2023:DHC:4549

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

Date of decision: 06th July, 2023

\+ CS(OS) 486/2018 & I.A. Nos. 13318/2018, 15952/2018, 456/2019

SHRI CHARANJEET SINGH & ANR. ..... Plaintiffs

Through: Mr. Pawanjit S. Bindra, Senior Advocate with Mr. Lakshay Dhamija, Advocate and Mr. Sahil Dutta, Advocate for plaintiffs Nos.1 and 2.

versus

SHRI HARVINDER SINGH & ANR. ..... Defendants

Through: Ms. Prabhsahay Kaur, Advocate for defendant No.1.
Mr. Mayank Kumar, Advocate.
Mr. H.S. Phoolka, Senior Advocate with Mr. Deepak Vohra, Advocate and Ms. Shilpa Dewan, Advocate for applicant/defendant No.2.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

I.A.15951/2018 (Under Order VII Rule 11 CPC)

By way of the present application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 ('CPC'), defendant No.2 seeks rejection of the plaint *inter-alia* on the grounds that the plaint does not disclose a cause of action and that it is also barred by law.

2. In the present suit, the plaintiffs have made the following prayers :

> *"(i) Pass a decree of declaration declaring that the property bearing No. F-61, Rajouri Garden, New Delhi is joint property of Plaintiffs and Defendants, both have 50% share each in the same.*
>
> *(ii) Pass a decree of cancellation in favour of Plaintiffs and against Defendants thereby canceling the sale deed dated 27.03.1992 Registered in the office of Sub Registrar Delhi bearing registration No.18570, in Addl. Book No. I, Vol. No. 5686 on Page No. 109 to 122 registered on 27.03.1992 in the name of Defendant No.2.*
>
> *(iii) Appoint a Local Commissioner with directions to suggest the mode of partition bearing No.F-61, Rajouri Garden, New Delhi by metes and bounds and to submit a report before this Hon'ble Court thereby declaring the share of the Plaintiffs in the same whereupon, this Hon'ble Court may be pleased to pass a Preliminary Decree.*
>
> *(iv) Pass a final decree of partition on the basis of report submitted by learned Local Commissioner and the Plaintiffs be put in possession of their share in the aforesaid properties.*
>
> *(v) Pass a decree of Permanent Injunction in favour of the Plaintiff and against the Defendants, restraining the Defendants, their servants, agents, employees, representatives or any body acting through them or on their behalf from in any manner whatsoever creating lien, mortgage, encumbrances, creating third party interest and dealing with or disposing of a part or whole of Property bearing No.F-61, Rajouri Garden, New Delhi.*
>
> *(vi) Grant costs.*
>
> *(vii) Grant such other, further relief/s in the facts and circumstances of the case as this Hon'ble Court may deem just and equitable in favour of the Plaintiffs."*

3. Briefly, it is the plaintiffs' allegation that property bearing No. F-61 Rajouri Garden, New Delhi ('subject property') is the 'joint property' of the plaintiffs and the defendants, both sides having a 50% share therein. In that respect, the plaintiffs seek a decree of declaration. Furthermore, it is the plaintiffs' case that Sale Deed dated 27.03.1992 registered in favour of defendant No.2 be cancelled since defendant No.2 is not the sole or absolute owner of the subject property. In that behalf, the plaintiffs seek a decree of cancellation of the said sale deed. Furthermore, the plaintiffs seek a decree of partition and separate possession in respect of their respective shares in the subject property, based on a mode of partition to be worked-out by appointing a local commissioner.

4. The plaintiffs further seek a decree of permanent injunction, restraining the defendants from creating any lien, mortgage, encumbrance or third-party rights, titles or interests, or otherwise dealing with and disposing the whole or any part of the subject property.

5. The paragraphs of the plaint that are relevant for deciding the present application are the following :

> *"8. As such, from the funds of aforesaid partnership, Property bearing No. F-61, Rajouri Garden, New Delhi was purchased on 27.3.1992 from its erstwhile owners Mrs. Devinder Sahni and Ms. Pritpal Kaur Chandhok. The said property was purchased in the name of Defendant No.2, namely Smt. Bhupinder Kaur Sahni, wife of Defendant No.1. Though the aforesaid property was purchased out of the partnership funds, the Defendant No.2 held the same in a fiduciary capacity for the benefit of members of the family/firm. The said property was always treated as such. Defendant No.2 had no*

income of her own. By paying monies from the firm to third parties and thereafter receiving cheque in lieu thereof from third parties in the name of Defendant No.2, suit property has been purchased.

* * * * *

"12. Since the families of Plaintiff No.1 and Defendant No.1 growing, need was felt to divide the business and properties. As such in February, 2013, the parties sat together and entered into oral settlement i.e. family settlement to divide the properties between them. In fact the same was also put in writing by way of Settlement Deed as under:

(a) It was agreed between the parties that property bearing No.BF-29, Tagore Garden, New Delhi will go to the share of Plaintiff No.1 and his family members and Plaintiff No.1 would pay Rs.75 Lacs to Defendant No.1 being 1.5 Cr. Total cost of construction and half of it i.e. Rs.75 Las from Plaintiff No.1's share.

(b) Ownership of Shop No. 5158 will be that of Plaintiff No.1 and Shop No. 5162 would be that of the Defendant No. 1.

(c) Cash and Stock of both the shops will be divided in the ratio of 60:40 between Defendant No.1 and Plaintiff No.1. Plaintiff No.1 accepted the same for the respect he had upon his elder brother.

(d) Property bearing No.F-61, Rajouri Garden, New Delhi would go to the share of Defendant No. 1.

(e) In property bearing No.A-3, Vishal Enclave, New Delhi, 50% share was of Defendant No.1, 37.5% of Plaintiff No.1 and balance 12.5 share of Smt. Raj Kaur, mother of Plaintiff No.1 and Defendant No. 1.

* * * * *

"14. After the settlement in February, 2013 construction over property bearing No.F-61, Rajouri Garden, New Delhi was started. The building was constructed out of the funds of partnership concern. The construction took place between April, 2013 and February, 2017. Now the building is almost complete. After the building was complete, the Defendant No.1 again turned dishonest.

"15. In utter disregard to the aforesaid understanding and agreement, the Defendant No.1 having turned dishonest started claiming that Property bearing No. F-61, Rajouri Garden, New Delhi was owned exclusively by his wife / Defendant No.2 and the same was not a family property. He even started filing false and frivolous complaints through the mother of the parties against the Plaintiffs alleging that Plaintiff No.1 had stolen the sale deed of property bearing No.A-3, Vishal Enclave, New Delhi with false allegations made in the said complaint. The Defendant No.1 did not stop at that and through his mother he made complaints to SHO dated 21.3.2017, 22.3.2017, 30.3.2017, 12.7.2017 and 13.7.2017. The relationship between the parties is such that there was no reason for Plaintiffs to doubt the intention of Defendants. Keeping in mind the aforesaid relationship and that parties had in mind that suit property will eventually devolve upon Defendants and other residential property unto the Plaintiffs, to avoid payment of stamp duty in future, suit property was purchased in the name of Defendant No.2. Defendant No. 2 is bound in a fiduciary character to protect the interest of Plaintiffs.

* * * * *

"17. From the aforesaid, it is clear that property bearing No.F-61, Rajouri Garden, New Delhi is a joint property of the parties and it was purchased out of partnership funds and all along it was treated as a family property. It is only recently in February, 2017 when Defendant started claiming that the said property was not joint family property but that of Defendant No.2 since it was purchased in her name. As such the Plaintiff is entitled to legal character that property No.F-61, Rajouri Garden, New Delhi is a joint property of the parties in which the Plaintiffs have 50% share and the Defendants balance 50%. In the circumstances, the Plaintiffs claim decree of declaration declaring that Plaintiffs and Defendants have 50% share each in property No.F-61, Rajouri Garden, New Delhi. If the sale deed dated 27.03.1992 Registered in the office of Sub Registrar Delhi bearing registration No. 18570 in Addl. Book No. I Vol. No. 5686 on Page No. 109 to 122 registered on 27.03.1992 in the name of Defendant No.2 is left out standing, which document is voidable, serious injury will be caused to the Plaintiff. In the

circumstances, the Plaintiffs seek a decree of cancellation of the aforesaid sale deed. Further direction is also sought to Sub Registrar, Delhi to cancel the said document.

* * * * *

"20. The cause of action arisen to file he (sic) present suit arose in favour of the Plaintiffs from time to time as explained hereinabove. The cause of action in (sic) February 2017 when the Defendant No.1 started claiming the suit property being F-61, Rajouri Garden, New Delhi is property of Defendant No.2 and the Plaintiffs have no right in the same. The cause of action further arose when the Plaintiff (sic, defendant No. 1) filed a suit for partition seeking partition of other properties without including the suit property. The cause of action further arose on 2.11.17 when the counter claim filed by the Plaintiff in suit bearing CS No 466/2017 was withdrawn with liberty to file separate suit, since the Defendant No, 2 in whose name property bearing No.F-61, Rajouri Garden is registered was not a party to said suit. Since Defendants have refused to partition the suit property. The cause of action is a continuing one."

(emphasis supplied)

The court has heard Mr. HS Phoolka, learned senior counsel appearing for defendant No. 2 and Ms. Prabhsahay Kaur, learned counsel appearing for defendant No. 1; as also Mr. Pawanjit Singh Bindra learned senior counsel appearing for the plaintiffs. Counsel for the parties have also filed their respective written submissions in the matter.

Submissions on behalf of defendant No.2 (applicant)

6. Seeking rejection of the plaint by way of the application under consideration, defendant No.2 has raised the following contentions :

6.1. Defendant No.2 states that the plaint itself recites that the subject property was purchased in her name, and title therein

was conveyed to her *vide* Sale Deed dated 27.03.1992. Defendant No.2 submits accordingly, that she is accordingly the sole and absolute owner of the subject property and therefore the prayer for declaring the subject property as 'joint property' or seeking its partition is not maintainable. She in fact asserts, that the subject property is her self-acquired property;

6.2. Defendant No.2 further points-out, that the falsity of the plaintiffs' claims is evident from the contradictory pleas they have taken in the plaint. *For one*, the plaintiffs allege that the subject property is 'partnership property' belonging to the partnership firm in which they are partners; *next*, the plaintiffs claim that the subject property is 'joint property' held by the family members; *and then*, the plaintiffs contend that the subject property is held by defendant No.2 in a fiduciary capacity for and on behalf of the partnership firm. Defendant No.2 argues that all these claims are mutually contradictory, apart from there being no specifics, particulars or support for any of the claims, either by way of clear averments in the plaint or even by reference to the documents filed alongwith the plaint;

6.3. Insofar as the claim of the subject property being partnership property is concerned, defendant No.2 points-out that there is nothing in the plaint to explain, even by way of an averment, as to how the subject property came to be partnership property. There is no allegation in the plaint that the subject property was

purchased by the partnership firm; nor that the property was purchased *in the names of the partners*; nor that *defendant No.2 is one of the partners* in the partnership firm; nor even that the subject property has been shown in the Income Tax Returns or any other returns or documents filed, as the property of the partnership firm;

6.4. It is further pointed-out that there is also no averment in the plaint *to show how* defendant No.2 is holding the subject property in a fiduciary capacity for the plaintiffs. It is submitted that nowhere is it stated in the plaint that defendant No.2 was one of the partners of the partnership firm. On point to fact, it is the admitted case between the parties that defendant No. 2 was never a partner of the partnership firm. Furthermore, defendant No.2 submits, that the subject property is also clearly out of the purview of sections 14 and 15 of the Indian Partnership Act, 1932 ('Partnership Act'), which provisions read as under :

> *"14. The property of the firm.—Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.*
>
> *Unless the contrary intention appears, property and rights and interest in property acquired with money belonging to the firm are deemed to have been acquired for the firm."*
>
> *"15. Application of the property of the firm.—Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business."*

More specifically, it is pointed out that the bald allegation that the subject property was purchased from the funds of the partnership firm is explained in the plaint itself in the following words : "*By paying monies from the firm to third parties and thereafter receiving cheque in lieu thereof from third parties in the name of Defendant No.2, suit property has been purchased*". It is argued that in view of the foregoing categorical averment in the plaint, it is evident that the subject property was not purchased *from* the funds of the partnership firm. Besides, once it stands admitted that the title to the subject property vests in defendant No. 2, the vague and bald assertion in the plaint that construction on the subject property was carried-out from the funds of the partnership firm loses any meaning, since the reliefs of declaration and partition are being sought of the subject property as a whole and not only of the superstructure;

6.5. Furthermore, defendant No.2 contends, that there is also no allegation, muchless anything to substantiate an allegation, that the subject property is 'joint family property'. There is no allegation in the plaint that the subject property belonged to any 'joint family'; or that there was ever an HUF to which the subject property belonged; nor even an allegation that defendant No.2 was ever a coparcener of any such HUF; nor any allegation that the subject property was declared as 'joint family' property in any official filings or records;

6.6. Insofar as the allegation in the plaint that the subject property is being held by defendant No.2 as part of a 'family settlement', it is submitted on behalf of defendant No. 2 that this allegation also does not require any consideration for the reason *firstly*, that defendant No.2 is not a signatory to the said alleged family settlement; *secondly*, the alleged document purporting to be a family settlement does not record that it is a 'memorandum' recording an oral family settlement, and if by way thereof, title to the subject property was conferred in favour of defendant No. 2, the alleged family settlement ought to have been registered as required in law, which it is not. It is contended, that by reason of non-registration, the purported family settlement is inadmissible in evidence. It is pointed-out that even assuming the alleged family settlement to be genuine and admissible, there is no averment in the plaint to say how the subject property came to be transferred solely in the name of defendant No.2 by way of a registered sale deed in *1992*, when the family settlement was admittedly signed only in *2013*;

6.7. As for the relief of seeking cancellation of Sale Deed dated 27.03.1992, defendant No.2 contends that the prayer to that effect is clearly barred by time, inasmuch as the limitation for seeking cancellation of a document is 03 years as provided in Article 59 of the Schedule to the Limitation Act, 1963 ('Limitation Act'). It is contended that since it is the plaintiffs' own case that funds belonging to the partnership firm were used for purchasing the subject property *vide* Sale Deed dated

27.03.1992, plaintiff No. 1, who was one of the partners, had knowledge of the said sale deed at the stage of execution itself. Besides, in any case, the alleged family settlement relied upon by the plaintiffs also mentions that the subject property will be handed-over and registered in favour of defendant No. 1. This is stated to have been an oral family arrangement to begin with, which was reduced to writing in February 2013. Therefore, at the latest, in February 2013, the plaintiffs knew that the subject property stood conveyed to defendant No. 2 *vide* Sale Deed dated 27.03.1992. However, the present suit has come to be filed only on 10.09.2018, which is well-beyond the 03 year limitation period, whether reckoned from the date of execution of the sale deed or the date of the alleged family settlement. The suit is therefore clearly barred by limitation;

6.8. On point of law, it is submitted that since it is the plaintiffs' case that the subject property was purchased and/or constructed using funds of the partnership firm *but* in the name of defendant No. 2, then such claim is precisely what is barred under section 4 of the Prohibition of *Benami* Property Transactions Act, 1988 ('Benami Transactions Act'), which reads as under :

> *"4. Prohibition of the right to recover property held benami-*
>
> *(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.*
>
> *(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the*

property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property."

Furthermore, it is submitted that defendant No.2 also does not fall within the exception to the definition of *benami* property engrafted in section 2(9)(A)(ii) of the Benami Transactions Act. The relevant exception reads as follows :

"2. Definitions.— In this Act, unless the context otherwise requires,—

* * * * *

(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—

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person

> *as may be notified by the Central Government for this purpose;*
>
> *(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;*
>
> *(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or*
>
> *(B) * * * * * (D) "*

It is argued that defendant No.2 does not fall within the category of "*a person standing in a fiduciary capacity for the benefit of another person*" merely because she is the wife of one of the partners of the partnership firm (*viz.* defendant No.1); other exceptions being clearly inapplicable to defendant No. 2. It is emphasised that the plaintiffs nowhere allege that defendant No. 2 is or was herself a partner;

6.9. Though not relevant for purposes of deciding the application under Order VII Rule 11 CPC, defendant No.2 says that she has clearly averred in her written statement that she paid the entire sale consideration for purchase of the subject property from her own resources, including by encashing her *Vikas Patras* and receiving funds from her cousin abroad. It is submitted that

documents evidencing how defendant No.2 arranged funds for purchasing the subject property have also being filed on record;

6.10. Lastly, it is contended that defendant No. 2's absolute ownership of the subject property is also recognised by the provisions of section 14(1) of the Hindu Succession Act 1956 ('Hindu Succession Act'), which makes a female Hindu "*a full owner thereof and not as a limited owner*" of any property acquired by her before or after the commencement of the Hindu Succession Act. It is argued that in view of Sale Deed dated 27.03.1992 standing exclusively in the name of defendant No.2, the plaintiffs cannot claim any right, title or interest in the subject property, which, in law vests exclusively in defendant No.2 as full owner.

7. In view of the above submissions, defendant No.2 contends that the plaint deserves to be rejected, *firstly* since the plaint does not disclose a cause of action; and *secondly* the suit appears from the statements in the plaint to be barred by law, *viz.* by the above-cited provisions the Limitation Act, the Benami Transactions Act as also the Hindu Succession Act.

8. In support of its case, defendant No.2 has cited the following judicial precedents :

8.1. ***Aparna Sharma & Ors. vs. Sidhartha Sharma & Ors.***[1]***, Pushpa Kanwar vs Urmil Wadhawan & Ors***[2] on the

[1] MANU/DE/2205/2018 at paras 5, 7
[2] MANU/DE/2993/2009 at paras 13-15

proposition that the meaning of 'fiduciary capacity' is no longer general and expansive, and only transactions between certain relationships having fiduciary capacity as stated in section 2(9)(A)(ii) would be covered within the exception and will not be hit by the Benami Transactions Act;

8.2. ***Surender Kumar Khurana vs. Tilak Raj Khurana & Ors.***[3] on the proposition that joint funds or joint properties are not equal in law to HUF funds or HUF properties;

8.3. ***J.M. Kohli vs. Madan Mohan Sahni & Ors.***[4] on the proposition that though there is an implied trust in *benami* transactions, "*however, such trusts are not the trusts which are within the purview of Section 4(3)(b) of the Benami Act*";

8.4. ***Narender Kante vs. Anuradha Kante & Ors.***[5] on the proposition that a deed of family settlement seeking to partition joint family properties cannot be relied upon unless signed by *all* the co-sharers of the property;

8.5. ***Renu Khullar vs. Aaron***[6]***, Church of Christ Charitable Trust and Educational Charitable Society vs. Ponniamman Educational Trust***[7] on the proposition that courts must enquire whether there is a *real cause of action* set-out in the plaint or if it is illusory in nature;

[3] 2016 (155) DRJ 71 at paras 5,8-9
[4] MANU/DE/2726/2012 at paras 9-13
[5] (2010) 2 SCC 77 at para 26
[6] 2018 (170) DRJ 268 at paras 13-16
[7] (2012) 8 SCC 706 at paras 12-14

8.6. ***Mohan Lal Bhatnagar vs. Kamlesh Kumari Bhatnagar & Ors.***[8]***, Subraya M.N. vs. Vittala M.N. & Ors.***[9]***, Kale & Ors. vs. Deputy Director of Consolidation & Ors.***[10] ***Satish Kumar Batra vs. Harish Kumar Batra & Ors.***[11] on the proposition that family settlements that have been reduced to writing and seek to partition, extinguish or create rights in immovable property must be registered to be admissible in evidence;

8.7. *Renu Khullar* (supra)[12] on the proposition that once the period of limitation to challenge the instrument starts running, it does not stop; and it is to be reckoned from the date of knowledge of execution of the instrument and not from the date there arose "a need to challenge" the instrument;

8.8. ***Union of India & Anr. vs. Ganpati Dealcom Pvt Ltd***[13] to explain the general scheme of the Benami Transactions Act;

8.9. ***Padmavati Mahajan vs. Yogender Mahajan & Anr.***[14] and ***Jaydayal Poddar (Deceased) through LRs and Anr. vs. Bibi Hazra & Ors.***[15] on the proposition that for a transaction to be termed as *benami*, the intention which should exist at the time the property was purchased has to be gauged from the surrounding circumstances, the source from which the purchase

[8] 2011 (185) DLT 394 (DB) at para 24
[9] (2016) 8 SCC 705 at paras 15, 16 and 19
[10] (1976) 3 SCC 119 at paras 10 and 15
[11] 2018 (II) AD (Delhi) 645 at paras 13-16
[12] 2018 (170) DRJ 268 at paras 21, 22
[13] 2022 SCC OnLine SC 1064
[14] 2008 (152) DLT 363 at paras 10, 12-17, 21
[15] (1974) 1 SCC 3 at paras 6, 7

money came, relationship of the parties, the nature and possession of the property, custody of the title deeds after the sale, motives governing their action in bringing about the transaction and their subsequent conduct; that the burden of proving that the property was *benami* is on the person asserting the claim; and the mere payment of consideration by a third person will not necessarily make the transaction *benami*;

8.10. ***Lalsa Prasad Singh vs. Chanderwala & Ors.***[16] on the proposition that where one party claims it to be a case of *benami* transaction arising from an HUF, it is necessary that the existence of the HUF is properly pleaded, especially when the person holding the property is not a member of the HUF but is a relative of such member;

8.11. ***Leena Mehta vs. Vijaya Myne & Ors.***[17] on the proposition that a combined reading of section 3(2) of the Benami Transactions Act and section 14 of the Hindu Succession Act would show that the law presumes that a property purchased in the name of the wife or unmarried daughter is purchased for her benefit, and that she would be the absolute owner of the property in terms of the title deed;

8.12. ***Nikhil Batra vs. Diwakar Batra & Ors.***[18] on the proposition that a bald plea that the woman, in whose name the property stands, is a housewife and therefore a *benami* owner on behalf

[16] MANU/DE/3113/2017 at para 6
[17] 2009 SCC OnLine Del 3577 at paras 7-11
[18] 2019 SCC OnLine Del 8253 at para 15

of the HUF, is barred by the Benami Transactions Act and does not constitute a pleading in law, especially when there are no particulars furnished alongwith such pleadings;

8.13. ***Savita Anand vs. Krishna Sain & Ors.***[19] on the proposition that fiduciary relationships have a legal connotation and are *not equivalent to filial relationships*, the former involving existence of a duty or obligation that is more than parental duties or obligations;

8.14. ***Hemant Satti vs. Mohan Satti & Ors.***[20] on the proposition that when the plaintiff sets-up a plea that a property is borne-out of a *benami* transaction, which property though standing in the name of his mother, in fact belonged to his father, he must plead and prove that the property was not acquired for the benefit of his mother; and

8.15. ***Anita Anand vs. Gargi Kapur & Ors.***[21] on the proposition that though a challenge to the right of a woman under section 14 of the Hindu Succession Act is entertainable if it is proved that the property was purchased only in the name of the woman and not for her benefit, those are cases of husband/wife. But since in the present case, the plaintiffs assert that the subject property was purchased in the name of the daughter-in-law, she cannot be placed in the same position as a daughter or wife.

[19] MANU/DE/1944/2020 at paras 29-30
[20] 2013 (139) DRJ 391 at paras 13-16
[21] MANU/DE/3395/2018 at paras 23-24

9. It is accordingly urged that the present application be allowed, and the plaint be rejected.

Submissions on behalf of defendant No.1

10. Appearing for defendant No. 1, Ms. Kaur, learned counsel supports the application seeking rejection of the plaint, further pointing-out that the present suit is in fact only a counter-blast to the suit bearing CS(OS) No.466/2017 filed *inter-alia* by defendant No. 1, whereby partition has been sought of all the properties that are jointly owned by the parties. It is submitted that in the said suit, the subject property has not been mentioned since it was never the joint-property of the parties and has always been held solely and exclusively by defendant No. 2. Ms. Kaur submits, that in that suit the present plaintiffs filed a counter-claim in relation to the subject property; which counter-claim was however dismissed as withdrawn as recorded in order dated 02.11.2017, with the court observing that a counter-claim " … *qua a non-party to the suit is not maintainable*". Moreover, it is pointed-out that even in that counter-claim, the alleged family settlement had neither been mentioned nor filed by the present plaintiffs. Counsel submits, that in fact certain claims made by the plaintiffs in the present suit are contrary to what is stated in the written statement filed by the present plaintiff No. 1 (who is defendant No. 1) in CS(OS) No. 466/2017. Ms. Kaur also submits that though it is the plaintiffs' own case that construction on the subject property began in 2014, the present suit has been filed only on 10.09.2018, whereby the suit is clearly time-barred.

Submissions on behalf of the plaintiffs

11. Opposing the application seeking rejection of the plaint, the plaintiffs have raised the following contentions :

11.1. The plaintiffs contend that the subject property was purchased on 27.03.1992 from the funds of the partnership firm 'M/s Sujan Singh & Sons.' which was started by the father of the concerned parties. It is submitted that though the subject property was purchased in the name of defendant No.2, who is the wife of defendant No.1, it has been categorically averred in para 8 of the plaint that defendant No.2 held the subject property in a fiduciary capacity, for the benefit of the family/firm and that the subject property has always been treated as family property. It is the plaintiffs' contention that defendant No.2 had no income of her own, and that, in fact the subject property was purchased by the partnership firm paying monies to third parties, who then gave cheques in the name of defendant No.2 in lieu of the money so received, which money was used by defendant No. 2 to purchase the subject property;

11.2. It is argued that it has been specifically averred in paras 8, 12 to 15, 17 and 20 of the plaint that family properties were divided between the family members on an oral settlement arrived at between them, which settlement was then narrated in a written family settlement deed dated February 2013. It is pointed-out that the family settlement acknowledges that the subject

property belongs to the family and would go to the share of defendant No.1, whereas other properties would come to the share of the plaintiffs. The allegation is that in disregard of the agreement so arrived at between the family members, defendant No.1 turned dishonest and started claiming that the subject property was owned by his wife, *viz.* defendant No.2. It is submitted that the averments in the plaint and the documents on record clearly show that defendant No.2 holds the subject property in a fiduciary capacity for the benefit of the other members of the family;

11.3. Furthermore, the plaintiffs contend that whether defendant No.2 comes within the purview of the exception contained in section 2(9)(A)(ii) of the Benami Transactions Act or whether the suit is barred by that statute, can only be decided after evidence is led. It is submitted, that fiduciary capacity is a well-defined concept and that it has been held by the Supreme Court that fiduciary capacity implies a relationship that is analogous to the relationship between trustees and beneficiaries; and that in fact, the concept is wider and extends to all such situations that place parties in a position founded on confidence, trust and good faith;

11.4. As regards rejection of a plaint is concerned, the plaintiffs contend that while deciding an application under Order VII Rule 11 CPC, the court must proceed only on a demurrer and see whether, accepting the averments made in a plaint, a suit is

barred by law; and that disputed questions cannot be decided when considering an application under Order VII Rule 11 CPC. In the present case, it is argued, that reading the averments in the plaint as a whole it cannot be said that the suit is barred by law, whether it be the Benami Transactions Act or the Limitation Act;

11.5. Insofar as the contention that, in any case, defendant No.2 holds the subject property as absolute owner in view of section 14 of the Hindu Succession Act, it is argued that a challenge to the right of the woman under section 14 is entertainable if it is proved that though a property was purchased in her name, it was not for her benefit, which is the case here. Furthermore, it is contended that since section 67 of the Benami Transactions Act gives overriding effect to that statute and recites that the provisions of that statute shall have effect notwithstanding anything inconsistent contained in any other law for the time being in force, and the Benami Transactions Act of 1988 being a later statute, it must prevail over the Hindu Succession Act of 1956, implying thereby that the effect of section 14 of the Hindu Succession Act stands negated;

11.6. It is also argued that the averments in the plaint make out a case that defendant No.2 falls within the exception contained in section 2(9)(A)(ii) of the Benami Transactions Act, which position has to be decided only after evidence is led and not at

the stage of deciding the present application under Order VII Rule 11 CPC;

11.7. In particular, reliance is placed by the plaintiffs upon a decision of a Division Bench of this court in ***Neeru Dhir vs. Kamal Kishore Dhir***[22], submitting that *vide* judgment dated 01.05.2020 made in the said matter, an application under Order VII Rule 11 CPC seeking rejection of the plaint was dismissed, reversing the view taken by the learned single Judge in that case, with the Division Bench observing : "*In the present case, the stage of evidence had not even been arrived at. In fact, only pleadings in the suit were completed. Issues have also not been framed. Therefore, there was no occasion for the court to determine as to whether the respondent No. 1 stood in a 'fiduciary capacity' vis-a-vis his deceased brother, Shri Anil Kumar Dhir, predecessor-in-interest of the appellants/ plaintiffs*".

12. Premised on the foregoing submissions, the plaintiffs argue that the plaint cannot be rejected either on the ground that it does not disclose a cause of action, or that it is barred any law, be it the Benami Transactions Act, the Limitation Act or the Hindu Succession Act.

13. In support of their contentions, the plaintiffs have placed reliance on the following judicial precedents :

[22] MANU/DE/2444/2020

13.1. ***Popat and Kotecha Property vs. State Bank of India Staff Association***[23] on the proposition that disputed questions cannot be decided at the time of considering an application under Order VII Rule 11 CPC;

13.2. ***Ram Prakash Gupta vs. Rajiv Kumar Gupta & Ors.***[24], ***Sri Bishwanath Banik & Anr. vs. Sulanga Bose & Ors.***[25], ***Madanuri Sri Rama Chandra Murthy vs. Syed Jalal***[26], ***Ram Prakash Gupta vs. Rajiv Kumar Gupta & Ors.***[27] on the proposition that rejecting a plaint under Order VII Rule 11 CPC only by reading a few lines and passages and ignoring the other relevant parts of the plaint, is impermissible;

13.3. ***Srihari Hanumandas Totala vs. Hemant Vithal Kamat & Ors.***[28], ***Soumitra Kumar Sen vs. Shyamal Kumar Sen***[29], ***Shakti Bhog Food Industries Ltd vs. Central Bank of India & Anr.***[30], ***Saleem Bhai & Ors. vs. State of Maharashtra & Ors.***[31], *Church of Christ Charitable Trust & Educational Charitable Society* (supra)[32] on the proposition that what is stated in the written statement cannot be gone into while deciding an application under Order VII Rule 11 CPC;

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[23] (2005) 7 SCC 510 at para 10
[24] (2007) 10 SCC 59 at paras 12-17, 18
[25] (2022) 7 SCC 731 at paras 7, 7.1
[26] (2017) 13 SCC 174 at para 7
[27] (2007) 10 SCC 59 at paras 11, 17, 18
[28] (2021) 9 SCC 99 at paras 16, 19-22
[29] (2018) 5 SCC 644 at paras 6, 9, 10
[30] (2020) 17 SCC 260 at para 7
[31] (2003) 1 SCC 557 at paras 7, 9
[32] (2012) 8 SCC 706 at para 11

13.4. ***Marcel Martins vs. M Printer & Ors.***[33]***, Pawan Kumar vs. Babulal since deceased through LRs & Ors.***[34] and *Neeru Dhir* (supra)[35] on the proposition that fiduciary capacity implies a relationship analogous to that between a trustee and a beneficiary of a trust and has wide import, extending to situations where parties are in a position founded on confidence, trust and good faith. The contention being that a disputed question of fiduciary relationship cannot be decided at the stage of deciding an application under Order VII Rule 11 CPC;

13.5. *Anita Anand* (supra)[36] and *Hemant Satti* (supra)[37] on the proposition that a challenge to the right of a woman under section 14 of the Hindu Succession Act is entertainable if it is proved that though a property was purchased in the name of a woman, it was not for her benefit, to submit that the question of whether the property was for the woman's benefit cannot be decided in an application under Order VII Rule 11 CPC;

13.6. ***Maruti Udyog Ltd vs. Ram Lal & Ors.***[38]***, Solidaire India Ltd vs. Fairgrowth Financial Services Ltd. & Ors.***[39] and ***Borukha Steel Ltd.*** **vs.** ***Fairgrowth Financial Services Ltd.***[40] on the

[33] (2012) 5 SCC 342 at paras 31-38
[34] (2019) 4 SCC 367 at paras 8, 10, 13
[35] MANU/DE/2444/2020 at para 20
[36] MANU/DE/3395/2018 at paras 3, 11-20, 22-24
[37] 2013 (139) DRJ 391 at paras 1-3, 7, 10, 15
[38] (2005) 2 SCC 638 at paras 41, 42
[39] (2001) 3 SCC 71 at paras 9-11
[40] (1997) 89 CompCas 547 Bom at paras 15, 19

proposition that when both statutes containing *non-obstante* clause are special statutes, an endeavour should be made to give effect to both, though in the case of conflict the later statute would prevail;

13.7. ***Md. Hassen Hashmi vs. Kaberi Roy & Ors.***[41] on the proposition that the question of whether there existed a fiduciary relationship or not is to be proved at the trial; and

13.8. ***R. Rajagopal Reddy (Dead) by LRs and Ors vs. Padmini Chandrasekharan (Dead) by LRs.***[42] to argue that sections 4(1) and 4(2) of the Benami Transactions Act are not retrospective. However, this decision rendered in 1995 does not appear to be relevant since in the present case all court proceedings have arisen only after the amendment of the Benami Transactions Act in 2016.

Discussion and Conclusions

14. Before proceeding to assess the factual contentions raised by the parties, the extant position of law in relation to the points raised may be recapitulated. In this regard, the following judicial precedents are relevant :

14.1. **On section 14 of the Hindu Succession Act**, in *Leena Mehta* (supra) a Co-ordinate Bench of this court has held as under :

> *"9. A perusal of Section 3(2) of the Act would show that the law presumes that if the property is purchased in the name of*

[41] AIR 1993 Cal 70 at paras 16, 22, 25-28
[42] (1995) 2 SCC 630 at paras 16, 17, 21

wife or unmarried daughter, the property has been purchased for benefit of the wife and unmarried daughter. ***It only means that if a property is purchased in the name of wife it is for her benefit and she becomes the absolute owner of the property***. *It does not mean that the property would still remain a benami property of the husband and every other legal heir of the husband would have a share in the property. Section 14 of the Hindu Succession Act, 1956 makes it further abundantly clear that if any property is possessed by a female Hindu whether it is acquired before or after the commencement of Act it shall be held by her as full owner and not as a limited owner unless and until the instrument by which the property has been acquired prescribes a restriction on her ownership of such property. In the present case, the conveyance deed executed by DDA was in the name of defendant no.1, there was no restriction placed in the conveyance deed about the right of ownership of defendant no.1. Defendant no.1 was absolute owner of the property in terms of the title deed in her favour. The property cannot be considered to be either of her husband or of anyone else after 31 years of execution of the title deed in her favour."*

(emphasis supplied)

14.2. **On section 2(9)(A)(ii) of the Benami Transactions Act**, in *Savita Anand* (supra) a Co-ordinate Bench of this court has explained the concept of 'fiduciary relationship' in the following words :

"*29. However, we are unable to accept this submission. Being a mother, D1 would have naturally assumed the role of the caretaker of her children including the appellant after the death of her husband. By setting out a ground for allotment of a plot to her, it cannot be assumed that D1 had entered into a fiduciary relationship with her children.* ***Fiduciary relationships have legal connotation and are not equivalent to filial relationships. Fiduciary relationships or***

capacity involve the existence of a duty or obligation that is more than parental duties or obligations.

"30. What constitutes fiduciary relationship has not been defined in the statutes. Recourse has been taken by the courts to the meanings given in dictionaries to deal with specific fact situations. The Supreme Court had occasion to discuss what constituted fiduciary relationship in CBSE vs. Aditya Bandopadhyay, MANU/SC/0932/2011 : (2011) 8 SCC 497 while considering the relationship of the examining bodies and students. After considering the definitions of "fiduciary relationship" in Black's Law Dictionary, the American Restatements (Trust and Agency), the Corpus Juris Secundum, Words and Phrases, and considering the decisions in Bristol and West Building Society vs. Mothew [1998 Ch. 1] In Wolf vs. Superior Court [2003 (107) California Appeals, 4th 25], the Supreme Court concluded:

> *"39.* ***The term "fiduciary" refers to a person having a duty to act for the benefit of another, showing good faith and candour, where such other person reposes trust and special confidence in the person owing or discharging the duty****. The term "fiduciary relationship" is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction(s). The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third party.*

> *40. <u>There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are: a partner vis-à-vis another partner and an employer vis-à-vis employee</u>. ...*
>
> *41. In a philosophical and very wide sense, ..."*

"31. Though the Supreme Court was in RBI vs. Jayantilal N Mistry & Others, MANU/SC/1463/2015 : (2016) 3 SCC 525 considering the question of disclosure by the Reserve Bank of India of information received by it from other banks about clients/loan defaulters, etc., under the Right to Information Act, 2005, it is apposite to refer to its observations on what constitutes fiduciary relationship and capacity, ... It also referred to the definition of fiduciary relationship given by The Advanced Law Lexicon 3rd Edition 2005 and also set down the scope of fiduciary relationship in paras 57 & 58, which are reproduced for convenience:

> *"57. The Advanced Law Lexicon, 3rd Edn., 2005, defines "fiduciary relationship" as:*
>
> *"**<u>Fiduciary relationship.--A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the [fiduciary] relationship</u>** .... Fiduciary relationship usually arises in one of the four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognised as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer."*

58. The scope of fiduciary relationship consists of the following rules:

> *"(i) No conflict rule--A fiduciary must not place himself in a position where his own interests conflict with that of his customer or the beneficiary. There must be 'real sensible possibility of conflict'.*
>
> *(ii) No profit rule--A fiduciary must not profit from his position at the expense of his customer, the beneficiary.*
>
> *(iii) Undivided loyalty rule--A fiduciary owes undivided loyalty to the beneficiary, not to place himself in a position where his duty towards one person conflicts with a duty that he owes to another customer. A consequence of this duty is that a fiduciary must make available to a customer all the information that is relevant to the customer's affairs.*
>
> *(iv) Duty of confidentiality--A fiduciary must only use information obtained in confidence and must not use it for his own advantage, or for the benefit of another person."*

"32. The facts and circumstances surrounding the acquisition of the suit property by D1 and its subsequent use do not establish any of the above elements. A parent would be in a fiduciary relationship with an offspring only when the child lacks legal capacity due to minority or disability and the relationship discloses an absolute dependency on the parent for decision making. The appellant was 18 years old and legally major when the suit property was purchased. Her very case is that she consciously allowed her mother to take the property in her own name and voluntarily, even paid for it. There are no facts pleaded to show how D1 had ever established superior control over the appellant and took over her responsibility. No duty or obligation is stated to have been taken by D1 to advice the appellant or that the appellant was completely dependent on D1 for such advice.

Rather, according to the appellant, her husband had all along helped D1 in dealing with the suit property. There is no pleading to the effect that a Trust had been created for the children of late Yashpal Sain and D1 had been appointed its Trustee."

(emphasis supplied)

14.3. **As for the claim for cancellation of the sale deed being time-barred**, in *Renu Khhullar* (supra) a Division Bench of this court had this to say on Article 59 of the Limitation Act :

"19. Learned counsel for the appellant, although, has argued that the period of limitation for the cancellation/annulment of a settlement deed dated 11.11.1980 is covered under Article 59 of the Limitation Act and not under Article 58 of the Limitation Act, however, the perusal of the plaint shows that not a single averment is made in the plaint regarding the period of limitation. The appellant has not pleaded any fact claiming exemption of any period to be excluded while calculating the period of limitation for seeking cancellation of the document, executed on 11.11.1980 and registered in the year 1981 and which was duly signed by the appellant. The plaint is completely silent as to the fact when the period of limitation had begun. In the plaint, the appellant has not disclosed the date on which she claims to have gained knowledge of the instrument i.e. the settlement deed dated 11.11.1980. Admitted facts are that this settlement deed was executed by her mother and it also bears her signatures as well as signatures of other siblings. In the absence of any pleadings to the contrary, the knowledge of execution of this deed therefore can be assigned to the date on which this deed was signed by the appellant i.e. 11.11.1980.

"20. Even if we accept that the Article 59 of the Limitation Act governs the period of limitation in the case of appellant, the period of limitation is three years from the date when the facts entitling the plaintiff to have the instrument cancelled, first became known. It is the duty of the plaintiff under the law to place before the Court, the facts showing that the instrument came to be known to her on any other date than the date on which she put her signature on the instrument. Naturally by her own averments in the plaint, she was aware of this family settlement on the very date on which it was signed. Although, it is argued before us that she simply signed the instrument and was not aware about the contents of the deed but again there are no pleadings in her plaint to this effect. The plaint is totally silent about the date of knowledge. What, she had contended in the plaint is reproduced as under:—

……

"21. Section 9 of the Limitation Act stipulates that ***once the period of limitation begins, it does not stop and no subsequent disability or inability stops it****. However, while computing the period of limitation, Part 3 of the Limitation Act excludes certain periods.* ***Order VII Rule 6 of CPC clearly stipulates that where a suit is instituted after the expiry of period of limitation, it is the duty of petitioner to plead facts in the plaint showing that the suit is within limitation and not barred by limitation. The appellant apparently has not made any averment in the plaint regarding period of limitation****. Even if we accept the arguments of learned counsel for the appellant that the period of limitation in this case has to be reckoned under Article 59 of the Limitation Act, it is still required to be filed within three years from the date of knowledge of execution of this settlement deed qua the appellant. In the absence of any averments in the plaint to the contrary, the period of limitation naturally has to begun from the date when family settlement was executed and signed by the appellant, admittedly which date is 11.11.1980.*

> *"22. In the light of this settled proposition of law, the claim of the appellant that the period of limitation is to be reckoned from the date of cause of action i.e. when there arose "a need to challenge" the instrument, has no force in it. The period of limitation to challenge the instrument once start running does not stop. The plaint is bereft of any facts, showing as to why it should be reckoned from the date of alleged cause of action and not from the date of execution of the instrument."*
>
> (emphasis supplied)

15. Upon a careful consideration of the submissions made on both sides, and in particular, on a close and meaningful reading of the averments contained in the plaint, in the backdrop of the position of law as discussed above, in the opinion of this court the following inferences can be drawn :

15.1. The plaintiffs do not dispute that the subject property was purchased *by defendant No.2* from its erstwhile owners, Davinder Sahni and Pritpal Kaur Chandhok, *vide* registered Sale Deed dated 27.03.1992. The plaintiffs contend that funds of their partnership firm were used for purchasing the subject property, since they allege, defendant No.2 had no income of her own. This is what para 8 of the plaint recites :

> *"8. As such, from the funds of aforesaid partnership, Property bearing No.F-61, Rajouri Garden, New Delhi was purchased on 27.3.1992 from its erstwhile owners Mrs.Devinder Sahni and Ms. Pritpal Kaur Chandhok. The said property was purchased in the name of Defendant No.2, namely Smt. Bhupinder Kaur Sahni, wife of Defendant No.1. Though the aforesaid property was purchased out of the partnership funds, the Defendant No.2 held the same in a*

> *fiduciary capacity for the benefit of members of the family/ firm. The said property was always treated as such. Defendant No.2 had no income of her own. By paying monies from the firm to third parties and thereafter receiving cheque in lieu thereof from third parties in the name of Defendant No.2, suit property has been purchased."*
>
> (emphasis supplied)

15.2. Though the plaintiffs say that the subject property was held by defendant No.2 in a fiduciary capacity for the benefit of the members of the family or the partnership firm, and that the subject property was always treated as such, nowhere in the plaint do they aver as to when or how funds of the partnership firm were paid towards purchasing the subject property. In fact curiously, in para 8 of the plaint, the plaintiffs aver that the suit property was purchased *"... By paying monies from the firm to third parties and thereafter receiving cheque in lieu thereof from third parties in the name of Defendant No.2, suit property has been purchased".* Whatever may have been the legitimacy of 'routing' funds in this way, even on a demurrer, the plaintiffs admit that ultimately monies were paid *by defendant No.2* towards purchase of the subject property in her name. The subject property accordingly stands in the sole name of defendant No.2 and is her absolute property. Also, there is no averment in the plaint that the sale deed placed any restriction saying that the subject property would not be held by defendant No. 2 as sole and absolute owner. In view of the clear mandate of the section 14 of the Hindu Succession Act therefore, as a

matter of law, defendant No.2 holds the subject property as full owner and not as a limited owner, and no averment in the plaint detracts from this position;

15.3. Besides, the plaintiffs' own best case, as admitted *inter-alia* in para 8 of the plaint, is that they *routed* money through third parties to buy the subject property in the name of defendant No.2. This is precisely the kind of mischief that section 4 of the Benami Transactions Act seeks to prevent, and therefore bars any claim made in respect of property so held by a third party *benami* for the person who funds the purchase. This in fact is the very purpose and intention of the legislature in enacting the Benami Transactions Act;

15.4. Insofar as the plaintiffs' contention that defendant No.2 falls within the exception engrafted in section 2(9)(A)(ii) to the definition of '*benami* transaction', a bare reading of the plaint would show that there is not even a whisper of an allegation that defendant No.2 was a partner of the partnership firm, the monies of which were allegedly routed for purchasing the subject property. There is also no allegation in the plaint that defendant No.2 was a partner of that firm. At the highest, the plaintiffs contend that defendant No.2 was in a fiduciary capacity *vis-à-vis* them *since* she was the wife of defendant No.1, who (latter) is a partner of the firm. There is clearly no support for the proposition that a partner's wife becomes a partner, by operation of any law or otherwise. If any doubt was

to remain on that count, a bare reading of section 5 of the Partnership Act answers it squarely. The provision reads as follows :

> *"5. Partnership not created by status. — The relation of partnership* ***arises from contract*** *and* ***not from status****; and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying on business as such are not partners in such business."*

It therefore follows, that *merely because defendant No. 2 is the wife of a partner* of the firm, she does not *ipso-facto* become a partner of the firm, *inter-alia* since as per section 5 of the Partnership Act, a relationship of partnership arises *from contract* and *not from status* of the parties.

15.5. Another contention raised by the plaintiffs is that, to begin with the family agreement was an oral family settlement dividing the properties amongst family members, but was subsequently reduced into writing in February 2013 by way of a settlement deed. It is further the plaintiffs' case, that since under the family agreement the subject property was to fall to the share of defendant No. 1, the sale deed in respect thereof was got executed in favour of respondent No. 2. The plaintiffs are however aggrieved that defendant No. 1 is now claiming the subject property to be the sole and absolute property of his wife/defendant No. 2, which is not required to form part of any family partition;

15.6. Without delving any further into whether the 'settlement deed' amounted to a '*memorandum*' recording a family settlement and therefore did not require registration; or whether it amounted to a '*deed*' and was therefore compulsorily registrable, suffice it to say that there is no averment in the plaint that defendant No. 2 was party to the oral settlement nor that she was signatory to the settlement deed. The plaintiffs' contention that *defendant No. 2 was bound by the settlement since her husband, defendant No. 1, was party to it*, especially in relation to property that stood exclusively in defendant No. 2's name, is to be considered only to be rejected. Here again, no cause of action is disclosed even going by the averments contained in the plaint;

15.7. In fact it is anathema in this day and age to diminish the autonomous status of a woman by treating her merely as an adjunct to her husband, least of all in relation to what the law recognises to be her absolute property;

15.8. The sale deed, of which cancellation is sought, was admittedly executed on 27.03.1992. The settlement deed, on which the plaintiffs place reliance, by their own reckoning came to be signed in February 2013. The present suit was filed on 10.09.2018 *i.e.*, more than 21 years after Sale Deed dated 27.03.1992 was executed conveying the subject property to defendant No. 2; and some 05 years after the signing of the settlement deed comprising the family agreement. It is the

plaintiffs' own case that the alleged oral family settlement happened even before the settlement deed was signed in February 2013. Clearly therefore, the present suit is way beyond the limitation of 03 years stipulated in Article 59 of the Schedule of the Limitation Act, with no scope for any extension or exclusion of time or condonation of delay under any of the provisions of the Limitation Act. It may further be observed that, other than a bald plea, there is no averment in the plaint nor any separate substantive application seeking to address the point of limitation, or explaining how the cause of action is claimed to be continuing in nature.

16. In the above view of the matter, this court is persuaded to hold that the plaint does not disclose any cause of action that requires trial. Furthermore, this court is of the opinion that applying the position of law as cited above, the reliefs claimed in the plaint are also clearly barred by law, as discussed above.

17. Accordingly, the application under Order VII Rule 11 CPC is allowed, thereby rejecting the plaint in suit bearing CS(OS) No. 486/2018.

18. The suit is disposed of by rejecting the plaint.

19. Pending applications if any, also stand disposed of.

ANUP JAIRAM BHAMBHANI, J

JULY 06, 2023
ds