

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 18.07.2018

+ **CS(OS) 1494/2011 and Crl.M.A. 15540/2012, IA Nos.
9764/2011, 13908/2011, 2950/2013 & 3324/2013**

SAVITA ANAND

..... Plaintiff

versus

KRISHNA SAIN & ORS

..... Defendants

Advocates who appeared in this case:

For the Plaintiff :Mr Rahul Srivastava and Ms Sanjna Dua.

For the Defendants :Dr Arun Mohan, Senior Advocate with Mr
Akshay Makhija.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The plaintiff has instituted this suit for partition claiming 1/4th share in the property bearing no. E-27, Block No. B-1 Extension, Mohan Co-operative Industrial Estate, New Delhi (hereafter 'the Suit Property').

2. The deed of perpetual sub-lease of the Suit Property was executed in favour of defendant no.1 on 30.03.1979 and the conveyance deed relating to the Suit Property was executed on 09.10.2009. Shri Yashpal Sain had expired on 17.10.1963; this was prior to the execution of the aforesaid deeds. Nonetheless, the plaintiff

claims that the Suit Property belonged to late Shri Yashpal Sain and, after his demise, had devolved on each of his legal heirs: the plaintiff (his daughter), defendant no. 1 (his widow – Smt Krishna Sain), defendant no. 2 (his daughter) and defendant no. 3 (his son).

3. After examining the pleadings, on 26.02.2013, this Court had called upon the learned counsel for the plaintiff to explain as to how the plaintiff could claim any share in the Suit Property on the basis of her late father being a member of the Society in question. This Court further observed that the aspect relating to the *Benami* Transactions (Prohibition) Act, 1988 was required to be considered. Subsequently, on 27.08.2013, this Court struck a preliminary issue:

“Whether the suit as framed, is barred in view of the *Benami* Transactions (Prohibition) Act, 1988”

4. Mr Rahul Srivastava, the learned counsel appearing for the plaintiff and Mr Akshay Makhija, the learned counsel appearing for the defendants were heard extensively on the preliminary issue as well as the question whether the plaintiff could claim any rights in the Suit Property as emanating from her deceased father being a member of the Society in question.

5. The undisputed facts are as under:-

5.1 Late Shri Yashpal Sain was born in Lahore, Pakistan on 19.12.1914. He practiced as a doctor in Gangaram Hospital in Pakistan and, thereafter, joined the business of coal contractors in the name and style of M/s Oriental Coal Corporation.

5.2 Shri Yashpal Sain and defendant no.1 got married in the year 1940 and three children were born of the wedlock: plaintiff being the eldest was born on 27.11.1944; defendant no.2 was born on 22.12.1947; and defendant no.3 was born on 18.03.1951.

5.3 Shri Yashpal Sain migrated to Delhi at the time of partition (in the year 1947) and started living in a rented premise at 6/5, Western Extension Area (WEA), Karol Bagh, New Delhi. He set up a proprietorship concern in the name of M/s Asiatic Syndicate for carrying on the business of import and export of goods.

5.4 Late Shri Yashpal Sain purchased a parcel of land in Khasra No. 33/16/1 admeasuring 5 bighas and 10 biswas situated in village Sahibabad, Mathura Road, Delhi along with one Sh P. Luthra. The said land was held in a Co-operative Society, namely, Mohan Small Industrialists Co-operative Services Society Ltd (hereafter 'Mohan Co-operative Society').

5.5 On 10.11.1960, the Government of Delhi issued a notification and acquired the land of Late Shri Yashpal Sain (located in Khasra No. 33/16/1 admeasuring 5 bighas and 10 biswas).

5.6 Thereafter, in 1963, the Delhi Government allotted certain lands to Mohan Co-operative Industrial Estate Limited (hereafter 'Mohan Industrial Estate') for setting up industrial units. Sh Yashpal Sain applied to the Government of Delhi for an alternative plot of land as his land had been acquired under the scheme of 'Large Scale Acquisition, Development and Disposal of Land in Delhi'. In response

to his application, Sh Yashpal Sain received a letter dated 23.11.1962 from Delhi Administration, Delhi, Land and Housing Department informing him that if he was interested in applying for an alternative allotment of plot for setting up of an industry, he could apply in the prescribed form. Further, if he had become a member of any Industrial Estate Co-operative Society to whom such land had been offered in the area, he could merely inform the said Society. Thereafter, Sh Sain was allotted a plot of land admeasuring 5494 sq. yards in Group A of Mohan Co-operative Society. On 11.01.1963, Mohan Co-operative Society called upon its members, who were allotted land, to deposit specified amounts for the society demanded by the Housing Authority.

5.7 On 17.10.1963, Shri Yashpal Sain died intestate, leaving behind the plaintiff and the defendants as his legal heirs.

5.8 In the meanwhile, the plot of industrial land allotted to Sh Yashpal Sain was cancelled because he had failed to deposit the amount for the same.

5.9 On 29.10.1963, defendant no.1, widow of Sh Yashpal Sain, sent a letter to the Mohan Co-operative Society of which her husband was a member requesting to allot the same land in Block A, which had been originally allotted to her husband.

5.10 However, there is no averment or material to indicate that the above request was acceded to. Indisputably, defendant no.1 was allotted land in Block B (also referred to as Group B) for which she paid the requisite cost.

5.11 Defendant no.1 also paid membership charges for becoming member of the Mohan Industrial Estate as well as ₹16,000/- towards cost of land.

5.12 On 22.07.1964, defendant no.1 requested that ₹17,000/- paid by her (₹1000/- as share money for one share and ₹16,000/- towards cost of land) be converted into share capital. Thereafter, on 03.06.1964, a share certificate for one share held by defendant no.1 in Mohan Industrial Estate was issued to her.

5.13 Defendant no.1 continued to pay the development and other charges in respect of the plot of land allotted to her (the Suit Property). All receipts of payments made to Mohan Industrial Estate are in the name of defendant no.1.

5.14 On 30.03.1979, a perpetual sub-lease in respect of the Suit Property was granted to defendant no.1. Thereafter, further charges were also paid to Mohan Industrial Estate and receipts for the same are also in the name of defendant no.1.

5.15 On 09.10.2009, the Suit Property was converted from leasehold to freehold by the DDA and a Conveyance Deed was executed in favour of defendant no.1.

6. In her plaint, the case set up by the plaintiff is that after the demise of late Sh Yashpal Sain, defendant no.1, being the mother of the plaintiff and defendant nos. 2 and 3, assumed the role of a “guardian and a benefactor” of the family and started looking after the

business and the estate of her deceased husband. It is claimed that defendant no.1 had decided to substitute the membership of late Sh Yashpal Sain in Mohan Industrial Estate and although the plaintiff had attained the age of majority, she did not object the substitution of defendant no.1 as a member of the Mohan Co-operative Society since she was her mother and was acting for the benefit of the entire family.

7. The plaintiff further claims that the initial consideration for the Suit Property was paid from the estate left behind by Sh Yashpal Sain, as defendant no.1 was a housewife and had no income of her own. And, therefore, on his demise, each of his legal heirs inherited 1/4th share in the Suit Property.

8. The plaintiff states that she got married on 19.02.1966 and, thereafter, her husband assumed the role of an elder male member of the family and started looking after the affairs of the family. The plaintiff's husband proposed to start a business activity from the Suit Property and entered into an arrangement with M/s Bata India Limited for construction of the Suit Property. The transaction was structured in a manner that substantial funds for construction of the building on the Suit Property was provided by M/s Bata India Limited as advance rent and the remaining funds were arranged by a loan from a bank. It is stated that the plaintiff's husband also stood as a guarantor for repayment of the said loan. Although, it is asserted that the plaintiff's husband had conceived of and entered into the transaction, it is not disputed that the plaintiff's husband acted on behalf of defendant no.1.

9. It is also stated that a partnership firm under the name and style of M/s ASM Warehousing Corporation was constituted, where defendant no.1 held 50% shares and plaintiff and defendant no.3 held 25% shares each. The said firm was to carry out the business of warehousing activity. The said partnership was dissolved by a dissolution deed dated 25.02.2005. M/s Bata India Limited also vacated the Suit Property in January, 2004.

10. It is stated that the DDA alleged misuse of industrial plot (the Suit Property) and determined the lease in respect of the Suit Property on 20.02.2003. Thereafter, the DDA issued an eviction notice dated 07.03.2005. DDA's action was challenged by a writ petition filed before this Court (*W.P. (C) 23270/2005* captioned "***M/s Krishna Sain v. Delhi Development Authority and Anr.***"). It is claimed that the said litigation was also pursued by the plaintiff/her husband, albeit, in the name of defendant no.1. The writ petition was decided in favour of defendant no.1 by a judgment dated 21.03.2006, whereby it was held that carrying on warehousing activities from the Suit Property was not a mis-user of the said premises and the DDA was not entitled to levy any mis-user charges or insist on any restoration charges for restoration of the lease. Further, DDA was also directed to process defendant no.1's application for conversion of the Suit Property from leasehold to freehold as per the Conversion Policy.

11. It is apparent from the above that the Suit Property was allotted to defendant no.1 in her own name. Although, her late husband may have been a member of the Mohan Industrial Estate, he had not

acquired the Suit Property at the time of his demise. Further, the allotment of the plot of land that was allotted in his favour was also cancelled. The plaintiff rests her case largely on the ground that Late Shri Yashpal Sain was a member of Mohan Co-operative Society. The said Society held lands which were divided amongst its members including Shri Yashpal Sain. These lands were acquired by the Govt. Subsequently, in 1963, certain lands were allotted to the Mohan Industrial Estate. Shri Yashpal Sain was also entitled to a plot of land and was required to complete certain formalities of allotment but he was ill at the material time and expired without completing those formalities. Defendant no.1 was admitted as a member of the Mohan Industrial Estate on the basis of the membership of her late husband and, therefore, acquired the Suit Property in her own name.

12. Clearly, a membership of a society does not constitute any inheritable estate. This proposition has been well settled in several decisions rendered by this Court.

13. In *Swayam Sidha Co-operative Group Housing Society v. Financial Commissioner, Delhi & Ors: 159 (2009) DLT 455*, a Division Bench of this Court referred to the decision in the case of *Gayatri De v. Mousumi Co-operative Housing Society Ltd. & Ors. : AIR 2004 SC 2271* and held as under:-

“9. In our opinion, the dispute is really covered by the decision of the *Supreme Court in Gayatri de v. Mousumi Co-operative Housing Society Ltd. & Ors., AIR 2004 SC 2271*. There are in fact two situations that can arise in a case such as the present. The first is where

the deceased member has not been allotted any plot or flat and is merely a member of a society. The second situation is where a deceased member has been allotted a plot or flat by virtue of his or her membership of a society.

10. In the first situation as mentioned above, there is no interest of a deceased member that can devolve on a nominee. It is merely a membership of a society and this cannot be termed as the estate of the deceased which can be inherited by the legal heirs of the deceased. A somewhat parallel situation would be a membership to a club or an association. The death of a member of a club or an association does not confer any entitlement on any of his legal heirs to membership of that club or association. In the second situation the allotment of a plot or flat is an interest that can devolve upon the legal heirs of a deceased. This is what has been held in *Gayatri De*. We may note that we have followed *Gayatri De* in a recent decision rendered by us in *Manmohan Nath N. Puri (Deceased) through L.Rs. v. Shri Madan Jha and Ors.*, (WP (C) No. 182/1990 decided on 18th March, 2009). In another Division Bench decision being *Pran Nath Mallick v. Dr. Netar Prakash mallick & Ors.*, 85 : 2000 (53) DRJ 206 (DB), a Division Bench dealt with the second situation mentioned above and concluded that after allotment is made, legal rights get vested in the member and the society cannot stop inheritance of those rights on the legal heirs of the deceased on the plea that such a person is not a member of the society. Of course, this decision would not be applicable to the first situation that we are concerned with but is being mentioned only to indicate the two distinct situations that can arise. ”

14. In view of the aforesaid position, the plaintiff cannot claim any right, title or interest in the Suit Property as her inheritance in the estate of her late father. At the time of the demise of the plaintiff's

father, he had not acquired the Suit Property. It did not form a part of his estate and, therefore, the question of the plaintiff acquiring any share in the same by survivorship does not arise.

15. Although, the plaintiff has also pleaded that defendant no.1 became a *Karta* of the joint family, there is neither any averment nor any material to establish that Sh Yashpal Sain (father) was carrying on any ancestral business as the *Karta* of an HUF. On the contrary, the averments are that Sh Yashpal Sain had to leave a prosperous family business at the time of partition and “*began a life afresh in New Delhi with his family as a refugee with humble means*”. It is claimed that he drew upon his business acumen and expertise acquired from family business and “*he set up a proprietorship firm in the name of M/s Asiatic Syndicate*”.

16. There is no averment that Sh Yashpal Sain had during his lifetime, created an HUF. The plaintiff has, thus, claimed rights as a legal heir to the Suit Property, which as per averments made in the plaint, would be of self-acquired property of Sh Yashpal Sain.

17. Although, it has been stated in the plaint that defendant no.1 acted as a *Karta* of the family, the said statement is plainly bereft of any merit as there is no foundation for this statement.

18. In ***Sunny (Minor) & Anr. v. Sh. Raj Singh & Ors.: 225 (2015) DLT 211***, a Coordinate Bench of this Court had referred to the decision of the Supreme Court in ***Yudhishter v. Ashok Kumar: (1987) 1 SCC 204*** and had observed that after enactment of the Hindu

Succession Act, 1956, the position with regard to inheritance of the HUF Properties has changed. It was explained that if a person inherits a property from his paternal ancestors after 1956, that property would not be an HUF property in his hands but his self-acquired property. It was further explained that there are two exceptions to the said Rule; first, where the HUF existing prior to 1956 continues even after enactment of the said Act; and second, where a person, who owns a self-acquired property, throws the same in a common hotchpot. It was further held that if a person claims that the properties are HUF properties, he/she is required to make positive statements in the plaint as to how and when the HUF was created and as to when the property was thrown into a common hotchpot.

19. In the present case, there is no positive averment as to when the HUF was formed by defendant no.1 (assuming that defendant no.1 could form an HUF). Merely stating that defendant no.1 held the Suit Property for the benefits of the family, is of no assistance to the plaintiff to set up a claim in respect of the Suit Property.

20. The issue whether the suit is barred in view of the *Benami* Transactions (Prohibition) Act, 1988 has to be considered in view of the aforesaid finding that the pleadings are insufficient and vague to sustain a case of the Suit Property being a property of an HUF, which includes the plaintiff.

21. As noticed above, it is also not disputed that the allotment of the Suit Property as well as all the receipts for payments made for the Suit

Property are in the name of defendant no.1. Further, the sub-lease of the Suit Property was executed in favour of defendant no.1 on 30.03.1979. The Suit Property was converted from leasehold to freehold and a Conveyance Deed for the same was executed in favour of defendant no.1 on 09.10.2009. However, the plaintiff claims that defendant no.1 became the member of Mohan Industrial Estate by virtue of her father being a member of Mohan Co-operative Society and the consideration for the same was paid by the funds left behind by her late father. Thus, the import of the plaintiff's case is that although the Suit Property is in the name of defendant no.1, in fact, the plaintiff and defendant nos. 2 & 3 are also joint owners as the consideration for the Suit Property was paid from the funds left by her late father to which each of them were equally entitled.

22. The plaintiff was a major at the material time. And a claim that she had acquired an undivided share in the Suit Property, although in the name of defendant no.1, by virtue of her funds being used for paying the consideration falls foul of the provisions of the *Benami Transactions (Prohibition) Act, 1988*. In terms of Section 4(1) of the said Act, *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.*

23. Mr Srivastava, has relied on the decision of the Supreme Court in ***Bhim Singh (dead) by LRs & Ors v. Kan Singh & Anr.: AIR 1980 SC 727*** and ***P.V. Sankara Kurup v. Leelavathy Nambiar: AIR 1994***

SC 2694 and the decision of a Coordinate Bench of this Court **Sri Mahinder Singh v. Pardaman Singh : AIR 1992 Del. 357** in support of his contention that the plea that defendant no.1 held the property in question for the benefit of the plaintiff did not fall within the scope of Section 4(1) of the Benami Transactions (Prohibition) Act 1988.

24. In **Bhim Singh v. Kan Singh** (*supra*), the Supreme Court had held that when a person buys a property with his own money but in the name of another person without any intention to benefit such other person, the transaction would be a benami transaction. The Court had further held that the burden of proving that a transaction is a benami transaction would rest on the person who asserts that it is such a transaction. There is no dispute as to the principles enunciated by the Court; however, they are of little assistance to the plaintiff. It is, in fact, the plaintiff's case that although the Suit Property was a part of the estate of the plaintiff's late father (in which she had one fourth share), it was held by defendant no.1 in her own name, in a fiduciary capacity for the plaintiff and defendant nos. 2 and 3. As noticed hereinbefore, the Suit Property did not form part of the estate of late Sh Yashpal Sain, as he had been unable to complete the formalities for acquiring the plot of land allotted to him (which was in Block A). The Suit Property (which is in Block B) was allotted to defendant no.1.

25. The plaintiff has also sought to suggest that part of the funds used for acquisition of the Suit Property belonged to her as the heir of Sh Yashpal Sain. The plaintiff was an adult at the material time and the effect of her pleading is that that she had funded part of the Suit

Property, albeit, in the name of defendant no.1. As stated above, it is not open for the petitioner to set up this case in view of the provisions of the *Benami* Transactions (Prohibition) Act, 1988.

26. In the case of *P.V. Sankara Kurup v. Leelavathy Nambiar* (*supra*), the Court was concerned with a case where an agent who was employed to purchase the property on behalf of the principal had fraudulently done so in his own name. In the said case, the Court had held that the owner would not be precluded from claiming declaration of title to the suit property and recovery of possession from the agent. In the present case, the plaintiff has not set up any case that defendant no.1 had acquired the property fraudulently in her own name instead of in the name of the plaintiff and other legal heirs of her late father. The said decision is thus wholly inapplicable in the facts of this case.

27. In the case of *Sri Mahinder Singh v. Mr Pardaman Singh* (*supra*), the plaintiff has set up a case that there existed a Joint Hindu Family and the property in question was purchased from the Joint Hindu Family Funds, albeit, in the name of one of the elder members of the family (the mother). This case would fall within the scope of the exception under Section 4(3)(a) of the *Benami* Transactions (Prohibition) Act, 1988 which specifically provides that Section 4 of the said Act would not apply 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. In the present case, the plaintiff has pleaded that defendant no.1 is a Karta of the family; but, as discussed above, such bald statements without the

necessary particulars, are wholly insufficient to establish the existence of a Hindu Undivided Family.

28. In view of the above, it is clear that the plaintiff has no right, title or interest in the Suit Property.

29. In the circumstances, it is also clear that the plaintiff does not have 1/4th share in the Suit Property. The facts, as stated in the plaint, do not give rise to any issue that requires trial. The suit is also barred under provisions of the *Benami* Transactions (Prohibition) Act, 1988.

30. The Suit is, accordingly, dismissed. All the pending applications are also disposed of including Crl. M.A. 15540/2012, as this Court is of the opinion that the interest of justice does not warrant any such enquiry to be held in this case.

JULY 18, 2018
pkv/RK

VIBHU BAKHRU, J