



2024:DHC:8436



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

*Reserved on: 26^h July, 2024
Date of Decision: 29th October, 2024*

+ **CS(OS) 77/2022 & I.A. 2931/2024**

MR. PARAMJIT SINGH

.....Plaintiff

Through: Mr. P.S. Bindra, Sr. Adv. with Mr.
Asutosh Lohia, Mr. Rohit Saraswat, Mr.
Gaurav Anand, Mr. Sharan Mehta and
Mr. Karan Sharma, Advs.

versus

MS GAGAN SINGH @ MANNU & ANR.

.....Defendants

Through: Mr. Rakesh Munjal, Sr. Adv. with Mr.
Rakesh Kumar, Mr. Sunil, Advs.
Mr. Rajat Sharma and Mr. R.P.S. Rana,
Advs.

+ **CS(OS) 629/2023 & I.As. 19910/2023, 7225/2024, 9130/2024,
9267/2024, 30067/2024**

GAGAN SINGH @ MANNU

.....Plaintiff

Through: Mr. Rakesh Munjal, Sr. Adv. with Mr.
Rakesh Kumar, Mr. Sunil, Advs.

versus

MR PARAMJIT SINGH AND ORS.

.....Defendants

Through: Mr. P.S. Bindra, Sr. Adv. with Mr.
Asutosh Lohia, Mr. Rohit Saraswat, Mr.
Gaurav Anand, Mr. Sharan Mehta and
Mr. Karan Sharma, Advs. for D-1
Mr. Gokul Sharma, Ms. Priyanka Singh,



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Ms. Deepanshi and Mr. Priyank
Chauhan, Advocates for D-2 to D-5.
Mr. Rajat Sharma and Mr. R.P.S. Rana,
Adv. for D-6

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

CS(OS) 77/2022

1. The captioned suit has been filed by the plaintiff seeking a mandatory injunction in respect of property bearing no. E-27, South Extension, Part-II, New Delhi ('suit property') in favour of the plaintiff restraining the defendants from creating any third-party interest qua the suit property. The plaintiff further seeks a permanent injunction against the defendants restraining them from dispossessing the plaintiff from the suit property and interfering/or obstructing with the plaintiff's possession, occupation and enjoyment of the suit property.
2. The plaintiff has also filed I.A. 2931/2024 seeking amendment of the plaint to incorporate an additional prayer for a decree of declaration declaring the plaintiff to be the sole and absolute owner of the suit property, which is pending adjudication.
3. The suit property comprises of a superstructure comprising ground floor, first floor, second floor and terrace on a plot admeasuring 250 sq. yds. The plaintiff asserts that he is in actual physical possession of the entire second floor along with terrace; and is in constructive possession of the remaining floors which are in the physical possession of the tenants.



4. The plaintiff is a permanent resident of Canada as well as naturalized Canadian citizen.

Arguments on behalf of the plaintiff

5. Mr. Pawan Bindra, learned senior counsel for the plaintiff stated that though the title deed dated 19.03.1965 of the suit property is standing in the exclusive name of late Sh. Raghbir Singh, the father of defendant no. 1 herein; however, plaintiff claims joint ownership of the suit property on the basis of the averments that substantial contribution towards the sale consideration was paid by the plaintiff's father, late Sardar Nirmal Singh. He stated that the suit property was purchased in the name of late Sh. Raghbir Singh in a fiduciary capacity for the benefit and enjoyment of the family of late Sardar Nirmal Singh.

5.1 He stated that the family of late Sardar Nirmal Singh has remained in exclusive possession of the second floor along with terrace and received a share in the rentals collected from the tenants of the ground floor and the first floor. He stated that after the death of late Sardar Nirmal Singh on 20.10.2004, the plaintiff herein continued to be in sole and exclusive possession of the second floor and terrace.

5.2 He stated that defendant no. 1's father, late Sh. Raghbir Singh and plaintiff's father late Sardar Nirmal Singh were first cousins. He stated that due to this close familial relationship the said two individuals had a common businesses all over the world and they invested jointly in several immovable properties across the country and the suit property was also purchased from the joint funds accrued from the said businesses. He stated therefore, late Sh. Raghbir Singh held the suit property in a fiduciary capacity. He stated that in



view of this averment the claim of the plaintiff of joint ownership is saved under Proviso (ii) to Section 2(9)(A)(ii) of the Prohibition of Benami Property Transactions Act, 1988 ('Benami Act').

5.3 He stated that the evidence of the aforesaid joint ownership is the fact that late Sardar Nirmal Singh and after him the plaintiff herein have remained in settled possession of the entire second floor alongwith terrace of the suit property. He stated that the house tax in respect of the second floor of the suit property was regularly paid by late Sardar Nirmal Singh and after his demise plaintiff has been clearing of all the dues. He stated that apart from the statutory taxes payment towards utilities including electricity and water bills have been regularly paid by the plaintiff.

5.4 He concedes that though in the plaint it is averred that rentals from the tenants on the ground floor and first floor of the suit property were being shared equally between plaintiff and defendant no. 1, however, no disclosure of the said income has been made in the Income Tax Returns filed by the late Sardar Nirmal Singh. He also concedes that the property is not mutated in the name of late Sardar Nirmal Singh or his legal heirs.

5.5 He stated that though admittedly there are no documents on record to substantiate the pleas of contribution of funds by late Sardar Nirmal Singh towards purchase of the suit property or the construction thereon, he states that the averments made at paragraphs 6, 7 and 8 of the plaint are sufficient to maintain the suit and the said averments shall be proved at the stage of trial.

5.6 He fairly concedes that though in the plaint at para 7, it has been averred that there were several joint investments made in immovable properties throughout India, the plaintiff herein is not aware about the details or existence



of any such other immovable properties jointly owned by late Sardar Nirmal Singh and late Sh. Raghbir Singh. He also concedes that the neither the plaintiff nor late Sardar Nirmal Singh have till date acknowledged the ownership of the legal heirs of late Sh. Raghbir Singh in any immovable property standing in the name of late Sardar Nirmal Singh.

5.7 The plaintiff has filed written submissions on 08.08.2024 and relied upon **Marcel Martins v. M. Printer¹**, **Neeru Dhir v. Kamal Kishore Dhir²**, **Pawan Kumar v. Babulal³**, **Binapani Paul v. Pratima Ghosh⁴**, **Poonam Jain v. Kailashwati Jain⁵** and **Pankaja v. Yellappa⁶**

Arguments on behalf of defendants

6. Mr. Rakesh Munjal, learned senior counsel appearing on behalf of defendant no. 1 stated that late Sh. Raghbir Singh, the father of defendant no. 1 was the exclusive recorded owner of the suit property as is evident from the title deed dated 19.03.1965. He stated that Sh. Raghbir Singh expired on 25.12.1974 and he was survived by his mother-Mrs. Har Kaur, wife-Mrs. Neera and his daughter-Ms. Gagan Singh, i.e., defendant no. 1 herein. He stated however, there was litigation between the said three Class-I legal heirs of Sh. Raghbir Singh between 1976 to 1994 and the matter came to rest after the SLP (C) 4191/1994 was dismissed on 05.08.1994 by the Supreme Court. He states that as per the judgment of the High Court of Punjab and Haryana dated 29.08.1988 passed in RSA No. 1285/1982, which was upheld by the Supreme

¹ AIR 2012 SC 1987

² 2020 SCC Online Del. 2506

³ (2019) 4 SCC 367

⁴ AIR 2008 SC 543

⁵ 303 (2023) DLT 626

⁶ (2004) 6 SCC 415



Court the entire estate of late Sh. Raghbir Singh including the suit property devolved equally upon his three Class-I legal heirs i.e., his mother, his widow and his daughter-defendant no. 1 herein. He stated that the plaintiff and his father late Sardar Nirmal Singh were aware of the said litigation at all times and never staked a claim in the suit property.

6.1 He stated that after the death of late Sh. Raghbir Singh and, the passing of the order of the High Court of Punjab and Haryana and the Supreme Court, the tenants in the suit property on ground floor and first floor attorned their tenancy in the favour of Smt. Har Kaur, the mother of late Sh. Raghbir Singh and filed their affidavits stating so before the High Court of Punjab and Haryana in RSA No. 1285/1982. He stated that in the said affidavits none of the tenants stated that late Sardar Nirmal Singh was their landlord or that they were paying any rentals to late Sardar Nirmal Singh.

6.2 He stated that in the year 2001 consequent upon the aforesaid judgments of the High Court of Punjab and Haryana and Supreme Court, the suit property stands mutated in the names of Smt. Har Kaur, Mrs. Neera and defendant no. 1, the three Class-I legal heirs of late Sh. Raghbir Singh. He relied upon the mutation letter dated 03.12.2001. He stated that the original title deed dated 19.03.1965 is in the custody of the defendant no. 1. He stated that the documents pertaining to Municipal Corporation of Delhi ('MCD') property tax department also record that late Sh. Raghbir Singh is the owner of the suit property.

6.3 He stated that the assertion in the plaint that late Sardar Nirmal Singh received share in the rentals recovered from the tenants on the ground floor and the first floor of the suit property is falsified from the income tax return of late



Sardar Nirmal Singh placed on record by the plaintiff for the Assessment Year ('AY') 2001-02, wherein the declaration made by the assessee (Sh. Nirmal Singh) is that he has NIL income under the head 'Income from House Property'. He states similarly the income tax return of the plaintiff himself for AY 2005-06 declares that he as well as NIL income under the head 'Income from House Property'.

6.4 He stated that the plaintiff initially on 10.02.2022 persuaded this Court to grant an ex-parte ad-interim restraint order in his favour on the false plea that the suit property stands in the joint names of late Sardar Nirmal Singh and late Sh. Raghbir Singh. He states that the falsity of the said submission was highlighted by the defendants and thereafter vide order dated 07.02.2024, this Court vacated the said ad-interim order after returning a finding that the plaintiff has no prima facie case in his favour. He also relied upon the contents of the orders dated 05.12.2023 and 14.12.2023. He stated that the record of this Court evidence that after obtaining the interim order on 10.02.2022, the plaintiff had avoided addressing arguments on the application of the defendant for vacation of stay. He stated that despite multiple opportunities granted to the plaintiff to substantiate his claims made in the plaint, the plaintiff was unable to file any documents to substantiate the same.

6.5 He stated that in order to perpetuate the fraud the plaintiff has now filed I.A. No. 2931/2024 under Order VI Rule 17 of the Code of Civil Procedure, 1908 ('CPC') for seeking amendment of plaint and in this application as per the proposed new prayer clause (aa) the plaintiff seeks a declaration that he is the sole and absolute owner of the suit property. He stated that the prayer sought to be inserted by way of this amendment is contrary and inconsistent with the



pleas in the existing plaint where the claim raised was of joint ownership of late Sardar Nirmal Singh and late Sh. Raghubir Singh. He stated that the amendment proposed shows the fraudulent nature of the claim and I.A. No. 2931/2024 deserves to be dismissed on this ground alone.

6.6 He stated that the plea in the plaint that late Sardar Nirmal Singh provided substantial funds for the sale consideration in 1965 towards the sale consideration of the suit property is a bald plea. He stated that no document in support of the said averment has been placed on record.

6.7 He stated that plaintiff is a licensee in the property and the said license has been duly cancelled by issuing a legal notice on 19.03.2022. He stated that the plaintiff has been called upon to vacate the second floor as well as terrace on or before 01.05.2022. He stated that since the plaintiff has failed to vacate the property the defendant no. 1 is entitled to seek his eviction and mesne profits w.e.f. 01.05.2022. He stated that defendant no. 1 has filed a separate suit for recovery of possession and mesne profits before this Court which is registered and numbered as CS(OS) 629/2023. He stated that the defendant is entitled to recover at the minimum Rs. 5 lakhs per month. He stated that defendant has placed on record registered lease deed dated 30.04.2022 of an adjoining property, qua a property constructed around the same time, wherein the ground floor has been let out at Rs. 9 lakhs per month with an annual escalation of 15%.

6.8 He relied upon **Dahiben v. Arvinbhai Kalyanji Bhanusali (Gajra)**⁷ and **Peeyush Aggarwal v. Sanjeev Bhavnani**⁸. The defendant has filed written submissions on 02.08.2024.

⁷ (2020) 7 SCC 366.



Analysis and findings

7. This Court has considered the submissions of the learned senior counsel for the parties and perused the record.

8. The plaintiff admits that the title documents of the suit property i.e., sale deed dated 19.03.1965 records that late Sh. Raghbir Singh is the absolute owner of the suit property and that the MCD vide letter no. Tax/CZ 'A')/01/1157 dated 03.12.2001 has mutated the said property in the names of the Class-I legal heirs of late Sh. Raghbir Singh i.e., late Smt. Har Kaur (since deceased), Smt. Neera (since deceased) and Ms. Gagan Singh (defendant no. 1 herein).

9. The plaintiff has filed this suit for permanent and mandatory injunction restraining the defendants from interfering in his possession of the second floor and terrace in the suit property. The plaintiff has now also filed I.A. No. 2931/2024 to amend the plaint to seek additional relief of declaration of sole and exclusive ownership of the plaintiff qua the suit property.

Plaintiff's claim of fiduciary relationship is without any factual basis

10. The basis of seeking the said relief of injunction and declaration is on the plea that Sh. Raghbir Singh purchased the suit property in a fiduciary capacity for the benefit and enjoyment of plaintiff's father Sardar Nirmal Singh and his family.

11. It is stated in the plaint that the suit property was purchased as an investment by late Sardar Nirmal Singh and the late Sh. Raghbir Singh with funds earned from joint business. It is stated that substantial contribution was made by plaintiff's father late Sardar Nirmal Singh towards the purchase consideration and therefore, the plaintiff's ownership claim is protected under

⁸ MANU/DE/1856/2013.



proviso (ii) to Section 2(9)(A) of the Benami Act. Specific averments made in the plaint are reproduced below :-

“4. That the father of the Plaintiff - Sardar Nirmal Singh (s/ o. Mr. Chanan Singh and Mrs. Surjit Kaur) had a long standing business relationship with Mr. Raghbir Singh (s/ o. Shri Lachman Singh and Mrs. Har Kaur), who was also his first cousin. [Raghbir Singh was the cousin of the Nirmal Singh (chacha's son), and Lachman Singh and Har Kaur were Uncle & Aunt]

.....

6. That as stated above, Sardar Nirmal Singh and Mr. Raghbir Singh together carried on successful businesses in various countries including India, Philippine, Hong Kong etc. (lumber, fishing, money exchange) and made several investments together which gave good returns. Over a period of time they made a small fortune together leading to investments made jointly/in trust, in a fiduciary capacity with each other.

7. That in the collective wisdom of Sardar Nirmal Singh and Mr. Raghbir Singh, investments were made in immovable properties in India, including the suit property i.e. E-27, South Extension, Part-2, New Delhi besides some other investments in Jalandhar while some other investments were liquidated and divided during the lifetime of Raghbir and Nirmal Singh. The present action only concerns the suit property at South Extension, New Delhi. The said suit property (purchased in a fiduciary capacity in the year 1965), in the name of Mr. Raghbir Singh for the benefit of Sardar Nirmal Singh and his family with substantial contributions towards the purchase consideration by the father of the Plaintiff - Sardar Nirmal Singh.

8. As there was unbound love and mutual trust between Sardar Nirmal Singh and Mr. Raghbir Singh, there was no conflict or apprehension and the property continued to be held / maintained in the name of Mr. Raghbir Singh. All the family members of Mr. Raghbir Singh and Sardar Nirmal Singh were aware of the aforesaid arrangement and most of them are willing to testify to the said facts.”

(Emphasis Supplied)

12. In the afore pleaded facts, the stand of the plaintiff is that late Sh. Raghbir Singh was standing in the fiduciary capacity for the benefit of late



Sardar Nirmal Singh and therefore, the plaintiff being the son of late Sardar Nirmal Singh is entitled to declaration of ownership of the suit property. Plaintiff relies upon the judgement of Supreme Court in the case of **Pawan Kumar (Supra)** and **Marcel Martins (Supra)**.

13. Having considered the submissions of the Plaintiff and having perused the record, this Court is of the opinion that the aforesaid claim of ownership of the plaintiff is hit by the Section 4 of the Benami Act as plaintiff has failed to file on record or produce on record any document whatsoever to substantiate his claim that there existed any fiduciary relationship between late Sardar Nirmal Singh and late Sh. Raghbir Singh or any part of the purchase consideration was provided by late Sardar Nirmal Singh.

14. The claim of joint investments between late Sardar Nirmal Singh and late Shri Raghbir Singh is a bald averment unsubstantiated by even sliver of a document. Plaintiff has not filed any written deed evidencing existence of any fiduciary relationship between late Sardar Nirmal Singh and late Sh. Raghbir Singh. Plaintiff has filed no documents to show that Sardar Nirmal Singh and Sh. Raghbir Singh were carrying on any business together and/or held joint funds and/or held any joint investments, which could have formed the corpus for purchasing the suit property. Therefore, in the absence of the said documents, the plaintiff's reliance on the judgments of the Supreme Court in **Pawan Kumar (Supra)** and **Marcel Martins (Supra)** is misconceived. In both the said relied upon cases, there were documents filed on record by the plaintiff therein, which prima facie evidenced flow of funds from plaintiff therein to defendant as well as existence of a fiduciary relationship, which evidence could



be tested at the stage of trial. However, in the facts of the present case, there is no iota of evidence.

15. The plaintiff by merely parroting words of the statute and stringing vague sentences in the plaint cannot overcome the absolute bar of Section 4 of Benami Act. The plaint fails to give any material particulars of the joint business or joint funds or investments held by late Sh. Raghbir Singh and late Sardar Nirmal Singh and its utilization for the purchase of the suit property. The facts pleaded in the captioned plaint, if real, would necessarily be capable of evidencing through documents. The absence of documents and material particulars to support the vague averments in the plaint shows that no such facts exist.

16. In the opinion of this Court, the aforesaid paragraphs of the plaint are nothing but a clever drafting to create an illusion of a legal plea of fiduciary capacity for dishonestly invoking the exception of proviso (ii) to Section 2(9)(A) of the Benami Act. The aforesaid pleas in the plaint all read together fail to raise any presumption that late Sh. Raghbir Singh stood as a trustee qua Sardar Nirmal Singh with respect to the suit property. The said bald averments are not sufficient for invoking the said proviso of the Benami Act. The averments made in the plaint failed to show any fiduciary relationship between late Sh. Raghbir Singh and late Sardar Nirmal Singh.

17. In the absence of any material facts in the pleadings and credible documents, the plea of the plaintiff that Sh. Raghbir Singh was a person standing in the fiduciary capacity qua Sardar Nirmal Singh is bereft of particulars and it does not give rise to any cause of action in favour of the plaintiff herein so as to invoke proviso (ii) to Section 2(9)(A) of the Benami



Act. The untenability of the plea is also evident from the fact that though in the plaint, it has been pleaded that late Sardar Nirmal Singh and Sh. Raghubir Singh had similarly made several investments multiple immovable properties all over the country however, the plaintiff has been unable to place on record the details of any other immovable properties, which form part of such an alleged joint corpus.

18. Section 2(9)(A) of the Benami Act reads as under:-

“(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
.....”

(Emphasis Supplied)

19. A perusal of the exceptions recognized under Section 2(9)(A) of the Benami Act shows that the intent of the legislation is that whenever a party invokes the said four exceptions, the source of funds which the party asserting benami relies upon have to be documented in records so as to be capable of verification. For instance, exception (i) requires the party asserting benami to show that the consideration was paid by such a party out of the known sources. The phrase known sources would mean bank account and/or declared funds shown in the balance sheet of such a party which are documented with the authorities. Similarly, exception (iii) and (iv) requires the party asserting benami and invoking the said provisos to establish payment towards consideration from known sources. Exception (i), (iii) and (iv) as is evident pertains to individuals and the legislature expects the person, who claims to be the benami owner to show that he/she provided the fund from sources, which can be identified and attributed to the person. The expression known sources has been incorporated in the Benami Act vide amendment made to the Act in the year 2016. Prior to the amendment this expression-known sources was absent⁹, thus in pre-2016 litigation claims parties were permitted to lead

⁹Section 4(3) of the Benami Act **prior** to its amendment in year 2016 read 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



circumstantial evidence to show that ownership rights were being exercised by the benamidar and this entire exercise was subjective. However, with the introduction with the phrase ‘known sources’ post 2016 in the Benami Act, the test has become objective and the party asserting benami ownership has to establish that the consideration for the immovable property was paid from known sources of the benamidar. The onus to prove that funds were provided to the title holder from known sources lies on the party asserting himself/herself to be benamidar. In the absence of evidence regarding known sources, the exception will not be available. The mere fact that parties are related to each other is not sufficient to invoke the exception in the absence of proof of flow of funds from ‘known sources’.

20. The expression known sources was discussed in the 28th report of the Standing Committee on Finance (2015-16), 16th Lok Sabha. The relevant portion of the report reads as under:

“9.13 The Institute of Chartered Accountants of India (ICAI), in their written submission stated that the exception to benami transaction as laid down in section 2(1) of the Bill uses the expression consideration paid on provided for the property by the Karta or member of HUF out of the known sources of income of HUF in sub clause (i) and in case of individual out of the known sources of income of the individual is of wider import and contemplates situations where loan funds may be provided for acquiring the property. Loan funds are not income and therefore expression “out of known

other person shall lie by or on behalf of a person claiming to be the real owner of such property.

...

(3) Nothing in this section shall apply,--

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.



sources” can be used instead of “known source of income” to bring in clarity in such cases.

9.14 In this context the Ministry of Finance, furnished their following views: "The term ‘known source of income’ was used in consultation with Ministry of Law and Justice to provide for investment where the source of funding was clearly identifiable. However if the Committee recommends, the matter shall be examined in consultation with Ministry of Law and Justice. **Although the intention of the provision is that the source of funds should be explained,** ambiguity may arise on account of the present language of the provision. The matter will be examined further and, if necessary, an amendment will be moved with the approval of the competent authority."

(Emphasis Supplied)

21. The proviso to Section 2(9)(A) of the Benami Act which carves out an exception qua and between individuals has been clearly defined and is limited to the relationships recognized in exception (i), (iii) and (iv). The said exceptions cannot be invoked by individuals who are not related by kinship; for instance, between two friends. The intention of the legislature is to make these exceptions available within limited relations of an individual.

22. Exception (ii) under Section 2(9)(A) of the Benami Act is intended to apply to transactions where one party is recognized under the law to be standing in a fiduciary capacity towards another person. This is evident from the illustrations included in the said exception. This exception (ii) in its existing form is intended to cover legal relationships such as partnership firm, a company, a trust, a depository and an executor. The exception recognizes that in these legal relationships the parties stand in a fiduciary capacity for each other. The fact that the exception is intended to apply to legal relationship is indicated from the fact that notifying any other legal relationship to be standing in a



fiduciary capacity is a prerogative reserve to the Central Government alone. Thus, if the party invoking the exception cannot establish through record the existence of a legal relationship specified in this exception, it cannot invoke the said exception. It is well settled that exceptions in the statute are to be construed strictly. [**CCE v. Hari Chand Shri Gopal**¹⁰]

23. In the facts of this case, the plaintiff herein has not placed on record any document evidencing existence of a partnership firm between late Sardar Nirmal Singh and late Shri Raghbir Singh. The plaintiff has not proved the existence of any common bank account of the partnership firm which provided the funds to late Sh. Raghbir Singh for purchase of the suit property neither there is any document on record evidencing any trail of payment from late Sardar Nirmal Singh to late Shri Raghbir Singh as partners for purchase of the suit property. The plaintiff has thus failed to even raise a presumption that late Shri Raghbir Singh was standing in a fiduciary capacity for late Sardar Nirmal Singh with respect to the suit property.

24. Thus, in the considered opinion of this Court, the plaintiff herein cannot rely upon the exceptions as provided under Proviso (ii) to Section 2(9)(A) of the Benami Act.

25. The reliance placed by plaintiff on the judgement of Division Bench of this court in **Neeru Dhir (Supra)** is misconceived as at paragraph no. 8 of the said judgment Division Bench records that the plaintiff therein had relied upon documents executed by title holder acknowledging that the subject property had been purchased for the benefit and welfare of the entire family as well as an agreement existed which recorded that the consideration has been paid for by

¹⁰ (2011) 1 SCC 236. Para 29



the parties claiming title therein. It was in view of the documents filed in support of the averments made in the plaint that the Division Bench at paragraph no. 23 observed that the plaint could not have been rejected under Order VII Rule 11 CPC. However, in the facts of the present case as noted above there is absolutely no document to support the bald averment made in the plaint and therefore the reliance placed by the plaintiff on this judgment of Neeru Dhir is inapplicable.

26. Similarly, in **Babita Pal (Supra)** relied upon by the plaintiff, the Division Bench was considering a challenge to an order of the Single Judge allowing an application under Order VI Rule 17 CPC as well as dismissal of an application rejecting the application under Order VII Rule 11 CPC. In the facts of the said case, the Court was satisfied that the plaintiff therein had placed on record sufficient documentary evidence to invoke the exceptions to Section 4(3) of the unamended Benami Act and thus the suit could not be rejected under Order VII Rule 11 CPC. However, this is not the case in the present suit which is bereft of any particulars and documents.

27. In **Poonam Jain (Supra)**, the plaintiff therein averred in the plaint that the subject property purchased in the name of the mother had been paid for from the account funds of partnership firm. The sale consideration had been debited from the account of the partner. The said averment was substantiated with documents. In these facts the Single Judge at paragraph no. 55 of the said judgment held that the plaint could not be rejected under Order VII Rule 11 CPC and the matter would have to be tested at trial. The facts of **Poonam Jain (Supra)** are distinguishable and not applicable to the facts of the present case.



28. The legal position that follows from the judgements relied upon by the plaintiff is that, in the absence of documents evidencing the existence of a fiduciary relationship and existence of corpus of funds made available by the plaintiff from his/her known sources to defendant, the plaintiff cannot invoke proviso (ii) of Section 2(9)(A) of the Benami Act and the claim of the plaintiff would be barred under Section 4 of the Benami Act.

Plaintiff's claim of equal contribution towards construction of the suit property not established

29. The plaintiff has averred that late Sardar Nirmal Singh made investments and contributions during the raising of the construction on the plot of land forming part of the suit property and it was averred that documents to substantiate the said averment has been filed along with the plaint.

30. In this regard, this Court has perused the documents placed on record with the plaint and the same shows that they do not pertain to suit property. The documents filed pertain to a distinct immovable property i.e., D-26, South Extension, Part-II, New Delhi; this fact during the course of arguments was also not disputed by the senior counsel appearing for the plaintiff. Therefore, in the considered opinion of this Court the plea that late Sardar Nirmal Singh contributed funds towards the construction of the suit property is also a bald averment not borne out from the record.

Effect of plaintiff's claim of continuous and uninterrupted possession

31. The plaintiff has also averred in the plaint that he and his family have been in continuous and uninterrupted possession of the second floor along with the terrace of the suit property and have been collecting rentals from the



tenants, who are occupying the ground and first floors of the suit property. To substantiate this claim, plaintiff has relied on the receipts for payments of property tax and utility bills for the suit property made by him and his mother since 2005. Furthermore, plaintiff has relied on the bank account statements, credit card bills, and income tax returns ('ITRs') of the plaintiff and the late Sardar Nirmal Singh, which bear the address of the suit property.

32. In the considered opinion of this Court reliance placed by the plaintiff on the payment of property tax, utility bills and other documents to claim ownership of the suit property is misconceived. These documents are the proof of possession not of ownership.

33. Moreover, the ITRs of late Sardar Nirmal Singh placed on record does not declare any ownership rights in the suit property. Though, the plaintiff has averred in the plaint that a share in the rental income from the tenants of the suit property were received by late Sardar Nirmal Singh during his life time and by the plaintiff thereafter, however, the ITRs of late Sardar Nirmal Singh and the plaintiff placed on record categorically declared that they had 'NIL' income under the head 'Income from House Property' which shows that plaintiff and late Sardar Nirmal Singh were not deriving any rental income from the suit property or any other property.

34. It is a matter of record that by the virtue of Section 140 of the Income Tax Act, 1961, the ITRs filed by an assessee contains a verification clause which declares that information given in the return is correct and true to their knowledge. To this effect, the verification in the ITR for AY 2001-02 of late Sardar Nirmal Singh and his declaration of 'NIL' for Income from house property is relevant and reads as under:-



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**Form No. 2D****SARAL****ITS-2D**

(INCOME TAX RETURN FORM FOR NON CORPORATE ASSESSEES OTHER THAN PERSONS CLAIMING EXEMPTION UNDER SECTION 11)

[See Proviso to rule 12(1)(b)(iii)]

1. **NAME MR. NIRMAL SINGH (PROP. OF M/S DEOL INTERNATIONAL EXPORT TRADERS)**
2. FATHER'S NAME LATE SHRI CHANAN SINGH
3. ADDRESS E-27, SOUTH EXTENSION, PART-11, NEW DELHI
.....PIN110049.....TELEPHONE
4. Permanent Account Number AAZPS-5027N
WARD-27(4)
5. Date Of Birth 01.05.1940
6. Individual/Hindu Undivided Family/Firm/Association of
1.4.2000 to 31.03.2001
Personal/Local Authority : INDIVIDUAL
Year : 2001-2002
7. Resident/Non-Resident/Nor Ordinarily Resident: Resident
8. Ward Circle/Special Range
9. Sex: Male/Female : Male
10. Income for the previous year i.e.
11. Assessment
12. Return Original or Revised : Original
13. Details of 'Bank Accounts. "Please tick (✓) the bank account, where you would like the amount of refund to be credited

.....

16. INCOME FROM HOUSE PROPERTY.....RS.....NIL

.....

VERIFICATION

I, NIRMAL SINGH.....(name in full and in block letters) son/daughter of LATE SH. CHANAN SINGH.....solemnly declare that to the best of my acknowledge and belief the information given in this return and the annexures and statements accompanying it are correct complete and truly stated in accordance with the provisions of Income Tax Act, 1961, in respect of income chargeable to income tax for the previous year relevant to the assessment year 2001-2002.

Receipt No.....0833.....Date.....29.10.2001

Seal

Sd/-

Signature of the receiving official

Date: 27.10.2001

Place: New Delhi

35. To the same effect is the status of declaration of information in ITR filed by the plaintiff herein, wherein similarly his disclosure with respect to income from house property and the verification reads as under:-



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**Form No. 2D****SARAL****ITS-2D**

(INCOME TAX RETURN FORM FOR NON CORPORATE ASSESSEES OTHER THAN PERSONS CLAIMING EXEMPTION UNDER SECTION 11)

[See Proviso to rule 12(1)(b)(iii)]

1. **NAME MR. PARAMJIT SINGH (PROP. OF M/S DEOL INTERNATIONAL EXPORT TRADERS)**
2. FATHER'S NAME LATE SHRI NIRMAL SINGH
3. ADDRESS E-27, SOUTH EXTENSION, PART-11, NEW DELHI
.....PIN110049.....TELEPHONE
4. Permanent Account Number AUIPS-4901Q 8. Ward Circle/Special Range
W-32940
5. Date Of Birth 01.05.1940 9. Sex: Male/Female : Male
6. Individual/Hindu Undivided Family/Firm/Association of 10. Income for the previous year i.e.
1.4.2004 to 31.03.2005
Personal/Local Authority : INDIVIDUAL 11. Assessment
Year : 2005-2006
7. Resident/Non-Resident/Nor Ordinarily Resident: Resident 12. Return Original or Revised : Original
13. Details of 'Bank Accounts. "Please tick (✓) the bank account, where you would like the amount of refund to be credited

.....

16. **INCOME FROM HOUSE PROPERTY.....RS.....NIL**

.....

VERIFICATION

I, PARAMJIT SINGH.....(name in full and in block letters) son/daughter of LATE SHRI NIRMAL SINGH.....solemnly declare that to the best of my acknowledge and belief the information given in this return and the annexures and statements accompanying it are correct complete and truly stated in accordance with the provisions of Income Tax Act, 1961, in respect of income chargeable to income tax for the previous year relevant to the assessment year 2005-2006.

Receipt No.....Date.....

Seal

Sd/-

Signature of the receiving official

Date: 25.07.2005

Place: New Delhi

36. Thus, the plaintiff's claim of collecting rentals from tenants of ground floor and first floor is bogus.

37. The payment of house tax or utility bills by a party in possession is the incidence of possession and does not evidence ownership rights of the party.



This obligation is commonly attached to a tenant or a licensee occupying the property.

38. In the facts of this case, it is apparent that late Sardar Nirmal Singh as an extended family member was permitted by late Sh. Raghbir Singh to occupy a portion of the suit property as a licensee. In ordinary course, owners permit extended family members to use and occupy immovable properties out of love and affection on the reasonable belief that the property will be vacated by the family member when called upon by the owner. To permit late Sardar Nirmal Singh or his family member to contend that the evidence of their possession in the suit property without payment of rent or licence fee would entitle them to raise a claim of ownership would be putting premium on a dishonest plea and would also be an abuse of the exception provided in proviso 2(ii) to Section 2(9)(A) of the Benami Act.

Summary of findings of this Court

39. In the aforementioned facts, the averments made in the suit along with the documents relied upon in the suit, plaintiff has failed to make out even an arguable case for invoking proviso (ii) Section 2(9)(A) of the Benami Act. There is no evidence whatsoever on record that plaintiff's father late Sardar Nirmal Singh contributed any sum of amount towards the sale consideration paid for acquisition of the suit property or the construction raised thereon.

40. The plea for declaration of ownership is otherwise expressly barred by the Section 4 of the Benami Act, since it is admitted case of the plaintiff that the title documents of the suit property stands in the name of late Sh. Raghbir Singh.



41. The plea of the plaintiff that upon all these bald averments, a suit can be maintained and the Court must permit the plaintiff to lead evidence on the said plea is misconceived. No cause of action is made out on the said averments raised by the plaintiff as plaintiff must satisfy the Court that a prima facie case exists in his favour.

42. This Court on 07.02.2024 has recorded in its order that despite repeated opportunities given to the plaintiff, he has been unable to produce any documents to show any title or rights in the suit property.

43. The plaintiff has placed all the documents within his possession on the record and even if all the documents are admitted to be correct, the same do not evidence that late Sardar Nirmal Singh contributed any funds towards the purchase of the suit property and/or late Sardar Nirmal Singh ever considered the suit property as his own property. The reliance placed upon the payments of house tax receipts (w.e.f. 2005) and utility bills (w.e.f. 2000) even if admitted to be correct do not evidence any proof of ownership of late Sardar Nirmal Singh or his family members. The said payments relate to their possession, which is admitted on record.

44. In the facts of this case, upon perusal of the averments made in the plaint and the documents annexed with the plaint, this Court is of the considered opinion that the plaintiff has failed to prove that late Sh. Raghbir Singh held the suit property in a fiduciary capacity qua Sardar Nirmal Singh.

45. In light of the aforesaid facts, this Court finds that the suit lacks a cause of action. Furthermore, the plea of ownership raised through I.A. No. 2931/2024 is barred under Section 4 of the Benami Act. Therefore, the judgment of the Supreme Court in **Pankaja (Supra)**, relied upon by the



plaintiff in support of their amendment application, is misplaced. The ratio which flows from the said judgement is that an amendment of pleadings must not be disallowed merely on the ground that the relief sought is barred by limitation which does not apply to the facts of the present case. Accordingly, the suit is rejected under Order VII Rule 11(a) and 11(d) of the CPC.

46. All pending applications are hereby dismissed.

Issuance of mandatory injunction to the plaintiff to handover peaceful and vacant possession to the defendant no. 1

47. In view of the of the aforesaid conclusion that the plaintiff has no legal right in the suit property, this Court is of the considered opinion that the plaintiff has no right to remain in possession of the suit property. The plaintiff has been served by defendant no. 1 with legal notice dated 19.03.2022 terminating the licence of the plaintiff to occupy the property effective 01.05.2022 and calling upon him to handover the physical possession. The defendant no. 1 is the sole surviving legal heir of late Sh. Raghbir Singh. The defendant no. 1 has thus, duly proved her entitlement to recover possession of the suit property from the plaintiff.

48. Keeping in view, the judgments of the Supreme Court in **Maria Margadia Sequeria Fernandes v. Erasmo Jack De Sequeria**¹¹, judgment of Division Bench of this Court in **Liberty Sales Services v. Jakki Mull & Sons**¹² and Judgement of coordinate bench of this Court in **Nathu Ram v. DDA**¹³, this Court hereby passes a decree of mandatory injunction directing the plaintiff herein to handover the vacant physical possession of the portion occupied by him in the suit property to the defendant no. 1 within four (4) weeks from today

¹¹ 2012 (5) SCC 370, Para 98

¹² 1997 (41) DRJ 26 at pages 34 and 35.

¹³ 2022:DHC:375, Paras 25 to 29



having come to this conclusion that he is in illegal and unauthorised possession of the suit property. The order for payment of mesne profits for the continued illegal possession w.e.f. 01.05.2022 is being passed in CS(OS) 629/2023.

49. Accordingly, the reliefs sought by the plaintiff are dismissed in the aforesaid terms along with all pending application and a mandatory injunction is passed against the plaintiff and in favour of defendant no. 1.

Award of actual costs in favour of the defendant

50. This Court is of the considered opinion that this suit filed by the plaintiff is an abuse of process. The Supreme Court in **Ramrameshwari Devi & Others v. Nirmala Devi**¹⁴ has opined that uncalled for litigation gets encouragement because Courts do not impose realistic costs. The relevant paragraph of the judgment read as under:

“46. It is also a matter of common experience that once an ad interim injunction is granted, the plaintiff or the petitioner would make all efforts to ensure that injunction continues indefinitely. The other appropriate order can be to limit the life of the ex parte injunction or stay order for a week or so because in such cases the usual tendency of unnecessarily prolonging the matters by the plaintiffs or the petitioners after obtaining ex parte injunction orders or stay orders may not find encouragement.

47. We have to dispel the common impression that a party by obtaining an injunction based on even false averments and forged documents will tire out the true owner and ultimately the true owner will have to give up to the wrongdoer his legitimate profit. It is also a matter of common experience that to achieve clandestine objects, false pleas are often taken and forged documents are filed indiscriminately in our courts because they have hardly any apprehension of being prosecuted for perjury by the courts or even pay heavy costs. In Swaran Singh v. State of Punjab [(2000) 5 SCC 668 : 2001

¹⁴ (2011) 8 SCC 249



SCC (Cri) 190] this Court was constrained to observe that perjury has become a way of life in our courts.

48. It is a typical example of how a litigation proceeds and continues and in the end there is a profit for the wrongdoer.

49. The learned amicus articulated the common man's general impression about litigation in following words:

“Make any false averment, conceal any fact, raise any plea, produce any false document, deny any genuine document, it will successfully stall the litigation, and in any case, delay the matter endlessly. The other party will be coerced into a settlement which will be profitable for me and the probability of the court ordering prosecution for perjury is less than that of meeting with an accident while crossing the road.”

...

52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials:

A. Pleadings are the foundation of the claims of parties. Civil litigation is largely based on documents. It is the bounden duty and obligation of the trial Judge to carefully scrutinise, check and verify the pleadings and the documents filed by the parties. This must be done immediately after civil suits are filed.

B. The court should resort to discovery and production of documents and interrogatories at the earliest according to the object of the Act. If this exercise is carefully carried out, it would focus the controversies involved in the case and help the court in arriving at the truth of the matter and doing substantial justice.

C. Imposition of actual, realistic or proper costs and/or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.”

(Emphasis Supplied)



51. Keeping in view the Section 35(2) of CPC, Rules 1(i) & 2 of Chapter XXIII of Delhi High Court (Original Side) Rules, 2018 and the judgment of the Supreme Court in **Ramrameshwari Devi (Supra)**, this Court deems it appropriate to impose actual costs on the plaintiff and payable to the defendants. For the purpose of determining the actual cost incurred by the defendants to be paid by the plaintiff herein, the Taxing Officer of this Court is directed to take appropriate steps in accordance with the provisions of Delhi High Court (Original Side) Rules, 2018 ('Original Side Rules, 2018').

52. List before the Taxing Officer/concerned Joint Registrar on **03.12.2024**.

CS(OS) 629/2023 and I.A. 7225/2024

53. This is a suit for possession, mesne profits, damages and permanent injunction filed by the plaintiff Ms. Gagan Singh, daughter of late Sh. Raghubir Singh against the defendant no. 1 i.e., Sh. Paramjit Singh, who is in possession of the second floor and terrace of the suit property.

54. Plaintiff has admittedly served legal notice dated 19.03.2022 upon defendant no. 1 calling upon him to vacate the portion occupied in suit property and putting him to notice that the licence granted to him to occupy the said portion stands revoked. The receipt of the notice is admitted by defendant no. 1.

55. The plaintiff has also filed I.A. No. 7225/2024 under Order XV-A CPC claiming deposit of arrears of mesne profits and occupation charges w.e.f. 01.05.2022 at Rs. 5 lakhs per month with yearly increment of 10 %.

56. The plaintiff has placed on record contemporaneous lease deed dated 30.04.2022 of an ad-joining building i.e. E-17, South Extension Part-II, New Delhi, wherein the tenant inducted on the ground floor area admeasuring 862.5 sq. feet has been paying rent w.e.f. 01.05.2022 at Rs. 9 lakhs to its landlord. The



plaintiff seeks damages at the rate of Rs. 5 lakhs per month relying upon the terms of the said registered lease deed.

57. Mr. Rakesh Munjal, learned senior counsel for the plaintiff stated that a decree for possession be granted in favour of the plaintiff and mesne profits be awarded at the prevalent market rent rate of Rs. 5 lakhs per month w.e.f. 01.05.2022 till the plaintiff gets the actual physical possession of the portion occupied by defendant no. 1 in suit property.

58. In reply, Mr. Pawan Bindra, learned senior counsel for the defendant had relied upon the pendency of CS(OS) 77/2022 to oppose the grant of decree of possession as well as grant of the relief of mesne profits.

59. He stated that since award of mesne profits under Order XV-A CPC requires a declaration that the defendant is an unauthorised occupant as a sine qua non; and no such declaration can be granted in this suit due to the pendency of the defendant's claims made under CS(OS) 77/2023.

60. He however did not address any submissions on the prevalent rate of rent for the second floor and terrace of the suit property under the possession of the defendant herein.

61. In view of the order dismissing the suit of the plaintiff in CS(OS) 77/2023 and directing the defendant no. 1 herein Mr. Paramjit Singh to handover the physical possession of the portion occupied by him in the suit property to the plaintiff herein i.e., Ms. Gagan Singh on the finding that the defendant has no right, title or interest in the suit property and therefore, has no right to continue in possession of the second floor and terrace of the suit property, the objections raised by Ld. Senior counsel for Mr. Pawan Bindra, Senior defendant do not survive for consideration.



62. This Court is satisfied that in the facts of this case, the defendant herein is an unauthorised occupant and after service of the notice dated 19.03.2022 by the plaintiff herein, the occupation is illegal and unauthorised.

63. In view of the fact that the plaintiff in I.A. No. 7225/2024 has also sought award of mesne profits w.e.f. 01.05.2022, this Court is satisfied that the plaintiff has become entitled to award of mesne profits w.e.f. 01.05.2022.

64. With respect to the rate of mesne profits, the plaintiff has placed on record the registered lease deed dated 30.04.2022, which shows that in a similar property located in the same neighbourhood of South Extension for the ground floor admeasuring 862.5 sq. feet wherein the tenant is paying rent at Rs. 9 lakhs per month w.e.f. 01.05.2022. Since, it's a registered lease deed, the defendant no. 1 has fairly not disputed the contents of the said document. This Court has also perused the detailed reply filed by defendant no. 1 to I.A. 7225/2024 and in its para-wise reply at relevant para 19, the defendant no. 1 has failed to respond to the assertions made by the plaintiff with respect to the lease deed dated 30.04.2022 as well as the plaintiff's assessment that she is entitled to mesne profits at Rs. 5,00,000/- per month.

65. The plaintiff has placed on record with her plaint a copy of the registered lease deed dated 30.04.2022. The defendant no. 1 has failed to file his written statement and affidavit of admission/denial of documents within the statutory period of limitation. In this factual situation the lease deed dated 30.04.2022 is deemed to be admitted as per the ('Original Side Rules, 2018').

66. The suit property is second floor with terrace on a plot admeasuring 250 sq. yards. This Court takes judicial notice of the fact that South Extension Colony in which the suit property is located is an upscale colony in South Delhi



and prominence of its commercial market is well established in New Delhi. The sum of Rs. 5,00,000/- assessed by the plaintiff may be accurate for commercial use of the second floor.

67. However, since the defendant no. 1 herein has used the second floor and terrace for residential purposes, this Court is of the considered view that the rent which the second floor would fetch for residential purpose in such an area is about Rs. 2,50,000/-. Accordingly, this Court is satisfied that the plaintiff is entitled to mesne profits Rs. 2,50,000/- lakhs per month w.e.f. 01.05.2022. Therefore, the defendant has become liable to pay the arrears from 01.05.2022 till 31.10.2024 (i.e. 30 months x Rs. 2,50,000/-) amounting to INR 75,00,000/-. The defendant is directed to pay this amount within four (4) weeks, failing which, he will be liable to pay this amount with interest at 12% per annum. In addition, the plaintiff has been granted four (4) weeks' time to vacate the suit property.

68. The plaintiff will remain liable to pay rent at Rs. 2,50,000/- per month w.e.f. 01.11.2024 until the physical handing over of the possession of the portion occupied by defendant no. 1 in the suit property. With these direction I.A. 7225/2024 stands allowed.

69. In view of the dismissal of CS (OS) 77/2022 filed by the defendant no. 1 and the directions issued to defendant no. 1 to handover possession of the second floor and terrace in the suit property to the plaintiff, the relief for decree of possession as sought at prayer (a) of the present suit is liable to be allowed.

70. Since defendant no. 1 is an unauthorized occupant, he is not entitled to create any third-party rights or induct any third party in the suit property. The



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plaintiff is thus entitled to a decree of permanent injunction as sought at prayer (b) of the present suit is liable to be allowed.

71. Accordingly, the suit qua prayer clause (a) and (b) are hereby decreed.

72. The registry is directed to draw up a decree sheet in terms hereof allowing prayer clauses (a) and (b) of the present suit i.e., CS (OS) 629/2023. In view of this decree, I.A. 19910/2023 (application under Order XXXIX Rules 1 & 2 CPC) has become infructuous and is hereby disposed of.

73. It is clarified that the mesne profits awarded under I.A. 7225/2024 are an interim measure and shall remain subject to the final determination of mesne profits while deciding prayer clause (c) of the plaint during trial and the plaintiff may be entitled to higher mesne profits 01.05.2022 till 31.10.2024.

74. The present suit shall thus continue only qua prayer clause (c).

75. List before the learned Joint Registrar (J) for further proceedings on 06.12.2024.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 29, 2024/rhc/hp/mt/AKT

“ ...