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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA(OS) 83/2018 & CM APPLs. 51160/2018, 92/2024 and 31469/2024**

MAYANK DAYAL & ORS. Appellants

Through: Mr. B.B. Gupta, Sr. Adv. with
Mr.Amiet Andlay, Mr.Manish
Sharma, Mr.Shivam Prajapati, Mr.
Achal Gupta, Mr. Karan Jain, and Mr.
Arun K. Sharma, Advocates.

versus

SHAKUNTALA DEVI (SINCE DECEASED)
THR LRS & ANRRespondents

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr.Ashish Verma and Mr.Kartikay
Bhargava, Advocates.
Mr.Gaurav Dua, Advocate for DDA.

+ **RFA(OS) 84/2018 & CM APPL. 51191/2018**

MAYANK DAYAL Appellant

Through: Mr. B.B. Gupta, Sr. Adv. with
Mr.Amiet Andlay, Mr.Manish
Sharma, Mr.Shivam Prajapati, Mr.
Achal Gupta, Mr. Karan Jain, and Mr.
Arun K. Sharma, Advocates.

versus

SHAKUNTALA DEVI (SINCE DECEASED)
THR LRS & ANRRespondents

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr.Ashish Verma and Mr.Kartikay
Bhargava, Advocates.
Mr.Gaurav Dua, Advocate for DDA.



+ **RFA(OS) 85/2018 & CM APPL. 51393/2018, CM APPL. 98/2024**

VINOD K DAYAL & ORS

..... Appellants

Through: Mr. B.B. Gupta, Sr. Adv. with
Mr.Amiet Andlay, Mr.Manish
Sharma, Mr.Shivam Prajapati, Mr.
Achal Gupta, Mr. Karan Jain, and Mr.
Arun K. Sharma, Advocates.

versus

SHAKUNTALA DEVI

(SINCE DECEASED THR LRS) & ORS

.....Respondents

Through: Mr. Sudhir Nandrajog, Sr. Adv. with
Mr.Ashish Verma and Mr.Kartikay
Bhargava, Advocates.
Mr.Gaurav Dua, Advocate for DDA.

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Date of Decision: 18th October, 2024

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MANMOHAN, CJ:

Introduction:

1. The present appeals arise out of the common judgment dated 02nd November, 2018 passed by the learned Single Judge in three suits between the parties, wherein, the learned Single Judge, dismissed the respective applications of the appellants herein, thereby cancelling the duly registered conveyance deed dated 10th June, 2014, executed by the Delhi Development Authority (“DDA”) in favour of appellant, i.e., Mayank Dayal, and declared



late Smt. Shankuntala Devi, the deceased grandmother of the appellant, as owner of the suit property, i.e., C-216, Sarvodaya Enclave, New Delhi. The suit filed by Mayank Dayal was dismissed, while the two suits filed by late Smt. Shakuntala Devi, were decreed in favour of the respondents herein, in the following manner:

I. CS(OS) 1640/2014, titled as *Shakuntala Devi versus Vinod K Dayal and Others*: The impugned judgment has dismissed *I.A. No. 20927/2014* filed by the appellants herein (defendants in the suit), under Order VII Rule 11 of Code of Civil Procedure, 1908 (“CPC”), for rejection of plaint, and has decreed the suit in favour of the respondents herein (plaintiffs in the suit).

II. CS(OS) 2441/2014, titled as *Mayank Dayal versus Shakuntala Devi and Others*: The impugned judgment has dismissed *I.A. No. 6501/2017* filed by the appellant herein, i.e., Mayank Dayal (plaintiff in the suit), under Order XII Rule 6 CPC, for judgment on admissions, and has also further dismissed the said suit filed by the appellant herein.

III. CS(OS) 3631/2014, titled as *Shakuntala Devi versus Mayank Dayal and Others*: The impugned judgment has dismissed *I.A. No. 1003/2015* filed by appellants herein (defendants in the suit), under Order VII Rule 11 CPC, for rejection of plaint, and has decreed the suit in favour of the respondents herein (plaintiffs in the suit).

2. Though a common judgment has been passed by the learned Single Judge in relation to the three suits, three separate appeals have been filed to challenge the said judgment.

Case Canvassed by Mayank Dayal (Appellants herein):

3. The facts, as put forth on behalf of Mayank Dayal (defendant in *CS(OS) 1640/2014* and *CS(OS) 3631/2014*; plaintiff in *CS(OS) 2441/2014*),



are as under:

3.1 Maternal uncle of Mayank Dayal, namely, Sh. Balbir Singh Goel, was a member of the Sarvodaya Cooperative Housing Society Limited. He was allotted a plot bearing no. C-216 in the residential colony known as ‘Sarvodaya Enclave’ vide a sub-lease executed in his favour on 25th June, 1968. The said plot was lying vacant, as Sh. Balbir Singh Goel was a contractor with the Military Engineering Service (“MES”) and was well settled and residing at Mall Road in Ambala, Haryana.

3.2 Smt. Sudha Dayal, mother of Mayank Dayal, was the youngest sister of Sh. Balbir Singh Goel. Mother of Smt. Sudha Dayal wanted her youngest daughter, i.e., Smt. Sudha Dayal, to reside in her own house in close vicinity to her siblings. Accordingly, Mr. Balbir Singh Goel, out of natural love and affection for his youngest sister, requested the Sarvodaya Cooperative Housing Society Limited to transfer the said vacant plot, bearing No. C-216, Sarvodaya Enclave, New Delhi, in favour of his sister, Smt. Sudha Dayal. Subsequently, the Lieutenant Governor of Delhi approved the transfer of the plot in favour of Smt. Sudha Dayal, which was communicated by the DDA vide letter dated 15th March, 1973. Thus, a perpetual sub-lease was executed in her favour on 28th April, 1973.

3.3 In the year 1974-75, father of the appellant, out of his own earnings and savings, started the construction of the ground floor of the said property. The construction was completed in the year 1976. However, at the request of his grandparents, i.e., Sh. Maheshwar Dayal and Smt. Shakuntala Devi, Mayank Dayal’s parents permitted his grandparents, i.e., father-in-law and mother-in-law of Smt. Sudha Dayal, to move into the ground floor of the aforesaid property.



3.4 Sh. Vinod Dayal, father of Mayank Dayal wanted to construct the first floor. However, Smt. Sudha Dayal started keeping ill health and was diagnosed with Cancer in the year 1983. Thus, parents of Mayank Dayal, in order to secure a better living environment for their family continued to reside at the rented bungalow at 19, Rajpur Road, Delhi along with their children. Ultimately, the construction of the first floor of the said property was started in the year 1985 and the cost of construction was borne by the parents of Mayank Dayal i.e., Smt. Sudha Dayal and Sh. Vinod Dayal.

3.5 Unfortunately, Smt. Sudha Dayal passed away on 09th January, 1987. The construction of the first floor was completed in the year 1987. Sh. Vinod Dayal, along with his daughter and son, i.e., Mayank Dayal, shifted to the first floor of the property in the year 1988. Mayank Dayal has been residing therein since then.

3.6 The lease money, property tax for the entire property that was earlier being borne by father of Mayank Dayal, i.e., Sh. Vinod Dayal, have been paid and borne by Mayank Dayal, since the year 1998. Mayank Dayal has been openly and authoritatively asserting his exclusive ownership rights in respect of the property. As per the policy of the DDA, Mayank Dayal applied for the conversion of the property from leasehold to freehold. After making payment of the charges, and completing all formalities, conveyance deed was executed in favour of Mayank Dayal on 10th June, 2014.

3.7 After more than 42 years of the execution of the perpetual lease deed dated 28th April, 1973, in favour of Smt. Sudha Dayal, and more than 28 years after the death of Smt. Sudha Dayal on 09th January, 1987, Smt. Shakuntala Devi, i.e., mother-in-law of Smt. Sudha Dayal filed *CS(OS) 1640/2014*, titled as *Shakuntala Devi versus Vinod K. Dayal and Others* and



CS(OS) 3631/2014, titled as *Shakuntala Devi versus Mayank Dayal and Others*, claiming to be the actual owner of the suit property, which was purchased in the name of her daughter-in-law, Smt. Sudha Dayal.

3.8 Mayank Dayal filed a suit, being *CS(OS) 2441/2014*, titled as *Mayank Dayal versus Shakuntala Devi and Others*, praying *inter-alia*, for decree of possession in respect of the ground floor of the property in question.

Case Canvassed by Late Smt. Shankuntala Devi (Respondents herein):

4. The case, as canvassed on behalf of late Smt. Shakuntala Devi, i.e. grandmother of Mr. Mayank Dayal, is as follows:

4.1 Smt. Sudha Dayal, mother of Mayank Dayal, was daughter-in-law of Smt. Shakuntala Devi. Plot bearing no. C-216, Sarvodaya Enclave, New Delhi, was initially allotted to Sh. Balbir Goel, brother of Smt. Sudha Dayal. Smt. Shakuntala Devi wanted to purchase the said property for the benefit of her family.

4.2 Since as per norms of Sarvodaya Cooperative Housing Society, the plot could only be transferred to a blood relative, it was agreed that the plot would be purchased from Sh. Balbir Goel, in the name of Smt. Sudha Dayal, daughter-in-law of Smt. Shakuntala Devi, as she was the sister of Sh. Balbir Goel.

4.3 To facilitate the transaction of purchase of plot, a joint account was opened in the names of Smt. Shakuntala Devi and Smt. Sudha Dayal in the year 1972. This account was opened around the time of the purchase of plot from Mr. Balbir Goel.

4.4 The sale consideration for the purchase of the plot was solely transferred by Late Smt. Shakuntala Devi, from her own personal account, into the said joint account.



4.5 In June, 1969, Mother of Shakuntala Devi, had gifted her, a Silver ingot, valued at Rs. 14,355/-. The same was sold for Rs. 17,975.51/- and the said money was deposited in the account of Smt. Shakuntala Devi. Rs. 15,000/- was withdrawn from personal savings account of Smt. Shakuntala Devi and was transferred to the joint account with Smt. Sudha Dayal.

4.6 Thereafter, a sum of Rs. 14,000/- was paid to Sh. Balbir Goel, on 28th November, 1972 towards sale consideration of the plot and the same was acknowledged by him vide letter dated 28th November, 1972, issued to Land and Housing Department, requesting sanction for transfer of the said plot to Smt. Sudha Dayal.

4.7 Subsequently, a sum of Rs. 5,000/- was paid from the joint account to Sh. Balbir Singh, towards sale consideration. After receipt of sale consideration, Sh. Balbir Goel transferred and nominated Smt. Sudha Dayal in the records of Sarvodaya Cooperative Housing Society, on 03rd December, 1972.

4.8 DDA had raised a demand of Rs. 1249.17/- towards non-construction charges upon Sh. Balbir Goel, vide letter dated 14th December, 1972. The same was paid to DDA on 02nd January, 1973, by Smt. Shakuntala Devi from the joint account.

4.9 Subsequently, a perpetual sub-lease was executed in favour of Smt. Sudha Dayal by DDA. Ground floor was constructed on the plot between the years 1973-1975, out of the personal funds of Smt. Shakuntala Devi. After construction of the ground floor, Smt. Shakuntala Devi, along with her husband, Maheshwar Dayal and her other son, Vinay Dayal, moved into the ground floor.

4.10 Joint letter dated 05th April, 1976 was issued by Smt. Sudha Dayal



and Sh. Maheshwar Dayal, to Municipal Corporation of Delhi (“MCD”) regarding issuance of completion certificate.

4.11 Letter dated 30th June, 1976 was issued by Smt. Sudha Dayal to DDA stating that she intends to give the property to Smt. Shakuntala Devi, out of natural love and affection.

4.12 Joint letter dated 15th February, 1980 was issued by Smt. Sudha Dayal and Sh. Maheshwar Dayal to MCD regarding issuance of House Tax bills.

4.13 Money was continuously transferred by Shakuntala Devi alone into the joint account, to facilitate the development of the property. The transactions are evident from various cheque book foils and pay-in-slips.

4.14 Payments towards Sarvodaya Cooperative Housing Society and towards house tax, were made out of the account jointly held by Smt. Shakuntala Devi and Sh. Maheshwar Dayal. Lease money receipts were also issued by Sarvodaya Cooperative Housing Society, in the names of Smt. Sudha Dayal and Maheshwar Dayal.

4.15 Disputes arose in the year 2014, when Sh. Vinod Dayal, father of Mayank Dayal and husband of Smt. Sudha Dayal, started claiming absolute ownership of the property in question and threatened to sell the property. In these circumstances, Smt. Shakuntala Devi was constrained to file *CS(OS) 1640/2014*, and *CS(OS) 3631/2014*.

Factual Matrix:

5. During the pendency of the three suits, Mayank Dayal filed applications under Order VII Rule 11 CPC, being *I.A. No. 20927/2014* and *I.A. No. 1003/2015* respectively, for rejection of plaints in the suits filed by Smt. Shakuntala Devi, i.e., *CS(OS) 1640/2014* and *CS(OS) 3631/2014*. Mayank Dayal further filed an application under Order XII Rule 6 CPC, in



the suit instituted by him, i.e., *CS(OS) 2441/2014*, praying for decree of possession in respect of the ground floor of the property in question.

6. By the impugned common judgment dated 02nd November, 2018, the learned Single Judge dismissed all the respective applications filed by Mayank Dayal, i.e., under Order VII Rule 11 CPC and under Order XII Rule 6 CPC. While doing so, the learned Single Judge, dismissed the suit of Mayank Dayal, i.e., *CS (OS) 2441/2014* and decreed the suits of Smt. Shakuntala Devi, i.e., *CS(OS) 1640/2014*, and *CS(OS) 3631/2014*, thereby, declaring Smt. Shakuntala Devi, as the 'Benami' owner of the suit property and cancelled the registered conveyance deed dated 10th June, 2014 executed by the DDA in favour of Mayank Dayal.

7. Both the parties advanced lengthy arguments before this Court. While Mayank Dayal prayed for setting aside of the impugned judgment dated 02nd November, 2018, learned counsel appearing for Shakuntala Devi prayed for dismissal of the appeals filed by Mayank Dayal.

Submissions on behalf of Appellants:

8. On behalf of appellants, following submissions have been made:

8.1 In the suit, i.e., *CS(OS) 1640/2014*, filed by the respondents herein, it was pleaded that Smt. Sudha Dayal (daughter-in-law), was the trustee of Smt. Shakuntala Devi (mother-in-law), solely on the ground that the consideration for the alleged purchase of the plot was allegedly made by mother-in-law. The said contentions made in the plaint were specifically refuted by the appellants herein in the written statement filed in *CS(OS) 1640/2014*.

8.2 The second suit filed by respondents herein, i.e., *CS(OS) 3631/2013*, was filed on the basis of the same submissions as the first suit. A detailed



written statement was filed by the appellants herein, specifically denying every averment, even pointing out the inconsistencies and contradictions in the documents filed and relied by the respondents herein.

8.3 As recorded in the order 1st August, 2015, the appellants denied all the documents filed by the respondents. Thus, the impugned judgment could not have been passed relying upon the same.

8.4 In reply to the application, *I.A. 6501/2017* in *CS(OS) 2441/2014* filed by appellants herein under Order XII Rule 6 CPC, the respondents herein had stated in categorical terms that the suit needs a detailed trial to determine the correct factual position.

8.5 Undisputedly, all the documents of title from 1973 onwards, have been in the name of Mrs. Sudha Dayal and/or her legal heirs, with no claim to the contrary by anybody, till filing of the first suit in 2014, i.e., after more than 41 years (1973-2014). Further, the respondents had even sought written permission from the legal heirs of Mrs. Sudha Dayal, namely, Mr. Mayank Dayal, for the installation of the electricity meter.

8.6 DDA being the perpetual lessor, recognised only Smt. Sudha Dayal, and after her death, her legal heirs. The property could have been transferred only in the name of blood relative of Shri Balbir Singh, and Smt. Sudha Dayal being his sister, could only be the real owner. If the real owner is to be taken anybody else other than the blood relative, then, the same may amount to circumventing and/or abusing or misusing the law, which may have cascading effects.

8.7 The impugned judgment proceeds on the incorrect premise and the learned Single Judge manifestly misdirected in passing the same, since nothing else, but “Trusteeship” was pleaded. However, the learned Single



Judge has travelled from “Trusteeship” to “Fiduciary”, and the property being for the family’s benefit.

8.8 The learned Single Judge has proceeded to decide the matters erroneously, as if they were being decided after recording the evidence of the parties, and that too accepting and inferring that the documents filed by Smt. Shakuntala Devi, being in original, are irrefutable, even though Smt. Shakuntala Devi could not be cross-examined for reasons of her old age and unfortunate death.

8.9 A bare perusal of Section 90 of the Indian Evidence Act, 1872 (“Evidence Act”) (now repealed), would clearly go to show that in terms thereof, merely a presumption is raised to the effect that signature and every part of such document, which purports to be in the handwriting of a particular person, is in that person’s handwriting. The Section nowhere provides that in terms thereof, the authenticity of the recitals contained in any document is presumed to be correct. It is open to the parties to raise a plea, contrary thereto.

8.10 The Rule laid down in Section 90 of the Evidence Act is to be applied with special care and caution, as nothing can be easier than for an unscrupulous person to forge the documents in his own favour more than thirty years old, and then produce them in Court, and say that he is relieved from the necessity of proving the execution of the documents.

8.11 In the present case, the presumption under Section 90 of the Evidence Act, is to be applied with special care and caution, in view of the inconsistencies and contradictions in the documents filed and relied on by the respondents herein, and pointed out in the written statement filed by the appellants herein in *CS(OS) 3631/2014*.



Submissions on behalf of Respondents:

9. On behalf of Smt. Shakuntala Devi (now deceased), it is contended as follows:

9.1 Shakuntala Devi purchased the suit property for the residential needs of the family. Since the property could only be transferred to a blood relation, therefore, a decision was taken to purchase the property in the name of Sudha Dayal, though the funds were to be provided by Shakuntala Devi. It is an admitted case that no funds were contributed by Sudha Dayal.

9.2 A joint account was opened in the name of Shakuntala Devi and Sudha Dayal, in which the entire funds were contributed by Shakuntala Devi.

9.3 The sale consideration was paid to Balbir Singh Goel from the joint account, in which the entire funds were contributed by Shakuntala Devi. Sudha Dayal does not even claim to have contributed any amount. The property was constructed from the funds provided by Shakuntala Devi. On completion of the construction of the property, Shakuntala Devi, her husband and one son started residing in the property. Sudha Dayal did not reside in the property during her life time, nor did she or her family make any claim of ownership.

9.4 The property was shown in the Income Tax Returns by Shakuntala Devi, as her property. On the contrary, Sudha Dayal never claimed the property as hers in her Tax Returns.

9.5 Admitted documents like the bank passbook of the joint account, payment into the joint account by Shakuntala Devi, receipt of consideration by Balbir Singh Goel, and payments towards construction in original, are already part of the record.



9.6 The property was purchased by Shakuntala Devi in the name of Sudha Dayal, her daughter-in-law, in a fiduciary capacity. Thus, the transaction is not hit by Section 4 (1) of the Benami Transactions (Prohibition) Act, 1988.

9.7 An issue was framed by the Trial Court regarding whether the property was a 'Benami' transaction, or it is the property of Shakuntala Devi, at the instance of the appellant. It is the appellant who filed an application, being *I.A. 6501/2017* for a decision of the entire suit by deciding the aforesaid preliminary issue. In reply, the respondent had stated that the matter would require a trial. The appellant opposed the same and now, cannot resile from his stand.

9.8 No gift deed from Mr. Balbir Singh Goel in favour of Smt. Sudha Dayal, mother of Mayank Dayal, was produced by the appellants herein. During the course of arguments before the learned Single Judge, the appellants herein, had admitted that the payments for the property had been made by Smt. Shakuntala Devi. In light of the admission of the appellants herein, based on the settled legal position, the learned Single Judge rightly proceeded to dispose of the suits by way of the impugned judgment.

9.9 Contention of the appellant that the findings of the learned Single Judge could not have been arrived at without a trial, is misplaced, as the appellant himself had sought an adjudication without a trial, and had opposed the contention of the respondent, that the matter be put to trial.

9.10 Having consented to the decision of the suit by deciding the preliminary issue, the order being a consent order to that effect, no appeal would lie against the said consent. The learned Single Judge having been called upon to decide issue no. 4 as a preliminary issue, rightly found that the property had been purchased by Smt. Shakuntala Devi. Consequently,



the suits were rightly decreed, as the remaining issues did not survive for further consideration.

9.11 The preliminary issue, i.e., “*whether the defendant no. 1 is the actual owner of the property which was held by Smt. Sudha Dayal as trustee of the defendant no. 1?*” goes to the root of the dispute in all the three suits, and results in finality in so far as the reliefs prayed in all the said suits. As such, after deciding the said issue against the appellant herein, the learned Single Judge rightly dismissed the suit of the appellant, i.e., *CS(OS) 2441/2014*, and partially decreed the other two suits filed by respondents, i.e., *CS(OS) 1640/2014* and *CS(OS) 3631/2014*.

9.12 The learned Single Judge correctly held that the bar under Section 4(1) of the Benami Transaction (Prohibition) Act, 1988, does not apply in the present case, as it is protected under Section 4(3)(b) of the Act.

9.13 The learned Single Judge has rightly considered the documents placed on record by Smt. Shakuntla Devi. This discretion was correctly exercised in view of the fact that the documents tendered in evidence are original, and also in view of the statutory presumption in their favour under Section 90 of the Evidence Act, in view of the said documents being more than thirty years old.

9.14 Learned Single Judge rightly held that the evidence is overwhelming and pointing to the fact that Smt. Sudha Dayal always had trust in her mother-in-law, and that the suit property was held by her on behalf of her mother-in-law, for the benefit of the entire family and is not the exclusive property of Shri Mayank Dayal.

Findings and Analysis:

10. We have heard learned counsels for the parties and have perused the



record.

11. At the outset, this Court notes that in the suit filed by Mayank Dayal, i.e., CS(OS) 2441/2014, the following issues were framed vide order dated 14th October, 2015:

“1. Whether the plaintiff is entitled to the possession of the property bearing No. C-216, Ground Floor, Sarvodya Enclave, New Delhi from the defendant? OPP

2. Whether the plaintiff is entitled to claim mesne profits/damages from the defendants for the use and occupation of the property bearing No. C-216, Ground Floor, Sarvodya Enclave, New Delhi? If so, at what rate and for what period? OPP

3. Whether the plaintiff is entitled to get a decree of permanent injunction against the defendant, as prayed? OPP

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

7. Relief.”

(Emphasis Supplied)

12. By virtue of the impugned judgment, the learned Single Judge treated the aforesaid issue no.4, as the preliminary issue. Thus, the learned Single Judge firstly proceeded to deal with the issue of fiduciary relationship between the mother-in-law, i.e., Shakuntala Devi and the daughter-in-law, i.e., Sudha Dayal. The learned Single Judge, then proceeded to examine the law of ‘Benami’ ownership, and ultimately concluded that the suit property was purchased for the benefit of the family. Thus, the learned Single Judge, has held as follows:

“xxx xxx xxx

*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 judgment are set out below:

"15. The bare readings 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 Kashmira Lai 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 Snehlata that the plot was transferred in the name of Dharampal, who happens to be the elder son of Kashmira Lai. 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 Lai. The money was also spent in construction by the father Kashmiri Lai. Occupation and enjoyment of the house were with the entire family right from the beginnings 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 Snehlata 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."

*29. In **Snehlata v. Priti Tandon & Am** [Counter claim No.12/2014 decision dated 17 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.*

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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.

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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.....

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. LA. 20927/2014 under Order VII Rule 11 is dismissed. LA. 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. LA. 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.

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(Emphasis Supplied)

13. Reading of the impugned judgment shows that while dismissing the applications filed by Mayank Dayal for rejection of the plaints under provisions of Order VII Rule 11 CPC in the two suits filed by respondents, and also dismissing the application under Order XII Rule 6 CPC filed by Mayank Dayal for decree on admission in the suit filed by him, the learned Single Judge proceeded to decree the suit in favour of Shakuntala Devi, i.e., the plaintiff in the suits being *CS(OS) 1640/2014* and *CS(OS) 3631/2014*. This course of action is totally impermissible. If the learned Single Judge came to a finding that the conditions for rejection of plaint under Order VII Rule 11 CPC did not exist, then, the court was required to dismiss the said applications and put the case for trial. In such a scenario, the suit is required to be heard on merits after taking evidence in the case. In ascertaining whether a plaint shows a cause of action, the court is not to enter upon a trial of the issues, affecting the merits of the claim made by the plaintiff.

14. If the court finds that the conditions under Order VII Rule 11 CPC for rejection of a plaint do not exist, while rejecting such application, a court cannot embark on making an elaborate enquiry into complicated questions of law and fact and decree the suit. The jurisdiction of the court is restricted



to only ascertaining whether on the allegations, there exists a case for rejection of the plaint on any grounds as given in order VII Rule 11 CPC. If the Court does not find any grounds for rejection of the plaint, then the Court is within its authority and jurisdiction to dismiss the application for rejection of plaint.

15. However, in the present case, the learned Single Judge erred in proceeding to deal with the merits of the case at the time of considering the applications for rejection of plaint. The issue, whether title as traced by Smt. Shakuntala Devi, i.e., plaintiff in *CS(OS) 1640/2014* and *CS(OS) 3631/2014*, is a legally acceptable one or not, could have been considered only after trial. Therefore, while dismissing the applications for rejection of plaint, the learned Single Judge ought to have put the suits for trial, and not consider the merits of the case.

16. Holding that no amount of evidence or merits of the controversy can be examined at the stage of decision of the application under Order VII Rule 11 CPC, Supreme Court in the case of *Eldeco Housing and Industries Limited Versus Ashok Vidyarthi and Others*, 2023 SCC OnLine SC 1612, has held as follows:

“xxx xx xxx

17. In Kamala v. K. T. Eshwara Sa, this Court opined that for invoking clause (d) of Order VII Rule 11 CPC, only the averments in the plaint would be relevant. For this purpose, there cannot be any addition or subtraction. No amount of evidence can be looked into. The issue on merits of the matter would not be within the realm of the Court at that stage. The Court at that stage would not consider any evidence or enter a disputed question of fact of law. Relevant paragraphs thereof are extracted below:

“21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in



Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.

23. The principles of res judicata, when attracted, would bar another suit in view of Section 12 of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.

24. It is one thing to say that the averments made in the plaint on their face discloses no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law.

25. The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact or law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for rejection of plaint should be entertained.

(Emphasis Supplied)

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19.

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23.12. In *Hardesh Ores (P) Ltd. v. Hede & Co.* [*Hardesh Ores (P) Ltd. v. Hede & Co.*, (2007) 5 SCC 614] the Court further held that it is



not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941].

xxx xxx xxx”

xxx xxx xxx

*26. However, the fact remains that all the aforesaid documents, referred to by the respondent in support of his plea for rejection of the plaint, cannot be considered at this stage as these are not part of the record with the Court filed along with the plaint. **This is the stand taken by the respondent-defendant in the application filed under Order VII Rule 11 CPC As noticed above, no amount of evidence or merits of the controversy can be examined at the stage of decision of the application under Order VII Rule 11 CPC Hence, in our view, the impugned order of the High Court passed in the Review Application deserves to be set aside. Ordered accordingly.***

xxx xxx xxx”

(Emphasis Supplied)

17. The findings by the learned Single Judge that the facts in the present cases, are irrefutable, and passing decree in the suits in favour of the respondents herein on that basis, is not sustainable. Perusal of the record shows that various contentious issues have been raised by the appellants, specifically denying every averment of the respondents in their written statements filed in the suits of the respondents. Various inconsistencies and contradictions, in the documents filed by the respondents, have been averred by the appellants. Therefore, it cannot be said that the facts in question are irrefutable or established. Further, the court could not have gone into the genuineness or correctness of the documents without evidence being led, with respect thereto. In view of the various disputed questions of facts, the



suits certainly require trial before any adjudication can be made on the various issues raised in the suits.

18. Further, it is to be noted that the preliminary issue framed by the learned Single Judge was as to whether the suit property was held by Smt. Sudha Dayal (daughter-in-law), as trustee of Smt. Shakuntala Devi (mother-in-law). However, in the impugned judgment, the issue of “Trusteeship” and “Fiduciary Relationship” have been dealt interchangeably, though said issues and relationships are separate and independent of each other.

19. By virtue of the impugned judgment, the learned Single Judge has not only dismissed the applications of the appellants for rejection of the plaint under Order VII Rule 11 CPC, but has also proceeded to declare Smt. Shakuntala Devi, the deceased grandmother of the appellant, as the “Benami” owner of the suit property. However, as per the law elucidated by the Supreme Court, the burden of proving that a particular sale is ‘Benami’, has to be strictly discharged by adducing legal evidence of a definite character. Thus, in the case of *Jaydayal Poddar (Deceased) Through L.Rs and Another versus Mst Bibi Hazra and Others, (1974) 1 SCC 3*, Supreme Court has held, as follows:

“xxx xxx xxx

6. It is well settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of a benami is the intention of the party or parties concerned; and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the



acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation, and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question, whether a particular sale is benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid test, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the Courts are usually guided by these circumstances: (1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar; (5) the custody of the title-deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale.

7. The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless No. 1 viz. the source, whence the purchase money came, is by far the most important test for determining whether the sale standing in the name of one person, is in reality for the benefit of another.

xxx xxx xxx”

(Emphasis Supplied)

20. Similarly, while holding that Order VII Rule 11 CPC was not the appropriate stage for testing the veracity of the pleas taken in the plaint and return any finding on the merits of the said plea taken by the plaintiffs in the plaint, Division Bench of this Court, in the case of ***Neeru Dhir and Others versus Kamal Kishore Dhir and Others, 2020 SCC OnLine Del 2506***, has held as under:

“xxx xxx xxx

22. In the present case, the stage of evidence had not even been arrived at. In fact, only pleadings in the suit were completed. Issues have also not been framed. Therefore, there was no occasion for the court to determine as to whether the respondent No. 1 stood in a



'fiduciary capacity' vis-a-vis his deceased brother, Shri Anil Kumar Dhir, predecessor-in-interest of the appellants/plaintiffs. On perusing the averments made in the plaint, it cannot be said at this stage that the suit is barred by Benami Act. In this context, we may usefully refer to a recent decision of the Supreme Court in *Pawan Kumar v. Babulal Since Deceased through Legal Representatives* reported as (2019) 4 SCC 367, wherein it has been held as below:—

*“13. In the present case, the controversy has arisen in an application under Order 7 Rule 11 CPC. Whether the matter comes within the purview of Section 4(3) of the Act is an aspect which must be gone into on the strength of the evidence on record. Going by the averments in the plaint, the question whether the plea raised by the appellant is barred under Section 4 of the Act or not could not have been the subject-matter of assessment at the stage when application under Order 7 Rule 11 CPC was taken up for consideration. The matter required fuller and final consideration after the evidence was led by the parties. It cannot be said that the plea of the appellant as raised on the face of it, was barred under the Act. The approach must be to proceed on a demurrer and see whether accepting the averments in the plaint the suit is barred by any law or not. We may quote the following observations of this Court in *Popat and Kotecha Property v. SBI Staff Assn.* [*Popat and Kotecha Property v. SBI Staff Assn.*, (2005) 7 SCC 510] : (SCC p. 515, para 10)*

“10. Clause (d) of Order 7 Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.”

(Emphasis added)

23. If we go strictly by the averments made in the plaint and the documents filed by the appellant/plaintiffs, we are of the opinion that the suit ought not to have been rejected outright under Order VII Rule 11 CPC on the ground that the pleas taken by the appellants/plaintiffs are barred under Section 4(3) of the unamended Benami Act. In our view, the matter would require a more comprehensive consideration after permitting the parties to lead evidence in the case. Order VII Rule 11 CPC was not the appropriate



stage for testing the veracity of the pleas taken in the plaint and return any finding on the merits of the said plea taken by the appellants/plaintiffs in the plaint or to extensively examine the underlying intent of the parties on a perusal of the documents filed by the appellants. On a bare reading of the averments made in the plaint read in conjunction with the documents placed on record, we are of the opinion that sufficient material facts have been disclosed requiring determination only after a proper trial. At the stage of deciding an application moved by the respondents under Order VII Rule 11 CPC, there was no occasion for the court to have taken pains to interpret and analyse the documents filed by the appellants/plaintiffs to hold in favour of the respondents.

xxx xxx xxx”

(Emphasis Supplied)

21. The contention of the respondents that the appellants themselves had sought adjudication without a trial, in order to justify the findings of the learned Single Judge, is totally misplaced. The said submission by the appellants, for adjudication without a trial, was made only with respect to adjudication of the application under Order XII Rule 6 CPC. Hence, the said submission made by the appellants in a different context, cannot be held against them.

22. The learned Single Judge has adverted to the factual matrix of the case in detail in the impugned judgment, which facts cannot be said to be uncontroverted, as noted hereinabove. The facts could have been established only during trial. Law is well settled that where an issue involves both mixed questions of facts and law, it cannot be taken up as a preliminary issue. Thus, Supreme Court in the case of **Ramesh B. Desai and Others versus Bipin Vadilal Mehta and Others, (2006) 5 SCC 638**, has held as follows:



“xxx xxx xxx

13. Sub-rule (2) of Order 14 Rule 2 CPC lays down that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in force. The provisions of this Rule came up for consideration before this Court in Major S.S. Khanna v. Brig. F.J. Dillon [(1964) 4 SCR 409 : AIR 1964 SC 497] and it was held as under: (SCR p. 421)

“Under Order 14 Rule 2, Code of Civil Procedure where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit.”

Though there has been a slight amendment in the language of Order 14 Rule 2 CPC by the amending Act, 1976 but the principle enunciated in the abovequoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue.

xxx xxx xxx”

(Emphasis Supplied)

23. In the event that the learned Single Judge did not find that the conditions under Order VII Rule 11 CPC for rejection of plaint existed, then, the suit was required to be heard on merits, after taking evidence in the case. If the court was of the view that the plaint disclosed cause of action, and



there was no ground for rejection of the plaint, it could not have proceeded further to give relief to the respondents, i.e., plaintiffs in the suit, on the basis of facts and circumstances disclosed in the plaint. Given that the learned Single Judge was of the view that sufficient material had been disclosed on the record by the plaintiff in the plaint, i.e., the respondents herein, the appropriate course of action that ought to have been adopted by the learned Single Judge was to reject the applications under Order VII Rule 11 CPC and put the matter for trial. Decreeing the suits in favour of the respondents, i.e., the plaintiffs in the suits, in such summary manner at the time of adjudication of applications under Order VII Rule 11 CPC, cannot be sustained.

24. In view of the aforesaid detailed discussion, the impugned judgment dated 2nd November, 2018 passed by the learned Single Judge is set aside. The matter is remanded back to the learned Single Judge for further proceedings in the suits, which shall be decided, after due recording and completion of evidence.

25. The present appeals are allowed in the aforesaid terms.

26. In view of the judgment pronounced today, the parties are directed to appear before the learned Single Judge for directions on 18th November, 2024.

MANMOHAN, CJ

MINI PUSHKARNA, J

OCTOBER 18, 2024

Au/kr/ak