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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RFA-1205-2022 (O&M)
Date of Decision : 09.07.2026

C.K. THAKUR Appellant

VERSUS

USHA THAKUR AND ORS Respondents

AND

208-1 **RFA-1347-2022 (O&M)**

USHA THAKUR Appellant

VERSUS

C.K THAKUR AND ORS Respondents

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN
HON’BLE MRS. JUSTICE AMARJOT BHATTI

Present: Mr. Dinesh Arora, Advocate and
Mr. Ashish Khatkar, Advocate
for the appellant in RFA-1205-2022 and
for respondent No.1 in RFA-1347-2022.

Mr. Bhupinder Ghai, Advocate and
Ms. Jaswinder Kaur, Advocate
for respondent No.1 in RFA-1205-2022 and
for the appellant in RFA-1347-2022.

ALKA SARIN, J. (ORAL)

1. The present judgment shall dispose off the above noted two appeals being RFA-1205-2022 titled as ‘C.K. Thakur Versus Usha Thakur & Ors.’ preferred by the plaintiff, namely, C.K. Thakur, and RFA-1347-2022 titled as ‘Usha Thakur Versus C.K. Thakur & Ors.’ preferred by defendant

No.1, namely, Usha Thakur. The parties are being referred to as the plaintiff and the defendant No.1 for the sake of clarity.

2. Brief facts relevant to the present *lis* are that the plaintiff filed a suit for declaration with consequential relief of permanent injunction and mandatory injunction. The case as set up by the plaintiff was that he is a senior citizen and having retired from the Ministry of Defence, New Delhi on 31.01.2007, he is residing at C-30, Palam Vihar Extension, Gurugram. The marriage of the plaintiff was solemnized with the defendant No.1 on 29.06.1967 and from the said wedlock two sons were born. Both the sons are settled with their respective families. The defendant No.1 is an illiterate, arrogant, abusive, aggressive person and she is suffering from high blood pressure, blood sugar and is under treatment at CGHS. It was further the case set up that the plaintiff obtained a loan from his GPF account, before his retirement i.e. in the year 1992 to purchase a residential property i.e. C-30, Palam Vihar Extension, Gurgaon (hereinafter referred to as the 'demised premises') and intimation in this respect was also given by the plaintiff to his department vide a letter dated 18.11.1992. Plaintiff further stated that he received an acknowledgement qua payment of ₹10,000 as advance money given to the vendor for the purchase of the demised premises. It was further the case that the sale deed was registered in the name of the defendant No.1 to save stamp duty. The plaintiff had again intimated his department regarding the purchase of the plot. On retirement, the plaintiff vacated the government accommodation and shifted to the demised premises along with the defendant No.1 and the children. The plaintiff obtained an

electricity connection in his name and he has been continuously paying tax to the Municipal Corporation/ house tax/ other payments qua other connections taken in his name. It was further the case set up that after shifting in the demised premises the behaviour of the defendant No.1 changed drastically and she started threatening the plaintiff that she would turn him out from the said house being co-owner. It was further the case that the demised premises was neither purchased for the benefit or welfare of the defendant No.1 nor the plaintiff had any intention to create title of the demised premises in the name of the defendant No.1. The plaintiff was in possession of registered documents. Since the parties have developed animosity against each other and filed several cases, hence the suit.

3. On notice, the defendant No.1 appeared and filed her written statement taking various preliminary objections including maintainability, *locus standi*, suppression of material facts etc. On merits it was stated that the demised premises was purchased by the defendant No.1 with the help of her father and as such the sale deed was executed in her favour. It was further stated that the plaintiff never applied for any loan at the time of purchase of the demised premises and it was denied that the plaintiff got executed any registered sale deed out of love and affection. Rather, the same was executed as the father of the defendant No.1 provided all the requisite funds for the purchase of the demised premises. It was further the stand that the electricity connection and other connections like water, LPG have been obtained by the plaintiff as the defendant No.1 was busy in taking care of the children and the plaintiff had taken the connection of every household supply in his name with

an ulterior motive. After shifting to the demised premises the behaviour of the plaintiff turned hostile as the defendant No.1 refused to ask for any share in her parental property. It was yet further the stand that the plaintiff filed one other suit previous to the present suit and the said suit was dismissed on 29.04.2015. The plaintiff had also filed an appeal and later withdrew the same.

4. From the pleading of the parties the following issues were framed on 06.01.2018 :

- 1) Whether plaintiff is actual and lawful owner of the suit property bearing No. C-30, Palam Vihar, Gurugram and the sale deed with respect to the suit property does not create any title in favour of the defendant ? OPP
- 2) Whether plaintiff is entitled to the relief of permanent injunction as prayed for ? OPP
- 3) Whether the present suit is not maintainable ? OPD
- 4) Whether plaintiff has no locus standi and cause of action to file the present suit ? OPD
- 5) Whether plaintiff has not come to the Court with clean hands and suppressed the true and material facts from the Court ? OPD
- 6) Whether the suit has not been properly valued for the purpose of Court fees and jurisdiction ? OPD
- 7) Whether plaintiff is estopped from filing the present suit by his own act, conduct and acquiescence ? OPD

8) Whether the suit is bad for non-joinder and mis-joinder of the necessary parties ? OPD

9) Whether the suit of the plaintiff is hopelessly time barred ? OPD

10) Relief.

5. The Family Court vide the impugned judgment dated 22.08.2022 partly decreed the suit. Hence, the present two appeals being RFA-1205-2022 and RFA-1347-2022 being preferred by the plaintiff and the defendant No.1, respectively.

6. Certain other facts, which are germane to the present *lis*, also need to be noted. Admittedly, the plaintiff had earlier filed a civil suit for declaration with consequential relief of permanent and mandatory injunction on 01.05.2014 which was dismissed on 29.04.2015. Aggrieved by the same an appeal was preferred by the plaintiff herein. In the said appeal an application was filed by the plaintiff herein for withdrawal of the suit on the ground that the pleadings in the suit were defective and that the plea of exception created by Sections 3 and 4 of the Prohibition of Benami Property Transactions Act, 1988 were not pleaded. On 05.11.2016 the following order was passed by the First Appellate Court permitting the plaintiff herein to withdraw the appeal with liberty to file a fresh suit on the same cause of action:

‘Shri Ashwani Rao, counsel for the appellant has made a statement regarding withdrawal of his appeal with liberty to file fresh one because he states that the pleading is defective and it will not be helpful to him if he withdraws

the appeal unconditional. Therefore he should be granted liberty to file fresh one. On the other hand Shri R.K. Jaiswal, counsel for respondent has objected to the withdrawal of the appeal stating that the appellant can withdraw the same but not with liberty to file fresh one.

I have heard the learned counsel for the appellant and learned counsel for the respondent.

The plaintiff is the master of his suit. He can judge what is appropriate for him or not. But at the same time the rights have accrued in favour of the other party. The appellant can withdraw the appeal with a liberty to file fresh suit because his pleadings are defective. Therefore he is permitted to withdraw the appeal with liberty to file fresh suit on the same cause of action. Appeal file be consigned to record room. Lower court record be sent back with a copy of this order to the concerned court.'

Though the earlier suit was withdrawn on the ground that the plea of exception carved out by Sections 3 and 4 of the Prohibition of Benami Property Transactions Act, 1988 were not pleaded, however, the said plea was again not raised in the present suit. The only case as set up and as noticed above was that the plaintiff had withdrawn money from his GPF account before his retirement after due intimation to the Department, that he had used that money to purchase the demised premises in the name of his wife

(defendant No.1) to avoid the stamp duty and that the original documents were in the possession of the plaintiff.

7. Learned counsel appearing on behalf of the plaintiff has vehemently contended that the plaintiff had paid the entire sale consideration having withdrawn the same from his GPF account and in this regard two letters were sent to the Department, which were duly proved on the record as Ex.P2 and Ex.P4. It is further argued that the letters show that the GPF amount was withdrawn to purchase the demised premises and intimation had also been sent to the Department. It is further the contention of the learned counsel that in the cross-examination these documents were put to the defendant No.1. Learned counsel would further contend that the receipt of ₹10,000 was also produced on the record to show the payment of earnest money to the vendor. Learned counsel appearing on behalf of the plaintiff has relied upon the judgment of the Supreme Court in the case of **Kedar Lal Seal & Anr. Versus Hari Lal Seal [AIR 1952 SC 47]** to contend that even though the pleadings may be wanting, however, it is always open to a Court to give a plaintiff such general or other relief as it deems just to the same extent as if it had been asked for, provided that it occasions no prejudice to the other side. Learned counsel has further relied upon the judgment in the case of **Valliammal (D) by LRs Versus Subramaniam & Ors. [2004 (4) RCR (Civil) 311]** to contend that all the six ingredients are made out bringing the present case under the exceptions carved out in Sections 3 and 4 of the Prohibition of Benami Property Transactions Act, 1988.

8. *Per contra*, learned counsel appearing on behalf of the defendant No.1 would contend that the receipt which was produced on the record was only qua ₹10,000 and that too was not proved in accordance with law inasmuch as the vendor never appeared in the witness box to prove the same. It is further the contention of the learned counsel that the sale deed, which was produced on the record as Ex.P3, states the sale consideration to be ₹1,20,000/-. Not an iota of evidence was led by the plaintiff to show the balance payment of ₹1,10,000/-, even if the payment of earnest money of ₹10,000 by him is accepted. Learned counsel would further contend that though Ex.P2 and Ex.P4 were produced on the record, however, the same were again not proved in accordance with law as none appeared from the Department to prove that the said documents were ever received by it. It is still further the contention of the learned counsel that there is no chain of financial transactions which had been proved by the plaintiff to show that the money withdrawn by him from his GPF account was transferred to his wife (the defendant No.1) who in turn transferred it to the vendor. Learned counsel contends that there is no evidence on the record also to show that the amount was ever withdrawn by the plaintiff from his GPF account inasmuch as the GPF account has also not been proved.

9. We have heard the learned counsel for the parties.

10. In the present case the arguments of the learned counsel for the plaintiff regarding Sections 3 and 4 of the Prohibition of Benami Property Transactions Act, 1988 and the fact that all the six ingredients carved out

under the above Sections are complied with deserve to be rejected. The six circumstances as enumerated in the case of **Valliammal** (supra) read as under:

- ‘1. the source from which the purchase money came;*
- 2. the nature and possession of the property, after the purchase;*
- 3. motive, if any, for giving the transaction a benami colour;*
- 4. the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;*
- 5. the custody of the title deeds after the sale; and*
- 6. the conduct of the parties concerned in dealing with the property after the sale.’*

Though the learned counsel for the plaintiff has vehemently argued that the source of the money has been proved by the plaintiff as having been withdrawn from the GPF account, however, as argued by the learned counsel for the defendant No.1, there is not an iota of evidence that the said amount was ever withdrawn from the GPF account. Neither the details of the GPF account itself were produced on the record nor were any persons from the Department examined to prove the same. Further still, the letters (Ex.P2 and Ex.P4) alleged to have been written to the Department were also not proved in accordance with law though the same were exhibited. The Supreme Court in the case of **Narbada Devi Gupta Versus Birendra Kumar Jaiswal & Anr. [2003 (4) RCR (Civil) 683]** has held as under :

'Reliance is heavily placed on behalf of the appellant on the case of Ramji Dayawala & Sons (P) Ltd., (supra). The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence that is by the 'evidence of those persons who can vouchsafe for the truth of the facts in issue'. The situation is, however, different where the documents are produced, they are admitted by the opposite party, signatures on them are also admitted and they are marked thereafter as exhibits by the court. We find no force in the argument advanced on behalf of the appellant that as the mark of exhibits has been put on the back portions of the rent receipts near the place where the admitted signatures of the plaintiff appear, the rent receipts as a whole cannot be treated to have been exhibited as an admitted documents.'

As held above in the **Narbada Devi Gupta's** case (supra), mere exhibition of a document is not considered as proof of the same and the document needs to be proved in accordance with law. In the absence of any document having been produced from the Department or any personnel having been examined from the Department to prove the said documents, the same cannot be relied upon. In view thereof the first requirement, i.e. the source from which the purchase money came does not stand proved. The receipt (Ex.P4) of ₹10,000/-

which has been relied upon as payment of earnest money was also not proved in accordance with law. The said receipt though produced on the record was alleged to have been issued by the vendor who never stepped into the witness box to prove the same. In the absence of the vendor or any other witness of the said receipt having stepped into the witness box to prove the same, the receipt itself cannot be said to have been proved in accordance with law and as such no reliance can be placed on the same.

10.1 Further still, there is no evidence on the record to prove the payment of the balance sale consideration of ₹1,10,000. Even if the receipt was to be taken to be proved, it is only for an amount of ₹10,000 while the sale deed as proved on the record stated the sale consideration was ₹1,20,000. Not an iota of evidence was brought on the record to show the payment of the sale consideration by the plaintiff.

10.2 The second requirement i.e. the nature and possession of the property after the purchase, even as per the averment made in the plaint, the defendant No.1 was residing in the demised premises and continuously resided in the demised premises and as such the possession also remained with the defendant No.1. Though the plaintiff is also stated to have been residing in the demised premises, however, it is not the case where the plaintiff is in exclusive possession of the demised premises and as such the second requirement also remains unproved.

10.3 The third requirement i.e. the motive, if any, for giving the transaction a benami colour also does not stand proved. Though an averment was made that the said transaction was done to save the stamp duty, however,

no evidence was brought on the record as to what was the stamp duty which was to be paid otherwise and the stamp duty which was actually paid since the demised premises was registered in a woman's name. No evidence was brought on the record that there was any difference in stamp duty at the relevant point of time.

10.4 The fourth requirement i.e. the position of the parties and the relationship, if any, between the claimant and the alleged benamidar, it is an admitted fact that the parties are married though now have been granted a decree of divorce. However, this fact alone would not amount to compliance of the requirement of Section 3 of the Prohibition of Benami Property Transactions Act, 1988.

10.5 The fifth requirement i.e. custody of the title deeds after the sale, though the plaintiff has stated that the custody of the title deed remained with him, however, it is to be seen that as per the averments made by the plaintiff himself the defendant No.1 is an uneducated lady and the plaintiff was working in the Ministry of Defence. That being the scenario, it is but acceptable and plausible that the title deed remained with the plaintiff (husband) and not in the custody of the defendant No.1 (wife) in whose name the demised premises was purchased.

10.6 The sixth requirement i.e. the conduct of the parties concerned in dealing with the property after the sale, as noticed above, the defendant No.1 remained in possession of the demised premises and as such the sixth ingredient cannot be said to have been completely complied with. It is trite that the burden to prove that a particular sale is a benami transaction and the

apparent purchaser is not the real owner always rests on the person asserting this fact. The plaintiff's claim that the sale deed in respect of the demised premises was a benami transaction has not been proved by leading cogent evidence.

11. There is yet another factor. The earlier civil suit was withdrawn by the plaintiff only on the ground that the pleadings were insufficient and the pleadings regarding Sections 3 and 4 of the Prohibition of Benami Property Transactions Act, 1988 were not pleaded. Though permission was given to withdraw the appeal and file a fresh suit on the same cause of action, however, in the subsequent second suit also, i.e. the present suit, there is not a whisper regarding Sections 3 and 4 of the Prohibition of Benami Property Transactions Act, 1988. Though the entire argument raised by the learned counsel for the plaintiff hinges on the ingredients of Sections 3 and 4 of the Prohibition of Benami Property Transactions Act, 1988, however, there are no pleadings to this effect. Infact, there is no pleading and there is no issue which was framed in this regard.

12. Learned counsel for the plaintiff has argued that the amount was withdrawn by the plaintiff from his GPF account and was paid to the vendor which fact also does not stand proved. The only evidence, if at all, is the receipt qua ₹10,000/-. There is no chain of financial transaction which has been brought out by the plaintiff to show that the amount was withdrawn by him from his GPF account and it was given to the defendant No.1 who further gave it to the vendor. The sale deed states the sale consideration to be ₹1,20,000/-. There is no evidence on the record to show that the balance

payment of ₹1,10,000/- was by the plaintiff from his own funds. In the absence of any such payment having been proved and only on the basis of the receipt qua ₹10,000/-, which was also not proved, this Court is of the considered opinion that the Family Court concerned has erred in partly decreeing the suit. In the absence of any evidence, the suit ought not to have been partly decreed and ought to have been dismissed in toto.

13. In view of the above, the appeal being RFA-1205-2022 filed by the plaintiff is dismissed and the appeal being RFA-1347-2022 filed by defendant No.1 is allowed. Consequently, the suit filed by the plaintiff is dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

09.07.2026
Aman Jain

(AMARJOT BHATTI)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No