

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

**RSA No.2625 of 2017 (O&M)
Date of Decision.04.04.2019**

Baldev Kumar Loomba (since deceased) through LRs

.....Appellant

Vs

Anshumali Luthra and others

.....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arun Jain, Senior Advocate with
Mr. Abhishek Dhull, Advocate
for the appellant.

Mr. Anand Chhibber, Senior Advocate with
Ms. Shreya Bhakoo, Advocate
for caveator-respondents.

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AMIT RAWAL J.(ORAL)

C.M. No.12180-C of 2017

The application for impleading the legal representatives of the deceased appellant is allowed subject to all just exceptions and the legal representatives are ordered to be brought on record for the purpose of adjudication of the present appeal.

The amended memo of parties is taken on record and the registry is directed to put the same at appropriate place.

RSA No.2625 of 2017

The present regular second appeal is at the instance of the appellant-defendant No.3 against the concurrent finding of fact whereby suit of the respondents-plaintiffs for declaration of acquiring title in respect of house No.75, Sector 9A, Chandigarh in equal share with consequential relief of mandatory injunction for direction to respondent No.2 for entry in the record has been decreed by the trial Court and affirmed in appeal.

The dispute revolves around the aforementioned property conveyed by the U.T., Administration Chandigarh in favour of Dr. Sunder Lal Loomba, who on his death in April, 1970 survived by wife, two sons and one daughter namely Smt. Chanan Devi Loomba, Dr. Bharat Kalyan Loomba, Sh. Baldev Kumar Loomba and Mrs. Kailash Lata Duggal respectively. Defendant No.3 is Baldev Kumar Loomba. Plaintiffs are children of Dr. Bharat Kalyan Loomba and children of Mrs. Kailash Lata Duggal. Chanan Devi also died intestate on 20.12.1980. Since the property in the Estate Office was recorded in the name of Dr. Sunder Lal Loomba, declaration was sought for transfer of $\frac{2}{3}$ rd share in the name of plaintiffs No.1 to 8 and $\frac{1}{3}$ rd share in the name of defendant No.3.

Defendant No.2 opposed the suit by challenging entitlement of declaration and withholding of the information by stating that plaintiffs No.1 to 4 may be children of Mrs. Kailash Lata Duggal, daughter of Sunder Lal Loomba and plaintiffs No.5 to 8 children of Bharat Kalyan Loomba but the house was allotted to Sunder Lal Loomba and denied knowledge of death of Sunder Lal Loomba as no death certificate was produced.

Defendant No.3 filed separate written statement explaining that Dr. Sunder Lal Loomba was in Government service under Burma Government and after retirement started his practice and purchased 4 kanal plot at Chandigarh to build two storey house for his two sons. Daughter Kailash Lata Duggal was adopted by N.L. Loomba and therefore, ceased of all relation with the family of Dr. Sunder Lal Loomba. All installments of plot were paid by defendant No.3 and construction was also raised. A counter-claim was also set up claiming ₹20 lakhs as compensation with regard to raising construction of the house, maintenance and for meeting other necessary expenses regarding the property.

Plaintiffs filed reply to the counter-claim.

Since the parties were at variance, the trial Court framed following issues:-

- “(1) Whether the plaintiffs are entitled for declaration to the effect that Dr. Sunder Lal Loomba is not longer alive? OPP*
- (2) Whether the plaintiffs No.1 to 8 are defendant No.3 are his legal heirs and are entitled for transfer of residential property in question in their favour? OPP*
- (3) Whether the plaintiffs and defendant No.3 are entitled for declaration to the effect that they are owners of the suit property? OPP*
- (4) Whether the plaintiffs are entitled for decree of injunction on the grounds taken in plaint? OPP*
- (5) Whether proper court fee has not been affixed? OPD*
- (6) Whether the suit has not been properly verified? OPD*
- (7) Relief.”*

Plaintiffs examined two witnesses and brought on record Ex.P1 to P10 whereas defendant No.3 examined two witnesses and brought on record various documents.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Abhishek Dhull, Advocate learned counsel appearing on behalf of the appellant-defendant No.3 in support of the memorandum of appeal raised following submissions:-

- (i) It is settled law that even if issue is not framed and the parties are alive to the court proceedings, the court is not prevented to render decision.
- (ii) A simplicitor suit for declaration in the absence of consequential relief was not maintainable.
- (iii) The conveyance deed executed by Estate Office leaves no manner of doubt that it was defendant No.3 Baldev Kumar

Loomba, who was treated as owner of the suit property. In fact, Dr. Sunder Lal Loomba paid the consideration and it was a benami transaction. Benami Transactions (Prohibition) Act, 1988 was repealed in the year 1988 but in view of the law laid down by Hon'ble Supreme Court in **R. Rajagopal Reddy (dead) by LRs and others Vs. Padmini Chandrasekharan (dead) by LRs (1995) 2 SCC 630**, which was earlier held to be retrospective has been held to be prospective.

- (iv) The transaction is dated 5.11.1954. The lower Appellate Court being the last court of fact and law had not referred to Ex.DA, DB, DC, DD, DE, DF, DG and DH i.e. communications and correspondences between defendant No.3 and estate office. Even the conveyance deed though was in the name of Dr. Sunder Lal Loomba but on the last page, it was signed by Baldev Kumar Loomba. In fact, it was Baldev Kumar Loomba, who was owner of the entire property as ingredients of benami which was prior to 1988 have been proved to the hilt.
- (v) The other ground for non-suiting the appellant-defendant No.3 was non-examination of parents as witnesses under the provisions of Section 122 of the Indian Evidence Act as only the son stepped into the witness box.
- (vi) Defendant No.3 was suffering from two diseases including dementia, thus, urges this Court for setting aside the judgments and decrees under challenge.

I have heard learned counsel for the appellant, appraised the paper book, records of Courts below and of the view that there is no force and

merit in the submission of Mr. Jain. A perusal of the aforementioned documents there is no dispute to the document with regard to payment of installments. There is also no dispute to the proposition of law that parties alive to the court proceedings can always lead evidence in the absence of issues and court can adjudicate upon the same but the fact of the matter is that for benami transaction, the most important/*sine qua non* document is the bank statement i.e. source of money. Unequivocally, bank statement has not seen light of the day. It was not a simplicitor suit for declaration but also for mandatory injunction to respondent No.2 for transferring the suit property in the names of plaintiffs and defendant No.3. Since there was emphatic denial regarding title, plaintiffs were required to determine their share on the basis of natural devolution, for, Sunder Lal Loomba and his wife died intestate. The cause of action to seek partition would arise subsequently, particularly, property at Chandigarh is not amenable to partition as fragmentation of the property is impermissible. It can be inter se arrangement between the co-sharers as per the provisions of Indian Partition Act.

In view of such circumstances, the concurrent finding of fact and law cannot be said to be suffering from any illegality and perversity, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 04, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No