

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

Date of decision: 19.03.2019

1. RSA No.3644 of 2008 (O&M)

Inderjeet Sharma

..... Appellant

Versus

Naresh Kanta Sharma and others

..... Respondents

2. CR No.2130 of 2015 (O&M)

Inderjit Sharma

..... Petitioner

Versus

Naresh Kanta

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Jain, Sr. Advocate with
Mr. Abhishek Dhull, Advocate
for the appellant (in both cases).

Mr. Shalender Nagpal, Advocate, for
Mr. Shireesh Gupta, Advocate
for respondent No.1 (in both cases).

ANIL KSHETARPAL, J.

Vide this judgment, I shall be disposing of one appeal bearing RSA No.3644 of 2008 and a revision petition i.e. CR No.2130 of 2015 as both are connected. Counsel for the parties are also agreed that both the cases can be conveniently disposed of by a common judgment.

Defendant No.1-appellant is in the regular second appeal against the concurrent finding of fact arrived at by the Courts below.

Plaintiff and defendant No.1 were husband and wife at the relevant time, now separated. The wife filed a suit for declaration with consequential relief of permanent injunction claiming that she is owner in possession of residential house.

It was claimed by the plaintiff that her mother gave the amount for purchase of the plot i.e. Rs.80,000/- through a draft with the understanding that the plot shall be purchased in the name of plaintiff. However, defendant No.1-appellant purchased the plot in his own name. It has further been alleged that mother of plaintiff-respondent also paid an amount for construction of the building but now the defendant is denying the ownership of the plaintiff.

The defendant contested the suit, claimed that the plot in question was purchased by him from the amount he received from sale of other property in the year 1991. He further claimed that the amount of Rs.80,000/- and other amounts were paid to him by the mother of the plaintiff as the same was given as repayment of loan by defendant No.1 to the mother of the plaintiff.

On appreciation of evidence, the Courts have conclusively held that the plot in question was purchased for Rs.80,000/- and the aforesaid amount was sent by mother of the plaintiff through draft and thereafter, Sh. S.L. Suneja got prepared a draft for the aforesaid amount in favour of the vendor. The Courts have further found that on appreciation of evidence that the mother of the plaintiff also transferred various amounts totaling Rs.1,28,000/- towards construction. The property is in possession of the plaintiff which is not disputed.

On the basis of the aforesaid finding, the Courts held that the

plaintiff and defendant shall be owner to the equal extent. It will be noted that the wife is not in appeal.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the judgments passed by the Courts below and the record.

Learned senior counsel appearing for the appellant has submitted that such suit is barred under the Prohibition of Benami Property Transactions Act, 1988 (for short as 'Act of 1988'). He submitted that at the relevant time, only exception was if a person purchases the property in the name of his wife or unmarried daughter as provided in Section 3(2) of the Act of 1988, hence, he submitted that the suit filed by the plaintiff was not maintainable. He further submitted that brother-in-law of the plaintiff was present when the sale deed was got registered, hence, the suit filed by the plaintiff is an after thought. He further drew attention of the Court to the statement of Sh. S.L. Suneja, brother-in-law of the plaintiff who has admitted that the construction was got carried out by the plaintiff.

This Court has considered the submission but find no substance therein. The benami transaction has been defined in Section 2(9) of the Act of 1988 which is extracted as under:-

“2. Definitions:- In this Act, unless the context otherwise requires,-

(9) “benami transaction” means,—

(A) a transaction or an arrangement—

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, an other person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by—

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

(B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or

(C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;

(D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;

Explanation.—

For the removal of doubts, it is hereby declared that benami transaction shall not include any transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882) , if, under any law for the time being in force,—

- (i) consideration for such property has been provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold ownership of such property;*
- (ii) stamp duty on such transaction or arrangement has been paid; and*
- (iii) the contract has been registered.”*

It is apparent that any person being individual if purchases the property in the name of his spouse or in the name of any child of such individual, the same would not fall within the definition of benami transaction. Section 3 of the Act of 1988 is only with respect to prohibition of benami transactions in the context of punishment because Sub-Section 2 provides for imprisonment. The relevant section prohibiting right to recover property held benami is in Section 4 of the Act which is extracted as under:-

“4. Prohibition of the right to recover property held benami.

- (1) 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.*
- (2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.”*

It is apparent that the prohibition is if the property is benami. There is no definition of the benami in the Act. The definition is of word benami transaction. The purchase of the property by an individual in the name of his spouse or in the name of child of such individual does not fall within the definition of benami transaction. Hence, this suit shall not be hit

by provisions of the Act of 1988.

As regards next argument of learned counsel, it will be noted that the plaintiff was not present at the time of execution and registration of the sale deed. The presence of brother-in-law cannot operate as estoppel against the plaintiff to claim the property, particularly when, it is not in dispute that at that time, the plaintiff and defendant were residing together and the entire amount was paid by the mother of the plaintiff for purchase of the property. Therefore, the case set up by the plaintiff is more plausible that the mother of the plaintiff wanted that the property should be purchased in the name of the plaintiff.

As regards next argument of learned counsel that construction has been raised by the husband is not in dispute. There is evidence and finding of the Courts below that some amount was contributed by the mother of the plaintiff. It is for this reason, the Courts have ordered that both the parties would be co-owners.

In view thereof, there is no ground to interfere.

The revision petition (CR No.2130 of 2015) has been filed against order passed by learned trial Court in a subsequent suit filed by the wife claiming 9/10th share in the suit property. In the aforesaid suit, petitioner-husband had filed an application for amendment of the counter claim which has been dismissed by the trial Court after recording a prima facie finding that the application has been filed to prolong the hearing of the case and the application is after the commencement of the trial. The Court has further found that the husband now wants to introduce a new case through the amendment.

Keeping in view the reasons recorded by the trial Court

rejecting the application for amendment, this Court does not find any good ground to interfere.

In view of the discussion made above, there is no ground to interfere in the regular second appeal as well as in the revision petition.

Hence, appeal as well as revision petition are dismissed.

The pending miscellaneous application, if any in both the cases, shall stand disposed of accordingly.

19.03.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No