Neutral Citation Number: [2024] EWHC 2155 (Ch)

Case No: BL-2023-BHM-000035

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil Justice Centre
Bull Street,
Birmingham
B4 6DS
Date: 30 April 2024

Before:

HIS HONOUR JUDGE TINDAL
(Sitting as a High Court Judge)

Between:

(1) RITESH SURANA
(2) SURENDRA SHETTY

Claimants

- and -

RUCHI SURANA

Defendant

- -
- -

MR BRADSHAW for the **Claimant**

MRS SURANA did not appear and was not represented

- -

APPROVED JUDGMENT

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JUDGE TINDAL:

Introduction

1. On the face of it, this is a straightforward claim under the Trusts of Land and Appointment of Trustees Act 1996, commonly known as 'TLATA', arising from a property 38 Maitland Close, Hounslow, Middlesex ('38, Maitland Close'). It was bought in 2007 and both the property and the mortgage were in the name of Mrs Surana (as I shall call the Defendant). It was an interest-only mortgage, funded by tenants' rent.

2. The First Claimant, Mr Surana as I shall call him, was the then-husband of Mrs Surana. The Second Claimant, Mr Shetty as I shall call him, is his friend. They say that there was a common intention constructive trust on the basis that 38, Maitland Close was only put into Mrs Surana's name because the Claimants, who were the true beneficial owners, were unable to get a mortgage. They seek a declaration that Mrs Surana holds 38 Maitland Close on bare trust for them in equal 50% shares and for an account of profits arising out of the rental income since Mrs Surana started to receive it in June 2022.

3. So far, one might think that this is the sort of case that County Court Judges up and down the country deal with day in, day out. However, a look at the Claim Form immediately shows an unusual feature. All the parties live in India, indeed they are Indian nationals, and whilst they resided in England for a time, they are now permanently resident back in India. A second complication is that there is a pending divorce suit and what we would call financial remedy proceedings in India as between Mr Surana and Mrs Surana. The third complication is that Mrs Surana is absent from this trial, indeed is in India, and is a litigant in person, although she was represented at an earlier stage of the proceedings. Therefore, the unusual feature of this case is that it raises questions of jurisdiction: where the claim should be heard in England or in India.

4. The proceedings began in March 2023, when permission to serve the Claim Form in India was given by a Deputy District Judge on the papers and the matter was then listed on 8th August 2023 before HHJ Rawlings, here in Birmingham Business and Property Court. He made an injunction order by consent and further case management directions. The case came on before me at Pre-Trial Review on 18th March 2024, by which time Mrs Surana was no longer represented and indeed had communicated with the Court back in November 2023 to suggest that she had decided to surrender the property. I asked Mrs Surana about that at the Pre-Trial Review when she appeared on the telephone. She explained that she no longer wanted it and because of the pending divorce and property proceedings in India, she could not afford to fund representation for the English proceedings and was also unable to attend by video link. Moreover, as I will explain, receivers have been appointed in respect of 38 Maitland Close because the mortgage was not being paid fully by her.

5. Against that background, Mrs Surana reaffirmed to me at the Pre-Trial Review that she had decided to 'surrender her interest' in 38 Maitland Close and indeed would not be attending the trial in the UK, even by telephone as she did at the Pre-Trial Review. I did try to persuade her of the importance of participation, but in the end, we compromised on her filing further representations which she has done and which I

shall take into account as submissions and evidence (albeit not tested in cross-examination). As well as providing some additional documents which I will also take into account, Mrs Surana has reaffirmed once again that she wanted to 'surrender her interest in' 38 Maitland Close due to the receivers. She also provided more detail on the pending divorce proceedings in India. But she also said she thought the case should be heard in India.

6. However, the Claimants do not accept that Mrs Surana ever had any 'interest' in 38 Maitland Close to 'surrender' in the first place. They maintain they have always had shared beneficial ownership of it between them, held on bare trust for them by Mrs Surana. This is perhaps why the proceedings have not ended in a consent order. Therefore, whilst Mrs Surana does not contest an outcome that 38 Maitland Close now can belong to Mr Surana and Mr Shetty, the way in which that outcome is reached may matter, not least in the ongoing proceedings in India.

7. Indeed, in Mrs Surana's third witness statement drafted when she had lawyers, she said that 38 Maitland Close forms part of the Indian claim and that 'the Indian Courts have jurisdiction over it', although added 'it is for the Court to decide'. Notwithstanding Mrs Surana's desire to 'surrender her interest' in it, that squarely raises an issue of jurisdiction. Whilst she did not in terms say that Indian law applied even if England had jurisdiction, more than once in her representations and to me at Pre-Trial Review, Mrs Surana indicated that she was 'not familiar with UK laws' and that they seemed different than Indian law. Moreover, practically, as I have explained, Mrs Surana indicated she could not afford representation or even physical attendance in the UK for trial. As she is a litigant in person in those very difficult circumstances (albeit insistent that she wanted to 'surrender her interest in the property') and as there are pending Indian proceedings in the divorce which relate to other property in India, it is necessary to deal in detail with jurisdiction and applicable law.

8. Therefore, I am grateful to the lawyers for the Claimants, particularly their Counsel Mr Bradshaw, for their diligence in looking into Indian law and the proceedings before and at trial. However, as I did not have a formal expert report in the usual way, I have also carried out my own research to cross-check that evidence of Indian law. I apologise from the outset to my Indian judicial colleagues if I have misunderstood it. However, despite our shared common law heritage, that research has suggested significant differences between English and Indian property law. That is entirely unsurprising since Indian law is of far greater antiquity than English law, which was imported in the 19th Century. As Fernanda Pirie put it in *'The Rule of Laws'* (Profile Books, 2021) at pg.2, Indian judges had applied the laws of the Dharmashatras for many centuries before the arrival in Asia of Europeans who at that time 'had nothing to compare in legal sophistication'. More prosaically, the potential differences between English and Indian law underlines the importance of determining which law applies to the ownership of 38 Maitland Close; and more fundamentally, in which jurisdiction the case should be heard, especially as there are pending property proceedings in India.

9. Indeed, it is partly because of those ongoing proceedings in India that I am giving such a detailed judgment. My concern is, firstly, to ensure that Mrs Surana understands what decision I have made and why, so that she can appeal it if she changes her mind about 38 Maitland Close; secondly to explain why I shall find that

England is indeed the correct jurisdiction for the case and that English law is indeed applicable; and, thirdly so that my judgment can be provided to my Indian judicial colleagues in so far as 38 Maitland Close is relevant to the Indian proceedings at all. To assist Mrs Surana, I will set out my brief conclusions at the beginning, then set out my findings of fact on the evidence that I have and then explain the reasons for each of my conclusions, particularly on jurisdiction and applicable law.

10. My first conclusion is that Mrs Surana has been property served and it is appropriate to proceed with this hearing and to give this judgment. My second conclusion is that I am satisfied that the English Courts have jurisdiction and indeed that the applicable law of the case is English law. The third conclusion, part of my decision on jurisdiction but which I specifically flag up from the start, is that I am satisfied that there is no risk of irreconcilable judgments as between my own judgment and the judgment of my colleague judge in India. Fourthly, I will make the declaration sought by the Claimants, which is that Mrs Surana holds 38 Maitland Close in Hounslow on bare trust for them in equal 50% shares between themselves but not herself. Finally, I will accept that Mrs Surana has a liability to account for profits she has made from that trust to the Claimants and I will order such an account in the case of Mr Shetty, but I will not order it in respect of Mr Surana precisely because I am concerned that it may interfere with the ongoing Indian proceedings.

Findings of Fact

11. As I have already said, all three parties are Indian nationals, although in 2007, they were all living in England. Mr and Mrs Surana lived at 1 Richens Close in Hounslow, which is stated as Mrs Surana's address for the purposes of the proprietorship register of 38 Maitland Close but was in the name of Mr Surana.

12. Mr Surana and his friend Mr Shetty were looking to buy an investment property between them, but they could not buy one in their own names as they each already had a mortgage in their names. So, I find it was agreed between them and Mrs Surana that a property would be bought in her name, with her name on the mortgage, with Mr Surana and Mr Shetty managing the property and deriving the rent and profits from it. I am satisfied that she agreed to this proposal on the basis that she would not have any responsibility for it. The property they found and bought on this basis was 38 Maitland Close. It was bought on 8 June 2007 in Mrs Surana's name for a price of £239,950. It was funded by an interest-only mortgage in Mrs Surana's name of £232,000 and contributions of £9,500 each from the Claimants to cover the deposit and expenses. However, Mrs Surana has never paid the mortgage from her own funds, nor paid for renovations and other works at 38 Maitland Close. Those were funded by the Claimants with the rent from the tenants and their own funds.

13. That is not only the consistent evidence of the two Claimants, but also supported by the contemporaneous documentation, including that relating to the purchase of 38 Maitland Close. It was Mr Surana and Mr Shetty not Mrs Surana liaising with the solicitors and the mortgage company and indeed as it was them again when the property was later re-mortgaged as well. Also, Mr Surana took responsibility for liaising with the tenants and with the tradesmen as well. All the contemporaneous documents demonstrate that the arrangement was as the Claimants describe it, and whilst Mrs Surana does not accept that, of course she is not here to give evidence and,

in any event, her statement is inconsistent with the contemporaneous evidence. I therefore prefer the evidence of the Claimants and accept that 38 Maitland Close was always planned to be in her name but for her husband and his friend to be the real owners.

14. This explains why, between 2007 and 2022, whilst the rent from 38 Maitland Close was paid into Mrs Surana's bank account from which the mortgage payment was made, the profits were passed on to the two Claimants, who were managing the property. Indeed, some of the rent from 38 Maitland Close is declared in a tax return for Mr Shetty's wife. On that subject, there is an email in the bundle from December 2018 purporting to be from Mrs Surana to solicitors, saying that she owned the property, but her friend Mrs Shetty had a 50% beneficial interest in the property and they now both wished to transfer their shares in the property to their respective husbands and wanted a deed of trust to be organised. That in fact did not happen, but it illustrates, say the Claimants in their statements, that the two husbands were the real owners rather than their wives. Whilst of course the email could be interpreted as evidencing that Mrs Surana and Mrs Shetty were (at least at that stage) beneficial owners, Mrs Surana does not suggest it means that. On the contrary, she suggests that email was faked by the claimants. I do not accept that and find it is yet another piece of evidence which supports the Claimants in their claim to be beneficial owners of 38 Maitland Close.

15. This arrangement continued relatively smoothly until 2022, when Mr Surana filed for divorce in India. By that time, all the parties were living back in India, although, as I have said, 38 Maitland Close was still rented out. I have seen the two petitions presented by Mr Surana in India, both in English translation. The first is a petition for divorce and an order in respect of the custody and residence of the children of Mr and Mrs Surana (who are now aged 14 and 9 and as I understand it, live with their father). It combines what, in England, would be called a 'child arrangements order application' and a 'divorce petition' and has the reference 184/2022. The second petition is what in England we would call a 'financial remedy application', relating to the property of Mr and Mrs Surana and has the reference 196/2022. The petitions were both presented in March 2022 to the Family Court in Dehradun, in the province of Uttarakhand in the foothills of the Himalayas in Northern India, not too far from the Nepalese border.

16. On 20 April 2022, the Family Court in Dehradun considered an application under section 24 of the Hindu Marriage Act for what would be called in England 'interim maintenance'. It was an application by Mrs Surana for maintenance from Mr Surana. Judge Gupta, the learned Principal Judge of the Family Court in Dehradun, determined that Mr Surana should pay Mrs Surana some maintenance, specifically the cost of her attendance at the Family Court. By that stage, the parties having separated, Mrs Surana had returned to her own family in Mumbai, which is, as everyone knows, on the western coast of India and therefore a considerable distance away from Dehradun in Uttarakhand. If I may respectfully say so, Judge Gupta's order was a classic judicial exercise in finding a middle way. Mrs Surana had sought a higher amount of maintenance, Mr Surana had sought less and Judge Gupta made an order in the middle: limiting the maintenance to her travel costs for herself and her mother when travelling from Mumbai to Dehradun.

17. Judge Gupta's judgment was appealed to the High Court of Uttarakhand at Nainital. I have not been told the result of that appeal, which was lodged some two years ago, but it is perfectly clear that the decision that Judge Gupta was making was in relation to the divorce suit, as I shall call it, namely petition 184/2022, which related to the divorce and the arrangements for the children. Therefore, I am satisfied that Judge Gupta's judgment - and indeed the appeal - is apparently unrelated to the property I am concerned with in the UK, 38 Maitland Close.

18. The position is slightly more complex in relation to the second property petition, 196/2022 in the Family Court of Dehradun. Mr Surana told me that case has not yet been the subject of any order, although his application for an injunction restraining Mrs Surana from dealing with property in India is listed before that Family Court next month in May 2024. Mr Surana's property petition concerns an Indian property again in Mrs Surana's name called D40 LA City near Lucent International School, Doonga, Dehradun, Uttarakhand in India (I shall call this 'the Indian Property'). However, the petition also refers to 38 Maitland Close in the UK, with which I am concerned.

19. When I saw this documentation in the bundle at trial, I asked the Claimants to provide mor in relation to the Family Court's orders because I was extremely concerned that I was being asked to make an order which interfered with the pending proceedings in India. As I say, it transpires that the only order as yet made (and appealed), which Mrs Surana mentioned in her submissions, related to the other petition concerning divorce and interim maintenance. As I understand it, no order has yet been made on Mr Surana's property petition (196/2022).

20. It is clear from reading that property petition, particularly what English lawyers would recognise as 'the prayer' at the end, that what is sought by Mr Surana is a declaration that he is the owner of the Indian Property and an injunction against Mrs Surana to transfer the Indian property and to recover the rental income. All of that is very similar to the relief he is seeking in England in respect of 38 Maitland Close. However, it is clearly an application in respect of the Indian Property, not 38 Maitland Close. The only reason the latter is mentioned is because Mr Surana is suggesting that the arrangement for the Indian Property bought in 2016 was similar the arrangement for 38 Maitland Close in the UK in 2007: the Indian Property was bought in Mrs Surana's name but really belongs to Mr Surana. In other words, what he is saying to the Indian Court is that: 'just like the arrangement for the property in England, the arrangement for the property in India was that it was in my wife's name but it really belonged to me'. For those reasons, I am satisfied that neither Indian petition seeks a declaration of ownership of 38 Maitland Close in England. This clears the way for me to make a declaration in relation to it, without fear of inconsistent judgments as I discuss later.

21. Returning to the chronology, on 15 May 2022, Mrs Surana emailed the tenants at 38 Maitland Close in England and told them that as she was the owner, she now wanted all the rent to be paid to her directly and for them not to contact her husband any further. This got back to Mr Surana and in November 2022 he instructed solicitors and they sent a letter before action setting out their case that 38 Maitland Close was held on bare trust by Mrs Surana on 50% beneficial shares for Mr Surana and Mr Shetty. On 12 December 2022, Mrs Surana replied denying that and said that she was the sole legal and beneficial owner of 38 Maitland Close.

22. In February 2023, it came to Mr Surana's attention that Mrs Surana was seeking to sell 38 Maitland Close and so his solicitor again sent an email asking for her to refrain from doing that or they would seek an injunction. Two days later, on 15 February 2023, Mrs Surana emailed a response maintaining that as she was the sole owner, she could proceed with the sale if she wished. That precipitated the present proceedings which were issued by Claim Form and statement under the 'Part 8' procedure under English Civil Procedure Rules on 22 March 2023. Deputy District Judge Connolly, on the papers as would be usual in these cases, gave the Claimants permission to serve Mrs Surana at her address in Mumbai in India, the same address, I note, as on her witness statements and emails and, I am satisfied, the correct address.

23. Whilst that service does not appear to have been affected by the usual diplomatic channels, I find on the balance of probabilities that Mrs Surana received the Claim Form and claim documents because she instructed lawyers and on 12 April 2023, she provided evidence to the Claimants' solicitors setting out her case and in particular that she disputed that they had any beneficial interest in 38 Maitland Close. The application for an injunction was listed before HHJ Rawlings on 8th August 2023, who made such an injunction by consent and made further directions progressing the case.

24. On 3 November 2023, Mrs Surana wrote to the English Court here in Birmingham saying that she had decided to surrender 38 Maitland Close, along with the accumulated rents for it. It is apparent from a spreadsheet prepared by Mr Surana (which I accept is accurate) that Mrs Surana was receiving the rent from 1 June 2022 and had paid the mortgage until the end of 2022. However, by the start of 2023, she was beginning to underpay the mortgage so that, by April of 2023, she was only paying £500 a month, which was less than half of the mortgage payment. As a consequence of this, receivers were appointed by the mortgage company on 15 December 2023, and that doubtless explains Mrs Surana's decision to essentially walk away from 38 Maitland Close and her decision explained at Pre-trial review on 18 March that she was not going to attend the trial (even by telephone as I proposed) or to instruct lawyers. Against that background of my findings of fact on the balance of probabilities, I now turn to my conclusions.

Service

25. In English law, the question of service of defendants abroad is intertwined with the English Court's own jurisdiction. In effect, the English Court only has jurisdiction if it can validly authorise the service of a defendant abroad under the English Civil Procedure Rules ('CPR') which should Mrs Surana or my Indian judicial colleagues be interested may be found at Civil – Civil Procedure Rules (justice.gov.uk). Permission to serve outside of the UK must be given by the Court in advance under CPR 6.36 and Practice Direction 6B, as was given here by the Deputy District Judge in March 2023. The appropriate method of service on defendants domiciled outside of England is set down by CPR 6.40(3). The usual way of doing so is under CPR 6.42, service through foreign governments, judicial authorities and consular authorities. That is also typically the ordinary method of service under Article 5 of the Hague Service Convention 1955, to which India and indeed England and Wales are signatories, but it is unclear that service of Mrs Surana in India was done in precisely

that way. Rather it appears that the Claim Form and associated documents were simply posted and/or emailed.

26. However, as I have said, I accept that Mrs Surana actually received and indeed acted on them. She instructed lawyers in England to represent her. Moreover, through the injunction proceedings, the Claimants' solicitors re-served the Claim Form and other claim documents on Mrs Surana's solicitors once they were instructed to accept service and I do have a formal certificate of service from 11th August 2023, just after the consent order made by HHJ Rawlings. That is not technically orthodox service on an overseas defendant under CPR 6.40. However, taken as a whole, there has been to all intents and purposes practically effective service, which enabled not only Mrs Surana to instruct lawyers last summer, who accepted service of the injunction application on her behalf, but also for her to participate as a litigant in person in proceedings from November of last year onwards, by participating at the PTR by telephone and by sending in further representations since, which I have taken into account in reaching my findings of fact.

27. In those circumstances, I am satisfied there is 'good reason' to exercise the power under CPR 6.15 to authorise retrospectively service of the Claim Form by alternative method, namely service by post and/or email in March/April 2023 and then again by post to her solicitors in England on 11th August 2023. In my judgment, that is perfectly consistent with the approach taken by the UK Supreme Court in the case of alternative service abroad in *Abela v Baadarani* [2013] UKSC 44. (I will use such 'neutral citations' for case-law as from my own research of Indian law, it will make it easier for my Indian judicial colleagues to research if relevant e.g. on this site: British and Irish Legal Information Institute (bailii.org)). That order retrospectively authorising service does no more than recognise what already has practically happened and there is no suggestion that it is contrary to Indian law (see CPR 40.3 and *Abela*), or indeed the Hague Service Convention (see Art.10).

28. Indeed, I take comfort from the decision of the Honourable Mr Justice Yashwant Varma in the Delhi High Court in *Transasia Private Capital Limited v Dhawan* (2023). The learned Judge considered the English rules on jurisdiction under CPR 6 in detail in the course of recognising an English High Court Judgment in related proceedings under Section 13-14 of the Indian Civil Code of Procedure and held that the English Court judgment should be recognised as there had not only been valid service under section 1140 of the English Companies Act 2006, but also service (as had been ordered by the English High Court) by email and WhatsApp and made no suggestion that either method of service was unknown to or contrary to Indian law. I return to *Transasia* below.

29. In those circumstances, as I say, I am satisfied that Mrs Surana has been properly served. Moreover, I am also satisfied that she was aware of this trial but has decided not to attend, even by telephone or video link (with the permission of Indian authorities) as I had suggested. Whilst of course far from ideal, she would have been able to participate by telephone – as she did at the Pre-Trial Review. She would have heard me ask questions as I did at trial of Mr Surana and Mr Shetty in fairness to her given she was absent, particularly relating to the purchase of 38 Maitland Close and the proceedings in India. Indeed, she could have asked her own questions and made further submissions on top of the written ones she sent me. I am satisfied that the

reason Mrs Surana did not participate in the trial is not because she *could not* do so, but because she *chose not* to do so – primarily because she had already decided to 'surrender her interest in' 38 Maitland Close. I therefore proceeded with the trial in her absence.

Jurisdiction and Governing (or Applicable) Law

Why Jurisdiction and Governing Law matter in this case

30. Whilst I am satisfied that Mrs Surana has been validly served, as I have explained she is unable to travel to the UK (and indeed I note Judge Gupta ordered Mr Surana to pay maintenance to fund her travelling from Mumbai to Dehradun in 2022). I am acutely conscious that it would be much easier for her to participate in proceedings relating to 38 Maitland Close if they were conducted in India, even in Dehradun, than the UK. This would not only be practically easier, but also potentially less expensive to instruct solicitors. Whilst I am satisfied that Mrs Surana *could* participate in a trial in the UK, it would be *better* for her were it in India.

31. Moreover, as I understand it, any judgment from England would not be 'recognised' in India unless it complies with Sections 13 and 14 of the Indian Civil Procedural Code. In *Transasia*, the Delhi High Court 'recognised' under Section 13 a judgment of the English High Court even though the latter had accepted jurisdiction and applied English law to two guarantees signed by an Indian businessman which appeared to be respectively governed by Dubai law and jurisdiction for one and Singapore law and jurisdiction for the other. Nevertheless, the Delhi High Court found that the English Court was a 'court of competent jurisdiction' under Section 13(a) of the Code, as it had jurisdiction under English law because of asymmetrical jurisdiction clauses and the fact the Indian businessman giving the guarantee was a director of English companies, meaning that under English law (in fact under section 1140 Companies Act 2006), he could be sued in England even if he lived elsewhere. Moreover, on the issue of foreign law, the Delhi High Court also noted that the UK Supreme Court in *Brownlie v FS Cairo* [2021] UKSC 45 had differentiated between firstly: 'the default rule' where the parties do not refer to foreign law in the case papers, when an English Court is entitled to adjudicate the case on English law (which is what the English High Court in *Transasia* had actually done); and secondly, 'the presumption of similarity' where one of the parties does invoke foreign law but where in the absence of evidence of what that foreign law is, the English Court may presume that it is materially similar to English law if it is reasonable to do so in all the circumstances.

32. In the present case, as I have said, Mrs Surana has contended the Indian Courts have jurisdiction over 38 Maitland Close because it is referred to in the Indian property petition. However, I have found that 38 Maitland Close is only referred to as an example of the arrangement which Mr Surana then says was replicated with the Indian Property. In any event, as Mrs Surana has raised jurisdiction, I must adjudicate that. Mrs Surana has not said in explicit terms that Indian law applies if the English Court does have jurisdiction. However, she is a litigant in person who has repeatedly said she is 'unfamiliar' with English law and that it appears to be 'different' than Indian law. Therefore, I consider in this unusual case, it would be unfair on Mrs Surana to apply either the 'default rule' or indeed 'the presumption of similarity' in *Brownlie*. After all, the former was displaced in *Brownlie* itself merely by the

assertion that Egyptian law applied and Mrs Surana has contended the Indian Courts have jurisdiction and effectively has asserted that Indian law applies. Moreover, whilst she has not provided evidence of Indian law – even of property, let alone of jurisdiction or applicable law – she has suggested that Indian law was materially different than English law and it would be unfair blithely to assume that it was the same. Therefore, in fairness to Mrs Surana, as the Claimants must prove that England has jurisdiction, I raised enquiries of Indian law myself of their lawyers, supplemented by my own research. Indeed, one upshot of this research is that Mrs Surana is absolutely right that English and Indian law do differ, which is another reason not to presume (inaccurately) that they do not.

33. Whilst it will be very familiar to my Indian judicial colleagues, for Mrs Surana's benefit, in English law, ownership of property is commonly (if not strictly accurately) explained as potentially 'split' into the person with 'legal ownership' registered at the Land Registry (often seen as 'paper title'); and the person with 'equitable ownership' (often seen as the 'real owner'). In most cases that is the same person or people – in other words the 'legal' owners are also the 'equitable' owners. Here however, whilst Mrs Surana was clearly the 'legal owner', the Claimants have to prove that they – and not she – were the 'equitable owners' under a 'constructive trust'. The Claimants must first prove they had an equitable interest at all by proving on balance of probabilities a 'common intention' (or agreement) as between all the parties (Mrs Surana as well as Mr Surana and Mr Shetty) and that they 'detrimentally relied' on that common intention or agreement e.g. by financial contribution (see *Jones v Kernott* [2011] UKSC 53 and *Amin v Amin* [2020] EWHC 2675 (Ch)). If the Claimants get over that hurdle, they must then prove the extent of their equitable interests, taking into account all the whole course of dealing of the parties (see *Jones* and *Oxley v Hiscock* [2004] EWCA Civ 546).

34. By contrast, the position appears to be quite different in Indian law. As the Honourable Supreme Court of India said in *Bai Dosabai v Mathurdas Govinddas* (1980), whilst many of the principles of English Equity were transplanted into Indian law, they are often in statutes which change, such as the Indian Trusts Act 1882. For example, section 94 of the 1882 Act originally recognised constructive trusts, but that was repealed by the Indian Prohibition of Benami Transactions Act 1988, which sought to curb abuses in property transactions with 'hidden real owners'. Prior to its amendment in 2016 (and so at the time of the purchase of 38 Maitland Road in 2007), Section 2 of that Act defined a 'Benami transaction' as 'any transaction in which property is transferred to one person for a consideration paid or provided by another person' which plainly would apply to this case were Indian law to apply. Section 4 of the Act prohibits civil claims or defences relying on 'Benami transactions', subject to limited exceptions such as where 'the property is held by a trustee or another person in a fiduciary capacity for the benefit of another for whom they stand in such a capacity'. The Honourable Supreme Court of India in *Marcel Martins v Printer* (2012) took an approach to 'fiduciaries' which English lawyers would entirely recognise (and which from 2016 was moved from section 4 into the amended definition section 2). Nevertheless, whether someone is a 'trustee' or 'fiduciary' in Indian law, even on principles which are familiar to English lawyers, it is still a stricter approach than English law itself takes to 'the common intention constructive trust'. In short, jurisdiction and governing law do matter in this case.

Principles of Jurisdiction and Governing Law

35. In English law, it is now well established since 2021 and the withdrawal (through 'Brexit') of the UK from the EU Jurisdiction scheme (under the EU 'Brussels Regulation') that there are three questions that have to be answered by the English Court in determining that it has jurisdiction. As Lord Lloyd-Jones summarised in *Brownlie* at paragraph 20:

> "[T]he domestic rules of England and Wales…require that in order to obtain permission to serve proceedings out of the jurisdiction in a case to which the Brussels system does not apply, a claimant must establish (1) a good arguable case that the claims fall within one of the gateways in CPR PD 6B, para 3.1; (2) a serious issue to be tried on the merits; and (3) that England is the appropriate forum for trial and the court ought to exercise its discretion to permit service out of the jurisdiction."

36. Similar principles apply to a contested issue of jurisdiction where there has already been service of proceedings out of the UK with permission. There is no doubt that there is 'a serious issue to be tried' in terms of the merits of the case. Indeed, I have found as a fact on the balance of probabilities that 38 Maitland Close was bought in Mrs Surana's name but that Mr Surana and Mr Shetty were agreed to be the real owners. The real issues on jurisdiction are the relevant 'gateway' and 'appropriate forum' (the latter traditionally called in Latin '*Forum Non Conveniens*'). However, both those issues also turn in part on which law governs (or 'applies to') that transaction: English law or Indian law. So, I consider the principles of jurisdiction and governing/applicable law together before reaching my conclusions.

37. The next stage on jurisdiction is whether there is a 'good arguable case' that the claim against the foreign defendant falls within one or more of the heads of jurisdiction under paragraph 3.1 of Practice Direction 6B of the CPR. The relevant ones in this case are firstly paragraph 3.1(11) of Practice Direction 6B:

> "The subject matter of the claim relates wholly or principally to property within the jurisdiction, provided that nothing under this paragraph shall render justiciable the title to or the right to possession of immovable property outside England and Wales."

This gateway reflects a widespread principle of private international law called 'the immovables rule': that land within a particular country falls within the jurisdiction of the Courts of that country and not others (e.g. the country where its owner is domiciled if different). This is reflected not only in the Brussels regime in the EU, but in England and Wales (a recent example of that is the rule of English law that overseas bankruptcy proceedings cannot assert rights over land owned by a foreign national bankrupt in England and Wales: *Kireeva v Bedzhamov* [2022] EWCA Civ 35, to which I return in a moment). There is another potentially relevant gateway at paragraph 3.1(15) of Practice Direction 6B:

> "A claim is made against the defendant as constructive trustee, or as trustee of a resulting trust, where the claim – (a) arises out of acts committed or events occurring within the jurisdiction; (b) relates to assets within the jurisdiction; or (c) is governed by the law of England and Wales."

Certainly, the first two of those alternatives are satisfied in this case, since the agreement between Mrs Surana, Mr Surana and Mr Shetty was concluded in England, and 38 Maitland Close is here. I will return to (c).

38. I turn to the third stage of the jurisdiction inquiry about 'appropriate forum': whether England is clearly or distinctly the appropriate forum for the trial of the dispute. To put it the other way around, whether I should stay the English proceedings because England is not clearly the better forum for the case than India. That is essentially a balancing exercise, explained in *Spiliada Maritime Corporation v Cansulex* [1987] AC 460 (a case from the House of Lords in the days before neutral citations). Lord Goff identified the underlying aim in all cases of disputed forum to identify the jurisdiction in which the case can be suitably tried in the interests of all the parties and for the ends of justice. The burden of proof rests on the claimant to persuade the court that England is clearly the appropriate forum for the proceedings on a holistic approach which depends not just on the location of the events giving rise to the claim, but also practical issues such as the location of the parties and the evidence and where the judgment may be enforced. That approach has been reiterated several times by the House of Lords and since 2010 by the Supreme Court, most recently in the cases of *VTB Capital v Nutritek* [2013] UKSC 5, *Lungowe v Vedanta* [2019] UKSC 20 and *Brownlie*.

39. One important specific factor relevant to appropriate forum is whether or not there is a risk of irreconcilable judgments, as emphasised in *Lungowe*. (That case also emphasised that if even if England is not clearly the appropriate forum, that a stay of English proceedings could also be refused if there was a real risk that substantial justice would not be obtainable in the foreign jurisdiction as was the case there, but there is obviously no suggestion of that with India). Nevertheless, it is also clear from the leading text *Dicey, Morris and Collins on Conflict of Laws* (16th Ed 2022) at paragraphs 12-50-51 that the risk of irreconcilable judgments is only one factor when there is another action pending current in another jurisdiction: see *De Dampierre v De Dampierre* [1988] AC 92 (which was a case about parallel divorces in different jurisdictions). Another important factor relevant to appropriate forum is what the governing law of the dispute will be. In *VTB*, Lord Mance pointed out that governing/applicable law was always relevant, although it was of less weight where the issues were principally factual rather than legal. In *VTB* itself, because the case was essentially about events in Russia involving Russians to be adjudicated on Russian law, Russia was the appropriate forum.

40. Turning to governing law itself in this case, as *Dicey* summarises at Rule 140:

> "All rights over or in relation to immovable land are governed by the law of the country where the immovable is situate (the lex situs)."

In *Kireeva*, Newey LJ summarised this 'immovables rule' generally at paragraphs 47-48 before he turned to apply it to insolvency:

> "The 'immovables rule' means that, as a matter of English law, a foreign court has no jurisdiction to make orders in respect of land in England and rights relating to such land are governed exclusively by English law. Thus, *Dicey, Morris & Collins on the Conflict of Laws* states at Rule 47(2) 'A court of a foreign country has no jurisdiction to adjudicate upon the title to, or the right to possession of, any immovable situate outside that

> country'….The authorities cited in support of these propositions include *Nelson v Bridport* (1846) 8 Beav 547, *Bank of Africa Ltd v Cohen* [1909] 2 Ch 129 and *In re Hoyles* [1911] 1 Ch 179. In *Nelson v Bridport*, Lord Langdale MR said at p 570 that 'The incidents to real estate, the right of alienating or limiting it, and the course of succession to it, depend entirely on the law of the country where the estate is situated'. In *Bank of Africa Ltd v Cohen*, Kennedy LJ said at pp 145-146 that 'it is a well-settled general rule of private international law . . . that in regard to immovable property the lex situs…prevails in regard to all rights, interests, and titles in and to such property'. In *Re Hoyles*, Farwell LJ observed at pp 185-186 that 'No country can be expected to allow questions affecting its own land, or the extent and nature of the interests in its own land which should be regarded as immovable, to be determined otherwise than by its own courts…."

41. Indeed, as I understand it, a similar principle applies in India at Section 16 Indian Civil Code of Procedure, which provides in summary that suits including for the 'recovery, partition, or determination of rights or interests' in immovable property 'shall be instituted in the Court within the local limits of whose jurisdiction the property is situate', although a suit can (but not must) be brought in the alternative within the Court in whose jurisdiction a defendant actually and voluntarily resides. However, I am not sure whether that proviso in Art.16 simply applies to Courts in different states *in India*. After all, in such an Intra-Indian case involving proceedings in different Indian states, the Honourable Supreme Court of India in *Viswanathan v Wajid* (1963) related Section 16 to a principle of international law similar to 'the immovables rule' at paragraph 19:

> "Undoubtedly, a court of a foreign country has jurisdiction to deliver a judgment in rem which may be enforced or recognised in an Indian Court, provided that the subject-matter of the action is property whether movable or immovable within the foreign country. It is also well settled that a court of a foreign country had no jurisdiction to deliver a judgment capable of enforcement or recognition in another country in any proceeding the subject-matter of which is title to immovable property outside that country….."

Therefore, applying *Viswanathan*, in *Kumari v Devi* (2008), the Honourable High Court of Punjab and Haryana held that insofar as an English judgment had declared as valid a will (in 'probate') which bequeathed property in India, that did not prevent an Indian Court examining for itself whether the will was enforceable in relation to immovables in India in respect of which the English Court lacked jurisdiction.

Conclusions on Jurisdiction and Governing Law

42. In my judgement, as indeed might be thought to be common-sense, because 38 Maitland Close is in England, the governing law of the dispute is that of England (and Wales) and indeed the English Court has jurisdiction because (1) there is a 'property gateway' under either paragraph 3.1 (11) or (15) as the English proceedings relate entirely to an immovable asset in England and moreover events in England governed by English law; (2) there is a triable issue in English law of the 'common intention constructive trust' (indeed the claim succeeds, as I discuss in a moment) and (3) England is distinctly and clearly the appropriate forum.

43. Having said that, I should say that have reflected over (3) - 'appropriate forum' - because I am conscious that all the parties now live in India and were Indian nationals at the time; that Mrs Surana has not been able to attend the UK to participate or indeed to instruct lawyers here for the trial; and that there are connected proceedings referring to (if not actually about) 38 Maitland Close itself pending in India.

44. However, those factors only go so far. Mrs Surana has been able to participate in the English proceedings from India, she instructed lawyers in England at an earlier stage, but she has not participated in the trial not because she is unable to do so (although I accept it is far from ideal) but essentially as she wishes to 'surrender her interests in the 38 Maitland Close'. Moreover, I am as satisfied as I can be on the information that I have that 38 Maitland Close is not the subject of pending proceedings in India and, as a consequence there is no risk of irreconcilable judgments. I recognise of course that a determination that 38 Maitland Close is beneficially owned by Mr Surana and Mr Shetty but is only in the legal name of Mrs Surana will mean that 38 Maitland Close may well be relevant in the property proceedings in India, but that does not mean India is the appropriate forum to determine a dispute about that ownership of 38 Maitland Close itself.

45. Indeed, in my judgment, the balance is decisively in favour of the English Courts having jurisdiction for five inter-related but analytically distinct reasons. Firstly, 38 Maitland Close is immovable property in England and under English law - and it would seem Indian law - the English courts have jurisdiction relating to it. Secondly, for the same reasons, the dispute about English land is also governed by English law. Thirdly, the case practically involves English law in the sense of the mechanics of property purchase, mortgage, rent etc with which the English Court is more familiar. Fourthly, for similar reasons, England is the location of the events in question and much of the relevant evidence from solicitors and tenancies etc comes from here. Finally, England is where any judgment in relation to 38 Maitland Close would have to be enforced.

46. I can deal with the remaining matters very shortly.

Was there a constructive trust ?

47. In my judgment there plainly was a constructive trust, for the reasons that Mr Bradshaw has given in his skeleton argument and which flow from my findings of fact. It is clear that there was an agreement between all three parties, including Mrs Surana, that 38 Maitland Close and its mortgage would be put in her sole name, simply because it was not possible for her husband Mr Surana, or his friend Mr Shetty, to get a mortgage themselves. However, but part of the deal was that they would arrange the management of 38 Maitland Close and they would derive the benefit of the income from it.

48. In those circumstances, this is in English law a classic common intention constructive trust, even on the traditionally more restrictive basis before *Jones* in *Lloyds Bank v Rosset* [1991] AC 107. In other words, there was a clear express agreement between all relevant parties that Mrs Surana would hold the property for the beneficial interests of Mr Surana and Mr Shetty in equal shares and there were direct contributions to the purchase price by Mr Surana and Mr Shetty by the provision of the deposits. Therefore, there was agreement and detrimental reliance on the strength of it,

consistent with the principles in *Rosset, Jones* and *Amin*. Accordingly, the Claimants have proved that they have beneficial interests in 38 Maitland Close, despite not being named on the title.

49. The next issue is the extent of those shares: the Claimants say 50% each with none to Mrs Surana, whilst she disputes that but also wants to 'surrender her interest in the property'. I recognise, as was said in *Amin*, that it is unusual to find that a legal owner has no beneficial interest, but like *Amin*, this is presented by both sides as an 'all or nothing' case. Whilst Mrs Surana might have been seen as making a contribution through undertaking responsibility for the mortgage, in reality, it is clear that she did so only on the basis that the mortgage would be paid from the rent as it was, and it is notable that, since 2023, even though she has been receiving the rent, she has not been paying the mortgage and seeks to 'surrender any interest'. I am entitled to bear that factor in mind in considering the whole course of dealings for the reasons given by Chadwick LJ in *Oxley*. That subsequent conduct by Mrs Surana is consistent, as is her email relating to herself and Mrs Shetty in 2018, of her recognition that the true beneficial owners of 38 Maitland Close were the claimants rather than herself. In those circumstances, I will make the declaration the Claimants seek that she holds 38 Maitland Close on bare trust for them on 50% beneficial shares each.

Should I order accounts of the rent received by Mrs Surana ?

50. It is also clear on my findings of fact that, since June 2022, Mrs Surana has been receiving the rent. From Mr Surana's spreadsheet which I accept, that totals £59,821.50. She has paid out in mortgage payments and other expenses in that time £30,299.57. Therefore, even though she has underpaid the mortgage, which is the reason why the receivers have been appointed, she has kept for herself a profit, up to September 2023, of £29,521.93 and has continued to do so on the same basis since then of another £12,915.84, and therefore has profited from 38 Maitland Close, despite not having a beneficial interest in it, to the tune of £42,437.77.

51. Mr Shetty seeks and as 50% beneficial owner for the property is entitled to, an account from Mrs Surana of half that sum. It may well be from what Mrs Surana has said in her correspondence with the Court that she has no money to pay that, and it may well be that Mr Shetty never sees it, but nevertheless he is entitled to it and I will order an account on that basis in his favour.

52. However, so far as Mr Surana concerned, this is where I must be cautious. If I order an account, which is a discretionary remedy, then it risks interfering with the question of maintenance and finances as between Mr and Mrs Surana in the ongoing Indian proceedings, as reflected in the Indian order of Judge Gupta for Mr Surana to make interim maintenance to Mrs Surana. Were I to order an account, that might risk undermining Judge Gupta's order and complicating the Indian proceedings. I am not prepared to risk that. In those circumstances it seems to me that, having had the finding of fact that Mrs Surana has had all the benefit of the rent from 38 Maitland Close since January 2023, Mr Surana can seek to rely on that finding of fact in the Indian Court if he wishes to do so, but obviously that will be a matter for the Indian Court to decide.

Recognition

53. Indeed, on that subject, I hope that my judgment is sound in English law and that I have respected Indian law and procedure, so that my Indian judicial colleagues will feel able to 'recognise' my judgment insofar as it assists them on the background to the purchase of 38 Maitland Close. After all, that is why Mr Surana had mentioned it in the Indian property petition. Accordingly, in preparing this judgment, I have borne in mind that Section 13 of the Indian Civil Code of Procedure (which resembles the Foreign Judgments (Reciprocal Enforcement) Act 1933 in England which applies to Indian judgments) states as follows:

> "A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except (a) where it has not been pronounced by a Court of competent jurisdiction; (*b*) where it has not been given on the merits of the case; (*c*) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable; (*d*) where the proceedings in which the judgment was obtained are opposed to natural justice; (e) where it has been obtained by fraud; *(f)* where it sustains a claim founded on a breach of any law in force in India."

54. Therefore, as is indeed shown by the *Transasia* case, before an Indian Court 'recognises' as binding upon it a judgment of a foreign court like the English High Court, whilst there is a presumption under Section 14 of the Code that the foreign Court is one of competent jurisdiction, that can be disproved if the English Court in fact lacked jurisdiction; or its judgment may not be 'recognised' on another ground in Section 13. I have tried to comply with the criteria in Rule 13. I have carefully considered jurisdiction and consider that England is a Court of competent jurisdiction. I have given a judgment on the merits of the case (in the sense discussed in *Transasia*). I have tried to avoid errors of international law and indeed to cross-check my jurisdiction and applicable law analysis against Indian law. I have attempted to secure natural justice in the case – whilst I recognise that Mrs Surana has not been able to attend the UK for trial, I have taken into account her submissions and representations and gave her the opportunity to participate she has declined to exercise. I have made detailed findings of fact which I hope will avoid any suggestion of fraud, although of course other information may emerge later and that will be a matter for the Indian court to determine. Finally, I have tried to avoid any breach of law in force in India (for example the Benami transactions rule, as on my own findings of fact, I would also consider Mrs Surana was a trustee and fiduciary for Mr Surana and Mr Shetty).

55. In those circumstances, I hope that my judgment will be recognised, if not of course enforced, in India. Indeed, I hope that my judgment proves of some use to my Indian judicial colleague in determining the disputes between Mr and Mrs Surana. I apologise that the transcript took longer than I expected to be typed and so it was not available for the hearing in Dehradun in May. In any event that concludes my judgment and indeed the proceedings in England.

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