

In the High Court of Punjab and Haryana at Chandigarh

RSA No. 3437 of 2018 (O&M)

Date of Decision: 24.8.2018

Sandeep Kaur and others

---Appellants

versus

Amarjit Singh Sandhu

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Kartikeya Swaroop Mehta, Advocate
for the appellants**

Rekha Mittal, J.

The present appeal directs challenge against concurrent findings of fact recorded by the courts whereby suit filed by the appellants-plaintiffs was partly decreed restraining the respondent-defendant from dispossessing them from house No. 52-A measuring 246 square yards, situated in the area of Kot Khalsa Urban Abadi Guru Teg Bahadur Nagar, Tehsil and District Amritsar but their claim seeking injunction against alienation of the suit house by the respondent-defendant has been rejected. The plaintiffs are widow and children of Hardyal Singh (since deceased) son of respondent-defendant Amarjit Singh Sandhu.

Counsel for the appellants has assailed judgments of the courts primarily on two grounds. It is argued that the respondent-defendant was aged about 73 years and a green card holder of United States of America at the time of purchase of the suit property and the same was a benami

transaction having been purchased in the name of the respondent-defendant as benami owner of the suit house. The second submission made by counsel is that defendant-respondent did not appear in the witness box in person but an attorney of the defendant has been examined, therefore, evidence adduced by the appellants-plaintiffs cannot be construed to be rebutted by the respondent-defendant. Counsel has also raised a mercy plea that three of the appellants are minors and in case they are dispossessed from the suit property, it would be of great inconvenience for the appellants. He would inform the court that a suit for possession has already been filed by the respondent-defendant through his attorney and the same is pending.

Counsel for the appellants, in response to a query, is not in a position to convince the court as to how this plea of benami transaction is amenable to be raised much less accepted in the light of Prohibition of Benami Property Transactions Act, 1988. Indisputably, the suit house was purchased and the title deed is in favour of the respondent-defendant. The mere fact that the respondent-defendant has not appeared in the witness box would not enure to benefit of the appellants to substantiate their plea with regard to the defendant being benami owner of the suit property and is not entitled to recover possession, in accordance with law or to deal with the property as he desires. As per the settled position in law, the plaintiff cannot take advantage of weakness of defence and he has to stand on his own legs to be successful in the lis. In the given scenario, the appellants cannot derive any advantage to their contention from failure of the respondent-defendant to appear in person or to produce his attorney in order to counter case of the plaintiffs-appellants.

So far as the plea of the appellants that in case the respondent

gets a decree of possession in a suit stated to be filed by him, the appellants would be rendered homeless, the appellants would be at liberty to raise any such mercy plea before the Court wherein the proceedings for recovery of possession are pending. At the present, the Courts have protected their right to retain possession of the suit property except in due course of law. In this view of the matter, the appellants are not entitled to any relief on equitable considerations. conducive

For the foregoing reasons, the appeal fails and is accordingly dismissed in limine. No order as to costs.

(Rekha Mittal)
Judge

24.8.2018

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No