

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3179 of 2013 (O&M)

Date of decision : 24.5.2019

...

Baby @ Nisha and another

.....Appellants

vs.

Mahadev Mandal and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Adish Gupta, Advocate and
Mr. Sandeep Verma, Advocate for the appellants.

Mr. Kunal Yadav, Advocate,
Mr. M.K. Gill, Advocate and
Mr. Mukesh Sharma, Advocate for the respondents.

...

H. S. Madaan, J.

Briefly stated facts of the case are that Mahadev Mandal and his wife Smt. Parvati, both plaintiffs, had brought a suit against their daughter Baby @ Nisha w/o Pardeep Aggarwal, as well as her husband Pardeep Aggarwal, on the assertions that the suit property measuring 50 sq. yards situated within revenue estate of village Mawai, Tehsil and District Faridabad, was purchased by plaintiff Mahadev Mandal from one Raja Ram vide agreement to sell dated 14.7.1998 for a sum of Rs.35,000/-; that thereafter he spent Rs.2 lacs on construction of house over such site and finally he got the sale deed of the property executed and registered in the name of his

daughter defendant No.1 – Baby vide registered sale deed No.1277 dated 10.5.1999. However, such daughter of the plaintiffs namely Baby @ Nisha got married with defendant No.2 Pardeep Aggarpal against wishes of the plaintiffs. The plaintiffs prayed that sale deed in question be declared as null and void, for the reason that the total sale consideration was paid by plaintiff No.1 to the seller and seller had signed full and final sale agreement and receipt in the name of plaintiff No.1; that plaintiffs had spent a sum of Rs. 2 lacs on construction over the site so purchased by plaintiff No.1 and they have been residing in the said house ever since; that they are running their business in the said property; that defendant No.1 has no concern with the suit property since she had never paid even a single penny to the plaintiffs at the time of purchasing the property and she was a minor girl aged about 13 years at that time; that sale deed No. 1277 dated 10.5.1999 is false, illegal and not binding upon the rights and title and interest of the plaintiffs and defendants have no right to dispossess the plaintiffs from the suit property on the basis of said sale deed. The plaintiffs prayed that the sale deed in question be declared as null and void. According to the plaintiffs, on 20.2.2007, the defendants came to the suit property and tried to dispossess the plaintiffs illegally. Feeling aggrieved, the plaintiffs brought the suit for declaration and permanent injunction.

On notice, both the defendants appeared and filed a written statement contesting the suit raising preliminary objections to the effect that the suit is bad for non-joinder of the necessary parties; that

no cause of action arose to the plaintiffs and they lack locus standi and are estopped to file the present suit; that the suit of the plaintiffs is barred by limitation; that the suit has not been properly framed; that the plaintiffs had concealed material facts from the court and had not approached with the clean hands, etc. On merits, the defendants claimed that defendant No.1 is absolute owner of the suit property; that she had raised a loan for construction of the house from private financier namely, Rajat Singh Fincap. Pvt. Ltd., Rajiv Gandhi Chowk, Old Faridabad and constructed the house over the plot; that defendant No.1 has been working since the age of 15 years and installments with regard to the loan were raised by her, which she has since repaid. In that way defendant No.1 is absolute owner of the suit property. While craving for dismissal of the suit, the defendants prayed that possession of the suit property be got delivered to them.

From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is owner and in physical possession of the house measuring 50 Sq.yards? OPP
2. Whether sale deed bearing No. 1277 dated 10.5.1999 is illegal, null and void and not binding on the rights of the plaintiffs? OPP
3. Whether plaintiff is entitled for consequential decree of permanent injunction as prayed for? OPP
4. Whether suit of the plaintiffs is not maintainable in the present form? OPD

5. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPD
6. Whether the suit is bad for want of concealment of material facts by the plaintiff from the Court? OPD
7. Whether the suit is bad for mis-joinder of necessary parties? OPD
8. Relief.

In order to prove their case, the plaintiffs examined Raja Ram as PW-1, Smt. Parwati as PW-2 and relied upon Exhibit P-1 original agreement to sell dated 14.9.1998; Exhibit P-2 original receipt dated 14.9.1998; Exhibit P-3 original agreement to sell dated 14.7.1998; Exhibit P-4 Affidavit dated 16.10.2004 and Mark PA copy of sale deed dated 10.5.1999. Thereafter the plaintiffs closed their evidence.

On the other hand, defendants themselves appeared as DW-1 and DW-2 and also examined Ms. Bhagwati as DW-3. The defendants produced in evidence Exhibit D-1 copy of sale deed dated 10.5.1999; Mark A copy of receipt dated 18.4.2006; Mark B copy of receipt dated 5.5.2006; Mark C copy of receipt dated 12.6.2006; Mark D copy of receipt dated 12.6.2006, Mark E and F copy of receipts dated 16.8.2006, Mark G and H copy of receipts dated 20.2.2007; Mark I copy of application dated 6.2.2007 moved by plaintiff No.2 and Mark J copy of notice and thereafter closed their evidence.

After hearing learned counsel for the parties, the trial Court decided issues No. 1 to 3 against the plaintiffs. Issues No. 4 to 7 were

decided against the defendants.

In view of the findings on issues No. 1 to 3, the trial Court dismissed the suit filed by the plaintiffs and decreed the counter claim submitted by the defendants, subject to their depositing court fee within a period of 30 days. This was so done vide judgment and decree dated 19.5.2012.

The plaintiffs had preferred an appeal before the District Judge, Faridabad. That appeal was assigned to Additional District Judge, Faridabad, who accepted the appeal set aside the judgment and decree passed by the trial Court and granted declaration to the plaintiffs to the effect that sale deed No. 1277 dated 10.5.1999 appearing in the name of defendant No.1 is null and void, whereas appellant-plaintiffs were declared to be owners in possession of the suit property. As a consequential relief, respondent-defendants were restrained from dispossessing the plaintiff-appellants from that property and from alienating it in any manner. The counter claim filed by the respondent-defendants was dismissed with costs. It was so done vide judgment and decree dated 23.2.2013.

The defendants are aggrieved by the said judgment and decree passed by learned Additional District Judge, Faridabad and have approached this Court by way of filing the present regular second appeal, notice of which was given to the respondent-plaintiffs, who have put in appearance through counsel.

I have heard learned counsel for the parties, besides going through the record.

The Ist Appellate Court of learned Additional District Judge, has referred to Section 3 (2) of the Benami Transactions (Prohibition) Act, 1988, which provides that nothing in sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or un-married daughter.

Learned Additional District Judge, Faridabad, has observed that in a *benami* transaction title to the property passes till it is questioned by the real party. The onus to prove a transaction to be a *benami* one is on the person who alleges the same to be so. It has further been observed that it has been judicially recognized that if the purchase is made in the name of wife or sons, the presumption of Hindu law is in favour of its being a *benami* purchase and burden of proof lies on the party in whose name it was purchased to prove that he was solely entitled to the legal and beneficial interest in such purchased estate.

Learned Additional District Judge, Faridabad, has observed that there is no dispute that appellant-plaintiffs had purchased the plot in the name of their daughter i.e. respondent No.1 Baby @ Nisha in the year 1998, vide agreement to sell dated 14.9.1998 Exhibit P-1 and that defendant No.1 was minor at that time. Defendant No.1 had got statement recorded in the Court as DW-1 and in her cross examination, she admitted that she was aged 12 ½ years old at the time of purchase of site. Defendant No.1 had given her date of birth

as 2.10.1987. She had failed to prove that she had raised any loan from Finance Company for the purpose of raising construction on the site purchased by plaintiff No.1, as detailed above. The Ist Appellate Court has made clear observation that trial Court had erred in observing that appellant-plaintiffs had executed the sale deed in the form of gift to defendant No.1, though the plaintiffs had got the sale deed qua the house in question executed in favour of their daughter Baby @ Nisha – defendant No.1, but that does not show intention of the parties to execute the sale deed in the form of gift to their minor daughter. The Ist Appellate Court found it to be a *benami* transaction. For the said reason, the sale deed in question was declared as null and void.

Learned Additional District Judge, Faridabad, has further observed that the appellants-plaintiffs are real owners in possession of the suit property, resultantly, suit of the plaintiffs was decreed, granting them declaration that impugned sale deed in the name of respondent-defendant No.1 is null and void and appellants-plaintiffs are owners in possession of the suit property. As a consequential relief, restrained respondents-defendants from dispossessing the appellants-plaintiffs from the suit property and further from alienating the suit property in any manner. Whereas counter claim filed by respondents-defendants was dismissed.

I find that the judgment and decree passed by the Additional District Judge, Faridabad, is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of

law and the judgment and decree passed by the trial Court were rightly set aside. There is no illegality or infirmity therein, which might have called for interference by this Court while hearing regular second appeal.

Furthermore, no substantial question of law is found to be involved in this appeal.

Therefore, finding no merit in the appeal, the same stands dismissed.

24.5.2019
chugh

(H.S. Madaan)
Judge

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No