IN THE COURT OF SH. DEEPANKER MOHAN: DISTRICT JUDGE-04, SHAHDARA DISTRICT, KARKARDOOMA COURTS, DELHI

CS No.2125/2016

IN RE:

1. Sh. Narender Kumar Vashisht
S/o Sh. K.L.V. Vashisht

2. Smt. Deepa Vashisht
W/o Sh. Narender Kumar Vashisht

Both Resident of:- 23A, Gali No.2,
Sham Nagar, New Gobindpura,
Delhi-110051 ....Plaintiffs

VERSUS

Smt. Anita Sharma
W/o Late Sh. K.K. Sharma
R/o Flat No.78, Himalaya Apartments,
Plot No.61, I.P. Extension,
Patparganj, Delhi-110092 .... Defendant

1.	CS No.	:	2125/2016
2.	Under Section	:	Suit for possession, damages and mesne profit.
3.	Date of institution	:	26/11/2008
4.	Reserved for judgment	:	05/05/2026
5.	Date of Judgment	:	18/06/2026

And

CS No.96/2024

IN RE:

Smt. Anita Sharma

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W/o Late Sh. K.K. Sharma
R/o Flat No.78, Himalaya Apartments,
Plot No.61, I.P. Extension,
Patpar Ganj, Delhi-110092 ....Counter Claimant

And

1. Sh. Narender Kumar Vashisht
S/o Sh. K.L.V. Vashisht

2. Smt. Deepa Vashisht
W/o Sh. Narender Kumar Vashisht

Both R/o 23A, Gali No.2,
Sham Nagar, New Gobindpura,
Delhi-110051 .... Respondents

1.	CS No.	:	96/2024
2.	Under Section	:	Counter claim for declaration to declare the sale deed dated 13.05.2005 as null & void; to declare the counter claimant as an owner of the suit property and permanent injunction.
3.	Date of institution	:	25/09/2009
4.	Date of registration	:	22/07/2010
5.	Reserved for judgment	:	05/05/2026
6.	Date of Judgment	:	18/06/2026

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<u>JUDGMENT</u>

1. Vide this common judgment, this Court shall dispose of the suit for possession, damages and mesne profit filed by plaintiffs against defendant on 26/11/2008 and Counter claim for declaration of sale deed dated 13/05/2005 as null and void and further declaring the counter claimant as sole, exclusive and absolute owner of suit property and for permanent injunction filed by counter claimant/defendant against respondents/plaintiffs. The counter claim was registered vide order dated 22.07.2010 and was separated vide order dated 08.02.2024.

<u>AVERMENTS OF THE PLAINT (CS NO.2125/2016)</u>.

2. Plaintiffs had purchased the flat bearing No.78, Himalaya Apartments, Plot No.61, I.P. Extension, Patparganj, Delhi-110092 from Sh. M.S. Farswan S/o Late Sh. N.S. Farswan vide registered sale deed dated 13.05.2005 for a total consideration amount of Rs.10,50,000/-. After it purchase, plaintiffs became the absolute and exclusive owners of the suit property and also got the suit property furnished.

3. Defendant is the sister-in-law of plaintiff No.1 and sister of plaintiff No.2. Husband of defendant had expired in the month of December, 2003 leaving behind his wife and two minor children.

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4. Plaintiffs had permitted the defendant to live in the suit property as a 'licensee'. Defendant stated to the plaintiffs that she was facing some financial problem, therefore, plaintiffs have been spending about Rs.15,000/- per month upon defendant and also providing her all items of daily need including groceries, school fees, vegetables, pocket money, clothes and other sundry items since May 2005. Defendant had promised that she will reimburse the said amount. Since May 2005 till July 2008, plaintiffs had spent a total sum of Rs.5,40,000/- upon defendant.

5. In the year 2005, plaintiffs had taken a loan of Rs.13 lakhs from the ICICI Bank for purchasing the suit property and for its furnishing including installation of fixtures and fittings. Thereafter, plaintiffs had further taken a loan of Rs.11,78,606/-. Plaintiffs are paying a total sum of Rs.28,813/- (Rs.13,900/- and Rs.14,913/- respectively) towards the equated monthly installment.

6. The electricity connection, gas connection and telephone connection installed in the suit property are in the name of plaintiff No.1. Defendant had promised that she would pay the consumption charges as per bill but later on she has neglected and failed to pay the same. The charges towards the aforesaid connections had been paid by plaintiff No.1.

7. In the month of May, 2008, plaintiffs asked the defendant to

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vacate the suit property on 16.06.2008 but defendant refused to vacate the suit property.

8. Plaintiffs through their advocate Sh. T.S. Ahuja had sent a legal notice dated 11.08.2008 thereby calling defendant to hand over vacant and peaceful possession of the suit property; pay a sum of Rs.5,40,000/- spent by them upon defendant; and demanded a sum of Rs.30,000/- per month towards the damages towards the use and occupation of the suit property within 03 days from the receipt of the notice. Despite service of notice, defendant neither complied with the terms of the said notice nor sent a reply of it.

9. After termination of the license of defendant, defendant has continued to use and occupy the suit property. Defendant is liable to pay the damages for use and occupation @ Rs.30,000/- w.e.f. 16.08.2008 till the date she is occupying the suit property, to plaintiffs.

10. In case, plaintiffs let out the suit property to any third party then they would easily fetch a monthly rent of more than Rs.30,000/-. Thus, plaintiffs are entitled to receive Rs.90,000/- till 16.11.2008 and further mesne profits till defendant vacate the suit property. Thus, the present suit for possession.

<u>SERVICE OF SUMMONS IN CS NO.853/2017</u>

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11. Summons of the suit was issued to defendant vide order dated 08.12.2008. Defendant was duly served on 28.05.2009. Despite service of summons, defendant failed to file her written statement, therefore, she was proceeded ex-parte vide order dated 18.11.2009.

12. Vide order dated 22.07.2010, an application under Order IX Rule 7 CPC and application under Order VIII Rule 1 CPC were allowed by the Hon'ble High Court of Delhi subject to deposit/payment of cost of Rs.5,000/- and Rs.20,000/- respectively.

13. Written statement and separate counter claim have been filed by the defendant. The Counter claim was got registered vide Order dated 22/07/2010.

AVERMENTS OF THE WRITTEN STATEMENT IN CS NO.2125/2016 AND AVERMENTS OF THE COUNTER CLAIM IN CS NO.96/2024.

14. Defendant in her written statement has specifically denied the claim of the plaintiffs and by way of the counter claim, she has prayed for declaration to declare the sale deed dated 13.05.2005 as null and void; declaration to declare her as the sole, exclusive and absolute owner of suit property and relief for permanent injunction.

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15. Since the month of June, 2005, defendant is residing in the suit property and prior to that, she was residing at Sunam, District-Sangrur, Punjab. Husband of defendant was a doctor and running his clinic at Sunam. He was having residential property ad-measuring 600 sq. yards at Sunam which was the matrimonial home of defendant. On 02.12.2003, husband of defendant had unfortunately expired, due to brain tumor, leaving behind his wife and two minor children. After the death of her husband, defendant let out the clinic of his husband for a monthly rent of Rs.12,000/. Defendant was able to maintain herself and her children from the afore-said rental income.

16. In the year 2001, plaintiff No.1 had borrowed an amount of Rs.1 lakhs from the husband of defendant with the assurance that he will return the same. Plaintiff No.1 had attended all the last rites rituals of the defendant's husband and thereafter, he used to visit defendant and assured her that he will take care of her and her children, being the elder of the family.

17. In the month of March, 2004, plaintiff No.1 persuaded the defendant to sell out her entire properties at Sunam and shift to Delhi for better future of her children but she was not agreed with the said proposal. In the month of March, 2004, upon believing the plaintiff No.1, defendant had given an amount of Rs.87,000/- to him to keep them in safe custody. The said

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amount had been withdrawn by plaintiff No.1 from her bank account in the month of February & March, 2004.

18. In the month of April, 2004 defendant along-with her children went Pehwa, Kurukshetra, Haryana to perform rituals of 'Chhaimai' of her deceased husband (six month after death) and plaintiff No.1 also came there to share the defendant's grieves. Defendant was very humble due to the gratitude of the plaintiff no.1 and she believed that plaintiff no.1 is a person, who can always take care of the defendant and her children. Plaintiff no.1 used to call defendant to enquire about her well beings and also used to frequently visit the defendant.

19. In the month of October, 2004 plaintiff no.1 came and stated that his only object is to make her children very well educated and at the small town like Sunam, she will not be able to give good education to her children. Plaintiff no.1 once again allured the defendant that she would sell her properties at Sunam and plaintiff no.1 would get her a good home at Delhi and also made some very beneficial investments for her, so that she would get the regular income. Defendant came into the trap of the plaintiff no.1 because of well being and education of her children and consented to the proposal of the plaintiff no.1. Thereafter, Plaintiff no.1 used to frequently come to Sunam on the pretext of looking the buyer of the defendant's properties and he also

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told defendant that he is looking after a home for the defendant and her children at Delhi. He further told that a flat in Delhi would cost around Rs.20-22 Lakh and he would be requiring more money. Defendant told plaintiff that she will be able to give the remaining money to the plaintiff no.1 only once her properties be sold. Plaintiff no.1 assured defendant that he will do everything to buy a home for the defendant and her children.

20. On 18.02.2005 and 04.03.2005 defendant paid a sum of Rs.85,000/- and a sum of Rs.38,000/- to plaintiff No.1 respectively. In the month of April, 2005, plaintiff No.1 received a sum of Rs.3,25,000/- from the proposed buyer of residential property of defendant at Sunam. The said buyer was searched by plaintiff No.1 and he agreed to sell the residential property of defendant for a sum of Rs.10,50,000/- and further assured the said buyer that the sale deed will be executed within the period of 6-8 months and the balance sale consideration amount shall be paid at that time.

21. By the month of April, 2005, plaintiff No.1 had received a total sum of Rs.6,35,000/- from defendant (Rs.5,35,000/- after the death of husband of defendant and Rs.1 lakhs from the husband of defendant).

22. In the month of May, 2005, plaintiff No.1 purchased the suit property and took a power of attorney from defendant on the

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pretext of executing the necessary documents. Upon believing the plaintiff No.1, she had given him her entire money received by her as sale consideration.

23. In the month of June, 2005, defendant and her children shifted in the suit property and started residing there. Plaintiff no.1 helped the defendant in getting her children admitted in a school.

24. In the month of December, 2005, plaintiff No.1 came to her house and asked her to accompany him to Sunam in order to get the sale deed executed of her residential house. Defendant along-with plaintiff went to Sunam No.1 and executed the sale deed. Property of defendant was sold for a total consideration of Rs.10,50,000/- but the sale deed of Rs.7,25,000/- was executed. On 28.12.2005, defendant had paid a sum of Rs.55,000/- to plaintiff No.1 and the said amount was withdrawn by the defendant from his saving bank account. After receiving the amount of Rs.7,25,000/- and Rs.55,000/-, plaintiff No.1 had purchased a Honda City Car.

25. In the month of January, 2006 plaintiff no.1 came to the residence of the defendant at time when her children were in their school. Plaintiff no.1 started emotional talks with defendant and stated that she is very young and it would be very difficult for her to spend her entire life alone. Gradually plaintiff

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no.1 started grieving the defendant and brought a situation when defendant was emotionally broken down. Plaintiff no.1 took the advantage of the situation and made physical relations with defendant. Defendant was under the great shock but plaintiff no.1 stated that he loves defendant and he would take care of the defendant for the whole life and further ensure that defendant's children would get good education.

26. In the month of February, 2004, the Kisan Vikas Patra had been brought by defendant from the amount of Insurance Policy of her husband. After the maturity of said Patra, defendant received a sum of Rs.3,02,000/- from the Post Office Sunam in the month of March, 2007. Out of the aforesaid amount, plaintiff No.1 forcibly took a sum of Rs.3 lakhs from the defendant.

27. Plaintiff No.1 pressurized the defendant to sell out the clinic of his husband. Plaintiff No.1 himself searched a buyer for the clinic and sold the said clinic along with all equipments for a sum of Rs.18,50,000/-. Plaintiff No.1 got sale deed executed from the defendant only for a sum of Rs.7,83,000/-. Plaintiff No.1 had took the amount of Rs.7,83,000/- directly from the buyer and also took another sum of Rs.3 lakhs in lieu of equipments. Under the pressure, defendant paid a sum of Rs.2,50,000/-, a sum of Rs.5 lakhs and a sum of Rs.2 lakhs to

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plaintiff No.1 on 07.05.2007, 06.07.2007 and 07.07.2007 respectively. Plaintiff no.1 assured defendant that he will invest the money of the defendant into an upcoming project of Parshavnath Developers Limited at Ghaziabad and project of Triveni Infrastructure Pvt. Ltd. at Faridabad. Plaintiff no.1 also assured defendant that he will start getting the returns of her money very soon.

28. Plaintiff No.1 physically, mentally and financially abused the defendant. Defendant bear every atrocity committed upon her by the plaintiff no.1 and remained silent for the sake of her children and sister's matrimonial life.

29. In the last week of April, 2008, plaintiff No.1 came at the residence of defendant and started threatening her. He had also demanded money from defendant. Plaintiff No.1 forcibly took the defendant and withdrew a sum of Rs.40,000/- from her account and left only Rs.1700/- in the said account.

30. Plaintiff No.1 was very much aware that defendant has left with no money and thereafter in the month of May, 2008, he served a legal notice upon defendant whereby asked the defendant to vacate the flat in question.

31. The relatives of the defendant gathered after sometime and they all persuaded the plaintiff No.1 not to victimize the defendant.

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In front of all the relatives including Mr. Prem Prakash, Mr. Kashmere Lal, Mr. Vinod Kumar, Sh. Naveen Kumar, Sh. Vijay Kumar etc., he agreed that defendant has paid him much more than the value of the flat in question and he agreed that he would not only transfer the flat in the name of defendant but also pay the balance amount. The said meeting was held at the plaintiffs' residence in presence of the parents of the plaintiff no.1.

32. In the month of September, 2008, plaintiff No.1 threatened the defendant that he would get the electricity and water connections of the flat in question disconnected. He had also demanded a sum of Rs.5 lakhs from defendant and stated that he will transfer the flat in favour of defendant only after receipt of Rs.5 lakhs. Defendant had also made complaint dated 03.09.2008 in this regard. In the end of month of May, 2009, defendant has received the summons and came to know that flat in question has not been purchased by plaintiff No.1 in the name of defendant but the same has been purchased in the names of plaintiffs. Plaintiff No.1 misused the power of attorney of defendant.

33. On 10.07.2009, plaintiff No.1 along with 2-3 goons came to the residence of defendant and started giving threats to defendant and that time he was fully drunk and carrying the revolver.

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Defendant made a written complaint dated 10.07.2009 to the SHO PS Mandawali in this regard.

34. On 10.07.2009, defendant went to the house of her sister i.e. plaintiff No.2 and told her the entire story. Plaintiff No.2 assured her that she will do everything for her. Plaintiff No.2 also gave an acknowledgment about the receipt of money by her husband from the defendant. Plaintiff No.2 also pressurized the plaintiff No.1 to transfer the flat and some moment. On the assurance of plaintiff No.2, defendant purchased the requisite stamp papers for transfer but when the defendant asked the plaintiff No.1 to complete other formalities, he refused.

35. On the occasion of Rakhi i.e. on 05/08/2009 all the relatives including brothers, sisters, sister-in-laws (bhabhi), nephews and niece gathered at the residence of the plaintiff no.1 and defendant was also called there. All the relatives in one voice asked the plaintiff no.1 to stop his atrocities upon defendant. Plaintiff no.1 asked to transfer the flat in question in the name of the defendant but plaintiff no.1 flatly refused.

36. Plaintiff not only sexually abused the defendant continuous for the period of 4 years but has also cheated her by duping her entire money. Defendant came under the trap of the plaintiff no.1 because of the misrepresentation of the plaintiff no.1.

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37. The flat in question was purchased out of the amount paid by defendant and she is the sole, absolute and exclusive owner of the flat in question and plaintiff has no right, title or interest in the flat in question. Plaintiff No.1 with mala-fide intention and with ulterior motive got the papers of the flat in question in his name as well as in the name of plaintiff No.2. Defendant was paying all the charges towards electricity bills, telephone, cables, grocery bill, vegetables, school fees and other sundry but plaintiff No.1 got aforesaid connections in his name by playing fraud upon defendant. Defendant has been maintaining herself and her children with the help of her brothers and relatives because she has been duped by plaintiff No.1.

38. Plaintiff has no cause of action to maintain the present suit. Plaintiff has not approached this Court with clean hands and has suppressed the material facts.

39. Defendant is only matriculate and her only resources were the money, which she got from the sale proceeds of her properties at Sunam and other savings and insurance policies of her husband. The entire money has been taken by the plaintiff no.1. Plaintiff No.1 assured the defendant that he would get very good returns on the money of the defendant.

40. Defendant was always told by the plaintiff that the flat in question has been purchased in her name. Plaintiff no.1 has

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taken a power of attorney from defendant and it has been told by plaintiff no.1 to defendant that he shall got the sale deed of the flat in question executed in the name of defendant. Plaintiff no.1 has no right to mortgaged the flat in question with the bank and the same has been purchased from the funds of the defendant.

41. Defendant has prayed for the dismissal of the suit and grant the decree prayed in the Counter claim.

AVERMENTS OF THE REPLICATION-CUM-WRITTEN STATEMENT AND WRITTEN STATEMENT TO THE COUNTER CLAIM.

42. Plaintiffs have specifically denied the averments of the defendant made in the written statement and claim in the counter claim except the following facts which are mentioned as under:-

i. Defendant was residing with her husband at Sunam and she had two children.

ii. The husband of defendant was having a resident house and clinic in Sunam. However, Plaintiffs further pleaded that the residential house was ad-measuring 450 sq. yards and was purchased in August, 1998 for about Rs.2,10,000/- and Plaintiff no.1 gave a sum of Rs.80,000/- to the husband of defendant for

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purchasing the residential house at Sunam on 29/07/1998.

iii. Plaintiff no.1 was having close relations with defendant and her husband; therefore, he visited the house of defendant after the brain tumor was detected to her husband. He further pleaded that plaintiffs arranged for the treatment of her husband at AIIMS, Delhi and for a pretty long period, husband of the defendant stayed with the plaintiffs at their residence. The husband of defendant has returned an amount of Rs.50,000/- (partly by way of draft and partly in cash) to plaintiff no.1 in the month of October, 2001.

iv. Plaintiffs visited the defendant twice or thrice at Sunam to render their condolences, after the death of her husband.

v. The children of defendant were studying in an unrecognized school and during the course of casual discussion, plaintiff no.1 has stated to defendant that Delhi is a better city which has better infrastructure and better schools and it would be better for the children and their future to study in a recognized school.

vi. The Plaintiff no.1 used to sometime call the defendant to enquire about her and her children's well-being.

vii. Plaintiff no.1 accompanied with the defendant at Sunam for the registration of the sale deed of her residential in the month of

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December, 2005. However, he has pleaded that he has been asked by the defendant to accompany her at Sunam for registration of sale deed.

viii. After receipt of the summons of the present suit, defendant called relatives of her parental side in order to put pressure upon plaintiff no.1 so that he should not compel her to vacate the suit property. Plaintiffs further pleaded that the said meeting ended without any conclusion because plaintiff no.1 did not agreed to their terms and clearly stated that why should he alone be monetarily burdened.

ix. The document **Ex.PW-2/D-1** bears the signatures of Plaintiff no.2 and she put her signatures on the revenue stamp affixed on the said page.

x. On 05/08/2009 some relatives i.e. one brother-in-law of the plaintiff no.1 along-with his son and daughter of brother-in-law Sandu had come to the residence of the respondents on the occasion of Rakhi but no discussion as alleged in the counter claim has ever occurred.

43. The sale deed was registered on 13/05/2005 and the same has not been challenged within 3 years of its registration, therefore, the counter claim is barred by limitation.

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44. The defendant/counter claimant has not stated that she has negotiated the price of the flat in question with the seller or that she entered into any agreement to sell with him or that the deal was between the seller and the defendant/counter claimant. Plaintiffs have purchased the flat in question after taking loan from ICICI Bank.

45. The transaction alleged by the defendant/ Counter claimant falls within the definition of benami transaction and the Counter claim is barred by the provision of the Benami Transactions (Prohibition) Act, 1988 and thus, the same is liable to be dismissed.

46. The suit has not been properly valued for the purpose of court fee and the requisite court fee has not been affixed. The value of the suit property in the years 2008/2009 was Rs.43 Lakhs. The Counter claimant ought to have affixed the court fee on the said amount.

47. The entire story has been concocted by the defendant. Defendant is playing into the hands of some relatives who are envious of the status of the plaintiff no.1 in society and are using the defendant for defaming and spoiling the family life of the plaintiffs.

48. After the death of defendant's husband, it was decided that

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plaintiffs along-with other relatives would help the defendant in bringing-up her children. It was a part of that process and by way of help that defendant was allowed to reside in the flat in question which was lying vacant.

49. The maintenance charges of the society are being deposited in the name of the plaintiff no.; the electricity connection is in the name of the plaintiff no.1; the telephone connection and Indraprastha Gas Limited connection is in the name of the plaintiff no.1. therefore, it does not lie in the mouth of the defendant to say that she was not aware as to who was the owner of the suit property. The suit property has been purchased by the plaintiffs out of their own funds.

50. On 09/07/2009 plaintiff no.1 had gone to the society to collect his mail and enquire about the dues of the society when defendant saw plaintiff no.1 at the gate and she came down and started hurling abuses and threatening plaintiff no.1 for dire consequences. Suspecting that defendant may create a scene and lodge some false report, plaintiff no.1 immediately called up the police at 100 number and thereafter, defendant ran back to the flat in question. Even thereafter, defendant has been making a number of threatening phone calls and hurling abuses over phone to the plaintiff no.1.

51. Before 11th August, 2008, defendant has approached the plaintiff

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no.2 and obtained her signatures on a blank paper with revenue stamp/receipt on the pretext that she wants to sell the washing machine lying in the suit property to Kabariwalas and he needs a receipt for its purchase, so that they could take it out of the society. Plaintiff no.2 signed the said blank paper in good faith. Plaintiff no.2 never signed the document Ex.PW-2/D-1 stating that her husband owned a sum of Rs.30 Lakh. The said receipt has been fabricated.

52. Defendant has become dishonest and is not vacating the suit property. Defendant has no right, title or interest in the suit property in any manner whatsoever and plaintiffs are the exclusive owners of the suit property. Plaintiffs claimed for the decree of their suit and dismissal of the counter claim.

REPLICATION TO THE WRITTEN STATEMENT OF THE COUNTER CLAIMANT.

53. The defendant/Counter claimant has specifically denied the averments of the written statement of the counter claim and affirmed the averments of their Counter claim.

54. Plaintiff no.1 has usurped the entire wealth of the defendant and out of that, the suit property has been purchased but instead of paying the entire amount to the seller, defendant no.1 got the suit property financed and paid the EMIs out of the wealth of the counter claimant. Plaintiff no.1 has also invested the wealth

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of the defendant into several projects like residential projects of M/s Parasvnath and M/s Triveni Infrastructure at Faridabad. Plaintiff no.1 had no source of income or any other source to justify their investments in the said projects. The wealth of the defendant was invested by the plaintiff no.1 but later on, his intention got malafide and he usurped the entire wealth of the defendant.

55. When defendant went to plaintiff no.2 and told about all the mis-deeds of the plaintiff no.1, he agreed to gift the suit property to the defendant and for this purpose, defendant has also purchased the stamp papers of Rs.26,520/-. Later on, plaintiff no.1 pressurized the plaintiff no.2 not to give the suit property to defendant.

56. The Counter claim of the defendant is well within limitation as the same has been filed within three years from the knowledge of the sale deed dated 13/05/2005 which has been fraudulently got executed by the plaintiff no.1 in his name and in the name of plaintiff no.2.

57. Fraud has been played upon the defendant by the plaintiff no.1, therefore, there is no question of benami transaction. Plaintiff no.1 always told defendant that the suit property has been purchased in her name. Defendant was not aware about the availing of loan facility by plaintiff no.1 on the suit property.

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FRAMING OF ISSUES

58. Upon completion of pleadings, following issues were framed in both the cases i.e. C.S. No.2125/2016 and C.S. No.96/2024, on 15.02.2011 which are as under:-

1. Whether the counter claim is barred by limitation as alleged in the written statement to the counter claim? OPP

2. Whether the counter claim is barred by the provision of The Benami Transactions (Prohibition) Act? OPP

3. Whether the counter claim is properly valued for the purpose of Court fees and jurisdiction? OPD

4. Whether the sale consideration for purchase of suit property was paid by the defendant and, if so, to what effect? OPD

5. Whether the suit is properly valued for the purpose of Court fees and jurisdiction? OPP

6. Whether the plaintiffs are entitled to mesne profit/damages for use and occupation and, if so, at what rate and to what amount? OPP

7. Whether the defendant is entitled to the reliefs claimed by her? OPD

8. Relief.

59. Vide order dated 17.12.2024, an application under Order XIV Rule 5 r/w Section 151 CPC was allowed and an additional issue was framed which is mentioned as under:-

9. *Whether plaintiff is entitled for decree of possession in*

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respect to the suit property against defendant, as prayed? OPP

EVIDENCE OF PLAINTIFFS

60. Plaintiffs to prove their case have examined only three witnesses i.e. (1) Plaintiff No.1 as **PW-1, (2)** Smt. Deepa Vashistha as **PW-2** & **(3)** Sh. Rahul Vashisht as **PW-3.**

61. **PW-1/Sh. Narender Kumar Vashisht** filed his evidence affidavit and tendered it as exhibited as **Ex.PW1/A** on 29.08.2011 and relied upon the documents i.e. **(1) Ex.P1-** Office copy of the legal notice dated 11.08.08, **(2) Ex.PW1/1-** Certified copy of sale deed dated 13.05.05, **(3) Ex.PW1/2-** Photocopy of statement of deponent's loan account with ICICI Bank, **(4) Ex.PW1/3-** Photocopy of the agreement schedule/statement of deponent's loan account with ICICI Bank, **(5) Ex.PW1/4-** Original telephone bill in respect of telephone connection in the name of deponent at the premises in question, **(6) Ex.PW1/5 & Ex.PW1/6-** Original bills pertaining to supply of electricity and cooking gas in the name of deponent, both installed at the premises in question, **(7) Ex.PW1/8-** Original postal receipt in respect of **Ex.P-1** & **(8) Ex.PW1/9-** Original certificate of postal in respect of **Ex.P-1**. On 23/12/2011, 30/05/2012 and 06/05/2013, PW-1 was cross examined by Ld. counsel for defendant.

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62. **PW-2/Smt. Deepa Vashistha** filed her evidence affidavit and tendered it as exhibited as **Ex.PW-2/A** on 06.05.2013 and relied upon the documents which were already tendered by PW-1. On 12/11/2013 and 23/08/2014, PW-2 was cross examined by Ld. counsel for defendant.

63. On 23/08/2014, plaintiffs' evidence was closed.

64. **PW-3/Sh. Rahul Vashisht** filed his evidence affidavit and tendered it as exhibited as **Ex.PW3/A** on 17.07.2018. On the same day i.e. 17.07.2018, he was cross examined by Ld. counsel for defendant and his further cross examination was deferred.

65. Vide order dated 23.11.2021, right of defendant to further cross examine PW-3 was closed.

66. On 23.11.2021, plaintiffs' evidence was closed.

<u>**EVIDENCE OF DEFENDANT**</u>

67. Defendant has examined only seven witnesses i.e. **(1)** Herself as **DW-1, (2)** Ms. Sarla Sharma as **DW-2, (3)** Sh. Vinod Kumar as **DW-3, (4)** Sh. Krishan Lal Jindal as **Ex.DW-4, (5)** Sh. Tirath Ram as **DW-5, (6)** Sh. Harvinder Singh as **DW-6** and **(7)** Sh. Satish Sharma as **DW-7**.

68. **DW-1/defendant** filed her evidence affidavit and tendered it as exhibited as **Ex.DW-1/A and Ex.DW1/A1** on 07/01/2015 and

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relied upon the **following** documents i.e. **Ex.DW1/1 to Ex.DW1/6**. On 07/01/2015, 09/04/2015 and 28/05/2015, DW-1 was cross examined by Ld. counsel for defendant.

69. Right of defendant to further lead DE was closed vide order dated 06.10.2015.

70. Vide order dated 19.11.2015, the Hon'ble High Court of Delhi has set aside the order dated 06.10.2015 subject to cost of Rs.5,000/- wherein she was permitted to examine only two witnesses namely Ms. Sarla and Mr. Vinod Kumar. On the same day, Ld. Local Commissioner was appointed to record the evidence of both the aforesaid witnesses.

71. **DW-2/Ms. Sarla Sharma** filed her evidence affidavit and tendered it as exhibited as **Ex.DW2/A** on 16/12/2015. She was partly cross examined by Ld. counsel for plaintiff on 16.12.2015.

72. Vide order dated 02/12/2015, the present matter was transferred to the District and Sessions Judge (East), KKD Courts Complex, New Delhi due to the pecuniary jurisdiction.

73. On 22.11.2016, 13.01.2017 and 21.03.2017, DW-2 she was further cross examined by Ld. counsel for plaintiff before the Court.

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74. **DW-3/Sh. Vinod Kumar** filed his evidence affidavit and tendered it as exhibited as **Ex.DW3/A** on 21/03/2017 and on the same day, he was cross examined by Ld. counsel for plaintiff.

75. Subsequent to framing an additional issue on 17.12.2024, defendant was allowed to lead additional evidence.

76. An application for summoning the witnesses filed on behalf of defendant and the same was allowed vide order dated 11.03.2025 thereby she was allowed to examine witnesses namely Sh. Satish Sharma, Sh. Krishan Lal, Sh. Krishan Kumar and Sh. Harvinder Singh.

77. **DW-4/Sh. Krishan Lal Jindal** filed his evidence affidavit and tendered it as exhibited as **Ex.DW4/A** on 29.04.2025. On the same day i.e. 29.04.2025, he was cross examined by Ld. counsel for plaintiffs.

78. **DW-5/Sh. Tirath Ram** filed his evidence affidavit and tendered it as exhibited as **Ex.DW5/A** on 03.06.2025. On the same day i.e. 03.06.2025, he was cross examined by Ld. counsel for plaintiffs.

79. **DW-6/Sh. Harvinder Singh** filed his evidence affidavit and tendered it as exhibited as **Ex.DW6/A** on 03.06.2025 and relied upon the document which was already exhibited as **Ex.PW3/4**.

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On the same day i.e. 03.06.2025, he was cross examined by Ld. counsel for plaintiffs.

80. **DW-7/Sh. Satish Sharma** filed his evidence affidavit and tendered it as exhibited as **Ex.DW7/A** on 12.07.2025. On the same day i.e. 12.07.2025, he was cross examined by Ld. counsel for plaintiffs.

81. On 12/07/2025, defendant's evidence was closed.

82. On 30.08.2025, 11.09.2025, 23.01.2026, 04.04.2026, 18.04.2026, 25.04.2026 and 05.05.2026, final arguments were heard.

83. Written arguments filed on behalf of defendant and plaintiff on 08.12.2025 and 23.01.2026 respectively. Additional written arguments have also been filed by defendant on 23/01/2026.

84. **APPRECIATION OF EVIDENCE AND DETERMINATION OF THE CASE ISSUE WISE.**

85. **Issue No.2 and 4 are taken up together first.**

ISSUE NO.2:- Whether the counter claim is barred by the provision of The Benami Transactions (Prohibition) Act? OPP

And

ISSUE NO.4:- Whether the sale consideration for purchase of suit property was paid by the defendant and, if so, to what effect? OPD

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86. Ld. counsel for plaintiffs argued that the defence taken by the defendant is hit by Section 3 and 4 of the Benami Transactions (Prohibition) Act, 1988. He further argued that the Act prohibits the Benami Transaction and as per the same, registered owner of the property is the real owner of it. He further argued that Section 4 of the Act prohibits a right to recover the property held benami. He further argued that the defendant is not entitled to benefit of Section 4(3) (b) of the Act existing prior to 2016 because there was no fiduciary relationship exist between plaintiffs and defendant. He further argued that plaintiffs were under no legal obligation to take care of defendant and her children. He further argued that defendant has given three versions in their pleading and evidences with regard to amount purportedly given by her to plaintiff No.1. He further argued that there are inconsistency of material facts in the version of defendant and her witnesses. He further argued that plaintiffs have purchased the suit property after availing the loan facility from ICICI Bank. He further argued that defendant has failed to prove that the suit property has been purchased out of her funds. In support of his arguments, he relied upon the judgments i.e. ***(1) 'Savita Anand Vs. Krishna Sain', 2020 SCC Online Del 2672, (2) 'CBSE Vs. Aditya Bandopadhyay', (2011) 8 SCC 497 and (3) 'Rakesh Yadav Vs. Registrar Cooperative Society', (2024) SCC Online Delhi 2901***.

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87. On the other side, Ld. counsel for defendant argued that the case pleaded by the defendant does not fall under the ambit of the provisions of the Benami Transactions (Prohibition) Act, 1988. He further argued that a fraud has been played by plaintiff No.1 upon defendant and has taken all her money. He further argued that plaintiff No.1 cleverly with a malafide intention, has taken all the sale proceeds and funds/money of defendant. He further argued that plaintiff No.1 has assured the defendant that he will take care of her and her children. He further argued that the funds of the defendant has been utilized for purchasing the suit property. He further argued that an amount of Rs.3,25,000/- has been handed over to plaintiff No.1 by the buyer of the Sunam property of defendant in the month of April, 2005 i.e. prior to the execution of the sale deed dated 13.05.2005. He further argued that even thereafter, an amount of Rs.30 lakhs has been fraudulently taken by plaintiff No.1 from defendant. He further argued that the suit property has been purchased out of the funds of the defendant and therefore, she is entitled to decree of declaration, as prayed.

88. As per plaintiffs, an amount of Rs.1 lakhs has been paid by her husband to plaintiff No.1 as loan in the year 1998. Defendant has not produced any cogent and reliable material on record which can establish that her husband has given an amount of Rs.1 lakhs as loan to plaintiff No.1 in the year 1998. No bank

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statement of her husband has been filed by defendant in support of her version. No independent witness has been examined by the defendant in support of her version.

89. Defendant has further pleaded that an amount of Rs.87,000/-, Rs.85,000/- and Rs.38,000/- have been given by her to plaintiff No.1 by way of cash in the month of March, 2004, 18.02.2005 and 04.03.2005 respectively. Defendant has not produced any cogent, probable and independent material on record to substantiate her version.

90. Defendant has pleaded that plaintiff No.1 has searched and negotiated with the proposed buyer regarding sale and purchase of defendant's residential house at Sunam. She further pleaded that the said house was sold for an amount of Rs.10,50,000/-. She further pleaded that an amount of Rs.3,25,000/- in cash has been given by the proposed buyer to plaintiff No.1 in the month of April, 2005 i.e. prior to purchase of the suit property.

91. Admittedly, the sale deed **Ex.PW1/1** has been executed on 13.05.2005. The sale deed **Ex.PW1/1** reflects that the payment of sale consideration amount of Rs.10,50,000/- has been made through demand draft No.287156 dated 31.03.2005 issued by ICICI Bank. The entire sale consideration amount has been paid by plaintiffs to Sh. M.S. Farswan (vendor) through demand draft dated 31.03.2005. It is not the case of defendant that seller

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Sh. M.S. Farswan has not been paid through bank draft.

92. Plaintiffs have pleaded that they have taken home loan for purchasing the suit property from ICICI Bank. The repayment schedule of the said loan account has been exhibited as **Ex.PW1/2**. The said document reflects that a home loan has been sanctioned by the ICICI Bank vide agreement No.LBNOD00000979782 dated 17.01.2005 for an amount of Rs.13 lakhs. The document **Ex.PW1/2** further reflects that the first EMI qua principal amount of Rs.13 lakhs has been scheduled for 07.05.2005. The document **Ex.PW1/2** does not reflect the date when the loan amount of Rs.13 lakhs has been disbursed to plaintiffs. The document **Ex.PW1/2** also does not disclose whether the said home loan has been taken in respect to the suit property for purchasing the same. Plaintiffs have not produced the bank statement of the afore-said loan account to establish that the demand draft dated 31.03.2005 as reflected in the sale deed dated 13.05.2005 has been prepared from the said loan account by the ICICI Bank.

93. As it may be, it is reflected in the sale deed **Ex.PW1/1** that the sale consideration amount of Rs.10,50,000/- has been paid through demand draft. Even if, the case of defendant be considered as true then also she has handed over only an amount of Rs.3,25,000/- in cash to plaintiff No.1 in the month

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of April, 2005 i.e. after preparation of the demand draft of Rs.10,50,000/-. The preparation of demand draft of Rs.10,50,000/- prior to handing over an amount of Rs.3,25,000/- in cash by defendant to plaintiff No.1 clearly establishes that the said amount has not been used for purchasing the suit property.

94. Even, as per the case of defendant, she has only given an amount of Rs.2,10,000/- in cash to plaintiff No.1 from 18.02.2005 to 04.03.2005. It is not the case of defendant that she has paid an amount of Rs.2,10,000/- for purchasing the suit property or paying the earnest money for purchasing the suit property. It is not the case of defendant that she had paid an amount of Rs.10,50,000/- to plaintiff No.1 prior to 31.03.2005 or execution of sale deed dated 13.05.2005. It is also not the case of defendant that the amount given by her to plaintiff No.1 has been deposited by plaintiffs in their bank account and thereafter, the said amount has been utilized for preparing the demand draft as mentioned in the sale deed **Ex.PW1/1**. Defendant during the cross examination of plaintiffs' witnesses have not asked them to produce their bank statement. Even, defendant has not given any notice to plaintiffs to produce their bank statement during entire trial.

95. Defendant in her replication to the written statement of counter claim has specifically pleaded that plaintiff No.1 has invested

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her wealth/money into several projects like residential projects of M/s Parsavnath and M/s Triveni Infrastructure at Faridabad. The stands taken by defendant are inconsistent. Defendant has not specifically pleaded whether an amount of Rs.3,25,000/- or an amount of Rs.2,10,000/- has been used for purchasing the suit property or the said amount has been invested in different projects. The document **Ex.PW2/D1** also does not suggest that the suit property has been purchased from the funds of defendant.

96. Considering the facts and circumstances of the case, material came on record, testimonies of witnesses and above discussions, this Court concludes that defendant has failed to produced any cogent, reliable and independent material on record which can establish that the sale consideration for purchase of the suit property was paid by her. **Issue No.4 is accordingly decided in favour of plaintiffs and against defendant**.

97. As per the pleadings of defendant made in the counter claim, the provisions of the Benami Transactions (Prohibition) Act, 1988 does not attract because as per the case of defendant, plaintiff No.1 has played fraud upon her and has purchased the suit property in his name and in the name of his wife. The reliance is placed on the judgment passed by **the Hon'ble Supreme Court in 'P.V. Sankara Kurup Vs. Leelavathy Nambiar', AIR 1994 SC**

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2694. It has been held that when an agent was employed to purchase the property on behalf of his principal and does show in his own name, then, upon conveyance or transfer of the property to the agent, he stands as a trustee for the principal. The property in the hands of the agent is for the principal and the agent stands in the fiduciary capacity for the beneficial interest he had in the property as a trustee. The bar under Section 4 of the Benami Transactions (Prohibition) Act, 1988 would not stand in the way of plaintiffs' suit for declaration of a title of the property.

98. No power of attorney purportedly executed by defendant in favour of plaintiff No.1 has been brought on record. Defendant has not given notice to plaintiff No.1 for its production during entire trial. Even, during the cross examination of PW-1, he was not asked to produce the purported power of attorney, if it is in his possession. Defendant has even not filed any copy of such purported power of attorney vide which she has authorized plaintiff No.1 to purchase the suit property. Defendant has failed to prove that she has executed a power of attorney in favour of plaintiff No.1 for purchasing the suit property. Defendant has further failed to produce any cogent, reliable and independent material on record which can establish that plaintiff No.1 has acted as her agent for purchasing the suit property.

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99. This Court has already concluded that the suit property has not been purchased by the funds of defendant, therefore, also the provision of Benami Transactions (Prohibition) Act, 1988 does not attract. **The issue No.2 is accordingly answered**.

<u>ISSUE NO.1</u>:- Whether the counter claim is barred by limitation as alleged in the written statement to the counter claim? OPP

100. Defendant by way of counter claimant is seeking declaration to declare the sale deed dated 13.05.2005 as null and void on the ground of fraud. Defendant has filed the counter claim on 25.09.2009 stating that she gain the knowledge about the execution of the sale deed in favour of plaintiffs only after receiving the summons of the main suit.

101. Ld. counsel for plaintiffs argued that the execution of sale deed was well within the knowledge of the defendant from inception. He further argued that the electricity connection, telephone connection and other utility services installed in the suit property are in the name of plaintiff No.1. He further argued that plaintiff No.1 being the owner of the suit property is the member of the society in which the suit property is situated. He further argued that defendant has falsely filed the counter claim against plaintiffs in order to grab the suit property.

102. On the other side, Ld. counsel for defendant argued that plaintiff No.1 has played fraud upon defendant and cleverly and

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fraudulently got the sale deed of the suit property registered in his name and in the name of his wife instead of defendant. He further argued that only after receiving the summons of the main suit, defendant came to know about the fraud played by plaintiff No.1 upon her and about the execution of sale deed in the name of plaintiffs, therefore, the counter claim is well within limitation from the date of knowledge.

103. Admittedly, the sale deed has been executed on 13.05.2005. As discussed above, defendant has failed to establish that the sale consideration amount for purchasing the suit property was paid her. Even, defendant has not examined the seller Sh. M.S. Farswan to establish that she has paid the sale consideration amount to him at the time of purchasing the suit property.

104. It is pertinent to mention here that as per the case of defendant, plaintiff No.1 has told her that he needs Rs.20-22 lakhs for purchasing a property in Delhi and defendant has shown her incapacity to pay such amount and on this, plaintiff No.1 assured that he will take care of everything. It is worthwhile to mention here that defendant was not having a financial capacity to purchase the suit property. As discussed above, admittedly, defendant has not paid the sale consideration amount of Rs.10,50,000/- either to plaintiff No.1 or seller Sh. M.S. Farswan at the time of execution of the sale deed dated

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13.05.2005, therefore, she has no locus-standi to seek declaration for declaring the sale deed dated 13.05.2005 as null and void.

105. As no funds have been given by defendant to plaintiff No.1 for purchasing the suit property, therefore, no question arises for purchasing the suit property in the name of defendant by plaintiffs.

106. Plaintiffs have allowed defendant to reside in the suit property being their licensee after purchasing the suit property. It has come on record that defendant has studied upto 10th class, therefore, she cannot be considered as an illiterate. It is strange that if the suit property has been purchased out of the funds of defendant by plaintiff No.1 in his name and in the name of his wife then why defendant has not asked plaintiffs to show the sale deed of the suit property or to provide her a copy of sale deed from the date of its execution till the date of filing of the main suit. Defendant has not explained the reasons which prevented her from asking plaintiffs to show the original sale deed or provide a copy of sale deed of the suit property to her, if the same has been purchased out of her funds.

107. As concluded above, the suit property has not been purchased out of the funds of defendant, therefore, she has no right, title or interest in the suit property. It was very much in the knowledge

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of the defendant from the date of execution of the sale deed dated 13.05.2005 that the suit property had been purchased by the plaintiffs in their own name. Admittedly, the electricity connection, telephone connection and other utility connections installed in the suit property are in the name of plaintiff No.1. The society charges are also being paid in the name of plaintiff No.1. Considering that the afore-said facts, it cannot be construed that defendant was unaware about the ownership of plaintiffs over the suit property.

108. Even, if defendant had paid an amount of Rs.30-37 lakhs to plaintiff No.1 on different occasions then also it does not create any right or interest of defendant over the suit property. The remedy available for the defendant is to seek the recovery of the afore-said amount and not to challenge the sale deed dated 13.05.2005 because defendant has not paid the sale consideration amount for purchasing the suit property.

109. The document **Ex.PW2/D1** (the authenticity of this document would be discussed while answering the additional issue) reflects that plaintiff No.2 has admitted that her husband has taken an amount of Rs.30 lakhs from defendant. However, the said document does not show that the amount taken by plaintiff No.1 from defendant has been used for purchasing the suit property. Moreover, as per document **Ex.PW2/D1**, plaintiff No.2

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agreed that she will be liable to get the amount of Rs.30 lakhs repaid to defendant. Defendant has not produced any cogent, reliable and independent material on record to establish that the suit property has been purchased out of her funds.

110. Considering the factual matrix of the case, material came on record, testimonies of witnesses and above discussions, this Court concludes that defendant was having the knowledge about the sale deed dated 13.05.2005 from the date of purchasing the suit property and also to the fact that the same has been purchased in the name of plaintiffs because the suit property had not been purchased out of her funds and all the utility bills have been paid in the name of plaintiff No.1. The counter claim has not been filed within three years from the date of execution of the sale deed dated 13.05.2005, therefore, the counter claim is barred by limitation. Though, defendant has no right to seek declaration for declaring the sale deed dated 13.05.2005 as null and void because the same has not been purchased out of her funds. **Issue No.1 is accordingly answered in favour of plaintiffs and against defendant/counter claimant**.

111. **Issue No.3 and 5 are taken up together.**

<u>ISSUE NO.</u>3:- Whether the counter claim is properly valued for the purpose of Court fees and jurisdiction? OPD

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<u>ISSUE NO.5</u>:- Whether the suit is properly valued for the purpose of Court fees and jurisdiction? OPP

112. None of the parties have addressed the arguments in respect to Issue No.3 and 5.

113. Defendant/counter claimant has filed counter claim seeking the relief of declaration for declaring the sale deed dated 13.05.2005 as null and void. Perusal of the certified copy of sale deed **Ex.PW1/1** reflects that the face value of the sale deed is Rs.10,50,000/- (the sale consideration amount for which the same has been purchased).

114. Admittedly, defendant/counter claimant is not the executant or party to the said sale deed dated 13.05.2005 and is in physical possession of the suit property. Defendant/counter claimant has valued her relief for declaration for the purpose of jurisdiction as Rs.10,50,000/- i.e. the face value of the sale deed dated 13.05.2005. As per the judgment of the Hon'ble Supreme Court passed in ***"Suhrid Singh @ Sardool Singh Vs. Ranjeet Singh and Ors.", Civil Appeal No.2811-2813/2010, arising out of SLP(C) Nos. 6745-47/2009, date of decision 29.03.2010***, defendant/counter claimant, being the non-executant of the sale deed dated 13.05.2005 and being in possession, has to pay the fixed court fees of Rs.19.50.

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115. Counter claimant has also claimed the relief of declaration for declaring herself as an exclusive owner of the suit property. Counter claimant has valued the said relief as Rs.200/-. As the counter claimant/defendant has claimed the relief of declaration to declare her as the exclusive owner of the suit property, therefore, she ought to have valued her counter claim qua the relief of declaration as per the prevailing market rate of the suit property on the date of institution of the counter claim.

116. The counter claim has been filed on 25.09.2009. As per sale deed **Ex.PW1/1**, the market value of the suit property was Rs.10,50,000/-. Plaintiffs (respondents in counter claim) have not produced any cogent, probable and independent material on record to establish that the market value of the suit property was more than Rs.10,50,000/- or Rs.43 lakhs on the date of filing the counter claim. Even, plaintiffs have not put a question to defendant's witnesses stating that the market value of the suit property has been exceeded four times within a period of four years. No material has been produced by the plaintiffs to show that the market value of the suit property has been exceeded four times within a period of four years.

117. In the absence of any cogent material on record, this Court concludes that the market value of the suit property on the date of institution of the counter claim was Rs.10,50,000/-.

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118. Counter claimant has affixed a court fees of Rs.12,675/- on the counter claim. The requisite Court fees on the amount of Rs.10,50,000/- would be Rs.12,592/-.

119. Counter claimant has also prayed for relief for permanent injunction and has valued the said relief as Rs.130/-.

120. Counter claimant ought to have paid the requisite court fees of Rs.12,624.50 on her counter claim as per the relief claimed. Counter claimant has affixed an ad-valorem court fees of Rs.12,675/- i.e. more than the requisite court fees, therefore, this Court concludes that the counter claimant has paid the requisite court fees on her counter claim as per the relief prayed. Though, the relief of declaration for declaring herself as owner of the suit property has not been correctly valued by the counter claimant but she has paid the requisite court fees on her counter claim. Even, if the value of her counter claim qua the relief of declaration for the purpose of jurisdiction would be considered as Rs.10,50,000/- then also this Court would be having the jurisdiction to try and adjudicate the counter claim. **Issue No.3 is accordingly answered in favour of counter claimant and against plaintiffs (respondents in the counter claim)**.

121. Plaintiffs have pleaded that they have allowed defendant to reside in the suit property being their 'licensee'. By way of the

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suit, plaintiffs want a decree of possession against defendant. The suit has been filed on 26.11.2008. Plaintiffs have pleaded that the market value of the suit property on the date of institution of the present suit was Rs.43 lakhs. Plaintiffs have also paid the requisite court fees of Rs.55,210/- on the plaint as per reliefs claimed.

122. Defendant has taken the objection that plaintiffs have valued their suit arbitrarily. The sale deed dated 13.05.2005 reflects that the market value of the suit property was Rs.10,50,000/-. This Court had already observed above that plaintiffs have not produced any cogent and independent material on record to show that the market value of the suit property has increased four times within a period of three years from its purchase. Plaintiffs being the master of their case are at liberty to value their suit as per their wish. The suit has not been undervalued. Plaintiffs have paid the requisite ad-valorem court fees in respect to the relief of possession. Even, if plaintiffs would have valued their suit qua the relief of possession as Rs.10,50,000/-, then also this Court would be having the pecuniary jurisdiction to try and adjudicate the suit.

123. Considering the facts and circumstances of the suit and above discussion, this Court is of the considered view that no prejudice has been caused to the defendant because plaintiffs

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have valued their suit for the relief of possession as Rs.43 lakhs. Plaintiffs have not undervalued their suit and have also paid the requisite ad-valorem court fees on the plaint.

124. In view of the above observations, this Court concludes that the suit of the plaintiffs is not undervalued and no prejudice has been caused to the defendant. **Issue No.5 is accordingly answered**.

125. **Issue No.7 and additional Issue No.8 are taken up together.**

ISSUE NO.7:- Whether the defendant is entitled to the reliefs claimed by her? OPD

And

ISSUE NO.8:- Whether plaintiff is entitled for decree of possession in respect to the suit property against defendant, as prayed? OPP

126. This Court has already concluded that defendant/counter claimant has no right to seek declaration for declaring the sale deed dated 13.05.2005 as null and void.

127. As per plaintiffs, they have taken two home loans for an amount of Rs.13 lakhs and Rs.11,78,606/- from ICICI Bank in respect to the suit property and was regularly paying total EMI of Rs.28,813/- (Rs.13,900/- + Rs.14,913/- respectively).

128. During the course of trial, it has come on record that the original

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sale deed dated 13.05.2005 of the suit property is with the ICICI Bank. It has also come on record that in the year 2019, plaintiffs were under financial crisis, therefore, they were unable to pay the installments of loan amount to ICICI bank and due to the said default, bank has also initiated the proceedings qua the suit property under the provision of SARFAESI Act.

129. When ICICI Bank was taking steps for getting the physical possession of the suit property under SARFAESI Act, defendant has deposited the amounts in the loan accounts with the ICICI Bank in order to protect herself from the dispossession of the suit property. As per the documents i.e. a letter dated 27.06.2019, ledger in a tabular form, copy of 03 pay orders and order dated 24.06.2019 passed by DRT-II, Delhi in NDN No.849/2019 (SA) titled as 'Anita Sharma Vs. ICICI Bank', filed on behalf of defendant on 05.07.2024, an amount of Rs.19,91,008.23 has been paid by/on behalf of defendant to ICICI Bank in respect to loans taken by plaintiffs in respect to the suit property. Defendant had paid an mount of Rs.9,90,000/-, Rs.7 lakhs, Rs.2,75,841.23 and Rs.25,167/- through pay orders on 24.06.2019, 29.06.2019, 27.06.2019 and 18.03.2012 respectively to ICICI Bank.

130. It has also come on record that the entire loan amount of ICICI Bank, Preet Vihar, Delhi has been repaid by the defendant and

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the loan accounts qua the suit property has been settled. The said fact has been recorded in the order dated 05.07.2024.

131. Defendant after repaying the entire loan amount and settling the loan accounts of ICICI Bank, Preet Vihar, Delhi pertaining to the suit property, has stepped into the shoes of ICICI Bank, Preet Vihar, Delhi and a right over the suit property has been created in favour of defendant.

132. This Court at this stage considers the conduct of plaintiffs that they have intentionally stopped making payment to the ICICI Bank, so that, defendant can be oust from the suit property under the proceedings of SARFAESI Act. Plaintiffs have not produced any cogent, reliable and probable material on record to show that they were suffering from financial constrains and due to the said reason, they were unable to pay the installments of loan accounts to the ICICI Bank. It is pertinent to mention here that plaintiffs have never disclosed about the fact to the Court that they have stopped making payment of the installments of the loan account to ICICI Bank and the said fact has been brought on record by defendant which has not been disputed by plaintiffs. Even, plaintiffs have not disclosed since when they have stopped making payment of installment of loan amount to ICICI Bank.

133. Considering the fact that defendant has settled the dispute with

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ICICI Bank by repaying an amount of Rs.19,91,008.23 as full and final settlement pertaining to the loan accounts of plaintiffs with the bank in respect to the suit property and got the suit property redeemed from the bank, therefore, this Court is of the considered view that a right of defendant has been created over the suit property and she cannot be dispossessed from the same, therefore, the relief of possession prayed by plaintiffs against defendant stand denied.

134. As per defendant, she has paid an amount of Rs.30 lakhs to plaintiff No.1 on different occasions and the said amount has been invested by the plaintiff No.1 in different projects. Plaintiffs have denied that plaintiff No.1 has never taken any amount from defendant rather they have given financial assistance to her.

135. During cross examination, PW-1 has deposed that he was having an income of Rs.50,000/- to Rs.60,000/- per month approximately and he was having a liability of himself, her wife (plaintiff No.2) and four minor children. It has also come on record during evidence that plaintiff No.1 was having three luxurious cars. It has also come on record that plaintiff No.1 has invested an amount of Rs.3 lakhs each in the properties/projects of Parshavnath Developers Limited at Ghaziabad and M/s Triveni Infrastructure Pvt. Ltd. in the month of December, 2005.

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The ITR produced by plaintiff No.1 creates reasonable doubts about the financial capacity of plaintiff No.1 to further invest in the afore-said properties/projects especially when he has already purchased the suit property for an amount of Rs.10,50,000/- in the same year i.e. on 13.05.2005; he has meager income of Rs.50,000/- to Rs.60,000/- out of which, he had to pay the installments of two loan accounts and also has to bear day-to-day expenses of his and his family members and also has to bear the expenses of Rs.15,000/- per month of defendant and her two minor children. Admittedly, plaintiff No.2 is a housewife and was not filing ITR. Plaintiffs have not produced any cogent material on record to establish that he was having sufficient funds with him which he further invested in the afore-said projects.

136. It is not in dispute that after the death of husband of defendant, the two properties i.e. one residential and one clinic, situated at Sunam, Punjab had been sold between December, 2005 to 2007. Plaintiff No.1 has admitted that he has accompanied with defendant at the time of execution of sale deed in respect to residential house of defendant at Sunam, Punjab in the month of December, 2005.

137. As per DW-1, the entire sale proceeds of the afore-said two properties have been cleverly and fraudulently taken by plaintiff

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No.1 from her. Admittedly, all the transactions had been made in cash. Plaintiff No.1 has denied the said allegations but has not disclosed what has been done with the sale proceeds of the afore-said two properties by defendant. It is strange that plaintiff No.1 was regularly paying Rs.15,000/- to defendant apart from allowing her to reside in the suit property without payment of any licence fee especially when defendant was having two properties at Sunam and was also getting Rs.12,000/- per month as rental income from there and also when the afore-said properties had been sold and defendant has received its sale proceeds. It is strange that even after receiving the sale proceeds of the afore-said properties and after getting the amount of Kisan Vikas Patra by defendant, plaintiff No.1 was regularly paying an amount of Rs.15,000/- per month to her and has never asked about the funds received by her or stopped financial help for defendant.

138. During the cross examination of PW-2, she has deposed that they are seven siblings including herself and defendant. She further admits that her five siblings are standing with defendant and she is alone. It is strange that if plaintiff No.1 has regularly financially helped the defendant after the death of her husband till the filing of the suit and has never taken any amount from her then why the other brothers and sisters of plaintiff No.2 and defendant are standing against plaintiff No.2 and in favour of

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defendant.

139. Plaintiff No.2 has admitted her signatures on the **Ex.PW2/D1**. She further admits that she has signed upon the revenue stamp affixed on the document **Ex.PW2/D1**. During her cross examination, she further deposed that she used to sign the documents only after reading the contents of the document. It is strange that plaintiff No.2 being an educated woman has signed a blank paper at the instance of defendant. Admittedly, defendant was residing in the suit property from last four years and all the people of the colony were aware about her. No person/official of a society would ask a tenant or licensee who is occupying the immovable property with the permission of landlord/licensor for last four years and was also related to them, to show 'no objection' from the owners in writing before allowing her/him to remove/sell any movable article including washing machine lying in the property.

140. The testimony of DW-1, DW-2 and DW-3 found reliable under the facts and circumstances of the case that the document **Ex.PW2/D1** has been written by DW-2 Smt. Sarla Sharma and thereafter, the same has been signed by plaintiff No.2 in the family meeting on 10.07.2009. Plaintiffs in their written statement to the counter claim have admitted that a meeting within family has occurred. PW-2 in her evidence affidavit has

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also deposed that various meetings have occurred within the family with regard to the dispute of the suit property.

141. DW-2 and DW-3 have specifically deposed that the document **Ex.PW2/D1** has been written by DW-2 Smt. Sarla Sharma at the instance of plaintiff No.2 and thereafter, she has signed the same on 10.07.2009.

142. Oral testimony of defendant's witnesses and cross examination of plaintiffs' witnesses infers that plaintiff No.1 has taken some amount from defendant and due to the said reason, the document **Ex.PW2/D1** was prepared at the instance of plaintiff No.2 and was signed by her in a family meeting on 10.07.2009. The document **Ex.PW2/D1** has been prepared and signed in presence of plaintiff No.1 in a family meeting on 10.07.2009, therefore, the same cannot be considered as a hearsay evidence. After discussion in the family meeting, the document **Ex.PW2/D1** came into existence and the same has been signed by plaintiff No.2 after reading its contents. Though, the said fact/document **Ex.PW2/D1** does not grant any right to defendant to claim ownership rights over the suit property.

143. The document **Ex.PW2/D1** can only prove that an amount of Rs.30 lakhs has been taken by plaintiff No.1 from defendant on different occasions and the same has been invested by him under different projects. The document **Ex.PW2/D1** does not

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create any right or interest of defendant in the suit property. It can only give a right to defendant to recover the afore-said amount in an appropriate proceedings before the competent Court of law against plaintiff No.1, if law of limitation permits.

144. In view of the discussions, this Court concludes that **Ex.PW2/D1** does not create any right or interest in favour of defendant in respect to the suit property, therefore, she is not entitled for decree of declaration to declare herself as an exclusive owner of the suit property. However, it is made clear that as defendant has redeemed the suit property from ICICI Bank, therefore, a right has been accrued in favour of defendant in respect to the suit property. The right which has been accrued in favour of defendant in respect to the suit property is of 'mortgagee' and not of an 'owner'.

145. This Court has already concluded that a right in the suit property has been accrued in favour of defendant and due to the same, a decree of possession cannot be passed against her and in favour of plaintiffs, therefore, in order to multiplicity of litigation, plaintiffs are hereby restrained from creating, selling, transferring, alienating or disposing of the suit property till the time she has a right to occupy the suit property being a 'mortgagee'. Plaintiffs are also restrained from dispossessing the defendant from the suit property without following due

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process of law and till the time she has a right to occupy the suit property being a 'mortgagee'. **A decree of permanent injunction is accordingly passed in favour of defendant/counter claimant and against plaintiffs. Issue No.7 and 8 are accordingly answered.**

<u>ISSUE NO.6</u>:- Whether the plaintiffs are entitled to mesne profit/damages for use and occupation and, if so, at what rate and to what amount? OPP

146. During the pendency of the suit, plaintiffs have stopped the payment of installments of loan amount to the ICICI Bank and has not disclosed the said material fact to this Court. The suppression of material fact by the plaintiffs have diluted/extinguished the cause of action for claiming the relief of mesne profit/damages against defendant and makes the plaintiffs disentitle for the decree of mesne profit/damages. Non-payment of installments of loan account to ICICI Bank clearly establishes that plaintiffs have not suffered damages/losses. Even, plaintiffs have not disclosed the date when they have stopped making payment of installments of loan account to ICICI Bank. It has come on record that defendant has redeemed the suit property and has paid an amount of Rs.19,91,008.23 to ICICI Bank, therefore, considering the facts and circumstances of the case and conduct of plaintiffs, this Court is not inclined to grant decree of mesne profit/damages in

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favour of plaintiffs and against defendant. Issue No.6 is accordingly decided in favour of defendant and against plaintiffs.

147. <u>Relief/Final judgment</u>

I. The sale deed dated 13.05.2005 is a valid document.

II. This Court declares that a right has been accrued in favour of defendant in respect to the suit property being its 'mortgagee' and therefore, during existence of such right, a decree of possession cannot be passed in favour of plaintiffs and against defendant/counter claimant. Thus, the relief of possession claimed by plaintiffs in the main suit has been denied.

III. The relief of mesne profit has also been denied to plaintiffs due to suppression of material facts and also because of the reason that the cause of action to claim the mesne profit has been extinguished/diluted during the pendency of the suit.

IV. The reliefs of declaration claimed by defendant in the counter claim have also been denied.

V. A decree of permanent injunction is passed in favour of defendant/counter claimant and against plaintiffs thereby restraining the plaintiffs from creating, selling, transferring, alienating or disposing of the suit property till the time defendant has a right to occupy the suit property being a 'mortgagee'.

VI. A decree of permanent injunction is passed in favour of

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defendant/counter claimant and against plaintiffs thereby restraining the plaintiffs from dispossessing the defendant from the suit property without following due process of law and till the time defendant has a right to occupy the suit property being a 'mortgagee'.

VII. Parties shall bear their respective cost.

148. The suit i.e. CS No.2125/2016 is dismissed and accordingly disposed of. The counter claim i.e. CS No.96/2024 is partly allowed and accordingly disposed of.

149. Let decree sheet be prepared accordingly.

150. Files be consigned to record room after due compliance.

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Announced in the open Court
on this 18th day of June, 2026

(DEEPANKER MOHAN)
DISTRICT JUDGE-04,
SHAHDARA DISTRICT
KKD Courts, Delhi