



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

% **Reserved on: 14.03.2023**
Pronounced on: 04.07.2023

+ **RFA(OS) 27/2022**

SMT. SARITA DUA Appellant

Through: Mr. Rishi Raj Sharma & Mr.
Yuvraj Sharma, Advocates.

versus

DR. GAUTAM DEV SOOD & ORS. Respondents

Through: Mr. Ashok Chhabra,
Advocate for R-1 to R-4

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

1 First appeal has been preferred against the Order dated 30.08.2022 vide which the suit of the appellant (plaintiff in the suit for partition and rendition of accounts), has been rejected under Order VII Rule 11 of Code of Civil Procedure, 1908.

2 Facts in brief are that the three plaintiffs, who were sisters, filed a suit seeking partition of the property bearing no. N-32, Greater Kailash, New Delhi (*hereinafter referred to as the suit property*) against defendant



no. 1, their brother and defendant nos. 2, 3 and 4 who are the legal heirs of the second brother, i.e. Dr. Devashish Kumar Sood.

3 The relevant facts as pleaded in the plaint are that the suit property was purchased by late Dr. Vyas Dev Sood, father of the parties on 27.04.1965 from his own funds/sources in the name of his wife, late Smt. Raj Kumari Sood for his own benefit, on which a two-storey house was consequently constructed from his own funds/sources. He died on 31.01.2001 while Smt. Raj Kumari Sood, the mother of the parties died in October 2004. They both died intestate and were survived by the three daughters, who are the plaintiffs and the two sons, who are respondent no. 1 and Dr. Devashish Kumar Sood, who is represented by his legal heirs. The disputes arose between the parties resulting in filing of the suit for partition and rendition of accounts.

4 An application under **Order VII Rule 11 of the Code of Civil Procedure, 1908** was filed by the respondents/defendants seeking dismissal of the suit essentially on two grounds:

- i) The mother, Smt. Raj Kumari Sood, who was the sole owner of the suit property had executed two Gift Deeds dated 13.03.2000 and 11.03.2002 in favour of two sons, namely, defendant no. 1 and Dr. Devashish Kumar Sood. The relief claimed in the present suit is simpliciter for partition without challenging or seeking cancellation of the aforesaid two registered Gift Deeds about which the plaintiff were aware since the year 2009.



ii) The present suit has been filed only in the year 2020 and is barred by limitation under Article 59 of the Limitation Act, 1963.

5. Admittedly, the plaintiffs had filed an earlier suit CS (OS) No. 1912/2009 for partition and rendition of accounts. The suit was contested and the written statements were filed by the defendants; however, pursuant to an Oral Understanding/Settlement between the parties in the year 2013, the plaintiffs agreed to not take any further action in the suit. Consequently, the suit was dismissed on account of default and non-prosecution vide Order dated 02.04.2013.

6. Thereafter, this present suit has been filed in the year 2020 seeking partition and rendition of accounts. The defendants in their Written Statement have taken the same defence as in earlier suit, of there being two registered Gift Deeds in favour of the defendants.

7. The plaintiff in the present suit has mentioned all these details in paragraph 17 of the plaint which reads as under:

*“17. That it is pertinent to submit that the plaintiffs had previously in the year 2009 filed a suit for partition and rendition of accounts against the Defendants before this Hon'ble Court being CS (OS) No. 1912 of 2009, wherein the pleadings were complete and the matter was fixed for hearing on 02-04-2013 for framing of issues. **That in the written statement/s filed by the Defendants in the said suit, allegedly reliance was placed on two gift deeds dated March 2000 & March 2002 allegedly executed by the mother (Smt. Raj Kumari Sood) in favour of the brothers of Plaintiffs i.e. husband of Defendant No. 2 (first floor & above of the suit property) and also Defendant No. 1 (ground floor of the suit property), respectively.** That in the replication filed by the Plaintiffs*



in the said suit, has denied the gift deed/s and raised pertinent questions regarding the authenticity, execution and existence thereof. That in any case since the suit property is itself benami and the true and correct owner was the father i.e. Late Dr. Vyas Dev Sood, the mother i.e. Late Smt. Raj Kumari Sood did not have any right to transfer the suit property partly or wholly or in any manner whatsoever, and accordingly any such transfer if so made would not bar or restrict or relinquish the legal rights of the Plaintiffs in the suit property.”

8. The learned counsel on behalf of the appellant/plaintiff has stated in the written submissions that the learned single Judge has fallen in error in treating paragraph 17 of the plaint as an averment when in fact it was only a narration of facts including the averment of the defendants about the existence of the two Gift Deeds as mentioned in the earlier suit. There was no admission of the plaintiff in respect of the Gift Deeds which could have been considered while deciding an application under Order VII Rule 11 of the Code of Civil Procedure, 1908; only the averments of the plaintiff in the plaint could have been considered to determine if there is no cause of action disclosed in the plaint. For this, reliance has been placed on Shakti Bhog Food Industries Ltd. vs Central Bank of India and Anr (2020) 17 SCC 260.

9. Further, it has been contended by the appellant that the Plaintiff is not required to seek a declaration of cancellation of the alleged Gift Deeds as the same is a 'void document'. As per the law propounded by the Apex Court in Prem Singh vs. Birbal (2006) 5 SCC 353 and Kewal Krishnan vs. Rajesh Kumar 2021 SCC OnLine 1097 it is no more res Integra that there



is no requirement to seek cancellation of a document which is void ab initio.

10. The Ld. Counsel for the appellant has argued that the Suit Property was bought by the father of the Plaintiff by using his own funds, in the name of the mother. Such being the case, the mother was only a de facto owner of the property contradistinguished to a de jure owner, i.e. the father. Since the property was benami, the de jure ownership vested with the father till his demise and thereafter, as per the laws of succession, delved upon the legal heirs. Reliance has been placed on the case of Manoj Arora Vs. Manita Arora 2018 SCC OnLine Del 10423.

11. **The Learned Counsels for the respondent nos. 1 to 4** on the other hand, have contended that the suit for partition without challenging registered Gift Deed is not maintainable. Article 59 of the Limitation Act prescribes a period of three years for challenging the registered Gift Deed. Admittedly, as per averments made in paragraph 17 of the plaint, the appellant/plaintiff had knowledge of the registered Gift Deed since 2009, however, no action has been taken to challenge the Gift Deed, even in the present suit which has been filed after 12 years. Therefore, the relief claimed is barred by Article 59 of the Limitation Act and the appeal is liable to be dismissed as being without merit.

12. Plaintiff has placed reliance on the following cases:

- (i) Dahiben vs Arvindbhai Kalyanji Bhanusali (Gajra) dead through LRs and Ors (2020) 7 SCC 366
- (ii) Ramti Devi vs Union of India (1995) 1 SCC 198
- (iii) Sanjay Roy Vs. Sandeep Soni, 2022 SCC OnLine Del 1525
- (iv) Lata Chauhan vs L.S. Bisht & Ors 2010 (117) DRJ 715



- (v) *B. Vijaya Bharathi vs P. Savitri and Ors* (2018) 11 SCC 761
- (vi) *Anita Anand Vs. Gargi Kapur*, 2018 SCC OnLine Del 11372
- (vii) *Abdul Rahim and Ors vs Sk. Abdul Zabar and Ors.* (2009) 6 SCC 160
- (viii) *Prem Singh and Ors vs Birbal and Ors.* (2006) 5 SCC 353
- (ix) *Harish Relan vs Kaushal Kumari Relan 7 Ors.* 2015 SCC OnLine Del 11528
- (x) *Saroj Salkan vs Huma Singh and Ors.* 2022 SCC OnLine Del 3788

13. **Submissions Heard.**

14. It is the admitted case of the parties that the suit property had been bought in the name of the mother of the plaintiff in the year 1965 by a registered Sale Deed. The appellant/plaintiff has claimed that the entire funds for purchase of suit property were paid by the father of the plaintiff from his own sources. So being the case, the mother was only a *de facto* owner of the property in contradistinction to the father being a *de Jure* owner. Since, the property was benami, the *de Jure* ownership vested with the father till his demise and thereafter, as per law of succession, devolved upon all the legal heirs and has sought partition of the properties.

I. Plea of Benami Transaction:

15. The basis for claiming that father was the de jure owner of the suit property is that the funds for the purchase of property were paid by the father though the property was purchased in the name of mother. The first aspect which requires consideration is whether the Benami Transaction (Prohibitions) Act, 1988 (hereinafter referred to as “the Benami Act”) permits a plaintiff to base his claim on de jure ownership of father despite the registered Sale Deed being in favour of the mother.



16. While the law creates a prohibition against the right to recover property held benami, the law has culled out certain exceptions to benami transactions under Section 3(2) of the Benami Act which reads as-

“3 Prohibition of benami transactions-

(1)....

(2) Nothing in sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter.”

17. The suit property was purchased vide registered Sale Deed dated 27.04.1965 in the name of mother. Both, the mother and father have died and at no point of time the father, during his lifetime, had claimed it to be Benami property. Now after almost 50 years of execution of the Sale Deed, the appellants have challenged the Sale Deed as being hit by Benami Transaction Act. Such a vague plea which is not supported by any details/explanation of the funds traceable to father, the plea of property belonging to father, has rightly been rejected as vague, not supported by any details.

18. Section 3(2) of the Act, no doubt creates a presumption if the property is purchased in the name of wife or daughter, but this presumption would have arisen only if there was any basis to establish that father had purchased property benami in the name of his wife.

19. Section 4 of the Benami Act prohibits the right to recover property held benami and reads as follows-

“Section 4 (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.

*(3) **Nothing in this section shall apply**,-- (a) where the person in whose name the property is held is a **coparcener in a Hindu undivided family** and the property is held for the benefit of the coparceners in the family; or (b) where the person in whose name the property is held is **a trustee or other person standing in a fiduciary capacity**, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.”*

20. Section 4 of the Act places a complete embargo on claiming any right if the transaction is per se benami i.e. the property is purchased in the name of one while the funds are paid by another. Section 4(2) of the Benami Act prohibits any suit on the basis of such transaction; no person can assert to be the real owner of such property held benami. The Apex Court in the case of R. Rajagopal Reddy (dead) by LRs and Ors vs Radmini Chandrasekaran (dead) by LRs (1995) 2 SCC 630 clarified the retrospective application of Section 4 and observed that Section 4 shall be applicable from the date it came into effect and no claim, suit or action preferred by the real owner, to enforce any right in respect of the property held benami, would lie/be admissible in any court.

21. We find the line of argument taken by the Appellants about the father being the de jure owner and thereby appellants/plaintiffs, the



daughters are entitled to share in the suit property, to be totally fallacious for the simple reason that the Sale Deed was never challenged within the period of three years. Section 27 of the Limitation Act is the only provision which extinguishes the right to property if not challenged within limitation, while all other sections of Limitation Act merely make the remedy barred by Limitation.

22. A Division Bench of this Court in the case of Sanjay Roy Vs. Sandeep Soni, (Supra) followed the judgement of Ramti Devi (Supra) and observed that Section 27 of the Limitation Act, 1963 extinguishes the right in property on expiry of the period of limitation.

23. Similarly, in the case of Lata Chauhan vs L.S. Bisht & Ors 2010 (117) DRJ 715 this court had observed that where the Plaintiff has failed to seek appropriate relief of Declaration or, alternatively, cancellation of the Registered Lease deed, such relief cannot be granted, because the period of limitation prescribed in this regard by Articles 58 and 59 mandates that suits in regard to such declaration are to be instituted within three years after the cause of action arises. As the plaintiff did not file the suit within time, it is time barred. The court further applied Section 27 of the Limitation Act to the facts of the case and observed that if the plaintiff had a cause of action to seek cancellation of the Registered Lease Deed enuring in favour of the first defendant, or to seek an appropriate declaration, it was extinguished after the expiry of three years from the date of registration of the document.

24. Therefore, a registered conveyance deed in favour of a party if not challenged within the prescribed period limitation under Article 59 of the Limitation Act, 1963 would vest absolute ownership rights in the



property. The plaintiffs not ever having questioned the validity of Sale Deed within limitation, they are debarred from claiming any right under the Sale Deed, as it stands extinguished by virtue of Section 27 of the Limitation Act. Once the Sale Deed has become unassailable and the title in favour of mother stands crystallized, the daughters/appellants cannot claim any right of partition by asserting it to be the father's property, who had died intestate.

25. The appellants have placed reliance on Manoj Arora Vs. Mamta Arora (Supra), wherein the husband had filed a suit for declaration and injunction against the wife claiming to be a *de jure* owner of the two properties, which he had purchased in the name of his wife, the defendant. He had explained the source of money and given details of money that was paid by him for the purchase of those properties. It was observed by the Coordinate Bench of this Court that when there are specific averments in the plaint about the property having been purchased by the husband in the name of his wife, the suit could not have been rejected under Order VII Rule 11 of the CPC.

26. However, in the present case, neither the father nor the mother ever claimed that the property was purchased benami by the father in the name of the mother. So much so, the parties to the suit, during the lifetime of their parents have also not asserted the property was benami in the name of the mother. Furthermore, no declaration whatsoever, has been sought in respect of the Sale Deed that was executed in the name of the mother on 27.04.1965 either in the present suit nor in the earlier civil suit bearing no. CS (OS) 1912/2009. The plaintiffs have also not disclosed the source from where the payment was made.



27. In the case of *Ramti Devi vs Union of India*, (supra) the appellant knew of the the execution and registration of the Sale Deed on 29-1-1947. The limitation period of three years prescribed Article 59 of the Schedule to the Limitation Act, 1963 began to run when the appellant had knowledge of the document being executed. The suit therein was filed in 1966, the earlier suit of 1959 having been withdrawn, and was held to be time barred and dismissed by the Apex Court.

28. The facts in case are similar. The defendant/ respondents had contested the claim of appellants to partition by asserting a right in their favour on the basis of two registered Gift Deeds dated 13.03.2000 and 11.03.2002, executed in their favour by the mother. The appellants/plaintiffs became aware of the Gift Deeds in favour of the respondents, in the year 2009 from the Written Statement filed by the respondents in the earlier suit in 2009. The averments of the appellant as contained in paragraph 17 clearly reflect that the defendants in the earlier suit as well, had agitated their exclusive right on the suit property on the basis of the two Git Deeds. Therefore, the two Gift Deeds were well within the knowledge of the plaintiffs since way back in 2009. Once the Gift Deeds came to the knowledge of the appellants in the year 2009, the cause of action to challenge the said Gift Deeds arose since 2009 which could have been challenged only within the period of three years from the date of knowledge as per Article 59 of the Limitation Act, 1963. We therefore, agree with the observations of the learned Single Judge that the suit was barred by limitation.

II. Suit for partition maintainable only if cancellation of the two Gift Deeds is sought:



29. The second ground of challenge to the maintainability of the suit as raised by the defendants, respondents was that the present suit for partition and rendition of accounts was not maintainable without first seeking cancellation of the two Gift Deeds.

30. In the case of Prem Singh and Ors vs Birbal and Ors. (2006) 5 SCC 353, the Respondent had filed a suit for declaration and partition of land. The facts of the case were that the Respondent was a minor at the time of execution of a Sale Deed with respect to the suit property dated 1.12.1961 wherein his age was shown to be 26 years. The suit was filed on 24.09.1979 which was hit by the limitation period under Section 59 and 60 of the Limitation Act, 1963 which is 3 years from attaining the age of minority. Respondent no 1 pleaded that he came to know about the Sale Deed on 22.08.1979 but when he failed to prove that he did not have knowledge at the time of execution of the Sale Deed, he pleaded that the deed had been executed by playing fraud on him who was a minor at the relevant point of time and the said Deed of Sale, thus, being void ab initio, the limitation of three years from the date of attaining of majority, as is provided for in Article 59 (sic Article 60) of the Limitation Act, 1963, would not be applicable. In this factual matrix, the Apex Court held that the suit for declaration was time barred. The Supreme Court established the need for setting aside a registered document and observed thus:

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption.”



31. In Anita Anand Vs. Gargi Kapur, (Supra), the Coordinate Bench of this Court had observed the plaintiff shall not be entitled for partition till he challenges the Gift Deed. Relief of partition would be consequential to the declaration of the Gift Deed as illegal. Likewise, in Ramti Devi Vs. Union of India (Supra), the Supreme Court held that unless a validly executed and registered document is cancelled by proper declaration by the Court, the said document remains valid and binds the parties.

32. In the present case, the appellants have not challenged the two Gift Deeds and thus, without seeking a cancellation, the present suit for maintenance is not maintainable, as has been rightly held by the learned Single Judge.

33. Accordingly, we find no merit in the present appeal, and the same is hereby dismissed.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

JULY 4, 2023/PA