

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

**Regular Second Appeal No.184 of 2014 (O&M)
Date of Decision: March 17, 2016.**

Smt. Kusum

.....APPELLANT(s).

VERSUS

Hari Singh and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Manish Soni, Advocate
for the appellant (s).

SURINDER GUPTA, J.

This is second appeal filed by plaintiff Smt. Kusum against the judgment of the first Appellate Court, whereby her suit claiming exclusive ownership over the suit property which comprises of house No.213 situated in Urban Estate-II, Hisar, was dismissed and she was allowed the relief only to the extent that defendant No.1 i.e. Hari Singh son of Dal Singh was restrained from interfering in her possession over the disputed house except in due course of law.

2. The plaintiff had set up a case that the plot of the disputed property was purchased by her in the name of her father-in-law Dal Singh defendant No.3 as her husband was a police officer and she could not purchase the plot in her name. The allotment order No.6803 dated 03.06.1976 was issued in the name of Dal Singh and the entire payment was

made by her through her husband or her brothers Shri Amar Singh Beniwal, Advocate and Dalip Singh Beniwal, the then Executive Engineer, H.S.E.B., now (at the time of filing of suit) Chief Engineer, Haryana Vidyut Parsaran Nigam Ltd. She got the possession of that plot through her brother Dalip Singh in the year 1982. Her husband died on 02.07.1986. After the death of her husband, she decided to get the ownership of house corrected in her name by obtaining a declaratory decree from the competent Court. Dal Singh also agreed and defendant No.1 offered his services for doing the needful. He obtained the signatures of plaintiff on blank papers and blank Vakalatnama, with assurance that disputed property will be transferred in her exclusive name. However, while filing the suit, defendant No.1 got his name inserted as one of the plaintiff claiming 1/2 share of the suit property. The suit was decreed on 17.08.1987. The plaintiff has averred that the decree is the result of fraud and forgery played by defendant No.1 in collusion with his father, defendant No.3, as such, is null and void and not binding on the rights of the plaintiff. After suffering the decree dated 17.08.1987, Dal Singh was left with no concern, right or interest in the plot in dispute and house built thereon but he got the conveyance deed No.7513 issued from HUDA in his name on 31.10.2001 and got it registered at serial No.5070 on 02.11.2011 in the office of Sub Registrar.

3. Defendant No.1, in his written statement, denied the claim of plaintiff and alleged that under the family settlement, this property came to him and his elder brother Ram Singh. On medical check-up of plaintiff, the doctor had opined that she could not conceive a child, therefore, in order to safeguard, that the property may not go out of the family, a rider was placed

in family settlement that if no child is born to the plaintiff, defendant No.1 shall be owner of entire house after her death. The instalment of the plot allotted by the HUDA were paid by Dal Singh himself, except on one occasion when it was paid by Amar Singh. Defendant No.1 had paid a sum of ₹1,33,080/- on 29.10.2001 to defendant No.2 vide Bank Draft No.7895 drawn on Union Bank of India. This amount was paid on account of enhancement of price of plot. When defendant No.1 demanded 1/2 share from the plaintiff, she filed the present suit.

4. Defendant No.2 in its separate written statement averred that plot in dispute was allotted to Dal Singh.

5. Defendant No.3 Dal Singh also denied the claim of the plaintiff over suit property.

6. Learned Civil Judge (Senior Division), Hisar dismissed the suit discarding the plea raised by plaintiff that the allotment of the plot in the name of Dal Singh was a benami transaction or she was defrauded by defendant No.1 while obtaining the decree dated 17.08.1987 in civil suit titled "*Kusum and another Vs. Dal Singh*".

7. While affirming the findings of learned Civil Judge (Senior Division), Hisar, first Appellate Court observed that possession of the plaintiff over the suit property is proved, as such, she cannot be dispossessed except in due course of law.

8. Learned counsel for the appellant argues that the allotment of disputed plot bearing No.213 situated in Urban Estate-II, Hisar in the name of Dal Singh was a benami transaction and the decree dated 17.08.1987 was

plaintiff, obtained the decree jointly in his name to the extent of 1/2 share in the suit property.

9. On perusal of the judgments of the Courts below, I find that the plea of the appellant-plaintiff that allotment of plot in the name of Dal Singh, father of her husband, was a benami transaction, was rightly discarded by both the Courts below. Even after coming into force of Benami Transaction (Prohibition) Act, 1988 (for short 'the Act'), this plea is no more available to the plaintiff.

10. Learned counsel for the appellant while referring to Section 4 of the Act has argued that when the property is held in the name of a coparcener, provisions of Section 4 of the Act are not applicable. He has also placed reliance on observations in case *Anil Gulati Vs. Promila Gulati 2015(4) R.C.R.(Civil) 842*, in support of his contention that the plea of appellant that Dal Singh was a benami owner of the suit property and is protected as per provisions of Section 4 of the Act.

11. The above submission do not help the appellant-plaintiff as it is nowhere her case that Dal Singh was a coparcener in a Hindu undivided family and the suit property was held for the benefit of coparceners in the family. As already discussed, protection under Section 4 of the Act is available with regard to the property held in the name of a coparcener, for the benefit of coparceners in the family. The facts of the case cited and the observations therein are not applicable to the facts and circumstances of the present case.

12. The suit property was allotted in the name of Dal Singh in the year 1976. This suit was filed in the year 2002 i.e. after about 26 years of

allotment and learned first Appellate Court has rightly observed that this plea that Dal Singh was a *benami* owner of suit property, is not available to the appellant-plaintiff at this stage.

13. The civil suit in which decree dated 17.08.1987 was passed, was also filed about 15 years before filing of this suit and it cannot be believed that plaintiff who is an educated lady, slept over the matter for such a long period and is now seeking modification of that decree. It is admitted that she had no source of income at the time of purchase of the property. Even if, for the sake of arguments, this fact is believed that husband of the plaintiff purchased the suit property as *benami* in the name of his father, after his death, the suit property would have devolved to the plaintiff and her mother-in-law in equal shares. Though plaint is silent on this aspect, learned counsel for the appellant-plaintiff could not explain this fact even during the course of arguments.

14. On perusal of the record and judgments of the Courts below, I find no legal or factual infirmity therein calling for any interference.

15. No substantial question of law requiring determination arises in this appeal, which has no merits.

16. Dismissed.

March 17, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE