

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

% **Date of decision: 16<sup>th</sup> August, 2018**

+ **EX.F.A. 9/2018, CM No.9638/2018 (for stay), CM No.9639/2018**  
**(for condonation of delay of 399 days in filing appeal).**

**RAKHI**

**..... Appellant**

Through: Ms. Deepali Gupta, Adv.

versus

**BABU LAL AND ANR**

**..... Respondents**

Through: Ms. Urvashi Bhatia, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. This Execution First Appeal impugns the order [dated 4<sup>th</sup> November, 2016 in Execution No.10/14 (New No.60653/16) of the Court of Additional District Judge-03 (West)] of dismissal of objections preferred by the appellant along with her brother and sister (who have not been impleaded as parties to this appeal) to the execution sought by the respondent no.1/decree holder of a compromise decree [dated 2<sup>nd</sup> November, 2012 in Suit No.513/2012 of the Court of Additional District Judge-06 (West)] in a suit filed by the respondent no.1/decree holder against respondent no.2/defendant/judgment debtor Bhagwati Devi, being the mother of the appellant/objector.

2. This appeal came up first before this Court on 13<sup>th</sup> March, 2018, when notice limited to the aspect of exploring possibility of amicable settlement between the parties was ordered to be issued and the operation of the impugned order stayed. The appellant/objector, after the last date, has not taken steps for service of the unserved respondent no.2/defendant/judgment debtor Bhagwati Devi.

3. The counsel for the appellant states that the appellant/objector, respondent no.1/decree holder and the respondent no.2/defendant/judgment debtor are present in Court in person.
4. The counsel for the appellant has been heard and the copies of the relevant Trial Court record annexed to this appeal perused.
5. The respondent no.1/decree holder instituted the suit, for recovery of possession, on the basis of title, of property no.E-690, Camp No.2, J.J. Colony, Nangloi, New Delhi, from the respondent no.2/defendant/judgment debtor. The said suit was compromised in mediation, whereunder the respondent no.1/plaintiff/decree holder agreed to pay Rs.2,00,000/- to the respondent no.2/defendant/judgment debtor for vacating the property.
6. Upon the respondent no.2/defendant/judgment debtor not vacating the property, execution was sought and in which as aforesaid, the appellant along with her sister and brother, being the daughters and son of the respondent no.2/defendant/judgment debtor, filed objections and against dismissal of which objections this appeal has been preferred.
7. It was the objection of the appellant and her sister and brother, (i) that the respondent no.1/plaintiff/decree holder is their paternal grandfather; (ii) that though the appellant /objector and her sister and brother along with their mother i.e. respondent no.2/defendant/judgment debtor were in possession of the property, but the appellant/objector and her sister and brother were not made a party to the suit; (iii) that the property was purchased by the appellant/objector's father, though in the name of the grandfather i.e. the respondent no.1/plaintiff/decree holder; (iv) that the appellant/objector and her sister and brother had not consented to the settlement arrived at by their

mother, the respondent no.2/defendant/judgment debtor, with the respondent no.1/plaintiff/decreed holder; (v) the entire purchase consideration for the land underneath the property and for construction of the property, was incurred by the father of the appellant/objector and her sister and brother, on behalf of the appellant/objector and her sister and brother; (vi) that the respondent no.1/plaintiff/decreed holder and the respondent no.2/defendant/judgment debtor were in collusion with each other; and, (vii) that the appellant/objector and her sister and brother were in possession of the property, being the legal representative of their father who was the owner of the property and who is missing for the last several years.

8. The sister and brother of the appellant/objector, who along with appellant/objector had filed objections, are obviously satisfied with dismissal of objections and have not appealed thereagainst.

9. Though the counsel for the appellant/objector, before me, has sought to argue that it was not the case of the appellant that her father was the owner and it was the case of the appellant/objector that the appellant/objector herself was the owner but the same is obviously contrary to what is pleaded and the counsel for the appellant cannot be permitted to change her arguments before successive Courts.

10. I have in this regard drawn attention of the counsel for the appellant/objector to paras 5 & 13 of the objections dated 8<sup>th</sup> October, 2013 preferred by the objectors and the counsel for the appellant/objector is unable to urge further, the argument that the objection of the appellant was that she in her own right and not as heir of her father has rights in the property.

11. The learned Additional District Judge, by the impugned order, has

dismissed the objections observing that, the plea of the appellant/objector that the father of the appellant/objector was the owner of the property for the reason of having contributed the purchase consideration therefor and having purchased the property in the name of the respondent no.1/plaintiff/decreed holder, was barred by the *Benami* Transactions (Prohibition) Act, 1988 now renamed Prohibition of *Benami* Property Transactions Act, 1988.

12. The counsel for the appellant/objector on enquiry as to what is wrong with the aforesaid reasoning, states that the *Benami* law does not apply because the property was purchased in trust and there was a fiduciary relationship.

13. However upon being asked, whether not fiduciary relationship is confined to a relationship of father towards a minor child and not by a major son towards his father, the counsel for the appellant/objector has no reply.

14. No case, even otherwise, in the objections, within the meaning of, Section 4(3)(b) of the *Benami* law as it existed earlier or Section 2(9)(A)(ii) or (iv) as it exists now i.e. of purchase in trust or a fiduciary capacity or of purchase from known sources of income, has been pleaded.

15. The counsel for the appellant/objector has however drawn attention to ***Textile Association (India) Bombay Unit Vs. Balmohan Gopal Kurup*** JT 1991 (2) SC 434.

16. Reliance on the said judgment is totally misconceived. That was the case under the Rent Control laws and *ex parte* decree against one of the heirs of the tenant was held to be not binding on the other heirs. Here, as aforesaid, the plea of the father of the appellant being the true owner and the respondent no.1/decreed holder being the *benami* owner and the appellant

having succeeded to a share in the property on the demise of her father, is barred by the *Benami* law. I may even otherwise state that *Textile Association (India) Bombay Unit* supra does not consider the detailed dicta of the Supreme Court in *Surayya Begum Vs. Mohd. Usman* (1991) 3 SCC 114 in this regard wherein it has been held that unless collusion of one of the heirs of the tenant with the landlord is proved, the decree against one heir is binding on the other heirs of the tenant as well.

17. The counsel for the appellant has not urged any other arguments.

18. No error is found in the impugned order and there is no merit in the appeal.

19. As far as the aspect of mediation is concerned, I have enquired in vernacular from the respondent no.1/plaintiff/decreed holder present in Court, whether he is willing for any settlement. He states that the total value of the property is Rs.8,00,000/- to 9,00,000/- and he has already deposited Rs.2,00,000/- in terms of the compromise decree before the Suit Court.

20. I have asked the counsel for the appellant/objector, whether the appellant/objector is willing to buy the property for Rs.8,00,000/-.

21. The counsel for the appellant/objector has taken instructions from the respondent no.2/defendant/judgment debtor, who shows unwillingness.

22. Taking of instructions by the counsel for the appellant/objector from the respondent no.2/defendant/judgment debtor also shows that this is not a case of collusion between the respondent no.2/defendant/judgment debtor and the respondent no.1/plaintiff/decreed holder.

23. There is no merit in the appeal.

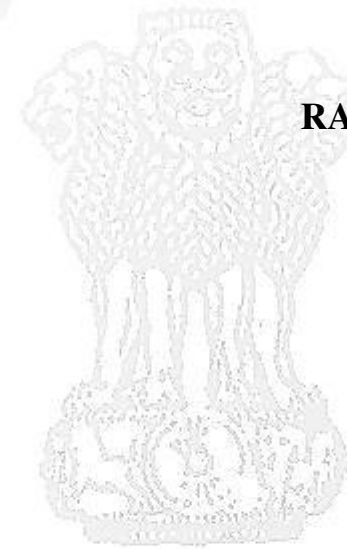
24. Dismissed.

25. However it will be open to the appellant/objector or the respondent no.2/defendant/judgment debtor to, before the Executing Court, within one month of today, make an offer for purchase of the property and needless to state, if the said offer is accepted by the respondent no.1/plaintiff/decreed holder, the Executing Court will order appropriately.

No costs.

**AUGUST 16, 2018**  
'pp'..

**RAJIV SAHAI ENDLAW, J**



न्यायमेव जयते