

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

**Judgment delivered on : October 27, 2017**

+ RFA 400/2010

VINOD KUMAR DHALL ..... Appellant

Through: Mr.Kirti Uppal, Sr.Adv. with  
Mr.K.R.Chawla,  
Mr.Harsh Kumar,  
Advocates.

versus

DHARAMPAL DHALL AND ANR. .... Respondents

Through: Mr.Sanjeev Sindhvani, Sr.Adv.  
with  
Mr.Dinesh Kumar Gupta,  
Mr.Vidit Gupta,  
Mr.Prakash Pandey,  
Advocates for LR's of R-1.

**CORAM:  
HON'BLE MR. JUSTICE P.S.TEJI**

**JUDGMENT**

**P.S.TEJI, J.**

1. Aggrieved by the judgment and decree dated 01.05.2010 passed by the learned Additional District Judge, Delhi whereby the suit for recovery, possession, mesne profits and permanent injunction filed by the respondent No.1/plaintiff has been decreed in his favour, the appellant/defendant No.1 has filed the present appeal.

2. The facts narrated in the plaint filed before the Court below are that a suit was filed before the Trial Court by respondent No.1/plaintiff for recovery, possession, mesne profits and permanent injunction with respect to the suit property No.ED-48, Tagore Garden, New Delhi measuring 149.33 square yards as a leasehold property under the perpetual lease deed executed by the President of India in favour of the plaintiff/respondent No.1 registered on 31.01.1966. The respondent No.1/plaintiff raised a construction over the suit property after obtaining necessary sanction from the competent authority. Upon completion of the house, all the family members started living in the said house along with the appellant/defendant No.1, who was allowed to take shelter in the suit premises. The father of the parties to the suit died on 10.08.1980 and thereafter due to the alleged behavior of the appellant/defendant No.1, he was kicked out of the house in 1986 and subsequently acquired a house at Moti Nagar, New Delhi, thus, shifting his residence along with family members from the suit property. The appellant/defendant No.1 subsequently acquired another accommodation at GH1/318, Paschim Vihar, New Delhi and both these houses were in possession of the appellant/defendant No.1. It is further alleged that in February, 1993 the plaintiff/respondent No.1 found that the appellant/defendant No.1 was residing in the suit property and asked respondent No.2 as to who gave permission to the appellant, wherein he was informed that the appellant was permitted to stay for a short period during the renovation of his own house and would leave once the same was over. The respondent No.1/plaintiff

has alleged that various requests were made to the appellant to vacate the house which were not adhered to and thus a notice dated 30.06.1995 was served upon him and subsequently the present suit was filed.

3. In the written statement filed on behalf of the appellant/defendant No.1, it has been stated that the plaintiff/respondent No.1 was not the owner of the suit premises and the allotment of the plot bearing no.ED-48, Tagore Garden, New Delhi on which the suit property was constructed, was actually done by DDA in the name of Sneh Lata, the oldest child of Kashmiri Lal, the father of the parties since 1963-64 which was later on transferred in the name of the plaintiff/respondent No.1 at the time of marriage of Sneh Lata, and thus it was only a benami transaction and the plaintiff was not the owner of the property. It was further averred in the pleading of the defendant No.1 that he is in possession of the suit premises uninterruptedly since its construction in 1965-66 and had become the owner of the suit property by adverse possession according to the provisions of the law. It was also countered on the ground that the suit was bad for non-joinder of the necessary parties, as all the four sisters and two brothers of the plaintiff who were legal heirs of the father were not made parties to the suit.

4. Replications to the written statements were filed on behalf of the defendants. On the basis of pleadings of the parties, following issues were framed by the Court below :

- 1) Whether the plaintiff is the owner of the suit property? OPP.
- 2) Whether the defendant is in the unauthorized occupation of the suit property? OPP.
- 3) Whether the plaintiff is entitled for the damages as explained? OPP.
- 4) Whether the defendant is the co-owner of the property as objection raised in para 5 of the written statement? OPD.
- 5) Whether the defendant has become the owner of the property by way of adverse possession? OPD.
- 6) Whether the plaintiff has locus standi to file the present suit? OPP.
- 7) Whether this suit is barred by the limitation? OPD.
- 8) Whether the Court has no pecuniary jurisdiction? OPD.
- 9) Whether the suit is bad for non-joinder of the parties? If so, to what effect? OPD.
- 10) Whether the suit is liable to be rejected under Order 7 Rule 11 CPC? OPD.
- 11) Whether the plaint does not disclose the cause of action? OPD.
- 12) Whether the plaintiff is entitled for the decree of possession? OPP.
- 13) Relief.

5. Vide impugned judgment, all the issues have been decided in favour of the respondent No.1/plaintiff and against the appellant/defendant No.1. Feeling aggrieved by the suit being decided in favour of the respondent No.1/plaintiff, the present appeal has been preferred by the appellant/defendant No.1.

6. I have heard the learned counsel for the parties and gone through the evidence available on record.

7. The arguments advanced by the learned counsel for the appellant are that the Trial Court has wrongly held the respondent No.1 as the owner of the property as it was submitted that during 1961-66 respondent No.1 was a student at IIT, Kharagpur, Calcutta with no income whatsoever and it is admitted by the respondent No.1 that during the course of his studies all his expenses were borne by his father. It was further submitted that the house in dispute was acquired and constructed during 1963-66 and, therefore, it cannot be thought of that the respondent No.1 either acquired the plot in the year 1963-64 from his own resources or raised construction in the year 1966. It was submitted that the respondent No.1 had not produced any evidence to prove that he acquired the plot from his own money or raised construction for which he paid himself. It was further submitted that the onus to prove that the said construction or acquiring of the land was made by respondent No.1 has failed miserably as the documents produced were income tax returns for the year 1991-92 and 1995-96, which have no relevance as the property in dispute was acquired in the year 1963-64 and built in the year 1966. It was further submitted that the Trial Court has wrongly held that since electricity and water bills were in the name of the respondent No.1, he becomes the owner of the said property.

8. Per contra, the arguments advanced by the respondent No.1/plaintiff are that the respondent No.1/plaintiff was the owner of the suit property on the basis of the perpetual lease deed dated 31.01.1966 (Ex.PW1/A). The appellant/defendant No.1 was permitted to reside in the suit property only for a short period on the ground of ongoing construction on the property of appellant/defendant No.1. The defendant No.1 was asked to vacate the premises but he failed to do so despite repeated requests and now he is disputing the ownership of the respondent No.1/plaintiff on the ground of benami property. The title of the plaintiff/respondent No.1 was clear and in support of the contentions raised, he has relied upon the judgments in ***Muddasani Venkata Narsaiah (D) Through LRs v. Muddasani Sarojana*** 2016 AIR (SC) 2250 and ***Anil Gulati v. Promila Gulati***, 2015 (222) DLT 17. The ratio of both these judgments is that there was no serious cloud on the title of the plaintiff so as to force him to seek the relief for declaration of title which was based on the strength of sale deed. It was observed that no defence in respect of any property can be raised against the person in whose name the property is held on the plea that the property is held benami.

9. The main issue being Issue No.1 to be decided in the present appeal is with respect to the question of title and ownership of the respondent No.1/plaintiff qua the suit property. The onus to prove the issue was on the respondent No.1/plaintiff. In order to prove the said issue, the plaintiff has pleaded in his plaint that he acquired the

leasehold rights of the property in question vide the perpetual lease deed executed by the President of India in his favour and registered the documents on 31.01.1966 and thereafter raised construction after obtaining necessary sanction from the competent authorities. The plaintiff examined PW-1, Ashok Kumar Midha, a UDC from Sub District No.2 Kashmiri Gate, Delhi who produced the records of the perpetual lease and the certificate of the same as Ex.PW1/A. The plaintiff while examining himself as PW-9 brought on record the original deed that was in his possession. It is evident that the perpetual lease deed Ex.PW1/A is a document that explicitly shows that the document was executed in 1966 between one Dharam Pal and the President of India, clarifying the suit property as a residential plot. The lease deed consists of further terms and conditions, thus, clarifying the title of the suit property being in the name of Dharam Pal i.e. the plaintiff/respondent No.1. Moreover, with respect to the construction raised on the said suit property, various vouchers i.e. bills of receipts of payments marked as X-1 to X-29 have been produced which show that the expenses for the construction were borne by the plaintiff/respondent No.1, alone. It is the contention of the appellant that the allotment of the plot was actually made in the name of Sneh Lata and the father of the parties had paid the entire amount to the DDA and subsequent construction was also raised by him out of his own sources. It is evident from the material placed on record that there is nothing whatsoever to support the deposition of the appellant/defendant No.1 with respect to the fact that the suit plot was

initially allotted to Sneh Lata. To the contrary, the plaintiff/respondent No.1 has placed on record that the leasehold rights were created by DDA in the year 1966 in the name of Dharam Pal i.e. the respondent No.1/plaintiff. It is admitted by the appellant/defendant No.1 in his deposition before the Trial Court that all the documents qua the suit property were in the name of the respondent No.1/plaintiff and raised only the plea that the cost was paid by their father Kashmiri Lal on the ground that at that time the plaintiff was a student and had no source of income to pay such an amount. Further, it is an admitted fact on behalf of the appellant/defendant No.1 that all the bills of electricity, water and HTA were in the name of the respondent No.1/plaintiff.

10. It has been established on record via ExPW1/A that the property has been allotted in the name of the respondent/plaintiff and by virtue of the same, he is the owner of the suit property. This makes him entitled for the possession of the suit property on the basis of title. The plea taken by the appellant/defendant that the property was not purchased by the plaintiff/respondent with his own funds as he did not have any independent source of income, does not render him disentitled to the suit property as the appellant/defendant does not claim that the property was purchased by the funds created by him. Moreover, if, for the sake of argument, it is presumed that the funds were arranged by the father of the parties in favour of the other son, the same is between the father and the son at that time. Undisputedly, it is not an inherent property and moreover, there is nothing brought

on record that the relationship between the respondent/plaintiff and his father was restricted to the assistance of contributing funds for raising the property. It would be pertinent to mention that the appellant/defendant has not brought any evidence on record that he has contributed anything towards the property, the title of which is in the name of the respondent/plaintiff. It is further pertinent to state that at no point of time, the appellant/defendant claimed that he had a share in the suit property except raising such a plea in the instant appeal.

11. As for the plea taken by the appellant/defendant that the suit property was in the name of his sister Sneha Lata, and which was at the time of her marriage transferred to respondent/plaintiff, is a benami transaction and does not make him the owner of the suit property, reliance has been placed on a plethora of judgments, gist of which is given below.

***Shri Krishan Kumar v. Shri. Harnam Das and Ors:*** 1990 (2) Delhi Lawyer 204 wherein it was held that in a benami transaction, it must be established that the property is held or possessed by the benamidar and that consideration was paid by another person. If possession is not transferred to the benamidar and in fact the consideration is paid by another person and the possession of the property is taken by such other person, the transfer deed by which the property is shown to have been sold to the benamidar would nearly be a sham document.

***Premnath Wadhwan v. Inderrai Wadhwan***, 52 (1993) DLT 556 wherein while discussing the applicability of Section 4 of the Benami Transaction (Prohibition) Act, 1988, the court observed that in case the possession of the property is with the real owner and that too for any express or implied intention of the parties, it cannot be said that the benamidar holds the property i.e. he is in possession of the property.

***Rebti Devi v. Ram Dutt and Anr.***; (1997) 11 SCC 714 wherein it was observed that though the initial burden lay on the defendant, who raised the defence of benami in the written statement, but when parties adduce oral and documentary evidence, question of burden of proof became insignificant.

***Jaydayal Poddar through LRs. and Anr. V. Bibi Hazra and Ors.***; AIR 1974 SC 171 wherein the court laid down circumstances to go through while determining whether a particular sale is benami or not.

- i) The source from which the purchase money came.
- ii) The nature and possession of the property after the purchase.
- iii) Motive, if any, for giving the transaction a benami colour.
- iv) The position of the parties and the relationship, if any, between the claimant and the alleged benamidar.
- v) The custody of the title deed after the sale.

- vi) The conduct of the parties concerned in dealing with the property after the sale.

On similar points, judgments in the cases of **Anathula Sudhakar v. P.Buchireddy through LRs**, AIR 2008 SC 2033; **Ouseph Chacko and Anr. V. Raman Nair Raghvan** AIR 1989 Kerala 317; **Union of India v. Moksh Builders and Financiers**, AIR 1977 SC 409; **Mohar Singh and Anr. V. Deendayal Gupta**, 65 (1997) DLT 1.

12. The above mentioned judgments are on the subject matter of benami transaction. The appellant/defendant No.1 had not taken a plea that the suit property belongs to him and is a benami transaction in favour of the respondent No.1/plaintiff. Thus, the judgments do not render any assistance to appellant/defendant No.1.

13. From the discussion above, this court is of the view that the court below has rightly decided the issues in favour of the plaintiff finding him to be the owner of the suit property on the basis of the perpetual lease deed dated 31.01.1966. On the contrary, the appellant/defendant No.1 has failed to make out a case in his favour that he had contributed to the acquisition of the suit property and merely took the plea that the father of the parties contributed in acquisition of the suit property by the respondent No.1/plaintiff, who happens to be his brother, does not create any right in favour of the appellant/defendant No.1 and the court below has rightly held so.

14. As discussed above, I do not find any error in the impugned judgment and decree dated 01.05.2010 and the same is upheld. Consequently, the present appeal is dismissed. No order as to costs.

**(P.S.TEJI)**  
**JUDGE**

**OCTOBER 27, 2017**  
**dd**

HIGH COURT OF DELHI



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