

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

RSA No. 3752 of 2016 (O&M)

Date of decision : September 26, 2018

Pardeep Kumar Bhasin (since deceased) through LR's and another

.....Appellants

Versus

Seema Bhasin and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Varun Parkash, Advocate
for the appellants.

LISA GILL, J.

Appellant - plaintiffs are aggrieved of concurrent findings rendered against them by the learned Additional Civil Judge (Senior Division), Karnal vide judgment and decree dated 04.02.2013, as well as by the learned Additional District Judge, Karnal vide judgment and decree dated 02.03.2016 and consequential dismissal of their suit.

Suit seeking a decree for declaration with consequential relief of permanent injunction filed by the appellant – plaintiffs was dismissed by the learned trial Court and the said decision was upheld by the learned First Appellate Court.

Brief facts necessary for the adjudication of this case are that the plaintiff – Pardeep Kumar Bhasin (now represented by his mother and daughter) filed the present suit seeking declaration to the effect that he is the real owner in possession of the house in question situated at Model Town, Karnal as detailed in the plaint with consequential relief of permanent injunction for restraining the defendant – wife and son from alienating the house in dispute illegally and forcibly. It was pleaded that the plaintiff –

Pardeep Kumar was married with respondent – defendant No. 1 Seema Bhasin on 01.06.1996. Two children i.e. a son (respondent No. 2) and a daughter (appellant B) were born out of this wedlock on 10.08.1988 and 11.01.1993 respectively. It was pleaded that plaintiff – Pardeep Kumar was a commission agent running his shop in Grain Market, Karnal. He alongwith his wife and children constituted a joint Hindu family, the plaintiff being the Karta. The house in question was purchased by the plaintiff in the name of his wife – defendant No. 1 from one Kuldeep for a sale consideration of ₹6,75,000/-. The plaintiff averred that the house in question was purchased in the name of the defendant as Benamidar. The plaintiff claimed to be the real owner in possession of the house on her own. It was further pleaded that defendant No. 1 was a quarrelsome lady. She left the company of the plaintiff without any reasonable cause on 23.05.2006. She took away his car and both the children with her. After a few days, the car and their daughter were entrusted to the plaintiff. Allegations of defendant No. 1 taking away gold ornaments and cash were also raised. The defendant – wife threatened to alienate the house in question, which was stated to be purchased by the plaintiff from his own income being the Karta. Hence, the suit was filed.

Respondent – defendants contested the suit. Written statement was filed raising various preliminary objections. Averments on merits were controverted. It was denied that the property in question was purchased by the plaintiff with his own income in the name of defendant No. 1 as benamidar. Defendant No. 1 claimed to be the absolute owner of the property in question with the plaintiff having no right, title or interest therein. It was pleaded that defendant No. 1 was thrown out of the matrimonial home by the plaintiff and the present suit was instituted only as

a counter blast to the divorce petition and the petition under Section 125 Cr.P.C. preferred by defendant No. 1 against the plaintiff at Meerut. Dismissal of the suit was prayed for.

Following issues were framed on the basis of the pleading:-

1. Whether the plaintiff is entitled to a decree for declaration to the effect that he is owner in possession of the house No. 44-A, being Karta of the family, situated at Model Town, Karnal detailed in para No. 3 of the plaint?OPP
2. Whether plaintiff is entitled to consequential relief of permanent injunction restraining the defendant from alienating the house in dispute?OPP
3. Whether suit is not maintainable? OPD.
4. Whether plaintiffs have no cause of action and locus standi to file the present suit? OPD.
5. Whether plaintiffs have concealed true and material facts from the court?OPD
6. Whether the present suit is bad for want of proper court fee and jurisdiction?OPD
7. Relief.

Evidence was led by both the parties.

Learned trial Court dismissed the suit filed by the appellant – plaintiff while concluding that the plaintiff had failed to discharge the burden upon him to prove that the transaction in question was benami. Appeal preferred by the appellant – plaintiff was also dismissed by the learned Additional District Judge, Karnal vide judgment dated 02.03.2016. Aggrieved therefrom, present appeal has been filed.

Learned senior counsel for the appellant vehemently argues that both the learned courts below have erred in dismissing the suit filed by the appellant – plaintiffs. Categorical finding has been returned by the learned First Appellate Court that the property in question was in possession of the

appellants. The consideration for the property was paid by the appellant – husband of defendant No. 1. Moreover, the evidence on record proves that the defendant – wife never had any funds to purchase the property in question. Reference is made to Ex. PX i.e. order dated 28.05.2009 passed by the learned District Judge, Family Court, Meerut in the proceedings initiated by the wife under Section 125 Cr.P.C. wherein she stated that she had no funds to maintain herself. It is further argued that in the written statement filed by the respondent – wife it was specifically stated that she was bereft of any kind of funds. Her attempt to prove that she was doing tuition work etc. and earning some money while leading her evidence can definitely not be looked into, being beyond pleadings.

Learned senior counsel, thus, urges that the evidence on record squarely proves that the demised property purchased in favour of the respondent – wife by the plaintiff – husband was clearly benami. It is submitted that Section 3(2) of the Prohibition of Benami Property Transactions Act, 1988 (for short the 'Benami Act') permits a person to enter in a benami transaction for purchase of property in name of his wife or unmarried daughter. Learned senior counsel relies upon the judgments of the Hon'ble Supreme Court in **Om Prakash Sharma @ O.P. Joshi versus Rajendra Prasad Shewda and others 2015 (4) RCR (Civil) 758** and **Valliammal (D) by LRs versus Subramaniam and others 2004 (4) RCR (Civil) 311** to contend that it is open to the party to prove on record that the transaction in hand is a benami transaction and the appellant has successfully proved the same in this case. Thus, it should be held that Pardeep Kumar was the actual owner of the property in question. It is, thus, prayed that this appeal be allowed, impugned judgment and decree dated

04.02.2013 passed by the learned Additional Civil Judge (Senior Division), Karnal and judgment and decree dated 02.03.2016 passed by the learned Additional District Judge, Karnal be set aside and suit filed by the appellants be decreed throughout.

I have heard learned counsel for the appellants and have perused the file as well as photocopy of the record, which was furnished by him in Court today.

The case set up by the appellant – plaintiff is that the house in question was purchased by him out of his own funds in the name of his wife – defendant No. 1. She had no means to purchase the property. Reference as mentioned above was made to order dated 28.05.2009 passed by the learned District Judge, Family Court, Meerat (Ex.PX).

The plaintiff in order to prove his case testified as PW1. He stated that the entire sale consideration was paid to the vendor but it is admitted in the cross examination that his mother had also spent a sum of ₹4,01,000/-. It was specifically contended that defendant – wife in her application under Section 125 Cr.P.C. had herself claimed that the plaintiff was earning a sum of ₹75,000/- to ₹1,00,000/- per month and she had claimed herself to be a destitute lady so there was no question of her having sufficient funds to purchase the property in question. PW1 also proved the agreement to sell (Ex.P3), according to which vendor Kuldip Singh, had agreed to sell the house in question in favour of mother of the appellant – plaintiff for a total sale consideration of ₹14,01,000/- out of which earnest money of ₹4,01,000/- was paid to the vendor by the plaintiff's mother. PW1 stated that though agreement to sell was executed in favour of his mother, the sale deed was registered and executed in favour of his wife – defendant

No. 1 though sale consideration was paid by him. Earlier one House No. 81-A(R), Model Town, Karnal was also purchased by him in favour of his wife when relations between them were cordial. Respondent/defendant – wife had contended that she used the sale proceeds of House No. 81-A(R), Model Town, Karnal for purchase of the property in question. She also claimed to be deriving some income from her tuition work. It was a specific plea of the respondent – wife that she was thrown out of the matrimonial home and the present suit was filed only as counter blast to the petition under Section 13 of the Hindu Marriage Act and Section 125 Cr.P.C. filed by her.

At this stage, it is relevant to note that Section 3(2) of the Benami Act has since been omitted by Act 43 of 2016 w.e.f. 01.11.2016. Prior to its omission, Section 3(2)(a) of the Act read as under:-

3. Prohibition of benami transactions.—

(1) No person shall enter into any benami transaction.

(2) Nothing in sub-section (1) shall apply to --

(a) 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;

(b) the securities held by a—

(i) depository as registered owner under sub-section (1) of section 10 of the Depositories Act, 1996

(ii) participant as an agent of a depository. Explanation.—

The expressions “depository” and “Participants shall have the meanings respectively assigned to them in clauses (e) and (g) of sub-section (1) of section 2 of the Depositories Act, 1996].

(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 Code of Criminal Procedure, 1973 (2 of 1974), an offence under this section shall be non-cognizable and bailable.

The present suit was instituted on 17.11.2007. In the present suit, sale deed dated 27.04.2005 (Ex.P1) was executed in the name of defendant No. 1 i.e. wife of the plaintiff Pardeep Kumar. It is a settled position that the person in whose name the property is purchased is presumed to be the owner of the same. It has been held by the Hon'ble Supreme Court in **Valliammal's** case (supra) that:-

“ There is a presumption in law that the person who purchases the property is the owner of the same. This presumption can be displaced by successfully pleading and proving that the document was taken benami in the name of another person from some reason, and the person whose name appears in the document is not the real owner, but only a benami. Heavy burden lies on the person who pleads that the recorded owner is a benami-holder.

This Court in a number of judgments has held that it is well established that burden of proving that a particular sale is benami lies on the person who alleges the transaction to be a benami. The essence of a benami transaction is the intention of the party or parties concerned and often, 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.”

It is further observed by the Hon'ble Supreme Court that the person claims the transaction to be benami was required to show that there are valid reasons for the purchase of property in the name of his wife and

that he had paid the money for purchase of the land.

The Hon'ble Supreme Court in **Om Prakash Sharma's** case (supra) while considering the controversy in the said case, which revolved around the ownership of the property in question being of the widow, specifically concluded that the property in question was owned by the widow even though the consideration money for the same may have been made available by her husband. It was accepted that the property was purchased by the husband for the benefit of his wife and therefore, she was in fact the real owner of the property in question. Therefore, the argument raised by learned counsel for the appellant in respect to the payment of consideration amount by the plaintiff is no avail.

Learned counsel for the appellants is unable to point out any evidence on record which would lead this Court to conclude that the defendant – wife is not the absolute owner of the property in question and it is the plaintiff (now represented by his mother and daughter) who is entitled to the ownership and possession of the property. The said property was purchased when relations between the husband and wife were cordial. In fact, the judgments of the Hon'ble Supreme Court in **Om Prakash Sharma's** case (supra) and **Valliammal's** case (supra), cement the case of the defendant – wife.

Both the learned courts below have rendered concurrent findings of fact against the appellant on a wholesome and proper appreciation of evidence on record which warrants no interference. In my considered opinion, no question of law much less a substantial question of law is involved in this appeal.

No other argument was addressed.

Learned counsel for the appellant is unable to point out any

illegality and infirmity in impugned judgment and decree dated 04.02.2013 passed by the learned Additional Civil Judge (Senior Division), Karnal as well as judgment and decree dated 02.03.2016 passed by the learned Additional District Judge, Karnal which calls for interference by this Court.

Accordingly, this appeal is dismissed with no order as to costs.

September 26, 2018

(Lisa Gill)
Judge

rts

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