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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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FAO(OS) 305/2016

SANTOSH VISHWESHWARNATH WADHWA (SINCE  
DECEASED) THR LRS ..... Appellant

Through: Mr. Rajesh Chaurasia, Advocate.

versus

GULSHAN CHHABRA & ORS ..... Respondents

Through: Appearance not given.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE A. K. CHAWLA**

**ORDER**

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**17.08.2018**

The plaintiff/appellant's grievance in this appeal against the order of the Ld. Single Judge is that the partition claimed in respect of one residential property i.e. property bearing No. 188, Kohat Enclave, Pitampura, Delhi was held to be not maintainable and the suit to that extent of the claim was dismissed. Various arguments were addressed by the counsel for the plaintiff. Firstly, it was submitted that the property was acquired by Sh. Hari Chand Chhabra but in the name of the defendant Sh. Gulshan Chhabra for unknown reasons. It was submitted that Sh. Gulshan Chhabra at the relevant time (acquisition of the residential unit in the cooperative society complex) was only 22 years and have no separate effective means of livelihood for paying the consideration in respect of the property. Learned counsel referred to widely prevalent practice and custom that the

eldest son being named as the owner of the properties acquired by the father on behalf of the Hindu Undivided Family (HUF). It was further submitted that there is a contradiction and inconsistencies in the pleadings of Sh. Gulshan Chhabra, the first defendant, which was not taken into account. Highlighting these factors which were a matter of trial, learned counsel submitted that the learned Single Judge fell into error in foreclosing the partition suit, so far as the property bearing No. 188, Kohat Enclave, Pitampura, Delhi is concerned.

In the impugned order, the learned Single Judge noticed the bar imposed by the provisions of the Benami Transactions (Prohibition) Amendment Act, 1988 especially Section 3 and Section 4(1). They have the effect of barring suits and defences that set up claims based or premised upon the benami ownership of property. That bar or prohibition to some extent is relieved by Section 4(3) which sets out two exceptions. The learned Single Judge examined the first of these exceptions which relates to coparcenary property that has held by one- which would be otherwise characterized as benami under the Act, need not be so. It is held on behalf of and to the benefit of all. The impugned judgment then notices that the subject matter of the property bearing No. 188, Kohat Enclave, Pitampura, Delhi could not be termed as “HUF” property on which a coparcener could lay claim, even if the plaintiff’s arguments were accepted, since it was acquired by Sh. Hari Chand Chhabra. Referring to *Commissioner Of Wealth Tax, Kanpur v. Chander Sen and Ors.* (1986) 3 SCC 567 and

subsequent rulings which have held that the advent of Section 8 of the Hindu Succession Act, the possession vis-à-vis inheritance has undergone a change inasmuch as it is not every property acquired by male Hindu after coming into force of the Act it can be automatically characterized as coparcenary property.

In this case, the averments in the suit are that Sh. Hari Chand Chhabra had acquired property from his own funds but in the name of Sh. Gulshan Chhabra, the first defendant, thus it was not the plaintiff's case that Sh. Hari Chand Chhabra used coparcenary funds to acquire the property- rather it was his own funds. In these circumstances, the property was self-acquired and quite clearly outside the protection of Section 4(3)(a) of the Benami Transactions (Prohibition) Act, 1988. Having regard to these facts which emerge from an overall reading of the suit, this Court is of the opinion that there is no infirmity with the impugned order inasmuch as it held that since the No. 188, Kohat Enclave, Pitampura, Delhi was not HUF property, it could not be included in the partition suit and made the subject matter of trial.

In view of the above reasons, the appeal has to fail and is accordingly dismissed.

**S. RAVINDRA BHAT, J**

**A. K. CHAWLA, J**

**AUGUST 17, 2018/akv**