

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 111

Case No. : RSA No. 3642 of 2018 (O&M)

Date of Decision : February 13, 2019

Smt. Sarla Devi (since deceased)
through her LRs Appellants

vs.

Shiv Narain and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Manish Mehta, Advocate
for the appellants.

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DEEPAK SIBAL, J. (Oral) :

The appellant filed a suit seeking therein to be declared owner in possession of 2/5th share of the property comprised in Khewat No.165, Khatoni No. 204, total area measuring 32 Kanals; in Khewat No.622, Khatoni No. 685, total area measuring 53 Kanals 01 Marla and in Khewat No.913, Khatoni No. 991, total area measuring 16 Kanals (for short – the suit property). Injunction to restrain the respondents from alienating the suit property was also sought.

The case set up by the appellant before the Trial Court was that Atam Singh and Arjan @ Ajit Singh were the previous owners of the suit property and they, in the year 1986, entered into an agreement to sell with the appellant with regard to 52 Kanals 08 Marlas and 48 Kanals 13 Marlas

no. 1 was known to both the parties, he became the Mediator between them. On 15.09.1986, when the appellant went to the deed writer for preparation of the sale deeds, she was informed by the deed writer that she would have to file an Income Tax Clearance Certificate but since such Certificate was to be issued at Narnaul which would have delayed the execution of the sale deed, the appellant got the sale deed dated 15.09.1986 executed in her favour as also in favour of respondent no. 1, her brother Ran Singh and father-in-law Amilal. A second sale deed dated 12.12.1986 was then got executed in favour of the appellant and respondent no. 1. Respondent no. 1 assured the appellant that he would transfer the suit land in her favour. However, later, though Amilal and Ran Singh transferred their share in favour of the appellant, respondent no. 1's refusal to do so occasioned the filing of the suit by the appellant.

On being put to notice, respondent no. 1 filed a written statement denying the appellant's claim. He stated that it was he who was owner in possession of 1/5th share purchased by him from Atam Singh and Arjan @ Ajit Singh and had become owner of the suit property after he had paid sale consideration to the aforesaid vendors.

The Trial Court, after sifting the evidence which was led by the parties, dismissed the appellant's suit and the appeal filed by the appellant against such dismissal met the same fate as her suit, giving her a cause to knock the doors of this Court through the present second appeal.

Learned counsel for the appellant submitted that it was the appellant who had in fact paid the entire sale consideration qua the suit

property to Atam Singh and Arjan @ Ajit Singh and only to avoid delay in the execution of the sale deeds, she had got the sale deeds executed in the name of respondent no. 1 who had good relations with both the appellant and her husband and was also the Mediator between the appellant and her vendors.

Learned counsel for the appellant further submitted that since the relationship between the appellant and respondent no. 1 was a fiduciary relationship, the above transaction would come under the exceptions carved out under Section 4(3) of the Prohibition of Benami Property Transactions Act, 1988 (for short – the Act).

The primary question which requires determination is whether the appellant is the sole owner in possession of the suit property. The record reveals that in pursuance to the sale deed in question, mutation was entered in favour of respondent no. 1 and that such proceedings took place not only in the presence of the appellant but were also attested by her. The record further reveals that the appellant filed an application before the Assistant Collector First Grade for correction of the *Girdawari* entered in favour of respondent no. 1. Such application was dismissed through order dated 30.07.2008 (Ex.D-5). Perusal of the *Naksha Bai* (Ex.D-6) also clearly depicts respondent no. 1 to be owner of 1/5th share with the remaining 4/5th share in the name of the appellant. On the basis of the aforesaid *Naksha Bai*, partition proceedings were finalized against which the appellant filed an appeal which was dismissed by the Collector, Sub Division Mahendergarh. On the basis of such partition, mutation is also found to

have been sanctioned in favour of respondent no. 1 through Ex.D-13. *Jamabandi* for the year 2009-10 (Ex.D-16) also shows respondent no. 1 to be a co-sharer in the suit property to the extent of 1/5th share.

Thus, there is overwhelming documentary evidence which belies the case set up by the appellant. No documentary evidence to the contrary was produced by the appellant. Only oral evidence was led. As per Sections 91 and 92 of the Indian Evidence Act, 1872, such oral evidence led by the appellant cannot contradict the aforesaid documents produced and proved by respondent no. 1.

The appellant appeared as her own witness as PW-1 but her credibility was doubted by both the Trial Court as also the Appellate Court for the reason that she claimed herself to be a *Pardanashin* lady but during the course of the trial, it was found that she had worked as an Ancillary Nurse Midwife in the Health Department of the State. She further admitted that her husband was not only a graduate but had retired from the post of a Deputy Superintendent of Police. She further stated that she did not remember whether any agreement to sell was executed before the execution of the sale deed and that she neither remembers whether any amount was paid at the time when the agreement to sell was signed nor whether she appeared before the Tehsildar during the partition proceedings.

No explanation is also forthcoming on the part of the appellant as to why the transaction in question which pertains to the year 1986, was challenged by her only in the year 2008 i.e. after 22 years.

The submission of learned counsel for the appellants that the

benami transaction in the case in hand would be covered under the exception carved out under Section 4(3)(b) of the Act also needs to be rejected.

Section 4 of the Act, as it stood at the relevant time, reads 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.

(3) Nothing in this section shall apply,--

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.”

As per Section 4 of the Act, no suit, claim or action to enforce

name the property is held or against any such person is maintainable by or on behalf of a person claiming to be the real owner of such property unless such action falls under the exceptions carved out under Section 4(3) of the Act.

As per the appellant, the transaction in question falls under the exception carved out under Section 4(3)(b) of the Act for the reason that the relationship between the appellant and respondent no. 1 was a “fiduciary relationship” since respondent no. 1 was the driver of the Chief Medical Officer in the Health Department where the appellant was working as Ancillary Nurse Midwife and that respondent no. 1 had acted as a Mediator in the marriage of the appellant's nephew.

No evidence was led by the appellant with regard to respondent no.1 acting as a Mediator in the marriage of the appellant's nephew. Even otherwise, such a relationship could not be termed as a “fiduciary relationship” as under the same, respondent no. 1 did not have the duty to act for the benefit of the appellant showing good faith and candour where the appellant had deposed trust and special confidence in him. There was also no assumption of control or responsibility of either party over each other. There is also not shown any reason for the appellant to have confidence or trust in the integrity or fidelity of respondent no. 1. In fact, there was no specific relationship and its nature proved before the Court which at all existed between the appellant and respondent no. 1.

In view of the above, there is no reason to interfere with the concurrent findings recorded by both the Trial Court as also the Appellate

Court. No question of law, much less any substantial question of law, is also found to arise in the present appeal.

Dismissed.

(DEEPAK SIBAL)
JUDGE

February 13, 2019
monika

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>