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

**RSA No.3889 of 2014 (O&M)
Date of Decision: 04.12.2015**

Manpreet Kaur

.....Appellant

Vs

Smt. Parminder Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Raj Kumar Kakkar, Advocate
for the appellant.

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?*

RAJ MOHAN SINGH, J.

[1]. Defendant No.1 is in second appeal against the concurrent judgments and decrees passed by the Courts below in a suit for separate possession and permanent injunction.

[2]. Plaintiff No.1 is the mother of plaintiffs No.2 and 3 and she has no adverse interest to the interests of the minors. Husband of the plaintiff No.1 Navdeep Singh died on 02.12.2000, who had purchased a plot measuring 20 x 65 square feet on 13.03.1991 and also purchased plot measuring 10 Marlas. He was also owner of 4000 square feet being 1/3rd share of total 12000 square feet comprised in Killa No.13M/2Min

(2-4) along with other co-sharers i.e. defendants No.2 and 3 in village Azimgarh. He was also owner of 10 *Marlas* of land being 10/125 share of total land measuring 6 *Kanals* 5 *Marlas*. After the death of Navdeep Singh, plaintiffs inherited the shares in the aforesaid properties.

[3]. Plaintiffs alleged that they are residing in the house detailed in the headnote of the plaint. Defendant No.1 Manpreet Kaur along with her husband is also residing in the said house. After the death of Navdeep Singh, nothing was given to the plaintiffs and they were constrained to file a civil suit titled **Shania vs. Ajit Singh** on 06.03.2002 in the Civil Court at Abohar and thereafter defendants started threatening the plaintiffs with dire consequences which prompted the plaintiffs to file suit for separate possession as they did not want to be in joint possession with the defendants as the defendants had threatened them to alienate more than their share in respect of specific portion without partition. Hence the suit came to be filed.

[4]. Defendant No.1 contested the suit on all fronts. Defendant No.1 claimed that she and her husband were having no legal obligation to maintain or provide any property for maintenance of plaintiff No.1, but keeping in view the moral obligation they entered into a compromise with plaintiff No.1 for

herself as well as on behalf of minors on 24.06.2002 in the presence of respectables. According to said compromise, plaintiff No.1 was bestowed upon the property by the husband of the defendant No.1 and she relinquished her claim qua the remaining property. Col. Ajit Singh was claimed to be necessary party in the suit and the suit was stated to be barred under Order 2 Rule 2 CPC. Title of Navdeep Singh has been negated as he was only a student at the relevant time. Ajit Singh, father of Navdeep Singh and husband of defendant No.1 was Officer in Army. He had agricultural land in village Danewala, Tehsil Abohar and with the income from the said land, he purchased the property and got constructed Kothi and family is a joint Hindu family. Navdeep Singh was only son, therefore, Ajit Singh purchased the property and got the same registered in the name of Navdeep Singh alone.

[5]. Replication was filed and on the basis of pleadings of the parties, following issues were framed by the trial Court:-

- “1. *Whether Navdeep Singh was owner of the suit property? OPP*
2. *Whether plaintiffs own share in the suit property, if so, to what extent?OPP*
3. *Whether suit is within limitation? OPP*
4. *Whether plaintiffs concealed material facts from the Court? OPD*

5. *Whether plaintiffs have no locus standi and cause of action to file the suit? OPD*
6. *Whether suit is not maintainable in the present form? OPD*
7. *Whether the suit is bad for mis joinder and non joinder of necessary parties? OPD*
8. *Whether the suit of the plaintiffs is barred under Order 2 Rule 2 CPC? OPD*
9. *Whether plaintiffs are entitled for separate possession of the suit property? OPP*
10. *Whether plaintiffs are entitled for injunction as prayed for? OPP*
11. *Relief.”*

[6]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[7]. Trial Court discussed issues No.1, 2, 4 to 6, 9 and 10 collectively. All these issues were decided in favour of the plaintiffs and against the defendant No.1. The plea of *benami* purchase in the name of the Navdeep Singh was not appreciated by the trial Court. Navdeep Singh died intestate leaving behind plaintiffs and defendant No.1 as class one heirs. Since Navdeep Singh was owner of the suit property, therefore, after his death his mother/defendant No.1 and plaintiff No.1 being widow and plaintiffs No.2 and 3 being daughters are

entitled to inherit the property being class-I heirs to the extent of 1/4th share each. Trial Court decreed the suit of the plaintiffs and preliminary decree for separation of possession of 3/4th share in favour of plaintiffs and 1/4th share in favour of defendant No.1 has been passed vide judgment and decree dated 04.05.2011.

[8]. Defendant No.1 remained unsuccessful in the First Appeal which was ordered to be dismissed vide judgment and decree dated 03.04.2014.

[9]. I have heard learned counsel for the appellant.

[10]. Appellant has framed following substantial questions of law in para No.12 of the grounds of appeal:-

- “a) When the plaintiffs had not sought the relief of partition, whether, the Court was competent to pass preliminary decree?*
- b) When Navdeep Singh was not having any source of income, the property purchased in his name by his father Sh. Ajit Singh would be a benami transaction?*
- c) When the plaintiffs had already filed civil suits against the defendants prior to the filing of the present suit, whether, the present suit would be hit by the principle of Order 2 Rule 2 CPC?*
- d) Whether, mere suit for possession without seeking the relief of partition is maintainable in the present form?*
- e) Whether, the compromise dated 24th of June,*

2002 entered by plaintiff No.1 on her own behalf and on behalf of minor daughters can be ignored without any legal basis?

- f) When the plaintiff no.1 on her own behalf and on behalf of minor daughters had relinquished their claim qua the property in question vide compromise dated 24th of June, 2002, whether, the plaintiffs are estopped to claim any right in the suit property?*
- g) Whether, the Learned Trial Court and Learned First Appellate Court misread and misinterpreted the pleadings and evidence on record?"*

[11]. Defendant No.1 has deposed that sale consideration of the sale deeds in favour of Navdeep Singh was contributed by her husband as he was having income from agricultural and tuition work. She further deposed that her husband was also running transport business and has denied the suggestion that sale consideration was sent by her father-in-law. The sale deeds dated 13.09.1991, 29.08.1990, 04.05.1992 and 30.07.1992 as Exhibits P-4 to P-7 respectively came into existence.

[12]. Col. Ajit Singh while appearing as DW-1 deposed that the properties were never purchased by Navdeep Singh by his own income as he was only a student and was not in a capacity to purchase the property for himself. Since Navdeep Singh was

the only son, therefore, properties were purchased in his name and after his unfortunate death, a compromise was effected on merely an obligation in order to keep harmony in the family and to give love and affection to the minor children. It was reduced into writing in the presence of respectables.

[13] Apparently, the properties are standing in the name of Navdeep Singh i.e. husband of plaintiff No.1 and father of plaintiffs No.2 and 3. In order to appreciate the alleged factum of property being *benami* it is relevant to point out that the transaction in question took place in the years 1990-91 and 1992 Ex.P-4 to P-7. Sections 3 and 4 of the Benami Transaction (Prohibition) Act (hereinafter referred to as 'the Act') are reproduced hereasunder:-

“3. Prohibition of benami transactions:-

- (1) *No person shall enter into any benami transaction.*
- (2) *Nothing in sub-section (1) shall apply to :-*
 - (a) *the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife of the unmarried daughter;*
 - (b) *the securities held by a:-*
 - (i) *depository as registered owner under sub-section (1) of section 10 of the Depositories Act, 1996*

- (ii) *participant as an agent of a depository.*

Explanation:- The expressions “depository” and “Participants” shall have the meaning respectively assigned to them in clauses (e) and (g) of the sub-section (1) of section 2 of the Depositories Act, 1996].

- (3) *Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.*
- 4) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under this section shall be non-cognizable and bailable.*

4. *Prohibition of the right to recover property held benami:-*

- (1) *No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.*
- (2) *No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.*
- (3) *Nothing in this section shall apply,--*
- (a) *where the person in whose name the property is held is a coparcener in a*

Hindu undivided family and the property is held for the benefit of the another coparceners in the family; or

- (b) *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.”*

[14]. The interpretation of the Sections 3 and 4 of the aforesaid Act was summarised by the Division Bench of this Court in **Mithilesh Kumari vs. Prem Behari Khare, (1989) 2 SCC 95**. The question poised before the Division Bench was whether Section 4(1) of the Act can be applied to the suit, claim or action to enforce any right of property hold *benami* against person in whose name such property is held. If such proceeding is initiated on behalf of person claiming to be real owner prior to coming into Section 4(1) of the Act. It was held again by the Division Bench that though Section 3 of the Act is prospective and though Section 4(1) of the Act is also not expressly made retrospective by necessary implication, it appears to be retrospective and was applied to all pending proceedings wherein right to property allegedly held *benami* is in dispute. Section 4(1) of the Act will apply at any stage where litigation may be pending in the hierarchy of proceedings.

[15]. The view expressed in **Mithilesh Kumari's** case

(supra) came to be considered by the Hon'ble Apex Court in **R. Rajagopal Reddy (dead) by LRs vs. Padmini Chandrasekharan (dead) by LRs, 1996 ARI (S) 238.** The Hon'ble Apex Court held that a mere look at the provisions of the Act shows that prohibition under Section 3(1) of the Act is against persons who are to enter into *benami* transaction and it has been laid down that no person shall enter into *benami* transaction which obviously mean from the date on which prohibition came into operation i.e. w.e.f. 05.09.1988. The view expressed in **Mithilesh Kumari's** case (supra) was concurred to the extent of prohibition that Section 3 of the Act cannot have retrospective operation. The issue for *benami*, for matter connected therewith or incidental thereto. Thus it was enacted to efface the then existing rights of the real owners of properties held by other *benami*. Such an Act was not given any retrospective effect by the Legislature.

[16]. As per Section 4(1) of the Act, no suit shall henceforth lie to recover the possession of the property held *benami* by the person. Any suit to enforce such a right after coming into operation of the Section 4(1) of the Act w.e.f. 19.05.1988 shall not lie.

[17] In nutshell and in view of subsequent judgments of the Hon'ble Apex Court in **Sankara Hali and Sankara Institute of**

Philosophy and Culture vs. Kishorilal, (1996) 7 SCC 55 and *Vijay Kumar and another vs. Dharampal and others, 2009(2) RCR (Civil) 64*, the provisions were held not applicable in respect of transactions made prior to coming into force of the Act in the year 1988.

[18]. The question as framed was answered in the manner that the transaction of sale effected prior to coming into force of the Act in the year 1988 is not hit by prohibition as the operation of Act was held prospective in nature. Since the transactions in question in the present case are subsequent to coming into force of the Act, therefore, these transactions are hit by the prohibition, therefore, the plea of *benami* purchase cannot be appreciated in the present case.

[19]. There is no evidence produced by the defendant No.1 that the property held by Navdeep Singh was a coparcenary Hindu undivided family property and was held by him for the benefit of coparceners in the family. In these circumstances, it cannot be held that the property possessed by the husband of the plaintiff No.1 was joint Hindu family property and the same was purchased *benami* by the husband of defendant No.1. The burden has to be discharged strictly in terms of evidence. Except the bald statement of defendant No.1, no cogent evidence has been produced on record that the property was

purchased by the husband of defendant No.1 in the name of his son Navdeep Singh.

[20]. Section 8 of the Hindu Succession Act further prescribes that the property of a male Hindu dying intestate shall devolve upon the heirs according to provisions of the Act. Firstly upon the heirs, being the relatives specified in clause I of the Schedule. Admittedly Navdeep Singh had died intestate leaving behind his mother defendant No.1 as his class-I heir, besides wife and minor children.

[21]. In view of aforesaid each one of the heir would be entitled to 1/4th share. The questions of law as formulated by the appellant do not arise inasmuch as that question No.(a) does not involve at all. Since suit is itself of separate possession of house in view of amended plaint, therefore, procedure of passing preliminary decree has to be evolved by the Courts below.

[22]. Question No.(b) is equally lacking in terms of evidence on record. Since *Benami* Act of 1988 fully covers the controversy in question, therefore, this question does not arise at all. The principles under Order 2 Rule 2 CPC are not attracted inasmuch as that the earlier suit was not having the same cause of action. No such limitation can be attracted in case of suit for partition in which every co-sharer is entitled to

the share. The earlier suit filed does not cover the cause of action as has been pleaded in the instant suit. Since the suit itself is for separate possession, it implies that suit is for possession by way of partition. The prayer if coupled with the pleadings made in the suit gives only irresistible conclusion that it is suit for possession by way of partition and the same is maintainable. The compromise dated 24.06.2002 does not spell out as to how the plaintiffs are not entitled to the relief as contained in the impugned judgments and decrees. There cannot be any bar from claiming the possession on account of partition, once the property was held to be purchased by Navdeep Singh and the plea of *benami* cannot be enforced. Accordingly the questions No.(c) to (e) are answered in the aforesaid manner.

[23]. Question No.(f) also does not involve as there is no such relinquishment of immovable property by the plaintiff No.1 as per alleged compromise dated 24.06.2002 which has not been proved on record, nor any such relinquishment is legally possible without there being any registered instrument executed in reference thereto. Even the pleadings of the earlier suit have not been proved in accordance with law and even the alleged ingredients of compromise have not been proved, nor any such relinquishment is lawfully possible.

[24]. The findings recorded by the Courts below are not on account of misreading of evidence in any manner. The findings are purely related to legal issues and, therefore, question No.(g) also does not arise. The Courts below have equitably granted the relief *qua* 3/4th share in favour of plaintiffs and 1/4th share in favour of defendant No.1, which is the only possible conclusion as per interpretation attached with Section 8 of the Hindu Succession Act.

[25]. Finding no merit in the appeal, the same is accordingly dismissed.

December 04, 2015

Atik

(RAJ MOHAN SINGH)
JUDGE