

RSA-4836-2017 (O&M)

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

RSA-4836-2017 (O&M)

Date of decision : 07.02.2019

Darshan Singh

... Appellant

Versus

Jaswinder Kaur and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Dinesh Nagar, Advocate
for the appellant.

AMIT RAWAL, J. (ORAL)

The appellant-plaintiff has not been successful in claiming declaration to be owner in possession of the suit property by restraining defendants from interfering in the peaceful possession on the premise that defendant No.2 was his brother and defendant No.1 was the wife of defendant No.2. Relations between the parties were not cordial and defendant No.2 went abroad leaving behind defendant No.1. The plaintiff acted as a mediator and he purchased the suit property in the name of defendant No.1, vide sale deed dated 19.06.1989. After the execution of the sale deed, relations between defendant Nos.1 and 2 improved and when the plaintiff requested for return of the property, defendant No.1 executed a sale deed dated 28.12.2007 through her attorney Ranjit Kaur in favour of defendant No.3. In these circumstance, the suit, aforementioned, was filed.

The defendants opposed the suit and denied that the plaintiff purchased the property and defendant No.3 had purchased the suit property from defendant No.1, vide sale deed dated 28.12.2007, from own funds.

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In order to prove his case, the plaintiff examined as many as four witnesses and tendered in evidence many documents, whereas the defendants examined six witnesses and brought on record various documents.

Mr. Dinesh Nagar, learned counsel for the appellant-plaintiff submitted that the sale deed was executed out of love and affection in favour of defendant No.1. It was a *benami* transaction. It was in vogue at the relevant point of time, therefore, right could not be taken away.

I am afraid the aforementioned argument is not sustainable in the eyes of law as the plea of the *benami* transaction after repealing of the Act in the year 1988 is available only on a limited point in [Section 4](#) of the Benami Transactions (Prohibition) Act, 1988, which is extracted herein below:-

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. (XXXX)

omitted by Act 43 of 2016, S. 7 (w.e.f. 1.11.2016). Prior to omission it read as:

"3) Nothing in this section shall apply:

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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."

From the perusal of the aforementioned, it is evident that only in a few circumstances, the plea of benami can be raised. In order to establish the plea of benami, the person who asserts plea is to prove by direct, cogent and positive evidence, source of money in purchasing the property and the person in whose name the property was purchased was actually a name lender. The plaintiff has not been able to place on record any documentary evidence i.e. transaction statement of funds, contributed for purchase of the land, in such circumstances, the registered document presumably reflected the ownership of the defendants.

In this view of the matter, I do not find any illegality and perversity in the judgments and decrees of the Courts below, much less, no substantial question of law arises for determination. No ground for interference is made out.

Resultantly, the present regular second appeal is dismissed.

07.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**