

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: 17th January, 2012
Judgment Pronounced on: 19th January, 2012

+ RFA(OS) 5/2000

SMT. SANTOSH MALIK (SINCE DECEASED)
THROUGH LRS. Appellants
Through: Mr.Vikas K. Chadha with Mr.R.K. Jain,
Advocates

versus

MAHARAJ KRISHAN & ANR. Respondents
Through: Mr.S. Vaidialingam, Adv. for R-1.
Mr.Devendra Sain, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. IA.No.721/1997 under Order VII Rule 11 of the Code of Civil Procedure filed by the defendants praying that the plaint be rejected, has been allowed.
2. Learned Single Judge has opined that in view of the prohibition contained in the Sub-Section (1) of Section 4 of the Benami Transactions (Prohibition) Act 1988, late Smt. Santosh Malik could not bring any action seeking partition and possession of property bearing No.B-6, Jangpura Extension, New Delhi-110044.

3. The legal heirs of Santosh Malik, who are litigating, on the death of Santosh Malik urged at the hearing of the appeal through their counsel that in view of Clause (a) of Sub-Section (3) of Section 4 of the Benami Transactions (Prohibition) Act 1988, the suit would be maintainable. Additionally, counsel urged that the defence could not be looked into while deciding on the issue: Whether the plaint disclosed a cause of action?

4. We thus proceed our journey by noting the pleadings in the plaint.

5. The plaintiff, Santosh Malik pleaded in the plaint, that she is the daughter of late Dr. Ram Krishan and that the defendants, Maharaj Krishan and Iqbal Krishan are her brothers. She pleaded that Maharaj Krishan obtained a matriculation certificate in the year 1946 and came to Amritsar. Thereafter, in paras 9 to 14 of the plaint, she pleaded as under:-

“9. That in 1950, the Rehabilitation Department of Govt. of India, decided to allot houses on hire-purchase basis to eligible refugees according to the size of the family, on a very nominal price of about ₹5,000/- out of which initially only a sum of ₹2500/- was required to be paid by cash. One house No.B-6, Janpura Extension, New Delhi was allotted to defendant No.1 as per the decision of the family.

10. That even this small amount was impossible to be paid for purchase of the aforesaid house No.B-6, Jangpura Extension, New Delhi, measuring 200 sq.yd. (earlier it was about 160 sq.yds. subsequently about 40 sq.yd. additional adjacent land was allotted) which was allotted to the family according to the size of the family consisting of 7 members.

11. That the plaintiff had been married on August 20, 1945. As the defendants and other family members were unable to even pay the initial price of ₹2500/- at that time, the plaintiff was approached by late Smt.Parvati Devi, her mother, to contribute maximum amount which she can afford for saving the family from further ruin, so that a joint family house can be purchased, which can be an asset of the family and misery of the family can end. She further assured the plaintiff that she will get her due share in the said house and she will be one of the equal co-owners of the same.

12. That the plaintiff told her mother that she can do so only after discussing the matter with her husband, who may give some money to her for this purpose. She also specifically stated that her husband may agree on the solemn assurance by the family members that the plaintiff will have her due equal share in the property being taken from the Govt. of India.

Accordingly, the plaintiff and her husband discussed the entire matter with other family members and it was agreed by all the family members and solemn assurance was given that in view of substantial help by the plaintiff at that crucial time, she will be one of the co-owners of the said property i.e. No.B-6, Janpura Extension, New Delhi, with other family members, with equal share in the property.

13. That the financial position of the family remained very weak for a long period of time right from pre-partition time till 1965 except for two years or so when defendant No.1 and defendant No.2 went to Indo-China in 1957 for about two years and were remitting their salary to Shri Hari Krishan, the eldest brother. They were not in a position even to pay regularly the installments of the house as also the ground rent of the house and they received the default notices a number of times. They could settle the installments of the

house and ground rent only in 1964, though they purchased the house in 1950.

14. That on getting solemn assurances from all the family members, the plaintiff contributed at that time a sum of ₹900/- out of initial deposit of ₹2,500/- for the purchase of the said house. Out of this amount of ₹900/-, a sum of ₹450/- was paid by the plaintiff's husband to her, and for the remaining amount, the plaintiff had to dispose of her jewelry.

The plaintiff acted most honestly and in good faith, for the welfare of the entire family, as she had been assured by all the family members that in view of her timely substantial contribution, she would be equally co-owner with others of the said property No.B-6, Janpura Extension, New Delhi, and if the said property is sold, she will get her due share, otherwise, she will have her due share with possession of the said property. Without her contribution the house could not have been purchased in 1950.

Since the financial position of the family was very weak and Shri Maharaj Krishan remained abroad for a long period of time, the plaintiff's share in the house was not given to her, though assurances were given to her that as and when Shri Maharaj Krishan came to India, she will get her due share. Besides, Shri Maharaj Krishan defendant No.1's wife and son remained ill intermittently for a long period of time from 1960 and she had hardly any savings to settle plaintiff's share in the house by giving her one third market price of the house.

Besides the contribution of the plaintiff, the part price out of the remaining amount was got adjusted by late Dr.Ram Krishan, father of the plaintiff and defendants from his refugee compensation claim for the property left in Pakistan. Further small amounts were contributed by other family members. However, as stated

above the plaintiff was the major contributory for initial deposit of ₹2500/- and other investments made in the property in 1960, as stated hereafter”

6. In para 17 of the plaint she has pleaded as under:-

“17. That Dr.Ram Krishan died on January 18, 1959 and Smt.Parvati Devi died on July 26, 1956 leaving behind three sons, i.e. Shri Hari Krishan, Shri Maharaj Krishan and Shri Iqbal Krishan and two daughters i.e. the plaintiff and Mrs.Pratibha Das.

After the death of Dr.Ram Krishan and Smt.Parvati Devi it was decided by the family members that the co-owners of the property will be Shri Hari Krishan, Shri Maharaj Krishan, Shri Iqbal Krishan and the plaintiff.”

7. Alleging that she had 1/3rd share in the property B-6, Jangpura Extension, New Delhi, partition thereof was prayed, with a direction that she be put in possession of 1/3rd built up property, the suit was instituted.

8. Re-visiting the averments made in the plaint, we find that in para 9, Santosh Malik pleads that Rehabilitation Department, Government of India decided to allot a house on hire-purchase basis to eligible refugees and that House No.B-6, Jangpura Extension, New Delhi was allotted to defendant No.1 as per the decision of the family.

9. Who took the decision: All the family members or only some? Where was the decision taken? On what day, month or year was the decision taken? Nothing has been pleaded. The averments in para 9 are as vague as vagueness can be.

10. She claims, as per pleadings in para 11 of the plaint, that her mother late Smt.Parvati Devi, approached her to

contribute the maximum amount which she could afford to save the family from ruin, so that a joint family house could be purchased and was assured that she i.e. Santosh Malik would get her due share in the said house and will be an equal co-owner thereof. She pleads, in para 12, that she discussed the matter with her husband and, on the solemn assurance from her family members, contributed ₹900/- for purchase of the house. She pleads, in the fourth sub-para of para 14 of the plaint that besides money contributed by her, her late father Dr.Ram Krishan got adjusted a compensation claim sanctioned to him with respect to property left in Pakistan when the property was purchased. She pleads in para 17 that after the death of her parents the family decided that the plaintiff would be treated as a co-owner of the property. The date, month and year when the family so decided, has not been pleaded.

11. A perusal of the averments in the plaint would show that it is not the case pleaded that late Dr.Ram Krishan, the father of the litigating parties had left behind ancestral properties at the time of partition and in lieu thereof the subject property was allotted and that with the consent of the father it was decided that the allotment would be in the name of defendant No.1. On the contrary, she had categorically pleaded that the Rehabilitation Department of the Government of India decided to allot houses to refugees. She had pleaded that on the asking of her mother she gave money to defendant No.1. She pleads an understanding in the family that she would be given one-third share in the property and that is the reason why she has prayed to be put in possession of one-third share in the property. Meaningfully read, she does not plead

the property to be having an ancestral character. If this was her case, since she admits that her father died on January 18, 1959 and her mother had pre-deceased her father, she could have only claimed a share through her father because as of the year 1959 she could not be a co-parcener in the joint family properties.

12. As the plaint is to be read, the foundation of the claim is that she paid ₹900/- at the asking of her mother and this sum was used to make the initial deposit when the house in question was purchased by her brother. As highlighted by us herein above, on what day, month or year was the decision taken, reference whereof has been made in para 9 of the plaint, have not been stated. Similarly, the decision of the family after the parents died that each child would be the co-owner of the property to which reference has been made in para 17 of the plaint is sans the particulars of any day, month or the year.

13. In the decision reported as 2011 (6) SCALE 677 Ramrameshwari Devi vs. Nirmala Devi, in para 52(a) the Supreme Court highlighted that pleadings are the foundation of the claims of parties and it is the bounden duty and obligation of every Trial Judge to carefully scrutinize the pleadings and the documents on which the pleadings are predicated. In the decision reported as AIR 1999 SC 1464 D.M.Deshpande vs. Janardhan Kashinath Kadam, the Supreme Court highlighted the relevance of pleading material facts. In the decision reported as AIR 1982 Bom.491 Nilesh Construction Co. vs. Gangu Bai, with reference to a plea of tenancy, the Bombay High Court highlighted that the

pleadings must disclose the details, with reference to the day when the tenancy was created and the exact nature thereof. In the decision reported as 2006 SC 1828 Mayar (HK) Ltd. & Ors. vs. Owners and Parties Vessel MV Fortune Express & Ors., the Supreme Court held that complaints have to be read meaningfully and not formally and it is the duty of the Court to see whether a real cause of action has been set out in the complaint or something illusory has been projected in the complaint and that after so reading, vexatious complaints have to be thrown out.

14. Suffice would it be to state that a vague plea sans the particulars thereof, would be no plea in the eyes of law and no issue can be settled between the parties as required by the Code of Civil Procedure. Indeed, Rule 2 of Order 6 of the Code of Civil Procedure enjoins upon a party to ensure that its pleadings contained a statement in the concise form of material facts. We do not find any material facts so pleaded.

15. That apart, the suit, as drafted is based upon title on the plea that having contributed ₹900/- when the property was purchased, and the contribution being on an express assurance that the plaintiff would have a right in the property and thus we concur with the reasoning of the learned Single Judge that the suit is barred by virtue of Sub-Section 1 of Section 4 of the Benami Transactions (Prohibition) Act 1988. The plea urged that the bar imposed as afore-noted is not available when clause (a) of Sub-Section 3 of Section 4 is attracted, is not available to the appellants since it is not pleaded in the complaint that the person in whose name the property is held is a co-parcener in a Hindu Undivided Family

and the property is held for the benefit of the co-parceners in the family. The plea in para 11 that the money was used to purchase a joint family house is a vague plea and since there is no plea that late Dr. Ram Krishan and his family constituted a Joint Hindu Family or an Undivided Hindu Family, we just see no scope to hold that clause (a) of Sub-Section (3) of Section 4 of the Benami Transactions (Prohibition) Act 1988 is applicable. We reproduce the said Section for facility of reference. It reads as under:-

“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.”

16. Thus, for the reason of vagueness in the pleadings and material facts not pleaded, being the additional reason, in addition to the reason given by the learned Single Judge with which we concur, we dismiss the appeal, but refrain from imposing cost.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JANUARY 19, 2012
Rk/dkb