

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No.1355 of 2013 (O&M)

Date of decision: 26.11.2015

M/s Dhingra Trading Co. and another

... Petitioners

versus

Ramesh Lal and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. B.S.Sidhu, Advocate for the petitioners.

Mr. G.L.Bajaj, Advocate for LR's of respondent No.1.

K.Kannan, J.(Oral)

1. The plaintiff, who filed the suit against Dhingra Trading Company through its proprietor Surinder Pal Singh for a loan obtained on 23.11.2005 sought an enforcement after the death of Surinder Pal against his wife as legal representative. In execution of the decree, the property standing in the name of the wife by virtue of a purchase made in the year 2003, admittedly before the loan was contracted, was to be attached. The judgment debtor pleaded that her liability is only qua the estate of the husband in her hands and the decree cannot be put in execution against the property purchased by her.

2. The Executing Court rejected the objection on a reasoning

that the wife was admittedly running M/s Dhingra Trading Company which her husband was running and therefore, the decree is enforceable on the property standing in her name.

3. The reasoning of the Court below is erroneous for a proprietary concern can be identified only through an individual who is proprietor. If the loan was contracted by the proprietor Surinder Pal Singh, notwithstanding the fact that the wife will be seen in carrying on his business, there is no question of enforcement of decree against any asset standing in the name of the widow purchased in own name prior to the contracting of loan. The right of enforcement can be possible only if the purchaser wife herself is a *benamidar* for her husband. There is no presumption in law that a property standing in the name of the wife belongs to the husband. On the contrary, it is fully competent for a husband to even provide the consideration for the benefit of purchase in the name of his wife. Unless the motive is shown to be oblique and deliberately purchased in the name of the wife to screen the property from the reach of the creditor, an enforcement of the debt against the property standing in the name of the wife is not competent. The burden is heavy on creditor to show that the transaction was *benami* and the property did not belong to her but represented the estate of her deceased husband. The Court below has confused the enforceability of the decree against the legal heir of the deceased husband, who alone had contracted the loan with personal liability of

the wife by the fact she was carrying on the same business which her husband was carrying. The property sought to be proceeded against was not an asset of the business. The enforcement against the property standing in the name of the wife was untenable and the order passed already cannot be supported.

4. The impugned order is set aside and the revision petition is allowed with costs of ₹3000/- against the respondent and in favour of the petitioner.

(K.KANNAN)
JUDGE

26.11.2015
Meenu