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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : 1st August, 2018

Date of decision : 2nd November, 2018

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CS (OS) 1640/2014

SHAKUNTALA DEVI

..... Plaintiff

Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr. Rohan Malik and Mr. Ashish Verma, Advocates. (M:9871305530)

versus

VINOD K DAYAL & ORS.

..... Defendants

Through: Mr. Brij Bhushan Gupta, Senior Advocate with Mr. Amiet Andley, Mr. Udai Khanna and Mr. Apoorv Gupta, Advocates. (M:9811151686)

AND

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CS(OS) 2441/2014, I.As. 15281/2014, 20821/2014 & 6501/2017

MAYANK DAYAL

..... Plaintiff

Through: Mr. Brij Bhushan Gupta, Senior Advocate with Mr. Amiet Andley, Mr. Udai Khanna and Mr. Apoorv Gupta, Advocates.

versus

SHAKUNTALA DEVI & ORS

..... Defendants

Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr. Rohan Malik and Mr. Ashish Verma, Advocates.

AND

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CS(OS) 3631/2014, I.As. 23640/2014, 1003/2015 & 1004/2015

SHAKUNTALA DEVI

..... Plaintiff

Through: Mr. Sudhir Nandrajog, Senior Advocate with Mr. Rohan Malik and Mr. Ashish Verma, Advocates.

versus

MAYANK DAYAL & ORS.

..... Defendants

Through: Mr. Brij Bhushan Gupta, Senior Advocate with Mr. Amiet Andley, Mr. Udai Khanna and Mr. Apoorv Gupta, Advocates.
Ms. Shanika Singh, Proxy counsel for Mr. Kunal Sharma, Advocate for DDA. (M:9501774570)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The question that arises in these three suits is whether the daughter-in-law could be considered as trustee or a person standing in a fiduciary capacity, who is holding property for the benefit of her mother-in-law as per Section 4(3)(b) of the Prohibition of Benami Transactions (Prohibition) Act, 1988 (*hereinafter*, '*Benami Transaction Act*').

2. The three suits are summarized herein below:

A. Suit No.1640/2014

3. This suit filed by Smt. Shakuntala Devi was the first suit in point of time seeking declaration and possession as also mesne profits and injunction in respect of the property bearing No.C-216, Sarvodaya Cooperative Housing Society, Sarvodaya Enclave, New Delhi admeasuring 498 Sq. Yards (*hereinafter*, '*suit property*'). The daughter in law of the Plaintiff - Smt. Shakuntala Devi was Late Smt. Sudha Dayal, wife of Shri Vinod K. Dayal. Smt. Shakuntala Devi was married to Shri Maheshwar Dayal. They had three children i.e. Shri Vinay Dayal, Smt. Veena Aggarwal and Shri Vinod Dayal.

4. During the pendency of the suit, Smt. Shakuntala Devi has passed away and her second son and sole daughter are impleaded as her legal heirs and hence are the Plaintiffs in the present suit.

5. The case pleaded by Smt. Shakuntala Devi is that the suit property was allotted to one Shri Balbir Singh Goel, brother of Smt. Sudha Dayal. She wanted to purchase the property for herself and for the benefit of her family members. On the suggestion of Shri Balbir Singh Goel, she decided to purchase the suit property from him. Since, as per the norms of the Sarvodaya Cooperative Housing Society, the transfer of a property was only permitted amongst blood relations, it is her case that a decision was taken to purchase the plot from Shri Balbir Singh Goel in the name of her daughter in law i.e. Shri Goel's sister, Smt. Sudha Dayal. Thus, in the Sarvodaya Cooperative Housing Society the nomination of Smt. Sudha Dayal was made in respect of the suit property, pursuant to a gift deed executed by Shri Balbir Singh Goel in favour of his sister Smt. Sudha Dayal. It is the case of Smt. Shakuntala Devi that the sale consideration was to be paid to Shri Goel and same amount was to be deposited with the DDA. Thus, a joint account was opened by Smt. Shakuntala Devi with her daughter in law Smt. Sudha Dayal. To the said joint account, a sum of Rs.15,000/- was transferred by Smt. Shakuntala Devi from her own saving's account. From the said sum, a sum of Rs.14,000/- was paid to Shri Goel initially and thereafter, a further sum of Rs.5,000/- was paid. In this manner, it was the Plaintiff i.e., Smt. Shakuntala Devi who paid the entire consideration for the suit property. Upon the receipt of the consideration, Shri Goel transferred and nominated his sister in the records of the society and a perpetual sub-lease was also

executed in favour of Smt. Sudha Dayal vide document dated 3rd April, 1973 by the DDA.

6. It is, thus, claimed that in this manner the property was purchased by Smt. Shakuntala Devi in the name of her daughter in law. Thereafter, it is averred that the construction was carried out by the Plaintiff along with her husband. The family of the Plaintiff, including her younger son Shri Vinay Dayal and his family, have been living in the suit property since 1976. When Smt. Sudha Dayal fell ill, at the request of her husband Shri Vinod Dayal they were allowed to shift to the first floor of the property in 1987. In fact, Smt. Sudha Dayal passed away in January, 1987, whereafter, her husband and two minor children moved into the first floor of the suit property. In this manner, the Plaintiff claims that the property belongs to her, though it was registered in the name of her daughter in law. Due to strained relations between the older son i.e. Shri Vinod Dayal and his children with the Plaintiff, she does not wish that they live in the suit property with her. The suit is, therefore, filed seeking the following reliefs.

“a. Pass a decree of declaration in favour of the plaintiff and against the defendants thereby declaring the plaintiff to be the sole and exclusive owner of the suit property no.C-216, Sarvodaya Cooperative Housing Society, Sarvodaya Enclave, New Delhi measuring 498 sq.yards.

b. Pass a decree of possession in favour of the plaintiff and against the defendants in respect of the first floor of the suit property as shown in red color in the site plan.

c. Pass a decree at the rate of Rs.50,000/- p.m. from 1st May 2014 towards the use and occupation charges of the first floor of the suit property till its handing over the possession of the suit property .

d. Pass a decree of permanent injunction in favour of the plaintiff and against the defendants thereby restraining them to sell, transfer or create third party interest in respect of the suit property.”

7. The suit was initially filed in this Court and then transferred to the District Court. An amendment was then sought to increase the valuation of the suit. Same was allowed vide order dated 22nd September, 2016. I.A. 10611/2014 was filed seeking interim injunction.

8. The Defendants filed an application being I.A. 20927/2014 under Order VII Rule 11 CPC, seeking rejection of the Plaint. The broad grounds taken are—

- i) That the suit property was transferred by Smt. Sudha Dayal's brother in her favour out of the natural love and affection for his sister.
- ii) That the conveyance deed was executed in 1973 and challenge to the same is not maintainable in 2014. Thus, the relief sought is barred by limitation.
- iii) The property, in fact, stands mutated in favour of the Smt. Sudha Dayal's son Mr. Mayank Dayal- Defendant No.2 in 1998. The property has already been converted from leasehold to freehold and all the payments for the same have been made by Mr. Mayank Dayal.
- iv) The suit is barred by Section 4 of the Benami Transaction Act.
- v) That Smt. Sudha Dayal was never a trustee for her mother in law, nor any fiduciary relationship existed between them in respect of the suit property. Even if the same existed, the relationship came to an end upon the death of Smt. Sudha Dayal.

vi) That there is no cause of action in the present suit, and the same is liable to be dismissed.

B. Suit No. 2441/2014

9. In this suit, the son of Smt. Sudha Dayal, Mr. Mayank Dayal seeks possession in respect of ground floor of the property, mesne profits from his grant mother Smt. Shakuntla Devi and family of his uncle Shri Vinay Dayal. Grounds for seeking possession are that the property was transferred by his uncle i.e. Shri Balbir Singh Goel (mama) in favour of his mother Smt. Sudha Dayal out of natural love and affection. A perpetual sale deed was executed in her favour by the DDA in the year 1973. The ground floor was constructed by his father which was completed in 1976 and his parents had permitted his grandmother, grandfather and the uncle/his family to move into the ground floor of the suit property. The construction on the first floor was completed in 1987 and the Plaintiff and his family moved into the first floor. He pleads that the electricity and water meter stood in the name of his mother. His father and sister relinquished their rights in his favour and the property was mutated in his name by the DDA and the MCD. All the liabilities such as tax, lease money, etc. are being borne by him including the conversion charges from leasehold to freehold.

10. He further submits that his uncle applied for sanction of additional meter for the ground floor at which time he had in fact, given a no objection certificate, which itself establishes that the Plaintiff was the owner of the property. When he received the summons in Suit No.1, efforts were made to resolve the disputes. However, since no resolution was possible, this suit has been filed. The Plaintiff has moved an application under Order XII Rule 6 CPC in the present suit seeking a decree on admission. The ground

pleaded in the application under Order XII Rule 6 CPC is that the conduct of the Defendants shows that they admit the ownership of the Plaintiff. Further, in the written statement, the Defendant admits that the property was purchased in the name of Smt. Sudha Dayal. Since most of the facts are admitted and the only question is about interpretation of the Benami Transaction Act, the Plaintiff submits that the issues do not require any formal evidence or trial. In the said application, I.A. No.6501/2017, the following prayer is made.

“(a) Pass a Decree of Possession in respect of the Ground Floor of the property bearing no. C-216, Sarvodaya Cooperative Housing Society, Sarvodaya Enclave, New Delhi under the provisions of Order 12 Rule 6 CPC;

Or in the alternative, treat the issue no. 4 framed vide order dated 14.10.2015 as a Preliminary Issue under Order 14 rule 2 of the Code of Civil Procedure 1905 and decide the same ; and”

11. Issue no.4 framed in the suit on 14th October, 2015, reads as under:

“4. Whether the defendant No. 1 is the actual owner of the property which was held by Smt. Sudha Dayal as trustee of defendant No. 1? OPD”

12. The defendant Smt. Shakuntala Devi has also moved an application under Order XXXIX Rule 4 CPC being I.A. 20821/2014. Arguments have been heard in the said applications.

C. Suit No.3631/2014

13. This is a suit for declaration and cancellation of documents filed by Smt. Shakuntala Devi seeking declaration that the relinquishment deed, mutation and conveyance deed executed in favour of Smt. Sudha Dayal and

Mr. Mayank Dayal are null and void. Reliefs prayed for in the suit are as under:

“1. Pass a decree of declaration in favor of the plaintiff and against the defendants thereby declaring
a. the Relinquishment Deed dated 03.11.1998,
b. Mutation in the records of defendant no.4 vide letter no. F-15(185)78/GES/CS/DDA/9352 dated 03.12.1998 and
c. Conveyance Deed dated 10/06/2014 registered with the sub-Registrar VII as document no. 9071 in Book No.1 Vol No. 5203 on pages 156-158 executed in favor of defendant no.1,
Null and void and ineffective and consequently directed to be cancelled.”

14. The averments made in the suit are similar to the ones made in suit no.1. Since it was disclosed to the Plaintiff that there was a lease deed executed in favour of Smt. Sudha Dayal, the mutation in favour of Shri Mayank Dayal and conveyance deed in favour of Shri Mayank Dayal after the property was converted from leasehold to freehold, the prayers above, are sought.

15. The brief case of the Plaintiff is that though the property was registered in the name of her daughter in law Smt. Sudha Dayal, the funds for the same were given by the Plaintiff and Smt. Sudha Dayal was holding it as trustee on her behalf. The Defendants have filed an application under Order VII Rule 11 CPC.

16. Various applications are pending in the three suits including applications under Order XXXIX Rules 1 & 2 CPC, Order XXXIX Rule 4 CPC, Order XII Rule 6 and Order VII Rule 11 CPC. Arguments have been addressed in all the applications. Senior counsels for both sides have argued

the matter on the question of law in respect of the Benami Transaction Act, being the only question, as most facts are not disputes between the parties. Since the finding on Issue no.4 extracted above in respect of the fiduciary relationship would result in a finality insofar as most of the reliefs prayed in the 3 suits are concerned, submissions have been made by counsels finally on the said issue.

17. Issue no.4 framed in the suit No. 2441/2014 is, thus, treated as a preliminary issue. The pleadings in all the applications have been completed. The decision in the application under Order VII Rule 11 CPC would be the first step in leading to a conclusion. In the said suit, Smt. Shakuntla Dayal had been permitted to file the evidence by way of affidavit and was also partly cross-examined. Unfortunately, before her cross-examination could be completed, she had passed away at the ripe age of 95 years. However, the documents that Smt. Shakuntala Devi submitted with her affidavit in evidence can still be considered, inasmuch as, the same are in original and they establish a large number of facts.

18. A brief perusal of the facts narrated above reveals that the only issue in all three suits is the question as to whether Smt. Sudha Dayal was holding the property in trust for or on behalf of her mother in law Smt. Shakuntla Devi and whether she was a person standing in the fiduciary capacity. Smt. Shakuntla Devi and Smt. Sudha Dayal are no more. So, the actual trustee and the beneficiary - both have passed away. Partial evidence of Smt. Shakuntla Devi is on record.

19. The following facts are admitted between the parties:

- a) That the property belonged to Shri Balbir Singh Goel;

- b) That Smt. Sudha Dayal was the real sister of Shri Balbir Singh Goel;
 - c) That the property was transferred in the name of Smt. Sudha Dayal;
 - d) That there was a joint bank account in the names of Smt. Shakuntla Devi and Smt. Sudha Dayal;
 - e) That the said property continued to remain in the name of Smt. Sudha Dayal and a conveyance deed was executed by DDA and MCD in the name of Shri Mayank Dayal in 1998.
 - f) That the mutation of the property was carried out in the name of Smt. Sudha Dayal;
 - g) That the property was thereafter converted from leasehold to free hold in 2010;
 - h) That the conveyance deed has been executed by the DDA in favour of Mr. Mayank Dayal, son of Smt. Sudha Dayal in 2014;
20. Apart from the above facts, there are certain further facts that can be culled out from the pleadings of the parties, which are as under:
- a) That the family of Smt. Sudha Dayal i.e. Mr. Vinod Dayal and Mr. Mayank Dayal and their daughter were living in Rajpur Road, on rent.
 - b) That Smt. Shakuntala Devi, her husband Mr. Maheshwar Dayal, and Mr. Vinay Dayal, the younger son moved into the ground floor of the property in 1976, almost immediately after the purchase from Shri Balbir Singh Goel.

- c) That in mid of 1980s i.e. 1985-87, Smt. Sudha Dayal was diagnosed with cancer and the first floor of the property was constructed.
- d) After the demise of Smt. Sudha Dayal in January, 1987, Mr. Vinod Dayal and his two children moved into the first floor of the suit property.
- e) That all along there has been no disruption in the peaceful enjoyment of the property by either of the families.
- f) That the first suit came to be filed by Smt. Shakuntla Devi when there was discord in the family and that she alleged that Smt. Sudha Dayal's family i.e. Mr. Vinod Dayal and his son had raised various disputes and had sought to evict her from the house.
- g) That Mr. Mayank Dayal got the conveyance deed executed in his favour after filing of the first suit. Second suit by Mr. Mayank Dayal is filed seeking possession and *mesne profits*. Third suit is thereafter filed by Smt. Shakuntala Devi seeking cancellation of all the documents which vested title in Mr. Mayank Dayal.

21. In this background, the fundamental question that arises is as to whether the property was actually purchased by Smt. Shakuntala Devi in the name of her daughter in law Smt. Sudha Dayal. Smt. Shakuntala Devi has placed on record a large number of original documents, in support of the plea that the property was actually purchased by her. The documents, which are placed on record by Smt Shakuntala Devi in CS(OS) 2441/2014, are described hereinafter:

- **Ex. D1W1/1** – Savings Bank pass book, Bank of India Ltd;

- **Ex. D1W1/2** – Gift deed in favour of Smt. Shakuntala Devi from her mother Smt. Tara Devi for silver ingot;
- **Ex. D1W1/3** – Certificate issued by Smt. Tara Devi certifying that she had gifted another silver ingot and certain shares to her daughter, Smt. Shakuntala Devi;
- **Ex. D1W1/4** – Cheque Book Foil for the period from January, 1980 to December, 1984 of account no.6648 with Bank of India;
- **Ex. D1W1/5** - Cheque Book Foil for the period from December, 1980 to March, 1986 of account no.6648 with Bank of India;
- **Ex. D1W1/6** - Cheque Book Foil for the period from December, 1969 to November, 1972 of account no.6648 with Bank of India;
- **Ex. D1W1/7** – Pay-in slips for the period from October, 1972 to January, 1973 of account no.6648 with Bank of India;
- **Ex.D1W1/8** - Pay-in slips for the period from February, 1973 to November, 1974 of account no.6648 with Bank of India;
- **Ex.D1W1/9** - Pay-in slips for the period from December, 1974 to February, 1976 of account no.6648 with Bank of India;
- **Ex.D1W1/10** - Pay-in slips for the period from January, 1984 to December, 1984 of account no.6648 with Bank of India;
- **Ex.D1W1/11** - Pay-in slips for the period from January, 1985 to March, 1986 of account no.6648 with Bank of India;
- **Ex. D1W1/12** – Savings Bank pass book, Bank of India Ltd;
- **Ex. DW1/13** – Letter dated 28th November, 1972 from Shri Balbir Singh Goel to the Land and Housing Department, requesting transfer of the suit property in the name of his sister Smt. Sudha Dayal;

- **Ex.D1W1/14** - Cheque Book Foil for the period from January, 1974 to May, 1974 of account no.9407 with Bank of India;
- **Ex.D1W1/15** - Cheque Book Foil for the period from June, 1974 to August, 1974 of account no.9407 with Bank of India;
- **Ex.D1W1/16** - Cheque Book Foil for the period from August, 1974 to October, 1974 of account no.9407 with Bank of India;
- **Ex.D1W1/17** - Cheque Book Foil for the period from October, 1985 to January, 1986 of account no.9407 with Bank of India;
- **Ex.D1W1/18** - Cheque Book Foil for the period from February, 1986 to February, 1989 of account no.9407 with Bank of India;
- **Ex.D1W1/19** - Pay-in slips for the period from November, 1972 to January, 1974 of account no.9407 with Bank of India;
- **Ex.D1W1/20** - Pay-in slips for the period from April, 1979 to March, 1986 of account no.9407 with Bank of India;
- **Ex.D1W1/21** - Pay-in slips for the period from August, 1986 of account no.9407 with Bank of India;
- **Ex. D1W1/22** – Letter written by Shri Vinod Dayal to Shri Balbir Singh Goel;
- **Ex.D1W1/23** – Demand by DDA of Rs.1,249.17 towards the non-construction charges upon Shri Balbir Singh Goel vide letter dated 14th December, 1972;
- **Ex.D1W1/24** – Letter written by DDA dated 19th September, 1972, to Shri Balbir Singh Goel asking him to show cause as to why the lease in his favour should not be cancelled on account of his lapse of non-construction over the plot.

- **Ex.D1W1/25** – Envelope containing letter dated 19th September, 1972;
- **Ex. D1W1/26** – letter written by Shri Balbir Singh Goel to the Additional Secretary (Lease Admin.), DDA dated 2nd January, 1973;
- **Ex.D1W1/27** – Letter dated 2nd January, 1973 from Shri Balbir Singh Goel to DDA requesting transfer of plot in favour of his sister;
- **Ex.D1W1/28** – Letter dated 15th February, 1980 written by Shri Maheshwar Dayal and Smt. Sudha Dayal to MCD;
- **Ex.D1W1/29** – Letter dated 5th April, 1976 written by Shri Maheshwar Dayal and Smt. Sudha Dayal to MCD;
- **Ex.D1W1/30** – Cheque Book Foil for the period from December, 1988 to April, 1991 of account no.535 with UCO Bank;
- **Ex.D1W1/31** – Cheque Book Foil for the period from November, 1991 to December, 1992 of account no.535 with UCO Bank;
- **Ex.D1W1/32** – undated letter written by Smt. Sudha Dayal to MCD authorising Shri Maheshwar Dayal to deal with all matters relating to the suit property;
- **Ex.D1W1/33** – Income tax return of Smt. Shakuntala Devi for the financial year ending on 31st March, 1983;
- **Ex.D1W1/34** – Certificate dated 21st August, 1975 issued by Shri Bishambar Nath Ram Swarup, Proprietor, to the income tax authorities for the Assessment Year 1972-73;
- **Ex.D1W1/35 & Ex.D1W1/36** – Rent receipts issued by the society in the name of both Smt. Sudha Dayal and Shri Maheshwar Dayal;

- **Ex.D1W1/37** – Receipt issued by Shri Vinod Dayal to Smt. Shakuntala Devi dated 1st April, 1964;
- **Ex.D1W1/38** – Letter dated 30th June, 1976 written by Smt. Sudha Dayal to the DDA expressing her intention to gift the property to Smt. Shakuntala Devi;
- **Ex.D1W1/39** – Ledger maintained by Smt. Shakuntala Devi of her accounts;
- **Ex.D1W1/40** – Copy of police complaint lodged by Shri Vinay Dayal;
- **Ex.D1W1/41 & Ex.D1W1/42** – Medical certificates issued by various doctors concerning the health of Smt. Shankuntala Devi.

22. Smt. Shakuntala Devi has placed on record two bank passbooks issued by the Bank of India, which show regular transactions being conducted by her and also sufficient balance in her account. She has also placed letters on record to show that she was gifted money from her mother, both in her name and in her husband's name. She, thus, has sufficient resources to purchase the property. Ex.D1W1/13 is a letter written by Shri Balbir Singh Goel dated 28th November, 1972 to the Land & Housing Department, Delhi Administration, wherein he requests that sanction may be given for transfer of the plot in favour of his sister Smt. Sudha Dayal of no.1876, Haveli Jugal Kishore, Chandni Chowk, Delhi-110006. At the bottom of this letter, the following text appears:

“Received one cheque no.HMD 026001 Dated 28-11-72 for Rs.14000/- on Bank of India Chandni Chowk Branch, Delhi (Fourteen Thousand) from Shrimati Sudha Dayal & Shankuntla Dayal towards the cost of above Plot in part payment.”

23. Thus, in the carbon copy of the letter, which Shri Balbir Singh Goel gave to Smt. Shakuntala Devi, it is clearly recorded that the transfer was not merely out of love and affection but upon receipt of Rs.14,000/- “*towards the cost of the above plot in part payment*”. This amount went from the joint bank account of Smt. Shakuntala Devi and Smt. Sudha Dayal.

24. Ex.D1W1/20, shows that various payments were being made to the DDA from this joint bank account. Thereafter, there are several receipts issued by the Sarvodaya Cooperative Housing Society Ltd., wherein the lease money has also been paid from the joint bank account. Moreover, Smt. Sudha Dayal had authorised her father in law to deal with the various governmental authorities in the 1970s. The letters signed by Shri Maheshwar Dayal i.e. **Ex.D1W1/28, Ex.D1W1/29 & Ex.D1W1/32**, establish the same. Smt. Shakuntala Devi has also placed on record, all the chequebooks of the joint bank account including her statement of accounts, which shows that she has been claiming income from property and reflecting the suit property in her balance sheets – (**Ex.D1W1/33 & Ex.D1W1/34**). The various cheque books of 1980s show that payments being made for hardware, steel, electricity, construction. Even the counterfoils of the pay-in-slips for the relevant period have been placed on record. However, the most clinching evidence Ex.D1W1/38 is the letter dated 30th June, 1976 written by Smt. Sudha Dayal to the following effect:

“Dated 30.6.76.

*1876, Haveli Jugal Kishore,
Chandni Chowk, Delhi-110006*

*THE ADDITIONAL SECRETARY,
Land Sales Section,
D.D.A. Vikas Bhawan,*

New Delhi.

Ref: Plot No.C-216, Sarvodaya Enclave, New Delhi-110017.

Dear Sir,

This is to inform you that I intend to gift the above mentioned Plot to Smt. Shakuntala Devi (Mother-in-Law) out of mutual love and affection and as such I shall request you to please let me know the formalities which I have to complete there off.

*Thanking You,
Yours faithfully,
Sudha Dayal."*

25. Smt. Sudha Dayal is no more and neither is Smt. Shakuntala Devi. The facts, however, tell a story which is completely irrefutable. The family has been residing in this property for more than 40 years. If the intention of either party was that one party would have exclusive rights in the property, such a long joint user by the family goes against the spirit of living together for the last 40 years. The family of Smt. Sudha Dayal, in whose name the property was actually reflected in the records, did not move into the property till 1987. Till then it was in the exclusive possession of Smt. Shakuntala Devi, her husband and younger son Mr. Vinay Dayal. All these facts go to show that the property was purchased for the benefit of the whole family and not for the exclusion of any member.

26. The legal question, that arises, is as to whether the relationship between mother-in-law and daughter-in-law can be held to be fiduciary in nature, and whether the daughter-in-law can be held to be a trustee of the mother-in-law. In Indian society, it is not unusual for a daughter-in-law

being treated as a trustee of mother-in-law. In fact, in most large families the daughter-in-law plays an extremely important role in nurturing and bringing up the family. Enormous amount of faith and trust is reposed in the daughter-in-law. In fact, the relationship between the two is one of confidence, trust and belief and not unusual to see in society. A mother-in-law confiding in daughter-in-law and vice-versa to the exclusion of the other family members and enjoying strong bonding is a part of our ethos and culture. Admittedly, Smt. Shakuntala Devi belonged to a wealthy family. In her cross-examination, she states that her father used to deal in shares, had rental income and was a very wealthy man. She had five brothers, who looked after her even after the demise of her father. She was married to Mr. Maheshwar Dayal in 1939, and they were living together in 1876, Haveli Jugal Kishore, Chandni Chowk, Delhi. The transfer letter written by Shri Balbir Singh Goel to the DDA in the name of Smt. Sudha Dayal gives her address as the address of the mother-in-law. The said letter, in original, which bears the extract mentioned above, as receipt of part sale consideration, is clear evidence of the fact that Smt. Shakuntala Devi had paid money to purchase the plot. Smt. Sudha Dayal had authorised her father-in-law Mr. Maheshwar Dayal to deal with the municipal authorities. Various charges have been paid by Smt. Shakuntala Devi including the lease charges in the society. Finally, the letter written by Smt. Sudha Dayal, that she wishes to transfer the property in her mother-in-law's name completely clinches the issue. As against all these documents, the mutation and the conveyance deed by the DDA etc. are in favour of Smt. Sudha Dayal and thereafter, in favour of Mr. Mayank Dayal. Conveyance deed and other such documents have their own consequences in law. However, the evidence is

overwhelming and pointing to the fact that Smt. Sudha Dayal always had trust in her mother in law. Thus, Smt. Shakuntala Devi is entitled to seek a declaration that the property actually belongs to her. Such a view is also expressed by the Supreme Court recently in ***Vinod Kumar Dhall v. Dharampal Dhall*** [Civil Appeals No.4534-4535/2018 decision dated 16th April, 2018] wherein the Supreme Court declared the property to be a family property and not an exclusive property of the Plaintiff who was one of the coparceners. The extracts from the said judgement are set out below:

“15. The bare reading of the aforesaid provision contained in Section 4(3) of the Act makes it clear that where a person in whose name a property is held as coparcener in a Hindu Undivided Family and the property is held for the benefits of the coparcener in the property, provisions of Section 4 containing prohibition of the right to recover the property held benami would not be applicable. The bar of the Act is not applicable to a transaction as contained in section 4(3)(a) and (b). If the property is held in fiduciary capacity or is held as a trustee for the benefits of another person for whom he is a trustee or towards whom he stands in such capacity. Thus, the provision of Act could not be said to be applicable in the instant case.

.....
20. Apart from that, when we come to the source of money for the purpose of purchase of plot, admittedly, the plaintiff was a student and he was admitted in the year 1961 at IIT, Kharagpur. At the time when the land was allotted in the name of Kumari Snehlata, he was still a student and he had no source of income at the relevant time in 1963 or in January 1966, when the allotment was changed in his name owing to the marriage of Kumari Snehlata. Thus, obviously, it was Kashmire Lal who had spent the money in getting the

land allotted and also had raised the construction in the year 1965-66. Though the plaintiff has stated that the construction was made sometime in the year 1966, his version cannot be said to be reliable. The plaintiff was silent in the plaint when the construction was raised. The defendant has come up with a specific case that the construction was raised in the year 1965-66 and that is reliable. Apart from that even if construction was made in 1966 the plaintiff had admitted that he obtained employment only in April 1966 and when the house was constructed in 1966, the plaintiff was not having enough earning so as to invest in the house or to purchase the plot in 1963. He was not even in a position to say his salary was Rs. 400 or not. It was obviously owing to the marriage of Kumari Sneh Lata that the plot was transferred in the name of Dharampal, who happens to be the elder son of Kashmiri Lal. Thus, apparently no money was paid by Dharampal for allotment of the land to the DDA and obviously, it was paid in 1963 by Kashmiri Lal. The money was also spent in construction by the father Kashmiri Lal. Occupation and enjoyment of the house were with the entire family right from the beginning and till today the family is residing in the house. Apart from that, the plaintiff has admitted that when he came to Delhi on posting at All India Institute of Medical Sciences, he started living in the rented accommodation, as there was a paucity of accommodation for his stay in the house in question. Thus, all the facts and circumstances indicate that it was a family property and not the exclusive property of the plaintiff - Dharampal. Thus, the Courts below have acted not only perversely but in a most arbitrary and illegal manner, while accepting the ipse dixit of the plaintiff and in decreeing the suit. Such finding of facts which are impermissible and perverse cannot be said to be binding. The legal inferences from admitted facts have not been correctly drawn.

21. Merely the fact that house tax receipt, electricity and water bills and other documents are in the name of Dharampal would carry the case no further, as it was the father who got the name changed of Kumari Sneh Lata in question in the name of Dharampal. The receipts were only to be issued in the name of the recorded owner, but Dharampal never resided in the house as he was in service out of Delhi, obviously, the amount was paid by family, not by Late Dharampal. Thus, we find that no benefit could have been derived from the aforesaid documents.”

27. The definition of fiduciary as held in the case of **Marcel Martins v. M. Printer (2012) 5 SCC 342** clearly shows that it is much beyond the children or blood relations. The relevant portion of the said judgement is set out below:

“23. 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. Having said that, let us turn to the facts of the present case once more to determine whether the Appellant stood in a fiduciary capacity vis-à-vis the Plaintiffs-respondents.”

28. Reliance has been placed on a judgement of this Court in **J.M.Kohli v. Madan Mohan Sahni and Anr. [RFA No.207/2012 decision dated 7th May, 2012]**, wherein a Ld. Single Judge of this Court, was dealing with a case where the Plaintiff had alleged that his brother in law was in a fiduciary relationship with him and that the Plaintiff had paid the entire sale consideration for the suit property. The Defendant took the objection that the

suit is barred by Section 4 of the Benami Transaction Act. The trial Court had dismissed the suit and the Ld. Single Judge had held that the pleadings therein were insufficient to bring the case out of the purview of the repealed Sections 81, 82 and 94 of the Indian Trusts Act, 1882 and bring the same within Section 4(3(b) of the Benami Transaction Act. The said case is clearly distinguishable as the plea of fiduciary relationship itself was rejected.

29. In ***Snehlata v. Priti Tandon & Anr [Counter claim No.12/2014 decision dated 11th April, 2018]***, it was held that a married daughter was not in a fiduciary capacity qua her father. In the present case however Smt. Sudha Dayal is the daughter in law and hence part of the same family and can be in a fiduciary relationship with her mother in law.

30. In ***Kusum Sanghi and Ors v. Raj Kishan Das 2015 VIII AD (Delhi) 198***, a Division Bench of this Court, held:

“35. As regards the plea of Benami Transaction sought to be raised by learned counsel for the Respondents, it is well settled that Section 4 of the Benami Transactions (Prohibition) Act, 1988 is not attracted in cases where property is held by the person standing in a "fiduciary" capacity for the benefit of another. It is equally well settled that existence of fiduciary relationship has to be determined in the fact situation of a particular case [See Marcel Martins Vs. M. Printers & Ors., (2012) 5 SCC 342 and P.V. Sankara Kurup Vs. Leelavathy Nambiar, (1994) 6 SCC 68].”

31. Going by the letters written by Smt. Sudha Dayal, which are on record, it cannot be held that she did not trust her mother-in-law or that she could not have been in a fiduciary relationship. Since it is stated that there was a legal impediment in the transfer of her brother's property, in the name

of anyone except the blood relations, it is not unimaginable for an understanding to be arrived at that though the money is being paid by the mother-in-law, the property would remain in the daughter-in-law's name.

32. The bar under Section 4(1) of the Benami Transaction Act, which is the basis of the application under Order VII Rule 11 CPC would, therefore, not apply in the present case, as it is protected by Section 4 (3)(b) of the Benami Transaction Act.

33. The question of limitation arises thereafter. All along when Smt. Sudha Dayal was alive, no dispute had arisen between the parties. She passed away in 1987 but the property had continued to remain in her name. No occasion had arisen for Smt. Shakuntala Devi to seek cancellation of the mutation in the name of Smt. Sudha Dayal as she had passed away and Smt. Shakuntala Devi remained all along under the presumption that the property is for the benefit of the whole family. It was only when the family of Smt. Sudha Dayal, after her demise, challenged this position in 2014, that the cause of action arose for her to assert her rights. Thus, the suit is not barred by limitation.

34. The second suit by Smt. Shakuntala Devi seeks cancellation of the conveyance deed in favour of Mr. Mayank Dayal, which was executed in 2014 itself. This suit is also not barred by limitation.

35. There is yet another issue in the present case. Though Smt. Shakuntala Devi is being held to be the real beneficiary of the suit property, a decree of possession is not liable to be passed, inasmuch as both the families are in occupation of the different portions of the property. Further, the younger son has sought impleadment as a legal heir of Smt. Shakuntala Devi on the basis of an alleged Will dated 9th September, 2015. On 2nd May,

2018, it was recorded that the daughter Mrs. Veena Aggarwal had no interest in the litigation. The impleadment of Mr. Vinay Dayal, and Smt. Veena Aggarwal was done by the Joint Registrar only because Mr. Vinod Dayal and his children were already parties to the suit. At no point of time had the validity, legality, existence of the Will being gone into by the Court. The Will dated 9th September, 2015 would have to be independently proved and established, in accordance with law. The parties are left to their remedies. The rights of Mr. Mayank Dayal and his family are left open to seek their own prayers objecting to the enforcement of the Will. Until then, neither party is entitled to the relief of possession.

RELIEFS IN THE THREE SUITS:

A. Suit no. 2441/14: Mayank Dayal v. Shakuntala Devi & Ors.

36. Issue no.4 framed in this suit is accordingly answered as under:

“Whether the defendant No. 1 is the actual owner of the property which was held by Smt. Sudha Dayal as trustee of defendant No. 1?”

It is held that Smt. Sudha Dayal being the daughter in law of Smt. Shakuntala Devi was in a fiduciary relationship with her mother in law and held the property in trust on her behalf for the benefit of the entire family.

37. Upon the decision of Issue no.4, Suit no. 2441/14 is liable to be dismissed, in the light of the findings above. The relief of possession sought for in I.A.6501/17 is rejected. The issue no.4 is taken up as a preliminary issue and decided against the Plaintiff, Shri Mayank Dayal. I.A. 15281/14, under Order XXXIX Rule 1&2 CPC is dismissed. I.A. 20821/14 under Order XXXIX Rule 4 CPC is disposed of as infructuous.

B. Suit no. 1640/14: Smt. Shakuntala Devi v. Vinod K. Dayal & Ors.

38. The decision of Issue no.4 in Suit no.2441/14 in favour of Smt. Shakuntala Devi, results in a declaration being granted in her favour that she was the sole owner of the suit property. However, the said declaration would enure to all her legal heirs and not only to Mr. Vinay Dayal. The disputes *inter se* the legal heirs is not the subject matter of the present litigations as Shri Vinay Dayal relies upon a will of Smt. Shakuntala Devi dated 9th September 2015. All questions as to the legality, validity and enforceability of the said will are left open. The relief of possession is not liable to be granted as the two sons and their respective families are in occupation of the ground floor and first floor. A permanent injunction is granted restraining all the parties from alienating, encumbering or transferring any part of the suit property. The relief of mesne profits is liable to be rejected, as the Plaintiff has since passed away and her legal heirs alone are in occupation of the suit property. The husband of Smt. Shakuntala Devi has predeceased her. I.A. 20927/2014 under Order VII Rule 11 is dismissed. I.A. 10611/2014, under Order XXXIX Rule 1&2 CPC is disposed of as infructuous.

C. Suit no. 3631/2014: Smt. Shakuntala Devi v. Mayank Dayal & Ors.

39. The mutation in the name of Mr. Mayank Dayal is accordingly, cancelled and so is the conveyance deed in his favour. Smt. Shakuntala Dayal is held to be the sole owner of the property, which she purchased for the benefit of the family. The suit is accordingly decreed in terms of Prayer clause 1(b) and (c). Prayer 1(a) is rejected, inasmuch as the Relinquishment Deed executed in favour of Shri Mayank Dayal would continue to enure to his benefit. I.A. 1003/15 under Order VII Rule 11 CPC is dismissed. I.A.

23640/14 under Order XXXIX Rule 1&2 CPC and I.A. 1004/2015 under Order XXXIX Rule 4 are disposed of as infructuous.

**PRATHIBA M. SINGH, J.
JUDGE**

NOVEMBER 02, 2018/dk

