

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

RSA No.4269 of 2016 (O&M)

Date of decision:21.05.2018

Gopal Dass

... Appellant

Vs.

Darshan Dass

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Ms. Manpreet Kaur, Advocate, for
Ms. Himani Kapila, Advocate
for the appellant.

AMIT RAWAL J. (Oral)

The appellant-plaintiff is aggrieved of the judgments and decrees of both the Courts below, whereby, suit for declaration to the effect that he was exclusive owner of the entire suit property, i.e. Atta Chaki and residential house shown as red in the site plan alongwith consequential relief of permanent injunction restraining the defendant from alienating the ½ share of the suit property, has been dismissed by the trial Court and affirmed by the Lower Appellate Court.

Learned counsel appearing on behalf of the appellant-plaintiff submits that both the Courts below have committed illegality and perversity in dismissing the suit, for, the plot measuring 8 marlas 3 sarsahies was purchased by the plaintiff, vide sale deed dated 17.05.1989. The appellant-plaintiff out of love and affection incorporated the name of defendant in the sale deed being real brother as co-sharer, though he was minor at that

relevant point of time. Since the defendant started asserting right vis-a-vis ½ share in the suit property, cause of action arose to file the suit. The entire sale consideration had been proved to be paid by the plaintiff, therefore, the Courts below ought not to have declined the relief as sought, much less electricity bills etc. had also been proved in favour of the appellant.

I have heard the learned counsel for the appellant-plaintiff and appraised the judgments and decrees of the Courts below.

I am afraid the aforementioned arguments are not sustainable in the eyes of law, for, a plea of benami transaction cannot be set up post amendment caused in The Benami Transactions (Prohibition), Act, 1988 (in short “1988 Act”) except the exceptions as envisaged under Section 4 of 1988 Act, i.e., with regard to transaction in the name of any un-married daughter and wife. The appellant-plaintiff cannot be said to be in fiduciary relationship with defendant-respondent in the sale deed dated 17.5.1989. The suit was filed in the year 2013 itself and for all this period, plaintiff did not dispute the co-ownership of the defendant.

This Court had seen the tendency amongst the litigants to coin the story for claiming exclusive rights in the property. The present case is of such kind.

As an upshot of my findings, I do not find any illegality and perversity in the judgments and decrees of the Courts below which are based upon the appreciation of oral and documentary evidence, much less no substantial question of law arises for adjudication of the present appeal.

No other argument has been raised.

Accordingly, the appeal stands dismissed.

(AMIT RAWAL)
JUDGE

May 21, 2018
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No