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

+ **RFA No.909/2003**

Date of decision: 12th September, 2008

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SAT PAL SHARMA & ANR. Appellant

Through : Mr. Pankul Nagpal, Adv.

versus

NIRMAL SHARMA

..... Respondent

Through : Sunil Malhotra, Adv.

CORAM :-

THE HON'BLE MR.JUSTICE PRADEEP NANDRAJOG

THE HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Pradeep Nandrajog, J. (Oral)

1. Heard learned counsel for the parties.
2. Trial Court Record has been perused.
3. The appeal is being disposed of finally.
4. Vide Ex.P.W.1/5 (a sale deed dated 12.12.1966) suit property therein Municipal No. X/191 (Old No.290/3), Tagore Gali, Gandhi Nagar, Delhi ad-measuring 100 sq.yds. was purchased in the name of Smt. Amrato Rani wife of Gobind Ram and Smt. Vidyawati wife of Sat Pal Sharma.
5. Smt. Amrato Rani died on 27.04.1997.
6. Ms. Nirmal Sharma claimed that she was the adopted

daughter of Amrato Rani and Gobind Ram. She further claimed that her mother Amrato Rani had executed a will in her favour being the will Ex.P.W.8/1 dated 04.04.1997. She additionally stated that to secure her i.e. Nirmal Sharma, her mother Amrato Rani had executed an agreement to sell, Power of Attorney, document, etc. Ex.P.W.1/6 to Ex.P.W.1/10. She stated that under the will and the documents, Ex.P.W.1/6 to Ex.P.W.1/10, share of Amrato Rani in the property was bequeathed to her.

7. She claimed that after her mother died she was in possession of half share in the property and that Satpal Sharma and Smt. Vidyawati had dispossessed her.

8. Satpal Sharma is the husband of Smt. Vidyawati.

9. It is, thus, obvious that Nirmal Sharma was the plaintiff and Satpal Sharma and Smt. Vidyawati were the defendants in the suit filed by Nirmal Sharma claiming possession. Alternatively, she sought a decree for partition.

10. Vide impugned judgment and decree dated 06.11.2003, Learned Trial Judge has held that Nirmal Sharma is half owner of the suit property. Preliminary decree in her favour has been passed holding her to be having $\frac{1}{2}$ share and the matter has been listed for further proceedings to partition the property by metes and bounds.

11. We note that Nirmal Sharma's claim for damages/mesne profits has been dismissed.

12. We note that Nirmal Sharma has not filed any cross-objections or a cross-appeal.

13. The case of Satpal Sharma and Smt. Vidyawati was that Satpal Sharma had paid the entire sale consideration when the property was purchased and that he had got recorded Amrato Rani's name and the name of his wife as the purchasers because they were mere name lenders. Thus, the defence was that the property was purchased benami by Satpal Sharma.

14. The claim of Nirmal Sharma to be the adopted daughter of Amrato Rani and Gobind Ram was disputed.

15. Needless to state, two main issues which arose between the parties, were whether the suit property was owned by Amrato Rani and Vidyawati as co-owners thereof, each having 50% share; and whether Nirmal Sharma was the adopted daughter of Amrato Rani and Gobind Ram and whether Amrato Rani had executed the will Ex.P.W.8/1.

16. Nirmal Sharma produced 8 witnesses, PW-1 to PW-8. The defence produced 5 witnesses DW-1 to DW-5.

17. With reference to the testimony of PW-5, who stated that he was present when the sale deed Ex.P.W.1/5 was executed and that the sale consideration was paid by Gobind Ram, Learned Trial Judge has returned a finding against the defendants.

18. In a nutshell, the Learned Trial Judge has held that he who alleges that a property was purchased benami has to lead

cogent evidence to establish that he had funded the purchase and that the presumption would be in favour of the recorded owners of the property to have paid the sale consideration. Noting that there was no evidence led by the respondents to prove that Satpal Sharma had paid the sale consideration when the sale deed Ex.P.W.1/5 was executed, finding returned is that Amrato Rani and Vidyawati were the owners of the property.

19. The Learned Trial Judge has also referred to the Municipal House Tax record which shows that the two ladies i.e. Amrato Rani and Vidyawati had been paying the property taxes in relation to the property.

20. On the issue whether Nirmal Sharma was the adopted daughter of Amrato Rani and Gobind Ram, Learned Trial Judge has referred exhibits i.e. Ex.P.W.1/1 to Ex.P.W.1/3, being the school certificates of Nirmal Sharma, which record her father's name as Gobind Ram. The second evidence considered by the Learned Trial Judge is the testimony of Smt. Satya Rani who appeared as PW-4. Smt. Satya Rani, the biological mother of Nirmal Sharma deposed that her daughter Nirmal Sharma was given in adoption at the age of six.

21. The third evidence taken note of by the Learned Trial Judge is a complaint Ex.D.W.1/3 made by Satpal Sharma, the defendant no.1, to the local police i.e. PS Shalimar Bagh, when a dispute qua the possession of the property surfaced. In Ex.D.W.1/3, he stated that Nirmal Sharma, the adopted

daughter of Amrato Rani and Gobind Ram was trying to meddle with the possessory rights of the property.

22. From the aforesaid documentary and oral evidence, the Learned Trial Judge has returned a finding that Nirmal Sharma has successfully proved that she was the adopted daughter of Amrato Rani and Gobind Ram.

23. With reference to the testimony of the attesting witnesses of the will, Ex.P.W.8/1, Learned Trial Judge has held that the will was proved.

24. The Learned Trial Judge has also considered the alternative, that even if the will is not proved and there being no other will propounded, Nirmal Sharma would still be entitled to inherited the interest of Amrato Rani being her adopted daughter.

25. Learned counsel for the appellant could not show to us any document wherefrom it stands established that Satpal Sharma paid the money when the suit property was purchased in the joint names of Smt. Vidyawati and Amrato Rani. In that view of the matter, the presumption in favour of the purchasers of the sale deed having paid the valuable consideration would stand, meaning thereby, that the plea of benami fails.

26. Having perused the testimony of PW-5, who we note was present when the sale deed Ex.P.W.5 was executed, we are reassured that Gobind Ram, the husband of the Amrato Rani paid the proportionate sale consideration.

27. Pertaining to the plea whether Nirmal Sharma was the adopted daughter of Amrato Rani and Gobind Ram, suffice would it be to state that the complaint, Ex.D.W.1/3, made by defendant no.1 to the police contains admissions fatal to the defence; being the admission that Nirmal Sharma was the adopted daughter of Amrato Rani and Gobind Ram.

28. The biological mother of Nirmal Sharma, namely, Satya Rani who appeared as PW-4 proved the fact of her daughter being given in adoption. Further, the school certificates Ex.P.W.1/1 to Ex.P.W.1/3 conclude the issue conclusively in favour of the Nirmal Sharma.

29. At this stage, learned counsel for the appellants states that he has just now been instructed by the son of the appellants, namely, Shri Sudesh Kumar Sharma that the appellants are prepared to pay to the respondents 50% value of the suit property.

30. The respondent, Nirmal Sharma who is present states that she is prepared to take Rs. 30 lakhs as her half share in the suit property, provided the amount is paid to her within three months from today.

31. Learned counsel for the appellants on instructions from the son of the appellants states that the appellants would be convinced by their son to pay Rs. 30 lakhs to Nirmal Sharma.

32. Since final partition of the property by metes and bounds has yet to be effected and the present appeal lays a challenge to

the preliminary decree, we dismiss the appeal sustaining the preliminary decree.

33. The Learned Trial Judge would consider the offer of the respondent as accepted by the son of the appellants so that the respondent can be given her half share in the suit property by giving half value thereof in money.

34. No costs.

35. Trial Court Record be returned.

PRADEEP NANDRAJOG, J.

J.R. MIDHA, J.

SEPTEMBER 12, 2008

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