

RSA No.3669 of 2017 (O&M)

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

**RSA No.3669 of 2017 (O&M)
Date of Decision: 17.7.2017**

Kulwinder Singh

.....Appellant

Vs.

Asha Chauhan

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Naveen Chopra, Advocate
for the appellants.

RAMESHWAR SINGH MALIK J. (ORAL)

Present regular second appeal, at the hands of plaintiff, is directed against the judgment of reversal passed by the learned first appellate court, whereby first appeal of the defendant was allowed, by setting aside the judgment and decree of the learned trial court in a suit for permanent injunction.

Brief facts of the case, as recorded by the learned first appellate court in para 2 and 3 of its impugned judgment, are that appellant and respondent were husband and wife and from their wedlock, one female issue was born. Respondent filed the suit pleading that he was having full love and affection towards the appellant being his wife. He purchased a house constructed over land measuring 2 biswas 15 biswani, comprised in khasra No. 179 to the extent of 55/12160 share situated at village Bitna, Tehsil

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Kalka, District Panchkula in the name of the appellant from the previous owner through registered sale deed No. 1674 dated 10.9.2007 Ex.D1, duly registered in the office of Sub-Registrar, Kalka. The whole of the sale consideration in the sum of ₹8,50,000/- was arranged by him and paid to the vendor to the sale deed Ex.D1. He withdrew the amount of ₹8,50,000/- from his bank account maintained in the Bank of India Branch, Banaur on 10.9.2007. The vendor to the sale deed (Ex.D1), also executed special power of attorney in favour of his brother Kulwant Singh for getting the mutation sanctioned in favour of the respondent.

The respondent alleged that after purchase of the house in dispute, he spent huge amount on its renovation. Subsequently, relations between him and the appellant became strained, as she was under the influence of his parents and threatened to alienate and dispossessed him from the house in dispute illegally and forcibly, which necessitated him to file the suit.

Defendant was put to notice. She appeared and filed her contesting written statement, raising more than one preliminary objections. On completion of pleadings of the parties, the learned trial court framed the following issues:-

1. Whether the plaintiff is entitled to a decree for permanent injunction as prayed for?OPP
2. Whether the present suit is not maintainable in the present form?OPD
3. Whether the plaintiffs have no locus standi/cause of action to file the present suit?OPD
4. Whether the plaintiffs have concealed the true and material facts from this Court?OPD
5. Whether the plaintiffs are estopped from filing the

present suit by his own act and conduct?OPD

6. Relief.

With a view to prove their respective stands taken in their pleadings, both the parties brought on record their documentary as well as oral evidence. After hearing learned counsel for the parties and going through the evidence brought on record, learned trial court came to the conclusion that plaintiff has proved his case. Accordingly, suit for permanent injunction filed by the plaintiff against his own wife was partly decreed, vide judgment and decree dated 31.8.2015. Feeling aggrieved, defendant-wife filed her first appeal which came to be allowed by the learned first appellate court vide its impugned judgment and decree dated 1.5.2017. Hence this regular second appeal at the hands of plaintiff

Heard learned counsel for the appellant.

It is a matter of record and not in dispute that suit property was purchased by way of sale deed Ex.D-1 in the name of defendant-respondent. It is also not in dispute that right of defendant-respondent qua the suit property, i.e. house purchased by way of sale deed ExD-1, was not a restricted one in any manner. In this view of the matter, respondent-defendant would be the absolute owner of the suit property in terms of the provisions of law contained in Section 14 of the Hindu Succession Act, 1956. Once the defendant-respondent was absolute owner of the suit property, plaintiff-appellant could not have sought an injunction against true owner. Having said that, this Court feels no hesitation to conclude that the learned first appellate court was well within its jurisdiction to pass the impugned judgment, thereby reversing the judgment of the learned trial court, and the same deserves to be upheld.

So far as the following judgments relied upon by learned counsel for the appellant, are concerned, there is no dispute about the law laid down and observations made in the cited judgments. However, on a close perusal of the cited judgments, none has been found to be of any help to the appellant, being distinguishable on facts.

Nand Kishore Mehra VS. Sushila Mehra, 1995 (4) SCC 572 (SC)

Rebti Devi Vs. Ram Dutt, 1997 (11) SCC 714 (SC)

Binapani Vs. Pratima Ghosh and others, 2007 (6) SCC 100 (SC)

V. Shankaranarayana Rao (D) by Lrs and others Vs. Leelavathy (Dead) by LRs and others, 2007 (10) SCC 732 (SC)

Sri Marcel Martins Vs. M. Printer and others, 2012 (5) SCC 342 (SC)

Ram Sarup Vs. Ghansham Dass and another, 2010 (5) RCR (civil) 257 (P&H High Court)

Nand Kishore Mehra VS. Sushila Mehra, 1999 (4) RCR (civil) 21 (Delhi High Court)

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

With a view to avoid repetition and also for the sake of brevity, observations made by the Hon'ble Supreme Court in para 11 and 12 of its

later judgment in Ganeshi Lal's case (supra), reiterating its view taken in Amrit Lal Manchanda's case (supra) and Mohd. Illiyas's case (supra), which can be gainfully followed in the present case, read as under:-

11. *"12....Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v.*

Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on

decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In *Home Office v. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute

definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it

marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it
Ed. See *Union of India VS. Amrit Lal Manchanda*,
(2004) 3 SCC 75, pp. 83-84, paras 15-18."

In fact, entire case of the plaintiff-appellant was that since he purchased the suit property, i.e, residential house, spending money from his own pocket for his wife-defendant/respondent, she cannot be said to be an absolute owner. In an exactly similar fact situation, Hon'ble Supreme Court rejected such contention, holding that in the circumstances, wife was the real owner of the property, although consideration money was made available by the husband. Relevant observations made and law laid down by the Hon'ble Supreme Court in para 11 to 13 of its judgment in **Om Prakash Sharma @ O.P. Joshi Vs. Rajendra Prasad Shewda and others, 2015 (4) RCR (civil) 758**, which can be gainfully followed in the present case, read as under:-

The purchase of property by a husband in the name of his wife is a specie of Benami purchase that had been prevalent in India since ancient times. Such a practice appears to have been prevalent on account of the position of Hindu women to succession until the enactment of the Hindu Succession Act and the amendments made thereto from time to time. In a situation where a Hindu widow had a limited right to the estate of the deceased husband under the Hindu Women's Right to Property Act, 1937, the purchase of immovable property by a husband in the name of the wife in order to provide the wife with a secured life in the event of the death of

*the husband was an acknowledged and accepted feature of Indian life which even finds recognition in the explanation clause to Section 3 of the Benami Transactions (Prohibition) Act, 1988. This is a fundamental feature that must be kept in mind while determining the nature of a sale/purchase transaction of immoveable property by a husband in the name of his wife along with other facts and circumstances which has to be taken into account in determining what essentially is a question of fact, namely, whether the property has been purchased Benami. The “other” relevant circumstances that should go into the process of determination of the nature of transaction can be found in **Jaydayal Poddar (Deceased) through L. Rs. & Anr. vs. Mst. Bibi Hazra & Ors. AIR 1974 SC 171 para 6** which may be usefully extracted:-*

“6. It is well settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of a benami is the intention of the party or parties concerned; and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be

benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation, and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question, whether a particular sale is benami or not, is largely one of fact, and for determining this 1 AIR 1974 SC 171 para 6 question, no absolute formulae or acid test, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the Courts are usually guided by these circumstances: (1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar; (5) the custody of the title-deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale. The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless No. 1 viz. the source, whence the purchase money came, is by far the most important test for determining whether the sale standing in the name of one person, is in reality for

the benefit of another” (Emphasis is ours)

*11. The reiteration of the aforesaid principles has been made in **Binapani Paul vs. Pratima Ghosh & Ors 2007 (2) RCR (civil 801 : 2007 (6) SCC 100**. The relevant part of the views expressed (Paras 26 and 27) may be profitably recollected at this stage.*

*“26. The learned counsel for both the parties have relied on a decision of this Court in **Thakur Bhim Singh v. Thakur Kan Singh** wherein it has been held that the true character of a transaction is governed by the intention of the person who contributed the purchase money and the question as to what his*

intention was, has to be decided by:

- (a) surrounding circumstances,*
- (b) relationship of the parties,*
- (c) motives governing their action in bringing about the transaction, and*
- (d) their subsequent conduct.*

27. All the four factors stated may have to be considered cumulatively. The relationship between the parties was husband and wife. Primary motive of the transaction was security for the wife and seven minor daughters as they were not protected by the law as then prevailing. The legal position obtaining at the relevant time may be considered to be a relevant factor for proving peculiar circumstances existing and the conduct of Dr.

Ghosh which is demonstrated by his having signed the registered power of attorney.”

*12. Applying the aforesaid principles to the facts of the present case we find that the High Court was perfectly justified in coming to the conclusion that the property though purchased from the funds of Jagannath was really for the benefit of his widow Moni Debi and therefore Moni Debi was the real owner of the property. In this regard the entries of the name of Moni Debi in Municipal and Land Revenue records; the fact that the brothers of Jagannath were no longer alive (according to the plaintiff the property was purchased by Jagannath in the name of his wife to protect the same from his brothers) are relevant facts that have been rightly taken into account by the High Court. The fact that the property was managed by Jagannath which fact accords with the practice prevailing in a Hindu family where the husband normally looks after and manages the property of the wife, is another relevant circumstance that was taken note of by the High Court to come to the conclusion that all the said established facts are wholly consistent with the ownership of the property by Moni Debi. In fact the aforesaid view taken by the High Court finds adequate support from the views expressed by this Court in **Kanakarathanammal vs. S.Loganatha Mudaliar & Anr . AIR 1965 SC 271** the relevant part of which is extracted below:*

“It is true that the actual management of the property was done by the appellant's father; but that would inevitably be so having regard to the fact that in ordinary Hindu families, the property belonging exclusively to a

female member would also be normally managed by the Manager of the family; so that the fact that appellant's mother did not take actual part in the management of the property would not materially affect the appellant's case that the property belonged to her mother. The rent was paid by the tenants and accepted by the appellant's father; but that, again, would be consistent with what ordinarily happens in such matters in an undivided Hindu family. If the property belongs to the wife and the husband manages the property on her behalf, it would be idle to contend that the management by the husband of the properties is inconsistent with the title of his wife to the said properties. What we have said about the management of the properties would be equally true about the actual possession of the properties, because even if the wife was the owner of the properties, possession may continue with the husband as a matter of convenience. We are satisfied that the High Court did not correctly appreciate the effect of the several admissions made by the appellant's father in respect of the title of his wife to the property in question. Therefore, we hold that the property had been purchased by the appellant's mother in her own name though the consideration which was paid by her for the said transaction had been received by her from her husband.” (Underlining is ours)

13. *On the basis of the above, we have no reason to disagree*

with the conclusion of the High Court that the property was owned by Moni Debi although consideration money for the same may have been made available by her husband, Jagannath.”

A bare perusal of the abovesaid law laid down by the Hon’ble Supreme Court in **Om Prakash Sharma @ O.P. Joshi’s case** (supra), would leave no manner of doubt that case in hand is squarely covered against the appellant.

Learned first appellate court before arriving at a judicious conclusion, rightly examined, considered and appreciated true facts of the case as well as the evidence available on record, in correct perspective. Cogent findings recorded by the learned first appellate court in para 12 to 14 of its impugned judgment, which deserve to be noticed here, read as under:-

“..... From the perusal of the contents of sale deed Ex.D1, it is crystal clear that right of appellant in the house in disputed has not been restricted to any extent. According to Section 14 of The Hindu Succession Act, 1956, the house in dispute is the absolute property of the appellant despite making payment of sale consideration by the respondent and the case of the respondent does not fall within the ambit of Section 14 (2) of The Hindu Succession Act, 1956, because no restrict upon the appellant in the sale deed Ex.D1 has been imposed with regard to use of house in dispute in particular manner. Once the appellant is absolute owner of the house in

dispute, as per Section 14 of the Hindu Succession Act, 1956, the respondent has not right to seek injunction against her but the learned trial court has not taken into account the relevant law.

Furthermore, coming into the provisions of The Benami Transactions (Prohibition) Act, 1988, again there is no dispute as per Section 3 of the Act (ibid), any person can purchase property in the name of his wife of unmarried daughter and it shall be presumed unless the contrary is proved that the said property had been purchased for the benefit of wife or unmarried daughter. Respondent in para No.4 of the plaint himself admitted that he was having full love and affection towards the appellant and purchased the house in dispute in her name. As already observe, there was no restriction clause in the sale deed Ex.D1 curtailing the absolute right of the appellant in the house on happening of any event in future. Even assuming the matrimonial relations between the appellant and the respondent became strained, subsequently despite that appellant cannot ceased to be absolute owner of the house in dispute. Assuming the respondent held house in dispute benami in the name of appellant despite that the respondent is not entitled to any injunction against the appellant. Section 4 of The Benami Transactions (Prohibition) Act, 1988 is re-produced as under:-

‘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 benmai 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.’

Taking into account the bare language of Section 4 of the Act (ibid), it is crystal clear even the respondent is assumed holder of house in dispute as benami property being the husband of the appellant despite that the suit is not maintainable against the appellant and once the suit itself is not maintainable, then no relief of injunction of any kind be granted in favour of the respondent. The learned trial court fell into an error and granted injunction against the appellant ignoring the provisions of Section 14 of The Hindu Succession Act, 1956, as well as Section 4 of The Benami Transactions (Prohibition) Act, 1988, which is illegal. Hence, the findings recorded by the learned trial court cannot be sustained, the same being illegal are liable to be set aside. The law cited (supra) by counsel for the respondent is not at par with the facts and circumstances of this case being this case having facts “sui-generis.”

During the course of hearing, learned counsel for the appellant failed to point out any patent illegality or perversity in the impugned judgment passed by the learned first appellate court. He also could not refer to any question of law much less substantial question of law, which is sine qua non for entertaining a regular second appeal at the hands of this Court, while exercising its appellate jurisdiction under Section 100 of the Code of Civil Procedure. In this regard, reliance can be placed on the law laid down by the Hon’ble Supreme Court in **Naryanan Rajendran and another Vs.**

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Lekshmy Sarojini and others, 2009 (2) RCR (civil) 286 and Santosh Hazari Vs. Purshottam Tiwari, 2001 (3) SCC 179.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present appeal is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant regular second appeal stands dismissed, however, with no order as to costs.

17.7.2017
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No