

Shri Santosh Kumar Chhabra vs Shri Harish Chander Chhabra & Ors on 12 December, 2023

Author: C. Hari Shankar

Bench: C. Hari Shankar

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS (OS) 71/2019 & I.A. 1632/2019

SHRI SANTOSH KUMAR CHHABRA

Through: Mr. Praveen Suri, Adv.

..... Pla

versus

SHRI HARISH CHANDER

CHHABRA & ORS.

..... De

Through: Mr. Sanjeev Sindhwani, Sr.

Adv. with Mr. Gaurav Gaur, Mr. Vive

Gaur, Adv. for D-1

Mr. Rohit Sehgal, Adv. for D-2

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

% 12.12.2023 IA 1632/2019 in CS(OS) 71/2019

1. The plaintiff Santosh Kumar Chhabra seeks, by means of this application, an interim injunction, restraining Defendant 1 from creating any third party interest in respect of the properties situated at 25/42, Punjabi Bagh West, Shop No 288 at Chowk Fatehpuri and agricultural land admeasuring 1000 sq yds in Khasra 73/10 and 74/11, Village Nangloi Jat, New Delhi. These properties would be referred to, collectively, as the "suit properties" and individually by their locations.

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2. Case set up in the plaint and submissions of Mr. Pravin Suri, learned Counsel for the plaintiff 2.1 Mr. Suri, appearing for the plaintiff, explained the facts of the case thus:

(i) Krishan Lal Chhabra and Krishna Rani Chhabra (Defendant 3) were husband and wife. Santosh Kumar Chhabra (the plaintiff), Harish Chander Chhabra (Defendant 1)

and Urmil Bajaj (Defendant 2) were their two sons and daughter.

(ii) Krishna Rani Chhabra's father was Ram Chander Sethi.

Apart from Krishna Rani Chhabra, who was his daughter, Ram Chander Sethi had two sons, Kaura Mal Sethi and Jaswant Singh Sethi. Krishna Rani Chhabra, Kaura Mal Sethi and Jaswant Singh Sethi were, therefore, siblings.

(iii) Krishan Lal Chhabra, Ram Chander Sethi and Kaura Mal Sethi created a partnership firm by the name Punjab Colour & Varnishing Co. (hereinafter "the firm"). Out of the funds of the firm, properties at 5/8, Singh Sabha Road ("the Singh Sabha Road property") and 22/23, Shakti Nagar ("the Shakti Nagar property") were purchased in the names of Krishna Rani Chhabra, Harbans Kaur (the wife of Kaura Mal Sethi) and Maya Rani (the wife of Ram Chander Sethi). In other words, the Singh Sabha Road and Shakti Nagar property were purchased in the names of the wives of the partners of the firm who, however, only acted as benamidars, who purchased the This is a digitally signed order.

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(iv) Krishan Lal Chhabra, Ram Chander Sethi and Kaura Mal Sethi, along with their wives and children, initially stayed in the Singh Sabha Road property. It was while they were staying in the said property that Defendants 1 and 2 were born.

(v) Consequent on the purchase of the Shakti Nagar property, Krishan Lal Chhabra, Krishna Rani Chhabra and their children, i.e. the plaintiff and Defendants 1 and 2, shifted to the Shakti Nagar property, whereas the remaining members of the family continued to reside in the Singh Sabha Road property.

(vi) On 27 January 1964, Ram Chander Sethi left the firm, and was replaced by his son Jaswant Singh Sethi. The partners of the firm were, thereafter, therefore, Krishan Lal Chhabra, Kaura Mal Sethi and Jaswant Singh Sethi.

(vii) Vide Sale Deed dated 22 August 1967, the Punjabi Bagh property was purchased by Krishna Rani Chhabra, Harbans Kaur and Rajwant Kaur (the wife of Jaswant Singh Sethi) from the owners for a consideration of 20,944/-. As in the case of the purchase of the Singh Sabha Road and Shakti Nagar properties, Krishna Rani Chhabra, Harbans Kaur and Rajwant Kaur were merely benamidars in the Punjabi Bagh property, on behalf of their respective husbands. Payment for the transaction This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/12/2023 at 22:55:01 was made out of the account of the firm in the National and Grindlays Bank.

(viii) A decision was taken in April 1968 to divide the aforesaid three properties, i.e. the Singh Sabha Road property, the Shakti Nagar property and the Punjabi Bagh property in the individual names of Krishna Rani Chhabra, Harbans Kaur and Rajwant Kaur, on behalf of their respective husbands. The division resulted in the Punjabi Bagh property coming to the share of Krishan Lal Chhabra.

(ix) In accordance with the above decision, on 22 April 1968, Harbans Kaur executed a Sale Deed and Rajwant Kaur executed an Exchange Deed, selling their respective one third shares in the Punjabi Bagh property to Krishna Rani Chhabra as the benamidar of Krishan Lal Chhabra. Against the sale of one third share in the Punjabi Bagh property by Rajwant Kaur to Krishna Rani Chhabra, Krishna Rani Chhabra sold her one and half share in the Singh Sabha Road property to Rajwant Kaur. The difference in value between the two properties, of 80,000/-, was paid by Rajwant Kaur to Krishna Rani Chhabra.

(x) Krishna Rani Chhabra thus became the absolute owner of the Punjabi Bagh property, albeit as a benamidar.

(xi) Vide Sale Deeds dated 11 February 1986 and 24 May 1990, the properties situated at No. 566, Nangloi Jat, Delhi- 110041 ("the Nangloi Property") and Shop No. 288, Chowk This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/12/2023 at 22:55:01 Fatehpuri, Delhi-110006 ("the Fatehpuri Property") were sold, by their respective owners, to Krishna Rani Chhabra. Mr. Suri submits that these purchases were made by Krishna Rani Chhabra as a benamidar for the benefit of her husband Krishan Lal Chhabra.

2.2 Grant of injunctive reliefs, submits Mr. Suri, has become a necessity in view of a Gift Deed, allegedly executed by Krishna Rani Chhabra on 18 October 2016, gifting the Punjabi Bagh property to Defendant 1 Harish Chandra Chhabra. Mr. Suri submits that the Gift Deed could not be accorded any legal sanctity, firstly as Krishna Rani Chhabra held the Punjabi Bagh property only as a benamidar for her husband Krishan Lal Chhabra and was not, therefore, competent to gift the property and, secondly, because, by then, Krishna Rani Chhabra was no longer mentally competent to execute such a Gift Deed. He has drawn my attention to para 8 of the plaint, in which it is specifically averred that the suit properties were purchased by Krishna Rani Chhabra as benamidar for her husband Krishan Lal Chhabra. Mr. Suri submits that, in para 6 of the written statement filed by Defendant 1, it has been admitted that Krishna Rani Chhabra purchased the disputed properties as a benamidar for her husband Krishan Lal Chhabra. Mr. Suri relies, in this context, on Section 2(9)1 1 (9) "benami transaction" means, -

- (A) a transaction or an arrangement -
- (a) where a property is transferred

for such property has been provided, or paid by, another person; and

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

(i) a Karta, or a member of a Hindu Undivided Family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu Undivided Family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/12/2023 at 22:55:01 of the Prohibition of Benami Property Transactions Act, 1988 ("the Benami Transactions Act"), and the definition of "benami transaction"

provided therein.

2.3 Submitting that triable issues have arisen, Mr. Suri submits that the plaintiff is entitled to interlocutory injunctive orders restraining creation of third party interests in respect of the disputed properties, as envisaged by Order 39 Rule 1(a)2 of the CPC.

3. Submissions of Mr. Sandeep Sethi in response executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;

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

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or (B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or (C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership; (D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious; Explanation. - For the removal of doubts, it is hereby declared that benami transaction shall not include any transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in Section 53-A of the Transfer of Property Act, 1882 (4 of 1882), if, under any law for the time being in force,--

(i) consideration for such property has been provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold ownership of

such property;

- (ii) stamp duty on such transac
- (iii) the contract has been reg

2 1. Cases in which temporary injunction may be granted. --Where in any suit it is proved by affidavit or otherwise -

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or ***** the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

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3.1 Mr. Sethi, learned Senior Counsel appearing on behalf of Defendant 1 emphatically refutes Mr. Suri's contention that any of the properties had been purchased benami. He submits that the plaintiff acknowledges, in paras 3 to 5 of the plaint, that the Singh Sabha Road, Shakti Nagar and Punjabi Bagh properties had all been purchased out of the funds of the firm in the names of the wives of its partners. Such transactions, he submits, are not "benami transactions" within the meaning of Section 2(9) of the Benami Transactions Act. The Benami Transactions Act, he submits, applies only where property is purchased by one person, meaning one individual, in the name of another, out of the funds of the first individual. The funds of the firm, he submits, could not be regarded as the funds of any one partner, and there is no such averment to be found in the plaint. He also relies, for this purpose, on the definition of "firm" and "person" in Section 2(17) and 2(24) of the Benami Transactions Act. Section 2(24), he submits, clearly distinguishes between an "individual" and a "firm". There is no basis, submits Mr. Sethi, to treat such transactions as benami.

3.2 Even otherwise, submits Mr. Sethi, exception (iii) below Section 2(9)(iii) of the Benami Transactions Act clearly excludes, from the ambit of "benami transactions", property held by one individual in the name of his spouse, in a case in which consideration for the property has been provided or paid out of the own sources of the said individual. Assuming, therefore, that the payment for purchase of the properties in issue was made by the firm, they cannot be regarded as benami transactions within the meaning of the Benami Transactions Act. Krishna Rani Chhabra is, therefore, entitled to be treated as the absolute owner of the disputed properties.

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3.3 Mr. Sethi submits that the plaintiff cannot be allowed to make out a case which is contrary to the

express recitals in the Sale Deeds under which the disputed properties were purchased. No declaration has been sought by the plaintiff, to declare the said Sale Deeds to be invalid. If the plaintiff sought to make out a case contrary to the recitals in the Sale Deeds, it was incumbent on him to challenge the Sale Deeds. No declaration has been sought in respect of the Sale Deeds, under which the disputed properties were purchased. The only declaration sought was in respect of the Gift Deed dated 18 October 2016. The plaintiff is, therefore, bound by the covenants of the respective Sale Deeds, and cannot seek to make out a case contrary thereto. He relies, for this purpose, on paras 4, 5 and 12 of the judgment of the Supreme Court in *Addanki Narayanappa v. Bhaskara Krishnappa*³, paras 14 and 15 of the judgment of the Division Bench of this Court in *Achyut Kumar Sharma v. J.V.G. Finance Ltd*⁴, para-73, 74, 75, 80 and 83 of the judgment of the Division Bench in *Prem Nath Chopra v. Arun Chopra*⁵, para-13 of the judgment of the Division Bench *Virender Kumar Garg v. Ravinder Kumar Garg*⁶, paras 2, 4, 5, 11, 16 to 18 and 20 of the judgment of a learned Single Judge of this Court in *Vinay Khanna v. Krishna Kumari Khanna*⁷, para-8 of the judgment of a learned Single Judge in *Raman Jain v. Magan Mala Jain*⁸ and paras 25 and 32 of the judgment of a learned Single Judge of this Court in *Arjun Singh* 3 AIR 1996 SC 1300 4 (2016) 232 DLT 1 (DB) 5 (2014) 209 DLT 144 (DB) 6 2013 SCC OnLine Del 4661 7 MANU/DE/0150/2020 8 MANU/DE/0058/2019 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/12/2023 at 22:55:02 Gupta v. Ajay Kumar Gupta⁹. *Addanki Narayanappa*, Mr. Sethi seeks to point out, that the assets of a partnership firm cannot be regarded as the property of the individual partners. Moreover, the decision in *Vinay Khanna* clearly holds that the contribution of money by a person for purchase of property does not make him the owner thereof and his right, if at all, is only to recovery of the money paid with interest.

3.4 Mr. Sethi submits that the registered Will dated 29 January 2003, executed by Krishna Rani Chhabra, bequeathing the Punjabi Bagh property in favour of Defendant 1, in which Krishna Rani Chhabra clearly stated that she was the full owner of the said property, also acts as an insurmountable hurdle to the interlocutory relief that the plaintiff seeks. He submits that the said Will was never destroyed, even if there was an understanding to the said effect. The recitals in the Will, therefore, cannot be ignored.

3.5 Assuming, without admitting, that the disputed properties were held by Krishna Rani Chhabra as a benamidar, Mr. Sethi submits that the suit itself would not be maintainable in view of Section 410 of the Benami Transactions Act. Though the plaintiff has sought to escape the rigour of Section 4 by relying on Exception (iii) below Section 9(1)(b) of the Benami Transactions Act, that provision, he submits, is ex facie not applicable, as it refers to property purchased benami by an 9 (2017) 162 DRJ 527 10 4. Prohibition of the right to recover property held benami. -

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

against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

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3.6 Mr. Sethi disputes the contention, in the plaint, that Defendant 3 Krishna Rani Chhabra was not possessed of the source of income to purchase the disputed properties. He submits that she was the recipient of income as a partner in the firm and was also working as an Insurance Agent with the New India Assurance Co. and that she was an income tax payee throughout her life.

3.7 Thus, submits Mr. Sethi, the plaintiff has no prima facie case in his favour. No interim injunction can, therefore, be granted, as sought by him.

4. Mr. Suri's submission in rejoinder Mr. Suri submits, in rejoinder, that there was no evidence, whatsoever, to indicate that Krishna Rani Chhabra, Harbans Kaur or Rajwant Kaur were possessed of the sources of income to purchase the properties in issue. Insofar as the Will dated 29 January 2003 is concerned, Mr. Suri submits that, as Defendant 1 is asserting the Gift Deed dated 18 October 2016, the Will ceased to have relevance.

Analysis

5. The plaintiff seeks an interim injunction under Order XXXIX Rule 1(a) of the CPC. No doubt, Order XXXIX Rule 1(a) empowers the Court to restrain, by temporary injunction, alienation, sale, This is a digitally signed order.

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6. Mr. Sethi's contention is, essentially, that the very first requirement of a prima facie case in the plaintiff's favour is not satisfied in the present instance.

7. Mr. Sethi disputes the essential basis of the plaintiff's claim, which is that the suit properties, and the disputed properties, were held by Krishna Rani Chhabra as benamidar for her husband Krishan Lal Chhabra. He has cited various judicial authorities. It would be appropriate, first, to see what they say.

8. Paras 4 and 5 and 12 of Addanki Narayanappa, on which Mr. Sethi places reliance, read thus:

"4. Direct cases upon this point of the courts in India are few but before we examine them it would be desirable to advert to the provisions of the Partnership Act itself bearing on the interest of partners in partnership property. Section 14 provides 11 (2012) 1 SCC 735 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/12/2023 at 22:55:02 that subject to contract between the partners the property of the firm includes all property originally brought into the stock of the firm or acquired by the firm for the purposes and in the course of the business of the firm. Section 15 provides that such property shall ordinarily be held and used by the partners exclusively for the purposes of the business of the firm. Though that is so a firm has no legal existence under the Act and the partnership property will, therefore, be deemed to be held by the partners for the business of the partnership. Section 29 deals with the rights of a transferee of a partner's interest and sub-section (1) provides that such a transferee will not have the same rights as the transferor partner but he would be entitled to receive the share of profits of his transferor and that he will be bound to accept the account of profits agreed to by the partners. Sub-section (2) provides that upon dissolution of the firm or upon a transferor-partner ceasing to be a partner the transferee would be entitled as against the remaining partners to receive the share of the assets of the firm to which his transferor was entitled and will also be entitled to an account as from the date of dissolution. Section 30 deals with the case of a minor admitted to the benefits of partnerships. Such minor is given a right to his share of the property of the firm and also a right to a share in the profits of the firm as may be agreed upon. But his share will be liable for the acts of the firm though he would not be personally liable for them. Sub-section (4) however, debars a minor from suing the partners for accounts or for his share of the property or profits of the firm save when severing his connection with the firm. It also provides that when he is severing his connection with the firm the court shall make a valuation of his share in the property of the firm. Sections 31 to 38 deal with incoming and outgoing partners. Some of the consequences of retirement of a partner are dealt with in sub-sections (2) and (3) of Section 32 while some others are dealt with in Sections 36 and 37. Under Section 37 the outgoing partner or the estate of a deceased partner, in the absence of a contract to the contrary, would be, entitled to at the option of himself or his representatives to such share of profits made since he ceased to be a partner as may be attributable to the property of the firm or to interest at the rate of six per cent per annum on the amount of his share in the property of the firm. The

subject of dissolution of a firm and the consequences are dealt with in Chapter VI, Sections 39 to 55. Of these the one which is relevant for this discussion is Section 48 which runs thus:

"In settling the accounts of a firm after dissolution the following rules shall, subject to agreement by the partners, be observed:

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(a) Losses, including deficiencies of capital, shall be paid first out of profits, next out of capital and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits.

(b) The assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:

(i) in paying the debts of the firm to third parties:

(ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;

(iii) in paying to each partner rateably what is due to him on account of capital; and

(iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits."

From a perusal of these provisions it would be abundantly clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing, to the partnership from the realisation of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to anyone. His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remain after satisfying the liabilities set out in clause

(a) and sub-clauses (i), (ii) and (iii) of clause(b) of Section 48. It has been stated in Lindley on Partnership, Edn., 12th at p. 375:

"What is meant by the share of a partner is his proportion of the partnership assets after they have been realised and converted into money, and all the partner-ship debts and liabilities have been paid and discharged. This it is, This is a digitally signed order.

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This statement of law is based upon a number of decisions of the English courts. One of these is Rodriguez v. Speyer Bros.¹² where at p. 68 it has been observed:

"When a debt due to a firm is got in no partner, has any definite share or interest in that debt; his right is merely to have the money so received applied, together with the other assets, in discharging the liabilities of the firm, and to receive his share of any surplus there may be when the liquidation has been completed."

No doubt this decision was subsequent to the enactment of the English Partnership Act of 1890. Even in several earlier cases, as for instance, Darby v. Darby¹³ the same view has been expressed. That was a case where two persons purchased lands on a joint speculation with their joint monies for the purpose of converting them into building plots and reselling them at a profit or loss. It was held by Kindersley, V.C. that there was a conversion of the property purchased out and out and upon the death of one of the partners his share in the part of the unrealised estate passed to his personal representatives. After examining the earlier cases the learned Vice-Chancellor observed at p. 995:

"The result then of the authorities may be thus stated :

Lord Thurlow was of opinion that a special contract was necessary to convert the land into personalty : and Sir W. Grant followed that decision. Lord Eldon on more than one occasion strongly pressed his opinion that Lord Thurlow's decision was wrong. Sir J. Leach clearly decided in three cases that there was conversion out and out : and Sir L. Shadwell, in the last case before him, clearly decided in the same way. That is the state of the authorities.

Now it appears to me that, irrespective of authority, and looking at the matter with reference to principles well established in this Court, if partners purchase land merely for the purpose of their trade, and pay for it out of the partnership property, that transaction makes the property personalty, and effects a conversion out and out."

He then observed:

12 1919 AC 59 13 61 ER 992 This is a digitally signed order.

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"This principle is clearly laid down by Lord Eldon in *Crawshay v. Collins*¹⁴ and by Sir W. Grant in *Featherstonhaugh v. Fenwick*¹⁵ and the right of each partner to insist on a sale of all the partnership property, which arises from what is implied in the contract of partnership, is just as stringent as a special contract would be. If, then, this rule applies to ordinary stock-in-trade, why should it not apply to all kinds of partnership property? Suppose that partners, for the purpose of carrying on their business, purchase, out of the funds of the partnership, leasehold estate, or take a lease of land, paying the rent out of the partnership funds, can it be doubted that the same rule which applies to ordinary chattels would apply to such leasehold property? I do not think it was ever questioned that, on a dissolution, the right of each partner to have the partnership effects sold applies to leasehold property belonging to the partnership as much as to any other stock-in-trade. No one partner can insist on retaining his share unsold. Nor would it make any difference in whom the legal estate was vested, whether in one of the partners or in all; this Court would regulate the matter according to the equities. And Sir W. Grant so decided in *Featherstonhaugh v. Fenwick*."

5. We have quoted extensively from this decision because of the argument that the decision in *Rodriguez* case would have been otherwise but for Section 22 of the English Act. Adverting to this *Lindley* has said:

"From the principle that a share of a partner is nothing more than his proportion of the partnership assets after they have been turned into money and applied in liquidation of the partnership, whether its property consists of land or not, must, as between the real and personal representatives of a deceased partner, be deemed to be personal and not real estate, unless indeed such conversion is inconsistent with the agreement between the parties. Although the decisions upon this point were conflicting, the authorities which were in favour of the foregoing conclusion certainly preponderated over the others, and all doubt upon the point has been removed by the Partnership Act, 1890, which contains the following section:

22. Where land or any heritable interest therein has become partnership property it shall, unless the contrary intention appears, be treated as between the partners (including the representative of a deceased partner), and 14 15 Ves 218 15 17 Ves 298

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I do not see how the principles enunciated in these paragraphs are at all relevant. They relate to the ownership of property which is brought into a firm by a partner. The Supreme Court has held that, once the property is brought into the firm, the person who brings the property to the firm ceases to have any proprietary right over the property, and the property becomes part of the assets of the firm, over which the firm alone has dominion. The present suit does not involve any property which was brought into the firm. The Punjabi Bagh property was purchased out of the funds of the firm in the names of the wives of its partners. The Fatehpuri and Nangloi properties are, on the other hand, properties with which the firm has no concern. The decision in Addanki Narayanappa cannot, therefore, be of assistance.

9. Proceeding, now, to the Division Bench judgments of this Court cited by Mr. Sethi, paras 14 and 15 of Achyut Kumar Sharma read as under:

"14. The Supreme Court has explained this principle as follows in Forward Construction Co. v. Prabhat Mondal¹⁶ :

"an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence."

15. Later, in Alka Gupta v. Narender Kumar Gupta¹⁷ , it was stated that:

16 (1986) 1 SCC 100 17 (2010) 10 SCC 141 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/12/2023 at 22:55:02 "even though a particular ground of defence or attack was not actually taken in the earlier suit, if it was capable of being taken in the earlier suit, it became a bar in regard to the said issue being taken in the second suit in view of the principle of constructive res judicata. Constructive res judicata deals with grounds of attack and defence which ought to have been raised, but not raised, whereas Order 2 Rule 2 of the Code relates to reliefs which ought to have been claimed on the same cause of action but not claimed.""

Mr. Sethi relies on these passages to contend that, without seeking the cancellation of the Sale Deeds under which the disputed properties were sold to Krishna Rani Chhabra, the plaintiff cannot seek any injunction against Defendant 1 dealing with the said properties, as Krishna Rani Chhabra, as the owner of the properties, was wholly competent to give them to Defendant 1. No declaration of invalidity having been sought in respect of the Sale Deeds under which Krishna Rani Chhabra purchased the disputed properties, Mr. Sethi submits that the prayer for injunction cannot be premised solely on the relief of declaration sought in respect of the Gift

Deed dated 18 October 2016.

10. Para 14 of Achyut Kumar Sharma holds, relying on the earlier decision of the Supreme Court in Mohd. Noorul Hoda v. Bibi Raifunnisa¹⁸ that "when the plaintiff seeks to establish a title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way, which otherwise binds him, though not a party, he has to necessarily seek a declaration and have the decree or instrument cancelled, set aside or rescinded". Para 15 further clarifies that "the sale deed by which ownership in an immovable property is transferred can be

18 (1996) 7 SCC 767 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/12/2023 at 22:55:02 known only when it is void ab initio". If the sale deed goes against the interest of the plaintiff, the plaintiff has, within the statutory period of limitation of three years from the date of coming to know of the execution and existence of the sale deed, to move a claim for cancellation thereof.

11. The plaintiff is not seeking cancellation of the Sale Deeds in respect of any of the suit properties. Mr. Suri's case is that, though, on paper, the sale deed of the Punjabi Bagh property was executed in favour of the wives of the partners of the firm, and the Fatehpuri and Nangloi properties were sold to Krishna Rani Chhabra, in each case, the buyers, i.e. the wives of the partners of the firm in respect of the Punjabi Bagh property and Krishna Rani Chhabra in respect of the Fatehpuri and Nangloi properties, purchased the properties as benamidars for the benefit of their respective husbands. The case that the plaintiff has sought to set up being one of the transactions being benami, the omission, on the plaintiff's part, to challenge the Sale Deeds, or seek a declaration that they were invalid, cannot operate to disentitle the plaintiff's claim to interim injunction. Achyut Kumar Sharma cannot, therefore, come to the aid of Mr. Sethi's client.

12. From Prem Nath Chopra, Mr. Sethi cites the following passages:

"73. The mutation and conveyance deed dated February 03, 1997 confer title of the suit property upon S.L. Chopra. The plaintiff has claimed that aforesaid mutation and conveyance deed dated February 03, 1997 were obtained by S.L. Chopra by playing fraud upon L&DO and other (class-II) legal heirs of Maharaj Kishan Chopra. Such being the case, the plaintiff was required to get cancelled the mutation and conveyance deed dated February This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/12/2023 at 22:55:02 03, 1997 which confer title of the suit property upon S.L. Chopra; howsoever faulty the mutation was.

74. Article 59 of the Limitation Act, 1963 prescribes that limitation period for getting an instrument cancelled or set aside would be three years from the date when the facts entitling the plaintiff to have the instrument cancelled or set aside first become known to him.

75. The question which arises for consideration is that when did the plaintiff come to know that S.L. Chopra had obtained mutation and conveyance deed in respect of the suit property in his favour by playing fraud upon L&DO and other (class-II) legal heirs of Maharaj Kishan Chopra, as claimed by the plaintiff.

80. The plaintiff could have filed a suit seeking cancellation of the mutation of the suit property in favor of S.L. Chopra and the conveyance deed dated February 03, 1997 conferring title to the suit property upon S.L. Chopra within three years of the date he came to know the facts which entitled him to get the said documents cancelled.

83. In this view of the matter, the Single Judge has rightly come to the conclusion that the plaintiff is precluded from questioning the title of S.L. Chopra to the suit property on the ground of bar of limitation."

13. Paras 13 and 14 of Virender Kumar Garg, similarly, read thus:

"13. The learned Single Judge had noticed that once late J.N. Garg had asserted his absolute ownership of the suit property, which was denied by the plaintiff through his reply that he had "acquired and built out of the funds of the ancestral properties and it was not constructed or acquired with the funds of your client." Apart from that assertion, and the further claim that J.N. Garg, being a public servant, could not have had sufficient means to acquire the property, the plaint was silent regarding particulars of the properties that were sold by J.N. Garg's father or uncle, the proceeds of which were allegedly utilized by him to acquire the suit property. This omission, in the opinion of the Court, is fatal to the entire claim of the plaintiff regarding the joint nature of the suit property. Once having admitted that J.N. Garg was possessed of income in the form of salary, the plaintiff had to at least state particulars relating to the properties which were sold, leading to acquisition of the suit property. No such averment or materials This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/12/2023 at 22:55:02 exist on the record. The absence of pleadings and material, therefore, rendered the plaintiff's claim that the suit property was joint,

suspect. It is axiomatic that a plaintiff who approaches the Court has to prove the allegations by positive evidence. In this case, the pleadings were silent about how the suit property was joint; concededly the property stood in the name of the late father - J.N. Garg, who had an independent source of income, i.e. his salary. Furthermore, the plaintiff had brought on record the notice issued by his father in 2000, clearly stating that he (the plaintiff) had no title to it. The plaintiff took no action within the period of three years, claiming declaration that the suit property was joint. He chose to do it over seven years later. The decision in *Anathula Sudhakar v. P. Buchi Reddy (Dead)* by LRs19 is an authority on the point that where there is a cloud on the title of a claimant as to property, he has to seek declaration:

"12.....a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient....."

14. There can be no dispute that a suit for declaration was the appropriate remedy; the cause for it arose with the assertion of the right by the father, denying that the plaintiff had any right to the property. The plaintiff took no steps to assert his right. Article 58 of the First Schedule to the Limitation Act prescribes a period of three years for suits claiming declaration; the starting point of limitation is when the right to sue accrues. In *Mt. Bolo v. Mt. Koklan*²⁰, the Privy Council observed as follows:

"13. There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted....."

19 (2008) 4 SCC 594 20 AIR 1930 PC 270 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/12/2023 at 22:55:02 The test of "clear and unequivocal threat to infringe" the plaintiff being the determinative one for seeing whether cause of action arises in a given case, has been subsequently adopted by the Supreme Court [*Ref. C. Mohammed Yunus v. Syed Unissa and Daya Singh v. Gurdev Singh (dead)* by LRs.22].

Applying that test, the clear and unequivocal threat to the plaintiff's claim of being owner on the basis of the suit property being HUF property, arose when his father issued a notice. The plaintiff

did nothing to assert that right. Therefore, he could not legitimately claim a declaration."

14. These passages, again, exposit the same legal position as is to be found in paras 14 and 15 of Achyut Kumar Sharma, viz., that a plaintiff who bases his claim on a foundation which is contrary to the recitals in a Sale Deed and against whom, therefore, the Sale Deed acts as an obstacle, has to seek cancellation of the Sale Deed in the first instance, before being entitled to any injunctive relief. For the reasons set out in para 11 supra, Prem Nath Chopra and Virender Kumar Garg can also not aid Defendant 1.

15. Raman Jain was a decision passed in a first appeal, under Section 96 of the CPC, against the judgment of the learned Trial Court dismissing a suit instituted by the appellant Raman Jain. An earlier suit had been instituted by the respondent Magan Mala Jain claiming exclusive ownership of the suit property and seeking eviction of the appellant Raman Jain therefrom. Raman Jain, in his suit, claimed ownership of the suit property, in derogation of the rights claimed by the plaintiff. This Court held, in para 8 of its decision, that, as Raman Jain was asserting his title over the suit property in derogation of the title asserted by the plaintiff, he had necessarily to assert such a right 21 AIR 1961 SC 808 22 (2010) 2 SCC 194 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/12/2023 at 22:55:02 within three years of 2011, when the plaintiff instituted the suit seeking eviction of Raman Jain. Raman Jain's suit having been instituted only in 2018, this Court found no fault in the decision of the learned Trial Court to dismiss Raman Jain's suit on the ground of limitation. Once, therefore, Magan Mala Jain was held to be the sole owner of the suit property, all the remaining reliefs sought by Raman Jain in his suit, which were dependent on the relief of declaration which, in turn, was barred by time, had necessarily to fail.

16. The dispute in Raman Jain was, therefore, fundamentally different from that which arises in the proceedings at hand.

17. The decision in Arjun Singh Gupta does not consider the effect of clause (iii) of the exception below Section 2(9)(A) of the Benami Transactions Act.

18. The specific case urged by Mr. Suri is that, of the disputed properties, the Punjabi Bagh property was held by the wives of the partners of the firm, and was purchased out of funds of the firm. Similarly, it is argued that the Fatehpuri and Nangloi properties were purchased by Krishan Lal Chhabra under the name of his wife, out of funds of Krishan Lal Chhabra. If these arguments are accepted, the plaintiff would be entitled, prima facie, to the benefit of exception (iii) below Section 2(9)(A) of the Benami Transactions Act, which excludes, from the definition of "benami transaction", holding of a property by an individual in the name of his spouse, the consideration for which property has been provided or paid out of the own sources of the individual.

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19. Though Mr. Sethi has sought to contend that the expression "individual" would not include a firm, that is a matter which is debatable. No judicial authority has been cited, before me, to support the submission that the word "person", as used in Section 2(9)(A), or the word "individual" as used in exception (iii) below Section 2(9)(A) of the Benami Transactions Act, would not include a firm.

20. In examining the present application, the Court has to be conscious of the scope of relief that it seeks. There is no prayer for the restoration of the status quo ante. All that is sought is that Defendant 1 should be restrained from creating third party interest in respect of the disputed properties.

21. Three considerations which have to govern any prayer for grant of interim injunction under Order XXXIX are the (i) the existence of a prima facie case, (ii) balance of convenience and (iii) possibility of irreparable loss if injunction is not granted.

22. Though all the three conditions have to be cumulatively satisfied for interim injunction to be granted, none of the three conditions is entitled to priority or primacy over the other. Given the peculiar facts of the case, the effect of one or the other of the said considerations may be so overarching as to constitute the main basis for grant of injunction. That said, however, the existence of all the three considerations, cumulatively, is necessary for an interim injunction to follow.

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23. A holistic appreciation of the rival considerations addressed at the bar indicates that the main bone of contention is whether Krishna Rani Chhabra was holding the disputed properties in her individual right or as benamidar for Krishan Lal Chhabra.

24. Apropos the Punjabi Bagh property, Mr. Suri's contention is that, though the property was purchased in the name of the wives of the partners of the firm, it was purchased out of the funds of the firm and was, therefore, held by the wives of the partners on behalf of and for the benefit of their respective spouses. Similarly, in respect of the Fatehpuri and Nangloi properties, Mr. Suri's submission is that, though the properties were purchased in the name of Krishna Rani Chhabra, the purchase was for the benefit of Krishan Lal Chhabra, for whom she was only a benamidar. Such, transactions do not constitute "benami transactions" within the meaning of the Benami Transactions Act, as they fall within exception (iii) below Section 2(9)(A).

25. Every benami transaction is not prohibited under the Benami Transaction Act. There are permitted and prohibited benami transactions. The prohibition against benami transactions is contained in Section 3(1) of the Benami Transactions Act, which prohibits any person from entering

into any benami transaction. The expression "benami transaction" as employed in Section 3(1), however, has to be understood not as the expression is understood in common parlance, but as the expression is defined in Section 2(9) of the Benami Transactions Act.

26. Section 2(9), while generally defining benami transactions as This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 14/12/2023 at 22:55:02 transactions where a property is transferred to and held by one person, though the consideration for the property has been paid by another, carves out certain exceptions from the definition.

27. Exception (iii) refers to holding of property by any person being an individual in the name of his spouse, the consideration for which property has been provided or paid out of the known sources of the individual. Mr. Suri's contention is that all the disputed properties were held by Krishan Lal Chhabra, in the name of his spouse, Krishna Rani Chhabra. That, therefore, fulfills the first condition in exception

(iii). The second condition, for exception (iii) to apply is that, the property must be purchased out of the funds of the person who holds the property in the name of his spouse.

28. Mr. Suri contends that, insofar as the Punjabi Bagh property is concerned, it was one of three properties, "the others being the Singh Sabha property and the Shakti Nagar property" which were purchased by the partners of the firms out of the funds of the firm in which they were partners. Thereafter, by an agreement between the parties, the one third share in the Punjabi Bagh property held by Rajwant Kaur, the wife of Jaswant Singh Sethi, was transferred to Krishna Rani Chhabra vide Exchange Deed dated 22 April 1968 and the one third share held by Harbans Kaur, wife of Kaura Mal Sethi, was sold to Krishna Rani Chhabra vide sale deed dated 22 April 1968. Thus, Krishna Rani Chhabra became the entire owner of the Punjabi Bagh property.

29. The aforesaid documents conveying the various properties This is a digitally signed order.

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30. The only question, therefore, was whether Krishna Rani Chhabra was, or was not, competent to execute the gift deed, gifting the Punjabi Bagh property to Defendant 1. Mr. Sethi's submission is that, as Krishna Rani Chhabra was only a benamidar for Krishan Lal Chhabra, she could not dispose of the properties during the life of Krishan Lal Chhabra.

31. There are specific assertions, in the plaint, that Krishna Rani Chhabra was a housewife and that the Fatehpuri and Nangloi properties were purchased out of earnings from the firm and M/s Krishan Lal & Sons and out of the own sources of Krishan Lal Chhabra. Admittedly, the partners in the firm were Krishan Lal Chhabra, Kaura Mal Sethi and Ram Chander Sethi, who was later replaced by Jaswant Singh Sethi. Their wives were not partners in the firm. To repeat, the specific assertion in the plaint is that Krishna Rani Chhabra was a housewife.

32. Given the fact that Krishna Rani Chhabra was not a partner in any firm and, rather, her husband Krishan Lal Chhabra was the partner in M/s Punjab Colour and Varnishing Co. as well as M/s Krishan Lal & Sons, the financial ability of Krishna Rani Chhabra to purchase all the above properties, is a matter which is arguable, and which would This is a digitally signed order.

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33. As against this, the contention of Mr Sethi is that Krishna Rani Chhabra purchased the disputed properties out of her own income, earned by her as an insurance agent and from other sources.

34. There are, therefore, rival contentions regarding the source of the funds using which the disputed properties were purchased as well as regards the financial capacity of Krishna Rani Chhabra to purchase the properties at Fatehpuri and Nangloi. These matters can be decided only consequent to leading of evidence.

35. The only interlocutory relief that the plaintiff seeks in this application is a restraint against any of the defendants from creating third party interest in respect of the disputed properties.

36. It appears, from the written statement of Defendant 2, that Krishna Rani Chhabra also executed a Gift Deed in respect of the Fatehpuri property in favour of Defendant 1.

37. Thus, the gift deeds in respect of two of the three disputed properties already stand executed by Krishna Rani Chhabra (Defendant 3) in favour of Defendant 1. The matter obviously deserves consideration, especially as Defendant 1 was one of three children of Krishna Rani Chhabra, the other being the plaintiff and Defendant 2. The execution of the gift deeds in favour of Defendant 1, thereby, effectively, divests the plaintiff and Defendant 2 of all other rights in the Punjabi Bagh and the Fatehpuri property.

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38. The plaintiff has also questioned the mental capacity of Krishna Rani Chhabra to gift the disputed properties. That, undoubtedly, would be a matter for trial and the onus to prove that

Krishna Rani Chhabra was not in a dispositive state of mind would be on the plaintiff.

39. At the same time, given the nature of the dispute, the plaintiff is, in my prima facie, opinion justified in his apprehension that, if Defendant 1 proceeds further to alienate the disputed properties at Punjabi Bagh, Nangloi and Fatehpuri properties, the plaintiff would, even if he succeeds in the suit, be left with a paper decree.

40. Several triable issues arise, including the actual nature of the transaction, the source from which the disputed properties were purchased, the financial capacity of Krishna Rani Chhabra to purchase the properties and the mental capacity of Krishna Rani Chhabra at the time when she allegedly gifted two out of the three disputed properties to Defendant 1 to the exclusion of plaintiff and Defendant 2.

41. The plaintiff has also candidly acknowledged the existence of a registered Will dated 29 January 2003, whereby Defendant 3 bequeathed the Punjabi Bagh property in favour of Defendant 1. The fact that, after executing the registered Will dated 29 January 2003, Krishna Rani Chhabra (Defendant 3) proceeded to execute the gift deed dated 18 October 2016 in respect of the very same property to Defendant 1 also raises a triable issue.

42. As already noted, the plaintiff is not seeking a status quo ante.

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43. Order XXXIX Rule 1(a), even by its very wordings, advocates the passing of such an order, where triable issues relating to the property in question arise for consideration.

44. Accordingly, I am of the view that the plaintiff is entitled to the interim relief sought in this application.

45. Pending disposal of the suit, therefore, the Defendant 1 shall stand restrained from creating any third party interest in respect of the disputed properties situated at (i) 25/42, Punjabi Bagh West, (ii) Shop No. 288 at Chowk Fatehpuri and (iii) agricultural land admeasuring 1000 sq yds in Khasra 73/10 and 74/11, Village Nangloi Jat, New Delhi.

46. Needless to say, the observations in this order are only prima facie and are not intended to be regarded as binding while adjudicating on the main dispute in the suit.

47. The application stands allowed accordingly.

C. HARI SHANKAR, J.

DECEMBER 12, 2023/HJ Click here to check corrigendum, if any This is a digitally signed order.

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