



2026:DHC:2887



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

% **Reserved on: 15th January, 2026**

Pronounced on: 07th April, 2026

+ **CM(M) 3154/2024, CM APPL. 46062/2024 & 46064/2024**

SUMESH MADAN

S/O Late Sh. R. C. Madan,
R/O 136, Mandakini Enclave,
Alaknanda, New Delhi.

through Attorney, Sh. Virender Chadha.

.....Petitioner

Through: Appearance not given.

Versus

1. **BHAVESH MADAN**

S/O Late Sh. R.C. Madan

2. **SMT. REETU MADAN**

W/O Sh. Bhavesh Madan,
both R/O 137, Mandakini Enclave,
Alaknanda, New Delhi.

3. **ANJU CHADHA**

W/O Sh. Virender Chadha

4. **VIRENDER CHADHA**

S/O Late Sh. K.C. Chadha
both R/O 136, Mandakini Enclave
Alaknanda, New Delhi.

.....Respondents

Through: Mr. Rajesh Mahindru & Mr. Birender
Chaudhary, Advs. for R-1.

Mr. Rishi Bharadwaj, Advocate for
R-3 and R-4.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T



NEENA BANSAL KRISHNA, J.

1. Petition under Article 227 of the Constitution of India has been filed on behalf of the *Applicant, Sumesh Madan* against Order dated 18.12.2023 passed by learned ADJ-01, New Delhi, whereby his Application for impleadment as party under Order I Rule 10 of CPC, in the Suit filed by the Respondents Nos. 1 & 2, for Possession, **had been dismissed.**

2. *A Civil suit bearing CS DJ 619/2020* was filed by Respondent Nos.1 & 2 Bhavesh Madan and Reetu Madan, for *Mandatory Injunction, Permanent Injunction and Damages against Anju Chadha, Respondent No.3 and her husband Virender Chadha, Respondent No.4.*

3. The *facts as narrated in the Complaint*, were that Plaintiffs Bhavesh Madan and Reetu Madan were registered owners and in legal possession of the Suit Property bearing No.136, Mandakini Enclave, Alaknanda, New Delhi, (*hereinafter referred to as suit property*) by virtue of Sale Deed dated 20.11.2009.

4. The Plaintiff in his Complaint has averred that in the month of January, 2020, Defendant Nos. 1 and 2, i.e. Anju Chadha, sister of Plaintiff, Bhavesh Madan and her husband Virender Chadha, came to India from Australia and expressed their desire to stay for a few days with the mother of Plaintiff No.1 and Defendant No.1, to spend some time with her in her old age. As a humane gesture, Plaintiffs permitted the Defendants to reside in the Suit Property. However, because of lockdown in March, 2020, they continued to stay there.



5. On 19.09.2020, Plaintiffs asked the Defendants to vacate the Suit Property, however, they refused to do so. *Consequently, Suit was filed for Mandatory Injunction, Permanent Injunction and Damages.*

6. *Defendants Anju Chadha and her husband Virender Chadha, in their **Written Statement** took the plea that Suit Flat had been purchased from joint family funds of parents of Plaintiff No.1 and Defendant No.1 and is required to be divided between the parties by way of Partition and present Suit is devoid of any merit and liable to be dismissed.*

7. It was further stated that Partition Suit has already been filed, which is pending adjudication in this Court. During pendency of the Suit, Appellant Sumesh Madan (*brother of Plaintiff No.1 and Defendant No.1*) filed an Application under Order I Rule 10 CPC, to be impleaded as a party in the Suit. He endorsed the defence set up by the Defendants and claimed that Suit Property was in fact, property purchased from joint family funds of parents and he was necessary and proper party for adjudication of the Suit.

8. *Learned ADJ, vide Order dated 18.12.2023, dismissed this Application*, by observing that there was Sale Deed in the name of Respondent Nos.1 and 2 and Applicant, to which there was no challenge and no cancellation of the same had been sought. Moreover, the Applicant was not even a party to the Suit. *Considering these aspects, Application under Order I Rule 10 CPC was dismissed.*

9. **Aggrieved by the Order of the dismissal of his Application**, *present Petition has been filed*, wherein it is submitted that Petitioner's grand-parents and parents have left behind various joint family businesses, movable and immovable properties for the benefit of the entire family,



which are Travellers (I) Forex Blue (P) Ltd.; M/s. Madan Traveller Guest House Pvt. Ltd.; and Madan Stores, etc.

10. Movable and immovable properties, purchased from the income generated from the joint family business/funds, are as under:

- ‘i) All the bank accounts fixed deposits and investment of Smt. Kamlesh Madan;*
- ii) 1/3rd share of Smt. Kamlesh Madan in property No.4360A-4362, Main Bazar, Paharganj, New Delhi;*
- iii) 1/3rd share of Smt. Kamlesh Madan in property No.4361, Main Bazar, Paharganj, New Delhi;*
- iv) 1/3rd share out of 1/4th share of property No.D, LSC 2, Vasant Vihar, New Delhi owned by Sh. Ramesh Chander Madan;*
- v) Property in Village Mewla Maharajpur, Haryana owned by Sh. Ramesh Chander Madan;*
- vi) Property in Village Anangpur, Haryana owned by Sh. Ramesh Chander Madan;*
- vii) Shares of Smt. Kamlesh Madan in Travellers (India Forex Blue Pvt. Ltd.);*
- viii) Shares of Smt. Kamlesh Madan in Madan Traveller Guest House Pvt. Ltd.;*
- ix) Locker held by Smt. Kamlesh Madan in UCO Bank, Parliament Street, New Delhi;*
- x) Property bearing Flat No.136, Mandakini Enclave, New Delhi-110019.*

11. The Petitioner/Applicant, Sh. Sumesh Madan, brother of Respondent No.1 and Respondent No.3, has submitted that he had been residing out of India since 2011 and he had executed General Power of Attorney dated 02.03.2012 in the name of Respondent No.1 / Bhavesh Madan, who is his



elder brother, to act as his Attorney, to manage the aforesaid properties and family businesses.

12. The suit property, was purchased from the joint funds of parents, by transferring huge amount to Respondent No.1's account. Aside from this, the Plaintiff also gave an amount of Rs.11,00,000/- by cheque to Respondent No.1, as the property was purchased for the benefit and enjoyment of entire family.

13. The suit property was enjoyed by all the family members, till death of their mother. Thereafter, Respondents Nos.1 and 2 turned dishonest; with the intention to grab all the properties and businesses established by grand-parents and parents and to grab the shares of Applicant; they filed various forged documents before various Authorities.

14. Sometime in 2010, Petitioner's parents, who were living in the Second Floor of Property bearing No.137, Mandakini Enclave, New Delhi, came to reside in Suit Property and they both expired in the Suit Property. After demise of their father Sh. R. C. Madan, Respondent No.3 and her husband started living with mother to take care of her. Respondent Nos.1 and 2 never lived in the Suit Property. After demise of their father, when Petitioner visited India, he lived in the Suit Property, as the same was purchased from joint family funds.

15. Sometime in November / December, 2023, after obtaining bank statements of deceased parents, it was found that before purchase of Suit Property in 2009, Petitioner and deceased parents had transferred huge amount in Respondent No.1's account, which was used to purchase the Suit Property in the name of Respondents Nos.1 and 2. Approximately



Rs.60,00,000/- were transferred and circulated in Respondent No.1's account, between signing of *Bayana* Agreement and execution of Sale Deed between 26.10.2009 and 21.11.2009.

16. Whenever Petitioner visited India on different occasions, he resided in Suit Property and even after demise of their father on 31.12.2014, Petitioner's mother produced hand-written note / Will of the father. Thereafter, it was mutually decided amongst mother, Petitioner, Respondents Nos.1 and 3 that the Suit Property, though purchased in the name of Respondent Nos.1 and 2, would be transferred in the name of Respondent No.3 Anju Chadha and would be for the use of Petitioner and Respondent No.3 only. Upon the same settlement, Property No.137, Mandakini Enclave, New Delhi was given to Respondent No.1 and Property No.510, Mandakini Enclave, New Delhi was given to the Petitioner.

17. By this hand-written note / Will of the deceased father, while settling all the properties in the presence of mother, Respondent No.1 agreed to put the Suit Property into common *hotch-potch*, with the intention of abandoning Respondents Nos.1 and 2's exclusive separate claim over the said property and to render it to be the joint family property purchased from joint funds.

18. After demise of their mother Late Smt. Kamlesh Madan, *Respondents Nos.1 and 2 filed a Suit for Mandatory and Permanent Injunction and Damages against Respondents Nos.3 and 4*, claiming themselves to be the exclusive owners of the Suit Property, by virtue of Sale Deed dated 20.11.2009. This property has been purchased from joint family funds, and Respondents Nos.3 and 4 have been residing in the Suit Property since 2015,



since demise of their father on 31.12.2014 and even have been taking care of their mother, Late Smt. Kamlesh Madan.

19. Petitioner's parents have left behind vast properties and businesses, in respect of which Respondent No.3 has filed a *Suit bearing CS (OS)432/2021 before this Court for Partition, Permanent Injunction and Rendition of Accounts*. Petitioner is residing abroad and had executed Power of Attorney dated 02.03.2012 in favour of Respondent No.1. On coming to know about the present Suit and controversy, Petitioner has cancelled the General Power of Attorney dated 29.10.2020 and executed fresh General Power of Attorney dated 04.09.2021 in favour of Respondent No.4. Petitioner thus, moved Application under Order I Rule 10 CPC to be impleaded as a party in the Suit filed by Respondent Nos.1 and 2.

20. It is claimed that transaction falls in the ambit of *Section 4 of Benami Transaction Act*, as any person who stands in the *fiduciary capacity* on behalf of other family members, would fall under the exceptions of Section 4(3)(1) of Benami Transaction Act.

21. Further, Respondents Nos.1 and 2 have concealed material facts. The perusal of Bank Statement of Petitioner and his parents, shows that Bayana document filed by Petitioner, proved that the payments for the Suit Property were made between 26.10.2009 and 21.11.2009, when Rs.60,00,000/- had been transferred to Respondent No.1's account.

22. It is asserted that the relevant facts and the background, have not been considered by learned District Judge. It is also not considered that after demise of father on 30.12.2014, a compromise was arrived at between the parties and Petitioner never doubted the intention of Respondent No.1.



23. The law governing Petitioner's Application under Order I Rule 10 CPC is well settled that any person, whose presence is necessary to determine the real issue in controversy between the parties, must be impleaded as party. The presence of the Petitioner is absolutely necessary for completely and finally adjudicating all the disputes. In any case, the rights of the individual are likely to be affected by a final decision in the Suit. The Petitioner has direct and legal interest in the action and in the outcome of the Suit Property and therefore, he is a necessary party.

24. It has not been appreciated by the learned Trial Court that once an objection to the title of the Plaintiffs / Respondent Nos.1 and 2, was raised by Respondent Nos.3 and 4, *the only remedy available with Respondent Nos.1 and 2 was to file a Suit for Declaration*. Hence, prayer is made that the impugned Order dated 18.12.2023, dismissing the Application under Order I Rule 10 CPC, be set aside.

Submissions heard and record perused.

25. The Respondent Nos.1 and 2 had filed *simplicitor Suit for Mandatory and Permanent Injunction*, seeking the possession from Respondent Nos.3 and 4 / Defendant Nos.1 and 2, who are in possession of the Suit Property, claiming that they are exclusive owners, having a Sale Deed dated 20.11.2009 in their name.

26. The Applicant/Petitioner i.e. *Sumesh Madan*, who is the brother of Respondent No.1, settled in Australia, has staked a claim in the Suit Property by asserting that *it had been purchased from joint family funds*. Admittedly, he is not in possession of the Suit property, but during his visits,



he used to stay with his mother or father in the Suit Property, during their lifetime.

27. Therefore, even if possession from Respondent Nos.3 and 4 had been sought by the Plaintiffs on the basis of Sale Deed, the legal Right of Applicant, are not to be adjudicated in this Suit of Respondent No.1&2. He, not being in possession, cannot be considered as a necessary and proper party to the Suit, as has been rightly held by learned District Judge.

28. His claim of ownership in the Suit Property on the basis that it had been purchased from joint family funds, can be determined only in a Suit appropriately filed by him. Admittedly, he has already filed CS(OS) 432/2021 Suit for Partition, wherein he can agitate all the defences or his rights, as agitated in the present Application.

29. Pertinently, the Suit in which the Application was filed, has already been decreed in favour of the respondents, under Order XII Rule 6 CPC, *vide* judgment dated 18.12.2023, and this Petition has also become infructuous.

30. Learned District Judge has rightly dismissed the Petitioner's Application under Order I Rule 10 CPC.

31. There is **no merit in the present Petition**, which is hereby, dismissed along with the pending Applications.

**(NEENA BANSAL KRISHNA)
JUDGE**

APRIL 07, 2026/R