

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

% *Judgment pronounced on: 12th February, 2015*

+ **I.A. No. 17289/2012 in CS(OS) 1381/2010**

PROMILA GULATI Plaintiff
Through Mr.Rajiv Bajaj, Adv.

versus

ANIL GULATI Defendant
Through Mr.P.K. Rawal, Adv. with Mr.Ajay
Bahl, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The plaintiff has filed a suit for mandatory and permanent injunction against the defendant seeking mainly the following prayers:

- (a) A decree in favour of the plaintiff and against the defendant for mandatory injunction whereby directing the defendant to remove all his belongings from the portion of the property bearing No.205, AGCR Enclave, Delhi;
- (b) A decree in favour of the plaintiff and against the defendant for a sum of Rs.50,000/- per month for illegally occupying the suit property bearing No.205, AGCR Enclave, Delhi w.e.f. from the date of the filing of the suit till realization along with pendente lite and future interest @ 18% per annum for

illegally occupying and trespassing the suit premises in the interest of justice and equity;

- (c) A decree of permanent injunction in favour of the plaintiff and against the defendants whereby permanent restraining the defendants for creating any third party interest in the said suit property and further permanently restraining them to part with the possession of the suit property and further permanently restraining the defendant from interfering with the peaceful possession of the plaintiff in the suit property.

2. Plaintiff Smt.Promila Gulati, daughter of late Sh.K.B. Midha, wife of Sh.Amrit Gulati, claims herself to be the absolute owner of the suit property bearing No.205, AGCR Enclave, Delhi-110092 by virtue of various title documents such as Gift Deed dated 3rd September, 1984 duly registered at the office of the Registrar executed by late Sh.K.B. Midha son of late Sh.Hans Raj, who was residing at 65/74, Rohtak Road, New Delhi-110005.

3. The suit property is in possession of the plaintiff which consists of ground floor, first floor, second floor and open terrace. The plaintiff is regularly paying the house tax of the said property to the local authority and under the record of the mutation the name of the plaintiff is recorded. The site plan of the built up property is annexed with the present plaint.

4. The defendant is the brother of the husband of the plaintiff (who is the sister-in-law of the defendant). The defendant is under the possession of first, second and mezzanine floor which is located

between first and second floor of the said property. The defendant used the said property for his residential purpose. The plaintiff says that due to relation she has allowed the defendant to use the said portion for residential purposes without any consideration and the status of the defendant in the said property is of a licensee. The said licence was orally terminated in 2009 and on 3rd May, 2010 through notice the plaintiff communicated the defendant about the termination of the said licence. The plaintiff is residing on the ground floor of the said property with her husband i.e. Sh.Amrit Gulati and two sons namely Gaurav Gulati and Sitish Gulati. The son of the plaintiff Mr.Gaurav Gulati is married and has been blessed with one daughter and due to the extension of the family of the plaintiff the space on the ground floor has squeezed. There is no sufficient accommodation available with the plaintiff to make arrangement for the plaintiff and her family members. It is stated by the plaintiff that the defendant was requested to remove his articles from the portion who on one pretext or the other without any legal rights, is not removing the same despite of termination of licence. It is specifically alleged that the defendant has his own property bearing No.1/60, Subhash Nagar, New Delhi which is sufficient accommodation for the family members of the defendant. Due to the said act of the defendant, the plaintiff had no other alternative but to file the present suit.

5. The suit was contested by the defendant who has filed the detailed written statement. Various defences are taken in the written statement. In the preliminary objections raised in the written

statement it is stated that there is no proper plaint before this Court. In order to avoid the payment of ad-voluerum court fee, the plaintiff has not filed the suit for possession as the property is worth more than Rs.1 crore. Thus, the plaint is liable to be rejected. It is submitted in the written statement that the father-in-law of the plaintiff and father of the defendant namely Sh.Krishan Lal Gulati was blessed with three sons and one daughter. The names of the sons of Sh.Krishan Lal Gulati are Sh.Ashok Gulati, Sh.Amrit Gulati husband of the plaintiff and Anil Gulati/defendant. Initially the father of the defendant was carrying on the business of footwear under the name and style of M/s Sunshine Sandle Works as a proprietor from the Shop No.35, D.B.G. Market, Karol Bagh, New Delhi prior to 1960 where he was joined by his above said three sons one by one and the said firm was converted into the partnership firm.

6. The aforesaid business Sh.Krishan Lal Gulati purchased one shop bearing No.6, D.B.G. Market, in the name of Sh.Ashok Gulati and Sh.Amrit Gulati from the funds of the partnership firm. Later on as the business flourished one more firm was opened in the year 1984-85 by the name of Sunshine Footwear which started functioning from 6, D.B. Gupta Market, locality as Sunshine Footwears. While Sunshine Sandle Works continued to be run by Mr.Krishan Lal Gulati and Ashok Kumar Gulati, the day to day affairs of Sunshine Footwears was being looked after by Amrit Gulati and Anil Gulati. The creation of new firm and retirement of aforesaid partners namely Amrit Gulati and Anil Gulati from M/s Sunshine Sandle Works was an

internal arrangement and family continued to remain joint and the business was also joint. The power of total control and important decisions however remained with late Krishan Lal Gulati in respect of both the firms, being the head of family and founder of both the firms. Ashok Gulati and Amrit Gulati were married prior to 1984 and Anil Gulati got married in 1998. Krishan Lal Gulati with his wife, all his children two daughters in law and grand children used to live at Subhash Nagar in Delhi House No.1/60 in a joint family arrangement, being owned by Krishan Lal Gulati. Exactly at about this time it came to be known that the father of the plaintiff herein late K.B. Midha, who was also the father-in-law of the elder brother of the defendant, was looking for a buyer to sell a plot which he had acquired in the AGCR Enclave, Delhi. Accordingly, late Krishan Lal Gulati paid the price of the plot to late K.B. Midha who in return executed a Gift Deed in respect of the plot in favour of his daughter Smt.Promila Gulati – the plaintiff herein and the factum of purchase of the aforesaid property against the consideration by way of Gift Deed is duly witnessed by the witness Harbans Lal who can come and depose on the same. Accordingly the father of the defendant raised the construction from his own funds and from the funds of joint business by the year 1986. The entire ground floor and one room of the first floor was completed and Amrit Gulati and his family shifted in the suit property and started residing therein. In the year 1985 a flat bearing No.EA-39, SSF Area G-8, Maya Enclave, New Delhi was purchased by the father of the defendant in the name of wife of Sh.Ashok Gulati and the family of Sh.Ashok Gulati shifted there. Somewhere in the year 1988

defendant met with an accident and as a result of which the defendant along with his parents shifted to the suit property before raising the construction on the first floor and second floor which was decided amongst the family members. Then the father of the defendant as well as the defendant raised the construction on the first floor and second floor in the year 1989-1990 and as per the agreement amongst the parties after the completion of the first floor and second floor the defendant who was unmarried at that time started residing alongwith his parents on the first floor and second floor of the property bearing No.205, AGCR Enclave, Delhi. In the year 1990 a plot at Rohini was allotted to Sh. Amrit Gulati and the payment of which was made from the joint account and from the funds of the business. In the year 1991 division of business took place in the family and by virtue of which the defendant and Amrit Gulati started their business and created their own separate firm under the sole proprietorship firm from the same premises i.e. 6, D.B.G. Market, Karol Bagh, New Delhi. The ground floor was retained by Sh.Amrit Gulati who started his firm in the name and style of Sun Shine Sales Corpn. and mezzanine floor remained with the defendant from where the defendant started his own business in the name and style of Like Shoes. At the same time understanding was reached among the family members and it was decided and agreed that Amrit Gulati through his wife shall remain the owner of the ground floor of the suit property apart from the plot at Rohini and defendant shall be the owner of the first floor and second floor of the suit property. It was decided that eldest son Sh.Ashok Gulati will be

the owner of the flat at Mayapuri. It was also decided that after the demise of the parents of the defendant the property at Subhash Nagar shall go to Ashok Gulati and it was the fair distribution of the properties created and earned from joint funds, amongst the three sons and as such the defendant is the owner of the property bearing No.205, AGCR Enclave, Delhi except the ground floor. The plaintiff is under obligation to honour the agreement. It is worthwhile to note that the plaintiff is a house wife with having no independent source of income and could not have paid the consideration amount to her father for getting the Gift Deed in her favour nor did she has any money to raise the construction on the suit property on any portion. The claim of the plaintiff is false, frivolous and against the family arrangement which she is under obligation to respect the same. Thus, the plaintiff have no right, title and interest in the property except the ground floor and defendant is owner in respect of the entire property except the ground floor hence the suit of the plaintiff is liable to be dismissed.

7. In nutshell, the case of the defendant in his written statement is that the suit property has been constructed out of funds of father of the husband of the plaintiff and the defendant. Funds have been generated out of the join family income and there is family settlement supporting the case of the defendant which would show that the property has been purchased out of the family business. The defendant has placed on record CD to establish the factum of the said family settlement.

8. In the replication, the plaintiff has denied the averments made in the written statement. It is denied that the father in-law of the plaintiff and father of the defendant namely Sh. Krishan Lal Gulati was blessed with three sons and one daughter. It is further denied that the names of the sons of Sh. Krishan Lal Gulati are Sh. Ashok Gulati, Shri Amrit Gulati husband of the plaintiff and Anil Gulati/ defendant. It is further denied that initially the father of the defendant was carrying on the business of footwear under the name and style of M/s. Sunshine Sandle Works as a Proprietor from the Shop No. 35. D.B.G. Market, Karol Bagh, New Delhi prior to 1960, where he was joined by his three sons Ashok Gulati, Amrit Gulati (the husband of the plaintiff) and Anil Gulati (the defendant herein) one by one and the said firm was converted into the partnership firm. It is further denied that during the period of aforesaid business Shri Krishan Lal Gulati purchased one shop bearing No. 6, D.B.G. Market, in the name of Shri Ashok Gulati and Shri Amrit Gulati from the funds of the partnership firm. It is also denied that later on as the business flourished one more firm was opened in the year 1984-85 by the name of Sunshine Footwear which started functioning from 6, D.B. Gupta Market, locality as business Food Wears, while Sunshine Sandle Works continued to be run by Mr. Krishan Lai Gulati and Ashok Kumar Gulati, the day to day affairs of Sunshine Footwears was being looked after by Amrit Gulati and Anil Gulati. It is further denied that the creation of new firm and retirement of aforesaid partners namely Amrit Gulati and Anil Gulati from M/s. Sunshine Sandle Works was an internal arrangement and family continued to

remain joint and the business was also joint. It is denied that the power of total control and important decisions however, remained with Late Krishan Lal Gulati in respect of both the firms, he being the head of family and founder of both the firms. It is also denied that Ashok Gulati and Amrit Gulati were married prior to 1984 and Anil Gulati got married in 1998. It is denied that Krishan Lal Gulati with his wife, all his children two daughters-in-law and grand children used to live at Subhash Nagar in Delhi House No. 1/60 in a Joint Family arrangement, house being owned by Krishan Lal Gulati. It is also denied that exactly at about this time it came to be known that the father of the plaintiff herein Late K.B Midha, who was also the father in law of the elder brother of the defendant herein, was looking for a buyer to sell a plot which he had acquired in the AGCR Enclave, Delhi. It is denied that accordingly late Krishan Lal Gulati paid the price of the plot to Late K.B. Midha who in return executed a Gift Deed in respect of the plot in favour of his daughter Smt. Promila Gulati the plaintiff herein and the factum of purchase of the aforesaid property against the consideration by way of Gift Deed is duly witnessed by the witness Harbans Lai who can come and depose on the same. More over it is an admission on the plaintiff as well as her husband Amrit Gulati that the entire consideration amount was paid by the father of the replying defendant and the same was duly recorded during the conversation which falsify the case of the plaintiff. It is also denied that after having purchased the suit property it was declared to construct it to law parts, first family of Amrit Gulati will shift there and then Anil Gulati & his parents will shift there. It is

also denied that accordingly the father of the replying defendant raised the construction from his own funds and from the funds of joint business by the year 1986. The entire ground floor and one room of the first floor was completed and Amrit Gulati and his family shifted in the suit property and started residing therein. It is further denied that it will not be out of place to mention herein that in the year 1985 a flat bearing No. EA-39, SSF Area, G-8, Maya Enclave, new Delhi was purchased by the father of the replying defendant in the name of the wife of Shri Ashok Gulati and the family of Sh. Ashok Gulati shifted there. It is further denied that somewhere in the year 1988-defendant met with an accident and as a result of which the replying defendant alongwith his parents shifted to the suit property before raising the construction on the first floor and second floor which was decided amongst the family members. It is denied that the father of the defendant as well as defendant raised the construction on the first floor and second floor in the year 1989-1990 and as per the agreement amongst the parties after the completion of the first floor and second floor the defendant who was unmarried at that time started residing alongwith his parents on the first floor and second floor of the property bearing No. 200 AGCR Enclave, Delhi. It is also denied that in the year 1990 a plot at Rohini was allotted to Shri Amrit Gulati and the payment of which was made from the joint account and from the funds of the business. It is also denied that in the year 1991 division of business took place in the family and by virtue of which the defendant and Amrit Gulati started their business and created their own separate firm under the sole proprietorship firm

from the same premises i.e. 6, D.B.G. Market, Karol Bagh, New Delhi. It is also denied that the ground floor was retained by Sh. Amrit Gulati who started his firm in the name and style of Sun Shine Sales Corporation and mezzanine floor was remained with the defendant from where the defendant started his own business in the name and style of Like Shoes. It is also denied that at the same time understanding was reached among the family members and it was decided and agreed that Amrit Gulati through his wife Shall remain the owner of the ground floor of the suit property spare from the plot at Rohini and defendant shall be the owner of the first floor and second floor of the suit property. It is also denied that it was decided that eldest son Shri Ashok Gulati will be the owner of the flat at Mayapuri. It is also denied that after the demise of the parents of the defendant the property of Subhash Nagar shall go to Ashok Gulati and it was the fair distribution of the properties created and earned from joint funds, amongst the three sons and as such the defendant is the owner of the property bearing No. 203, AGCR Enclave, New Delhi except the ground floor. It is also denied that the plaintiff is under obligation to honour the agreement. Rest of the para are false and frivolous, hence denied. It is also denied that the plaintiff is a house wife with having no independent source of income and could not have paid the consideration amount to her father for getting the Gift Deed in her favour nor did she has any money to raise the construction on the suit property on any portion. It is denied that the claim of the plaintiff is false, frivolous which she is under obligation to respect and honour the same. It is further denied that the defendant

is having sufficient proofs to show that the construction was raised from the funds of his father and joint funds and, therefore, on account of concealment of material facts the suit of the plaintiff is liable to be dismissed. It is denied that moreover as submitted above the plaintiff have no right, title or interest in the property except the ground floor and defendant is owner in respect of the entire property except the ground floor hence the suit of the plaintiff is liable to be dismissed.

It is submitted that the defence raised by the defendant is false and frivolous and the same is concocted story. It is submitted that the defendant raised by the defendant is barred by Section 4 of the Benami Transaction (Prohibition) Act, 1988. It is submitted that the present property has been gifted by the father of the plaintiff through a Registered Gift Deed dated 3rd September, 1984 out of the love and affection towards her daughter. It is further submitted that the plaintiff has raise construction over the properly form the 4 funds of her stridhan and savings and the defendant is only staying as a licensee in the property and that licence has already been terminated vide legal notice dated 3rd May, 2010.

9. On completion of pleadings, the plaintiff filed an application bearing I.A. No.17289/2012 under Order XII Rule 6 CPC for passing of the judgment on admission made by the defendant. It is stated that as per the provisions of law under Order XII Rule 6 CPC, this Court has ample power to decree the suit of the plaintiff, the Court may at any stage of the suit either on the application or its own motion without determination of any other question between the

parties make such order or give such judgment as it may think fit having regard to such admission.

10. It is apparent that the said defence taken by the defendant is barred by Section 4 of the Benami Transactions (Prohibition) Act, 1988. The operative part of the law reads as under :

“4. Prohibition of the right to recover property held benami –

(1) ...

(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.”

11. In the case of ***Peeyush Aggarwal vs. Sanjeev Bhavnani*** 2014 (140) DRJ 511, it was observed that:

“27. The defendant as Managing Director of VIL cannot be said to have been standing in a fiduciary capacity to the plaintiff who was the Chairman of the said company and could at best be said to be standing in a fiduciary capacity to the company i.e. VIL. Similarly, I am unable to see as to how the defendant can be said to be a trustee of the plaintiff. I may notice that the bar / prohibition of the Benami Act is being avoided in all cases where the claim or the defence is clearly hit by the said legislation merely by paying lip service and pleading the opposite party to be the trustee or standing in a fiduciary capacity. Putting such claim or defences merely with the said plea to trial tantamounts to permitting the so called “Benami owner” to be harassed by litigation at the instance of the person claiming to be the “real owner”; litigation cannot be

permitted to be used as a tool of oppression, often forcing the “Benami owner” though having a valid defence of the Benami Act, for the reason of the property coming under cloud owing to the mere pendency of litigation and he being thus deprived from beneficial use thereof, to settle with the real owner.

28. It cannot be lost sight of that Section 81, 82 and 94 of the Indian Trusts Act, 1882 which have been repealed by the Benami Act expressly provided for the person in whose name the property is transferred for consideration provided by another, to be holding the said property for the benefit of the said another. Thus, the mere factum of payment of consideration does not create a trust as was the case earlier.

29. Earlier also in *Anil Bhasin Vs. Vijay Kumar Bhasin* 102 (2003) DLT 932, the bar of the Benami Act was sought to be defeated by pleading the son to be standing in a fiduciary capacity and as a trustee of the mother. However, it was held; i) that the repeal of Sections 81 and 82 of the Trusts Act by the Benami Act itself establishes that the intention of the legislature was not to allow the concept of trustee or fiduciary capacity of the pre-1988 period to continue to remain as an available defence as otherwise the repeal of Sections 81 and 82 would have no meaning and permit avoidance of the prohibition contained in the Benami Act and render the provisions thereof irrelevant; ii) it is only the purchase of property in the name of wife or unmarried daughter which is exempted from the prohibition and even purchase in the name of son or married daughter has not been given that status; iii) once the legislature has expressly conferred exemption in the name of the wife or unmarried daughter, it is to be deemed that such restricted exclusion cannot be extended or made applicable to others; iv) that in view of the repealed Sections 81 and 82, there cannot be the same concept of trusteeship or fiduciary capacity as was the position prior to 1988; and v) that after the repeal of Sections 81 and 82, it is only those

instances of fiduciary capacity, such as property of a partnership firm held in the name of one of the partners or property which Mr. X wanted Mr. Y to buy in the name of Mr. X but in violation of that instruction, Mr. Y buying the property in his own name can Y be said to be standing in a fiduciary capacity and as a trustee of X, that the exemption under Section 4(3)(b) of the Benami Act would apply.

30. I find the aforesaid view to have been followed in D.N. Kalia Vs. R.N. Kalia 178 (2011) DLT 294 where also, the defence of the plaintiff being only the Benami owner and holding the property in trust for the defendant and other family members, was held to be not tenable in view of the Benami Act and the exception contained in Section 4(3)(b) held to be not available.

31. I yet further find another Single Judge in Pushpa Kanwar Vs. Urmil Wadhawan MANU/DE/2993/2009 to have also followed the dicta aforesaid in Anil Bhasin and held that upon repeal by the Benami Act of Sections 81 and 82 of the Trusts Act, the concept of trusteeship or relationship of fiduciary capacity as understood in trust law or that of the transferee being deemed to be holding for the benefit of the person buying or providing the consideration as was the position prior to the Benami Act, does not exist. It was further held that the term fiduciary is not restricted to technical or express trusts but includes even such offices or relations as those of an attorney at law, a guardian, executor, broker, a director of a Corporation, and a public officer. Finding no such office or relationship in the facts of that case, mere plea of the Benami holding the property in a fiduciary capacity was held to be insufficient to escape the bar of the Benami Act.

32. As far as reliance by the counsel for the plaintiff on Canbank supra is concerned, the Court found that case to be concerned by Section 88 of the Trusts Act and held the list of persons viz. trustee, executor, partner, agent, director of a company, legal advisor to be not exhaustive

and held the shares in that case to have been acquired as an agent; the facts of that case also found the “benami owner” to be not claiming any right, title or interest therein. The said judgment cannot be said to be inconsistent with the view taken by this Court in Anil Bhasin supra and followed in D.N. Kalia and Pushpa Kanwar supra.

33. Though the counsel for the plaintiff has not referred but mention may also be made of Babita Pal Vs. Jagdish Bansal 196 (2013) DLT 792 (DB) where a plea for summary dismissal of the suit for the reason of the claim therein being barred by the Benami Act was rejected for the reason that the real import of the transaction and the relationship between the parties could be determined only after trial. However, that case fell in the category as discussed in Anil Bhasin supra of Y purchasing property in his own name contrary to the instruction of X who had provided the sale consideration to purchase the properties in the name of X. Thus, the said dicta of the Division Bench also does not come in the way of holding the claim in the present case to be barred by the Benami Act.

34. Similarly, the facts of the recent judgment of the Supreme Court in Marcel Martins Vs. M. Printer (2012) 5 SCC 342 were entirely different. There in the facts, the relationship of trust was found to exist. Such is not the case here. Moreover, the Supreme Court in the said judgment held that in determining whether a relationship is based on trust or confidence relevant to determining whether they stand in a fiduciary capacity, the court shall have to take into consideration the factual context in which the question arises for it is only in the factual backdrop that the existence of a fiduciary relationship can be deduced in a given case.

35. In the present case, the pleas of the plaintiff fall in the genre of “fantastic”. The prevalent market practice is of giving stock options to the employees and not of „parking” the stocks with the employees.

36. Some other obvious inconsistencies going to the root of the matter are also found in the case of the plaintiff. Though the plaintiff has approached this Court with himself being the beneficial owner of the shares, with the shares in the name of Omkam and BGR being transferred in the name of the defendant for consideration paid by the plaintiff and on which plea it should be the plaintiff who should have been entitled to the dividend with respect to the said shares, but the plea of the plaintiff in para 17 of the plaint is of the defendant having agreed to deposit the said dividend with VIL and in pursuance to the said agreement having deposited Rs.5,50,000/- out of the dividend received of Rs.23,97,863/- with VIL. Even if the plaintiff were to be a majority shareholder of VIL, VIL remains a distinct legal entity from its shareholders and the question of the monies owed to the shareholders being paid to the company without any satisfactory explanation therefor, and which has not been given, does not arise. Similar is the plea of the plaintiff of the loan admittedly repayable by VIL to the defendant being squared off against the balance dividend which as per the case built by the plaintiff should have been repayable by the defendant to the plaintiff. The squaring off is sought to be done with VIL paying Rs.16,50,000/- to the defendant as against Rs.16,02,137/- which was due. The same is also contrary to all canons of accounting practices particularly corporate accounting which is subject matter of internal and external audits. What follows from such inconsistencies is that the present suit is an abuse of the process of the Court to ward off the claim of the defendant for recovery of the balance loan amount admittedly advanced by the defendant to VIL.

37. The Supreme Court in T. Arvindandom Vs. T.V. Satyapal AIR 1977 SC 2421, Liverpool & London S.P. & I Association Ltd. Vs. M.V. Sea Success I (2004) 9 SCC 512 and ITC Ltd. Vs. Debts Recovery Appellate Tribunal (1998) 2 SCC 70 has held that litigation should not be allowed to be used as a tool of oppression and the Courts should

exercise jurisdiction to dismiss a case which has no chance of success and to abort it at the earliest so that the resources of the Courts can be used for deserving cases. The present is one such case.

38. I therefore dismiss the present suit as not disclosing a cause of action and / or being thoroughly vexatious and frivolous and in abuse of the process of this Court. Costs of Rs.20,000/- are also imposed on the plaintiff payable to the defendant. Decree sheet be drawn up.”

12. In the case of ***Ramesh Advani vs. Hiro Advani & Anr.*** being CS(OS) 1828/2012, decided on 16th July, 2013, this Court in paras 8 to 16 and paras 19 to 38 observed as under:

“8. I will first take up the aspect of the maintainability of the suit in view of the bar of the Benami Act in as much as if the suit were to be found to be not maintainable, the question of adjudicating the applications aforesaid would not arise.

9. The claim of the plaintiff in the suit, in a nutshell, is that the property aforesaid was acquired and built by the father of the parties from his self acquired funds but in the name of the defendant no.1 and the family then was a Joint Hindu Family.

10. The Benami Act was enacted to prohibit benami transactions and the right to recover property held benami and for matters connected therewith or incidental thereto. Section 2(a) thereof defines benami transaction as a transaction in which property is transferred to one person for a consideration paid or provided by another person. Section 4 thereof bars any 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 and at the instance of a person claiming to be the real owner of such property.

11. In the light of the aforesaid provisions, it was enquired from the counsel for the plaintiff whether not the claim of the plaintiff, of the subject property being transferred by the DDA to the name of the defendant no.1 for consideration paid or provided by the father and of the plaintiff as such being the real owner of 1/3 rd share in the property by inheritance, against the defendant no.1 in whose name the property is held, is hit by the bar of the Benami Act and if that were to be the case of the plaintiff whether not, even if there was to be any truth therein, the said property is liable to acquisition under Section 5 of the said Act.

12. The counsel for the plaintiff has contended (a) that the case of the plaintiff is covered by the exception provided in Section 4(3) of the Benami Act; and, (b) reliance is placed on Marcel Martins Vs. M. Printer (2012) 5 SCC 342.

13. Section 4(3) of the Benami Act makes the bar contained in Section 4 (1) & (2) inapplicable. "(3) (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.

14. Though the counsel for the plaintiff has not elaborated but it is obvious that for the plaintiff to fall in the exception provided in clause (a) supra, the plaintiff has to plead/prove/establish:- (I).the existence of a Hindu undivided family; (II). that the defendant no.1 and in whose name the property is held is a coparcener of the said Hindu undivided family; and, (III). that the property is held by the defendant no.1 for the benefit of the coparceners in the family.

15. Similarly, for the claim of the plaintiff to fall in the exception provided in clause (b) supra (and invoking which the plea of benami was held to be not applicable, in Marcel Martins supra) the plaintiff has to plead/prove/establish:-

- (i). that the defendant no.1 in whose name the property is held is a trustee of or was otherwise standing in a fiduciary capacity earlier of / towards the father and now of / towards the plaintiff and the defendant no.2; and,
- (ii). the property was held by the defendant no.1 earlier for the benefit of the father and now for the benefit of the plaintiff and the defendant no.2 for whom he is the trustee or towards whom he stands in such fiduciary capacity.

16. The bar imposed by the Benami Act is invariably found to be got rid of by pleading a case to be under either of the aforesaid two exceptions. The question which arises for consideration is, whether such a plea has been made by the plaintiff and even if be so, whether a mere plea of the case falling in exceptions aforesaid is enough for the case to be set down for trial and which, experience of life shows generally drags on for several years, putting a clog on the property and thereby depriving the recorded owner thereof from exercising rights with respect thereto and often compelling him/her to settle with the claimants, negating the enactment of Benami Act and allowing litigation before the Courts to be used as a tool of coercion or oppression.

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19 The exception in Section 4(3)(a) to the applicability of the Benami Act uses the term „Hindu Undivided Family“ as well as „coparcener“. The Supreme Court in State of Maharashtra Vs. Narayan Rao (1985) 2 SCC 321 has held that a joint family may consist of female members also but

a Hindu coparcenary is however a narrower body than the joint family; only male members who acquire by birth interest in the joint or coparcenary property can be members of the coparcenary or coparceners. The exception contained in 4(3)(a) of the Act restricts its benefit only to property held by a "coparcener in a Hindu Undivided Family" as opposed to any "Member" of such family. It is so because such coparceners are recognized by law to jointly by birth inherit rights in the joint property of the family and in the event such property stands in one of their names for the benefit of others, the Benami Act is declared to not come in the way. Such a principle however cannot be extended to all / any members of such family who do not have any vested right in the property and to whom such property devolves in their independent / separate capacity by way of intestate succession under the Hindu Succession Act. The pleading of the plaintiff is of a joint family of which the mother and sister of the parties were also members and not of coparcenary. Section 4(3)(a) though uses the word Hindu Undivided Family, but being in the nature of an exception to the general rule of prohibition of the right to recover property held benami, has to be construed strictly so as not to make the prohibition redundant. From the use of the word coparcenary in conjunction with Hindu Undivided Family in Section 4(3)(a), the reference to Hindu Undivided Family has to be read as a reference to a coparcenary and which as aforesaid as held by the Supreme Court is a narrower body than the joint family. Thus the plea in the plaint of the existence of a joint Hindu family and in the absence of any plea of coparcenary cannot be read as a plea of exception carved out in Section 4(3)(a).

20. Though it is pleaded that the family at the time of acquisition of the plot was a joint Hindu family but it is nowhere pleaded that the plot was acquired or construction raised thereon from the funds of the family. Rather the plea is of the plot having been acquired and the construction

being raised from the self acquired funds of the father and the father exercising the rights over the property as owner and the plaintiff and the two defendants becoming the 1/3rd owners each of the property on the intestate demise of their father and mother and being their only class I heirs under the Hindu Succession Act.

21. Mulla's commentary on Hindu Law, 18th Edition under para 214 thereof explains the genesis of coparcenary as under:- A coparcenary is created in the following manner: A Hindu male A, who has inherited no property at all from his father, grandfather, or great-grandfather, acquires property by his own exertions. A has a son B, B does not take any vested interest in the self-acquired property of A during A's lifetime, but on A's death, he inherits the self-acquired property of A. If B has a son C, C takes a vested interest in the property by reason of his birth, and the property inherited by B from his father A becomes ancestral property in his (B's) hands, and B and C are coparceners as regards the property. If B and C continue joint, and a son D is born to C, he enters the coparcenary by the mere fact of his birth. Moreover, if a son E is subsequently born to D, he too becomes a coparcener.

22. The Supreme Court in Makhan Singh Vs. Kulwant Singh (2007) 10 SCC 602 held that there is no presumption of a property, being joint family property, only on account of existence of a joint Hindu family and the person who asserts so has to prove that there was a nucleus with which joint family property could be acquired. Thus from the mere plea of existence of a joint Hindu family at the time of acquisition of the plot and construction thereon and from the absence of any plea of a nucleus and rather the assertion of the property having been acquired by the father from his self acquired funds, it has but to be held that there is no plea in the plaint of the property at the time of acquisition / construction being of a coparcenary or of the

defendant no.1 holding the same for the benefit of coparceners in the family.

23. Thought the Hindu Succession Act has been amended w.e.f. 2005 making females also coparceners but the father of the parties is stated to have died much prior to the said amendment, in the year 1976 and as per the law then applicable the mother of the parties and the defendant no.2 being the sister would not have inherited any rights in the property and the share of the father in the property would have devolved on the plaintiff and defendant no.1 by survivorship. However the pleading is of the property on the demise of the father being inherited by all his class I heirs i.e. including the mother and the sister and which also is a clear indication of absence of any coparcenery or the property being of any coparcenary.

24. The Supreme Court in Mayor (H.K.) Vs. Vessel M.V. Fortune Express (2006) 3 SCC 100 and recently followed by the Division Bench of this Court Santosh Malik Vs. Maharaj Krishan MANU/DE/0448/2012 while upholding the order of rejection of the plaint on the ground of the claim therein being barred by the Benami Act, held that the plaint has to be read meaningfully and not formally and it is the duty of the Court to see whether a real cause of action has been made out in the plaint or something illusory has been projected and that after so reading, vexatious plaints have to be thrown out. In fact during the course of hearing it was repeatedly asked from the counsel for the plaintiff whether there was anything else to show that there was a coparcenary in fact in existence at any time; whether any Income Tax returns thereof were filed; whether there was any other joint property of the parties earlier or now. The counsel candidly admitted that there is none.

25. Merely because a person at the time of acquisition of the property may be residing with his parents and siblings and merely because the sale consideration has flown from the parents or from some other siblings is not

enough to bring a case within the exception aforesaid to the prohibition contained in Benami Act. It cannot be lost sight of that benami transactions prevalent earlier, generally were between family members and hardly ever in the name of absolute strangers, and if pleas as in the present case were to be held to be falling within the exception clause, would negate the legislative intent of prohibiting actions to enforce rights in respect of property held benami.

26. I have considered whether the long admitted possession at least from the year 1967 till 2006-2007 i.e. of nearly 40 years of plaintiff of the premises can be said to raise any presumption of jointness or of the intent but I am unable to hold so. Such possession has to be seen in the context of Indian conditions where siblings especially brothers living together, even after their marriages, in a house belonging to one of them, is not uncommon.

27. As far exception (b) supra is concerned, it was imperative for the plaintiff to plead a relationship of trust between the defendant no.1 and earlier the father and/or that of defendant no.1 was standing in a fiduciary capacity and holding the property for the benefit of the father. There are no such pleas in the plaint. The plaintiff has merely relied on Sri Marcel Martins. The Supreme Court in the said judgment has held that in determining whether a relationship is based on trust or confidence, relevant to determining whether they stand in a fiduciary capacity, the Court shall have to take into consideration the factual context in which the question arises for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case.

28. Having said that, it becomes important to see the factual context in which the said observations were made. In that case it was not in dispute that the title to the property even though as a tenant originally vested in the common ancestor of the parties who had died intestate and

was transferred in the name of one of the heirs only at the instance of the Municipal Corporation to avoid procedural complications and all the legal heirs had made contributions towards the sale consideration for conversion of the tenancy rights into ownership rights and it was in these facts that the Supreme Court held the plea of benami to be not available and held the case to be falling in the exception. The present is however not a case of parties acquiring title to the property from a common ancestor; rather the case is that the common ancestor from his self acquired funds had acquired the subject property in the name of the defendant no.1. The said plea, even if were to be ultimately proved, is squarely in the teeth of the prohibition in the Benami Act.

29. I would be failing in my duty if do not refer to the Division Bench dicta in Manjeet Singh Anand Vs. Sarabjit Singh Anand MANU/DE/1205/2009 where rejection of the plaint on the ground of claim therein being barred by the Benami Act was denied on the existence in the plaint of the plea of existence of a joint family and which was held to imply Hindu Undivided Family, observing that though the case of the plaintiff therein was weak and not likely to succeed but holding the same to be no ground for ousting the plaint under Order VII Rule 11 of the CPC. However in that case there were averments in the plaint of the property being held for the benefit of coparceners in the family and the defendant holding the property as a trustee for the benefit of all the family members and which as aforesaid are lacking in the present case. I therefore do not consider myself bound by the said judgment. Mention in this regard may also be made of another Division Bench of this Court in Babita Pal Vs. Jagdish Bansal 196 (2013) DLT 792 where also a plea for summary dismissal of the suit for reason of the claim therein being barred by the Benami Act was rejected for the reason that the real import of the transaction and the relation between the parties could be determined only after trial. However, I do not consider

myself bound thereby also for the reason discussed in detail in my recent pronouncement dated 04.07.2013 in CS(OS) No.1026/2010 titled Peeyush Aggarwal Vs. Sanjeev Bhavnani and for which reason it is not deemed necessary to burden this judgment therewith.

30. That brings me to the only document in this regard filed by the defendant no.1 and qua which application aforesaid has also been filed by the plaintiff for examination of the signatures by this Court and/or for reference of the signatures to an expert. The counsel for the plaintiff in this regard has also relied on paras 36 to 39 of Ajit Savant Majagavi Vs. State of Karnataka AIR 1997 SC 3255.

31. In the said affidavit purportedly of the defendant no.1, the defendant no.1 has deposed that he is a member of the Joint Hindu Family headed by the father; that the father had purchased the plot and constructed on the same in his name; that the expenses incurred on the house were being borne by and income therefrom being also received by the father as head of the joint family.

32. The question which arises is whether the said affidavit would take the suit away from the clutches / prohibition of the Benami Act.

33. I am unable to see how. If the same were to be permitted, it would amount to the Courts permitting the Benami Act to be defeated merely by the real owners obtaining execution of such documents from the benami owners; rather the said affidavit is an unequivocal admission of the property being benami and rights wherein cannot be enforced by the plaintiff claiming to be the true owner of a share in the property by inheritance from the father. The said affidavit nowhere advances the case of the existence of the coparcenary of which the plaintiff and the defendant no.1 can be said to be coparceners.

34. Even otherwise, without any special circumstances and which are not pleaded, there cannot be any question of a grown up son being a trustee of the father or standing in a fiduciary capacity qua the father.

35. Thus whichever way one looks at, the claim in the suit is barred by the Benami Act.

36. Faced therewith the counsel for the plaintiff had contended that the plaintiff has been in possession of the first floor and even if not having any rights in the property, cannot be dispossessed therefrom without due process of law.

37. However the report as aforesaid of the commission issued at the instance of the plaintiff is of the first floor though containing the belongings of the plaintiff being not in use for the last several years. The Commissioner, as directed, has also taken photographs and a perusal whereof also supports the said report. In any case no objections against the said report have been filed. Moreover, once it is held that the plaintiff has no right in the property and was living therein as a licensee of the defendant no.1 and once it is found that the plaintiff on the date of institution of the suit was not living in the property, mere finding of the goods and articles belonging to the plaintiff in the said premises would not entitle the plaintiff to be put back into possession. Reference in this regard may be made to Section 65 of the Indian Easement Act, 1882 which provides the remedy of dispossessed licensee as for compensation only and not for repossession. I have had an occasion to discuss this aspect in detail in a recent judgment in Keventer Agro Limited Vs. Kalyan Vyapar Pvt. Ltd. MANU/DE/1479/2013 and need is thus not felt to reiterate the same here.

38. The suit is accordingly dismissed as barred by the provisions of the Benami Act. Resultantly all pending

applications are also dismissed; however in the circumstances no costs. Decree sheet be drawn up.”

13. In the case of ***P.E. Lyall vs. Balwant Singh***, 187 (2012) DLT 164, the Court held as under :

“Though, the impugned judgment of the trial Court is a detailed judgment running into 26 pages and deciding all the issues in the two suits, I need not go into the details on any of these aspects inasmuch as the only issue which is required to be determined in this appeal, and as argued before me, was with respect to the plea of benami i.e the appellant claimed that respondent/plaintiff was not a real owner of the property because the funds for the purchase of property were infact given by the father of the parties late Sh. Jivan Singh. Since I am not required to go into the merits of the matter, I am not going into the issue on merits as to whether really the respondent is the actual owner as contended by him or he was only a benamidar, as argued by the appellant. The appellant before the trial Court had tried to show that the respondent had no earnings and was of a very young age having just taken employment, though, on this very basis it cannot be said that automatically the property will become benami inasmuch as it is possible that the father can be said to have gifted the moneys to the respondent/plaintiff and therefore the property was purchased in the name of respondent/plaintiff. A leading judgment laying down the indicias for deciding whether property held benami or not is the judgment of the Supreme Court in the case of Jaydayal Poddar v. Smt. Bibi Hazara and Ors. AIR 1974 SC 171 and which provided for five indicias to decide the benami ownership of the property. As to who provided the funds/source of money is only one (and not the sole) indicia, another indicia being the motive for giving the transaction a benami colour, and which if does not exist the property will not be benami even if funds are provided by a person other than the benami owner. Therefore, on merits there could have been

something to be said in favour of either the appellant or the respondent qua the issue of benami nature of property. Of course I must hasten to add that the trial Court has held that no document has been proved by the appellant/defendant No.1 showing giving of the funds from the retirement benefits of the father for purchase of the property in question.

9. Though, the respondent/plaintiff had raised the plea of bar of the Act before the trial Court, the trial Court has very surprisingly chosen to give findings on merits that the property is not benami, although, once the plea of bar of the defence of benami was raised by the respondent/plaintiff, the trial Court in fact ought to have instead of deciding the issue on merits, disposed of the suit on account of bar to the taking of defence in the written statement of the property benami in view of Section 4(2) of the Act.

10. In view of the above, I hold that the defences which were taken by the appellant/defendant No.1 in the two suits of the plaintiff/respondent being only a benamidar and not the real owner and that the father-late Sh. Jiven Singh was the owner of the property are hit by provision of Section 4(2) of the Act. Since the defence itself is barred, nothing else is required to be looked into.”

14. Having gone through the pleadings of the parties and the entire gamut of the case, it is admitted position that the father of the plaintiff has gifted the suit property in favour of the plaintiff. The defendant has not disputed the fact that it is a registered document. In nutshell, the case of the defendant is that there was an oral family settlement by virtue of which the suit property has come into the favour of the defendant. Admittedly, the Gift Deed is registered Gift Deed which is dated 3rd September, 1984. On the basis of the registered Gift Deed,

a conveyance deed dated 12th October, 2000 was also registered in favour of the plaintiff undisputedly. Defendant did not take any steps for cancellation of the said documents neither any proceedings are pending in this regard.

15. Defendant has not initiated any proceedings i.e. suit for implementation of an oral family settlement or any other claim raised by the defendant in the written statement. Therefore, this Court is unable to accept the contention of the defendant in view of the fact that it is a registered document in favor of the plaintiff since more than 30 years. The defendant in order to confuse the real issue involved in the matter is trying to raise the defence which is totally out of context and afterthought. In case the defendant is claiming any right in the suit property, he ought to have initiate the appropriate remedy in accordance with law. The defendant has admitted in his pleading that the father of the plaintiff was the owner of the suit property which has been admittedly gifted to the plaintiff by her father. In case any amount is spent for the purpose of construction of the suit property as alleged by the defendant, the suit for recovery of said amount ought to have been filed. There is no written document at all between the two families of any nature. On the otherhand, the gift deed is a registered document which is within the knowledge of the defendant and other family members. All the pleas raised by the defendant are dishonest defence, which has no bearing in the eyes of law. The entire defence is moonshine which are raised in order to confuse the Court. Hence, no trial in the matter is required. In the

present case, as the defendant is merely a licensee, the suit filed by the plaintiff for mandatory injunction is maintainable in view of peculiar facts and circumstances. Thus, the objection of the defendant is rejected.

16. It is a rule of law of evidence, which is also known as the "best evidence rule" that in case a written document is available, no oral evidence can be lead in that regard. In the present case, in the face of a document in writing, the pleas of the defendant cannot be permitted to be taken and are barred by the provision of Section 92 of the Evidence Act. The following cases are relevant in this regard:

(a) In ***M/s. Kusum Enterprises and Ors. Vs. Vimal Kochhar and Anr.*** 207(2014)DLT172, it was observed as follows:

"(c) Section 91 of the Indian Evidence Act, 1872 provides that where the terms of a contract have been reduced in the form of a document and where the matter is required by law to be reduced in the form of a document, no evidence shall be given in proof of the terms of such contract except the document itself; Section 92 of the Evidence Act provides that where the terms of the contract required by law to be reduced in the form of a document have been proved according to Section 91, no evidence of any oral agreement between the parties for the purpose of contradicting, varying, adding to, or subtracting from its terms shall be admitted; though there are exceptions to both the said provisions but the same have not been invoked by the respondents/plaintiffs or their counsel and the case is not found to be falling in any of the exceptions;

(d) it is also the settled position in law (See Chandrakant Shankarrao Machale Vs. Parubai Bhairu Mohite (2008) 6

SCC 745 and *S. Saktivel Vs. M. Venugopal Pillai* (2000) 7 SCC 104) that the terms of a registered document can be varied/alterd by a registered document only; in *Raval & Co. Vs. K.G. Ramachandran* (1974) 1 SCC 424 it was specifically held that any variation of rent reserved by a registered lease deed must be made by another registered instrument;"

- (b) In the case of ***Roop Kumar v. Mohan Thedani*** (2003) 6 SCC 595, it was held as follows:

"Section 91 relates to evidence of terms of contract, grants and other disposition of properties reduced to form of document. This section merely forbids proving the contents of a writing otherwise than by writing itself; it is covered by the ordinary rule of law of evidence, applicable not merely to solemn writings of the sort named but to others known some times as the "best evidence rule". It is in really declaring a doctrine of the substantive law, namely, in the case of a written contract, that of all proceedings and contemporaneous oral expressions of the thing are merged in the writing or displaced by it. (See Thaver's Preliminary Law on Evidence p. 397 and p. 398; Phipson Evidence 7th Edn. p. 546; Wigmore's Evidence p. 2406.) It has been best described by Wigmore stating that the rule is no sense a rule of evidence but a rule of substantive law. It does not exclude certain data because they are for one or another reason untrustworthy or undesirable means of evidencing some fact to be proved. It does not concern a probative mental process - the process of believing one fact on the faith of another. What the rule does is to declare that certain kinds of facts are legally ineffective in the substantive law; and this of course (like any other ruling of substantive law) results in forbidding the fact to be proved at all. But this prohibition of providing it is merely the dramatic aspect of the process of applying the rule of substantive law. When a thing is not to be proved at all the rule of prohibition does not become a rule of evidence

merely because it comes into play when the counsel offers to "prove" it or "give evidence" of it; otherwise any rule of law whatever might reduced to a rule of evidence. It would become the legitimate progeny of the law of evidence. For the purpose of specific varieties of jural effects - sale, contract etc. there are specific requirements varying according to the subject."

- (c) In ***Far East Marketing (P) Ltd. Vs. Khurana Electricals*** (in I.A. Nos. 17592/2011 and 17593/2011 in CS(OS) No. 303/2011, Decided On: 10.11.2014), this court observed that :

"13. No evidence of any oral agreement or statement can be admitted when the terms of any such contract have been reduced in the form of a document. Thus, the grounds mentioned in the application for leave to defend as defence, it is merely a moonshine defence. The said grounds have no application in law."

17. The following judgments are relevant for the purpose of considering the prayer made in the present application under Order 12 Rule 6 CPC :

- (a) In ***Rameshwar Prasad Gupta Vs. Rajinder Kumar Gupta and Ors.***, IAs 6852/2011 and 13665/2009 in CS (OS) No. 2362/2008, Decided On: 18.07.2011, it was observed that:

"The law on admission is well settled by this Court in various decisions, some of them are as under:

- (a) Umang Puri v. Lt. Col. Pramode Chandra Puri 165 (2009) DLT 245 wherein it was held that the admissions need not be made expressly in the pleadings and even on constructive admissions, the Court

can proceed to pass a decree in favour of the Plaintiff under Order 12 Rule 6, CPC.

(b) National Textile Corporation Ltd. and Anr. v. Ashval Vadera 167 (2010) DLT 602 wherein it was held that admission can be found even in the statement of parties recorded in the court and admissions may also be gleaned from vague and unspecific denials.

(c) Madan Lal Kaushik v. Shree Yog mayaji Temple and Ors. 178 (2011) DLT 398 wherein it was held that if the defense is irreconcilable rendering it impossible well nigh (almost) impossible for the Defendant to succeed, suit out to be decreed which was the objective of amendment of Code of Civil Procedure brought in 1976.”

(b) In ***Uttam Singh Duggal & Co. Ltd. vs. United Bank of India***, (2000) 7 SCC 120, it has been held as follows :

“In the objects and reasons set out while amending the said rule, it is stated that “where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled.” We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed.”

(c) In ***M/s. Payal Vision Ltd. vs. Radhika Choudhary***, JT 2012 (9) SC 214, wherein it has been held as follows :

“In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the Plaintiff-landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord Under Section 106 of the Transfer of Property Act. So long as these two aspects are not in dispute the Court can pass a decree in terms of Order XII Rule 6 of the Code of Civil Procedure.”

- (d) This Court in the case of ***Zulfiquar Ali Khan (dead) through LRs and Ors. vs. Straw Products Limited & Ors.*** 2000 (56) DRJ 590 in para 10 observed as under :

“10. This is a notorious fact that to drag the case, a person so interested often takes all sorts of false or legally untenable pleas. Legal process should not be allowed to be misused by such persons. Only such defense as give rise to clear and bona fide dispute or triable issues should be put to trial and not illusory or unnecessary or mala fide based on false or untenable pleas to delay the suit. The issues will be framed in a suit only when pleadings raise material proposition of law and/or fact which need investigation and so could be decided after trial giving parties opportunities to adduce such relevant evidence as they may think necessary and proper. Material proposition of law or fact would mean such issues which are relevant and necessarily arise for deciding the controversy involved. If a plea is not valid and tenable in law or is not relevant or necessary for deciding the controversy involved, the Court would not be bound and justified in framing issue on such unnecessary or baseless pleas, thereby causing unnecessary and avoidable inconvenience to the parties and waste of valuable court time.”

18. In view of the aforesaid reasons, it is clear that defendant has no right or interest in the suit property. It appears to the Court that the contention raised by the defendant is an afterthought and the defence raised by the defendant is moonshine. Therefore, trial in the matter is not required in view of registered titles in favour of the plaintiff for the last thirty years which are unchallenged by the defendant. On the contrary, the defendant has failed to enforce an alleged oral family settlement which is denied by the plaintiff and the materials placed on record do not give any indication to establish the pleas raised by the defendant. Therefore, a decree is liable to be passed in favour of the plaintiff and against the defendant in view of the settled law.

19. In view of the above, the suit application of the plaintiff bearing I.A. No.17289/2012 under Order XII Rule 6 CPC is allowed. Consequently, the suit of the plaintiff is decreed in terms of prayers (a) and (c) which are reproduced hereunder:

"(a) pass a decree in favour of the plaintiff and against the defendant for mandatory injunction whereby directing the defendant to remove all his belongings from the portion of the property bearing No.205, AGCR Enclave, Delhi;

(c) pass a decree of permanent injunction in favour of the plaintiff and against the defendants whereby permanent restraining the defendants for creating any third party interest in the said suit property and further permanently restraining them to part with the possession of the suit property and further permanently restraining the defendant from interfering with the peaceful possession of the plaintiff in the suit property."

Prayer (b) is not being granted in absence of any evidence. The parties are related to each other. Thus the said prayer (b) is rejected.

20. Decree be drawn accordingly. Plaintiff is entitled to costs.

21. Suit and pending applications are disposed of accordingly.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 12, 2015