

(2025) 07 DEL CK 0860

In the Delhi High Court

Case No : CS(OS) No. 412 Of 2020 and I.A. Nos. 11771, 16772, 18997, 21764 Of 2022

Ms. Neera Misra

APPELLANT

Vs

State Rakesh Chandra Misra

RESPONDENT

Date of Decision : 11-07-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 151, Order 1 Rule 10, Order 6 Rule 17, Order 7 Rule 11, Order 7 Rule 13, Order 39 Rule 2A
Transfer of Property Act, 1872 — Section 54
Registration Act, 1908 — Section 17, 49
Indian Easement Act, 1882 — Section 60
Benami Transactions (Prohibition) Act, 1988 — Section 4

Citation : (2025) 07 DEL CK 0860

Hon'ble Judges : Vikas Mahajan, J

Bench : Single Bench

Advocate : Ashutosh Lohia, Shraddha Bhargava, Rohit Saraswat, Karan Sharma, Prinay Sharma, Raman Kapur, Abhimanyu Walia, Kunal Sharma, Prabhjot Singh, Ishani Pillai

Final Decision : Dismissed

Judgement

Vikas Mahajan, J

I.A. 6952/2024 (under Order VI Rule 17 read with Section 151 CPC filed on behalf of plaintiff seeking amendment of the plaint)

1. The plaintiff and defendant in the present suit are siblings. The case set out by the plaintiff in the plaint is that the property bearing No. 71, Mayfair Apartment, Mayfair Garden, Hauz Khas Enclave, New Delhi - 110016 [hereinafter 'suit property'] was purchased in the name of the defendant with the funds collectively contributed by the plaintiff and her father.

2. It is alleged that the property was purchased in fiduciary capacity in the name of defendant for the benefit of plaintiff and her parents. In the initial set of

documents, the Agreement to Sell dated 03.02.1994 was prepared in the name of vendor and defendant whereas the other set of documents such as GPA, SPA, etc. dated 03.02.1994 were drawn-up in the name of father of the parties. However, considering various factors, it was decided by the family that the suit property be purchased in the sole name of the defendant. The documents upon execution were also handed over to the plaintiff and she moved into the said property on 15.02.1994, and since then she is in continuous and uninterrupted possession.

3. In 2003, Draupadi Dream Trust (a Public Charitable Trust) [hereinafter 'Trust'] was registered, of which plaintiff was the Settlor, Founder Trustee and Chairperson while the defendant was also made a Trustee. It is averred in the plaint that the Trust has been functioning from the suit property.

4. On 10.04.2007, a Board Resolution was passed by both the trustees wherein it was decided that the suit property from which the Trust operated, and which stood in the name of the defendant, shall constitute the property of the Trust for all purposes and the Trust shall continue to operate from the said premises by virtue of being an irrevocable licensee thereto.

5. It is further averred in the plaint that in furtherance of express intention of parties, the plaintiff as well as the Trust have carried out several renovations and changes in the layout and structure of the suit property being irrevocable licensee and have accordingly acquired an indefeasible right thereto.

6. It is also stated in the plaint that after the demise of the parents of parties, the defendant in the year 2019 started asserting sole ownership rights on the suit property and threatened the plaintiff with dispossession, and is even trying to dispose of the suit property.

7. In the backdrop of aforesaid facts, the plaintiff sought following reliefs in the plaint:

“(a) Grant a decree of permanent mandatory injunction in respect of property bearing No. 71, Mayfair Apartment, Mayfair Garden, Hauz Khas Enclave, New Delhi - 110016, in favour of the Plaintiff and against the Defendant restraining the Defendant and / or his agents, representatives, servants, assigns, nominees, legal heirs, etc. from creating a third party interest, qua the suit premises;

(b) Grant a Decree of permanent injunction in favour of the Plaintiff and against the Defendant restraining the Defendant from dispossessing the Plaintiff from the property bearing No. 71, Mayfair Apartment, Mayfair Garden, Hauz Khas Enclave, New Delhi - 110016, except with due process of law.

(c) Grant a Decree of permanent injunction in favour of the Plaintiff and against the Defendant restraining the Defendant from interfering with and/or obstructing with the Plaintiffs possession, occupation and enjoyment of the property bearing No. 71, Mayfair Apartment, Mayfair Garden, Hauz Khas Enclave, New Delhi-110016.

(d) Direct the Defendant to refrain from creating any act of nuisance and disturbing the peace;

(e) Grant costs of these proceedings to the Plaintiff and against the Defendant.”

8. Initially, when the suit was filed, the Trust was not made a party, however, realising that the Trust is a proper and necessary party, the plaintiff filed an application being I.A. No.1041/2021 [under Order I Rule 10 CPC] on 18.01.2021 seeking to implead the Trust as plaintiff no.2 in the suit.

9. The defendant filed his written statement wherein he took a preliminary objection that the plaint suffers from non-joinder of parties as the Trust has not been made a party to the proceedings even though the plaintiff is seeking rights through the Trust.

10. In the present application being I.A. No.6952/2024 [under Order VI Rule 17 CPC], it has been articulated by the plaintiff that the defendant has filed another independent suit being CS(OS) No.591/2021 against the plaintiff/applicant herein inter alia seeking reliefs of part possession, delivery, injunction and mesne profits. It is stated that in the said suit, as well as, in the written statement filed by the defendant in the present suit, the title of the Trust over the property has been disputed. It is alleged that status quo order was passed in CS(OS) No.591/2021 on 16.11.2021 whereby this Court had directed the parties to maintain status quo in respect of the suit property especially with respect to title and possession. Similarly, status quo was passed in the present suit as well, on 29.04.2022.

11. However, the plaintiff claims that defendant and his wife, in blatant violation of the said status quo orders, forcibly and illegally barged into the suit property. In such circumstances, the plaintiff approached the police as well as filed an application being I.A. No.18997/2022 [under Order XXXIX Rule 2A CPC] in the present suit. It is further stated in the present application that in light of the fact that the defendant has not only disputed the title of the Trust but has also forcibly trespassed into the suit property, this application has been filed under Order VI Rule 17 CPC seeking to include the prayer for decree of declaration to the effect that the Trust is the absolute and sole owner of the property. The said prayer (aa) sought to be inserted by way of amendment reads as under:

“(aa). Grant a Decree declaring the Draupadi Dream Trust - Plaintiff no.2 to be the Absolute and sole owner of the property bearing No. 71, Mayfair Apartment, Mayfair Garden, Hauz Khas Enclave, New Delhi-110016.”

12. Besides insertion of aforesaid prayer, the plaintiff is also seeking insertion of para 1A & 14A in the plaint, which read as under:

“Para 1 A. -That Plaintiff No.2 i.e. Draupadi Dream Trust was incorporated in 2003 and is a registered public charitable Trust of which the plaintiff No.1 is the Founder Trustee and Chairperson. From the very inception of the Trust, it has been functioning from the suit property i.e. 71, Mayfair Apartment, Mayfair

Garden, Hauz Khas Enclave, New Delhi- 110016, which is also the residence of the Plaintiff No.1. The Plaintiff No.2 Trust works in the area of Art & Culture, Eco tourism, Education & Literacy, Environment and natural resource management, Food and Agriculture, Health & Nutrition, New & Renewable Energy, Panchayati Raj, Science & Technology, Sports, Vocational Training, Womens Development & Empowerment, Youth Affairs, etc. The organization works towards the promotion of sustainable development.

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Para 14 A. That as such the suit property i.e. 71, Mayfair Apartment, Mayfair Garden, Hauz Khas Enclave, New Delhi – 110016 belongs exclusively to Plaintiff No.2 i.e. Draupadi Dream Trust. Due to the malafide and illegal actions of the Defendant herein who was one of the Trustees, his name has been removed vide Board Resolution dated 15.11.2022 and the Plaintiff No.1 for besides other reasons as detailed herein above, has a legal right to reside in the suit property of which she is the Founder Trustee and Chairperson and neither the Defendant, his family or the other two brothers have any right to the suit property.”

13. That apart, various incidental amendments have been sought seeking to amend the cause title, as well as, various other paragraphs to insert reference to the Trust as plaintiff no.2. Likewise, amendments have also been sought in the existing prayer clauses within the same parameters.

14. It is pertinent to note that the present application under Order VI Rule 17 CPC [I.A. No.6952/2024] seeking aforesaid amendments to the plaint was filed subsequent to the I.A. No.1918/2023 [under Order VII Rule 11 CPC] of the defendant which is also being decided in the present judgment. By way of said application under Order VII Rule 11 CPC, defendant is seeking rejection of the plaint inter alia on the ground that the suit for injunction has been filed by the plaintiff without having any right, interest or title in the suit property.

15. Mr. Ashutosh Lohia, learned counsel appearing on behalf of the plaintiff/applicant submits that the law is well settled that when applications, both under Order VI Rule 17 CPC as well as under Order VII Rule 11 CPC have been filed, it is the application under Order VI Rule 17 CPC which has to be given precedence. In this regard, he places reliance on the decision of this Court in Rajesh Kumar Mehlawat vs. Naresh Gupta, 2017 SCC OnLine Del 9645.

16. He further submits that from reading of the plaint as a whole, it becomes apparent that right over the suit property has been claimed by the plaintiff through the Trust, and as such, impleadment of Trust as a plaintiff is necessary to effectually and completely adjudicate upon all questions involved in the suit. In that view of the matter, the plaintiff had preferred an application under Order 1 Rule 10 CPC [I.A. No.1041/2021] on 18.01.2021 to implead the Trust as plaintiff no.2.

17. He submits that the said application seeking impleadment of the Trust as

plaintiff no.2 is only a formal application and the same was filed even prior to filing of the written statement by the defendant. He points out that the defendant has also taken an objection as regards non-joinder of the Trust as plaintiff in the suit. He states that I.A. No.1041/2021 may be read as part and parcel of the application for amendment being I.A. No.6952/2024.

18. In support of the application for amendment of the plaint, Mr. Lohia submits that the factual foundation for relief of declaration of ownership of the Trust has already been laid in the original plaint, inasmuch as it has been specifically averred that on 10.04.2007, a Board Resolution was passed in the presence of both the trustees of the Trust wherein it was decided that the suit property which stood in the name of the defendant shall and does constitute the property of the Trust for all purposes.

19. In addition, he states that there are also specific averments to the effect that although the suit property was purchased in the name of the defendant, the same was held by him in a fiduciary capacity and the property was purchased for the benefit of the plaintiff wherein the plaintiff had made financial contribution towards purchase of the same.

20. He submits that it has always been the case of the plaintiff that she has been residing in the suit property and has been in continuous, uninterrupted and peaceful possession of the same since 1994. The plaintiff has also been using the suit property as office being exclusive property of Draupadi Dream Trust.

21. He places reliance on the decision of the Hon'ble Supreme Court in Pankaja and Ors. vs. Yellappa (D) by Lrs. and Ors., (2004) 6 SCC 415 to contend that since the necessary factual basis had already been laid in the original plaint in respect to the title of the Trust over the suit property, amendment sought in the present application for addition of prayer for declaration of title in favour of the Trust, ought to be allowed.

22. He further invites attention of the Court to the decision of a Coordinate Bench in Sumit Gupta vs. Prema Gupta, 2022 SCC OnLine Del 3754, to submit that the principles governing exercise of jurisdiction under Order VI Rule 17 CPC have already been crystalised by this Court and the case of the plaintiff/applicant is squarely covered by them.

23. He contends that in view of the above referred specific averments in the original plaint itself, no new case is being introduced nor the amendment sought will change nature of the suit. He, therefore, urges that the application seeking amendment be allowed.

24. Per contra, Mr. Raman Kapur, learned Senior Counsel appearing on behalf of the defendant/non-applicant submits that the relief of declaration now sought to be incorporated by way of present application will alter the nature of suit and the application is an attempt to establish a fresh cause of action which is inconsistent with the original claim of the Plaintiff.

25. Elaborating on his submission, Mr. Kapur points out that the plaintiff has sought declaration of title in favour of the Trust, however, in support of such a claim, reliance has been placed on a single document, i.e. the Board Resolution dated 10.04.2007, which is forged and fabricated. The said Board Resolution, he submits, is not even a registered document nor is it a valid document for transfer of title. He further contends that a perusal of the said Board Resolution reveals that the Trust has only been made an alleged irrevocable licensee and not the owner.

26. He contends that the present application is simply a reaction to the application moved by the defendant under Order VII Rule 11 CPC and the written statement, as nothing constrained the plaintiff from filing a suit for declaration of ownership of Trust in the beginning itself.

27. He further contends that the amendment is not necessary for proper adjudication of the present suit. He, therefore, urges that the present application be dismissed.

28. Having heard learned counsel for the parties, at the outset, it may be observed that the law is well settled that where an application under Order VI Rule 17 CPC is filed and is pending, then the same ought to be decided first, before deciding the application under Order VII Rule 11 CPC, notwithstanding the fact that application under Order VII Rule 11 CPC had been filed prior in time.

29. This Court in case titled as Wasudhir Foundation vs C. Lal & Sons, 1991 SCC OnLine Del 569 observed as follows:

"5. This is the righteous path And, if this be so is it not necessary, in the ends of justice, to extend the beneficial legal principles ensconced in Order 6 rule 17 More so, when one hardly discerns any-thing in Order 7 rule 11 which may lead one to take the view that it takes away the power of the court to allow amendment or places hurdles in performance of its duty? After all what is the effect of Order 7 rule 11? It is, if I understand correctly, that the plaintiff would not be precluded from filing a fresh suit in respect of the same cause of action. If he so desires see Order 7 Rule 13. If such be the effect, why not permit the amendment of the plaint so as to remove the defect and prevent the operation of the Rule? Why make him first invite the rejection of the plaint, then allow him to file a fresh suit at the expense of delay and heavy costs? Why not straightaway allow him to amend the plaint, remove the defect and permit him, thereby, to proceed with the same suit? Why this rigmarole?

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7. The ouster of Order 6 rule 17 will throttle the very life line of Order 7 rule 11. Instead of promoting, it would defeat the ends of justice. I refuse to be a patty to such an approach.

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9. Order 6 rule 17 is thus held to be neither restricted nor controlled by Order 7 rule 11.”

(emphasis supplied)

30. Likewise, in *Rajesh Kumar Mehlawat (supra)*, this Court has noted that an application under Order VI Rule 17 CPC has to be considered first even if filed after an application under Order VII Rule 11 CPC. The relevant portion of the judgment read thus:

“4. Though in the memorandum of the petition the thrust of the counsel for the petitioner/defendant is that the application under Order 6 Rule 17 should not have been considered when the arguments on the application under Order 7 Rule 11 had been heard but the counsel for the petitioner/defendant agrees that the settled principle of law is that an application under Order 6 Rule 17 even if filed after an application under Order 7 Rule 11 or before the order on the application under Order 7 Rule 11 of CPC is pronounced, has to be considered first.”

(emphasis supplied)

31. Therefore, Mr. Lohia is right in urging that I.A. No.6952/2024 filed by the plaintiff under Order VI Rule 17 CPC ought to be decided first, even though the same has been filed subsequent to the application of the defendant under Order VII Rule 11 CPC i.e. I.A. No.1918/2023. Thus, the present application for amendment is being taken up at first.

32. With regard to amendment of the plaint, it is equally settled that an amendment which seeks to introduce an additional relief, the factual basis for which already exists in the plaint as originally filed, should be allowed. Reference in this regard may be had to the decision of Hon’ble Supreme Court in *Pankaja (supra)*. The facts of the present case are similar to the facts in said case wherein the suit was originally filed seeking a decree of permanent injunction, as well as, possession of the suit property. However, in the written statement filed by the defendant therein, a contention was raised that a suit for injunction and possession without seeking a declaration of title was not maintainable.

33. Accordingly, the plaintiff therein filed an application under Order VI Rule 17 CPC seeking to add a prayer to declare the plaintiffs as owners of the suit property. The Hon’ble Apex Court noted that the Trial Court, as well as, the High Court had proceeded on the assumption that amendment seeking the declaratory prayer after six years of accrual of cause of action is clearly barred by limitation. Accordingly, the application was rejected by both the courts being barred by limitation, as well as, on the ground that it amounted to introduction of a different relief than what the plaintiff had asked for in the original plaint. Setting aside the decision of the courts below, the Hon’ble Supreme Court held as under:

“18. We think that the course adopted by this Court in *Ragu Thilak D. John* case applies appropriately to the facts of this case. The courts below have proceeded on an assumption that the amendment sought for by the appellants is ipso facto

barred by the law of limitation and amounts to introduction of different relief than what the plaintiff had asked for in the original plaint. We do not agree with the courts below that the amendment sought for by the plaintiff introduces a different relief so as to bar the grant of prayer for amendment, necessary factual basis has already been laid down in the plaint in regard to the title which, of course, was denied by the respondent in his written statement which will be an issue to be decided in a trial. Therefore, in the facts of this case, it will be incorrect to come to the conclusion that by the amendment the plaintiff will be introducing a different relief.”

(emphasis supplied)

34. Applying the enunciation of above law to the facts of present case, it is to be noted that the plaintiff, in no uncertain terms, has averred in the plaint that the property is that of the Trust. Furthermore, the plaintiff in the original plaint has narrated the complete factual backdrop in support of the claim of ownership by the Trust over the suit property, starting right from the inception when the suit property was first acquired, and leading up to the eventual passing of the title to the Trust by way of the Board Resolution of 2007. The relevant paras of the original plaint asserting the said facts are reproduced hereinbelow for ready reference:

“5. That amongst all the siblings, there was a very close bond between the Plaintiff and the Defendant and in this background, an oral trust was first created in the year 1994 with the understanding that the future and financial security of the Plaintiff and her parents must be taken care of. Thus, the father of the Plaintiff Shri Dhanesh Chandra Misra and the Defendant alongwith the Plaintiff collectively contributed funds and purchased the property being 71, Mayfair Apartment, Mayfair Garden, Hauz Khas Enclave, New Delhi- 110016, hereinafter called the "suit property", for the benefit, maintenance and residence of the Plaintiff and her parents. The said property was purchased in a fiduciary capacity, in the name of the defendant, for the benefit of the plaintiff and her parents. There was a substantial contribution towards the purchase consideration by the Plaintiff and her parents. This was primarily arranged from the money which was kept aside for the marriage of the plaintiff. That since 1980, the plaintiff had collected her savings (she had been earning through home tuitions and sale of her art work of which her earnings were primarily through cash) and had entrusted her savings to her father for purchase of the said property. As the plaintiff was not an income tax payee, it was upon the advise of the father of the parties and the defendant that the property be purchased in the name of the defendant.

6.It is pertinent to mention that all the (suit) property documents were immediately upon execution handed over to the plaintiff alongwith possession and the plaintiff moved into the said property on 15.02.1994 as the property was purchased for the plaintiff (and her parents) alone. It may further be relevant to mention here that at that point of time, in fact uptill recently the Defendant was

a permanent resident of Dubai.

7. That on 13.08.1998, the conveyance deed was executed and the suit property was registered in the sole name of the Defendant. At the said point of time, the Defendant was married and residing in Dubai with his family. The conveyance deed was also handed over to the plaintiff.

8. That since Feb 1994, i.e. the date of purchase of the suit property, the Plaintiff has been in continuous and uninterrupted possession. All expenses qua maintenance, repairs, upkeep, renovations, electricity, water, property tax etc. have been paid by the plaintiff regularly. That the plaintiff was time and again assured by the defendant that the suit property was purchased for her alone and she shall have all rights of an owner thereon.

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14. That since the inception of the Trust, the Trust has been functioning from the suit property, which is also the residence of the plaintiff i.e. 71, Mayfair Apartment, Mayfair Garden, Hauz Khas Enclave, New Delhi - 110016. Over a period of time, it was decided by the plaintiff and the defendant to secure the property by making the same a Trust property as the Trust was functioning from there. Thus, on 10.04.2007, a Board Resolution was passed by both the Trustees wherein it was decided that the suit property from which the Trust operated which stood in the name of Rakesh Chandra Misra, shall and does constitute the property of the Trust for all purposes and the Trust shall continue to operate from the said premises by virtue of being an irrevocable licensee thereto. That the work and functioning of the Trust is continuing from its inception from the suit property till date.

In furtherance to the express intentions of the parties, the plaintiff as well as the trust have also carried out several renovations and changes in the layout and structure of the (suit} property being irrevocable licensees thereto and have accordingly acquired an indefeasible right-thereto."

35. A reading of the plaint shows that the plaintiff has stated the progression of the circumstances which led to the property having been devolved upon the Trust. It has been stated that the suit property was purchased with substantial contribution by the plaintiff and her parents, for their benefit, maintenance and residence. The title documents were executed in the name of the defendant only in a fiduciary capacity. The plaintiff has also claimed that the aforesaid decisions were in pursuance to an oral trust which was created in the year 1994 for the future and financial security of the plaintiff and her parents. It is further to be noted that plaintiff has claimed she is in peaceful and uninterrupted possession of the suit property since the inception, as well as, she is having the original title deeds including the conveyance deed of the suit property. Later, when the 'Trust' was created in 2003, the same started its operation from the suit property as well. It has also been stated that later, it was decided by both the trustees, i.e. the plaintiff and the defendant, that the suit

property shall constitute the property of the Trust.

36. The dominant purpose for allowing amendment to the plaint is to minimise litigation and as such, the courts need to take a liberal approach while deciding such applications. By way of present application the plaintiff seeks to incorporate reference to Trust as 'plaintiff no.2' and further seeks to introduce the additional prayer for declaring the Trust to be absolute and sole owner of the property.

37. As noted above, the plaintiff had always claimed the suit property being that of the Trust by virtue of the Board Resolution which had been filed along with the original plaint. The necessary pleadings to that effect are already present in the original plaint as discussed above. It is, therefore, not wrong to conclude that the plaintiff is not introducing any new cause of action by way of the amendment.

38. As regard the other amendments regarding addition of paras 1A and 14A, as well as, reference to the Trust as plaintiff no.2, the same are only ancillary and directly related to the real issue in controversy with regard to the title and possession over the suit property. The suit is otherwise at the initial stage and the issues have not yet been framed.

39. In view of the above, the present application is allowed and the amended plaint filed along with the application is taken on record. Let plaintiff(s) affix the court fee on the additional relief of declaration sought, within a period of four weeks from this order.

40. The I.A. No. 6952/2024 stands disposed of.

I.A. No.1041/2021 (under Order I Rule 10 CPC by the plaintiff)

41. The present application seeking impleadment of the Trust is found to be inextricably intertwined with the relief sought in the application for amendment i.e. I.A. No. 6952/2014

42. Having regard to the findings and conclusion arrived at in the foregoing paragraphs, this Court is further of the view that presence of the 'Trust' before this Court is necessary to effectually and completely adjudicate upon and settle all questions involved in the suit. "Reference may be had to Order I Rule 10 Clause (2), Code of Civil Procedure, 1908 10. (2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

43. However, it must be noted that inadvertently, while reserving judgment on the applications under Order VI Rule 17 CPC and under Order VII Rule 11 CPC, the present application seeking impleadment of the 'Trust' as plaintiff no.2 was

left out, although the same was filed as far back as in the year 2021.

44. Be that as it may, this Court deems it appropriate to allow the said application and implead the Trust. Accordingly, 'Draupadi Dream Trust' is impleaded as plaintiff no.2 in the suit. The amended memo of parties filed alongwith the application is taken on record.

45. The application stand disposed of in the above terms.

I.A.No.1918/2023 (under Order VII Rule 11 filed by defendant seeking rejection of plaint)

46. Now turning to the application filed by the defendant under Order VII Rule 11 CPC seeking rejection of plaint, to be noted that although, the present application has been filed prior to the plaintiff filing the application under Order VI Rule 17 CPC seeking amendment, Mr. Raman Kapur, learned Senior Counsel appearing on behalf of the defendant contends on demurrer that even the amended plaint does not disclose any cause of action.

47. Elaborating on his submission, Mr. Kapur submits that the plaintiff is seeking a prayer for declaration of ownership in favour of the Trust which claim is not supported by any valid legal document or instrument for transfer of property. The claim of the plaintiff is only on the basis of a Board Resolution which is an unregistered document.

48. He contends that Section 54 of the Transfer of Property Act, 1872 clearly defines how a sale should be made in order to be construed as a legal sale. Further, in view of the provisions of Section 17 of the Registration Act, 1908 [hereafter the 'Act'], an immovable property can be transferred only by way of a registered document.

49. He submits that the so-called Board Resolution on the basis of which plaintiffs are claiming declaration of ownership in favour of the Trust, is not a registered document, therefore, the same is inadmissible in view of Section 49 of the Act. He further submits that if any immovable property is to be given to any trust, the same has to be done by way of a registered document, and there is no valid and legal document on record to support the contention that the Trust is owner of the suit property. He places reliance on the decision of Hon'ble Supreme Court in Suraj Lamp & Industries Pvt. Ltd. v. State of Haryana & Anr., (2012) 1 SCC 656.

50. He further submits that a perusal of the Board Resolution itself shows that the Trust is an irrevocable licensee whereas Section 60 of the Indian Easement Act, 1882 provides that every license is revocable. He submits that the license was terminated by the defendant by sending a notice dated 02.09.2021 to the plaintiff to vacate the property, thereby revoking all the rights that were held by the plaintiff or the Trust [now plaintiff no.2] as licensee.

51. That apart, he submits that with regard to other reliefs of injunction sought

by the plaintiff, the same are no more sustainable in view of the suit having been filed by the defendant being CS(OS) No.591/2021 seeking part possession, injunction and mesne profits amongst other reliefs. He submits that since the said suit has been filed with regard to the suit property, the present suit and the restraint sought against dispossession herein do not survive.

52. Mr. Lohia, on the other hand, has argued that the application under Order VII Rule 11 CPC has to be decided on the basis of the averments made in the plaint while taking them to be true and the averments made in the written statement cannot be considered for the said purpose.

53. He contends that the property was held by the defendant in fiduciary capacity for the benefit of the plaintiff and her parents. He has placed reliance on the decision of this Court in *Neeru Dhir vs. Kamal Kishore Dhir*, 2020 SCC OnLine Del 2506 to contend that whether the question that the suit is barred by Section 4 of Benami Transactions (Prohibition) Act, 1988 [in short 'Benami Act'] is an aspect which can be gone into on the strength of evidence on record. He, therefore, urges the Court that the present application may be dismissed.

54. At the outset, it may be noted that despite making an averment that the property was purchased in the name of the defendant in a fiduciary capacity for the benefit of plaintiff no.1 and her parents, intriguingly there is no declaration of ownership sought in favour of plaintiff no.1 either in the original or amended plaint. The prayer of declaration of ownership is sought only in favour of plaintiff no.2/Trust, which is predicated on the Board Resolution dated 10.04.2007.

55. A perusal of the plaint reveals that the plaintiff has set up two parallel pleas which is clear from the following paragraph of the plaint:

"16. That upon the demise of the father of the parties in November 2010 followed by the demise of the mother in June 2018, there came a sudden change in the attitude of the defendant. The defendant in the year 2019, started asserting his sole ownership rights on the suit property and threatened the Plaintiff No.1 with dispossession. At the time, the Plaintiff No.1 explained to the defendant that firstly, the suit property was purchased for her and with her financial contribution albeit in a fiduciary capacity and secondly, it was a Trust property and he had no right over it."

(emphasis supplied)

56. One of the contentions of the plaintiff no.1 is that she contributed towards consideration of property, though the same was purchased in the name of defendant to be held in a fiduciary capacity. The other contention raised is that by way of a board resolution dated 10.04.2007, it was decided amongst the then Trustees, that the suit property shall and does constitute the property of plaintiff no.2/Trust for all purposes.

57. Notably, in the amended plaint the plaintiff no.1 has prayed for decree seeking declaration of ownership of property only in favour of plaintiff no.2/Trust,

which suggests that the plaintiffs are not pressing for any relief of ownership in favour of plaintiff no.1 in her own personal capacity.

58. In the aforesaid backdrop, there may be substance in the contention of Mr. Kapur that the prayer of declaration of ownership in favour of plaintiff no.2/Trust could have been predicated only on the basis of a registered document and not solely on the basis of unregistered board resolution in view of the provisions of Section 17 of the Act, but this Court does not wish to dilate on the said argument, since apart from the prayer for decree of declaration, the plaintiffs have also sought reliefs of permanent injunction restraining defendant from dispossessing or interfering with the possession of plaintiffs besides restraining plaintiffs from creating any third-party rights.

59. The said reliefs have been premised on the ground that the plaintiff no.1 is in settled possession of the suit property since 1994, as pleaded in the plaint. It is also averred in the plaint that in the year 2019, the defendant started asserting his sole ownership rights in the suit property and threatened the plaintiffs with dispossession. Threats were again repeated in February/March 2020. Further in the month of June/July 2020, the defendant sent several property dealers to the suit property enquiring about the sale of property. It is further alleged that the defendant has been attempting to pressurize and force plaintiffs to vacate the suit property and hand over the original title documents of the house.

60. Even assuming the plaintiffs were licensees in the suit property and the license of the plaintiffs has been terminated by the defendant, still regard being had to the long-standing possession of the plaintiff no.1 in the suit property from the year 1994 and averments made in the plaint as regard threats being extended to the plaintiffs as to their dispossession and sale of suit property, it cannot be said that the plaint does not disclose a cause of action insofar as prayers for injunction are concerned. Reference in this regard may be had to the decisions of this Court in *Arvindra Kumar Singh v. Hardayal Kaur & Ors.*, 2005 SCC OnLine Del 98 and *Hyundai Motor India Ltd. v. Opal Metal Engineering Pvt. Ltd.*, 2008 SCC OnLine Del 970. Further, if the defendant has filed a separate suit CS(OS) No.591/2021 seeking inter alia decree of part possession, the same will not wipe out or extinguish the cause of action for the prayers of injunction in the present suit, warranting rejection of plaint on the ground of non-disclosure of cause of action.

61. Even if, arguendo, the plaintiffs are not entitled to the relief of declaration, still the plaint cannot be rejected in part, inasmuch as it is trite law that there cannot be rejection of plaint in part. The plaint can be rejected as a whole or not at all, in exercise of powers under Order VII Rule 11(d) CPC. Reference in this regard may be had to the decision of Hon'ble Supreme Court in *Geetha, D/o Late Krishna and Others v. Nanjundaswamy and Others* 2023 SCC OnLine SC 1407, wherein it was observed as under:

"12. There is yet another reason why the judgment of the High Court is not

sustainable. In an application under Order VII Rule 11, CPC a plaint cannot be rejected in part. This principle is well established and has been continuously followed since the 1936 decision in *Maqsd Ahmad v. Mathra Datt & Co.*⁴. This principle is also explained in a recent decision of this Court in *Sejal Glass Ltd. v. Navilan Merchants (P) Ltd.*,⁵ which was again followed in *Madhav Prasad Aggarwal v. Axis Bank Ltd.*⁶ The relevant portion of *Madhav Prasad* (supra) is extracted hereinunder:

"10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11(d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in *Sejal Glass Ltd. v. Navilan Merchants (P) Ltd.*, (2018) 11 SCC 780 : (2018) 5 SCC (Civ) 256] is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) CPC. The Court answered the said question in the negative by advertent to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) CPC will have no application at all, and the suit as a whole must then proceed to trial.

...

12. Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) CPC on account of non-compliance with mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 CPC.

In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part..."

13. In view of the above referred principle, we have no hesitation in holding that the High Court committed an error in rejecting the plaint in part with respect to Schedule-A property and permitting the Plaintiffs to prosecute the case only with

respect to Schedule-B property. This approach while considering an application under Order VII Rule 11, CPC is impermissible. We, therefore, set aside the judgment and order of the High Court even on this ground.”

(emphasis supplied)

62. On an overall conspectus of the facts and enunciation of law, the plaint cannot be rejected under Order VII Rule 11 CPC. The suit is at a nascent stage and parties are at liberty to raise their respective contentions at appropriate stages of the suit.

63. The observations made herein are only for the purpose of deciding the present application and the same shall not cause any prejudice to the parties.

64. In view of the aforesaid, the application is dismissed.