

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

+ **RSA No.22/2014**

% **30th January, 2014**

SMT. SUMAN TANEJA Appellant
Through: Mr. S.S. Dogra, Advocate.

VERSUS

RAKESH TANEJA AND ORS. Respondents
Through: Mr. Sudhir K. Makkar, Advocate with
Ms. Meenakshi Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

Caveat No.83/2014

1. Since the counsel appears for the caveator, caveat stands discharged.

C.M. No.1403/2014 (condonation of delay)

2. For the reasons stated in the application, delay of 22 days in filing the appeal is condoned.

C.M. stands disposed of.

C.M. No.1405/2014 (condonation of delay)

3. For the reasons stated in the application, delay of 51 days in re-filing the appeal is condoned.

C.M. stands disposed of.

C.M. No.1406/2014 (condonation of delay)

4. For the reasons stated in the application, delay of 17 days in re-filing the appeal is condoned.

C.M. stands disposed of.

+ RSA No.22/2014 and C.M. No.1404/2014 (stay)

5. This Regular Second Appeal is filed impugning the judgment of the first appellate court dated 22.2.2013 by which the first appellate court accepted the appeal filed by the plaintiff no.2/respondent no.1 herein and set aside the judgment of the trial court dated 7.5.2007 which had dismissed the suit for partition with respect to property No.5-B, village Hastal, Colony Dayalsar, Najafgarh Road, New Delhi-59 admeasuring 75 sq yds.

6. The admitted fact is that the suit property was purchased in the name of Smt. Sahiba Devi by means of documents being the sale agreement, Will, power of attorney etc dated 23.7.1992. I may note that the documents in question are prior to amendment of Section 53A of the Transfer of Property Act, 1882 by Act 48 of 2001 w.e.f 24.9.2001 and therefore there

was no requirement in law for registration of the document being the agreement to sell. The case of the appellant/defendant no.1, the daughter-in-law of Smt. Sahiba Devi being the wife of the deceased son Sh. Satish Kumar Taneja of Smt. Sahiba Devi, was that though the suit property was purchased in the name of Smt. Sahiba Devi actually, the funds for the same were contributed by the husband of the appellant. This defence is contained in paras 4 and 5 of the written statement and the same read as under:-

“4-5. That the contents of paras 4 and 5 of the plaint are wrong, incorrect and denied. It is absolutely wrong and denied that after selling the aforesaid D.D.A. flat, the plaintiff No.1 had purchased the property bearing No.5-B, measuring 75 sq. yds. Consisting of two shops, two rooms, kitchen, bathroom latrine on the ground floor and two rooms on the first floor situated at village Hastal Colony, known as Dayalsar, Najafgarh Road, New Delhi.

That the true and correct facts are that the suit property was purchased by the husband of the defendant No.1 from his own funds and resources in the name of his mother out of love and affection and being head of the family. The transaction of sale and purchase was made by the husband of the defendant No.1 and sale consideration was paid by the husband of the defendant No.1 in the presence of the witnesses, even for this purchase the husband of the defendant No.1 obtained loan from his in-laws and friends and purchased the property. It is wrong and denied that the sale consideration was paid by the plaintiff No.1, and out of sale consideration which was received after the sale of D.D.A. flat. It is pertinent to state here that even at the time of allotment of D.D.A. flat the husband of the defendant No.1 shared the 50% consideration amount and after the sale of D.D.A. flat, the plaintiff No.1 used this money for the marriage of plaintiff No.2 and other defendants, who are sons and daughters of the plaintiff No.1. It is absolutely wrong and denied that the suit property is self acquired property of the plaintiff No.1 and no other family members of the plaintiffs have contributed a

single paise in the purchase of the property, including the wife of the defendant No.1.

It is wrong and denied that due to love and affection, the suit property was purchased in the name of the wife of the defendant No.1. It is further wrong and denied that the suit property owned and possessed by the plaintiff No.2, however, it is disputed that the electricity bill comes in the name of Smt. Sahiba Devi. It is clarified here that the electricity meter only installed in the name of person in whose name property stands.

It is pertinent to state here that the husband of the defendant No.1 is possession and owned the entire property from the date of purchase i.e. 23.7.1992 after the death of the husband of the defendant No.1, the property has devolved to the answering defendant by virtue of inheritance and answering defendant is in the occupation and possession of the entire property, and the defendant No.1 is maintaining and looking after the suit property from his own perks.” (underlining added)

7. The first appellate Court has reversed the judgment of the trial court essentially on two counts. The first count is that as per the admitted contentions raised by the appellant/defendant no.1, the defence would be barred by the provision of Benami Transactions (Prohibition) Act, 1988 (hereinafter referred to as “Benami Act”). The second aspect which has been held by the first appellate court against the appellant is that the appellant/defendant no.1 failed to prove by leading such evidence which the court could believe, that moneys for purchase of the suit property were paid by late Sh. Satish Kumar Taneja.

8. I have already reproduced the relevant paragraphs of the written statement filed on behalf of the appellant/defendant no.1 in the trial court and the same show that pleas raised therein are classical pleas of benami, and which pleas cannot be taken after passing of the Benami Act in the year 1988. As per Section 3 of the Benami Act neither any suit can be filed nor any defence can be raised to urge the plea that the transaction was a benami transaction i.e though the property was standing in the name of one particular person actually the owner is someone else who had paid the consideration.

9(i) There are two exceptions which are carved out by the Benami Act and which are contained in Section 4(3) of the Benami Act and which provision reads as under:-

“Section 4. Prohibition of the right to recover property held benami.-(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.”

(ii) For a defence to be urged to come under Section 4(3)(b) of the Benami Act, it is necessary to firstly plead that the property in question was purchased in trust for a beneficiary and which is held for the benefit of the

beneficiary on behalf of the trustee and towards whom the trustee or other person stands in a fiduciary capacity. There is no pleading on behalf of the appellant/defendant no.1 as required under Section 4(3)(b) and therefore really these legal proceedings which are now going on for 10 years should not have been continued for this long period. I am surprised that trial Court did not realize this aspect and after proceeding to frame issues allowed both the parties to lead evidence on their respective cases and thereafter dismissed the suit.

The appellate court, no doubt, has taken note of the law from the admitted position appearing in the pleadings that the defence is barred by virtue of Section 4(2) of the Benami Act, however, a legal plea from the admitted set of facts can always be raised at any stage.

10. I may note that the appellate court in addition to holding the suit as being barred by the Benami Act has also considered on merits the defence of the appellant/defendant no.1 and held that no credible evidence has been led to prove that the funds for purchase of the suit property were given by Sh. Satish Kumar Taneja, late husband of the appellant/defendant no. 1. The relevant observations of the appellate court in this regard are contained in paras 17 to 20 of the impugned judgment, with which I agree and the same read as under:-

“ Sh. Satish Kumar Taneja was employed as Group ‘D’ employee in MCD as a Driver. He got married to defendant no.1 in 1987. As testified by PW1, two of his sisters had been married prior to him. Both of his brothers i.e. defendant no.4 and plaintiff no.2 were married after the purchase of suit property in 1993 and 1995 respectively. No record of salary or other accumulations of Sh. Satish Kumar Taneja was called from the office of his employer to assess the availability of his own small family, so as to be able to contribute in performing marriages of his siblings besides his own and also in purchasing DDA flat at Sheikh Sarai, New Delhi to the extent of 50%. Defendant no.1 did not disclose the amount that Sh. Satish Kumar Taneja may have spent in various marriages and for purchasing DDA flat even by estimation. Eyebrows have justifiably been raised in respect of the version of defendant no.1 that she used to be paid a sum of Rs.5,000/- per month by her husband. Even a Group ‘A’ officer was not receiving this much amount in his salary in or about 1992. While there was good probability of plaintiff no.1 having sufficient amount in hand in 1992 as he had retired from Government service in 1990 and must have received retiral benefits besides the sale proceeds of DDA flat of Sheikh Sarai from 1991 with no major liability in the interregnum, the defendant no. I had utterly failed to substantiate the availability of savings to the extent of Rs. 25,000/- with her husband.

18. DW Satpal claimed to be a caterer and sweet shop owner earning about Rs. 8,000/-- 9,000/- per month in 1992. He must be an income tax payee. He has neither produced his books of account nor filed the Income Tax returns of the relevant years where the alleged loan of Rs. 20,000/- given by him to Sh. Satish Kumar Taneja may have been reflected. He claimed that Rs. 30,000/- was borrowed by Sh. Satish Kumar Taneja from his cousin Sh. Jagdish Chander who had arranged that amount from a grain agent. He did not disclose the name and particulars of said agent. He did not disclose the name and particulars of said agent. It is another matter that DW Jagdish Chander himself is totally silent in this behalf. He also did not produce either his books of account or Income Tax returns showing the loan entry in the name of Satish Kumar Taneja. While Satpal claimed to have accompanied his brother-in-law to the house of Jagdish Chander for borrowing the sum of Rs. 30,000/- , Sh. Jagdish Chander did not whisper about the presence of Satpal but claimed that the money was

directly paid by him to husband of defendant no. 1. Strangely enough the theory of part funding of suit property by taking loan by Satish Kumar Taneja was not propounded in reply Ex. DW 1/1A to the legal notice of the plaintiffs. Even in written statement it was stated that loan was arranged from 'relatives and friends'. Reliability to the version could have been attached if instead of taking a shaky and open defence and leaving margin for manipulation in evidence, the defendant no. 1 would have come out straight with the names of creditors. Further defendant no. 1 has not disclosed as to when and in what manner the loan liability of her cousins was discharged by her husband. No document in this behalf is filed. While DW Satpal has deposed that the consideration amount was paid to the seller in Uttam Nagar court, DW Praveen Kumar Bansal has testified that the total amount of consideration of sale was paid at the residence of seller in advance. This hits the trustworthiness of DWs.

19. It is being thrust that suit property had been purchased in the name of Smt. Sahiba Devi being the mother of Sh. Satish Kumar Taneja out of love and affection'. In fact the defendant no. 1 was not even aware in whose name the documents were got executed from the seller Sh. Rakesh Kumar. The legal notice Ex. PW 1/11 was got issued to defendant no. 1 by plaintiff no. 1 Sh. Lekh Raj Taneja after death of his wife. In her reply Ex. DW 1/1A defendant no. 1 insisted that the suit property was purchased by her husband by investing his funds and resources but in the name of sender of the notice i.e. Sh. Lekh Raj Taneja. No whisper about the documents of suit property having been executed in the name of Smt. Sahiba Devi, was made in the entire reply. It was claimed that the documents were got executed in the name of mother because she was the "head of family". In north Indian societal arrangement when eldest male in the family is alive, the female next in line is not bestowed this nomenclature. Even in that case Sh. Satish Kumar Taneja would have got GPA Ex. PW 1/7 executed from the seller in his own favour and not in favour of plaintiff no. 1. It is not the case of defendant no. 1 in pleadings that this document was got executed in favour of Sh. Lekh Raj Taneja out of so called "love & affection". The basis asserted by defendant no. 1 to explain the documents of property in the name of mother of her husband, therefore is unpalatable.

20. It is a usual & normal behavior that one who actually purchases any property for personal occupation will retain the title papers thereof with him. In the case in hand however all the documents got executed from the vendor were in the custody of plaintiffs who have produced them in the court. In Para 3 of the reply Ex. DW 1/1A to the legal notice, defendant no. 1 had claimed that she was being harassed, humiliated and terrorized by plaintiffs and other family members and that she had made written complaint about it at Police Post Matiala, New Delhi. No plausible reason has been furnished by defendant no. 1 for neither demanding nor taking any legal action against the plaintiff no. 1 for retrieving documents Ex. PW 1/2 to ex. PW 1/5 and the previous set of similar documents which were in favour of the vendor Sh. Rakesh Kumar, even when the circumstances were aggravated and she was allegedly being maltreated.” (underlining added)

11. So far as the issue that the bar of the Benami Act could not be taken up for the first time in appeal, the same has been dealt with in the impugned judgment in para 23 which reads as under:-

“23. The contention that the plaintiffs cannot take the assistance of the provisions of The Benami Transactions (Prohibition) Act, 1988 for the first time in appeal, does not hold water in view of the fact that legal submissions available to the litigants can be raked up at any stage of the proceedings. Section 3 of the said Act, which came into force on 05.09.1988 puts a bar on Benami Transactions. Section 4 thereof, deemed to have become effective on 19.05.1988, constitutes an embargo to a suit, claim, action or defence in respect of any property held benami. Even if the stance of defendant no.1 that the suit property was purchased by her husband by paying consideration amount of Rs.75000/- from his resources of which documents were got executed by him in the name of his parents benami, were to be accepted, the transaction was barred under the Act of 1988. The purported real owner or his successor-in-interest cannot raise a defence to assert the title of real owner. In fact the benami transaction was made punishable by Section 3(3) of the Act. Reliance in this

behalf is placed upon ***R. Rajagopal Reddy Vs. Padmini Chandershekharan, AIR 1996 SC 238.***”

12. Before me, counsel for the appellant essentially argued two aspects. The first aspect was that the appellate court has given a judgment in this case after three years and therefore the judgment needs to be set aside on this count itself, and the second ground which is urged is that the suit property in fact was owned by the husband of the appellant/defendant no.1, Sh. Satish Kumar Taneja as the funds were provided by him.

13. So far as the second aspect is concerned, I have already considered the same above and this argument will stand rejected not only because of the legal bar contained in Section 4(2) of the Benami Act but also on account of the observations of the appellate court which I approve and which have been reproduced above.

14. So far as passing of the judgment after a period of three years is concerned, at the outset I was inclined to favourably consider this aspect, however, I note that the Supreme Court in the judgment in the case of ***Kunwar Singh and Ors. Vs. Sri Thakurji Maharaj 1995 Supp. (4) SCC 125*** has allowed the appeal because of delay in passing the judgment leaving the question open whether only because of delay in passing of the judgment the same can be set aside on that count itself. In the judgment relied upon on

behalf of the appellant in the case of *Kanhaiyalal and Ors. Vs. Anupkumar and Ors. AIR 2003 SC 689* the judgment of the court below was set aside no doubt because it was passed with delay, but more importantly because of the fact that judgment was passed in a second appeal and the judgment was passed without formulating the necessary questions of law which are required to be framed as per Section 100 of CPC. Even the judgment in the case of *Bhagwandas Fatechand Daswani & Ors. Vs. HPA International & Ors. (2000) 2 SCC 13* does not lay down a general proposition that a judgment passed with delay is to be set aside only on the count of delay in passing of the same. Therefore, the facts of the cases cited on behalf of the appellant are different and they cannot be applied more so because I put it to the counsel for the appellant that what is the argument or the issue which the appellant wanted for the first appellate court to consider but the appellate court had not considered that argument/issue and which has resulted in prejudice to the appellant. Counsel for the appellant could not show me any ground urged in this Regular Second Appeal as to which specific ground the appellant had urged before the first appellate court and which was not considered by the first appellate court. The only ground which is urged before this court is the ground contained in para 10 of the present appeal, and which ground is really ground on merits that the first appellate court has

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wrongly decided the issue. Therefore, it is not the case of the appellant that any ground urged before the first appellate court has not been decided by the first appellate court or how is the appellant in any manner prejudiced by the long delay.

I have already observed above that this litigation has gone on for about 10 years although right at the outset the suit should have been forthwith decreed and which is one aspect which further persuades me not to unnecessarily remand the case back for a fresh judgment by the first appellate court on account of the judgment having been passed with delay.

15. In view of the above, no substantial question of law arises. The appeal is therefore dismissed, leaving the parties to bear their own costs.

JANUARY 30, 2014
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VALMIKI J. MEHTA, J.