



2024:DHC:10209



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

% *Date of decision: 16th December, 2024*

+ **C.R.P. 169/2023, CM APPL. 34243/2023, CM APPL. 34245/2023**

BIR SINGH

S/o Late Shri Roop Singh
R/o House No. 565/381/204
First Floor, Paryvaran Complex,
Saidulajab. New Delhi- 110030

.....Petitioner

Through: Mr. Rahul Malhotra and Mr. Chirag
Goyal, Advocates.

versus

1. PRATAP SINGH (THROUGH LRS)

S/o Late Sh. Roop Singh
R/o House No. 56513811204
First Floor, Paryvaran Complex,
Saidulajab, New Delhi- 110030

2. SH. DEEPAK RATHORE

S/o Late Sh. Pratap Singh
R/o House No. 56513811204
First Floor, Paryvaran Complex,
Saidulajab, New Delhi- 110030

3. SMT. RAJNI RATHOD

W/o Late Sh. Pratap Singh
R/o House No. 56513811204
First Floor, Paryvaran Complex,
Saidulajab, New Delhi- 110030

4. SMT. AARTI RATHOD

D/o Late Sh. Pratap Singh

Signature Not Verified

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SHARMA

Signing Date: 13/12/2025
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R/o House No. 56513811204
First Floor, Paryvaran Complex,
Saidulajab, New Delhi- 110030

.....Respondents

Through: Mr. Jagat Singh Baasta and Ms. Art,
Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT (Oral)

1. A Civil Revision Petition under Section 115 read with Section 151 CPC, 1908 has been filed on behalf of the Revisionist/Plaintiff Sh. Bir Singh to challenge the Order dated 15.03.2023 *vide* which the Application under **Order XII Rule 6 CPC, 1908** for Judgment on Admission, has been dismissed.
2. **Briefly stated**, the Plaintiff had filed a *Suit for Declaration, Possession, Permanent Injunction, Recovery of Money and Mesne Profits* against the Respondents/ Defendants who are his elder brother- Sh. Pratap Singh (Defendant No.1), the brother's wife- Smt. Rajni Rathore (Defendant No. 3) and their two children namely Sh. Deepak Rathore (Defendant No. 2) and Smt. Aarti Rathore (Defendant No. 4).
3. **The averments made in the plaint** were that the Plaintiff/Revisionist was the owner of the property bearing No.565, Khasra No.391/204, Prayavaran Complex, Saidulajab, Mehrauli, New Delhi (hereinafter the "suit property"), having purchased the same on the basis of *Agreement to Sell, Power of Attorney, Receipt etc dated 12.07.1995*, on payment of sale consideration of Rs.60,000/-, from the recorded bhoomidar/erstwhile owner Sh. Rambir Singh.

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4. Since *Defendant No.1- Shri Pratap Singh* the elder brother of the Plaintiff, was differently abled, he was permitted along with his family to stay on the First Floor of the suit property, while the Plaintiff/Shri Bir Singh and his family resided on the Second Floor of the suit property. The Plaintiff also permitted him to collect the rent of two rooms on the Ground Floor of the suit property which was in the possession of the tenant out of love and affection as the elder brother was not having sufficient income.

5. However, since the Defendants started harassing the Plaintiff and threatened to grab the title and possession of the suit property, the Plaintiff terminated the permissive use of the Defendants in the Suit property in July 2018. The Plaintiff also asked the Defendants to cease and desist from collecting the rent from the tenants.

6. The Defendants neither vacated the suit property nor ceased to collect the rent in respect of the two rooms on the ground floor. The Plaintiff, being the sole owner of the suit property, was constrained to file the first *Civil Suit* bearing *C.S. No. 24/2020 for permanent Injunction, Mandatory Injunction and mesne profits* against the Defendants.

7. In the above suit, the Defendants filed their Written Statement and **raised a defense** that though the property is in the name of the Plaintiff, the sale consideration of Rs. 60,000/- was paid by the Defendants and the Plaintiff had already transferred his right title and interest in the suit property to the Defendant No. 1/Sh. Pratap Singh, for a consideration of Rs. 1,00,000/- vide *ATS, GPA, Will, Receipt, and Possession Letter* dated 29.01.2018.

8. **The first Civil Suit** bearing *C.S. No. 24/2020 for permanent Injunction, Mandatory Injunction and mesne profits* was withdrawn by the



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Plaintiff with liberty to file a fresh suit. Hence, the *Present Suit is filed for declaring the Agreement to Sell, GPA, etc. dated 29.01.2018 in favour of Defendant No.1 as null and void* and also for *Recovery of possession* of the suit property along with the *Recovery of money and mesne profits*.

9. ***The Defendant No. 2 to 4 i.e. the Legal heirs of the Late Pratap Singh, in their Written Statement,*** took a preliminary objection that the property had been purchased by Defendant No. 1 in the year 1995 in the name of the Plaintiff, on payment of Rs.60,000/-, to the erstwhile owner. However, in 2018 it was agreed between them that Defendant No.1 would pay Rs.1 lakh in cash to the Plaintiff and the Plaintiff shall transfer the title documents in his name. It is further asserted that pursuant to mutual agreement Defendant No.1 paid Rs.1 lakh to the Plaintiff in cash and he in turn executed the title documents i.e. *ATS, GPA, Will, Receipt, and Possession Letter dated 29.01.2018* in favour of Defendant No.1.

10. The Defendant No.1 has expired on 19.04.2021. The Defendants, therefore, have contested the Suit and sought the protection of their possession of the First Floor.

11. ***The Application under Order XII Rule 6 CPC, 1908*** was filed on behalf of the Plaintiff/Revisionist, wherein reliance was placed on the ***admission of the Respondents*** that the original documents of 1995 were in the name of the Plaintiff.

12. It is submitted that ***firstly***, the *plea of benami transaction* taken by the defendants, is not tenable under law; and ***secondly***, as per Section 4 of the Prohibition of Benami Transaction Act, 1988 they cannot seek re-transfer of this property in their name. Any such retransfer would also be null and void in terms of Section 6 of the Prohibition of Benami Transaction Act, 1988.



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13. It is further contented that Agreement to Sell, etc. dated 29.01.2018, now produced by the Respondents, are forged and fabricated documents and do not bear the signatures of the Plaintiff. Therefore, in view of the admission made in the Written Statement by the defendants that the Original Property documents were in the name of the plaintiff, the Suit of the Plaintiff must be decreed.

14. **The learned ADJ** considered the contentions raised by both the parties, in the Impugned Order dated 15.03.2023 and observed that a specific defense has been taken of an *Oral Settlement* and execution of title documents in favour of Defendant No.1/Paratap Singh in the year 2018. In the light of the defense taken by Defendant No.1, it was concluded that triable issues have been raised and in absence of clear and unambiguous admissions, no Judgment of Admissions under Order XII Rule 6 CPC, 1908 can be granted.

15. Aggrieved by the said Impugned Order, the present Revision Petition has been filed.

16. **Submissions heard and record perused.**

17. The *first contention* that has been raised by the Defendants is that earlier Suit bearing C.S. No.24/2020 for Permanent and Mandatory Injunction and Mesne Profits was withdrawn by the Plaintiff and therefore, the present Suit for Declaration, Possession along with *Permanent Injunction, Recovery of Money and Mesne Profits* is not maintainable. However, it is stated by the Defendants, themselves that the first Suit bearing CS No. 24/2020 had been withdrawn by the Plaintiffs with liberty and consequently the present Suit cannot be asserted to be barred under the law.



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18. The main controversy to be ascertained is whether there are any unambiguous, unequivocal admissions in the Written Statement made by the Respondent/Defendants entitling the Plaintiff to a Decree on Admissions.

19. The claim of the Revisionist/Plaintiff was that he had purchased the suit property in 1995 from the erstwhile owner Shri Rambir Singh on the basis of Agreement to Sell, Power of Attorney etc. dated 12.07.1995 and because his elder brother/Defendant No.1-Pratap Singh was disabled, he had permitted him along with his family to reside on the First Floor of the property in question and also to collect rent of two shops on the Ground Floor.

20. The Defendants have taken a *specific defense* that the property, though admittedly in the name of the Plaintiff/ Bir Singh, was actually purchased by funds provided by Sh. Pratap Singh, who was the elder brother and the Karta of the Family. Subsequently, since several issues regarding the title of the suit property developed between the two brothers, the parties arrived at a settlement 2018 by virtue of which the Plaintiff transferred the title of the property in the name of Defendant No. 1/ Sh. Pratap Singh for a consideration of Rs. 1 lakh, the Plaintiff executed Agreement to Sell etc. dated 29.01.2018 in favour of defendant No.1.

21. ***The defendants are thus, basing their claim to be in possession of the property on the basis of Sale documents namely Agreement to Sell, GPA. Receipt dated 29.01.2018, etc which needs to be proved by way of evidence.***

22. At this stage, merely because the Defendant No.1/Pratap Singh had admitted that earlier Agreement to Sell etc of 1995 were in the name of the Plaintiff, the same is not sufficient admission for the Decree of the Suit in



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light of the specific defense raised by the Defendants. *Whether the property got subsequently transferred to Defendant No. 1 by virtue of Agreement To Sell, etc. dated 29.01.2018, is a triable issue and no Judgment on Admission can be granted at this stage.*

23. The Plaintiff had also asserted that *Section 4 of the Benami Transaction (Prohibition) Act, 1988* prohibits resale of a property to a person who claims to be Benami holder of the suit property. However, Section 4 reads as under:

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

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

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

24. From this Section, it is evident that no Suit can be filed by a person claiming to be a benami owner of the property for transfer of the property in his name. However, it nowhere bars a property alleged to have been purchased benami earlier, to be transferred in the name of such person by the Benami Holder of the property, by execution of the appropriate documents. The contention of the plaintiff that the alleged title claimed by the Defendants on the basis of subsequently executed Sale documents therefore, cannot be said to be barred under law. Disputed facts have been raised which are required to be decided after recording of evidence.

25. The learned Trial Court has thus, rightly observed that there are



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defenses which have been taken by the Defendants, which merit a trial. *There are no clear unambiguous admissions made by the Defendants in their Written Statement of all the material facts. The Application under Order XII Rule 6 CPC, 1908 has been rightly dismissed.*

26. There is no merit in the present Petition which is hereby dismissed along with the pending Application(s).

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 16, 2024
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