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Current's

ALL INDIA PROPERTY CASES

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ADVERSE POSSESSION CLAIM

Adverse Possession Claim - Plaintiffs claimed ownership of land by adverse possession and challenged partition order passed without impleading them - Trial authority decreed suit recognizing continuous possession as hostile - Appellate authority reversed holding that under Sections 8 and 9 of Administration of Evacuee Property Act, possession deemed on behalf of custodian being co-owner - Held that plaintiffs could not claim adverse possession against custodian - Possession of one co-owner deemed possession of all - High Court affirmed that plaintiffs failed to establish adverse possession and upheld dismissal of suit - Counter claim liberty maintained - Appeal Dismissed [*Maktulo (Deceased) and Others vs. Ram Parkash (Deceased) and Another* (PUNJAB AND HARYANA HIGH COURT) 2026(1)AIPC91]

BENAMI PROPERTY

Benami Property - Appeal filed by legal representatives of deceased plaintiff challenging appellate court order dismissing suit for declaration of ownership - Plaintiff claimed purchase of land though part registered in uncle's name was benami and he was real owner - Trial court decreed suit but first appellate court reversed findings - Evidence showed entire sale consideration paid by plaintiff and possession remained with him - Vendor also supported plaintiff's version - Original sale deed always remained in plaintiff's custody - Close relationship between parties and motive established benami transaction - Authority held findings of first appellate court erroneous and restored trial court decree declaring plaintiff owner to extent of one-third share - Appeal Allowed [*Ram Murti (Since Deceased) vs. Shiv Kumar* (PUNJAB AND HARYANA HIGH COURT) 2026(1)AIPC112]

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COUNTERCLAIM PROPERTY

Counterclaim Property - Plaintiff sought injunction over specific land - Defendants filed counterclaim over different property alleging encroachment - Plaintiff moved to

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EX PARTE RECALL

Ex Parte Recall - Plaintiffs challenged order of Trial Court allowing defendant to file written statement and contest suit after twelve years by setting aside ex parte order - Court observed that though liberal approach should be adopted to ensure fair trial, reasons for delay beyond ninety days must be recorded and plaintiff given opportunity to file objection - Trial Court failed to consider long delay and did not allow plaintiffs to file objection - It was held discretion exercised mechanically without considering delay and conduct - Order set aside and matter remanded for reconsideration giving opportunity to plaintiffs - Application Allowed in Part [*Rushiya Bibi & Ors vs. Md Roushan Ali Mondal & Ors* (CALCUTTA HIGH COURT) 2026(1)AIPC86]

INDIVISIBLE PROPERTY

Indivisible Property - Miscellaneous second appeal filed challenging order of remand passed by Appellate Court - Property subject to partition decree contained workshop and house - Trial Court divided property by metes and bounds rejecting earlier permission for sale - Appellate Court found division impracticable as workshop under single management and demolition would cause hardship - Held property incapable of physical division; smaller shareholder could purchase at valuation or sale through public auction - High Court upheld reasoning noting discretion exercised properly under Secs. 2 and 3 of Partition Act - Appeal Dismissed sustaining remand for sale procedure [*Baby Suvarna W/o Late Babu Salian; Suresh S/o Babu Salian; Ramesh S/o Late Babu Salian vs. Umesh Salian S/o Late Kotiappa; Raghunath Poojary S/o Late Kushalakshi; Tharun S/o Late Kushalakshi; Shruthi D/o Late Kushalakshi; Sachin S/o Late Kushalakshi* (KARNATAKA HIGH COURT) 2026(1)AIPC29]

JUDGMENT ON ADMISSION

Judgment on Admission - Plaintiff sought eviction decree claiming defendant as licensee - Defendant asserted tenancy at fixed rent and filed separate suit for declaration - Application under Order 12 Rule 6 CPC for judgment on admission rejected - Court observed that admissions must be clear and unequivocal - Relationship of licensor and licensee disputed and not admitted - Payment of rent and maintenance charges required detailed evidence - Court upheld rejection of application holding discretion under Order 12 Rule 6 to be exercised only on unequivocal admission - Petition Dismissed [*Nirmala Devi Agarwal vs. Bhag Chand Agarwal* (CALCUTTA HIGH COURT) 2026(1)AIPC41]

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Land Deletion Request - Petition filed seeking deletion of assigned lands from prohibited list under Section 22A of Registration Act - Tahsildar and Revenue Divisional Officer reported that land assigned under political sufferer category - District Collector rejected request stating absence of original files and genuineness of assignment not proved - Observation that District Collector failed to assign reasons for rejecting report of Tahsildar and ignored guidelines issued by CCLA - Held that non-consideration of relevant material and non-speaking order amounts to arbitrariness - Order of rejection set aside - Authority directed to reconsider matter afresh following due procedure - Petition Allowed [*M Swarnalatha @ Sunitha, W/o M Meghanadh vs. State of Andhra Pradesh; District Collector, Tirupati District; Revenue Divisional Officer, Srikalahasthi; Tahsildar, Srikalahasthi Mandal, Tirupati* (ANDHRA PRADESH HIGH COURT) 2026(1)AIPC72]

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Lease Termination - Defendant filed application for rejection of plaint on ground that suit filed before Commercial Division after issuance of notice under Sec.106 of Transfer of Property Act - Plaintiffs contended that dispute related to commercial transaction covered under Sec.2(1)(c)(vii) of Commercial Courts Act - Plaintiffs stated that tenancy determined by efflux of time and possession not handed over - Defendant argued that suit based on statutory right and not commercial - Observation made that Division Bench judgment clarifying scope of explanation to Sec.2(1)(c) must be considered - Held that nature of transaction being commercial and arising from lease used for business purpose falls within jurisdiction of Commercial Division - Application for rejection of plaint not maintainable - Plaintiffs rightly approached Commercial Court - Petition Dismissed [*Dipankar Ghosh & Anr vs. Cesc Limited* (CALCUTTA HIGH COURT) 2026(1)AIPC33]

MORTGAGE RECOVERY

Mortgage Recovery - Borrower availed overdraft from bank secured by mortgage of property - On default, Recovery Officer brought mortgaged property to auction - Auction purchaser deposited full sale price and received sale certificate - Subsequent purchasers claimed ownership alleging they bought sites earlier from power of attorney holders - Recovery Officer rejected objections but Tribunal set aside sale holding purchaser disqualified under Land Reforms Act - Bank and auction purchaser challenged decision - Court held that mortgaged property had been converted for residential use and was no longer agricultural - Auction purchaser lawfully bought property in public auction after due process - Tribunal erred in applying agricultural land restrictions - Bank as prior mortgagee entitled to enforce recovery through sale - Orders of Tribunal and Appellate Tribunal set aside - Sale confirmed - Petitions Allowed [*Bank of Baroda; A Naveen Bhandary Son of Late A L Bhandary vs. G S Srinivas Gupta Son of G N Shankar Narayan; Dr C N Vishwanath; Dr Ramachandra*

Hegde; Aslam Basha Son of Dhoodajan; Shashikala; M/s United Distilleries Vengallpura; B A Ram; Pallavi Ram Wife of Late B A Ram; (KARNATAKA HIGH COURT) 2026(1)AIPC13]

PARTITION OF PROPERTY

Partition of Property - First defendant challenged preliminary decree for partition claiming exclusive ownership based on series of documents starting from ancestral will and alleged Melpattam right - Evidence showed Melpattam conveyed only usufructuary right and not interest in land - Subsequent documents conveyed no valid title defeating co-ownership - Permission to build house and sink well did not create ownership interest - Property being Tarwad property remained partible among co-sharers - Lower court decree for partition found valid and confirmed - Appeal Dismissed [*Venugopal K Veloth S/o Leela vs. Mahilamani D/o Parvathi; Rohin Kumar S/o Mohilamani; Rajaram S/o Mahilamani; Sajithkumar Pandaredoutil Sandeep S/o Sreedharan Pandaredothil; Damayanthi W/o Balakrishnan; Praseej Kumar S/o Balakrishnan; Praseena D/o Balaa* (KERALA HIGH COURT) 2026(1)AIPC100]

PARTNERSHIP PROPERTY

Partnership Property - Appeal under arbitration law against dismissal of challenge to award - Parties earlier engaged in property development business through partnership and purchased property jointly - Dispute arose after dissolution deed allegedly interpolated - Arbitrator Dismissed claim citing lack of proof - Court observed respondent never denied existence or execution of dissolution deed but only alleged later insertion - Held burden of proving interpolation rested on respondent under evidentiary law - Absence of proof or expert evidence rendered allegation untenable - Arbitrator and lower court erred in concluding non-existence of partnership or deed - Award set aside and matter remitted for reconsideration - Appeal Allowed [*Rameshwar Dayal vs. Krishan Singh Panwar (Deceased)* (DELHI HIGH COURT) 2026(1)AIPC47]

POSSESSION AND INJUNCTION

Possession and Injunction - Plaintiff sought injunction claiming ownership of property based on receipt of payment asserting purchase from defendant - Defendants denied sale asserting tenancy and default in rent - Trial Court and Appellate Court vacated interim injunction holding plaintiff failed to establish ownership - Court held unregistered receipt cannot evidence sale and proviso to Section 49 permits use only for collateral purpose not for title - Even assuming tenancy, possession protection depends on due process once court adjudicates rights - Plaintiff failed to prove prima facie case or ownership and cannot claim equitable relief - Lower court orders upheld - Petition Dismissed [*Abdul Khaliq Sofi vs. Mohammad Shafi Mir and Another* (JAMMU AND KASHMIR HIGH COURT) 2026(1)AIPC75]

PROPERTY ATTACHMENT

Property Attachment - Petitioners challenged property attachment orders under corruption charges - Properties alleged to be disproportionate assets and benami holdings - Trial court upheld attachment citing PC Act and Criminal Law Amendment Ordinance - Petitioners claimed amendment not retrospective and property acquired before amendment - Court examined legal provisions and held Special Court has jurisdiction post amendment - Found procedure under Ordinance followed including notice and investigation - Dismissed plea of procedural violation - Held attachment valid in law - Petitions dismissed [*Basheer M S/o (Late) Moideen Kunju Paravathani House; Hamza V S/o Kunjippu Thumbilimedu House; Sajitha V P, W/o Hamza Thumbilimedu House vs. State of Kerala; Inspector of Police Vigilance & Anti* (KERALA HIGH COURT) 2026(1)AIPC121]

PROPERTY INHERITANCE

Property Inheritance - Appeal from decree granting injunction based on Will - Plaintiff claimed ownership under Will of father; defendant contended property was ancestral and jointly possessed - Trial court decreed suit; first appellate court reversed holding testator lacked authority; High Court restored trial court decree finding property self-acquired and Will duly proved - Supreme Court held plaintiff admitted defendant's possession and failed to seek declaration of title or recovery of possession - Injunction simpliciter not maintainable when possession disputed - Decree of High Court set aside - Suit dismissed - Appeal Allowed [*S Santhana Lakshmi & Ors vs. D Rajammal* (SUPREME COURT OF INDIA) 2026(1)AIPC1]

PROPERTY OWNERSHIP

Property Ownership - Plaintiff sought declaration of ownership and possession with injunction against defendants who used adjacent open land for dumping waste - Trial court and first appellate court rejected claim citing discrepancies in revenue records and lack of possession - High Court reversed holding title deed covered entire property and waste dumping cannot establish possession - Supreme Court found defendants failed to prove oral partition or possession - Revenue correction supported plaintiff's title - Declaration of ownership and possession rightly granted with injunction against interference - Appeal Dismissed [*Kisan Vithoba Aakhade (D) Through Lrs and Others vs. Suresh Tukaram Nerkar* (SUPREME COURT OF INDIA) 2026(1)AIPC4]

PROPERTY PARTITION

Property Partition - Plaintiffs filed suit for partition claiming ancestral property - Defendants alienated part of property under Agreement for Sale - Plaintiffs settled matter with some Defendants and did not press relief for that part - No specific relief was sought regarding remaining alienation - Trial Court observed alienation justified for legal necessity including marriage of daughters - Agreement not challenged by co-parcener during lifetime - First Appellate Court affirmed that without relief in plaint, alienation could not be questioned - Evidence showed alienation done by family Karta

and no challenge from others - Held alienation binding - Appeal dismissed as no substantial question of law arose - Second Appeal Dismissed [*Rohit Ramesh Palve; Rekha Ramesh Palve vs. Tula Shankar Palave; Punjabai Sadu Tapase; Laxmibai Dhanaji Palave,; Ranjendra Dhanaji Palave; Shobhabai Balu Pawar; Sunita Dhanaji Palave; Manisha Dhanaji Palave; Kisan Waman Borade; Shantaram Deoram @ Jayaram Navale; ;* (BOMBAY HIGH COURT) 2026(1)AIPC103]

PROPERTY PARTITION

Property Partition - Application filed for setting aside dismissal of plea under Order VII Rule 11 CPC - Petition challenged rejection of plaint on ground of lack of cause of action - Respondents filed suit for partition claiming one-third share in residential house - Defendant argued transfer deed executed in favour of daughter excluded plaintiffs' rights - Objection treated as defence matter not determinable at threshold - Amendment applications regarding transfer deed pending - At stage of Order VII Rule 11, only plaint averments considered and cause of action disclosed - High Court held no ground to interfere under Article 227 and upheld trial court's dismissal of defendant's application - Revision petition found meritless and dismissed - Miscellaneous applications disposed of - Revision Petition Dismissed [*Rajan Kohli vs. Gulbhushan Kumar Kohli and Another* (PUNJAB AND HARYANA HIGH COURT) 2026(1)AIPC118]

PROPERTY POSSESSION

Property Possession - Appeal challenged NCLAT order which reversed NCLT's direction to return possession of leased property to appellants during corporate insolvency resolution process - Property had been leased by corporate debtor from appellants and CoC decided it was not required due to high rent and limited operations - Resolution Professional and CoC recommended return of property - Only suspended director opposed return without agreeing to pay rent - Supreme Court held CoC's commercial decision must be respected and Section 14(1)(d) did not bar voluntary return of property - Appeal Allowed [*Sincere Securities Private Limited & Ors vs. Chandrakant Khemka & Ors* (SUPREME COURT OF INDIA) 2026(1)AIPC8]

PROPERTY TAX VALUATION

Property Tax Valuation - Petitioners challenged valuation notice and subsequent demand under UAA system alleging lack of jurisdiction and prior adjudication - Municipal authority issued notices and determined annual valuation after hearing - Court held prior writ petition only remitted matter for fresh consideration without quashing notice - Petitioners participated and raised objections which were duly addressed - Liberty granted by Supreme Court did not reopen settled issues - Existence of alternative statutory remedy before Assessment Tribunal warranted dismissal of writ - Petition Dismissed [*Oriental Motor Accessories Agency Private Limited & Anr vs. Kolkata Municipal Corporation & Ors* (CALCUTTA HIGH COURT) 2026(1)AIPC66]

SPECIFIC PERFORMANCE

Specific Performance - Appeal filed challenging refusal of temporary injunction under Code of Civil Procedure - Appellant sought to restrain respondent from alienating property based on unregistered agreement of sale - Trial authority held respondent to be bona fide purchaser under registered deed and denied injunction - Appellant contended unregistered agreement could be admitted as evidence under Registration Act and non-grant of relief would cause hardship - Respondent maintained ownership and possession derived from registered sale deed and objected to interference - Material revealed appellant delayed enforcing rights and failed to establish prima facie case - Authority concluded possession and title of respondent flowed from registered deed and apprehension of alienation not substantiated - No interference required with order of rejection - Appeal Dismissed [*M/s Saha Developers and Promoters vs. Parmila M W/o Late T Shivanna; Anusha S D/o Late T Shivanna; Basavaraju S/o Late Rangaiah* (KARNATAKA HIGH COURT) 2026(1)AIPC105]

VALIDITY OF ASSIGNMENT DEED

Validity of Assignment Deed - Cause of matter arose when Official Liquidator sought cancellation of Deed of Assignment transferring land and building of Navinon Ltd to applicants - Applicants claimed to be bona fide purchasers and sought ratification - Property belonged to company under liquidation and transfer made years after commencement of winding-up - Applicants relied on authority of ostensible ownership and absence of notice of liquidation - Liquidator argued transfer void under statutory provisions as property disposed after commencement of winding-up - Court observed that transaction executed after initiation of liquidation proceedings is void unless expressly validated - No proof shown of benefit to company or creditors - Payment not made to company and executors acted without lawful authority - Court held transfer cannot be ratified under statutory discretion - Applicants not entitled to protection under Transfer of Property Act as they failed to establish bona fide purchase or due diligence - Transaction treated as fraudulent and contrary to law - Deed declared void and possession directed to be handed to liquidator - Equitable relief for restitution rejected as no legal basis proved - Petition for ratification dismissed - Official Liquidator's report accepted - Interim Application Dismissed [*Zulfikar Akbarali Khoja; Nilesh Indulal Ponda; Indian Link Chains Mfrs Ltd vs. Official Liquidator, M/s Navinon Ltd; Ravindra Kamlakar Palkar; Cidco* (BOMBAY HIGH COURT) 2026(1)AIPC53]

ALL INDIA PROPERTY CASES

2026(1)AIPC1

IN THE SUPREME COURT OF INDIA

[From MADRAS HIGH COURT]

(Hon'ble Judge Ahsanuddin Amanullah; K Vinod Chandran)

Civil Appeal No 12517 of 2025 **dated 07/10/2025**

S Santhana Lakshmi & Ors

Versus

D Rajammal

PROPERTY INHERITANCE

Property Inheritance - Appeal from decree granting injunction based on Will - Plaintiff claimed ownership under Will of father; defendant contended property was ancestral and jointly possessed - Trial court decreed suit; first appellate court reversed holding testator lacked authority; High Court restored trial court decree finding property self-acquired and Will duly proved - Supreme Court held plaintiff admitted defendant's possession and failed to seek declaration of title or recovery of possession - Injunction simpliciter not maintainable when possession disputed - Decree of High Court set aside - Suit dismissed - Appeal Allowed

Law Point: A suit for bare injunction without prayer for declaration or possession is not maintainable when plaintiff admits defendant's possession and title itself is under challenge

Counsel:

S Nandakumar (Senior Advocate), Naresh Kumar, Deepika Nandakumar, Amit Yadav, Kanimozhi Jaishankar, Senthil Jagadeesan (Senior Advocate), Punit Agarwwal, Sajal Jain

JUDGEMENT

K. Vinod Chandran, J.- [1] Leave granted.

[2] The present appeal arises from a suit filed by Rajammal against Munuswamy, her brother, for injunction simpliciter, one, to restrain alienation or encumbrance of the suit property and the other to restrain interference with the peaceful possession & enjoyment of the plaint schedule property. The plaintiff claimed absolute right over the property being half share of 1.741/2 acres coming to 0.871/4 acres of dry landed property with all appurtenances attached thereto. The claim was made specifically on the ground that by a Will dated 30.09.1985, Rangaswamy Naidu, their father had bequeathed the said property

equally in favour of the plaintiff and another brother, Govindarajan. The plaintiff's contention itself was that the defendant was continuing in the property as a tenant while the defendant claimed that he came into possession as a co-owner and later there was an arrangement, by which in the lifetime of his father, the property was equally divided between the brothers i.e. the defendant and Govindarajan.

[3] The trial court found the Will to have been proved and decreed the suit injuncting the defendant from alienating the property and from interfering with the plaintiff's peaceful possession. On appeal, the appellate court found that the bequest was made of an ancestral land, on which the testator had no right to execute the Will. The trial court judgment was upset and the suit was dismissed. In the second appeal, the High Court formulated two questions of law as to whether the appellate court was correct in finding the suit property to be a joint family property and whether Ex.B5 document produced by the defendant was properly construed.

[4] The property was found to be the absolute property of the plaintiff's father though it was purchased by the grandmother of the plaintiff. The title of the plaintiff's father was neither questioned by the grandmother in her lifetime nor did she claim a right over the said property. Ex. A6 Will was found to have been proved since the signature of the testator was affirmed by PW1, the plaintiff and the signature of one of the testators, who was deceased, was affirmed by his own son, PW2. In the context of both the testators having passed away, the evidence was found to be sufficient to prove the Will. Based on the above findings, the right of the plaintiff over the property was established and the possession was found to follow title thus enabling both the injunctions sought for. The first appellate court's order was set aside, and the suit was allowed restoring the trial court's judgment & decree.

[5] Before us, the legal heirs of the defendant, the appellants, contended that they have been always in possession of the land, as admitted by the plaintiff. The suit was filed without any prayer for declaration and the injunction simpliciter ought not to have been granted. It was contended that by Ex. B1 agreement entered into by Rangaswamy Naidu, Govindarajan and the original defendant, there was a division of the properties in the year 1983 itself. The plaintiff was unable to produce any ocular or documentary evidence to establish possession. The plaintiff's own admission was that the defendant was in possession of the property.

[6] The learned Senior Counsel appearing for the respondent-plaintiff, however, would point out that there are two different properties, as has been noticed by the High Court, one purchased in the year 1934 and another in the year 1984. The house property is said to have been purchased in the year 1984 with which the plaintiff was not concerned in the suit. In fact, a specific pleading was made reserving her right to take action against the house property separately. The appellants as of now is concerned only with the property more fully described in the plaint which does not contain a house, is the contention.

[7] We have gone through the suit in which clear statements are made as to the defendant having been inducted into the property as a tenant by the father. The father is said to have filed OS No. 895 of 1984 to obtain possession of the suit property and arrears of rent, which, after the death of the father, stood dismissed allegedly for reason of the defendant having agreed to pay the rent. Immediately, we have to notice that Annexure P7 dismissed OS No.895 of 1984 filed by Rangaswamy Naidu, after his death, substituting Govindarajan and the plaintiff as the legal heirs. The suit was dismissed for default without any observation of an agreement regarding payment of rent. It is also pertinent to observe that even at that stage a written statement was filed by the original defendant, Munuswamy contending that in the suit property, the defendant had put up a structure in which he was residing with his family. He claimed possession of the property as a co-owner and not as a tenant; which relationship was asserted to be not existing since there was no such tenancy created orally or on the strength of documents. The original plaintiff having died, the siblings who got impleaded as his legal heirs, filed an amended plaint again alleging tenancy and claiming the property as per the registered Will dated 30.09.1985. The substituted plaintiffs despite taking up a plea of the Will executed by the deceased father in the amended plaint, the proceedings were not continued and the suit stood dismissed for default.

[8] It was after a few years that the present suit was instituted in the year 2003 wherein also the possession of the defendant was admitted, again on the contention of a tenancy arrangement. In the present suit also, the defendant took up a contention that it was a joint family property later set apart to his share.

[9] More pertinent is the fact that the plaintiff in her evidence clearly stated that property covered by the Will is in the possession of Munuswamy and Govindrajan, her brothers. The total extent of the property even according to the plaintiff is 1.741/2 acres and her share is 87.25 cents. The property on the four sides of her share is stated to be in the hands of third parties; which cannot be correct since when half of the property is claimed, at least on one side the property bequeathed to Govindrajan should have been mentioned. In fact, even in evidence, it is repeated that in the suit property the father and Munuswamy, the defendant were staying in half portions of the house and Govindrajan was staying in the ancestral house. As of now, with respect to the suit property, it is contended that Munuswamy is enjoying the western portion and Govindrajan is enjoying the eastern portion of the house.

[10] It is also significant that though the plaintiff did not have possession, she had not claimed recovery of possession. While asserting a Will and title on its strength, there should have been a declaration of title sought, especially when the contention of the defendant was that he came into the property as a co-owner and then occupies it with absolute rights, making valuable improvements. The defendant also did not seek to get a declaration on the basis of an arrangement entered into with the father and the other brother or seek a partition on the strength of a counter claim.

[11] In the above circumstances, we cannot but find the 'Will' is proved but the right of the testator to bequeath the property is still under a cloud. Even if the title is established, there should have been a recovery of possession sought by the plaintiff. The ill-drafted plaint and the clear admissions made in the witness box ought to have restricted the trial court and the High Court from granting an injunction against the interference of peaceful enjoyment of the property, especially when the possession was admitted to be with the defendant, in the pleadings as also the oral evidence. The injunction against alienation is perfectly in order since the defendant too has not sought for a declaration of title.

[12] The learned Senior Counsel for the plaintiff sought for agitating the cause afresh. We are of the opinion that since a stalemate is created; with the ownership not having been declared in favour of either of the parties, also considering the relationship, we reserve liberty to either of the parties to seek declaration of title and consequential possession or recovery of possession, if they desire, which proceedings will be instituted within a period of three months from today. If a fresh proceeding is initiated then the same would be considered afresh untrammelled by the findings in the present proceedings, which shall not govern the rights of the parties. However, we make it clear that no alienation shall be made by both parties or the subject property encumbered.

[13] The appeal is disposed of with the above reservation of liberty.

[14] Pending applications, if any, shall stand disposed of

2026(1)AIPC4

IN THE SUPREME COURT OF INDIA

(Hon'ble Judge Prashant Kumar Mishra; K Vinod Chandran)

Civil Appeal No 720 of 2015 **dated 09/09/2025**

Kisan Vithoba Aakhade (D) Through Lrs and Others

Versus

Suresh Tukaram Nerkar

PROPERTY OWNERSHIP

Code of Civil Procedure, 1908 Or. 41R. 27 - Specific Relief Act, 1963 Sec. 34 - Property Ownership - Plaintiff sought declaration of ownership and possession with injunction against defendants who used adjacent open land for dumping waste - Trial court and first appellate court rejected claim citing discrepancies in revenue records and lack of possession - High Court reversed holding title deed covered entire property and waste dumping cannot establish possession - Supreme Court found defendants failed to prove oral partition or possession - Revenue correction supported plaintiff's

title - Declaration of ownership and possession rightly granted with injunction against interference - Appeal Dismissed

Law Point: Discrepancy in revenue records or mere dumping of waste cannot displace valid title under registered sale deed - Oral partition must be proved with evidence - Declaratory relief under Specific Relief Act is justified where possession and ownership are established.

Acts Referred:

Code of Civil Procedure, 1908 Or. 41R. 27

Specific Relief Act, 1963 Sec. 34

Counsel:

Satyajit A Desai, Sachin Patil, Pratik Kumar Singh, Abhinav K Mutyalwar, Sachin Singh, Puneet Sharma, Sanchit Agrahari, Anagha S Desai, Gagan Sanghi, Farah Hashmi, Rameshwar Prasad Goyal

JUDGEMENT

K. Vinod Chandran, J.- [1] The concurrent findings on facts as entered into by the trial court and the first appellate court, to reject the suit filed, was overturned by the High Court in Second Appeal holding, the reading of the document establishing title; of the plaintiff and the findings on possession; of the defendants, perverse.

[2] Shri Satyajit A. Desai, learned counsel for the appellants argued that the sale deed exhibited at Ext. 81, was produced by the plaintiff. Though it showed the extent of 150 square metres, actually as per the revenue records produced by the defendants, as on the date of sale deed the vendor of the plaintiff had possession only of 109.70 square metres. The balance portion was an open space which was in the possession of the deceased 1 st appellant, the 8th defendant in the suit. The revenue records were corrected after the written statement was filed by the defendants. Despite assertion of possession by the plaintiff, in the Commission taken out by the plaintiff it was found with the 9th defendant. Even then the plaintiff did not seek for recovery of possession. It is argued that there was no question of law arising in the Second Appeal and the High Court erred in reversing the concurrent finding on facts of the trial court and the first appellate court.

[3] Shri Gagan Sanghi, learned counsel for the respondent No. 1/ plaintiff read to us the reliefs sought in the plaint, which was a declaration of ownership and possession with consequential injunction. The plaintiff was in possession of the entire property wherein admittedly there was a building. The disputed land was lying contiguous to the plot in which the building was constructed. The defendants were dumping waste in the property and keeping manure thereon, which was objected to. On objections raised there was a threat levelled and hence the suit was filed. The mere finding of manure and waste on the property cannot lead to a finding of possession. The appellate court

wrongly found that the title deed showed only a lower extent which was found to be a mistake of fact amounting to perversity by the High Court.

[4] The plaint was filed for declaration of ownership and possession and consequential injunction from interference with the open space, lying adjacent to the residential building. The property as covered by Ext. 81 title deed was more fully described in the 1st paragraph of the plaint, for which the declaration was sought insofar as the ownership and possession as also consequential permanent injunction against the defendants from interfering with the ownership and possession of the plaintiff. The plaint averments clearly indicate that the suit was necessitated since the defendants failed to give heed to the objections raised by the plaintiff against the defendants using the property to keep manure and dump waste.

[5] The suit was compromised insofar as the defendants 1 to 7 are concerned. Defendants 8 to 12 went to trial but with only a written objection to the IA for temporary injunction by the 9 th defendant. On a query being put to the learned counsel appearing for the appellants, it was asserted that the 8th defendant adopted the objection filed by the 9th defendant to the I.A praying temporary injunction, which was adopted as the written statement of the 9th defendant also. However, we notice from the judgment of the trial court itself that the 8 th defendant failed to file a written statement, and the 9th defendant alone contested the matter and adopted the objection filed to the IA praying injunction, as the 9 th defendant s written statement. Defendants 10 to 12 remained ex-parte. We are surprised with the submission made by the learned counsel for the appellants to the specific query made by us, clearly contrary to the records. We find that the suit has not been contested by the 8 th defendant or the defendants 10 to 12 and they have chosen to file an appeal from the order in second appeal, along with the 9th defendant.

[6] Be that as it may, it was the contention of the 9 th defendant that the property was his ancestral property, and he had been using it as a dung heap and for waste disposal while also claiming common use as per an oral partition of 1974. The trial court found that due to the discrepancy in the revenue records; the correction regarding the extent having been made during the pendency of the suit, no reliance could be placed on the same. It was hence found that the plaintiff could not establish his title either over ABCD , marked in the map wherein the building existed and also PCDF , the adjacent open plot which was the bone of contention between the plaintiff and the 9 th defendant. The first appellate court went further to find that since there was no claim for recovery of possession, the suit has to be dismissed under Section 34 of the Specific Relief Act, 1963, specifically the declaratory relief prayed for, being also a matter of discretion. It was also found by the first appellate court that the sale deed was only with respect to 109.70 square metres.

[7] The plaint was accompanied with a map showing the two different extents lying contiguous within ABCD the disputed open plot lying adjacent demarcated as PCDF . There was no dispute raised as against the plot in which there was a residential

building, even by the 9 th defendant who alone contested the suit. There was no cause for the trial court to find the title of entire ABCD to be not established especially when there was a title deed. The Commissioner has given specific measurements of the property and without a finding that the building was not constructed at least in the 109.70 square metres, the trial court ought not to have declined the relief of declaration with respect to the entire ABCD .

[8] Insofar as the land indicated as PCDF , the trial court entered a finding based on the Commissioner s report. The Commissioner s report only spoke of the manure kept and waste dumped in the property; which according to us cannot be a valid ground to find possession, especially when the case of the plaintiff was that waste is being thrown in the property and manure kept by the 9th defendant, without permission and despite specific objection raised against such acts.

[9] We also see from the Judgment of the trial court that the 9 th defendant had claimed that in an oral partition by the sons and brothers of the father of the vendor of the plaintiff, the open land was kept in common. This claim was taken without any pleading or evidence regarding his relationship with the vendors family, who sold the property which devolved on him. The vendor of the plaintiff was the son of the original owner whose brothers and sons are said to have entered into an oral partnership in the year 1971. But for the bland assertions of partition and common use, nothing is produced to establish the same nor is anybody examined to substantiate the contentions. Without any evidence regarding the oral partition and without establishing the connection with such partition or relationship with the vendor or his father, who was the original owner, the 9 th defendant could not have raised a valid claim of possession-incommon, of the property.

[10] The High Court in the second appeal looked into the sale deed and found that it conveyed 150 square metres of property which was comprised in the two extents indicated separately in the map and together in the plaint description. The High Court also found that the mere reason of the manure and waste having been found in the property, cannot lead to a finding of possession; which finding is perverse. We are in perfect agreement with the findings of the High Court.

[11] The revenue records produced by the plaintiff showed the corrected area as per the sale deed. Merely because the correction was done in the course of the suit is no reason to disbelieve the public record maintained. The written submissions indicate that the application for correction was filed much before the suit was filed and the documents were produced in first appeal by an application under Order 41 Rule 27 of the Civil Procedure Code, which however was rejected. Even dehors such proof the latest revenue records having shown the actual extent, it was for the defendants to disprove the same. The trial court ought not to have suspected the sanctity of the correction, unless it was disproved.

[12] The first appellate court s finding on Section 34 of the Specific Relief Act cannot be sustained since the 9th defendant did not establish possession. PW2, known to both parties, deposed that the vendor of the plaintiff used to tie his cattle in the property. It was also deposed that the 9th defendant used to keep manure and dump waste in the open plot, since the plaintiff was not residing therein. Hence, the plaintiff s vendor s possession is established and the plea of his common use set up by the 9 th defendant is demolished.

[13] We cannot but reiterate that the deceased 1st appellant, now represented by the 2nd appellant and the appellants 3 to 5 never contested the suit and they cannot file an appeal and prosecute it based on the contentions of the 9 th defendant though an identity of interest is claimed by the 9th defendant.

[14] For all the above reasons, we find absolutely no merit in the Appeal and the same stands dismissed.

[15] Pending applications, if any, shall stand disposed of

2026(1)AIPC8

IN THE SUPREME COURT OF INDIA

(Hon'ble Judge Sanjay Kumar; Satish Chandra Sharma)

Civil Appeal No. 12812 of 2024 **dated 05/08/2025**

Sincere Securities Private Limited & Ors

Versus

Chandrakant Khemka & Ors

PROPERTY POSSESSION

Insolvency and Bankruptcy Code, 2016 Sec. 14 Sec. 62 Sec. 7 - Property Possession - Appeal challenged NCLAT order which reversed NCLT's direction to return possession of leased property to appellants during corporate insolvency resolution process - Property had been leased by corporate debtor from appellants and CoC decided it was not required due to high rent and limited operations - Resolution Professional and CoC recommended return of property - Only suspended director opposed return without agreeing to pay rent - Supreme Court held CoC's commercial decision must be respected and Section 14(1)(d) did not bar voluntary return of property - Appeal Allowed

Law Point: Section 14(1)(d) of IBC does not bar voluntary return of leased property to owner when Resolution Professional and Committee of Creditors unanimously agree that retention is financially unviable and not required during insolvency proceedings

Acts Referred:

Insolvency and Bankruptcy Code, 2016 Sec. 14, Sec. 62, Sec. 7

JUDGEMENT

Sanjay Kumar, J.- [1] This appeal, under Section 62 of the Insolvency and Bankruptcy Code, 2016 [for short, "IBC"], calls in question the order dated 12.11.2024 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi [for short, "NCLAT"], allowing Company Appeal (AT) (Insolvency) No. 1064 of 2023 filed by Chandrakant Khemka, respondent No. 1, and setting aside the order dated 07.08.2023 of the National Company Law Tribunal, Kolkata Bench [for short, "NCLT"], in CP(IB) No. 1377/KB/2020. Thereby, the NCLT had directed delivery of possession of the property in question to the appellants herein.

[2] Facts, relevant to this adjudication, need recounting at some length. On 13.02.2019, a Memorandum of Understanding was executed by and between Nandini Impex Private Limited, which became a corporate debtor under the IBC thereafter, represented by its Director, Chandrakant Khemka, on the one hand, and Noble Dealcom Private Limited along with Jodhpur Properties and Finance Private Limited, appellant Nos. 2 and 3 herein, on the other hand, whereby Nandini Impex Private Limited availed financial assistance to the tune of 3? crores from them and secured the same through deposit of the title deeds relating to the rear portion of the ground floor of White House, 1/18-20, Rani Jhansi Road, New Delhi. Another Memorandum of Understanding was executed by Nandini Impex Private Limited on 15.02.2019 with Sincere Securities Private Limited, appellant No.1 herein, for availing a loan of 3 crores from it and the same was secured through deposit of the title deeds of the front portion of the ground floor of White House. As Nandini Impex Private Limited failed to repay the loans, separate conveyance deeds were executed by it on 27.02.2020 transferring the title over the front and rear portions of the ground floor of White House to the appellants respectively. However, two separate Leave and License Agreements were executed simultaneously on the same day, whereby possession of the front and rear portions of the ground floor of White House was retained by Nandini Impex Private Limited on payment of rentals of 6 lakhs per month for each portion. Owing to the default in payment of the rentals, the appellants terminated the Leave and License Agreements on 08.05.2020. Eviction suits were also instituted by the appellants for regaining possession of the subject ground floor portions along with other reliefs.

[3] While so, UCO Bank, respondent No. 3 herein, filed a petition under Section 7 of the IBC against Nandini Impex Private Limited. The same was admitted on 20.09.2022 by the NCLT, initiating corporate insolvency resolution process [for short, "CIRP"] against Nandini Impex Private Limited, the corporate debtor. Significantly, UCO Bank was the sole member of its Committee of Creditors [for short, "CoC"]. The appellants, as operational creditors, filed their respective claims before the Interim Resolution Professional appointed for the corporate debtor and the said claims were

accepted in toto. At that stage, UCO Bank, constituting the CoC, deputed the Resolution Professional to visit the subject property on the ground floor of White House and decide whether there was any need to retain the same by paying huge rentals. Thereafter, at its meeting held on 06.04.2023, the CoC decided that there was no requirement to hold on to the subject property and requested the Resolution Professional to hand over the possession thereof to the appellants. Chandrakant Khemka, being a suspended director of the corporate debtor, raised objections to this move. Interlocutory Applications came to be filed by the appellants in 2023 seeking a direction from the NCLT to return the subject property to them. By order dated 07.08.2023, the NCLT noted the decision of the CoC that the subject property was not required and directed the Resolution Professional to deliver possession of the same to the appellants. Aggrieved thereby, Chandrakant Khemka filed an appeal before the NCLAT. By way of the impugned order dated 12.11.2024, the NCLAT allowed his appeal and set aside the order dated 07.08.2023 passed by the NCLT, observing that Section 14(1)(d) of the IBC barred recovery by an owner of property during the CIRP, when such property was occupied by the corporate debtor. The NCLAT remanded the matter to the NCLT to consider the issue afresh.

[4] By order dated 25.11.2024, this Court permitted the proceedings before the NCLT to continue, subject to the final outcome of this appeal. This Court also noted that UCO Bank, constituting the CoC, supported the appellants in so far as return of possession of the subject property was concerned. Further, this Court noted that the learned counsel appearing on advance notice for Chandrakant Khemka, respondent No. 1, conceded that he was not willing to pay the current rent or the arrears of rent, post initiation of the CIRP. This Court also recorded that the Resolution Professional did not wish to retain possession of the property in question.

[5] Thereafter, on 14.07.2025, upon being informed that a new Resolution Professional was appointed for the corporate debtor, this Court required him to make known his stand by way of a written affidavit. Pursuant thereto, Pratim Bayal, the new Resolution Professional, filed affidavit dated 17.07.2025. Therein, he categorically stated that, given the extremely limited operations of the corporate debtor at present and the extremely high rent of the White House property, it was not feasible and was totally unnecessary for the corporate debtor to continue to hold on to the said property. He, therefore, reiterated the statement made by his predecessor before the NCLT to the effect that the property could be returned to the appellants.

[6] Given the aforestated facts, it is clear that except for Chandrakant Khemka, respondent No. 1, who is a suspended director of the corporate debtor, all other parties are at consensus that the property in question need not be retained by the corporate debtor, as it is not required by it and imposes a huge financial burden on it, in terms of the lease/license rentals payable therefor. It is, however, the case of Chandrakant Khemka that the erstwhile Resolution Professional of the corporate debtor made a factually incorrect statement before the NCLT, leading to the passing of the

unreasoned order dated 07.08.2023 and, therefore, the NCLAT was justified in remanding the matter for a comprehensive adjudication afresh. It is his further case that the property in question is essential for the functioning of the corporate debtor and Section 14(1)(d) of the IBC barred its return to the appellants.

[7] Despite all others involved in the CIRP being in favour of doing so, Chandrakant Khemka alone opposes the return of the subject property to the appellants. His lofty claim that the rent due to the appellants would stand secured by the provisions of the IBC does not stand to reason, Further, Chandrakant Khemka is himself not willing to bear the expenditure for retaining the possession of the subject property.

[8] Uco Bank, constituting the CoC, echoed the stand of the Resolution Professional, by filing separate written submissions. Reference was made therein to the decision of this Court in **K. Sashidhar v. Indian Overseas Bank and others**, 2019 12 SCC 150 . Paragraph 52 of the decision reads as follows:

52. As aforesaid, upon receipt of a "rejected" resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of the Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable.

The commercial wisdom of the CoC must, accordingly, be given primacy during the CIRP. When UCO Bank, constituting the CoC, decided that retention of the

possession of the subject property was not in the interest of the CIRP, that decision must be given the respect that is lawfully due to it.

[9] Lastly, we may note that Section 14(1)(d) of the IBC states that once the adjudicating authority, by order, declares a moratorium, it would prohibit, amongst other acts, the recovery of any property by an owner or lessor where such property is occupied by or is in the possession of the corporate debtor. In the case on hand, the chronology of events manifests that, at its very first meeting held on 20.02.2023, the CoC discussed the issue of retention of the ground floor of White House. It asked the Resolution Professional to visit the said premises and decide as to whether holding on to the same was required, spending a huge amount towards rentals. Thereafter, at its third meeting held on 06.04.2023, the CoC took note of the Resolution Professional's report that it was not feasible to hold on to the subject property, as only 8 to 9 staff members were there and the revenue generated would not be sufficient to pay the lease/license rentals. The CoC recorded that the matter was duly discussed and the Resolution Professional was asked to hand over possession as early as possible, as there was no requirement to hold on to the said premises spending such a huge amount towards rentals.

[10] It was only thereafter that the appellants filed Interlocutory Applications before the NCLT praying for a direction to deliver possession of the subject property to them along with other reliefs. It is, therefore, manifest that this was not a simple case of the owner of the property seeking recovery of possession thereof from the corporate debtor, which would be barred by the express language of Section 14(1)(d) of the IBC. On the other hand, as already noted hereinbefore, it was the CoC and the Resolution Professional who were and still are desirous of returning the possession of the property in question to the appellants, keeping in mind the adverse financial implications of retaining the same. It appears that Chandrakant Khemka, respondent No. 1, who is not willing to personally bear the expenditure for such retention, is bent upon stalling that process for some undisclosed and extraneous reasons.

[11] This was, therefore, not a situation which warranted an order of remand in the context of Section 14(1)(d) of the IBC. The order dated 12.11.2024 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi, in Company Appeal (AT) (Insolvency) No. 1064 of 2023, is accordingly set aside and the order dated 07.08.2023 passed by the National Company Law Tribunal, Kolkata Bench, in CP(IB) No. 1377/KB/2020, is restored. The Resolution Professional shall act upon and implement the said order expeditiously.

The appeal is allowed, in the aforesaid terms.

Pending application(s), if any, shall stand disposed of

2026(1)AIPC13

IN THE HIGH COURT OF KARNATAKA

(Hon'ble Judge D K Singh; Venkatesh Naik T)

W P (Writ Petition) No 36440 of 2014, 52283 of 2013 **dated 03/12/2025**

Bank of Baroda; A Naveen Bhandary Son of Late A L Bhandary

Versus

G S Srinivas Gupta Son of G N Shankar Narayan; Dr C N Vishwanath; Dr Ramachandra Hegde; Aslam Basha Son of Dhoodajan; Shashikala; M/s United Distilleries Vengallpura; B A Ram; Pallavi Ram Wife of Late B A Ram;

MORTGAGE RECOVERY

Transfer of Property Act, 1882 Sec. 58 - Recovery of Debts Due to Banks and Financial Institutions Act, 1993 Sec. 30, Sec. 26 - Income Tax Rules, 1962 Rule 61 - Security Interest (Enforcement) Rules, 2002 Rule 9 - Karnataka Land Reforms Act, 1961 Sec. 2, Sec. 79A, Sec. 79B - Mortgage Recovery - Borrower availed overdraft from bank secured by mortgage of property - On default, Recovery Officer brought mortgaged property to auction - Auction purchaser deposited full sale price and received sale certificate - Subsequent purchasers claimed ownership alleging they bought sites earlier from power of attorney holders - Recovery Officer rejected objections but Tribunal set aside sale holding purchaser disqualified under Land Reforms Act - Bank and auction purchaser challenged decision - Court held that mortgaged property had been converted for residential use and was no longer agricultural - Auction purchaser lawfully bought property in public auction after due process - Tribunal erred in applying agricultural land restrictions - Bank as prior mortgagee entitled to enforce recovery through sale - Orders of Tribunal and Appellate Tribunal set aside - Sale confirmed - Petitions Allowed

Law Point: Once property mortgaged to bank and converted for non-agricultural use is sold in public auction under lawful recovery process, such sale cannot be invalidated on ground of purchaser's ineligibility under agricultural land provisions when mortgage rights precede later transactions.

Acts Referred:

Transfer of Property Act, 1882 Sec. 58

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 Sec. 30, Sec. 26

Income Tax Rules, 1962 Rule 61

Security Interest (Enforcement) Rules, 2002 Rule 9

Karnataka Land Reforms Act, 1961 Sec. 2, Sec. 79A, Sec. 79B

Counsel:

Udaya Holla, Nagaraj Damodar, Gautam Bhardwaj, H T Nataraj, A Madhusudhana Rao, Latha Shetty

JUDGEMENT

Venkatesh Naik T, J.- [1] Wp No.36440 of 2014 and WP No.52283 of 2013

WP No.36440 of 2014 has been filed by the Bank of Baroda erstwhile (Vijaya Bank) to set aside the order dated 23.08.2013 passed by the Debt Recovery Appellate Tribunal, Chennai, (for short, 'the Tribunal') in MA No.138 of 2008 and to set aside the order dated 07.03.2008 passed by the Debt Recovery Tribunal, (for short 'DRT') Bengaluru in AOR No.2 of 2003 and thereby allow the Miscellaneous Appeal No.138 of 2008 on the files of the Debt Recovery Appellate Tribunal, Chennai.

[2] Whereas, WP No.52283 of 2013 is filed by the petitioner, auction purchaser, A. Naveen Bhandary, to set aside the order dated 23.08.2013 passed by the Debt Recovery Appellate Tribunal, Chennai in Miscellaneous Appeal No.378 of 2010, wherein, the tribunal dismissed the appeal filed by the petitioner, which was filed challenging the order dated 07.03.2008 passed by the Debt Recovery Tribunal(for short 'DRT'), Bengaluru in AOR No.2 of 2003.

Brief facts of the case in W.P.No.36440/2014 and W.P.No.52283/2013 herein are as under:

[3] The 6th/10th respondent, M/s. United Distilleries had availed a temporary overdraft facility to the limit of Rs.20,00,000/- from the Bank of Baroda(hereinafter referred to as 'bank'), Gandhi Bazaar Branch, Bengaluru, on 13.06.1991. The property measuring an extent of 1 acre 30 guntas in Survey No.122/1 of Gottigere Village, Uttarahalli Hobli, Bengaluru South Taluk owned by 7th/11th respondent, Sri. B.A. Ram, and another property measuring 3 acres 18 guntas in Survey No.122/2 of Gottigere Village, Uttarahalli Hobli, Bengaluru South Taluk owned by the 8th/12th respondent, Sri. B.A. Laxman, had mortgaged with the bank as collateral security by deposit of the title deeds to secure the said facility availed by the 6th/10th respondent M/s. United Distilleries. The mortgage was created by depositing of title deeds, on 09.07.1991, in favour of the Bank by Sri B.A. Ram and Sri. B.A. Laxman. On account of the default in repayment of the dues, the bank filed OA No.36 of 1996 before the Debt Recovery Tribunal, Bengaluru, against M/s. United Distilleries, Sri. B.A. Ram and Sri. B.A. Laxman and five others, for recovery of a sum of Rs.45,48,567.80 paise together with interest and also for sale of the mortgaged properties. The Debts Recovery Tribunal, Bengaluru by its order dated 28.02.1997 allowed OA No.36 of 1996 and declared that the applicant bank is entitled to recover from defendant Nos.1 to 8 therein jointly severally and personally a sum of Rs.45,48,567.80 paise with costs and interest at 24.50% p.a.

[4] In terms of the order passed by the DRT, Bengaluru, the Recovery Officer, issued notice for settling sale proclamation dated 29.06.1998 and on 22.09.1998, order

of attachment of immovable property of Sri. B.A. Ram and Sri. B.A. Laxman was made by Recovery Officer and on 16.10.1998, a proclamation of sale was issued by the Recovery Officer. Pursuant to the recovery certificate, the bank initiated further recovery proceedings for sale of the mortgaged properties. The mortgaged properties were brought to sale in the said recovery proceedings on two occasions, which was not fruitful as there were no bidders. In the meanwhile, the mortgaged properties were notified for acquisition by the Bengaluru Development Authority (BDA). Thereafter, the property in Sy.No.122/1 measuring an extent of 1 acre 30 guntas (Item No.1) in the schedule of the original application was acquired and the other property in Sy.No.122/2 measuring 3 acres 18 guntas (Item No.2) in the schedule of the original application was de-notified, as the same was already converted for non-agricultural residential use, pending mortgage with the bank.

[5] Finally, a third auction was conducted in respect of land in Survey No.122/2 alone on 28.11.2002 fixing the offset price at Rs.34,00,000/-. In the said auction, the petitioner(W.P.No.52283/2013), auction purchaser, Naveen Bhandary participated and was declared as the highest bidder for a sum of Rs.38,00,000/- and the auction purchaser had also paid a sum of Rs.38,00,000/- being the sale proceeds, and the same was upheld by the Recovery Officer. Accordingly, the certificate of sale was issued in favour of the auction purchaser, Sri Naveen Bhandary.

[6] In the meanwhile, respondents viz., G.S. Srinivas Gupta, Aslam Basha, Ramachandra Hegde, Sashikala, C.N. Vishwanath and Sri Hiren K. Dharamshi, who claimed right over the mortgaged properties, which were sold in auction, filed a memorandum of objections as claimants, before the Recovery Officer of the Debt Recovery Tribunal, Bengaluru, on the basis that, they are bona fide purchasers of individual house/sites in the mortgaged properties during the year 1995. In the claim or objections made before the Recovery Officer, respondent No.5 Sri. Dr. C.N. Vishwanath and Sri Hiren K. Dharamshi sought for setting aside the auction sale dated 28.11.2002 and to release the said property in their favour. The Recovery Officer, after consideration of the facts and circumstances, passed a detailed order dated 23.12.2002 and dismissed the objections raised by the Objectors.

[7] Being aggrieved by the order passed by the Recovery officer of DRT, Bengaluru, Dr. P.V. Narayana Rao (one of the claimant) filed AOR No.1 of 2003 and respondents herein viz., Sri. G.S. Srinivas Gupta, Dr. C.N. Vishwanath, Dr. Ramachandra Hegde, Sri. Hiren K. Dharamshi, Sri. Aslam Basha and Smt. Sashikala filed AOR No.2 of 2003 before the Debts Recovery Tribunal, Bengaluru, seeking to set aside the order of the Recovery Officer dated 23.12.2002. In turn, the Debt Recovery Tribunal, Bengaluru, vide order dated 30.09.2003 dismissed AOR No.1 of 2003 filed by Dr. P.V. Narayana Rao and allowed AOR No.2 of 2003 by order dated 07.03.2008 by setting aside the order passed by the Recovery Officer dated 23.12.2002, and the Recovery Officer of DRT was directed to proceed against the main borrowers personally as well as against the individual properties forthwith.

[8] Thus, the Bank filed an appeal in MA No.138 of 2008 before the Debt Recovery Appellate Tribunal, Chennai, being aggrieved by the order dated 07.03.2008 passed by the DRT, Bengaluru. The petitioner, A. Naveen Bhandary, filed an appeal in MA.No.378/2010 before DRAT, Chennai. The Appellate Tribunal dismissed the appeal in MA No.138 of 2008 by its order dated 23.08.2013, and confirmed the order passed by DRT, Bengaluru in AOR No.2 of 2003 dated 07.03.2008. Thus, the Bank being aggrieved by the order dated 07.03.2008 in AOR No.2 of 2003 and order dated 23.08.2013 passed in MA No.138 of 2008, filed WP No.36440 of 2014 (GM-DRT), whereas, the auction purchaser, Naveen Bhandary filed WP No.52283 of 2013, challenging the impugned order.

[9] We have heard the learned Senior counsel/learned counsel for the petitioners and learned counsel for the respondents respectively.

[10] Sri Udaya Holla, learned Senior Counsel representing Sri. Nagaraj Damodar on behalf of the petitioner/Bank vehemently contended that, the DRT and the Appellate Tribunal have totally ignored the fact that the charge created in respect of the mortgaged property in favour of the bank is lawful, and that the bank has every right to auction and realise its dues by bringing the mortgaged property to sale. The bank need not proceed personally against the borrowers, when the valuable property mortgaged for securing the loan is available for auction. Secondly, the DRT and the Appellate Tribunal completely ignored the fact that the mortgaged property although was agricultural land at the time it was mortgaged in favour of the bank, but when the said property was brought for auction by the Recovery Officer, the same was converted for non-agricultural and residential purpose by the mortgager or who are owners of the mortgaged property.

[11] Thirdly, the DRT and the Appellate Tribunal have erroneously given a finding that the mortgaged property which was brought for auction by the Recovery Officer is an agricultural land and the auction purchaser being the retired employee of the bank, hence, is not a competent person to participate in the public auction and under Section 79A of Karnataka Land Reforms Act, 1961 to purchase the mortgaged land, which is erroneous one, by totally ignoring the fact that the very same land mortgaged in favour of the bank has been converted from agricultural to non-agricultural use by formation of residential sites thereon.

[12] Fourthly, the DRT and the Appellate Tribunal ought to have given liberty to the bank to approach the Recovery Officer for bringing the property lawfully mortgaged to it for auction to realize the amount due to it. Thus, the impugned order passed by the DRT as well as Appellate Tribunal is perverse and without application of mind.

[13] Fifthly, the bank being the prior mortgage holder is entitled to enforce the same in preference to the claim of G.S. Srinivas Gupta, Aslam Basha, Ramachandra Hegde, Sashikala,C.N. Vishwanath and Mr. Hiren K. Dharamshi, who are only subsequent purchasers of the property pending the mortgage.

[14] Sixthly, the DRT and the Appellate Tribunal ought to have appreciated the fact that the first respondent by name G.S. Srinivas Gupta, who was only the Power of Attorney holder of respondent Nos.6 and 7 Sri. B.A.Ram and B.A. Laxman, who are the absolute owners/mortgagers of the property and as such, Sri G.S. Srinivas Gupta cannot have any right in derogation to the rights of his Principal. As an agent, Sri. G.S. Srinivas Gupta is only bound by the Act of his Principal viz., Sri. B.A. Ram and Sri. B.A. Laxman and therefore Sri. B.A. Laxman cannot contend that they have sold and converted the mortgaged property as residential sites in favour of respondent Nos.1 to 5 Sri. G.S. Srinivas Gupta, Sri. Aslam Basha, Sri. Ramachandra Hedge, Smt. Sashikala, Sri. C.N. Vishwanath and Sri Hiren K. Dharamshi.

[15] Seventhly, the order passed by the Debt Recovery Tribunal, Bengaluru, is in contravention to the order dated 30.09.2003 passed in AOR No.1 of 2003, whereby, the Debt Recovery Tribunal has already upheld the order of Recovery Officer in DCP No.206 dated 23.12.2002 and being aggrieved by the same, no appeal was filed and thus, the said order has attained finality. As such, no subsequent order could have been passed in derogation to the earlier order. The Debt Recovery Tribunal has seriously erred in allowing AOR No.2 of 2003, as respondent Nos.1 to 5 and Sri Hiren K. Dharamshi had subsequent right, based on GPA executed by respondent No.7 and respondent No.8, Sri B.A. Ram and Sri B.A. Laxman, in fact, they had played fraud and cheated them. The remedy of respondent Nos.1 to 5 and Sri Hiren K. Dharamshi will lie only against those persons who have defrauded them by initiating appropriate proceedings before a competent forum. A mere contention that they are bona fide purchasers for valuable consideration, respondent Nos.1 to 5 and Sri Hiren K. Dharamshi cannot seek setting aside of the sale in question. The sale was made by Recovery Officer in the recovery proceedings by following the recourse provided under law for realization of the legitimate dues of the bank.

WP No 52283 of 2013

[16] Sri. Bipin Hegde, learned counsel representing Smt. Anuparna Bardoloi, learned counsel on behalf of the petitioner Sri Naveen Bhandary, the auction purchaser, contended that, the order passed by the Debt Recovery Tribunal and the Appellate Tribunal are contrary to law and material available on record. The DRT while passing the impugned order dated 07.03.2008 committed an error by holding that the Recovery Officer failed to investigate the claims of the respondents, which is nothing but based on assumptions and presumptions. In fact, the respondents have no valid title to the sites purchased by them and they have no locus standi to challenge the order of the Recovery Officer passed in AOR 2 of 2003. It is an admitted fact that the respondents/purchasers have purchased the alleged sites subsequent to the date of the mortgage of property in question. Under such circumstances, the purchasers have purchased the mortgaged property and they stepped into the shoes of the mortgager as defined under Section 58 of the Transfer of Property Act, 1882. Further, the order dated 28.02.1997 passed by the DRT in OA No. 36/1996 has not been challenged and the same has reached its finality

and as per the sale certificate, the property was auctioned in the public and the petitioner, Naveen Bhandary being the highest bidder has deposited the entire auction sale consideration, sale was confirmed, registered sale deed was executed in his favour and possession was also handed over to him. Accordingly, the revenue records were also changed in the name of the auction purchaser.

[17] It is further contended that, the DRT failed to consider that in view of Section 26(1) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (in short 'RDB Act'), the validity of the recovery certificate cannot be challenged before the Recovery Officer. Therefore, the appeal filed in AOR No.2 of 2003 is unsustainable in law. The finding of the tribunal is that, bringing the property to auction by Recovery Officer is in violation of the provisions of The Karnataka Land Reforms Act. Since, the land was not purchased for a specific prohibited purpose, the Debt Recovery Tribunal, Bengaluru and the Debt Recovery Appellate Tribunal, Chennai lost sight of the fact that, the Bengaluru Development Authority had notified for acquisition of the property comprised in Sy.No.122/1 measuring 1 acre 30 guntas and land bearing Sy.No.122/2 measuring 3 acres and 18 guntas and later, 3 acres and 18 guntas were de-notified. In the said acquisition proceedings also, the land in question was acquired for formation of a residential layout. In view of the same, the finding of the DRT, Bengaluru and DRAT, Chennai, that land in question was agricultural land is highly erroneous. It is contended that respondents by name Sri.G.S. Srinivas Gupta, Aslam Basha, Ramachandra Hegde, Sashikala, C.N. Vishwanath have purchased the property in question in the year 1995 from the Power of Attorney Holder of respondent Nos.11 and 12/respondent Nos.7 and 8 Sri. B.A. Ram and Sri. B.A. Laxman. The mortgage in favour of the bank was of the year 1991 and therefore, respondents G.S. Srinivas Gupta, Aslam Basha, Ramachandra Hedge, Sashikala, C.N. Vishwanath are not bona fide purchasers, more particularly, when original title deeds are in the custody of the bank. Neither the respondents nor the subsequent purchasers are the bona fide purchasers of the property in question, which was fully mortgaged in favour of the bank, since they have not scrutinized and verified the original title deeds, which were in the custody of the bank before purchasing the property in question. Respondent Nos.4 and 5/respondent Nos.1 and 2 being the agents of respondent Nos.11 and 12/respondent Nos.7 and 8 cannot have independent right or a remote standing to challenge the order of the Recovery Officer, therefore, the impugned order dated 07.03.2008 made in AOR 2 of 2003 and also order passed by the DRT, Bengaluru and DRAT, Chennai are unsustainable and liable to be set aside. Hence, prayed to allow the petitions.

[18] In support of their contentions, learned counsel for the petitioner in W.P.No.36440/2014 relied upon the following decisions:-

1. ITC Limited vs. Blue Coast Hotels Ltd., & Ors.,2018 SCCOnlineSC 237;

2. Indian Bank v. K. Pappireddiyar,2018 SCCOnlineSC 743;

3. Valley Iron & Steel Company Limited v. State of Himachal Pradesh and Others,2016 SCCOnline HP 2375;

4. A. Parvatham v. Bank of Baroda represented by its Branch Manager, Tiruppur and 4 Others,2000 SCCOnlineMad 276;

5. Bank of Baroda, Through its Branch Manager v. Gopal Shriram Panda and Another,2021 SCC OnlineBom 466;

6. Smt. Madhukanta Patadia, W/o. Late Harajeevandas v. The State of Karnataka, W.P.No.147188 of 2020 DD 16.07.2020;

7. Tamil Chelvan v. State of Karnataka and Others in WP No.38276/2013 and W.P.No.38702- 38703/2013 dated 25.05.2016;

8. Sri. B.M. Upendra Kumar v. State of Karnataka,2016 SCCOnlineKar 855;

9. Sri. R. Raghu v. Sr. G.M. Krishna and Another in Civil Appeal 8544 of 2024.

[19] Sri. H.T. Nataraj, the learned counsel for respondent Nos.1 to 5 and 7(a-c)(in W.P.No.36440/2014 and for respondent Nos.4, 5, 6, 8, 9 and 11(A-C) in W.P.No.52283/2013 vehemently contended that the respondent/G.S. Srinivasa Gupta was a builder and developer. In the year 1991, he entered into an Agreement for purchase of land bearing Sy.Nos.122/1 and 122/2 of Gottigere village, Uttarahalli Hobli, Bengaluru South Taluk measuring 1 acre 30 guntas and 3 acres 18 guntas respectively from respondents Sri. B.A. Ram and Sri. B.A. Laxman and pursuant to said Agreement, he was put in possession and enjoyment of the property with all liberty to develop the land and to make improvement thereon. The respondent G. S. Srinivasa Gupta made complete payment as consideration to its owners, formed private layout on the said property after obtaining permission from the village administration on 15.11.1991. The respondents Dr. C.N. Vishwanath, Dr. Ramachandra Hegde, Hiren K. Dharamshi, Sri. Aslam Basha and Smt. Sashikala are the owners of the residential plots formed in the layout in those survey numbers, who are in possession of the property since 1995, on which date, they were put in possession and sale deeds were executed in their favour. According to the respondent/G.S. Srinivasa Gupta, M/s. United Distilleries had borrowed a sum of Rs.20.00 lakhs in the year 1991 from the Bank. Accordingly, respondents B.A. Ram and B.A. Laxman deposited the title deeds of the land in respect of above survey numbers, as collateral security. Since M/s. United Distilleries(respondent No.10/respondent No.6) committed default, the Bank initiated recovery proceedings in OA No.36/1996 before the Tribunal. The Tribunal passed the order dated 28.02.1997 and accorded three months' time to M/s. United Distilleries to pay the amounts due, failing which, the Bank was permitted to sell the mortgage properties of Sri B.A. Ram and Sri. B. A. Laxman. In pursuance of the order passed in O.A. 36/1996, the

Recovery Officer initiated recovery proceedings in DCP No.206 in O.A.No.36/1996. Thus, the Recovery Officer brought the aforesaid property for sale on 28.11.2002 and public auction was held. The petitioner/Naveen Bhandary was the highest bidder, who was offered to purchase the said property for Rs.38,00,000/-. Hence, respondent Nos.1 to 5 filed objections before the Recovery Officer with a request not to confirm the sale and the property in question should not be sold, as the objectors are absolute owners of the property and none of the persons have the right over the said property. It is further contended that the Recovery Officer failed to appreciate the fact that the land, which was subject matter of mortgage was an agricultural land. The land which is being brought to sale is a converted land and fully developed layout. Thus, it comprises of more than 100 residential plots and each plot has been sold to individual persons and objectors, who are the purchasers of said residential plots formed in the said layout and they are in peaceful possession of the same.

It is further contended that the Recovery Officer ought to have considered that the respondents M/s. United Distilleries, Sri. B. A. Ram and Sri.B.A. Laxman are owning many movable and immovable properties. Thus, without proceeding against them, they proceeded against the property in question, which is a converted land, purchased by respondent Nos.1 to 5 herein. The Recovery Officer ought to have proceeded in accordance with the provisions of Code of Civil Procedure, by arresting and detaining the defaulters in civil prison, so that they will voluntarily pay the entire mortgage amount. Further, the land owners Sri. B. A. Ram and Sri. B.A. Laxman played fraud and cheated the prospective purchasers of residential plots by selling the same knowingly that the property is the subject matter of mortgage with the bank for discharge of debt. Therefore, respondent Nos.1 to 5 and 7 prayed to dismiss the petitions filed by the petitioners.

[20] In support of their case, learned counsel for respondent Nos.1 to 5 and LRs of respondent No.7 in W.P.No.36440/2014 relied on the following decisions:-

1. Narayan Deorao Javle(deceased) through Legal Representatives v. Krishna and Others,2021 17 SCC 626;

2. **Mathew Varghese v. Amritha Kumar and Others**, 2014 5 SCC 610;

3. Vasu CoCo Resorts Pvt Ltd., and Others v. The Authorised Officer, State Bank of India and Others;

4. ARCE Polymers Private Limited v. M/s. Alphine Pharmaceuticals Private Limited & Others, Civil Appeal No.7372/2021 disposed of 03.12.2021;

5. **Ram Kishun and Others v. State of Uttar Pradesh and Others**, 2012 11 SCC 511.

[21] Sri. A. Madhusudhana Rao, learned counsel for respondent No.8/respondent No.12 Sri. B.A. Laxman vehemently contended that, respondent No.8, who is the

mortgager/guarantor had also sought for an opportunity for one time settlement and had also deposited initial amount of Rs.6,75,000/- at that time and the same was not considered by the Bank. Further, respondent Nos.7 and 8 had executed a Power of Attorney in favour of Sri. G.S. Srinivas Gupta and inturn, he sold sites to other respondents on the basis of said Power of Attorney. As such, in the proceedings initiated by Sri. G.S. Srinivas Gupta and other purchasers of sites, Sri. B.A. Laxman alongwith his deceased brother Sri. B.A. Ram(respondent No.7) had also filed objection to the claim of the purchasers and had contested the matter. Hence, Sri. B.A. Laxman has substantial interest in the controversy involved in the case. Further, Rule 61 of the Income Tax Rules, clearly enable the defaulter or any person whose interest are affected by same, to seek for setting aside the sale. It is further contended that the auction sale in favour of the auction purchaser, is in violation of the provisions of Rule 9 (2) of the SARFAESI Rules, which provides that, when the reserve price of the property proposed to be sold, the notice regarding the same should be given by the Recovery Officer to the mortgager. The reserve price was reduced from Rs.42.00 lakhs to Rs.34 lakhs and the property was sold to the auction purchaser in the subsequent auction at Rs.38.00 lakhs. Admittedly, no notice was given to respondent No.8- B.A. Laxman, regarding reduction of reserve price by the Recovery Officer. In this background, the very sale proceedings are illegal and the same have been rightly set aside. Further, the entire sale proceedings have been conducted in a malafide manner, without fixing the reserve price, taking into account the actual nature and location of the land as on the date of the auction. The Recovery Officer, without proper publication reduced the reserve price, only with an intention to facilitate the auction purchaser, who is none other than an ex-employee of the same bank, and also a Director of the Bank Employees' House Building Co-operative Society. The petitioner Naveen Bhandary, was the only bidder in the impugned auction. The Debt Recovery Tribunal in the order dated 07.03.2008 passed in AOR No.2/2003 has extensively dealt with the aforesaid illegalities committed by the Recovery Officer during the auction sale in paragraph No.6 of the said order and the same has been confirmed by the Debt Recovery Appellate Tribunal, Chennai.

It is further contended that the orders passed by the Debt Recovery Tribunal, Bengaluru and Debt Recovery Appellate Tribunal, Chennai do not suffer from any error of jurisdiction and the same do not call for interference under Article 227 of the Constitution of India, 1950.

[22] The learned counsel in support of this argument relied upon the judgment of the Hon'ble Supreme Court in the case of **Delhi Development Authority v. Corporation Bank and Ors**, 2025 INSC 1161(Civil Appeal No.11269/2016) disposed of on 25.09.2025), wherein the Hon'ble Supreme Court in paras 23 to 25 has reiterated the principles relating to the procedure to be followed while conducting the sale in terms of the provisions of Income Tax Act, 1961 and the provisions of Recovery of Debts and Bankruptcy Act, 1993. The Hon'ble Supreme Court has

categorically referred to the fact that at the time of the proclamation of sale, a notice has to be issued to the defaulter, and in the proclamation of sale, the time and place has to be specified, the details of the property has to be stated and also any other materials, which is required to assess the nature and value of the property. Whereas, in the instant case, the sale proclamation that has been issued by the Recovery Officer does not satisfy these requirements and the sale in favour of the auction purchaser is in violation of these provisions.

[23] In view of the submissions made by both the parties, in both the petitions, the following points which would arise for our consideration is as under:-

> "Whether the order passed by the Debt Recovery Appellate Tribunal, Chennai is contrary to law and thus calls for interference by this Court?"

[24] In the instant case, the Bank challenged the impugned order passed by DRT, Bengaluru and DRAT, Chennai and to allow MA No.138/2008, whereas, the auction purchaser also filed writ petition to set-aside the impugned order passed by DRAT, Chennai in MA No.378/2010.

[25] A reading of the final order passed in OA No.36/1996 reveals that the 9th respondent Sri. B.A. Laxman being the owner of land bearing Sy.No.122/2 of Gottigere village, stood as guarantor to the loan transaction of M/s. United Distilleries and had created an equitable mortgage of his land by deposit of title deeds in favour of the Bank. As the principal borrower M/s. United Distilleries failed to clear the loan, the bank proceeded for auction of the mortgaged properties belonging to Sri. B.A. Laxman. Accordingly, the Recovery Officer brought the said land for sale and the Bank had also got the land valued by an approved valuer and the approved valuer has described the property as a 'dry land suitable for forming layout' and also stated that it is a 'vacant land' i.e., agricultural land and it has been subsequently converted into a nonagricultural land and made into several plots. Hence, it is just and necessary to analyse the term 'land'.

The word 'Land' as defined in Section 2(A)(18) of the Karnataka Land Reforms Act, 1961 reads as follows:

> "Land" means agricultural land, that is to say, land which is used or capable of being used for agricultural purposes or purposes subservient thereto and includes horticultural land, forest land, garden land, pasture land, plantation and tope but does not include house-site or land used exclusively for non agricultural purposes;"

Therefore, from the above, it can be seen that the land in this case is an agricultural land.

[26] As per the objection statement of the Bank, the Village Administrator, Gottigere Village had issued no objection for formation of sites, however, he is not a

competent authority to approve the residential layout plan and that the layout plan is null and void as the same is unauthorised one.

[27] Therefore, from a combined reading of the description of the property in the OA, the approved valuer's report, the order of the learned Presiding Officer, DRT Bangalore in AOR No.1/2003 and the objection statement to the appeal in AOR No.2/2003 under Section 30 of RDDB & FI Act filed by the Bank, it reveals that the land in question was an agricultural land and converted into layout without sanction or approval of competent authorities.

[28] The bank as well as auction purchaser have taken the contention that the Recovery Officer was directed to proceed against the main borrowers personally as well as against their individual properties forthwith. In fact, the charge created in respect of mortgaged property in favour of the bank, is in accordance with statutory provisions and therefore, the bank has every right to auction and realise its dues by bringing the mortgaged property to sale. Further, the mortgaged property was agricultural land at the time it was mortgaged in favour of the bank. But, when the said property was brought for auction by the Recovery Officer, the same was converted for non-agricultural and residential purposes by the Mortgager or who are the owners of the mortgaged property. Thus, the Appellate Tribunal ought to have given liberty to the bank to approach the Recovery Officer for bringing the property lawfully mortgaged to it, for auction to realise the amount due to it. The Bank being the prior mortgage holder is entitled to enforce the same in preference to the claim of respondent Nos.1 to 5, 7 and Mr. Hiren K. Dharamshi, who are only subsequent purchasers of the property pending the mortgage. Respondent No.1/respondent No.4 Sri. G.S. Srinivas Gupta, who was only Power of Attorney Holder of Sri. B.A. Ram and Sri. B.A. Laxman and as such, Sri. G.S. Srinivas Gupta, is only bound by the act of his principal i.e., they stepped into the shoes of mortgager by virtue of Section 58 of the Transfer of Property Act and thus, Sri. B.A. Ram and Sri. B.A. laxman cannot contend that they have sold and converted the mortgaged property as residential sites in favour of respondent Nos.1 to 5, 7 and Sri. Hiren K. Dharamshi. Therefore, the remedy of respondent Nos.1 to 5, 7 and Hiren K. Dharamshi will lie only against those persons, who have defrauded them by initiating appropriate proceedings before a competent forum. Hence, it is just and necessary to analyse Sections 59A, 60 and 91 of the Transfer of Property Act, 1882 and Order 34, Rule 1 of Code of Civil Procedure, 1908.

> "59-A. References to mortgagors and mortgagees to include persons deriving title from them. Unless otherwise expressly provided, references in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively.
>
> **60. Right of mortgagor to redeem.** At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to

deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by decree of a court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Redemption of portion of mortgaged property. Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except only where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

91. Persons who may sue for redemption. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely

(a) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same;

(b) any surety for the payment of the mortgage-debt or any part thereof; or

(c) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property."

Order 34 Rule 1 CPC, 1908:

"1. Parties to suits for foreclosure, sale and redemption. Subject to the provisions of this Code, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to the mortgage.

> Explanation. A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party to the suit; and a prior mortgage need not be joined in a suit to redeem a subsequent mortgage."

Thus, the equity of redemption is a right which is subsidiary to the right of ownership. Such right is not over and above the right of ownership purchased by respondents herein. The expression "equity of redemption" is a convenient maxim, but, an owner, who has stepped into the shoes of the mortgager, after the purchase from the mortgager, but, before filing a suit for foreclosure is entitled to redeem the property in terms of Section 60 of Transfer of Property Act. Once subsequent purchaser had purchased the mortgaged property, the right of redemption is a part of the title and as an owner, he could seek redemption of the suit land in view of Section 91 of Transfer of Property Act. Similar ratio is laid down by the Hon'ble Supreme Court in the case of Narayan Deorao Javle (Deceased) through LRs v. Krishna and Others,2021 17 SCC 626.

[29] The guarantor, respondent No.8/respondent No.12 B.A. Laxman has taken the contention that, the auction sale in favour of the auction purchaser is in violation of the provisions of Rule 9(2) of SARFAESI Rules, which provides that, when the reserve price of the property proposed to be sold, the notice regarding the same should be given by the Recovery Officer to the mortgager.

[30] Admittedly, in these cases, the reserve price was reduced from Rs.42.00 lakhs to Rs.34.00 lakhs and the property was sold to the auction purchaser at Rs.38.00 lakhs. Infact, no notice was given to respondent No.8/respondent No.12 regarding reduction of reserve price by the Recovery Officer. In this background, respondent No.8/respondent No.12 contended that the very sale proceedings are illegal. Hence, it is just and necessary to analyse Section 9(2) of SARFAESI Rules, 2002.

> "Rule 9(2) of the SARFAESI Act states that the sale of a secured asset is confirmed in favour of the highest bidder, subject to the secured creditor's approval. It also mandates that the sale price must be at least equal to the reserve price to be confirmed. The rule outlines the process for sale confirmation, including the condition that the bid must be higher than the reserve price."

[31] The Hon'ble Apex Court in the case of **Mathew Varghese v. A. Amritha Kumar and Others**, 2014 5 SCC 610, held that under SARFAESI Act, the Recovery Officer shall comply mandatory procedures viz., 30 days' clear notice to borrower of date of sale and there is mandatory requirement of adjournment/postponement of sale for a period of more than one month and no sale or transfer of secured asset to be made on any subsequent date without notifying borrower afresh with 30 days' clear individual notice of the fresh date of sale and thus, any sale or transfer of secured asset under SARFAESI Act in violation of the above mandatory requirements would be held invalid.

Therefore, it appears that, the entire sale proceedings have been conducted in a malafide manner, without fixing the reserve price taking into account the actual nature and location of the land as on the date of auction, without there being proper publication, by reducing the reserve price, with an intention to facilitate the auction purchaser, who is none other than an ex-employee of the same bank and also a Director of the Bank Employees House Building Co-operative Society, who was the only bidder in the impugned auction. The aforesaid mandatory requirement was extensively dealt with by DRT, Bengaluru and DRAT, Chennai.

[32] Further, at the time of proclamation of sale, a notice has to be issued to the defaulter and in the proclamation of sale, the time and place has to be specified, the nature and value of the property has to be stated. In this regard, the Hon'ble Apex Court in the case of **Delhi Development Authority v. Corporation Bank and Ors.**, 2025 INSC 1161at paras 23 to 25 has held as under:-

> "23. Section 29 of the 1993 Act deals with application of certain provisions of Income-tax Act. It provides that provisions of Second and Third Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962, as in force from time to time, shall as far as possible, apply with necessary modifications as if the said provisions and the Rules referred to the amount of debt due under this Act instead of to the Income-tax. The Second Schedule provides for procedure of recovery of tax, whereas the Third Schedule deals with procedure for distraint by Assessing Officer or Tax Recovery Officer. Rule 53 of Second Schedule to 1961 Act deals with contents of proclamation. It provides that a proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and shall specify, as fairly and accurately as possible:-
>
> "(a) The property to be sold;
>
> (b) The revenue, if any, assessed upon the property or any part thereof;
>
> (c) The amount for the recovery of which the sale is ordered.
>
> (d) Any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property."
>
> 24. Thus, Rule 53 mandates the Recovery Officer to mention in the proclamation of sale any other thing which he considers material for purchaser to know in order to judge the nature and value of the property.
>
> 25. In exercise of powers under Section 295(1) of the 1961 Act and Rules 91 and 92 of the Second Schedule of the 1961 Act, the Central Board of Revenue has made the Rules namely, the Income Tax (Certificate Proceedings), Rules 1962. Rule 16 of the Rules empowers the Recovery Officer to summon any

person whom he thinks necessary to summon and may examine him in respect of any matters relevant to the proclamation and require him to produce any document in his possession or power relating thereto."

[33] Hence, in this case, the Recovery Officer has not complied the mandatory strict compliance under SARFAESI Rules and any infraction of the Rules would be detrimental to the whole exercise of disposing of the secured Asset for realising the outside secured creditor.

[34] Admittedly, the Debt Recovery Tribunal (DRT) cannot adjudicate civil rights such as those involving the declaration of a sale deed's validity because these matters fall outside its limited jurisdiction under the SARFAESI Act. The DRT's role is primarily for expediting debt recovery and enforcing security interests, not for resolving complex title disputes, which remain the purview of civil courts, whereas, the Recovery Officer of DRT, Bengaluru conducted auction sale which is contrary to the provisions of law and which is against the interest of respondents Sri. B.A. Ram and Sri. B.A. Laxman and no notice was served upon them while reducing price of the land in question.

[35] It is contended that the schedule property comprises of more than 100 residential plots and each plot has been sold to individuals and objectors, thus they are in possession of the property.

[36] The auction purchaser has taken the contention that the validity of certificate issued by Recovery Officer cannot be challenged. Hence, it is just and necessary to analyse Section 26 of RDB Act, 1993, which reads as under:-

26. Validity of certificate and amendment thereof. (1) It shall not be open to the defendant to dispute before the Recovery Officer the correctness of the amount specified in the certificate, and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer.

(2) Notwithstanding the issue of a certificate to a Recovery Officer, the Presiding Officer shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer.

(3) The Presiding Officer shall intimate to the Recovery Officer any order withdrawing or cancelling a certificate or any correction made by him under sub-section (2).

[37] There is no dispute about the essential facts. The property was sold in pursuance to the public auction. Mere fact that the auction purchaser is not an agriculturist and he was a former employee of the Bank and thus, there was bar against him to purchase the land, itself leads to an irreversible conclusion that the sale transaction is vitiated.

[38] The petitioner bank has taken contention that the Appellate Tribunal rejected the claim of the bank on the ground that, the auction purchaser was barred in

purchasing agricultural land as there is bar under Section 79-A and 79-B of The Karnataka Land Reforms Act, 1961.

[39] We have perused the judgments relied upon by the petitioner Bank in the case of **Smt. Madhukanta Patadia, Tamil Chelvan, B.M. Upendra Kumar and R. Raghu's** referred supra, wherein it is held that amendment provision to Section 79A and B of the KLR Act are retrospective in nature and hence the restrictions imposed in the earlier section has been lifted by virtue of an amendment dated 13.08.2015. There is no dispute as to the said proposition and lifting of restrictions under the KLR Act. However, the fact remains that the Recovery Officer conducted auction proceedings which are contrary to the rules and not in the bonafide manner.

[40] Admittedly, M/.s United Distilleries had availed temporary overdraft facility from the Bank on 13.06.1991 and a mortgage was created by the deposit of title deeds in favour of the bank by Sri. B.A. Ram and Sri. B.A. Laxman. Later, they executed a Power of Attorney in favour of Sri. G.S. Srinivas Gupta, inturn, he developed the land in question, secured permission from the Village Administrator, formed sites and sold the sites to prospective purchasers on the basis of Power of Attorney. Hence, the land in question do not remain as agricultural land.

[41] The bank has relied upon the decision in the case of Indian Bank v K. Pappireddiyar reported in 2018 SCC Online SC 743, wherein the Apex Court held that the question as to whether the land is agricultural has to be determined on the basis of totality of facts and circumstances including the nature an character of the land, the use to which, it was put and the purpose and intent of the parties on the date on which the security interest was created.

[42] Apart from the above, the only ground that is now urged in the petitions is, as on the date of the auction purchase, the auction purchaser was a retired employee of the Bank. It appears that he has actively involved himself in the process of auction purchase. In addition, the Court draws support from the provisions of the Code of Civil Procedure, 1908, and finds that there is no clear proof of material irregularity and are of substantial injury to either the mortgager or the Bank Authority, as a result of the said sale for what is termed as inadequate price. The land in question is situated within the city limits of Bengaluru. The present cost of the land would run to crores of rupees and thus, there is allegation of reference of fraud and collusion. There is no merit in the writ petitions and the petitions are liable to be dismissed.

Accordingly, the writ petitions are **dismissed** and we upheld the orders dated 23.08.2013 passed by Debt Recovery Appellate Tribunal, Chennai in M.A.No.138/2008 and M.A.No.378/2010.

In view of dismissal of the petitions, pending IAs, if any, stands disposed of

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2026(1)AIPC29

IN THE HIGH COURT OF KARNATAKA

(Hon'ble Judge H P Sandesh)

Miscellaneous Second Appeal No 34 of 2023 **dated 28/11/2025**

Baby Suvarna W/o Late Babu Salian; Suresh S/o Babu Salian; Ramesh S/o Late Babu Salian

Versus

Umesh Salian S/o Late Kotiappa; Raghunath Poojary S/o Late Kushalakshi; Tharun S/o Late Kushalakshi; Shruthi D/o Late Kushalakshi; Sachin S/o Late Kushalakshi

INDIVISIBLE PROPERTY

Partition Act, 1893 Sec. 2, Sec. 3 - Indivisible Property - Miscellaneous second appeal filed challenging order of remand passed by Appellate Court - Property subject to partition decree contained workshop and house - Trial Court divided property by metes and bounds rejecting earlier permission for sale - Appellate Court found division impracticable as workshop under single management and demolition would cause hardship - Held property incapable of physical division; smaller shareholder could purchase at valuation or sale through public auction - High Court upheld reasoning noting discretion exercised properly under Secs. 2 and 3 of Partition Act - Appeal Dismissed sustaining remand for sale procedure

Law Point: When property incapable of equitable physical division, Court may direct sale and permit co-owner to purchase other's share under Secs. 2 and 3 of Partition Act to avoid hardship

Acts Referred:

Partition Act, 1893 Sec. 2, Sec. 3

Counsel:

Udaya Prakash M, Ravishankar Shastry G

JUDGEMENT

H.P.Sandesh, J.- [1] This miscellaneous second appeal is filed against the judgment and decree dated 02.01.2023 passed in R.A.No.122/2020 allowing the appeal and setting aside the judgment and decree dated 03.03.2020 passed in F.D.P.No.16/2012 and remanding the matter to the Trial Court to proceed in accordance with the Partition Act, 1893 ('the said Act' for short).

[2] The factual matrix of the case is that respondent No.1 had filed a suit in O.S.No.192/2009 for partition of the suit schedule property. The Trial Court after adjudication of the same, passed the judgment and decree declaring that the plaintiff is entitled for 5/6th share in the plaint schedule property and it shall be divided into six

equal shares by metes and bounds. On the basis of the judgment and decree, the plaintiff preferred petition for final decree to allot 5/6th share in the plaint schedule property by appointing an advocate Commissioner with the assistance of ADLR Surveyor. In the final decree proceedings, respondent Nos.1 to 4 appeared through their counsel, but they did not file any objections. The Court appointed the Court Commissioner to effect partition and on the basis of the preliminary decree, the Court Commissioner filed his report stating that there is already a house and workshop existing in the schedule property. If the property is to be divided into 1/6th share of the respondents, it would result in demolition of workshop and house causing hardship to the petitioner, who is having 5/6th share in the plaint schedule property. Hence, the Court Commissioner returned the warrant unexecuted. The Court after hearing the arguments of the learned counsel for the petitioner on I.A.No.1 under Sections 2 and 3 of the Act, allowed and permitted the petitioner to purchase the undivided 1/6th share of the respondents as per valuation. Subsequently, the respondents appeared in final decree proceedings and submitted that they want their share as per the preliminary decree. The Trial Court after rejecting the earlier Commissioner's report appointed another Court Commissioner to divide the schedule properties into six equal shares and allot 5/6th share to the petitioner and 1/6th share to the respondents as per the preliminary decree.

[3] Subsequently, the Court Commissioner visited the property and measured the property with the assistance of ADLR Surveyor and filed the report before the Trial Court on 02.03.2020 and the petitioner filed his objections to the Commissioner report. The Trial Court having considered the same, framed the point for consideration whether the petitioner has made out sufficient ground to allot the shares as per the preliminary decree? The Trial Court after hearing the arguments of both the parties, allotted 5/6th share to the petitioner i.e., 0-15.58 cents of land out of available extent in the schedule property. The portion of share consisting of residential building, one shop premises, one vehicle parking shed, two water tanks and one workshop premises is identified and coloured in yellow colour by the Commissioner. The Commissioner also identified 0-03.12 cents of land coloured in green colour i.e., 1/6 th share allotted to the share of the respondents and final decree was drawn.

[4] Hence, an appeal was filed in R.A.No.122/2020. The First Appellate Court having considered the grounds urged in the appeal, formulated the point whether the appellant is entitled to claim that the suit schedule property be sold under Section 3 of the Partition Act, 1893 and whether the impugned order of the learned Trial Court dated 03.03.2020 passed in FDP No.16/2012 calls for an interference? The First Appellate Court having heard the respective learned counsel and considering the material available on record, in paragraph No.14 comes to the conclusion that the subdivision of the workshop, which is under the single management of the appellant, certainly will not help the respondents to enjoy the property. Practically it is not divisible property. If the workshop has to be subdivided amongst the parties, it will cause demolition of the workshop and useful to none and therefore, comes to the

conclusion that the order passed by the Trial Court earlier on 23.11.2018 invoking Sections 2 and 3 of the Act, should have been enforced and the Trial Court committed an error in passing an order completely contrary to the earlier order. The First Appellate Court also comes to the conclusion that when the property is incapable to divide, it was proper to consider the request made by the appellant and answered both the points in the affirmative and also while giving an opportunity to purchase the property, made it clear that if the shareholder of the smaller interest chooses, he can also ask for leave to purchase the property at the valuation made by the Court and also the appellant can purchase 1/6th share on proper valuation fixed by the Court and if both does not do so, then the property is to be sold in public auction. Hence, answered both the points in the affirmative and set side the order of the Trial Court and remanded the matter to the Trial Court to proceed in accordance with the said Act.

[5] Being aggrieved by the judgment and decree of the First Appellate Court passed in R.A.No.122/2020, the present miscellaneous second appeal is filed before this Court.

[6] The main contention of the learned counsel for the appellants is that when the Commissioner visited the spot and given the report that the property can be divided and when the appellants want to possess a share in the land, the First Appellate Court ought not to have exercised its discretion for sale of the appellants' share under Sections 2 and 3 of the said Act. The learned counsel would vehemently contend that the appellants cannot be compelled to sell their share and hence, it requires interference of this Court.

[7] The learned counsel for respondent No.1 in his arguments would vehemently contend that earlier an application was filed and an order was passed on 23.11.2018 is not in dispute, wherein permission was given to purchase the property. The said order has attained its finality and when the same was not challenged, the same was taken note of by the First Appellate Court and hence, the question of setting aside the order of the First Appellate Court does not arise. The learned counsel also contend that after seven years, the appellants appeared and filed objections to the Commissioner's report and second Commissioner was also appointed and he has given the report. The learned counsel would submit that when the objection was filed, on the very same day, the Trial Court passed an order without considering the objections and hence, the Appellate Court taken note of the factual aspects and passed a well-reasoned order and reasons also assigned while setting aside the order, particularly in paragraph No.14 and hence, it does not require any interference.

[8] Having heard the learned counsel for the appellants and the learned counsel for respondent No.1, the points that would arise for the consideration of this Court are:

(i) Whether the First Appellate Court committed an error in setting aside the order passed in FDP and remanding the matter for fresh consideration?

(ii) What order?

Point No.(i):

[9] Having heard the learned counsel for the appellants and the learned counsel for respondent No.1, the main contention of the learned counsel for the appellants is that when the property can be physically divided and independently enjoyed and when the appellants want to possess a share in the land, the Court ought not to have exercised its discretion to sell the property of the appellants invoking Sections 2 and 3 of the said Act. The learned counsel also vehemently contended that the appellants cannot be compelled to sell their property. No doubt, there is a force in the contention of the appellants counsel that no one can be compelled to sell their property. But, the Court has to take note of the material available on record. The total extent of property available in Sy.No.71/3A1P6 is 22 cents. It is not in dispute that in terms of the preliminary decree, respondent No.1 is entitled for 0-15.58 cents of land and the appellants are entitled for 0-03.12 cents of land. It has to be noted that the Commissioner also visited the spot and identified the same. The Commissioner's report also clearly discloses that 5/6th share of respondent No.1 was shown yellow colour and 0-03.12 cents was shown in green colour. It is also important to note that this property is abutting to National Highway No.74. It is also not in dispute that National Highway would be expanded and portion of that property is also identified for widening the same and hence, automatically the area would be reduced. When such being the case, I do not find any error on the part of the First Appellate Court in setting aside the order of the FDP Court. It is also important to note that in the said property, there is a house and also workshop. It is not in dispute that 5/6th share is allotted in favour of respondent No.1 and also workshop which is in existence, which is under the single management of respondent No.1 and if division is made, certainly it will affect the enjoyment of the property and the property is also not divisible. If it is divided, the workshop which is in existence, would be demolished and no one can use the same and the said factors are also taken note of by the First Appellate Court.

[10] It is also important to note that there was an order before the Trial Court when an application was filed permitting respondent No.1 to purchase the property vide order dated 23.11.2018 and while passing such an order, Sections 2 and 3 of the said Act was also invoked. Even after the appearance of the appellants herein, they have not filed any application to recall that order or to challenge that order and the said order has attained its finality and hence, the order dated 23.11.2018 is still in existence. It is also important to note that when the material clearly discloses that house and workshop is incapable of partition, the property can be sold and an observation was also made that either of the parties can purchase the same. The appellants herein also can purchase 5/6th share of respondent No.1 if they would like to have the property and the same also would be on proper valuation fixed by the Court and even option was given to respondent No.1 also to purchase the property. The First Appellate Court also made an observation that even if the shareholder of the smaller interest chooses, he can also ask for leave to purchase the property at the valuation fixed by the Court.

When such observation is made that the property is not divisible since house and workshop is in existence and further made an observation is made that highest bidder, who offers higher price above the valuation made by the Court can be accepted by the Trial Court, I do not find any error on the part of the First Appellate Court in setting aside the order of the Trial Court and remitting the matter to the Trial Court to consider the same. The First Appellate Court also made an observation that if both the parties fail to offer the valuation fixed by the Court, then the property is to be sold in public auction in order to fetch more amount and also taken note of Section 3 of the said Act. When such being the case, I do not find any ground to interfere with the findings of the First Appellate Court. The First Appellate Court only set aside the order of the Trial Court and remanded the matter to the Trial Court to proceed in accordance with the Partition Act, 1893 and safeguarded the interest of both the parties while remanding the same. Hence, I answer the point in the negative.

Point No.(ii):

[11] In view of the discussions made above, I pass the following:

ORDER

The miscellaneous second appeal is dismissed

2026(1)AIPC33

IN THE HIGH COURT AT CALCUTTA

(Hon'ble Judge Krishna Rao)

G A (Com) (General Application (Commercial)); C S (Com) (Civil Suit (Commercial)) No 5 of 2025; 379 of 2024 **dated 28/11/2025**

Dipankar Ghosh & Anr

Versus

Cesc Limited

LEASE TERMINATION

Transfer of Property Act, 1882 Sec. 106 - Commercial Courts Act, 2015 Sec. 2 - Lease Termination - Defendant filed application for rejection of plaint on ground that suit filed before Commercial Division after issuance of notice under Sec.106 of Transfer of Property Act - Plaintiffs contended that dispute related to commercial transaction covered under Sec.2(1)(c)(vii) of Commercial Courts Act - Plaintiffs stated that tenancy determined by efflux of time and possession not handed over - Defendant argued that suit based on statutory right and not commercial - Observation made that Division Bench judgment clarifying scope of explanation to Sec.2(1)(c) must be considered - Held that nature of transaction being commercial and arising from lease used for business purpose falls within jurisdiction of Commercial Division -

Application for rejection of plaint not maintainable - Plaintiffs rightly approached Commercial Court - Petition Dismissed

Law Point: Suit for recovery of commercial premises after termination of lease under Sec.106 of Transfer of Property Act can be entertained by Commercial Division when transaction arises from lease used for commercial purpose.

Acts Referred:

Transfer of Property Act, 1882 Sec. 106

Commercial Courts Act, 2015 Sec. 2

Counsel:

Soumabho Ghose, Tiana Bhattacharyya, Shayak Mitra, Anshumala Bansal, R Chowdhury, Bhargav Verma, Rupak Ghosh, Zulfiquar Ali Al Quaderi, Saptarshi Mandal, Tiasha Gupta

JUDGEMENT

Krishna Rao, J.- [1] The defendant has filed the present application praying for rejection of plaint on the ground that the plaintiffs have filed the suit before the Commercial Division after issuance of notice under Section 106 of the Transfer of Property Act, 1882. As per the judgment passed by the Coordinate Bench of this Court in the case of **Deepak Polymers Private Limited Vs. Anchor Investments Private Limited**, 2021 1 CalLT 129, if the suit for eviction is based on a notice under Section 106 of the Transfer of Property Act, 1882, the same arises out of the statutory right and having no direct nexus with the lease agreements in respect of immovable property is concern.

[2] Mr. Rupak Ghosh, Learned Advocate representing the defendant submits that in paragraph 10 of the plaint, it is the specific case of the plaintiffs that the plaintiffs have issued Advocate notice dated 24th March, 2022, under Section 106 of the Transfer of Property Act,1882, calling upon to vacate and to hand over peaceful possession of the suit property. He submits that from the said averments, it is clear that the suit is based upon the notice under Section 106 of the Transfer of Property Act, 1882.

[3] Mr. Ghosh submits that though subsequently in the year 2024, this Court dissenting with the order passed by the Coordinate Bench in the case of **Deepak Polymers Private Limited** (supra) referred to the Hon'ble the Chief Justice of this Court and the same was referred to the Hon'ble Division Bench of this Court and the Hon'ble Division Bench has held that lease agreement is to be looked into and to consider for deciding the nature and character of jural relationship of the landlord and tenant between the parties. He submits that the judgment passed by the Hon'ble Division Bench is not having any prospective effect. He submits that when the plaintiffs have filed the suit, at the relevant point of time the judgment in the case of **Deepak Polymers Private Limited** (Supra) was in force, thus the plaintiffs ought to have filed the suit before the Non-Commercial Division. The judgment passed in the

case of **T.E. Thomson and Co. Ltd. vs. Swarnalata Chopra Nee Kapur & Another** by the Hon'ble Division Bench dated 18th June, 2025, is not applicable in the present suit as the said judgment is not having prospective effect.

[4] In support of his submission, he has relied upon the judgment in the case of **P.V. George and Ors. Vs. State of Kerala and Ors**, 2007 3 SCC 557 and submits that the Law declared by a Court will have a retrospective effect if not otherwise stated to be so specifically.

[5] Mr. Ghosh further relied upon the judgment in the case of **Kanishk Sinha and Another Vs. The State of West Bengal and Another** passed in **Special Leave Petition (Criminal) Nos. 8609-8614 OF 2024** dated **27th February, 2025**, wherein the Hon'ble Supreme Court held that the judgment of the Court will always be retrospective in nature unless the judgment itself specifically states that the judgment will operate prospectively.

[6] Mr. Soumabho Ghose, Learned Advocate representing the plaintiffs submits that it is the specific case of the plaintiffs that on 18th June, 1956 by way of registered deed of lease, the defendant was inducted as a lessee by the predecessors-in-interest of the plaintiffs and the same was extended from time to time. The lease deed was lastly renewed on 30th May, 2003, for a period of 20 years with effect from 1st January, 2002 till 31st December, 2021.

[7] Mr. Ghose submits that due to efflux of time, the deed of lease stood determined on 31st December 2021. The defendant did not exercise their option for renewal of the lease period of the suit premises and accordingly, the plaintiffs requested the defendant to vacate the premises and to hand over the vacant possession of the same but the defendant failed to vacate the same.

[8] Mr. Ghose submits that as the defendant failed to vacate and to handover the possession of the suit premises to the plaintiffs, the plaintiffs issued notice under Section 106 of the Transfer of Property Act, 1882, calling upon the defendant to vacate and to hand over the possession of the suit premises to the plaintiffs.

[9] Mr. Ghose submits that the it is the specific case of the plaintiffs that the suit relates to a commercial transaction and is covered under Section 2(1)(c)(vii) of the Commercial Courts Act, 2015 and the suit filed by the plaintiffs, is Commercial in nature.

[10] Mr. Ghose submits that in the case of **Deepak Polymers Private Limited** (supra), the Coordinate Bench of this Court has not considered the explanation clause of Section 2(1)(c) of the Commercial Court Act, 2015, wherein it is clarified that a commercial dispute shall not be cease to be a commercial dispute merely because "it also involves action for recovery of immovable property or for realization of monies out of immovable property given as security or involves any other relief pertaining to immovable property".

[11] Mr. Ghose submits that this Court while considering the case of **Deepak Polymers Private Limited** (supra) finds that in the said case the explanation clause of Section 2(1)(c) of the Act was not considered, the matter referred to the Hon'ble Chief Justice for constitution of Special Bench and accordingly, the Hon'ble Division Bench has held that even if the case is initiated on the basis of notice under Section 106 of the Transfer of Property Act, 1882, the parties can rely upon agreement/lease deed.

[12] Mr. Ghose submits that the plaintiffs have filed the suit taking into consideration of the explanation clause of Section 2(1)(c) of the Commercial Courts Act, 2015 and in the meantime the matter referred by this Hon'ble Court to the Special Bench held that the explanation clause is an integral part and parcel of Section 2(1)(c) of the Act and has to be taken into consideration along with the Section 106 of the Transfer of Property Act, 1882 for deciding the issue whether it is commercial suit or not. He submits that in the present case, it cannot be a question that the judgment passed by the Hon'ble Division Bench cannot be operative prospectively or not.

[13] Heard the Learned Counsel for the parties, perused the materials on record and the judgments relied by the parties. The defendant has filed the present application relying upon the judgment of the Coordinate Bench of this Court in the case of **Deepak Polymers Private Limited (supra)** wherein the Court held that:

"**25.** In view of Section 6 of the 2015 Act, a Commercial Court has jurisdiction to try all suits and applications relating to "commercial dispute" of a "specified value" arising out of the entire territory over which it has been vested with territorial jurisdiction. Since the relief sought in the present suits relate to an immovable property and/or rights therein, which are actually used for commercial purpose, the plaintiff has correctly determined the "specified value" in terms of Section 12(1)(c) of the 2015 Act, the opposite parties argue. The Act of 2015 has an overruling effect notwithstanding anything inconsistent therewith in any other law in terms of Section 21 thereof, contends learned counsel for the opposite parties. As such, no question of valuation on the basis of lease annual rent, as contemplated in the West Bengal Court Fees Act, 1970 and the Suit Valuation Act, 1887, arises in the present case.

26. Reading the words of the legislature literally is the primary rule for construction of statutes. As such, learned counsel for the opposite parties defends the impugned orders on the premise that the Commercial Court has jurisdiction to entertain and decide the suits-in-question.

27. Upon hearing the rival contention of the parties and perusing their respective written notes of arguments, as well as on a plain and meaningful reading of the plaints of the aforesaid suits in their entirety, it is crystal-clear that the suits have been filed primarily for recovery of possession of immovable properties under Section 106 of the Transfer of Property Act, 1882. In all the plaints, it has been pleaded that notices were given under Section 106, which the defendants failed to comply with even after the expiry of fifteen (15) days thereafter. Hence, the first ingredient of the suits which

stares in the face is that the suits are based on the statutory right conferred by Section 106 of the 1882 Act. The cause of action in each of the suits clearly arises by virtue of the rights conferred by Section 106. In the event the suits were for termination of lease on the ground of forfeiture for violation of any of the clauses of the lease agreements and/or for specific performance of the agreements or suits of like nature, the suits would definitely come within the purview of "commercial dispute" as defined in Section 2(1)(c) of the Commercial Courts Act, 2015.

28. A plain reading of the said provision indicates that Section 2(1)(c) defines "commercial dispute" to be a dispute "arising out of" the subsequent sub-clauses, including several aspects. Sub-clause (vii) is the only basis of argument of the plaintiffs/opposite parties. The said sub-clause stipulates that a dispute arising out of "agreements relating to immovable property used exclusively in trade or commerce" come within the ambit of "commercial dispute". The judgments cited by the plaintiffs are distinguishable on their respective facts with the present case. Most of the cases, as mentioned above, pertain directly to agreements from various perspectives. Suits for specific performance of agreements, suits relating renewal clauses in agreements and other similar contexts gave rise to the proceedings which culminated in the said reports. Thus, the proceedings were "arising out of" the respective agreements.

29. What has been highlighted in the judgments placed by the opposite parties is that all suits arising out of agreements relating to immovable property used exclusively in trade or commerce, including eviction suits, would come within the ambit of the expression "commercial dispute" and shall be decided by the Commercial Courts in the event of the pecuniary jurisdiction, on the basis of valuation of the suits, being above the stipulated amount.

30. However, the cardinal question which has not been addressed but is pivotal to the present adjudication is the expression "dispute" which precedes the expression "arising out of" as appearing in Section 2(1)(c) of the 2015 Act. Reading sub-clause (vii) in conjunction with the starting words of Clause (c), it is seen that the expression "agreements relating to immovable property ." qualifies the term "dispute" arising out of such agreements.

31. A "dispute" can only be determined by the cause of action of the suit and not the preceding backdrop. Even if Section 106 of the Transfer of Property Act deals with termination of the jural relationship of lessor and lessee, pre-supposing a prior lease agreement, the bundle of facts comprising the cause of action of the suit is the sole determinant of the "dispute" involved in the suit.

32. In the event the suits, in the present case, had been filed for recovery of possession in respect of immovable property on the ground of forfeiture for contravention of any of the terms and conditions of the respective agreements-in-question, it might have been argued that the suits pertains to disputes "arising out of" such agreements.

33. However, the dispute itself, in the present case, arises out of refusal by the defendants to comply with the notices issued by the lessor under Section 106 of the Transfer of Property Act, 1882, which is based on a statutory right independent and irrespective of any clause of the lease agreements.

34. Hence, the suits squarely arise out of a statutory right conferred by Section 106 of the Transfer of Property Act, having no direct nexus with the lease agreements in respect of the immovable properties concerned. Thus, the precondition of the applicability of Section 2(1)(c)(vii), that is, the emanation of the dispute out of the lease agreement, is not satisfied in the present suits. Thus, the secondary question as to whether the immovable properties are used exclusively in trade or commerce, pales into insignificance."

[14] The main issue raised by the defendant that the plaintiffs have filed the suit when the order passed by the Court in the case of **Deepak Polymers Private Limited (supra)** and at that time there was no order of the Hon'ble Division Bench wherein the Hon'ble Division Bench has taken into consideration of the explanation clause of the Commercial Courts Act, 2015, thus the order of the Hon'ble Division Bench is not applicable in the present case as the judgment of the Hon'ble Division Bench is not having a prospective effect.

[15] The plaintiffs have filed the suit in the Commercial Division taking into consideration that the dispute between the plaintiffs and the defendant is commercial in nature as the plaintiffs are relying upon the lease of deed and due to efflux of time, the tenancy is determined and the plaintiffs issued notice under Section 106 of the Transfer of Property Act, 1882 for vacating the premises and handing over the possession.

[16] In the case of T.E. Thomson & Company Limited Vs. Swarnalata Chopra Nee Kapur and Another,2024 SCCOnLine Cal 8985, the defendant in the said case had raised the issue that the Coordinate Bench of this Court in the case of **Deepak Polymers Private Limited (supra)** has held that refusal by the defendants to comply with the notices issued by the lessor under Section 106 of the Transfer of Property Act, 1882, which is based on a statutory right independent and irrespective of any clause of the lease agreements, hence, the suit squarely arises out of a statutory right conferred by Section 106 of the Transfer of Property Act, 1882, having no direct nexus with the lease agreements in respect of the immovable properties concern.

[17] In the case of **T.E. Thomson & Company Limited (supra)** at the time of hearing of the application filed by the defendant under Order VII Rule 11 of the Civil Procedure Code, 1908, Learned Counsel for the plaintiffs have raised the issue that the Hon'ble Court while passing the order in the case of **Deepak polymers Private Limited (supra)** did not consider or deal with the explanation clause provided in Section 2(1)(c) of the Commercial Courts Act, 2015. Considering the said issue raised by the plaintiffs in the case of **T.E. Thomson & Company Limited (supra),** this Court with great respect of the Hon'ble Judge dissented with the order passed in the

case of **Deepak Polymers Private Limited (supra)** and referred the matter to the Hon'ble the Chief Justice of this Court to constitute a Special Bench to decide the following issue:

"a. Whether after issuance of notice under Section 106 of the Transfer of Property Act, 1882, the defendant or the parties cannot rely the agreement/or Lease Deed as the case may be?

b. Whether only on the basis of the case initiated under Section 106 of the Transfer of Property Act, 1882, it can be said that Court cannot look into the agreement between the parties and thus the suit cannot be treated as commercial suit in terms of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015?

c. Whether if the Explanation Clause of Section 2(1((c) of the Commercial Courts Act, 2015 taken into consideration along with Section 106 of the Transfer of Property Act, 1882, the suit can be treated as commercial suit in terms of the lease agreement/rent agreement entered between the parties?"

[18] The Hon'ble Chief justice of this Court has referred the matter, namely, **T.E. Thomson & Company Limited vs. Swarnalata Chopra Nee Kapur & Anr.,** being the case number **IA No. GA-COM/2/2024 in CS (COM) NO. 4 of 2023,** to the Hon'ble Division Bench for taking decision in the abovementioned issues and the Hon'ble Division Bench has held as follows:

"**122.** In view of the aforesaid discussion we accept the submission of Mr. Anindya Kumar Mitra, the leanred Amicus Curie and anwer the questions in the manner following:

Q.(a) Whether after issuance of notice under section 106 of the Transfer of Property Act, 1882, the defendant or the parties cannot rely on the agreement/lease deed as the case may be?

Answer- The lease agreement is to be looked into and considered for deciding the nature and character of jural relationship of landlord and tenant between the parties, that is to say, whether the lease agreement is for manufacturing or agricultural purpose, upon which will depend validity of notice under Section 106 of T P Act. The answer is in the negative.

Q.(b) Whether only on the basis of the case initiated under Section 106 of the Transfer of Property Act, 1882, it can be said that Court cannot look into the agreement between the parties and thus, the suit cannot be treated as commercial suit in terms of Section 2(1)(c)(vii) of the Commercial Courts Act, 2015?

Answer - This question is included by necessary implication in question (a) and is answered in the negative.

Q.(c) Whether if the Explanation Clause of Section 2(1)(c) of the Commercial Courts Act, 2015 taken into consideration along with the Section 106 of the, 1882, the suit can be treated as commercial suit in terms of the lease agreement/rent agreement entered between the parties?

Answer- Yes. Explanation clause is an integral part and parcel of the Section 2(1)(c)(vii) of the said Act and has to be taken into consideration for deciding whether it is a commercial dispute or not. Explanation is very relevant because it reflects legislative intent that a commercial dispute will not cease to be commercial dispute, even if recovery of immoveable property is claimed, which will not change the character of a dispute if it has been held to be commercial dispute under Section 2(1)(c) (vii) of the said Act."

[19] The defendant has raised the issue in the present case that the judgment passed by the Hon'ble Division Bench in the case of **T.E. Thomson (Supra)** dated **18th June, 2025**, is not applicable in the present case as the said judgment cannot be given prospective effect. This Court in the case of **T.E. Thomson (supra)**, has dissented with the order passed in the **Deepak Polymers Private Limited (supra)** and referred the matter to the Hon'ble the Chief Justice for constitution of Special Bench and accordingly, the matter was decided by the Hon'ble Division Bench of this Court by affirming the issue referred by this Court. Thus the issue raised by the defendant that the judgment passed in the case of the **T.E. Thomson (Supra)** dated **18th June, 2025** by the Hon'ble Division Bench is not applicable in the present case having no leg to stand.

[20] Once this Court dissented with the order passed in the case of **Deepak Polymers Private Limited (supra),** the only option with this Court to accept the issue decided by the Hon'ble Division Bench in the case of **T.E. Thomson (Supra)**.

[21] The judgments referred by the plaintiffs, are settled law that the judgment of the Court always be retrospective effect in nature unless the judgment itself specifically states that the judgment will operate prospectively. But in the present case, the question of giving retrospective effect to the judgment passed by the Hon'ble Division Bench in the case of **T.E. Thomson (supra)** dated **18th June, 2025,** does not and cannot arise as the said judgment is passed by the Hon'ble Division Bench on the issue referred by this Court in the case of **T.E. Thomson (supra).**

[22] Considering the above, this Court did not find any merit in the application filed by the defendant, **G.A. (Com) No. 5 of 2025** is **dismissed**

2026(1)AIPC40

IN THE HIGH COURT AT CALCUTTA

(Hon'ble Judge Hiranmay Bhattacharyya)

C O (Civil Order) No 952 of 2025 **dated 28/11/2025**

Nirmala Devi Agarwal

Versus

Bhag Chand Agarwal

JUDGMENT ON ADMISSION

Code of Civil Procedure, 1908 Or. 12R. 6 - Evidence Act, 1872 Sec. 58 - Transfer of Property Act, 1882 Sec. 111, Sec. 106 - Judgment on Admission - Plaintiff sought eviction decree claiming defendant as licensee - Defendant asserted tenancy at fixed rent and filed separate suit for declaration - Application under Order 12 Rule 6 CPC for judgment on admission rejected - Court observed that admissions must be clear and unequivocal - Relationship of licensor and licensee disputed and not admitted - Payment of rent and maintenance charges required detailed evidence - Court upheld rejection of application holding discretion under Order 12 Rule 6 to be exercised only on unequivocal admission - Petition Dismissed

Law Point: Power under Order 12 Rule 6 CPC is discretionary and can be exercised only when specific and unambiguous admission of fact exists; disputed relationship between parties bars relief under provision.

Acts Referred:

Code of Civil Procedure, 1908 Or. 12R. 6

Evidence Act, 1872 Sec. 58

Transfer of Property Act, 1882 Sec. 111, Sec. 106

Counsel:

Partha Pratim Roy, Pankaj Agarwal, Rittick Chowdhury, Chmpa Pal, Debjit Mukherjee, Kaustav Bhattacharya, Priyanka Jana, Shreejita Sen

JUDGEMENT

Hiranmay Bhattacharyya, J.- [1] This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order dated February 5, 2025 passed by the learned Civil Judge (Senior Division) 1st Court, Howrah in Title Suit No. 387 of 2016 heard analogously with Title Suit No. 104 of 2020.

[2] By the order impugned, the application under Order 12 Rule 6 of the Code of Civil Procedure filed by the petitioner stood rejected.

[3] The case made out by the petitioner in the plaint of Title Suit No. 387 of 2016 is summarized hereunder as follows: The opposite party was inducted as a licencee in respect of a covered area for running a restaurant at a licence fee of Rs. 25,000/- per month payable according to English Calendar month. The defendant did not pay licence fee on and from the month of February 2015 and a certain sum of money was stated to be due and payable by the opposite party to the petitioner. Petitioner through her learned advocate issued a notice to quit. Opposite party replied to the said notice. Petitioner filed the suit for eviction since the opposite party failed and neglected to deliver vacant possession of the suit premises to the petitioner.

[4] The opposite party is contesting the Title Suit No. 387 of 2016 by filing a written statement denying the material allegations contained therein. It has been specifically stated in the written statement that the opposite party was inducted as a monthly premises tenant in respect of the suit property at a monthly rent of Rs. 2000/- which was subsequently increased to Rs. 4000/-. The opposite party denied that he was inducted as a licensee in respect of the suit property at a licence fee of Rs. 25,000/- per month.

[5] The opposite party filed a Title Suit No. 722 of 2016 praying for a decree of declaration that the opposite party is a bonafide tenant under the petitioner and for permanent injunction restraining the petitioner from causing any disturbance to the peaceful possession and enjoyment of the opposite party in the suit property. The said suit which was initially filed before the learned Civil Judge (Junior Division) 3rd Court at Howrah was transferred to the Court of the learned Civil Judge (Senior Division) 1st Court at Howrah and renumbered as Title Suit No. 104 of 2020.

[6] Petitioner filed an application under Order 12 Rule 6 of the Code of Civil Procedure praying for passing a judgment on admission. In the said application, it has been stated that from the hand notebook/ rent collection book produced by the opposite party it is evident that the opposite party paid rent exceeding Rs. 10,000/- per month to the petitioner on account of his occupation in the suit premises and such occupation can never be governed by the West Bengal Premises Tenancy Act, 1997 as the premises is situated within the limits of Howrah Municipal Corporation and used for non-residential purposes.

[7] The application under Order 12 Rule 6 of the Code of Civil Procedure was rejected by the impugned order. Being aggrieved by such order, the petitioner has approached this Court.

[8] Mr. Partha Pratim Roy, learned advocate for the petitioner contended that the monthly payments made by the opposite party on account of maintenance charges and electricity charges are components of rent. He contended that from the hand notebook/ rent collection book it is evident that the opposite party is paying a sum of Rs. 19, 000/- per month which includes rent, maintenance and electricity charges. He submitted that since the property is situated within the limits of Howrah Municipal Corporation and is used for non-residential purpose, the opposite party cannot claim to be a tenant under the West Bengal Premises Tenancy Act, 1997. He contended that the opposite party does not have any valid defence against the claim of the petitioner for eviction from the suit premises. He contended that even assuming that the occupation of the opposite party is governed under the provisions of the Transfer of Property Act, the opposite party could not have continued in possession of the suit property as the service of notice to quit upon the opposite party is admitted by the opposite party. In support of his contention that maintenance charges and electricity charges are components of rent, Mr. Roy placed reliance upon the decision of the Hon'ble Division Bench of this case in the case of Rajshri Productions Private Limited vs. T.E. Thomson

and Company Limited reported at 2023 SCC Online Cal 899,Rajshri Productions Private Limited vs. T.E. Thomson and Company Limited reported at 2023 SCC Online Cal 899. Mr. Roy submitted that Order 12 Rule 6 of the Code of Civil Procedure permits the Court to pass judgment on the basis of admission made by the parties not only in pleadings but also in any document or in the statements recorded by the Court. He thus contended that the recordings in the rent collection book can be taken into consideration as an admission of the quantum of monthly rent. In support of such contention, Mr. Roy placed reliance upon a judgment of the Hon'ble Supreme Court in the case of Rajiv Ghosh vs. Satya Narayan Jaiswal,2025 SCCOnline SC 751. Mr. Roy contended that since the opposite party admitted service of the notice to quit, the Court can pass a decree under Order 12 Rule 6 of the Code of Civil Procedure in view of the judgment of the Hon'ble Division Bench delivered on 12.11.2024 in **FAT 191 of 2020 with FAT 194 of 2020** in the case of **M/s. Signotron (India) Pvt. Ltd. vs. M/s. Nautica Hospitality Consulting Private Limited.**

[9] Mr. Debjit Mukherjee, learned advocate appearing for the opposite party seriously disputed the submissions made by Mr. Roy. He contended that the power under Order 12 Rule 6 of the Code of Civil Procedure is discretionary and cannot be claimed as a matter of right. In support of such contention he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Karan Kapoor vs. Madhuri Kumar**, 2022 10 SCC 496. He contended that the opposite party never admitted service of notice to quit.

[10] Heard the learned advocates for the parties and perused the materials placed.

[11] Order 12 Rule 6 of the Code of Civil Procedure reads thus-

> **"6. Judgment on admissions.-**(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.
>
> (2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

[12] The Hon'ble Supreme Court in **Uttam Singh Duggal & Co. Ltd. vs. United Bank of India and others**, 2000 7 SCC 120 held that the object of Rule 6 of Order 12 is to enable a party to have a speedy judgment at least to the extent of admission. Where a claim made by a party is admitted by the other party, entitling the former to succeed, it should apply under Order 12 Rule 6 of the Code of Civil Procedure.

[13] The Hon'ble Supreme Court in **Rajiv Ghosh** (supra) held that judgment on admission under Order 12 Rule 6 can be passed at any stage. It may be pronounced either on an application made by a party or even suo motu. Order 12 Rule 6 permits

the Court to pass judgment on the basis of the statements made by the parties not only on the pleadings but also dehors the pleadings i.e., either in any document or even in the statement recorded in the Court. It was further held therein that use of the word "may" in Rule 6 makes the provision enabling, discretionary and permissive and not mandatory, obligatory or peremptory. It was further held therein that Rule 6 of Order 12 must be read with Rule 5 of Order 8 which is identical to the proviso to Section 58 of the Evidence Act. After noting the aforesaid provisions, the Hon'ble Supreme Court held that it is manifest that the court is not bound to grant relief to the plaintiff only on the basis of admission of the defendant.

[14] In **Karan Kapoor** (supra) it was held that the power under Order 12 Rule 6 is discretionary and cannot be claimed as a matter of right. Such power should be only exercised when specific, clear and categorical admission of facts and documents are on record, otherwise the Court can refuse to invoke the power under Order 12 Rule 6 of the Code of Civil Procedure.

[15] From the aforesaid discussion it follows that the power under Order 12 Rule 6 of the Code cannot be claimed as a matter of right and the Court is not obliged to grant relief to the plaintiff only on the basis of admission of the defendant.

[16] This Court has to now consider whether the learned Trial Judge was right in refusing to invoke the power under Order 12 Rule 6 of the Code of Civil Procedure.

[17] Petitioner filed the suit claiming that the opposite party was inducted as a licensee for running a restaurant at a licence fee of Rs. 25,000/-. A decree for eviction against the opposite party was prayed for upon revocation of licence.

[18] The specific case of the opposite party in the written statement is that he was inducted as a monthly premises tenant at a monthly rent of Rs. 2000/- which was subsequently increased to Rs. 4000/-. The opposite party also filed a suit for declaration of tenancy right and for permanent injunction.

[19] From a bare reading of the plaint of the suit filed by the petitioner and the written statement as well as the plaint of the suit filed by the opposite party, it does not appear to this Court that the opposite party has admitted the claim of the petitioner that there existed a licensor-licensee relationship between the parties. The question of invocation of power under Order 12 Rule 6 of the Code would arise when the claim of the plaintiff is admitted by the defendant.

[20] Mr. Roy would contend that the opposite party has admitted service of notice to quit upon him and, therefore, a decree for eviction should follow in view of the provisions laid down under Section 106 of the Transfer of Property Act.

[21] Opposite party claimed that he is a monthly premises tenant at a monthly rent of Rs. 4000/-. Mr. Roy placed strong reliance upon the hand notebook/rent collection book in support of his contention that the opposite party admitted that he is paying an amount exceeding Rs. 10,000/- per month for occupying the suit premises. Mr. Roy

would contend that the opposite party cannot claim protection under the West Bengal Premises Tenancy Act, 1997.

[22] Opposite party claims that the rent is only Rs. 4000/- per month and the maintenance charges and electricity charges do not form part of the rent.

[23] In **Rajshri Productions Private Limited** (supra) a point was raised whether corporation tax or the commercial surcharge is an integral part of the rent for the purpose of ascertaining the quantum of rent. It was held therein that the property tax cannot ipso facto come within the purview of the rent but depends upon the intentions and the conduct of the parties in relation thereto and there is no uniform principle that the property tax shall be outside the purview of the rent. If the parties have agreed that the rent shall include the tax then in that event the tax component will become the part of the rent. The Hon'ble Division Bench held that every component in respect of the enjoyment of the premises payable to the landlord may not come within the definition of rent as it depends upon the intentions and the conduct of the parties in relation to the creation of tenancy. It was further held therein that any amount or a component which is variable in nature cannot be regarded as a component of the rent even if it is paid along with the basic rent.

[24] From the aforesaid reported decision it follows that the intentions and conducts of the parties in relation to creation of tenancy plays an important role for arriving at a conclusion as to whether an amount paid by the tenant to the landlord would come within the definition of rent. Whether it was the intention of the parties at the time of creation of the tenancy that maintenance charges and electricity chares shall form part of the rent cannot be decided at this stage.

[25] Even if the contention of Mr. Roy is accepted that the occupation of the opposite party is governed not under the West Bengal Premises Tenancy Act, 1997 as the amount on account of maintenance and electricity charges form part of rent and it, therefore, exceeds the threshold limit fixed under the West Bengal Premises Tenancy Act, 1997, the question that would arises is whether a decree for eviction should be passed by invoking the provisions of Order 12 Rule 6 of the Code of Civil Procedure.

[26] Section 111 of the Transfer of Property Act, provides for determination of a lease of immovable property. Clause (h) thereof provides that a lease of immovable property determines on expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

[27] In case, a lease of an immovable property is one from month to month and not governed under the West Bengal Premises Tenancy Act, 1997 ,it is a monthly tenancy terminable by 15 days' notice under Section 106 of the Transfer of Property Act.

[28] The provision relating to determination of a lease of immovable property under Section 111 read with Section 106 of the Transfer of Property Act shall apply only if there exists a lessor-lessee or landlord-tenant relationship between the parties.

[29] No material has been produced before this Court to show that the petitioner has admitted the landlord-tenant relationship between the parties. On the contrary, it is the case of the petitioner that the relationship between the parties was that of licensor and licensee.

[30] Law Commission after considering the provisions of Order 12 Rule 6 of the Code as it existed prior to Code of Civil Procedure (Amendment) Act, 1976 recommended to modify the rule. The statement of Objects and Reasons for the amendment was noticed in **Rajiv Ghosh** (supra), which is extracted hereinafter.

"23. In Statement of Objects and Reasons, it had been stated:

"Clause 65, sub-clause (ii)- Under Rule 6, where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on the admitted claim. The object of the rule is to enable a party to obtain speedy judgment at least to the extent of relief to which, according to the admission of the defendant, the plaintiff is entitled. The rule is wide enough to cover oral admissions. The rule is being amended to clarify that oral admissions are also covered by the rule""

[31] From the statement of Objects and Reasons it is evident that under Rule 6 of Order 12 where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on the admitted claim.

[32] The learned Trial Judge rightly observed that the relationship of landlordtenant between the parties is disputed.

[33] Upon going through the materials on record this Court could not find any specific, clear and categorical admission of the claim made by the petitioner.

[34] In view of the aforesaid discussion this Court holds that the learned Trial Judge was right in refusing to invoke the provisions of Order 12 Rule 6 of the Code of Civil Procedure.

[35] In **M/s. Signotron (India) Pvt. Ltd.** (supra) in a suit for eviction inter alia on the ground of notice under Section 106 of the Transfer of Property Act and arrear rents, the jural relationship of lessor-lessee between the parties governed under the Transfer of Property Act as well as the service of notice under Section 106 of the said Act was admitted. On such admitted facts, the Hon'ble Division Bench held that the judgment on admission directing eviction was justified. The said decision being distinguishable on facts, cannot come to the aid of the petitioner.

[36] It is well settled that the power under Order 12 Rule 6 of the Code is discretionary and not a matter of right. The learned Trial Judge exercised its discretion judiciously. The order impugned does not suffer from any infirmity. This Court is, therefore, not inclined to interfere with the impugned order under Article 227 of the Constitution of India.

[37] Accordingly, CO 952 of 2025 stands dismissed. There shall be, however, no order as to costs.

[38] Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities

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2026(1)AIPC47

DELHI HIGH COURT

(Hon'ble Judge Chandrasekharan Sudha)

F A O (First Appeal From Order); C M Appl (Civil Miscellaneous Application) No 389 of 2018; 33291 of 2018 **dated 28/11/2025**

Rameshwar Dayal

Versus

Krishan Singh Panwar (Deceased)

PARTNERSHIP PROPERTY

Code of Civil Procedure, 1908 Or. 7R. 11 - Evidence Act, 1872 Sec. 103, Sec. 102, Sec. 101 - Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 37 - Partnership Property - Appeal under arbitration law against dismissal of challenge to award - Parties earlier engaged in property development business through partnership and purchased property jointly - Dispute arose after dissolution deed allegedly interpolated - Arbitrator Dismissed claim citing lack of proof - Court observed respondent never denied existence or execution of dissolution deed but only alleged later insertion - Held burden of proving interpolation rested on respondent under evidentiary law - Absence of proof or expert evidence rendered allegation untenable - Arbitrator and lower court erred in concluding non-existence of partnership or deed - Award set aside and matter remitted for reconsideration - Appeal Allowed

Law Point: When execution of document admitted and only interpolation alleged, burden of proof lies on party asserting alteration; failure to adduce expert evidence makes allegation legally unsustainable under sections 101-103 of Evidence Act.

Acts Referred:

Code of Civil Procedure, 1908 Or. 7R. 11

Evidence Act, 1872 Sec. 103, Sec. 102, Sec. 101

Arbitration and Conciliation Act, 1996 Sec. 34, Sec. 37

Counsel:

L K Singh, S C Singhal

JUDGEMENT

Chandrasekharan Sudha, J.- [1] The present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (the Act) is directed against the judgment dated

11.04.2018 passed by the ADJ-04, South-West District, Dwarka Courts, New Delhi in CS No. 15209/2016 dismissing the application under Section 34 of the Act. Parties in this appeal will be referred to as described in the claim petition.

[2] The allegations in the claim petition are as follows:- The claimant and the respondent started business of sale/ purchase of properties around the year 1997. They were doing the said business in partnership and were distributing the profits equally between them. In the year 2000, the claimant and the respondent started the business of construction of buildings. The terms and conditions of the partnership were reduced into writing as per partnership deed dated 29.03.2000. The said partnership business was being carried on under the name and style M/s Asha Builders. The parties also opened a current account bearing no.5029 in the name of the Firm with the Bank of Maharashtra, Janak Puri, New Delhi. All the monies received by the Firm were deposited in the said account and was thereafter shared equally between the partners. Thereafter, the parties purchased a three storied building situated at Plot No. 33, Khasra No. 17/24, Gali No. 3, Mohan Block, West Sagarpur, New Delhi-46. The building consisted of basement, ground floor and first floor owned by one Kalawati Devi Pandey, who sold the basement and ground floor to one D.C. Verma. The first floor was sold to one Anil Jain. As the owners of different floors were different, the property was purchased by the claimant and the respondent by way of two different deeds.

2.1. It was mutually agreed and decided that the sale deed in respect of the basement and ground floor would be executed in favour of the claimant and the sale deed in respect of the first floor in favour of the respondent. The aforesaid arrangement was made for the sake of convenience. However, it was mutually agreed and accepted by the parties that they would jointly own and possess the property in dispute with equal undivided ownership rights and shares in the property. It was also agreed and accepted that whatever monetary benefits in the form of any earning was derived from the property or in the form of sale proceeds by selling the property would be distributed equally among the parties. It was after the purchase of the property, the aforesaid partnership business commenced. After the purchase of the property, they mutually consented to use the property for the purpose of the business of the Firm.

2.2. The partnership thereafter was dissolved by a deed of dissolution dated 05.05.2001. At the time of dissolution of the Firm, it had only two assets, namely, the current account with the Bank of Maharashtra and t he aforesaid immovable property. The deed of dissolution was executed and signed by both the parties on their own volition and without any force, coercion, fraud or undue influence. The assets of the Firm, namely, the bank account and the immovable property have been mentioned in the deed of dissolution, which has been duly signed by the parties in the presence of witnesses. At the time of dissolution of the partnership Firm, the parties had agreed that they would sell the property in dispute and distribute the sale proceeds equally.

2.3. In the second week of May 2001, i.e., soon after the dissolution of the partnership, the claimant was in dire need of money and so he approached the

respondent for his consent to sell the property so that the sale proceeds could be divided equally between the parties. However, the respondent avoided the claimant and did not accede to the request. Thereafter, the claimant came to know from common friends and acquaintances that the respondent had been representing himself to be the sole and absolute owner of the entire property and that the claimant had no right, title or interest in any portion of the property. Therefore, the claimant in order to protect and safeguard his interest in the property, published a notice in the daily newspaper Rashtriya Sahara in its issue dated 22.05.2001. He also sent a notice dated 18.05.2001 calling upon the respondent to partition the property equally by metes and bounds or in the alternative to give his consent for the sale of the property so that the sale proceeds could be divided equally between the partners. The respondent received the notice. However, he sent a reply dated 30.05.2001, raising untenable contentions. Hence, the claim seeking an award for partition of the property by metes and bounds into two equal shares as well as for award of damages.

[3] The respondent entered appearance and filed written statement contending that the claim petition was liable to be rejected under Order VII Rule 11 CPC as the claimant had no right, title or interest in the disputed property. He claimed that the property was exclusively owned and possessed by him, from the very beginning. It was also contended that the deed of dissolution dated 05.05.2001 was a fabricated one. A perusal of Clauses 2 and 6 would make it clear that the same are not in alignment with the remaining portion of the document. Clauses 2 and 6 were added to the deed of dissolution after the parties had affixed their signatures in the same. Therefore, the respondent contended that the claim petitioner was not entitled to the reliefs prayed for.

[4] Before the arbitrator, oral and documentary evidence was adduced. On a consideration of the oral and documentary evidence and after hearing both sides, the learned Arbitrator dismissed the claim. Aggrieved, the claimant has come up in appeal.

[5] It was submitted by the learned counsel for the appellant/ claimant that neither the arbitrator nor the trial court considered the directions given by this Court in its order dated 20.01.2006 in OMP No. 266/2001 in its right perspective. Without considering the said direction, the conclusion arrived at is erroneous and hence, the same needs to be reversed.

[6] Per contra, it was submitted by the learned counsel for the respondent that it was the burden on the part of the claimant to prove his case, which has not been done and, therefore, the claim was rightly dismissed. There is no infirmity in the impugned order calling for interference by this Court.

[7] Heard both sides.

[8] Admittedly, in the earlier proceedings between the parties, this Court held thus:-

2. I have examined the award. It appears that there is a great deal of dispute with regard to the genuineness of the Dissolution Deed which has been produced before the

petitioner. According to the counsel of the respondent, clause 2(ii) and 6 of the Dissolution Deed have been interpolated after the Dissolution Deed was signed and executed by the parties. According to learned counsel for the petitioner, the documents have been signed by the parties being conscious of the said clauses 2(ii) and 6 of the Dissolution Deed.

3. To ascertain the rival contention of the parties, I had directed the learned counsel to produce the original of the Dissolution Deed. The same has been produced before me in court today and I find that it cannot be easily and conclusively determined as to whether the dissolution deed has been interpolated or not. And, therefore, a thorough investigation is required where both the parties want to lead expert evidence in this regard. Unfortunately the learned Arbitrator has not considered the matter with thoroughness that was necessary. Therefore, it would be appropriate that the award that has been passed by the ld. Arbitrator is set aside and the matter is referred for arbitration afresh to an independent arbitrator agreed upon by the learned counsel for the parties.

(Emphasis supplied)

[9] Pursuant to the aforesaid direction, the matter again came up before a fresh arbitrator, who found that there are no documents to support the claim made by the claimant and hence, dismissed the claim. The said award of the arbitrator has been confirmed by the trial court. Both the arbitrator as well as the trial court proceeded under the assumption that the partnership deed as well as the deed of dissolution are disputed and as no documents have produced in respect of the disputed immovable property, the claimant could not claim any right in the property and thus, proceeded to dismiss the claim.

[10] A reading of the written statement of the respondent makes it quite apparent that there is no denial of the partnership deed or the execution of the deed of dissolution. What is contended or disputed is that after the execution of the deed of dissolution, clauses 2(ii) and 6 were interpolated. There is never a case in the written statement that there was no partnership deed or that the dissolution deed had not been executed. Therefore, apparently the arbitrator and the trial court went wrong in concluding that the claimant failed to establish the execution of partnership deed or the dissolution deed, which apparently were never in dispute.

[11] Now coming to the question whether the dissolution deed was interpolated, after the same was executed and after the respective parties had affixed their signatures in the same. The relevant portion of the deed of dissolution reads thus:-

....

Now this deed of dissolution witnesseth as under:-

1. That the partnership between the party of the Ist part and party of the 2nd part shall stand dissolved w.e.f. to day i.e. 5th May, 2001.

2. That at present the partnership has following assets:-

(i) Current A/c No. 5029 in Bank of Maharastra, Janak Puri, in the name of M/s Asha Builders.

(ii) Plot of land measuring 100 Sq. Yds, Plot No. 33, Khasra No.17/24, built up three Storey building at Mohan Block, Gali No.3, West Sagarpur, New Delhi in the name of K.S. Panwar & R. Dayal.

3. That the parties have mutually agreed to close the aforesaid bank account itself and to share equally the amount lying therein.

4. That there are no liabilities of the partnership firm as on date.

5. That both the parties shall have no claim against each other after the dissolution of the firm and all the claims of the parties shall stand settled.

6. That both the present parties have agreed that the aforesaid plot and building No.33, belonging to partnership shall be sold at a convenient time and the sale procedure shall be shared 50% by the parties.

[12] As noticed earlier, this Court, by order dated 20.01.2006, had set aside the earlier award of the arbitrator and the matter was referred afresh so as to enable both sides to adduce evidence in respect of their respective contentions regarding the deed of dissolution. The respondent has no case that the deed of dissolution had not been executed, but only that the deed had been interpolated. Therefore, there was no necessity for the claimant to prove the execution of the dissolution deed. The burden lay on the respondent to prove that subsequent to the execution of the deed, the same had been interpolated.

[13] The arbitrator found that neither party adduced any evidence though several opportunities were granted. Thus, in the absence of any expert evidence, it could not be decided as to whether there was any interpolation or not.

[14] Here it would be apposite to refer to the relevant provisions in the Indian Evidence Act, 1872 (the Evidence Act). Section 101 says that any person who desires the court to give judgment as to any legal right or liability dependent on the existence of facts of which he asserts, must prove that those facts exist. Section 102 says that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. As per Section 103, the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

[15] In the case at hand, it is the respondent who asserts that interpolations were made in the deed of dissolution after its execution. Therefore, the burden was clearly on the respondent to establish the same. However, no steps are seen taken in the said direction by the respondent. Apart from the mere contention in the written statement, nothing has been brought on record to prove that there has been interpolations in the deed. Merely because the clauses in question are not in alignment with the remaining paragraphs, cannot be a ground to believe that there has been interpolations after the execution of the deed.

[16] When the learned counsel for the respondent was asked as to the person on whom the burden lay for proving the contention of interpolation, submitted that the interpolations are visible to the naked eye and, therefore, no further proof was required. The contention that is seen taken in the written statement is that Clauses 2(ii) and 6 were subsequently typed into the document where gaps had been left. Now, the question whether there was any gap(s) left in the document and whether the gaps were filled by the subsequent interpolations were matter(s) that required to be proved by the respondent. However, no effort(s) is seen to have been made by the respondent in the said direction.

[17] It is true that in the legal notice issued by the claimant to the respondent, there is no specific reference to the clauses in the deed of dissolution, but only a demand for partition. This was pointed as a suspicious ground as the notice was issued after the execution of the deed of dissolution. This alone is also not a ground to disbelieve the deed of dissolution. The execution of the deed of dissolution is referred to in the notice. It is stated that the respondent is not cooperating with the request for partition and hence, the notice. A perusal of the deed of dissolution shows that there are two witnesses to the said deed. The said witnesses are not seen examined. No evidence has been led in as to the person who typed/prepared the deed. The said person could have been examined to prove the case of interpolation. But no such attempt is seen made by the respondent. The respondent has no case that the two witnesses were not available to be examined or that their whereabouts could not be traced out. That being the position, it can only be held that the contention regarding interpolation has not been proved.

[18] It is no doubt true that for creating any right in an immovable property, the value of which is more than Rs. 100/-, execution of a registered document is necessary. The claimant does not have a case that any registered document was executed. He rests his claim on the dissolution deed the execution of which is not denied. The only contention of interpolation raised by the respondent has not been established. That being the position, the deed of dissolution stands proved as per which the parties agreed to treat the property as partnership property and, therefore, the contentions to the contrary cannot be countenanced.

[19] In addition to the relief of partition, damages are also claimed. However, there is no evidence to prove damages. Therefore, the claim can only be partly allowed relating to the relief of partition of the property.

[20] In the result, the impugned judgment and award is set aside. The claim is partly allowed and the prayer for partition of the immovable property referred to in the deed of dissolution by metes and bounds in two equal shares and to demarcate and identify the equal shares at the site and to handover one share each to the claimant and the respondent respectfully for their exclusive ownership, peaceful possession and enjoyment is allowed.

[21] The appeal is partly allowed as aforesaid. Application(s), if any pending, shall stand closed

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2026(1)AIPC53

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge Arif S Doctor)

Interim Application (L); Official Liquidators Report; Company Petition No 26905 of 2024; 27 of 2023; 1176 of 2001 **dated 27/11/2025**

Zulfikar Akbarali Khoja; Nilesh Indulal Ponda; Indian Link Chains Mfrs Ltd

Versus

Official Liquidator, M/s Navinon Ltd; Ravindra Kamlakar Palkar; Cidco

VALIDITY OF ASSIGNMENT DEED

Companies Act, 1956 Sec. 433, Sec. 529A, Sec. 536, Sec. 441, Sec. 434, Sec. 530, Sec. 529 - Transfer of Property Act, 1882 Sec. 41 - Specific Relief Act, 1963 Sec. 19 - Validity of Assignment Deed - Cause of matter arose when Official Liquidator sought cancellation of Deed of Assignment transferring land and building of Navinon Ltd to applicants - Applicants claimed to be bona fide purchasers and sought ratification - Property belonged to company under liquidation and transfer made years after commencement of winding-up - Applicants relied on authority of ostensible ownership and absence of notice of liquidation - Liquidator argued transfer void under statutory provisions as property disposed after commencement of winding-up - Court observed that transaction executed after initiation of liquidation proceedings is void unless expressly validated - No proof shown of benefit to company or creditors - Payment not made to company and executors acted without lawful authority - Court held transfer cannot be ratified under statutory discretion - Applicants not entitled to protection under Transfer of Property Act as they failed to establish bona fide purchase or due diligence - Transaction treated as fraudulent and contrary to law - Deed declared void and possession directed to be handed to liquidator - Equitable relief for restitution rejected as no legal basis proved - Petition for ratification dismissed - Official Liquidator's report accepted - Interim Application Dismissed

Law Point: Disposition of property made after commencement of winding-up proceedings without approval is void under Section 536(2) of Companies Act, 1956 and cannot be ratified unless shown to be bona fide, beneficial to creditors, or in ordinary course of business; equitable considerations cannot override statutory prohibition

Acts Referred:

Companies Act, 1956 Sec. 433, Sec. 529A, Sec. 536, Sec. 441, Sec. 434, Sec. 530, Sec. 529

Transfer of Property Act, 1882 Sec. 41

Specific Relief Act, 1963 Sec. 19

Counsel:

Mutahhar Khan, Satyajit Roul, Chetan Shelke, Sneha Phene, Ajit Tamhane, Savita Sawalkar, Priyanka Mahadeshwar, Eshaan Saroop

JUDGEMENT

Arif S. Doctor, J.- [1] Since the issue that arises for consideration in the Official Liquidator's Report ("**OLR**") and the Interim Application are essentially two sides of the same coin, both the captioned proceedings were, with the consent of the Learned Counsel, heard together and are being disposed of by this common order.

[2] The issue for consideration in both captioned proceedings is the validity of a Deed of Assignment dated 16th May 2019 ("**the Deed of Assignment**"), which assigned to the Applicants, a plot of land identified as - Lot No. 45, Old Survey No. 113 (Part), New Survey No. 165, measuring approximately 1,497 square metres, located in Tarapur Industrial Area, Boisar, Palghar ("**the said land**"), along with a building on it ("**the said building**"). The said land and building are collectively referred to as "**the said property**". It is not in dispute that the said property belonged to a company known as Navinon Limited ("**Navinon**").

[3] The OLR seeks cancellation of the Deed of Assignment, while the Interim Application seeks its ratification.

[4] However, before adverting to the rival contentions, it is necessary for context to set out the following facts:

i. On 3rd November 2001, Company Petition No. 1176 of 2001 was presented in this Court for the winding up of Navinon under the provisions of Sections 433 and 434 of the Companies Act, 1956 ("**Companies Act**").

ii. It is the Applicants' case that on 14th February 2005, one Manohar Narhar Shanke ("Manohar Shanke") and Ravindra Kamlakar Palkar ("Ravindra Palkar") were authorised by a board resolution of Navinon to deal with two properties belonging to Navinon, one of which was the said property. This board resolution was signed on behalf of Navinon by Atulya Mafatlal, the then Vice Chairman of Navinon.

iii. On 17th February 2005 a joint power of attorney was executed by Atulya Mafatlal in favour of Manohar Sankhe and Ravindra Palkar in terms of the board resolution dated 14th February 2005. It is not in dispute that this power of attorney was unregistered.

iv. On 16th December 2005, this Court passed an order of winding up against Navinon, by which the Official Liquidator High Court Bombay was appointed to take charge of the assets and affairs of Navinon.

v. It is the case of the Applicants that sometime in the year 2017 the Applicants were approached by Atulya Mafatlal, who represented himself to be a director of Navinon, along with Manohar Sankhe, who claimed to be the leader of the workman's union, with a proposal to transfer the said property in favour of the Applicants by way of a Deed of Assignment.

vi. It is the case of the Applicants that since Manohar Sankhe was unable to continue to act as the Constituted Attorney on behalf of Navinon on account of personal reasons, he delegated his powers to Ravindra Palkar vide a Power of Attorney dated 26th September 2017. This Power of Attorney was registered.

vii. On 16th November 2017, the Applicants issued a public notice in a newspaper called "Aapla Vartahar" which the Applicants claim had wide circulation in the area in which the said property is located. It is the Applicants' case that they did not receive any response to the public notice.

viii. It is also the Applicants' case that on 1st December 2017, the workers' union of Navinon passed a resolution giving consent to the proposed assignment on the condition that 50% of the sale consideration was paid to the union. The Applicants have relied upon a letter dated 8th December 2017, issued by the Applicants' Advocate, who opined that there was no impediment in proceeding with the proposed assignment.

ix. Since CIDCO was the first lessee of the said land, on 4th December 2019, Atulya Mafatlal addressed a letter to CIDCO requesting that the application for transfer/assignment in favour of the Applicants be processed.

x. The Deed of Assignment was then executed on 16th May 2019 by Ravindra Palkar on behalf of Navinon as its constituted attorney.

xi. It is the case of the Official Liquidator that on 14th October 2022, the Official Liquidator received a letter from one Mansi Ghagh claiming that some unknown persons had entered the said land and had commenced demolition of the existing structures.

xii. Accordingly, on 13th January 2023, the Official Liquidator deputed representatives to conduct a spot inspection of the said property, during which the Applicants informed the Official Liquidator of the Deed of Assignment.

xiii. As already noted above, the Official Liquidator then filed the captioned OLR on 15th February 2023 to declare the Deed of Assignment dated 16th May 2019 as being void and for a direction to the Applicants to hand over possession to the Official Liquidator. The Applicants thereafter, on 29th August 2024, filed the captioned Interim Application seeking ratification of the said Deed of Assignment.

SUBMISSIONS ON BEHALF OF THE OFFICIAL LIQUIDATOR

[5] Mr. Khan, Learned Counsel appearing on behalf of the Official Liquidator, at the outset invited my attention to Section 441 of the Companies Act to point out that once an order of winding-up was passed, the winding-up proceedings were deemed to have commenced from the date on which the company petition was presented. He submitted that in the present case, the winding-up petition against Navinon was presented on 3rd November 2001, and the order of winding was passed on 16th December 2005. He thus submitted that the winding-up proceedings were deemed to have commenced on 3rd November 2001. He then took pains to point out that the Deed of Assignment was executed on 16th May 2019, which was almost eighteen years after the commencement of winding up.

[6] Mr. Khan then placed reliance upon Section 536(2) of the Companies Act to point out that any disposition of the property of a company made after the commencement of winding-up is void unless expressly validated by the Court. He submitted that in the facts of the present case, the Deed of Assignment having been entered into well after the commencement of winding up was, by operation of law, void.

[7] Mr. Khan, however, fairly pointed out that while Section 536(2) does vest the Court with discretionary power to validate transactions entered into after the commencement of winding-up, such discretion is circumscribed and can be exercised only in limited circumstances. He submitted that only those transactions which were shown to be (i) in the interest of the company in liquidation, (ii) necessary to enable the company to continue as a going concern, or (iii) entered into in the ordinary course of its business were capable of being ratified. He submitted that any disposition of company property outside these categories must ordinarily be treated as void and incapable of ratification. In support of this submission, he relied upon the decisions of this Court in Sunita Vasudeo Warke v. Official Liquidator,2013 SCCOnLineBom 59 and Laxman Yeshwant Prabhudesai v. NRC Ltd.,2010 SCCOnLineBom 434, from which he pointed out that this Court had emphasised that dispositions of a company's property after the commencement of winding-up were, by default, void. Mr. Khan submitted that these judgments make it clear that validation is the exception, not the norm, and may be granted only when the transaction demonstrably serves the interests of the company or its creditors and does not deplete or prejudice the company's assets.

[8] Mr. Khan then placed reliance upon the decision of this Court in Sarigam Containers Pvt. Ltd. v. Magatul Industries Ltd.,2008 SCCOnLineBom 490, to submit that although the Court possesses wide discretionary power under Section 536(2) to validate a postcommencement transaction, the burden of seeking such validation rests squarely on the party claiming under the impugned transfer. He submitted that Sarigam Containers clearly lays down that the Applicant seeking ratification must specifically plead and affirmatively establish that the transaction was bona fide, duly authorised, effected in the ordinary course of the company's business, and demonstrably beneficial to the company or its creditors. He submitted that unless these foundational facts were

distinctly pleaded and supported by cogent evidence, the Court cannot be invited to exercise its discretion under Section 536(2). In the absence of such material, he submitted, the transaction must ordinarily be treated as void, and the question of seeking validation does not arise at all.

[9] Mr. Khan then took pains to point out that, in the present case, the Applicants had neither pleaded, much less proved, that the Deed of Assignment was executed in the ordinary course of the business of Navinon or that the same conferred any benefit on Navinon or its creditors. On the contrary, he pointed out Ravindra Palkar, who had executed the Deed of Assignment on behalf of Navinon had in his Affidavit in Reply to the Interim Application, specifically stated that he had acted solely on the representations, instructions, and directions of Atulya Mafatlal, and further affirmed that had he known that Navinon was already under liquidation he would not have executed the Deed of Assignment. He also pointed out that the Affidavit of Ravindra Palkar expressly affirmed the fact that no consideration from the Deed of Assignment was paid to Navinon. Mr. Khan thus submitted that on this ground alone, the question of ratifying such a transaction under Section 536(2) did not arise.

[10] Mr. Khan further pointed out that though the Deed of Assignment recorded that the consideration for the transfer was rupees one crore, not a single rupee had been received by Navinon, as confirmed by Ravindra Palkar. He pointed out from the Deed of Assignment that the consideration was to be paid to the Assignor, i.e., Navinon, however the same was allegedly paid as follows -

(i) Rs. 29,93,039 to CIDCO (ii) Rs. 40,00,000 to Mr. R.M. Rai (alleged to be a decree holder against the Navinon) (iii) Rs. 19,80,000 to alleged members of the workers union and (iv) Rs. 10,26,961 was appropriated by Ravindra Palkar against alleged arrears of his salary for a period up to March 2019.

[11] Mr. Khan then submitted that the execution of the said Deed of Assignment was clearly fraudulent. He first pointed out that the Power of Attorney dated 17th February 2005, which was said to have been issued pursuant to a Board resolution was unregistered, and authorised both Manohar Sankhe and Ravindra Palkar. He then pointed out that in 2017 Manohar Sankhe had purportedly relinquished his authority in favour of Ravindra Palkar by a Power of Attorney dated on 12th October 2017 which was registered and based on which Ravindra Palkar had executed the Deed of Assignment. He submitted that this conduct smacked of malafides and fraud since the first Power of Attorney was unregistered and of no legal force, even assuming the board resolution was valid. He submitted that it was to overcome this patent illegality that the second power of attorney was executed and registered even assuming Manohar Sankhe could have delegated his powers to Ravindra Palkar.

[12] Mr. Khan then submitted that neither delay nor inaction on the part of the Official Liquidator could form the basis for seeking validation of a transaction that is otherwise void under Section 536(2), as held by this Court in **Laxman Yeshwant**

Prabhudesai v. NRC Ltd. He submitted that if alienations made post commencement of winding up were to be validated on such grounds, the same would effectively amount to rewarding the misconduct or irregularities of the erstwhile directors of a company that has already been ordered to be wound up. He also placed reliance on the judgement of this Court in BIFR v. Hindustan Transmission Products Ltd.,2012 SCCOnLine 1294 to point out that neither the honesty or good faith of the transferee nor the absence of any direct involvement in impropriety is, by itself, sufficient to justify ratification. He pointed out that this Court in that case emphasised that validation under Section 536(2) can be granted only when the transaction demonstrably serves the interests of the company in liquidation or its creditors, not merely because the transferee had acted innocently or without knowledge of the winding-up proceedings. Mr. Khan thus submitted that the statutory presumption of voidness cannot be displaced merely on the basis of equitable pleas unless the transaction affirmatively meets the strict requirements for validation.

[13] Mr. Khan also submitted that the Applicants cannot claim any equity on the basis of the payments allegedly made by them, since firstly, these payments were not made to Navinon, and secondly, all payments in liquidation were required to be made strictly in accordance with Sections 529, 529A, and 530 of the Companies Act. He pointed out that the payments relied upon by the Applicants were, in fact, preferential in nature and contrary to the statutory scheme provided for in the Companies Act. He therefore submitted that if infact any such payments were made, they were made entirely at the Applicants' own risk and cannot form the basis for seeking equitable relief.

[14] In conclusion, Mr. Khan submitted that the Applicants, in collusion with Atulya Mafatlal and Ravindra Palkar, had misappropriated a valuable asset of Navinon to the detriment of creditors and workmen. He submitted that a case for ratification had been made out, and the Deed must be declared void, and possession consequently be handed over to the Official Liquidator .

SUBMISSIONS ON BEHALF OF THE APPLICANTS

[15] Mr. Shah, Learned Counsel appearing on behalf of the Applicants, in the captioned Interim Application, essentially submitted that the Interim Application be allowed since: **(A)** the Applicants were bona fide purchasers for value without notice of the order of winding up; alternatively, **(B)** the said transfer was from the ostensible owner, and thus the Applicants were entitled to the benefit of Section 41 of the Transfer of Properties Act, 1882, and Section 19(b) of the Specific Relief Act, 1963. He submitted that in the event the Court was not inclined to ratify the said transfer, then **(C)** the Applicants were entitled to be restituted for the amounts spent by them in terms of Section 33 of the Specific Relief Act.

[16] Mr. Shah submitted that at the time when the Deed of Assignment was entered into, the Applicants were entirely unaware of the fact that a winding-up order had been

passed against Navinon. He pointed out that though the winding-up order was passed in the year 2005, there was no indication that the said property was in the possession of the Official Liquidator or that the said property did not belong to Navinon. In support of his contention he submitted that (i) there were no security guards deployed to safeguard the said property nor was there any signage or notice displayed at the said property to indicate that the same was in the possession of the liquidator or that Navinon was in liquidation; (ii) that the said property came to be transferred to the name of Navinon only on 5th April 2019 until which time it stood in the name of Indian Dyestuff, i.e. Navinon's former name; (iii) no response was received by the Applicants to the public notice issued by them on 16th November 2017; (iv) CIDCO continued to accept payments made by the Applicants towards service charges and water charges; (v) CIDCO also issued an NOC for assignment in favour of the Applicants; (vi) on 29th April 2022, MIDC granted the Applicants' permission for demolition of the existing building; (vii) on 14th July 2022, MIDC, i.e., who was the original owner of the said property, approved the sanctioned plans; and (viii) on 22nd April 2024, the Applicants were issued an occupation certificate by MIDC.

[17] Mr. Shah submitted that it was only on 13th January 2023, when the Official Liquidator visited the said property, that the Applicants became aware of the winding-up order. He therefore contended that the Applicants were bona fide purchasers for value and thus could not be divested of the rights validly acquired under the Deed of Assignment. In support of this contention, he relied upon the decision of the Hon'ble Supreme Court in the case of Crystal Developers v. Asha Lata Ghosh,2004 SCCOnLIneSC 1262 and pointed out that transferees who act in good faith, for valuable consideration, and without notice of any infirmity in title, are entitled to equitable protection. He submitted that the Applicants fell squarely within this category of purchasers, having entered into the Deed of Assignment after conducting due diligence and without any knowledge of the winding-up proceedings.

[18] Mr. Shah then placed reliance upon the decision of this Court in S.P. Khanna v. S.N. Ghosh,1975 SCCOnLineBom 263 to contend that where a transaction is shown to be bona fide, for fair and adequate consideration, and demonstrably in the interest of the company against which a winding-up order has been passed, the Court may exercise its discretionary jurisdiction under Section 536(2) of the Companies Act to validate such a transaction, even if it was entered into after the commencement of winding-up proceedings. He submitted that the ratio of **S.P. Khanna** recognises that the power under Section 536(2) is fundamentally equitable in nature and is intended to prevent injustice, particularly where the transferee has acted honestly and the transaction does not prejudice the company or its creditors. Mr. Shah submitted that the present case squarely falls within the ratio of the judgement in the case of **S.P. Khanna** since, the Applicants had acted in good faith and had paid an amount exceeding the market value of the property, thereby conferring a clear benefit on the company in liquidation. He submitted that the discretion of this Court under Section

536(2) is not confined only to the matters mentioned in **Sunita Vasudeo Warke v. Official Liquidator, Laxman Yeshwant Prabhudesai v. NRC Ltd.,** or **Sarigam Containers Pvt. Ltd. v. Magatul Industries Ltd.,** were only illustrative in nature.

[19] Mr. Shah then, in the alternative, submitted that the transfer in favour of the Applicants was effected by Ravindra Palkar who, on the face of the record, appeared to possess full authority to deal with the property and thus an ostensible owner. In support of this contention he placed reliance upon (i) the Board Resolution of Navinon dated 14th February 2005; (ii) the Power of Attorney dated 17th February 2005 executed in favour of both Manohar Sankhe and Ravindra Palkar; and (iii) the registered Power of Attorney dated 26th September 2017, by which Manohar Sankhe delegated his powers exclusively to Ravindra Palkar. He submitted that the Applicants having exercised due diligence, acted in good faith and having paid a consideration of Rupees One crore which, was utilised for the benefit of Navinon were entitled to invoke the protection afforded by Section 41 of the Transfer of Properties Act, 1882. In support of his contention he placed reliance upon the decision of the Hon'ble Supreme Court in Duni Chand v. Vikram Singh & Ors,2024 SCCOnLineSC 1702 to point out that a transferee who acts in good faith, after exercising due diligence, is protected when the transferor is the ostensible owner. Mr. Shah submitted that the Applicants in the present case satisfied each of these requirements and were thus entitled to such protection.

[20] Mr. Shah then submitted that, in the event this Court was not inclined to ratify the Deed of Assignment, then Applicants would have to be restituted to the position they occupied prior to its execution. He submitted that, in such an eventuality, the Official Liquidator would have to reimburse the Applicants not only with the entire consideration amount paid under the Deed of Assignment but also all amounts expended by the Applicants towards arrears, statutory dues, and other liabilities relating to the subject land. In support of this submission, he placed reliance upon the decision of this Court in Nimesh K. Thakkar & Ors. v. Official Liquidator & Ors,1989 SCCOnLineSC 276 to point out that this Court had recognised that a bona fide transferee was entitled to restitution of amounts paid in furtherance of a transaction that is subsequently avoided, particularly where the company in liquidation or its creditors have benefited from such payments. He submitted that since the Applicants had paid valuable consideration and discharged substantial liabilities of Navinon, the Applicants were entitled to be restituted for all the amounts spent in the event the transfer was held to be invalid.

[21] Mr. Shah also placed reliance upon the judgment of the Hon'ble Supreme Court in Kuju Collieries Ltd. v. Jharkhand Mines Ltd.,1974 SCCOnLineSC 224 to point out that when an agreement is void, no rights can flow from it and any person who has received an advantage under such a void agreement is bound, under the principles of restitution, to restore that advantage or compensate the person from whom it was received. He submitted that the underlying rationale of **Kuju**

Collieries is that even where a transaction is void and incapable of enforcement, equity mandates that the party who has benefited cannot retain such benefit to the detriment of the other party. Applying this principle to the present case, Mr. Shah submitted that if the Deed of Assignment was held to be void, the Applicants would nonetheless be entitled to a full restitution of all amounts paid and expended by them, whether by way of consideration or discharge of statutory dues of Navinon since Navinon and its creditors had derived benefit from those payments.

[22] Mr. Shah then placed reliance upon the decision of this Court in Helbon Engineers Pvt. Ltd. v. Ferral Anant Machinery Manufacturers Pvt. Ltd. & Anr.,2024 SCCOnLineBom 2134 to point out that this Court has, in appropriate circumstances, has exercised its discretionary jurisdiction under Section 536(2) to validate a transfer of a company's property executed after the commencement of winding-up. He submitted that in **Helbon Engineers**, this Court had recognised that the object of Section 536(2) was not to invalidate all post-commencement transactions mechanically but to prevent prejudice to the company and its creditors. He pointed out in the case of **Helbon Engineers** the Court found that the impugned transfer had been effected bona fide, for fair value, and in a manner that did not jeopardise the interests of the company in liquidation and that the transferee therein and accordingly ratified the transfer notwithstanding that it took place after the winding-up order. Mr. Shah submitted that the ratio of **Helbon Engineers** clearly illustrates that Section 536(2) vests the Court with a wide equitable discretion to protect genuine and beneficial transactions, and that the power is intended to be exercised to prevent injustice rather than to penalise bona fide parties. He therefore submitted that the present case, being one where the Applicants had acted in good faith and paid valuable consideration which was utilised for the benefit of Navinon and its creditors, fell squarely within the same equitable principles recognised in **Helbon Engineers** and would therefore warrant similar validation.

SUBMISSIONS ON BEHALF OF THE OFFICIAL LIQUIDATOR IN REJOINDER

[23] Mr. Khan submitted that the Applicants contention that the Deed of Assignment was a bona fide transfer was plainly unstateable since the Deed itself inter alia recorded, that that the subject land was neither included in nor subject to any liquidation proceedings and further that the Applicants had accepted the assignment of the leasehold rights strictly on an "as is, where is" basis. He thus submitted that the question of the Applicants now contending that they were unaware of any liquidation proceedings or claiming any equities did not arise.

[24] Mr. Khan did not dispute that the power of ratification under Section 536(2) of the Companies Act was discretionary in nature. He clarified, however, that the very object of conferring such discretion on the Company Court was limited and to be exercised only to prevent the business and affairs of a company from coming to a complete standstill upon the presentation of a winding-up petition. Section 536(2), he

submitted, was intended to protect bona fide commercial transactions necessary for the continued functioning of the company and not to validate transfers that may otherwise prejudice the body of creditors or undermine the winding-up process. Mr. Khan also did not dispute that the parameters laid down by this Court in the decisions of **Sunita Vasudeo Warke** and **Laxman Yeshwant Prabhudesai** were illustrative and not exhaustive but submitted that the same underscored an important principle, i.e., that the discretion under Section 536(2) must be exercised with the utmost caution and circumspection and only in cases where the equities overwhelmingly justify such validation. He submitted that the facts of the present case being gross would not satisfy these considerations, either on the touchstone of bona fides or on the requirement of demonstrating that the impugned transaction was in the interest of the company or its creditors. He therefore submitted that, on the facts of the present matter, this Court ought not to invoke its discretionary power under Section 536(2) to ratify the transaction in question.

[25] Mr. Khan submitted that the Applicants' reliance on Section 41 of the Transfer of Property Act, 1882, was also entirely misconceived. He pointed out that the Interim Application did not contain a single averment with respect to Section 41, nor were any of the foundational facts necessary for invoking Section 41 of the Transfer of Property Act, 1882, set out in the Interim Application. Mr. Khan placed reliance upon the decision of Hon'ble Supreme Court in the case of **Duni Chand**, to point out that the Hon'ble Supreme Court had held that for Section 41 to apply, the transferee must specifically plead and prove that the transferee had taken reasonable care to ascertain the transferor's authority to transfer the property in question. He submitted that Section 41 operates only where the real owner consents to such transfer and thus creates an estoppel. In the facts of the present case, he pointed out that the Official Liquidator was merely a statutory custodian of the said property and not the owner. He submitted that it was well settled that waiver or acquiescence requires a positive act that would reasonably mislead a third party. Mr. Khan placed reliance upon the decision in the case of Superintendent of Taxes, Dhubri v. Onkarmal Nathmal Trust,1975 SCCOnLineSC 186 to point out that estoppel cannot be inferred against a statutory authority.

[26] Mr. Khan, then in dealing with the judgements relied upon by Mr. Shah, submitted that the Applicants' reliance on each of those decisions was wholly misplaced and that none of them had any application to the facts of the present case. He pointed out that the decision in **Nimesh K. Thakkar** categorically holds that persons entering into transactions with a company after the commencement of winding-up proceedings stand on the same footing as ordinary creditors and are not entitled to any priority over other creditors, nor can they claim restitution but are required to lodge any claim with the Official Liquidator. Similarly, the decision in **Crystal Developers** would be of no assistance to the Applicants, as it was rendered in the context of revocation of probate and bears no relevance to proceedings under

Section 536(2) of the Companies Act. Mr. Khan then also pointed out that the decision in the case of **S.P. Khanna**, merely reiterates the broad equitable considerations that may apply to bona fide transactions entered into after a winding-up order is passed and does not, in any manner dilute, qualify, or override the specific statutory mandate under Section 536(2), which declares that any disposition of the company's property made after the commencement of winding-up proceedings is void.

[27] Mr. Khan then also distinguished the decision of this Court in the case of **Helbon Engineering Pvt. Ltd.** by pointing out that, unlike the present case, in the case of **Helbon Engineering Pvt. Ltd.** there were no creditors or employees who had any outstanding claims against the company in question. He submitted that the outstanding claims against Navinon were well in excess of the consideration which was stated to have been paid by the Applicants in the present case. He also pointed out that the decision in the case of **Kuju Collieries** was also equally misplaced. He submitted that while the general principle that benefits received under a void agreement must be restored was not in dispute, he contended that this principle had no application in the present context since the Companies Act was a self-contained and special statute that prescribed a specific mechanism for prioritising and adjudicating all claims made against a company in liquidation. He thus submitted that the general principles for restitution cannot be invoked to bypass or dilute the statutory scheme embodied in the Companies Act.

FINDINGS AND REASONS

[28] After hearing Learned Counsel for the parties and the caselaw which have been relied upon, I am satisfied that the question of ratifying the Deed of Assignment does not arise, for the following reasons:

A. Section 441(2) of the Companies Act, 1956, makes clear that the winding up of a company is deemed to have commenced from the date of presentation of a winding-up petition, which in the facts of the present case was admittedly on 3rd November 2001. The Deed of Assignment was executed on 16th May 2019, which is nearly eighteen years after the commencement of winding up.

B. Section 536(2) of the Companies Act unequivocally provides that any disposition of a company's property made after the commencement of winding up is void, unless the Court specifically directs otherwise. The provision is mandatory, and the power of validation conferred upon the Court is an exceptional one, as is clear from the decisions in the case of **Sunita Vasudeo Warke v. Official Liquidator, Laxman Yeshwant Prabhudesai v. NRC Ltd.**, and **Sarigam Containers Pvt. Ltd. v. Magatul Industries Ltd**. Thus the discretion vested in the Court under Section 536(2) of the Companies Act is one which is to be exercised sparingly and only where the transferee clearly establishes that the transaction was bona fide, effected in the ordinary course of the company's business, or was demonstrably beneficial to the company or its creditors or in those circumstances where no possible prejudice would

be caused by validating such a transaction. These decisions clearly enunciate that the Official Liquidator's delay or inaction, the transferee's good faith, or private dealings without the Liquidator's knowledge cannot displace the statutory presumption of voidness. Such factors alone cannot justify the disposition of a company's property after the commencement of winding-up proceedings against the company.

C. Crucially, in the present case the Applicants have neither pleaded nor demonstrated that the transaction in question was in the ordinary course of business or was in any manner beneficial to Navinon or its creditors. On the contrary, the material on record makes clear that the Deed of Assignment was executed eighteen years after the commencement of winding up and was wholly outside the ordinary course of business of Navion. Further, not a single rupee from the consideration which is stated to have been paid by the Applicants was received by Navinon. Thus, neither Navinon nor its creditors received any benefit from the said transaction. Equally crucial is the fact that Ravindra Palkar has, in his Affidavit in Reply to the Interim Application (L) No. 26905 of 2024 , unequivocally stated that he (i) executed the Deed of Assignment under the instructions of Atulya Mafatlal (ii) was unaware of the fact that a winding-up order had been passed against Navinon and (iii) had he been aware that Navinon was under liquidation, he would not have executed the Deed of Assignment.

D. The execution of the Deed of Assignment is patently fraudulent and entirely lacking in bona fides. The transaction was effected eighteen years after commencement of winding-up, on the strength of powers of attorney that were themselves legally ineffectual. The 2005 Power of Attorney relied upon was unregistered and therefore incapable of authorising any transfer of immovable property, and the subsequent 2017 Power of Attorney purportedly executed by Manohar Sankhe in favour of Ravindra Palkar was equally invalid, since the foundation of Manohar Sankhe's authority was the 2005 Power of Attorney, even assuming Manohar Sankhe could delegate his authority to Ravindra Palkar without any ratification from Navinon. Notably, Ravindra Palkar executed the Deed of Assignment on behalf of Navinon by representing, falsely, that the property was not subject to liquidation. No consideration was paid to Navinon, instead, the amounts were diverted to third parties and to Ravindra Palkar personally. Thus, the transaction conferred no benefit whatsoever on Navinon or its creditors and was plainly a fraudulent attempt to misappropriate its assets.

E. The Applicants' reliance on Section 41 of the Transfer of Property Act, 1882, is entirely misconceived. To begin with, the Interim Application contains no pleadings setting out the foundational facts necessary to invoke Section 41. Moreover, Section 41 applies only where the real owner, by consent or conduct, enables another to hold himself out as the ostensible owner. In the present case, the Official Liquidator is not the real owner of the property but merely a statutory custodian of the company's assets. Consequently, the doctrine of ostensible ownership has no application to these facts, all the more so when the Applicants have not even asserted such a case in their pleadings.

F. The plea for restitution is equally untenable. As held by this Court in the case of **Nimesh K. Thakkar**, persons entering into transactions after commencement of winding-up stand on par with ordinary unsecured creditors and must lodge their claim before the Official Liquidator. They are not entitled to any special equity or priority on the ground that the transaction has been avoided. The Companies Act is a complete code governing distribution of the company's assets through Sections 529, 529A, and 530. The Court cannot order restitution in a manner that is contrary to the scheme for payment under the provisions of the Companies Act. Reliance upon the decision of the Hon'ble Supreme Court in the case of **Kuju Collieries Ltd.** is entirely inapposite since it was rendered in the context of general principles relating to contract and not in the context of winding-up, where the Companies Act lays down the scheme for adjudication and distribution of claims.

G. The reliance on the decisions of **S.P. Khanna** as well as **Helbon Engineers Pvt. Ltd.** is misplaced. The decision in **S.P. Khanna** does not dilute the mandatory nature of Section 536(2) nor expand the scope of the Court's discretion. It merely recognises that validation may be granted in exceptional cases where the transaction is demonstrably beneficial to the company in question. As already noted in paragraph (26) above, such is not the case here. Especially the decision in the case of **Helbon Engineers Pvt. Ltd.** would not apply to the present case, since in the said case, the Court had exercised the power u/s. 536(2) since the company in liquidation had no outstanding creditors or workmen's dues, the impugned transfer was bona fide and did not prejudice the company, its stakeholders, or the winding-up process and, infact, facilitated the company's affairs without jeopardising liquidation.

[29] For all these reasons, the transaction embodied in the Deed of Assignment dated 16 May 2019 is void under Section 536(2) and is not a fit case for validation. The Applicants have neither established any statutory ground for ratification nor shown that the transaction promoted the interests of the Company or its creditors.

[30] The Applicants' remedy, if any, lies in filing a claim before the Official Liquidator, which shall be adjudicated in accordance with law and the priorities prescribed under the Companies Act.

[31] Accordingly, the OLR is liable to be allowed, and the Interim Application seeking ratification of the impugned Deed of Assignment is liable to be dismissed.

ORDER

[32] In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

(i) The Official Liquidator's Report dated 15 February 2023 is allowed in terms of prayer clauses (a) and (b) which read thus:

"a) In view of para (12), above, whether this Hon'ble Court may be pleased to declare the purported transfer of the immovale property of the company (In Liqn) situated at House bearing no.13, Tarapur Industrial Area, Boisar Taluka, District

Palghar to Mr. Zulfikar Khoja and Mr. Nilesh I Ponda by way of Deed of Assignment dated 16/05/2019 as void.

b) In view of para (13) above, whether this Hon'ble Court may be pleased to direct Mr. Zulfikar Khoja & Mr. Naresh I Ponda to stop the construction work on the above mentioned property of the company (In Liqn.), to vacate and handover the peaceful possession of the property of the company (In Liqn.) occupied by them within 7 days to the Official Liquidator, High Court, Bombay."

(ii) Interim Application (L) No. 26905 of 2024 is dismissed.

(iii) The Applicants are at liberty to lodge their claim, if any, before the Official Liquidator in accordance with law. Any such claim shall be adjudicated by the Official Liquidator strictly in terms of the priorities and statutory scheme contained in Sections 529, 529A, and 530 of the Companies Act, 1956. Nothing in this order shall be construed as an expression of opinion on the merits of such a claim.

(iv) In the facts and circumstances of the case, there shall be no order as to costs.

(v) All pending applications, if any, stand disposed of.

[33] At this stage, Ms. Sneha Phene, learned counsel for the Applicants, sought a stay of this order. The request was opposed by Mr. Khan, who submitted that the operation of this order not be stayed since the same may imperil the said property, as the Applicants could then deal with the same. He, however, submitted that insofar as handing over possession of the property in question was concerned, the Applicants may hand over possession after a period of four weeks. Hence, there shall be a stay in terms of prayer clause (b) for a period of four weeks from the date on which a copy of this order is uploaded

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2026(1)AIPC66

IN THE HIGH COURT AT CALCUTTA

(Hon'ble Judge Raja Basu Chowdhury)

W P O (Writ Petition (O)) No 622 of 2025 **dated 27/11/2025**

Oriental Motor Accessories Agency Private Limited & Anr

Versus

Kolkata Municipal Corporation & Ors

PROPERTY TAX VALUATION

Kolkata Municipal Corporation Act, 1980 Sec. 179 - Property Tax Valuation - Petitioners challenged valuation notice and subsequent demand under UAA system alleging lack of jurisdiction and prior adjudication - Municipal authority issued notices and determined annual valuation after hearing - Court held prior writ petition only remitted matter for fresh consideration without quashing notice - Petitioners

participated and raised objections which were duly addressed - Liberty granted by Supreme Court did not reopen settled issues - Existence of alternative statutory remedy before Assessment Tribunal warranted dismissal of writ - Petition Dismissed

Law Point: Once valuation notice upheld and objections adjudicated by competent authority, challenge before High Court not maintainable when alternative statutory remedy exists under Section 179 of Kolkata Municipal Corporation Act.

Acts Referred:

Kolkata Municipal Corporation Act, 1980 Sec. 179

Counsel:

Mainak Bose (Senior Advocate), Sankarsan Sarkar, Tanmoy Sett, Sucheta Das, Biswajit Mukherjee, Anupam Dasadhikari

JUDGEMENT

Raja Basu Chowdhury, J.- [1] The instant writ petition has been filed, inter alia, challenging the notices dated 29th November, 2024, 4th January, 2025 and 21st January, 2025 as also the order dated 28th February, 2025 passed by the respondent no. 4.

[2] It is the petitioners' case that the petitioner no. 1 is the owner of the land and building being premises no. P-31, Nanigopal Roy Chowdhury Avenue, Kolkata 700 014 (hereinafter referred to as "the said premises") which comprises of a G+6 stories and some single storied outhouses. The disputes in relation to the present cause cropped up for the first time when a notice dated 5th August, 2023 proposing the enhancement of the annual valuation of the said premises was issued under UAA (Unit Area Assessment) system thereby proposing annual valuation to be Rs.2,74,56,410/- with effect from 1st quarter, 2017. According to the petitioners, since the notice reached the petitioners beyond the period for filing of the objection, the petitioners were prevented to object to the same, and accordingly, the petitioners had approached this Hon'ble Court in a writ petition which was registered as WPO/1716/2023.

[3] By an order dated 16th October, 2023 a Co-ordinate Bench of this Court was pleased to set aside the subsequent steps taken by the Municipal Corporation pursuant to the notice dated 5th August, 2023 and directed the Hearing Officer to hear out the issue in question in furtherance to the notice dated 5th August, 2023 and to decide the issues as raised in the objection pending consideration afresh on merits by granting an opportunity of hearing to the petitioners.

[4] According to the petitioners since, the fundamental/jurisdictional power of the Hearing Officer to issue such notice having regard to the provisions contained in Section 179(2)(b) of the Kolkata Municipal Corporation Act, 1980 (hereinafter referred to as "the said Act") was not decided, an appeal was filed.

[5] The Division Bench of this Court decided to hear out the appeal finally and subsequently by an order dated 21st November, 2024, noting the reliefs prayed for by the petitioners and noting that the challenge to the annual valuation pursuant to the notice dated 5th August, 2023 had succeeded, was of the view that the petitioners have a statutory alternative remedy available with regard to the annual valuation fixed and, as such, without entering into the said arena disposed of the appeal keeping the other issues raised by the petitioners in the writ petition with regard to annual valuation and the refund of the tax paid in respect of the specified quarters, open to be adjudicated before appropriate forum.

[6] Petitioners, however, approached the Hon'ble Supreme Court questioning the above order in a Special Leave Petition which was registered as "Special Leave to Appeal (C) No(s). 5363/2025. The Hon'ble Supreme Court by its order dated 17th March, 2025 was, inter alia, pleased to dismiss the Special Leave Petition on the following terms:-

"1. We are not inclined to interfere with the impugned judgment and, hence, the special leave petition is dismissed.

2. We, however, clarify that the petitioner is at liberty to raise all pleas and contentions before the appropriate authority in accordance with law.

3. Pending application(s), if any, shall stand disposed of."

[7] Pursuant to the aforesaid the petitioners participated in the proceedings of the proposed valuation pertaining to the notice dated 5th August 2023 for the first quarter of 2017-18 and the annual valuation with effect from fourth quarter of 2016-17. Ultimately the Hearing Officer after hearing the petitioners' objection and noting that the assessee did not object to the determination of the valuation of Rs. 64,628/- with effect from the fourth quarter of 2016-17, determined the annual valuation with effect from first quarter of 2017-18 to be Rs.2,74,56,408/-. Pursuant to the aforesaid a demand notice dated 14th May, 2025 was issued demanding property tax from the first quarter of 2025-26 to the fourth quarter of 2025-26 from the petitioner no.1 and a letter of intimation dated 14th July, 2025 was also issued which recorded that there are outstanding dues of Rs.6,21,92,670/. The present writ petition has, however, been filed challenging not only the order passed by the Hearing Officer but also the aforesaid two demand notices and the recording made in the municipal assessment book which records that the annual valuation of the property with effect from first quarter of 2017-18 has been determined to be Rs.2,74,56,410/-.

[8] Mr. Bose, learned senior advocate appearing for the petitioners at the very outset would submit that once, a determination of annual valuation has been set aside the authorities ought not to proceed thereon. To substantiate his contention, reliance has been placed on the notice dated 5th August 2023 proposing the annual valuation with effect from first quarter of 2017-18. He would submit that the proposed annual valuation, which had reached finality by reason of the petitioners not filing objection

and consequent upon the order passed by the coordinate Bench of this Court dated 16th October 2023, did not survive. As such the consequential demand notices are void and are not enforceable against the petitioners. According to him, the proposed annual valuation was revised by the Hearing Officer. On such ground he questions the demand notices. Independently of the above, he would submit that having regard to the provisions contained in section 179(2)(b) of the said Act, the municipal authorities could not have given effect to the annual valuation under the UAA Scheme prior to March, 2025. On such ground the valuation cannot be sustained and should be set aside. While responding to a query from the Court he would submit that though the petitioners had raised the aforesaid issue before the coordinate Bench in the first round and though the determination was set aside, the same was on another point, the aforesaid issue was not considered at all, and as such the petitioners are always entitled to question the same. Independently of the above, he would submit by referring to the order passed by the Hon'ble Supreme Court that despite the Hon'ble Supreme Court dismissing the SLP, had granted liberty to the petitioners to raise all pleas and contentions before the appropriate forum in accordance with law. On such ground as well the petitioners are entitled to challenge the valuation before this Court.

[9] Mr. Mukherjee, learned advocate appears for the municipal authorities. He would submit that though the petitioners had raised all such issues in the first round, the Hon'ble Court did not allow the same. The appeal filed by the petitioners did not succeed and the Division Bench, in fact, clarified the position that since an alternative remedy is available, the petitioners should not be permitted to question such issues before the Division Bench.

[10] He would submit that the liberty granted by the Hon'ble Supreme Court cannot confer any right on the petitioners to question an order which has otherwise reached finality. According to him, the petitioners had participated in the proceeding and raised objections, the objections were duly considered and an appropriate order was passed by the Hearing Officer. The petitioners have an alternative remedy before the Municipal Assessment Tribunal. This Court ordinarily ought not to interfere with such decision.

[11] Heard the learned Advocates appearing for the respective parties and considered the materials on record. As noted above, the facts of the cause are admitted. The petitioners, in the instant case, had initially approached this Court questioning the annual valuation in respect of the 1st quarter of 2017-18, since, the time to file the objection pursuant to the notice dated 5th August, 2023 had expired when the notice was served on the petitioners. Although, the petitioners appeared to have questioned the subsequent issue as regards violation of Section 179(2)(b) of the said Act, the Co-ordinate Bench appears to have allowed the writ petition limited to the ground of violation of principles of natural justice thereby setting aside further proceeding pursuant to the notice dated 5th August, 2023. The notice dated 5th August, 2023 was not set aside. The Co-ordinate Bench had, in fact, directed the Hearing Officer to hear

out the issue in question in furtherance of the notice dated 5th August, 2023 and decide the issues as raised in the objection pending consideration afresh by granting opportunity of hearing to the petitioners.

[12] In compliance of the above direction, the petitioners were notified by the municipal authorities and the Hearing Officer had heard out the petitioners' objection. It is not the case of the petitioners that there has been violation of the principles of natural justice. From the assessment order which is before this Court, I find that the petitioners' representative in response to the hearing notice had raised the following objections:-

"In the hearing dt. 10/02/25 Recorded Owner Mr. Pravin K. Popat having Aadhar no.9512 8601 5574 and mob. No. - 9830178391, also director of Oriental Motor Accessories Agency Private Limited was present. Assessment Collection (South) Department was represented by Smt. Maumita Ghosh (Deputy Assessor Collector) and Sri Sanjay Majumder (Assistant Assessor Collector) of concerned ward.

Mr. Popat submitted that notice of hearing had been issued for two periods namely in respect of (1) Annual valuation of Rs. 646280/-w.e.f 04/2016-17 & (II) Annual valuation of Rs. 27456408/-w.e.f 01/2017-18.

Mr. Popat further submitted that a single notice cannot cover assessment proceedings of two periods.

He also submitted that he should be allowed reasonable time to submit objection.

Mr. Popat also stated that the assessment proceedings for the period 4/2016-17 has already been completed and so no hearing is needed for 4/2016-17.As such the notice of hearing dt. 21/01/25 has no validity."

[13] The Hearing Officer by considering the pleadings in the writ petition had noted that the assessee did not object to the annual valuation of Rs. 646280/- with effect from fourth quarter of 2016-17. In response to a query of this Court, Mr. Bose has clarified that the assessee in fact did not object to the annual valuation of Rs. 646280/- with effect from fourth quarter of 2016-17. Although, Mr. Bose has attempted to raise an issue that the hearing officer or the Municipality could have only determined the annual valuation having regard to the valuation of Section 179(2)(b) of the said Act, I, however, find that the aforesaid issue has already been set at rest when the Hon'ble Court had refused to entertain the writ petition on such ground. Although, the petitioners have preferred an appeal therefrom the Division Bench of this Court has also refused to entertain the appeal on such ground by, inter alia, observing as follows:-

"We perused the writ petition. The first prayer in the writ petition as the notice of annual valuation dated August 5, 2023 and the supplementary bills issued.

Appellants required the annual valuation of certain quarters to be recalled and/or withdrawn and refund of certain sums in the subsequent prayers. Those reliefs, in our view, are adjudication of the annual valuation of the premises concerned. There are statutory alternative remedies available to the appellants with regard to the annual

valuation fixed. There is no ground for entering into such arena in a writ petition in the facts and circumstances of the present case.

We are of the view that interest of justice would be sub-served by keeping other issues raised by the appellants in the writ petition with regard to the annual valuation and the refund of the tax paid in respect of the specified quarters, open to be adjudicated by the appropriate forum.

APO/197/2023 is disposed of without any order as to costs."

[14] I find that Mr. Bose would argue that since the Hon'ble Supreme Court had granted liberty to the petitioners to raise all points, the aforesaid issue can once, again be raised by the petitioners before this Court, unfortunately, I am unable to agree to the same. Once, a decision has been rendered by this Court in not entertaining the challenge on the ground of alternative remedy and the challenge to the same did not succeed up to the Hon'ble Supreme Court, I am afraid simply because Hon'ble Supreme Court had granted liberty to the petitioners to raise all pleas and contentions before the appropriate authority, same by no stretch of imagination could be extended to the Hon'ble Court to entertain a petition which it had earlier refused.

[15] The other points raised by the petitions is with regard to the demand being proceeded on the basis of the annual valuation which has already been set aside. On such score, I find that the Assessing Officer has decided the annual valuation which is two rupees less than the proposed annual valuation. The petitioners insist that since the aforesaid figure is reflected in the municipal assessment book under the heading annual valuation, the same seeks to vitiate the demand raised by the municipality. I am afraid to note that the petitioners are attempted to hold onto the straws to succeed in the writ petition. Once, a decision has been rendered by the municipal authorities and since, it is not a case of violation of principles of natural justice, ordinarily no interference is called for. This Court, however, cannot enter into the factual issues in exercise of its writ jurisdiction while deciding the matter of this nature. The challenge to the order on the ground of violation of Section 179(2)(b) of the said Act cannot be entertained, since the previous challenge thereto before this Hon'ble Court did not succeed. The remedy of the petitioners to challenge an assessment order including the issue of violation of Section 179(2)(b) of the said Act, before the alternative forum and the refusal of this Court to entertain such challenge has been decided and/or confirmed by the Division Bench which has not been interfered with by the Hon'ble Supreme Court. On such ground also I am unable to accede to the prayers made in the petition.

[16] The writ petitioner is thus dismissed.

[17] Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities

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2026(1)AIPC72

HIGH COURT OF ANDHRA PRADESH: AMARAVATI

(Hon'ble Judge Tarlada Rajasekhar Rao)

Writ Petition No 8923 of 2023 **dated 26/11/2025**

M Swarnalatha @ Sunitha, W/o M Meghanadh

Versus

State of Andhra Pradesh; District Collector, Tirupati District; Revenue Divisional Officer, Srikalahasthi; Tahsildar, Srikalahasthi Mandal, Tirupati

LAND DELETION REQUEST

Registration Act, 1908 Sec. 22A - Land Deletion Request - Petition filed seeking deletion of assigned lands from prohibited list under Section 22A of Registration Act - Tahsildar and Revenue Divisional Officer reported that land assigned under political sufferer category - District Collector rejected request stating absence of original files and genuineness of assignment not proved - Observation that District Collector failed to assign reasons for rejecting report of Tahsildar and ignored guidelines issued by CCLA - Held that non-consideration of relevant material and non-speaking order amounts to arbitrariness - Order of rejection set aside - Authority directed to reconsider matter afresh following due procedure - Petition Allowed

Law Point: Administrative authority must provide valid reasons when differing from subordinate reports and ensure compliance with statutory procedure and executive guidelines before rejecting claim under Section 22A of Registration Act

Acts Referred:

Registration Act, 1908 Sec. 22A

Counsel:

G V V S Vara Prasad

JUDGEMENT

Tarlada Rajasekhar Rao, J.- [1] The present Writ Petition is filed under Article 226 of the Constitution of India for the following relief/s:

.....to issue an appropriate writ more particularly one in the nature of writ of Mandamus declaring the action of the 2nd respondent in passing the impugned Order vide Proceedings Rc.E2/2111/2022 dated 03.02.2023 whereunder the 2nd respondent rejected the application of the petitioner for deletion of land to an extent of Ac.0.15 cts in Sy.No.385-2 and Ac.1.29 cts in Sy.No.462 of Inagalur Village, Srikalahasthi Mandal, Tirupati District from the list of prohibited properties U/S 22A of Registration Act, 1908 contrary to the recommendation made by the 3rd respondent vide Roc.D/1368/2021 dated 26.03.2022 and further without making any enquiry about the

documents submitted by this petitioner as illegal, arbitrary and opposed to the established principles of law and contrary to the Circular instructions issued by CCLA vide CCLA's Ref.No.Assn.I(1)/351/2022 dated 20.05.2022 and is in violation of Article 14 and 300-A of the Constitution of India and Consequently set aside the Impugned Order of the 2nd respondent vide Proceedings Rc.E2/2111/2022 dated 03.02.2023 by directing the 2nd respondent herein to delete the subject lands of the petitioner mentioned above from the list of Prohibited Properties U/S 22A of Registration Act, 1908 and pass such other order or orders....

[2] The petitioner herein filed application in MeeSeva vide Application No.TTA012100075924 dated 27.09.202 with a request to delete the land to an extent of Ac.1.29 cents in Survey No.462, an extent of Ac.0.15 cents in Survey No.385/2 of Inagalur village of Srikalahasthi Mandal from the prohibited properties list under Section 22(A) of Registration Act, 1908, to the 2nd respondent-District Collector. The 2nd respondent-District Collector after conducting the enquiry has rejected the application filed for deletion of the land from the prohibited list of properties vide proceedings in Rc.E2/2111/2022, dated 03.02.2023 and the relevant portion is hereby extracted:

"In the instant case, it is noticed that, it is not known that the genuinity of Sri Kudithipudi Venkataramaiah S/o. Venkataratnam and Sri Doppalapudi Bapaiah S/o. Kotaiah whether the assignees were Political Sufferers or not and there is no original F.Dis files/ any other material evidences to prove that the assignment was granted in favour of the original assignees under Political Sufferer category.

The District Level Committee has verified the Village records and other connected records presented by the Tahsildar, Srikalahasthi and finally arrived that the land under reference submitted before the committee which was listed in the prohibitory Property is clear Govt lands so that the Sy.No. was included in the prohibited properties list U/s 22A of Registration Act, 1908 and recommended to reject the claim of the petitioner.

In view of the facts reported by the Tahsildar, Srikalahasthi and Revenue Divisional Officer Tirupati and in view of the guidelines issued by the Chief Commissioner of Land Administration, A.P., Mangalagiri, the request of the petitioner for deletion of land to an extent of Acs.0.15 cts in Sy.No.385-2 and Acs.1.29 cts in Sy.No.462 from the list of Prohibited Properties U/s 22A of Registration Act, 1908 is hereby REJECTED."

[3] The said order was assailed in the writ petition on the following grounds:

(1) No land assigned to any political sufferer shall be placed in prohibitory list under Section 22(A) of the Registration Act, 1908 except in cases or there are questions about genuinity of the assignment itself.

(2) The 2nd respondent herein has completely failed to take into consideration the documents submitted by the petitioner to come to conclusion as to whether the documents of the political sufferer are genuine or fake.

(3) The 2nd respondent herein has given a go bye to the report submitted by the 3rd and 4th respondents and not followed the guidelines as envisaged by CCLA before passing impugned order of rejection.

[4] Learned counsel appearing for the petitioner has taken this Court to the proceedings of the Tahsildar dated 26.03.2022. Wherein, the 4th respondent- Tahsildar was found that the land in Survey No.385/2, 462 with an extent of Ac.4.58 cents and Ac.1.29 cents, Inagaluru village, are classified as 'AWD' as per village accounts and the same were assigned in favour of 1) Sri Doppalapudi Bapaiah S/o. Kotaiah and 2) Sri Kudithipudi Venkataramaiah S/o. Venkatarathnam, under political sufferer's quota vide DKT No.213/4/1398 and 145/4/1399 respectively, and the said land was purchased by the brother of the petitioner herein vide registered sale deed No.1776/1996, dated 04.09.1996 and after demise of the purchaser, the petitioner has got the property on succession and the mutation was affected in the revenue records and allotted 1B Khata No.655. And also the name of the petitioner reflected in 10(1) Account and No.(4) DKT Register and connected DKT files also available at Tahsildar office. There are no disputes and court cases on the subject lands. Therefore, recommended to delete the land from the list of Section 22(A)(1)(a) of Registration Act, 1908.

[5] The impugned rejection order from the 2nd respondent-District Collector to delete from the prohibited list is based upon the following grounds: (i) the change of classification from the Adavi Poramboke to A.W. Dry was not available (ii) no original file is available in the matter that the assignment was granted in favour of the original assignees under the political sufferer category (iii) the District Level Committee has verified village records and other connected records and submitted a report before the Committee and the report indicates that the said land included under Section 22A of the Registration Act, 1908 as a government land.

[6] The Tahsildar submitted a report dated 26.03.2022 and stated that the land is AWD wasteland and it is assigned to the original assignee. The 2nd respondent-District Collector has not assigned any valid, cogent reasons for not accepting or discarding the report submitted by the Tahsildar through Revenue Divisional Officer. Without assigning reasons on the report submitted by Tahsildar, not accepting the same is bad in law, on this ground alone the order impugned is not sustainable. The Committee report has not been placed on record.

[7] The Counter Affidavit filed by the 2nd respondent only reinforced the findings of the impugned order. Therefore, this Court is of the opinion to remand the matter back to the 2nd respondent-District Collector directing to reconsider the case of the petitioner basing upon the report submitted by the Tahsildar vide proceedings dated

26.03.2022 and to pass appropriate orders after giving opportunity to the petitioner herein.

[8] With the above direction, the Writ Petition is disposed of. There shall be no order as to costs.

As a sequel, interlocutory applications, if any pending in this Writ Petition shall stand closed

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2026(1)AIPC75

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH

(Hon'ble Judge Sanjay Dhar)

Cr M (M) (Miscellaneous Criminal Case (M)); C M; Caveat No 512 of 2025; 7685 of 2025, 7686 of 2025; 2949 of 2025 **dated 24/11/2025**

Abdul Khaliq Sofi

Versus

Mohammad Shafi Mir and Another

POSSESSION AND INJUNCTION

Code of Civil Procedure, 1908 Or. 39R. 2, Or. 39R. 1 - Registration Act, 1908 Sec. 49 - Possession and Injunction - Plaintiff sought injunction claiming ownership of property based on receipt of payment asserting purchase from defendant - Defendants denied sale asserting tenancy and default in rent - Trial Court and Appellate Court vacated interim injunction holding plaintiff failed to establish ownership - Court held unregistered receipt cannot evidence sale and proviso to Section 49 permits use only for collateral purpose not for title - Even assuming tenancy, possession protection depends on due process once court adjudicates rights - Plaintiff failed to prove prima facie case or ownership and cannot claim equitable relief - Lower court orders upheld - Petition Dismissed

Law Point: Unregistered money receipt cannot establish ownership under Section 49 of Registration Act and person failing to prove prima facie ownership or lawful possession cannot claim injunction to protect possession

Acts Referred:

Code of Civil Procedure, 1908 Or. 39R. 2, Or. 39R. 1

Registration Act, 1908 Sec. 49

Counsel:

Malik Mushtaq, M Amin Khan

JUDGEMENT

Sanjay Dhar, J.- [1] The petitioner through the medium of present petition has challenged order dated 17.11.2025 passed by learned District Judge, Pulwama, whereby appeal against order dated 11.03.2025 passed by learned Sub Judge (Special Mobile Magistrate) Pulwama vacating interim injunction in a suit filed by the petitioner against the respondents, has been upheld.

[2] Issue notice to the respondents. Mr. M.Amin Khan, Advocate, who is on caveat, accepts notice on behalf of respondents. Caveat stands discharged.

[3] Heard and considered.

[4] It appears that the petitioner (hereinafter "the plaintiff") has filed a suit seeking permanent injunction against the respondents (hereinafter "the defendants") before the Court of learned Sub Judge (Special Mobile Magistrate) Pulwama (hereinafter the trial Court). In the said suit the plaintiff has claimed that he has purchased a piece of land measuring 15/12 feet situated at Main Market Shadi Marg on right side of the Shadimarg Keller Road from defendant No.1 for an amount of Rs.4,50,000/- for construction of shop. It has been pleaded that the plaintiff paid an amount of Rs.3,92,500/- to defendant No.1 on 02.12.2009 against a proper receipt, whereafter he constructed two storied shops over the suit land. It has been further pleaded that even the balance amount of Rs.57,500/- has been paid by the plaintiff to defendant No.1. Thus, according to the plaintiff he is the absolute owner of suit property, where he is running his bakery business. It has been submitted that the plaintiff has invested an amount of Rs.1,82,000/- for constructing the shops but the defendants are interfering in his possession over the suit property.

[5] The defendants contested the suit by filing their written statement, in which they have denied having sold the suit property to the plaintiff. According to the defendants, they are the exclusive owners in possession of the suit property consisting of the shopping complex of three shops on ground floor. It has been submitted that the defendants have also constructed first floor of the said shopping complex. According to the defendants, the plaintiff approached defendant No.1 in the year 2009 for renting out two shops to him and at that time he had given an advance rent of Rs.3, 92,500/- in various installments to defendant No.1. It has been submitted that the rent of the suit shops was fixed at Rs.2250/- per month and it was also agreed that after seven years it will be enhanced to 20% per month up to next seven years. It has been submitted by the defendants that till December, 2023 an amount of Rs.4,15,500/- was due on account of rent from the plaintiff and after deducting the amount of Rs.3, 92,500/- the plaintiff is in arrears of rent of Rs.23,000/-, out of which he has paid an amount of Rs.5400/- leaving a balance of Rs.17,600/-.

[6] It has been pleaded that when defendant No.1 requested the plaintiff to pay the balance rent and to pay rent as per the market value which is Rs.4000/- per month from January 2024 onwards, he avoided to do so on one pretext or another. It has been

submitted that the plaintiff has filed false and frivolous suit and that he does not have ownership rights in respect of the suit property. It has been submitted that the plaintiff is only a tenant and is not an absolute and exclusive owner of the suit property.

[7] It seems that the learned trial Court vide order dated 11.03.2025 dismissed the application of the plaintiff under Order 39 Rule 1 and 2 CPC and vacated the interim direction that had been passed in his favour. The said order came to be challenged by the plaintiff by way of an appeal before the learned Principal District Judge, who vide order dated 17.11.2025, while dismissing the appeal upheld order passed by the learned trial Court.

[8] The plaintiff has challenged the impugned orders passed by the Courts below on the grounds that the same are contrary to law. It has been contended that the plaintiff cannot be dispossessed from the suit property except in due course of law, even if it is assumed that his status is of a tenant. It has been submitted that in view of the fact that the plaintiff was in possession of the suit property it was the duty of the Courts below to protect his possession.

[9] The claim of the plaintiff before the trial Court and before this Court is that he has purchased the suit property and paid the amount of consideration to defendant No.1. In this regard the plaintiff relies upon the receipt executed by defendant No.1 in respect of Rs.3,92,500/-. Learned counsel for the plaintiff has contended that the receipt could have been read as evidence for collateral purposes.

[10] In the above context, if we have a look at Section 49 of the Registration Act, it lays down the effect of non-registration of documents which are required to be registered. Proviso to Section 49 lays down that an unregistered document affecting immovable property and required by the Registration Act, or the transfer of Property Act, to be registered may be received as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by the registered instrument. The document (receipt of amount), admittedly does not contain any covenant with regard to transaction of sale relating to the suit property. The same is admittedly not a registered document. Had it been a case of unregistered agreement to sell, the things may have been different, inasmuch as, the plaintiff by taking aid of proviso to Section 49 of the Registration Act, could have used the said document as evidence of a contract in a suit for specific performance, but such is not a case. Neither the plaintiff has filed suit for specific performance nor the document (receipt of money) contains any covenant affecting the suit property. Thus, the receipt of money by defendant No.1 cannot be taken as evidence with regard to agreement to sell the suit property. The contention of the plaintiff in this regard is misconceived.

[11] It has been next contended by the plaintiff that even if it is assumed that he was a tenant in respect of the suit property, still then his possession was required to be protected by the trial Court till such time he was evicted after adoption of due course of law.

[12] In the above context it is to be noted that there was no rent deed executed by the parties in respect of the suit property and if the plaintiff claims to be the tenant of the suit property he is only a tenant by sufferance. According to the defendants the plaintiff failed to get the lease extended by paying the rent at market value which he had agreed. Thus, the status of the plaintiff is that of a tenant holding over. Nonetheless it is an admitted case of the parties that the plaintiff is in possession of the suit property. The question that falls for determination is as to whether the plaintiff was entitled to protect his possession over the suit property against his eviction until the defendants obtain a decree for eviction against him.

[13] In the above context it is to be noted that the plaintiff has claimed his possession over the suit property as owner and not as a tenant. This contention of the plaintiff has been found to be prima facie not tenable. The plaintiff has sought injunction against the defendants in his capacity as an owner of the suit property but his status as owner of the property has prima facie been found to be false. Once the plaintiff's right to possess the suit property as owner thereof has, prima facie, been found to be untenable, the consequential relief of injunction against his dispossession cannot be granted. The relief of injunction is an equitable relief and a litigant, whose right to such relief has been found to be prima facie, based upon falsehood, cannot be granted such relief. A litigant who seeks equitable relief has to do equity. The plaintiff in this case has come up with a prima facie false claim of ownership qua suit property, so he is disentitled to relief of injunction.

[14] Otherwise also even if it is assumed that the plaintiff is in possession of the suit property as a tenant or as tenant holding over, the grant of interim protection in his favour would depend upon the determination of the question whether his eviction in accordance with law would mean filing of a separate suit for eviction against him. To find an answer of this question, we need to notice the position of law as discussed in various judicial precedents.

[15] In **Madan Lal vs. Shri Mata Vaishno Devi Shrine Board**, CSA No.18/2018 decided on 20.09.2023, this Court had an occasion to consider the aforesaid issue. It would be appropriate to reproduce the relevant paragraphs of the said judgment, which would help us in finding an answer to the aforesaid question. The same are reproduced as under:-

"24) In **M/s. G. M. Modi Hospital and Research Centre Medical Science vs. Sh. Shankar Singh Bhandari and others**, 1996 AIR(Del) 1, a Single Judge of Delhi High Court has discussed the law on the subject in the following manner:

"15. A similar question was mooted before the Court of Appeal in **England in Hemmings and Wife vs. The Stoke Pages Golf Club, Limited, and another**, 1920 1 KB 720. The Court of Appeal reversed the judgment of the trial-Judge who granted injunction. To appreciate the question, it is necessary to notice the facts. The plaintiff Hemmings was in the employment of Stoke Poges Golf Club Ltd. A cottage was given

to the plaintiff by virtue of his being the employee of the Golf Club. He was not a tenant. In May 1918 he left the services and worked for a neighbouring farmer. Subsequently, a notice was served on him to deliver possession of the cottage. Thereupon, possession was taken from-him. He filed then the suit to recover damages for forcible entry and for assault on the basis of the alleged infringement by the defendants of the statute 5 Ric. 2, stat. 1, c. 7, which enacts that a forcible entry is a punishable offence. The learned trial judge granted the relief prayed for by the plaintiff and the Court of Appeal, as stated above, differed from the view taken by him. The Court of Appeal noticed the distinction between the case of a person who occupies a premises by virtue of employment is servant and the case of a person who Occupies as atenant. The plaintiff therein relied upon the case in Newton us. Harland, 1 M & G page 644 for the proposition that nobody can take possession without any recourse to court of law and any forcible entry is a crime in law. The learned Judge Justice Erskine said in that case "There are, it is true, many cases (some of which were cited at the argument) in which it has been held that no action for trespass quare clausurn freight will lie at the suit of a tenant against the landlord for a forcible entry after the expiration of the term. The earlier authorities upon .this point are collected in kDalton's Justice, c. 129, p. 431; and Turner v. Meymott. (5) But then the reason for this is also given, namely, that the plaintiff, having no title to the possession as against his landlord, can have no right of action against him as a trespasser, for entering upon his own land, even with force; for entering upon his own land, even with force; for, although the law had been violated by the defendant, for which he was liable to be punished under a criminal prosecution, no right of the plaintiff had been infringed, and no injury had been sustained by him for which he could be entitled to compensation in damages;" and by Fry J. in Beddall v. Maitland (6), where he says: "He can recover no damages for the entry, because the possession was not legally his, and he can recover none for the force used in the entry, because, though the statute of Richard II. crates a crime, it gives not civil remedy." The Court of Appeal dealt with this case at length and found that this case was not accepted by any Court subsequently and that was no longer good law. After having considered this case, the learned Judges came to the conclusion "In the present case the defendants were undoubtedly entitled to possession of the cottage. The plaintiffs had no right and did not pretend they had any right to remain there. Assuming, but without deciding, that the entry by the defendants was a forcible entry, the right to possession was in the defendants, and the acts which are alleged as giving the plaintiffs a right of action were done in defense of their right to possession. Blades v. Higgs (2); and of the possession which they had acquired by the alleged forcible entry. I have no fear that the present decision will encourage lawlessness as was suggested for the respondent. A person who makes a forcible entry upon lands and tenements renders himself liable to punishment, and he exposes himself also to the civil liability to pay damages in the event of more force being used than was necessary to remove the occupant of the premises, or in the event of any want

of proper care in the removal of his goods. If the view of the law expressed in Newton v. Harland (3) is correct it must follow that the law confers upon the lawless trespasser a right of occupancy the length of which is determined only by the law's delay."

25) Again in the case of **Pran Nath and others** (supra), this Court held that a licensee' s possession is not that of a person in settled possession and he is not, thus, entitled to say that he has right to continue in possession until evicted under some decree or order of the court.

26) In another judgment of the Delhi High Court in the case of **Thomas Cook (India) Limited vs Hotel Imperial**, 2006 15 ILR(Del) 90, the question as to what is meant by due process of law came up for discussion before the said court. In this context, paras 27 and 28 of the judgment are relevant and the same are reproduced as under:

"27.This brings me to the second aspect of 'due process of law'. It was urged by Mr Kaul that even if the plaintiff was in unlawful possession it could only be evicted by due process of law and therefore the plaintiff was entitled to an order of injunction preventing the defendants from removing the plaintiff from the said two rooms except through due process of law. It must be made clear that this argument fails in the context of this case because the plaintiff was never in possession and therefore there is no question of dispossession in the sense usually understood. The plaintiff had a mere right to use, such right was revocable, it has been revoked and the plaintiff is entitled under section 63 of the Indian Easements Act, 1882 to a reasonable time to leave the premises and take away its goods. The argument also fails because by rushing to court the plaintiff has indeed invited a judicial determination of its status. If it got an order of injunction it would ensure to its benefit. But, if it did not, then it can't be heard to say that this court has to grant an injunction all the same because otherwise it would give a license to the defendants to forcibly throw out the plaintiff without filing a suit for possession.

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 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 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."

27) The aforesaid judgment of the Delhi High Court has been quoted with approval by a Three Judge Bench of the Supreme Court in the case of **Maria Margarida Sequeria Fernandes and others v Frasmo Jack de Sequeria (Dead) through LRs**, 2012 AIR(SC) 1727.

28) From the foregoing analysis of law on the subject, it is clear that due process of law or due course of law means that a person in a settled possession cannot be evicted without a court of law having adjudicated upon his rights qua the true owner, meaning thereby that rights of the parties have to be adjudicated by a court of competent jurisdiction. It is also clear that it is immaterial as to which of the parties brings action to a court. What is material is that rights of the parties have to be adjudicated by the competent court. Once this is done, the due process of law or due course of law can be stated to have been followed. What has been emphasized by the Supreme Court in **Krishna Ram Mahale's case (supra)** is that the person in a settled possession cannot be dispossessed without adopting due process of law. Once this requirement of due process of law is followed, a trespasser or a licensee, who has overstayed, can be evicted by the true owner by using reasonable force. The only requirement is that there has to be determination of the rights of the parties by the competent court, whoever may have brought action in the court."

[16] In view of the law discussed hereinbefore, it is clear that requirement of due process of law gets fulfilled once a person in possession brings a suit for injunction against a person who interferes in his possession and his rights are determined in the said suit. It is not necessary for the defendants to bring a fresh suit for eviction against the plaintiff once in a suit for injunction filed by the plaintiffs against defendants the Court determines that the plaintiff does not have a prima facie case in his favour.

[17] In this view of the matter, even if the plaintiff is in possession of the suit property, once the learned trial Court and the Appellate Court have rightly come to the conclusion that he has failed to establish a prima facie case in his favour, he cannot retain his possession over the suit property and his possession cannot be protected till

such time the defendants obtain a decree of eviction against him. The defendants are entitled to use reasonable force to evict the petitioner/plaintiff from the suit property and the petitioner/plaintiff cannot have the benefit of protection order from the Court, because he has failed to prima facie establish his right to remain in possession of the suit property.

[18] For the foregoing reasons, I do not find any ground to interfere in the impugned orders passed by the trial Court and the Appellate Court. The petition lacks merit and is, accordingly, dismissed

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2026(1)AIPC82

THE HIGH COURT OF JUDICATURE AT MADRAS

(Hon'ble Judge P B Balaji)

A S (Appeal Suit); C M P (Civil Miscellaneous Petition) No 427 of 2024; 12948 of 2024 **dated 21/11/2025**

Thanjai P N Chezhian

Versus

T Srinivasan; V Vijayakumar; S Madhavan; R Sukumar; Shanthi @ Shanthi Chezhian; Jagadeesan (Deceased); Roja Marudham; J Akila; J Ravishankar

BENAMI PROPERTY DISPUTE

Code of Civil Procedure, 1908 Or. 7R. 11 - Benami Transactions (Prohibition) Act, 1988 Sec. 3, Sec. 4 - Benami Property Dispute - Plaintiff filed suit claiming property purchased in wife's name from his funds - Trial Court rejected plaint holding suit barred by Benami Transactions Act - Contention that exemption under Section 3(2) covers husband's purchase in wife's name - Court observed presumption of benefit to wife unless contrary proved - Determination requires evidence and cannot be summarily dismissed - Held rejection improper since plaint discloses arguable issue falling under statutory exception - Matter remanded for trial on merits - Appeal Allowed

Law Point: When purchase in wife's name falls under statutory exception under Section 3(2) of Benami Transactions Act, plaint cannot be rejected summarily and must be tested on evidence at trial

Acts Referred:

Code of Civil Procedure, 1908 Or. 7R. 11

Benami Transactions (Prohibition) Act, 1988 Sec. 3, Sec. 4

Counsel:

G Vasudevan, R Vijayaraghavan

JUDGEMENT

P B Balaji, J.- [1] The plaintiff is the appellant, aggrieved by the order of the trial Court, rejecting the plaint, allowing the application filed by the defendants on the ground that the suit is barred by the provisions of the Benami Transactions (Prohibition) Act, 1988 (herein after called as Act).

[2] I have heard Mr.G.Vasudevan, learned counsel for the appellant and Mr.R.Vijayaraghavan, learned counsel for the respondent 1 to 4. There is no appearance on the side of the respondents 5 to 8.

[3] Mr.G.Vasudevan, learned counsel for the appellant would contend that the plaintiff and the 1 st defendant are husband and wife and during the happier times, the plaintiff had purchased the suit property in favour of his wife and father-in-law. It is the case of the plaintiff that the entire sale consideration was met only by the plaintiff and there was no intention to benefit his wife and further, the plaintiff is entitled to establish that it was a benami purchase. The suit has been filed on the strength of these averments to declare that the plaintiff is the sole and absolute owner of the suit properties and for various other reliefs. Pending the suit, the property had been sold and the purchasers, defendants 2, 4 to 6 have taken out I.A.No.3 of 2019, seeking rejection of the plaint on the ground that the suit is barred by the provisions of the Act.

[4] The learned counsel for the appellant would further submit that though the Act underwent an amendment by Act 43 of 2016, the amended provisions came into force only on 01.11.2016 and therefore, he would contend that to decide the suit, relevant provisions that would apply are only the unamended provisions of the Act. He would further state that the allegations in the plaint have to be tested only at trial and when there is an exemption for purchase of the property by the husband in the name of his wife, then it is not a case for a summary rejection of the plaint. He would also rely on the decision of the Hon'ble Supreme Court in **Pawan Kumar Vs. Babulal, since deceased through LR s and others**, 2019 4 SCC 367, where the Hon'ble Supreme Court in a similar circumstance, where the plaint was sought to be rejected on the ground that it was barred by the provisions of the Benami Transactions (Prohibition) Act, 1988, held that when the plaint makes out a controversy, then suit is saved by Section 4(3) of the Act and disputed questions of fact would have to be adjudicated only on the basis of evidence and plaint was not liable to be rejected under Order VII Rule 11 of CPC. He would therefore pray for the appeal being allowed.

[5] Per contra, Mr.R.Vijayaraghavan, learned counsel for the respondents 1 to 4, who are purchasers of the suit property from the fatherin-law of the plaintiff, would contend that the respondents 1 to 4 are bonafide purchasers for value. The property was admittedly standing in the name of the wife of the appellant and she had settled the property in favour of her father, who in turn had sold the property in favour of these respondents, who have purchased the property for value and therefore, the respondents rightly moved an application for rejection of the plaint, as they should not

be compelled to undergo the agony of trial, when the provisions of the Act clearly prohibit the plaintiff from claiming that the property was purchased benami, in the name of his wife.

[6] Referring to the plaint averments, the learned counsel for the respondents 1 to 4 would submit that it is a clear case where the plaintiff admits that it was a benami transaction and therefore, the provisions of the Act would clearly be applicable to the facts of the case and the relief sought for in the suit cannot be available to the plaintiff. He would also rely on the decision of the Hon'ble Supreme Court in Mithilesh Kumari and another Vs. Prem Behari Khare in Civil Appeal No.2311 of 1978 dated 14.02.1989, where the Hon'ble Supreme Court held that the Act nullifies all defence available to the real owner, in requiring the benami property from the benamidar and the law must apply irrespective of the time of the benami transaction. He would therefore pray for dismissal of the appeal.

[7] I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the order impugned in the appeal.

[8] The only point that arises for consideration is whether the trial Court was right in rejecting the plaint on the ground that it was barred by the provisions of the Act.

[9] It is not in dispute that the plaintiff and the 1 st defendant are husband and wife and that the suit property is standing in the name of the wife. The husband has approached the Court, claiming that the the purchase in the name of his wife, was by way of only benami and that he is the real owner of the property. He challenges subsequent alienations that have been made by the wife in favour of her father and the encumbrances created by his father-in-law in favour of the respondents 1 to 4 herein.

[10] In order appreciate the real question in controversy in this appeal, it would be appropriate for me to extract Section 3 and Section 4 of the Act which read as follows:

"Section 3 of the Act prohibits transaction by providing:

(1) No person shall enter into any benami transaction.

(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 of the unmarried daughter.

(3) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(4) Notwithstanding contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under this section shall be noncognizable and bailable.

Section 4 prohibits the right to recover property held benami by providing:

(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."

[11] No doubt, from a reading of Section 4, it is clear that no suit can be filed or instituted, to enforce any right in respect of a property held benami, against the person in whose name, the property is held. It is relying on this provision that the application for rejection of the plaint has been filed.

[12] However, Section 3 of the Act, as can be seen from the above extract, carves out an exemption under subsection 2 which states that a purchase of property by any person in the name of his wife or unmarried daughter shall be presumed to be for the benefit of the wife or the unmarried daughter as the case may be, **"unless the contrary is proved".** In the decision relied on by Mr.R.Vijayaraghavan, that was a case where the Hon'ble Supreme Court found that Section 3(2) would not apply in the facts of those case and the question was whether the coming into force of the provisions of the Act, pending an appeal, could be enforced against the plaintiff. In such circumstances, the Hon'ble Supreme Court held that appeal was only a re-hearing and therefore, the Appellate Court was entitled to take into account, facts and events that have come into existence, after the passing of the decree appealed against and under such circumstances, the Hon'ble Supreme Court declined to grant relief to the plaintiff who came to Court with a case that the transaction was a benami transaction and he was the real owner.

[13] In Pawan Kumar's case, the Hon'ble Supreme Court held that when the plaint averments were brought under Section 4(3) of the Act, then without parties leading evidence, the plaint cannot be rejected, invoking Order VII Rule 11(d) of CPC.

[14] In fact, though the Hon'ble Supreme Court in Mithilesh Kumari's case, held that the Act would apply prospectively, the Hon'ble Supreme Court subsequently in **R.Rajagopal Reddy Vs. Padmini Chandrasekharan**, 1994 2 SCC 630, held that the provisions of the Act would apply only prospectively and even cases pending on the date of commencement of the Act would remain unaffected by the coming into force of the Act.

[15] The view taken in Mithilesh Kumari's case is no longer good law. In the present case, even from a reading of Section 3(2), which would apply to the facts of the present case, since the plaintiff and the 1 st defendant are husband and wife and the property is claimed to have been purchased by the husband in the name of his wife, the employment of the words **"unless the contrary is proved",** would alone be sufficient

to come to a conclusion that without evidence being let in, the claim of the husband cannot be decided.

[16] The plaintiff has pleaded that he has purchased the property out of his own money and his wife is only a benamidar and that the property was not her benefit. It is contended by Mr.R.Vijayaraghavan that there is absolutely nothing to substantiate in the plaint as to how the consideration was met by the plaintiff and other particulars and there is no purpose in directing the plaintiff to prove the same in the absence of documents, the plaintiff can always substantiate his case during trial and is always oepn to the parties to seek introduction of additional documents also.

[17] Even on an independent reading of the plaint, I find that the suit is not barred by the provisions of the Act. Consequently, Order VII Rule 11(d) of CPC is not attracted to enable the defendants to seek rejection of the plaint. The issues will have to be necessarily decided upon facts to be proved at trial, on the basis of oral and documentary evidence to be adduced. Therefore, when disputed questions of fact are present, then adjudication has to be only on the basis of evidence and plaint cannot be rejected at the threshold by applying Order VII Rule 11 of CPC.

[18] The trial Court has clearly fell in error in not considering the phrase **"unless the contrary is proved"** and the findings arrived by the trial Court that the plaint is liable to be rejected are therefore clearly perverse and improper, warranting interference in appeal. The point is answered in favour of the appellant.

[19] In fine, the Appeal Suit is allowed. The order dated 26.03.2024 in I.A.No.3 of 2019 in O.S.No.6549 of 2019 on the file of the learned V Additional Judge, City Civil Court, Chennai, is set aside. Considering that the suit was originally filed before this Court in C.S.No.578 of 2013, I direct the learned V Additional Judge, City Civil Court, Chennai, to dispose of the suit on merits and in accordance with law, within a period of nine months from the date of receipt of a copy of this order. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed

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2026(1)AIPC86

IN THE HIGH COURT AT CALCUTTA

(Hon'ble Judge Biswaroop Chowdhury)

C O (Civil Order) No 3739 of 2024 **dated 17/11/2025**

Rushiya Bibi & Ors

Versus

Md Roushan Ali Mondal & Ors

EX PARTE RECALL

Code of Civil Procedure, 1908 Or. 8R. 1, Or. 12R. 6, Sec. 151 - Transfer of Property Act, 1882 Sec. 52 - Ex Parte Recall - Plaintiffs challenged order of Trial Court

allowing defendant to file written statement and contest suit after twelve years by setting aside ex parte order - Court observed that though liberal approach should be adopted to ensure fair trial, reasons for delay beyond ninety days must be recorded and plaintiff given opportunity to file objection - Trial Court failed to consider long delay and did not allow plaintiffs to file objection - It was held discretion exercised mechanically without considering delay and conduct - Order set aside and matter remanded for reconsideration giving opportunity to plaintiffs - Application Allowed in Part

Law Point: Extension of time to file written statement beyond statutory limit requires recording of reasons and opportunity to opposite party; discretionary power must be exercised judiciously and not mechanically.

Acts Referred:

Code of Civil Procedure, 1908 Or. 8R. 1, Or. 12R. 6, Sec. 151

Transfer of Property Act, 1882 Sec. 52

Counsel:

Ashim Kr Routh, Manishka Dhar, Ananya Mondal, Subhayam Banik, Partha Sarathi Das, Sormi Dutta

JUDGEMENT

Biswaroop Chowdhury, J.- [1] The petitioners before this Court are the plaintiffs in a suit for preemption and is aggrieved by the Order dated 23-09-2024 passed by Learned Civil Judge Junior Division 1st Court Barasat North 24 Parganas in allowing the petition filed by the opposite party No-1 to allow him to contest the suit by filing written statement and setting aside the order fixing the case for exparte hearing.

[2] On the application filed by the opposite party no-1/Defendant no-1 before the Learned Trial Court for setting aside Order fixing T.S. 431 of 2010 for Exparte hearing against opposite party no-1 by Learned Civil Judge (Junior Division) 1st Court Barasat North 24 Parganas the Learned Judge decide the same by observing as follows:

[3] 'In the light of the above deliberation, it is evident that an opportunity of hearing is a quintessential feature of a fair trial.

[4] The function of a processual law is to facilitate justice and further its ends, and therefore it must be construed liberally and in such manner as to render the enforcement of substantive rights effective. The denial of relief on the score of mistake and negligence is abdominal to the rules of procedure.

[5] The Court should adopt a liberal approach in interpreting civil processual law. It is also limpid that costs may be imposed to provide to cut short the inconvenience caused to the adversary. It goes without saying that cost is the best medicine that cures every problem in litigation.

[6] Thus it can be safe to conclude that in the present case defendant no-1 can get an opportunity to participate in the proceeding, however, by paying a cost of Rs. 10,000 (Ten thousand) as the defendant should not be punished for the act and conduct of his lawyer.

[7] In the light of the above reasoning prayer of the defendant is allowed with the cost of Rs. 10,000/- (Ten thousand). The defendant no-1 is entitled to contest this case and written statement filed by defendant no.1 is accepted subject to the payment of cost of Rs. 10,000/- (Ten thousand) to the plaintiff. The order no. 11 dated 17-11-2011 is modified to the extent that defendant can participate in this suit and ex-parte order is hereby set aside subject to the payment of cost of Rs. 10,000/- (Ten thousand) to the plaintiff.

[8] Fix 11.11.2024 for hearing of petition pertaining to Order 12 Rule 6 read with Section 151 CPC filed by defendants no. 11 to 12 and payment of cost of Rs. 10,000/- (Ten thousand) by defendant no-1 to the plaintiff.'

[9] The petitioners/plaintiffs being aggrieved by the order passed by the Learned Trial Court has come up with this application under Article 227 of the Constitution of India.

[10] The order of the Learned Trial Court is assailed on the ground that the said application dated 29th April 2024 for vacating the interim order was taken up for hearing on 23rd September without serving any copy and granting any opportunity to the petitioners to file their written objection, and that the Learned Trial Court did not consider that the defendant no-1 is trying to contest the suit by setting aside the ex-parte order against him almost after 12 years only to delay the suit, and that the Learned Judge did not consider that the defendant no-1 has already transferred the suit property to the defendant no. 11 and 12 and that the said defendants have agreed to transfer the same in favour of the petitioners upon getting necessary consideration thereof as per the direction of Learned Court below.

[11] Heard Learned Advocate for the petitioners and Learned Advocate for the opposite party no-1. Perused the petition filed and materials on record.

[12] Learned Advocate for the petitioners submits that the relief sought for is primarily against the respondent no. 11 and 12 and no relief was sought against the opposite party no-1 or any other opposite parties but they have been made parties to the said suit being heirs and successors of the said Late Karim Box Mondal. Learned Advocate further submits that the opposite party no-1 was having his knowledge of the aforesaid suit for long 13 years but only when he came to know that on 23rd September 2024 that the said suit would be disposed of he filed application for leave to file written statement by recalling the order fixing the case for ex-parte hearing. Learned Advocate also submits that there would be no change of the situation if the opposite party no-1 is allowed to contest the suit but the suit would be never ending process in view of the fact that in spite of the order of this Hon'ble Court for early

disposal of the said suit it is pending for filing written statement by opposite party no-1.

[13] It is submitted by the Learned Advocate that the opposite party no-1 will be at liberty to argue the suit even without filing his written statement. It is further submitted that recalling ex-parte order of hearing of the suit is devoid of any substance and should not be allowed in any circumstances. It is also submitted that the Learned Court below did not apply his Judicial mind while exercising his discretionary power.

[14] Learned Advocate relies uponthe following Judicial decisions.

Salem Advocate Bar Association VS Union of India, 2005 6 SCC 344

Bal Gopal Maheshwari and others VS Sanjees Kumar Gupta, 2013 8 SCC 719.

ATCOM Technologies Ltd. VS YA Chunawala and Company and ors, 2018 6 SCC 639

[15] Learned Advocate for the opposite party no-1 submits that the application for vacating of ex-parte order filed by the opposite party no-1 was taken up for hearing on 23/09/2024 and upon hearing the Learned Counsels for the parties the Learned Court was pleased to allow the petition of the opposite party no-1 with cost of Rs. 10,000/-. Learned Advocate further submits that during pendency of the suit the plaintiff and defendant/opposite party no-1 arrived at verbal mutual settlement that the defendant/opposite party no.1 will purchase the schedule B. property from the opposite party no11 and 12, and the plaintiff will withdraw the suit against them. In terms of the settlement by and between the plaintiff and defendant/opposite party no-1 the opposite party no-1 approached the opposite party no-11, and 12 for sale of the said property to opposite party no-1. Thereafter agreement was entered into between the opposite party no-1 and opposite party no. 11 and 12 and earnest money was paid. Learned Advocate draws attention to copies of the agreement for sale and documents regarding payment made.

[16] Learned Advocate also submits that after entering into agreement for sale the opposite party no. 11 and 12 in collusion with plaintiff filed application under Order XII Rule 6 of the Code of Civil Procedure.

[17] Before proceeding to decide the material in issue it is necessary to consider the provisions contained in Order VIII Rule 1 of the Code of Civil Procedure.

[18] Order VIII Rule 1 provides as follows:

[19] Written Statement-The defendant shall within thirty days from the date of service of summons on him present a written statement of his defence.

[20] Provided that where the defendant fails to file the written statement within the said period of thirty days he shall be allowed to file the same on such other day as may be specified by the Court for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

[21] Upon perusal of the provision contained in Rule 1 it will appears that the prescribed time for filing written statement is within thirty days from the date of service of summons but the Court has power to extend the time for reasons to be recorded in writing.

[22] Thus it is clear that time may extended by Court by giving its own reasons in the interest of Justice upto ninety days from the date of service of summons. Although the period of ninety days is prescribed under law but it is held in different Judicial decisions that the period is directory and not mandatory. Court if satisfied with reasons furnished by a defendant that he could not for sufficient cause file written statement within ninety days may allow further time to file written statement. Hence beyond ninety days sufficient cause must be shown by Defendant by filing application with service of copy upon the plaintiff.

[23] Further when there is inordinate delay in filing written statement beyond the period of ninety days the plaintiff should be granted opportunity to file a written objection unless he chooses not to file the same.

[24] In the instant case although Learned Trial Judge has based his findings on different Judicial Decisions, but has not considered the issue of delay of twelve years and have not given the opportunity to the petitioner/plaintiffs to file written objection to the petition.

[25] Although it is held in different Judicial decisions that no party should ordinarily be denied the opportunity of participating in the process of justice dispensation but it is also held that time to file written statement should not be extended in a routine manner.

[26] In the instant case the opposite party no-1 has brought some new facts alleged to have taken place during the pendency of suit regarding agreement for transfer of B. schedule property between opposite party no-1 and opposite party no. 11 and 12 and the allegation of collusion between plaintiffs/petitioners and opposite party no-11 and 12, but the same was not submitted before Learned Trial Court.

[27] Although transfer during pendency of suit is governed by doctrine of Lispendens as per Section 52 of the transfer of property Act, but those facts are to be brought before the Learned Trial Court. In the facts and circumstances this Court is of the view that the matter should be remitted to the Learned Trial Court for reconsideration of the application for setting aside order fixing the suit for ex-parte hearing against defendant no-1 upon granting opportunity to the plaintiffs/petitioners to file written objection.

[28] Hence this application under Article 227 of the Constitution stands allowed. Order dated 23rd September 2024 passed by Learned Civil Judge Junior Division 1st Court Barasat at North 24 Parganas in Title Suit no-431 of 2010 is set aside. The matter is remitted back to the Learned Trial Court to reconsider the application filed by opposite party/defendant no-1 for setting aside order dated 17th November 2011 fixing

the case for ex-parte hearing against opposite party no-1, in accordance with law. The opposite party no-1 is permitted to file supplementary affidavit to the application filed by him within one week from the next date fixed before Learned Trial Court. The petitioners/plaintiffs shall file Affidavit of objection within 3 weeks from the date of filing of supplementary affidavit and the Learned Trial Court shall thereafter decide the application as well the suit very expeditiously without granting unnecessary adjournments. Endeavour should be made to dispose the suit within one year.

[29] It is however made clear that in the event the Learned Trial Court is of the view that there is chance of settlement in the suit, the suit may be referred to Mediation for settlement.

[30] Urgent Photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities

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2026(1)AIPC91

PUNJAB AND HARYANA HIGH COURT

(Hon'ble Judge Pankaj Jain)

R S A (Regular Second Appeal) No 1279 of 1991 **dated 12/11/2025**

Maktulo (Deceased) and Others

Versus

Ram Parkash (Deceased) and Another

ADVERSE POSSESSION CLAIM

Administration of Evacuee Property Act, 1950 Sec. 9, Sec. 8 - Adverse Possession Claim - Plaintiffs claimed ownership of land by adverse possession and challenged partition order passed without impleading them - Trial authority decreed suit recognizing continuous possession as hostile - Appellate authority reversed holding that under Sections 8 and 9 of Administration of Evacuee Property Act, possession deemed on behalf of custodian being co-owner - Held that plaintiffs could not claim adverse possession against custodian - Possession of one co-owner deemed possession of all - High Court affirmed that plaintiffs failed to establish adverse possession and upheld dismissal of suit - Counter claim liberty maintained - Appeal Dismissed

Law Point: Where custodian becomes co-owner under Administration of Evacuee Property Act, possession of any occupant is presumed on behalf of custodian and cannot mature into adverse possession - Continuous possession alone does not create ownership without proof of hostile intent against all co-owners.

Acts Referred:

Administration of Evacuee Property Act, 1950 Sec. 9, Sec. 8

Counsel:

Vijay K Jindal (Senior Advocate), Abhishek Shukla, Ashish Aggarwal (Senior Advocate), Anmol Rattan Singh Dhillon, Vishal Pundir, Ashwani K Chopra (Senior Advocate), Harminder Singh, Ridhima Khindria

JUDGEMENT

Pankaj Jain, J.- [1] Plaintiffs are in appeal. For convenience and to avoid confusion, the parties hereinafter are referred to as by their original position before the Court of the First Instance, i.e., the appellants as 'plaintiffs' and the respondents as 'defendants'.

[2] The plaintiffs filed suit seeking decree of declaration to the effect that they are owners in possession of a land measuring 69 Kanals and 17 Marlas as detailed out in the headnote of the plaint and that order of partition dated 24.05.1984 qua suit land is bad, illegal and does not affect the rights of the plaintiffs.

[3] Plaintiffs claim to be in cultivating possession of land measuring 69 Kanals 17 Marlas prior to the year 1941-42 and claim that they have become owners of the said land as their possession has always remained open, adverse and hostile. The defendants went behind their back without their knowledge and sought partition of the suit land. Assistant Collector, 1st Grade, Pathankot vide order dated 24.05.1984 partitioned the land without impleading plaintiffs as party. Plaintiffs still continue to be in actual physical possession of the suit land. The order regarding delivery of symbolic possession of the suit land to the defendants is illegal and not binding upon the rights of the plaintiffs. Plaintiffs cannot be dispossessed from the suit land under the garb of the partition.

[4] Suit was contested by the defendants. Defendants denied that the plaintiffs have become owners of the land in question by way of adverse possession. Defendants claimed that the suit land was a joint-holding of the defendants along with custodian. The defendants have 1/3rd share in the total land. The same was so recognized by the statutory authorities vide order dated 06.04.1953. Prior to order of partition, dated 24.05.1984, the defendants were in possession as co-sharers and after partition they are in possession of their share.

[5] Defendants also preferred counter-claim claiming possession from the plaintiffs. As per counter-claim, the defendants claimed that plaintiffs trespassed over the suit land and the defendants being owners thereof, are entitled to possession. The suit was decreed on 19.05.1986 by Sub Judge, 1st Class, Pathankot. In the appeal preferred by the defendants, the judgment and decree, dated 19.05.1986 passed by the Court of the First Instance were set aside. The matter was remanded back vide order dated 20.05.1988 by the Appellate Court framing additional issues for re-trial.

[6] The suit was again tried on following issues:

1. Whether the plaintiffs are the owners in possession of the suit land being in adverse possession of the suit land for more than 40 years? OPP

2. Whether the plaintiffs are entitled to declaration and consequential relief of permanent injunction prayed for? OPP

2a. Whether the suit is barred by time? OPD

2b. Whether the counter claim filed by the defendants is not maintainable? OPP.

2c. Whether the defendants are entitled to possession of the disputed land on the basis of the counter-claim? OPD.

3. Whether the plaint has been properly valued for the purpose of Court fee and jurisdiction? OPP.

4. Whether the jurisdiction of this Court is barred u/S 158 of the Punjab Land Revenue Act? OPD

5. Whether the suit is not maintainable? OPD

6. Whether the suit is bad for mis-joinder and non-joinder of parties? OPD

and issues as follows framed by the Appellate Court:-

6a. Whether the land in suit formed part of Khewat No.266 of jamabandi for the year 1977-78 measuring 1490 Kanals 4 Marlas entered as Shamlat Deh and the defendants and the Custodian are the co-sharers in that. If so, to what effect? OPD.

6b. Whether the order of partition dated 24.5.84 passed by Assistant Collector Ist Grade, Pathankot is illegal, null and void? OPP.

7. Relief.

[7] While answering Issue No.1, the Trial Court found that as per revenue record, it stands proved that the plaintiffs and their predecessors-ininterest have continued to be in possession of the suit land. Their possession had remained long and continuous without interruption. The Court found that the defendants instituted suit for partition in the year 1963 after getting their rights declared from Custodian (Judicial) in the year 1953. The plaintiffs were arraigned as defendants in earlier suit. In the written statement filed in the earlier suit filed on 03.02.1964 they asserted their title as owners. Vide order dated 25.07.1964, Exhibit P-16, the suit was withdrawn with liberty to file the fresh suit on the same cause of action after impleading custodian as a necessary party. Thus, it stands proved on record that the possession of the plaintiffs is adverse, hostile and continuous at least from the date of filing of the written statement in the earlier suit i.e. from February, 1964. Once, it stands proved that the plaintiffs are in possession of the suit land for last more than 12 years and their possession is adverse,

hostile and continuous, they are entitled to decree of declaration to the effect that they have become owners of the suit land by way of adverse possession.

Issue No.1 was decided in favour of plaintiffs by the Trial Court.

[8] On Issue No.6-A, the Court of the First Instance found that after the pleadings were amended, the plaintiffs relinquished their claim w.r.t. the land allotted to the custodian in the partition proceedings and is now suing in respect of land measuring 69 Kanals 17 Marlas allotted to the defendants. Thus, the non-impleadment of the custodian being co-sharer in the joint Khata shall have no effect on the present suit as the defendants are claiming exclusive claim over the suit land after partition order. The Court of the First Instance accordingly found that the Issue not being germane to the adjudication, has no bearing on the final judgment. The Court accordingly decreed the suit filed by the plaintiffs. The counter-claim preferred by the defendants was dismissed.

[9] Dissatisfied with the judgment and decree passed by the Court of the First Instance, defendants preferred appeal.

[10] The Lower Appellate Court held that the possession of the plaintiffs remained undisturbed and continuous after the year 1941-1942. However, mere continuous possession does not become adverse. By the dint of Section 8 of the Administration of Evacuee Property Act, 1950 (hereinafter referred to as 'the 1950 Act'), custodian assumed co-ownership in the joint land w.e.f. the year 1950. Even if the defendants never remained in possession of the land in dispute, their joint owner i.e., custodian is deemed to be in possession on behalf of all the co-owners. The plaintiffs/respondents cannot claim their possession to be adverse without impleading all the co-owners including custodian, as defendants. In view of Section 8(4) of the 1950 Act, the plaintiffs cannot claim their possession adverse against custodian. The Lower Appellate Court, accordingly, reversed the findings on Issue No.1 holding that the plaintiffs are not entitled to decree of declaration that they are owners in possession of the suit land and dismissed the suit filed by the plaintiffs. Counter-claim preferred by the defendants was also dismissed granting liberty to the defendants to file a separate suit for possession of the suit land against plaintiffs/respondents.

[11] Ld. Senior Counsel appearing for the appellants/plaintiffs has assailed the findings recorded by the Lower Appellate Court. He submits that the finding regarding plaintiffs being in possession of the suit land continuously from the year 1941-1942 as Gair Dakhil Daran is concurrent. Both the Courts below have held the plaintiffs to be in continuous possession of the suit land. In the year 1963, the defendants preferred suit for possession. Copy of the plaint, is Exhibit P-1. In the written statement filed on 03.02.1964, Exhibit P-2, the plaintiffs, in the present suit, specifically claimed that they were in adverse possession of the suit land for more than 12 years and thus have become owners by way of prescription. The present suit has been instituted by the plaintiffs in the year 1984. In the last 20 years, no effort was made by defendants to

disrupt the hostile and continuous possession of plaintiffs. All the ingredients of adverse possession having been satisfied and proven, the Trial Court rightly decreed the suit filed by the plaintiffs which has been wrongly reversed by the Lower Appellate Court.

[12] He submits that the limitation even if taken to run from the date of filing of the written statement i.e., 03.02.1964, the defendants have lost their right to seek possession and thus the judgment & decree passed by the Lower Appellate Court, need to be reversed and the judgment & decree passed by the Trial Court need to be restored. Counsel relies upon ratio of law laid down in **Rameshwar Prasad vs. Municipal Corporation Sagar**, 1992 MPLJ 764 and **Smt. Hussain Begam and others vs. Rafique Khan and others, Second Appeal No.97 of 2000 D/d 14.02.2018**.

[13] Per contra, Ld. Senior Counsels representing the respondents have drawn attention of this Court to the order dated 06.04.1953, Exhibit DW-1/A to submit that the defendants are not allottees of the evacuee property. The land in question is a Shamlat Deh. The same vested in the proprietors of the village. 2/3rd land vested in Muslim proprietors. 1/3rd of Shamlat land vested in the defendants being proprietors. After Muslims migrated on partition to newly carved out country of Pakistan, the land was declared evacuee property. The defendants filed claim before the custodian. The same was accepted vide order dated 06.04.1953. Right of the defendants of being co-owners to the extent of 1/3 share was accepted.

[14] In the year 1963, suit was filed by Ram Parkash for himself and on behalf of defendant No.2, acting as his next friend. The same was withdrawn with liberty to file fresh one with better particulars as custodian was not impleaded as a party to the lis. It has been contended that by virtue of Section 8(4) of 1950 Act, custodian became co-owner in possession of the suit land and continued to be so up to the year 1984 when the order of partition was passed. Till that date, custodian remained co-owner in possession of the suit property. Trite it is that possession of a co-owner is deemed to be possession of all the co-owners. The defendants remained in possession of the part of the suit land.

[15] In the present suit, the plaintiffs initially claimed adverse possession over the entire land. However, later on relinquished their rights against custodian by amending their pleadings on 24.08.1988. Thus, the plaintiffs cannot claim ouster of the defendants prior to the date of order of partition. The Lower Appellate Court thus has rightly reversed the findings recorded by the Trial Court and dismissed the suit filed by the plaintiffs. Reliance is being placed upon ratio of law laid down in the case of **P.R. Nayak vs. Bejen Dadiba Bharucha**, 1951 AIR(Bom) 406, **Budhi Singh vs. Sewa Singh**, 1971 AIR(HP) 29, **Maqsood Alam vs. Mossamat Bibi Husna and another**, 1971 AIR(Pat) 31, **Sayed Salahuddin Ahmad vs. Janki Mahton and others**, 1957 AIR(Pat) 549, **Ram Chander vs. Bhim Singh and others**, 2008 3 RCR(Civ) 685, **Mallikarjunaiah vs. Nanjaiah and others**, 2019 3 RCR(Civ) 12, **Nagabhushanammal (D) by LRs. vs. C. Chandikeswaralingam**, 2016 2

RCR(Civ) 469, **Shri Uttam Chand (D) Through Lrs vs. Nathu Ram (D) Through Lrs. & others**, 2020 11 SCC 263, **Chettan Kaur and others vs. Mohan Dass and others**, 1966 PunLJ 237, M. **Radheshyamlal vs. V. Sandhya and another**, 2024 2 RCR(Civ) 351, Bhartu vs. Ram Sarup,1981 PunLJ 2004, **Ram Chander vs. Bhim Singh and others**, 2008 3 RCR(Civ) 685, **Banta Singh vs. Hakam Singh**, 1994 PunLJ 360, **Gurdeep Singh vs. Rachhpal Singh**, 1993 PunLJ 98, **Karcha Singh alias Gurbaksh Singh vs. Dewan Singh, R.S.A No.1961 of 1985 D/d. 19.02.1985** and **Custodian-General, Evacuee Property, and others vs. Shanti Sarup**, 1961 AIR(P&H) 497.

[16] I have heard counsel for the parties and have carefully gone through records of the case.

[17] The issues that arise for consideration of this Court are:

(i) Whether the custodian being co-owner of the joint land, has bearing on the final result of the present lis?

(ii) Whether the defendants being co-owners with the custodian, are deemed to be in possession of the suit land in the light of Section 8(4) of the 1950 Act? and

(iii) Whether the plaintiffs/appellants can claim ownership by way of adverse possession, claiming that the plaintiffs declared their possession to be adverse by filing written statement in February, 1964 in the earlier suit?

[18] During the course of arguments, this Court specifically asked Mr. Jindal, Senior Advocate regarding any dispute w.r.t. the land being evacuee property. He answered in negative and admitted that the suit land is evacuee property. Land was joint till order of partition dated 24.05.1984. The land in question is a shamlat land. The same vested in the proprietors of the village. Some of the proprietors of the village were Muslims who migrated on partition of the country in the year 1947. The land was declared evacuee property. It has come on record that the defendants preferred Claim No.429 before Assistant Custodian (Judicial), Gurdaspur on 05.07.1950 qua 1/3rd share in the land. The same was accepted vide order dated 06.04.1953 Exhibit DW1/A. In view of the acceptance of the claim of the defendants qua 1/3rd share in the suit land, they became co-owners to the extent of 1/3 share in the joint land along with the custodian.

[19] Sections 8 and 9 of the 1950 Act, read as under:

"**8. Vesting of evacuee property in the Custodians**.-

(1) Any property declared to be evacuee property under section 7 shall be deemed to have vested in the Custodian for the State.--

(a) in the case of the property of an evacuee as defined in sub-clause (i) of clause (d) of section 2, from the date on which he leaves or left any place in a State for any place outside the territories now forming part of India;

(b) in the case of the property of an evacuee as defined in sub-clause (ii) of clause (d) of section 2, from the 15th day of August, 1947; and

(c) in the case of any other property, from the date of the notice given under sub-section (1) of section 7 in respect thereof.

(2) Where immediately before the commencement of this Act, any property in a State had vested as evacuee property in any person exercising that powers of Custodian under any law repealed hereby, the property shall, on the commencement of this Act, be deemed to be evacuee property declared as such within the meaning of this Act and shall be deemed to have vested in the Custodian appointed or deemed to have been appointed for the State under this Act, and shall continue to so vest:

Provided that where at the commencement of this Act there is pending before the High Court the Custodian or any other authority for or in any State any proceeding under section 8 or section 30 of the Administration of Evacuee Property Ordinance, 1949 (XII of 1949), or under any other corresponding law repealed by the Administration of Evacuee Property Ordinance, 1949, (XXVII of 1949), then notwithstanding anything contained in this Act or in any other law for the time being in force, such proceeding shall be disposed of as if the definitions of 'evacuee property' and 'evacuee' contained in section 2 of this Act had become applicable thereto.

(3) Where any property in a State belonging to a joint stock company had vested in any person exercising the powers of a Custodian under any law previously in force, then nothing contained in clause (f) of section 2 shall affect the operation of sub-section (2), but the State Government may, by notification in the Official Gazette, direct that the Custodian shall be divested of any such property in such manner and after such period as may be specified in the notification.

(4) Where after any evacuee property has vested in the Custodian any person is in possession thereof, he shall be deemed to be holding on behalf of the Custodian and shall on demand surrender possession of it to the Custodian or to any other person duly authorised by him in this behalf.

9. Power of Custodian to take possession of evacuee property vested in him.- If any person in possession of any evacuee property refuses or fails on demand to surrender possession thereof to the Custodian may use or cause to be used such force as may be necessary for taking possession of such property

and may, for this purpose, after giving reasonable warning and facility to any woman not appearing in public to withdraw, remove or break open any lock, bolt or any door or do any other act necessary for the said purpose."

(emphasis supplied)

[20] Accordingly, in terms of Section 8(4), since the property vested in custodian, the plaintiffs who were in possession, were deemed to be holding possession thereof on behalf of the custodian. They were liable to surrender possession to the custodian on demand. The land remained joint. Since the possession qua share of the land is deemed to be possession under custodian, the other co-sharers including defendants are deemed to be in possession thereof. Reference can be made to law laid down by Division Bench of this Court in **Sant Ram Nagina Ram v. Daya Ram Nagina Ram**, 1961 AIR(P&H) 528 which stands approved by Full Bench in the case of **Bhartu vs. Ram Sarup**, 1981 PunLJ 204, observing as under:

"4. The inter se rights and liabilities of the co-sharers were settled by a Division Bench of this Court in a very detailed judgment in **Sant Ram Nagina Ram v. Daya Ram Nagina Ram**, 1961 AIR(P&H) 528, and the following propositions, inter alia, were settled:-

(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of joint property by one co-owner, is in the eye of law, possession of all even if all but one are actually out of possession.

(3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies that of the other.

(5) Passage of time does not extinguish the right of the coowner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to any body to disturb the arrangement without the consent of others except by filing a suit for partition."

(emphasis supplied)

[21] The said relationship of co-ownership was snapped only in the year 1984. Till the date of partition, the possession of custodian is deemed to be possession on behalf of all the co-sharers. The plaintiff gave up his claim against the custodian. In view thereof, this Court finds that the answer to question No.1 as culled out in the afore-going para, is answered in affirmative. Thus, the finding recorded by the Court of the First Instance on Issue No.6-A, is unsustainable. It is held that the defendants along with custodian are co-owners of the suit land and they continued to be so till the date of order of partition. It cannot be said that after the plaintiffs gave up their rights against custodian, the issue has been rendered redundant.

[22] The Issue No.2 being fully covered by ratio of law laid down by Full Bench of this Court in **Bhartu's** case (supra), the same is answered in favour of respondents/ defendants.

[23] The plaintiffs have claimed their ownership over the suit land by way of adverse possession. Trite it is that one who claims adverse possession is required to prove that his possession is not only continuous but hostile, exclusive and adverse to the true owner. In order to claim adverse possession under a co-sharer, possessee needs to prove ouster of the other co-owner. Admittedly, custodian always remained in possession of the suit land by virtue of Section 8(4) of 1950 Act. The possession of the custodian is deemed to be possession of all the co-owners including the defendants.

The plaintiffs failed to prove ouster of the defendants. Passage of time does not extinguish right of co-sharers until their ouster is proved. Continuous possession of plaintiffs thus has been rightly held to be not enough to prove their possession to be adverse.

[24] In view of above, this Court finds no reason to interfere in the well reasoned findings recorded by the Lower Appellate Court. Resultantly, finding no merit in the present appeal, the same is ordered to be dismissed.

[25] Pending application, if any, shall also stands disposed off

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2026(1)AIPC99

IN THE HIGH COURT OF KERALA AT ERNAKULAM

(Hon'ble Judge Sathish Ninan; P Krishna Kumar)

Regular First Appeal No 11 of 2017 **dated 07/11/2025**

Venugopal K Veloth S/o Leela

Versus

Mahilamani D/o Parvathi; Rohin Kumar S/o Mohilamani; Rajaram S/o Mahilamani; Sajithkumar Pandaredoutil Sandeep S/o Sreedharan Pandaredothil; Damayanthi W/o Balakrishnan; Praseej Kumar S/o Balakrishnan; Praseena D/o Balaa

PARTITION OF PROPERTY

Partition of Property - First defendant challenged preliminary decree for partition claiming exclusive ownership based on series of documents starting from ancestral will and alleged Melpattam right - Evidence showed Melpattam conveyed only usufructuary right and not interest in land - Subsequent documents conveyed no valid title defeating co-ownership - Permission to build house and sink well did not create ownership interest - Property being Tarwad property remained partible among co-sharers - Lower court decree for partition found valid and confirmed - Appeal Dismissed

Law Point: Melpattam confers only right to take usufructs and not proprietary interest; Tarwad property remains partible unless exclusive right lawfully proved

Counsel:

Mahesh V Ramakrishnan, B Krishnan, R Parthasarathy

JUDGEMENT

Sathish Ninan, J.- [1] The preliminary decree in a suit for partition is under challenge by the first defendant.

[2] The plaint schedule consists of two items of properties. With regard to the partibility and shares of plaint item No.2 there is no dispute. In this appeal we are concerned only with the plaint item No.1 (hereinafter referred to as "the property").

[3] The property originally belonged to one Kadungon, the predecessor-in-interest of the parties under Ext.B1 Partition Deed of the year 1911. Thereafter on 30.08.2011 he executed Ext.A2 Will, bequeathing the property to his wife-Narayani, children and grand children. The plaintiffs seek for partition and separate possession of their 5/6 shares out of the property.

[4] Defendants 1 to 3 contended that the property is not partible. It was contended that Narayani, the wife of Kadungon had given the property on 'melpattam' to her son-in-law, Anandan (husband of her daughter Lakshmi), and while so enjoying, she executed Ext.B3 document dated 25.04.1938, conferring on him the right to sink a well and construct a house in a portion of the property. Later, on 23.01.1943, Anandan conveyed the entire property to his wife Lakshmi under Ext.B4 Sale Deed dated 23.01.1943. Under Ext.B5 Sale Deed dated 06.05.1972, Lakshmi conveyed the property to the first defendant. Thus the first defendant claims exclusive right over the property.

[5] The trial court negatived the claim of exclusive right by the first defendant, and passed a preliminary decree for partition.

[6] We have heard Sri.Mahesh V. Ramakrishnan, the learned counsel for the appellant and Sri.B.Krishnan, the learned counsel for the contesting respondents.

[7] The points that arise for consideration in this appeal are:-

(i) Has the first defendant obtained exclusive right over the property?

(ii) Is the property partible?

(iii) Does the decree and judgment of the trial court warrant any interference?

[8] It is not in dispute that if the exclusive right claimed by the first defendant is not proved, the property is liable to be partitioned among the parties. It is also not in dispute that the property is a Tarwad/Tavazhi property. The claim for exclusive right of the first respondent is founded on the following:-

(i) A 'melpattam' right over the property granted by Narayani to her son-in-law Anandan (husband of her daughter Lakshmi).

(ii) Ext.B3 document permitting Anandan to sink a well and construct a house in a portion of the property.

(iii) Ext.B4 conveyance of the property by Anandan to his wife Lakshmi tracing right to Melpattam and Ext.B3.

(iv) Ext.B5 conveyance of the property by Lakshmi to the first defendant.

We proceed to analyse each of the above transactions.

[9] Firstly coming to the Melpattam right of Anandan, the grant of such right earlier is acknowledged in Ext.B3 document. 'Melpattam' is only a right to take usufructs from the trees in the property. It does not create interest over the land. In **Krishnan Nair & anr. v. Abdu**, 1965 AIR(Ker) 39(F.B), this Court held,

> "A melpattom (literally, a lease of what is above the surface) is a lease of trees with no interest in the land, ordinarily enuring for one year- see Sundara Iyer's, Malabar and Aliyasanthana Law, pages 290 and 453 and C. Ramachandra Aiyar's, A Manual of Malabar Law, page 42."
>
> The right conferred under a 'melpattam' is only the right to take usufructs from the trees. Though the learned counsel for the appellant would contend that possession was granted thereunder, the term 'possession' has to be understood in the context and the purpose for which the arrangement was made. As noted above, it is limited for the purpose of taking usufructs from the trees. There is no creation of interest over the land. The possession under the arrangement is only for the purpose of taking usufructs from the trees. This is affirmed by the recitals in Ext.B4 wherein, while tracing the rights, referring to the marupattam it is stated, **[1]** meaning the right to take the crops/income from the property.

[10] Under the Madras Marumakkathayam Act to grant a lease for more than twelve years or of a lease having fixity of tenure, the written consent of majority of the major members of the Tarawad was necessary [See: **V. P. Anandavally Amma v. V. P. Premalatha Kurup & anr.**, 1991 1 KerLJ 790)]. Admittedly there was no such consent. The grant was not for a limited period. Therefore, there could not be a valid lease. At any rate, the arrangement being only in the nature of a right to take usufructs, such issues do not arise. We only need to notice that the melpattam arrangement could

not negate the rights of the other members of the family and that it did not create any interest over the land.

[11] Coming to Ext.B3, thereunder, all that is given is a permission to construct a house and to sink a well in a portion of the property. The permission granted is on a specific condition to surrender the property on receiving the value of such improvements. Therefore, Ext.B3 also did not create any interest in the property defeating the rights of the other co- owners.

[12] Under Ext.B4, all that Anandan conveyed and could convey is only the Melpattam rights and the right obtained under Ext.B3. The conveyance thereunder is in favour of his wife, who is a cosharer.

[13] Under Ext.B5 Sale Deed Lakshmi has purported to convey her share in the property to the first defendant. When admittedly the property is a Tarawad/thavazhi property, an undivided member could not alienate her purported share in the property[See: **Ammalu Amma v. Lakshmi Amma & ors.**, 1966 KerLT 32]. Hence Ext.B5 is of no consequence.

[14] From the above it can be seen that the first defendant could not raise any claim except that he is in possession of the property under the Melpattam and the permissive right granted under Ext.B3. As noticed by us supra, both rights do not operate against the rights of the other co-owners. The first defendant who is a co-sharer is in possession. There is no plea of adverse possession and ouster. Even such a plea could not be maintained in the light of the categoric admission by Lakshmi in Ext.B5 Sale Deed that she has only a co-ownership property. That itself implies the acknowledgment of the title of the other co-owners in respect of the property. In fact, in Ext.B5 the rights of the other co-sharers are specifically acknowledged. Hence even a plea of adverse possession could not be maintained.

[15] The property is liable to be partitioned between the sharers. The decree and judgment of the trial court warrant no interference.

We find no merit in the appeal. Appeal fails and is dismissed

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2026(1)AIPC102

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge Sharmila U Deshmukh)

Second Appeal No 289 of 2020 **dated 06/11/2025**

Rohit Ramesh Palve; Rekha Ramesh Palve

Versus

Tula Shankar Palave; Punjabai Sadu Tapase; Laxmibai Dhanaji Palave,; Ranjendra Dhanaji Palave; Shobhabai Balu Pawar; Sunita Dhanaji Palave; Manisha Dhanaji Palave; Kisan Waman Borade; Shantaram Deoram @ Jayaram Navale;;

PROPERTY PARTITION

Property Partition - Plaintiffs filed suit for partition claiming ancestral property - Defendants alienated part of property under Agreement for Sale - Plaintiffs settled matter with some Defendants and did not press relief for that part - No specific relief was sought regarding remaining alienation - Trial Court observed alienation justified for legal necessity including marriage of daughters - Agreement not challenged by co-parcener during lifetime - First Appellate Court affirmed that without relief in plaint, alienation could not be questioned - Evidence showed alienation done by family Karta and no challenge from others - Held alienation binding - Appeal dismissed as no substantial question of law arose - Second Appeal Dismissed

Law Point: Relief for setting aside sale transaction must be specifically pleaded in plaint - Mere assertion of partition without assailing alienation cannot invalidate legally justified sale by Karta

Counsel:

Nikhil M Pujari, Amey Deshpande, Niyati Sontakke

JUDGEMENT

Sharmila U. Deshmukh, J.- [1] The Second Appeal has been preferred by the Plaintiff against the concurrent findings rendered in Regular Civil Appeal No. 97 of 2013 by the first Appellate Court on 15th April, 2019 arising out of judgment and decree dated 8th March, 2013 passed in Regular Civil Suit No. 227 of 1996 by the Joint Civil Judge, Junior Division, Nashik.

[2] Briefly stated the facts of the case are that Plaintiff had filed a suit for partition in respect of property described in paragraph nos. 1A to 1D. The suit property is claimed to be an ancestral property and originally owned by one Shankar. The Plaintiff No. 1 is the son of Ramesh, who is the grandson of Shankar and Plaintiff No. 2 is wife of Ramesh. It is pleaded that Defendant Nos. 1 to 10 who were the other legal heirs sold the suit property described in clause 1(c) of the Plaint to Defendant Nos. 11 and 12 and in respect of properties at Clause 1A, B and D, an Agreement to Sale came to be executed on 25th March, 1990 in favor of Defendant Nos. 13 and 14. During the pendency of the proceedings, the suit came to be settled by the Plaintiffs with Defendant Nos. 11 and 12 and hence, no relief was claimed in respect of the property described in clause 1(c) of the Plaint.

[3] The Trial Court by judgment dated 8th March, 2013 appreciated the evidence on record. It held that Defendant Nos. 13 and 14 had pleaded that properties were alienated for well-being of joint family. It noted that Ramesh was alive during execution of Agreement for Sale and had not challenged the agreement. The Trial Court noted that during cross-examination, there is no denial obtained from Defendant No. 13 regarding evidence i.e. the alienation was for legal necessity for the marriage of daughters of family. The Trial Court has observed that it is not suggested there was no

need for the family to sell the property. The Trial Court dismissed the suit by observing that though the Plaintiffs had prayed for declaration against one of the Sale Deed executed in favor of Defendant Nos. 11 and 12, however, has not claimed any relief against the Sale Deed executed in favor of Defendant Nos. 13 and 14.

[4] The Appellate Court has confirmed the findings of the Trial Court and has held that in the absence of any relief being sought by the Plaintiffs in respect of the properties mentioned in clause 1A, B and D0 sold to Defendant Nos. 13 and 14, the Court cannot pass any order on the basis of averments.

[5] Learned counsel appearing for Appellants-original Plaintiffs0 would submit that properties were alienated by Defendant Nos. 1 to 10 in favour of Defendant Nos. 13 and 14 under an Agreement for Sale which did not contain the signature of the deceased Ramesh. He submits that the suit has been filed seeking partition of property and as the Plaintiffs have share in the property, despite alienation, the same ought to have been allowed. Upon query by this Court as to whether any relief has been sought in respect of alienation in favor of Defendant Nos. 13 and 14, learned counsel appearing for Appellant would fairly concede that declaration was sought against the Sale Deed executed in favor of Defendant Nos. 11 and 12, however, no relief has been sought against the Sale Deed executed in favor of Defendant Nos. 13 and 14.

[6] I have considered the submissions and perused the judgment of the Trial Court and the First Appellate Court.

[7] During the pendency of the proceedings, the dispute was settled with Defendant Nos. 11 and 12 and hence, no relief was pressed as against Defendant Nos. 11 and 12. The Plaintiff had prayed for declaration against the Sale Deed executed in favor of Defendant Nos. 11 and 12, but failed to seek any relief qua the alienation in favor of Defendant Nos. 13 and 14. It was necessary for the Plaintiff to seek the specific relief that the alienation in favor of Defendant Nos. 13 and 14 does not bind the share of the present Plaintiffs. In the absence of any such relief being prayed in the Plaint, the Trial Court and the First Appellate Court has rightly rendered concurrent findings that in the absence of any relief sought in respect of alienation in favor of Defendant Nos. 13 and 14, the suit is liable to be dismissed. That apart, even on merits based on the evidence, which has come on record, the Trial Court as well as the first Appellate Court has come to a finding that the alienation in favor of Defendant Nos. 13 and 14 was for the purpose of legal necessity. It is not denied that Defendant No. 1 was Karta of the joint hindu family and the Agreements for Sale as well as Sale Deed was executed by him. During his life time, Ramesh did not object to the alienations. It is not demonstrated from evidence on record that the sale was not for legal necessity. The alienation would therefore bind the Plaintiffs. There was no perversity which is demonstrated in appreciation of evidence by the Trial Court and Appellate Court.

[8] In light of the above, no substantial question of law arises for consideration. The Second Appeal stands dismissed.

[9] In view of above, nothing survives for consideration in pending Applications, if any, and the same stand disposed of

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2026(1)AIPC105

IN THE HIGH COURT OF KARNATAKA

(Hon'ble Judge Anu Sivaraman; Vijaykumar A Patil)

Commercial Appeal No 359 of 2024 **dated 03/11/2025**

M/s Saha Developers and Promoters

Versus

Parmila M W/o Late T Shivanna; Anusha S D/o Late T Shivanna; Basavaraju S/o Late Rangaiah

SPECIFIC PERFORMANCE

Code of Civil Procedure, 1908 Or. 39R. 2, Or. 39R. 1 - Registration Act, 1908 Sec. 49 - Commercial Courts Act, 2015 Sec. 13 - Specific Performance - Appeal filed challenging refusal of temporary injunction under Code of Civil Procedure - Appellant sought to restrain respondent from alienating property based on unregistered agreement of sale - Trial authority held respondent to be bona fide purchaser under registered deed and denied injunction - Appellant contended unregistered agreement could be admitted as evidence under Registration Act and non-grant of relief would cause hardship - Respondent maintained ownership and possession derived from registered sale deed and objected to interference - Material revealed appellant delayed enforcing rights and failed to establish prima facie case - Authority concluded possession and title of respondent flowed from registered deed and apprehension of alienation not substantiated - No interference required with order of rejection - Appeal Dismissed

Law Point: An unregistered agreement of sale can be relied upon for collateral purposes but cannot override ownership under a registered sale deed-For grant of temporary injunction, applicant must show prima facie case, balance of convenience, and irreparable loss-Mere existence of unregistered agreement does not create right to restrain a bona fide purchaser.

Acts Referred:

Code of Civil Procedure, 1908 Or. 39R. 2, Or. 39R. 1

Registration Act, 1908 Sec. 49

Commercial Courts Act, 2015 Sec. 13

Counsel:

K R Lingaraju, J M Anil Kumar

JUDGEMENT

Vijaykumar A. Patil, J.- [1] This commercial appeal is filed under Section 13(1A) of the Commercial Courts Act, 2015, challenging the order dated 29.07.2024 passed on I.A.No.II filed by the appellant-plaintiff under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908, (for short, 'CPC') in Com.O.S.No.245/2023 by the Principal District and Sessions Judge, Mysuru (for short **'the Trial Court'**).

[2] The brief facts leading to the filing of this appeal are:

The appellant filed a suit in Com.O.S.No.245/2023 seeking relief of specific performance of the agreement of sale dated 26.02.2020 in favour of the appellant. In the said suit, the appellant filed an application in I.A.No.II under Order XXXIX Rule 1 and 2 of the CPC seeking interim relief of injunction against the respondent No.3 and seeking to restrain the respondent No.3 from alienating the suit schedule property in any manner until the disposal of the suit. The Trial Court after considering the submissions advanced on both sides, dismissed I.A.No.II mainly on the ground that the respondent No.3 is a bona fide purchaser and any injunction restraining him from alienating the suit schedule property would amount to interference in the right of enjoyment of the property of the respondent No.3. Being aggrieved, this appeal is filed.

[3] Sri.K.R.Lingaraju, learned counsel appearing for the appellant/petitioner submits that the Trial Court has committed a grave error in appreciating the law and the facts of the case. It is submitted that the Trial Court has erroneously considered the respondent No.3 as a bona fide purchaser and dismissed I.A.No.II. The question with regard to respondent No.3 is a bona fide purchaser or purchaser pendente lite is required to be considered in a full-fledged trial. It is further submitted that the Trial Court has erred in stating that the agreement of sale is an unregistered document and does not have much credence in law, as according to Section 49 of the Registration Act, 1908, even an unregistered document can be admitted as evidence and used to corroborate a collateral transaction as such as in a suit for specific performance. It is also submitted that if the relief sought in the application is not granted, it would cause irreparable injury and hardship to the appellant and if the appellant succeeds in the suit and meantime the respondent No.3 further alienates the property, it would lead to multiplicity of proceedings. Hence, he seeks to allow the appeal by granting the relief sought in I.A.No.II filed before the trial Court.

[4] Per contra, Sri. J.M.Anil Kumar, learned counsel appearing for respondent No.3 supports the impugned order of the Trial Court and submits that the respondent No.3 is defendant No.3 in the suit who has purchased the property under the registered sale deed dated 13.06.2023 by paying considerations to respondent Nos.1 and 2 / defendant Nos.1 and 2. It is submitted that the respondent No.3 is in possession and enjoyment of the suit schedule property from the date of purchase and him being the

bona fide purchaser, cannot be denied right to enjoy the property at the instance of the appellant - agreement holder. Hence, he seeks to dismiss the appeal.

[5] We have heard the learned counsel appearing for the appellant, learned counsel appearing for respondent No.3 and meticulously perused the material available on record. We have given our anxious consideration to the submissions advanced on both sides. The point that arises for consideration in this appeal is:

"Whether the impugned order dated 29.07.2024 passed by the Trial Court on I.A.No.II needs any interference?"

[6] The above point is answered in the negative for the following reasons.

[7] The material placed on record discloses that respondent No.1 executed an unregistered agreement of sale dated 26.02.2020 in favour of the appellant in respect of the suit schedule property, for a total sale consideration of Rs.28,50,000/-. It is the appellant's case that, in pursuance of the said agreement, respondent No.1 received a sum of Rs.5,00,000/- as advance sale consideration by cheque and that further payments were made on 03.10.2020 and 09.12.2021, thereby aggregating to Rs.19,00,000/-. The appellant claims to have always been ready and willing to pay the balance sale consideration and had called upon respondents Nos.1 and 2 to execute a regular sale deed. However, despite such readiness, respondents Nos.1 and 2 failed to execute the sale deed and, suppressing the existence of the earlier unregistered agreement, proceeded to execute a registered sale deed dated 13.06.2023 in favour of respondent No.3.

[8] With these assertions, the appellant instituted the suit and sought an order of temporary injunction restraining respondent No.3 from further alienating or encumbering the suit schedule property during the pendency of the proceedings. During the course of arguments, it was urged on behalf of respondent No.3 that he is a bona fide purchaser for valuable consideration, having purchased the property under a duly registered sale deed with the intention to develop the property. Taking note of these submissions, we are of the view that the apprehension expressed by the appellant regarding the likelihood of further alienation at this stage does not appear to be well-founded.

[9] It is not in dispute that the appellant places reliance upon an unregistered agreement of sale dated 26.02.2020, whereas respondent No.3's title emanates from a registered sale deed dated 13.06.2023, which, prima facie, confers legal ownership and possession. The transaction in favour of respondent No.3 took place more than three years after the alleged unregistered agreement with the appellant. The record, however, is silent as to any concrete steps taken by the appellant during the intervening period to enforce or assert his rights under the said agreement. The delay and inaction on the part of the appellant are relevant factors that draw into question the bona fides and urgency of his claim. These competing contentions and the authenticity of the

agreement of sale dated 26.02.2020 are matters that necessitate detailed consideration and evidence at trial.

[10] The Trial Court, upon a careful appreciation of the pleadings and material, recorded a finding that the appellant failed to establish a prima facie case warranting injunction. Respondent No.3, being the holder of a registered title and presently in possession, prima facie enjoys a superior legal right over the appellant at this interlocutory stage. Consequently, the balance of convenience tilts in favour of respondent No.3, as any restraint order would prejudice his rights arising from a registered conveyance. As regards the element of irreparable injury, it is well-settled that when adequate legal remedies or monetary compensation are available in the event the appellant ultimately succeeds in the suit, an injunction should not ordinarily be granted. The Trial Court has, therefore, exercised its discretion judiciously in refusing interim relief under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. We find no infirmity, illegality, or perversity in the said conclusion warranting interference at this stage. It is made clear that the foregoing observations are confined solely to the present adjudication. No opinion has been expressed on the merits of the issues pending determination in the suit.

[11] For the aforementioned reasons, we do not find any merit in this appeal, accordingly, the same is **dismissed.**

No orders as to costs

2026(1)AIPC108

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

(Hon'ble Judge Maulik J Shelat)

Special Civil Application No. 13143 of 2024 **dated 25/09/2025**

Riyaz Mahmad Hussain Merchant

Versus

Bhavnaben Rasiklal Vaniya & Ors

COUNTERCLAIM PROPERTY

Code of Civil Procedure, 1908 Or. 7R. 10, Or. 8R. 6A - Counterclaim Property - Plaintiff sought injunction over specific land - Defendants filed counterclaim over different property alleging encroachment - Plaintiff moved to reject counterclaim as unrelated - Trial Court dismissed plea - Plaintiff argued counterclaim must relate to suit land - Court held counterclaim over different property valid if part of same transaction or issue - Cited Supreme Court decision allowing such counterclaims - Rejected plea to return counterclaim - Application Dismissed

Law Point: Counterclaim involving different property permissible if allegations form part of same transaction and relief sought is against plaintiff

Acts Referred:

Code of Civil Procedure, 1908 Or. 7R. 10, Or. 8R. 6A

Counsel:

Adil R Mirza, Nirav C Thakkar

JUDGEMENT

Maulik J.Shelat, J.- [1] Rule returnable forthwith. Learned advocate Mr.S.C.Sharma waives service of notice of Rule on behalf of respondent Nos.1, and 3 to 5 and 7. Though served, none appears for the respondent nos.2 and 6. With the consent of learned advocates of the respective parties, the matter is taken up for hearing.

[2] Heard learned advocate Mr.Adil R. Mirza for the applicant and learned advocate Mr.S.C.Sharma for learned advocate Mr.Nirav C. Thakkar appearing for the respondent Nos.1, 3 to 5 and 7.

[3] The present writ application is filed under Article 227 of the Constitution of India seeking the following relief:-

"(A) Your Lordships may be pleased to admit and allow this petition;

(B) Your Lordships may be pleased to issue appropriate writ, order or direction, quashing and setting aside the order dated 17.05.2024 passed by Ld. Additional Civil Judge, Umargam on an application Exh.21 in Regular Civil Suit No. 05 of 2022 which is annexed at Annexure-D;

(C) Pending hearing, admission and final disposal of this petition, Your Lordship may be pleased to stay implementation, execution and the operation of the order dated 17.05.2024 passed by Ld. Additional Civil Judge, Umargam on an application Exh.21 which is annexed at Annexure-D;

(D) Your Lordships may be pleased to grant such other and further relief/s that may be deemed fit and proper in the interest of justice."

THE BRIEF FACTS OF THE CASE.

[4] The petitioner herein is the original plaintiff, whereas the respondents are the defendants of Regular Civil Suit No.5 of 2022 pending before the Principal Senior Civil Judge, Umargam.

4.1. The suit is filed seeking injunction in relation to suit property situated at Survey No. 4042 at Village Khattaltvada, Taluka Umargam District Valsad, whereas defendant Nos.1 and

4 have filed the written statement cum - counter claim below Exh.12 contending inter alia that plaintiff has encroached upon the property belonged to defendants at Survey No. 4301 situated at Village Khattaltvada, Taluka Umargam District Valsad.

4.2. It appears that pending the suit/counter claim, the impugned application came to be filed by the plaintiff below Exh.21 requesting the Trial Court to return the

counter claim under Order VII Rule 10 of the Civil Procedure Code, 1908 (hereinafter referred to as "CPC") as according to the plaintiff, it would not be maintainable in law inasmuch as it pertains to the property other than the suit property.

4.3. After hearing the parties, the Trial Court vide its impugned order dated 17.05.2024 rejected the impugned application, hence, the present application.

SUBMISSION OF THE PETITIONER - PLAINTIFF

[5] Learned advocate Mr.Mirza would submit that plaintiff having filed the suit seeking only injunction in relation to suit property i.e., survey no.4042 situated at Village Khattaltvada, whereas counter claim filed for completely different property alleged to have been owned by defendants at Survey No.4301 at Village Khattaltvada. So, according to learned advocate Mr.Mirza, any counter claim seeking any relief as regards oth the property other than the suit property could not be maintainable.

5.1. Learned advocate Mr.Mirza would submit that any counter claim seeking relief by defendants not touching the suit property would not be maintainable and the Trial Court has committed a serious error of law while rejecting impugned application.

5.2. In support of his submission, learned advocate Mr.Mirza would rely upon the decision of **Satyender And Ors Versus Saroj And Ors**, 2022 17 SCC 154 .

5.3. Making the above submissions, learned advocate Mr.Mirza would request to allow the present writ application.

SUBMISSION OF THE RESPONDENTS

[6] Per contract, learned advocate Mr. Sharma, appearing for the respondents, would submit that the issue germane to the matter would be squarely covered by the decision of the Hon'ble Supreme Court in the case of **Jag Mohan Chawla v. Dera Radha Swami Satsang**, 1996 4 SCC 699 , which is in fact referred to in the cited decision by learned advocate Mr. Mirza. It is submitted that by way of counterclaim, the defendants have specifically pleaded that plaintiffs have encroached upon their property, albeit, other than suit property but that would not deprive defendants of their right to file any counterclaim, inasmuch as it is permissible under Order VIII Rule 6A of the CPC.

6.1. Learned advocate Mr. Sharma would further submit that when there is a specific allegation made by the defendants in the counterclaim that the plaintiff has encroached upon their piece of land and sought relief by way of counterclaim, it is maintainable in law.

6.2. Lastly, learned advocate Mr. Sharma would submit that when there is no error, much less any gross error of law, committed by the trial court, this Court should not exercise its power under Article 227 of the Constitution of India.

6.3. Making the above submissions, learned advocate Mr. Sharma would urge this Court to dismiss the present application.

[7] No other further submissions are made.

ANALYSIS

[8] The facts, which are observed hereinabove, are not in dispute. It is not in dispute that the suit property and the property that is mentioned in the counterclaim are both different properties. Nonetheless, the fact remains that there is a specific allegation made by defendants in their counterclaim that the plaintiff has encroached upon their piece of land, so mentioned in the counterclaim, and sought relief accordingly against the plaintiffs.

[9] In this background of facts, when the counterclaim was filed, the impugned application filed by the plaintiff under Order VII Rule 10 of the CPC for return of the plaint would not be sustainable in law.

[10] The issue germane in the present application is squarely covered by the decision of the Supreme Court in the case of **Jag Mohan Chawla (supra)** , wherein in an identical situation, before the Hon'ble Supreme Court, the Hon'ble Supreme Court has observed and held thus:-

"5.The question, therefore is: whether in a suit for injunction, counter-claim for injunction in respect of the same or a different property is maintainable? Whether counter-claim can be made on different cause of action?................................ The words "any right or claim in respect of a cause of action accruing with the defendant" would show that the cause of action from which the counter-claim arises need not necessarily arise from or have any nexus with the cause of action of the plaintiff that occasioned to lay the suit. The only limitation is that the cause of action should arise before the time fixed for filing the written statement expires. The defendant may set up a cause of action which has accrued to him even after the institution of the suit. The counter-claim expressly is treated as a cross-suit with all the indicia of pleadings as a plaint including the duty to aver his cause of action and also payment of the requisite court fee thereon. Instead of relegating the defendant to an independent suit, to avert multiplicity of the proceeding and needless protection (sic protraction), the legislature intended to try both the suit and the counter-claim in the same suit as suit and cross-suit and have them disposed of in the same trial. In other words, a defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him even though it is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file a separate suit. Acceptance of the contention of the appellant tends to defeat the purpose of amendment............................. Even otherwise, it being an independent cause of action, though the identity of the property may be different, there arises no illegality warranting dismissal of counter-claim. Nonetheless, in the same suit, both the claim in the suit and the counter-claim could be tried and decided and disposed of in the same suit."

(emphasis supplied)

[11] The decision so cited by learned advocate Mr. Mirza in support of his argument, wherein in the case of **Satyender** (supra), the Supreme Court has also taken note of the decision of the Hon'ble Supreme Court in the case of **Jag Mohan Chawla (supra)**, and observed as under:-

"16...........It is true that a counter claim can be made by the defendant, even on a separate or independent cause of action (**Jag Mohan Chawla & Anr. v. Dera Radha Swami Satsang & Ors.**, 1996 4 SCC 699)." (emphasis supplied)

[12] So, the aforesaid decision would not be helpful and assist the case of the plaintiffs as it would not apply to the facts of the present case.

[13] Thus, in view of the aforesaid undisputed facts germane from the record of the case and also applying the ratio of the footnoted decision, there is no scintilla of doubt that the counterclaim filed by the defendants would be maintainable in law. As such, I do not find any merits in the present application, inasmuch as there is no error, much less any gross error of law or any jurisdictional error committed by the trial court, which requires interference while exercising its power under Article 227 of the Constitution of India.

CONCLUSION

[14] In view of the above, the present application is required to be rejected, which is hereby REJECTED. The order dated 17.05.2024 passed by Additional Civil Judge, Umargam below Exh.21 in Regular Civil Suit No.05 of 2022 is hereby confirmed. Rule discharged. No order as to costs

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2026(1)AIPC112

PUNJAB AND HARYANA HIGH COURT

(Hon'ble Judge Harkesh Manuja)

R S A (Regular Second Appeal) No. 899 of 1989 **dated 10/09/2025**

Ram Murti (Since Deceased)

Versus

Shiv Kumar

BENAMI PROPERTY

Code of Civil Procedure, 1908 Sec. 10 - Benami Property - Appeal filed by legal representatives of deceased plaintiff challenging appellate court order dismissing suit for declaration of ownership - Plaintiff claimed purchase of land though part registered in uncle's name was benami and he was real owner - Trial court decreed suit but first appellate court reversed findings - Evidence showed entire sale consideration paid by plaintiff and possession remained with him - Vendor also supported plaintiff's version - Original sale deed always remained in plaintiff's custody - Close relationship

between parties and motive established benami transaction - Authority held findings of first appellate court erroneous and restored trial court decree declaring plaintiff owner to extent of one-third share - Appeal Allowed

Law Point: Where evidence shows entire sale consideration paid by one party, possession with him and title deed in his custody, transaction stands proved as benami despite registration in another's name.

Acts Referred:

Code of Civil Procedure, 1908 Sec. 10

Counsel:

Dilraj Singh Brar, H K Brinda, R L Sharma

JUDGEMENT

Harkesh Manuja, J.- [1] The legal representatives of the plaintiff-Ram Murti are in Regular Second Appeal.

[2] By way of present appeal, challenge has been laid to the judgment and decree dated 01.12.1988 passed by the Court of Additional District Judge, Patiala (**hereinafter to be referred as "First Appellate Court"**), whereby an appeal preferred against the judgment and decree dated 17.08.1988 passed by the Court of Sub Judge First Class, Rajpura (**hereinafter to be referred as "trial Court"**), decreeing the suit for declaration as well as permanent injunction, filed at the instance of appellant-plaintiff, was allowed, resultantly dismissing the suit filed at the instance of appellant-plaintiff.

[3] Briefly stating, the appellant-plaintiff/Ram Murti (since deceased), who happened to be the nephew of respondent-defendant, filed a suit for declaration claiming himself to be owner in possession of 1/3rd share of 06 biswas of land falling in Khewat Khatoni No. 37/142 Khasra No. 1166 / 1040 / 285 (2-17), situated in the revenue limits of Village Barahman Majra, Tehsil Fatehgarh Sahib (now district). It was pleaded that the above mentioned 06 biswas land was purchased vide registered sale deed dated 16.03.1959 from Amir Chand against sale consideration of Rs. 1000/- with 2/3rd share recorded in the name of the father of appellant, whereas 1/3rd share was registered in the name of respondent-defendant, though the entre sale consideration was paid by the plaintiff from his own pocket. It was further pleaded that the father of appellant-plaintiff raised construction of residential house over the property in question about 24-25 years back and the respondent-defendant despite been aware of the same never raised any objection being fully conversant with the fact that he was only a Benamindar and in fact, the appellant-plaintiff was the real owner. In the alternate, it was further pleaded that the father of appellant had raised residential house 24-25 years back; with complete knowledge and notice of this fact to the respondent-defendant, the appellant-plaintiff even acquired ownership by way of adverse

possession. Finally, it was pleaded that the respondentdefendant been intending to dispossess the appellant-plaintiff from the suit property in question, the suit was filed.

[4] Upon notice, the respondent-defendant appeared and filed written statement having admitted the relationship between the parties. Further, it was admitted that the land was purchased vide registered sale deed dated 16.03.1969 against sale consideration of Rs. 1000/- in the name of respondent-defendant as well his brother, namely, Jai Ram Dass, who happened to the father of appellant-plaintiff; in the ratio of 1/3rd and 2/3rd share respectively. It was further pleaded that the respondent-defendant was in possession of his 1/3rd share measuring 2 biswas and the remaining 4 biswas remained in possession of his brother Jai Ram Dass. The factum of sale deed dated 16.03.1969 being a benami transaction was specifically denied. Further, it was also pleaded that the suit filed at the instance of appellant-plaintiff was not maintainable as an earlier suit filed at his instance was withdrawn and thus, he was estopped and barred by his own act and conduct from filing this suit.

[5] Upon consideration of the pleadings, the learned trial Court framed the following issues:-

" 1. Whether the plaintiff is entitled to the declaration as prayed for? OPP

2. Whether the plaintiff is entitled to the permanent injunction as prayed for? OPP

3. Whether the suit of the plaintiff is liable to be stayed u/s 10 C.P.C.? OPD

4. Whether the plaintiff has no locus standi to file the present suit? OPD

5. Whether the suit of the plaintiff is time barred? OPD

6. Whether the suit is bad for non-joinder of necessary parties? OPD

7. Whether the suit of the plaintiff is not maintainable? OPD

8. Whether the plaintiff is barred to file the present suit by principle of estoppel? OPD

9. Relief. "

[6] Learned trial Court, vide its judgment and decree dated 17.08.1988, decreed the suit of the plaintiff-appellant, while declaring him to be real owner of the suit property to the extent of 1/3rd share, thereby restraining the respondent-defendant from alienating the same in any manner.

[7] Aggrieved thereof, the respondent-defendant filed first appeal, which came to be allowed vide judgment and decree dated 01.12.1988 passed by the learned First Appellate Court, while dismissing the suit filed by the appellant-plaintiff. Hence, the present appeal.

[8] Impugning the aforesaid judgment and decree dated 01.12.1988 passed by the First Appellate Court, learned counsel for the appellantplaintiff submitted that the First Appellate Court went wrong while ignoring the material evidence on record in the shape of averments made in the sale deed wherein it was categorically stated that a sum of Rs. 740/- towards balance sale consideration was paid by the appellant-plaintiff to the vendor, namely, Amir Chand. He further submitted that even Amir Chand, while appearing as PW-3, went on to depose that the entire sale consideration against the sale deed dated 16.03.1959 was paid to him by the appellantplaintiff only. He also contended that even the possession of the property in question always remained with the appellant-plaintiff and the said fact was even recorded in the jamabandi for the year 1980-81, which was produced on record by the respondent-defendant himself as Ex. D-1. Learned counsel, therefore, submitted that it was established on record that the entire sale consideration towards the sale deed dated 16.03.1959 was paid by the appellant-plaintiff besides the possession of the land in question being with him only. He thus claimed that no interference was called for by the First Appellate Court with the findings of fact recorded by the trial Court, wherein it was held that the sale deed dated 16.03.1959 to the extent of one-third share in the name of Shiv Kumar (respondent-defendant) was benami and in fact purchase made by the appellant-plaintiff.

[9] On the other hand, learned counsel for the respondentdefendant, while relying upon jamabandi for the year 1980-81 (Ex. D-1), submitted that the ownership to the extent of one-third of 06 biswas of land was recorded in the name of respondent-defendant only and no effort was ever made by the appellant-plaintiff for getting the same corrected for long.

He further submitted that a sum of Rs. 260/- was paid by the respondent-defendant to the vendor, therefore, the sale deed to the extent of one-third was executed in his favour and thus, there was no question of the transaction in question being benami. He also contended that the findings recorded by the learned First Appellate Court were based on proper appreciation of evidence, and thus the present appeal was liable to be dismissed.

No other argument was addressed on behalf of the appellant(s)- plaintiff as well as respondent-defendant.

[10] Having heard learned counsel for the parties and gone through the paper-book / records, I find substance in the submission(s) made on behalf of the appellant(s)-plaintiff.

[11] Before proceeding further in the matter, it may be relevant to take note of the exposition of law on the issue in hand, rendered by the Hon'ble Apex Court in case of "**Binapani Paul Versus Pratima Ghosh and others**, 2007 6 SCC 100". Relevant paras-47 thereof is extracted hereunder:-

" **47.** Burden of proof as regards the benami nature of transaction was also on the respondent. This aspect of the matter has been considered by this Court in Valliammal (D) By LRS. v. Subramaniam and Others wherein a Division Bench of this Court held (SCC pp.239-41, paras 13-14 & 18)

"13. This Court in a number of judgments has held that it is well established that burden of proving that a particular sale is benami lies on the person who alleges the transaction to be a benami. The essence of a benami transaction is the intention of the party or parties concerned and often, 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. Refer to Jaydayal Poddar v. Bibi Hazra, Krishnanand Agnihotri v. State of M.P., Thakur Bhim Singh v. Thakur Kan Singh, Pratap Singh v. Sarojini Devi and Heirs of Vrajlal J. Ganatra v. Heirs of Parshottam S. Shah. It has been held in the judgments referred to above that the question whether a particular sale is a benami or not, is largely one of fact, and for determining the question no absolute formulas or acid test, uniformly applicable in all situations can be laid. After saying so, this Court spelt out the following six circumstances which can be taken as a guide to determine the nature of the transaction:

(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. (Jaydayal Poddar v. Bibi Hazra1, SCC p. 7, para 6)

14. The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless, the source from where the purchase money came and the motive why the property was purchased benami are by far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another. We would examine the present transaction on the touchstone of the above two indicia.

18. It is well settled that intention of the parties is the essence of the benami transaction and the money must have been provided by the party invoking the doctrine of benami. The evidence shows clearly that the original plaintiff did not

have any justification for purchasing the property in the name of Ramayee Ammal. The reason given by him is not at all acceptable. The source of money is not at all traceable to the plaintiff. No person named in the plaint or anyone else was examined as a witness. The failure of the plaintiff to examine the relevant witnesses completely demolishes his case."

[12] Applying the aforementioned proposition of law laid down by the Hon'ble Apex Court in **Binapani Paul's case (supra)** to the facts and circumstances of the present case, it becomes evident that the property in dispute was purchased by the appellant-plaintiff as benami transaction in the name of his real uncle i.e. defendant-respondent to the extent of 1/3rd share vide sale deed dated 16.03.1959 and the factual aspects to support are as follows:-

(a) As per the statement made by vendor-Amir Chand while appearing as PW-3, the entire sale consideration against the registered sale deed dated 16.03.1959 was paid by the appellantplaintiff. On the other hand, respondent-defendant while appearing as DW-1, failed to prove anything to the contrary;

(b) The original sale deed dated 16.03.1959 always remained in possession of the appellant-plaintiff and it was tendered by him in his evidence as PW1, whereas the respondent-defendant, while appearing as DW-1, deposed that he was not even aware of the fact as to in whose possession the original sale deed was lying since the date of its registration;

(c) DW-1 (Shiv Kumar) / respondent in his crossexamination also admitted that he was not even present at the time of execution of the sale deed dated 16.03.1959;

(d) Exclusive possession of the property in question being with the appellant-plaintiff was established on record through the deposition made by PW-1 (Rameshwar Das son of Sh. Atma Ram), who happened to be the neighbour besides the deposition made by plaintiff himself as PW-5 and the whole 06 biswas of land formed part of one common boundary wall. Moreover, even as per jamabandi (Ex. D-1) which pertains to the year 1980-81, the appellant-plaintiff has been recorded in possession of the one-third share of the suit land as 'gair mumkin makan'.

(e) The close relationship between the parties being of nephew and real uncle (chacha), besides the motive governing their action in bringing about the transaction-sale deed in the name of respondent-defendant was of appellant-plaintiff being a govt. employee at the time of purchase.

(f) As per plaintiff, the sale deed was executed in the year 1959, but the defendant being DW-1 deposed that the sale-deed was executed in the year 1969. Even in the written statement filed on behalf of the defendant, it was alleged that the suit land was purchased vide sale deed dated 16.03.1969. On

the contrary, factually the sale deed is dated 16.03.1959 as is clear from perusal of Ex. P-1. In view thereof, the defendant had no knowledge of the sale deed itself and his plea that the sale consideration was paid by him from his own pocket cannot be believed.

[13] For the aforesaid reasons, in the considered opinion of this Court, it has been clearly established on record that the plaintiff-Ram Murti (since deceased) was the real owner of the suit property; the defendantrespondent (Shiv Kumar) was only a Benamidar; the plaintiff was in possession of the suit property since the date of sale, whereas the respondent-defendant had no knowledge of the sale deed dated 16.03.1959 nor even any amount was parted by him towards the sale transaction to the vendor-Amir Chand.

[14] Accordingly, the present appeal succeeds and is thus allowed; the judgment and decree dated 01.12.1988 passed by the learned First Appellate Court is set aside, while upholding the judgment and decree dated 17.08.1988 passed by the learned trial Court, thereby decreeing the suit of plaintiff-appellant/Ram Murti (since deceased). Decree-sheet be drawn accordingly. No order as to costs.

[15] Pending miscellaneous application(s), if any, shall also stand disposed off

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2026(1)AIPC118

PUNJAB AND HARYANA HIGH COURT

(Hon'ble Judge Vikas Bahl)

C M (Civil Miscellaneous); C R (Civil Revision) No 1610 of 2025; 4734 of 2025 **dated 22/08/2025**

Rajan Kohli

Versus

Gulbhushan Kumar Kohli and Another

PROPERTY PARTITION

Code of Civil Procedure, 1908 Or. 1R. 10, Or. 6R. 17, Or. 7R. 11 - Property Partition - Application filed for setting aside dismissal of plea under Order VII Rule 11 CPC - Petition challenged rejection of plaint on ground of lack of cause of action - Respondents filed suit for partition claiming one-third share in residential house - Defendant argued transfer deed executed in favour of daughter excluded plaintiffs' rights - Objection treated as defence matter not determinable at threshold - Amendment applications regarding transfer deed pending - At stage of Order VII Rule 11, only plaint averments considered and cause of action disclosed - High Court held no ground to interfere under Article 227 and upheld trial court's dismissal of defendant's application - Revision petition found meritless and dismissed - Miscellaneous applications disposed of - Revision Petition Dismissed

Law Point: At stage of Order VII Rule 11 CPC only plaint averments must be considered and existence of defence cannot justify rejection of plaint, questions regarding transfer deeds or impleadment are triable issues to be decided in trial.

Acts Referred:

Code of Civil Procedure, 1908 Or. 1R. 10, Or. 6R. 17, Or. 7R. 11

Counsel:

Kunal Muthreja, Pulkit Dagar

JUDGEMENT

Vikas Bahl, J.- [1] CM-16102-CII-2025

1. This is an application filed under Section 151 CPC for restoration of the case and recalling of order dated 25.07.2025.

[2] For the reasons stated in the application which is duly supported by an affidavit, the present application is allowed and order dated 25.07.2025 is recalled and the main case is restored to its original number and is taken on Board today itself for final disposal.

Main case

1. This is a revision petition filed under Article 227 of the Constitution of India for setting aside the order dated 28.05.2025 passed in Civil Suit No.2822 of 2019, whereby an application filed under Order VII Rule 11 CPC by the petitioner has been dismissed.

2. Learned counsel for the petitioner has submitted that in the present case, a perusal of the plaint would show that the plaintiffs have no cause of action to file the suit. It is further submitted that the suit property was in fact transferred by Asha Rani in favour of Pranjal which fact has not been mentioned in the plaint and thus, the plaint deserves to be rejected. It is submitted that the impugned order, vide which the application under Order VII Rule 11 CPC has been dismissed, be set aside and the application filed by the petitioner under Order VII Rule 11 CPC be allowed.

[3] This Court has heard learned counsel for the petitioner and has perused the paper book and is of the opinion that the impugned order is in accordance with law and deserves to be upheld and the present revision petition being meritless, deserves to be dismissed for the reasons stated hereinafter.

[4] Respondent Nos.1 and 2/plaintiffs have filed a suit for partition with consequential relief of permanent injunction on the pleading that the plaintiffs/respondent Nos.1 and 2 and the present petitioner/defendant are joint owners in possession to the extent of 1/3rd share each of the residential house in question. It is the case of respondent Nos.1 and 2/plaintiffs that Asha Rani was owner of the suit property and after the death of Asha Rani, the plaintiffs and defendant being sons of Asha Rani, are entitled to 1/3rd share each. In the plaint, it is specifically stated that

the suit property has not been partitioned among the parties and is still joint and the present petitioner/defendant is adamant about raising construction and not partitioning the property and thus, the suit has been filed. A perusal of the suit would show that respondent Nos.1 and 2 have cause of action to file the suit. It is a matter of settled law that at the stage of Order VII Rule 11 CPC, it is the averments in the plaint which are to be taken into consideration and not the defence of the defendant. Moreover, the question as to whether the plaintiffs/respondent Nos.1 and 2 would succeed in the case or not is also not to be taken into consideration at the stage of deciding the application under Order VII Rule 11 CPC. In the said circumstances, the observations made by the trial Court while dismissing the application of the petitioner under Order VII Rule 11 CPC to the effect that a perusal of the plaint would show that the plaintiffs have a cause of action to file the suit, cannot be faulted with.

[5] Plea raised by the petitioner to the effect that there is a transfer deed dated 02.03.2015 in favour of the daughter of the petitioner with respect to the suit property and that the said plea has been taken in the written statement, is a plea of defence. At any rate, as has been mentioned in the impugned order, an application under Order VI Rule 17 CPC along with Order 1 Rule 10 CPC in order to make an amendment to challenge the said transfer deed dated 02.03.2015 as well as to implead the said Pranjal daughter of the petitioner has already been filed and the same is pending adjudication. It is not disputed before this Court that the plaintiffs are not party to the said transfer deed dated 02.03.2015. Thus, the said aspect raised as a defence would be considered during the course of trial after the application under Order VI Rule 17 CPC and Order 1 Rule 10 CPC filed by the plaintiffs is decided and the same does not call for rejecting the suit at the threshold.

[6] The Hon'ble Supreme Court in the case of **"Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil"**, 2010 8 SCC 329, had observed that the High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of court or tribunal subordinate to it. It was also observed in the said judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227 but at the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.

[7] Keeping in view the above, this Court is of the opinion that the impugned order does not call for any interference by this Court while exercising its powers under Article

227 of the Constitution of India and accordingly, the impugned order is upheld and the present revision petition being meritless, deserves to be dismissed and is dismissed.

[8] All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order

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2026(1)AIPC121

IN THE HIGH COURT OF KERALA AT ERNAKULAM

(Hon'ble Judge A Badharudeen)

Crl M C (Criminal Miscellaneous Case) No 5590 of 2025, 6757 of 2025, 6764 of 2025 **dated 20/08/2025**

Basheer M S/o (Late) Moideen Kunju Paravathani House; Hamza V S/o Kunjippu Thumbilimedu House; Sajitha V P, W/o Hamza Thumbilimedu House

Versus

State of Kerala; Inspector of Police Vigilance & Anti

PROPERTY ATTACHMENT

Prevention of Corruption Act, 1988 Sec. 13, Sec. 18A - Prohibition of Benami Property Transactions Act, 1988 Sec. 3, Sec. 7, Sec. 5, Sec. 4, Sec. 8 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 528 - Property Attachment - Petitioners challenged property attachment orders under corruption charges - Properties alleged to be disproportionate assets and benami holdings - Trial court upheld attachment citing PC Act and Criminal Law Amendment Ordinance - Petitioners claimed amendment not retrospective and property acquired before amendment - Court examined legal provisions and held Special Court has jurisdiction post amendment - Found procedure under Ordinance followed including notice and investigation - Dismissed plea of procedural violation - Held attachment valid in law - Petitions dismissed

Law Point: Special Court empowered post amendment to order pre-trial attachment under PC Act and Criminal Law Ordinance if due process including notice and evidence assessment followed.

Acts Referred:

Prevention of Corruption Act, 1988 Sec. 13, Sec. 18A

Prohibition of Benami Property Transactions Act, 1988 Sec. 3, Sec. 7, Sec. 5, Sec. 4, Sec. 8

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 528

Counsel:

S Rajeev, V Vinay, M S Aneer, Sarath K P, Anilkumar C R, K S Kiran Krishnan, Dipa V, Akash Cherian Thomas, Rajesh A, Rekha S, Rajesh A, Rekha S

JUDGEMENT

A Badharudeen, J.- [1] Crl.M.C.Nos.6757/2025 and 6764/2025 have been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, (hereinafter referred to as 'BNSS' for short) by accused Nos.1 and 2 in Crime No.VC-1/2019 of VACB, Ernakulam, challenging common order in Crl.M.P.No.1682/2024 & Crl.M.P.No.1403/2024 dated 23.05.2025 in the above case.

[2] Crl.M.C.No.5590/2025 is at the instance of the accused in V.C.No.6/2021/SCK of VACB, Kozhikode. In this Crl.M.C., order passed in Crl.M.P.No.346/2023 in the above crime, ordering interim attachment is put under challenge.

[3] Heard the learned counsel for the petitioners as well as the learned Public Prosecutor, representing the VACB. Perused the relevant documents.

[4] I shall address the issue involved in Crl.M.C. Nos.6757/2025 and 6764/2025 at first.

[5] In this case, the prosecution alleges that the petitioners amassed disproportionate assets to their known sources of income, to the tune of Rs.28,78,399/-, (Rupees twenty eight lakh seventy eight thousand three hundred and ninety nine only), which would come to 64% of the excess of the total income, for which they could not account for. On this premise, the prosecution alleges that the accused committed offences punishable under Section 13(1) (e) r/w Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'PC Act' for short) and Section 13(1)(b) r/w 13(2) of the Prevention of Corruption (Amendment) Act, 2018 (hereinafter referred to as the 'PC Act, 2018' for short). The genesis of the case to be borne out from the application filed by the prosecution before the Special Judge, seeking attachment of properties as stated in paragraph No.9 of the petition is as under:

> "9. The immovable properties acquired during the check period has already sold by the accused as per Document number 5310/2014, 5311/2014 of SRO Cherupulassery and as per Document No.2127/2012 of SRO Kadambazhipuram. Three properties 1) Thrikandiri-I Village Sry 102/4 as per SRO Cherpulassery Document No.2495/2011 (23.25 cent) in the name of Smt.Sajitha V.P., 2) Thrikadiri-I Village Sry No.-59/1 as per SRO Cherpulassery Document No.2003/01/13 in the name of Hamsa V. (25.77 cent), 3) Kadampazhipuram -I village Sry No.143/7 of SRO Kadambazhipuram Document No.2126/1/2012 in the name of Sajitha V.P. (194.73 cent) acquired during the check period are also likely to be sold. Hence, the I.O. Submitted an Affidavit and application before the Hon'ble EC & SJ Court, Thrissur that necessary steps to confiscate the above mentioned three properties and Rs.9,65,330/- (Rupees Nine lakh Sixty five Thousand Three hundred and Thirty only). This petition is pending before this Hon'ble Court as CMP No.-1403/2024."

[6] The trial court issued notice, for which the petitioners, who are the respondents therein filed objection and finally, on appraisal of the matter in issue, the learned Special Judge ordered to attach the above immovable properties by invoking power under Section 18A of the PC Act, 2018.

[7] Multiple contentions are raised at the instance of the petitioners as well as the learned Public Prosecutor. Coming to the crux of the dispute, the same centers on Section 18A of the PC Act, 2018, introduced with effect from 26.07.2018, whereby it has been provided as under:

> **"18A. Provisions of Criminal Law Amendment Ordinance, 1944 to apply to attachment under this Act.** (1) Save as otherwise provided under the Prevention of Money Laundering Act, 2002, (15 of 2003), the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord.38 of 1944) shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act.
>
> (2) For the purposes of this Act, the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord.38 of 1944) shall have effect, subject to the modification that the references to "District Judge" shall be construed as references to "Special Judge"

[8] As pointed out by the learned Special Public Prosecutor, this Court addressed the application of Section 18A of the PC Act, 2018, in the decision reported in Mac Charles (India) Ltd. (M/s.) v. State of Kerala,2021 5 KHC 421 and held in paragraph No.34 that, now, after the introduction of Section 18A(2) in the Act, it appears that the dichotomy of jurisdiction of the District Judge and the Special Judge, which was explained by the Division Bench in Dr.V.K.Rajan v. State of Kerala,2007 4 KHC 828, has disappeared. The Division Bench had noticed that, in Section 29 of the Act, it was not mentioned that the words 'District Court' wherever appear in the Ordinance shall be substituted by 'Special Court'. The change now occurred by the introduction of Section 18A(2) in the Act is exactly what the Division Bench had referred to above. Section 18A(2) of the Act states that, for the purposes of the Act, the provisions of the Ordinance shall have effect, subject to the modification that the reference to "District Judge" shall be construed as reference to "Special Judge". Therefore, the expression 'while trying the offence' in Section 5(6) of the Act stands expanded by the words "for the purposes of this Act" contained in Section 18A of the Act. It means that, with effect from 26.07.2018, even at the pre-trial stage, the Special Court has jurisdiction to entertain an application under Section 3(1) of the Ordinance.

[9] It is argued by the learned counsel for the petitioners that as early in the year 1962, in the decision in State of West Bengal v. S.K.Ghosh,1962 SCCOnLine SC 53: SIR 1963 SC 255, the Apex Court considered the provisions of the Criminal Law Amendment Ordinance, 1944 (hereinafter referred to as 'the Ordinance' for short) and

in paragraph No.14, the Apex Court observed that the Ordinance came into force on 23-8-1944, would take the case out of the ambit of Article 20(1), for we have come to the conclusion that the forfeiture provided under Section 13(3) is not a penalty at all within the meaning of Article 20(1) and the second argument urged on behalf of the appellant must prevail. Now the 1944 Ordinance is an independent Ordinance and is not an amendment to the 1943 Ordinance. It is true that the Ordinance is termed "the Criminal Law Amendment Ordinance"; but its provisions will show that it deals mainly with recovery of money or property belonging to Government procured by the offender by means of the offence. An analysis of the provisions of the 1944 Ordinance will show this clearly. Section 3 provides for application for attachment of property; Section 4 provides for an ad interim attachment; Section 5 provides for investigation of objections to attachment; Section 6 provides for attachment of property of mala fide transferees; Section 7 provides for execution of orders of attachment and Section 8 for security in lieu of attachment; Section 9 for administration of attached property and Section 10 for the duration of attachment. Section 11 provides for appeals. Then come Sections 12 and 13. Lastly there are Section 14 which bars certain proceedings and Section 15 which protects certain actions taken in pursuance of the Ordinance. It will therefore be clear that the Ordinance provides for no punishment or penalty; all that it provides is attachment of the money or property procured by the offence or any other property of the offender if the above property is not available and the purpose of the attachment is to prevent the disposal or concealment of such property. Section 13(3) with which we are particularly concerned lays down that the District Judge shall order that from the property of the convicted person attached under this Ordinance or out of the security given in lieu of such attachment, there shall be forfeited to His Majesty such amount or value as is found in the final judgment or order of the criminal courts in pursuance of Section 12 to have been procured by the convicted person by means of the offence, together with the costs of attachment as determined by the District Judge. It is further provided that where the final judgment or order of the criminal court has imposed or upheld a sentence of fine on the said person, the District Judge may order without prejudice to any other mode of recovery, that the said fine shall be recovered from the residue of the said attached property or of the security given in lieu of attachment. The forfeiture by the District Judge under Section 13(3) cannot in our opinion be equated to forfeiture of property which is provided in Section 53 of the Indian Penal Code. The forfeiture provided in Section 53 is undoubtedly a penalty or punishment within the meaning of Article 20(1); but that order of forfeiture has to be passed by the court trying the offence, where there is a provision for forfeiture in the section concerned in the Indian Penal Code. There is nothing however in the 1944 Ordinance to show that it provides for any kind of punishment for any offence. Further it is clear that the Court of District Judge which is a Principal Court of Civil Jurisdiction can have no jurisdiction to try an offence under the Indian Penal Code. The order of forfeiture therefore by the District Judge under Section 13(3) cannot be

equated to the infliction of a penalty within the meaning of Article 20 (1). Article 20(1) deals with conviction of persons for offences and for subjection of them to penalties. It provides firstly that "no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence". Secondly, it provides that no person shall be "subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence". Clearly, therefore Article 20 is dealing with punishment for offences and provides two safeguards, namely, (i) that no one shall be punished for an act which was not an offence under the law in force when it was committed, and (ii) that no one shall be subjected to a greater penalty for an offence than what was provided under the law in force when the offence was committed. The provision for forfeiture under Section 13(3) has nothing to do with the infliction of any penalty on any person for an offence, If the forfeiture provided in Section 13(3) were really a penalty on a convicted person for commission of an offence we should have found it provided in the 1943 Ordinance and that penalty of forfeiture would have been inflicted by the criminal court trying the offender.

[10] As per the decision, placed by the learned counsel for the petitioners, in **Union of India and Another v. Ganpati Dealcom Private Limited**, 2023 3 SCC 315, the Apex Court considered Section 3 of the Prohibition of Benami Property Transactions Act, 1988 and observed in paragraph No.127 of the said case as under:

> "127.1 Section 3(2) (sic Section 3) of the unamended 1988 Act is declared as unconstitutional for being manifestly arbitrary. Accordingly, Section 3(2) of the 2016 Act is also unconstitutional as it is violative of Article 20(1) of the Constitution.
>
> 127.2 In rem forfeiture provision under Section 5 of the unamended 1988 Act, prior to the 2016 Amendment Act, was unconstitutional for being manifestly arbitrary.
>
> 127.3 The 2016 Amendment Act was not merely procedural, rather, prescribed substantive provisions.
>
> 127.4 In rem forfeiture provision under Section 5 of the 2016 Act, being punitive in nature, can only be applied prospectively and not retroactively.
>
> 127.5 The authorities concerned cannot initiate or continue criminal prosecution or confiscation proceedings for transactions entered into prior to the coming into force of the 2016 Act, viz.25-10.-2016. As a sequence of the above declaration, all such prosecutions or confiscation proceedings shall stand quashed."

In fact, this judgment was recalled by the Apex Court in a subsequently filed review petition, as per order dated 18.10.2024, in the decision in Union of India and Another v. Ganpati Dealcom Private Limited,2024 167 taxmann.com 525 (SC). Thus

the learned counsel for the petitioners placed a decision which is not in existence in the eye of law.

[11] According to the learned counsel for the petitioners, while passing the common order in Crl.M.P.Nos. 1682 /2024 and 1403/2024, the learned Special Judge failed to take note of the provisions of the Ordinance. According to him, under Section 13(3) of the Ordinance, the amount to be forfeited or recovered shall be limited to the fine imposed as per the judgment or order of a criminal court, together with the cost of the attachment, and nothing beyond that.

[12] Even though it is submitted by the learned counsel for the petitioners that Section 18A of the PC Act, 2018, has been introduced with effect from 26.07.2018, the crime in Crl.M.C.No.5590/2025 was pertaining to the check period upto 31.12.2017, i.e., before the amendment, and therefore, the same could not be applied retrospectively. The learned Public Prosecutor justified the orders in tune with the mandate of the Ordinance and placed a decision of the Apex Court in Naveda Properties Pvt.Ltd. Through its Directors v. State of Maharashtra and Another,2019 4 KHC 782, with reference to Section 13 to contend that since the ordinance was adopted by the Presidential Adaptation of Laws Order, 1950, issued under the powers conferred by clause (2) of Article 372 of the Constitution, making the Ordinance effective in the territory of India, and, therefore, continues to remain in force.

[13] Having addressed the rival arguments, even though it is argued by the learned counsel for the petitioners that the Special Judge wrongly interpreted Section 18A and provisions of the Ordinance, admittedly, in Crl.M.C. Nos.6757/2025 and 6764/2025, the check period includes the period after the amendment came into force with effect from 26.07.2018, whereas the check period in Crl.M.C.No.5590/2025 is prior to the amendment, i.e., upto 31.12.2017.

[14] According to the learned counsel for the petitioners, the procedure followed by the Special Judge, in attaching the entire properties without specifying the attachment for the amount involved, also without taking into consideration of the said contention, would require interference.

[15] On perusal of the Ordinance, it could be gathered that by the introduction of Section 18A, the State Government has reason to believe that any person has committed any scheduled offence may, whether or not, any court has taken cognizance of the offence, authorised the making of an application of the District Judge, (here, the special Judge) within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for the attachment, under this Ordinance of the money or other property which the said person to have procured by means of the offence, or if such money or property cannot for any reason be attached or other property of the said person of value as nearely as may be equivalent to that of the aforesaid or other property.

[16] Section 3(3) provides that an application under Section 3(1) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the said person has committed any offences is found, and the amount of money or value of other property believed to have been procured by means of an offence. The application also shall furnish the details provided under clause (a) and (b) of Section 3(3) of the Ordinance. Section 4 provides for issuance of ad-interim attachment on receipt of an application under Section 3 and Section 4(2) mandates issuance of notice to the person against whom the attachment is made with the order and records thereof. Section 5 of the Ordinance provides that on notice, if no cause is shown and no objections are made under Section 4 on or before the specific date, the District Judge, (here, the Special Judge) shall forthwith pass an order making the ad interim order of attachment absolute.

[17] Section 5(2) of the Ordinance provides that if cause is shown on any objections are made as aforesaid the District Judge (here, the Special Judge) shall proceed to investigate the same, and in so doing, as regards the examination of the parties and in all other respects he shall, subject to the powers of a court in hearing a suit under the Code of Civil Procedure, 1908 and any person making an object under Section 4 shall be required to adduce evidence to show that at the date of attachment he had some interest in the property attached.

[18] Section 5(3) of the Ordinance provides further that after investigation under sub-section (2), the District Judge (here, the Special Judge) shall pass an order either making the ad interim order of attachment absolute or varying it by releasing a portion of the property from attachment or withdrawing the order.

[19] The order of attachment made under this provisions shall be carried into effect as may be practicable in the manner provided in the Code of Civil Procedure as mandated under Section 7 of the Ordinance.

[20] Section 8 of the Ordinance provides a remedy to the person whose property has been or is about to be attached under this Ordinance may, at any time apply to the Judge to permit him to give security in lieu of such attachment and where the security offered and given is in the opinion of the Judge satisfactory and sufficient, he may withdraw or, as the case may be, refrain from passing, the order of attachment.

[21] On perusal of the Rules, in comparison with the orders impugned, it is discernible that the learned Special Judge has passed the common order in a case where the amount involved is 28,78,399/-. (i.e., in VC No.1/2019). But the attachment order seems to have been passed over the entire property without considering the valuation of the property. In fact, what is the valuation of the property is not discernible from the records. Even though it cannot be held at this stage that the Special Judge ordered attachment of the property in excess of the statutory mandate since it has been provided under Section 8 of the Ordinance that a remedy is available to a person whose property has been, or is about to be, attached under the Ordinance,

to permit the Judge to accept security in lieu of such attachment and the security offered and given is in the opinion of the Judge satisfactory and sufficient, on accepting the security, the Judge could withdraw the attachment if attachment already passed or refrain from passing an order of attachment if attachment not passed. Since the order of the learned Special Judge could not be found as illegal and the entire properties have been attached in a case involving disproportionate assets to the tune of Rs.28,78,399/- (as alleged by the prosecution), the attachment should be confined to the property which would fetch the said amount and not beyond that.

[22] Having held so, it is specifically ordered that the petitioners in Crl.M.C.Nos.6757/2025 and 6764/2025 are at liberty to furnish security for an amount of Rs.28,78,399/- either independently or by offering any one of the properties attached along with original title deed of the property, nonliability certificate, valuation certificate, tax receipt, possession certificate and location sketch. On production of security as stated, the learned Special Judge can consider the same in terms of Section 8 of the Ordinance and pass appropriate orders as per law.

In the result, Crl.M.C.Nos.6757/2025 and 6764/2025 stand disposed of as indicated above.

In Crl.M.C. No. 5590/2025, only an interim order of attachment has been passed, and upon notice, the petitioner filed an objection. Therefore, the petitioner is at liberty to raise the contention before the special court in accordance with the statutory provisions and the decision extracted above. While passing the final order, the learned Special Judge shall consider the same.

Holding so, Crl.M.C.No.5590/2025 stands disposed of as above.

APPENDIX OF CRL.MC 5590/2025	
PETITIONER ANNEXURES	
ANNEXURE-I	**CERTIFIED COPY OF THE ORDER DATED 07.05.2025 PASSED BY THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE, KOZHIKODE**
ANNEXURE-II	**TRUE COPY OF THE FIR IN CRIME NO VC.6/2021/SCK REGISTERED BY VACB, SPECIAL CELL, KOZHIKODE**
ANNEXURE-III	**TRUE COPY OF THE APPLICATION ALONG WITH THE AFFIDAVIT SUBMITTED U/SS 18A OF THE PREVENTION OF CORRUPTION (AMENDMENT) ACT, 2018**
ANNEXURE-IV	**TRUE COPY OF THE SALE DEED DATED 27.06.2016 IN DOCUMENT NO. 1559/2016**
ANNEXURE-V	**TRUE COPY OF THE AGREEMENT DATED 06.10.2021 BETWEEN THE PETITIONER AND USSAIN**

ANNEXURE-VI	**TRUE COPY OF THE ORDER DATED 19.09.2023 IN CRL MC NO 777/2022**
APPENDIX OF CRL.MC 6757/2025	
PETITIONER ANNEXURES	
ANNEXURE-I	**TRUE COPY OF THE FIR IN CRIME NO VC.01/2019/SCE BY VACB SPECIAL CELL, ERNAKULAM**
ANNEXURE-II	**CERTIFIED COPY OF THE COMMON ORDER IN CRL MP 1682/2024 & CRL MP 1403/2024 IN VC NO 01/2019/SCE DATED 23.05.2025 PASSED BY THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THRISSUR**
ANNEXURE-III	**TRUE COPY OF THE AFFIDAVIT AND APPLICATION SUBMITTED U/S 18A OF THE PREVENTION OF CORRUPTION ACT DATED 28.10.2024**
ANNEXURE-IV	**TRUE COPY OF THE COUNTER STATEMENT FILED BY THE 2ND PETITIONER IN CRL MP NO 1682/2024 BEFORE THE ENQUIRY COMMISSIONER & SPECIAL JUDGE (VIGILANCE THRISSUR)**
ANNEXURE-V	**TRUE COPY OF THE STATEMENT OF LAND AND PROPERTY, SHARES IN COMPANIES AND OTHER INVESTMENT HELD BY THE 1ST PETITIONER, HIS WIFE AND FRIENDS IN THE YEAR 2016**
APPENDIX OF CRL.MC 6764/2025	
PETITIONER ANNEXURES	
ANNEXURE-I	**TRUE COPY OF THE FIR IN CRIME NO VC.01/2019/SCE BY VACB SPECIAL CELL, ERNAKULAM**
ANNEXURE-II	**CERTIFIED COPY OF THE COMMON ORDER IN CRL MP 1682/2024 & CRL MP 1403/2024 IN VC NO 01/2019/SCE DATED 23.05.2025 PASSED BY THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THRISSUR**
ANNEXURE-III	**TRUE COPY OF THE APPLICATION SUBMITTED U/S 18A OF THE PREVENTION OF CORRUPTION ACT ALONG WITH THE AFFIDAVIT DATED 23.09.2024**

ANNEXURE-IV	**TRUE COPY OF THE COUNTER STATEMENT FILED BY THE 1ST PETITIONER IN CRL MP NO 1403/2024 BEFORE THE ENQUIRY COMMISSIONER & SPECIAL JUDGE (VIGILANCE THRISSUR)**
ANNEXURE-V	**TRUE COPY OF THE COUNTER STATEMENT FILED BY THE 2ND PETITIONER IN CRL MP NO 1403/2024 BEFORE THE ENQUIRY COMMISSIONER & SPECIAL JUDGE (VIGILANCE), THRISSUR**
ANNEXURE-VI	**TRUE COPY OF THE STATEMENT OF LAND AND PROPERTY, SHARES IN COMPANIES AND OTHER INVESTMENT HELD BY THE 1ST PETITIONER, HIS WIFE AND FRIENDS IN THE YEAR 2016**