

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 19.09.2019

1. RSA No.12336 of 2018(O&M)

Parshotam Saini through his LRsAppellants

Versus

Smt. Ram Kaur and othersRespondents

2. RSA No.12338 of 2018(O&M)

Parshotam Saini through his LRsAppellants

Versus

Smt. Ram Kaur and othersRespondents

3. RSA No.14367 of 2018(O&M)

Parshotam Saini through his LRsAppellants

Versus

Kirpal Singh and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Rahul Deswal, Advocate
for the appellants.

RAJ MOHAN SINGH, J.

CM No.18849-C of 2018

This is an application under Order 41 Rule 27 read with Section 151 CPC for leading additional evidence.

Appellants seek to lead additional evidence on the basis of evidence of Kirpal Singh who was examined as PW 1 in the suit for possession for the same property and the said suit was also decided by the trial Court on the same date along with the present suit. Kirpal Singh has been examined in the present suit as DW 1.

The examination of Kirpal Singh in the present suit would not give rise to any ground in favour of the appellants to seek production of additional evidence of his statement recorded in the suit for possession, particularly when no such context is involved in the present case. In the present case, sale deed executed in favour of defendant No.1 prior to coming into force of Benami Transaction (Prohibition) Act is involved. The issue is purely a legal issue to be considered by this Court in view of scope of the aforesaid sale deed to be considered at the threshold of Benami Transaction (Prohibition) Act.

The statement of Kirpal Singh would not improve the case of the appellants in any manner, nor the same can be allowed to be led at this stage, particularly when no such record of suit of possession was summoned by the trial Court at the

time of consideration of the suit on merits.

This application is found to be totally devoid of merits and is accordingly dismissed.

Main case

[1]. Vide this common order, RSA No.12336 of 2018 titled Parshotam Saini through his LRs Vs. Smt. Ram Kaur and others, RSA No.12338 of 2018 titled Parshotam Saini through his LRs Vs. Smt. Ram Kaur and others and RSA No.14367 of 2018 titled Parshotam Saini through his LRs Vs. Kirpal Singh and others are being decided. Since common question of law and facts are involved, therefore, facts are being culled out from RSA No.12336 of 2018.

[2]. On the basis of pleadings and arguments raised by both the sides, I proceed to decide the following substantial question of law arises for determination at the hands of this Court:-

“Whether the sale deed dated 20.05.1977/30.05.1970 in favour of defendant No.1 registered prior to coming into force of Benami Transaction (Prohibition) Act was void in terms of provisions of Benami Transaction (Prohibition) Act?”

[3]. LRs of plaintiff No.1 have preferred the present regular second appeals against the concurrent judgments and decrees passed by the Courts below in a suit for declaration and

permanent injunction.

[4]. Plaintiffs filed a suit for declaration, challenging the sale deed dated 27.01.2011 executed by defendant No.1 (Smt. Ram Kaur widow of Prithi Chand) in favour of other defendants being void and is not binding upon the rights of the plaintiffs who claimed themselves to be co-owner in possession to the extent of 1/3rd share each. Permanent injunction was also sought, restraining the defendants from dispossessing the plaintiffs from house No.65, Charan Bagh, Patiala as shown in the headnote of the plaint.

[5]. Plaintiffs claimed that they being brothers and sons of Prithi Chand and defendant No.1 have been residing jointly in the house in question. The house in question was purchased by their father Prithi Chand from Hardial Singh son of Lt. Col. Karnail Singh vide sale deed dated 30.05.1970. The house was purchased as a benami transaction in the name of defendant No.1 i.e. mother of the plaintiffs and wife of late Sh. Prithi Chand. The amount of construction was paid by the father of the plaintiffs and sale deed was also signed by father of the plaintiffs on behalf of his wife as purchaser i.e. defendant No.1. The father of the plaintiffs and husband of defendant No.1 had been running bakery shop from which he earned sufficient amount and thereafter, he purchased benami property

(hereinafter called as suit property) in favour of his wife (defendant No.1). After about 3 years, father of the plaintiffs got constructed a house in the plot in question which was purchased benami in the name of defendant No.1. All the expenses on the construction were borne by father of the plaintiffs. After the death of Prithi Chand (father of the plaintiffs), the plaintiffs became co-owner of the house in question as the house was built by their father. Defendant No.1 vide sale deed dated 27.01.2011, sold the house in question in favour of defendant Nos.2 to 4. The said sale deed was claimed to be illegal, void and without any right, title or interest.

[6]. Earlier Parshotam Saini (plaintiff No.1) filed a suit for permanent injunction against his mother Smt. Ram Kaur which was dismissed by the trial Court vide judgment and decree dated 20.04.2010, against which an appeal is statedly pending. A suit for permanent injunction was also filed by defendant No.1 against plaintiff No.2 Narinder Kumar and his wife which was dismissed as withdrawn on 05.12.2006. Defendant No.1 initially appeared in the suit, but, thereafter, did not file any written statement. Defence of defendant No.1 was struck off vide order dated 04.01.2013 and thereafter, she did not appear and was proceeded against *ex parte*.

[7]. Defendants No.2 to 4 contested the suit on the ground

that they are *bona fide* purchasers having purchased the property from real owner for consideration. They further submitted that defendant No.1 was absolute owner as per sale deed dated 20.05.1977, which was executed by Hardial Singh in favour of Ram Kaur. As per revenue record, Ram Kaur was shown to be owner of the property bearing khewat No.60, Khatoni No.129, khasra No.160/1 (0-10) in village Lehal, District Patiala. The sale deed was executed in favour of defendant Nos.2 to 4 for lawful consideration of Rs.41,00,000/- vide sale deed dated 27.01.2011.

[8]. After completion of the pleadings, both the parties went to trial on the definite issues.

[9]. The entire thrust of the arguments raised by learned counsel for the appellants is on the benami transaction in favour of defendant No.1. In order to prove benami nature of transaction, the plaintiffs were required to lead material evidence to show that husband of defendant No.1 paid the consideration and he had the custody of sale deed and was in possession of the property. He had the motive for transaction in question. The onus was on the plaintiffs to prove the same as they were asserting the same to be true. The burden was required to be discharged by the plaintiffs by adducing material evidence of definite character and the same was sufficient to

prove the factum of benami or establishing the circumstances raising inference of such benami character. The essence of benami transaction is the intention of the parties and that intention has to be shrouded in a thick veil not capable of being pierced through. No such inference can be drawn on the basis of evidence led by the plaintiffs. The serious onus has to be discharged by the plaintiffs and the same cannot be a substitute for proof of benami transaction. The registered sale deed was executed for consideration and that sale deed has conferred title upon the vendee. Such transaction cannot be declared illegal on whims of a party, challenging the same. Whether a particular sale is benami or not, is dependent upon certain questions. The Courts are usually guided by the circumstances like the source of money, nature and possession of the property, motive of the party, position and relationship between the parties, custody of title deeds and burden of proving a transaction to be a benami transaction is heavily on the party, who is asserting the same i.e. plaintiffs. The essence of a benami transaction is the intention of the concerned party and such intention should be shrouded in a thick veil which cannot be easily pierced through.

[10]. Plaintiffs have failed to prove that late Sh. Prithi Chand husband of defendant No.1 Ram Kaur had actually paid the sale consideration. The original sale deed dated 30.05.1970 was in

the custody of defendant No.1 and the suit property was admittedly in possession of defendant No.1 and the plaintiffs. Plaintiffs have failed to prove motive for the transaction. Merely making overt-act or a statement in the context of transaction being benami would not suffice to serve the purpose. The transaction in question took place before coming into force of Benami Transaction (Prohibition) Act. Sections 3 and 4 of the aforesaid Act are reproduced hereasunder:-

“3. Prohibition of benami transactions:-

(1) No person shall enter into any benami transaction.

(2) Nothing in sub-section (1) shall apply to :-

(a) 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 of the unmarried daughter;

(b) the securities held by a:-

(i) depository as registered owner under sub-section (1) of section 10 of the Depositories Act, 1996

(ii) participant as an agent of a depository.

Explanation:- The expressions “depository” and “Participants” shall have the meaning respectively assigned to them in clauses (e) and (g) of the sub-section (1) of section 2 of the Depositories Act, 1996].

(3) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

4) Notwithstanding anything contained in the Code of

Criminal Procedure, 1973 (2 of 1974), an offence under this section shall be non-cognizable and bailable.

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 another 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.”

[11]. The interpretation of the Sections 3 and 4 of the aforesaid Act was summarised by the Division Bench of this Court in **Mithilesh Kumari vs. Prem Behari Khare, (1989) 2**

SCC 95. The question poised before the Division Bench was whether Section 4(1) of the Act can be applied to the suit, claim or action to enforce any right of property hold *benami* against person in whose name such property is held. If such proceeding is initiated on behalf of person claiming to be real owner prior to coming into force Section 4(1) of the Act. It was held again by the Division Bench that though Section 3 of the Act is prospective and though Section 4(1) of the Act is also not expressly made retrospective by necessary implication, it appears to be retrospective and was applied to all pending proceedings wherein right to property allegedly held *benami* is in dispute. Section 4(1) of the Act will apply at any stage where litigation may be pending in the hierarchy of proceedings.

[12]. The view expressed in *Mithilesh Kumari's case* (supra) came to be considered by the Hon'ble Apex Court in *R. Rajagopal Reddy (dead) by LRs vs. Padmini Chandrasekharan (dead) by LRs, 1996 AIR (SC) 238*. The Hon'ble Apex Court held that a mere look at the provisions of the Act shows that prohibition under Section 3(1) of the Act is against persons who are to enter into *benami* transaction and it has been laid down that no person shall enter into *benami* transaction which obviously mean from the date on which prohibition came into operation i.e. w.e.f. 05.09.1988. The view

expressed in **Mithilesh Kumari's case (supra)** was concurred to the extent of prohibition that Section 3 of the Act cannot have retrospective operation. The issue is for *benami*, for matter connected therewith or incidental thereto. Thus it was enacted to efface the then existing rights of the real owners of properties held by other *benami*. Such an Act was not given any retrospective effect by the Legislature.

[13]. As per Section 4(1) of the Act, no suit shall henceforth lie to recover the possession of the property held *benami* by the person. Any suit to enforce such a right after coming into operation of the Section 4(1) of the Act w.e.f. 19.05.1988 shall not lie.

[14]. In nutshell and in view of subsequent judgments of the Hon'ble Apex Court in **Sankara Hali and Sankara Institute of Philosophy and Culture vs. Kishorilal, (1996) 7 SCC 55** and **Vijay Kumar and another vs. Dharampal and others, 2009(2) RCR (Civil) 64**, the provisions were held not applicable in respect of transactions made prior to coming into force of the Act in the year 1988.

[15]. In the present case, a transaction of sale was effected prior to coming into force of Benami Transaction (Prohibition) Act and therefore, the same is not hit by prohibition as the operation of the Act was held to be prospective in nature.

[16]. Having considered the controversy in the light of material evidence and legal position on record, I find that the proposed substantial question of law does not arise in the present case. Operation of the Benami Transaction (Prohibition) Act has been held to be prospective in nature. The sale deed is prior to the coming into force of Benami Transaction (Prohibition) Act, therefore, no consideration can be given to the aforesaid transaction being a benami transaction.

[17]. Both the Courts below have recorded concurrent findings of fact, thereby negating the plea of the plaintiffs in the context of benami transaction. In view of Benami Transaction (Prohibition) Act being prospective in nature, no question of law worth consideration is involved in the present appeals. The findings of fact recorded by the Courts below cannot be held to be result of misreading of evidence or having suffered with any perversity. These appeals are accordingly dismissed.

[13]. Since the main appeal has been dismissed on merits, therefore, there is no need to pass any order in the pending applications. All the pending applications are accordingly disposed of.

19.09.2019

Prince

Whether reasoned/speaking

Whether reportable

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No

Yes/No