

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.875 of 1979

(Against the judgment and decree dated 23.08.1979 passed by Subordinate Judge 1st Court, Munger in title suit No.96 of 1977).

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Mostt. Hiramani Devi & Ors.

.... Plaintiffs-Appellants

Versus

Sri Gopal Prasad Shah & Ors.

.... Defendants-Respondents

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Appearance :

For the Appellant/s :

Mr. Ganpati Trivedi, Sr. Advocate
Mr. Tarkeshwar Prasad Verma, Advocate
Mr. R.K.Sinha No.2, Advocate

For the Respondent/s :

Mr. Hemendra Prasad Singh, Sr. Advocate
Mr. Ashok Kumar, Advocate
Ms. Arpana Kumari, Advocate

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 10-02-2015

1. The original plaintiff (since deceased) had filed this First Appeal against the judgment and decree dated 23.08.1979 passed by the learned Subordinate Judge 1st Court, Munger in title suit No.96 of 1977.

2. The plaintiff-appellant filed the aforesaid suit praying for declaration of title over the suit property and for recovery of possession and other consequential reliefs.

3. The plaintiff claimed the aforesaid relief alleging that the suit plot No.248 was purchased by Basudeo Lall, the father of the plaintiff by registered sale deed dated 29.11.1938 and plot No.249



by registered sale deed dated 13.02.1946. After purchase, his father amalgamated these two plots and then the father and the plaintiff constructed a pucca three storied building on the same. The Mama of the plaintiff i.e. brother-in-law of Basudeo Lall namely Ramdhan Prasad was inducted as a tenant on monthly rent of Rs.25 from 1950 to 1959. Ramdhan Prasad lived till his death and after his death in the year 1960, his widow with her daughters were allowed to live in the house. Subsequently, the plaintiff came to know that the defendant Nos.2 and 3 purchased the suit house from the widow of Ramdhan Prasad namely Sundari Devi. Gopal Prasad has purchased suit house from Jaya Devi, one of the daughters of Ramdhan Prasad. The sale deeds are without consideration and fraudulent. No title conveyed to the purchasers.

4. The defendant Nos.2 and 3 filed contesting written statement alleging that in fact, Ramdhan Prasad was the real owner of the property. To avoid the claim of his co-sharers in the suit property, Ramdhan Prasad purchased the property in the name of his brother-in-law, Basudeo Lall. Ramdhan Prasad was not the tenant. Ramdhan Prasad has paid the consideration amount of the sale deed in the year 1938 and 1946. In the marriage of Jaya Devi, one of his daughters, the suit house was given in Dahej to his daughter, Jaya Devi. After his death, his legal heirs became the owner of the suit property,

therefore, the plaintiff's suit is liable to be dismissed. After purchase, the purchasers are coming in possession of the property.

5. The defendant no.4 also filed another contesting written statement. She is also purchaser. Her defence is also in the same line as that of defendant Nos.2 and 3.

6. On the basis of the aforesaid pleadings of the parties, the learned court below framed the following issues:

- I. Is the suit as framed maintainable?
- II. Has the plaintiff got a cause of action for the suit?
- III. Is the suit barred by limitation?
- IV. Whether the lands over which the suit house stands were purchased by Basudeo Lall as alleged by the plaintiff or these were purchased by late Ramdhan Prasad from his own money in the Benami name of late Basudeo Lall as alleged by defdt. Nos.2, 3 and 4?
- V. Whether the suit house was constructed by late Basudeo Lall as alleged by the plaintiff or it was constructed by late Ramdhan Pd. as alleged by defendant nos.2, 3 and 4?
- VI. Whether late Ramdhan Prasad came in possession of the suit house as a monthly tenant at the rate of Rs.25/- as alleged by the plaintiff?
- VII. Whether after the death of late Ramdhan Prasad his widow Mostt. Sundari Devi lived in the suit house and if so, whether she lived therein as tenant at will of the plaintiff as alleged by the plaintiff or she lived in her own right after inheriting the house as alleged by defendant nos.2 and 3?
- VIII. Whether defendant no.12 was inducted as a tenant in the house by the plaintiff?
- IX. Whether late Basudeo Lall had executed a Bazidawa in respect of the suit house in favour of Ramdhan Prasad as alleged by defendant nos.2, 3 and 4?
- X. Whether Srimati Jaya Devi had acquired title and possession of the suit house prior to its sale by her to Gopal Prasad either by virtue of gift of the same to her by late Ramdhan Prasad at the time of her marriage more than 20 years ago or by adverse possession?
- XI. Whether defendant nos.2 and 3 have got title and possession

of the suit house by virtue of alleged sale of the same by Mostt. Sundari Devi in their favour?

- XII. Whether defendant no.4 has got title and possession of the suit house as alleged?
- XIII. Whether the plaintiff has got subsisting title over the suit house and he is entitled to confirmation in the alternative for recovery of possession as prayed for?
- XIV. Is the plaintiff entitled for the decree of mesne profits and permanent injunction as prayed for?
- XV. To what other relief or reliefs if any, are the plaintiffs entitled?

7. On the basis of the evidences, the court below recorded the finding that in fact, there was motive to purchase the property by Ramdhan Prasad in the name of Basudeo Lall. Ramdhan Prasad was a man of substantial means whereas Basudeo Lall was a poor person. Possession of Basudeo Lall and his heirs are admitted. On these finding, the court below dismissed the plaintiff's suit.

8. The learned senior counsel, Mr. Ganpati Trivedi appearing on behalf of the appellants submitted that the court below did not consider the fact that the defendants failed to prove the motive for purchase of the property in the name of Basudeo Lall. In paragraph 11 of the written statement, the defendants stated that with consent of all the co-sharers, the property was given in Dahej to the daughter of Ramdhan Prasad namely, Jaya Devi, therefore, the motive pleaded by the defendants is not acceptable. The defendants also failed to prove the payment of consideration to the vendor by Ramdhan Prasad in the year 1938 and 1946. However, the court



below without properly appreciating the evidences recorded a wrong finding that Ramdhan Prasad was a rich person and Basudeo Lall was poor man. The learned counsel further submitted that although, the defendants alleged that there was a Bazidaba(relinquishment deed) executed by Basudeo Lall in favour of Ramdhan Prasad but the original was never produced. The defendants only produced the certified copy of the said relinquishment deed but the court below gave much emphasis on this relinquishment deed, Exhibit 'C'. According to the learned counsel, the learned court below has not properly appreciated the evidences and recorded wrong findings. To prove the fact of Benami transaction, the onus lies on the defendants in the present case and the most important ingredients to prove Benami transaction is, firstly, the passing of consideration and secondly, the motive to purchase the property in the Benami name. The other ingredients have been elaborately given by the Hon'ble Supreme Court in various decisions. According to the learned counsel, in the present case, the defendants failed to prove either passing of consideration or the motive. There was no property dispute between Ramdhan and his co-sharers in the year 1938 and 1946, therefore, there was no motive at all. In support of his contention, the learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of Thakur Bhim Singh v. Thakur Kan Singh, (1980)

3 Supreme Court Cases 72, Jaydayal Poddar v. Bibi Hazra, (1974) 1 Supreme Court Cases 3 and Binapani Paul v. Pratima Ghosh and others (2007) 6 Supreme Court Cases 100.

9. On the other hand, the learned senior counsel, Mr. Hemendra Prasad Singh submitted that so far motive is concerned, even the plaintiff's witnesses have admitted that there was property dispute between Ramdhan Prasad and his co-sharers and subsequently, suit was filed in the year 1955. The defendants specifically pleaded in the written statement that to avoid the claim of the co-sharers, the property was purchased in the name of Basudeo Lall. The defendants have discharged their onus to prove the fact that Ramdhan Prasad was a man of substantial means whereas Basudeo Lall was a poor person. In view of these evidences produced by the defendants, there cannot be any presumption that Basudeo Lall had any capacity to purchase the property and construct three storied building on the suit properties. Evidences have been adduced to the effect that Basudeo Lall had only one house which also was sold by him 10-12 years prior to filing of the suit. Once the onus was discharged by the defendants, the onus shifted on the plaintiff to prove the fact that in fact, Basudeo Lall had the source of income but there is no such evidence. Moreover, Basudeo Lall himself executed and registered a relinquishment deed wherein he has clearly admitted that

the property in suit was purchased by Ramdhan Prasad in his name. This is the admission of Basudeo Lall and the plaintiff is claiming through Basudeo Lall, therefore, he will be bound by the admission of Basudeo Lall. On these grounds, the learned counsel submitted that the First Appeal is liable to be dismissed.

10. In view of the above facts and circumstances of the case and the submissions of the parties, the only point arises for consideration in this First Appeal is as to “whether the suit property was purchased by Ramdhan Prasad in the name of Basudeo Lall as such, Basudeo Lall is a Benamidar and Ramdhan Prasad is the real owner” and “whether the judgment and decree passed by the court below is sustainable in the eye of law?”

11. It is admitted case that the registered sale deeds with respect to two plots i.e. 248 and 249 stand in the name of Basudeo Lall. There is a three storied pucca building on the suit property. The plaintiff claimed that his father had purchased the property whereas the defendant’s case is that plaintiff’s father, Basudeo Lall was the Benamidar of Ramdhan Prasad and in fact, Ramdhan Prasad was the real owner who had paid the consideration amount. Both the sale deeds have been produced by the plaintiff which are Exhibit 1/A and 1/B. In support of their respective cases, the parties have adduced evidences. The defendants have examined

D.W.4 who has stated that Ramdhan Prasad had purchased the suit property in the name of Basudeo Lall and Ramdhan Prasad had constructed the building thereon. This is the evidence of D.W.7 also. From perusal of the evidence of D.W.3 who has been examined on behalf of defendant no.4, it appears that although, in the examination-in-chief, he has not stated about the Benami transaction but in the cross-examination, the plaintiff obtained the answer to the effect that the suit property was purchased by Ramdhan Prasad and that he constructed the house thereon. Further, it may be mentioned that to this witness, even no suggestion has been given that in fact, he is giving false evidence that the property was purchased by Ramdhan Prasad. From perusal of the evidences of these D.Ws., it will appear that no cross-examination has been made by the plaintiff regarding the Benami transaction. On the contrary, plaintiff's witness i.e. plaintiff himself examined as P.W.1 stated that he was not present at the time of execution of the sale deed. P.W.9 admitted in his evidence that Ramdhan Prasad was a man of substantial means who purchased the property and constructed the house. D.W.8 examined on behalf of defendant nos.2 and 3 stated that Ramdhan had 200 bighas of land and 14-15 houses. This evidence of D.W.8 has been admitted by P.W.9. Further, P.W.9, P.W.5 and P.W.4 have admitted that Basudeo Lall had only one house and besides that one house, he had no other



property. Further, P.W.1 admitted the fact that 10-12 years ago, Basudeo Lall had sold the said house. From the above evidences of the witnesses, it appears that two types of evidences have been produced. One on behalf of the plaintiff regarding the capability of purchasing the property and the other is regarding capability of construction of the house. So far the plaintiff's witnesses are concerned, they have no doubt, stated that consideration was paid by Basudeo Lall but there is no explanation at all that how he paid the consideration amount when it is admitted by them that he had only one house which was also subsequently sold. On the contrary, the defendant's witnesses have been given the substantial means of Ramdhan Prasad which was even admitted by the plaintiff's witnesses. Therefore, it is clear that Ramdhan Prasad was a rich man whereas the father of the plaintiff i.e. Basudeo Lall was a poor person. The finding of the trial court on this point is, therefore, confirmed.

12. It is settled principles of law as has been held by Hon'ble Supreme Court in the case of **Jaydayal Poddar v. Bibi Hazra, (1974) 1 Supreme Court Cases 3** that “the essence of a benami is the intention of the party or parties concerned; and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the



serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation, and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question, whether a particular sale is benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid test, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the courts are usually guided by these circumstances: (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.”

13. This is the consistent view of the Hon’ble Supreme Court and subsequently also this decision in the case of Jaydayal Poddar(supra) has been followed in many cases including (2007) 6

Supreme Court Cases 100 (Binapani Paul v. Pratima Ghosh and others).

14. In view of the above settled proposition of law, the source of money is not the sole consideration for determining the nature of transaction. However, it is a relevant consideration but not determinative in character. Here, in the present case, except the case that the property stands in the name of Basudeo Lall, the other evidences, as discussed above, show that Basudeo Lall had no means at all. Possession of the defendants is admitted. The case of the plaintiff that Ramdhan Prasad was a tenant is not supported by any evidence. The learned counsel for the appellants submitted that Exhibit 3 was produced by the plaintiff to show that application was filed by Ramdhan Prasad wherein he admitted that he was residing in the house as tenant. So far this Exhibit 3 is concerned, it may be mentioned that this Exhibit 3 was not proved by any witness. The certified copy was filed by the plaintiff which was marked by the Court as an exhibit on the ground that it is a public document. However, from perusal of the evidence of the defendants, the plaintiff never confronted the so called admission of Ramdhan Prasad as tenant in the suit premises.

15. The Hon'ble Supreme Court in the case of **Sita Ram Bhau Patil v. Ramchandra Nago Patil (dead) by LRs. and**



another, A.I.R. 1977 Supreme Court 1712 has held that if it is not confronted to the witness against whom it is to be utilized, the same cannot be read as evidence against him. Admitted fact is that in the present case, the same was never confronted to any of the witness, therefore, no opportunity was given to the witnesses examined on behalf of the defendants to explain the so called admission.

16. On the contrary, the defendants have produced Exhibit C, the certified copy of registered relinquishment deed. From perusal of this relinquishment deed, it appears that Basudeo Lall has admitted that the property was purchased by Ramdhan Prasad and he is a Benamidar only. This is the admission of Basudeo Lall, the father of the plaintiff. So far this relinquishment deed is concerned, the plaintiff has not sought for any relief in the plaint. It is also settled principles of law that admission is the best evidence unless it is explained. Here, there is no explanation at all. The plaintiff although stated that it was not executed by Basudeo Lall but no steps were taken by him. The original register was called for by the Court from the Registry office which was brought before the Court and then the document was marked. When the plaintiff denied the signature, the defendants filed an application for directing the plaintiff to produce the original sale deed executed by Basudeo Lall through which he sold the suit house or produced any admitted document signed by

Basudeo Lall for comparison with the disputed signature but he never complied the order of the court below and avoided the comparison. The defendants have also examined the witnesses in support of the fact that Basudeo Lall was not only Bahnoi but also a Karpardaz of Ramdhan Prasad.

17. Almost all the witnesses either examined on behalf of the plaintiff or defendants have admitted that the defendants are in possession of the property. The plaintiff himself admitted the possession of Ramdhan Prasad since 1950. The witnesses have also examined to show that in fact, in the marriage of Jaya Devi, daughter of Ramdhan Prasad, the suit property was given in Dahej to Jaya Devi. Now, in view of the above evidences and materials available on record, it becomes clear that the father of the plaintiff was a poor person and not capable of paying of consideration amount. He was not capable of constructing three storied building over the suit land. The possession of Ramdhan Prasad is admitted since 1950. The case of the plaintiff that Ramdhan was a tenant is falsified as there is no evidence in support of the same. The father of the plaintiff admitted that he is Benamidar and executed the relinquishment deed, Exhibit C i.e. registered document. The conduct of the parties shows that the properties are dealt with by the defendants i.e. the heirs of Ramdhan Prasad.

18. In view of the above evidences available on record, I find that Basudeo Lall was only a Benamidar. In fact, Ramdhan Prasad was the real owner who has purchased the property in the name of his Bahnoi, Basudeo Lall who was also Karpardaz. The finding of the trial court on this question is, therefore, confirmed.

19. In the result, I find no merit in this First Appeal and accordingly, this First Appeal is dismissed. In the facts and circumstances of the case, there shall be no order as to cost.

(Mungeshwar Sahoo, J)

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