consideration of Rs. 5 lakhs, under an Agreement to Sell dated 9th October, 2001 and that possession thereof had been handed over to them.

4.3. Late S. Swaran Singh had executed a General Power of Attorney ('GPA') dated 1st February, 2003 in favour of defendant no.1 in respect of Surya Niketan Property, pursuant to which defendant no.1 had entered into an Agreement to Sell dated 26th May, 2003 in favour of Ms. Shobha Sharma for a consideration of Rs. 10 lakhs and had handed over possession of the said property to her.

5. The plaintiffs thereafter amended the suit and impleaded Ms. Shobha Sharma as defendant no.3, S. Kapil Kumar Chopra as defendant no.4 and S. Narinder Pal Singh as defendant no.5. The plaintiffs also sought cancellation of following documents:

- i. Will dated 8th May, 2002,
- ii. Agreement to Sell dated 9th October, 2001 in favour of defendants no. 4 and 5,
- iii. GPA dated 1st February, 2003 in favour of defendant no.1 and
- iv. Agreement to Sell dated 26th May, 2003 in favour of defendant no.3.

6. The plaintiffs challenged the aforesaid documents on the ground that the signatures and/or thumb impressions of Late S. Swaran Singh appearing thereon were forged and fabricated. In respect of Surya Niketan Property, the plaintiffs specifically disputed the execution and validity of the GPA dated 1st February, 2003 and the Agreement to Sell dated 26th May, 2003 and disputed the claim of defendant no.3 that possession of the property had been handed over to her.



7. By order dated 10th October, 2006, the Trial Court framed the following issues:

(1) Whether the plaintiff was in actual, physical possession of any portion of the suit property at the time of institution of the suit? OPP

(2) Whether the suit has been valued properly for the purposes of court fee and whether the court fee in accordance with law is affixed on the plaint? OPP

(3) Whether the document dated 8th May, 2002 is the last Will and Testament of late S. Swaran Singh? If so, to what effect? OPD

(4) Whether the agreement to sell dated 9th October 2001 was executed by late S. Swaran Singh in favour of defendants 4 & 5? OPD 4&5

(5) Whether the General Power of attorney dated 1st February 2003 in favour of defendant no.1 is valid & binding? OPD3

(6) Whether the defendant no.3 is a bonafide purchaser of property no.27, Surya Niketan, Delhi-92 by virtue of the agreement to sell dated 26th May, 2003? OPD3

(7) Whether the plaintiff is entitled to a decree for declaration and partition in respect of the suit properties?

(8) Relief.

8. The parties thereafter led evidence in support of their respective cases. The plaintiffs examined, *inter alia*, witnesses in support of their challenge to the documents relied upon by the defendants and also relied upon the medical records of Late S. Swaran Singh and a handwriting expert's report. Defendants no.1 and 2 led evidence in support of the Will, GPA and Agreements to Sell, while defendant no.3 led evidence concerning the transaction and possession of Surya Niketan Property.



FINDINGS OF TRIAL COURT

9. The Trial Court in the impugned judgment has returned the following findings:

9.1. In relation to the Will dated 8th May, 2002, the Trial Court considered the evidence of the attesting witnesses and the surrounding circumstances and held that the Will had not been duly proved.

9.2. In relation to the Agreement to Sell dated 9th October, 2001 concerning Nehru Place Property, the Trial Court held that Late S. Swaran Singh had executed the Agreement to Sell in favour of defendants no.4 and 5.

9.3. In respect of Surya Niketan Property, the Trial Court considered the GPA dated 1st February, 2003 and the Agreement to Sell dated 26th May, 2003 and held that Late S. Swaran Singh had duly executed the GPA in favour of defendant no.1 and that defendant no.1, acting as his duly constituted attorney, had executed the Agreement to Sell dated 26th May, 2003 in favour of defendant no.3 for consideration. The Trial Court further held that the entire consideration had been received by Late S. Swaran Singh and possession of the property had been handed over to defendant no.3.

9.4. While deciding the issue of possession, the Trial Court held that defendants no.4 and 5 were in possession of Nehru Place Property and defendant no.3 was in possession of Surya Niketan Property pursuant to the Agreements to Sell. The Trial Court further held that the plaintiffs were neither in actual physical possession nor in constructive possession of the suit properties, as Late S. Swaran Singh did not have any right, title or interest in the suit properties at the time of his death.



9.5. The Trial Court consequently held that, since the plaintiffs were neither in actual nor constructive possession of the suit properties and had not sought the relief of possession, the suit for partition was not maintainable in the manner in which it had been framed.

10. Aggrieved by the aforesaid judgment, the plaintiffs preferred the present appeal.

PROCEEDINGS BEFORE THIS COURT

11. This matter first came up for hearing on 13th October, 2017, wherein the counsel for the appellants made it clear that the appeal is restricted to Surya Niketan Property and the appellants do not claim any right, title and interest in the Nehru Place Property. The relevant observations from the said order are set out below:

“2. In the subject suits two immovable properties were in issue of which partition was claimed. First was Flat No.407, 4th Floor, Shakuntala Apartments, Nehru Place, New Delhi and the second was Plot No.27, Surya Niketan, Delhi-92 admeasuring 330 sq. yards.

3. Today, counsel for the appellants states that the appeal is restricted to the property at Surya Niketan and the appellants do not claim any right, title and interest in the Flat No. 407.”

[emphasis supplied]

12. In the order dated 13th October, 2017, this Court noted the objection with regard to non-payment of proper court fees on the appeal and held that, since the Trial Court has held that the possession of Surya Niketan Property is with respondent no.3, the appellants would have to value the appeal for the relief of possession on the market value of the property, without prejudice to the respective rights and contentions of the parties. The relevant observations from the said order are set out below:



4. ***It is seen from the record of the Trial Court that the Plot No. 27, Surya Niketan, Delhi was said to be purchased by the defendant no. 3 in the suit in terms of documentation executed by Sh. Swaran Singh/father in his life time. Defendant no.3 relies upon the documents including a document dated 26.5.2003, and which document is a registered agreement to sell.***

5. ***The doctrine of non-payment of any ad valorem court fee in a suit for partition on the ground that the suit for partition is covered by Schedule-II Article 17 Sub-Clause(vi) of the Court Fees Act is premised that every co-owner is deemed to be in possession for and on behalf of all the co-owners, and therefore, the plaintiffs also are in constructive possession of the joint/owned property although they may not be in physical possession. This presumption of joint possession/constructive possession however extinguishes and comes to an end when the physical possession of the suit property is no longer with one or more family members. In such a scenario there cannot be filed a suit for partition or declaration etc without the plaintiff in the suit seeking possession of the suit property and paying court fees as per the market value of the suit property.***

6. ***I may note that by the impugned judgment the trial court has upheld the documentation transferring the property at Surya Niketan in favour of the defendant no.3 in the suit, and who is the respondent no.3 herein. It has also been held by the trial court in its impugned judgment that the respondent no.3/defendant no.3 is in physical possession of the Surya Niketan property pursuant to the registered Agreement to Sell dated 26.5.2003.***

7. ***Counsel for the appellants/plaintiffs states that the appellant/plaintiff will pay the court fees on the market value of the suit property for seeking the relief of possession, and appellants/plaintiff will accordingly value the appeal for the relief of possession on the market value of the property at Surya Niketan on the date of filing of the suit. It is stated that needful will be done within a period of six weeks.***

[emphasis supplied]

13. Consequently, the appellants paid the requisite court fees.

14. Thereafter, the appellants filed C.M. No.26030/2018 seeking amendment of the plaint so as to incorporate a prayer for possession in respect of Surya Niketan Property.



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15. C.M. No.26030/2018 was subsequently withdrawn by the appellants *vide* order dated 28th March, 2026.

16. The parties were heard on 31st July, 2026 and 13th August, 2026, when the judgment was reserved.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

17. The counsel for appellants have made the following submissions:

17.1. The GPA dated 1st February, 2003, allegedly executed by Late S. Swaran Singh in favour of defendant no.1, is surrounded by suspicious circumstances and, consequently, the Agreement to Sell dated 26th May, 2003 executed by defendant no.1 in favour of respondent no.3 on the basis of the said GPA cannot confer any right upon respondent no.3. In this regard, reliance is placed upon the medical records of Late S. Swaran Singh.

17.2. The appellants did not seek the relief of possession as Late S. Swaran Singh, during his lifetime, continued to remain in possession of Surya Niketan Property, and, after his demise on 20th June, 2003, the appellants along with defendants no.1 and 2 continued to remain in possession thereof.

17.3. The claim of defendant no.3 that possession of the property was handed over to her on 26th May, 2003 is false and cannot be accepted, particularly when the deceased was admitted in hospital during the said period. The respondent no.3 herself stated in her cross-examination that she had never met or spoken to Late S. Swaran Singh.

17.4. Accordingly, Late S. Swaran Singh continued to remain in possession of Surya Niketan Property and the appellants are entitled to the relief of declaration and partition in respect thereof.



SUBMISSIONS ON BEHALF OF RESPONDENT NO.2

18. *Per contra*, counsel appearing on behalf of respondent no.2 has made the following submissions:

18.1. Late S. Swaran Singh had executed a GPA dated 1st February, 2003 in favour of defendant no.1 in respect of Surya Niketan Property pursuant to which defendant no.1 executed the Agreement to Sell dated 26th May, 2003 in favour of defendant no.3, Ms. Shobha Sharma, for a consideration of Rs. 10 lakhs and handed over possession of the said property to her.

SUBMISSIONS ON BEHALF OF RESPONDENT NO.3

19. Counsel appearing on behalf of respondent no.3 has made the following submissions:

19.1. The respondent no.3 is the purchaser of Surya Niketan Property under the Agreement to Sell dated 26th May, 2003, executed by defendant no.1 pursuant to the GPA dated 1st February, 2003 executed by Late S. Swaran Singh in her favour. The respondent no.3 as *bona fide* purchaser has been in physical and constructive possession of the Surya Niketan Property since 26th May, 2003.

19.2. The respondent no.3 had been put in possession of Surya Niketan Property on 26th May, 2003 pursuant to the aforesaid Agreement to Sell and, therefore, the plaintiffs were not in actual or constructive possession of the said property.

19.3. Late S. Swaran Singh was in a sound and disposing mind when the Agreement to Sell was executed in favour of respondent no.3. In this regard, reliance is placed on the letters placed on record by the appellants, namely,



letter dated 6th May, 2003 [Ex. DW-9/P-5], letter dated 12th May, 2003 [Ex. DW-9/P-6] and letter dated 23rd May, 2003 [Ex. DW-9/P-8], all obtained by plaintiff no.2 under RTI from DDA. These letters were confronted in cross-examination of DW-9 (defendant no.1) and duly exhibited. Hence, the hospitalization and health of Late S. Swaran Singh between 6th May, 2003 till 23rd May, 2003 does not establish that he was of unsound mind.

19.4. There is nothing on record, including in the evidence led by the appellants, to establish or corroborate that the appellants were in actual physical possession of Surya Niketan Property at the time of institution of the present suit.

ANALYSIS and FINDINGS

20. I have heard the counsel for the parties and perused the record.

21. To begin with, I would deal with the findings of the Trial Court on issues no.5 and 6, which are set out below for ease of reference:

“(5) Whether the General Power of attorney dated 1st February 2003 in favour of defendant no.1 is valid & binding? OPD3

(6) Whether the defendant no.3 is a Bonafide purchaser of property no.27, Surya Niketan, Delhi-92 by virtue of the agreement to sell dated 26th May, 2003? OPD3”

22. It has come in evidence that Late S. Swaran Singh, during his lifetime, executed a registered GPA dated 1st February, 2003 [Ex.DW4/2] in favour of defendant no.1 in respect of the Surya Niketan Property.

23. The GPA duly records that Late S. Swaran Singh is aged about 82 years, suffering from ill health, and is undergoing treatment for diabetes and blood pressure. On account of expenses required for his treatment, he wishes



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to sell the Surya Niketan Property and, therefore, has executed the GPA in favour of his wife to enter into a sale agreement for the Surya Niketan Property.

24. This GPA is a registered document, registered before the concerned Sub-Registrar. The GPA bears thumb impressions of Late S. Swaran Singh.

25. DW-4, S. Harbans Singh, has deposed on behalf of the defendants that Late S. Swaran Singh had affixed his thumb impressions on the GPA. DW-4 has also deposed that he, along with Ms. Asha Kumari, had signed as an attesting witness on the GPA. He has also deposed that he, along with Ms. Asha Kumari and Mrs. Nirmal Kaur, signed and put their thumb impressions before the Sub-Registrar, and Late S. Swaran Singh put his thumb impressions before the Sub-Registrar. He has duly identified the signatures of Mrs. Nirmal Kaur and Ms. Asha Kumari, as well as his own signatures. He has also identified the thumb impressions of Mr. Swaran Singh on the GPA. The said witness was duly cross-examined, however, the appellants have not been able to discredit his testimony.

26. The defendants duly summoned the LDC from the office of the Sub-Registrar, Seelampur, Delhi and examined him as DW-1. DW-1 brought the original GPA [Ex. DW4/2] dated 1st February, 2003 executed by Late S. Swaran Singh. He confirmed the registration of the said GPA.

27. Once a document is registered and the process of registration is proved by examining the concerned official, a presumption arises that the document was validly executed. It is for the party disputing the document to lead evidence to disprove the credibility of the registered document. In this context, reference may be made to the judgment of the Supreme Court in



Prem Singh v. Birbal¹, wherein it has been held that a registered document carries a presumption of validity and the onus lies on the person challenging the same to rebut such presumption. The relevant observations of the said judgment are set out below:

*“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. **The onus of proof, thus, would be on a person who leads evidence to rebut the presumption.** In the instant case, Respondent 1 has not been able to rebut the said presumption.”*

[emphasis supplied]

28. The appellants contend that GPA was forged and fabricated, however, they have failed to discharge the onus of proving the same. Their challenge to the GPA was founded primarily on the report of their handwriting expert, PW2. The Trial Court, however, disbelieved the said expert evidence on the ground that the report was based on comparison of thumb impressions from a dim and light photocopy, and did not indicate any specific markers of forgery in respect of the thumb impressions appearing on the GPA and hence, lacked credibility.

29. The appellants have also contended that Late S. Swaran Singh was seriously unwell from June 2002 to June 2003, and hence he could not have executed a GPA on 1st February, 2003. Reliance in this regard is placed on the discharge summary dated 26th January, 2003 issued by Sitaram Bhartiya Hospital [Ex. P-3].

30. A perusal of the said discharge summary shows that Late S. Swaran Singh was unwell and undergoing treatment and was discharged from Sitaram Bhartiya Hospital on 26th January, 2003, and at the time of his discharge, he

¹ (2006) 5 SCC 353



was in a satisfactory condition. This discharge summary does not suggest that Late S. Swaran Singh was not in a position to visit the Sub-Registrar's office on 1st February, 2003 for the execution of the GPA.

31. Hence, the appellants have failed to place any cogent material on record to demonstrate that the GPA [Ex.DW4/2] was forged or fabricated. Based on the evidence on record, the defendants have proved that the GPA has been validly executed.

32. In terms of the aforesaid GPA, defendant no.1 was empowered to sell the Surya Niketan Property and also receive the sale consideration in respect thereof. Acting on the aforesaid registered General Power of Attorney, a registered Agreement to Sell [Ex. DW5/3] was executed by defendant no.1, as his attorney, transferring the Surya Niketan Property in favour of defendant no.3.

33. The defendants duly summoned the LDC from the office of the Sub-Registrar, Geeta Colony, Delhi and examined him as DW-2. DW-2 brought the original Agreement to Sell dated 26th May, 2003. He confirmed the registration of the Agreement to Sell on 27th May, 2003. Since the Agreement to Sell was executed through a registered Power of Attorney, there was no requirement for Late S. Swaran Singh to visit the office of the Sub-Registrar.

34. The appellants have challenged execution of the Agreement to Sell on the ground that since Late S. Swaran Singh was in the hospital from 2nd May to 30th May, 2003, he could not have entered into an Agreement to Sell. However, the hospitalization of Late S. Swaran Singh would have no bearing on the Agreement to Sell being executed, as the same was executed by Late S. Swaran Singh through a duly appointed attorney.



35. The letters relied upon by the appellants [Ex. DW-9/P-5], [Ex. DW-9/P-6] and [Ex. DW-9/P-8], which were put in cross-examination to defendant no.3 by the appellants themselves, show that Swaran Singh was in sound mental condition when the Agreement to Sell was executed on 26th May, 2003.

36. The appellants dispute the validity and execution of the Agreement to Sell [Ex. DW5/3]. However, in his cross-examination, the plaintiff no.2 himself stated that he was not aware as to whether the complete sale consideration had been paid by defendant no.3 to Late S. Swaran Singh. The plaintiff no.2 has also admitted that his father, Late S. Swaran Singh, being the owner of the property, had an absolute right to sell the same to anyone.

37. The Agreement to Sell duly records that the entire sale consideration of Rs. 10,00,000/- has been received by the seller from the buyer through a pay order. In this regard, the defendant no.1 has stated in her affidavit that the amount of sale consideration, i.e. Rs. 10,00,000/- was received by way of a Banker's cheque [Mark – B] in the name of Late S. Swaran Singh and was duly deposited in his bank account no.1120 with Syndicate Bank. The certified copy of passbook of bank account no.1120 with Syndicate Bank in the name of Late S. Swaran Singh for the period from 8th May, 1999 to 14th March, 2005, which shows the deposit of Rs. 10,00,000/-, has been exhibited as Ex. DW 1/G. Therefore, the evidence on record shows that defendant no.3 was a *bona fide* purchaser of the Surya Niketan Property.

38. As noted above, since the Agreement to Sell is a registered document, there is a presumption in its favour that the said document was validly executed. The onus was on plaintiff to lead evidence to disprove the



credibility of the registered document. However, plaintiffs have failed to show that the Agreement to Sell was not validly executed.

39. In light of the above, there is no infirmity in the findings of the Trial Court that i) GPA was validly executed by Late S. Swaran Singh in favour of defendant no.1; ii) defendant no.1, acting as the duly constituted attorney of Late S. Swaran Singh, executed the Agreement to Sell in favour of defendant no.3 for sale of Surya Niketan Property; and iii) defendant no.3 has paid the entire sale consideration for the Surya Niketan Property.

40. Next, I proceed to consider findings of the Trial Court on issues no.1 and 2. The same are set out below for ease of reference:

“(1) Whether the plaintiff was in actual, physical possession of any portion of the suit property at the time of institution of the suit? OPP

(2) Whether the suit has been valued properly for the purposes of court fee and whether the court fee in accordance with law is affixed on the plaint? OPP”

41. The Agreement to Sell [**Ex. DW5/3**] records that the seller has handed over actual physical possession of the Surya Niketan Property to the buyer.

42. The appellants have sought to contend that since Late S. Swaran Singh was in the hospital and undergoing treatment, he could not have handed over possession of the Surya Niketan Property to defendant no.3 on 26th May, 2003. The appellants also placed reliance on the cross-examination of defendant no.3 on 27th July, 2013, wherein she stated that she had never met Late S. Swaran Singh.

43. Since the possession of the Surya Niketan Property was handed over by the Power of Attorney holder of Late S. Swaran Singh to the buyer, which she was authorized to do in terms of the GPA, there was no requirement for the buyer, *i.e.*, defendant no.3, to meet Late S. Swaran Singh.



44. The defendant no.3 in her cross-examination has also stated that the Surya Niketan Property is in her possession under her lock. She has also produced the letter issued by the President of the housing society to the defendant no.3 regarding the deposit of security and other charges in respect of Surya Niketan Property [Ex. DW-3/6].

45. Therefore, there is no infirmity in the finding of the Trial Court that defendant no.3 was in physical possession of the Surya Niketan Property since 26th May, 2003. Consequently, it cannot be said that the appellants were either in physical possession or constructive possession of the Surya Niketan Property. The relevant findings of the Trial Court in this regard are set out below:

*“The defendants no: 4 and 5 and the defendant no. 3 have been proved to be in possession of the respective properties sold to them under the Agreements to Sell dated 09.10.2001 and 26.05.2003 **Certainly the plaintiffs were not in actual physical possession of the properties as the plaintiffs long before the death of S. Swaran Singh were not residing with S. Swaran Singh or over any portion of the suit properties and it is not even the case of the plaintiffs that the plaintiffs were in actual physical possession of the suit properties.** The plaintiffs as class-I legal heirs of late S. Swaran Singh were not even in constructive possession of the suit properties along with defendants no. 1 and 2 as S. Swaran Singh at the time of his death was not vested of any right, title or interest in the suit properties. Issue no: 1 is, therefore, decided against plaintiffs and in favour of the defendants.”*

[emphasis supplied]

46. Based on the aforesaid findings, the Trial Court held that since the plaintiffs had not sought relief of possession, when admittedly they were not in possession, the suit for partition was not maintainable. Relevant findings of the Trial Court are set out below:

“The suit for partition was not maintainable in the facts and circumstances without the plaintiffs also seeking the relief of possession. As the plaintiffs



have not sought the relief of possession and on the relief of partition, the plaintiff are not required to have a fixed ad-valorem court fees, however, in the facts and circumstances, the plaintiffs were required to have also sought the relief of possession as the plaintiffs at the time of the institution of the suit for partition were neither in actual nor in constructive possession of the suit properties which rested with subsequent / bona-fide purchasers.”

47. In this regard, reference may be made to the judgment of this Court in **Manmohan Batra v. Bharat Bhushan Batra**², wherein a suit for partition was dismissed by the Trial Court. This Court, while upholding the findings of Trial Court, held that as the plaintiff therein was not in physical possession and the documents recorded delivery of possession to defendants, the plaintiff could not claim constructive possession. The plaintiff was therefore required to seek possession, and in the absence of such relief, the suit for partition as framed was held to be not maintainable. The relevant observations of the said judgment are set out below:

*“10. I completely agree with the aforesaid findings and conclusions of the trial court and in addition thereto I would like to reiterate and add the following reasoning as an appellate court under Order 41 Rule 24 CPC
XXXX*

(c) In my opinion, the suit was in fact not maintainable as framed inasmuch as, the appellant/plaintiff admittedly was not in physical possession of the property. A suit for partition only lies when the plaintiff is either in physical possession of the property or in constructive possession of the property i.e. when the property is held by a co-owner for all the other co-owners. In the present case, once it was shown that the appellant/plaintiff was not in physical possession of the property, and could not be in constructive possession because Respondent 1/Defendant 1 claimed rights in the property under the documentation dated 26-5-1995, which mentioned that possession was handed over to Defendant 1, ouster was clearly pleaded and it was incumbent on the appellant/plaintiff to amend his plaint to seek the relief of possession. Admittedly, no relief of possession is sought and hence the suit as framed is not maintainable.

² 2012 SCC OnLine Del 2663



Also, in my opinion, the suit for possession if now sought to be amended to claim the relief would in the peculiar facts of this case be hopelessly barred by limitation inasmuch as once ouster is clear from the year 1996, the period of 12 years under Article 65 expires in 2007, and thereafter by virtue of Section 27 of the Limitation Act, 1963 the rights of the appellant/plaintiff assuming they existed in the suit property would stand extinguished. Thus, neither the suit as framed was maintainable as a suit for partition and the relief for possession as of today, if the suits were to be converted into a suit for possession, the relief for possession cannot be granted because the suit for possession as on today will be barred if the same is filed today.”

[emphasis supplied]

48. In this regard, appellants had moved an application bearing CM No.26030/2018 seeking amendment of the plaint. In paragraphs 7, 19, and 21 of the said application, the appellants admitted that they were not in possession of the Surya Niketan Property at the time of institution of the suit. Hence, they sought amendment of the plaint so as to include the relief of possession. The aforesaid paragraphs are set out below:

“7. That on 13.10.2017, this Hon'ble Court was pleased to observe that since the appellants/plaintiffs were not in physical possession of the Surya Niketan property, no sufficient Court fees had been paid. This Hon'ble Court was pleased to observe that the appellants/plaintiffs will accordingly value the appeal for the relief of possession on the market value of the property at Surya Niketan on the date of filing of the suit. Copy of the order dated 13.10.2017 is annexed herewith as Annexure-A.

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19. That in the backdrop of the above facts and circumstances, it is become necessary for the appellants to seek amendment of the plaint to the extent that they may be allowed to seek decree of possession of the suit land.

XXXX

21. That the appellants may also be allowed to add sub para (viii) after sub para (vii) in the prayer clause of the amended plaint as under: "Decree of possession in favour of the plaintiffs and against the defendant No.3 in respect of plot No.27, Surya Niketan, Delhi””

[emphasis supplied]



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49. However, the aforesaid application was withdrawn by the counsel for the appellants on 28th March, 2026.

50. To a pointed query from the Court as to why the said application was withdrawn, counsel for the appellants submitted that since the appellants were in constructive possession of the Surya Niketan Property, the aforesaid application was withdrawn. However, from the discussion above, it is manifest that plaintiffs were not in actual or constructive possession of Surya Niketan Property at the time of institution of the suit. Consequently, in the absence of possession and without seeking the relief of possession, the suit for partition was not maintainable as framed.

51. In view of the discussions above, I do not find any infirmity in the findings of the Trial Court that requires interference by this Court.

52. Accordingly, the present appeal is dismissed.

53. Pending applications stand disposed of.

AMIT BANSAL

SEPTEMBER 16, 2026

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