



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

% ***Pronounced on: 28th February, 2025***

+ **C.R.P. 6/2023& CM APPL. 861/2023**

NEERU MAHENDRU

D/o Late Ramji Dass Mahendru,

R/o 5/20-8, G.F., Roop Nagar,

Delhi- 110007

.....Petitioner

Through: Mr. Rajesh Mahindru & Ms. Ruby
Kumari, Advocates.

Versus

INDER MOHAN (DECEASED) THROUGH LRS.

i. SH. AJAY MAHENDRU

S/o Late Inder Mohan

R/o 5/20-B, G.F., Roop Nagar,

Delhi- 110007

ii. MS. MONIKA ABROL

D/o Late Inder Mohan

W/o Sh. Parikshit Abrol

R/o Flat No. 301, Building No. 21

Sanskriti Apartments, Thakur Complex

90th Road, Kandavali East, Mumbai – 400101

iii. ANJALI BHAI

D/o Late Sh. Inder Mohan

W/o Sh. Gagan Bhai

R/o B-106, Siddhart Kunj

Sector-7, Plot No. 17,

Dwarka, New Delhi – 110075



iv. Sh. AMIT MAHENDRU

S/o Late Inder Mohan

R/o 5/20-B, F.F., Roop Nagar,

Delhi- 110007

....Respondents

Through: Mr. Shiv Charan Garg, Mr. Imran Khan, Ms. Jahanvi Garg & Mr. Yogendra, Advocates.

Mr. Neeraj Kumar, Advocate for DDA.

+ C.R.P. 7/2023& CM APPL. 863/2023

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Versus

AMIT MAHENDRU

S/o Late Inder Mohan

R/o 5/20-B, F.F., Roop Nagar,

Delhi- 110007

.....Respondent

Through: Mr. Shiv Charan Garg, Mr. Imran Khan, Ms. Jahanvi Garg & Mr. Yogendra, Advocates.

+ CM(M) 2144/2024 & CM APPL. 16680/2024

1. NEERU MAHENDRU

D/o Late Ramji Dass Mahendru,

R/o 5/20-8, G.F., Roop Nagar,

Delhi- 110007



2. SH. AJAY MAHENDRU

S/o Late Inder Mohan
R/o 5/20-B, G.F., Roop Nagar,
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3. MS. MONIKA ABROL

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Sector-7, Plot No. 17,
Dwarka, New Delhi – 110075Respondents
Through: Mr. Shiv Charan Garg, Mr. Imran
Khan, Ms. Jahanvi Garg & Mr.
Yogendra, Advocates.

+ **C.R.P. 106/2024**

1. NEERU MAHENDRU



D/o Late Ramji Dass Mahendru,
R/o 5/20-8, G.F., Roop Nagar,
Delhi- 110007

2. SH. AJAY MAHENDRU

S/o Late Inder Mohan
R/o 5/20-B, G.F., Roop Nagar,
Delhi- 110007

3. MS. MONIKA ABROL

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.....Petitioners

Through: Mr. Rajesh Mahindru & Ms. Ruby
Kumari, Advocates

Versus

1. AMIT MAHENDRU

S/o Late Inder Mohan
R/o 5/20-B, F.F., Roop Nagar,
Delhi- 110007

2. ANJALI BHAI

D/o Late Sh. Inder Mohan
W/o Sh. Gagan Bhai
R/o B-106, Siddhart Kunj
Sector-7, Plot No. 17,
Dwarka, New Delhi – 110075

.....Respondents

Through: Mr. Shiv Charan Garg, Mr. Imran
Khan, Ms. Jahanvi Garg & Mr.



Yogendra, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The captioned four Petitions are being decided by this common Judgment, as these involve similar facts.
2. Before considering the four Orders impugned in these Petitions, it would be relevant first to narrate the *factual background*.
3. Smt. Neeru Mahendru filed the **first Suit bearing No. 39/14 [New Number CS No. 12198/2016]** claiming possession from her brother Sh. Inder Mohan (*since deceased*), in regard to Suit Property bearing No. 5/20, Roop Nagar, Delhi-110007 (*henceforth referred to as the "Suit Property"*), in respect of one room on the first floor of the Suit Property. According to her, the entire suit property was owned by her mother Smt. Raj Kumari vide Registered Sale Deed dated 23.03.1961, which was revised vide Sale Deed dated 22.02.1968. Smt. Raj Kumari during her life time, executed Gift Deed dated 01.12.2006 in favour of Smt. Neeru Mahendru Petitioner, the unmarried Daughter by virtue of which she became the owner of the entire property in question, built on a land admeasuring 400 square yards, comprising of Ground Floor, First Floor and open terrace thereon.
4. According to Smt. Neeru Mahendru, the Respondent Sh. Inder Mohan who was her elder brother, came in possession of the suit property with the permission of her mother. After execution of the Gift Deed dated



01.12.2006 in her favour by the Mother, he continued to be in the permissive user by her consent.

5. It is further asserted by Smt. Neeru Mahendru that after some time, Sh. Inder Mohan started misbehaving and quarrelling with her and over the period, he also became alcoholic and started disturbing the family peace and tranquillity after getting drunk. However, considering the relationship, she did not initiate any action against him.

6. In the year 2013, Smt. Neeru Mahendru told Sh. Inder Mohan to make an alternate arrangement and vacate the suit premises and also remove the goods from the suit property. However, Sh. Inder Mohan failed to do so. A Legal Notice dated 06.11.2013 was sent to Sh. Inder Mohan despite which he did not hand over the possession.

7. Consequently, **first** Suit No. 39/14 [New Number CS No. 12198/2016] was filed for possession thereof and Damages @Rs.20,000/- per month and also for future damages in the same amount.

8. The Suit was contested by Sh. Inder Mohan, who in his **Written Statement** took the defence that his possession in the suit property was not limited to one room on the First Floor, but he along with his son ShAmit Mahendru and his family, was in possession of the entire First Floor. Though he admitted that his mother, Smt. Raj Kumari was the registered owner of the property in question, but claimed that she was a house wife and had no source of income. In fact, he and his father, Sh.Ramji Dass had provided the funds for purchase of the property. Moreover, the entire construction on the plot was done from the funds provided by them.

9. It was further asserted that because the mother Smt. Raj Kumari was



not the actual owner, she had no right to execute the registered Gift Deed dated 01.12.2006 in favour of Smt. Neeru Mahendru. He denied that he came into possession with the permission of mother Smt. Raj Kumari which was continued with the permission of Smt. Neeru Mahendru, but asserted that he has been in occupation of the property in his own right.

10. Sh. Inder Mohan admitted the service of Legal Notice dated 06.11.2013, but claimed that he chose not to give any Reply as it was false and frivolous. He therefore, contended that Smt. Neeru Mahendru was not entitled to recovery of possession or damages.

11. Sh. Inder Mohan died on 17.11.2016, after which an Application under Order XXII Rule 4 CPC was filed to bring on record his legal heirs who put in appearance before the Trial Court on 07.03.2017 and were impleaded as legal heirs of Sh. Inder Mohan on 19.12.2017.

12. Even though Sh. Amit Mahendru and other legal heirs, had been impleaded in the **first suit** i.e. Suit No. 39/14, but Smt. Neeru Mahendru in her wisdom filed **Second Civil Suit**, CS No. 612198/2018 against Sh. Amit Mahendru and Smt. Anjali Bhai, the two contesting Legal Heirs of late Inder Mohan on the same facts, to claim possession of the suit property.

13. Smt. Neeru Mahendru in **first** Suit No. 39/14 and **second** suit CS 612198/2018, filed two separate **Applications under Order XII Rule 6 Civil Procedure Code** (*henceforth "CPC"*) to seek a decree of possession on admissions. However, both these *Applications were dismissed vide common Order dated 05.11.2022* on the ground that a person is entitled to decree on admission only if the admissions made are unambiguous, unequivocal and unconditional. However, legal heirs of Sh. Inder Mohan



i.e. Sh. Amit Mahendru and Smt. Anjali Bhai had nowhere admitted the Gift Deed, but had raised challenge to it by way of separate **third** suit CS No. 451/2020. In the absence of categorical admission by the legal heirs of Sh. Inder Mohan, there was no ground for allowing the Application under Order XXII Rule 6 CPC. Consequently, the Application was dismissed.

14. Aggrieved by the common Order dated 05.11.2022, Revision Petitions No.06/2023 and 07/2023 have been filed in two respective **first** and **Second Suit**.

15. Sh. Amit Mahendru, son of Inder Mohan, when faced with Suit for possession by Smt. Neeru Mahendru, filed the **Third** Civil Suit No.451/2020 to challenge the Gift Deed dated 01.12.2006 executed by Smt. Raj Kumari in favour of Smt. Neeru Mahendru. However, in the said Suit as well, the sole ground of challenge was that Smt. Raj Kumari was not the actual owner of the suit property, as the same was purchased by his father- Sh. Inder Mohan and grandfather Sh. Ramji Dass. The assertions, on which the Gift Deed was sought to be challenged, were identical to the defence taken by Sh. Inder Mohan and Sh. Amit Mahendru in the **first** Suit No. 39/14 and **second** Suit CS No.612198/2018.

16. In this **third** suit CS 451/2020, Application under Order VII Rule 11 CPC was filed by Smt. Neeru Mahendru for rejection of Suit by asserting that no independent cause of action was raised in the Suit to challenge the Sale Deeds and the Suit was liable to be rejected. *However, the Application was rejected vide Order dated 03.02.2024, which has been challenged by way of Revision Petition No.106/2024.*

17. In the same suit, Sh Amit Mahendru filed an Application under Order



VI Rule 17 CPC for corrections to substitute the word “**cancellation** of Sale Deed” with the word “**declaring** the Gift Deed null and void”, which was allowed vide Order dated 03.02.2024, which is challenged by Smt. Neeru Mahendru in **CM(M) 2144/2024**.

18. Ld. Counsel for Petitioner, Smt. Neeru Maheendru has contended that the **main defence** taken in the *Written Statement* by the *Respondent/Defendants* and also the averments in **third suit** is that the Suit property had been purchased *benami* in the name of mother Smt. Raj Kumari from the funds of Sh. Inder Mohan and his father and that Smt. Raj Kumari not being the owner, had no right to execute the Gift Deed in favour of the Plaintiff.

19. It was further contended that the Respondents have not disclosed any right to occupy the property in question. Reliance has been placed upon decision in Maria Margardida Sequireira vs. Erasmo, (2012) 5 SCC 370, wherein it was held that the defendant is required to show his right to continue to occupy the suit property and in the absence of any said right, defendant cannot resist the possession.

20. Furthermore, Sh. Inder Mohan, along with his *Written Statement*, had filed Memorandum of Understanding dated 06.08.2006 (*henceforth referred to as the ‘MOU’*) but he himself stated that the said MOU was never acted upon and no suit for Specific Performance was ever filed in regard to this MOU. Even otherwise, the MOU does not prevent Smt. Raj Kumari to execute the Gift Deed in respect of the suit property.

21. It is submitted that the defence taken by the legal heirs of Sh. Inder Mohan is nothing but clever drafting so as to drag the case into lengthy trial



and to continue to enjoy possession of the suit property during pendency of the proceedings.

22. The learned Trial Court has failed to consider that Sh. Inder Mohan had no right, title or interest in the suit property and he was permitted to stay in the suit property by Smt. Neeru Mahendru, which permission was revoked by Legal Notice dated 06.11.2013. The Legal Notice was admittedly served upon Sh. Inder Mohan, to which no reply was given. Therefore, there was no legal defence disclosed by Sh. Inder Mohan in his Written Statement and she was entitled to decree on admissions.

23. **Submissions heard and record perused.**

CRP 6/2023 & CRP 7/2023 and CRP 106/2024:

24. Smt. Neeru Mahendru had filed the **First Civil Suit No. 39/2014** seeking possession of the suit property from her brother Sh. Inder Mohan claiming him to be in permissible use of the suit property. At the outset, it is pertinent to note that after the demise of Sh. Inder Mohan on 17.11.2016, his legal heirs Sh. Amit Mahendru and Smt. Anjali Bhai were impleaded while the other two legal heirs did not join to contest the suit. Once Sh. Amit Mahendru got impleaded in place of Sh. Inder Mohan, as he along with his family was residing with Sh. Inder Mohan, cause of action continues against Sh. Amit Mahendru.

25. However, Smt. Neeru Mahendru in her wisdom filed **Second** Suit in the year 2018 seeking the same relief against Sh. Amit Mahendru. The **Second Suit**, infact, is not tenable in light of the first suit but it is evident that Smt. Neeru Mahendru in order to be double sure that her Suit does not



get defeated on technical grounds and by way of abundant caution, filed the **second** Suit for possession against Sh.Amit Mahendru.

26. The **Third Suit No. 451/2020** has been filed by Sh. Amit Mahendru in 2020 to challenge the Gift Deed dated 01.12.2006 on identical grounds.

27. The question which arises in the two Civil Suits for possession filed by Smt. Neeru Mahandru, is whether there are any unambiguous, unequivocal and clear admissions by Sh. Inder Mohan and after his demise by Sh.Amit Mahendru, raising any legal defence which needs to be put to trial. Likewise, whether there exists any cause of action in the **third Suit** filed by Sh. Amit Mahendru, for Declaration of Gift Deed as null and void.

28. Admittedly, Smt. Raj Kumari was the registered owner of the suit property by virtue of Sale Deed dated 23.03.1961 and revised Sale Deed dated 22.02.1968. These facts have not been denied or disputed either by Sh. Inder Mohan or by Sh. Amit Mahendru.

29. Smt. Raj Kumari became the owner in the year 1961 and her title was never challenged during her life time either by her husband or by Sh. Inder Mohan and no Suit was filed to declare them as the real owner of the suit property. Their father died in the year 1979 and Sh. Inder Mohan never filed a Suit during the lifetime of their father or within three years after his death, seeking Declaration that he is the real owner of the property as funds were allegedly provided by them and the mother had no source of income. Sh. Inder Mohan and his legal heirs, after demise of their father, are precluded from challenging the Sale Deed in favour of their Smt. Raj Kumari.

30. The consistent defence taken on behalf of Sh. Inder Mohan and after his demise, his Legal Heirs, is that funds for purchase of the property in



question were given by Sh. Inder Mohan and his father, husband of Smt. Raj Kumari, as she was a house wife and had no source of income. Essentially, the plea of property having been purchased *benami* in the name of Smt. Raj Kumari has been raised.

31. The *first aspect* which requires consideration is whether the *Benami Transaction (Prohibitions) Act, 1988* (hereinafter referred to as "the Benami Act) permits a plaintiff to base his claim on alleged ownership of father despite the registered Sale Deed being in favour of the mother.

32. Section 4 of the Benami Act prohibits the right to recover property held benami and reads as follows-

"Section 4 -

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

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

(3) Nothing in this section shall apply,-- (a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or (b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he



stands in such capacity."

33. Section 4 of the Act places a complete embargo on claiming any right if the transaction is per se benami i.e. the property is purchased in the name of one while the funds are paid by another. Section 4(2) of the Benami Act prohibits any suit on the basis of such transaction; no person can assert to be the real owner of such property held benami.

34. The Apex Court in the case of R. Rajagopal Reddy (dead) by LRs and Ors vs. Radmini Chandrasekaran(dead) by LRs (1995) 2 SCC 630 clarified the retrospective application of Section 4 and observed that Section 4 shall be applicable from the date it came into effect and no claim, suit or action preferred by the real owner, to enforce any right in respect of the property held benami, would be admissible in any court.

35. The argument of the Respondents about the father being the real owner, is totally fallacious for the simple reason that the Sale Deed was never challenged within the period of three years, by the Defendants.

36. Moreover, Section 27 of the Limitation Act, 1963 extinguishes the right in property on expiry of the period of limitation. Division Bench of this Court in the case of Sanjay Roy vs. Sandeep Soni, 2022 SCC OnLine Del 1525 followed the judgment of Ramti Devi vs Union of India (1995) 1 SCC 198, wherein it was observed that “...until the document is avoided or cancelled by proper declaration, the duly registered document remains valid and binds the parties. So the suit necessarily has to be laid within three years from the date when the cause of action had occurred...”, to hold that “...in the absence of any challenge to the registered Conveyance Deed in favour of the plaintiff, ever raised by the appellant in his pleadings or



otherwise, it conferred absolute ownership rights in favour of Smt. Kalyani Roy, which is beyond challenge.”

37. Similarly, in the case of Lata Chauhan vs L.S. Bisht & Ors, 2010 (117) DRJ 715 this Court observed that where the Plaintiff has failed to seek appropriate relief of Declaration or alternatively cancellation of the Registered Lease deed, such relief cannot be granted, because the period of limitation prescribed in this regard by Articles 58 and 59 mandates that suits in regard to such Declaration are to be instituted within three years after the cause of action arises. As the plaintiff did not file the Suit within time, it was held to be time barred. The Court further referred to Section 27 Limitation Act and observed that if the plaintiff had a cause of action to seek Cancellation or Declaration of the Registered Lease Deed, it was extinguished after the expiry of three years from the date of registration of the document.

38. Another aspect which needs consideration is that while the law creates a prohibition against the right to recover property held benami, it recognizes certain exceptions to benami transactions under Section 3(2) of the Benami Act which reads as-

"3 Prohibition of benami transactions-

(1)....

*(2) Nothing in sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, **unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter.**"*

39. Section 3(2) of the Benami Act, no doubt creates a presumption if the property is purchased in the name of wife or daughter, but this presumption



would have arisen only if there was any basis to establish that father had purchased property benami in the name of his wife, for her benefit.

40. The registered Sale Deed in favour of Smt. Raj Kumari vested absolute ownership rights in the property. Once the Sale Deed has become unassailable and the title in favour of mother stands crystallized, the defendants cannot raise the same as a defense in challenging the Gift Deed executed by the Mother in favour of plaintiff/Smt. Neeru Mahendru.

41. The appellants have placed reliance on Manoj Arora vs. Mamta Arora, AIR OnLine 2018 DEL 1166, wherein the husband had filed a Suit for Declaration and Injunction against the wife claiming to be the real owner of the two properties which he had purchased in the name of his wife, the defendant. He had explained the source of money and given details of money that was paid by him for the purchase of those properties. It was observed by the Coordinate Bench of this Court that when there are specific averments in the plaint about the property having been purchased by the husband in the name of his wife, the Suit could not have been rejected under Order VII Rule 11 of the CPC.

42. It is relevant to note that Sh. Inder Mohan had there are not given any specific details of any kind disclosing the source of money provided by him or the father. Merely by taking the bald plea that they had provided the funds, cannot give them any unfettered defence to challenge the ownership of Smt. Raj Kumari.

43. It has been rightly contended that the Sale Deed in the name of Smt. Raj Kumari was well within the knowledge of Sh. Inder Mohan since 1961, despite which it was never ever challenged in any court of law either during



her life time or even thereafter.

44. It is also significant to note that a Legal Notice dated 06.11.2013 was served upon Sh. Inder Mohan, which was admittedly received by him but he chose not to give any Reply on the ground that the Notice was frivolous. Even at that time, there was no plea taken by Sh. Inder Mohan in his defence that Smt. Raj Kumari was not the owner of the property and therefore, had no right to execute the Gift Deed.

45. To sum up, **first and foremost**, there was no challenge to the Sale Deed dated 23.03.1961 and revised on 22.02.1968 in favour of the mother, Smt. Raj Kumari by either her husband/Sh. Ramji Dass or by her son/Sh. Inder Mohan within three years of demise of the father in 1979. **Secondly**, since there was no challenge within the limitation period of three years from the date of accrual of cause of action, the right in the property got extinguished under S.27 Limitation Act. **Thirdly**, aside from asserting that the funds were provided by father/Sh. Ramji Dass and by son/Sh. Inder Mohan no details of the funds have been provided. Such a vague plea which is not supported by any details/explanation of the funds traceable to father and son, the plea of property belonging to father is liable to be rejected as vague, not supported by any details. In the absence of any source of money being explained, it is evident that it is merely a sham defense set up which has no merit. The plea of *benami* transaction in the name of Smt. Raj Kumari is therefore, not tenable and challenge to the sale Deed is without any basis.

46. It is also pertinent to observe that there is no averment in the Written Statement to challenge the genuineness of the Gift Deed. The only question raised was that the property was purchased Benami in the name of mother,



but as discussed in detail, the defendants have miserably failed to even plead the requisite facts to their claim of property being benami.

47. From the comprehensive reading of the averments contained in the Suit along with the contentions raised in the Written Statement, *it is evident that there was no valid legal defence disclosed in the Written Statement.*

48. There were unequivocal admissions in regard to the Sale Deed being in favour of Smt. Raj Kumari and execution of Gift Deed by her in favour of Smt. Neeru Mahendru. The defendants have not been able to establish any legal right to continue in the property, as they were in permissive user, and permission stands revoked vide Legal Notice Dated 06.11.2013, clearly entitling her to a decree of possession.

49. For the same reasons, no cause of action is disclosed in the **Third Suit** filed by Sh. Amit Mahindru and Smt. Anjali Bhaifor Declaration of Gift Deed as null and void, and it is also barred by limitation.

50. *In view of the above, the impugned Order dated 05.11.2022 dismissing the Application under Order XXII Rule 6 CPC, in the **First and Second Suits**, is hereby set aside.*

51. Also, impugned Order dated 03.02.2024 dismissing the Application under Order 7 Rule 11, **in Suit No. 451/2020 (Third suit) is set aside and the Suit is hereby, rejected.**

52. ***It is therefore, held that Smt. Neeru Mahendru is entitled to a decree of possession in respect of the Suit Property.***

53. Smt. Neeru Mahendru has also claimed user and occupation charges and damages for which the parties are directed to appear before the learned Trial Court on 15.03.2025 for adjudication.



CM(M) 2144/2024:

54. Sh.Amit Mahendru has also filed the **third** Suit bearing **CS NO. 451/2020** to challenge the Gift Deed.

55. He filed an Application under *Order 6 Rule 17 CPC* to seek amendment in the Suit by substituting the words “*cancellation of sale deed*” with the word “*declaring the Gift Deed null and void*”.

56. The learned Trial Court has allowed the said amendment vide Order dated 03.02.2024, which has been challenged in this Petition.

57. The amendment Application has been rightly allowed since it was merely technical in nature and did not change the import of the Plaint.

58. There is no merit and **the petition is hereby, dismissed.**

Conclusion: -

59. The Revision Petitions bearing No. **CRP 06/2023 and CRP 07/2023**, impugning the order dated 05.11.2022, passed in CS No. 12198/2016 and CS No. 6373/2018, dismissing the Application under Order 12 Rule 6, **are allowed.**

60. The Application under Order 12 Rule 6 is allowed. The Suits of the Petitioner for possession in respect of the Suit Property are hereby, decreed and the parties are directed to appear before the Trial Court on 15.03.2025, for adjudication of user and occupation charges.

61. The Revision Petition bearing No. **CRP 106/2024**, impugning the order dated 03.02.2024 dismissing the Application under Order 7 Rule 11, **is allowed** and Suit No. 451/2020 **is dismissed.**

62. The Petition bearing No. **CM (M) 2144/2024** challenging the Order dated 03.02.2024 allowing the amendment under Order 6 Rule 17 has no



merit. **The Petition is hereby, dismissed.**

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 28, 2025

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