HIGH COURT OF BOMBAY

Bench: B. P. Colabawalla & M. M. Sathaye, JJ

Date of Decision: April 01, 2024

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 97 OF 2014

Arising out of PETITION NO. A-480 OF 2010

Rajeev Ruia ... Appellant

VERSUS

Mahesh Vennalakanti ... Respondent

Legislation :

Sections 10, 13(1)(i-a), and 13(1)(i-b) of the Hindu Marriage Act, 1955

Benami Transactions (Prohibition) Act, 1988

Section 45 of the Section 14 of the Hindu Succession Act, 1956

Transfer of Property Act, 1882

Articles 58, 59, 65 of the Limitation Act, 1963

Subject: Appeal in a matrimonial dispute involving property ownership issues, following the death of the original appellant (wife) and the continuation of the appeal by her son.

Headnotes:

Marriage and Divorce - Appeal challenging Family Court's decision on property ownership - Facts surrounding the purchase of disputed Juhu Flat and tenancy of Cuffe Parade Flat - Family Court's dismissal of Mrs. Rajeshri V. Mahesh's judicial separation petition and decree of divorce in favor of Respondent, based on grounds under Sections 13(1)(i-a) and 13(1)(i-b) of the Hindu Marriage Act, 1955 – Circumstances leading to breakdown of marriage considered. [Paras 1-2]

Property Ownership Dispute - Contest over the ownership of Flat No. 404, Marina Apartments, Juhu Tara Road, Mumbai – Respondent’s claim of sole ownership based on exclusive financial contribution upheld – Original Appellant’s (Mrs. Rajeshri V. Mahesh) name added for convenience without

monetary contribution, negating her claim for 50% share. [Paras 6, 8, 30-31, 33, 36]

Benami Transaction Act Non-Applicability - Arguments regarding the applicability of the Benami Transactions (Prohibition) Act, 1988 rejected – No evidence to establish that the Juhu Flat was purchased for the benefit of the Original Appellant, Mrs. Rajeshri V. Mahesh. [Paras 22-24, 30-32, 34-36]

Section 14 of the Hindu Succession Act - Original Appellant's claim under Section 14 of the Hindu Succession Act, 1956, for full ownership due to presumed limited ownership, rejected – Section 14 found inapplicable as the Original Appellant neither had a limited ownership nor contributed financially to the Juhu Flat. [Paras 37-49]

Limitation Act Defense - Defense based on the Limitation Act, 1963, upheld – Limitation Act does not bar defenses in legal proceedings, despite the expiry of statutory limitation period for filing a suit or appeal. [Paras 51-54]

Interim Order Extension - Post-judgment interim order preventing the creation of third-party rights in the Juhu Flat extended for four weeks, providing the Appellant time to appeal to the Supreme Court. [Paras 59-60]

Decision: The appeal is dismissed. The High Court upholds the Family Court's decision on the sole ownership of the Juhu Flat favoring the Respondent, Mahesh Vennalakanti. An interim order regarding the Juhu Flat is extended for four weeks. No order as to costs. [Paras 56, 60]

Referred Cases:

- Nand Kishore Mehra Vs. Sushila Mehra [(1995) 4 SCC 572]
- Om Prakash Sharma Alias O.P. Joshi Vs. Rajendra Prasad Shewda & Ors. [(2015) 15 SCC 556]
- Jaydayal Poddar (Deceased) Through L.Rs. & Anr. Vs. Mst. Bibi Hazra & Ors. [(1974 1SCC 3]
- Thakur Bhim Singh Vs. Thakur Kan Singh [(1980) 3 SCC 72]
- Bacchaj Nahar Vs. Nilima Mandal [(2008) 17 SCC 491]
- Sita Ram Bhau Patil Vs. Ramchandra Nago Patil (Dead) By L. Rs. & Anr. [(1977) 2 SCC 49]
- Raveen Kumar Vs. State of Himachal Pradesh [(2021) 12 SCC 557]

- Udham Singh Vs. Ram Singh and Anr. [(2007) 15 SCC 529]
- N. Mani Vs. Sangeetha Threatre and Ors. [(2004) 12 SCC 278]
- Gummalapura Taggina Matada Kotturuswami v. Setra Veeravva [1959 Supp 1 SCR 968 : AIR 1959 SC 577]
- Mangal Singh v. Smt Rattno [AIR 1967 SC 1786 : (1967) 3 SCR 454]
- R.B.B.S. Munnalal v. S.S. Rajkumar [AIR 1962 SC 1493 : 1962 Supp 3 SCR 418]
- Sukhram v. Gauri Shankar [(1968) 1 SCR 476 : AIR 1968 SC 365]
- V. Tulasamma & Ors. v. Sesha Reddy [(1977) 3 SCC 99]
- Bai Vajia v. Thakorbhai Chelabhai [(1979) 3 SCC 300]
- Eramma v. Veerupanna [(1966) 2 SCR 626 : AIR 1966 SC 1879]
- Kuldeep Singh v. Surain Singh [(1968) 2 Andh LT 224 : 1968 SCD 881 : 1968 Punj LR 30]
- Gangamma & Ors. v. G. Nagarathnamma & Ors. [(2009) 15 SCC 756]
- Seth Badri Prasad v. Srimati Kanso Devi [(1969) 2 SCC 586]
- Shrimant Shamrao v. Pralhad [(2002) 3 SCC 676]
- Bajranglal Shivchandrai Ruia v. Shashikant N. Ruia & Ors. [(2004) 5 SCC 272]
- Controller of Estate Duty, Lucknow v. Aloke Mitra [(1981) 2 SCC 121]
- Kalawatibai v. Soiryabai & Ors. [(1991) 3 SCC 410]
- Jogi Ram v. Suresh Kumar [(2022) 4 SCC 273]
- Gurbachan Singh v. Satyapal Singh [(1990) 1 SCC 445]
- Ajudh Raj v. Moti [(1991) 3 SCC 136]
- Abdullamiyan v. Govt. of Bombay [(1942) 44 Bom LR 577 : AIR 1942 Bom 257]
- Gulwant Kaur v. Mohinder Singh [(1987) 3 SCC 674 : (1989) 10 ATC 599]

Representation

Mr. Dinesh Kumar Seth i/b. Mehul Rathod for the Appellant

Mr. Rohan Kadam a/w Karishma Rao i/b. Pankaj Bhatt for the Respondent

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JUDGMENT: [B. P. COLABAWALLA, J.]

1. The above Family Court Appeal impugns the Judgment and Decree dated 11th March 2013 passed by the Family Court at Bandra. By the impugned Judgment, the Family Court has:

(a) dismissed the Petition for judicial separation [under Section 10 of the Hindu Marriage Act, 1955] filed by Mrs. Rajeshri V. Mahesh [for short the **"Original Appellant"**] against the Respondent;

(b) decreed the Respondent's counterclaim for divorce under Sections 13(1)(i-a) [on the ground of cruelty] and 13(1)(i-b) [on the ground of desertion] of the Hindu Marriage Act, 1955; and

(c) held that the Respondent is the sole and absolute owner of Flat No. 404, Marina Apartments CHS, Juhu Tara Road, Mumbai -400049 [for short the ***"Juhu Flat"***].

2. Originally, the Petition seeking judicial separation was filed by Mrs. Rajeshri V. Mahesh [the Original Appellant] who was the wife of the Respondent. She was previously married and has a son from her previous marriage [the present Appellant]. The above Family Court Appeal was also originally filed by Mrs. Rajeshri V. Mahesh as she was aggrieved by the impugned Judgment and Decree passed by the Family Court on 11th March 2013. During the pendency of the above Appeal, the said Mrs. Rajeshri V. Mahesh [the Original Appellant] passed away on 15th January 2022. Accordingly, pursuant to order dated 9th June 2023 passed in Interim Application No. 4753 of 2023, the present Appellant, namely, the son of Mrs. Rajeshri V. Mahesh from her first marriage, was substituted as the Appellant being her legal heir. The said Mrs. Rajeshri V. Mahesh and the Respondent had no children from their marriage.

3. Be that as it may, in view of the death of Rajeshri V. Mahesh, the Appeal against the impugned Judgment, in so far as it dismisses her Petition for judicial separation and decrees the Respondent's counterclaim for divorce, is not pressed by Mr. Seth, the learned advocate appearing for the present Appellant. The sole issue for consideration and which now survives in the above Family Court Appeal, is the correctness of the Family Court's order that the Respondent is the sole and absolute owner of the *Juhu Flat*.

4. To consider whether the Family Court's finding on this issue is correct or otherwise, it would be necessary to set out some brief facts. In eptember

1970, the Respondent became an employee of one M/s. Woolcombers of India [**"Woolcombers"**], a subsidiary of Duncan Brothers. Accordingly, in October 1972, the Respondent was provided accommodation by Woolcombers at Flat No. 123, Mehr-Naz, Cuffe Parade, Colaba, Mumbai [for short the *"**Cuffe Parade Flat**"*]. Woolcombers were the tenants of the *Cuffe Parade Flat* and the landlords were one Mr. and Mrs. Rangnekar.

5. On 27th December 1977, the Respondent married the said Rajeshri V. Mahesh [the Original Appellant], who thereafter began residing with him in the *Cuffe Parade Flat*. In the year 1979, the Respondent left the employment of Woolcombers and joined Tata Exports Ltd. He also claimed tenancy in relation to the *Cuffe Parade Flat* and filed R.A.E Suit No. 183/262/1979 in the Small Causes Court at Mumbai against the landlords for fixation of standard rent in respect of the *Cuffe Parade Flat*. Certain other proceedings were also initiated by the landlords for regaining possession of the *Cuffe Parade Flat* from the Respondent. Be that as it may, on 4th April 1985, the landlords [namely, Mr and Mrs. Rangnekar] and the Respondent entered into consent terms in Arbitration Case No.512 of 1981 for settling all their *inter-se* litigation. The terms of this settlement *inter-alia* recorded that the landlords agreed to pay a sum of Rs. 4,40,000/- to the Respondent by Demand Draft and the Respondent agreed to vacate the *Cuffe Parade Flat* on or before 30th May 1985. In the said settlement, the landlords also declared that they would not make any claim for rent, compensation and/or arrears against the Respondent. Because of this settlement, all parties agreed to withdraw all proceedings filed against each other.

6. While all this was going on, in 1985, the Respondent searched and finalized the purchase of the *Juhu Flat* from the developer, namely, one Marina Corporation. For paying the sale consideration of the said *Juhu Flat*, the employer of the Respondent, namely, Tata Exports Ltd. sanctioned a PF loan of Rs. 81,000/- and directly issued a cheque dated 10th April 1985 in the name of Marina Corporation. In fact, Marina Corporation also issued a receipt of Rs. 81,000/- in the name of the Respondent and the Original Appellant. This was because the *Juhu Flat* was to be purchased in the joint names of the Respondent and the Original Appellant [Rajeshri V. Mahesh].

7. Since the Respondent was able to finalize the purchase of the *Juhu Flat*, on 7th May 1985, the Respondent's Advocate wrote to the landlords of the *Cuffe Parade Flat* informing them that they were able to find alternate accommodation and requesting them to take possession of the *Cuffe Parade Flat* against payment of Rs. 4,40,000/- [by Demand Draft].

8. On 20th May 1985, for the *Juhu Flat*, Marina Corporation executed an Agreement for Sale in the joint names of the Respondent and the Original Appellant for a consideration of Rs. 4,86,000/-. Thereafter, the Respondent handed over possession of the *Cuffe Parade Flat* to their landlords and against the said handing over, the Respondent received a Demand Draft of Rs. 4,40,000/- which was deposited in his Saraswat Bank Savings Account. On 25th May 1985, the Respondent paid Marina Corporation a sum of Rs. 4,40,000/- by way of Demand Draft No. 80374. In turn, Marina Corporation issued six receipts for a total sum of Rs. 4,39,545/- in the name of the Respondent and the Original Appellant. In other words, on 25th May 1985, the developer, namely, Marina Corporation issued seven receipts totaling to Rs. 5,20,525/- which not only included the purchase price of the *Juhu Flat* but also certain monies paid towards stamp duty, electricity deposit and the sinking fund deposit. The Respondent and the Original Appellant accordingly moved into and started occupying the *Juhu Flat*.

9. Thereafter, on 6th November 1985, a Leave and License Agreement was executed between the Original Appellant and the Respondent's employer - Tata Exports Ltd. This Leave and License Agreement was in relation to the *Juhu Flat*. According to the Respondent he had approached Tata Exports Ltd. at the time of purchasing the *Juhu Flat* who advised him to add the Original Appellant's name in order to take advantage of a higher rental allowance that would be paid under his service terms and conditions. It is important to note that Tata Exports itself gave a PF loan to the Respondent for purchasing the *Juhu Flat*.

10. The Respondent and the Original Appellant thereafter continued to reside in the *Juhu Flat* until disputes arose between them, and the Original Appellant filed Petition No. A/480 of 2010 in the Family Court at Bandra, seeking judicial separation under Section 10 of the Hindu Marriage Act, 1955. To this Petition,

the Respondent filed his written statement contesting the Original Appellant's claim for judicial separation. He also filed a counterclaim seeking a divorce under Section 13(1)(i-a) and 13(1)(i-b) of the Hindu Marriage Act, 1955. On 22nd September 2011, the Family Court framed issues *qua* the judicial separation and the divorce.

11. Thereafter, the Original Appellant amended her Petition to insert a new cause of action *qua* the *Juhu Flat*. She amended her Petition for incorporation of averments in support of and for seeking a relief that the *Juhu Flat* be sold and the sale proceeds be divided between the Respondent and the Original Appellant. To this amendment, the Respondent filed his additional written statement contesting the Original Appellant's new claim *qua* the *Juhu Flat* and her case that she was the 50% owner of the said Flat as she had contributed 50% of the purchase money. The Family Court on the basis of the new claim pressed by the Original Appellant framed two additional issues, namely, (i) does the Respondent prove that he had paid the entire consideration for the *Juhu Flat* and that he is sole owner thereof; and (ii) Whether the Original Appellant was entitled to get a decree to direct the Respondent to sell the *Juhu Flat* and entitled to 50% of the sale consideration.

12. Thereafter, the parties filed their respective evidence before the Family Court and the Family Court heard the arguments canvassed by both sides. After all this, on the basis of the pleadings as well as the evidence led by the parties, the Family Court passed the impugned Judgment dated 11th March 2013 and dismissed the Original Appellant's Petition for judicial separation and decreed the Respondent's counterclaim for divorce. The Family Court, in the impugned Judgment, also gave a finding that the Original Appellant failed to prove that she is the joint owner of the *Juhu Flat* because she was not able to establish that she has paid any consideration for the same. The Family Court also came to the conclusion that the entire consideration for the *Juhu Flat* was paid by the Respondent-Husband. In these circumstances, the Family Court gave a finding that the Respondent-Husband is the absolute owner of the *Juhu Flat* and the Original Appellant is not entitled to get a decree/order to direct the Respondent to sell the *Juhu Flat* or get a share in the sale proceeds thereof. As stated earlier, being aggrieved by the Family Court Judgment, the present Appeal is filed.

13. In this factual backdrop, Mr. Seth, the learned Counsel appearing for the Appellant, submitted that the present Family Court Appeal is pressed against the findings given by the Family Court in so far as it relates to the refusal of dividing the *Juhu Flat* in which the Original Appellant [and now the current Appellant being the son of the Original Appellant] has a 50% share. He submitted that the claim of the 50% share of the *Juhu Flat* has been set out in grounds of Appeal. According to Mr. Seth, the Original Appellant is entitled to this 50% share not only by invoking the provisions of the Benami Transaction (Prohibition) Act, 1988, but also by virtue of Section 14 of the Hindu Succession Act, 1956. He also attacked the impugned order by contending that it is contrary to the provisions of the Limitation Act, 1963. He, however, fairly pointed out that neither in the Family Court Petition nor in the present Family Court Appeal there is any reference to (a) The Benami Transaction (Prohibition) Act, 1988; (b) Section 14 of the Hindu Succession Act, 1956; or (c) the Limitation Act, 1963. He submitted that despite this, under Section 7 of the Family Court's Act, 1984, and more particularly under Section 7(1)(a) thereof, the Family Court is a District Court and therefore had full power to decide the issue of the 50% share of the *Juhu Flat* by looking into the provisions of (a) the Benami Transaction (Prohibition) Act, 1988; (b) Section 14 of the Hindu Succession Act, 1956; as well as (c) the Limitation Act, 1963. He submitted that the Family Court ought to have considered these provisions notwithstanding the fact that no issue regarding the same was ever raised before it. He submitted that the Family Court ought not to have decided the issue of the 50% ownership of the *Juhu Flat* only as per Section 45 of the Transfer of Property Act, 1882. He, therefore, submitted that notwithstanding the fact that these points were not raised either before the Family Court, or even in the Memo of Appeal before this Court, we ought to take these provisions into consideration for deciding whether the impugned Judgment [holding that the Original Appellant is not entitled to any share in the *Juhu Flat*], is correct or otherwise. In support of this proposition, Mr. Seth relied on a decision of the Hon'ble Supreme Court in the case of ***N. Mani Vs. Sangeetha Threatre and Ors. [(2004) 12 SCC 278]***.

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14. Mr. Seth took us through the impugned Judgment as well as the evidence led by the parties before the Family Court and impugned the Family Court's Judgment [on the issue that the Original Appellant was entitled a 50% share in the *Juhu Flat*], to contend that the test laid down under the provisions of the Benami Transactions (Prohibition) Act, 1988 were not met by the Respondent and therefore, notwithstanding the fact that the Respondent had paid the entire consideration for purchase of the *Juhu Flat,* it would not entitle him to be declared as the absolute owner thereof. In this regard, Mr. Seth relied upon Section 3(2) of the Benami Transactions (Prohibition) Act, 1988 as it stood prior to its amendment in the year 2016. Mr. Seth submitted that by virtue of Section 3 of the Benami Transactions (Prohibition) Act, 1988 [as it stood prior to its amendment], the Respondent can claim full ownership of the *Juhu Flat* only if he can prove that the said Flat was not purchased for the benefit of the Original Appellant [the wife]. This is notwithstanding the fact that the entire consideration for purchase of the *Juhu Flat* was paid by him. In support of this proposition, Mr. Seth relied upon the Judgment of the Hon'ble Supreme Court in the case of ***Nand Kishore Mehra Vs. Sushila Mehra [(1995) 4 SCC 572]***. Mr. Seth submitted that in the facts of the present case, the Family Court erred in not considering that the Respondent had made binding admissions in his written statement and counterclaim that he had added the name of the Original Appellant in the *Juhu Flat* purchase deed, out of love and affection, and for her security. Mr. Seth submitted that once this was the admission, the Respondent could not be allowed to resile from this binding admission made in the first instance, by subsequently changing his pleadings in his additional written statement that the Respondent had put the Appellant's name only for the sake of convenience. He submitted that since the Original Appellant's name was included in the purchase deed of the *Juhu Flat* out of love and affection, and for her security, the Family Court erred in not considering that it would make no difference if the Respondent paid the entire consideration, or otherwise. He submitted that if the purchase of the *Juhu Flat* was to provide the wife with security, it is a fundamental feature that must be kept in mind while determining the nature of a sale/purchase transaction in determining whether the *Juhu Flat* was purchased Benami. In support of this proposition, Mr. Seth relied upon the decision of the Hon'ble

Supreme Court in the case of ***Om Prakash Sharma Alias O.P. Joshi Vs. Rajendra Prasad Shewda & Ors. [(2015) 15 SCC 556]***.

15. Mr. Seth then submitted that the tests for reclaiming ownership of properties under Benami Transactions, before the enactment of the Benami Transactions (Prohibition) Act, 1988, can be found in the Judgments of the Hon'ble Supreme Court in the Case of ***Jaydayal Poddar (Deceased) Through L.Rs. & Anr. Vs. Mst. Bibi Hazra & Ors. [(1974 1SCC 3];*** and ***Thakur Bhim Singh Vs. Thakur Kan Singh [(1980) 3 SCC 72]***. He submitted that the test laid down in the case of ***Jaydayal Poddar (supra)*** is that the Court has to examine (i) the source from which the purchase money came; (ii) The nature and possession of the property after the purchase; (iii) motive, if any, for giving the transaction a Benami colour; (iv) the position of the parties and the relationship, if any, between the claimant and the alleged Benamidar; (v) the custody of the title deeds after the sale; and (vi) the conduct of the parties concerned in dealing with the property after the sale. He submitted that the ratio in the case of ***Jaydayal Poddar (supra)*** has been followed in subsequent judgments wherein the same tests are applied for determining the nature of the benami property. However, post the Benami Transactions (Prohibition) Act, 1988, the additional tests prescribed by the Hon'ble Supreme Court in the case of ***Nand Kishore Mehra (supra)*** is also applied, namely, that the husband has to prove that the properties concerned have not been purchased for the benefit of the wife, even if he succeeds in showing that the consideration for the purchase of those properties had been paid by him. He submitted that if these tests were to be applied to the transaction in question, it is clear that the Respondent has been unable to prove that the *Juhu Flat* was not purchased for the benefit of the Original Appellantwife, and therefore, could not have claimed full ownership of the *Juhu Flat*. He submitted that this is notwithstanding the fact as per the evidence of the parties, it is proved that the Respondent paid 100% of the consideration for the *Juhu Flat*. Even otherwise, he submitted that out of the tests laid down by the Hon'ble Supreme Court [referred to by us earlier, and which were to be applied before the enactment of the Benami Transaction (Prohibition) Act, 1988 was brought into force], barring one, none of the other tests have been fulfilled. Once this is the case, then, the Respondent could not have claimed 100% of the ownership of the *Juhu Flat* as the same was clearly barred not only by the Judgments of the Hon'ble Supreme Court prior

to the enactment of the Benami Transactions (Prohibition) Act, 1988 but even after its enactment [by virtue of Section 3(2) thereof].

16. In answer to the aforesaid arguments, Mr. Kadam, the learned Counsel appearing for the Respondent, submitted that the Original Appellant had initially filed a claim before the Family Court only seeking judicial separation under Section 10 of the Hindu Marriage Act, 1955. Thereafter, on 18th February 2012, the Original Appellant amended her Petition to seek reliefs for sale of the *Juhu Flat* and for directions to distribute 50% of the sale proceeds to her. He submitted that this relief was sought on the specific ground that she was the owner of the 50% share in the *Juhu Flat* by virtue of having contributed equally towards its purchase. He submitted that this is clear not only from the pleadings but also from the evidence led by the Original Appellant before the Family Court. In this regard, he took us through the pleadings filed before the Family Court. He, thereafter, submitted that after this plea was taken and the issue of ownership of the *Juhu Flat* became a live issue, the Respondent filed an additional written statement on 1st March 2012. He took us through the additional written statement and pointed out that the Respondent categorically denied that the Original Appellant had contributed anything towards the purchase of the *Juhu Flat* and reiterated and asserted that the entire consideration emanated from him, and that it was only purchased jointly in her name for the sake of convenience. Mr. Kadam submitted that it was not the case of the Original Appellant either before the Family Court or even in the present Memo of Appeal that the 50% share of the *Juhu Flat* was either gifted to her or was purchased for her benefit. No evidence in support of this contention was ever led by the Original Appellant and no issues in relation to the same were either framed. He submitted that in fact she came with a positive case that she is a 50% owner of the *Juhu Flat* by virtue of the fact that she has contributed equally to purchase the same. If this is the positive case with which she approached the Family Court, she cannot be heard to say that the *Juhu Flat* was bought for her benefit. The two cases would be mutually destructive of each other. He submitted that once this was not a case put up before the Family Court, then, it would be highly improper to entertain this argument in this Court for the simple reason that whether the *Juhu Flat* was bought for her benefit or otherwise would be a question of fact for which evidence would have to be led and the opposite party would have to be given an opportunity to meet that case. This is completely absent in the facts of the present case. He submitted that in the

absence of proper pleadings as well as evidence regarding the applicability of the Benami Transactions (Prohibition) Act, 1988, such arguments can never be canvassed, and no cognizance of the same can be taken by this Court. He submitted that only in exceptional cases can the Court assess a case not specifically pleaded, but even then, the pleadings in substance should contain the necessary averments to make out a particular claim, the issues framed should also generally cover the question involved, and the parties proceed on the basis of the said issue, to lead evidence accordingly. In this regard, Mr. Kadam relied upon a decision of the Hon'ble Supreme Court in the case of ***Bacchaj Nahar Vs. Nilima Mandal [(2008) 17 SCC 491]***. He, therefore, submitted that the aforesaid argument ought not to be taken into consideration at all for deciding whether the Family Court had erred in giving a finding /declaration that the Respondent is the sole owner of the *Juhu Flat* because he has paid the entire consideration for purchase of the said Flat.

17. Be that as it may, and without prejudice to his forgoing argument, Mr. Kadam also addressed us on whether the Benami Transactions (Prohibition) Act, 1988 would apply to the facts of the present case. He submitted that the said Act does not prohibit and/or preclude the Respondent from asserting his ownership rights for the *Juhu Flat*. He submitted that Section 3(2) of the said Act [prior to its amendment in 2016] excluded properties purchased in the name of the wife or unmarried daughter from the prohibition imposed on Benami Transactions but was subject to a presumption that the said property had been purchased for the benefit of the wife or unmarried daughter. In other words, the presumption was a rebuttable one, upon proof being shown to the contrary. He submitted that in the present case, this presumption was duly rebutted by the following :-

a. By the Original Appellant herself pleading a case and attempting to lead evidence claiming that she was the owner of 50% share in the *Juhu Flat* by virtue of contributing her own funds. Such a case was in itself destructive of and militates against pleas that the *Juhu Flat* was gifted to her, transferred in lieu of a right of maintenance, or that it was purchased for her benefit.

b. The presumption was rebutted by the Respondent as well who pleaded a case and successfully proved that the Original Appellant's name was only

added for convenience (such as the Tata Exports Leave & License Agreement referred to earlier).

c. Even when cross-examining the Respondent, the Original Appellant only confronted him and suggested to him her case of having equally contributed to purchase the *Juhu Flat*. No questions were put nor was it suggested to the Respondent that the *Juhu Flat* was purchased in her name for her benefit and/or gifted to her.

d. Confronting the Respondent with alternate cases of ownership of the *Juhu Flat* being gifted and/or it being purchased in the Original Appellant's name for her benefit, was a matter of substance and mandatory. Having not done so, it was not open to the Original Appellant or to her son [the present Appellant] to propound these cases today.

18. Thus, according to Mr. Kadam, the presumption under Section 3(2) of the unamended Benami Transactions (Prohibition) Act, 1988 stood duly rebutted by pleadings and proof.

19. As far as the so-called admission made by the Respondent is concerned, Mr. Kadam submitted that no admission was ever made by the Respondent that the *Juhu Flat* was purchased in the Original Appellant's name for her benefit. He submitted that an admission must be clear, unambiguous and unimpeachable. In other words, such an admission should capture a clear, unambiguous and unimpeachable intent on the Respondent's part that the *Juhu Flat* was purchased in the name of the Original Appellant for her benefit. He submitted that the Respondent's statement in his first written statement is hardly an admission since he has clearly averred that he added the name of the Original Appellant to the Agreement and Share Certificate after being emotionally blackmailed and being unaware of the legal implications of the same. This does not point to a clear, unambiguous, voluntary, and informed intent with knowledge that the addition of her name was for her benefit. Indeed, the Original Appellant herself did not think it was an admission since :-

a. The Respondent's pleading was in his Written Statement to her Petition for judicial separation as originally filed on 15th July 2010. There was no controversy and/or relief claimed at that time by the Appellant qua the *Juhu Flat*.

b. The Original Appellant thereafter amended her petition to seek reliefs in respect of the *Juhu Flat* on 18th February 2012. Though fully cognizant of the Respondent's pleading (as it stood then), the claim nevertheless proceeded on the plea that she was an owner of the 50% share of the *Juhu Flat* by having equally contributed towards the said Flat's Purchase.

c. When title to the *Juhu Flat* became a live controversy in issue [pursuant to the amendment], the Respondent filed his additional written statement deposing to paying the full consideration and joining the Original Appellant's name solely for the sake of convenience.

d. Thus, the Original Appellant's case all along was of acquiring 50% ownership in the *Juhu Flat* on her own steam through contribution. Having failed in that case, it is now not open for her to argue that the *Juhu Flat* was purchased by the Respondent for her benefit.

20. In the alternative, Mr. Kadam submitted that even assuming for the sake of argument that the Respondent's pleading was an admission, it was akin to a previous statement having been made prior to the amended Petition which introduced a new claim and/or cause of action specifically making title to the *Juhu Flat* a live issue only in 2012. In these circumstances, to rely on such an admission, it was incumbent upon the Original Appellant to confront the Respondent with this statement in order for him to tender an explanation and clear up the issues in detail. A mere proof of admission, after the person whose admission it is alleged to be, has concluded his evidence, will be of no avail and cannot be utilised against him. In support of this proposition, Mr. Kadam, relied upon the Judgments of the Hon'ble Supreme Court in the case of **(i)** ***Sita Ram Bhau Patil Vs. Ramchandra Nago Patil (Dead) By L. Rs. & Anr. [(1977) 2 SCC 49];*** **(ii)** ***Raveen Kumar Vs. State of Himachal Pradesh [(2021) 12 SCC 557];*** and **(iii)** ***Udham Singh Vs. Ram Singh and Anr. [(2007) 15 SCC 529]***. Mr. Kadam submitted that since the Respondent was not confronted during the cross-examination regarding the alleged admission

[if it can be taken as an admission at all], it is not open for the present Appellant to latch on to the said statement and misconstrue a stray pleading and claim it to be an admission, and that too after the Respondent closed his evidence. In any event, Mr. Kadam submitted that admissions are not conclusive proof, and the entirety of the evidence and pleadings have to be examined, and if that is done, it is evident that the live issue was really as to who paid for the *Juhu Flat*. Both parties went to trial knowing fully well that title to the *Juhu Flat* would be established by proof of who supplied the funds. Once this was the case before the Trial Court, the so-called admission that the *Juhu Flat* was bought for the Original Appellant's benefit or for her security, is wholly irrelevant. Even otherwise, Mr. Kadam submitted that the Respondent has satisfied all the legal tests. He submitted that this is not strictly a vanilla case of benami since the *Juhu Flat* is held jointly in the name of the Respondent and the Original Appellant. Though a title deed/document carries an initial presumption that the name of the persons therein as owners, are indeed the true owners, this presumption is displaced once it is shown that consideration flows only from one of the parties. He submitted that where it is asserted that an assignment in the name of one person is in reality for the benefit of another, the real test is the source of the consideration and also who has been in enjoyment of the benefits of the transaction. He submitted that certain tests have been laid down by the Hon'ble Supreme Court in the case of ***Jaydayal Poddar (supra)***. These are not hard and fast rules that are uniformly applicable to determine whether a particular property was held benami. The guiding principles were laid down in the said Judgment. Pertinently at paragraph (7) thereof, the Court has expressly clarified that these indicia were not exhaustive, and their efficacy varied according to each case. Mr. Kadam submitted that in fact at paragraph (7), the Supreme Court in the case of ***Jaydayal Poddar (supra)***, expressly emphasized that the source of the purchase money is by far the most important test for determining whether the property standing in the name of one person is in reality for the benefit of another. In fact, even in the case of ***Thakur Bhim Singh (supra),*** the Supreme Court further cautioned [at paragraph 27], that a person who spent money on the property with the knowledge of the actual state of affairs would not in law confer on that party a proprietary interest therein. In other words, even assuming for the sake of argument that the Original Appellant had paid any maintenance charges as alleged by her, and though not proved, the same would not give her any proprietary interest in the *Juhu Flat*. In the facts of the present case, Mr. Kadam submitted that the Original Appellant

came to Court with an express case that she paid 50% of the funds for purchase of the *Juhu Flat* and therefore was the 50% owner thereof. Having confined her case to this, it was not open for her to plead a destructive and an inconsistent case that the *Juhu Flat* was bought for her benefit, gifted to her and/or transferred in lieu of maintenance. He submitted that in the facts of the present case, the Respondent has undoubtedly satisfied the most important test laid down in the case of ***Jaydayal Poddar (supra)*** of having paid full consideration for the *Juhu Flat*. This is undisputed. He was also in possession and was residing there. He has also successfully deposed to the motive of adding her name, namely that it was added for the sake of convenience [such as higher salary benefits accruing due to the Tata Exports Leave and License]. The title deeds of the said *Juhu Flat* were also in the Flat itself and the Original Appellant herself has admitted that the Respondent had paid maintenance charges many times. This is apart from the fact that the current Appellant's contention that the Original Appellant was paying maintenance charges is unbelievable since her deposition to that effect was wholly uncorroborated. The only documents shown to this effect was a receipt that was issued in the year 2011 [i.e. after filing of the Petition for judicial separation]. Once this is the case, then, even the tests laid down in the case of ***Jaydayal Poddar (supra)*** are fully met, was the submission of Mr. Kadam.

21. The last argument canvassed on this issue by Mr. Kadam was that while the present Appeal is pending, the Benami Transactions (Prohibition), Act, 1988 is amended in the year 2016. By virtue of the 2016 amendment, the presumption under Section 3(2) is no longer available in view of its deletion under the 2016 amendment. He submitted that now by virtue of the provisions of Section 2(9)(A)(b)(iii) of the said Act, the Respondent has to prove that though the property was bought in the name of spouse or in the name of any child of such person, the consideration for such property has been provided or paid out of the known sources of such individual. In other words, the presumption that was there in Section 3(2) has been removed. He submitted that, in fact, the Act itself provides in Section 1(3) that the provisions of Section 3, 5 and 8 shall come into force at once, and the remaining provisions of this Act shall be deemed to have come into force on 19th May 1988. In other words, the provisions of Section 2(9)(A)(b)(iii) are retrospective and therefore, we ought to apply the law as contemplated by the 2016 amendment. If this

be the case, then, the entire case of the Original Appellant based on the provisions of the Benami Transactions (Prohibition) Act, 1988 fails because it is an admitted fact that the entire sale consideration of the *Juhu Flat* was paid by the Respondent and no contribution for the same was made by the Original Appellant. He, therefore, submitted that there was absolutely no merit in the arguments canvassed by Mr. Seth on the applicability of the Benami Transactions (Prohibition) Act, 1988 to negate the findings given by the Family Court regarding the fact that the Respondent was the 100% owner of the *Juhu Flat*.

FINDINGS AND CONCLUSIONS ON THE APPLICABILITY OF THE

BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988

22. We have heard the learned Counsel appearing for the parties at quite some length on the aforesaid contentions. We have also perused the papers and proceedings in the above Family Court Appeal. We find considerable substance in the arguments canvassed by Mr. Kadam. The facts before us are clearly undisputed. The facts would clearly reveal that the Original Appellant approached the Family Court in the year 2010, seeking judicial separation under Section 10 of the Hindu Marriage Act, 1955. Thereafter, on 18th February 2012, the Original Appellant amended her Petition to seek reliefs for sale of the *Juhu Flat* and for a direction to distribute 50% of the sale proceeds to her. This relief was sought on the ground that she had equally contributed towards the purchase of the
Juhu Flat. These pleadings can be found at paragraph 22A and 22B of the amended Petition. For the sake of convenience, the same are reproduced as under:

> "22A: The Petitioner states that at the time of the marriage she was a divorcee aged about 38 years and the Respondent was a bachelor aged about 31 years of age. The Petitioner state that after my marriage we started residing as husband and wife at the Respondent's address at Meher Naz Bldg. at Cuffe Parade. We lived in the said apartment till 1985. The Petitioner states that the said apartment was a tenanted apartment and the rent was being paid by the Respondent's then employers Duncan Brothers. The Petitioner states that the landlords wanted us to vacate the premises

as we were not the direct tenants. Finally we arrived at an agreement with the landlord who paid us money (said amount) to vacate the premises. The said amount was utilized by us to purchase the current apartment where we are residing at our address mentioned in the cause title of the Petition. The Petitioner states that in addition to the above the Owners/Builders Marina Apartments, were to be paid some consideration in Cash. **The Respondent did not have any cash at that point of time and hence he asked me to pawn my jewellery and get cash or arrange for the cash if were to get the possession. The Petitioner State that I arranged for the funds in cash from my relatives. Finally on the payment of the cash component the possession of our apartment at Marina Apts. was handed over to us**. The Petitioner states that the Respondent has now inducted his sister and brother-in-law in the said house and in collusion with them he is making the Petitioner's life in the matrimonial home extremely miserable. In addition to the above at the age of 71 she fears for the safety of her life and also filed several complaints to the concerned police station for help. The Petitioner further states that in addition to the above the Respondent has created 3rd party rights in an assets that is **the matrimonial home which has been brought from the joint funds of the Petitioner and the Respondent and the share certificate clearly depicts her name as the first name along with that of the Respondent**. The Petitioner states that it is imperative that to ensure both the Petitioner and the Respondent in their twilight of their life have their own independent place to lead their lives peacefully.

22B. The Petitioner states that it would be in fitness of things and more particularly considering the facts that both of them are senior citizens that the Hon'ble court direct the parties to sell the matrimonial home situated at 404, Marina Apartment near Palm Grove Hotel, Juhu Tara Road, Mumbai 400049 at the current market value, and the sale proceeds of the same be shared equally between them."

(emphasis supplied)

23. On perusing the pleadings before the Family Court,

including the evidence that was led by the Original Appellant, we find that nowhere it was her case that the *Juhu Flat* was purchased by the Respondent for her benefit or that she was gifted a share in the property by the Respondent. When the Respondent put up his case [in his additional written statement] that the name of the Original Appellant was added in the *Juhu Flat* only for the sake of convenience, the Original Appellant-wife continued with her case that she is entitled to 50% ownership of the *Juhu Flat* on the basis that she has contributed equally for purchase of the said *Juhu Flat.* It was never her case that the 50% share of the *Juhu Flat* was bought by the Respondent in her name for her benefit. This case, in fact, has been put up before us only in the arguments. This was never the case either in the Family Court or even in the Memo of Appeal filed before us. We must, in a lighter way, state that this is nothing but the ingenuity of Counsel. Whether any particular property is bought for the benefit of another is a question of fact. It has to be first pleaded and thereafter proved. If we were to entertain this argument today, it would in fact do grave injustice to the Respondent because in appeal, without any pleading or evidence, the Respondent would have to meet an entirely new case. This itself, to our mind at least, would amount to a complete violation of the principles of natural justice. In an adversarial litigation, it is extremely important that a party who comes to court with a particular case has to be held to that case. This is for the simple reason that the opposite party then knows exactly what case it has to meet. The case that the *Juhu Flat* was bought for the benefit of the Original Appellant could have been pleaded and proved by her before the Family Court. If the Original Appellant had put up such a case, then, under Section 3(2) of the Benami Transaction (Prohibition) Act, 1988, there could have been a case of presumption in her favour and the Respondent would have to rebut the said presumption. Without having pleaded that case, it would be impossible for the Respondent to adequately rebut that presumption. We, therefore, find considerable force in the argument canvassed by Mr. Kadam that the case of the Original Appellant that the *Juhu Flat* was bought by the Respondent for the benefit of the Original Appellant cannot be taken cognizance of us at this late stage and that too without any evidence or pleadings in that regard. This is more so when one takes into consideration that the Original Appellant, during her lifetime, never stated anywhere that the 50% share in the Juhu Flat was bought by the Respondent for her benefit. This argument is being canvassed across the bar, and that too for and on behalf of the present Appellant, who is the son of the Original Appellant from her first marriage. In

this regard, it would be apposite to refer to the observations of the Hon'ble Supreme Court in the case of ***Bachhaj Nahar Vs. Nilima Mandal & Anr. (supra)***. The relevant portion of this decision read thus:

"11. The Civil Procedure Code is an elaborate codification of the principles of natural justice to be applied to civil litigation. The provisions are so elaborate that many a time, fulfilment of the procedural requirements of the Code may itself contribute to delay. But any anxiety to cut the delay or further litigation should not be a ground to flout the settled fundamental rules of civil procedure. Be that as it may. We will briefly set out the reasons for the aforesaid conclusions.

12. **The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take**.

13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. **When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief**. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could

not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. **Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief**.

14. The High Court has ignored the aforesaid principles relating to the object and necessity of pleadings. Even though right of easement was not pleaded or claimed by the plaintiffs, and even though parties were at issue only in regard to title and possession, it made out for the first time in second appeal, a case of easement and granted relief based on an easementary right. For this purpose, it relied upon the following observations of this Court in *Nedunuri Kameswaramma* v. *Sampati Subba Rao* [AIR 1963 SC 884] : (AIR p. 886, para 6)

"*6*. … No doubt, no issue was framed, and the one, which was framed, could have been more elaborate; but since the parties went to trial fully knowing the rival case and led all the evidence not only in support of their contentions but in refutation of those of the other side, it cannot be said that the absence of an issue was fatal to the case, or that there was that mistrial which vitiates proceedings. We are, therefore, of opinion that the suit could not be dismissed on this narrow ground, and also that there is no need for a remit, as the evidence which has been led in the case is sufficient to reach the right conclusion."

But the said observations were made in the context of absence of an issue, and not absence of pleadings.

15. The relevant principle relating to circumstances in which the deficiency in, or absence of, pleadings could be ignored, was stated by a Constitution Bench of this Court in *Bhagwati Prasad* v. *Chandramaul* [AIR 1966 SC 735] : (AIR p. 738, para 10)

"*10*. … *If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial*, then the mere fact that the plea was not

expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : *did the parties know that the matter in question was involved in the trial, and did they lead evidence about it*? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. *To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.*"

(emphasis supplied)

16. The principle was reiterated by this Court in *Ram Sarup Gupta* v. *Bishun Narain Inter College* [(1987) 2 SCC 555 : AIR 1987 SC 1242] : (SCC pp. 562-63, para 6)

"*6. … It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it*. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. *In order to have a fair trial it is imperative that the party should settle the essential material facts so that other party may not be taken by surprise*. The pleadings however should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case it is the duty of the court to ascertain the substance of the

pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of pleading is raised the enquiry should not be so much about the form of the pleadings; instead the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. *Once it is found that in spite of deficiency in the pleadings parties knew the case and they proceeded to trial on those issues by producing evidence, in that event it would not be open to a party to raise the question of absence of pleadings in appeal.*"

(emphasis supplied)

17. It is thus clear that a case not specifically pleaded can be considered by the court only where the pleadings in substance, though not in specific terms, contain the necessary averments to make out a particular case and the issues framed also generally cover the question involved and the parties proceed on the basis that such case was at issue and had led evidence thereon. As the very requirements indicate, this should be only in exceptional cases where the court is fully satisfied that the pleadings and issues generally cover the case subsequently put forward and that the parties being conscious of the issue, had led evidence on such issue. **But where the court is not satisfied that such case was at issue, the question of resorting to the exception to the general rule does not arise. The principles laid down in *Bhagwati Prasad* [AIR 1966 SC 735] and *Ram Sarup Gupta* [(1987) 2 SCC 555 : AIR 1987 SC 1242] referred to above and several other decisions of this Court following the same cannot be construed as diluting the well-settled principle that without pleadings and issues, evidence cannot be considered to make out a new case which is not pleaded**. Another aspect to be noticed, is that the court can consider such a case not specifically pleaded, only when one of the parties raises the same at the stage of arguments by contending that the pleadings and issues are sufficient to make out a particular case and that the parties proceeded on that basis and had led evidence on that case. Where neither party puts forth such a contention, the court cannot obviously make out such a case not pleaded, suo motu.

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23. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties, etc., which require pleading and proof. **Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs**. In a suit for recovery possession of property 'A', court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court cannot grant a relief of declaration or possession. **The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc**."

(emphasis supplied)

24. As held in the aforesaid Judgment of the Supreme Court, only in exceptional cases can the Court assess the case not specifically pleaded. Even then, (i) the pleadings in substance should contain the necessary averments to make out a particular claim; (ii) the issues framed should also generally cover the question involved; and (iii) the parties proceed on the basis of the said issue to lead evidence accordingly. In the facts of the present case, the issue regarding the applicability of the Benami Transactions (Prohibition) Act, 1988 and/or the presumption that is set out in Section 3(2) of the said Act [prior to its amendment] was never in contemplation of the parties either when they approached the Family Court or in fact even in the Appeal filed before us. This is an argument developed only by the Counsel at the time we were hearing the above Appeal. This being the case, we are afraid that such a contention cannot be allowed to be raised at this late stage.

25. To get over this problem, Mr. Seth relied upon the so-called admission made by the Respondent in his written statement dated 15th July 2010 to contend that this was very much a live issue before the Court. To understand this argument, it would be necessary to set out the said alleged admission and

which can be found at paragraph 12 of the written statement filed by the Respondent dated 15th July 2010.

"12. The Respondent states that sometime in 1985 he received a lumpsum payment in settlement from his Landlord in Cuffe Parade for vacating the house. He supplemented the said amount by withdrawing his Provident Fund borrowed the cash component from his sister Uma and her husband Jagdish and purchased the flat where the Petitioner and Respondent presently live completely from the said funds with no contribution whatsoever from the Petitioner. The original agreement was made by the builder Rahejas in the name of the Respondent alone, as can be seen from the original agreement and that of the garage. **However at the very last moment the Petitioner emotionally black mailed him into putting her name as the first purchaser by saying that she had no financial security. The Respondent in the goodness of his heart, his love for her, his naivete, and not knowing the full implications of the law agreed to do so**. The Respondent states that he has all the documents to prove that he has paid fully for the Flat in which he presently resides. He craves leaves of this Honourable Court to refer to and rely upon the bank statements etc. when produced."

(emphasis supplied)

26. We fail to understand how this is an unequivocal admission to establish the case of the Original Appellant that the *Juhu Flat* was bought for her benefit. In fact, we do not read this as an admission at all. From a plain reading of paragraph 12, it is clear that the Respondent has stated that since he was blackmailed by the Original Appellant by saying that she had no financial security, the Respondent from the goodness of his heart, his love for her, his naivete, and not knowing the full implications of the law, agreed to do so. In the said paragraph, it is again reiterated that the Respondent has all the documents to prove that he has fully paid for the *Juhu Flat* in which he presently resides. After the judicial separation Petition filed by the Original Appellant-wife was amended [claiming 50% of the *Juhu Flat*], the Respondent filed an additional written statement dated 1st March 2012. In the additional written statement, after the *Juhu Flat* was put in issue before the Family Court,

the Respondent categorically put up a case that he is the sole and exclusive owner of the *Juhu Flat* and that the Original Appellant – wife has made no contribution towards the same and that her name was incorporated as a joint holder only for the sake of convenience. Paragraph 1 of the additional written statement of the Respondent reads as under:

> "1. At the outset, the Respondent submits that he is the sole exclusive and absolute owner of the Flat no. 404, Marina Apartment, Juhu Tara Road, Mumbai 400049. Hereafter for brevity's sake referred as "the said suit flat". **The said Petitioner has made no contribution towards paying the purchase price or the expenses relating to the purchase of the said suit flat. Being Respondent's wife, her name was joined as a joint holder for the sake of convenience only, and as such she has no right title or interest in the said suit flat**."
>
> (emphasis supplied)

27. Despite these pleadings, the Original Appellant continued with her case that she is entitled to 50% ownership of the *Juhu Flat* because she has equally contributed for purchase of the same. She never put up a case that the *Juhu Flat,* though purchased entirely by the Respondent, was for her benefit. This so-called admission is of no avail to the Original Appellant because a mere proof of admission, after the person whose admission it is alleged to be, has concluded his evidence, will be of no avail and cannot be utilized against him. This proposition has been succinctly set out by the Hon'ble Supreme Court in the case of ***Udham Singh (supra).*** The relevant portion of this decision reads thus:

> **"9.** The above averments made in the plaint, as indicated earlier has been taken as admission of the plaintiff, however, this question needs to be looked into. First of all, we find that the averment made in the previous plaint does not lead to a conclusion that the defendants were admitted as tenants though no doubt the word "theka" has been used. But the expression theka can be used in many ways e.g. it may be "theka" for labour. It required to be explained or elaborated. We also find that the earlier suit was dismissed in default. No written statement was filed, nor were issues framed. Hence, obviously no trial took place.

No doubt admission is the best evidence against the person who is said to have made it, but it can always be explained. **One whose previous statement is to be treated as an admission or it is sought to be used, he has to be confronted with such a statement**. We find that though the document, namely, the plaint in the earlier suit, has been brought on record but no request seems to have been made for summoning the plaintiff. Learned counsel for the appellant has placed reliance on the decision of this Court in *Sita Ram Bhau Patil* v. *Ramchandra Nago Patil* [(1977) 2 SCC 49]. Our attention has been drawn to the observations made in paragraph 17 of the Report to the effect that the admission has to be clear, unambiguous and proved conclusively. It is a question which needs to be considered as to what weight is to be attached to an admission and for that purpose it is necessary to find out as to whether it is clear, unambiguous and a relevant piece of evidence, and further it is proved in accordance with the provisions of the Evidence Act. It would be appropriate that an opportunity is given to the person under cross-examination to tender his explanation and clear the point on the question of admission. In our view, the High Court was again wrong in attaching much weight to the averments made in the earlier plaint and coming to the conclusion that the defendants were admitted to be the tenants by the plaintiff on the land in question.**"**

(emphasis supplied)

In the case of ***Sita Ram Bhau Patil Vs. Ramchandra Nago Patil (through Lrs.) & Anr. (supra)*** the Hon'ble Supreme Court observed as under:-

"14. The second infirmity against this admission being used against the respondent is that as long as the respondent was under cross-examination, it was not brought to his notice. It is said by counsel for the appellant relying on the decision of this Court in *Bharat*

Singh v. *Bhagirathi* [(1966) 1 SCR 606 : AIR 1966 SC 405 : (1966) 2 SCJ 53] that this admission was proved by the appellant and this admission on the ruling of the decision of this Court is substantive evidence and is therefore admissible against the respondent.

15. The decision of this Court in *Bharat Singh case* [(1966) 1 SCR 606 : AIR 1966 SC 405 : (1966) 2 SCJ 53] is that:

"Admissions have to be clear if they are to be used against the person making them. Admissions are substantive evidence by themselves, in view of Sections 17 and 21 of the Indian Evidence Act, though they are not conclusive proof of the matters admitted."

Admissions proved are said in the decision to be: "admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether the party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions".

16. Counsel for the appellant submitted that the respondent even though not confronted with the admission would be bound by his admissions and the appellant would be entitled to rely on the admissions as admissible. There is the observation in the very next sentence in the aforesaid decision of this Court that "the purpose of contradicting the witness under Section 145 of the Evidence Act is very much different from the purpose of proving the admission". It, therefore, follows that admission is relevant and it has to be proved before it becomes evidence.

17. If admission is proved and if it is thereafter to be used against the party who has made it the question comes within the provisions of Section 145 of the Evidence Act. The provisions in the Indian Evidence Act that "admission is not conclusive proof" are to be considered in regard to two features of evidence. First, what weight is to be attached to an admission? In order to attach weight it has to be found out whether the admission is clear, unambiguous and is a relevant piece of evidence. Second, even if the admission is proved in accordance with the provisions of the Evidence Act and if it is to be used against the party who has made it, "it is sound that if a witness is under cross-examination on oath, he should be given an opportunity, if the documents are to be used against him, to tender his explanation and to clear up the point of ambiguity or dispute. This is a general salutary and intelligible rule" (see *Bal Gangadhar Tilak* v. *Shrinivas Pandit* [42 IA 135, 147]). The Judicial Committee in that case said, "it has to be

observed with regret and with surprise that the general principle and the specific statutory provisions have not been followed". The general principle is that before any person is to be faced with any statement he should be given an opportunity to see that statement and to answer the same. The specific statutory provision is contained in Section 145 of the Indian Evidence Act that "A witness may be crossexamined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him." **Therefore, a mere proof of admission, after the person whose admission it is alleged to be has concluded his evidence, will be of no avail and cannot be utilised against him**."

(emphasis supplied)

28. This has again been reiterated in the case of ***Raveen Kumar Vs. State of Himachal Pradesh (supra).*** The relevant portion of this decision reads thus:

"16. The learned counsel for the appellant could not fairly dispute the distinction between "replies" submitted to the Court in some pending proceedings, as compared to the statements recorded by the police under Section 161CrPC. **Nevertheless, a court should be overcautious to place reliance on a piece of evidence with which the witness concerned has not been confronted despite an opportunity to do so**. Although there is no need to separately prove the court records emanating during trial but no legal presumption can be extended to the veracity of the contents of such documents. The reply filed in court proceedings, at best, can be treated as an admission; which as held by this Court in *Sita Ram Bhau Patil* v. *Ramchandra Nago Patil* [*Sita Ram Bhau Patil* v. *Ramchandra Nago Patil*, (1977) 2 SCC 49] , must not only be proved, **but also the opposite party must be confronted with it at the stage of cross-examination**. It would be apposite to extract the cited judgment to the following effect : (SCC p. 53, para 17)

"*17*. If admission is proved and if it is thereafter to be used against the party who has made it the question comes within the provisions of Section 145 of the Evidence Act. The provisions in the Evidence Act that "*admission is not conclusive proof*" are to be considered in regard to two features of evidence. First, what weight is to be attached to an admission? In order to attach weight it has to be found out whether the admission is clear, unambiguous and is a relevant piece of evidence. Second, *even if the admission is proved in accordance with the provisions of the Evidence Act and if it is to be used against the party who has made it*, '*it is sound that if a witness is under cross-examination on oath, he should be given an opportunity, if the documents are to be used against him, to tender his explanation and to clear up the point of ambiguity or dispute*. This is a general salutary and intelligible rule' … *Therefore, a mere proof of admission, after the person whose admission it is alleged to be has concluded his evidence, will be of no avail and cannot be utilised against him*."

(emphasis supplied)

29. In the facts of the present case, the Original Appellant-wife did not confront the Respondent during the trial with the so-called admission made in the written statement filed on 1st July 2010 nor gave him an opportunity to explain under what circumstances in the additional written statement he had stated that the *Juhu Flat* was bought entirely out of his funds but the name of the Original Appellant was added only for the sake of convenience. In fact, when the entirety of the evidence and pleadings is perused, it is evident that the live issue before the Family Court was really as to who paid for the *Juhu Flat*. Both parties went to trial knowing fully well that the title of the *Juhu Flat* would be decided on the basis of who paid the sale consideration for the same. Once this is the case with which the parties proceeded before the Trial Court, we are clearly of the opinion that this entire argument, on the basis of certain provisions of the Benami Transactions (Prohibition) Act, 1988, can be of no avail to the Original Appellant, or the current Appellant who is the son of the Original Appellant.

30. So far as the reliance placed by Mr. Seth on the Judgment of the Hon'ble Supreme Court in the case of ***Jaydayal Poddar Vs. Mst. Bibi Hazra (supra)*** is concerned, we find the same to be wholly misplaced. This

Judgment was passed prior the Benami Transactions (Prohibition) Act, 1988 being brought into force. It is true that when the said Act was initially brought into effect, Section 3(2) thereof contemplated that nothing in Sub-section (1) of Section 3 would apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter. The unamended provisions of the Benami Transactions (Prohibition) Act, 1988, [as it stood prior to the

2016 amendment] read as under:

"3. Prohibition of benami transactions-

(1) No person shall enter into any benami transaction.

(2) Nothing in sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter.

(3) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2of 1974), an offence under this section shall be non-cognizable and bailable."

31. As mentioned earlier, the Original Appellant never came to Court with a case that the *Juhu Flat* was purchased for her benefit so that the presumption could be raised in her favour. She came to Court with the case that she had contributed 50% of the proceeds for purchase of the *Juhu Flat* and therefore she be declared a 50% owner. This case would be directly contrary to a case that the *Juhu Flat* was bought for her benefit. If she has contributed 50% of the proceeds for purchase of the *Juhu Flat*, then she should claim a 50% ownership of the *Juhu Flat* in her own right and not because it was bought for her benefit. In other words, these two cases would be mutually destructive of

each other. We, therefore, find that the reliance placed on Section 3(2) is wholly misplaced. This is apart from the fact that from the pleadings and evidence on record, the Respondent has clearly established he has entirely paid for purchase of the *Juhu Flat* and the name of the Original Appellant was added only for the sake of convenience. This evidence of the Respondent has not been shaken in cross-examination.

32. There is one more important issue regarding the applicability of the Benami Transactions (Prohibition) Act, 1988, and which was amended in the year 2016. The presumption that was there in favour of the wife or unmarried daughter [as set out in Section 3(2)] was done away with by the 2016 amendment of the said Act. In fact, there were substantial amendments and Section 2(9) now defined what a benami transaction meant. For the sake of convenience, the relevant portion Section 2(9) of the said Act reads thus:

> "2(9) "benami transaction" means,-
>
> (A) a transaction or an arrangement-
>
> (a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided or paid by, another person; and
>
> (b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, **except when the property is held by**-
>
> (i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;
>
> (ii) A person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the

Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose.

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

(B)……..

(C)……..

(D)……..”

`

(emphasis supplied)

33. As can be seen from this provision, the Benami Transactions (Prohibition) Act, 1988 [renamed as *The Prohibition of Benami Property Transactions Act, 1988* by the 2016 amendment], do not apply to any person being an individual who purchases a property, or enters into a transaction or arrangement, in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the said individual. In other words, the presumption in Section 3(2) prior to amendment [that it will be presumed that the property was bought for the benefit of the wife or the unmarried daughter], has been done away with by virtue of the 2016 amendment. This is not in dispute even before us, and Mr. Seth fairly submitted that after the 2016 amendment, the presumption is no longer available to the Original Appellant. He, however, submitted that since the Act was not amended when the Family Court decided the matter, or in fact even when the present Appeal was filed, we still must apply the provisions of Section 3(2), namely, the unamended provisions of the Benami Transactions (Prohibition) Act, 1988. We are unable to agree with this submission for more than one reason. Firstly, Section 1(3) of the Benami Transactions (Prohibition) Act, 1988 categorically stipulates that the provisions of Section 3, 5 and 8 shall come into force at once and the remaining provisions of the Act shall be deemed to have come into force on 19th May 1988. In other words, the provisions of Section 2(9) have been brought into effect from 19th May 1988. Once this is the case, when we are deciding the Appeal today, we have to apply the provisions of Section 2(9) and not the provisions of Section 3(2) as they stood prior to the amendment of the Act in 2016. We say this because the hearing of this Appeal is a re-

hearing and/or a continuation of the Petition filed before the Family Court. The Appeal Court exercises seisin of the whole case once again and in moulding the relief, if any, must take into account changes in law that have taken place even after the decree. The Hon'ble Supreme Court in the case of ***Vineeta Sharma Vs. Rakesh Sharma (supra)*** has clearly laid down the aforesaid proposition. The relevant portion of this decision reads thus:

"101. In *Lakshmi Narayan Guin* v. *Niranjan Modak* [*Lakshmi Narayan Guin* v. *Niranjan Modak*, (1985) 1 SCC 270] , it was laid down that change in law during the pendency of the appeal has to be taken into consideration thus: (SCC pp. 274-75, para
9)

"*9*. That a change in the law during the pendency of an appeal has to be taken into account and will govern the rights of the parties was laid down by this Court in *Ram Sarup* v. *Munshi* [*Ram Sarup* v. *Munshi*, AIR 1963 SC 553] which was followed by this Court in *Mula* v. *Godhu* [*Mula* v. *Godhu*, (1969) 2 SCC 653] .

We may point out that in *Dayawati* v. *Inderjit* [*Dayawati* v. *Inderjit*, AIR 1966
SC 1423] this Court observed: (AIR p. 1426, para 10)

'*10*. … **If the new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the court of trial as well as the court of appeal must have regard to an intention so expressed, and the court of appeal may give effect to such a law even after the judgment of the court of first instance**.'

Reference may also be made to the decision of this
Court in *Amarjit Kaur* v. *Pritam Singh* [*Amarjit Kaur* v. *Pritam Singh*, (1974) 2 SCC 363] where effect was given to a change in the law during the pendency of an appeal, relying on the proposition formulated as long ago as *Kristnama Chariar* v. *Mangammal* [*Kristnama Chariar* v. *Mangammal*, 1902 SCC OnLine Mad 30 : ILR (1903) 26 Mad 91] by Bhashyam Ayyangar, J., that the hearing of an appeal was, under the processual law of this country, in the nature of a re-hearing of the suit. In *Amarjit Kaur* [*Amarjit Kaur* v. *Pritam Singh*, (1974) 2 SCC 363] this Court referred also to *Lachmeshwar Prasad Shukul* v. *Keshwar Lal Chaudhuri* [*Lachmeshwar Prasad Shukul* v. *Keshwar Lal Chaudhuri*, 1940 SCC OnLine FC 10 : AIR 1941 FC 5] in which the Federal Court

had laid down that once a decree passed by a court had been appealed against, the matter became sub judice again and thereafter the appellate court acquired seisin of the whole case, except that for certain purposes, for example, execution, the decree was regarded as final and the court below retained jurisdiction."

102. In *United Bank of India* v. *Abhijit Tea Co. (P) Ltd.* [*United Bank of India* v. *Abhijit Tea Co. (P) Ltd.*, (2000) 7 SCC 357 : AIR 2000 SC 2957] , with respect to change in law during the pendency of proceedings, it was observed: (SCC p. 365, para 20)

"*20*. Now, it is well settled that it is the duty of a court, whether it is trying original proceedings or hearing an appeal, to take notice of the change in law affecting pending actions and to give effect to the same. (See G.P. Singh: *Interpretation of Statutes*, 7th Edn., p. 406.) If, while a suit is pending, a law like the 1993 Act that the civil court shall not decide the suit, is passed, the civil court is bound to take judicial notice of the statute and hold that the suit—even after its remand—cannot be disposed of by it."

(emphasis supplied)

34. This proposition is also laid down by the Hon'ble Supreme court in the case of ***Amarjit Kaur Vs. Pritam Singh & Ors. [(1974) 2 SCC 363]***. The relevant portion of this decision reads thus:

2. We will take up for consideration Civil Appeal No. 941(N) of 1973. The appellant challenges the correctness of a decree passed by the High Court dismissing a suit for pre-emption. The plaint property belonged to Defendant 4. He sold the same to Defendants 1 to 3 by a sale deed dated July 29, 1965 and registered on October 14, 1965. The appellant who is the daughter of Defendant 4, claiming that she has a right to preempt, instituted the suit through her guardian. The trial court decreed the suit. Against the decree, an appeal was preferred by the vendees. That appeal was dismissed on July 17, 1971. An appeal was preferred to the High Court against this decree. The Punjab Pre-emption (Repeal) Act, 1973 (Act 11 of 1973) received the assent of the Governor of Punjab on April 6, 1973 and was published in the Punjab Gazette on April 9, 1973. The High Court allowed the appeal and

dismissed the suit holding that the provision of Section 3 of the above Act should govern the decision. The plaintiff-appellant then applied for leave to file letters patent appeal. That was dismissed.

3. Section 3 of the Punjab Pre-emption (Repeal) Act, 1973, provides:

"Bar to pass decree in suit for pre-emption.—On and from the date of commencement of the Punjab Preemption (Repeal) Act, 1973, no court shall pass a decree in any suit for pre-emption."

The section, in effect, says that no court shall decree a suit for pre-emption after the coming into force of the Act. The question is, whether the appellate court, when it passes a decree, confirming the decree for pre-emption passed by the trial court or the lower appellate court, is passing a decree for pre-emption.

4. In *Lachweshwar Prasad Shukul* v. *Keshwar Lal Chaudhuri* [1940 FCR 84] it was held that once the decree passed by a court had been appealed against, the matter became sub-judice again and thereafter the appellate court has seisin of the whole case, though for certain purposes, e.g., execution, the decree was regarded as final and the courts below retained jurisdiction. The Court further said that it has been a principle of legislation in British India at least from 1861 that a court of appeal shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Civil Procedure Code on courts of original jurisdiction, that even before the enactment of that Code, **the position was explained by Bhashyam Iyengar, J. in *Kristnama Chariar* v. *Mangammal* [ILR (1903) 26 Mad 91, at p. 95-96.] in language which makes it clear that the hearing of an appeal is under the processual law of this country in the nature of a re-hearing, and that it is on the theory of an appeal being in the nature of a re-hearing that the courts in this country have in numerous cases recognized that in moulding the relief to be granted in a case on appeal, the court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against**.

5. As an appeal is a re-hearing, it would follow that if the High Court were to dismiss the appeal, it would be passing a decree in a suit for pre-emption. Therefore, the only course open to the High Court was to allow the appeal and that is what the High Court has done. In other words, if the High Court were to confirm the decree allowing the suit for pre-emption, it would be passing a decree in a suit for pre-emption, for, when the appellate court confirms a decree, it passes a decree of its own, and therefore, the High Court was right in allowing the appeal.**"**

(emphasis supplied)

35. The aforesaid proposition will apply with even greater force when one takes into consideration that the presumption under Section 3(2) was a rebuttable presumption [and which presumption does not find place in Section 2(9) after amendments to the said Act], and a rule of evidence which defines the manner and procedure by which a Court must try a particular fact. In other words, a rebuttable presumption being an evidentiary rule, falls in the realm of procedural law. It is now well settled that the rule against retrospectivity does not apply to procedural law. A presumption is a matter of evidentiary procedure and is presumed to be retrospective. Therefore, if the presumption is taken away by a statutory amendment, then the Original Appellant cannot rely upon the unamended provision [which contained the presumption] because if the presumption is deleted by a statutory amendment, it too would be presumed to be retrospective. In this regard, the reliance placed by Mr. Kadam on the Judgment of the Supreme Court in the case of ***Gurbachan Singh Vs. Satyapal Singh [(1990) 1 SCC 445]*** is apposite. The relevant portion of this decision reads thus:

"34. It is also convenient to refer in this connection to the provisions of Section 113-A of Indian Evidence Act, 1872 which provide that:

"113-A. *Presumption as to abetment of suicide by a married woman*.— When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

35. In the instant case the deceased Ravinder Kaur was married to the accused, Satpal Singh in November 1982 and she committed suicide on June 25, 1983. It has also been found on a consideration of the circumstantial evidence that she was compelled to take the extreme step of committing suicide as the accused persons had subjected her to cruelty by constant taunts, maltreatment and also by alleging that she has been carrying an illegitimate child. The suicide having been committed within a period of seven years from the date of her marriage in accordance with the provisions of this section, the court may presume having regard to all the other circumstances of the case which we have set out earlier that such suicide had been abetted by the husband and his relations. Therefore, the findings arrived at by the Additional Sessions Judge are quite in accordance with the provisions of this section and the finding of the High Court that the accused persons could not be held to have instigated or abetted the commission of offence, is not sustainable in law.

36. **It has been contended on behalf of the accusedrespondents that Section 113-A of the Indian Evidence Act was inserted in the statute book by Act 46 of 1983 whereas the offence under Section 306, IPC was committed on June 23, 1983 i.e. prior to the insertion of the said provision in the Indian Evidence Act. It has, therefore, been submitted by the learned counsel for the respondents that the provisions of this section cannot be taken recourse to while coming to a finding regarding the presumption as to abetment of suicide committed by a married woman, against the accused persons**.

37. **The provisions of the said section do not create any new offence and as such it does not create any substantial right but it is merely a matter of procedure of evidence and as such it is retrospective and will be applicable to this case**. It is profitable to refer in this connection to *Halsbury's Laws of England*, Fourth Edition, Volume 44 page 570 wherein it has been stated that:

"The general rule is that all statutes, other than those which are merely declaratory or which relate only to matters of procedure or of evidence, are prima facie prospective, and retrospective effect is

not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature....”

38. It has also been stated in the said volume of *Halsbury's Laws of England* at page 574 that:

“The presumption against retrospection does not apply to legislation concerned merely with matters of procedure or of evidence; on the contrary, provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament.”

39. In *Blyth* v. *Blyth* [1966 AC 643 : (1965) 2 All ER 817] the wife left the husband in 1954 and lived with the co-respondent until August 1955, when she broke off the association. In 1958 the husband and wife met by chance and sexual intercourse took place. In December 1962, the husband sought a divorce on the ground of his wife's adultery. During the pendency of the application Section 1 of the Matrimonial Causes Act, 1963 came into force on July 31, 1963 which provided that any presumption of condonation which arises from the continuance or resumption of marital intercourse may be rebutted on the part of a husband, as well as on the part of a wife, by evidence sufficient to negative the necessary intent. The question arose whether this provision which came into force on July 31, 1963 can be applied in the instant case. It was held that the husband's evidence was admissible in that Section 1 of the Act of 1963 only altered the law as to the admissibility of evidence and the effect which the courts are to give to evidence, so that the rule against giving retrospective effect to Acts of Parliament did not apply.

40. In *Herridge* v. *Herridge* [(1966) 1 All ER 93] similar question arose. It was held that Section 2(1) of the Act of 1963 was a procedural provision, for it dealt with the adducing of evidence in relation to an allegation of condonation in any trial after July 31, 1963; accordingly the sub-section was applicable, even though the evidence related to events before that date, and the resumption of cohabitation in the present case did not amount, by reason of Section 2(1), to condonation.

41. <u>On a conspectus of these decisions, this argument on behalf of the appellant fails and as such the presumption arising under Section 113-A of the Evidence Act has been rightly taken into consideration by the trial court</u>."

(emphasis supplied)

36. In view of the foregoing discussion, we are of the opinion that there is no merit in the argument canvassed by Mr. Seth that the finding of the Family Court regarding the *Juhu Flat* ought to be interfered with by us on the basis of applying the provisions of the Benami Transactions (Prohibition) Act, 1988.

<u>APPLICABILITY OF SECTION 14 OF THE HINDU SUCCESSION ACT, 1956:-</u>

37. The next argument canvassed by Mr. Seth was that by virtue of Section 14 of the Hindu succession Act, 1956, the Original Appellant has become the absolute owner of 50% of the *Juhu Flat* notwithstanding the fact that she had not contributed any amount towards the purchase of the said Flat. In this regard, Mr. Seth brought to our attention the provisions of Section 14 and submitted that any property possessed by a female Hindu, whether acquired before or after the commencement of the Hindu Succession Act, 1956, shall be held by her as a full owner thereof and not a limited owner. Mr. Seth submitted that the explanation to Section 14(1) clearly states that the property possessed by a Female Hindu includes both movable and immovable property acquired by her by way of inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as *Stridhana* immediately before the commencement of the Hindu Succession Act, 1956. Mr. Seth submitted that sub-section (2) of Section 14 stipulates that nothing contained in sub-section (1) shall apply to any property acquired by way of a gift, or

under a will or any other instrument, or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribed a restricted estate in such property. Mr. Seth submitted that in the facts of the present case, neither the purchase deed of the *Juhu Flat* nor the share certificate issued in relation thereto imposed any restriction on the right of the Original Appellant's 50% joint ownership of the *Juhu Flat*. Once this is the case, then, Section 14(2) of the Hindu Succession Act, 1956 has no application, and by virtue of Section 14(1), the Original Appellant has become the full owner of her 50% share in the *Juhu Flat*. In support of this submission, though many judgments were tendered to the Court, reliance was placed only on the following three judgments of the Hon'ble Supreme Court:

(i) Gangamma & Ors. Vs. G. Nagarathnamma & Ors. [(2009) 15 SCC 756];

(ii) V. Tulasamma & Ors. Vs. Sesha Reddy (Dead) By Lrs. [(1977) 3 SCC 99];

(iii) Seth Badri Prasad Vs. Srimati Kanso Devi [(1969) 2 SCC 586].

38. On the other hand, Mr. Kadam, the learned Advocate appearing for the Respondent, firstly submitted that the plea of ownership having vested in the Original Appellant under Section 14 of the Hindu Succession Act, 1956 in lieu of right to maintenance, cannot be taken in the absence of a pleaded case. This apart, he submitted that in the facts of the present case, Section 14 would not be attracted at all. Relying upon the said provision, he submitted that on a plain reading of Section 14(1), it is clear that for the said Section to come into operation (a) the property must be possessed by a Hindu woman; (b) mere possession is not enough but must be acquired; and (c) such property must first be held as a 'limited owner'. This is because the words 'not as limited owner' evinces the Parliament's intention that but for this provision, the property would have otherwise vested in the Hindu woman as a limited owner. He submitted that it is only when these requirements are satisfied that the Section 14(1) comes into operation and converts a limited ownership and/or ownership of a limited estate, into a full ownership by a deeming fiction and by operation of law. He submitted that the original Appellant has never claimed limited ownership in her alleged 50% share in the Juhu Flat. Once this is the case, the reliance placed on Section 14 is wholly misconceived, was the submission.

39. Mr. Kadam thereafter submitted that the object of Section 14 was to do away with the 'widow's estate' or 'limited estate' in Hindu law and to make a Hindu woman who, in the absence of the Section, would have only been a limited owner. By virtue of Section 14, a Hindu woman now, instead of having limited ownership, becomes a full owner with all powers of disposition and with the property being heritable by her heirs and not the heirs of her deceased husband. He submitted that this is now well settled as set out in the cases decided by the Hon'ble Supreme Court in ***(i) Eramma Vs. Veerupanna & Ors. [AIR 1966 SC 1879]; (ii) Kalawatibai Vs. Soiryabai & Ors. [(1991) 3 SCC 410]; and (iii) Jogi Ram Vs. Suresh Kumar [(2022) 4 SCC 273]***. In other words, he submitted that for the Hindu woman to get full ownership of a particular property by virtue of Section 14, she first has to have limited ownership. Section 14 does not by itself confer full ownership of a property to the Hindu woman, especially where in fact there is none. When in law, title and interest does not in any way whatsoever vest in a Hindu woman, this Section does not operate to act as a fresh source of title. It only converts the limited title to a full title to the said property. But for that too, the *sin qua non* is that initially the Hindu woman has to have a limited ownership/title to the said property. He submitted that in the facts of the present case it is not even the case of the Original Appellant that she had limited ownership of her 50% share of the *Juhu Flat,* and which by virtue of Section 14, has now become a full ownership of that very share. He submitted that in fact the case of the Appellant was quite the opposite. It was the case of the Original Appellant that she is the absolute owner of 50% share of the *Juhu Flat* because she has contributed 50% of the proceeds to purchase the said *Juhu Flat*. Never was a case ever set up that she was a limited owner of the *Juhu Flat*. He submitted that this is not even a case canvassed before us, either in a Memo of Appeal or even in the arguments. In the arguments all that is canvassed is that since the Original Appellant is a Hindu woman and her name appears in the purchase deed and the share certificate, she has become full owner of her 50% share, notwithstanding the fact that no consideration was paid by her. Mr. Kadam submitted that since this is the specific case with which the Original Appellant had not only approached the Family Court but also this Court, the reliance placed on Section 14 is wholly misplaced. He submitted that Section 14 does not have the effect of over-riding and/or negating the provisions of the Transfer of Property Act, 1882. It was his submission that Section 14 does not stipulate and/or lay down the requirements of the

substance and form for a transfer and/or acquisition to be legally recognized and valid. For this, one has to look at the Transfer of Property Act, 1882. He submitted that the Transfer of Property Act, 1882 is the general law which defines the various modes in which a transfer can be affected. It further prescribes the conditions, substance, and form for that transfer to be legally effective and recognized. For example, he submitted that a gift of immovable property to be effective and valid must fulfil the conditions, substance, and form prescribed under Sections 122 to 129 of the Transfer of Property Act, 1882 to be effective and recognized. If a gift is invalid by virtue of the provisions of the Transfer of Property Act, 1882, the same cannot be made valid by taking recourse to Section 14(1) of the Hindu Succession Act, 1956. To put it differently, Section 14 does not legalize an otherwise illegal transaction, was the submission. When one reads Section 14 in this light, along with Section 45 of Transfer of Property Act, 1882, there is no conflict as the same can be read harmoniously and Section 14 would not override the provisions of Section 45 of the Transfer of Property Act, 1882.

40. Mr. Kadam then submitted that an ostensible interest in a property does not in any manner trigger Section 14 of the Hindu Succession Act, 1956. An ostensible interest is not a limited interest and/or a limited ownership that would trigger the fiction under Section 14 of the Hindu Succession Act, 1956. In this regard, Mr. Kadam relied upon the decision of the Hon'ble Supreme Court in the case of ***Controller of Estate Duty, Lucknow Vs. Aloke Mitra [(1981) 2 SCC 121]***. He, therefore, submitted that even assuming that this Court wants to entertain the aforesaid argument based on Section 14, though it was not even their case before the Family Court or before this Court in the above Memo of Appeal, the same has to be rejected in light of the submissions recorded by us above.

FINDINGS AND CONCLUSIONS ON THE APPLICABILITY OF

SECTION 14 OF THE HINDU SUCCESSION ACT, 1956:-

41. We have heard the learned Counsel on the issue/applicability of Section 14 of the Hindu Marriage Act, 1956 at quite some length. It is true that the plea of Section 14 was never raised before either the Family Court or in the Memo of Appeal before this Court. We, therefore, would

be fully justified in not entertaining this argument at all, especially since this argument/contention is being canvassed for the first time before us to assail the impugned judgement of the Family Court. However, since Section 14 is a beneficial legislation and has been enacted for the benefit of a Hindu woman, we have entertained this argument to see if the facts of the present case would fall within the parameters of the said Section. To understand this controversy, it would be apposite to reproduce the provisions of Section 14:

"**14. Property of a female Hindu to be her absolute property.-**

(1) **Any property possessed by a female Hindu, whether acquired** before or after the commencement of this Act, shall be held by her as full owner thereof **and not as a limited owner**.

Explanation.- In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after the marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as *stridhana* immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civl Court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

(emphasis supplied)

42. On a plain reading of Section 14, it is clear that any property possessed by a female Hindu, whether acquired before or after commencement of the Hindu Succession Act 1956, shall be held by her as a full owner thereof and not as a limited owner. The Explanation to Section 14(1) explains the word 'property' and includes movable and immovable property acquired by a female Hindu by any of the methods or modes mentioned in the said Explanation. Sub-

section (2) of Section 14 carves out an exception and stipulates that nothing contained in Section 14(1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property. What can be discerned from Section 14 is that for Section 14(1) to be triggered, the female Hindu who possessed any property, whether acquired before or commencement of the Hindu Succession Act, 1956, must initially have a limited ownership in the said property. If she is not the owner of the property at all, then the question of getting full ownership by virtue of Section 14(1) does not arise. What Section 14(1) contemplates is that limited ownership of any property possessed by a female Hindu, whether acquired before or after commencement of the Hindu Succession Act, 1956, converts itself into a full ownership. In the view that we take, we are supported by several decisions of the Hon'ble Supreme Court. The first decision is in the case of ***Eramma Vs. Veerupanna & Ors. (supra)***. The relevant portion of this decision reads thus:

"6. It was next contended by the appellant that she was admittedly in possession of half the properties of her husband Eran Gowda after he died in 1341-F and by virtue of Section 14 of the Hindu Succession Act she became the full owner of the properties and Respondents 1 and 2 cannot, therefore, proceed with the execution case. We are unable to accept this argument as correct. At the time of Eran Gowda's death the Hindu Women's Right to Property Act, 1937 (Act 18 of 1937) had not come into force. It is admitted by Mr Sinha that the Act was extended to Hyderabad State with effect from February 7, 1953. It is manifest that at the time of promulgation of Hindu Succession Act, 1956 the appellant had no manner of title to properties of Eran Gowda. Section 14(1) of the Hindu Succession Act states:

"14. (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.— In this sub-section, 'property' includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by

purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act."

7. It is true that the appellant was in possession of Eran Gowda's properties but that fact alone is not sufficient to attract the operation of Section 14. **The property possessed by a female Hindu, as contemplated in the section, is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act**. It may be noticed that the Explanation to Section 14(1) sets out the various modes of acquisition of the property by a female Hindu **and indicates that the section applies only to property to which the female Hindu has acquired some kind of title, however restricted the nature of her interest may be. The words "as full owner thereof and not as a limited owner" as given in the last portion of sub-section (1) of Section 14 clearly suggest that the legislature intended that the limited ownership of a Hindu female should be changed into full ownership. In other words, Section 14(1) of the Act contemplates that a Hindu female who, in the absence of this provision, would have been limited owner of the property, will now become full owner of the same by virtue of this section**. The object of the section is to extinguish the estate called limited estate or "widow's estate" in Hindu law and to make a Hindu woman, who under the old law would have been only a limited owner, a full owner of the property with all powers of disposition and to make the estate heritable by her own heirs and not revertible to the heirs of the last male holder. The Explanation to sub-section (1) of Section 14 defines the word "property" as including "both movable and immovable property acquired by a female Hindu by inheritance or devise …". Sub-section (2) of Section 14 also refers to acquisition of property. **It is true that the Explanation has not given any exhaustive connotation of the word "property" but the word "acquired" used in the Explanation and also in sub-section (2) of Section 14 clearly indicates that the object of the section is to make a Hindu female a full owner of the property which she has already acquired or which she acquires after the enforcement of the Act. It does not in any way confer a title on the female Hindu where she did not in fact possess any vestige of title. It follows, therefore, that the**

section cannot be interpreted so as to validate the illegal possession of female Hindu and it does not confer any title on a mere trespasser. In other words, the provision of Section 14(1) of the Act cannot be attracted in the case of a Hindu female who is in possession of the property of the last male holder on the date of the commencement of the Act when she is only a trespasser without any right to property.**"**

(emphasis supplied)

43. As set out in the aforesaid decision, it is clear that Section 14(1) does not confer a title on a female Hindu where she did not in fact possess any vestige of title. In other words, Section 14(1) does not validate the illegal possession of a female Hindu and it does not confer any title on mere trespasser.

44. The aforesaid view has also been reiterated by the Hon'ble Supreme Court in the case of ***Kalawatibai Vs. Soiryabai & Ors. (supra).*** The relevant portion of this decision reads thus:-

"7. Property acquired by a female Hindu before the Act came into force comprised, broadly, of inherited property or stridhana property acquired by her from a male or female. Nature of her right in either class of property, unlike males, depended on the school by which she was governed as well as whether it came to her by devolution or transfer from a male or female. This invidious discrimination was done away with after coming into force of 1956 Act and the concept of Hindu widows' estate or limited estate or stridhana ceased to exist by operation of Section 14 read with Section 4 of the Act which has an overriding effect. A female Hindu who but for the Act would have been a limited owner became full owner. But the section being retrospective in operation the meaning of female Hindu prior to 1956 has to be understood in the light of Hindu law as it prevailed then. The section enlarged the estate of those female Hindus who otherwise would have been limited owners. This result follows by reading the first part with the last which uses the expression, 'held by her as full owner thereof and not as a limited owner'. To put it differently a limited owner became

a full owner provided she was a female Hindu who was possessed of any property acquired before the commencement of the Act. Therefore, mere being female Hindu was not sufficient. She should have been of that class of female Hindus who could on existence of other circumstances were capable of becoming full owners. Further the Act being applicable by virtue of Section 2 to not only Hindus by religion but also to Buddhists, Jains or Sikhs and to any person who was not a Muslim, Christian, Parsi or Jew it was but necessary to use an expression of such wide connotation as female Hindu because by virtue of sub-section (3) of the section the word 'Hindu' in any portion of the Act, which includes Section 14, the word had to be understood as including not only a person who was Hindu by religion but even others. However, the objective being to remove disparity and injustice to which females were subjected under Hindu law the section limits its operation to such female Hindus who were limited owners. Reference to the explanation by the learned counsel was also not very apposite. It was appended to widen the meaning of property by adding to it the inherited property, and the property which came to be possessed by a female Hindu in manner mentioned in it. Its effect was that a female Hindu became absolute owner not only in respect of inherited property but even of property received by way of gift or on partition or in lieu of maintenance etc. **provided she was a limited owner. And not that it enlarged the estate of even those who were not limited owner.** Any other construction would militate against the otherwise clear meaning of sub-section (1).

8. Although this section has come up for interpretation, by this Court, on various occasions in different context but in none of these cases the court had occasion to examine the ambit of expression female Hindu and whether it extended to females other than limited owner. Since in every case whether it was decided for or against it was the widow who was alive on the date the Act came into force **and she being a limited owner the decision turned on if she was 'possessed' of the property so as to become full owner**. For instance in *Gummalapura Taggina Matada Kotturuswami* v. *Setra Veeravva* [1959 Supp 1 SCR 968 : AIR 1959 SC 577] the widow was held to have acquired rights as the adoption made by her having been found to be invalid she was deemed to be in constructive possession

and thus 'possessed' of the property on the date the Act came into force. *Mangal Singh* v. *Smt Rattno* [AIR 1967 SC 1786 : (1967) 3 SCR 454] was another case where widow's constructive possession enured to her benefit as she having been dispossessed by her collaterals in 1954 and filed a suit for recovery of possession before the Act came into force was held to be 'possessed' of the property so as to entitle her to become full owner. *R.B.B.S. Munnalal* v. *S.S. Rajkumar* [AIR 1962 SC 1493 : 1962 Supp 3 SCR 418] was a case where the share of the widow was declared in preliminary decree. No actual division of share had taken place, yet the court held that it was property 'possessed' by her on the date the Act came into force. In *Sukhram* v. *Gauri Shankar* [(1968) 1 SCR 476 : AIR 1968 SC 365] , it was held that a widow was full owner in joint Hindu family property as she became entitled to the interest which her husband had by virtue of Hindu Women Right to Property Act. The court ruled that even though a male was subject to restrictions qua alienation on his interest in joint Hindu family property, but a widow acquiring an interest by virtue of the Act did not suffer such restriction. *V. Tulsamma* v. *Shesha Reddy* [(1977) 3 SCC 99] and *Bai Vajia* v. *Thakorbhai Chelabhai* [(1979) 3 SCC 300] , were cases where the widow was 'possessed' of the property in lieu of maintenance, and therefore, she was held to be full owner. In all these cases since the widow was in possession, actual or constructive, on the date the Act came into force she was held to be a female Hindu 'possessed' of the property, and consequently, her limited ownership stood converted into full ownership by operation of law. **Even in *Eramma* v. *Verupanna* [(1966) 2 SCR 626 : AIR 1966 SC 1879] and *Kuldeep Singh* v. *Surain Singh* [(1968) 2 Andh LT 224 : 1968 SCD 881 : 1968 Punj LR 30] , where the benefit was denied under Section 14 the female Hindus were widows but they were not held to be 'possessed' of the property because their possession was not backed by even the remotest vestige of title**. In *Eramma case* [(1966) 2 SCR 626 : AIR 1966 SC 1879] the benefit was denied as Hindu Women's Right to Property Act being not applicable on the date the succession opened she could not be held to be possessed of the property. And in *Kuldeep Singh case* [(1968) 2 Andh LT 224 : 1968 SCD 881 : 1968 Punj LR 30] she had been divested of her interest as a result of transfer made by her. Contest in all these cases was between reversioner and the widow herself or the person claiming through her. Review of these decisions

indicates that this Court **has consistently taken the view as stated in *Bai Vajia* v. *Thakorbhai Chelabhai* [(1979) 3 SCC 300] : (SCC p. 313, para 17) "For the applicability of sub-section (1), two conditions must co-exist, namely:**

(i) the concerned female Hindu must be possessed of property, and

(ii) such property must be possessed by her as a limited owner."

9. Mention is necessary to be made in this connection about observation in *Gulwant Kaur* v. *Mohinder Singh* [(1987) 3 SCC 674 : (1989) 10 ATC 599] , that the court in *Bai Vajia case* [(1979) 3 SCC 300] did not purport to lay down that, "what was enlarged by sub-section (1) of Section 14 into a full estate was the Hindu woman's estate known to Hindu law. When the court uses the words 'limited estate', the words are used to connote a right in the property to which possession of the female Hindu may be legitimately traced, but which is not a full right of ownership". *Gulwant Kaur case* [(1987) 3 SCC 674 : (1989) 10 ATC 599] was concerned with acquisition of right by wife, on entrustment of property in lieu of maintenance, after 1956, when the concept of widows' estate or limited estate or even stridhana had ceased to exist. Therefore, what was necessary was being possessed of property, actual or constructive, by female Hindu **under some right or title**. Whereas *Bai Vajia case* [(1979) 3 SCC 300] was concerned with acquisition of right in property held in lieu of maintenance before 1956. Therefore a female Hindu could become absolute owner only if she was limited owner. Sub-section (1) of Section 14 deals with rights of female Hindus both before and after the Act came into force. **Female Hindu could become absolute owner of property possessed by her on the date the Act came into force only if she was a limited owner whereas she would become absolute owner after 1956 of the property of which she would otherwise have been a limited owner."**

(emphasis supplied)

45. When we apply this law to the facts of the present case, we find that there is absolutely no case put up by the Original Appellant that she was a limited owner of her 50% share in the *Juhu Flat* and by virtue of Section 14 (1), has now become full owner. In fact, as correctly submitted by Mr. Kadam, the case of the Original Appellant has always been quite the opposite. The case of the Original Appellant has been that she is the absolute and full owner of her 50% share of the *Juhu Flat* because she had equally contributed for purchase of the same. Once this is the case with which the Original Appellant has approached this Court, it necessarily digresses from the case that she is a limited owner of the 50% share in the *Juhu Flat*. She has admittedly not contributed a farthing for purchase of the *Juhu Flat*. This in fact has now been admitted before us. Once this is the case, then she cannot claim any ownership rights in the *Juhu Flat* if there are no ownership rights existing in favour of the Original Appellant. The question of Section 14 coming to her rescue cannot and does not arise for the simple reason that for Section 14(1) to be attracted, the female Hindu has to first have a limited ownership right in the property before the same can be converted into full ownership.

Section 14(1) does not in any way give title to a property to a female Hindu where she had none. Once this is the position in law [as interpreted by the Hon'ble Supreme Court], we are of the view that the findings of the Family Court regarding the Respondent being the full owner of the *Juhu Flat*, do not call for any interference.

46. Before parting on this issue, we may mention that the three Judgments relied upon by Mr. Seth have no application to the facts and circumstances of the present case. In the case of ***Gangamma & Ors. Vs. G. Nagarathnamma & Ors.(supra),*** it was a clear case where certain properties were standing in the name of the mother. The Plaintiff was the wife of the deceased son and she alleged that these properties stood benami in the mother's name. The Plaintiff claimed that these properties were purchased from the funds supplied by the son and from the income generated from agricultural lands which were joint family properties. It is on this basis that the Plaintiff alleged that the properties standing in the name of mother were also joint family properties. The Supreme Court held that from the evidence before the Trial Court, nothing appeared on record to evidence the income of the son, [the Plaintiff's husband]. On this basis it held that the High Court fell into an error in holding that the properties standing in the name of the mother were joint family properties. In other words, the Supreme Court opined that the High Court's

findings were found to be without any evidence. In fact, the Supreme Court next held that in the absence of evidence to the contrary in this case, the factum of the properties being held in the name of mother would cloth her with title under Section 14 of the Hindu Succession Act, 1956. In other words, the Supreme Court recognized that the result would have otherwise been different had there been any evidence led by the parties to show that her husband had income which was used to purchase the properties in the mother's name. We fail to see how this decision can be of any assistance to the case of the Original Appellant. In fact, in the facts of the present case, there is ample evidence to show that the entire sale consideration for purchase of the *Juhu Flat* was provided by the Respondent and the Original Appellant contributed absolutely nothing towards the same. Once this is the case, we find that the reliance placed on the decision of the Supreme Court in the case of ***Gangamma & Ors. Vs. G. Nagarathnamma & Ors.(supra)*** is wholly misplaced.

47. Even the Judgment in the case of ***V. Tulasamma & Ors. Vs. Sesha Reddy (supra)*** is wholly inapplicable to the facts of the present case. The issue before the Supreme Court in this case was (i) whether the instrument of compromise under which the property was given to the Appellant before the 1956 Act in lieu of maintenance, falls within Section 14(1) or is covered by Section 14(2) of the Hindu Succession Act, 1956; and (ii) Whether a Hindu widow has a right to property in lieu of maintenance, and if such a right is conferred to her subsequently by way of maintenance, whether it would amount to mere recognition of a pre-existing right or a conferment of a new title so as to fall squarely within Section 14(2) of the 1956 Act. In fact, in the case of ***V. Tulasamma & Ors. Vs. Sesha Reddy (supra)*** the Supreme Court considered the Judgment of ***Eramma Vs. Veerupanna & Ors. (supra)*** relied upon by us earlier. After referring to several Judgments, the Supreme Court in paragraph 31 laid down the following principles:

"(1) that the provisions of Section 14 of the 1956 Act must be liberally construed in order to advance the object of the Act **which is to enlarge the limited interest possessed by a Hindu widow which was in consonance with the changing temper of the times**.

(2) it is manifestly clear that sub-section (2) of Section 14 does not refer to any transfer which merely recognises a preexisting right

without creating or conferring a new title on the widow. This was clearly held by this Court in Badri Pershad's case (supra).

(3) that the Act of 1956 has made revolutionary and farreaching changes in the Hindu society and every attempt should be made to carry out the spirit of the Act which has undoubtedly supplied a long felt need and tried to do away with the invidious distinction between a Hindu male and female in matters of intestate succession;

(4) that sub-section (2) of Section 14 is merely a proviso to sub-section (1) of Section 14 and has to be interpreted as a proviso and not in a manner so as to destroy the effect of the main provision."

(emphasis supplied)

48. Even from this decision, it is clear that though Section 14 of the 1956 Act must be construed liberally in order to advance the object of the Act, i.e. to enlarge the limited interest possessed by a Hindu widow and changing it into a full ownership. As stated by us earlier, Section 14 does not confer on a female Hindu title to property, where she had none to begin with.

49. Even the case of the ***Seth Badri Prasad Vs. Srimati Kanso Devi (supra)*** relied upon by Mr. Seth is wholly inapplicable to the facts of the present case. Here also, the female Hindu had a limited estate and was thereafter converted into full ownership by virtue of Section 14(1) of the Hindu Succession Act. This was not a case where the female Hindu had no right or interest in the property to begin with. This is clear from the facts of the said case which are set out in paragraph 1 of that Judgment. We, therefore, find that the reliance placed on this Judgment also is of no assistance to the Original Appellant.

50. In view of the foregoing discussion, we find that the reliance placed on Section 14 of the Hindu Succession Act, 1956 to claim 50% ownership of the *Juhu Flat* is wholly misplaced and is therefore rejected.

APPLICABILITY OF THE LIMITATION ACT, 1963

51. The last argument canvassed by Mr. Seth was on the issue of limitation. He submitted that under Section 3 of the Limitation Act, a litigant is allowed to set up a defense of limitation, although the same has not been set up in either a suit or an appeal. He submitted that the claim of the Respondent was decided by the Family Court which was subject to Articles 58 and 59 of the Limitation Act, 1963, namely, for a declaration that the Respondent was 100% owner of the *Juhu Flat* and consequently, the implied relief for cancellation of a purchase deed of the *Juhu Flat*, in so far as the Appellant's 50% share is concerned [though this consequential implied relief is not specifically prayed for, but is bound to form part of the decree to give it full legal effect]. In this regard, Mr. Seth submitted that the Respondent in his written statement and in his counterclaim pleaded that in the year 1989, the Appellant refused to cohabit with the Respondent, and it became obvious to the Respondent that the Original Appellant had waited for the flat to be in her joint name to show her true colours. He submitted that the Respondent has deposed in his affidavit of evidence that the Original Appellant was guilty of deserting the Respondent since 1989, till the date of filing of the affidavit of evidence. Mr. Seth submitted that the start of the limitation for the Respondent to apply for either seeking a declaration of his full ownership of the Flat [under Article 58 of the Limitation Act], or for cancellation of the 50% ownership of the Appellant [under Article 59 of the Limitation Act] started on the date sometime in 1989, when as per the pleadings and deposition of the Respondent, he realized that he had been misled and cheated by the Original Appellant into adding her name on the purchase deed/share certificate of the *Juhu Flat* and thereafter the Original Appellant had deserted the Respondent in 1989. He, therefore submitted that the remedy allowed by the Family Court was barred by limitation especially since the Respondent had put up his case in the nature that the said Flat was purchased by him [as a benami Flat] in the name of the Original Appellant – wife.

52. On the other hand, Mr. Kadam, the learned Counsel

appearing for the Respondent submitted that the aforesaid argument is completely devoid of merits. He submitted that the Respondent's plea of ownership vesting in him was taken in defence of the Original Appellant's

claim of ownership having vested in her. He submitted that it is now too well settled that limitation does not bar a defence. In this regard Mr. Kadam relied upon the decisions of the Hon'ble Supreme Court in the cases of **(i) *Shrimant Shamrao V. Pralhad [(2002) 3 SCC 676];*** and **(ii) *Bajranglal Shivchandrai Ruia Vs. Shashikant N. Ruia & Ors. [(2004) 5 SCC 272]***.

53. Mr. Kadam next submitted that even assuming that the Respondent was obligated to file a Suit against the Original Appellant, such a suit would be for recovery of possession from her and for declaration of title to the remaining 50% of the *Juhu Flat*. Such a suit even if seeking a declaration of title, is treated under law to be a suit for recovery of possession liable to limitation under Article 65 of the Limitation Act. Article 65 of the Limitation Act begins to run when the defendant's possession becomes adverse to the plaintiff. In other words, a plea of adverse possession inherently proceeds on the footing that someone else is the owner of the property. A plea of independent title is mutually inconsistent with a plea of adverse possession. In the present case, it is the Original Appellant's case of having acquired 50% ownership in the *Juhu Flat* independently and in her own stead. She did not accept that the Respondent was the 100% owner of the *Juhu Flat*. Thus, possession never became adverse to trigger limitation under Article 65. That apart, the Respondent has always been in possession of the Flat and therefore the plea of limitation is wholly frivolous.

FINDINGS ON THE APPLICABILITY OF THE LIMITATION ACT, 1963

54. We have heard the learned Counsel appearing for the parties on the issue of limitation. We find considerable force in the argument canvassed by Mr. Kadam. In the facts of the present case, what has been set up to refute the 50% ownership of the Original Appellant is by way of a defence. The Limitation Act applies to suits, appeal and applications. This is clear from Section 3 of the Limitation Act which stipulates that subject to the provisions of Section 4 to 24 [inclusive], every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. The Limitation Act does not bar a defence being taken to a claim made by the plaintiff. In this regard, we find

that the reliance placed by Mr. Kadam on the Judgments of the Hon'ble Supreme Court in the case of ***Shrimant Shamrao V. Pralhad [(2002) 3 SCC 676] and Bajranglal Shivchandrai Ruia Vs. Shashikant N. Ruia & Ors. [(2004) 5 SCC 272]*** is well founded. In the case of ***Shrimant Shamrao V. Pralhad (supra)***, the Supreme Court in paragraph 20 held as under:

"20. It is, therefore, manifest that the Limitation Act does not extinguish a defence, but only bars the remedy. Since the period of limitation bars a suit for specific performance of a contract, if brought after the period of limitation, it is open to a defendant in a suit for recovery of possession brought by a transferor to take a plea in defence of part performance of the contract to protect his possession, though he may not able to enforce that right through a suit or action.**"**

Similarly, in the case of ***Bajranglal Shivchandrai Ruia Vs. Shashikant N. Ruia & Ors. (supra)***, the Hon'ble Supreme Court in paragraph 70 and 71 opined as under:

"70. The Division Bench came to the conclusion that the withdrawal of Suit OS No. 218 of 1973 and the rejection of the application moved by Bajranglal for transposition as the plaintiff, which was upheld by the Division Bench, and the summary dismissal of the special leave petition thereagainst, conclusively precluded the contention urged by the appellant in this regard. The Division Bench held, "the result of rejection of application for transposition is that the cause of action against the corporation and the auction-purchaser came to an end" and based its finding upon the fact that, on the date when Bajranglal made the application for transposition as plaintiff (10-9-1985), Bajranglal had lost the right to file a suit for avoiding the auction-sale, as it was barred by time. This led the Division Bench to hold:

"the result of withdrawal of the suit and the rejection of application for transposition is that the auction-sale in favour of the plaintiff had become final and Bajranglal cannot raise any objection in the present suit and avoid the auction-sale".

71. In our view, this reasoning of the Division Bench is erroneous. Although the period of limitation prescribed in the Limitation Act, 1963 precludes a plaintiff bringing a suit which is barred by limitation, as far as any defence is concerned, there is no such limitation. In reply to the

plaintiff's suit that she had derived title to the suit property by virtue of the auction-sale and the certificate of sale issued by BMC, it was perfectly open to the defendants, including Bajranglal, to contend to the contrary. The burden of proving the facts alleged in the plaint was squarely upon the plaintiff. After recording evidence on both sides, if the evidence showed that the auction-sale held by BMC was contrary to the provisions of the BMC Act and the Regulations made thereunder, the defendants were entitled to urge upon the learned Single Judge to come to the conclusion recorded by the learned Single Judge.

72. The respondents, however, contend that the sale proceedings could be challenged only by way of substantive suit. Inasmuch as the suit had become time-barred on the date of the application for transposition, there was no scope for the sale of Hari Niwas to the plaintiff being challenged by a suit. They urged that the Division Bench is right in characterising the challenge to the suit by Bajranglal as a "back-door method".

73. It appears to us that the contention of the respondent is misplaced. If the title claimed by the plaintiff was a nullity and wholly void, there was no need for any of the defendants including Bajranglal to challenge it by way of a substantive suit. They could always set up a nullity of title as a defence in any proceeding taken against them based upon such title. If, in fact, the sale was a nullity, it was *non est* in the eye of the law and all that the defendant had to do was point this out. (See in this connection: *Ajudh Raj* v. *Moti*[(1991) 3 SCC 136] and the opinion of the Full Bench of the Bombay High Court in *Abdullamiyan* v. *Govt. of Bombay* [(1942) 44 Bom LR 577 : AIR 1942 Bom 257] .)**"**

55. In light of the aforesaid decisions of the Hon'ble Supreme Court, we fail to understand how the Limitation Act can be attracted to defeat the defence taken by the Respondent that the Original Appellant is not the owner of the *Juhu Flat* because she has not contributed towards the purchase of the same. Even otherwise, we find that this argument is of no avail to the Original Appellant. It is only on 18th February 2012 that the Original Appellant amended her Petition and inserted a new cause of action qua the *Juhu Flat*

and claimed 50% ownership of the same. In other words, for the first time, the Original Appellant claimed 50% ownership of the *Juhu Flat* on 18th February 2012. It is in reply to this case that the Respondent filed his additional written statement contending that the Original Appellant was not entitled to any ownership rights in the *Juhu Flat* as she had not contributed anything for the purchase thereof, and her name was added only for the sake of convenience. This plea was taken on 1st March 2012 itself. We, therefore, fail to see how limitation can in any event be the answer to over-turn the findings given by the Family Court regarding the ownership of the *Juhu Flat*. The issue of ownership was raised for the first time by the Original Appellant-wife only in the year 2012. This being the case, we find even the argument canvassed by Mr. Seth on the issue of limitation have no merit and the same is hereby rejected.

56. For all the aforesaid reasons, we find that the impugned Judgment and decree of the Family Court requires no interference. We find that it is a perfectly well reasoned order after examining all the evidence on record. It is not disputed that the entire purchase money has been paid by the Respondent and it is in this light that the Family Court had declined the reliefs sought for by the Original Appellant qua the *Juhu Flat*. We, therefore, have no hesitation in dismissing the above Appeal as we find no merit in the same. However, in the facts and circumstances of the present case, there shall be no order as to costs.

57. Before concluding, we must acknowledge and appreciate the efforts put in, and the assistance given to the Court, by Mr. Seth as well as Mr. Kadam, in the above Appeal.

58. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

59. At this stage, Mr. Seth, the learned Counsel appearing for the Appellant, submitted that this Court, by its order dated 15th September 2014, had restrained the Respondent from creating any third party rights in favour

of any person, in any manner whatsoever, in relation to the *Juhu Flat*, and which has continued till date. He, therefore, requested that this interim order be continued for a period of four weeks to enable the Appellant to test our judgment before the Hon'ble Supreme Court.

60. Considering that the above restraint has been operating against the Respondent from 15th September 2014, we find that the request made by Mr. Seth to be a fair and reasonable one. In these circumstances, we direct that for a period of four weeks from today, the Respondent shall not create any third-party rights in favour any person, in any manner whatsoever, in relation to the *Juhu Flat*.