

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

RSA No. 5053 of 2017 (O&M)

Date of Decision: 21.11.2017

Birbal Ram

.....Appellant

Versus

Smt. Salochna Devi

.....Respondent.

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. P.S. Jammu, Advocate for the appellant.

AVNEESH JHINGAN, J.

The present appeal has been filed at the behest of plaintiff being aggrieved of concurrent dismissal of his suit for declaration.

For convenience purposes the parties are being referred to as per their original position in the plaint.

The plaintiff filed a suit for declaration to the effect that he is owner in possession of the land detailed in the suit which fell in Khewat No. 77 Khatauni No. 155, 156 as per Jamabandi for the year 2007-2008. The suit property is situated in village Gusianana, Tehsil and District Sirsa. The revenue record shows the defendant to be the owner of the suit land on the basis of sale deed No. 1422 dated 23.03.1999. It was prayed that the said revenue entries are against law and facts and are liable to be corrected in favour of the plaintiff. Consequential relief for permanent injunction restraining the defendant from interfering into the possession of the plaintiff over the suit land was also prayed.

The facts as averred by the plaintiff are that the defendant was married to him on 21.03.1993 according to Hindu Rites and Ceremonies at

village Deeplana, Rajasthan. After the marriage, out of their wedlock a male child namely 'Amit' was born on 24.12.2001. It was further averred that they were leading a happy matrimonial life and out of love and affection, plaintiff purchased the suit land in the name of the defendant through the registered sale deed No. 1422 dated 23.03.1999. The plaintiff spent the entire amount of sale consideration from his own pocket. The amount was withdrawn from the account of the plaintiff in Bank of Rajasthan. It was alleged that defendant never contributed any amount for purchase of the land. It was averred that the plaintiff is in cultivating possession of the suit land. Some dispute arose between the plaintiff and the defendant, their relations became strained. After purchasing the land in the name of the defendant she started misbehaving and was looking to a chance to pick up quarrel with the plaintiff. It was alleged that the defendant misappropriated the cash and gold ornaments belonging to the plaintiff. Defendant got registered FIR No.19 dated 1.2.2008 against the plaintiff and his family members. She also filed a petition under Section 13 of the Hindu Marriage Act and the same was decided in her favour on 27.03.2010. It was submitted that the defendant remarried and is residing with her 2nd husband. It was averred that the defendant has no right in the title or any interest in the property owned by the plaintiff. It was submitted that the sale deed No. 1422 dated 23.03.1999 in favour of the defendant was a paper transaction and the property was purchased out of love and affection in her favour. It was the case of the plaintiff that the revenue entires in favour of the defendant were wrong, against the law and liable to be corrected in favour

of the plaintiff. On having a threat from the defendant to alienate/transfer the suit land the plaintiff had to file the suit.

On notice defendant appeared and filed written statement raising preliminary issues and the reply was also filed on merits. Replication was also filed by the plaintiff.

Learned trial court framed the following issues:

1. Whether the plaintiff is entitled for decree of declaration to the effect that the plaintiff is owner in possession of land to the extent of 844/3339 share out of total land measuring 169 kanals 19 marlas comprised in Khewat no.77 Khatuni No. 155, 156 as per jamabandi for the year 2007-08, alongwith consequential relief of permanent injunction as prayed for? OPP
2. Whether the revenue record showing the defendant to be owner of the suit land on the basis of sale deed No.1422 dated 23.3.1999 are wrong, against the law and facts and are liable to be corrected as prayed for? OPP
3. Whether suit of the plaintiff is not maintainable? OPD
4. Whether the plaintiff has no cause of action or no locus standi to file the present suit as prayed for? OPD
5. Whether the plaintiff has concealed the true and material facts from the court and not come with clean hand as prayed for? OPD
6. Relief.

The plaintiff in order to support his suit himself appeared as PW- 1 and examined Sh. Ankur Sharma, Deputy Branch Manager ICICI bank as PW2. Copy of sale deed dated 23.03.1999 and the Jamabandi for year 2007-08 were placed on record as Ex. P-1 and P-2 respectively.

Defendant in order to rebut the suit herself appeared as DW1 and examined Bhoop Singh as DW2 and placed on record copy of judgment dated 27.03.2010 as Ex. D1 and FIR was placed on record as Ex. D2.

Learned trial court after appreciating the facts and considering the evidence produced, decided issue No. 1 and 2 against the plaintiff. Issues 3 to 5 were not pressed and were hence decided against the defendant. The net result was that suit was dismissed vide judgment and decree dated 19.02.2016.

Aggrieved of the judgment and decree dated 19.02.2016, plaintiff filed an appeal, and the said appeal was dismissed by District Judge, Sirsa, vide judgment and decree dated 16.08.2017.

Hence the present regular second appeal.

In the present appeal though as many as 7 substantial questions of law have been framed but the counsel while arguing the appeal has not addressed the arguments on the said questions. The Ld. Counsel for the plaintiff contended that sale deed No. 1422 dated 23.03.1999 was only a paper transaction and actually the land was purchased by the plaintiff out of love and affection. His contention is that necessary corrections should be made in the revenue record in his favour. He argued that the entire consideration for the purchase of the land was paid by him and the defendant failed to prove that amount of Rs.2 lakhs was contributed by her and her family for the purchase of the suit land.

There is no dispute with regard to the fact that the plaintiff and defendant were married and out of their wedlock a male child was born. The

said child was deaf and dumb and was with the defendant. It is also not disputed that the suit land was purchased in the name of the defendant vide sale deed No. 1422 dated 23.03.1999.

The plaintiff made a claim that the entire amount was spent by him which was withdrawn from his account in Bank of Rajasthan. Plaintiff claimed that he was in cultivating possession of the suit land and the land was purchased in the name of the defendant out of love and affection. On the other hand it was claimed that she and her family members were never pressurized to pay of sum of Rs.2 lacs for purchasing the suit land.

Ex. P-1 sale deed shows that the said land was purchased in the name of the defendant The plaintiff relied upon the statement of Deputy Branch Manager of ICICI bank who had brought copy of the joint statement which was exhibited as PW2/A. The manager deposed that the account was in the joint name of the plaintiff and the defendant. DW2 was examined by the defendant and he deposed that the share of the defendant was paid by her brother and family members to the vendor of the suit land in his presence and the defendant is owner in possession of the land since its purchase. It is pertinent to note that DW2 was an attesting witness to the sale deed. The plaintiff in his cross-examination admitted that the defendant is recorded as owner of the land in revenue record and according to the revenue record the defendant is in cultivating possession of the suit land.

There is no dispute on the proposition that the revenue entries raise a rebuttable presumption. The reliance in this regard can be placed upon the Full Bench decision of this Hon'ble Court in **Ram Chander Vs.**

Bhim Singh and others, 2008 (3) RCR (Civil) 685, wherein it has been

held as under :-

“22. Revenue entries reflect the rights of the parties as opposed to conferring rights and raise rebuttable presumptions as to their correctness. They reflect an existing state of affairs, namely, an existing title or a state of possession. Entries in revenue records neither confer nor deprive a person of his title, whether joint or separate. Rectangle numbers and Killa numbers are revenue measures, used by revenue authorities to identify and describe fields that constitute the ownership of a land owner. A holding may be divided into different Khewats, Khataunis, rectangles and killas/khasras all bearing different numbers. Where parties are joint owners or co-sharers, the land would comprise of a Khewat or khewats, different khataunis, rectangles and/or khasra/killas numbers. Thus, where a group of land owners holds land in joint ownership and are reflected as owners in common of the khewat, commonly known as the joint khewat, they would continue to remain owners in possession of the land, though described as being situated in different khataunis, rectangles and khasra/killas numbers. Division of land into different rectangles, khasra or killas numbers does not alter the nature of property held in common or the rights of co-sharers flowing therefrom. The Full Bench in Lachhman Singh's case (supra), disregarded the nature of joint property and by

placing undue reliance upon artificial divisions of land meant to identify land, erred while holding that a vendee, who purchases land from a joint khewat by reference to specific rectangles and khasra numbers, does not become a co-sharer in the entire joint khewat.”

In the abovesaid decision, it has been held that entries in the revenue record raise a rebuttable presumption.

In the present case the rebuttable presumption is in favour of the defendant and the plaintiff has not been able to rebut the same as he himself admitted that the revenue entries are in favour of the defendant showing her as owner and in cultivating possession of the suit land. The plaintiff in the present case has to establish his own case by substantiating the claim made in the suit. He cannot rely upon the weaknesses of the evidence produced by the defendant. Reliance in this regard is placed upon the judgment of the Hon'ble Apex Court in **Union of India and others Vs. Vasavi Co-op. Housing Society Ltd. and others**, 2014 (2) SCC 269, wherein it has been held that the plaintiff has to succeed only on the strength of his case and not on the weakness of the case set up by the defendants in a suit for declaration of title and possession.

Similarly, in **Rangammal Vs. Kuppuswami and another**, 2011 (12) SCC 220, the Hon'ble Apex Court held as under :-

“14. Section 101 of the Indian Evidence Act, 1872 defines 'burden of proof' which clearly lays down that whosoever desires any court to give

judgment as to any legal right or law dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person. Thus, the Evidence Act has clearly laid down that the burden of proving fact always lies upon the person who asserts. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party.”

In the aforesaid judgment, it has been laid down that until the court comes to a conclusion that the person upon whom burden to prove a fact lies has been able to discharge his burden, it cannot proceed on the basis of weakness of the other party.

The plaintiff in the present case has not been able to establish that he had spent the entire amount from his own pocket for purchase of the suit land. Rather the witness produced by him, the Bank Manager, has deposed that account in the Bank of Rajasthan was in joint name of defendant and the plaintiff. DW2 deposed that the share of the defendant was paid to the vendor by her family members in his presence.

The claim of the plaintiff that the suit land was purchased in the name of the defendant out of love and affection is belied by the long drawn

litigation and the strained relations between the plaintiff and the defendant as proved on record. There was not only case under the Hindu Marriage Act but there was FIR lodged in the Police Station. In such a situation the claim of the plaintiff for purchase of suit land out of love and affection for the wife is not proved. To substantiate the claim in the suit, apart from self-serving statement of the plaintiff nothing else has been brought on record.

On having failed to prove the above said contentions another unsuccessful effort was made by the Ld. counsel to submit that the land was purchased under Benami transaction out of love and affection and therefore the plaintiff has a right to recover the same back. The said contention raised has no substance and is liable to be rejected. As discussed above the claim that the land was purchased out of love and affection is not acceptable in the present case. Rather it has been proved beyond doubt that plaintiff and defendant were not having cordial relations.

Sections 3 and 4 of Benami transaction (prohibition) Act, 1988 (for short, 'the Act') would be relevant:-

“3. Prohibition of benami transaction :-

- 1) No person shall enter into any benami transaction.
- 2) Nothing in sub-section (1) shall apply to 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 or the unmarried daughter.
- 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 Criminal Procedure Code, 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 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.”

From the perusal of the above section 3 it would be evident that Benami transaction is prohibited. The exception is if the property is purchased in the name of wife it shall be presumed that the property has been purchased for the benefit of the wife unless contrary is proved. In the present case it has been proved that the property was not purchased out of love and affection or for the welfare.

Section 4 of Benami Act forbids any suit by a person claiming to be real owner of such property to enforce any right in respect of property held Benami.

In **Sri Marcel Martins Vs. M. Printer and others**, 2012 (5) SCC 342, the Hon'ble Apex Court, after re-producing Section 4 of the Act, held as under :-

“13. A plain reading of the above will show that no suit, claim or action to enforce a right in respect of any property held benami shall lie against the person in whose name the property is held or against any other person at the instance of a person claiming to be the real owner of such property.”

In view of the aforesaid decisions, and for the reasons mentioned above, the contentions raised by the plaintiff are rejected.

During the course of hearing, learned counsel for the appellant could not point out any illegality or perversity in the impugned judgment passed by the learned first appellate court. He could not refer to any question of law much less substantial question of law which is sine qua non for this court to exercise its appellate power under Section 100 of the CPC.

The cogent findings recorded by the learned first appellate court have been found factually correct and legally justified. Thus, no fault can be found in the impugned judgment and decree passed by the first appellate court and the same deserves to be upheld.

No other argument was raised.

Considering the facts and circumstances of the case noted

above, coupled with the reasons afore-mentioned, this Court is of the considered view that the present appeal is bereft of merit and without any substance, thus it must fail.

Resultantly, the instant Regular Second Appeal is dismissed, however, with no order as to costs.

November 21, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes