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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% **Reserved on: 15<sup>th</sup> January, 2026**  
**Pronounced on: 07<sup>th</sup> April, 2026**  
+ **RFA 70/2024, CM APPL. 5115/2024**

1. **MS. ANJU CHADHA**  
W/O Mr. Virender Chadha  
R/O 136, Mandakini Enclave,  
Alaknanda, New Delhi.

2. **MR. VIRENDER CHADHA**  
R/O 136, Mandakini Enclave,  
Alaknanda, New Delhi.

.....Appellants

Through: Mr. Rishi Bharadwaj, Advocate.  
versus

1. **BHAVESH MADAN**  
S/O Late Sh. R.C. Madan  
R/O 137, Mandakini Enclave,  
Alaknanda, New Delhi

2. **SMT. REETU MADAN**  
W/O Sh. Bhavesh Madan,  
R/O 137, Mandakini Enclave,  
Alaknanda, New Delhi.

.....Respondents

Through: Mr. Rajesh Mahindru & Mr. Birender  
Chaudhary, Advs. for R-1.

**CORAM:**  
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

1. An Appeal under Section 96 CPC has been filed on behalf of the South-East District, Saket *Appellants Ms. Anju Chadha and Mr. Virender Chadha against Judgment dated 18.12.2023, whereby learned ADJ-01, New Delhi, has decreed the Suit for Mandatory Injunction, Permanent Injunction*



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*and Damages and directed the Appellants to vacate the Suit Property within 30 days, under Order XII Rule 6 CPC.*

**2.** **CS DJ 619/2020** was filed by Respondent Nos.1 and 2 / Bhavesh Madan and Reetu Madan for *Mandatory Injunction, Permanent Injunction and Damages* against Anju Chadha/Respondent No.3 and her husband Virender Chadha Respondent No.4.

**3.** *The facts as narrated in the Plaintiff,* were that Plaintiffs Bhavesh Madan and Reetu Madan were registered owners and in legal possession of the Suit Property bearing No.136, Mandakini Enclave, Alaknanda, New Delhi, (*hereinafter referred to as suit property*), by virtue of Sale Deed dated 20.11.2009.

**4.** It was claimed that in the month of January, 2020, Defendant Nos.1 and 2, i.e. Anju Chadha (sister of Plaintiff Bhavesh Madan) and her husband Virender Chadha, came to India from Australia and expressed their desire to stay for a few days with the mother of Plaintiff No.1 and Defendant No.1 to spend some time with her in her old age. As a humane gesture, Plaintiffs permitted the Defendants to reside in the Suit Property. The Defendant/Appellant had told the Respondent within a few days, he would be flying back to their home in Australia and assured that they would vacate the property as and when the Plaintiff desires. The stay of the Defendants got extended on account of Covid Pandemic Lockdown from 22.03.2020 onwards and they therefore, continued to stay in the same property.

**5.** The Plaintiff's mother died on 17.06.2020 and the Appellants continued to stay in the property even after the demise of the mother. It is



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claimed that they were bare licensee without any charges being the real sister and brother-in-law of Plaintiff No.1.

6. The Plaintiff explained that he had been carrying on business from shop, office and small guest house at Paharganj, Delhi. The parents of Plaintiff No.1 had excluded the Defendant No.1, the real sister from their estate and bequeathed their properties located at Vasant Vihar, Faridabad and New Rohtak Road, Delhi, in favour of the Plaintiff and his younger brother, who lives in USA.

7. After the demise of the mother, Plaintiff had asked the *Appellants about the status of commercial property No.25/15, New Rohtak Road, Delhi*, but they seemed to have become dishonest and greedy for more money and were eyeing the properties of the Plaintiff/Respondent No.1.

8. On 10.09.2020 the Plaintiff had asked the Appellants to make their arrangement and vacate the property and thereby terminated the permission to occupy the Suit property. However, they refused to vacate the property and extended open threats to the Plaintiffs.

9. The Defendant No.1 demanded jewellery of the mother which was kept in the locker, although she had no right to the same in terms of the Will of the mother. The Plaintiff left with no choice, agreed to give the jewellery of the mother to maintain peace in the family. It was agreed that after receiving the jewellery, the Defendants would vacate the property and would not interfere in the life of the Plaintiff in any manner.

10. Accordingly, the jewellery was given to Defendant No.1 on 29.09.2020. The parents of Appellant No.1, i.e. Mrs. Anju Chaddha and Respondent No.1, i.e. Mr. Bhavesh Madan, have left behind vast properties



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and businesses, in respect of which Respondent No.3 has filed a *Suit bearing CS (OS)432/2021 before this Court for Partition, Permanent Injunction and Rendition of Accounts.*

11. Thereafter, the Defendants refused to vacate the property, but continued to extend the threats. On 22.11.2020 the Defendants started removing some of the furniture and articles belonging to the Plaintiffs, kept in the Suit property, without the permission or information of the Plaintiffs. They intended to steal the furniture and also to create third party rights in the Suit property. The Plaintiffs immediately called the Police and a Police Complaint dated 22.11.2020 was also lodged by the Plaintiffs

12. However, because of lockdown in March, 2020, they continued to stay there. On 19.09.2020, Plaintiffs asked the Defendants to vacate the Suit Property, however, they refused to do so. *Consequently, a Suit was filed for Mandatory Injunction, Permanent Injunction and Damages/Mesne Profits of Rs. 1,00,000/- from 29.09.2020 to filing of the suit @ Rs. 50,000/- per month along with interest @ 12% per annum, and further damages at the rate of Rs.50,000/- per month alongwith interest @ 12% per annum, for the period during the pendency of the suit, and for the future period at the rate of Rs.50,000/- per month alongwith interest @ 12% per annum, till the time the possession of the suit property,* against the Respondents to vacate and hand over the possession of the Suit Property.

13. The Defendants/Appellants had filed a **Written Statement** wherein they had taken a *preliminary Objection* that the Suit is a reflection of greed with a view to cheat and deprive the Defendant No.1 and her younger brother, of their admitted claims and rights in the suit property, as they are



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not only the admitted owners of the property but also in possession thereof and thus, the Suit for Injunction is not maintainable

**14.** Furthermore, the Plaintiffs should have sought recovery of Possession and the present Suit for Mandatory and Permanent Injunction, is not maintainable. Since, the Defendant No.2 is the co-owner of the joint family property, the only remedy for the Plaintiff was to seek a Partition of the Joint Family property and the Defendants cannot be evicted. In fact, the Suit is a clandestine attempt by the Plaintiffs to grab the various Joint Family assets and to misappropriate the wealth created by the grandfather Late Sh. Chunni Lal Madan and thereafter, by the mother and father of the parties with dishonest intentions. The Suit property is liable to be distributed amongst all the legal heirs it being a Joint Family property.

**15.** It was asserted that various discussions/messages and noting between the parties had taken place and some of those had been handwritten by the Plaintiff himself. The game of the Plaintiff and his claim in the present Suit can be justly considered, by asking the Plaintiff to produce his Income Tax Returns for the Years 2008-09 and 2009-10 to ascertain the source of funds.

**16.** The Defendants have been residing in the Suit property which is not only established from various documents, but is also not disputed by the Plaintiffs. In fact, the Defendants have been staying in the Flat since 2015 and have been maintaining and paying all the charges including electricity, water, maintenance, society, maids, gas, car cleaner, cook etc. in cash to the Plaintiff. The Plaintiff could not go and deposit the said charges with the Authorities, during the lock down period, and the Plaintiff called Defendant No.2 to deposit the money in their bank account, on 25.06.2020. For the



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said purpose, the Plaintiff/Respondent shared their bank account details with the Defendants on Whatsapp, which was done by Defendant No.2 who also deposited Electricity bill in 2016-17 through his bank account.

**17.** The Plaintiff No.1 had filed another *Suit for Permanent and Mandatory Injunction* in respect of the Joint Family properties, assets and business being the Travellers (I) Forex Blue (P) Ltd., M/s Madan Traveller Guest House Pvt. Ltd. & Madan Stores etc. It was claimed that the Plaintiff by way of the present Suit, was trying to convert the joint possession of the properties bearing No. XV/4360A, 4361 and 4362, Main Bazar, Pahar Ganj as his exclusive possession, even though the ancestral family business was being carried out since 1948-49. He is attempting to take control of the entire business as well as the family properties, which cannot be permitted. Furthermore, the Plaintiff has not only admitted that all the properties belonged to Joint Family, but also that they have to be distributed between three legal heirs of Late Sh. R.C. Madan and Smt. Kamlesh Madan.

**18.** The *Family Settlement* had been drawn up by the Plaintiff in his own hand writing, detailing the manner in which the properties were to be distributed, in addition to distribution of goods, valuables, cash, jewellery etc., lying the almirah of the Suit property.

**19.** It regards to the Suit property, *it as agreed that the same would be gifted to Defendant No.1 and aside from it she would be given a sum of Rs.1 Crore by Bhavesh Madan.* This would be a part from the payment to be made by the Bhavesh Madan to Mr. Sumesh Madan amounting to Rs.2 Crores 80 Lakhs, as detailed herein, for the transfer of Pahar Ganj properties.



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20. In furtherance of this *Family Settlement*, the Plaintiff had shared number of property dealers with Defendant No.2. The Plaintiff had also shared the details of Vasant Vihar property on 22.09.2020. The Defendant No.2 requested for the papers of the suit property from the Plaintiff. The Plaintiff and Defendant No.2 also started getting the papers made in this regard and draft Deeds were also prepared, on the basis of the Family Settlement. The Suit of the Plaintiff is not maintainable as the properties at Paharganj belongs to the family and grandfather of the parties had been carrying out business from the said premises, the License dated 03.01.1960, had been issued for the said premises.

21. The Defendant further asserted that Defendant No.1 got married from the Flat No.144, Krishi Apartment, Block-D, Vikaspuri, and she stayed in the said flat from the year 1988 till 1997. However, the Plaintiff who was running a firm in the name of a Rossete, lost huge money in the business and had fallen ill during this period.

22. The family including Defendant No.1 sold the Vikaspuri flat and another property A-44, Preet Vihar between 1996 to 2005 and a sum of Rs.70 lakhs were spent on the treatment and settling the dues suffered by the Plaintiff at that time. It was under these circumstances that the Suit property was purchased. The parents of the parties assured Defendant No.1 that they would gift the said Suit property to her at the time of distribution of family properties and till such time, she could continue to reside in the flat. The Plaintiff as well as Sumesh Madan, the younger brother agreed for the same. It is in this manner that Defendant No.1 and 2 are in occupation and in



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possession of the Suit property since 2015 i.e. from the date of demise of the father.

**23. *On merits***, the defence as stated above was reiterated and it was claimed that the Suit of the Plaintiff was liable to be dismissed.

**24.** Thereafter, an **Application under Order XII Rule 6 CPC** was filed on 05.05.2022 on behalf of the Respondents, wherein it was stated the Suit Property was exclusive property of the Plaintiffs, as the same was purchased by them vide Registered Sale Deed dated 20.11.2009, to which Defendant No.1 / Appellant No.1, was the attesting witness and had never challenged the Sale Deed and even now has not challenged the title of the Plaintiffs with respect of the Sale Deed. The defence taken by the Defendants was sham and moon shine; rather reading of Written Statement shows that with the *mala fide* intention of dragging the Suit Property into lengthy litigation and to continue in occupation of the Suit Property without any charges and to harass and blackmail the Plaintiffs to accept their illegal demands.

**25.** The Defendants have not been able to show any right to occupy the Suit Property and merely by taking false plea of property having been purchased from the joint family funds, they cannot claim valid defence and they are liable to handover the possession of the Suit Property, to the Plaintiffs.

**26.** It was further submitted that Defendants cannot be permitted to challenge the Registered Sale Deed or ask the Plaintiffs to show the funds, as the contents of the Registered Sale Deed itself show how the payments had been made, by the Plaintiffs.



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27. There was no triable issue raised in the Written Statement and there is clear admission about the Suit Property having been purchased by the Plaintiffs. *Therefore, a Decree under Order 12 Rule 6, was sought.*

28. The Application was contested by the **Appellants, who in their Reply to the Application** had stated that *Defendant No.1 / Appellant No.1 has filed CS(OS) 432/2021 for partition* claiming that the Suit Property was purchased from joint family fund and is liable to be partitioned between him, Plaintiff and Sumesh Madan (brother of Plaintiff No.1 and Defendant No.1). The rights of the parties in regard to the Suit Property, shall be determined in the said Suit and cannot be decided in the present Suit filed by the Plaintiffs.

29. It was denied that there were any admissions made about the Plaintiffs being the exclusive owners of the Suit Property, which in fact, has been purchased from joint family funds. There is no unequivocal admission ever made by Defendant Nos.1 and 2 entitling the Plaintiffs to a Decree under Order XII Rule 6 CPC. The defence had always been that the Suit Property was purchased from joint family funds.

30. It was claimed that ancestral family businesses had been carried on since 1948/1949 and any attempt to control the entire business as well as the family properties cannot be permitted. Plaintiff in the said Suit has claimed himself to be the proprietor of "*Madan Store*", despite being fully aware that he is not Sole proprietor of the same and has made false averments in order to defraud the parties and to grab the family properties.

31. The Appellants have placed on record various documents, in regard to Diary Notes of Late Sh. Ramesh Chand Madan, Whatsapp Messages/Chats between Appellant No.2 and Respondent No.2, ABN-AMRO, Bank



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Statements of Accounts of Smt. Kamlesh Madan. It is asserted that without giving sufficient opportunity to prove these documents, impugned Order under Order XII Rule 6 CPC has been passed.

**32.** The *learned District Judge* referred to the rival contentions of the parties and observed that the only plea taken by the Appellants/Defendants in their Written Statement was that the property was purchased from the joint family funds and all the legal heirs of Late R.C. Madan were true and rightful owners of the Suit property. They claimed to be the co-owners and that they were entitled to stay in the Suit property.

**33.** They relied upon purportedly on the Family Settlement as per which, it was decided that the Suit property shall be gifted to Defendant No.1 by the Plaintiff. It was observed that the Plaintiffs admittedly had a Sale Deed in their favour which had not been challenged in the Suit by the Defendants. Once the title of the Plaintiff's was admitted in the property, the same cannot be challenged by the Defendants merely to claim a right to stay in the property. Their only defence was that the Suit property had been purchased from the joint family funds.

**34.** Furthermore, the defence of Section 4 Benami Transactions (Prohibition Act) taken by the Defendants by asserting that the property was purchased from the joint family funds for the benefit of the whole family could not be sustained, in view of express proviso of Section 4 Benami Transaction Act.

**35.** Moreover, a Suit for Partition had already been filed which is pending in this Court, wherein also, the Defendants had not sought cancellation of the Sale Deed dated 20.11.2009 in favour of the Plaintiffs. It



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was held that the title of the Plaintiffs in the Suit property by virtue of Sale Deed dated 20.11.2009 stood established and the Sale Deed was not under challenge. **In view of the aforesaid, the Application under Order XII Rule 6 CPC was allowed and the Suit of the Plaintiff was decreed.**

**36. Aggrieved by Order dated 18.12.2023 of the Ld. District Judge, Delhi, the present Appeal has been preferred by the *Defendants/Appellants*.**

**37. The *grounds of challenge* are that while in the Impugned Order, reference has been made to the contention raised by the Appellants in the Written Statement that the Suit Property being purchased by joint family funds, has to be divided in the name of all legal heirs of parents of Plaintiff No.1 and Defendant No.1, the title of the Suit Property has been wrongly adjudicated, when only question of possession was to be adjudicated. The Plaintiff has admitted that the only business, consisting of a Shop, Office and Small Guest House at Paharganj, Delhi, was a joint family business and therefore, Respondents admitted that the only source of income was from the joint family business, which was run by their father and that Respondent No.1/ Plaintiff No.1 had no independent source of income in 2009.**

**38. Reliance has been placed on *K. V. Naarayanaswami Iyer vs. I. V. Ramakrishna Iyer*, AIR 1965 SC 289, wherein it was held that if on the date of acquisition of a particular property, the joint family had sufficient nucleus for acquiring the property in the name of any member of the joint family, it should be presumed to be acquired from the family funds, so as to form part of the joint family property unless the contrary is proven.**

**39. Similar observations have been made in *Vinod Kumar Dhall vs. Dharam Dhall (Deceased) Through his LRS & Ors.* and *Mallapa***



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Girimallapa Betgeri and Ors. vs. R. Yellappagouda Patil and Ors., AIR 1959 SC 906.

40. Reliance is also placed on Dal Chand vs. Babu Ram, AIR 1981 All 335, wherein it was held that where the Suit was founded on the averment that the purchase was in the name of a member of a coparcenary. It was really a purchase by the joint family and so no question of Benami transaction arose.

41. Reliance is also placed on Pawan Kumar vs. Babulal Since Deceased through LRs & Anr., 2019 SCC 367, wherein it has been observed that whether the plea raised by the Appellant is barred under Section 4 of Benami Transaction Act or not, cannot be a subject of assessment at the stage of Application under Order VII Rule 11 CPC.

42. Similar observations have been made in G. Tuhin Kumar vs. State Bank of India, MANU/YL/0089/2020.

43. It is further asserted that learned Trial Court has wrongly placed reliance on Maria Margarida Sequeira Fernande vs. Erasmo Jack De Sequeira, (2012) 5 SCC 370, to hold that despite a challenge being raised to the ownership of the Plaintiffs and a claim of co-ownership being raised, merely the possession rights could not have been adjudicated in the Suit under Order XII Rule 6 CPC.

44. There was no admission made ever by the Appellants about the exclusive ownership of the Respondents. Therefore, the impugned Judgment dated 18.12.2023 is liable to be set aside.

45. **Learned counsel for the Respondents** has vehemently opposed the Appeal and argued that aside from bald assertions that property is a joint



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family property, there is no challenge to the Registered Sale Deed, which proves the exclusive ownership of the Respondents in the Suit Property. In any case, the challenge to their claim of ownership is subject matter of Suit for Partition, which has already been filed after filing of present Suit.

**Submissions heard and record perused.**

**46.** It is admitted that the Plaintiffs had purchased the Suit property by virtue of a Sale Deed dated 20.11.2009, to which the Appellant No.1 Anju Chadha *was also a witness*. She was aware of the execution of the Sale Deed in favour of the Respondent since the day of its execution in 2009, despite which never ever was any challenge raised to the Sale Deed being in the exclusive name of the Respondents. *The Sale Deed which has never been challenged, clearly reflects the exclusive ownership of the Respondents in the Suit property.*

**47.** The only defence which has been set up by the Appellant's is that in fact there were joint businesses being conducted by their father, sons and other family members and that the funds for purchasing the Flat had been mobilised by the parents and it was a Joint Family property in which the Plaintiff cannot assert his exclusive rights.

**48.** The first aspect which emerges from the submissions in the Written Statement is that there was a business being carried out by the three generations of the family, but it has been explained by the Defendants themselves that the businesses were being carried out from the Paharganj properties. Those properties which were in joint names, are already a subject matter of the Partition Suit.



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49. The family may have had some family businesses and there may be assets in the name of the family business or acquired from the funds of family business, but this is one property which is the exclusive property of the Plaintiff, as is evident from the Sale Deed. The parents of the parties may have lived in the said premises during their life time and that the Defendant No.1 being the sister, may have also come to live in the Flat while the parents were alive and may have continued even thereafter, but they cannot claim any ownership rights in the Suit property.

50. The Defendants have significantly, asserted that there is a **Family Settlement** wherein the Plaintiff had agreed to sell the property or to give it to the Defendants, which again is not within the scope of this simpliciter Suit for Possession. This family settlement, on the basis of which the Appellant is claiming a right to property, is already a subject matter in the Suit for Partition. The Appellants are at liberty to take all these grounds in that Suit, to establish their claim on the basis of Family Settlement or the suit property having being put in the common hotch-potch, by the Plaintiff/Respondent.

51. In this context, it may be observed and clarified that the Defendants claim that they have a share in the Suit property being a Joint Family and that there was a family settlement, is a subject matter of a separate Partition Suit, which has been filed inter-se the parties. The present Suit is confined solely to recovery of Possession on account of the Sale Deed in the name of the Plaintiffs.

52. It is pertinent to note that in the present Suit there being a Sale Deed exclusively in the name of the Plaintiffs, and other admissions in the Written



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Statement, the learned District Judge has rightly held that there was no defence per-se, made out in the Written Statement which would give rise to a triable issue. **There is no challenge to the Sale Deed being in the name of the Plaintiffs.**

**53.** In view of the clear unambiguous and unequivocal admission in regard to the Sale Deed being in the name of the Plaintiffs to which there is no challenge, the Decree of Possession under Order XII Rule 6 CPC has been rightly made by the learned District Judge.

**54.** There is no merit in the present Appeal, which is hereby, dismissed.

**55.** The Appeal stands disposed of accordingly along with the pending Application(s).

**(NEENA BANSAL KRISHNA)  
JUDGE**

**APRIL 07, 2026/va**