2026:DHC:8248

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Reserved on:17th July, 2026*

Pronounced on:24th September, 2026

Uploaded on: 24th September, 2026

CNR No. DLHC010306472026

\+ **RFA 674/2026 & CM APPL.44816/2026, CM APPL.44817/2026**

SURYA DEEP GARG @ SURAJ GARG
S/o Shri Ravindra Prakash Gupta
R/o H.No.41/9, Kishangarh,
New Delhi-110070.

.....Appellant

Through: Mr. S.S. Panwar, Advocate, Ms. Nividita Panwar, Mr. Nawal Kishor, Mr. Praveen Singh, Advocate, Ms. Durgesh Nandini, Advocate alongwith Appellant.

versus

1. **SMT. NEHA GARG**
W/o Sh. Surya Deep Garg @ Suraj Garg
D/o Sh. Arun Kumar Gupta
Proprietor of M/s Chamkeeli Enterprises,
At T-2-503, Parsvnath Shrishti, Sector93-A,
Gautam Budh Vihar, U.P.201304.

2. **SMT. SUNNETA GUPTA**
W/o Sh. Arun Kumar Gupta
R/o 139, Roopayan Store,
Shastri Nagar, Near Ratlam Hospital,
Ratlam, Madhya Pradesh-457001.

3. **SHRI ANIL KUMAR GULATI**
S/o Shri Ram Gopal
R/o 90/80-AB, First Floor,

Malviya Nagar, New Delhi-110017.
Through Sheikh Imran Alam & Associates
Ch. No.208, Lawyers Chambers' Block,
Saket Court, New Delhi-110017.

4. **SMT. RAJ RANI (DECEASED)**
W/o Shri Ram Gopal
R/o o 90/80-AB, First Floor,
Malviya Nagar, New Delhi-110017.

Through LRS'

(i) **SH. ANIL KUMAR GULATI**
S/o Shri Ram Gopal
R/o 90/80-AB, First Floor,
Malviya Nagar, New Delhi-110017.

(ii) **SMT. BIMLA KHURANA**
D/o Late Smt. Raj Rani
R/o Flat No.227, GH-1,
Archana Apartments,
Paschim Vihar, Delhi-110063.

(iii) **SH. J.K. GULATI**
S/o Late Smt. Raj Rani
R/o 169, Sarojini Colony,
Near Bus Stand, Yamuna Nagar,
Haryana-1356001.

(iv) **SMT. ANITA MALHOTRA**
D/o Late Smt. Raj Rani
R/o B-201, The Cresent, Sector-50,
Noida, U.P.-201304.

(v) **SH. S.K. GULATI**
S/o Late Smt. Raj Rani
R/o G-4A, Kalka Ji,
New Delhi-110019.

Through Mr. Saurabh Jain, Advocate
Office: C-13, GF, Dayanand Colony,
Lajpat Nagar-IV, New Delhi-110024.

(vi) **SMT. MADHU BAJAJ**
D/o Late Smt. Raj Rani
R/o Flat No.406,
Sargodha Apartment, Sec.-07,
Dwarka, Delhi-110075.

(vii) **SMT. ALKA SADANA**
D/o Late Smt. Raj Rani
R/o H.No.1221, Sec-19,
Faridbad, Haryana-121002.

All LRs of Respondent No.4 Except R-4(V)
Represented Through
Muenuddin Siddiqui & Associates
Ch. No.261, Lawyers Chamber's Block,
Saket Court, New Delhi-110017.

.....Respondents

Through: None

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC')* has been filed on behalf of the Appellant against the Judgment and Decree dated 11.04.2026 passed by the Ld. District Judge in CS DJ No. 580/2023, whereby the Suit filed by the Appellant for *Declaration, Possession and Permanent Injunction* ***has been rejected under Order VII Rule 11 CPC,*** *by the Learned District Judge,* *Delhi*

2. The **facts in brief,** as stated in the Plaint, are that the marriage of Appellant/ Plaintiff Surya Deep Garg and Defendant No. 1, /Smt. Neha Garg was solemnized on 02.12.2001 according to Hindu customs and rites.

3. After the marriage, Appellant and Defendant No.1 resided together at the house of the parents of the Appellant, i.e., H. No.959, Sector-3, R.K. Puram, New Delhi. However, after some time, Defendant No.1 insisted that the Appellant should stay in a house near the house of her mother.

4. Consequently, the Defendant No.2, Smt. Suneeta Gupta, arranged a rented accommodation for the Appellant and Defendant No.1, which was a single-bedroom set at the Lower Ground Floor in Property No. R-116, Khirki Extension, Malviya Nagar, New Delhi, on a monthly rent of Rs.4,000/- per month.

5. The Appellant, however, used to pay the rent to the landlord every month through his mother-in-law, Defendant No.2, as the accommodation had been arranged by her. Subsequently, after some time, the Appellant came to know that the said property was owned by the maternal grandmother of Defendant No.1.

6. The Appellant, on coming to know of this fact, felt cheated. After some time, *purchased a two-bedroom flat bearing No. JD-18E/A, Upper Ground Floor, Khirki Extension, Malviya Nagar, New Delhi from his own funds*, on the basis of registered Agreement to Sell, GPA, Will and other documents dated 10.02.2004, from the erstwhile owner, Sh. Panna Lal Saini S/o Late Sh. Munshi Ram, for sale consideration of Rs.1,25,000/-, paid through a cheque dated 30.10.2003. *However, the documents were executed in the name of Defendant No. 1, allegedly out of love and affection*.

7. After some time, the Appellant sold this Flat for a consideration of Rs.2,00,000/-, which was received by the Appellant and Defendant No.1 in their joint Account maintained with ICICI Bank, Green Park Extension Branch, New Delhi.

8. After selling this Flat No. JD-18E/A, the Appellant had purchased another Flat bearing No.R-71, Khirki Extension, Malviya Nagar, New Delhi on 16.09.2005, from Mrs. Nisha Jaideva *for a consideration of Rs.3,50,000/*, although the documents were again executed in the name of Defendant No. 1, allegedly out of love and affection.

9. The Appellant explained that the sum of Rs.3,50,000/- and a sum of Rs. 50,000/- (towards fittings and fixtures in the flat) were paid by him as under:

(i) *Rs.1,50,000/- vide Pay Order dated 15.09.2005 issued by ICICI Bank, Green Park branch*

(ii) *Rs.2,00,000/- vide Pay Order dated 15.09.2005 issued from the Joint Account of Appellant and Defendant No.1 in Union Bank of India, Branch South Extn.-I, New Delhi.*

(iii) *Rs.50,000/- vide Pay Order dated 15.09.2005 from the personal account of the Appellant towards the fittings and fixtures.*

10. After shifting to the new second flat, a son, Master Arth, was born on 20.09.2005, at Ratlam, M.P., and the entire expenses were borne by the Appellant.

11. On 02.02.2007, the above-mentioned flat was sold by the Appellant to Mrs. Suman Behl for a consideration of Rs.23,75,000/-, out of which a sum of Rs.3,85,000/- was received by way of cheques which were deposited in the joint Account of the Appellant and Defendant No.1, and the balance amount was received in cash.

12. Thereafter, the ***Appellant purchased flat bearing No. 90/80-AB, First Floor, measuring 200 Sq. Yds. in Malviya Nagar, New Delhi (hereinafter the 'Suit Property') from Shri Sandeep Malik for a total sale consideration of Rs.27,00,000/-.*** The sale consideration was again paid by the Appellant from his own funds, but the *Sale Deed dated 20.04.2007 was executed and registered in the name of Defendant No. 1/wife and Defendant No. 2/mother-in-law*.

13. It was explained that Defendant No. 2 was made a co-owner in the suit property, as part of the sale consideration was paid through a loan amount obtained by the Appellant from the bank, in the name of Defendant No. 2. The suit property, according to the Appellant, was for the benefit of himself, his wife, and son, for residential purposes.

14. Defendant No.2, being a Government servant, was able to get a loan of Rs.10,00,000/- at a lesser rate of interest as compared to the rate of interest chargeable by the financial institutions to non-Government servants such as the Appellant. This arrangement was allegedly suggested by Defendant No.2 when the Appellant discussed his requirement of arranging funds for purchasing the Suit property. The Appellant claimed that this loan of Rs.10,00,000/- was repaid by him to Defendant No.2 in cash and through cheques against receipts, issued in her name.

15. The Appellant thus, explained that the entire consideration amount of the suit property was paid by him, in the following manner :

(i) Rs.7,00,000/- vide Cheque dated 27.01.2007 from joint Account of Appellant and Defendant No.1. It was explained

that this amount of Rs.7 lakhs had been obtained as a loan by the Appellant by pledging his NSE Bonds, purchased by him in his name as well as in the name of Defendant No.1, from his own funds.

(ii) Rs.3,85,000/- vide cheque dated 18.03.2007 from the joint Account of Appellant and Defendant No.1, which represented the sale proceeds of the earlier flat purchased in Khirki Extension.

(iii) Rs.5,85,000/- vide Demand Draft dated 16.04.2007 drawn from the Account of M/s Credit Solutions, a proprietorship Firm of the Appellant opened on 10.04.2007 but in the name of Defendant No.1, in which a sum of Rs.7,52,000/- had been deposited through a cheque which the Appellant got issued from the Centurion Bank of Punjab as consideration for work done for the bank under the said proprietorship firm; and

(iv) Rs.10,3000/- through Demand Draft dated 31.03.2007 from ICICI Bank. Mumbai Branch. It was explained that this amount represented a loan obtained in the name of Defendant No. 2 from ICICI Bank, which was subsequently repaid/transferred by the Appellant in instalments into her salary account.

16. It was further asserted that there was an understanding between the Plaintiff and Defendant No.2 that she would make payments to the Bank from the amounts paid to her by the Appellant. Defendant No.2 was stated to be maintaining two bank accounts, and one payslip dated 24.12.2008 for Rs.

5,000 was made to the other bank account.

17. It was further claimed that Defendant Nos. 1 and 2 had not contributed any amount towards the purchase of the suit property and that their names had been inserted in the Sale Deed for the reasons explained above.

18. The Appellant thus asserted that although the suit property had been purchased in the name of Defendant Nos. 1 and 2, *they were holding the same in a fiduciary capacity for the benefit of the entire family, as the property had been purchased for their residence*.

19. As asserted by the Plaintiff, Defendant Nos. 1 and 2 had no right, title, or interest in the suit property, except that Defendant No. 1 was residing therein as his wife and her right was limited to residence in the suit property.

20. The Appellant further asserted that he had spent substantial amounts on the higher education of Defendant No.1 and, owing to his encouragement, she obtained *admission in the Institute of Electronics and Telecommunication Engineers (IETE). However, she failed to clear all the examinations and ultimately discontinued her studies.*

21. The Appellant also claimed to have assisted Defendant No. 2 in repaying the loan taken from MTNL and other private financiers for purchasing *Flat No. J-4/97C, Second Floor, Khirki Extension, Malviya Nagar, New Delhi.* The Appellant claimed that he had been paying a sum of Rs.15,000/- per month to Defendant No.2 through Defendant No.1, by transferring the amount from his current Account to the Savings Account of Defendant No.1.

22. The Appellant asserted that in November, 2008, differences started arising between him and Defendant No.1. She started making frivolous accusations against the Appellant and his family members.

23. **Writ Petition (Crl.) No.1646/2009 for Habeas Corpus** was filed by Defendant No.1 seeking direction to the Appellant to produce their minor son, alleging that the child had been taken away by the Plaintiff.

24. The Appellant thereafter requested Defendant No.2 to get her name deleted from the Sale Deed by relinquishing her rights in favour of the Appellant. However, instead of doing the needful, Defendant No. 2 allegedly continued to procrastinate. When the Appellant discussed the matter with Defendant No.1, she also hesitated to speak to her mother in this regard. The Appellant claimed that, apprehending from the conduct of Defendant Nos.1 and 2, that they intended to grab the suit property for their own benefit, he believed that the transaction was a benami transaction.

25. The Defendant No.1 left the matrimonial home, i.e., the suit property, along with the minor son in June/July, 2009 on the pretext that maternal grandparents were unwell and went to her parental home in Ratlam, Madhya Pradesh. The Appellant informed about this incident to the Police, *vide* written complaint dated 09.07.2009.

26. Furthermore, Defendant Nos.1 and 2 started pressurizing the Appellant not to seek possession of the suit property or to evict Defendant Nos. 1 and 2. Several complaints were lodged against Defendant No.1 and her family members. Defendant Nos.1 and 2 thereafter sent a Legal Notice dated 04.11.2009 claiming ownership in the suit property and demanding maintenance. This was followed by another Notice dated 31.11.2009, issued by Defendant No. 2.

27. It was further submitted that, in the Habeas Corpus Writ Petition, the parties were referred to the Mediation Centre, Delhi High Court, and arrived at a mutual Settlement dated 19.01.2010, whereby they agreed to stay together in the House at Malviya Nagar, New Delhi, and to consult a *Marriage Counsellor*. Defendant No.1 also agreed that the proceedings under Section 12 of the Domestic Violence Act, would be kept in abeyance.

28. The Appellant asserted that after the Settlement dated 19.01.2010, the parties started residing together, in terms thereof. However, Defendant No.1 took away the child on 30.04.2010, in breach of the said settlement. Feeling aggrieved, the Appellant filed *a Petition under Section 9 of the Hindu Marriage Act, which was eventually dismissed in default.*

29. The Appellant further claimed that false criminal cases under Sections 498A and 406 IPC had been registered against him, in which he was arrested, *but he was acquitted on 30.12.2022*. In her cross-examination dated 23.03.2016, Defendant No. 1 had admitted that no transaction relating to the purchase of the suit property had been undertaken by her and that, if any such transaction had taken place, her mother would have had knowledge thereof.

30. Another ***FIR No.1808/2010,*** *was also registered against the Appellant, in which he was acquitted on 15.02.2018,* and the Appeal against the said acquittal was dismissed *vide* Judgment dated 06.04.2022. **Divorce proceedings under Section 13 of the Hindu Marriage Act were initiated by Defendant No. 1**. During the cross-examination in these proceedings, Defendant No.1 admitted that the Information Letter dated 04.11.2009 was received by her from the Appellant, for vacating the Suit property.

31. The Appellant also claimed that there are judicial admissions on the part of Defendant No.1 regarding her being a housewife and not having any independent income. It was further claimed that Defendant No.2 was earning a salary of not more than Rs.9,000/- per month, which was admitted by Defendant No.1 in the proceedings under the Domestic Violence Act.

32. According to the Appellant, the suit property had in fact been purchased from his funds, although the Sale Deed was executed in the names of Defendant Nos.1 and 2.

33. The Appellant had earlier filed ***CS(OS)No.2351/2010 against Defendant Nos.1 and 2 seeking Declaration and Injunction,*** but the said Suit was dismissed in default on 14.03.2013. The Application under Order IX Rule 9 CPC seeking restoration was rejected on 27.04.2015. The SLP preferred by the Appellant against the dismissal of the Restoration Application was also dismissed by the Supreme Court. *The Appellant claimed that 13 frivolous criminal litigations had been filed against him by Defendant Nos.1 and 2 against him.*

34. In 2018, the Appellant was shocked that the suit property was illegally sold by the Defendant Nos. 1 and 2 to the Defendant Nos. 3 and 4, *vide* alleged Sale Deed dated 09.01.2018.

35. Consequently, ***the present Suit was filed seeking a Declaration*** *that the suit property bearing No.90/80-AB, First Floor, Malviya Nagar purchased vide registered Sale Deed dated 20.04.2007* ***was a benami transaction****; a* ***declaration that the alleged Sale Deed dated 09.01.2018*** *in respect of the Suit property* ***was illegal, bogus and void ab initio and liable to be cancelled*** *as being not binding upon the Appellant;* ***possession of the suit Property*** *against Defendant Nos. 3 and 4, and a* ***Decree of Permanent Injunction*** *for restraining the defendants from creating third-party rights in the Suit property.*

36. **Defendants No.1 and 2, in their joint Written Statement,** took *preliminary objections* that the Suit was barred under the Benami Transaction (Prohibition) Act, 1988, as it was *also barred by limitation*, as the Appellant was never the recorded owner of the suit property.

37. It was further asserted that, since the execution of the Sale Deed dated 20.04.2007, Defendant Nos.1 and 2 had been aware that the Sale Deed was executed in their names. Even if it is assumed that the Sale Deed dated 10.01.2018 gave a fresh cause of action, that too, is barred by limitation. Furthermore, the *Suit was barred by the principles of constructive res judicata*, as the Appellant had earlier filed CS(OS)2351/2010 on the same cause of action, which was dismissed and the Order has attained finality.

38. The averments made in the Plaint, were denied in toto. It was specifically contended that the relief sought against Defendant No. 2 was *barred in terms of Section 4(b) of the Benami Transaction (Prohibition) Act, 1988.* The Appellant was wrongly propounding a theory of unilateral implied trust. It was further contended that *Section 82 of the Indian Trusts Act has been repealed by Section 7 of the Benami Transaction (Prohibition) Act, 1988.*

39. It was claimed that the properties had been purchased by Defendant No.1 by paying the sale consideration from her own funds. It was denied that the Appellant had funded the purchase of the properties on every occasion.

40. It was admitted that a sum of Rs.2,00,000/- had been received by Defendant No.1 through Banking, but it was asserted that the amount had been deposited in the joint Account only on the insistence of the Appellant. It was denied that the sale consideration was being paid by the Appellant.

41. It was admitted that there were multiple matrimonial and criminal litigations that had ensued between the parties. It was denied that the Appellant had any right, title, or interest in the Suit property. All the averments made in the Plaint were denied; It was thus, stated that the Suit was liable to be dismissed on merits.

42. **Defendant No. 3 in the Written Statement** claimed that the Suit was liable to be dismissed as all the averments made in the Plaint were false and fabricated.

43. **Defendant No. 4 (through legal heirs) in the Written Statement** asserted that the Suit was barred by limitation as well as the Prohibition of Benami Transactions (Prohibition) Act,1988. All the averments made in the Plaint were denied, and it was asserted that the Suit was liable to be dismissed.

44. The **Appellant in the Replication** reaffirmed the assertions made in the Plaint.

45. ***The Defendant Nos.1 and 2 filed an Application under Order VII Rule 11 CPC* seeking rejection of the Plaint,** essentially on the grounds that the *Suit was barred by limitation as well under the Prohibition of Benami Transaction (Prohibition) Act, 1988.*

46. The ***learned District Judge, in the impugned Judgment*** dated 11.04.2016, observed that the Appellant, in his own pleadings, had admitted that the Sale Deed had been executed jointly in the name of Defendant No.1/ wife, and Defendant No. 2/ mother-in-law.

47. It was observed that while the Benami law provided an exception in respect of property purchased in the name of the wife or unmarried daughter, no such exception was available where the property was also purchased in the name of the mother-in-law. Section 82 of the Indian Trusts Act was also observed to have been repealed by the Benami Transaction (Prohibition) Act, 1988.

48. The Suit was consequently held to be patently barred under Section 4 of the Benami Transaction (Prohibition) Act, 1988, and it was held that the Appellant could not seek a Declaration of ownership in respect of the suit property.

49. It was further noted that the Sale Deed sought to be challenged was dated 20.04.2007, whereas the Benami Law has subsequently been amended in 2016 and the unamended provisions were applicable and that the statutory bar was attracted to the facts of the present case.

50. It was further held that, from the averments made in the Plaint itself, it was evident that the Appellant had full knowledge of the alleged benami transaction, in the names of Defendant Nos.1 and 2. The Appellant could have sought Declaration of being the owner of the property purchased in 2007. The limitation period was held to have commenced in 2009-10 and to have expired by 2012-13.

51. Therefore, the limitation period could not be circumvented by filing a new Suit in 2023, i.e., 16 years after the execution of the initial Sale Deed and 13 years after his title was unequivocally denied. The subsequent discovery of the Sale Deed of 2018 in the name of third parties (subsequent purchasers) was held not to have the effect of resetting the limitation period.

52. It was further noted that the Sale Deed dated 09.01.2018 was a duly registered document. The registration of a document being a public act, providing constructive notice under Section 3 of the Transfer of Property Act, 1882, the Appellant, who claimed to be the beneficial owner of the suit property and had been actively litigating in respect thereof since 2010, could not claim that he was unaware of the registered Sale Deed executed in 2018.

53. The Plaint itself stated that on 30.04.2010, the Appellant was in the possession of the suit property and that Defendant Nos.1 and 2 were making demands for possession. The Appellant was also stated to have been present in the suit property on 16.10.2010, when property dealers had visited the premises to make enquiries regarding its sale.

54. The Appellant had sought to assert a fresh cause of action based on the admissions of Defendant No. 2 recorded on 11.11.2022, in Criminal proceedings. However, it was held that no admission in cross-examination could give rise to a fresh cause of action. **The Suit was, therefore, held to be barred by limitation.**

55. It was further held to be barred on account of the earlier Civil Suit filed by the Appellant, which had been dismissed in default and had attained finality.

56. ***The Plaint was accordingly rejected under Order VII Rule 11 CPC on the grounds that the claim was barred under the Benami Transaction (Prohibition) Act, by limitation and by the principles applicable to the earlier litigation.***

57. Aggrieved by the said Judgment, the Appellant/Appellant had **preferred the present Appeal.**

58. The ***grounds of challenge*** are that the provisions of the Benami Transaction (Prohibition) Act, 1988 have been misapplied and misinterpreted. It is claimed that the suit property had been purchased by the Appellant from his own funds and resources in the name of his wife, for the benefit of the family.

59. Therefore, the transaction of the Appellant was squarely protected under Section 3(2) of the Act and the bar of Section 4(1) was not applicable. The observations of the learned Trial Court Judge are illegal, baseless, and misconceived.

60. It is further contended that, to attract the provisions of Section 3(2) of the Act, the actual source of the funds used for payment of the consideration, as well as the purpose and intention behind purchasing the property in the name of the wife or unmarried daughter, have to be considered to determine whether the transaction constituted a prohibited benami transaction.

61. Insofar as the repeal of Section 82 of the Indian Trusts Act is concerned, it has been contended that the name of Defendant No. 2 was inserted in the Sale Deed in a fiduciary capacity for the benefit of the Appellant and Defendant No.1, she being the mother of Defendant No.1. It has been thus, contended that the repeal of Section 82 Indian Trusts Act did not affect the benami transaction in the circumstances of this case, and that the expression *'Trustee'* as used by the Appellant, was not contended to invoke the statutory concept of trustee under the Indian Trusts Act, 1982.

62. It is further contended that, even if the claim against Defendant No. 2 were held to be barred, the claim against Defendant No.1 would nevertheless be maintainable qua half of the suit property. Therefore, the plaint could not have been rejected under Order 7 Rule 11 CPC, in view of the principles laid down in the case of *Kum Geetha D/o Late Krishna vs. Nanjundaswamy 2023 Live Law (SC) 940.*

63. The learned Trial Court failed to appreciate that the property had been purchased by the Appellant for the benefit of the family and for their use, as is evident from the pleadings and documents. Consequently, Defendant Nos.1 and 2 had no personal rights to deal with the suit property or to sell the same for their own benefit to the exclusion of the Appellant.

64. The learned Trial Court failed to appreciate the intention behind purchasing the property in the names of Defendant Nos.1 and 2, which, according to the Appellant, was evident from the history of litigation between the Appellant and Defendant No. 1, who is supported by Defendant No. 2 in her best interest.

65. In any case, the documents placed on record by the Appellant, *raised mix question of fact and law which could not have been adjudicated without recording evidence*, and the Plaint could not, therefore, have been rejected under Order VII Rule 11 CPC. There is a collusion and mala fide intention on the part of Defendant Nos.1 and 2 to appropriate the suit property for their own benefit, contrary to the purpose for which the suit property had been purchased.

66. It was further contended that a fresh cause of action had arisen upon the execution of the impugned Sale Deed dated 09.01.2018, of which the Appellant claimed to have acquired knowledge on 21.04.2022 based on admissions made by Defendant Nos.1 and 2. The Appellant thus sought to distinguish the original transaction of 2007 from the subsequent Sale Deed of 2018 and asserted that the latter constituted an independent cause of action.

67. The Appellant has referred to *Daliben Valjibhai & Ors. v. Prajapati Kodarbhai Kachrabhai & Anr. SLP (C) No.23625/2024*, wherein it was held that the limitation would commence from the date of knowledge and not necessarily from the date of execution of the Sale Deed. The present Suit has been filed on 03.10.2023 and was therefore, well within the limitation. Moreover, the computation of limitation involved a mixed question of fact and law and could not have been decided under Order VII Rule 11 CPC.

68. It was also submitted that the earlier *Civil Suit, being CS (OS) 2351/2010*, had been filed in respect of the Sale Deed dated 20.04.2007 and that dismissal of the said Suit under Order IX Rule 9 CPC could not extinguish the cause of action that arose from the subsequent Sale Deed dated 09.01.2018.

69. The learned Trial Court's observation that the Sale Deed dated 09.01.2018 was not an independent event and did not give a fresh cause of action, but was merely in furtherance of the same root cause of action, is totally illegal, baseless, and misconceived.

70. It has been further contended that the observation regarding '*clever drafting' creating an illusion of a fresh cause of action* was unwarranted and that the Two Sale Deeds constituted independent transactions. Reliance is placed on *Ganesh Prasad vs. Rajeshwar Prasad & Ors*. (Civil Appeal arising out of SLP (C) No.28377/2018) wherein it was held that the principle of *res judicata* or the bar under Order IX Rule 9 CPC is a mixed question of law and fact and cannot be decided without adducing evidence.

71. *Therefore, the impugned Judgment rejecting the Suit of the Appellant under Order VII Rule 11 CPC is, therefore, liable to be set aside.*

Submissions heard and record perused.

72. *The chain of facts may be stated in brief*. The Appellant had purchased the first Property bearing No. JD-18E/A, Upper Ground floor Khirki Extension on 10.02.2004 for a sum of Rs.1,25,000/- in the name of Defendant No.1. The said property was subsequently sold for Rs.2,00,000/- on 16.09.2005 and the money was received in the joint Account of Appellant and Defendant No.1.

73. The Appellant further asserted that, out of the said sale proceeds of Rs.2,00,000/- and additional contribution from his own funds, he purchased another property bearing No. R-71, Khirki Extension *vide* Sale Deed dated 16.09.2005 for a sale consideration of Rs.3,50,000/- again in the name of Defendant No.1. This property was subsequently sold for Rs.23,75,000/- and thereafter the property bearing No.90/80-AB, First Floor, Malviya Nagar was purchased *vide* Sale Deed dated 20.04.2007 for a sale consideration of Rs.27,00,000/- in the name of Defendant Nos.1 and 2.

74. *It is this last Sale Deed dated 20.04.2007 which is sought to be challenged by the Appellant, in addition to the Sale Deed of 2018 executed in favour of Defendant No.3.*

75. To ascertain the basic cause of action, it is pertinent to first consider whether, from the averments made in the Plaint itself, any legally maintainable challenge has been disclosed against the Sale Deed dated 20.04.2007

76. The *first aspect* apparent from the Plaint itself is that the challenge to the Sale Deed of 2007 has been made in the present Suit, which has been filed in September, 2023. The Appellant could have sought to challenge the ***Sale Deed within the period of three years, but it was filed in 2023, i.e., after 16 years, which is patently barred by limitation.***

77. The Appellant has himself stated that he had paid the sale consideration for the purchase of the suit property *vide* the impugned Sale Deed dated 20.04.2007 executed in the names of Defendant Nos. 1 and 2. Thus, the Appellant was admittedly aware of the execution of the Sale Deed dated 20.04.2007. The challenge to the said Sale Deed, therefore, cannot be treated as a claim arising for the first time upon the subsequent Sale Deed dated 09.01.2018. The Appellant's own pleadings disclose knowledge of the transaction and of the title standing in the names of Defendant Nos. 1 and 2.

78. The *second aspect* which arises for consideration is the effect of the **dismissal of the earlier Suit**, **being CS(OS) No. 2351/2010,** which was instituted in respect of the very same Sale Deed dated 20.04.2007. The said Suit was dismissed in default on 14.03.2013, and the Application seeking restoration thereof under Order IX Rule 9 CPC was subsequently dismissed on 27.04.2015. SLP (C) 1250/2016 was also dismissed *vide* order dated 08.01.2016.

79. Once the Appellant has already instituted litigation challenging the said Sale Deed dated 20.04.2007 , he cannot subsequently seek to challenge the very same Sale Deed, after a period of 16 years. It has been contended that the principle of *constructive res judicata*, was not applicable since the earlier suit was not dismissed on the basis of any adjudication on the issues.

80. The dismissal of the earlier Suit in default cannot be regarded as an adjudication on merits, so as to attract the principle of *res judicata*. However, the consequences of a dismissal when none appears on behalf of the Plaintiff, are specifically provided in **Order IX Rule 9 CPC**, which precludes the Plaintiff from instituting a fresh Suit in respect of the same cause of action.

81. In the present case, CS(OS) No.2351/2010 was dismissed for non-prosecution, *vide* Order dated 14.08.2013, as none appeared on behalf of the Appellant/Plaintiff.

82. The Appellant thereafter, availed of the remedy contemplated under Order IX Rule 9 CPC by seeking restoration of the said Suit; however, the Application for restoration was dismissed on 27.04.2015 and the challenge thereto eventually attained finality. The question, therefore, is *whether the present Suit is founded upon the same cause of action as the earlier Suit so as to attract the statutory bar under Order IX Rule 9 CPC.*

83. In Ganesh Prasad v. Rajeshwar Prasad, 2023 SCC OnLine SC 256, the Supreme Court explained that Order IX Rule 9 CPC bars a subsequent Suit, where it is founded upon the same cause of action as the Suit earlier dismissed under Order IX Rule 8 CPC. It was further explained that, for determining the identity of the causes of action, the Court must examine whether the causes of action in the two Suits are, ***in substance and not merely technically, identical***. The cause of action does not depend upon the nature of the defence or merely upon the form of relief claimed.

84. The present Suit is based on *two claims: first*, that although the Sale Deed dated 20.04.2007 stands in the names of Defendant Nos.1 and 2, the Appellant is the real owner of the suit property as he had paid the sale consideration; and *second*, that the subsequent Sale Deed dated 09.01.2018 executed by Defendant Nos.1 and 2, on the basis of earlier Sale Deed dated 20.04.2007 is therefore, invalid. *The challenge to the subsequent Sale Deed can succeed only if the Appellant first establishes the challenge to* the registered Sale Deed dated 20.04.2007, as being a benami transaction.

85. The challenge to the subsequent Sale deed dated 09.01.2018 is, therefore, dependent upon the challenge to the first sale Deed. In the first Suit bearing CS(OS) No.2351/2010, the challenge was to the Sale deed dated 20.04.2007, which got dismissed in default. *Thus*, *the present Suit is based on the same cause of action*, is barred under Order IX Rule 9 CPC.

86. Moreover, the present case is distinguishable from Ganesh Prasad (supra), where the earlier Suit was founded upon a landlord-tenant relationship, whereas the subsequent Suit was based upon an independent right of redemption of mortgage and, therefore, arose from a different cause of action.

87. The *third aspect* raised in the Application for rejection of the Suit, was that it was barred under *Prohibition of Benami Property Transactions Act, 1988.*

88. The law with regard to benami transactions, is well settled. The Supreme Court in *Manjula & Ors. v. D.A. Srinivas*, 2026 SCC Online SC 831, has explained the distinct operation of Sections 3 and 4 of the Prohibition of Benami Property Transactions Act, 1988. *Section 3 prohibits the entering into a benami transaction, whereas Section 4 operates as a bar against enforcement of rights in respect of property held benami. Section 4(1) bars a suit, claim or action to enforce any right in respect of property held benami by or on behalf of a person claiming to be the real owner, while Section 4(2) bars a defence based on any right in respect of such property.*

89. In the present case, the transaction is dated 20.04.2007. The question, therefore, is whether the substituted Section 2(9) introduced by the 2016 Amendment, would be applicable for determining whether the transaction is benami.

90. In *Manjula (supra)*, the Supreme Court considered the effect of the 2016 Amendment and held that the changes incorporating the exceptions under the erstwhile Section 4(3) into the substituted Section 2(9) are retrospective. The Court distinguished such declaratory and curative provisions from provisions creating new penal liability, which operate prospectively.

91. Thus, the mere fact that the transaction in the present case took place on 20.04.2007, does not prevent the applicability of the substituted Section 2(9) for determining whether the transaction is benami or falls within any of the statutory exceptions.

92. *Section 2(9)(A)(iii) reads as under:*

> **2 (9)** ***'benami transaction'*** means,—
>
> *(A) a transaction or an arrangement—*
>
> *(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and*
>
> *(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration,* ***except when the property is held by —***
>
> …
>
> ***(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual***;"

93. It excludes from the definition of a benami transaction, a transaction where an individual purchases property in the name of his spouse or child, *provided the consideration is paid from the known sources of income of that individual.*

94. In the present case, Defendant No.1 is the wife of the Plaintiff. However, the Sale Deed dated 20.04.2007 was executed not only in favour of Defendant No.1, but also Defendant No.2, who is the mother of Defendant No.1.

95. The Appellant thus, explained that the entire consideration amount of

Rs.27,00,000/- for the suit property was paid by him, in the following manner :

(i) Rs.7,00,000/- vide Cheque dated 27.01.2007 from joint Account of Appellant and Defendant No.1. It was explained that this amount of Rs.7 lakhs had been obtained as a loan by the Appellant by pledging his NSE Bonds, purchased by him in his name as well as in the name of Defendant No.1, from his own funds.

(ii) Rs.3,85,000/- vide cheque dated 18.03.2007 from the joint Account of Appellant and Defendant No.1, which represented the sale proceeds of the earlier flat purchased in Khirki Extension.

(iii) Rs.5,85,000/- vide Demand Draft dated 16.04.2007 drawn from the Account of M/s Credit Solutions, a proprietorship Firm of the Appellant opened on 10.04.2007 but in the name of Defendant No.1, in which a sum of Rs.7,52,000/- had been deposited through a cheque which the Appellant got issued from the Centurion Bank of Punjab as consideration for work done for the bank under the said proprietorship firm; and

(iv) Rs.10,3000/- through Demand Draft dated 31.03.2007 from ICICI Bank. Mumbai Branch. It was explained that this amount represented a loan obtained in the name of Defendant No. 2 from ICICI Bank, which was subsequently repaid/transferred by the Appellant in instalments into her salary account.

96. A perusal of the four constituents of the sale consideration, as explained by the Appellant himself, reveals that his claim of having paid the entire amount of Rs.27,00,000/- from his own exclusive funds, *is not borne out from his own averments.*

97. The *first component* of Rs.7,00,000/- was admittedly paid from the **joint Account** of the Appellant and Defendant No.1. The *second component* of Rs.3,85,000/- was also paid from the **joint Account** of the Appellant and Defendant No.1, which represented the sale proceeds of the earlier flat. *Both the Account holders have equal rights over the funds deposited in the* joint Account. The Appellant, therefore, cannot unilaterally claim exclusive ownership over the monies lying in the joint Accounts, so as to assert that the sale consideration was paid entirely from his own known sources of income.

98. The *third component* of Rs.5,85,000/- was drawn from the Account of M/s Credit Solutions, a proprietorship firm which, by the Appellant's own admission, was opened in the name of Defendant No.1. The funds in the Account of a firm which stands in the name of Defendant No.1, *cannot be treated as the exclusive funds of the Appellant.* The Appellant has offered no explanation as to how the funds of a proprietorship firm, admittedly registered and operated in the name of his wife, can be appropriated as his own known sources of income.

99. The *fourth component* of Rs.10,30,000/- represented a loan obtained in the name of Defendant No.2 from ICICI Bank. The Appellant's claim that he subsequently repaid this amount to Defendant No.2, in instalments, through cash payments and transfers into her salary Account, *is not supported by any cogent documentary proof.* Mere assertions of cash repayments, without any corroborative evidence such as receipts, bank statements, or acknowledgments, ***cannot be accepted as proof of having discharged the liability.***

100. Thus, from the Appellant's own pleadings and explanation of the source of funds, it is evident that the sale consideration was paid either from the joint Accounts of the Appellant and Defendant No.1, from a Proprietorship Firm admittedly standing in the name of Defendant No.1, or from a loan obtained in the name of Defendant No.2, with no credible proof of repayment.

101. The Appellant has, therefore, failed to establish that the consideration for the suit property was paid out of his own known sources of income, within the meaning of Section 2(9)(A)(iii) of the Act. *The plea of benami transaction raised by the Appellant is, accordingly, not maintainable.*

102. The Appellant has, therefore, failed to establish that the consideration was paid out of his known sources of income, and the exception under Section 2(9)(A)(iii) is not attracted so as to exclude the transaction from the definition of a benami transaction.

103. Consequently, the claim of the Appellant that the property, though purchased in the names of Defendant Nos.1 and 2, was held for his benefit and that he is the real owner, falls squarely within the bar of Section 4(1) of the Act, which prohibits a suit, claim or action by a person claiming to be the real owner of property held benami.

104. Further, the Supreme Court in *Binapani Paul v. Pratima Ghosh*, *(2007) 6 SCC 100*, held that the *source of money is a relevant factor, but cannot be treated as the sole determining circumstance; the intention of the parties has to be gathered from the totality of the circumstances, including* *the motive for the transaction, possession, relationship of the parties, custody of title documents and their subsequent conduct.*

105. Therefore, the source of the purchase money, though relevant, is not by itself sufficient to determine whether a transaction is benami. The intention of the parties has to be gathered from the surrounding circumstances, including the motive for the transaction, possession of the property, relationship between the parties, custody of the title documents. and subsequent conduct.

106. *The learned District Judge, therefore, rightly held that the challenge of the Appellant to the Sale Deed of 2007 is barred by the Benami Transaction (Prohibition) Act.*

107. *Once it is held that the challenge to the Sale Deed of 20.04.2007 is not maintainable or that the property was purchased in the name of Defendant Nos.1 and 2, they had an absolute right to deal with the property. Consequently, the subsequent Sale Deed dated 09.01.2018 executed in favour of Defendant No. 3 cannot be challenged by the Appellant.*

Conclusion:

108. There is no merit in the Appeal, which is hereby dismissed.

109. The Appeal stands disposed of along with the pending Applications.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 24, 2026
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