



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 2099 OF 1996
WITH
INTERIM APPLICATION NO. 2696 OF 2020
IN
SUIT NO. 2099 OF 1996

Usha Sureshchandra Jhaveri	.. Plaintiff
Versus	
Himanshu S. Jhaveri and Ors.	.. Defendants

-
- Mr. P. G. Lad a/w. Ms. Sayali Apte and Ms. Heena Mody i/by Heena Mody, Advocates for Plaintiff.
 - Mr. Chaitanya Chavan a/w. Mr. Nikhil Jayakar, Advocates i/by Vinayak Kumbhar for Defendants.
 - Mr. S.K. Dhekale, Court Receiver present.
-

CORAM	: MILIND N. JADHAV, J.
DATE	: JUNE 10, 2024

JUDGMENT:

1. This Suit is filed by the Plaintiff for seeking a declaration that she is entitled to one-fourth share in the suit property described in Exhibit-A and Exhibit-B to the Suit Plaint and calls upon the Court to effect partition by metes and bounds and carve out her one-fourth share, put her in possession thereof and pass a decree to that effect. Exhibit-A at page No.147 of the Suit Plaint is a list of four immovable properties namely; (i) Flat in Soni Chambers, second floor, Avantikabai Gokhale Road, Mumbai – 400 004; (ii) Office premises at Bandra-Kurla Complex in Diamond Brouse; (iii) Flat No.104, 1st Floor,

Prabhudarshan Society at Surat and (iv) Office premises on second Floor, Pancharatna Building, Peeplasheri Jeerukhadi, Surat. Exhibit-B page Nos.22 and 23 is a list of movable properties under four groups viz; Group One comprising of one National Saving Certificate, four race horses, motor car and household items, group two comprising of ornaments, group three comprising of ornaments belonging to Plaintiff's father to be returned and not partitioned and group four comprising of shares of 21 companies. Plaintiff is the second wife of one deceased Sureshchandra Jhaveri. Defendant Nos.1 to 3 are her stepchildren. Defendant No.4 is the wife of Defendant No.1. Defendant No.1 is the son and Defendant Nos.2 and 3 are married daughters of deceased. Defendant No.2 expired in the interregnum and is represented by her legal heirs who are arrayed as Defendant Nos.5 and 6. Deceased Sureshchandra Jhaveri was initially married to Rasilaben Jhaveri, mother of Defendant Nos.1 to 3. Rasilaben Jhaveri expired in a car accident on 13.02.1978. Sureshchandra Jhaveri married Plaintiff on 23.01.1987 and the marriage was registered on 29.01.1987. Sureshchandra Jhaveri expired on 29.06.1993.

2. Plaintiff would contend that at the time of his demise he was owner of four immovable properties stated in Exhibit-A to the Suit Plaintiff as also several movable properties stated in Exhibit-B to the Suit Plaintiff. It is averred in the Suit Plaintiff that properties at serial Nos.1, 2 and 3 in Exhibit-A were purchased by the deceased Sureshchandra

Jhaveri in the name of Defendant No.1 and therefore Plaintiff seeks partition of one-fourth share out of these properties in her favour. Defendant No.1 has denied Plaintiff's claim that the Suit properties belonged to the ownership of Sureshchandra Jhaveri at any point of time or were purchased by him on his name. Parties have led extensive evidence and referred to and relied upon documentary evidence in support of their respective case. Hence it will be the oral and documentary evidence which will determine the extent of the rights of the parties rather than their pleadings.

3. In order to adjudicate and decide the *lis* between the parties, it will be appropriate to list the dates and events, *inter alia*, pertaining to the parties and the suit properties since both sides have relied upon them and led evidence on the same. Sureshchandra Jhaveri admittedly died intestate on 29.06.1993. Defence of the Defendants to the reliefs claimed by Plaintiff is two fold namely;

- (i) that during the lifetime of Sureshchandra Jhaveri, due to matrimonial disputes, Plaintiff executed an Agreement dated 03.05.1989, *inter alia*, declaring that she has no right, title or interest in the movable or immovable properties of Sureshchandra Jhaveri subject only to right of residence and payment of maintenance of Rs.2,000/- per month after his

demise; and

- (ii) that the four immovable properties in Exhibit “A” of which partition is claimed never belonged to Sureshchandra Jhaveri and therefore these properties cannot be subjected to partition by Plaintiff.

4. Briefly stated some of the facts which will be essential for determining the present *lis* are required to be considered. Sometime in 1959, Sureshchandra Jhaveri married his first wife Rasilaben Jhaveri. Defendant No.1 was born on 19.03.1963. On 21.03.1967, Sureshchandra Jhaveri purchased a residential house being flat No.104 in Prabhudarshan Cooperative Housing Society, Surat in his name. On 13.05.1976, Sureshchandra Jhaveri sold the said flat in Prabhudarshan Cooperative Housing Society to Lalitkumar Himmatlal Kapasi. This is an admitted position by the Plaintiff. On 16.01.1978, Rasilaben Jhaveri purchased the same flat in Prabhudarshan Cooperative Housing Society from Lalitkumar Himmatlal Kapasi. However according to Plaintiff though this flat in Prabhudarshan Cooperative Housing Society was purchased in the name of Rasilaben Jhaveri, it was purchased by Sureshchandra Jhaveri himself from his own funds as *benami* in the name of his first wife Rasilaben Jhaveri. Incidentally, on 13.02.1978 Rasilaben Jhaveri met with a car accident and expired.

At that time Defendant No.1 was 15 years old.

4.1. On 25.02.1978, the said Prabhudarshan Cooperative Society passed a resolution to transfer the share certificate standing in the name of the erstwhile member Lalitkumar Himmatlal Kapasi to the name of Rasilaben Jhaveri. This particular fact of passing of resolution and effecting transfer in the name of Rasilaben Jhaveri after her demise is strongly objected to and argued by the Plaintiff, though it was an unilateral act committed by the said Cooperative Housing Society. In August-1979, Defendant No.1, 17 years old decided to start his own business. At that time Defendant No.1 was working part-time and had learnt the art of sorting diamonds and the intricacies of handling diamond business from professional teachers. On 26.12.1981, Defendant No.1 addressed a letter to Prabhudarshan Cooperative Housing Society to effect transfer of the flat in Prabhudarshan Cooperative Housing Society to his name as he was nominated as nominee by Rasilaben Jhaveri. On 07.02.1982, Prabhudarshan Cooperative Housing Society passed a resolution and transferred the shares of flat No.104 in the name of Defendant No.1 since he was the nominee. Sometime in 1982-1983, Defendant No.1 started his firm in the name and style of 'Suhir Diamonds'. At that time Defendant No.1 was 20 years old and had gathered experience of working as a diamond sorter for about three years prior thereto. It is significant to note that the Suit Plaintiff does not refer to 'Suhir Diamonds' and does

not seek partition of the assets of 'Suhir Diamonds' save and except to state that Sureshchandra Jhaveri was trading in diamonds. In the year 1983, Defendant No.1 shifted his base from Mumbai to Surat. For the financial years 1983-1984, Defendant No.1 filed his first income-tax return. On 02.11.1983, Defendant No.1 purchased an office in Surat in Panchratna Building on the second floor by a registered sale deed after paying consideration of Rs.88,451/- from the account of his proprietorship firm called 'Suhir Diamonds'. This office premises was purchased by Defendant No.1 as Proprietor of 'Suhir Diamonds'. In 1985, Defendant No.1 got married to Defendant No.4 and they both resided at Surat. In January-1987, Defendant No.1 was informed by his father Sureshchandra Jhaveri about his proximity to the Plaintiff. Until this point of time Sureshchandra Jhaveri never asserted his claim over the Surat Office in Panchratna Building of Defendant No.1 nor in Flat No.104 in Prabhudarshan Cooperative Housing Society, Surat.

4.2. On 23.01.1987, Plaintiff got married to Sureshchandra Jhaveri at Arya Samaj, Bombay in accordance with Hindu Vedic Rights. This marriage was registered on 29.01.1987. Plaintiff resided with Sureshchandra Jhaveri at Mumbai in his house property known as 'Sagar Cottage' situated at Walkeshwar, Mumbai. It is averred in the plaint that after marriage of Plaintiff with Sureshchandra Jhaveri, they alongwith Defendant Nos.1 to 3 shifted to Surat as one family with the intention of residing there for two years. Plaintiff has averred that

Sureshchandra Jhaveri was trading in diamonds and was also the owner of four race horses at Mahalaxmi Race Course, Mumbai. Plaintiff has averred that Sureshchandra Jhaveri would make periodical trips to Mumbai to look after his business and on one of his last trip, due to his health concern he brought the Plaintiff and kept her in Mumbai. It is averred that on 24.02.1987, Plaintiff was declared pregnant but in order to avoid embarrassment she underwent an abortion on 25.02.1987. On 10.05.1987, Sureshchandra Jhaveri visited Antwerp in Belgium and at that time Plaintiff went to reside at her paternal home in Mumbai. According to Defendant Nos.1 to 3 relationship between Plaintiff and Sureshchandra Jhaveri were strained at that time due to involvement of Plaintiff with one Suresh Keshavlal Shah. There was an incident and a scuffle between Plaintiff and wife of Suresh Keshavlal Shah. Plaintiff gave her version of her story to Defendant No.2 and Defendant No.2 informed Sureshchandra Jhaveri in Antwerp due to which he suffered a mild heart attack and was hospitalised in Antwerp for 15 days. On 28.06.1987, Sureshchandra Jhaveri returned back to India. On 14.03.1989, the strained relations between Plaintiff and Sureshchandra Jhaveri came to the fore when through his Advocate M/s. Wadia Gandhi and Company he sought divorce by mutual consent from Plaintiff. These facts are not stated in the Plaint but are disclosed by Defendant Nos.1 to 3. Plaintiff addressed an undated letter to Sureshchandra Jhaveri admitting the

allegations made against her but apologized and requested him not to press for a divorce. In these circumstances, on 03.05.1989, Plaintiff executed an agreement with Sureshchandra Jhaveri, *inter alia*, agreeing that she will not make any claim to the movable or immovable properties of Sureshchandra Jhaveri after his demise, that she would have right of residence only in the property known as 'Sagar Cottage' during her lifetime and she would be entitled to Rs.2,000/- per month after his demise. According to Plaintiff she does not deny executing this agreement but states that the said agreement was executed by misrepresentation and is vitiated by coercion and not binding on her. However after the above incident, Plaintiff and Sureshchandra Jhaveri once again started residing together and there was no further dispute.

4.3. On 12.11.1991, Defendant No.1 through his proprietorship firm 'Suhir Diamonds' submitted an application form to Bharat Diamond Bourse for allotment of premises at Bandra-Kurla Complex (for short '**BKC**') and an initial amount of Rs.1,87,500/- was paid by him alongwith the application from his Bank Account maintained in Sangli Bank. 'Suhir Diamonds' was his proprietorship firm which was doing business for more than 9 years at that time in Surat. On 28.01.1992, Defendant No.1 was allotted premises / office premises by Bharat Diamond Bourse in the name of 'Suhir Diamonds'. This was an office premises ad-measuring 269 square feet. From 1992

onwards Defendant No.1 paid the installments for the total purchase price / consideration of approximately Rs. 18,83,000/- and received possession of the premises after 20 years in the year 2013, since the premises were under construction. In April-1993, Sureshchandra Jhaveri sold his residential house namely premises on the second floor of 'Sagar Cottage' Building, Opposite Sheetal Bar, Walkeshwar, Mumbai-400 006 for a consideration of Rs.1.10 Crores. This fact has been confirmed by the Plaintiff only in her cross-examination in answer to question No.100. On 17.04.1993, Sureshchandra Jhaveri and Defendant No.1 jointly bought a residential flat in Kashinath Building, Khetwadi, S.V.P. Road, Mumbai for a total consideration of Rs.9,00,000/-. This consideration was paid equally from the respective Bank Accounts of Sureshchandra Jhaveri and Defendant No.1. According to Defendant No.1, amount which was infact paid by Sureshchandra Jhaveri was received by him from the business associates of Defendant No.1 as he did not have any money. According to Defendant No.1, the sale proceeds of Sagar Cottage premises were applied by Sureshchandra Jhaveri to repay his debts. Plaintiff's case is silent on this aspect. On 06.06.1993, Plaintiff had a quarrel with Sureshchandra Jhaveri and walked out of the Kashinath Building flat deserting him. Since Sureshchandra Jhaveri was sick at that time and alone, Defendant No.1 took him to Surat to reside with him. On 29.06.1993, Sureshchandra Jhaveri expired due to cardiac arrest at

Surat while he was staying with Defendant No.1.

4.4. Between August-1993 to November-1994, Defendant No.1 liquidated the shares belonging to Sureshchandra Jhaveri to clear his debts. Defendant No.1 liquidated 1010 shares of Computer Point, 2500 shares of L&T, 2000 shares of Ruchi Soya and 15,575 shares of Rishi Packers for a total amount of Rs.11,91,189.75. According to Defendant No.1 Sureshchandra's debts were about Rs.9,21,548.50. There is no mention of any other shares despite the Plaintiff claiming that deceased Sureshchandra Jhaveri held shares in 21 companies as per Exhibit "B".

4.5. On 27.10.1973, Defendant No.1 sold the Kashinath Flat for a consideration of Rs.9,21,000/- once again to repay his business associates who had given the loan to Sureshchandra Jhaveri.

4.6. On 15.10.1994, that is one year after demise of Sureshchandra Jhaveri, Defendant No.4 and Defendant No.1 jointly purchased the flat at Soni Chambers, Second Floor, Avantikabai Gokhale Road, Mumbai-4 by a registered agreement for a total consideration of Rs.1,50,000/-. According to them, Rs.75,000/- was paid by Defendant No.4 from her Bank Account and the balance Rs.75,000/- was paid by Defendant No.1. At that time, according to Plaintiff since Defendant No.1 attempted to transfer shares of Sureshchandra Jhaveri to the name of third parties by lodging the

transfer deeds with ROC, she filed a Suit being Suit No.791 of 1995 in the Bombay City Civil Court seeking injunctive reliefs against two Companies. Thereafter on 11.10.1995, Plaintiff through her Advocate called upon Defendant Nos.1 to 3 to effect partition by metes and bounds of the properties as stated in Exhibit "A" and Exhibit "B" and sought her one-fourth share in the said properties of Sureshchandra Jhaveri. On 13.03.1996, Defendant Nos.1 to 3 through their Advocate replied to the above notice and also relied upon the agreement dated 03.05.1989 executed by the Plaintiff.

4.7. In the above background, Plaintiff filed the present Suit seeking a declaration that she is entitled to one-fourth share in the immovable and movable properties belonging to Sureshchandra Jhaveri and sought partition of 1/4th share by metes and bounds. On 24.12.1996, RWITC i.e. Royal Western India Turf Club provided details of the five horses alongwith their ownership and sale details sought for by the Plaintiff which has been produced and placed on record by the Plaintiff.

4.8. On 15.04.2004, the following issues were framed by the Court:-

- "1) *Does the plaintiff prove that the properties mentioned in the Exhibits 'A' and 'B' are the properties acquired by deceased Suresh Chandra Jhaveri?*
- 2) *Does the plaintiff prove that the properties mentioned in Exhibits 'A' and 'B' to the plaint are joint properties of the plaintiff and the defendants?*

- 3) *Does the plaintiff prove that the plaintiff has 1/4th share in the properties mentioned in Exhibits 'A' and 'B' to the plaint?*
- 4) *Whether the claim made by the plaintiff in respect of the four immovable properties mentioned in Exh.A to the plaint is barred by the provisions of the Benami Transactions (Prohibition) Act 1988?*
- 5) *Whether the plaintiff is estopped from making any claims to the estate of the deceased Sureshchandra Jhaveri in view of her having executed the agreement dated 3rd May 1989 as mentioned in paragraphs 4 and 11 of the written statement?*
- 6) *Do the defendants prove that the properties mentioned at Exhibits 'A' and 'B' are self acquired properties of the defendants?*
- 7) *Does the plaintiff proves that the plaintiff is entitled for partition of the properties and possession of 1/4th share in the properties mentioned in Exhibits 'A' and 'B' to the plaint?*
- 8) *What order on decree?"*

4.9. In the above backdrop, it is Plaintiff's case that the four immovable and movable properties mentioned in Exhibit-A and Exhibit-B to the Suit Plaint have been acquired by Sureshchandra Jhaveri, her husband during his lifetime. Exhibit-B is the list of 35 movable properties. According to Plaintiff Exhibit-C comprising of list of ornaments is the *streedhan* of the Plaintiff and Defendant No.1 is in its possession and Plaintiff would be filing a separate proceeding for seeking its return. What is essentially pleaded by Plaintiff is that the immovable properties at Serial Nos.1, 2 and 3 namely; the flat in Soni Chamber, office premises in Bandra-Kurla Complex and Flat No.104 in Prabhudarshan Cooperative Housing Society at Surat were bought by Sureshchandra Jhaveri during his lifetime in the name of Defendant

No.1 and they belong to Sureshchandra Jhaveri, though there is no specific prayer seeking such a declaration. Defendants have refuted the case of Plaintiff by relying upon documentary evidence to disprove the Plaintiff's case.

5. Mr. Lad, learned Advocate appearing on behalf of the Plaintiff has made the following submissions in respect of the immovable properties claimed by Plaintiff to have been bought by Sureshchandra Jhaveri:-

5.1. Flat in Prabhudarshan Co-operative Housing Society:-

- (i) In respect of flat No.104, Prabhudarshan Cooperative Housing Society, Surat 395 001, Sureshchandra Jhaveri has purchased the said flat whereas according to Defendant No.1 it was purchased by his late mother Rasilaben.
- (ii) that this flat was purchased by the deceased Sureshchandra Jhaveri on 21.03.1967 initially before it was sold to Lalit Kumar Himmatlal Kapasi and after a few years Rasilaben Jhaveri purchased this flat in her name from Lalit Kumar Himmatlal Kapasi. That payment towards this purchase was made on 16.01.1978 and the flat was transferred on 25.02.1978 in Rasilaben's name.

- (iii) That in answer to question No.75 in cross-examination, Defendant No.1 has admitted that that this flat was purchased by his deceased father in 1974-1975.
- (iv) That Defendant No.1 has produced no record showing that this flat belonged to Rasilaben Jhaveri during her life time except bear words and deliberately giving false statement that that his mother expired in the year 1980. That as per record Rasilaben Jhaveri expired on 13.02.1978. That no sale deed is produced by Defendant No.1 regarding above transaction.
- (v) That as per Exhibit "I" to the Written Statement of the Defendant No.1 the Application for becoming member is signed on 25.02.1978 by Rasilben Jhaveri and on the same day the Society has transferred the share certificate in his name. However, it is admitted fact that Rasilaben Jhaveri infact expired on 13.02.1978. So this flat ought to belong to Sureshchandra Jhaveri and Defendant No.1 has laid a false claim as owner of this flat on the basis of his nomination to claim ownership of

this flat. He would submit that the share certificate clearly reflected that 4 years after demise of Rasilaben Jhaveri, this flat was transferred in the name of Defendant No.1 and hence it is a fraudulent transfer.

- (vi) He would submit that from the purported minutes of the meeting of the said Society at Exhibit "II", it is seen that neither the Chairman nor Secretary was present in meeting when the share certificate effecting transfer onto Defendant No.1's name was duly endorsed on the share certificate on same day.
- (vii) He would submit that Defendant No.1 has manipulated the entry of transfer onto his name in collusion with the society as no sale deed in favour of Rasilaben Jhaveri was produced and it was so effected only to deprive the Plaintiff of her share through her deceased husband Sureshchandra Jhaveri. That failure on the part of Defendants to produce the purported sale deed of the flat in favour of Rasilaben Jhaveri would draw adverse inference as law laid down by the Hon'ble Apex Court in the case of *Gopal Krishna Vs. Mohd. Haji*

*Latif*¹. That as per law laid down in the decision of *Ratanlal Bank Vs. Syndicate Bank*², share certificate cannot be a sufficient proof of title of the immovable property and this position is upheld by the Division Bench of this Court.

- (viii) Hence in aforesaid premises this flat belonged to Sureshchandra Jhaveri and Plaintiff being his wife is entitled to one-fourth share in the flat premises.

5.2. Flat in Soni Chambers:-

- (i) He would submit that originally Defendant No.4 – Sejal Himanshu Jhaveri (Wife of Defendant No.1) was not party to the Suit, inspite of which vide Chamber Summons, Defendant No.4 alleged that she has independent right in the Flat in Soni Chambers and got herself impleaded as party Defendant No.4. He would submit that Defendant No.4 has however chosen not to lead any evidence and hence her contention of having a separate legal right in this flat be discarded.
- (ii) That Defendant No.1 has claimed that Soni Chamber flat is a self-acquired property by him and

¹ AIR 1968 S.C.1418

² 200(2) DRTC 112

not from the nucleus of Sureshchandra Jhaveri's properties. However, the following dates and events would prove the contention of Defendant No.1 as false namely; in April, 1993 Sagar Cottage premises was sold by Sureshchandra Jhaveri. On 17.04.1993 flat in Kashinath CHS was purchased from the sale proceeds of Sagar Cottage flat; On 29.06.1993, Sureshchandra Jhaveri expired; On 27.10.1993, flat in Kashinath CHS was sold by Defendant No 1 unilaterally and in April 1994 tenancy rights were acquired in this Soni Chamber flat and on 15.11.1994 sale deed of this flat was registered. According to Mr. Lad, from the above dates and events it clearly established that from the sale proceeds of Kashinath premises, this flat in Soni Chambers was purchased.

- (iii) That the Defendant has come up with a fake story in his examination-in-chief that his business associates has granted loan of Rs.4,50,000 to Sureshchandra Jhaveri without disclosing their details. That the burden shifted on the Defendant Nos.1 and 4 to prove that this flat was not purchased by them out of Joint family nucleus and

it was purchased independently by them and since the Defendants have miserably failed to prove that this flat in Soni Chambers is their self- acquired property. Hence, the Plaintiff has one-fourth share in the flat in Soni Chambers being the legally wedded wife of deceased Sureshchandra Jhaveri.

5.3. Panchratna Office premises, Surat:-

- (i) According to Plaintiff deceased Sureshchandra Jhaveri purchased this office premises in the year 1983.
- (ii) That Defendant No.1 was too young in 1983 to purchase this office in Surat as he was barely 20 years old and had just started his business.
- (iii) Details of payment made by Defendant No.1 to purchase this office was not produced by him in evidence.
- (iv) That this office was purchased in the name of “Suhir Diamonds” a proprietary concern of Defendant No.1, but payment was done by Sureshchandra Jhaveri only.
- (v) That Sureshchandra Jhaveri supported his son in

purchasing this office and Defendant No.1 did not produce independent evidence of its acquisition or the Bank account statement from which the payment was made.

(vi) That the Defendants who claimed to be holder of said Bank account could have easily provide the details but deliberately, willingly and intentionally failed to provide the details of the said account. That the Defendant No.1 deliberately did not wish that the Bank Account No.35 of Sangli Bank to come on record before this Court which would have shown that the entire business of Suhir Diamonds was handled by Sureshchandra Jhaveri and not by Defendant No.1.

(vii) He would submit that as per claim of Defendant No.1 if he is the proprietor of 'Suhir Diamond' then it was his duty to produce all Books of Account and Bank statement of 'Suhir Diamonds' but he claimed in cross-examination that they were stolen.

(viii) Hence, an advance inference be drawn against Defendant No.1 as he failed to produce relevant documents since in a Suit for partition, Plaintiff and

Defendant are parties at equal status and party in possession of best evidence should produce it and if not produced then an adverse inference should be drawn against such a party. That the said business of Suhir Diamonds belonged to Sureshchandra Jhaveri and not Defendant No.1. That the Defendant's knowledge of Export-Import of diamond business even after having 35 years of experience of diamond Business is zero. That during cross-examination he was unable to give the name of any associate and / or offshore party with whom he dealt with on behalf of 'Suhir Diamonds' .

- (ix) That he gave evasive replies to question seeking production of his books of accounts pertaining to his income in cross-examination and declined to give details of the Bank accounts.

5.4. SUHIR DIAMOND BUSINESS:

- (i) He would submit that there is no cross-examination to pleadings in paragraph No.6 of the Plaint. He would submit that that deceased used to look after the business at Bombay by taking periodical trips abroad and it is admitted by Defendant No.1 in his

examination-in-chief that deceased extended full support to him and even allowed him to use the premises at 'Sagar Cottage'. That Defendant No.1 made a false statement that he gave a limited power of attorney to Sureshchandra Jhaveri. The POA was not produced alongwith his examination-in-chief but the same was produced only after giving notice to produce the same. That Defendant No.1 thereafter admitted that he gave the POA to sign all documents including withdrawal of cheque etc. In cross examination, however Defendant No.1 gave inconsistent answer to question No.32, when he was asked whether Sureshchandra Jhaveri had knowledge of Diamond Trading to which he disagreed. In reply to question No.176 when asked whether the Sangli Bank statement revealed the expenses incurred for the foreign trip of Sureschandra Jhaveri for purchase of rough diamonds, expenses incurred for cutting and polishing diamonds and receipt of the payment from purchasers for assorted diamonds through Diamond Merchants Trading association he answered that he agreed for the rest of expenses

because he did not authorize Sureshchandra Jhaveri by way of Power of Attorney to carry on such activities in his absence. This answer given by Defendant No.1 shows that the entire business activity of Suhir Diamonds was actually conducted by Sureshchandra Jhaveri.

- (ii) That Sureshchandra Jhaveri was conducting business of 'Suhir Diamonds' though the proprietorship of Defendant No.1. That in reply to question No.273 when asked whether he was able to produce any evidence or any documents to show that business of M/s Suhir Diamonds was conducted by him from 1983 to 1993, he has answered that he is unable to produce these documents as they have been stolen from his Surat Office and he shall produce the same when they are found. That this proves that Sureshchandra Jhaveri was the nucleus of the said business and all immovable and movable property mentioned in Exhibit-A and Exhibit-B to the Plaint purchased during his life time and after his death belong to Sureschchandra Jhaveri and thus Plaintiff is entitled for the one-fourth share in all immovable and

movable properties of Sureshchandra Jhaveri i.e. immovable properties viz; Panchratna office, Prabhudarshan flat Surat, office at BKC and Soni Chamber flat purchased from funds of the Sureshchandra Jhaveri during his life time and after his death from the sale proceed of his properties.

Office in Bharat Diamond Bourse BKC property

- (i) He would submit that the entire business and bank account of Suhir Diamonds was handled by Sureshchandra Jhaveri and the first application money of Rs.1,87,500/- was paid by Sureshchandra Jhaveri through DD of Sangli Bank. Moreover during his life time i.e. till June 1993 the monthly installments were also paid by Sureshchandra Jhaveri. That Rs.6,16,189.75 was paid by Sureshchandra Jhaveri towards installments of the BKC office premises. That Defendant No.1 paid the balance consideration for acquisition of this office at BKC by liquidating the following properties of Sureshchandra Jhaveri viz; Rs 11,91,189.75 from various Company shares of deceased; Rs.2,83,500/- through 6750 shares of Rishi packers;

Rs.9,21,000/- through sale proceeds of flat at Kashinath Building; Rs.2,00,000/- through release of lease of Horse; Rs. 51,000/- through RWITC; Rs.15,000/- through UTI; Rs.3,00,000/- which Defendant No.1 admitted that he received after sale of shares of deceased. However, the Plaint is completely silent on this issue and those figures have surfaced in evidence for the first time.

5.5.

HORSES:

- (i) That admittedly the Sureshchandra Jhaveri invested in race horses; namely 5 race horses, called Diamond Park, Individuality, Rishi, Packer and Jai and out of which four horses were sold by Defendants after the demise of the Sureschandra Jhaveri.
- (ii) That Defendants have falsely alleged that the horses were sold with the consent of Plaintiff and after obtaining her signature on the indemnity bonds and forms of RWITC. That no signature of Plaintiff was obtained to sell the horses on contingency basis and the signature appearing on the forms and bonds is forged and fabricated by Defendant No.1.

- (iii) That one out of the four horses, Individuality, was sold by Defendant No.1 to one Mr. Oza and it was not on contingency basis. The details of amounts received were not disclosed by Defendant No.1. Similarly in the case of another horse called Rishi, Defendant No.1 cancelled the leave and received the amounts which were not disclosed by him. Thus both the aforesaid i.e. sale proceeds of 'Individuality' and amount of release of lease were pocketed by Defendants.

5.6. Shares (Movable property):-

- (i) He would submit that admittedly Sureschandra Jhaveri had huge investments in the share market and was owner of various shares of listed companies which were sold by Defendants after his demise without the consent of Plaintiff and even without obtaining any succession certificate, Probate, Letter of Administration in violation of the provisions of Section 108 of the Companies Act. According to Plaintiff, at the time of his demise, Sureschandra Jhaveri was holding 75000 of Rishi packers and Plaintiff tried her level best to get

details of the said shares by issuing witness summons to the Company, but the same was not provided. Defendant No.1 failed to give the account of 6750 shares out of the above which were appropriated by him and Defendant No.4 after Sureshchandra Jhaveri's demise.

- (ii) He would submit that similarly in respect of shares of Garden Vareli Company, G.E. Shipping Company and many other Companies belonging to Sureshchandra Jhaveri, Defendant No.1 liquidated these shares fraudulently without obtaining succession certificate and without consent of Plaintiff immediately after the demise of Sureshchandra Jhaveri. He would therefore submit that Defendants' defence that the assets of Sureshchandra Jhaveri were sold to pay off his debts cannot be believed as no details have been provided. Defendants are therefore fully accountable for the shares held by them belonging to Sureshchandra Jhaveri and therefore Plaintiff is entitled to 1/4th share of the sale proceeds of the shares which according to Plaintiff is computed at Rs.18,76,639.75.

5.7. He would submit that Defendant No.1 has played an imminent fraud on the Plaintiff by dealing with properties of Sureshchandra Jhaveri after his demise to the exclusion of the Plaintiff by raising a false plea of fake creditors and that the deceased Sureshchandra Jhaveri was in debt. He would submit that without placing any proof on record, such defence on the part of the Defendants cannot be believed and ought to be rejected. He would submit that the properties acquired by Defendant No.1 after the demise of Sureshchandra Jhaveri are from the sale proceeds of the properties which were liquidated by Defendants after his demise and hence all those properties are the subject matter of partition in the present Suit and Plaintiff is entitled to 1/4th share in them. Hence, the Suit be decreed as prayed for by the Plaintiff .

6. Mr. Lad has in his support his above submissions relied on the following decisions:-

- (i) *Kalwa Devadattam and Ors. Vs. Union of India and Ors.*³.
- (ii) *Bhimavarapu Subba Reddy and Ors. Vs. B. Nagireddy and Ors.*⁴
- (iii) *Rajendra Nath Majhi Vs. Ttustu Charan Das & Anr.*⁵
- (iv) *Adivappa and Ors. Vs. Bhimappa & Anr.*⁶
- (v) *M/s. ICICI Bank Ltd. Vs. Surbhi Gupta*⁷

³ AIR 1964 SC 880

⁴ AIR 1973 Andhra Pradesh 184

⁵ AIR 1979 Cal.105

⁶ Civil Appeal No.11220 of 2017

⁷

- (vi) *Pradeep Kumar Vs. Mahaveer Prasad*⁸
- (vii) *Gopal Krishna Ketkar Vs. Mohamed Haji Latif*⁹
- (viii) *Bhagwan Swaroop Vs. Mool Chand and Ors.*¹⁰

7. Mr. Chavan, learned Advocate for Defendant Nos. 1 to 3 along with Mr. Jaykar, learned Advocate has taken me through the list of dates and made the following submissions on behalf of Defendants:-

7.1. He would submit that it is Plaintiff's case that Sureshchandra Jhaveri was owner of the immovable and movable properties listed in Exhs. A & B to the Suit plaint and further during his lifetime he was seized with ownership as also possession of the said properties situated at Mumbai and Surat. On the above general premise, Plaintiff has prayed for effecting partition of her alleged 1/4th share in the said properties. He would submit that the entire premise and basis of Plaintiff's alleged claim that the four immovable properties stated in Exh. A and the movable properties stated in Exh. B belonged to the ownership of Sureshchandra Jhaveri is false and incorrect on the face of record. He would submit that mere averment and assertion in the suit plaint without substantiating the same with cogent and most importantly relevant documentary evidence to corroborate the fact of ownership of the said properties in the name of Sureshchandra Jhaveri cannot and should not be accepted by a Court of law. He would

⁸ AIR 2003 AP 107

⁹ AIR 1968 SC 1418

¹⁰

submit that repeated assertions in the Suit plaint followed by the affidavit of evidence without placing on record any relevant document of ownership cannot establish the Plaintiff's alleged claim. He would submit that on the contrary Defendant Nos. 1 to 3 have in their pleadings and evidence established that the said properties did not belong to the ownership of Sureshchandra Jhaveri at any point of time and even from the date of their acquisition and therefore cannot be apportioned/partitioned on the premise that they belonged to Sureshchandra Jhaveri. While drawing my attention to the Written Statement dated 07.10.2003 and the affidavit of evidence of Defendant No.1 dated 06.12.2014, he would make the following pointed submissions on each of the immovable properties to refute and reject the claim of Plaintiff that the 4 properties belonged to the ownership of Sureshchandra Jhaveri.

7.2. The property at Item No. 1 in Exh. A to the Suit plaint is the flat in Soni Chambers situated on 2nd floor of the said building, Avantikabai Gokhale Road, Mumbai – 400 004. He would submit that this flat was purchased jointly by Defendant Nos. 1 and 4 under a registered agreement dated 15.11.1994 which is well after the demise of Sureshchandra Jhaveri and the payment of consideration for this flat was paid equally by the Defendants. He would submit that Rs. 75000/- i.e. 50% of the amount was paid over by Defendant No. 4 from her bank account whereas the balance 50% amount of

consideration was paid over by Defendant No.1 from his bank account maintained in Sangli Bank. He would submit that unless the Plaintiff proved that any monies belonging to Sureshchandra Jhaveri were utilized by the answering Defendants for purchase of this flat, mere assertion of the Plaintiff that the said flat belongs to Sureshchandra Jhaveri's ownership is not tenable in law. This is precisely because Sureshchandra Jhaveri expired on 29.06.1993 (17 months before purchase of this flat). That the registered sale deed dated 15.12.1994 has been taken on record as Exhibit and marked as Exh. D-39 by this Court in evidence. He has drawn my attention to the recital in the said sale deed to contend that the vendors therein i.e. Defendant Nos. 1 and 4 acquired right in the said flat after the death of Sureshchandra Jhaveri. He would submit that for a period of 9 months Defendant Nos. 1 and 4 were tenants of the landlord in the said flat prior to they entering into the registered sale deed on 15.12.1994. He would submit that no challenge has been raised by the Plaintiff to the Defendants having paid the consideration of Rs. 1.5 Lacs for acquisition of the flat in Soni Chambers. On the issue of law, he would submit that seeking such a relief that this particular flat belonged to Sureshchandra Jhaveri is clearly barred by the provisions of Benami Transactions Act, 1988 and in so far as this flat is concerned, the Suit is not maintainable because it is the specific case of the Plaintiff that despite the aforesaid admitted facts, the said flat belonged to

Sureshchandra Jhaveri. The basis of the Plaintiff's case and allegation in normal terms would be that after the demise of Sureshchandra Jhaveri the said flat was acquired by the answering Defendants in their names with the monies received from Sureshchandra Jhaveri. That the onus to prove this fact is on the Plaintiff which she has not discharged. He would submit that merely repeatedly asserting the pleadings cannot prove the Plaintiff's case unless she discharges the burden of proof of the allegations made by her in the Suit plaint. Plaintiff in the present case has failed to prove that this flat belonged to the ownership of Sureshchandra Jhaveri.

7.3. With respect to property being Office premises at BKC i.e. Item No. 2 in Exh. A to the Suit plaint, he would submit that the said office premises were booked by Defendant No. 1 in the name of Suhir Diamonds of whom the Defendant No. 1 is the sole proprietor by making an Application bearing No. 1533 on 12.11.1991. He would submit that this Application was made seeking allotment of the office premises to Bharat Diamond Bourse and resultantly on 28.01.1992 the allotment of this office premises was made to Suhir Diamonds on a long lease. He would submit that pursuant thereto and until 2013 the said office premises building was under construction. He would submit that until 2013 Defendant No. 1 paid the installments for acquisition of the said office in the name of Suhir Diamonds and paid over a total consideration of Rs. 18,83,000/- for acquisition of the said

office admeasuring 269 sq. ft. He would submit that possession of the said office premises was received by Defendant No. 1 in the year 2013 and he has been occupying and using the said office premises for conducting his diamond trading business. He would strongly argue that the date of Application, the form of the Application and the date of Allotment letter are prior to the demise of Sureshchandra Jhaveri. He would submit that when the Application was made by Defendant No. 1 for seeking allotment of the office premises to Bharat Diamond Bourse on 12.11.1991, Defendant No. 1 was already 9 years into the diamond trading business. He would submit that at that time he was based in Surat when he made the Application for the office premises in BKC Bombay. He would submit that the allegation of Plaintiff is that the said office belonged to Sureshchandra Jhaveri which once again would mean that the acquisition of the said office by Defendant No. 1 was *benami* in nature. He would submit that while making such a claim it is the duty of Plaintiff to place on record appropriate cogent material evidence to show as to how the said office premises at BKC, Bombay belonged to Sureshchandra Jhaveri. She has not proved whether the funds were paid by Sureshchandra Jhaveri or the allotment was made to him. Pursuant to the Application having been sanctioned and approved and allotment having been done on 28.01.1992, Defendant No.1 paid the entire total consideration from his bank account between 1992 to 2013 in installments and therefore

it cannot lie in the mouth of the Plaintiff to contend that the said office premises belonged to Sureshchandra Jhaveri who expired subsequently on 29.06.1993. He would submit that Plaintiff has not placed on record any relevant documentary evidence to substantiate her alleged claim that this office premises at BKC belonged to Sureshchandra Jhaveri or how or whether any consideration was paid over by Sureshchandra Jhaveri for acquisition of the said office premises. He would contend that the said office premises at BKC is a self acquired property of Defendant No.1 in its entirety and belonged to the ownership of Defendant No. 1 exclusively and therefore cannot be the subject matter of partition.

7.4. With respect to the property being flat No. 104, Prabhudarshan CHS at Surat which is Item No. 3 in the list at Exh. A in the Suit plaint, he would submit that in so far as this property is concerned, there is a little bit of history thereto. He would submit that all that the Plaintiff has contended in the Suit plaint is that this flat was purchased during the life time of Sureshchandra Jhaveri and it is now standing in the name of Defendant No. 1 and therefore this Flat belongs to Sureshchandra Jhaveri and needs to be apportioned / partitioned amongst his legal heirs. He would submit that the said flat No. 104 in Prabhudarshan CHS was purchased by the deceased namely Sureshchandra Jhaveri on 21.03.1967 for the first time. However on 13.05.1976 the said flat was sold by Sureshchandra Jhaveri to Lalit

Kumar Kapasi. However the first wife of Sureshchandra Jhaveri repurchased the said flat from Lalitkumar Kapasi on 16.01.1978. She met with a car accident within 15 days thereafter on 13.02.1978 and expired. In the meanwhile the flat came to be transferred in her name after her demise on 25.02.1978 by the Co-operative Housing Society allowing the transfer. It is further seen that four years thereafter the Society passed a resolution permitting transfer of shares of the said flat in the name of Defendant No. 1 on 07.02.1982 in view of the fact that Defendant No. 1 was nominated as the sole nominee by his mother Rasilaben Jhaveri who had purchased the said flat on 16.01.1978. In support of his submission, Defendant No. 1 has placed on record the Society share certificate which proved the transfer of the said flat from the name of Sureshchandra Jhaveri as it stood originally to Mr. Lailtkumar Kapasi and thereafter to Rasilaben Jhaveri and finally to Defendant No. 1 according to the aforementioned dates. Mr. Chavan has been candid enough to the Court to submit that in view of creation and extinguishment of rights in the said flat on the aforementioned dates, it cannot be asserted by Plaintiff that the said flat belonged to the exclusive ownership of Sureshchandra Jhaveri at the time of his demise or even rather it was purchased by Sureshchandra Jhaveri when the aforementioned facts are clearly admitted facts by both parties. He would also be fair to inform the Court that transfer of the said flat onto the name of Rasilaben Jhaveri

by the Society on the basis of the sale deed between Rasilaben Jhaveri and Lalitkumar Kapasi was effected only after her demise. In the same breath he would also therefore inform the Court that the further transfer of the said flat by the Society onto the name of Defendant No. 1 as nominee of Rasilaben would be subject to the earlier transfer. He would fairly inform the Court that at the highest it can be construed that it was Rasilaben Jhaveri who was the owner of the said flat which was transferred onto the name of Defendant No. 1 and pursuant to her demise on 13.02.1978 which is after the date of purchase of the said flat on 16.01.1978, the said flat would devolve upon her legal heirs and her legal heirs at the then time would include Sureshchandra Jhaveri, Defendant Nos. 1, 2 and 3. He would therefore fairly inform the Court that at the highest on the date of demise of Rasilaben Jhaveri, Sureshchandra Jhaveri would be entitled to 1/4th share in the said flat and upon his demise, his 1/4th share would have to be apportioned to his legal heirs namely the Plaintiff (his second wife) and Defendant Nos. 1, 2 and 3 (his children). Thus out of his 1/4th share, Plaintiff would be at the highest entitled to 1/4th share therein which would effectively mean that Plaintiff is entitled to 1/16th share in the said flat in Prabhudarshan CHS and nothing more. He would submit that this would only be possible if this Court rejects the ownership claim of Defendant No. 1 in the said flat which has stood ground since the transfer of shares having been permitted by the Co-

operative Housing Society in his name as far back as on 17.02.1982. He would submit that the share certificate with the duly transferred name of the Defendant No. 1 has been placed on record and marked as exhibit and this has not been challenged or denied by the Plaintiff till date. He would submit that merely because the said flat was purchased by Sureshchandra Jhaveri at the inception stage on 21.03.1967, it cannot be concluded that the said flat belonged to him or was in his ownership until his demise because of the aforementioned intervening events which stand proven by documentary evidence. He would submit that these intervening events have extinguished the rights of Sureshchandra Jhaveri in the said flat and created fresh right of entitlement which have been proved by Defendant No.1 by placing on record copies of the registered agreements and share certificate issued by the Society, copies of the Society minutes of meetings, letters addressed by the Society to Defendant No. 1 and the resolutions passed by the Society. He would submit that such overwhelming documentary evidence of the intervening circumstances clearly defies the bald case of the Plaintiff seeking entitlement of this particular flat exclusively in the name of Sureshchandra Jhaveri, the deceased.

7.5. With respect to the office premises at Panchratna Building, Peeplasheri, Jadakhadi, Surat which is at item No.4 in the list at Exh. A, he would submit that this property was purchased in the name of

Suhir Diamonds by Defendant No. 1 under a registered sale deed date 02.11.1983. He would submit that it is Plaintiff's case that she is entitled to 1/4th share in this property based on the premise that Sureshchandra Jhaveri at the time of his demise in 1993 was the owner of this office premises. To refute the claim of the Plaintiff he would submit that this office premises was purchased by the Defendant No. 1 in the name of Suhir Diamonds, his proprietorship firm in the year 1983 which was ten years before the demise of Sureshchandra Jhaveri. He would submit that the entire plaint is completely silent about the existence and the entitlement of Suhir Diamonds in respect of the immovable properties including this property. He would submit that the entire plaint is completely silent on the aspect of whether the business and the money earned through Suhir Diamonds belonged to Sureshchandra Jhaveri and this is not even the case of the Plaintiff. He would vehemently submit that only at the time of witness action, for the first time in the evidence filed by the Plaintiff, she has claimed that Suhir Diamonds belonged to the deceased Sureshchandra Jhaveri. He would submit that such a stand came to be adopted by Plaintiff without making any such claim or assertion in the Suit plaint but only after going through the defence taken by the answering Defendants in their Written Statement as a complete afterthought. He would submit that the stand adopted by Plaintiff for the first time in her evidence claiming entitlement of Sureshchandra Jhaveri to Suhir Diamonds, a

proprietorship firm established by Defendant No. 1 is nothing but a complete afterthought and most importantly it is not even corroborated or supported by any documentary evidence whatsoever enabling the Plaintiff to maintain such a stand. He would submit that the registered sale deed dated 02.11.1983 for acquisition of this office premises has been taken on record in evidence and marked as Exhibit. Since 1983 i.e. the date of its purchase it has been in the possession of Defendant No. 1 and for 10 years thereafter, Sureshchandra Jhaveri did not claim any right in the said office at Surat. In fact, Sureshchandra Jhaveri resided in Bombay at that time. He would submit that the Plaintiff has taken a completely different stand from that taken in the Suit plaint in her affidavit of evidence to assert that Sureshchandra Jhaveri purchased the Panchratna office in 1983 in the name of Suhir Diamonds and paid the entire consideration for acquisition of the said property. He would submit that Plaintiff has miserably failed in adducing any evidence in respect of her alleged claim that Sureshchandra Jhaveri paid the entire consideration for acquisition of this office or that the entire business of Suhir Diamonds was conducted by and belonged to Sureshchandra Jhaveri in its entirety. He would submit that Plaintiff has even failed to prove that consideration paid for acquisition of this office premises was provided to Defendant No.1 by Sureshchandra Jhaveri as alleged by her. He would submit that despite the Written Statement filed by Defendant

No. 1 on 07.10.2003, Plaintiff failed to produce any relevant or cogent documentary evidence in respect of her above claim and it is only in the affidavit of evidence that an entirely new case was alleged that Suhir Diamonds was run by deceased Sureshchandra Jhaveri for the first time. He would submit that Defendant No. 1 has filed his income tax return in the year 1984 and has also produced on record Challan of the year 1983 to contend that Defendant No. 1 was in business since that time. He would submit that certified copy of the registered sale deed of this Panchratna office is taken on record as Exhibit and its execution is proved by Defendant No.1. It shows that it has been executed only by Defendant No. 1 and most importantly consideration of Rs. 88,451/- was paid from the bank account of Defendant No.1 by cheque No. 2460 dated 11.11.1983 drawn on Bank of India, Lalgate Branch, Surat. Hence he would submit that this office property being the exclusive self acquired property of Defendant No. 1 10 years prior to the demise of Sureshchandra Jhaveri cannot be deemed to be his property after his demise.

7.6. Next he would submit that it is Plaintiff's case that the deceased was the owner of five horses. He would submit that Plaintiff states that Sureshchandra Jhaveri was owner of four race horses namely Rishi, Packer, Jay and Individuality without giving any details whatsoever. He would submit that in the Written Statement Defendant No. 1 has placed on record the entire details of the status

of the five horses belonging to the deceased Sureshchandra Jhaveri which were managed by RWITC. These details were received from the said Club. He would submit that Sureshchandra Jhaveri had 1/3rd share in the horse called Diamond Park whose racing tenure got over on 05.05.1992. He was therefore given as a hack for production of anti-snake venom serum. Next he would submit that the horse called Individuality was sold on contingency basis and the decision to sell this horse was taken by the Plaintiff and Defendant No.1 together and both of them signed the indemnity bond and submitted the same to RWITC. This horse was thereafter sold to one D. Oza on 09.02.1994 and he expired on 17.08.1994. Horse called Jay/Jai was owned jointly by Sureshchanra Jhaveri, Plaintiff, Defendant No. 1 and Defendant No. 4. Once gain this horse was sold on 19.02.1994 on contingency basis through the RWITC to Purtwisingh Jodha, his wife and Lt. Col. Govindsingh. The horse called Rishi was leased to the deceased Sureshchandra Jhaveri on 15.07.1992 and the lease was cancelled on 19.02.1994. This horse was retired on 01.05.1995 and it never formed part of the estate of the deceased. Horse called Packer was owned by the deceased Sureshchandra Jhaveri (50%), Plaintiff (25%) and Govindsingh (25%). This horse was sold on 19.02.1994 on contingency basis to Mr. and Ms. M.P. Jodha and Govindsingh and thereafter further sold to Digvijay Singh Shekhavat on 27.11.1995. This horse had won a few races after its transfer and as per the terms

of the contingency sale, 50% of the prize money was deposited in the account of the Plaintiff and Sureshchandra Jhaveri maintained by RWITC. That Court Receiver has taken charge of this account and the Plaintiff is aware of the same. Defendant No. 1 would not have any objection for the Plaintiff to take over the monies from this account if she so desired. In respect of LIC policies, he would submit that Defendant No.1 had provided full particulars of the LIC policies purchased by deceased Sureshchandra Jhaveri and there were six LIC polices, details of which are as under:-

Sr. No.	Policy Number	Nominee	Amount	Reference
1	017183339 D-48	Rasila Jhaveri	15,000/-	II/165/26 Pg. 263
2	017484045 D-49	Defendant No. 2	50,000/-	II/165/27 Pg. 265
3	017484044 D-50	Defendant No. 3	50,000/-	II/165/28 Pg. 266
4	073590370 D-51	The Sangli Bank	50,000/-	II/165/29 Pg. 270
5	891619302 D-52	Plaintiff and Defendant No. 1	40,000/-	II/166/30 Pg. 273, 275
6	917069612 D-53	Plaintiff	1,50,000/-	II/166/31 Pg. 276

7.7. From the above table, Mr. Chavan would inform the Court that the amount in respect of Policy at Sr. No. 1 was collected by Defendant No. 1. The amount in respect of Policies at Sr. Nos. 2 and 3 were collected by Defendant Nos. 2 and 3, the married daughters of

Sureshchandra Jhaveri and for this Defendant No. 1 is not responsible. The amount of Policy at Sr. No. 4 has been deposited in Court as per order dated 01.12.1999. The amount against Policy at Sr. No. 5 though would stand to the entitlement of the Plaintiff and Defendant No. 1 jointly, the same has been encashed by the Plaintiff and this fact has been confirmed by LIC vide its letter dated 03.12.1999 appended at page No. 275 of the pleadings. LIC in this letter has confirmed that the money has been given to the Plaintiff and the Plaintiff has also acknowledged the same. Policy at Sr. No. 6 has been encashed entirely by the Plaintiff and she has admitted the same in her cross-examination.

7.8. Mr. Chavan has next drawn my attention to a crucial submission according to Defendant No. 1 and he would submit that the said submission is such that the Plaintiff would not be entitled to any share whatsoever and the Plaintiff is estopped from making any claim to the estate of the deceased Sureshchandra Jhaveri. He would draw my attention to a Memorandum of Understanding of 1989 and would submit that due to strained relations between the Plaintiff and the deceased Sureshchandra Jhaveri at the then time, the deceased had sent a divorce notice through his Advocate Wadia Ghandy & Co. to the Plaintiff. He would submit that in response to the said notice Plaintiff admitted the contents of the notice but in order to save the marriage and due to intervention of relatives, the deceased agreed not to divorce

the Plaintiff. He would submit that at this juncture Plaintiff and deceased executed the Memorandum of Understanding / Agreement wherein Plaintiff agreed not to claim any right in any of the properties of the deceased during and after his lifetime. He would submit that under the said Memorandum of Understanding / Agreement Plaintiff would be entitled to residence for her life in Sagar Cottage premises which was their residence and Rs. 2000/- per month by way of maintenance. Though the Plaintiff would submit that Plaintiff has not denied this Memorandum of Understanding / Agreement but according to Plaintiff the said agreement was executed by misrepresentation, fraud and collusion and the Plaintiff's signature thereon were obtained by fraud.

7.9. In view of his above submissions he would submit that if the evidence produced by the Defendants is seen, there will be no doubt whatsoever in the mind of the Court that the properties claimed by the Plaintiff to be allegedly belonging to Sureshchandra Jhaveri, her deceased husband in fact never belonged to him and that the said properties belonged to Defendant No. 1. He would submit that the Plaintiff has not discharged the burden of proof of proving her alleged case. In that view of the matter, he would submit that if the Plaintiff has failed to discharge the burden of proving that the properties at Exh. A and B belonged to deceased Sureshchandra Jhaveri, the Plaintiff cannot be entitled to any share in the said properties much

less 1/4th share claimed by her. He would submit that Plaintiff's case in the Suit plaint is thoroughly insufficient and she has not placed on record any relevant or cogent documentary evidence even in her evidence to justify her alleged claim in the Suit plaint and hence the Suit deserves to fail. He would therefore urge the Court to dismiss the Suit. He would also urge that the present Suit is barred by the provisions of Benami Transactions Act, 1988 and more specifically Section 4 thereof. He would submit that in view of the provisions of the Benami Transactions Act, 1988, it is the Plaintiff's own case as pleaded in the Suit plaint that three out of the four immovable properties are held *benami* in the name of Defendant No. 1 and they would belong to the deceased Sureshchandra Jhaveri. In that view of the matter, the present Suit deserves to fail and be dismissed with costs. He would draw my attention to the order dated 26.08.2003 passed by the Supreme Court in the SLP filed by Defendant No. 1 to contend that the said order clearly states that all payments made thereunder and any amounts due to either of the parties shall be subject to the orders passed in the Partition Suit which is the present Suit before me. He would submit that the Defendant No. 1 has adhered to the deposit orders until the present and has paid an amount of Rs. 25,17,038/- in installments to the Plaintiff right from inception as directed by the Court. He would therefore urge the Court to dismiss the suit proceedings and pass appropriate orders regarding any further

deposits to be made to the Plaintiff. In support of his submissions he has referred to and relied upon the following decisions:-

- (i) *Bhagwat Sharan Vs. Purushottam & Ors.*¹¹;
- (ii) *Gangamma Vs. G. Nagarathnamma & Ors.*¹²;
- (iii) *Jaydayal Poddar Vs. Bibi Hazra*¹³;
- (iv) *Prem Singh & Ors Vs. Birbal & Ors.*¹⁴;
- (v) *Ramti Devi Vs. UOI*¹⁵;
- (vi) *Sangeeta Sehgal Vs. Gautam Dev*¹⁶;
- (vii) *Eda Mary Vs. Yedla Elzebeth*¹⁷;
- (viii) *Sarbati Devi Vs. Usha Devi*¹⁸;
- (ix) *Govindrao Vs. Dadarao*¹⁹;
- (x) *Clemant Soares Vs. Juliana Farias*²⁰;
- (xi) *Oriental Insurance Company Vs. Premlata Shukla*²¹.

8. I have heard Mr. Lad, learned Advocate for Petitioner and Mr. Chavan, learned Advocate for Defendants and with their able assistance perused the pleadings of the present case as also the evidence produced on record. Submissions made by the learned Advocates have received due consideration of the Court.

9. In the present case it is seen that the Plaintiff has sought entitlement and partition by metes and bounds of her alleged 1/4th

11 2020 (6) SCC 387

12 (2009) 15 SCC 756

13 1974(1) SCC 3

14 2006 (5) SCC 353

15 (1995) 1 SCC 198

16 2022 SCC Online Del 2685

17 2018 SCC Online Hyd. 2153

18 (1984) 1 SCC 424

19 2004 (4) Mh.L.J. 653

20 Judgment dated 23.11.2016 in Testamentary Suit No. 12 of 2006

21 2007 (13) SCC 476

share in the Suit property on the principal ground that the Suit properties belonged to the deceased Sureshchandra Jhaveri, her husband and according to her, the Plaintiff and Defendant Nos. 1 to 3 would be entitled to a share of 25% each in the same. It is seen that Plaintiff married the deceased Sureshchandra Jhaveri on 23.01.1987. Sureshchandra Jhaveri expired on 25.06.1993. Plaintiff filed the Suit on 06.06.1996. As delineated herein above, Suit properties are broadly classified into two parts namely immovable and movable properties. The immovable properties comprise of four properties i.e. (i) Flat in Soni Chamber, Avantikabai Gokhale Road, Mumbai – 400 004; (ii) Office premises at BKC in Bharat Diamond Bourse; (iii) Flat No. 104 in Prabhudarshan CHS, Surat and 4) Flat in Panchratna Building, Pipla Sherry, Jadakhadi, Surat. The movable properties as enumerated in Exh. B are classified in the following groups i.e. (i) National Saving Certificate (1); (ii) Four race horses viz. Rishi, Packer, Jay/Jai and Individuality; (iii) motor car, scooter, furniture and crockery; (iv) Insurance policies and (v) Misc. movable properties.

10. Both parties have led evidence. Cross-examination of Plaintiff and Defendant No. 1 has been recorded by the Court appointed Commissioner. Status of the aforesaid properties as on the date of demise of Sureshchandra Jhaveri *qua* the evidence led by both the parties and the documentary evidence produced to prove their status as on that date along with the date of acquisition of the said

properties and materiel evidence produced in that regard will therefore have to be seen. It would be convenient to take up the issue of entitlement of each of these properties separately considering that the date of acquisition of these properties and the status of these properties governing the rights of parties thereafter until the date of demise of Sureshchandra Jhaveri on 29.06.1993 and even thereafter until the date of filing of the Suit in 1996 and pursuant thereto. Hence I propose to deal with the abovesaid immovable properties individually so as to ascertain the right, title and interest therein of the concerned parties (Plaintiff *vis-a-vis* Defendant No. 1 / Defendants or whether it be the Plaintiff or the Defendants or Sureshchandra Jhaveri, the deceased).

11. With respect to the first immovable property namely flat in Sony Chamber, Plaintiff has pleaded in the plaint that it was purchased during the lifetime of Sureshchandra Jhaveri in the name of Defendant No. 1. Save and except this singular averment made in paragraph Nos. 4 and 5 of the Suit plaint, there is no other averment in the Suit plaint to substantiate the acquisition of this property. In the Written Statement Defendants in paragraph Nos. 3, 14, and 37 have dealt with the above property contending that it was purchased under the registered sale deed by Defendant Nos. 1 and 4 jointly on 15.12.1994 (17 months after demise of Sureshchandra Jhaveri). Thus on the face of record, it is seen that the contention that this property was

purchased during the life time of deceased Sureshchandra Jhaveri is *prima facie* false and incorrect. It is seen that this property was purchased after the demise of Sureshchandra Jhaveri and the registered sale dated deed is 15.12.1994. This document is taken on on record in evidence and marked as Exh. B-39 which is appended at page 187 to 195 of Volume II of the compilation of documents. Perusal of this sale deed reveals that the vendors therein namely Defendant Nos. 1 and 4 were the tenants of this particular property and they acquired the right in this property by virtue of the registered sale deed dated 15.12.1994 on payment of a consideration of Rs. 1,50,000/-. It has further come in evidence of Defendant No. 1 that the amount of consideration was paid equally by Defendant No. 1 from his bank account in Sangli Bank (Rs. 75,000/-) and by Defendant No. 4 from her own bank account. Plaintiff has not challenged the registered sale deed dated 15.12.1994. In the evidence led by Plaintiff, it is her case that the residence of Sureshchandra Jhaveri and Plaintiff in Sagar Cottage was sold at the instance and pressure of the Defendants. According to her the said Sagar Cottage premises was sold for Rs. 1,10,00,000/-. Plaintiff has averred that from the sale proceeds of Sagar Cottage premises, one flat in Kashinath Building was purchased in the joint names of Sureshchandra Jhaveri and Defendant No. 1 wherein the Plaintiff and Sureshchandra Jahveri started residing. That Sagar Cottage premises was sold by Sureshchandra

Jhaveri. The flat in Kashinath Building was purchased on 17.04.1993. Sureshchandra Jhaveri expired on 29.06.1993. Defendant No. 1 sold the flat in Kashinath Building on 27.10.1993. Flat in Sony Chambers was purchased by Defendant Nos. 1 and 4 on 15.12.1994. It is alleged by the Plaintiff that this flat in Soni Chambers was purchased by Defendant No. 1 out of the sale proceeds of the flat in Kashinath Building. Without even pleading in the Suit plaint, such is the case of the Plaintiff for the first time in her affidavit of evidence. It has also come on record in evidence that after Plaintiff and Sureshchandra Jhaveri moved to reside in the flat in Kashinath Building, relationship between them strained due to certain critical issues leading to the Plaintiff deserting Sureshchandra Jhaveri and moving out of the said flat and thereafter she went on to reside in her matrimonial home after the demise of Sureshchandra Jhaveri on 29.06.1993, wherein he had 50% share, the other 50% being with Defendant No. 1, this flat was the only flat which belonged to him (50%) on the date of his demise since it was standing in the name of Sureshchandra Jhaveri to the extent of 50% and Defendant No. 1. The fact that this flat belonged to Sureshchandra Jhaveri to the extent of 50% is also clearly admitted by Plaintiff in her cross-examination. However what is pertinent to note is the fact that there is no proof brought on record by the Plaintiff, save and except the averments and the case pleaded in the affidavit of evidence that the sale proceeds of Sagar Cottage premises were used

by Sureshchandra Jhaveri and Defendant No. 1 to buy the flat in Kashinath Building and after the sale of Kashinath flat, the sale proceeds thereof were used by the Defendant No.1 to buy this flat in Soni Chambers. Plaintiff has not proved or placed on record any documentary cogent evidence in this respect save and except her pleadings which cannot be countenanced. It is further seen that the answering Defendant No. 1 in his evidence in rebuttal has placed on record affidavits from the lenders to whom money was owed by Sureshchandra Jhaveri and after his demise the flat in Kashinath Building was sold by Defendant No.1 for an amount of Rs. 9,00,000/- and 50% of the sale proceeds namely Rs. 4.5 Lacs was distributed to the lenders / creditors. Affidavits of those lenders / creditors have been placed on record by Defendant No. 1. The cross-examination of the Plaintiff in this regard is also crucial and cannot be ignored. It is seen that while replying to question Nos. 24 to 27, 100 to 112 and 187 to 210, it is gathered that the evidence given by Plaintiff is without having any personal knowledge of the case pleaded by the Plaintiff. It is also revealed that Plaintiff did not have any knowledge about the debtors and creditors of deceased Sureshchandra Jhaveri. In answer to question No. 101, Plaintiff has admitted that the Sagar Cottage premises were not sold at the instance or pressure of Defendants. This is in contradiction to her pleadings in her affidavit of evidence. In that regard the evidence of the answering Defendant namely Defendant No.

1 is relevant. He has deposed that Sagar Cottage premises were sold since the deceased desired to reside with him in Surat and not with the Plaintiff due to their strained relations. Defendant No. 1 has further deposed that after sale of the Sagar Cottage premises, it was Defendant No.1 who provided funds to Sureshchandra Jhaveri as loan from his business associates for purchase of the flat in Kashinath Building. Defendant No.1 has further deposed that after demise of Sureshchandra Jhaveri, flat in Kashinath Building was sold for Rs. 9,21,000/- to pay off the loans of Sureshchandra Jhaveri and the affidavits of the creditors are placed on record. It is seen that the flat in Sony Chambers was in fact purchased after a period of almost 17 months thereafter by Defendant Nos. 1 and 4. The bank statements of Sureshchandra Jhaveri and Defendant No.1 reflect the payment made for acquiring the flat in Kashinath Building. They are taken on record and marked Exhs. D-9 and D-10 and are appended at page Nos. 613 and 614 of the paper book. Bank statements of Defendant Nos. 1 and 4 in respect of the amounts paid for acquisition of the flat in Sony Chambers are also placed on record by Defendant No. 1 and exhibited as Exhs. D-40 and D-41 and they are appended at page Nos. 690 and 693 of the compilation. This overwhelming documentary evidence of acquisition rather source of acquisition of the flat in Soni Chambers by Defendant Nos. 1 and 4 in December 1994 is not challenged by Plaintiff. The Plaintiff on the contrary has not placed on record any

documentary evidence save and except making bald allegations. Plaintiff would have to prove her case on the basis of affirmative evidence and not on the basis of eliciting a response in cross-examination from Defendant No. 1. The answers given to question Nos. 100 to 107, 317 to 345, 397 to 402 and 406 to 413 show that Defendant has been able to make out a reasonable case to invoke the belief of the Court that based on the above timeline the nexus between the sale of Sagar Cottage premises and purchase of Flat in Kashinath building and thereafter purchase of the flat in Soni Chambers cannot be established at all. It is clearly seen that the Plaintiff's case in the Suit plaint and her affidavit in lieu of examination in chief is completely different. The Plaintiff has failed to prove that this flat purchased by Defendant Nos. 1 and 4 jointly in Sony Chambers can form part of the estate of the deceased Sureshchandra Jhaveri. There is not an iota of evidence placed on record by the Plaintiff in this regard. Neither has the Plaintiff challenged the registered sale deed or the consideration amount paid by Defendant Nos. 1 and 4 to acquire the flat in Soni Chambers. To link the purchase of the flat in Soni Chambers with the sale of the flat in Kashinath Building, one has to see the timeline in that regard. Both these transactions have not taken place within a close proximity of time, rather there is a gap of more than 17 months between these transactions. At the highest the Plaintiff would be entitled to her share in the sale proceeds of the flat

in Kashinath building which was jointly belonging to Sureshchandra Jhaveri and Defendant No. 1. At the highest then the Plaintiff's share would be Rs. 2,30,250/- out of total consideration received by Defendant No. 1 of Rs. 9,21,000/- . As delineated herein above the flat in Kashinath Building was an immovable property which belonged to Sureshchandra Jhaveri (to the extent of 50% share) during his lifetime and at the time of his demise. The sale of the said flat in Kashinath building by Defendant No. 1 to the exclusion of the legal heirs of Sureshchandra Jhaveri is therefore not right. The move on the part of the Defendant No. 1 to sell the flat in Kashinath Building immediately after the demise of Sureshchandra Jhaveri, his father clearly deprives the right of the Plaintiff of her share and entitlement in the sale proceeds as she is the legally wedded wife of the deceased. This is notwithstanding the fact that the Plaintiff had waived her right by virtue of the Memorandum of Undertaking. Though Defendant No. 1 has placed on record certain documentary evidence to prove that the 50% sale proceeds were paid off by him towards debts of Sureshchandra Jhaveri to his creditors and creditors' affidavits were also placed on record, it still does not absolve the Defendant No. 1 from his act of sale of the said flat in Kashinath building to the exclusion of the Plaintiff's share. Hence I am not inclined to accept the case of the Defendant No. 1 that the entire amount of the sale proceeds belonging to the share of Sureshchandra Jhaveri were paid off by him

to his creditors. Since the act of Defendant No. 1 of sale of flat in this regard was to the exclusion of the Plaintiff who is admittedly one of the legal heir of the deceased Sureshchandra Jhaveri on the date of his demise, the Plaintiff would be entitled to an amount of Rs. 2,30,250/- as on the date of sale of the flat in Kashinath building i.e. 27.10.1993. Since Defendant No.1 solely handled the transaction on his own free will, he will be liable to pay this amount as determined above to Plaintiff being her 1/4th share along with interest. I determine the rate of interest at the rate of 9% per annum simple interest to be paid on the amount from 27.10.1993 upto the date on which the same is paid by Defendant No. 1 to the Plaintiff. In so far as the challenge of the Plaintiff to seek entitlement to her share in the Sony Chambers flat belonging to Defendant No. 1 and Defendant No. 4 jointly is concerned, the said challenge completely fails in the absence of any relevant or material evidence / pleadings. Plaintiff is therefore not entitled to any share whatsoever in the Soni Chambers flat on the premise that the said flat is the property belonging to deceased Sureshchandra Jhaveri.

12. Next property in line is the BKC office at Mumbai in Bharat Diamond Bourse. As per the averment in the Suit plaint, it is pleaded by Plaintiff that Sureshchandra Jhaveri, her husband entered into an agreement with one Bharat Bush Association i.e. Association of Diamond Merchants and on the basis of that agreement he has a right

in the BKC office and the copy of this agreement was with Defendant No. 1. This is the case of Plaintiff pleaded in paragraph No. 5B of the Suit plaint. According to Plaintiff as enumerated in paragraph No. 4 of the Suit plaint this property namely BKC office was purchased by deceased Sureshchandra Jhaveri during his lifetime in the name of Defendant No. 1, however in paragraph No. 5 of the same Suit plaint, the Plaintiff has averred that the deceased Sureshchandra Jhaveri entered into an agreement with Bharat Bush Association i.e. Association of Diamond Merchants and hence he had a right to receive this office and copy of this agreement is with Defendant No. 1. Save and aforesaid contradictory pleadings, there is nothing in the Suit plaint to substantiate the claim of Plaintiff that this office belonged to the deceased. That apart in witness action, Plaintiff has failed to produce the alleged agreement between deceased Sureshchandra Jhaveri and Bharat Bush Association nor has the Plaintiff attempted to obtain a copy of the said agreement from Bharat Bush Association nor the Plaintiff has issued witness summons to the said Bharat Bush Association to substantiate her case in paragraph No. 5. With such contradictory pleadings of Plaintiff, the Defendants' Written Statement throws substantial light on the issue of acquisition of this office. Paragraph No. 15 of the Written Statement filed by Defendant No. 1 read with the exhibits at page Nos. 200 to 205 of the Written Statement reveal that on 12.11.1991 (during the lifetime of

Sureshchandra Jhaveri) Defendant No. 1 made an Application bearing No. 1553 seeking allotment of this BKC office premises to Bharat Diamond Bourse. This Application is placed on record and appended to the Written Statement. I have perused the same. It is made by Defendant No. 1 in the name of Suhir Diamonds. This Suhir Diamonds is the sole proprietorship concern / firm of Defendant No. 1. At Exh. H, page No. 207, allotment letter dated 28.01.1992 of this office premises in the name of Suhir Diamonds is appended. The aforesaid documentary evidence produced by Defendant No. 1 *prima facie* falsifies the case of Plaintiff, since both these incidents and events have occurred during the lifetime of Sureshchandra Jhaveri and therefore it cannot lie in the mouth of the Plaintiff to contend that this office belonged to the deceased Sureshchandra Jhaveri or to the estate of the said deceased after his demise. After this Written Statement is filed on record, Plaintiff has thereafter pleaded a completely different case altogether in her evidence affidavit and contended that the payments for acquisition of this office were made from the deceased's business account and cheques were issued from the Sangli Bank account being A/c No. 35 and were signed by deceased. She would further contend and allege that though Suhir Diamonds was shown to be the sole premiership concern of Defendant No. 1, it was actually run by the deceased. If that be the case, nothing prevented the Plaintiff from bringing on record the material evidence in that regard and also

asserting these facts in the Suit Plaintiff. Plaintiff not been able to place on record any documentary evidence as to how the business of Suhir Diamonds belonged to the deceased Sureshchandra Jhaveri or to show that he was the authorized signatory of Defendant No. 1. On being quizzed on this aspect, Plaintiff has confirmed that she never assisted the deceased Sureshchandra Jhaveri in his business nor did she have any knowledge about any person associated with his business as also the accounts of the business of the deceased Sureshchandra Jhaveri. It is seen that Defendant No. 1 in his evidence has however proved and placed on record the application dated 12.11.1991 bearing No. 1533 which is marked as Exh. D-43. Said application when seen is in the name of Suhir Diamonds along with an acknowledgment slip. The allotment letter is also placed on record and marked as Exh. D-44. It is seen that there is no sale or lease agreement by virtue of the said allotment and all that has been issued is a share certificate dated 01.07.2013 bearing No. 0746214 to 746482 to entitle the allottee namely Suhir Diamonds the right of occupancy of the said office. This affirmative evidence of the Defendant and the further evidence elicited from Defendant No.1 in his cross-examination in this regard is relevant. In the cross-examination of Defendant No.1, it has come on record that this office premises No. EC1140 on the 1st Floor of Tower E of Bharat Diamond Bourse Complex was handed over to Defendant No. 1 in the year 2013. The purchase value of this office premises was Rs.

18.83 Lacs and an amount of Rs. 1.87 Lacs which was paid by Defendant No. 1 by demand draft. It is also come on record that the balance amount was paid in equated installment over a lengthy period of time upto 2013. Thus it is clearly established that in 1991 an Application was made seeking allotment and in 1992 an allotment letter was issued to Defendant No. 1 in the name of Suhir Diamonds. This office was under construction until 2013 for a period of almost 21 years. Sureshchandra Jhaveri expired on 29.06.1993 i.e immediately in the next year after the date of allotment of this office to Suhir Diamonds. Hence to contend that this office premises belonged to the deceased is completely far fetched and cannot be countenanced in the absence of cogent evidence. In fact Plaintiff has produced no evidence at all. Additional relevant documentary evidence in the form of profession tax certificate issued in the name of Suhir Diamonds has been placed on record by Defendant No. 1. The entire amount of Rs. 18.83 Lacs has been paid over by Defendant No. 1 for acquisition of this office premises. Plaintiff has miserably failed to prove that the source of acquisition of this office premises was made from amounts made available by the deceased Sureshchandra Jhaveri. This is so because it is the Plaintiff's case that this office was purchased in the name of Defendant no. 1 only for convenience. If that be so, the Plaintiff has not proved her case at all to seek entitlement of any share in this office premises on the ground that it belonged to

Sureshchandra Jhaveri. The overwhelming evidence produced by Defendant No.1 to the contrary and more specially the documentary evidence taken on record and marked as Exhs. D-42 to D-45 completely demolishes the Plaintiff's case. Further on the date of demise of Sureshchandra Jhaveri i.e. on 29.06.1993, it cannot be said that the deceased had paid the purchase price for this office and had purchased this office premises in the name of Defendant No. 1 for convenience. In that view of the matter the case of the Plaintiffs seeking partition or share in this office premises completely fails and is liable to be dismissed.

13. Next immovable property in the list of the properties at Exh. A is property being flat No. 104, Prabhudarshan CHS at Surat which is claimed by the Plaintiff to be a property belonging to the deceased Sureshchandra Jhaveri. For convenience and reference this property will be referred to as Prabhudarshan flat. It is the case of Plaintiff in paragraph Nos. 4 and 5 of the Suit plaint that this flat was purchased during the lifetime of the deceased in the name of Defendant No. 1. Save and except this averment, there is nothing in the Suit plaint to substantiate the Plaintiff's case and claim. Be that as it may, in the Written Statement, Defendant No. 1 has given a vivid account of the acquisition of this flat along with the entire timeline. According to Defendant No. 1 this flat was originally purchased by the deceased Sureshchandra Jhaveri on 21.03.1967. Thereafter the said

flat was sold by the deceased to Lalitkumar Kapasi on 13.05.1976. Thereafter mother of the Defendant No. 1 and first wife of the deceased Sureshchandra Jhaveri repurchased the said flat from Lalitkumar Kapasi on 16.01.1978. Within one month from the date of this purchase, Rasilaben Jhaveri perished in a car accident on 13.02.1978. However despite the above incident, this flat was transferred in the name of Rasilaben Jhaveri on the basis of the registered agreement dated 16.01.1978 by the Society. This transfer was effected by the Society on 25.02.1978 after Rasilaben had expired and without considering her demise the flat was transferred onto her name. Be that as it may, it is seen that the Society thereafter effected a second transfer of shares in respect of this very flat in the name of Defendant No. 1 on 07.02.1982 and since that time this flat has been standing in the name of Defendant No. 1. It is pertinent to note that both parties have not produced any documentary evidence in respect of the purchase / repurchase of Prabhudarshan flat earlier, but the share transfer certificate placed on record in evidence confirms the above dates and events. However, one thing is clear that this flat stood in the name of Rasilaben Jhaveri before it was transferred to the name of Defendant No. 1. It is the case of Defendant No. 1 that since he was the sole nominee in respect of this flat nominated by Rasilaben, therefore in 1982 on his Application, the Society transferred the shares in this flat in his name. It needs to be stated and it is settled law that a

nominee cannot derive title to the property to the exclusion of alleged heirs, if the said property is transferred onto his name. The nominee holds the property in trust on and for the benefit of the true owner of the property and the nominee cannot assume himself to have become owner of the flat which is transferred onto his name. In the present case it is seen that admitted position is that Rasilaben i.e. wife of deceased Sureshchandra Jhaveri acquired the rights in the said flat on 16.01.1978. However she met with a car accident on 13.02.1978 and expired on 16.02.1978. The Society transferred the shares in the said flat by virtue of the agreement of 16.01.1978 in the name of Rasilaben Jhaveri. In the above facts, Defendant No. 1 cannot claim to be the sole owner of the said flat on the ground that the said flat was transferred to his name by the Society as he was the sole nominee of Rasilaben. The said flat has to be declared to be the property of Rasilaben Jhaveri i.e. wife of the deceased and on her demise her legal heirs would be entitled to the said flat. Admittedly the Plaintiff comes into the picture only in the year 1987 i.e pursuant to her marriage with Sureshchandra Jhaveri. Hence on the date of demise of Rasilaben Jhaveri i.e. 13.02.1978, her heirs namely Sureshchandra Jhaveri, Defendant Nos. 1, 2 and 3 would be entitled to a share in the said flat. Thus deceased Sureshchandra Jhaveri would be entitled to 1/4th share in the said flat and on 29.06.1993, his legal heirs namely Plaintiff and Defendant Nos. 1 to 3 would be entitled to an equal share

from the share belonging to him in the said flat. Hence I am inclined to hold that if Rasilaben expired on 13.02.1978, she was survived by her husband, son and two daughters and thus each of them were entitled to 1/4th share in the Prabhudarshan flat after her demise. The 1/4th share of the husband namely the deceased Sureshchandra Jhaveri remained in fact upto his death in 1993 and it would be available to his four legal heirs namely the Plaintiff and Defendant Nos. 1 to 3. Thus the Plaintiff is entitled to 1/16th share in the Prabhudarshan flat.

14. Fourth immovable property is the office premises situated on 2nd floor of the building known as Panchratna Building, Pipla Sherry, Jadakhadi, Surat. For convenience and reference, this office premises will be referred to as 'Panchratna Office'. According to Plaintiff this office premises was purchased in the name of Defendant No.1 by the deceased in the year 1983. The registered sale deed dated 02.11.1983 is placed on record by Defendant No. 1. It is marked in evidence. The vendor in the said agreement is Suhir Diamonds which is the sole proprietorship concern of Defendant No. 1. Since 1983 i.e. the date of purchase, this office premises has been in possession of Defendant No. 1. It is the case of the Plaintiff in her affidavit of evidence that the deceased Sureshchandra Jhaveri paid the entire consideration for acquiring this office premises in 1983 though this case is not pleaded by the Plaintiff in the Suit plaint. It is averred by

the Plaintiff that when this office premises was purchased in 1983 Defendant No. 1 was merely 21 years old and therefore he could not be in a position to pay the consideration for acquisition of this office premises. However in her cross-examination Plaintiff in reply to Q. No. 241 has clearly admitted that she did not have any document to show that the business of Suhir Diamonds belonged to the deceased Sureshchandra Jhaveri or it was run by the said deceased. The certified copy of the sale deed dated 02.11.1983 has been produced on record as evidence by Defendant No. 1 and its execution has been proved by him. The said sale deed is executed by Defendant No.1 himself. It reveals that consideration of Rs. 88,451/- was paid from the bank account of Defendant No. 1's proprietorship concern i.e. Suhir Diamonds by cheque no. 2460 dated 11.11.1983 drawn on Bank of India, Lalgate branch, Surat. One of the submissions advanced by Plaintiff is that the acquisition of this Panchratna office by Defendant No. 1 was not reflected in the income tax assessment Challan for the year 1983-84 and hence it should be derivated that the said office was purchased by the deceased Sureshchandra Jhaveri in the name of Defendant No. 1 for convenience. However it is seen that this contention of the Plaintiff cannot negate the certified copy of the registered sale deed dated 02.11.1983. That apart Plaintiff has not placed on record any relevant or material evidence to show whether the consideration paid for acquisition of this office premises was in fact

and indeed paid by the deceased Sureshchandra Jhaveri in any manner whatsoever. The payment of the total consideration of Rs. 88,451/- was paid from the bank account of Suhir Diamonds maintained in Bank of India, Lalgate branch, Surat. Suir Diamonds is the sole proprietorship concern of Defendant No. 1. The Plaintiff did not maintain any challenge to the registered sale deed dated 02.11.1983 nor does the Plaintiff has been able to prove that the business of Suhir Diamonds belonged to the deceased. Such a case is not even stated in the Suit Plaint. Hence in view of the fact that the registered sale deed has been produced on record by Defendant No. 1 in respect of acquisition of the Pancharatna office, the Plaintiff's case that said office was purchased by the deceased fails.

15. Before I advert to the movable properties, the case of the Plaintiff in respect of Suhir Diamonds needs to be considered for adjudication as it is seen that some of the immovable properties stood in the name of Suhir Diamonds which was a proprietorship concern of Defendant No. 1. Perusal of the plaint and the evidence leads to an inevitable conclusion that no case has been averred or made out in the plaint that the business of Suhir Diamonds was established and carried on by the deceased Sureshchandra Jhaveri and some of the properties were purchased by the said deceased in the name of Suhir Diamonds merely for convenience purpose. The plaint as well as the evidence of the Plaintiff does not prove the fact that the capital / money utilized

for purchasing some of the properties in the name of Suhir Diamonds belonged to the deceased Sureshchandra Jhaveri. It is clearly seen that only after the Defendant No. 1 clarified the above position with respect to some of the properties having been purchased in the name of Suhir Diamonds, the Plaintiff has changed her case entirely in her evidence. This does not stop here. The Plaintiff cannot prove her case merely on the basis of pleadings. There is not an iota of evidence placed on record by Plaintiff to prove her case. The fact that Suhir Diamonds was established and was in the businesses of trading of diamonds at the relevant time in 1983 has been clearly established due to its registration with various Statutory Authorities in respect of its diamond business. The only aberration which the Plaintiff is attempting to take advantage is the fact that one Power of Attorney was given to the deceased Sureshchandra Jhaveri by the Defendant No. 1 who was at the then time residing in Surat to operate the Bank Account in Bombay. This Power of Attorney was in fact given for the limited purpose of acting as Defendant No. 1's agent in absence of Defendant No. 1 in Bombay and more specifically for operating the bank account in Sangli Bank. It is however seen that despite this Power of Attorney, the application for seeking allotment of BKC office was signed by Defendant No.1 himself. It is clearly seen that the case of the Plaintiff as pleaded in her affidavit of evidence is beyond her pleadings in the Suit plaint. In view of the above, I am of the clear

opinion that Plaintiff's case that Suhir Diamonds belonged to the deceased Sureshchandra Jhaveri has no merits and is liable to be rejected and dismissed.

16. In so far as the movable properties are concerned, the claim of Plaintiff pertains to the sale proceeds of the horses, certain shares belonging to the deceased and National Saving Certificate and LIC policies. In so far as the Suit Plaintiff is concerned, Plaintiff has not given any details whatsoever in respect of her alleged claim in so far as Exh. B is concerned. Even in the affidavit of evidence of Plaintiff, no details are given. Whatever details are garnered are from the pleadings of the Defendants. Defendants in their written statement have furnished the details in respect of the status of the four horses allegedly belonging to the deceased on the date of demise and thereafter as also with respect to the LIC policies. In so far as the shares are concerned, the initial burden of prove would lie on the Plaintiff which has not been discharged. In that view of the matter, the case of the Plaintiff in so far as the shares are concerned cannot be accepted.

17. In so far as the LIC policies are concerned, it is seen that in all there are six policies which were taken out by the deceased. Out of these six policies, it is seen that an amount of Rs. 50,000/- has been deposited in this Court as per order dated 01.12.1999 in respect of

Policy No. 073590370-D-51. Copy of this policy is appended at page No. 270 in Volume II of the compilation of documents. The nominee in respect of this policy is the Sangli Bank. Be that as it may, since the policy was taken out by the deceased, all four legal heirs of the deceased would be entitled to the amount which has been deposited in this Court along with accrued interest and hence Plaintiff and Defendant Nos. 1 to 3 would be entitled to receive 25% share in the amount which stands deposited in this Court pursuant to the order dated 01.12.1999 along with accrued interest upto date. In so far as the other policies are concerned, it is seen that two policies at Sr. Nos. 5 and 6 as enumerated in the table appended at paragraph No. 7.6 herein above have been encashed by the Plaintiff. Thus, Plaintiff has received amounts of Rs. 40,000/- and 1,50,000/- against these two policies. It is next seen that Defendant Nos. 2 and 3, the married daughters have encashed two policies of Rs. 50,000/- each whereas Defendant No. 1 has encashed one policy of Rs. 15,000/- which is at Sr. No. 1. Hence no orders are required to be passed in respect of the amount received by the parties against the LIC policies nor will the parties will be liable to pay any share out of the said amounts received by them, save and except the directions given by this Court in respect of the policy at Sr. No. 4 in the table. In so far as the value of the horses are concerned, it is seen that Plaintiff has not stated or given any details whatsoever but has merely claimed unknown amounts

against four horses. In the written statement however substantial and adequate details have been given along with documentary evidence by Defendant No. 1 in respect of four horses. It is seen that Plaintiff has also executed her signature on the indemnity bond and the various forms given by RWITC which are part of record and evidence of the case. Though the Plaintiff may now deny that her signature was obtained fraudulently or even to the extent that it has been forged, Plaintiff has not been able to prove her case at all in so far as this claim is concerned. It is clearly seen that all four horses have been dealt with strictly in accordance with law and in that view of the matter, I am inclined to accept the case of Defendant No. 1 which is enumerated by me in paragraph No. 7.6 herein above. Plaintiff's claim fails totally in this regard. However, there is one direction which needs to be given. According to Defendant No. 1, Court Receiver has taken charge of the account of the horse called Packer which was sold on 19.02.1994 pursuant to the demise of the deceased on contingency basis. It is averred by Defendant No. 1 that this particular horse called Packer had won a few races and as per the terms of contingency sale, 50% of the prize money own by this horse was deposited in the account of Plaintiff and the deceased maintained by RWITC. It is further averred by Defendant No.1 that Court Receiver has taken charge of this account and Plaintiff is aware of the same. Ironically, Plaintiff has failed to give any details of this particular account. It can be possible that the

Plaintiff may not be aware of the same and hence benefit of doubt needs to be given to the Plaintiff in so far as this particular account is concerned. Since Defendant No. 1 has given his no-objection, if the Court Receiver has indeed taken charge of any such account in which the prize money own by this particular horse has been deposited with the RWITC, then considering that the amount belongs to the Plaintiff and the deceased, Plaintiff would be entitled to 50% share in the said amount which stands deposited along with accrued interest. Plaintiff would also be entitled to 1/4th share out of the share of the deceased and equally Defendant Nos. 1, 2 and 3 would be entitled to 1/4th share each. However since Defendant No. 1 has argued across the bar through his Advocate that he does not have any objection if the Plaintiff takes over the monies from this account if she so desires, the Court Receiver is directed by this Court to make appropriate report to this Court after considering an authenticated copy of this judgment in respect of any such account of which he may have taken charge wherein monies have been deposited belonging to the Plaintiff and the deceased and seek appropriate directions of this Court for release of the said monies strictly in accordance with law.

18. In view of the above observations and findings, I am of the clear opinion that the Suit of the Plaintiff fails, save and except to the extent of Plaintiff's 1/16th share in the value of Flat No. 104, Prabhudarshan Society at Surat which is Item No. 3 in the list of

immovable properties at Exh. A to the Suit Plaint and she shall be entitled to the amount of Rs. 2,30,250/- from Defendant No. 1 along with simple interest at the rate of 9% per annum from 27.10.1993 until the payment and / or realization. Defendant No. 1 is directed to pay the aforesaid amount after computation to the Plaintiff within a period of four weeks from the date of this judgment as determined by this Court in paragraph No. 11 herein above.

19. I am informed by Mr. Chavan that by virtue of the Supreme Court order dated 26.08.2003, Defendants were directed to pay compensation of Rs. 10,000/- to the Plaintiff in the interregnum and it was directed that payment of such compensation shall be subject to the outcome of the present Suit proceedings. In view of the final adjudication done by this Court on the basis of the evidence led by the parties, I am inclined to hold that this amount of Rs. 10,0000/- which is being paid by the Defendants to the Plaintiff on monthly basis shall now stand discharged. This interim arrangement shall no longer continue. Defendants shall have no claim on the monies received by the Plaintiff under this interim arrangement until today.

20. Mr. Lad has made a request that in view of the adverse order passed by this Court in respect of three immovable properties, the said order be stayed to enable the Plaintiff to consider maintaining a challenge thereto before the superior Court. That apart Mr. Lad

would next submit that until the Appeal period is over, Defendant No. 1 be restrained from dealing with the three properties which have been held in favour of Defendant No. 1 to the exclusion of the Plaintiff. This submission of Mr. Lad is extremely fair in the facts and circumstances of the present case. Present Judgment shall therefore stand stayed for a period of eight weeks from today to enable the Plaintiff to decide approaching the superior Court. However it is clarified that adjudication of the other issues shall be as per the decision of this Court in the present Judgment and the same are not stayed.

- 21.** Suit stands decreed in the above terms.
- 22.** Decree be drawn up accordingly.
- 23.** In view of decretal of the Suit, nothing further survives in Interim Application No.2696 of 2020. Same also stands disposed of.

[MILIND N. JADHAV, J.]

Amberkar

RAVINDRA
MOHAN
AMBERKAR

Digitally
signed by
RAVINDRA
MOHAN
AMBERKAR
Date:
2024.07.05
20:10:48
+0530