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

RSA-33-2015 (O&M)

Date of decision : 21.01.2016

Ram Murti

...Appellant

Versus

Sushil Kumar

..Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ranjit Saini, Advocate
for the appellant.

Mr. Nikhil Ghai, Advocate
for the respondent.

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?

AMIT RAWAL, J. (ORAL)

The appellant-defendant is in regular second appeal against the concurrent findings of the fact, whereby the suit for possession of the residential property shown in the site plan, has been decreed by both the Courts below.

Mr. Ranjit Saini, learned counsel appearing on behalf of the appellant submits that the respondent was the main owner and the real owner was the appellant as he had provided the

fund/money for purchasing the aforementioned property. Though, this fact had been stated unequivocally in examination-in-chief but there is no cross-examination. The benami transaction amongst the brothers is permissible as the status of the relationship is fiduciary in nature. He further submits that the sister in this regard had also deposed that the money was provided by the appellant to the respondent-Sushil Kumar to purchase the plot in the name of the appellant. Once, two siblings were on one side, there was no occasion for the trial Court/Appellate Court to disbelieve the version of the sister, thus, there is illegality and perversity in the judgment and decree of both the Courts below, much less, substantial question of law arises for the determination of this Court.

Mr. Nikhil Ghai, learned counsel appearing on behalf of the respondent submits that the duty cast upon the defendant to discharge the onus by proving the documentary evidence viz-a-viz, providing of the finances for purchase of the plots/construction thereon. In the absence of the same, the trial Court rightly found that the title in the revenue record was of the plaintiff. He submits that the concurrent finding of the Courts below should not be interfered as no substantial question of law arises for the determination of this Court and prays for dismissal of the appeal.

I have heard the learned counsel for the parties and appraised the paper book.

In order to claim, the plea of benami transaction, the appellant was required to discharge the onus by proving the

finances having been used/paid to the plaintiff for purchasing the property and for raising alleged construction. In the absence of any such documentary evidence, self-serving statement of the brother and sister pales into insignificance. In my view, the appellant-defendant failed to discharge the onus, viz-a-viz stand taken that of the benami transaction that the plaintiff was named lender, whereas, the appellant was real owner.

Keeping in view the aforementioned facts, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of the oral and documentary evidence, much less, no substantial questions of law arises to be determined by this Court.

Accordingly, the appeal is dismissed.

21.01.2016
yogesh

(AMIT RAWAL)
JUDGE