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IN THE HIGH COURT OF DELHI AT NEW DELHI*Reserved on: 5th September, 2024**Date of Decision: 18th December, 2024*

+ CS(OS) 359/2022 & I.As. 9461-62/2022, 10801/2022, 20003/2022,
1780/2023, 23213/2023

NAVEEN NISHOK KUMAR AND ORS.

.....Plaintiffs

Through: Mr. Harsh Kumar and Ms. Shikha
Gogoi, Advocates

versus

HARISH KUMAR

.....Defendant

Through: Mr. Nishant Datta, Mr. Pradeep
Bhardwaj and Mr. Chirag Rathi,
Advocates

+ CS(OS) 142/2024

HARISH KUMAR

.....Plaintiff

Through: Mr. Nishant Datta, Mr. Pradeep
Bhardwaj and Mr. Chirag Rathi,
Advocates

versus

VINOD KUMAR AND ORS

.....Defendants

Through: Mr. Harsh Kumar and Ms. Shikha
Gogoi, Advocates

CORAM:**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMEET PRITAM SINGH ARORA, J:****I.A. 23213/2023 in CS(OS) 359/2022**

1. This is an application under Order XII Rule 6 of the Code of Civil Procedure, 1908, filed by the defendant, seeking a judgment on admission in favour of the defendant and against the plaintiffs, thereby, dismissing the present suit in respect of prayer clauses (a), (b), (d) to (f) and (h) to (j)



prayed for in the suit.

Arguments on behalf of the defendant

2. Mr. Nishant Dutta, learned counsel for the defendant stated that the present suit is not maintainable and the suit is liable to be dismissed in respect of prayer clauses (a), (b), (d) to (f) and (h) to (j).

2.1. He stated that the reliefs sought by the plaintiffs under prayer clauses (a), (e), (i) and (m) qua Shop No. 1/12, Chhoti Sabji Mandi, Janakpuri, Delhi ['Shop No. 1/12'] are not maintainable, as the plaintiffs have, admittedly, no right, title and interest in the said property. He stated that the plaintiffs by executing the registered relinquishment deed dated 03.03.2010 ['deed dated 03.03.2010'] have already relinquished their rights in the said property in favour of the defendant and the said fact finds mention in paragraph 19 of the plaint. He stated that admittedly, the deed dated 03.03.2010, has never been cancelled by way of a registered cancellation deed. He stated that it is settled law that a registered document can be substituted by a registered document only or by means of a decree of cancellation issued by the Court under Section 31 of the Specific Relief Act, 1963. He stated that no decree for cancellation of the deed dated 03.03.2010 has ever been sought by the plaintiffs from a competent Court, till date. He stated that thus, the defendant continues to be the sole and lawful owner of Shop No. 1/12.

2.2. He stated that the reliefs sought by the plaintiffs qua property i.e., Shop no. 1/13, Chhoti Sabji Mandi, Janakpuri, Delhi ['Shop No. 1/13'] and the property bearing no. Khatauni no. 576, Gata No. 272, Khata No. 506, Gata No. 54 and 55, Village Belana, Sikandarabad, Uttar Pradesh-203202



[‘Sikandarabad property’] are also not maintainable. He stated that these properties were purchased by the defendant in his own name and with his own funds. He stated that the fact that Shop No. 1/13 and Sikandarabad property have been purchased in the name of defendant is admitted by the plaintiffs in paragraph 13 and 20 of the plaint, respectively. He stated that the plea of benami being raised by the plaintiffs is unsubstantiated and, in this regard, he relied upon the judgment of **Jaydayal Poddar v. Bibi Hazra**¹.

2.3. He stated that the plaintiffs claim for partition of the property bearing no. S-350, Mangolpuri, Delhi [‘Mangolpuri Property’] at prayer clauses (c) and (g) of the plaint can be allowed. He stated that the said property was in the name of late Sh. Sahab Chand [father of the parties herein] and can be partitioned amongst the parties herein in equal shares.

Arguments on behalf of the plaintiffs

3. In reply, Mr. Harsh Kumar learned counsel for the plaintiffs stated that present application filed under Order XII Rule 6 of CPC is not maintainable, as the defendants have neither filed their written statement nor the reply to IA No. 20003/2022 [application under Order VIII Rule 10 of CPC, filed by the plaintiffs] has been filed by the defendant.

3.1. He stated that late Sh. Sahab Chand was the absolute owner of Shop No. 1/12 and after the demise of parents of the parties herein, the defendant under the garb of false assurances had the relinquishment deed dated 03.03.2010 executed by the plaintiffs in favour of the defendant. He stated that the plaintiffs, after knowing the fraud played upon by the defendant

¹ (1974) 1 SCC 3



cancelled the registered relinquishment deed dated 03.03.2010 by a (unregistered) cancellation deed dated 17.05.2012. He stated that the copy of the said cancellation deed was duly handed over to the defendant herein.

3.2. He stated that the plea of benami raised by the plaintiffs with respect to Shop No. 1/13 and Sikandarabad property are triable issues and cannot be decided at the present stage.

Findings and Analysis

4. This Court has heard the learned counsel for the parties and perused the record.

5. In November, 2021, Shri Harish Kumar filed a suit bearing CS SCJ No. 1391/2021 ['Civil Suit'] for declaration, mandatory and permanent injunction with respect to property known as Shop no. 1/12, Chhoti Sabzi Mandi, Janakpuri, Delhi admeasuring about 13.5 meters, i.e., Shop no. 1/12, before the Court of Senior Civil Judge, West District, Tis Hazari Courts, Delhi. The subject matter of this suit was only the immovable property i.e., Shop no. 1/12. An interim order dated 13.12.2021 was passed in the said suit restraining the defendants therein [who are the plaintiffs in CS(OS) 359/2022] from dispossessing Shri Harish Kumar (the plaintiff therein) from Shop No. 1/12. The learned Civil Judge issued further directions vide orders dated 01.09.2022 and 23.09.2022, to ensure compliance of the interim order dated 13.12.2021.

6. This Civil Suit was subsequently transferred to this Court vide Order dated 18.07.2023 passed in TR.P. (C) 44/2022 and was re-numbered as CS(OS) 142/2024.

7. Further in June 2022, the captioned suit i.e., CS(OS) 359/2022 was



filed before this Court, wherein, Shri Harish Kumar was impleaded as the sole defendant. Plaintiff nos. 1 to 5 in CS(OS) 359/2022 are the siblings of the said defendant.

8. The captioned suit i.e., CS(OS) 359/2022 has been filed by the plaintiffs for seeking partition of four (4) immovable properties which are as under: -

- a. Property bearing no. 1/12, Chhoti Sabji Mandi, Janakpuri, Delhi [i.e., Shop No. 1/12];
- b. Property bearing no. 1/13, Chhoti Sabji Mandi, Janakpuri, Delhi [i.e., Shop No. 1/13];
- c. Property bearing no. S-350, Mangolpuri, Delhi [‘Mangolpuri property’]; and
- d. Property bearing no. Khatauni no. 576, Gata No. 272, Khata No. 506, Gata No. 54 and 55, Village Belana, Sikandarabad, Uttar Pradesh-203202 [i.e., Sikandarabad property].

9. In this suit i.e., CS(OS) 359/2022, this Court passed an ex-parte ad-interim order dated 03.06.2022 in I.A. 9461/2022 with respect to Shop no. 1/12. This Court restrained the defendant (Shri Harish Kumar) from dispossessing the plaintiffs from the said property, without due process of law.

10. Thereafter, the plaintiffs in CS(OS) 359/2022 filed an application i.e., I.A 10801/2022 under order XXXIX Rule 2A CPC alleging breach of the ad-interim order dated 03.06.2022 by the defendant.

11. In these facts, the defendant (Shri Harish Kumar) filed an application I.A. 23213/2023 under Order XII Rule 6 CPC seeking a judgment in his



favour and dismissal of the suit i.e., CS(OS) 359/2022 in respect of three (3) immovable properties i.e., Shop no. 1/12, Shop no. 1/13 and Sikandarabad property.

In the written submissions dated 11.09.2024, the defendant, Shri Harish Kumar has conceded that Mangolpuri property is to be divided between the parties in equal shares as per the reliefs sought in the plaint.

12. The plaintiffs have filed their written submissions dated 18.09.2024 and have stated that the I.A 23213/2023 filed by the defendant is not maintainable.

13. With effect from 23.04.2024, both the suits i.e., CS(OS) 359/2022 and CS(OS) 142/2024 were listed together before the same Bench of this Court.

14. In this judgment, for the ease of reference, the parties are being referred to by their rank and status in the memo of parties filed in CS(OS) 359/2022, as the subject matter of the said suit is all the four (4) properties with which the parties herein are concerned.

15. Plaintiff nos. 1 to 4 and defendant are the sons; and plaintiff no. 5 is the daughter. The parties are children of late Shri Sahab Chand and late Smt. Kailasho Devi. Late Shri Sahab Chand, unfortunately passed away on 11.02.1999 and Smt. Kailasho Devi passed away on 19.07.2008. The parties admitted that both late Shri Sahab Chand and late Smt. Kailasho Devi died intestate. The parties, who are brothers and sisters are thus, Class-I legal heirs of late Shri Sahab Chand as well as the only natural legal heirs of Smt. Kailasho Devi.

16. Accordingly, the captioned suit CS(OS) 359/2022 has been filed by



the plaintiffs for partition of the immovable estate of Late Shri Sahab Chand.

Shop No. 1/12 Choti Sabzi Mandi, Janakpuri, Delhi

17. It is stated in the plaint of CS(OS) 359/2022 at paragraph 11 that Shop No. 1/12 was allotted to late Shri Sahab Chand vide perpetual lease deed dated 31.03.1987. The said lease deed evidencing the allotment of Shop No. 1/12 in favour of late Shri Sahab Chand has been placed on record.

18. It is a matter of record that upon death of late Shri Sahab Chand and demise of his wife Smt. Kailasho Devi, this property devolved in six (6) equal shares upon the plaintiffs and the defendant herein.

19. It is admitted in the plaint that plaintiff nos. 1 to 5 executed a relinquishment deed dated 03.03.2010 relinquishing their shares in favour of the defendant herein and thus vesting the entire property i.e., Shop No. 1/12 in favour of the defendant alone. The relinquishment deed was executed and registered with the office of Sub-Registrar, SR II, Janakpuri, New Delhi. The relinquishment deed dated 03.03.2021 has been placed on record with the plaint.

20. It is stated in the plaint at paragraph 25 that plaintiff nos. 1 to 5 cancelled the registered relinquishment deed dated 03.03.2010. In this regard, the plaintiffs have placed on record an unregistered cancellation deed dated 17.05.2012, which bears the stamp of the Notary Public. It was contended during oral arguments that with this unilateral cancellation the respective undivided shares of plaintiff nos. 1 to 5 in Shop No. 1/12 stood restored.



21. It is stated in the plaint at paragraph 28 that subsequently plaintiff nos. 3 to 5 executed a registered relinquishment deed dated 09.03.2021 with respect to their respective 1/6th undivided shares in Shop No. 1/12 in favour of plaintiff no. 1. It is stated in paragraph 29 that plaintiff no. 2 as well executed a registered relinquishment deed dated 25.08.2021 with respect to his undivided 1/6th share in Shop No. 1/12 in favour of plaintiff no. 1. It is stated that in this manner plaintiff no. 1 with effect from 25.08.2021 became owner of undivided 5/6th share in Shop No. 1/12 and the defendant is entitled to 1/6th share in Shop no. 1/12.

22. In plaint of CS(OS) 359/2022 with respect to Shop No. 1/12, reliefs are sought only by plaintiff no. 1 in his favour and against the defendant. No relief qua this Shop has been sought by plaintiff nos. 2 to 5. The prayer clauses in the plaint qua Shop No. 1/12 are (a), (e) and (i) which reads as under: -

“.....

a) Pass a decree of declaration in favour of Plaintiff no.1 that he be declared as owner of 5/6th share of the property bearing no.1/12, *Chhoti Sabji Mandi, Janakpuri, Delhi*, in the interest of justice.

...

e) Pass a preliminary decree of partition in respect of the property bearing No.1/12, *Chhoti Sabji Mandi, Janakpuri, Delhi* in favour of the Plaintiff no.1 and against the Defendant in respect of 1/6th share each of the Plaintiffs, in the interest of justice.

...

i) Pass a final decree of partition in respect of the property bearing No.1/12, *Chhoti Sabji Mandi, Janakpuri, Delhi* in favour of the Plaintiff no.1 and against the Defendant in respect of 5/6th share of the Plaintiff no.1 in the said properties, in the interest of justice.”

23. The defendant in I.A. 23213/2023 states that in these aforementioned admitted facts set out in the plaint, the prayer clauses (a), (e) and (i) deserve



to be dismissed in view of the registered relinquishment deed dated 03.03.2010 executed by plaintiff nos. 1 to 5 in his favour.

24. The defendant contends that in law, the registered relinquishment deed dated 03.03.2010 executed by plaintiff nos. 1 to 5 in his favour could not have been cancelled by the unregistered cancellation deed dated 07.05.2012. The defendant contends that the only course known in law for the aggrieved party is to approach a Civil Court and seek a decree of cancellation of the registered document under Section 31 of the Specific Relief Act, 1963 ('Act of 1963').

25. Before deliberating on the rival contentions of the parties it would be appropriate to refer to Section 31 of the Act of 1963 which reads as under: -

“31. When cancellation may be ordered.— (1) Any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

(2) If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.”

26. The Supreme Court in **Deccan Paper Mills Company Limited v. Regency Mahavir Properties and Others**², while considering the nature and objective of the proceedings under Section 31 of the Act of 1963 relied upon its earlier judgment in **Suhrid Singh v. Randhir Singh**³, which held that where an executant of a deed wants a deed to be annulled, the executant

² (2021) 4 SCC 786 [paras 31 and 32]



has to seek cancellation of the deed. The relevant paragraph 31 and 32 of **Deccan Paper Mills Company Limited** (supra) read as under: -

“31. Also, in an instructive judgment of this Court in *Suhrid Singh v. Randhir Singh* [*Suhrid Singh v. Randhir Singh*, (2010) 12 SCC 112], in the context of the Court Fees Act, 1870 this Court held : (SCC p. 114, para 7)

“7. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to A and B, two brothers. A executes a sale deed in favour of C. Subsequently A wants to avoid the sale. A has to sue for cancellation of the deed. On the other hand, if B, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by A is invalid/void and non est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If A, the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If B, who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs 19.50 under Article 17(iii) of the Second Schedule of the Act. But if B, a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7(iv)(c) of the Act.”

32. The reasoning in the aforesaid judgment would again expose the incongruous result of Section 31 of the Specific Relief Act being held to be an in rem provision. When it comes to cancellation of a deed by an executant to the document, such person can approach the court under Section 31, but when it comes to cancellation of a deed

³ (2010) 12 SCC 112



by a non-executant, the non-executant must approach the court under Section 34 of the Specific Relief Act, 1963. Cancellation of the very same deed, therefore, by a non-executant would be an action in personam since a suit has to be filed under Section 34. However, cancellation of the same deed by an executant of the deed, being under Section 31, would somehow convert the suit into a suit being in rem. All these anomalies only highlight the impossibility of holding that an action instituted under Section 31 of the Specific Relief Act, 1963 is an action in rem.”

(Emphasis Supplied)

27. In this regard it would be relevant to refer to judgment of a Co-ordinate Bench of this Court in **Gunmala Jain v. G.N.C.T. of Delhi and Others**⁴, wherein the learned Single Judge held that the only remedy available to the executant of a deed is to institute appropriate proceedings before a competent Court for cancellation of the instrument. The Court further held that the Registrar has no jurisdiction under the Registration Act of 1908 to cancel a registered instrument. The relevant paras of the judgment read as under: -

“1. The petitioner challenges the validity of a show cause notice issued by the District Magistrate, the second respondent herein. That notice calls upon the petitioner to show cause why sale deeds executed and duly registered be not cancelled on the allegation that the instruments came to be registered by concealment of material facts. While the respondents in the counter affidavit have referred to facts in support of the allegation that material particulars were not disclosed before the instruments in question was presented for registration, the principal question which falls for determination would be as to whether jurisdiction can be recognized to have the jurisdiction or authority to issue the notice impugned.

...

3. The Court firstly notes that the Registration Act of 1908 confers no authority or power upon the District Magistrate

⁴ 2021 SCC OnLine Del 5484



to initiate proceedings for cancellation of an instrument which has come to be duly registered. Significantly, the show cause notice impugned here has not even been shown to have been penned by the District Magistrate. The notice is also not expressed to have been issued pursuant to an order made by the District Magistrate or for and on behalf of the competent authority. The notice is merely endorsed by a Reader stated to be attached to his office.

...

6. It is thus manifest that once a document comes to be duly registered, it becomes a fait accompli. The only remedy then available to an aggrieved person is to institute appropriate proceedings before a competent court for cancellation or annulment of the instrument. In any case, no provision made in the Act can be recognized as conferring authority upon the respondents to cancel a registered instrument.”

(Emphasis Supplied)

28. The plaintiffs were conscious of the aforesaid position in law. The plaintiffs in their written statement dated 24.12.2021 filed before the District Court in CS SCJ No. 1391/2021 [re-numbered as CS(OS) 142/2024] had categorically asserted that they intend to initiate proceeding under Section 31 of the Act of 1963 for cancellation of the relinquishment dated 03.03.2010. The plaintiffs however, while filing the captioned suit CS(OS) 359/2022 have elected not to seek the relief of cancellation; and rightly so as such a relief would have been barred by limitation as on the date of the filing of the suit.

29. The plaintiff nos. 1 to 5's assumption in paragraph 25 of the plaint that the relinquishment deed dated 03.03.2010 stands cancelled by execution of the unregistered and unilateral cancellation deed dated 17.05.2012 is misconceived, as the said cancellation deed dated 17.05.2012 has no effect on the operation and binding nature of the registered



relinquishment deed dated 03.03.2010. In view of the aforesaid judgments, the plaintiff no.1's present action seeking relief of partition and declaration qua Shop No. 1/12 is thus without any cause of action in view of the registered relinquishment deed dated 03.03.2010.

30. Since, the registered relinquishment deed dated 03.03.2010 subsists and has not been cancelled by the competent Court, the execution of the subsequent relinquishment deed dated 09.03.2021 by plaintiff nos. 3 to 5 and relinquishment deed dated 25.08.2021 by plaintiff no. 2 are null and void; as on these dates (09.03.2021 and 25.08.2021) plaintiff nos. 1 to 5 had no right, title or interest in Shop No. 1/12 and, therefore, plaintiff nos. 2 to 5 could not have relinquished any share qua Shop No. 1/12 in favour of plaintiff no. 1. So also, plaintiff no. 1 had no right, title or interest in his favour and, therefore, there could have been no relinquishment in his favour. The relinquishment deeds dated 09.03.2021 and 25.08.2021 are therefore void and non-est. The said deeds are liable to be cancelled so as to prevent any mischief by plaintiff no. 1 on the basis of the said void documents.

31. In case of a relinquishment deed the releasor irrevocably transfers his/her right, title and interest in the property in favour of the releasee. The transfer of rights by a releasor in favour of a releasee is irrevocable at the instance of the releasor and results in extinguishment of the rights of the releasor in the suit property. The relevant clause of the registered relinquishment deed dated 03.03.2010, which records extinguishment of the rights of the releasor(s) i.e., the plaintiffs herein is at clause 6 which reads as under: -



“6. Pursuant to his/her/their wish, as mentioned above, the Executant(s)/ Releasors(s) hereby releases and relinquishes all his/her/their rights, interest, shares in the said property and hereby declares and affirms that he/she/ they will have no claim, right or interest in the said property and the same vests absolutely in favour of SH. Harish Kumar S/o Late Sh. Sahab Chand.”

(Emphasis Supplied)

32. Thus, any reversion of interest between the releasor and releasee for revoking the relinquishment deed would have to be by a decree of the competent Court.

33. Notwithstanding the aforesaid finding that the registered relinquishment deed can only be cancelled by a decree of the competent Court, the claim of the plaintiff nos. 1 to 5 that the registered relinquishment deed dated 03.03.2010 has been cancelled by executing a unilateral unregistered cancellation deed dated 17.05.2012 is misconceived and without any basis in law.

34. In case of a relinquishment deed or any other document by which title in an immovable property is transferred irrevocably, the executant of the documents cannot undo such a transfer unilaterally. Even if the parties mutually decide to undo such a transfer, the reversion of the title can be done only in accordance with the modes recognized under the Transfer of Property Act, 1882 [‘Act of 1882’] and by way of registered documents mutually executed by the parties. The modes of transfer are recognized under the Act of 1882 are in Chapter III, Chapter VI and Chapter VII.

35. Even in cases pertaining to lease and mortgage of an immovable property, which is governed by Chapter IV and Chapter V of Act of 1882, wherein the owner creates a limited interest in favour of the



lessee/mortgagee by registered documents, the Supreme Court has held in **Chandrakant Shankarrao Machale v. Parubai Bhairu Mohite**⁵ that registered documents pertaining to mortgage can only be altered by another registered document. The Supreme Court held that unregistered documents cannot alter the terms and conditions of the registered documents. The relevant paragraphs 12 and 15 of the said judgment reads as under: -

“12. The deed of mortgage dated 28-2-1983 was a registered document. The terms of a registered document could be varied or altered only by another registered document. A finding of fact has been arrived at that the appellant could not prove his possession as a tenant. We have noticed hereinbefore that the appellant was put in possession as a mortgagee. It was, therefore, in our opinion, impermissible in law to change his status from a mortgagee to that of a lessee by reason of an unregistered deed of lease (even if we assume that the same had been executed).

...

15. The deed of mortgage was a registered one. It fulfilled the conditions of a valid mortgage. Its terms could not have been varied or altered by reason of an unregistered document so as to change the status of the parties from mortgagee to a lessee. [See S. Saktivel v. M. Venugopal Pillai [(2000) 7 SCC 104 : AIR 2000 SC 2633] (SCC p. 108, para 6 : AIR paras 6-7).]”

(Emphasis Supplied)

36. Similarly in **S. Saktivel v. M. Venugopal Pillai and Others**⁶, the Supreme Court while rejecting a contention of a party, who alleged that the terms of a registered settlement deed had been altered by an old arrangement held that terms of the registered document can be rescinded only by a subsequent registered document and not otherwise. The relevant portion of the para 6 of the said judgment reads as under: -

⁵ (2008) 6 SCC 745

⁶ (2000) 7 SCC 104



“6. In sum and substance what proviso (4) to Section 92 provides is that where a contract or disposition, not required by law to be in writing, has been arrived at orally then subsequent oral agreement modifying or rescinding the said contract or disposition can be substantiated by parol evidence and such evidence is admissible. Thus if a party has entered into a contract which is not required to be reduced in writing but such a contract has been reduced in writing, or it is oral, in such situations it is always open to the parties to the contract to modify its terms and even substitute by a new oral contract and it can be substantiated by parol evidence. In such kind of cases the oral evidence can be let in to prove that the earlier contract or agreement has been modified or substituted by a new oral agreement. Where under law a contract or disposition is required to be in writing and the same has been reduced to writing, its terms cannot be modified or altered or substituted by oral contract or disposition. No parol evidence will be admissible to substantiate such an oral contract or disposition. A document for its validity or effectiveness is required by law to be in writing and, therefore, no modification or alteration or substitution of such written document is permissible by parol evidence and it is only by another written document the terms of earlier written document can be altered, rescinded or substituted. There is another reason why the defendant-appellant cannot be permitted to let in parol evidence to substantiate the subsequent oral arrangement. The reason being that the settlement deed is a registered document. The second part of proviso (4) to Section 92 does not permit leading of parol evidence for proving a subsequent oral agreement modifying or rescinding the registered instrument. The terms of registered document can be altered, rescinded or varied only by subsequent registered document and not otherwise. If the oral arrangement as pleaded by the appellant, is allowed to be substantiated by parol evidence, it would mean rewriting of Ext. A-1 and, therefore, no parol evidence is permissible.”

(Emphasis Supplied)

37. Thus, the unregistered cancellation deed dated 17.05.2012 executed by the plaintiffs has no effect in law and the plaintiff nos. 1 to 5 remain bound by the registered relinquishment deed dated 03.03.2010.



38. Therefore, keeping in view the admitted facts of this case, which are evident on a bare perusal of a plaint, documents filed therewith and the law noticed hereinabove, this Court is of the considered opinion that the reliefs sought by plaintiff no. 1 qua Shop No. 1/12 at prayer clauses (a), (e) and (i) is without any cause of action and the said reliefs are liable to be dismissed. So also, since plaintiffs have no right in Shop no. 1/12 this Court holds that plaintiff are not entitled to the claims of rent as per prayer clause (n) of the plaint.

39. The execution of the unregistered cancellation deed dated 17.05.2012 by the plaintiffs, registered relinquishment deed(s) dated 09.03.2021 and 25.08.2021 by the plaintiffs is null and void. The said deeds are liable to be delivered up by the plaintiff no. 1 and cancelled. The registry is directed to send a decree to the concerned Sub-Registrar II, Janakpuri, New Delhi in whose office the relinquishment deed(s) dated 09.03.2021 and 25.08.2021 are registered with a direction to the said Sub-Registrar to make a note regarding the cancellation of the said relinquishment deeds.

Directions to plaintiff nos. 1 to 5 to handover vacant and peaceful possession to the defendant

40. The defendant herein in his plaint, which is re-numbered CS(OS) 142/2024 has prayed for a decree of permanent injunction against the plaintiffs herein to restrain them from entering Shop No. 1/12 and interfering the possession of the defendant herein.

41. The Supreme Court in **Maria Margarida Sequeira Fernandes and Others v. Erasmo jack DE Sequeira (Dead) Thr. Lrs.**⁷ held that 'due process' need not always mean a process initiated by the owner, it can be



any judicial proceedings where the respective contentions of the parties are adjudicated in a free and fair manner and with proper opportunity being afforded to the parties. The relevant portion of the said judgment reads as under:

“79. Due process of law means that nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity to the defendant to file pleadings including written statement and documents before the court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated upon by a competent court.

80. The High Court of Delhi in *Thomas Cook (India) Ltd. v. Hotel Imperial* [(2006) 88 DRJ 545] held as under: (DRJ p. 566, para 28)

“28. The expressions ‘due process of law’, ‘due course of law’ and ‘recourse to law’ have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed ‘forcibly’ by the true owner taking law in his own hands. All these expressions, however, mean the same thing—ejectment from settled possession can only be had by recourse to a court of law. Clearly, ‘due process of law’ or ‘due course of law’, here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner. Now, this ‘due process’ or ‘due course’ condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is

⁷ (2012) 5 SCC 370



an action before the court and the court adjudicates upon it. If that is done then, the 'bare minimum' requirement of 'due process' or 'due course' of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e. for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the 'recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law."

(Emphasis Supplied)

42. In the facts of this case, it is evident that plaintiff nos. 1 to 5 have disputes with the defendant and there is a conflict between the parties which has led to a law-and-order situation qua the control and possession of Shop No. 1/12. The precarious situation in which parties find themselves is evident from the pleadings of I.A 10801/2022 filed in CS(OS) 359/2022.

43. Plaintiff nos. 2 to 5 have admitted in their own plaint in CS(OS) 359/2022 that they have no right, title or interest in Shop No. 1/12. In view of this admission and the fact that plaintiff nos. 2 to 5 have executed a registered relinquishment deed dated 03.03.2010 in favour of the defendant, they have no right to occupy the said Shop or enter the said Shop without the express consent of the defendant.

44. In the plaint at paragraph 32, it is stated that plaintiff nos. 1 and 4 along with the defendant are occupying the said shop. Thus, plaintiff nos. 2, 3 and 5 on their own showing are not even in possession of the said Shop.



45. Accordingly, plaintiff no. 4 is directed to vacate and handover the peaceful and vacant possession of Shop No. 1/12 to the defendant within four (4) weeks, failing which plaintiff no. 4 will become liable to pay Rs. 40,000/- per month to the defendant as mesne profits.

46. Further, plaintiff nos. 2, 3 and 5 are restrained from entering the said Shop without the express consent of the defendant. To avoid any ambiguity, plaintiff nos. 2, 3 and 5 are directed to vacate and handover the peaceful and vacant possession of Shop No. 1/12 to the defendant. In case, the said plaintiffs enter the said Shop they will become liable to pay mesne profits at Rs. 40,000/- per month.

47. Plaintiff nos. 2 to 5 shall file an affidavit within four (4) weeks confirming that they have handed over the peaceful and vacant possession of Shop No. 1/12 to the defendant, failing which the defaulting plaintiffs will become liable for mesne profits.

48. In view of the absolute title of the defendant in Shop No. 1/12, plaintiff nos. 1 as well has no right to continue to use and occupy the said premises. Accordingly, plaintiff no. 1 has no right, title or interest in Shop No. 1/12. Plaintiff no. 1 as well is directed to vacate and handover the peaceful possession of Shop No. 1/12 to the defendant within four (4) weeks. In case of default plaintiff no. 1 as well will become liable for paying mesne profits at the rate of Rs. 40,000/- per month along with any other defaulting plaintiff. Plaintiff no. 1 as well will file an affidavit within four (4) weeks confirming the peaceful handover of the said Shop premises to the defendant.

49. Plaintiff nos. 1 to 5 are further injuncted from entering Shop No. 1/12



without the express consent of the defendant. And if the consent is given by the defendant, Plaintiff nos. 1 to 5 shall not be entitled to remain in the shop if called upon by defendant to remove themselves.

50. In view of the aforesaid directions issued with respect to Shop No. 1/12, the interim order dated 03.06.2022 passed in CS(OS) 359/2022 is hereby vacated. Moreover, in view of the aforesaid findings qua the absence of title in favour of the plaintiffs, the relief sought qua Shop No. 1/12 in I.A. 9461/2022 filed in CS(OS) 359/2022 is not maintainable and the application is dismissed qua this shop.

51. So also, I.A. 10801/2022 filed under Order XXXIX Rule 2A CPC with respect to conflict between the parties for the occupation of Shop No. 1/12. In view of the findings that the plaintiffs have no right to remain in the said shop, this Court is not inclined to proceed with this application and the same is accordingly disposed of.

Shop No. 1/13 Chhoti Sabzi Mandi, Janakpuri, Delhi

52. It is stated in the plaint at paragraph 13 that the title of the Shop No. 1/13 stands in the name of the defendant. It is pleaded that the said Shop was bought by late Shri Sahab Chand in the name of the defendant but for the benefit of the family. It is stated at paragraph 40 of the plaint that the said property was bought from savings and legitimate sources and therefore late Shri Sahab Chand is the de jure owner of the said property.

53. It is contended by the defendant that the plea of benami raised by the plaintiffs is unsubstantiated. It is stated that burden of proving that the transaction is benami and defendant is not the real owner is on the plaintiffs. The defendant has relied upon the judgement of Supreme Court in **Jaydayal**



Poddar v. Bibi Hazra (supra). It is stated that the Shop No. 1/13 has been purchased by defendant from his own funds. It is stated that plaintiffs have neither made any necessary pleadings nor filed any necessary documents to support the aforesaid contention. It is stated that the plea of benami raised by the plaintiffs is expressly prohibited under the Benami Transactions Prohibition Act, 1988 (prevailing at the time of purchase of the property) as well as under the Benami Transactions (Prohibition) Amendment Act, 2016 ('Amended Benami Act').

54. Before adjudicating on this plea of the plaintiffs, it would be relevant to refer to Section 2(9)(A)(b) of the Amended Benami Act, which reads as under: -

[2. Definitions.— In this Act, unless the context otherwise requires,—

(9) “benami transaction” means,—

(A) a transaction or an arrangement—

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by—

...

...

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv) **any person** in the name of his brother or sister or **lineal ascendant** or descendant, **where the names of** brother or sister or **lineal ascendant** or descendant **and the individual appear as joint-**



owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

...

...”

(Emphasis Supplied)

55. Though the plaintiffs have not identified the provision under which they seeks to claim the exception from the operation of the Amended Benami Act, this Court presumes that the plaintiffs rely upon the exception (iii) or (iv) of Section 2(9)(A)(b) of the Benami Act.

56. A plain reading of the aforementioned exceptions under Section 2(9)(A)(b) of the Amended Benami Act, if interpreted liberally, may lead to the conclusion that an individual claiming his child to be a benamidar would be entitled to invoke both exceptions (iii) and (iv). However, the Benami Act, being a penal statute enacted specifically to curb benami transactions, its exceptions have to be construed strictly and not liberally. Consequently, exceptions (iii) and (iv) must be construed harmoniously to identify that the plea of the plaintiffs in the present matter would attract which of the aforesaid exceptions, if any.

57. The process of construction requires a combination of both literal and purposive approach, while remaining mindful of the legislative intent behind the enactment and the mischief it seeks to address. The preamble of the Amended Benami Act unequivocally states that the said Act aims to prohibit benami transactions and the right to recover property held benami. The exceptions (iii) and (iv), which are under consideration, were introduced through the Amended Benami Act. The report of the Standing



Committee on Finance (2015-16)⁸, which provided recommendations for the amendments in the unamended Benami Act, expressly notes that the exclusions under the Amended Benami Act have been substantially reduced as compared to unamended Benami Act. This reflects the legislature's clear intent to adopt a restrictive approach in extending the exceptions under the Amended Benami Act. Keeping this in mind, a liberal interpretation would undermine the very purpose of the said legislation.

58. Exceptions (iii) and (iv) are distinct as exception (iii) does not impose any precondition for an individual to have its name recorded along with the name of the spouse or child in the title deed of the property to claim ownership of property [held in the name of their spouse or child], other than the requirement that the funds used for the acquisition of such property originate from the known sources of such individual. In contrast, exception (iv) imposes an additional mandatory precondition of joint ownership, alongside the requirement of known sources, thereby making it more stringent.

59. The exception (iii) is applicable when the individual purchases the property in the name of any child of such an individual or his/her spouse. The phrase 'child' has not been defined in the Benami Act.

60. The exception (iv) is applicable between an individual and his lineal descendant. It contemplates that an individual who pays the entire consideration for the purchase of the property from known sources can claim the said property exclusively even though his/her lineal descendant is recorded as a joint owner.

⁸ Twenty-Eight Report, Standing Committee on Finance (2015-16), 16th Lok Sabha, The Benami



61. Exception (iv) has three requisites i.e., (i) the name of the claimant/person should be recorded as a joint owner; (ii) the entire consideration should have been paid by the claimant; and (iii) the consideration should have been paid from the known sources of the claimant. Thus, for the plaintiffs to invoke exception (iv) of the Benami Act, they would have to show that all the three ingredients are satisfied.

62. The scope and ingredients of exception (iii) is distinct from exception (iv). Exception (iii) stipulates that the claimant/person/benamidar has paid the entire consideration from its known sources; and the property stands in the name of the child or spouse of such a person. Thus, being a joint recorded owner is not stipulated in exception (iii) unlike exception (iv).

63. Exception (iii) covers child and spouse, whereas, exception (iv) does not cover spouse. In the opinion of this Court, similarly, child in exception (iii) and lineal descendant in exception (iv) has to be interpreted so as to give a meaningful and intelligible differentia in the category of persons who are covered by the phrase child and lineal descendant.

64. Since a child, who has attained majority is covered in exception (iv) and this exception, has conditions distinct from exception (iii), the word child would have to be given its natural meaning, as it appears in exception (iii) so as to further the purpose of the Act. In common parlance child is the converse of the term adult and is understood to be a person who has not attained the age of majority. This Court is thus persuaded to hold that a child who has not attained the age of majority is covered by exception (iii) and a child who has attained majority and is thus an adult is covered by

Transactions Prohibition (Amendment) Bill, 2015.



exception (iv).

65. In the facts of this case, admittedly, defendant was of the age of 26 years when Shop No. 1/13 was purchased and had attained majority. Therefore, these facts would show that defendant satisfies the definition of lineal descendant envisaged in exception (iv) of the Benami Act.

66. A lineal descendant or ascendant is a blood relative in the direct line of descends. Section 25 of the Indian Succession Act, 1925 defines lineal consanguinity, as under: -

“25. Lineal consanguinity. (1) Lineal consanguinity is that which subsists between two persons, one of whom is descended in a direct line from the other, as between a man and his father, grandfather and great-grandfather, and so upwards in the direct ascending line; or between a man and his son, grandson, great-grandson and so downwards in the direct descending line.

(2) Every generation constitutes a degree, either ascending or descending.

(3) A person's father is related to him in the first degree, and so likewise is his son; his grandfather and grandson in the second degree; his great-grandfather and great-grandson in the third degree, and so on.”

67. The defendant is admittedly the lineal descendant of late Sh. Sahab Chand and it is an admitted case of the plaintiffs that late Shri Sahab Chand is not recorded as a joint owner of Shop No. 1/13. The plaintiffs have already admitted that the title documents of the said property are in favour of defendant alone. The claim of Benami raised by the plaintiffs is thus liable to be rejected at threshold as ingredients of Clause (iv) of the Benami Act are not satisfied.

68. However, it bears mentions that the plaintiffs along with the plaint have filed documents under the cover of the index dated 27.05.2022. In



these documents, the plaintiff has not annexed a single document which would evidence any transfer of funds from late Shri Sahab Chand to defendant herein for purchase of Shop No. 1/13 at the relevant time. Thus, there is no proof of transfer of funds and such a transfer being from known sources.

69. In these facts and legal position, in the considered opinion of this Court, the plaint fails to show any cause of action in favour of the plaintiffs for making a claim qua Shop No. 1/13. The claim in the plaint i.e. CS(OS) 359/2022 is thus liable to be dismissed qua the said property for being barred in law.

Property bearing no. Khatauni no. 576, Gata No. 272, Khata No. 506, Gata No. 54 and 55, Village Belana, Sikandarabad, Uttar Pradesh-203202 i.e., Sikandarabad property

70. It is stated in the plaint at paragraph 20 that this property at Sikandarabad was purchased by the defendant on 26.11.2010. It is stated that though this property was purchased after the death of the parents of the parties, the corpus for the purchase of the said property was the funds of the deceased parents. It is stated that the property was purchased in the name of the defendant as per previous practice since he was the eldest sibling. No documents in support of the assertion with respect to the source of funds of the purchase of the said property has been annexed with the plaint.

71. The sale deed dated 26.11.2010 reflecting the name of the defendant has been placed on record.

72. The defendant in its application I.A. 23213/2023 has stated that the said property has been purchased from his personal funds. The defendant has reiterated that this plaint is barred under the Benami Act.

73. The reasons recorded by this Court, while rejecting the claims of the



plaintiffs qua Shop No. 1/13 apply with equal force to this claim as well. In fact, the claim of the plaintiffs qua this property has have absolutely no foundation. The facts pleaded by the plaintiffs at para 20 do not apply to the exception at Clause (iv) of Section 2(9)(A)(b) of the Amended Benami Act. The plaintiffs have failed to identify the exceptions of Section 2(9)(A)(b) of the Amended Benami Act, which they seek to invoke and in the opinion of this Court consciously so since none of the exceptions are attracted.

74. The plaintiffs have not placed on record any document to show existence of any common funds belonging to late Shri Sahab Chand and late Smt. Kailasho Devi available to the parties for purchase of this property. Assuming such funds were available and were utilized by the defendant even then it would not attract Clause (iii) or (iv) of Section 2(9)(A)(b) the Amended Benami Act. The exceptions to the prohibition of Benami transactions cannot be invoked by plaintiffs on the basis of bald pleadings.

75. Thus, the claim of the plaintiffs qua this property is barred in law i.e. under the Amended Benami Act and the reliefs sought qua Shop no. 1/13 are liable to be dismissed.

Property bearing no. S-350, Mangolpuri, Delhi-110083

76. It is an admitted fact that late Shri Sahab Chand was the absolute owner of Mangolpuri property and upon death of late Shri Sahab Chand and demise of his wife Smt. Kailasho Devi, this property devolved in six (6) equal shares upon the plaintiffs and the defendant herein.

77. Accordingly, a preliminary decree is hereby passed declaring that the plaintiffs and the defendant have 1/6th share each in the entire Mangolpuri property. A preliminary decree can be drawn up in terms thereof.



78. Ms. Anubha Goel, Advocate (Mobile No. 9873075650) (Enrolment No. D-2226/2014 and email: anubhagdelhi@gmail.com) is hereby appointed as the Local Commissioner for visiting the Mangolpuri property to assess if the said property can be partitioned by metes and bound. The Local Commissioner is directed to file a report in this regard within four (4) weeks from the date of this judgment. The Local Commissioner will be paid a fee of Rs. 2 lakhs to be paid by all the parties in equal shares.

79. Meanwhile, the parties are directed to maintain status quo qua title and possession of the Mangolpuri property until the passing of the final decree.

80. In view of the aforesaid directions, I.A. 9461/2022 stands disposed of.

81. Further, in view of the findings hereinabove, the reliefs sought by the plaintiffs in CS(OS) 359/2022 qua Shop No. 1/12, Shop No. 1/13 and Sikandarabad property are dismissed.

82. Accordingly, I.A. 23213/2023 stands allowed in the aforesaid terms.

83. The summary of the directions passed hereinabove are as under: -

Qua Property bearing no. 1/12, Chhoti Sabji Mandi, Janakpuri, Delhi

- a) The relinquishment deeds dated 09.03.2021 and 25.08.2021 qua property bearing no. 1/12, Chhoti Sabji Mandi, Janakpuri, Delhi are liable to be cancelled so as to prevent any mischief on the basis of the said documents and the plaintiff nos. 1 to 5 remain bound by the registered relinquishment deed dated 03.03.2010.
- b) The execution of the unregistered cancellation deed dated 17.05.2012, registered relinquishment deeds dated 09.03.2021 and



25.08.2021 are null and void and are liable to be delivered up by the plaintiff no. 1 and cancelled.

- c) The registry is directed to send a decree to the concerned Sub-Registrar II, Janakpuri, New Delhi in whose office the relinquishment deeds dated 09.03.2021 and 25.08.2021 are registered with a direction to the said Sub-Registrar to make a note regarding the cancellation of the said relinquishment deeds.
- d) Plaintiff nos. 1 to 5 are directed to handover the peaceful and vacant possession of the Shop No. 1/12 to the defendant within four (4) weeks failing which plaintiff nos. 1 to 5 will become liable to pay mesne profits as directed hereinabove. Each plaintiff shall file an affidavit within four (4) weeks confirming that they have handed over the peaceful and vacant possession of Shop no. 1/12 to the defendant, failing which the defaulting plaintiff will become liable for the mesne profits.

Qua Property bearing no. 1/13, Chhoti Sabji Mandi, Janakpuri, Delhi and Sikandarabad property

- e) The claim of the plaintiffs qua (i) Property bearing no. 1/13, Chhoti Sabji Mandi, Janakpuri, Delhi and (ii) Property bearing no. Khatauni no. 576, Gata No. 272, Khata No. 506, Gata No. 54 and 55, Village Belana, Sikandarabad, Uttar Pradesh-203202 i.e., Sikandarabad property is barred in law i.e., under the Amended Benami Act and the reliefs sought qua these properties are accordingly dismissed.

Qua Property bearing no. S-350, Mangolpuri, Delhi

- f) A preliminary decree is hereby passed declaring that the plaintiffs and the defendant have 1/6th share each in the entire Mangolpuri



property. A preliminary decree can be drawn up by registry in terms thereof.

84. CS(OS) 359/2022 will continue only with respect to further proceedings including passing final decree of partition with respect to Mangolpuri property.

85. List for the report of the Local Commissioner on **25.03.2025**.

CS(OS) 142/2024

86. This Court in CS(OS) 359/2022 has already returned a finding that the defendants herein are bound by the registered relinquishment deed dated 03.03.2010 executed by them in favour of the plaintiff herein with respect to property bearing no. 1/12, Chhoti Sabji Mandi, Janakpuri, Delhi. In addition, a decree has been passed directing the defendants herein to vacate and handover peaceful possession of the Shop No. 1/12 to the plaintiff herein and not enter Shop No. 1/12 without his permission.

87. In view of the said finding and the directions issued in CS(OS) 359/2022, this suit is hereby decreed in favour of the plaintiff herein and against the defendants herein.

88. The registry is directed to draw up a final decree in terms thereof.

MANMEET PRITAM SINGH ARORA, J
DECEMBER 18, 2024/mt/MG