2026:DHC:7295

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

% ***Reserved on: 5th August, 2026***
Pronounced on: 31st August, 2026

\# **CNR No. DLHC010469462022**

\+ **RFA 645/2022, CM APPL. 53984-53986/2022**

Bhisham Mehta
S/0 Radha Ballabh Mehta
R/O G-35, Lajpat Nagar-
III, New Delhi - 110024 .....Appellant
Through: Mr. Vikas Tiwari, Advocate

versus

Mrs. Gita Vig
W/0 Mr. Rajiv Vij
R/0 Chaudhary apartment
Block — 2
First Floor, Gurunanak
Sarani Road
Punjabi Para, Siliguri

Mrs. Hemlata Chanda
W/0 Mr. Debotpal
Chanda
R/o 178 Ram Krishna
Asharampara, Siliguri
Distt~Darjeeiing

Mrs. Dipti Dhingra
W/o Mr. Avinash
Dhingra
R/o 91 Sterling Cresent,
Maple,
ON L6A, 1A1, Canada
.....Respondents
Through: Mr. Vikas Arora, Ms. Rashi Priya, Mr. Vansh Arora, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 has been preferred by the Appellant/Defendant against the Judgment and Decree dated 07.02.2020, passed by the learned Additional District Judge, New Delhi, *whereby the Suit* in CS No. 11535/2016 *of the Respondents*, ***was decreed for a decree for a sum of Rs. 1,01,78,074/-*** *together with interest @ 8% per annum with effect from 11.04.2011 till realisation, under Order* ***XII Rule 6*** *of the Code of Civil Procedure*, 1908.

2. The ***facts in brief*** are, that Smt. Kusum Mehta was the *mother of the Plaintiffs*. Smt. Kusum Mehta died intestate on 25.12.2013, survived by her three daughters, namely, the plaintiffs.

3. On 29.03.1985, Smt. Kusum Mehta along with her three sisters-in-law, namely, Smt. Nirmal Mehta, Smt. Renu Mehta and Smt. Bina Mehta (wife of the Appellant), purchased agricultural land measuring 26 Bighas bearing Mustatil No. 52, Killas No. 3/2(0-4), 8(4-2), 9(4-16), 13(4-2), 17(4-7), 18(4-2) and 23(4-7), situated in the Revenue Estate of Village Paprawat, Tehsil Najafgarh, New Delhi *(hereinafter referred to as the "Suit Property"), vide* four ***registered Sale Deeds, all dated 29.03.1985***, executed by Shri Jagat alias Roshan, son of Shri Noat Ram.

4. The Suit Property was mutated in the joint names of the four vendees, in the revenue records. Smt. Kusum Mehta was, accordingly, the owner of a *1/4th undivided share* in the suit property.

5. The case of the Plaintiffs is that in the month of April, 2012, Smt. Kusum Mehta was surprised to discover that a sum of Rs. *71,99,801/- had been credited to her Savings Bank Account No. 03281000000319* with the Punjab and Sind Bank at Siliguri, on 30.03.2012. Upon enquiry, it was revealed that the said amount had been *transferred by the Defendant*, who was the real brother of her husband, Shri Chhatrapal Mehta, who had predeceased her, on 09.04.2006.

6. It was further revealed that without informing Smt. Kusum Mehta, Defendant had sold the suit property, including the 1/4th undivided share of Smt. Kusum Mehta, as her attorney, on the basis of a registered General Power of Attorney dated 07.04.1995, to M/s Agile Properties Limited, for a total sale consideration of Rs. 6,95,11,500/-, *vide* registered Sale Deed dated 11.04.2011. The said Sale Deed records all four co-owners as *"Vendors"* and describes the suit property as their *"self-acquired property."* The Defendant had executed the said sale deed as the ***General Attorney*** of *Smt. Kusum Mehta, Smt. Nirmal Mehta and Smt. Renu Mehta*, while Smt. Bina Mehta executed it in her own right.

7. The 1/4th share of Smt. Kusum Mehta in the sale consideration, amounted to Rs. 1,73,77,875/-. However, the Defendant transferred only a sum of Rs. 71,99,801/- to the account of Smt. Kusum Mehta, retaining the balance.

8. Smt. Kusum Mehta requested the Defendant on several occasions, to pay her share of the sale consideration, but the Defendant avoided doing so, on one pretext or another. After the death of Smt. Kusum Mehta in December, 2013, the Plaintiffs also requested the Defendant to pay them their due share. However, the Defendant refused and threatened them with dire consequences.

9. The Plaintiffs, through their *Special Power of Attorney holder* Shri Debotpal Chanda, instituted the Suit in April, 2014, seeking **recovery of Rs. 1,69,70,198/- *(comprising the balance principal amount of Rs. 1,01,78,074/- together with interest at the rate of 18% per annum)*** along with pendente-lite and future interest, against the Defendant.

10. The Defendant in their ***Written Statement***, took a *preliminary objection* that the ***Suit was barred by limitation***, having been filed beyond three years from the date of the Sale Deed dated 11.04.2011.

11. The case of the Defendant is that on 29.03.1985, on the very date of the execution of the four sale deeds, Smt. Kusum Mehta executed a *notarized General Power of Attorney in favour of the Defendant*, irrevocably conferring upon him, inter alia, the power of "Gift." The Defendant contended that by virtue of the said General Power of Attorney, Smt. Kusum Mehta ceased to have any right, interest or lien in the suit property. The said General Power of Attorney dated 29.03.1985 was reaffirmed by Smt. Kusum Mehta by way of *a registered General Power of Attorney dated 07.04.1995*, registered before the Sub-Registrar, Siliguri, District Darjeeling.

12. The Defendant further contended that the suit property was acquired by him and his wife, Smt. Bina Mehta, from their own funds, and that the names of the three sisters-in-law were added in the four Sale Deeds, merely for the sake of convenience.

13. The Defendant ***set up a counter-case*** that the sum of Rs. 72,00,000/- credited to the bank account of Smt. Kusum Mehta on 30.03.2012, *was not her share of the sale consideration, but was an interest-free friendly loan* advanced by the Defendant to Smt. Kusum Mehta at her request, by way of an account payee cheque dated 19.03.2012 drawn on Karur Vysya Bank, Delhi, for a period of two years, *on an oral understanding that she would repay the same on or before 31.03.2014.*

14. The Defendant also filed a ***Counter-Claim*** **being *CS No. 11532/2016 for recovery of Rs. 72,00,000/- from the Plaintiffs as the legal heirs of Smt. Kusum Mehta.***

15. In the ***replication,*** the Plaintiffs denied the contentions raised in the Written Statement. The Plaintiffs contended that the General Power of Attorney was given for effective *management of the suit property*, which was situated in Delhi, as Smt. Kusum Mehta was residing in Siliguri. The said *General Power of Attorney was not coupled with interes; was not executed for any consideration, and neither created nor transferred any right or interest in the suit property in favour of the Defendant*.

16. The Plaintiffs further contended that after selling the shares of all the co-owners, the Defendant had deposited the ***identical sum*** of Rs. 72,00,000/- in the accounts of all the co-owners, *namely, Smt. Nirmal Mehta, Smt. Kusum Mehta and Smt. Renu Mehta, during the same period of March, 2012.* This fact had been *admitted* by the Defendant before the Police Authorities in his Reply dated 23.11.2013, to a Complaint filed by Smt. Nirmal Mehta, at PS Lajpat Nagar.

17. The Plaintiffs also pointed out that Smt. Kusum Mehta had shown the amount of Rs. 71,99,801/-, in her Income Tax Return for the Assessment Year 2012-2013, filed in March, 2013, as *long-term capital gains from part sale consideration, and had paid tax thereon*.

18. The Plaintiffs filed an application under ***Order XII Rule 6*** read with Section 151 of the Code of Civil Procedure, 1908, seeking judgment on admissions.

19. The learned Additional District Judge, by the impugned judgment dated 07.02.2020, *decreed the Suit in favour of the Plaintiffs*, holding that there were ***clear, unambiguous and unequivocal admissions on the part of the Defendant***. A decree for a sum of Rs. 1,01,78,074/- was passed in favour of the Plaintiffs, together with interest at the rate of 8% per annum with effect from 11.04.2011 till realisation. The Plaintiffs were also held entitled to interest on the sum of Rs. 72,00,000/- at the rate of 8% per annum from 11.04.2011 till 30.03.2012, and to costs of the Suit.

20. The Defendant filed a *Review Application* bearing Misc. DJ No. 60/2020, *which was* ***dismissed,*** *vide* Order dated 05.09.2022.

21. Aggrieved, the Defendant has preferred the present Appeal.

22. The ***grounds of challenge*** are that the learned Additional District Judge erred in passing a decree on admissions under ***Order XII Rule 6*** of the Code of Civil Procedure, 1908, without there being any unequivocal, clear and unconditional admission on the part of the Appellant. That the learned Additional District Judge read Para 7 of the Appellant's reply dated 23.11.2013 to the complaint at PS Lajpat Nagar, only in smattering fragments, and failed to consider the very next sentence which clarified that the amount was not deposited out of any obligation whatsoever.

23. The learned Additional District Judge decreed the suit without deciding the Counter-Claim filed by the Appellant, which was registered as a separate suit being CS No. 11532/2016, in violation of Order VIII Rule 6-A(2) of the Code of Civil Procedure, 1908, which mandates that a Counter-

Claim shall have the same effect as a cross-suit, so as to enable the Court to pronounce a final judgment on both; the original claim and the counter-claim.

24. That the learned Additional District Judge failed to appreciate that the General Power of Attorneys dated 29.03.1985 and 07.04.1995, irrevocably conferring the power of "Gift" in favour of the Appellant, *amounted to an absolute transfer of right and interest in the suit property*, and that Smt. Kusum Mehta had ceased to have any right, interest or lien in the suit property.

25. ***Moreover, the suit was barred by limitation,*** having been filed beyond three years from the date of the Sale Deed dated 11.04.2011.

Submissions heard and record perused.

26. The Plaintiffs, being the daughters and legal heirs of Late Smt. Kusum Mehta, instituted the *Suit for Recovery* of the balance sale consideration attributable to the 1/4th undivided share of their mother in the suit property, which was sold by the Appellant, as her registered General Power of Attorney holder, *vide* Sale Deed dated 11.04.2011, for a total sale consideration of Rs. 6,95,11,500/-.

27. The Appellant, having received the entire sale consideration, remitted only a sum of Rs. 71,99,801/- to Smt. Kusum Mehta, on 30.03.2012, and retained the balance.

28. The registered Sale Deed dated 11.04.2011, executed by the Appellant/Defendant, is the foundational document. The relevant recitals thereof are extracted hereunder:

> *"This Sale Deed is executed at New Delhi on this* ***11th Day of April, 2011, by;***

(1) ***Mrs. Kusum Mehta*** *W/o Shri Chhatra Pal Mehta ... through her General Attorney Shri Bhisham Mehta ... duly constituted vide General Power of Attorney dated 07.04.1995, duly registered in the office of the Siliguri, Darjeeling;*

(2) Mrs. Nirmal Mehta ... through her General Attorney Shri Bhisham Mehta ... duly constituted vide General Power of Attorney dated 29.03.1985;

(3) Mrs. Renu Mehta ... through her General Attorney Shri Bhisham Mehta ... duly constituted vide General Power of Attorney dated 07.04.1995 ...;

(4) Mrs. Bina Mehta W/o Shri Bhisham Mehta ..., hereinafter collectively called 'THE VENDORS' ...

Whereas the Vendors are the absolute owners/bhumidars and in possession of Agricultural land measuring 26 bighas ... situated in the Revenue Estate of Village Paprawat, Tehsil Najafgarh, New Delhi ...

AND WHEREAS the said land is the self-acquired property of the Vendors having purchased the same from Shri Jagat alias Roshan S/o Shri Noat Ram, vide Four Separate Sale Deeds all dated 29.03.1985 ..."

29. The said recitals in the Sale Deed, constitute clear and categorical admissions on the part of the Appellant to the following effect: ***firstly***, that Smt. Kusum Mehta was one of the four "Vendors" of the suit property; ***secondly***, that she was, along with the other three co-owners, an *"absolute owner/bhumidar"* thereof; ***thirdly***, that the suit property was the "self acquired property" of the four Vendors, purchased under the four registered Sale Deeds all dated 29.03.1985; and ***fourthly***, that the Appellant executed the Sale Deed dated 11.04.2011 not in his own right, but as the ***"General Attorney"*** of Smt. Kusum Mehta and the two other co-owners, and received the sale consideration of Rs. 6,95,11,500/- in that capacity.

30. The Appellant has sought to depart from the recitals of his own registered instrument, by contending that the suit property was in fact, acquired by him and his wife Smt. Bina Mehta from their own funds, and that the names of the three sisters-in-law were added in the four Sale Deeds dated 29.03.1985, merely for the sake of convenience.

31. *A registered instrument speaks for itself, and general and unsubstantiated averments, contrary to the recitals in the registered Sale Deed, is not admissible under S.91 and S.92 Indian Evidence Act (corresponding to Sections 94 and 95 of the Bharatiya Sakshya Adhiniyam, 2023)* and no contrary assertions can be permitted to displace the covenants of a registered document, executed by the very party who now seeks to resile from it.

32. ***Furthermore, aside from bald assertions, no material has been placed on record*** to demonstrate that the Appellant or his wife contributed the sale consideration under the four Sale Deeds dated 29.03.1985. Moreover, 7if the entire consideration was paid by the defendant, no prudent person would invest such money and but property in the name of others, and that too, vide separate Sale Deeds. Pertinently, the Appellant's own Income Tax Returns for the Assessment Years 2011-12 and 2012-13, do not reflect the receipt of the sale consideration of Rs. 6,95,11,500/- as Capital Gains, which would have been the necessary consequence, had he been the true owner of the suit property.

33. The Appellant next contends that the notarized General Power of Attorney dated 29.03.1985 and the registered General Power of Attorney dated 07.04.1995, having irrevocably conferred upon him the power of "Gift," amounted to an absolute transfer of right and interest in the suit property in his favour, and that Smt. Kusum Mehta ceased to have any right, interest or lien in the suit property from the date of execution of the said instruments.

34. The said contention is *untenable in law*. A *General Power of Attorney* is not an instrument of transfer of right, title or interest in an immovable property, but is a document of *agency*. Even an irrevocable Power of Attorney does not have the effect of transferring title to the attorney. The Supreme Court in *Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana and Another*, (2012) 1 SCC 656, has categorically held that transactions of the nature of *"GPA sales"* do not convey title and do not amount to transfer.

35. The two General Powers of Attorney merely empowered the Appellant to ***look after, manage and supervise the undivided share of Smt. Kusum Mehta in the suit property***, and to sell, transfer or gift the same on *her behalf*. They were not executed for any ***consideration***, and were not coupled with any ***interest*** of the Appellant in the suit property.

36. Significantly, the Appellant, in his Reply to the Application under Order XII Rule 6, has himself conceded that an irrevocable General Power of Attorney *"may not be a document of absolute transfer of title."* Having so conceded, it is not open to the Appellant to contend to the contrary.

37. Once it stands admitted that the Appellant acted as the agent of Smt. Kusum Mehta and received the sale consideration in that capacity, the consequences under *Section 218 of the Indian Contract Act, 1872*, which provides that an agent is ***bound to pay*** to his principal all sums received on his account, would follow.

38. The Appellant, having received the sale consideration of Rs. 6,95,11,500/- on behalf of the four Vendors, was under a statutory obligation to pay to Smt. Kusum Mehta her 1/4th share thereof, being Rs. 1,73,77,875/- He has, however, remitted only a sum of Rs. 71,99,801/-, thereby retaining the balance of Rs. 1,01,78,074/-, which *he is bound to pay to the Respondents, the legal heirs of Smt. Kusum Mehta*.

39. The Appellant has sought to characterise the sum of Rs. 72,00,000/- credited to the account of Smt. Kusum Mehta not as part of the sale consideration, but as an *interest-free friendly loan* advanced to her in August, 2011, at her request, for a period of two years, on an ***oral understanding*** that she would repay the same on or before 31.03.2014. The said plea does not create any ***triable issue***, and stands *demolished by the Appellant's own admissions on record.*

40. In the reply dated 23.11.2013 filed by the Appellant before PS Lajpat Nagar, to the complaint of Smt. Nirmal Mehta, one of the co-owners of the suit property, the Appellant stated as under:

> *"7. After the* ***aforesaid transaction with respect to the said property, I deposited a sum of Rs. 72,00,000/- in the account of Mrs. Nirmal Mehta (Complainant herein), Mrs. Kusum Mehta, and Mrs. Renu Mehta.*** *I state that I deposited the said sum in the account of the complainant,*

> *considering that she is closely related.* ***It is made clear that I have not deposited the said amount out of any obligation that is due ...."***

41. Two admissions of the Appellant emerge from the aforesaid reply, both fatal to the loan theory. ***Firstly***, the Appellant himself admitted that he had deposited the *identical* sum of Rs. 72,00,000/- not only in the account of Smt. Kusum Mehta but also in the accounts of the other two co-owners, namely, Smt. Nirmal Mehta and Smt. Renu Mehta.

42. ***Secondly***, in the said reply, there is *no whisper whatsoever of any loan having been advanced to Smt. Kusum Mehta* or to any of the other co-owners. The Appellant's stated reason for the deposit in this reply, *was the close family relationship, and not the repayment of any loan*. Further, the said deposit is expressly described in the Reply as having been made *"after the aforesaid transaction with respect to the said property,"* being a plain reference to the sale of the suit property.

43. The deposit of the identical sum of Rs. 72,00,000/- in the accounts of all three co-owners during the same period of March, 2012, is *destructive of the loan theory*. It is inconceivable that Smt. Kusum Mehta, Smt. Nirmal Mehta and Smt. Renu Mehta would each, independently and at the same time, have requested the Appellant to advance an interest-free friendly loan of the *identical sum of Rs. 72,00,000/- for identical periods, on identical oral understandings*. The only rational explanation for the identical deposits into the accounts of all three co-owners, is that the deposit represented a *part of the sale consideration attributable to each*. The Appellant's attempt to characterise the deposit into Smt. Kusum Mehta's account alone as a loan, while remaining silent on the identical deposits into the accounts of the other two co-owners, is a contrivance which cannot withstand scrutiny.

44. Yet another material admission emerges from the record. *Smt. Kusum Mehta had in her Income Tax Return for the Assessment Year 2012-13, filed in March, 2013, shown the sum of Rs. 71,99,801/- as long-term capital gains from the part sale consideration received by her*, and had paid tax thereon. Such a declaration, made by Smt. Kusum Mehta in her lifetime on solemn statutory record, is wholly incompatible with the plea that the said amount had been received by her, as an interest-free friendly loan.

45. The Appellant, on the other hand, has not placed on record any document whatsoever, no acknowledgement of loan, no writing, no correspondence, no entry in his own books of account, and no reflection in his own Income Tax Returns for the Assessment Years 2011-12 and 2012-13, evidencing the advancement of a loan of Rs. 72,00,000/- to Smt. Kusum Mehta.

46. The Appellant's own pleadings are further inconsistent on the basic mode by which the alleged loan was said to have been advanced. *In the written statement and the counter-claim*, it is averred that the sum of Rs. 72,00,000/- was paid by way of an account payee ***cheque*** dated 19.03.2012 drawn on Karur Vysya Bank, Delhi, personally handed over by the Appellant to Smt. Kusum Mehta at Siliguri. *In the reply to the Application* under Order XII Rule 6, however, the Appellant has averred that the said amount was advanced to Smt. Kusum Mehta on 30.03.2012 by way of ***RTGS transfer on her request***. Such internal inconsistency in the Appellant's own pleadings, on so basic a matter, itself detracts from the credibility of the loan theory.

47. In view of the foregoing, the admissions of the Appellant, emerging from the recitals of the registered Sale Deed dated 11.04.2011, from his own Reply dated 23.11.2013 before PS Lajpat Nagar, and from the absence of any material to support the loan theory, are *clear, unambiguous and unequivocal*.

48. The defence of an interest-free friendly loan, being wholly *unsupported by any documentary material* and being contradicted by the Appellant's own contemporaneous written Reply before the police authorities, is a moonshine defence, and cannot detain the Court from passing a decree on admissions under *Order XII Rule 6* of the Code.

49. The next contention advanced on behalf of the Appellant is that the learned Trial Court could not have decreed the suit while the Counter-Claim of the Appellant, for recovery of the said sum of Rs. 72,00,000/-, remained pending. The said contention is misconceived.

50. The record demonstrates that the ***Counter-Claim*** filed by the Appellant was, by Order dated 30.09.2014, registered as ***CS No. 11532/2016.*** The cause of action set up by the Respondents in the Suit, is the retention of the balance sale consideration by the Appellant, while the cause of action set up by the Appellant in the Counter-Claim is distinctly based on the alleged advancement of a friendly loan, which are ***independent cause of action.*** In such circumstances, the pendency of the Counter-Claim, which stands separately registered as a distinct Suit, does not operate as a bar to the passing of a decree on admissions in the Suit. The learned Trial Court has rightly so held, in paragraph 36 of the impugned judgment.

51. The last contention urged on behalf of the Appellant is that the **Suit is barred by limitation,** having been filed beyond the period of three years from the date of the Sale Deed dated 11.04.2011. The said contention has ***no merit***. The Respondents' cause of action for recovery of the balance sale consideration arose not on the date of the sale deed, of which Smt. Kusum Mehta had no knowledge, but on the date on which the sale and the retention of the balance sale consideration came to her knowledge. On the record, this occurred in April, 2012, after the sum of Rs. 71,99,801/- was credited to her bank account, on 30.03.2012. *The Suit having been filed on 15.04.2014 is well within the period of three years from the date of knowledge,* ***and is not barred by limitation.***

52. In view of the foregoing discussion, this Court finds *no infirmity in the impugned Judgment and Decree dated 07.02.2020*.

53. The Appeal is hereby, ***dismissed***. Pending applications, if any, are also disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 31, 2026/*va/RS*