

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.426 of 2015 (O&M)
Date of Decision.30.10.2015

Bal Krishan

.....Appellant

Versus

Mansa Devi and others

.....Respondents

Present: Mr. Vikas Bahl, Senior Advocate with
Mr. N.K. Vadehra, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. Delay of 1140 days in filing the appeal is condoned.
2. The appeal is brought at the instance of the plaintiff who wanted to contend that his mother, the 1st defendant did not have a right to sell the properties and that she had merely a life interest in the same. The plaintiff is relying on a Will said to have been executed by the father restricting the mother's interest to the property for her life. The Will was upheld by the trial Court and in the Appellate Court, the Court was affirming the decision regarding the Will but still held on a separate issue framed of whether the mother had ownership over one of the items of property which was a hotel and made reference to the fact that it was purchased in the name of the mother after the execution of the Will itself and therefore, the property purchased in the name of the mother could not have been a subject of bequest by the father. There

was an attempt at the trial to show that the mother did not have any independent resources and the plaintiff was, therefore, trying to contend that the Will must be taken as including the property which was purchased in the name of the mother and restriction of interest which operate for other properties must operate in respect of the subsequent acquisition also.

3. The Appellate Court's reasoning is assailed by the learned Senior Counsel appearing on behalf of the appellant to contend that apart from the clear admission that the mother had no independent source of income, there was also evidence to the effect that it was always the intention of the father to treat the property as his own and bequest must be taken as including bequest in respect of the hotel premises as well and the restriction of interest operated in respect of the said property. The argument is fallacious for the following reasons.

4. One, a property standing in the name of wife cannot become the property of the husband by the only fact that source of funds came from him, for an acquisition must be taken to benefit the wife even if the fund has flowed only from the husband. A benami transaction does not cast away the obligation for a person who pleads for such a contention to set out motive for such purchase. Source of consideration is but one small aspect, for the nearness of relationship between the parties itself will justify the benefit as accruing to the ostensible purchaser. Without a motive spelt out by the plaintiff, there was no scope possible for him to make out a case of benami. Two, the transaction of benami must also be established by appropriate pleadings and proof. The plaintiff was not making out any case of benami other

than the fact that the source of funds came from his father. That would hardly be a justification for ruling a property as benami.

5. A bequest normally could operate only in respect of a property which a person had at the time when the document is drafted. If there is any subsequent acquisition to the instrument unless there is a clause in the Will itself that makes a reference to any future acquisitions as subjected to the manner of disposition made, such future acquisition will not be governed by the bequest. If in this case, the father was making a bequest in respect of the property which he owned in the year 1966, the property purchased in the year 1971 in the name of the mother cannot operate as a subject of bequest unless there is specific recital in the nature of residuary disposition of properties left out in the Will or properties which are acquired in future to be also subjected to the same kind of disposition. There was no such case nor was there a recital to that effect in the Will. The lower Appellate Court was, therefore, perfectly justified in modifying the decision of the trial Court and allowing for the relief in favour of the plaintiff only in respect of all other properties except the hotel premises which was not a subject of disposition.

6. I will find no error in the appreciation of fact or law at the Appellate Court for intervention in the second appeal. The second appeal is dismissed as involving no substantial question of law.

(K. KANNAN)
JUDGE

October 30, 2010
Pankaj*