



2025:DHC:6379



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 31st July, 2025

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CM(M) 114/2020 & CM APPL. 3768/2020

BHARAT BHUSHAN SACHDEVA & ORS

.....Petitioner

Through: Dr. Amit George, Mr. Arkaneil and
Mr. Bhaumik, Advocates.

versus

JHANG BIRADARI HOUSING RESIDENTS SOCIETY

.....Respondent

Through: Mr. Sanat Kumar, Sr. Advocate with
Mr. A.H. Pasha, Advocate.**CORAM:****HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)**

1. Petitioners herein are defendants before the learned Trial Court and take exception to order dated 05.11.2019 whereby the learned Trial Court has not acceded to their request for treating certain issues as preliminary issues and has dismissed the application while holding as under:-

"11. Having gone through the pleadings of the parties, this court is of the considered view that no pure question of law is involved in the present case, as all the issues framed vide order dated 30.07.2018, are mixed question of law and facts and cannot be decided without evidence of the parties. At this stage of the matter it cannot be decided whether the suit land was taken in the name of Shri Amir Chand, Brij Lal for the benefit of the plaintiff society and subsequently transferred in the name of late Shri Matwal Chand or was it their self acquired property. Similarly, the plaintiff society has pleaded its possession for all practical purposes in the suit land, which is disputed by the defendants, therefore, without leading evidence by the parties, this issue also cannot be decided "whether the plaintiff society was in actual possession of the suit land or not, consequently, was it required to seek relief of possession or not". Same is the opinion of this court, regarding the valuation of the suit for



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the purpose of jurisdiction and court fees as prima-facie there is no material on record to come to any conclusion regarding the value of the suit property. Therefore, at this stage of the matter, the valuation of the suit made by the plaintiff is considered to be the correct value of the suit property. The issue regarding the same has already been framed, on which the parties may lead their respective evidence.”

2. Let me capture the background facts, in brief.
3. The suit in question seeks declaration and mandatory injunction.
4. The plaintiff society claims itself to be the lawful owner of 31 *bighas* of land situated at Basai Darapur, Rohtak Road, New Delhi and declaration is also being sought to the abovesaid effect and it is prayed that defendants be directed to transfer and convey the suit property in their name.
5. As per plaintiff society, initially, it was formed as an Association for resettlement of people belonging to *Jhang* (Pakistan), who eventually, migrated to India, after partition. The Association bought the abovesaid property in auction from the Government of India for developing the same for the residence of the members of its community (*Jhang Biradari*).
6. Since at the relevant time i.e. in 1958, the abovesaid Association was not a registered society, it was in no position to submit any bid in the auction in its own name and, therefore, it decided that its two members i.e. Mr. Amir Chand and Mr. Brij Lal, would submit bid on behalf of plaintiff society and the bid submitted by them was, eventually, accepted and the entire amount as per the auction was deposited for which various persons of ‘Jhang Biradari’ contributed even their claim amount.
7. Later on, Mr. Matwal Chand (since deceased) was appointed Secretary of the abovesaid Association and a general *power of attorney* was executed by Mr. Amir Chand and Mr. Brij Lal in favour of Mr. Matwal



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Chand. Such attorney clearly indicated that Mr. Matwal Chand shall do and perform all acts and deeds to convert the land into residential plots and transfer the same to respective purchasers of colony known as Anand Park.

8. According to the case of the plaintiff society, Mr. Amir Chand and Mr. Brij Lal along with said Mr. Matwal Chand were holding the suit land for the 'use and benefit' of the Society since 1958 and after the society was registered in the year 1996, it was learnt that, after the death of Mr. Matwal Chand, his legal representatives were trying to usurp the suit land by taking steps to get the same mutated in their names and it is in the abovesaid backdrop that the suit was filed seeking declaration and injunction in aforesaid terms.

9. The averments made in the suit have been refuted by the defendants and, according to them, sale deed was executed in favour of predecessor-in-interest of Late Mr. Matwal Chand on 16.05.1962 and that the averments in the suit clearly suggested that the suit was hit by *Benami Transactions (Prohibition) Act, 1988*. They also claimed that the suit was hopelessly time-barred and was not maintainable in the present form as no declaration was sought with respect to the cancellation of sale deed executed in the year 1962.

10. It will be worthwhile to mention that the suit was initially filed before this Court and was registered as CS(OS) No. 1449/2011.

11. During the pendency of the suit before this Court, on its original side, the defendants (petitioners herein) filed an application under Order VII Rule 11 CPC seeking rejection of plaint.

12. They reiterated all the preliminary objections which they had mentioned in their written statement i.e. the suit was not maintainable and



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that it was barred by limitation and they also took legal objection that it was barred in terms of *Benami Transactions (Prohibition) Act, 1988*.

13. The abovesaid application was allowed by learned Single Judge, *vide* judgment dated 04.02.2015 and, while upholding the contentions made in the abovesaid application, the suit was rejected under Order VII Rule 11 (d) CPC.

14. Such order was assailed by filing a *Regular First Appeal* which was registered as RFA (OS) No. 28/2015 and, by a comprehensive order, the abovesaid judgement of the learned Single Judge was set aside and the learned Division Bench went on to observe that the *right to sue* was not to be confused with the *cause of action* and, that the limitation would commence from the date the right to sue accrued and went on to hold that the question that the suit was barred by the limitation also did not arise. It also referred to the provisions of *Indian Trust Act, 1882* and came to the conclusion that the suit could not be held as not maintainable and that there was no need to seek any cancellation of sale deed because, in the plaint, the sale deed, as such, had not been challenged. It also observed that if the plaint is read in a meaningful manner, the pleading was to the effect that Mr. Amir Chand and Mr. Brij Lal executed the sale deed in question in favour of Mr. Matwal Chand, because Mr. Matwal Chand was the Secretary of the Association who held the property as a trustee.

15. Resultantly, the appeal was allowed and the order dated 04.02.2015 passed by learned Single Judge was set aside.

16. The defendants, aggrieved by the abovesaid order, though, filed a *Special Leave Petition* but, fact remains that such *Special Leave Petition* was dismissed *vide* order dated 08.03.2016 while observing that the question



of limitation and all other legal questions were kept open.

17. On account of change in the pecuniary jurisdiction, the suit got transferred to District Courts.

18. In terms of the averments made in the pleadings, the following issues were framed on 30.07.2018:-

“(I) Whether the present suit has been filed by an authorized person and plaint has been signed and verified by the competent person? OPP

(II) Whether the suit of the plaintiff is barred by law of limitation? OPD.

(III) Whether the suit of the plaintiff is barred under Benami Transaction Act? OPD.

(IV) Whether the suit of the plaintiff is not maintainable in its present form in view of Specific Relief Act? OPD.

(V) Whether the plaintiff has not valued the present suit properly for the purpose of jurisdiction and court fees? OPD.

(VI) Whether the plaintiff is entitled for the decree of declaration, as prayed for? OPP.

(VII) Whether the plaintiff is entitled for the decree of mandatory injunction, as prayed for? OPP.

(VIII) Whether the suit of the plaintiff is maintainable in the absence of seeking cancellation of the sale deed dated 16.05.1962, in favour of Predecessor-in-interest of the defendants? OPD.

(IX) Relief”

19. When the case was at the stage of plaintiff’s evidence, an application was moved by the defendants under Order XIV Rule 1 CPC praying therein that issue Nos. III, IV,V and VIII be treated as preliminary issues.

20. Learned Trial Court was of the view that such issues could not be decided without evidence and, therefore, while dismissing the abovesaid application has directed the parties to lead their respective evidence.

21. Such order dated 05.11.2019 is under challenge.

22. Both the sides have been heard at length and this Court has also seen the precedents cited at the Bar.

23. The prime contentions coming from the side of the defendants is to



the effect that all the abovesaid issues, which they are requesting to be treated as preliminary issues, can be easily answered on the basis of pleading and, therefore, the learned Trial Court was not justified in directing the parties to lead evidence and then to decide the abovesaid issues.

24. It is submitted that even otherwise, there is a clear-cut admission by the plaintiff Society itself in the plaint which clearly goes on to indicate that the property was held Benami and, therefore, there was no requirement of leading any evidence to decide the abovesaid issues. Similarly, arguments have been raised in context of maintainability of the suit, valuation for jurisdiction and Court Fee and limitation.

25. There is one very distinctive feature of this case which has already been referred to. To reiterate, at a very initial stage, an application under Order VII Rule 11 CPC was filed by the defendants by which, evidently, they were seeking rejection of the suit for the same very reasons only.

26. Such application was, though, allowed by the learned Single Judge but, as already noticed above, the learned Division Bench, while elaborating the facts in a comprehensive manner, dismissed the application moved under Order VII Rule 11 CPC and now the endeavour of the defendants is to seek back-door entry and to have adjudication with respect to those very aspects, in a summary and hasty manner based on analysis of the pleadings.

27. However, in view of the specific observations made by the learned Division Bench, the request of the defendants is completely misplaced and misconceived.

28. Undoubtedly, Hon'ble Supreme Court has left the issues open but that would not, *ipso facto*, mean that the plaintiffs become entitled to get rapid decision on all the abovesaid legal aspect, merely on the basis of pleadings.



29. Had that been possible, the order of learned Single Judge would not have been upset.

30. It need not be emphasised that if any issue raises mixed question of fact and law, it cannot be treated as preliminary issue. The pleadings in the present case are somewhat complex and clarity would be attainable only when we have the testimony of the parties. In *Major S.S. Khanna v. Brig. F.J. Dillon*, 1963 SCC OnLine SC 72, it has been observed as under:-

“17. ...Under Order 14 Rule 2 Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the Court: not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit.”

31. The facts of the present case are little intricate and multifaceted and the situation would become crystal clear when the parties enter into witness box and adduce evidence in support of their respective stance. The oral testimony would certainly throw some light about the underlying intention of the parties, which would enable the learned Trial Court to take appropriate decision. Since the case is at the stage of trial, this Court, deliberately, refrains from making any further detailed discussion, lest it may prejudice the learned Trial Court.

32. Suffice it to say, suit was filed way back in the year 2011 and is already in the midst of trial and, in view of foregoing discussion, this Court does not find any compelling reason to invoke its supervisory powers under



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Article 227 of Constitution of India, particularly, when there is no illegality or perversity in the impugned order.

33. Resultantly, the petition is dismissed.

34. It is, however, clarified that the above observations are tentative in nature and shall not be construed as expression on merits of the case and the learned Trial Court, without being influenced by any observation made hereinabove, shall decide the issues, after due appraisal of evidence.

(MANOJ JAIN)
JUDGE

JULY 31, 2025/sw/pb