



2025:DHC:8439-DB



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

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Judgment reserved on: 11.09.2025

Judgment pronounced on: 23.09.2025

+ RFA(OS) 57/2025, CM APPL. 57487/2025, CM APPL. 57488/2025 and CM APPL. 57489/2025

NAVEEN NISHOK KUMARAppellant

Through: Mr. Abhishek Singh, Adv.

versus

HARISH KUMAR & ORS.Respondents

Through: Mr. Nishant Datta, Mr. Chirag
Rathi, Mr. Kunal Sejwal, Mr.
Dipesh Kashyap and Mr.
Aayush Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

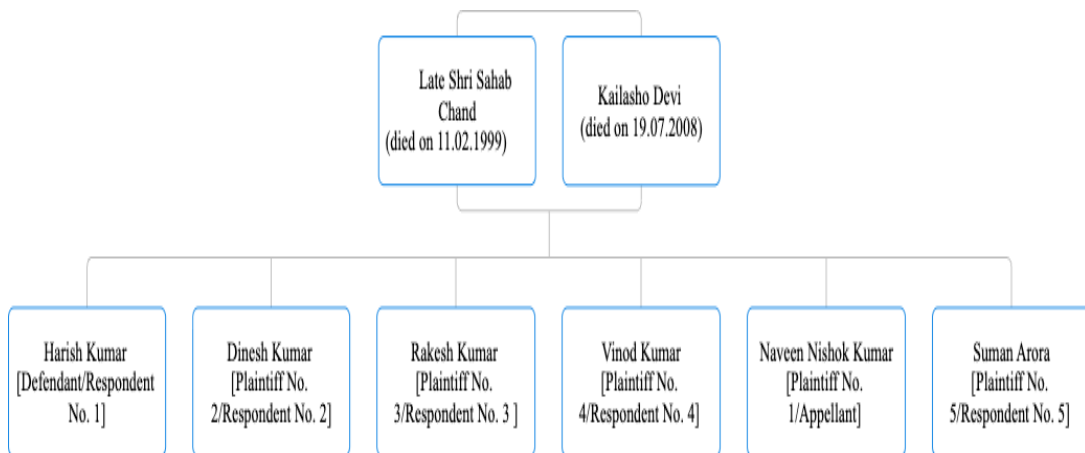
ANIL KSHETARPAL, J.

1. The present Appeal under Section 96 of the Code of Civil Procedure, 1908 [hereinafter referred to as “CPC”] is preferred against the Judgment/Decree dated 18.12.2024 passed by the learned Single Judge in CS(OS) No. 359/2022 captioned *Naveen Nishok Kumar & Ors. vs. Harish Kumar*. By the Impugned Judgment, the learned Single Judge, while exercising enabling powers under Order XII Rule 6 of the CPC, decreed the suit for declaration and partition of one of four properties.



FACTUAL MATRIX

2. The broad facts leading to the present Appeal are that the parties are children of Sh. Sahab Chand and his wife, Smt. Kailasho Devi, who passed away on 11.02.1999 and 19.07.2008, respectively. Late Sh. Sahab Chand died intestate, leaving behind six children and a widow, who are his Class-I Legal Heirs. For ease of convenience, a genealogical tree of the family has been reproduced below, denoting the status and rank of the parties before the learned Single Judge in CS(OS) No. 359/2022 as well as before this Court:



3. In November, 2021, the Respondent No.1/Sh. Harish Kumar filed a civil suit bearing CS SCJ No. 1391/2021 for declaration, mandatory and permanent injunction with respect to property being Shop No.1/12, Chhoti Sabzi Mandi, Janakpuri, Delhi admeasuring about 13.5 sq. mtrs. [hereinafter referred to as “Shop No.1/12”] against the Defendants [Plaintiffs in CS (OS) No. 359/2022], before the Court of Senior Civil Judge, West District, Tis Hazari Courts, Delhi.



4. In May 2022, another civil suit, bearing CS(OS) No. 359/2022, was filed by Sh. Naveen Nishok Kumar [hereinafter referred to as “Naveen Kumar”], Sh. Dinesh Kumar, Sh. Rakesh Kumar, Sh. Vinod Kumar and Smt. Suman Arora (Appellant along with Respondent Nos. 2 to 5), before the learned Single Judge, seeking partition of four immovable properties against the Respondent No.1 [Plaintiff in CS SCJ No. 1391/2021], which are as under:-

- i. Shop No. 1/12;
- ii. Property bearing No. 1/13, Chhoti Sabji Mandi, Janakpuri, Delhi [hereinafter referred to as “Shop No. 1/13”];
- iii. Property bearing No. S-350, Mangolpuri, Delhi [hereinafter referred to as “Mangolpuri property”], and
- iv. Property bearing Khatauni No. 576, Gata No. 272, Khata No. 506, Gata No. 54 and 55, Village Belana, Sikandarabad, Uttar Pradesh – 203202 [hereinafter referred to as “Sikandarabad property”].

5. The civil suit bearing SCJ No. 1391/2021 was subsequently transferred to this Court *vide* Order dated 18.07.2023 passed in TR.P. (C) 44/2022 and was re-numbered as CS(OS) No. 142/2024. It was, thereafter, tried along with CS(OS) No. 359/2022 and disposed of *vide* the common Impugned Judgment.

6. Sh. Naveen Kumar, along with Sh. Dinesh Kumar, Sh. Rakesh Kumar, Sh. Vinod Kumar and Smt. Suman Arora executed a Relinquishment Deed dated 03.03.2010 in favour of the Respondent No.1 for relinquishing their shares in Shop No.1/12 and thus, making



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the Respondent No.1 an exclusive owner of the Shop No.1/12. The said Relinquishment Deed was duly executed and registered with the office of Sub-Registrar, Janakpuri, New Delhi. Sh. Naveen Kumar, Sh. Dinesh Kumar, Sh. Rakesh Kumar, Sh. Vinod Kumar and Smt. Suman Arora do not claim that the relinquishment was a result of fraud or misrepresentation.

7. The Appellant, along with Sh. Dinesh Kumar, Sh. Rakesh Kumar, Sh. Vinod Kumar and Smt. Suman Arora have claimed that, subsequently, *vide* a unilateral Deed of Cancellation dated 17.05.2012 [hereinafter referred to as “Deed of Cancellation”], they cancelled the registered Relinquishment Deed dated 03.03.2010. The Deed of Cancellation is unregistered and only bears the stamp of the Notary Public. It is contended that with this Deed of Cancellation, their undivided respective shares in Shop No.1/12 stood restored.

8. Thereafter, Sh. Rakesh Kumar, Sh. Vinod Kumar and Smt. Suman Arora executed a Relinquishment Deed dated 09.03.2021 to relinquish their respective undivided shares in Shop No.1/12 in favour of Sh. Naveen Kumar. Sh. Dinesh Kumar also relinquished his 1/6th share in favour of Sh. Naveen Kumar by way of a registered Relinquishment Deed dated 25.08.2021. Thus, Sh. Naveen Kumar claims to have become the owner of undivided 5/6th share of Shop No.1/12, leaving 1/6th share to Sh. Harish Kumar.

9. It is a matter of record that Shop No.1/13 was purchased on 17.06.1993 and bears the name of the Respondent No.1. The Appellant alleges that the said Shop was bought by the Late Sh. Sahab



Chand, in the name of the Respondent No.1, for the benefit of the family. The contention has been specifically rebutted by the Respondent No.1, who asserts that the shop was acquired by him from his own funds.

10. With respect to the Sikandarabad property, it is contended the same was purchased by the Respondent No.1 on 26.11.2010. The Appellant alleges that the said property was acquired from the funds of their deceased parents. It is an admitted fact by the parties that Late Sh. Sahab Chand was the absolute owner of the Mangolpuri property and upon his death and post demise of his wife, Smt. Kailasho Devi, this property devolved in six equal shares upon the six siblings.

PROCEEDINGS BEFORE THE LEARNED SINGLE JUDGE

11. The two civil suits bearing CS(OS) No. 142/2024 and CS (OS) No. 395/2022 were decided *vide* the common judgment and decree dated 18.12.2024. The learned Single Judge, upon considering the rival submissions and the material placed on record, held that the unregistered Deed of Cancellation executed by the Plaintiffs in CS(OS) No. 395/2022 has no effect in law and they remain bound by the registered Relinquishment Deed dated 03.03.2010. The Court also held that the Relinquishment Deed(s) executed on 09.03.2021 and 25.08.2021 by Sh. Dinesh Kumar, Sh. Rakesh Kumar, Sh. Vinod Kumar and Smt. Suman Arora in favour of Sh. Naveen Kumar is null and void, and that they are left with no right, title or interest in Shop No.1/12. Sh. Harish Kumar was held to be the exclusive owner of the Shop No.1/12.



12. The learned Single Judge held that the plaint in CS (OS) No. 395/2022 fails to show any cause of action in favour of the Plaintiffs for making a claim *qua* Shop No.1/13. Additionally, that the Plaintiffs did not place on record any document to show existence of common funds utilized by the Defendant to buy the Sikandarabad property and the claim is also barred under Section 4 of the Prohibition of Benami Property Transactions Act, 1988 [hereinafter referred to as “Benami Act”].

13. A preliminary decree was passed declaring that the Plaintiffs and the Defendant in CS(OS) No. 395/2022 have a 1/6th share each in the entire Mangolpuri property. A Local Commissioner was also appointed to visit the Mangolpuri property to assess if the said property can be partitioned by metes and bounds and to file a report accordingly. Meanwhile, the parties were directed to maintain *status quo qua* title and possession of the Mangolpuri property until the passing of the final decree.

14. On 04.02.2025, an execution petition bearing number 18/2025 was filed by the Respondent No.1 before the Executing Court, seeking delivery of possession of Shop No.1/12, Chhoti Sabzi Mandi, Janakpuri, Delhi.

15. Aggrieved by the Impugned Judgment dated 18.12.2024 in CS(OS) No. 359/2022, the Appellant field the present Appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT



16. Learned counsel for the Appellant has made the following submissions:

16.1 The four properties which form the subject matter of the present *lis* were either self-acquired by Late Sh. Sahab Chand or from family funds, thus becoming part of the joint family estate. There is an unequal and arbitrary distribution of the estate.

16.2 The Relinquishment Deed dated 03.03.2010 was procured through fraud and misrepresentation, concealment of material facts, and undue influence, which was also pleaded by the Appellant along with Respondent Nos. 2 to 5 [Plaintiffs in CS(OS) No. 359/2022] in their written submission filed in CS(OS) No. 142/2024.

16.3 The Relinquishment Deed dated 03.03.2010 was revoked and cancelled through the Deed of Cancellation. Additionally, there are valid and registered Relinquishment Deeds dated 09.03.2021 and 25.08.2021 executed by the other Class-I Legal Heirs in favour of the Appellant.

16.4 The agricultural land at Sikandarabad property was purchased from joint family funds and, therefore, cannot be treated as the Respondent No. 1's self-acquired property.

16.5 The property known as Shop No.1/13 was purchased during the lifetime of Late Sh. Sahab Chand, in the name of the Respondent No.1, under a fiduciary capacity for the benefit of the family.

16.6 The Appellant has been regularly paying property taxes and municipal charges for Shop No.1/12, which is strong evidence of his



continued possession, ownership claim, and discharge of co-owner responsibilities.

ANALYSIS

17. This Court has heard the learned counsel for the parties and, with their able assistance, perused the Impugned Judgement along with the material on record.

18. The first plea which the Appellant has taken to challenge the Impugned Judgement is that the Relinquishment Deed dated 03.03.2010 was executed because Respondent No.1 stated that since the Shop No.1/12 stood in the joint names of the family and not in the specific name of any individual, it would be difficult to get the property converted from leasehold to freehold. Therefore, there was misrepresentation on the part of the Respondent No.1, which led to relinquishment of rights by the other legal heirs. Consequently, the Relinquishment Deed was cancelled by the Deed of Cancellation; however, this deed was never registered.

19. Under Section 17 of the Registration Act, 1908, any document resulting in the transfer of right, title or interest in the immovable property valuing Rs.100 or more is required to be registered. Hence, the Deed of Cancellation does not affect the rights of the Respondent No.1. Consequently, two Relinquishment Deeds dated 09.03.2021 and 25.08.2021, executed by the Respondent Nos.2 to 5, would not create any right, title or interest in favour of the Appellant.



20. The law stands settled with regard to the plea of fraud and misrepresentation. In the case of ***Ranganayakamma v. K.S. Prakash***¹, the Supreme Court observed that the party pleading fraud or misrepresentation is required to plead specific particulars in the pleadings. The relevant paragraphs are reproduced as follows:

“39. Another aspect of the matter cannot also be lost sight of. Order 6 Rule 4 of the Code of Civil Procedure reads as under:

“4. Particulars to be given where necessary.—In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.”

40. When a fraud is alleged, the particulars thereof are required to be pleaded. No particular of the alleged fraud or misrepresentation has been disclosed.

41. We have been taken through the averments made in the plaint. The plea of fraud is general in nature. It is vague. It was alleged by the plaintiffs that signatures were obtained on several papers on one pretext or the other and they had signed in good faith believing the representations made by the respondents, which according to them appeared to be fraudulent representations. When such representations were made, what was the nature of representation, who made the representations and what type of representations were made, have not been stated. Allegedly, on some occasions, Respondents 1 and 2 used to secure the signatures of one or more of the plaintiffs and Defendants 3 to 8 on several papers but the details therein had not been disclosed.

43. We are, however, not oblivious of the decisions of this Court and other High Courts that illegality of a contract need not be pleaded. But, when a contract is said to be voidable by reason of any coercion, misrepresentation or fraud, the particulars thereof are required to be pleaded. In Maharashtra SEB v. Suresh Raghunath Bhokare [(2005) 10 SCC 465 : 2005 SCC (L&S) 765] the law is stated in the following terms: (SCC p. 468, para 5)

“5. ... The Industrial Court after perusing the pleadings and the notice issued to the respondent came to the conclusion that the

¹ (2008) 15 SCC 673



alleged misrepresentation which is now said to be a fraud was not specifically pleaded or proved. In the show-cause notice, no basis was laid to show what is the nature of fraud that was being attributed to the appellant. No particulars of the alleged fraud were given and the said pleadings did not even contain any allegation as to how the appellant was responsible for sending the so-called fraudulent proposal or what role he had to play in such proposal being sent.”

(See also Prem Singh [(2006) 5 SCC 353] .)

44. *In Ramesh B. Desai v. Bipin Vadilal Mehta [(2006) 5 SCC 638] this Court emphasised the necessity of making requisite plea of Order 6 Rule 4 stating: (SCC p. 654, para 22)*

“22. Undoubtedly, Order 6 Rule 4 CPC requires that complete particulars of fraud shall be stated in the pleadings. The particulars of alleged fraud, which are required to be stated in the plaint, will depend upon the facts of each particular case and no abstract principle can be laid down in this regard.”

45. *In Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad [(2005) 11 SCC 314] this Court held: (SCC p. 379, paras 207-208)*

“207. We may now consider the submissions of Mr Desai that Appellant 1 herein is guilty of commission of fraud. Application filed by Respondent 1 before the Gujarat High Court does not contain the requisite pleadings in this behalf, the requirements wherefor can neither be denied nor disputed.

208. It is not in dispute that having regard to Rule 6 of the Companies (Court) Rules, the provisions of the Code of Civil Procedure will be applicable in a proceeding under the Companies Act. In terms of Order 6 Rule 4 of the Code of Civil Procedure, the plaintiff is bound to give particulars of the cases where he relies on misrepresentation, fraud, breach of trust, etc.”

(Emphasis supplied)

21. The pleadings in the plaint do not disclose any particulars regarding the alleged requirement for conversion of Shop No.1/12 from leasehold to freehold. No further details of the incident have been set out in the pleadings. The allegations remain general and vague. It is well settled that fraud must be specifically pleaded and proved with cogent material particulars, as required under Order VI



Rule 4 of the CPC. In fact, the plaint does not contain an assertion with respect to fraud or misrepresentation in law.

22. A perusal of the contents of Paragraph Nos.19, 20, 22 and 23 of CS(OS) No. 359/2022 makes it evident that the Appellant along with Respondent Nos. 2 to 5 [Plaintiffs in CS(OS) No. 359/2023] has not alleged that the Respondent No.1 played fraud and instead, they merely claimed that the Respondent No.1 gave a promise/assurance, which was not fulfilled; however, the details of the aforesaid assurance have also not been disclosed.

23. During the hearing of the present Appeal, the Appellant does not claim that he is in possession of any document which was not produced along with the plaint. Moreover, two civil suits were decided by the learned Single Judge, namely, CS(OS) No. 142/2024 and CS(OS) No. 395/2022 *vide* the common Impugned Judgment. The present Appeal has been filed only against the judgment dated 18.12.2024 passed in CS (OS) 359/2022 captioned ***Naveen Nishok Kumar & Ors. vs. Harish Kumar***. The Appellant has not filed any Appeal against the judgment and decree passed in CS(OS) No. 142/2022 wherein the only relief sought was declaration, mandatory and permanent injunction with respect to the property bearing Shop No.1/12, Chhoti Sabzi Mandi, Janakpuri, Delhi.

24. Additionally, the Plaintiffs have not disclosed what prevented them from adopting the appropriate legal recourse to seek cancellation of the relinquishment deed executed in 2010. Their conduct reveals that they merely chose to contest CS(OS) No. 142/2022 instituted by



Respondent No.1, and only thereafter sought partition when Respondent No.1 initiated steps to assert his share.

25. The learned Single Judge has observed that the only remedy available to the executant of a deed for cancellation of a registered instrument is to institute appropriate proceedings before a competent Court, which was not done by the Plaintiffs in the present case. *Howbeit*, at present, the relief of cancellation of the Relinquishment Deed dated 03.03.2010 may also be barred by the limitation. We are in consonance with the view taken by the learned Single Judge.

26. Before the learned Single Judge, the Appellant raised the plea of benami *qua* property known as Shop No.1/13; however, the Appellant did not identify the provision under which they sought to claim the exception from the operation of the Benami Act. The learned Single Judge presumed that the Plaintiffs relied upon the exception (iii) or (iv) of Section 2(9)(A)(b) of the Benami Act. However, the Plaintiffs failed to substantiate this argument.

27. The Appellant has made another attempt to bring the present case within the exception prescribed under Section 2(9)(A)(b) of the Benami Act, this time specifically under Exception (ii), to save it from the prohibition under Section 4 of the Benami Act. The Appellant has claimed that Shop No.1/13 was purchased in the name of the Respondent No.1 by their father, Late Sh. Sahab Chand, under a fiduciary capacity for the benefit of the family. Thus, the property was held by the Respondent No.1 as a trustee or as a person standing in a fiduciary capacity *qua* Late Sh. Sahab Chand for the benefit of the



family and therefore, was falling within the scope of Section 2(9)(A)(b)(ii) of the Benami Act, and as such, was not hit by the prohibition contained in Section 4 of the Benami Act. In this regard, a reference is made to Sections 2(9)(A) and 4 of the Benami Act, which sets out as:

“2. Definitions.—

In this Act, unless the context otherwise requires,—

(9) “benami transaction” means,—

(A) a transaction or an arrangement—

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration,

except when the property is held by—

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

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

...

4. Prohibition of the right to recover property held benami.—

(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.”



28. Exception (ii) of Section 2(9)(A)(b) of the Benami Act has two requisites, that is, (a) the person shall stand in a fiduciary capacity to another, and (b) the property is held for the benefit of another person with whom he stands in such capacity. The Appellant has not been able to annexe any document that would evidence the transfer of funds from the Late Sh. Sahab Chand to the Respondent No.1 for the purchase of Shop No.1/13 at the relevant time. At the time of purchase, the Respondent No.1 was 26 years of age [as noted by the learned Single Judge].

29. A Coordinate Bench of this Court in **Anil Bhasin vs. Vijay Kumar Bhasin and Ors.**² has contemplated the scope of fiduciary relationship in the context of the Benami Act and held as follows:

“15. It is obvious that in view of Section 7 of the Benami Transactions Act, which repealed Sections 81 and 82 of the Indian Trusts Act, 1882, there cannot be the same concept of trusteeship or fiduciary capacity, or that of the transferee being deemed to be holding for the benefit of the person buying or providing the consideration as was the position prior to the amendment of 1988.

16. At the same time, there exists the provisions of Section 4(3)(b) of the Benami Transactions Act, 1988, being in the nature of a proviso excluding from the prohibition, the right to recover property held Benami, in such situations where the person in whose name the property, is held, is a trustee or other persons standing in a fiduciary capacity.

17. To my mind, the only interpretation which can reconcile all the provisions, is to hold that after the repeal of Sections 81 and 82 of the Indian Trusts Act, 1882, it is only those instances of fiduciary capacity such as property of partnership firm held in the name of one of the partners, or property which Mr. X wanted Mr. Y to buy in the name of Mr. X, but in violation of that instruction, Mr. Y has bought the property in his (Y's) own name. In such a case Mr. Y being in fiduciary capacity and a trustee of Mr. X, the provisions of Section 4(3)(b) will ensure that prohibition of Benami Transaction does not

² (2003) 102 DLT 932



stand in the way of a legal proceeding by Mr. X to enforce any right in respect of the said property.

18. The distinction is subtle, but significant. If Mr. X asks Mr. Y to purchase in his own name certain property, of which consideration has been paid by Mr. X, then that is a Benami Transaction. On the other if Mr. X were to ask Mr. Y to buy the property in the name of Mr. X, but for any reason Mr. Y purchases the property in his own name (viz. name of Mr. Y), then the relationship of trustee and or fiduciary capacity is available in the former case, but not in the latter case.

19. In the application seeking amendment of the plaint, it is found that the plaintiff has very categorically, alleged that the mother had paid for the property which was purchased in the name of her son. It is not even suggested that the mother wanted the property to be purchased for herself and/or that it was the son (defendant No. 3) who by transgressing directions purchased the property in his own name.”

(Emphasis supplied)

30. In another judgment, namely, **Savita Anand v. Krishna Sain & Ors.**³, another Coordinate Bench of this Court has held that a parent would be in a fiduciary relationship with an offspring only when the child lacks legal capacity due to minority or disability, and the relationship discloses an absolute dependency on the parents for decision-making. The relevant portion of the judgment has been reproduced hereinbelow:

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

³ 2020 SCC OnLine Del 2672



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

40. There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are : a partner vis-à-vis another partner and an employer vis-à-vis employee. An employee who comes into possession of business or trade secrets or confidential information relating to the employer in the course of his employment, is expected to act as a fiduciary and cannot disclose it to others. Similarly, if on the request of the employer or official superior or the head of a department, an employee furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only if the employee's conduct or acts are found to be prejudicial to the employer.

30. Though the Supreme Court was in *RBI v. Jayantilal N Mistry*, (2016) 3 SCC 525 considering the question of disclosure by the Reserve Bank of India of information received by it from other banks about clients/loan defaulters, etc., under the Right to Information Act, 2005, it is apposite to refer to its observations on what constitutes fiduciary relationship and capacity, as it would help in determining whether D1 stood in such a capacity to the appellant in the present case. It had followed its earlier decision in *CBSE v. Aditya Bandopadhyay* (supra). It also referred to the definition of fiduciary relationship given by *The Advanced Law Lexicon 3rd Edition 2005* and also set down the scope of fiduciary relationship in paras 57 & 58, which are reproduced for convenience:

“57. *The Advanced Law Lexicon, 3rd Edn., 2005, defines “fiduciary relationship” as:*



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

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

“(i) No conflict rule A fiduciary must not place himself in a position where his own interests conflict with that of his customer or the beneficiary. There must be ‘real sensible possibility of conflict’.

(ii) No profit rule A fiduciary must not profit from his position at the expense of his customer, the beneficiary.

(iii) Undivided loyalty rule A fiduciary owes undivided loyalty to the beneficiary, not to place himself in a position where his duty towards one person conflicts with a duty that he owes to another customer. A consequence of this duty is that a fiduciary must make available to a customer all the information that is relevant to the customer's affairs.

(iv) Duty of confidentiality - A fiduciary must only use information obtained in confidence and must not use it for his own advantage, or for the benefit of another person.”

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



Trust had been created for the children of late Yashpal Sain and D1 had been appointed its Trustee.

32. In short, there is nothing to show that D1 had taken the allotment of the suit property for the benefit of her family and that she was holding it in trust for her children and that in view of the fiduciary nature of her title, even if the documents are recorded only her name, the appellant had a right to claim a share in the property. ...”

(Emphasis supplied)

31. In the context of the above two judgments, this Exception is also not available to the Appellant to escape the rigours of the prohibition of Section 4 of the Benami Act. As noted, the facts and circumstances neither disclose the existence of a fiduciary relationship between the Late Sh. Sahab Chand and the Respondent No.1, nor establish any intention on the part of Respondent No.1 to hold the property in trust for the benefit of his family. In the absence of any such fiduciary obligations or trust arrangement, the Appellant cannot invoke the statutory exception, and the claim is squarely barred under Section 4 of the Benami Act.

32. As regards the remaining contentions raised by the Appellant, namely the claim over the agricultural land at Sikandarabad and the payment of property tax and municipal charges, both are unsupported by any documentary proof. In the absence of proof, the Court cannot simply question the title of the Respondent No.1 over these properties. With regard to the property bearing No. S-350, Mangolpuri, Delhi, a preliminary decree for partition has been passed by the learned Single Judge in the Impugned Judgement.

33. Learned counsel for the parties have not raised any other submissions.



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34. Keeping in view the foregoing discussion, the present Appeal lacks merit, hence, dismissed. All pending applications stand closed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
SEPTEMBER 23, 2025
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