

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Decided on: 25th November, 2019

+ **CS(OS) 269/2017**

BISHAN KUMAR AGGARWAL

..... Plaintiff

Represented by: Mr. Ashish Virmani and Mr.
Saksham Gover, Advocates with
plaintiff in person.

versus

RADHA AGGARWAL & ANR

..... Defendant

Represented by: Mr. Nishant Datta and Ms. Rachita
Datta, Advocates.

**CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA**

MUKTA GUPTA, J.

I.A. 10057/2017 (under Order XII Rule 6 CPC)

1. By the present application, the Plaintiff seeks judgement on admission of the fact which have been made by the Defendants in their pleadings.

2. By this suit the plaintiffs had inter alia sought a decree of eviction against the defendant Nos.1 to 3 company to hand over vacant peaceful possession of property bearing no. D-89, first floor, Panchsheel Enclave, Delhi 110017 (hereinafter referred to as 'suit property'), a decree of permanent injunction restraining defendants, their assigns, agents,

servants, employees, officers, successors in interest, heirs, representatives etc. from alienating or creating any third party interest, raising any construction in or on the suit property and a decree for sum of ₹ 80,000 per month towards mesne profits from 15th February 2017 till the vacation of the suit property in favour of the plaintiff.

3. Plaintiff became the owner of property bearing no. D-89, first floor, Panchsheel Enclave, Delhi 110017 by virtue of the gift deed dated 29th December 2005 executed by his father Shri Gajanand Prakash. Defendant No. 1 is the wife of the deceased brother of the Plaintiff, whereas Defendant No. 2 and 3 are the daughter and son of Defendant No. 1 respectively. The father of the plaintiff acquired the suit property vide a perpetual lease deed dated 24th September 1974 and constructed a two storeyed residential building on it after getting the building plans sanctioned. Thereafter, vide conveyance deed dated 16th October 2001, he got the suit property converted into freehold in his name.

4. The father of the plaintiff permitted his son Shri Shiv Shankar Aggarwal (husband of Defendant No. 1) to take care and reside in the suit property. On 9th October 2005, husband of Defendant No. 1 passed away as he committed suicide. Considering the situation of Defendant No. 1 and her children, Shri Gajanand Prakash did not insist that the defendants vacate the suit property.

5. Vide registered gift deed dated 29th December 2005, the suit property was transferred in the name of Plaintiff, making him the lawful owner of the same. The said information was conveyed to Defendant No. 1 and thereafter, she requested Shri Gajanand Prakash to permit her to reside in the suit property. Further, the defendant No. 1 gave assurance to the

plaintiff that she would continue to take care of the suit property and vacate the same as and when required. She along with her children continued to reside in the suit property for over ten years without any intervention by the plaintiff. Various requests were made by the plaintiff to defendant No. 1, in person as well as over the phone but in vain. The plaintiff also issued a legal notice dated 30th January 2017 calling upon the defendants to vacate the suit property within a period of fifteen days but no response to the same was received. Hence, the present suit was filed.

6. Summons in the present suit were issued on 30th May 2017.

7. In the written statement filed by the defendants it is claimed by them that they are not liable to vacate or hand over the possession of the suit property as it is a HUF property and thus the suit filed by the Plaintiff is not maintainable. Defendants claim that the plaintiff had no independent business and that the funds generated from the family business were used to purchase the property, there being no contribution from Shri Gajanand Prakash. It is also claimed that in order to get the gift deed executed in his name, the Plaintiff blackmailed his father, therefore, the gift deed having no legal sanctity, is liable to be revoked. Further, the business was started by the family of the parties and a shop bearing no. 24, Masjid Moth, New Delhi, a shop situated at G-2, Bhanot Plaza, House No. 1, Deshbandhu Gupta Road, Paharganj and a shop situated at Race Course Road were being run till the death of husband of Defendant No. 1. The grandfather of the plaintiff, Shri Gajanand Prakash, was doing business in the name and style of M/s Allied Business Company and the husband of Defendant No. 1 and Plaintiff were also participating in the said business. Therefore, the suit is not maintainable as the property was created from the funds

generated from the business of the joint family. The defendants were also not aware of the execution of alleged gift deed till filing of the present suit. The suit property was purchased in the individual capacity by the family members in order to avoid tax problems and that the properties are said to be assets of the HUF. The defendants also claim that the legal notice dated 30th January 2017 was never served upon them.

8. By its application, claim of the Plaintiff is that the provisions of Benami Transaction (Prohibition) Act, 1988 read with Benami Transaction (Prohibition) Amendment Act, 2016 would evenly apply to the present suit as it is a settled position that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the properties held against any other person shall lie by or on behalf of a person claiming to be the real owner of such property even if such transactions have been entered into prior to the enactment of this act.

9. Section 4 of The Benami Transactions (Prohibition) Act, 1988 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.”

10. On this basis plaintiff claims that the defendants would not be entitled to claim the suit property which was admittedly in the name of Shri Gajanand Prakash. The defendant also failed to satisfy the requirements of Order VI Rule 4 CPC and failed to prove the existence of purported HUF in their written statement. The plaintiff also claims that mere purchase of property from joint funds or business would not come under the ambit of HUF and that the defendants in their written statement have also taken contradictory stands one being that the suit property is HUF property and other being that the suit property was purchased by the joint funds of the family. Plaintiff has further objected to this stand of the Defendant on the ground that mere carrying on of a joint business would not ipso facto create an HUF. The plaintiff started his business under the name and style of M/s Allied Business Company three years after the death of grandfather of the Plaintiff who was the sole proprietor of a firm namely “Gaja Nand Prakash”. The said business was started from his own funds and he was the sole proprietor of the same. Therefore, the joint family business never existed as alleged by the defendant.

11. High Court of Delhi in MANU/DE/0822/2016 Ravinder Singh Sur v. Balvinder Singh and Ors. held that a plain plea that an HUF property existing without pleading any specific facts that how did it come into existence would not prove that the subject property was a HUF property.

12. In view of the facts noted above, suit is decreed in favour of the plaintiff and against the defendants in terms of prayer (a) in the suit.

Decree of permanent injunction in terms of prayer (b) also passed in favour of the plaintiff and against the defendants.

13. Plaintiff does not press prayer (c). Hence, no decree is being passed in terms of prayer (c).

14. Application is disposed of.

CS(OS) 269/2017

1. In view of I.A. 10057/2017 being allowed, suit is decreed as noted above.

2. Decree sheet be drawn accordingly.

I.A. 6842/2017 (u/O XXXIX R 1&2 CPC)

Application is disposed of as infructuous.

NOVEMBER 25, 2019
‘sk’

(MUKTA GUPTA)
JUDGE