



2025:DHC:7619-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 11 March 2025
Pronounced on: 2 September 2025

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FAO(OS) 4/2024, CM APPL. 2970/2024

PANKAJ AGGARWALAppellant

Through: Mr. Rajesh Gupta and Mr.
Harpreet Singh, Advts.

versus

MEENAKSHI DUBEYRespondent

Through: Mr. Pushkar Sood, Ms. Shikha
Sood, Mr. Anshuman Sood, Ms. Rikky
Gupta, Mr. Aarey, Ms. Ananya Singh and
Mr. Samarth Sood, Advts.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

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JUDGMENT

02.09.2025

C. HARI SHANKAR, J.

1. This appeal assails order dated 18 December 2023, passed by a learned Single Judge of this Court in IA 15528/2023 in CS (OS) 496/2021¹. The application, which stands disposed of by the impugned order, was preferred by the appellant Pankaj Aggarwal² under Order XIV Rule 2(2)³ of the Code of Civil Procedure, 1908⁴, as the

¹ Dr. (Mrs.) Meenakshi Dubey v Mr. Pankaj Aggarwal

² "Pankaj" hereinafter

³ (2) 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 an issue of law only, it may try that issue first if that issue relates to—

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that



defendant in CS(OS) 496/2021, seeking that issues (i), (ii), (iv) and (v), as framed by the learned Single Judge on 2 May 2023, be treated as preliminary issues, as also under Section 10⁵ of the CPC, praying that trial of CS (OS) 496/2021 be stayed pending disposal of CS 58565/2016, presently pending before the learned Trial Court. The learned Single Judge has rejected both prayers. Aggrieved thereby, the appellant Pankaj has filed the present appeal.

Rival Pleadings in the Suit

The Complaint

2. CS (OS) 496/2021⁶ was filed by the respondent Meenakshi Dubey⁷, against the appellant Pankaj. Meenakshi and Pankaj are siblings. At the time of filing of CS (OS) 496/2021, Pankaj was occupying the ground floor and the first floor and Meenakshi was occupying the second floor of the suit property situated at A-11/25, Vasant Vihar, New Delhi – 110057.

3. The complaint, in the suit, asserted and averred thus:

(i) K.K. Aggarwal, the father of Pankaj and Meenakshi, died

issue has been determined, and may deal with the suit in accordance with the decision on that issue.

⁴ “CPC” hereinafter

⁵ 10. **Stay of suit.** – No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation.—The pendency of a suit in a foreign court does not preclude the Courts in [India] from trying a suit founded on the same cause of action.

⁶ “the suit” hereinafter

⁷ “Meenakshi” hereinafter



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intestate on 25 May 1981. Pursuant to his death, an oral family settlement was executed among Pankaj, Meenakshi and their mother Indira Aggarwal⁸, agreeing that Indira would own the ground floor, Pankaj would own the first floor and Meenakshi would own the second floor of the suit property. In order to avoid further disputes, this oral family settlement was reduced into writing by way of a written family settlement dated 21 July 1998. Even prior thereto, however, all parties acted on the basis of the oral family settlement dated 30 May 1981.

(ii) As the family settlement contained no dispensation with respect to the roof rights in the suit property, it was apparent that the roof rights were required to be divided one third among Indira, Pankaj and Meenakshi.

(iii) Acting on the basis of the family settlement, Indira executed a Gift Deed dated 23 December 2004, gifting the second floor and a proportionate share of the appurtenant land to Meenakshi.

(iv) In March 2011, Pankaj took Indira with him to Toronto. At that time, Indira was 76 years of age. She was suffering from depression and, over a period of time, completely came under the control of Pankaj.

(v) In 2011 itself, Pankaj communicated with Meenakshi, expressing his desire to raise constructions on, or sell, the third

⁸ “Indira” hereinafter



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floor of the suit property, without involving Meenakshi. In the circumstances, Meenakshi instituted CS (OS) 643/2011 before the learned Senior Civil Judge⁹, Dwarka Courts, seeking an injunction against such construction on, or alienation of, the third floor of the suit property.

(vi) In CS (OS) 643/2011, Indira filed an application on 31 May 2014, seeking her deletion from the array of parties and averring that she had transferred all her rights in the suit property, in favour of Pankaj, *vide* Gift Deed dated 2 April 2012. The said purported Gift Deed was placed on record, in CS (OS) 643/2011, by Pankaj on 16 August 2014

(vii) The application was rejected by the court.

(viii) *Vide* order dated 7 October 2014, passed in CS (OS) 643/2011, the learned Senior Civil Judge restrained Pankaj from creating any third party right in respect of the second floor of the suit property or raising any construction thereon.

(ix) The Gift Deed, which had been placed on record by Pankaj in CS (OS) 643/2011 on 16 August 2014, was challenged by Meenakshi by amending CS (OS) 643/2011. In view of the said amendment, CS (OS) 643/2011 was transferred to this Court and, consequent on enhancement of pecuniary jurisdiction of district courts, was re-transferred to the District Court. It is presently pending before the learned Additional

⁹ “the learned SCJ” hereinafter



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District Judge, Patiala House, and stands re-renumbered as CS 58565/2016.

(x) Between March 2010 and May 2011, Pankaj transferred ₹ 2 crores to his account and, in April 2011, further transferred ₹ 46,84,523/- to his account, from the account of Indira. This was done taking advantage of the weak mental condition of Indira, who was suffering from constant depression. This transfer stands reflected in the bank statement of Indira.

(xi) During cross examination in CS 58565/2016, Meenakshi was confronted with a Will alleged to have been executed by Indira on 16 March 2010. A perusal of the Will revealed that it indirectly described Indira's share in the suit property. Indira's signature on the Will was different from her usual signature. The contents of the Will did not make sense, and the language in which the Will was written did not reflect any existence of analytical existence of logic. It was clear, therefore, that the Will was executed under coercion. It was, therefore, liable to be declared null and void.

(xii) Prior to her death, Indira used to reside on the first floor of the suit property. Between 1998 and 2018, the ground floor of the suit property was rented out by Indira. The entire rent was collected by Indira as the ground floor fell to her share under the family settlement dated 21 July 1998.

(xiii) After the death of Indira, Pankaj started collecting rent



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from the tenants of ground floor of the suit property, under the garb of the Will dated 16 March 2010 stated to have been executed by her.

(xiv) In actual fact, all assets of Indira, including the rent collected from the ground floor, were was required to be equally divided between Pankaj and Meenakshi.

(xv) On 17 November 2018, Indira died at the age of 83. Her medical records revealed that she was in a weak mental state prior to her demise.

4. On the basis of these facts and averments, Meenakshi, *vide* CS (OS) 496/2021, sought (i) a decree of partition by metes and bounds, partitioning the ground floor, terrace/roof rights of the second floor, the garage block and the undivided land under the said property, between Pankaj and Meenakshi, with half share falling to the lot of each, (ii) a declaration that the Will dated 16 March 2010 purportedly executed by Indira, was null and void and (iii) a decree of permanent injunction restraining Pankaj from creating any third party interest in the ground floor or the garage block of the suit property.

Written Statement

5. The appellant Pankaj Aggarwal, in his written statement filed by way of response to the suit, contended thus:

(i) K.K. Aggarwal owned two properties. One was the suit



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property located at Delhi and the other was a residential property at Faridabad.

(ii) Meenakshi's contention that an oral family settlement had been executed on 30 May 1981 was denied.

(iii) In fact, an oral family settlement was executed, but in 1983. Under the said family settlement, the Faridabad property fell to the lot of Meenakshi, whereas the suit property at Delhi was exclusively allotted to Indira and Pankaj.

(iv) The Faridabad property was, in fact, sold by Meenakshi and, out of the sale proceeds, she purchased a property at Janakpuri.

(v) On 5 June 1984, Meenakshi executed a relinquishment deed, relinquishing her share in the suit property in favour of Indira and Pankaj.

(vi) On 17 December 1984, Jamuna Devi, the mother of K K Aggarwal, executed a Will, bequeathing her rights in the suit property on Indira and Pankaj.

(vii) On the basis of the relinquishment deed dated 5 June 1984 executed by Meenakshi and the Will dated 17 December 1984 executed by Jamuna Devi, the suit property was mutated by the DDA in favour of Pankaj and Indira on 30 August 1987.



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(viii) The written family settlement dated 27 August 1998 (wrongly stated by Meenakshi to have been executed on 21 July 1998) was executed by misrepresentation and manipulation. The document was, moreover, compulsorily registerable under Section 17(1)(a) of the Registration Act, 1908. As it was unregistered, it could not confer any right, title or interest in the suit property. It was also inadmissible in evidence and could not be read even for any collateral purpose.

(ix) On 29 September 2004, Pankaj executed a Special Power of Attorney, empowering Indira to gift the share of Pankaj in the second floor of the suit property to Meenakshi. It was on the basis of the said SPA that the gift deed was executed by Indira on 23 December 2004, gifting, to Meenakshi, the second floor of the suit property and the proportionate share of the appurtenant land.

(x) On 5 July 2004, consequent on the suit property being converted to freehold, a conveyance deed was executed by DDA, of the suit property, in the joint names of Indira and Pankaj.

(xi) On the basis of the gift deed dated 23 December 2004, the second floor of the suit property was mutated in Meenakshi's favour on 7 July 2005.

(xii) On 20 February 2008, Indira executed a gift deed, gifting her remaining half share of the ground floor of the suit property



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to Pankaj.

(xiii) This was followed by a Will executed by Indira on 16 March 2010, whereby her remaining undivided half share in the suit property was bequeathed to Pankaj.

(xiv) It was at this juncture that Meenakshi instituted CS (OS) 643/2011 before the Senior Civil Judge, Dwarka, against Pankaj.

(xv) On 22 March 2012, Indira executed a general power of attorney¹⁰, empowering Pankaj to deal with Indira's share in the suit property. This was followed by a gift deed dated 2 April 2012, whereby Indira gifted, to Pankaj, her remaining half share in the first floor, the terrace and all other rights of Indira in the suit property.

(xvi) Following this, on 30 August 2013, the entire suit property, excluding the second floor, was mutated by DDA in the name of Pankaj.

6. Pankaj therefore asserted that Meenakshi had no rights in the second floor of the suit property, save and except the rights which were gifted to her by Indira, *vide* gift deed dated 23 December 2004. The entire remainder of the suit property was belonged to Pankaj and stood mutated in his name. Meenakshi, therefore, had no right to seek partition of the suit property by metes and bounds. It was, therefore,

¹⁰ "GPA" hereinafter



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submitted that the suit deserved to be dismissed.

Replication

7. Responding to the written submissions filed by Pankaj, Meenakshi contended, in her replication, thus:

(i) It was true that Meenakshi had executed a relinquishment deed dated 5 June 1984. However, the relinquishment deed did not specifically refer to her 1/4th share in the suit property. Besides, it was executed by her on the assurance that her interest in the suit property shall be protected. In any event, the relinquishment deed stood superseded by the written family settlement deed dated 21 July 1998, the covenants of which made it clear that the relinquishment deed was not to be acted upon.

(ii) The gift deed dated 23 December 2004 had in fact been executed by Indira in furtherance of the written family settlement dated 21 July 1998.

(iii) The ATS dated 10 October 1994 was executed by Indira essentially in order to establish Meenakshi's rights over the second floor of the suit property.

(iv) The conveyance deed dated 5 July 2004 could not be relied upon and was of no value as it was executed in violation of the covenants of the written family settlement dated 21 July



1998.

(v) Insofar as the purported gift deed dated 20 February 2008, executed by Indira, gifting her half share in the ground floor to Pankaj was concerned, Meenakshi denied that it was accepted by her. In fact, she asserted that the gift deed never came to her knowledge till it was provided during evidence in CS 58565/2016. In any event, the gift deed was invalid as Indira was not, at that time, in a sound disposing frame of mind. Moreover, if Indira had in fact gifted her half share in the ground floor of the suit property to Pankaj by the gift deed dated 20 February 2008, there was no explanation for the execution of the subsequent gift deed dated 2 April 2012. This itself indicated that the gift deed dated 20 February 2008 could not be relied upon.

(vi) The gift deed dated 2 April 2012 was also invalid as Indira at that time was not in sound disposing state of mind.

Meenakshi, therefore, reiterated her prayers in the plaint.

8. From the rival pleadings, it is perfectly clear that there is hardly any aspect on which Pankaj and Meenakshi are *ad idem*, except for execution of the gift deed dated 23 December 2004. Else, Meenakshi asserts her title over the suit property on the basis of

- (i) the oral family settlement dated 30 May 1981,
- (ii) the written family settlement dated 21 July 1998 and
- (iii) the gift deed dated 23 December 2004.



As against this, Pankaj completely denies the existence of any oral family settlement dated 30 May 1981. Pankaj, instead, asserts his right over the entire suit property, except the second floor, on the basis of

- (i) an oral family settlement deed dated 1983,
- (ii) the relinquishment deed dated 5 June 1984 executed by Meenakshi,
- (iii) will dated 17 December 1984 executed by Jamuna Devi,
- (iv) mutation of the suit property in favour of Indira and Pankaj on 30 August 1987,
- (v) conveyance deed dated 5 July 2004 executed by DDA by which the suit property was conveyed in the joint names of Indira and Pankaj,
- (vi) gift deed dated 20 February 2008 executed by Indira purportedly gifting her half share in the ground floor of the suit property to Pankaj,
- (vii) will dated 16 March 2010 purportedly executed by Indira, bequeathing the remaining undivided half share in the suit property to Pankaj,
- (viii) gift deed dated 2 April 2012 by Indira, gifting her half share in the first floor of the suit property along with the terrace and other rights in the suit property to Pankaj and
- (ix) the mutation of the entire suit property except the second floor by DDA in the name of Pankaj on 30 August 2013.

Meenakshi completely denies the existence of any oral family settlement of 1983. She also contends that the conveyance deed dated 5 July 2004 executed by DDA was invalid as it was in violation of the



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family settlement dated 21 July 1998. She also challenges both the gift deeds dated 20 February 2008 and 2 April 2012 asserted by Pankaj.

9. It is in the backdrop of such a situation that we are required to examine whether the learned Single Judge was in error in refusing to treat issues (i), (ii), (iv), (v) as framed on 2 May 2023, as preliminary issues.

10. The following issues were framed by the learned Single Judge in the suit on 2 May 2023:

i. Whether the plaintiff is guilty of willful concealment and suppression of material facts as mentioned in paragraph 3(I) (a) to (h) of the preliminary objections in the written statement? If so, whether the suit is liable to be dismissed on this ground? **OPD**

ii. Whether the alleged Family Settlement dated 21.07.1998 was compulsorily registrable under Section 17(1)(b) read with Section 49 of the Registration Act, 1908? If so, what is the effect of it not having been registered? **OPD**

iii. Whether the suit is liable to be stayed under Section 10 of the Code of Civil Procedure, 1908, in view of the previously instituted suit, namely. Civil Suit No. 58565/2016 pending in the Court of the Additional District Judge-03, Patiala House Courts, New Delhi? **OPD**

iv. What is the effect of the Relinquishment Deed dated 05.06.1984 and the Gift Deeds dated 23.12.2004, 20.02.2008 and 02.04.2012 on the maintainability of the present suit? **Onus on parties**

v. Whether the parties are bound by the alleged Family Settlement dated 21.07.1998? **Onus on parties**

vi. Whether the plaintiff is entitled for a decree of partition of the property being Ground Floor, terrace/ roof rights of second floor, garage block and undivided free hold land admeasuring 403 Square Yards of Property No. A-11/2 5, Vasant Vihar, New Delhi-110057 and half share thereof? **OPP**



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vii. Whether the plaintiff is entitled for half of the share in all the moveable properties left behind by Late Mrs. Indira Aggarwal as mentioned in para 16 of the plaint? **OPP**

viii. Whether the Will of Mrs. Indira Aggarwal dated 17.03.2010 is to be declared null and void? **OPP**

ix. Whether the plaintiff is entitled for a decree of permanent injunction as prayed in para (d) of the prayer clause of the Plaint? **OPP**

x. Relief, if any.”

IA 15528/2023, in which the impugned order has been passed

11. The appellant moved IA 15528/2023, under Order XIV Rule 2(2) of the CPC, praying as under:

“In the facts and circumstances of the case, it is respectfully prayed that this Hon'ble Court may be pleased to:

(I) Decide/determine Issue No. 1, 2, 4 & 5 as purely the issues of law under Order 14, rule 2(2) CPC at the threshold/initial state itself; consequently, also decide/determine issue no. 6, 7 & 9 that are directly dependent on the findings on the legal-issues aforesaid;

(II) In the alternative, under issue no. 3 staying the trial of the above captioned suit [i.e. CS (OS) No. 496/2021] under Section 10 CPC till the adjudication/disposal of ‘Previous Suit’, namely Civil Suit No. 58565/2016, presently in court of Mr. Gaurav Rao, ADJ-03, Patiala House, New Delhi.

(III) Pass any further or other Order(s), direction(s), which are deemed fit, reasonable and expedient in the circumstances.”

12. The submissions of Pankaj, with respect to the prayer for trying Issues (i), (ii), (iv) and (v) as preliminary issues, as contained in the application, may be reproduced thus:



“3. It may be appreciated that *issue no. 1, 2, 4 & 5* are predicated on specific plea(s) raised in the written-statement, as indicated hereinbelow, which is duly substantiated and supported with irrefutable, unquestionable and undeniable material on record.

3.1 *Issue No. 1* is predicated on Preliminary Objection in *para 3(I)* title-head 'Willful concealment and Suppression of Material Facts' in of Written Statement. The material concealments pertains to suppression of the following material facts, -

(a) that in year 1984 Plaintiff relinquished her share in the suit- property vide registered Relinquishment Deed dated 05.06.1984 [*ref. para 3(1)(a)*].

(b) that vide registered Conveyance Deed dated 05.07.2002 the suit-property was registered in names of defendant and mother/Indira Aggarwal as joint co-owners. [*ref. para 3(1)(d)*].

(c) that vide registered Gift Deed dated 23.12.2004 defendant and mother/Indira Aggarwal as co-owners transferred/gifted the 2nd Floor of the suit-property to the Plaintiff/Meenakshi, which is not disputed. This document also admits the exclusive right of co-ownership of defendant and the mother over the suit- property. [*ref. para 3(1)(e)*].

(d) that vide registered Gift Deed dated 20.02.2008 mother/Indira Aggarwal transferred her undivided half share in GROUND FLOOR etc of the suit-property to defendant, which is also not in dispute. [*ref. para 3(1)(f)*].

(e) that vide registered Gift Deed dated 02.04.2012 mother/Indira Aggarwal transferred/gifted her undivided right in First Floor etc (remaining undivided half share) in favour of the defendant, which is under challenge in the 'previous suit'. [*ref. para 3(1)(h)*].

Note-1: Share gifted vide Gift Deed dated 02.04.2012 was part of mother's bequest in her WILL dated 17.0.3.2010, which she later gifted to defendant.

Note-2: Gift Deed dated 20.02.2008 was in the knowledge of the plaintiff and is also recorded in the recital of the subsequent Gift Deed dated 02.04.2012: nevertheless, plaintiff has not challenged Gift Deed dated 20.02.2008 and has instead limited the challenge against Gift Deed dated



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02.04.2012 alone in the '*Previous Suit*' (*supra*).

(f) Reference is also made to other factual concealments -

(i) Judgment and Pleadings in a ***Civil Suit No. 794/1985 (inter-family suit)*** reflects that plaintiff herein duly admitted the relinquishment of her share admitted the suit-property to be exclusive property of the Defendant and mother [***ref. para 3(I)(b)***].

(ii) Execution of Agreement to Sell dated 10.10.1994 admits exclusive co-ownership of Defendant and mother over the suit-property. [***ref. para 3(I)(c)***]

Conclusion - These documents [***(a) to (e) above***] are registered documents and are unchallengeable. In presence of these documents the suit-pleadings is farcical and partition claim is legally untenable. The suppression of the aforesaid facts/documents is a 'Material Concealment' that affects the very maintainability of the suit, apart from being '***FRAUD UPON THE COURT***'; it nullifies the principal suit-claim, in as much as, in presence of Gift Deed dated 20.02.2008 *vis-à-vis* Ground Floor in favour of the defendant, claim for partition of Ground Floor is neither lawful nor entertainable and is barred by law; such claim is not tenable in law without declaration/cancellation law; such claim is not tenable in law without declaration/cancellation of Gift Deed dated 20.02.2008, which though not prayed for in the suit, is otherwise is barred by law."

3.2 Issue No.2 is based on Preliminary Objection in para 3(III) "title-head 'Consequence of Non-Registration of Family Settlement and its inadmissibility even for collateral purposes'. The said objection and the consequently Issue No. 2 goes to the root of the case and questions the very maintainability of the principal suit-claim of partition of Ground Floor as the plaintiff is tracking her right to the property under alleged Family Settlement. The issue, being 'issue of law' creating a bar to the suit, merits to be decided at the outset as preliminary issue.

3.3 Issue No. 4 & 5 by its very language are purely legal issues to be determined at the threshold as mandated u/Or.14, r. 2(2) CPC. Obviously, the effect of Relinquishment Deed dated 05.06.1984 and Gift Deeds dated 23.12.2004,20.02.2008 and 02.04.2012 (challenged in previous suit) on the maintainability of



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the present suit is to be determined at this stage itself, in as much as, the issue goes to the root of the matter. Also, as the plaintiff has based her right to share in Ground Floor on alleged Family Settlement, issue no. 5 needs to be determined at this stage itself. The issue thus merits to be decided at the outset as preliminary issue.

4. The contentions in para 2 & 3 (supra) ex-facie reflects that Issue no. 1, 2, 4 & 5 are purely the 'issues of law' and raises a legal bar to the very maintainability of the suit, and merits to be determined/decided at the initial state itself as 'preliminary issues', which is also a mandate w/Or. 14, rule 2(2) CPC.

5. Further, as the decision on Issue no. 1, 2, 4 & 5 will also rule and govern issue no. 3, 5, 6 & 9, it is imperative to decide the said issues at this stage itself, so as to narrow down the scope of the suit to the real and entertainable limit.

The Impugned Order

13. By order dated 18 December 2023, the learned Single Judge has dismissed IA 15528/2023.

14. The reasoning of the learned Single Judge may be reproduced thus:

“7. From the aforesaid, what emerges is that while issue no. (i) pertains to wilful concealment on the part of the plaintiff, issue no. (ii) pertains to the family settlement. Similarly issue (iii) pertains to the relinquishment deed and the three gift deeds. In my considered view, neither the question as to whether the plaintiff is guilty of willful concealment nor can the question as to whether the family settlement dated 21.07.1998, the relinquishment deed or the three gift deeds are binding on the parties can be effectively determined unless evidence is led by both sides. Even the question as to what would be the effect of the relinquishment deed as raised in issue no. (iv) would also be a factual issue requiring appreciation of evidence. Though issue no.(ii) as has been urged vehemently by the learned counsel for the defendant on the face of it appears to be a legal issue, in my view even this question cannot be effectively decided without appreciating the nature and scope of the family



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settlement as also the circumstances in which it was entered into. This would also necessarily require appreciation of evidence in detail and therefore I am of the considered opinion that all these issues are primarily factual issues.

8. In the light of the aforesaid, I find absolutely no merit in the plea of the defendant to treat these issues as preliminary issues. I have also considered the submissions of the learned counsel for the defendant that the present suit is required to be stayed under Section 10 CPC, on account of the pendency of a suit before the learned ADJ, Patiala House Courts wherein the plaintiff has challenged the validity of a gift deed dated 02.04.2012, but find no merit therein. It needs to be noted that in the present suit, the plaintiff has not sought cancellation of the gift deed dated 02.04.2012, which besides the relief of permanent injunction, is the main relief sought in the suit pending before the learned ADJ. On the other hand, in the present suit the plaintiff has sought partition not only of the ground floor but also of the roof rights of the second floor, the terrace block and the undivided freehold land measuring the property No. A-11/25, Vasant Vihar, New Delhi. She has also prayed for declaring the will dated 16.03.2010, purportedly executed by her mother, as null and void. Consequently, the scope of the issues arising in the two suits is substantially different. Even the prayers in the present suit are much wider. I am, therefore, of the view that this is not a fit case where the proceedings in the present suit should be stayed during the pendency of the suit before the learned ADJ.”

15. Aggrieved by the aforesaid order, the appellant has filed the present appeal.

16. We have heard Mr. Rajesh Gupta, learned Counsel for the appellant and Mr. Pushkar Sood, learned Counsel for the respondent, at length.

Rival Contentions

17. Mr. Gupta submits that issues (i), (ii), (iv) and (v), as framed on 2 May 2023, are purely legal issues which did not require leading of



any evidence and, therefore, ought to have been decided as preliminary issues. He submits that the learned Single Judge has not adduced any satisfactory reason to reject the said request as made by the appellant.

18. To support his submissions, Mr. Gupta urges as under:

(i) Issue (ii) is a pure question of law. The family settlement deed dated 21 July 1998 created a right and, therefore, was compulsorily registrable. He relies, for this purpose, on paras 10 to 13 of the judgment of the Supreme Court in *Sita Ram Bhama v Ramavtar Bhama*¹¹. He further submits that the respondent cannot possibly seek to rely on the family settlement dated 21 July 1998, in view of the fact that Meenakshi had herself earlier relinquished her right over the suit property *vide* relinquishment deed dated 5 June 1984.

(ii) Mr. Gupta thereafter took us through the written submissions tendered by him. He submits that Meenakshi was a witness to the conveyance deed dated 5 July 2004 and could not, therefore, seek to rely on the gift deed dated 23 December 2004.

(iii) Insofar as the gift deed dated 20 February 2008 was concerned, Mr. Gupta submits that it was never challenged by Meenakshi, despite the existence of the gift deed being within her knowledge.

¹¹ (2018) 15 SCC 130



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(iv) Inasmuch as the gift deed of 20 February 2008 found mentioned in the gift deed of 2 April 2012, Mr. Gupta submits that Meenakshi could not now seek to complain against the gift deed dated 20 February 2008, for the first time in the suit instituted by her in 2016.

(v) Mr. Gupta submits that the prayer of Meenakshi that the suit property be partitioned by metes and bounds was based on the premise that Indira had died intestate in 2008. She could not have in any case sought such partition in view of the gift deed date 20 February 2008 whereby Indira gifted her half share in the ground floor of the suit property to Pankaj.

19. In view of these facts, Mr. Gupta submits that the learned Single was in error in holding that issues (i), (ii), (iv) and (v) could not be decided as preliminary issues because they required recording of evidence.

20. In support of his submissions regarding Order XIV Rule 2(2) of the CPC, Mr. Gupta places further reliance on the judgments in *Sukhbiri Devi v UOI*¹² and *Sathyanath v Sarojamani*¹³.

21. Insofar as the prayer for stay of trial of the CS (OS) 496/2021, in view of the pendency of the earlier instituted CS 58565/2016 before the learned District Court at Patiala House was concerned, Mr. Gupta places reliance on the judgments of the Supreme Court in *Aspi Jal v*

¹² 2022 SCC OnLine SC 1322

¹³ (2022) 7 SCC 644



Khushroo Rustom Dadyburjor¹⁴ and Santosh Kumar v Ashok Chand¹⁵.

22. The principles culled out by the Supreme Court in *Aspi Jal*, to decide whether a case for staying the trial in a subsequent suit, on the ground of pendency of an earlier instituted suit between the parties was, or was not, made out, was whether a finding in the earlier instituted suit would operate as *res judicata* in the later suit. Applying this principle, Mr. Gupta submits that Meenakshi has sought to challenge the validity of the gift deed dated 2 April 2012 in CS 58565/2016 on the same basis on which he seeks to challenge the validity of the will dated 16 March 2010, which was that Indira was not in a sound disposing state of mind at the time of execution of either of these documents. The finding of the learned Trial Court, apropos Indira's state of mind, as it would return in CS 58565/2016, would, therefore, operate as *res judicata* in CS (OS) 496/2021. The learned Single Judge was, therefore, in his submission, in error in refusing to stay the trial by of CS (OS) 496/2021, awaiting the outcome of suit CS 58565/2016.

23. Responding to the submissions of Mr. Gupta, Mr. Sood submits that the learned Single Judge was perfectly justified in holding that the issues, which the appellant desired to be decided as preliminary issues, were issues requiring trial and recording of evidence. He further submits that the discretion of the learned Single Judge in this regard have to be respected and, if the learned Single Judge felt that the

¹⁴ (2013) 4 SCC 333

¹⁵ (2021) 3 SCC 385



issues could not be decided as preliminary issues as the required evidence, no case for interference could be said to be made out. He relies, for this purpose, on paras 12 to 16 of the judgment of the Supreme Court in *Mongia Realty and Buildwell Pvt Ltd v Manik Sethi*¹⁶, paras 13 to 16 of *Ramesh B Desai v Bipin Vadilal Mehta*¹⁷ and *National Institute of Mental Health & Neuro Sciences v C Parameshwara*¹⁸.

24. Insofar as the appellant's application under Section 10 of the CPC is concerned, Mr. Sood submits, relying on the issues framed by the learned Trial Court in suit CS 58565/2016, that there was no commonality between those issues and the issues framed in the present case. For ready reference, the issues framed in CS 58565/2016 may be reproduced thus:

“ISSUES-

1. Whether suit of the plaintiff is not maintainable in the form presented? OPD2.
2. Whether suit has not been valued properly for the purpose of pecuniary jurisdiction and Court fees? OPD1 & 2.
3. Whether plaintiff is entitled to decree of permanent injunction restraining the defendants or any person acting through them or creating any third party rights or from carrying out construction in roof of second floor in suit property no. A-11/25, Vasant Vihar, New Delhi and interfering in the plaintiff's common use of roof of second Floor? OPP.
4. Whether plaintiff is entitled to decree of declaration of the Gift Deed dated 02.04.2012 executed by defendant no.2, mother in favour of defendant no.1 brother qua half undivided share in the built up first floor, second floor roof and servant quarter on second

¹⁶ (2022) 11 SCC 572

¹⁷ (2006) 5 SCC 638

¹⁸ (2005) 2 SCC 256



floor garage with its roof in the suit property as null and void?
OPP.

5. Relief.”

Analysis

I. Re. prayer for treating Issues (i), (ii), (iv) and (v) as preliminary issues

25. Law relating to Order XIV Rule 2(2)

25.1 Order XIV Rule 2(2) applies where issues of law and fact arise in the same suit – as they would, nearly inevitably, in every case. It applies where the Court is of the opinion that, *on an issue of law*, the case, or part of it, *may be disposed of*. Two prerequisites, therefore, are apparent even from these opening words of Order XIV Rule 2(2). The issue concerned must be an issue *of law*. This *ipso facto* excludes issues of fact, or mixed issues of fact and law. Further, the case, or part of the case, must be capable of *being disposed of*, on the said issue being decided. If the decision on the issue would not dispose of the case, or at least a part of the case, the provision would not apply.

25.2 *If* these two conditions are satisfied, Order XIV Rule 2(2) empowers – *and does not obligate, as is apparent from the use of the word “may”* – the Court to try the issue as a preliminary issue. Of course, though the provision is discretionary, and not obligatory, the Court cannot, capriciously, refuse to exercise discretion, and if it does so, the decision would be open to challenge. Exercise of discretion under Order XIV Rule 2(2) must, as in all cases of exercise of



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discretion, be judicious, and not whimsical or arbitrary.

25.3 The provision empowers the Court, in such circumstances, to try the issue first, *provided* the issue falls within the parameters of one or more of clauses (a) and (b) that follow. Clause (a) applies to issues relating to the jurisdiction of the Court, and clause (b) applies to issues relating to a bar to the suit created by any law for the time being in force.

25.4 Thus, *an issue cannot be tried as a preliminary issue, under Order XIV Rule 2(2), merely because it does not require evidence to be led, or is capable of determination straightaway. It must be an issue, in the first place, which relates to the jurisdiction of the Court, or a bar to the suit.*

25.5 Before proceeding further, it would be instructive to refer to the pronouncements of the Supreme Court with respect to Order XIV Rule 2(2).

25.6 Mr. Gupta has cited *Sukhbiri Devi* and *Sathyanath*.

25.7 *Sukhbiri Devi v UOI*

25.7.1 In *Sukhbiri Devi*, the learned Trial Court framed a preliminary issue on the question of limitation, in exercise of jurisdiction under Order XIV Rule 2(2) of the CPC. A preliminary issue was, therefore, framed as to “whether the suit is within the limitation”. The issue was answered in the negative, and the suit was



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accordingly dismissed. The plaintiffs in the suit challenged the judgement and decree before the learned Additional District Judge and, thereafter, before this Court, failing on each occasion. The plaintiffs, therefore, appealed to the Supreme Court.

25.7.2 The Supreme Court observed, at the outset, that the appeal before it was assailing concurrent findings of three Courts below and that, applying the law laid down in *State of Rajasthan v Shiv Dayal*¹⁹, the Supreme Court was expected, ordinarily, not to interfere, save and except where the concurrent findings of the Courts below were perverse.

25.7.3 The appellant sought to contend before the Supreme Court that questions of limitation were mixed questions of law and fact and could not, therefore, be decided as preliminary issues under Order XIV Rule 2(2). Dealing with the submission, the Supreme Court noted its earlier decision in *Nusli Neville Wadia v Ivory Properties*²⁰, in which it was held that, where the question of limitation could be decided based on admitted facts, it could be decided as a preliminary issue under Order XIV Rule 2 of the CPC. The following paras from *Nusli Neville Wadia* were specifically relied upon:

“51. [...] As per Order 14 Rule 1, issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other. The issues are framed on the material proposition, denied by another party. There are issues of facts and issues of law. *In case specific facts are admitted, and is the question of law arises which is dependent upon the outcome of admitted facts, it is open to the court to pronounce the judgment based on admitted facts and the preliminary question of law under the provisions of*

¹⁹ (2019) 8 SCC 637

²⁰ (2020) 6 SCC 557



Order 14 Rule 2. In Order 14 Rule 2(1), the court may decide the case on a preliminary issue. It has to pronounce the judgment on all issues. Order 14 Rule 2(2) makes a departure and the court may decide the question of law as to jurisdiction of the court or a bar created to the suit by any law for the time being in force, such as under the Limitation Act.

52. In a case, question of limitation can be decided based on admitted facts, it can be decided as a preliminary issue under Order 14 Rule 2(2)(b). *Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order 14 Rule 2(2) as a preliminary issue or any other such issue of law which requires examination of the disputed facts. In case of dispute as to facts, is necessary to be determined to give a finding on a question of law. Such question cannot be decided as a preliminary issue. In a case, the question of jurisdiction also depends upon the proof of facts which are disputed and the question of law is dependent upon the outcome of the investigation of the facts, such question of law cannot be decided as a preliminary issue, is settled proposition of law either before the amendment of CPC and post amendment in the year 1976.”*

(Underscoring in original; italics supplied)

25.7.4 Following this, the Supreme Court held, in para 19 of the report, that “though limitation is a mixed question of law and facts it will shed the said character and would get confined to one of a question of law when the foundational fact(s), determining the starting point of limitation is vividly and specifically made in the plaint averments”.

25.7.5 Thus, *Sukhbiri Devi* does not detract from the position that only pure issues of law can be determined as preliminary issues under Order XIV Rule 2(2) of the CPC. If there are no disputed facts, and the facts which are necessary for deciding the issue are admitted, the only issue that survives for consideration remains an issue of law and, therefore, can be framed as a preliminary issue and decided under



Order XIV Rule 2(2). The moment, however, the parties are in dispute regarding facts, which are necessary for deciding the issue concerned, the issue does not remain a pure issue of law, and cannot, therefore, be decided under Order XIV Rule 2(2) as a preliminary issue.

25.8 *Sathyanath*

25.8.1 The appellants before the Supreme Court in this case were the plaintiffs in the suit from which the appeal emanated. They sought a declaration that they were absolute owners of the suit property and that the judgement and decree rendered in an earlier suit was null and void. Of the various issues framed in the suit, the respondent-defendant, in her application under Order XIV Rule 2(2), prayed that the issues relating to whether the suit was hit by *res judicata* and estoppel, barred by limitation, not properly valued and whether the appellants-plaintiffs had abused the process of Court, be decided as preliminary issues. The application was dismissed by the learned Trial Court. In appeal, the High Court directed that the issue of *res judicata* be decided as a preliminary issue. Aggrieved thereby, the plaintiffs appealed to the Supreme Court.

25.8.2 The Supreme Court initially cited, with approval, the following passage from its earlier decision in *Ramesh B. Desai v Bipin Vadilal Mehta*²¹:

“13. Sub-rule (2) of Order 14 Rule 2CPC lays down that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of

²¹ (2006) 5 SCC 638



on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in force. The provisions of this Rule came up for consideration before this Court in **S.S. Khanna v F.J. Dillon**²² and it was held as under:

Though there has been a slight amendment in the language of Order 14 Rule 2 CPC by the amending Act, 1976 but the principle enunciated in the above quoted decision still holds good and there can be no departure from the principle that *the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue.*”

(Emphasis supplied)

25.8.3 Thereafter, the Supreme Court proceeded to hold as under, on the facts before it:

“21. The provisions of Order 14 Rule 2 are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the lis and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order 14 Rule 2. *If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the court or the bar to the suit is made out, the court may decide such issues with the sole objective for the expeditious decision. Thus, if the court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext.*

23. The different judgments of the High Court referred to above are in consonance with the principles laid down by this Court in **Ramesh B. Desai** that *not all issues of law can be decided as preliminary issues. Only those issues of law can be decided as*

²² AIR 1964 SC 497



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preliminary issues which fell within the ambit of clause (a) relating to the “jurisdiction of the Court” and (b) which deal with the “bar to the suit created by any law for the time being in force”. The reason to substitute Rule 2 is to avoid piecemeal trial, protracted litigation and possibility of remand of the case, where the appellate court differs with the decision of the trial court on the preliminary issues upon which the trial court had decided.

25. In ***Abdul Rahman v Prasony Bai***²³, this Court was examining a suit filed by the appellant in the year 1999 to declare that the defendant is not the daughter of Mangal Singh and that the appellant is in adverse possession even during the lifetime of Mangal Singh. An additional issue was framed regarding the jurisdiction of the civil suit to try the said suit. The High Court in proceedings passed an order on 29-11-2001 dismissing the suit on the preliminary issue whether the dispute to the present civil suit has already been decided and adjudicated by the Court and is barred by the principles of res judicata. An intra court appeal was filed which was dismissed on 4-12-2001 and thereafter, the matter travelled to this Court. In these circumstances, this Court held as under:

“21. For the purpose of disposal of the suit on the admitted facts, particularly when the suit can be disposed of on preliminary issues, no particular procedure was required to be followed by the High Court. In terms of Order 14 Rule 1 of the Code of Civil Procedure, a civil court can dispose of a suit on preliminary issues. It is neither in doubt nor in dispute that the issues of res judicata and/or constructive res judicata as also the maintainability of the suit can be adjudicated upon as preliminary issues. Such issues, in fact, *when facts are admitted*, ordinarily should be decided as preliminary issues.”

26. A perusal of the above judgment of this Court shows that it was an admitted fact that issue of res judicata and of constructive res judicata can be adjudicated as preliminary issue. *Since it was an admitted fact, it cannot be said that principle of law has been enunciated that a plea of res judicata can be decided as a preliminary issue.*

27. In ***Srihari Hanumandas Totala v Hemant Vithal Kamat***²⁴, the property was mortgaged in favour of Karnataka State Finance

²³ (2003) 1 SCC 488

²⁴ (2021) 9 SCC 99



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Corporation (for short “the Corporation”). The Corporation auctioned the property as the loan was not repaid. The legal heirs of the borrower filed a suit in OS No. 138 of 2008 challenging the sale deed dated 8-8-2006 executed by the Corporation and partition of the suit property. A separate OS No. 103 of 2007 was filed by the purchaser from the Corporation. Such suit of the purchaser was decreed on 26-2-2009. The decree in the said suit was affirmed by the High Court on 11-8-2017. The purchaser from the Corporation filed an application under Order 7 Rule 11 for rejection of the plaint of OS No. 138 of 2008. Such application was dismissed by the learned trial court. The order was affirmed in revision by the High Court holding that the ground of res judicata could not be decided merely by looking at averments in the plaint. It is the said order which became subject-matter of challenge before this Court.

28. This Court in *Srihari Hanumandas Totala* found that the plea of res judicata requires consideration of the pleadings, issues and decision in the previous suit and such a plea would be beyond the scope of Order 7 Rule 11. However, in the operative paragraph, it was observed that the trial court shall consider whether a preliminary issue should be framed under Order 14, and if so, to decide it within a period of three months of raising the preliminary issue. The operative part of the order reads thus:

“28. For the above reasons, we hold that the plaint was not liable to be rejected under Order 7 Rule 11(d) and affirm the findings of the trial court and the High Court. We clarify however, that we have expressed no opinion on whether the subsequent suit is barred by the principles of res judicata. We grant liberty to the appellant, who claims as an assignee of the bona fide purchaser of the suit property in an auction conducted by KSFC, to raise an issue of the maintainability of the suit before the Additional Civil Judge, Belgaum in OS No. 138 of 2008. The Additional Civil Judge, Belgaum shall consider whether a preliminary issue should be framed under Order 14, and if so, decide it within a period of 3 months of raising the preliminary issue. In any event, the suit shall be finally adjudicated upon within the outer limit of 31-3-2022.”

29. This Court in *Srihari Hanumandas Totala* was thus examining the scope of Order 7 Rule 11 of the Code, whereas such is not the issue in the present appeal. In fact, the defendant has filed an application for framing of preliminary issues. The direction of the High Court is on such application. Therefore, such application needs to be considered in the light of the provisions of Order 14 Rule 2 of the Code.



30. In *Jamia Masjid*, the judgment and decree in a second appeal holding that the suit is barred by the principle of res judicata was the subject-matter of challenge before this Court. The learned trial court decided Issues 5 and 6 related to res judicata and limitation as preliminary issue. It was held that suit was not barred by limitation but barred by res judicata. In appeal, such finding was affirmed. However, in second appeal, the matter was remanded to the trial court for disposal of the suit in accordance with law holding that the suit is not barred by res judicata. In appeal against such judgment and decree, the appeal was remanded to the High Court. The High Court after remand held that the judgment in a representative suit under Section 92 of the Code binds the parties to the suit and would thus operate as res judicata.

31. In appeal before this Court, it was considered whether res judicata raises a mixed question of law and facts. The Court held as under:

“26. The court while undertaking an analysis of the applicability of the plea of res judicata determines first, if the requirements of Section 11CPC are fulfilled; and if this is answered in the affirmative, it will have to be determined if there has been any material alteration in law or facts since the first suit was decreed as a result of which the principle of res judicata would be inapplicable. *We are unable to accept the submission of the appellants that res judicata can never be decided as a preliminary issue. In certain cases, particularly when a mixed question of law or fact is raised, the issue should await a full-fledged trial after evidence is adduced.* In the present case, a determination of the components of res judicata turns on the pleadings and judgments in the earlier suits which have been brought on the record. The issue has been argued on that basis before the trial court and the first appellate court; followed by two rounds of proceedings before the High Court (the second following upon an order of remand by this Court on the ground that all parties were not heard). All the documentary material necessary to decide the issue is before the court and arguments have been addressed by the contesting sides fully on that basis.

66. In view of the discussion above, we summarise our findings below:

66.1. Issues that arise in a subsequent suit may either be questions of fact or of law or mixed questions of law and



fact. An alteration in the circumstances after the decision in the first suit, will require a trial for the determination of the plea of res judicata if there arises a new fact which has to be proved. However, the plea of res judicata may in an appropriate case be determined as a preliminary issue when neither a disputed question of fact nor a mixed question of law or fact has to be adjudicated for resolving it.”

32. A perusal of the said judgment would show that only Issues 5 and 6 were decided relating to res judicata and limitation as preliminary issues by judgment dated 3-2-2006. This Court set aside the finding on the preliminary issue by judgment dated 23-9-2021 i.e. almost more than 15 years later when the matter was remanded back to the trial court. The absence of the decision on all issues has necessitated the matter to be remanded back, defeating the object of expeditious disposal of lis between the parties. The conclusion in para 66.1 in **Jamia Masjid** is that the plea of res judicata in appropriate cases may be determined as preliminary issue *when it is neither a disputed question of fact nor a mixed question of law and fact*. Such finding is what this Court held in **Ramesh B. Desai**.

33. We find that the order of the High Court to direct the learned trial court to frame preliminary issue on the issue of res judicata is not desirable to ensure speedy disposal of the lis between parties. Order 14 Rule 2 of the Code had salutary object in mind that mandates the court to pronounce judgments on all issues subject to the provisions of sub-rule (2). However, *in case where the issues of both law and fact arise in the same suit and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that suit first, if it relates to jurisdiction of the court or a bar to the suit created by any law for the time being in force. It is only in those circumstances that the findings on other issues can be deferred. It is not disputed that res judicata is a mixed question of law and fact depending upon the pleadings of the parties, the parties to the suit, etc. It is not a plea in law alone or which bars the jurisdiction of the court or is a statutory bar under clause (b) of sub-rule (2).*”

(Emphasis supplied)

25.8.4 Thus, even on a question of *res judicata*, the Supreme Court held that, if the determination of the issue involved disputed questions of fact, it could not be decided as a preliminary issue under Order XIV Rule 2(2) of the CPC.



25.9 Importantly, both the decisions cited by Mr. Gupta are cases in which the issue/issues under consideration were those which affected the jurisdiction of the Court to hear the suit or operated as a bar to its entertainment. As against this, in the present case, at least Issues ii, iv and v cannot be regarded as issues which relate to the jurisdiction of this Court to hear and decide the suit, or operate as a bar to its entertainment. They are issues which relate directly to the merits of the dispute.

25.10 The decisions in *Sukhbiri Devi* and *Sathyanath*, cited by Mr. Gupta, do not, therefore, advance the case that he seeks to plead.

25.11 Mr. Sood has, on the other hand, cited *Mongia Realty* and *Ramesh B. Desai*.

25.12 *Mongia Realty*

25.12.1 *Mongia Realty* is a case in which the Supreme Court held that an issue of limitation, the decision on which depended on facts which were disputed, could not be decided as a preliminary issue under Order XIV Rule 2(2).

25.12.2 This appeal also emanated from proceedings which were before this Court. *Mongia Realty* instituted a suit against Manik Sethi for recovery of an amount of ₹ 1,11,63,633/-. The learned Trial Court framed a preliminary issue as to whether the suit was barred by limitation. By order dated 16 August 2018, the learned Trial Court



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decided the issue of limitation against Mongia. Mongia carried the matter to this Court. The appeal was dismissed by a learned Single Judge by judgment dated 4 September 2019. Mongia appealed, further, to the Supreme Court.

25.12.3 The Supreme Court briefly noted the facts of the case. Mongia claimed to have advanced loans of ₹ 10 lakhs, ₹ 18 lakhs, ₹ 15 lakhs and ₹ 39 lakhs to Manik. Mongia claimed that the amounts were to be returned by Manik within one year from the date of payment of the last instalment i.e. latest by 9 April 2014 along with interest. Despite the lapse of two and a half years, it was asserted that an amount of ₹ 1,1163,633/- remained outstanding from Manik to Mongia. It was on this basis that a decree for the said amount was sought.

25.12.4 Manik, in its written statement, contended, *per contra*, that Mongia was seeking to camouflage payments made for business transactions as loans. It was submitted that Manik provided real estate services to Mongia against commission. On certain occasions, Mongia was claimed to have also made payments for carrying out renovation works. Mongia's assertion that it had advanced loans to Manik was denied, and the entire transaction was stated to be one of payment of commission by Mongia to Manik against providing of real estate service and renovation activities.

25.12.5 The Supreme Court noted that no written statement was filed by Manik within the permissible period and that, therefore, the preliminary issue with respect to limitation was decided by the learned



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Trial Court on the basis of arguments at the Bar. The learned Trial Court held that, as it had been admitted in the plaint that the last payment was made by Mongia on 20 June 2013, and the suit was instituted on 1 April 2017, it was barred by time. This finding was affirmed by the High Court.

25.12.6 The Supreme Court, dealing with the matter, observed and held as under:

12. The appellant has specifically set up a plea in Para 5 of the plaint that the loans were to be repaid within one year from the date of the payment of the last instalment. The case of the appellant has to be proved on the basis of evidence adduced in the suit. Such an issue could not have been decided purely on the basis of oral arguments urged on behalf of the contesting parties. The respondent has denied the existence of loan transactions and has set up the plea that the payments made by the appellant were on account of commission. There are two conflicting versions on the nature of the business transactions between the parties, the appellant alleging that it was a loan, while the respondent alleges that it was in the nature of a commission for real estate services.

13. The issue as to whether the claim of the appellant is barred by limitation cannot be isolated from the nature of the transactions between the parties. In any event, whether the plea of the appellant as set up in Para 5 of the plaint is proved would depend upon evidence adduced at the trial. The course of action which was followed by the learned trial Judge of directing the parties to address arguments on the issue of limitation was irregular. The issue of limitation in the present case would require evidence to be adduced.

16. Since the determination of the issue of limitation in this case is not a pure question of law, it cannot be decided as preliminary issue under Order 14 Rule 2CPC. Hence, we allow the appeal and set aside the judgment of the trial Judge dated 16-8-2018 and of the Single Judge of the High Court dated 4-9-2019²⁵.

²⁵ *Mongia Realty & Buildwell (P) Ltd. v Manik Sethi*, 2019 SCC OnLine Del 9956



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The issue of limitation which has been framed by the learned trial Judge may be decided, along with other issues at trial. The appeal shall stand allowed in the above terms.

25.12.7 This judgment, therefore, reinforces the position that, where the facts which are necessary for deciding the issue are in dispute, the issue cannot be decided as a preliminary issue under Order XIV Rule 2(2) of the CPC. Even where the issue relates to jurisdiction of the Court or to a bar to the suit being entertained or proceeded with, it can be tried as a preliminary issue only where the issue is purely one of law, and not where any inquiry into disputed facts is involved.

25.12.8 The position in law is fairly clear from the above decisions, and it is not necessary to multiply authorities.

26. Applying the law

26.1 In our considered opinion, the appellant's prayer that Issues (i), (ii), (iv) and (v) should be decided as preliminary issues has to fail both because they are not pure issues of law, and because there are disputed questions of facts which have to be resolved in order to decide the said issues.

26.2 This is apparent from a bare reading of the Issues themselves.

26.3 Insofar as the learned Single Judge is concerned, she has clearly observed that all the issues which were required, as per Pankaj, to be decided as preliminary issues, involved disputed questions of fact and



would require leading of evidence. At a bare glance, this finding is not deserving of interference. The use of the word “may”, in Order XIV Rule 2(2) of the CPC renders the exercise of jurisdiction under the said provision discretionary. Thus, even in a case where all the ingredients of Order XIV Rule 2(2) are satisfied, i.e. where the question involved is purely one of law, and it relates either to the jurisdiction of the Court or to a bar to the suit being proceeded with, the Court is still not obligated, in law, to decide the issue as a preliminary issue. Of course, in such an extreme situation, the Court would have to provide cogent and convincing reasons for not doing so, in the absence whereof the exercise of discretion may become vulnerable to judicial interference.

26.4 In the present case, we find no reason to interfere with the view expressed by the learned Single Judge in para 7 of the impugned order, that any decision on Issues (i), (ii), (iv) and (v) would require leading of evidence. In the first place, as we have already noted, except, perhaps, for Issue (i), the remaining issues (ii), (iv) and (v) are neither issues which relate to the jurisdiction of the Court, nor issues which relate to any bar to the suit, created by law applicable for the time being in force. Issues (ii), (iv) and (v) relate to the effect and impact of documents on which the parties, particularly, Pankaj, seek to place reliance.

26.5 Re. Issue (ii)

26.5.1 Issue (ii) deals with a family settlement, with respect to which the circumstances in which it was executed are themselves a subject



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matter of dispute.

26.5.2 Irrespective of whether the family settlement was, or was not, compulsorily registerable, the resolution of the issue would not either effect the jurisdiction of the Court to try the suit or operate as a bar to the suit.

26.6 Re. Issue (iv)

26.6.1 Issues (iv) and (v), besides being similarly not issues which affect either the jurisdiction of the Court or the entertainability of the suit, are, on their very face, Issues involving disputed questions of fact.

26.6.2 Insofar as Issue (iv) is concerned, it relates to the relinquishment deed dated 5 June 1984 and the gift deeds dated 23 December 2004, 20 February 2008 and 2 April 2012. All these documents are mired in dispute. While Meenakshi admits execution of the relinquishment deed dated 5 June 1984, she specifically asserted that the relinquishment deed did not particularly deal with her one-fourth share in the suit property and it had been signed by her on an assurance that her interest on the suit property would be safeguarded. Moreover, in view of the subsequent execution of the written family settlement dated 21 July 1998, which was admitted by Pankaj, Meenakshi's contention is that the relinquishment deed dated 5 June 1984 was no longer enforceable and stood superseded. The *inter se* relationship between the relinquishment deed dated 5 June 1984 and the written family settlement dated 21 July 1998 is clearly a triable



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issue, which would require leading of evidence.

26.6.3 The gift deed dated 23 December 2004 was asserted by Meenakshi. The execution of the said gift deed is not disputed by Pankaj. Meenakshi's contention is that the gift deed dated 23 December 2004 was in furtherance of the written family settlement dated 21 July 1998. Inasmuch as Pankaj seeks to dispute the enforceability of the written family settlement dated 21 July 1998, claiming it to be an instrument executed by manipulation and misrepresentation, this contention of Meenakshi is also open to trial.

26.6.4 The contention of Mr. Gupta is that, in view of the subsequent gift deeds dated 20 February 2008 and 2 April 2012, the earlier gift deed dated 23 December 2004 could not be enforced by Meenakshi.

26.6.5 This submission, too, clearly is one which would require a trial for its resolution. Meenakshi has specifically disputed the enforceability of the gift deed dated 20 February 2008. One of the grounds on which she has done so is that, if the suit property stood gifted by Indira to Pankaj by the gift deed dated 20 February 2008, there was no requirement of a subsequent gift deed dated 2 April 2012. Besides, the disposing ability of Indira, to execute both these gift deeds, is also questioned by Meenakshi. It cannot, therefore, be said, as Mr. Gupta would seek to contend, that the gift deed dated 23 December 2004 stood wiped out by the subsequent gift deeds dated 20 February 2008 and 2 April 2012.

26.7 Re. Issue (v)



Issue (v) is equally triable. It deals with the effect of the family settlement dated 21 July 1998. This document is subject matter of serious controversy. Meenakshi contends that the written family settlement dated 21 July 1998 merely reduced, to writing, the terms of the oral family settlement dated 30 May 1981. Pankaj, *per contra*, disputes the very execution of any oral family settlement on 30 May 1981. He contends, rather, that the written family settlement dated 21 July 1998 is a document which is vitiated by misrepresentation and manipulation. All these issues would have to be resolved by way of evidence, before any view can be taken on the effect of the family settlement dated 21 July 1998.

26.8 Issues (ii), (iv) and (v) were, therefore, clearly not amenable to adjudication as preliminary issues.

26.9 Re. Issue (i)

26.9.1 Issue (i) deals with the allegation, of Pankaj, that Meenakshi was guilty of wilful concealment and suppression of facts, as alleged in paras 3(I)(a) to (h) of the written statement filed by way of response to the suit. We may reproduce, here, for ready reference, para 3 with the aforesaid sub-paras, thus:

“3. The Plaintiff has dishonestly filed the suit, which ex-facie is not maintainable on law and facts, inter alia, for reasons of - (I) willful concealment and suppression of material facts; (II) deliberate falsehood that tantamount to fraud upon the court; (III) consequences of non-registration of Family Settlement, its inadmissibility even for collateral purposes; (IV) Prayers founded on the 'Family Settlement' and 'Will' are barred in law; (V) suit



liable to be stayed under Section 10 CPC, which are sequentially elaborated herein after as under:

(I) WILLFUL CONCEALMENT AND SUPPRESSION OF MATERIAL FACTS- The plaintiff has willfully concealed and suppressed the documents and the facts related thereto as detailed below:

(a) Relinquishment Deed dated 05.06.1984

Plaintiff executed Relinquishment Deed dated 05.06.1984 relinquishing her one fourth (1/4) share in the suit-property that she had as legal-heir of late Shri K.K. Aggarwal, who died intestate on 25.05.1981. She executed this deed as per the wishes of her father pursuant to the oral family settlement in the year 1983 as elaborated in para 4 (ii) of brief facts and submissions (*infra*).

It is relevant to point out that legal heirs have acted under the said oral family settlement to complete and conclude the said arrangement resulting in the execution of Relinquishment Deed and handing over Faridabad property to the plaintiff, the entire suit property was mutated in the names of the defendant and his mother in 1987 under this arrangement, and later on Conveyance Deed dated 05.07.2004 of the suit property was executed in favour of defendant and the mother.

(b) The judgment and pleading in Civil Suit No. 794/1985

The said suit was filed by the defendant and mother against Plaintiff and the grand-mother as elaborated in para 4 (iii) of brief facts and submissions (*infra*), and contains admissions of the Plaintiff of oral family settlement of year 1983 pursuant to which the suit property exclusively fell to the joint share of defendant and the mother, and the plaintiff got the family property in Faridabad.

(c) Agreement to Sell dated 10.10.1994

On Plaintiff's request and her insistence, the defendant and the mother agreed to sell the 2nd floor of the suit-property to the Plaintiff limited to the portion described therein for a sum of Rs. 2 Lakh. This document admits the exclusive right of co-ownership of defendant and the mother over the suit- property.



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(d) ***Conveyance Deed dated 05.07.2004***

On the basis of the relinquishment deed dated 05.06.1984 and the Will dated 17.12.1984 of grandmother, and In furtherance of family settlement a Conveyance deed dated 05.07.2004 was executed in favour of the defendant and the mother-Mrs. Indira Aggarwal making them the joint co-owners of the suit-property. This fact is admitted by the Plaintiff.

(e) ***Gift Deed dated 23.12.2004***

On the Plaintiff's request, the defendant and mother jointly executed the Gift Deed dated 23.12.2004 in favour of plaintiff as co-owners of the suit property transferring the second floor of suit-property to plaintiff as detailed in the Deed. This document admits the exclusive right of co-ownership of defendant and the mother over the suit-property.

(f) ***Gift Deed dated 20.02.2008***

Mrs. Indira Aggarwal (mother) executed the Gift Deed dated 20.02.2008, transferring her undivided half share in GROUND FLOOR etc. in the suit-property to the defendant as detailed in the Deed. By virtue of this Gift Deed the defendant became the sole and exclusive owner of the entire Ground floor of the suit property. This document was in the knowledge of the plaintiff and is clearly noted in the recital of Gift Deed dated 02.04.2012 challenged by the plaintiff in previous suit.

(g) ***Rent Agreement dated 11.04.2010***

Mrs. Indira Aggarwal (mother) executed Rent Agreement dated 11.04.2010 rented out the servant quarter in the 224 floor of garage block of the suit-property to Ms. Dinesh Bhatia. This is also an admitted fact that after the tenant vacated the said servant quarter (on 2nd floor of garage portion), on request of the plaintiff, the mother gave it temporarily to the plaintiff.

(h) ***Gift Deed dated 02.04.2012***

Mrs. Indira Aggarwal (mother) executed a Gift Deed dated 02.04.2012 transferred/gifted her remaining undivided half share in the suit-property i.e. First Floor etc as described in the Deed, which was previously bequeathed by her to



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the defendant vide WILL dated 16.0.3.2010. This document is under challenge in the previous suit.”

26.9.2 From the recital of facts and the rival pleadings of the parties, as also set out earlier in this judgment, it is obvious that nearly every document cited in the sub paras of para 3(I) of the written statement is subject matter of dispute. The effects of these documents on each other is also a matter which has to be tried. The allegation of wilful misstatement and suppression is, again, a matter of trial.

26.9.3 It is well settled that every suppression of fact is not a wilful suppression. In *S.J.S. Business Enterprises (P) Ltd. v State of Bihar*²⁶, the Supreme Court has dealt with the issue of when suppression of fact would be fatal. The relevant paras from the said decision may be reproduced, thus:

“13. As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. *But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case. It must be a matter which was material for the consideration of the court, whatever view the court may have taken*²⁷. Thus when the liability to income tax was questioned by an applicant on the ground of her non-residence, the fact that she had purchased and was maintaining a house in the country was held to be a material fact, the suppression of which disentitled her to the relief claimed. Again when in earlier proceedings before this Court, the appellant had undertaken that it would not carry on the manufacture of liquor at its distillery and the proceedings before this Court were concluded on that basis, a subsequent writ petition for renewal of the licence to manufacture liquor at the same distillery before the High Court was held to have been initiated for oblique and ulterior purposes and the interim order passed by the High Court in such

²⁶ (2004) 7 SCC 166

²⁷ *R. v General Commrs. for the purposes of the Income Tax Act for the District of Kensington, (1917) 1 KB 486*



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subsequent application was set aside by this Court²⁸. Similarly, a challenge to an order fixing the price was rejected because the petitioners had suppressed the fact that an agreement had been entered into between the petitioners and the Government relating to the fixation of price and that the impugned order had been replaced by another order²⁹.”

26.9.4 There can be no dispute about the fact that, without a trial and without examining evidence, the allegation of Pankaj that Meenakshi was guilty of wilful concealment and suppression and that the suit instituted by her was liable to be dismissed on that ground, could not have been decided.

26.10 We, therefore, are in entire agreement with the learned Single Judge in her view that issues (i), (ii), (iv) and (v), as framed on 2 May 2023, could not be decided as preliminary issues. We find no cause to disturb her decision, therefore, to reject IA 15528/2023 insofar as it prays for framing of the said issues as preliminary issues under Order XIV Rule 2(2) of the CPC.

27. Re-prayer for stay of trial under Section 10 of the CPC

27.1 The principles relating to Section 10 of the CPC and the circumstances in which trial can be stayed on the ground of pendency of an earlier suit, are exhaustively delineated in the judgment of the Supreme Court in *C Parameshwara*, thus:

“8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying

²⁸ *State of Haryana v Karnal Distillery Co. Ltd.*, (1977) 2 SCC 431

²⁹ *Welcom Hotel v State of A.P.*, (1983) 4 SCC 575



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Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as *res judicata* in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are “the matter in issue is directly and substantially in issue” in the previous instituted suit. The words “directly and substantially in issue” are used in contradistinction to the words “incidentally or collaterally in issue”. Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical.”

27.2 At a plain reading, Section 10 applies only where the cause of action and the reliefs sought in the earlier and the latter suits are identical or where the decision of the Court with the earlier suit would operate as a *res judicata* in the latter suit. The learned Single Judge has correctly noted that, in suit CS 58565/2016, Meenakshi had challenged the validity of the gift deed dated 2 April 2012. As against that, in the present suit, the prayer is for permanent injunction, and for a declaration that will dated 16 March 2010, purportedly executed by Indira, is null and void. The mere fact that the inability of Indira to dispose of her property is urged by Meenakshi in both the suits as a ground cannot constitute a basis to stay the trial in the present suit, merely because of the pendency of suit CS 58565/2016. The documents, with respect to which the disposing ability of Indira was questioned by Meenakshi were, in the two suits, themselves different.



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27.3 We also find merit, in this context, in the reliance, by Mr. Sood, on the issues which have been framed in the present suit, vis-a-vis the issues framed in CS 58565/2016. The issues are also distinct and different. The decision of the learned Trial Court on the issues framed in CS 58565/2016 would not be dispositive of the issues framed in CS (OS) 496/2021.

27.4 Applying the tests in *C Parameshwara*, therefore, no fault can be found with the decision of the learned Single Judge not to stay the trial in CS (OS) 496/2021 pending disposal of CS 58565/2016 pending before the learned Trial Court at Patiala House.

Conclusion

28. For these reasons, we find no cause to interfere with the impugned order of the learned Single Judge insofar as it dismisses IA 15528/2023.

29. Consequently, the present appeal is dismissed with no orders as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

SEPTEMBER 2, 2025/AR/dsn