

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

**RSA No.2932 of 2017 (O&M)
Date of Decision.23.05.2019**

Jaipal

...Appellant

Vs

Dr. Dharamvir Nandal and others

...Respondents

2. RSA No.3173 of 2017

Jaipal

...Appellant

Vs

Dr. Dharamvir Nandal and others

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vivek Suri, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

This order of mine shall dispose of two regular second appeals filed at the instance of defendant Jai Pal i.e. RSA No.2932 of 2017 arising out of decretal of civil suit No.163 of 2012 titled as 'Dr. Dharamvir Nandal and another Vs. Jaipal and another' for separate possession by way of partition qua a double storeyed house measuring 560 sq. yards including two shops bearing MC No.546 to 549, Ward No.29 situated at C.R. College Road, Tilak Nagar, Rohtak and RSA No.3173 of 2017 arising out of Civil Suit No.345 of 2013 titled as 'Dr. Dharamvir Nandal Vs. Jaipal' whereby suit for possession by way of partition qua plot measuring 330 sq. yards including two shops bearing M.C. No.540-B, Ward No.29, situated at C.R. College Road, Tilak Nagar, Rohtak has been decreed by trial Court and affirmed in appeal.

The plaintiff alleged that owing to demise of common ancestor Lal Chand on 28.08.2002, all the parties to the *lis* i.e. daughters, appellant-defendant and plaintiff acquired 1/4th share and plaintiff sought separate possession by way of partition.

Defendant opposed the suit and denied that the suit property was inherited by the parties in equal share. In fact, it was purchased by the father from the funds provided by defendant and after demolition, the entire construction was raised at his instance. A family settlement in this regard in the year 2003 was also entered into.

Both the parties led extensive evidence.

Mr. Vivek Suri, learned counsel appearing on behalf of the appellant-defendant submitted that when it has come on record that house was dilapidated in 1992 and construction was raised by defendant, plea of benami in fiduciary relationship, despite its repealment in 1988, is still permissible. In fact, father was the name lender and actual owner was defendant, thus, suit for partition in such circumstances is not maintainable. The same pleas were taken in other suit.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit. In view of the repealment of the Act, the appellant-defendant cannot set up plea of benami. No account statement has been placed on record to establish the same. On demise of common ancestor, if parties do not want to remain in joint possession, suit for separate possession by way of partition is the actual remedy, which has been availed of.

There could not be any objection with regard to other property subject matter of different suit as it was not stated to be owned by common ancestor but between two brothers.

In view of such circumstances, I do not find any illegality and perversity in the concurrent finding of fact rendered by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, both the second appeals are dismissed.

(AMIT RAWAL)
JUDGE

May 23, 2019
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No