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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 26.04.2010

+ CS(OS) NO. 323/2001

JAGIR SINGH

..... Plaintiff

Through: Mr. Tarun Dewan, Advocate.

versus

GURMEET KAUR

..... Defendant

Through: Ms. Anisha Banerji and Ms. Mrinalini Gupta, Advocates.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

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

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

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1. Heard counsel.
2. The present order will dispose of the Preliminary Issue no. 2, i.e. whether the suit is liable to be dismissed in view of the Benami Transactions (Prohibition) Act, 1988. The issue was framed by Court on 12/01/2004. The suit claims declaration and consequential relief in respect of property No. D-69, Hauz Khas, New Delhi- 110016 (hereafter called “the suit property”).
3. The unamended suit contended that by sale deed dated 12th September, 1967, the suit property bearing no. D-69, Hauz Khas, New Delhi- 110016 was purchased from Sh.

Ashok Mansukhani by the plaintiff and late Shri Hardev Singh i.e the predecessor and the defendant.

4. The plaintiff claims that he had contributed one half of the cost of the said property and all along it was understood and agreed that he would be half owner of the said property. It was further held that in December 1974, the plaintiff was in India and the defendant Sh. Hardev Singh sought to raise a dispute about his ownership of the said property, and by an affidavit dated 07th December, 1974, the said Sh. Hardev Singh acknowledged and admitted that the plaintiff has one-third share in the property. Sh. Hardev Singh claimed to be the owner to the extent of the balance two-third's share. The plaintiff submits that after this acknowledgment of his rights, the parties had no dispute over each other's position and that it continued to be as it were till after October, 1999, when Sh. Hardev Singh passed away. It is submitted that the legal heirs/representatives of the Hardev Singh, arrayed defendants started disputing the plaintiff's title which necessitated this suit, for declaration, possession and rendition of accounts and partition of the basement.

5. The plaintiff relies upon certain documents, certified copies of the sale deed dated 19.09.1967, a copy of the affidavit dated 07.12.1974 and the letter dated 01.11.1994 written by Sh. Hardev Singh, in which too there is an allusion of the plaintiff's one-third share.

6. The defendants resist the suit contending that the plaintiff has no right or interest in the suit property and that it was purchased and registered in their favour. They dispute the genuineness of the affidavit dated 07.12.1974 and also the letter relied upon by the plaintiff. After considering the submissions and in view of the documents relied upon, the Court proceeded to frame issues on 12.01.2004. The second issue is the one this Court is concerned with at the present stage.

7. The plaintiff points to the circumstance that after the issues were framed, the suit was amended. In the amended suit, the claim made is on the strength of a certified copy of the sale deed dated 12.09.1967, i.e. that late Sh. Waryam Singh Khamba, the plaintiff's father (also father of late Sh. Hardev Singh) was the real and true owner of the

property and that he had contributed amounts in the purchase of the same. Reliance is placed upon the endorsement at the back of the documents (certified copy of the sale deed) to say that late Sh. Waryam Singh was real owner for having paid the amount of Rs. 40,000/- out of the entire consideration of Rs. 43,000/-. It is submitted that the plaintiff was not in possession of the relevant documents when the suit was filed and, therefore, this claim of Mr. Waryam Singh being the true owner could not be urged. It is, therefore, urged on the basis of such documents that the plaintiff being the heir of Sh. Waryam Singh is entitled to one half of the share of the property.

8. The defendants contend that neither the suit nor the amended plaint are maintainable in view of Sections 3 and 4 of The Benami Transactions (Prohibition) Act, 1988. It is submitted firstly that the suit contains pleadings that are inconsistent with what is sought to be urged. The defendants submit that the original claim was that the plaintiff was half share owner in his own right and has relied upon the affidavit dated 07.12.1974 and the alleged letter dated 01.11.1941. Those documents indicate at best, that the plaintiff was one-third owner. This, submits counsel, that the plaintiff has completely changed the character of the suit and is now claiming that instead of his being the Benami owner to the extent of one-half share, is Benami holder and the real and true owner of the property.

9. It is submitted that otherwise too the said document as a whole would indicate that the plaintiff bases his claim on what is essentially Benami transaction and that provisions of the Act would create a bar for such claims.

10. In reply to the submissions, the plaintiff argues that there is no substantial difference between the original suit and the amended suit and that the claim about Sh. Waryam Singh's ownership was in the alternative, the essential part of the claim being that the plaintiff himself was the true owner to the extent of one-half share.

11. Before proceeding to analyse rival contentions, it is necessary to extract relevant provisions of the Benami Act which are as follows:-

“3. Prohibition of benami transactions.-(1) No person shall enter into any benami transaction.

(2) Nothing in sub-section (1) shall apply to-

a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter;

b) the securities held by a-

(i) Depository as registered owner under sub-section (1) of section 10 of the Depositories Act, 1996.

(ii) participant as an agent of a depository.”

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

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

(3) Nothing in this section shall apply-

a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.”

12. In this case, the plaintiff is claiming half share in the suit property. Though the expression "Benami" is not used, the Court is not unmindful of the circumstance that the title of the property is based on the Sale Deed dated 12.09.1967. That document confers

title to the property in favor of late Sh. Hardev Singh. Although the plaintiff urged that at that point of time, the fact that signatures did not appear on the document, that aspect is of little or no consequence. According to the document (i.e. the sale deed dated 12.09.1967), late Sh. Hardev Singh was the real and true owner. The plaintiff's reliance on the endorsement at the back of the document to the extent that Sh. Waryam Singh was supposed to have paid Rs. 40,000/-, is of no avail because to escape the rigor of Section 4, clear averments about the property being that of a Hindu Undivided family are necessary. This is because the prohibition from entering into Benami transaction sought to be effectuated by Sections 3 and 4, the latter of which prohibits the filing of the suit for the assertion of such claims shall apply absolutely. A close reading of section 4 (1) would reveal that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property. The bar is relieved to the extent indicated in Section 4 (3). In this case, the plaintiff nowhere asserts that the property was purchased by or on behalf of late Sh. Hardev Singh. Likewise, it is not the plaintiff's case that late Sh. Hardev Singh was holding the property or a share of the plaintiff's interest so as to save the claim under Section 4 (3).

13. The plaintiff as discussed earlier had originally submitted that the ownership of the property was joint as between him and late Sh. Hardev Singh. The documents relied upon suggested that the so-called portion was to the extent of one-third in favour of the plaintiff and two-third in favour of the late Sh. Hardev Singh. Besides affidavit and letter dated 07.12.1974 and 01.11.1994 there is no document indicative of the plaintiff's submission of having deposited or paid any amount. On the contrary, the only indication in the document is of late Sh. Waryam Singh having paid Rs. 40,000/-. As far as that aspect is concerned, the previous discussion would reveal that the plaintiff does not say that Sh. Waryam Singh purchased it. In the amended suit, he claims that the real and true owner was Sh. Waryam Singh.

14. Having regard to the entire submissions and the circumstance and the operation of Section 4 (1) of the Benami Act, the Court is of the opinion that the suit and all pending applications are not maintainable. The suit and consequential proceedings are, therefore, rejected.

No order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

APRIL 26, 2010
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