

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: February 09, 2015

1. R.S.A.No.4600 of 2011 (O&M)

Prem Lata

...Appellant

Versus

Ram Sarup

...Respondent

2. R.S.A.No.4654 of 2011 (O&M)

Ram Sarup

...Appellant

Versus

Prem Lata

...Respondent

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Sandeep Bansal, Advocate,
for the appellant (in RSA No.4600 of 2011) &
for the respondent in RSA No.4654 of 2011.

Mr.Arun Takhi, Advocate,
for the appellant (in RSA No.4654 of 2011) &
for the respondent (in RSA No.4600 of 2011).

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two Regular Second Appeal Nos.4600 and 4654 of 2011 as the parties are the same and the defendant in Civil Suit No.192 of 1998, i.e., Ram Sarup set up a counter claim. The facts are being taken from RSA No.4600 of 2011 for the adjudication of the aforementioned two Regular Second Appeals.

The appellant-plaintiff in the year 1998 filed a suit for declaration to the effect that she is exclusive owner in possession of the house marked ABCD constructed in the area 7 marlas being part of khasra No.634, situated in Premgarh, St.No.12, Krishna Nagar, Hoshiarpur and also sought injunction restraining the respondent-defendant from interfering in the house, whereas the defendant-appellant in RSA No.4654 of 2011 set up a counter claim and claimed a declaration that he has 1/3 share along with plaintiff Prem Lata and Sushila Joshi daughter of Babu Ram out of land measuring 44 kanals 12 marlas, bearing khewat No.59, khatauni No.96, khasra No.21//8(7-18), 9(7-8), 13(7-18), 19(7-8), 22/1(6-7), khatauni No.97, khasra No.21/26 (0-5), situated in village Persowal, HB No.323, Tehsil Garhshankar, District Hoshiarpur as per jamabandi for the year 1993-94 and in the alternative, counter claim for joint possession.

The appellant-plaintiff in the aforementioned Civil Suit No.192 of 1998 averred that the house in question was bequeathed by Babu Ram through a valid and registered Will dated 16.7.1984 and as per the said Will, the defendant had to pay a sum of ₹25,000/- to Gian Sarup, husband of the plaintiff and on receipt of ₹25,000/-, Gian Sarup would have relinquished his right and title in favour of Ram Sarup. It was also settled that in case the defendant did not make the payment of ₹25,000/- upto the particular time, the house in dispute will become the ownership of Gian Sarup, the husband of the appellant-plaintiff.

The appellant-plaintiff filed the suit on the premise that since the defendant did not comply with the recital in the Will, thus, a cause of action accrued to the appellant-plaintiff to claim the declaration in respect

of the house. The counter-claimant also claimed a right in the property measuring 44 kanals 12 marlas on the ground that though the aforementioned agriculture land was in the name of Gian Sarup, but the same was purchased through the funds provided by Babu Ram, i.e., from the joint Hindu funds.

It has come in the evidence on record that the house in dispute was shown to be in the ownership of defendant Ram Sarup and similarly the land measuring 44 kanals 12 marlas was shown to be ownership of Gian Sarup.

The trial Court, on the basis of the material, i.e., oral and documentary evidence brought on record, dismissed the suit of the appellant-plaintiff and as well as the counter-claim of the respondent-defendant. The appeal filed against the aforementioned judgment and decree also met with the same fate and as such both the Regular Second Appeals have been filed in this Court.

Mr.Sandeep Bansal, learned counsel appearing for the appellant-plaintiff in RSA No.4600 of 2011, in support of his grounds of appeal, submitted that both the Courts below have committed illegality and perversity in dismissing the suit and as well as the appeal on the premise that the appellant-plaintiff had been able to prove by leading evidence that the house in dispute was purchased through the funds of Babu Ram and, therefore, it was a *benami* transaction and Ram Sarup was only a name lender and, therefore, Babu Ram, under the premise of actual owner, thus, rightly had Willed away part of the share in the house in possession of Gian Sarup and since Ram Sarup did not comply with the recital in the Will and,

therefore, the appellant-plaintiff has become the owner.

Mr.Arun Takhi, learned counsel appearing on behalf of the counter-claimant, in support of the grounds of appeal, submits that the land measuring 44 kanals 12 marlas, though was in the name of Gian Sarup, but in fact it was purchased through the funds/money provided by Babu Ram and, therefore, the properties actually stood in the name of Babu Ram and Gian Sarup was only the lender name and, therefore, Ram Sarup being son of Babu Ram also have a share and right in the aforementioned agriculture land.

I have heard the learned counsel for the parties and appraised the impugned judgments and decrees of both the Courts below and is of the view that both the appeals are liable to be dismissed on the following reasons.

The Benami Transactions (Prohibition) Act, 1988 (for short “the Act”) was promulgated by the Government on 5.9.1988 and in view of the new Act, there was a prohibition on *benami* transaction except the exceptions carved out in Sections 3 and 4 of the Act. In essence, the plea of *benami* transaction can only be taken where the person in whose name property is held to be a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or 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. Section 3 of the Act also provides that no person can enter into any *benami* transaction, but this Act would not apply to the purchasing of

the property by any person in the name of his wife or unmarried daughter and in respect of property held by the vendee.

In the present case, none of the ingredients as provided by the Act are attracted. The appellant-plaintiff is none else but a widow of Gian Sarup and the counter-claimant/respondent-defendant is the son of Babu Ram, brother of Gian Sarup. The appellant-plaintiff has failed to lead any evidence in support of her averment that Babu Ram had any right and title in the house, which, he could bequeath in the manner prescribed in the Will. It is settled law that a person, who is not the owner of the property, cannot bequeath the property by way of testamentary document. Babu Ram was not the owner of the house in dispute as the house stood in the name of Ram Sarup. The appellant-plaintiff also failed to prove that Babu Ram had contributed in the purchase of the house in the name of Ram Sarup. Similarly, Ram Sarup also failed to prove the means of consideration alleged to have been contributed by Babu Ram for the purchase of the aforementioned agriculture land in the name of Gian Sarup. The aforementioned Act came to be debated by a three Judges bench of the Hon'ble Supreme Court in **R.Rajagopal Reddy (Dead) by L.Rs and others Versus Padmini Chanderasekharan (Dead) by L.Rs, (1995) 2 Supreme Court Cases 630.** The occasion to ponder upon the applicability of the Act arose as Hon'ble Supreme Court in **Mithilesh Kumari Versus Prem Behari Khare, (1989) 2 SCC 95** had held the applicability of the Act with retrospective effect. In essence, the Hon'ble Supreme Court in **R.Rajagopal Reddy's case (supra)** held that the plea of *benami* transaction can be taken in accordance with the provisions of Sections 3 and 4 of the Act and it

would not apply retrospectively, meaning thereby the Act would come into force from the date it has been promulgated. Once the appellant-plaintiff has failed to prove the plea that Ram Sarup was a name lender and actual owner was Babu Ram, Babu Ram cannot be said to have Willed away the alleged share in the manner prescribed in the Will. Both the Courts below have rendered a finding of fact and law, based on the appreciation of oral and documentary evidence. Accordingly, no substantial question of law arises in the present appeals.

The appeals are devoid of merit and accordingly are dismissed.

February 09, 2015
ramesh

(AMIT RAWAL)
JUDGE