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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 431/2025 & I.A. 15924/2025, I.A. 29645/2025**

PUNEET KAUR

.....Plaintiff

Through: Mr. Ravinder Singh, Ms. Raveesha Gupta, Mr. Ritvik Bhardwaj and Ms. Nishita Kushwaha, Advs.
M: 9811614545

versus

HARVINDER KAUR & ANR.

.....Defendants

Through: Mr. Rajesh Ranjan Singh, Adv.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

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27.02.2026

I.A. 29645/2025

1. The present application has been filed on behalf of the plaintiff under Order XII Rule 6, read with Section 151 of the Code of Civil Procedure, 1908 ("CPC"), praying for grant of preliminary decree in favour of the plaintiff, *qua* her 33% share in the freehold property, bearing No. E-300, East of Kailash, New Delhi-110065, built on the land admeasuring 200 sq. yds.
2. Learned counsel appearing for the plaintiff relies upon the judgment dated 22nd September, 2025, passed by the Division Bench of this Court in *MAT.APP.(F.C.) 217/2017*, titled as "*Sangeeta Gera Versus Sanjeev Gera*"



and in particular, relies upon the following paragraphs:

“xxx xxx xxx

31. Normally, when a husband and wife acquire property during the subsistence of marriage, the presumption in law is that such acquisition is made from common family funds and that both spouses have contributed equally, irrespective of whether one of them is earning or not. In the present case, the subject property was purchased in the joint names of the husband and wife, although it is an admitted position that the entire consideration, including the payment of EMIs, was borne solely by the Appellant/Husband. It is further a matter of record that the title of the subject property is held in the names of both spouses as joint owners, and even the account in HSBC Bank, in which the surplus amount was deposited, was maintained in the joint names of the parties.

32. In this regard, a reference may be made to Section 4 of the Prohibition of Benami Property Transactions Act, 1988 [hereinafter referred to as “Benami Act”], which sets out as follows:-

“4. Prohibition of the right to recover property held benami.—

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

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



33. Section 4 creates an absolute bar against the enforcement of rights in respect of property held benami. It stipulates that no person claiming to be the real owner of such property can institute any suit, claim, or action to enforce rights against the benamidar or any other person in whose name the property stands. Equally, it prohibits the raising of any defence in a pending suit, claim, or action on the ground that the property, though standing in the name of another, actually belongs to the real owner. The combined effect of sub-Sections (1) and (2) is that the real owner is entirely disabled from seeking recognition of any right, title, or interest in the benami property, either by way of initiating proceedings or by way of defence.

34. In this backdrop, once the property stands in the joint names of the spouses, the husband cannot be permitted to claim exclusive ownership merely on the ground that he alone provided the purchase consideration. Such a plea would contravene Section 4 of the Benami Act, which imposes an absolute bar against the enforcement of rights in respect of property held benami. The provision clearly stipulates that no person claiming to be the real owner of a property standing in another's name can either institute proceedings or raise a defence asserting such ownership. Thus, the combined effect of the presumption of equal ownership between spouses and the statutory prohibition under Section 4 is that the Appellant is prevented from contending that the amount from the sale of the joint property belongs to him alone.

35. Therefore, the Respondent is entitled to a 50% share in the proceeds of the property held jointly by the parties, and the money must be released to her.

xxx xxx xxx”

3. Learned counsel appearing for the plaintiff further submits that the defendants cannot lead any evidence against a registered document in which the plaintiff and the defendants are shown as co-owners. For this purpose, he



relies upon the judgment dated 23rd February, 2026 of this Court passed in CS(OS) 685/2022, titled as “ *Gopal Krishan Srivastava Versus M/s Lakras Infracon Pvt. Ltd. & Ors.*”, and in particular, relies upon paragraphs 12, 13, 14 and 19 of the said judgment, which are reproduced as under:

“xxx xxx xxx

12. However, in the opinion of this Court, the entire case of the Plaintiff hinges on an oral financing arrangement, for which, not a single document has been filed by the Plaintiff, to indicate that all these documents were executed only as a security for the purported loan advanced by the Defendants.

13. In view of the above, the stand of the Plaintiff is clearly his by Section 92 of the Evidence Act, 1872. Section 92 of the Evidence Act, 1872, reads as under:

“Section 92. Exclusion of evidence of oral agreement.

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1). -- Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, [want or failure] of consideration, or mistake in fact or law.



Proviso (2). -- The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3). -- The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4). -- The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5). Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6). -- Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations

(a) A policy of insurance is effected on goods in ships from Calcutta to London. The goods are shipped in a particular ship which is lost. The fact that particular ship was orally excepted from the policy cannot be proved.



(b) A agrees absolutely in writing to pay B Rs. 1,000 on the first March 1873. The fact that, at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(c) An estate called the Rampore tea estate is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of Bs as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse of Rs. 500. B may prove the verbal warranty.

(h) A hires lodgings of B, and gives B a card on which is written – "Rooms, Rs. 200 a month". A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A



may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount, A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered."

14. The registered documents, cancellation of which has been sought, have been filed by the Plaintiff itself and, therefore, the Plaintiff admits the documents, which means that the documents need not be proved. When the documents need not be proved, in view of Section 92 read with Section 95 of the Evidence Act, 1872, the Plaintiff is precluded to lead evidence for the purpose of contradicting, varying, adding to, or subtracting the terms of the contract which has been reduced in the form of an document. This Court can only look into the documents as admitted by the Plaintiff. There is nothing in any of the four registered documents indicating that these documents have been executed only as a security of an oral loan transaction. No other document has been produced by the Plaintiff to substantiate the case that the registered documents were treated only as a security for a Loan Agreement. In the absence of anything to the contrary, the Plaintiff is precluded from leading any evidence to show that there was any other oral agreement which contradicts the document which have been reduced into writing in terms of Section 92 of the Evidence Act, 1872.

XXX XXX XXX

19. In addition, Sections 74 and 77 of the Indian Evidence Act, 1872, is also attracted to the facts of the present case, as the documents were registered in the Sub-Registrar's office and as such, are public documents, of which certified copies were filed before this Court.

XXX XXX XXX"

4. *Per contra*, learned counsel appearing for the defendants submits that the judgment passed in the case of *Sangeeta Gera (Supra)*, as relied upon by the plaintiff is the subject matter of *Special Leave to Appeal ("SLP") (C) 36801/2025* before the Supreme Court. He, thus, submits that the judgment of the Supreme Court in that regard, be awaited.



5. However, learned counsel appearing for the plaintiff submits that the issue before the Supreme Court is only with regard to dissolution of the marriage and not with regard to the issue of wife having equal share in the property when the property has been purchased during the subsistence of the marriage.
6. Learned counsel appearing for the defendants submits that he shall check the said position.
7. At this stage, learned counsel appearing for the plaintiff submits that payments were made by the plaintiff from her accounts as well, which is disputed by learned counsel appearing for the defendants.
8. Accordingly, at request, re-notify on 29th April, 2026.

MINI PUSHKARNA, J

FEBRUARY 27, 2026/KR