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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **CS(OS) 461/2021, I.A. 12522/2021 and I.A. 15734/2021**

Between: -

- 1. GAGANDEEP KAUR**
W/O GAGANDEEP SINGH
R/O F-168 D, 2ND FLOOR
RAJOURI GARDEN, NEW DELHI- 110027
- 2. SMT. PAMINDER JUNEJA**
W/O SH. NAVJEET JUNEJA
R/O 8, CAMP ROAD, GERRARDS CROSS SL 97PE,
LONDON; U.K

PLAINTIFFS

*(Through: Mr. Rajat Aneja, Mr. Aditya Sharma, Mr. Anant Chaitanya Dutta and Mr. Sanjay Mishra, Advs. for P-1.
Ms. Mohna M. Lal, Ms. Geetali Hazarika and Mr. Nikhil Anand, Advs. for P-2.)*

AND

- 1. RATTANDEEP SINGH GROVER**
S/O LATE SH. CHANCHAL SINGH GROVER
R/O H.NO 64, NORTH AVENUE ROAD PUNJABI BAGH,
NEW DELHI -110026
- 2. VIRAJ VEER SINGH**
S/O RATTANDEEP SINGH GROVER
S/O LATE SH. CHANCHAL SINGH GROVER
R/O H.NO 64, NORTH AVENUE ROAD PUNJABI BAGH
NEW DELHI -110026



2025:DHC:5260



....DEFENDANTS

(Through: Mr. Rajesh Yadav, Senior Advocate with Mr. Arvind K. Gupta, Mr. Abhiesumat Gupta, and Mr. Arun Bhattacharya, Advocates.)

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Reserved on: 02.05.2025

Pronounced on: 02.07.2025

JUDGMENT

I.A.-18546/2022(APPLICATION UNDER ORDER VII RULE 11 (A), (B), (C) & (D) CPC ON BEHALF OF THE DEFENDANT NO.1 AND 3, SEEKING REJECTION OF PLAINT)

The present application has been filed by defendant nos. 1 and 2 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”), seeking rejection of the plaint, mainly on two grounds:- i. absence of cause of action; ii) plaint is barred by law under the Prohibition of Benami Property Transactions Act, 1988. (*Benami Act, 1988*).

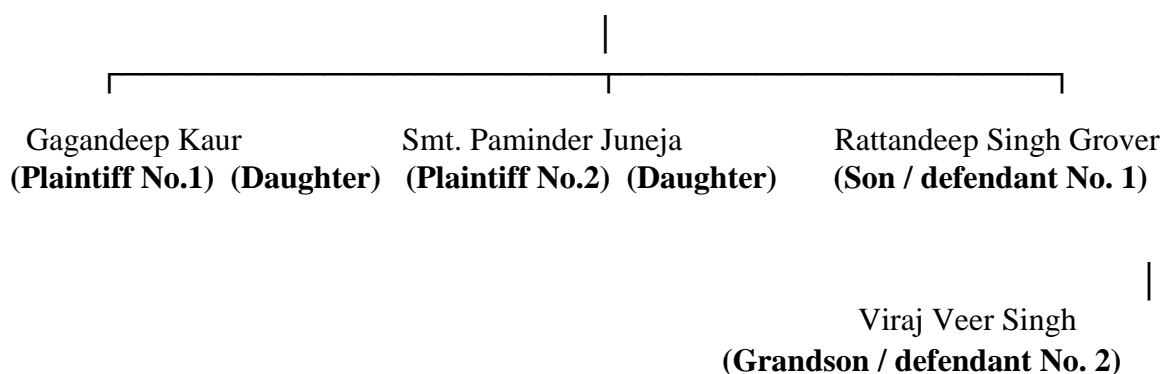
2. The present suit has been instituted by the plaintiffs seeking a declaration that late Sh. Chanchal Singh was the *de facto* owner of the suit properties as detailed in paragraph 3 of the plaint. Based on this assertion, the plaintiffs have prayed for partition of the said properties and has further sought a declaration that the Gift Deed dated 24.12.2020, executed in favour of defendant no. 1, as well as, the Gift Deed executed in favour of defendant no. 2, be declared as null and void to the extent of the plaintiff's 1/4th share in the suit properties.



3. Before delving into the merits of the present application, it is important to understand the pedigree of the parties indicating the current status of each party as on date. The pedigree chart is reproduced below:

Late Sh. Chanchal Singh Grover - late Smt. Rajinder Kaur

(Wife)(Deceased defendant)



Comparison of Party Status: Old vs New Memo of Parties

Name of Party	Status in Old Memo	Status in New Memo
Gagandeep Kaur	Plaintiff	Plaintiff No. 1
Paminder Juneja	defendant No. 3	Plaintiff No. 2
Rattandeep Singh Grover	defendant No. 1	defendant No. 1
Rajinder Kaur	defendant No. 2	Deleted from the case on her death
Viraj Veer Singh	<i>Not a party</i>	defendant No. 2 (Newly Added)

4. The pleadings in the plaint insofar as are relevant for deciding of the present application are set out below:-

- i. Both plaintiffs are daughters of late Sh. Chanchal Singh, and defendant No.1 is his son. defendant No.2 is the son of defendant



- No.1. All the parties are Class-I legal heirs of late Sh. Chanchal Singh.
- ii. Late Sh. Chanchal Singh used to run chit fund businesses under the names *Gursant Trading and Chit Fund Pvt. Ltd.* and *Sahib Chits (Delhi) Pvt. Ltd.* at 4636, Ganesh Bazar, Cloth Market, Fatehpuri, Delhi. Out of the aforesaid business he had earned substantial income.
 - iii. Out of his earnings, late Sh. Chanchal Singh purchased various immovable properties, either in his name or in the names of defendant No.1 and late Smt. Rajinder Kaur, either jointly or solely.
 - iv. late Sh. Chanchal Singh passed away intestate on 02.01.2008. The properties acquired from his income are part of the family estate.
 - v. The plaintiffs are not claiming any properties for which they have executed relinquishment deeds. The present partition suit concerns only the remaining properties, referred to as “Suit Properties”.
 - vi. The Suit Properties include:-
 - ½ portion of Residential Plot No. 64, North Avenue Road, Punjabi Bagh (West), New Delhi – 555.55 sq. yds.
 - House Property at 720 Road No., Katra Neel, Chandni Chowk – 50.16 sq. m.
 - House Nos. 752-753-754, Road No., Katra Neel, Chandni Chowk – 17.19 sq. m.
 - House No. 579, Gali Ghanteshwar, Chandni Chowk.
 - Plot No.2, Meera Kunj, Nilothi Extension (Farm House), Chander Vihar – 1000 sq. yds.



- A-201, Vikas Tower, Vikaspuri, Delhi.
 - Shops No. 10 and 12, 2nd Floor, TDI Mall, Vishal Enclave, New Delhi.
 - Bank accounts and fixed deposits in the name of late Sh. Chanchal Singh.
 - Assets of the two chit fund companies: Gursant Trading and Chit Fund Pvt. Ltd. and Sahib Chits (Delhi) Pvt. Ltd.
- vii. A probate petition under Section 276 of the Indian Succession Act is pending before the Court. It is claimed that late Smt. Rajinder Kaur (formerly defendant No.2) executed an unregistered Will dated 14.08.2020.

Submissions On Behalf Of Defendant No.1 and 2

5. The submissions of Mr. Rajesh Yadav, learned senior counsel appearing on behalf of the applicants /defendant Nos. 1 and 2, are as follows-

5.1 It is submitted that plaintiffs own pleadings reveal that the properties in question were either self-acquired by the defendants after the demise of late Sh. Chanchal Singh or stood in the names of defendant No.1 or late Smt. Rajinder Kaur. In either circumstance, the claim attracts the express bar of the Benami Act 1988.

5.2 It is submitted that in respect of Property No. 64, North Avenue Road, Punjabi Bagh:

- i. The pleadings made by the plaintiffs in paragraph No. 2(a) have been extensively read and clarified. It is stated that ½ share in the aforesaid property was purchased by late Mrs. Rajinder Kaur



through a registered sale deed dated 05.02.1992. Therefore, at the time of execution of the gift deed in favour of defendant No. 1, namely Mr. Rattan Singh Grover, she was the absolute owner of the said ½ share, without any encumbrances.

- ii. As per paragraph No. 6 of the plaint, the plaintiffs have admitted that late Mrs. Rajinder Kaur was a director in companies and had an independent source of income. Therefore, the property in question cannot be considered to have been purchased from the known sources of late Sh. Chanchal Singh, as alleged.
- iii. Since the sale deed dated 05.02.1992, being the primary document of ownership in favour of late Mrs. Rajinder Kaur, remains unchallenged, a challenge to the gift deed dated 24.12.2020 cannot be sustained. Reliance is placed on the judgments in *Md. Noorul Hoda vs. Bibi Raifunnisa*¹ and *Surinder Kaur vs. Ram Narula & Ors*².

5.3 It is submitted that in respect of property at 720, Road No., Katra Neel, Chandni Chowk, admeasuring 50.16 square meters:

- i. Referring to paragraph No. 2(c) of the plaint, it is submitted that the plaintiffs have not provided specific details or the status of the said property, which is admittedly unknown to them. Since no such identifiable property exists, the suit concerning this property is not maintainable.

¹ (1996) 7 SCC 767

² (2013) SCC OnLine Del 4377



5.4 Similarly, it is submitted that with regard to Property Nos. 752-753-754, Katra Neel, Chandni Chowk:

- i. Referring to paragraph No. 2(d) of the plaint, it is submitted that defendant No. 1 and late Mrs. Rajinder Kaur were the absolute joint owners of the said property, which they purchased from their own sources of income. The sale deed dated 31.01.2013, executed by Vipin Wahi, evidences this self-acquired ownership. Therefore, no cause of action arises for the present suit. The sale consideration was paid jointly by defendant No. 1 and late Mrs. Rajinder Kaur. Subsequently, late Mrs. Rajinder Kaur gifted her share, of her own volition, to defendant No. 1 *via* a registered gift deed dated 05.01.2021. Hence, the plaintiffs have no right, title, or interest to challenge the ownership of defendant No. 1 and defendant No.2 (Viraj Veer Singh).
- ii. It is further submitted that this property was purchased more than 8 years after the demise of late Sh. Chanchal Singh. No evidence has been adduced to show that funds belonging to late Sh. Chanchal Singh were used for this purchase. Moreover, the sale deed dated 31.01.2013 has not been challenged by the plaintiffs.

5.5 As regards Property No. 579, Gali Ghanteshwar, Chandni Chowk, it is submitted that:

- i. Reference is made to paragraph No. 2(f) of the plaint. It is submitted that the said property was sold by late Sh.. Chanchal Singh to late Mrs. Rajinder Kaur during his lifetime for valid sale consideration through a registered sale deed dated 14.06.2005. Consequently, late



Mrs. Rajinder Kaur became the lawful and exclusive owner of the property, which thus qualifies as her self-acquired asset.

- ii. The plaintiff, having admitted the transaction, cannot now challenge the valid and legal title of defendant No.2.

5.6 In relation to Plot No. 2, Meera Kunj, Nilothi Extension and Flat No. A-201, Vikas Tower, Vikaspuri, it is submitted:

- i. It is submitted that the property was purchased on 17.09.1997 by defendant No. 1 for valid sale consideration of Rs.1.90 lakh from Mr. Hari Om Aggarwal. Since then, defendant No. 1 has been the lawful owner and is in possession of the same.
- ii. No evidence has been filed by the plaintiff to demonstrate any financial contribution from late Sh. Chanchal Singh.
- iii. Even if such a claim is presumed, the same is barred under the Benami Act, 2016 (amended).
- iv. The present case does not fall under any of the exceptions carved out under Section 4(3) of the Benami Act 1988.

5.7 With respect to shops No. 10 and 12, 2nd Floor, TDI Mall, Vishal Enclave, New Delhi, it is submitted:

- i. It is submitted that these shops were never purchased by late Mr. Chanchal Singh in the name of late Mrs. Rajinder Kaur. Furthermore, no details of these shops are provided in the plaint. It is the case of the defendants that neither defendant No. 1 nor late Mrs. Rajinder Kaur had any connection with the said shops.

5.8 Further, it is also submitted that the plea of a Hindu Undivided Family (HUF) has been raised for the first time in the replication and finds no



mention in the original plaint. No details have been provided about the constitution, creation, members, or assets forming part of the alleged HUF. This plea is clearly an afterthought and is inconsistent with the plaintiffs own claim that late Sh. Chanchal Singh was the *de facto* owner of the properties in his individual capacity. Reliance is placed on the decision in the case of *Sagar Gambhir v. Sukhdev Singh Gambhir*³, *Sagar Gambhir vs. Sukhdev Singh Gambhir (Deceased) through LRs & Anr*⁴ and *Anchit Sachdeva & Anr. vs. Sudesh Sachdeva & Ors*⁵.

5.9 Additionally, reliance is also placed on *Ramesh Advani v. Hiro Advani*⁶, to submit that a declaratory suit which seeks to set aside alienations such as Gift Deeds is not maintainable in the absence of possession and proper valuation for court fees and jurisdiction. It is submitted that declaratory reliefs affecting title to immovable property must satisfy the requirements of possession and proper court fee needs to be paid.

5.10 Conclusively, it is submitted that the suit, as framed, is not maintainable either in fact or in law. It is barred under the provisions of the Benami Act, 2016 (amended), discloses no cause of action, and is not properly valued for court fees and jurisdiction. Accordingly, the plaint is liable to be rejected under clauses (a), (b), (c), and (d) of Order VII Rule 11 of the CPC. In support of these submissions, defendant Nos.1 and 2 placed reliance on *Suhrid Singh @ Sardool Singh v. Randhir Singh*⁷; *Sagar Gambhir, and Ramesh Advani v. Hiro Advani*⁸.

³2016 SCC OnLine Del 2748

⁴ 2017 SCC OnLine Del 7305

⁵ 2024 SCC OnLine 8768

⁶2013 SCC OnLine Del 2603

⁷(2010) 12 SCC 112

⁸2013 SCC OnLine Del 2603



Submissions On Behalf Of The Plaintiffs

6. *Per contra*, the submissions of Mr. Rajat Aneja and Ms. Mohna M. Lal, learned counsel appearing on behalf of the plaintiffs are as follows-

6.1 At the outset, it is submitted that the plaint must be read holistically and in its entirety, rather than in a fragmented or isolated manner, which could distort the context and true intent of the pleadings. It is a well-settled principle of law that an application under Order VII Rule 11 CPC is confined strictly to the contents of the plaint and cannot delve into disputed questions of facts. Any alleged inconsistencies or contradictions within the plaint, are matters to be adjudicated during trial and cannot form the basis for rejection at the threshold. At this preliminary stage, all averments in the plaint are required to be presumed as true.

6.2 It is submitted that the plaintiffs have categorically pleaded in the plaint that late Sh. Chanchal Singh, father of the parties, was the sole contributor and operator of a chit fund business including entities such as *Gursant Trading and Chit Fund Pvt. Ltd.* and *Sahib Chits (Delhi) Pvt. Ltd.*, which generated income which was used to purchase various properties. The properties were purchased in the names of defendant No.1 (his son) and late Smt. Rajinder Kaur (his wife), in a fiduciary capacity and not as absolute owners, solely for the purposes of accounting and to reduce income tax liability, while the beneficial interest always remained with late Sh. Chanchal Singh and, by extension, the family as a whole.

6.3 It is further submitted that neither defendants had any independent source of income at the time when these properties were acquired as defendant No.1 was merely aged around 17-21 year, nor did they contribute to the chit fund or to the consideration for any of the properties. The



plaintiffs have specifically asserted that the entire business activity, including the chit fund operation, was conducted and managed solely by late Sh. Chanchal Singh , and the financial flows used for acquisition of properties originated from this business. This has been pleaded not merely in general terms, but with reference to specific properties, years, and transactions.

6.4 Moreover, it is submitted that the plaint clearly avers that the scheduled properties were purchased from joint family funds. The properties remained in joint possession, and taxes were consistently paid from joint family funds. The family-run companies were closely held private limited entities, managed exclusively by family members, with no involvement of third-party outsiders. Under settled principles of Hindu law, where the *Karta* or co-parceners acquire property with the aid and assistance of joint family assets or efforts, the source of funds becomes the determining factor, and such matters can only be adjudicated upon evidence at trial. The burden to prove self-acquisition lies on the person asserting it, and such a claim must demonstrate that the property was acquired without any aid from joint family resources. It is, therefore, an admitted and pleaded fact that the family functioned as a joint family, and all such issues are triable and cannot be dismissed at the threshold.

6.5 Further it is submitted that the defendants have failed to provide critical documents such as income tax returns, bank statements, account books, and documents related to the source of funds despite notice dated 19.03.2022 under Order VIII Rule 12 CPC. This non-disclosure warrants that the claims in the plaint be tested at trial and should not be dismissed at the preliminary stage.



6.6 In addition, it is submitted that that the Benami Act, 2016 (amended), does not bar the present claim, as the properties were held in fiduciary capacity or in trust for the family. The case falls within the exception under Section 4(3)(b) of the Benami Act, 1988 as late Sh. Chanchal Singh stood in a fiduciary and trustee-like relationship to the defendants and purchased the properties using known sources of income derived from his chit fund enterprise, for the benefit of all family members, not just for the name-holders.

6.7 Furthermore, it is also submitted that the Benami Act, 2016 (amended), is not retrospective in its operation. The plaintiffs claim pertains to transactions that occurred prior to the enforcement of the Benami Act, 1988 and in some cases, even before the 2016 amendment. In this regard, reliance is placed on the judgment of the Supreme Court in ***P. Rajagopal v. State of Tamil Nadu***⁹, where it was categorically held that the provisions of the Benami Act, 1988 are not retrospective and cannot be applied to transactions which took place prior to the coming into force of the Act. Therefore, any plea raised by the defendants invoking the bar of the Benami Act must be rejected in light of the plaintiffs case, which is based on transactions that are alleged to have occurred well before the Act or its amendments came into force. Accordingly, the present suit, which asserts the real ownership of properties purchased in the name of family members by late Sh. Chanchal Singh using his own funds, is not barred under the Benami Act.

6.8 Coming on to the issue of Court fees it is submitted that the plaintiffs have clearly averred in paragraph 14 of the plaint that they are in



constructive possession of the suit properties, and accordingly, a fixed Court fee has been paid as per Schedule II, Article 17(VI) of the Court Fees Act, 1870. It is well-settled in law that, where, plaintiffs are in constructive possession, only a fixed Court fee is payable, and the plaint cannot be rejected under Order VII Rule 11 CPC on the ground of deficiency of Court Fee. Ad valorem Court fee becomes applicable only when there is a specific plea of “ouster,” which is not the case here.

6.9 Conclusively, it is emphasized that the grounds raised in the present application cannot be adjudicated at the preliminary stage of deciding an application under Order VII Rule 11 of the CPC, as they involve disputed questions of fact that require trial and evidence. In support of these submissions, plaintiffs placed reliance on the decisions in ***Ramesh B. Desai v. Bipin Vadilal Mehta***¹⁰, ***Kasthuri and Others vs. Baskaran and Another***¹¹, ***G. Subramani vs. V. Rajasekaran and Another***¹², ***Chandra vs. Reddappa Reddy***¹³, ***Salem Advocate Bar Association Tamil Nadu vs. Union of India***¹⁴, ***Metson Education and Development Association (P) Ltd vs. The Church of South India Trust Association***¹⁵, ***Pawan Kumar vs. Babu Lal***¹⁶, ***P. Rajagopal vs. State of Tamil Nadu***¹⁷, ***Sarabjit Singh Anand vs. Manjit Singh Anand & Others***¹⁸, ***Popat and Kotecha Property vs. State***

⁹(1994) 6 SCC 632

¹⁰(2006) 5 SCC 638

¹¹2003 SCC OnLine Mad 550

¹²2013 SCC OnLine Mad 1796

¹³2011 SCC OnLine Mad 715

¹⁴2003 1 SCC 49

¹⁵2008 1 CTC 521

¹⁶2019 4 SCC 367

¹⁷2019 5 SCC 403

¹⁸2008 SCC OnLine Del 27



Bank of India Staff Association¹⁹, Smt. Prakash Wati vs. Dayawanti & Others²⁰, Jagdish Prasad vs. Joti Pershad²¹, Geeta Tandon vs. Dr. Sunil Gomber & Anothre²², and Manoj Arora vs. Mamta Arora²³.

Analysis

7. I have heard learned counsels appearing for the parties and perused the records.

8. Before proceeding to the analysis of the facts of the case, it is important to briefly discuss the scope of Order VII Rule 11 of CPC. Although, the principles governing the scope of an application of this nature have been a subject matter of various pronouncements, it is imperative to note that at this stage, while deciding an application under Order VII Rule 11 CPC, the Court is required to examine only the averments made in the plaint. The scope of such an application is limited solely to determine whether, on the basis of the plaint as it stands, and on a comprehensive reading thereof a cause of action is disclosed or if the suit is barred by any law. No reference can be made to the written statement or any defence raised, as the assessment must be confined strictly to the pleadings of the plaintiffs.

9. This Court in ***Meena Vohra v. Master Hosts (P) Ltd.***²⁴, had an occasion to discuss the underlying objective of order VII Rule 11 CPC and held:

“11. The real object of Order VII Rule 11 CPC is to keep out irresponsible lawsuits from the Courts and it provides for an

¹⁹ 2005 7 SCC 510

²⁰ 1990 SCC OnLine Del 213

²¹ 1974 SCC OnLine Del 214

²² 2023 SCC Online Del 2067

²³ 2018 SCC OnLine Del 10423

²⁴ 2025 SCC OnLine Del 1758



independent remedy for the defendant no.1/applicant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The Supreme Court in Sopan Sukhdeo Sable v. Asstt. Charity Commr.⁹, held as under:

“17. .. The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by a searching examination of the party, in case the court is prima facie of the view that the suit is an abuse of the process of the court, in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.

20....Rule 11 of Order 7 lays down an independent remedy made available to the defendant no.1/applicant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word “shall” is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant no.1/applicant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiff/non-applicants from presenting a fresh plaint in terms of Rule 13.””

10. Furthermore, in ***Hardesh Ores (P) Ltd. v. Hede & Co.***²⁵ the Supreme Court has held that it is not permissible to cull out a sentence or a passage and to read it in isolation. It is the substance and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint *prima facie* show a cause of action, the Court cannot embark upon an enquiry whether the allegations are true in fact. Therefore, a roving inquiry akin to appreciation of evidence is not contemplated at the stage of Order VII Rule 11 of the CPC.

²⁵ (2007) 5 SCC 614



11. In the case of *Amiteshwar Singh v. Kamal Nain*²⁶, this Court observed that the plaintiff had sufficiently pleaded that the suit property was held by the father of the parties in his capacity as *karta*, for the benefit of the co-parceners. These pleadings were found as adequate to sustain the civil suit. Consequently it was held therein that the plaint could not be rejected summarily under the provisions of Order VII Rule 11 of the CPC. It was thus held that at that stage, the Court was not empowered to assess the veracity or truthfulness of the allegations in the plaint; such matters are to be tested during trial.

12. In *Pawan Kumar*, the Supreme Court was dealing with a case where the trial court had allowed an application under Order VII Rule 11 of the CPC, and the High Court had affirmed that decision. The matter reached the Supreme Court following the rejection of the plaint on the ground that the suit was barred under Section 4 of the Benami Act, 1988. In that case, the trial Court had held that the suit was barred because the plaintiff had admitted in the plaint that he had purchased the property in the name of his father using his own income or borrowed funds. The High Court concurred, observing that Section 4 of the Benami Act, 1998 prohibited any suit, claim, or action to enforce a right in respect of property held benami, against the person in whose name the property is held. As there were no averments in the plaint suggesting that the property was held by the father (defendant no. 1) for the joint benefit or as part of joint ownership, the High Court found that the suit was clearly barred under Section 4.

²⁶ 2022 SCC OnLine Del 3345



13. However, the Supreme Court in the aforesaid judgment, upon examining the 2004 scheme of the Benami Act and relying on the principle laid down in *Marcel Martins*²⁷, found that the defendant's plea was entirely misplaced. In paragraph 13 of the judgment, the Court held as under:

“13. In the present case, the controversy has arisen in an application under Order 7 Rule 11 CPC. Whether the matter comes within the purview of Section 4(3) of the Act is an aspect which must be gone into on the strength of the evidence on record. Going by the averments in the plaint, the question whether the plea raised by the appellant is barred under Section 4 of the Act or not could not have been the subject-matter of assessment at the stage when application under Order 7 Rule 11 CPC was taken up for consideration. The matter required fuller and final consideration after the evidence was led by the parties. It cannot be said that the plea of the appellant as raised on the face of it, was barred under the Act. The approach must be to proceed on a demurrer and see whether accepting the averments in the plaint the suit is barred by any law or not...”

14. It is thus evident that Clause (d) of Rule 11 of Order VII of the CPC applies only to cases where the statements made by the plaintiff in the plaint, without any doubt or dispute, clearly show that the suit is barred by any law in force. If the question of applicability of any legal bar is itself a subject matter of contest between the parties, it could only be resolved after affording the parties the opportunity to lead evidence and appreciation thereof.

Interpretative Scope of Unamended Section 4 of the Benami Transactions (Prohibition) Act, 1988 at the Stage of Consideration Under Order VII Rule 11 CPC

15. In the present case, the father of the plaintiffs and defendant No. 1 passed away on 02.01.2008. The amendment to Section 4 of the Benami Act, 1988 came into effect on 01.11.2016. It is therefore understood that

²⁷ (2012) 5 SCC 342



sub-section (3) of Section 4, as it stood prior to the amendment, would be applicable to the facts of the present case. This is further supported by the plaintiffs' pleadings, which indicate that some of the properties were purchased prior to 1988, i.e., before the enforcement of the Benami Act itself, while others were acquired after its enactment. Notably, none of the properties involved in the civil suit were purchased after 01.11.2016. It is thus evident that the provisions of the Benami Act, 1988 do not apply to the present set of facts as the amendment does not operate retrospectively.

16. Support for the aforesaid position can be drawn from the decision in ***Rajgopal Reddy***, where the Supreme Court, while interpreting the provisions of the Benami Act, 1988, held that benami transactions were a legally recognized mode of holding immovable property prior to the enactment of the Act. These transactions were commonly practiced, and upon proof of relevant facts, courts would grant relief in such suits. The Parliament, acting on the recommendations of the Law Commission, enacted the Benami Act, 1988 to prohibit such transactions. A benami transaction typically involves the purchase of property in the name of another person who does not pay the consideration but merely lends his name, while the real purchaser the one who provides the consideration remains the actual and beneficial owner. In order to prohibit such arrangements and bar the enforcement of rights over benami property, the Benami Act, 1988 was enacted.

17. However, under Section 4(3) of the Benami Act, 1988, certain exceptions were carved out. Since the pre-amendment provisions of Section 4 (prior to the 2016 amendment) are central to the present controversy, the unamended version of Section 4 is reproduced below in its entirety:



“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 held 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.

(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.”

18. Based on the aforesaid submissions, defendant No. 1 contends that the suit is barred by the Benami Act, 1988. In contrast, the plaintiff maintains that the suit falls within the exceptions outlined in Section 4(3)(b) of the Act, which covers , for instance, a case wherein a husband purchases property in the name of his wife for the benefit of the family. The plaintiff further asserts that late Sh. Chanchal Singh, in his fiduciary role, acquired the properties using income from his chit fund business for the collective benefit of all family members. Thus, the claims *qua* such properties were not banned by the unamended Section 4 of the Benami Act of 1988.

19. In order to understand the development and application of law regarding the benami transactions, it could be divided in the following three time zones:

- i. The first stage pertains to the period prior to the enactment of the Benami Transactions (Prohibition) Act, 1988. As noted above, benami transactions were a legally recognized mode of holding



immovable property during this period. The Supreme Court, in the case of ***Rajgopal Reddy***, affirmed this position and held that the provisions of the 1988 Act do not have retrospective application. Therefore, transactions that took place before the enactment of the Act were governed by the prevailing legal position of that time, wherein a suit *qua* property held by one in the name of ancestor was not prohibited. In ***Controller of Estate Duty, Lucknow v. Alope Mitra***²⁸, the Court further held that where a property was purchased by a husband in the name of his wife, and the wife had no independent source of income, the presumption was that the husband was the real owner of the property.

- ii. The second phase spans from the enactment of the Benami Act, 1988 till the 2016 amendment to the same Act. During this period from 1988 to 2016, though benami transactions were prohibited by law, however, Section 3(2) of the Benami Act, as it stood prior to amendment of 2016, provided an exception inter-alia for purchase of property by the husband in the name of his wife. Further, prior to its omission in the year 2016, exceptions were provided in Section 4(3)(a) and (b) of the Benami Act, i.e., purchase of property by an HUF and purchase of property by a person standing in fiduciary capacity. Thus, if a property was purchased by the husband in the name of the wife, it was presumed that it was for the benefit of the wife. However, the husband could disprove such presumption.

²⁸ (1981) 2 SCC 121



iii. The third time zone commences from 2016 onwards. In 2016, the Benami Act was further amended extensively by way of the Benami Transactions (Prohibition) Amendment Act, 2016. Section 3(2) of the Benami Act was deleted. However, under the definition of prohibited benami transactions in Section 2(9) of the Benami Act as amended in 2016, various exceptions have been provided. Such exceptions as provided in Section 2(9) of the Benami Act includes purchase of property by an individual in the name of spouse or in the name of any child and the payment of consideration for such property has been provided or paid out of the known sources of such individual; property held by a karta or member of HUF provided the property has been held for the benefit of other members in the family and consideration for such property has been provided or paid out of the known sources of the HUF; persons standing in 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, etc.

20. As noted hereinabove, in light of the respective dates of acquisition of the immovable properties forming part of the suit property, the present case is governed by two stages: the period prior to the enactment of the Benami Transactions (Prohibition) Act, 1988, and the second stage, i.e., from 1988 until the Amendment Act of 2016 came into force. Thus, it can be observed that the transactions pertain to a time frame during which the exceptions to the prohibition of benami acquisitions were in force. While the plaintiffs claim that the suit properties fall within such exceptions and are therefore not prohibited under the Benami Act, 1988. Thus, the suit is barred by law.



21. As already discussed above, in the case of **Pawan Kumar**, the exercise of power under Order VII Rule 11 of the CPC in the context of the Benami Act, 1988 has been considered by the Supreme Court. It was held that the question as to whether a matter falls within the purview of Section 4(3) of the Act is an aspect that must be adjudicated upon the strength of the evidence on record. A similar view has been expressed by this Court in the case of **Neeru Dhir v. Kamal Kishore Dhir**²⁹. Paragraph 12 of the said judgment reads as under:

“12. The plea taken by Mr. Chawla, learned counsel for the appellants that the bar placed under Section 4 of the Benami Act would not apply retrospectively, is no longer res integra. The said proposition had come up before the Supreme Court in R. Rajagopal Reddy (dead) by LRs v. Padmini Chandrasekharan (dead) by LRs reported as (1995) 2 SCC 630, wherein Justice S.B. Majmudar, speaking for the other members of a three Judge Bench had arrived at a conclusion that Section 4(1) of the Benami Act does not have any retrospective application. By the same analogy, any amendment to the said enactment by virtue of Act 43 of 2016, that came into effect on 01.11.2016, cannot acquire retrospectivity in a case like the present one where the suit was instituted by the appellants well before the said date, in February, 2016. We therefore have no hesitation in accepting the submission made by learned counsel for the appellants that the amended Benami Act, wherein sub-section (3) of Section 4 was omitted, would not apply to the instant case. Instead, the unamended Act, which included subsection (3) to Section 4, would govern the case.”

22. The same Division Bench in **Sukruti Dugal v. Jahnavi Dugal**³⁰, has held that at the stage of deciding an application under Order VII Rule 11 of the CPC, the Court has to assume that all averments made in the plaint are true and the entire plaint must be read as a whole to determine whether it discloses any cause of action. The opinion of the Court that the plaintiff may

²⁹ 2020 SCC OnLine Del 2506

³⁰ 2020 SCC OnLine Del 241



not ultimately succeed in the suit, cannot be the basis for rejecting the plaint.

Relevant observations are set out as under:

*“12. As can be seen from the aforesaid discussion, a plaint cannot be rejected on the basis of allegations levelled by the defendant in the written statement or for that matter, in an application moved under Order VII Rule 11 CPC, for seeking rejection of the plaint. In exercise of its powers under Order VII Rule 11 CPC, the court is required to look into the averments made in the plaint, which alone are germane. The entire plaint must be read as a whole to determine as to whether it discloses a cause of action. In undertaking the said exercise, the court is not expected to consider a particular plea and instead, the averments made in the plaint in entirety, have to be taken to be correct. Since a cause of action comprises of a bundle of facts, the same are required to be proved by the plaintiff only at the time of the trial. Only the material facts are required to be stated in the plaint without referring to the evidence except in circumstances where the pleadings relate to misrepresentation, fraud, undue influence, wilful default etc. **As long as the court is satisfied that the plaint discloses some cause of action that requires determination, the plaint ought not to be rejected. At the end of the day, the court must be mindful of the fact that the underlying object of Order VII Rule 11 CPC is to nip in the bud, irresponsible and vexatious suits. At the same time, the opinion of the court that the plaintiff may not ultimately succeed in the suit, ought not to form the basis for rejecting the plaint.**”*

23. In view of the aforesaid legal position, the plea that the suit is barred under Section 4 of the Benami Act, 1988 cannot be adjudicated at the stage of an application under Order VII Rule 11 of the CPC. The factual matrix of the present case must be examined after affording the parties the opportunity to lead evidence or the question of applicability of the legal bar or the exceptions envisaged in the Benami Act, 1988 is a triable issue and can not be adjudicated in a summary manner. The plaint clearly contains assertions that the properties in question were not purchased exclusively for the benefit of the person in whose name they stand, but for the benefit of the entire family, including the plaintiffs.



Factual Matrix of the Instant Case.

24. At this juncture, it is pertinent to refer to the specific pleadings in the plaint, which clearly state that the suit property was purchased exclusively from the known funds of late Sh. Chanchal Singh and was intended for the benefit of the entire family. Repeated assertions to this effect have been made in the plaint, specifically in paragraph numbers 2, 2(a) to 2(h), 4 to 9, and 11:

“2. (a)The said immovable property was purchased in the year 1992 by late Sh. Chanchal Singh jointly in his own name and in the name of defendant No.2, out of his known sources of income. **Half portion was held by late Sh. Chanchal Singh on his own name and other half portion was held by late Sh. Chanchal Singh in the name of his wife i.e defendant No.2. The said property was purchased not for the benefit of defendant No.2 only but for the benefit of entire family including the Plaintiff...**

c. House property at 720 Road No.. Katra Neel, Chandni Chowk admeasuring 50.16 Square meters: The said property was purchased by late Sh. Chanchal Singh in the name of defendant No.2, out of his known sources of income. **The said property was purchased by late Sh. Chanchal Singh not for the benefit of defendant No.2 only but for the benefit of entire family including the Plaintiff. The exact details and status of the property is not known to the Plaintiff since the defendant No. 2 had refused to share it with the Plaintiff.**

g. Plot No.2, Meera Kooi. Nilothi Extension (Farm House). Chander Vihar, Delhi, admeasuring 1000 square yards and A-201, Vikas Tower, Vikaspuri. Delhi: The said properties were purchased by late Sh. Chanchal Singh in the name of defendant No.1, out of his known sources of income. **The said properties was purchased not for the benefit of the defendant No.1 only but for the benefit of entire family including the Plaintiff. The exact details and status of the properties is not known to the Plaintiff since the defendant No.1 had refused to share it with the Plaintiff.**

h. Shop No. 10 and 12. 2nd floor. TDI Mall. Vishal Enclave. New Delhi: The said Property **was purchased by late Sh. Chanchal Singh in the name of the defendant No.2, out his known sources of income. The said properties was purchased not for the benefit of the defendant No.2 only but for the benefit of entire family including the Plaintiff.** The exact details and status of the properties is not known to the Plaintiff since the defendant No. 2 had refused to share it with the Plaintiff.



9. That it is further pertinent to mention here that late Sh. Chanchal Singh was a man having a fine sense of business and late Sh. Chanchal Singh had earned handsomely from the businesses he ran. Though the defendant No.1 was inducted as one of the directors in the Companies ran by late Sh. Chanchal Singh but the entire business was operated himself by late Sh. Chanchal Singh. The defendant No.1 only assisted late Sh. Chanchal Singh in his businesses. The reason for appointing the defendant No.1 as director in the Companies run by late Sh. Chanchal Singh was only to create more accounted income and to reduce burden of tax. Therefore, the income which though were shown in the name of the defendant No.1 belonged to late Sh. Chanchal Singh. **It is pertinent to mention here that if the books of accounts and bank statements of late Sh. Chanchal Singh, defendant No.1 and 2 be called the trail of money routing in the bank accounts of the defendant No.1 and 2 can be traced easily, which will ultimately establish that the funds if any had came from the account of late Sh. Chanchal Singh only.**

10. That from the above it is clear that late Sh. Chanchal Singh was a de-facto owner of the Suit Properties in as much as the entire sale consideration was paid out of the known sources of late Sh. Chanchal Singh. Further, at the time when the substantial properties were purchased by late Sh. Chanchal Singh (Punjabi Bagh Property, Nilothi Property, Fatehpuri Property etc.) the defendant No.1 and 2 had no independent source of income of their own and were dependent upon late Sh. Chanchal Singh only. late Sh. Chanchal Singh had purchased the Suit Properties not only for the benefit of the de-jure owner but for the benefit of the entire family. Therefore, no person either the defendant No.1 or 2 can claim to be the exclusive owner of the Suit Properties. Further, the Plaintiff being the co-owner of the Suit Properties therefore have constructive possession of the Suit Properties. The Possession of the defendant No.1 and 2 is the possession for and on behalf of all the co-owners including the Plaintiff."

25. It is the plaintiffs' case that the properties purchased by the deceased father of the plaintiffs and defendant No. 1 in the name of his wife were intended for the benefit of the entire joint family. Regarding the properties purchased in the name of defendant No. 1, the plaintiffs contend that defendant No. 1 had no independent source of income, and that late Chanchal Singh utilized income derived from chit fund companies to finance these purchases. It is also the case of the plaintiffs that the



properties acquired in the name of RatanDeep Singh were also meant for the benefit of the entire family. These issues involve mixed questions of law and fact, which cannot be conclusively decided at the preliminary stage without allowing the parties to lead evidence. The following averments in the plaint must therefore be examined in detail.

26. Additionally, the plaintiffs have alleged that the defendants have wilfully withheld material documents. A legal notice dated 19.03.2022 was issued under Order XII Rule 8 of the CPC, calling upon defendant No. 1 to produce relevant documents. According to the plaintiffs, the response received was vague and evasive. It is further submitted that the income tax return for the year 1997–1998 in the name of defendant No. 1 reflects “Chanchal (HUF)”, which *prima facie* supports the plaintiffs' contention that the family was undivided and that an HUF existed in the name of the deceased father. Thus, the contentions *qua* the existence of HUF and utilisation of HUF funds also remain open till evidence is led and determination of the same is carried out. The decisions relied upon by the defendants are distinguishable on facts or were rendered after evidence had been adduced.

27. In light of the above facts and legal principles, the issue of whether the properties sought to be partitioned were benami in nature and whether the consideration was paid by late Chanchal Singh requires full adjudication after the parties are allowed to lead evidence. Resolution of other ancillary issues will depend on this pivotal question. The Court, therefore, finds no ground to reject the suit under Order VII Rule 11 of the CPC.

28. Moreover, it is a settled principle of law that there cannot be any partial rejection of the plaint under Order VII Rule 11 of the CPC. Either the



plaint has to be rejected as a whole or there can be no rejection at all. In this regard reference may be made to the judgment of the Supreme Court in *Madhav Prasad Aggarwal v. Axis Bank Limited*³¹ and *Roop Lal Sathi v. Nachhattar Singh Gill*³², which has been followed in *Dr. Ramesh Chander Munjal v. Dr. Suraj Munjal*³³.

29. The above proposition of law is also reiterated by the Supreme Court in its recent decision in *Central Bank of India v. Prabha Jain*³⁴, which held as follows:

*“23. Even if we would have been persuaded to take the view that the third relief is barred by Section 17(3) of the SARFAESI Act, still the plaintiff must survive because there cannot be a partial rejection of the plaintiff under Order 7 Rule 11CPC. **Hence, even if one relief survives, the plaintiff cannot be rejected under Order 7 Rule 11CPC.** In the case on hand, the first and second reliefs as prayed for are clearly not barred by Section 34 of the SARFAESI Act and are within the civil court's jurisdiction. Hence, the plaintiff cannot be rejected under Order 7 Rule 11CPC.*

*24. If the civil court is of the view that one relief (say relief A) is not barred by law but is of the view that relief B is barred by law, the civil court must not make any observations to the effect that relief B is barred by law and must leave that issue undecided in an Order 7 Rule 11 application. **This is because if the civil court cannot reject a plaintiff partially, then by the same logic, it ought not to make any adverse observations against relief B.**”*

30. Accordingly, the application is dismissed.

31. Needless to state any observations made herein are only for the purposes of deciding the present application and would have no bearing on the final adjudication of the suit.

³¹ (2019) 7 SCC 158

³² (2019) 7 SCC 158

³³ 2022 SCC OnLine Del 1045

³⁴ (2025) 4 SCC 38



2025:DHC:5260



CS(OS) 461/2021, I.A. 12522/2021 and I.A. 15734/2021

32. List this matter before the concerned Joint Registrar for taking up further steps in accordance with the extant rules on 04.09.2025.
33. Keeping in view the facts and circumstances of the case, and in light of the stay order dated 11.10.2021 operating against the suit properties mentioned in para 2 of the plaint except for properties 2(a) and 2(b), the Court directs that the evidence be recorded at the earliest. Let the process be completed within six months from today.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

JULY 02, 2025/p