

\$~OS-10

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

%

Date of decision: 18.02.2019

+ CS(OS) 392/2017

SMT. ANITA GUPTA Plaintiff

Through Ms.Payal Jain, Adv.

versus

SH. SURESH DUDANI & ANR Defendants

Through Ms.Rakhi Dubey, Adv. for D-1.
Mr.A.V.Bagur, Adv. for D-2.

**CORAM:
HON'BLE MR. JUSTICE JAYANT NATH**

JAYANT NATH, J.(ORAL)

IA No. 1347/2019

1. This application is filed under Order 12 Rule 6 CPC seeking a decree in favour of the plaintiff.
2. Learned counsel for defendant No.2 has filed his reply in court which is taken on record.
3. Present suit is filed by the plaintiff seeking a decree of permanent injunction to restrain the defendants from parting with possession in respect of the property No. 11/394, Sunder Vihar, New Delhi-110087. A decree of possession is also sought regarding the suit property.

4. The case of the plaintiff is that she is the registered owner of the property No. 11/394, Sunder Vihar, New Delhi and is presently a resident of USA. It was pleaded that the defendants with the parents were residing at another property at Sunder Vihar which was owned by Sh. S.S.S.Dudani, the father of the plaintiff and defendant No. 1. The shares of all the members of the family were said to have been settled. It was agreed that the plaintiff shall be the sole owner of the suit property and accordingly, the plaintiff became the registered owner by registered document dated 29.08.2007. The defendants were given a right to reside in the property as a licensee w.e.f. 29.08.2007. In August 2010, the plaintiff terminated the license. Hence, the present suit.

5. In written statement, defendant No. 1 has supported the case of the plaintiff. Defendant No. 2 who is the wife of defendant No. 1 has opposed the present suit. In her written statement, she states that at the time of her marriage, she was working as a stenographer in the Ministry of Defence, Government of India. She had a large amount of personal savings which she had accumulated before her marriage as she virtually had no expense and was saving her salary. Further, she was given substantial Stridhan. From February 1989 i.e. from her marriage till 2006, she gave her entire salary to her mother-in-law when she was in India and thereafter to defendant No.1. Defendant No. 1 is said to have taken away the entire cash component of the Stridhan belonging to defendant No.2. It is further stated that defendant No. 1 would take away the entire salary and other allowances of defendant No. 2 and put it into his personal accounts. Defendant No. 1 was an official of a public sector bank and stated to be knowledgeable about money management. Hence, defendant No. 2 is said to have implicit faith in him

and agreed to the game plan of defendant No. 1 to quickly purchase a house. In 2000, it is stated that defendant No. 1 indicated his desire to purchase the suit property for Rs. 9 lakhs. Defendant No. 2 allowed defendant No. 1 to utilize the funds from her savings and also raised additional amount. It is stated that defendant No.1 did not have a single penny with him when he purchased the suit property. Subsequently, it is pleaded that defendant No. 2 was served with a notice in a case filed by the plaintiff before ADJ (West), Tis Hazari Court titled as *Anita Gupta vs. Suresh Dudani & Anr.* It is stated that on service of this notice defendant No. 2 came to know about a purported gift deed said to have been executed by defendant No. 1 in favour of the plaintiff on 29.08.2007. Hence, defendant No. 2 has filed a separate suit in 2013 challenging the gift deed and so called family settlement which was filed in the court of ADJ, Tis Hazari but has now been transferred to this court.

6. The plea taken in paragraph 18 of the written statement is as follows:-

“18. Thereafter in the year 2000 the Defendant No: 1 purchased the suit scheduled property with the funds made available by the Answering Defendant No: 2 called as 'family funds'. It is admitted fact that the Defendant No: 1 did not have a single penny with him when he purchased the Suit Scheduled Property. While denying, but even it is true, as claimed by Defendant No: 1 that the entire amount required for purchasing the Suit Scheduled Property has come from his late father, Sh. S.S. Dudani, it cannot be that it could have been acquired so acquired without inputs from the Answering Defendant No: 2.”

7. Keeping in view the above submissions of defendant No.2, the plaintiff has filed her replication clarifying the necessary position. It is stated that in May-June 2000, Sh. S.S.S.Dudani, the father of the plaintiff and

defendant No. 1 sold his personal house in Sunder Vihar to one Sh. Kapil Aggarwal for a total sum of Rs. 9 lakhs which amount was received by cheque in his account in Oriental Bank of Commerce, Punjabi Bagh, New Delhi. The aforesaid sum of Rs. 9 lakhs was transferred to his son/defendant No. 1 by two cheques of Rs. 4.50 lakhs each bearing Nos. 612202 and 612203 and the proceeds were credited in the bank account of defendant No.1 bearing No. 40612 in Union Bank of India, Punjabi Bagh, New Delhi with the instructions to buy the suit property in his name and to immediately transfer/gift the same to the daughter, the plaintiff. It is stated that the suit property was purchased in the joint name of the plaintiff and defendant No. 1 vide General Power of Attorney dated 24.08.2004 executed by the erstwhile owner which was duly registered and the entire sale consideration of Rs. 9 lakhs for purchase of the aforesaid property was paid from the funds received by defendant No. 1 from his father. As it was the desire of Sh. S.S.S.Dudani that the suit property would remain the exclusive property of the plaintiff, the plaintiff being the joint owner/GPA holder appointed defendant No. 1 as her attorney for her share in the suit property. Defendant No. 1 thereafter out of his own free will and desire executed the Gift Deed dated 29.08.2007 in favour of the plaintiff.

8. Defendant No. 1 is not opposing the present suit and has also vacated the suit property. Defendant No.2 is however opposing the present suit. It appears that there is a matrimonial dispute between the defendants.

9. I may note that defendant No. 2 has also filed a separate suit in Tis Hazari Court where she has challenged the legality and validity of the Gift Deed dated 29.08.2007 executed by defendant No. 1. On 05.12.2018 while hearing arguments, this court in exercise of power under Section 24 CPC

with the consent of the parties had transferred the suit pending in the District court titled as “Meena Dudani vs. Anita Gupta” to this court. That suit is also listed in court today being CS (OS) 37/2019.

10. I have heard learned counsel for the parties.

11. As noted above, learned counsel for defendant No.1 has not opposed the present suit. She states that defendant No. 1 has already vacated the suit property.

12. Learned counsel for defendant No.2 as noted above has pointed out that some matrimonial disputes exist between the defendants. Proceedings under the Domestic Violence Act and under Section 125 Cr.P.C. are pending against defendant No. 1 filed by defendant No.2. He states that under Section 38 of the Transfer of Property Act, defendant No. 1 cannot defeat the right of defendant No.2 and her family members by transferring the suit property. Similarly, he also states that there was no family settlement. He, however, submits that the funds had come from the father of defendant No.1 and hence, the children of the defendants also would have a right in the suit property.

13. The pleas raised by defendant No. 2 are vague and lack material particulars. Defendant No.2 claims that defendant No.1 had no money in his possession to pay for the purchase of the suit property, though admittedly he was working in a nationalised bank. She further claims that she had substantial savings from her income prior to her wedding. She further claims that her entire salary was taken away after marriage, first by her mother-in-law and then by her husband- defendant No.1. She also claims that part of *Stridhan* was also taken away by defendant No.1. Having made these general allegations she has failed to give any details as to how these funds

were transferred to the account of defendant No.1.

I may note that under Order 8 Rule 1A CPC when a defendant basis his defence upon the documents, he shall produce them in court when the written statement is presented by him. Defendant No.2 has filed no documents to show the transfer of funds from her own account to that of defendant No.1's account. She has also not filed her own bank statement. She states that she is working as a stenographer in the Ministry of Defence, Government of India. If money had been transferred from her own account to that of defendant No.1's account, bank statement would clearly reflect the position. Hence, material documents have been withheld from the court.

In contrast, the plaintiff has clearly given the full details of the source of funds for purchase of the property, namely, the sale of the self acquired property by the father of the plaintiff and defendant No. 1, namely, Sh.S.S.S.Dudani. Bank details are given. Statement of accounts of Sh.S.S.S.Dudani and defendant No. 1 of the respective banks have also been placed on record which show that the consideration for purchase of the suit property had flowed from the account of the father of the plaintiff and defendant No. 1 to the account of defendant No. 1. Thereafter, the said amount had been transferred to Sh. S. Sehgal from whom the property in question was bought. These transactions clearly show that the source of consideration of defendant No. 1 is the money received by him from his father Late Sh. S.S.S. Dudani.

The pleas raised by defendant No. 2 are vague, bereft of relevant details and cannot be relied upon.

14. The learned counsel appearing for defendant No2 categorically accepted that the consideration for the suit property was made by defendant

No.1 from the property proceeds that were received from the father of plaintiff and defendant No.1 Sh.S.S.S.Dudani. He tried to argue that as funds have come from the father of the plaintiff and defendant No.1 Sh.S.S.S.Dudani, the children of defendants necessarily have a right in the suit property. This plea has no merit.

15. Hence, as accepted by the learned counsel for defendant No.2 the funds for purchase of the suit property came from the account of the father of the plaintiff and defendant No.1 on sale of the self acquired property of the father. This funding by the father of the plaintiff and defendant No.1 of the suit property does not in any manner help defendant No.2 or children of the defendants. Any claim to the property would clearly be barred by the provisions of the Prohibition of Benami Property Transaction Act, 1988. Reference in this context may be had to Section 2(9) which defines a benami transaction as follows:

“2. In this Act, unless the context otherwise requires,—

(9) "benami transaction" means,—

(A) a transaction or an arrangement—

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by—

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and

includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

.....”

Section 4 of the Prohibition of Benami Property Transaction Act, 1988 reads as follows:

“Prohibition of the right to recover property held benami.

4. (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.”

16. Hence, a suit would not lie to enforce any right in respect of the property held *benami* against the person in whose name the property is held. No defence can also be based on any right in regard to any properties held *benami*.

What learned counsel for defendant No. 2 had sought to plead is that the present suit property has been bought by defendant No.1 in his name out of the funds generated from the sale of self acquired property of the father of plaintiff and defendant No.1. Such a plea would confer no right on defendant No.2.

17. Reference may be had to the judgments of this court in ***Ajay Batra & Ors. vs. Y.P.Batra and Ors.2014 (I) AD DEL. 156***. That was a case in which the plaintiff had argued that one of the properties in Defence Colony being HUF property the same be partitioned declaring share of each parties in accordance with law. As there was a plea that the rent of the property was being credited in the account of Y.P.Batra, HUF, the court held as follows:-

“15. I have wondered as to how the plaintiff/s can maintain the suit for declaration and partition of properties which are in the name of either Mrs. Geeta Batra or Mrs. Jaya Batra or Ms. Deeksha Laxmi Wadhera Batra and the title whereof is in their names, even if it is the admitted position that the sale consideration thereof flowed from Mr. Y.P. Batra.

.....

18. The Benami Transactions (Prohibition) Act 1988 vide Section 4(1) thereof prohibits such a suit. Though section 4(3)(a) of the Act makes the said prohibition inapplicable to the case 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 of the family, however neither could Mrs. Geeta Batra, Mrs. Jaya Batra & Ms. Deeksha Laxmi Wadhera Batra be said to be coparceners of Mr. Y.P. Batra HUF nor is there any plea in the plaint to the said effect nor is it pleaded that the property was held for the benefit of the coparceners of the family. Thus the claim of the plaintiff/s qua the aforesaid six properties cannot be said to be exempt from the prohibition contained in the Benami Act.”

18. Similarly, another Bench of this court in ***Ramesh Advani vs. Hiro Advani & Ors.*** MANU/DE/2025/2013 held as follows:-

“23. The Supreme Court in Mayor (H.K.) Vs. Vessel M.V. Fortune Express, (2006) 3 SCC 100 and recently followed by the Division Bench of this Court Santosh Malik Vs. Maharaj Krishan MANU/DE/0448/2012 while upholding the order of rejection of the plaint on the ground of the claim therein being barred by the Benami Act, held that the plaint has to be read meaningfully and not formally and it is the duty of the Court to see whether a real cause of action has been made out in the plaint or something illusory has been projected and that after so reading, vexatious plaints have to be thrown out. In fact during the course of hearing it was repeatedly asked from the counsel for the plaintiff whether there was anything else to show that there was a coparcenary in fact in existence at any time; whether any Income Tax returns thereof were filed; whether there was any other joint property of the parties earlier or now. The counsel candidly admitted that there is none.

24. Merely because a person at the time of acquisition of the property may be residing with his parents and siblings and merely because the sale consideration has flown from the parents or from some other siblings is not enough to bring a case within the exception aforesaid to the prohibition contained in Benami Act. It cannot be lost sight of that benami transactions prevalent earlier, generally were between family members and hardly ever in the name of absolute strangers, and if pleas as in the present case were to be held to be falling within the exception clause, would negate the legislative intent of prohibiting actions to enforce rights in respect of property held benami.”

19. Hence averments of defendant No.2 that she has a right in the property/ or children have a right in the property on account of the fact that the property has been purchased from the sale proceeds received from the sale of the self acquired properties by the father does not confer any title on

defendant No.2 as pleaded. The said plea is clearly barred by section 4 of the provisions of Prohibition of Benami Property Transaction Act. The exception to the Act as stated in Section 2(9)(A)(i) or (iv) are not applicable.

20. It is settled law that while considering an application under Order 12 Rule 6 CPC the court can ignore vague and unsubstantiated pleas. Order 12 Rule 6 CPC reads as follows:-

“6. Judgment on admissions.- (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit, either on the application of an party or of its own motion and without waiting for the determination of any other question between the parties, make such Order or give such judgment as It may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

21. The Division Bench of this court in *Vijay Myne vs. Satya Bhushan Kaura, 142 (2007) DLT 483 (DB)* held as follows:-

“12. It is not necessary to burden this judgment by extracting from the aforesaid authoritative pronouncement as the learned Single Judge has accomplished this exercise with prudence and dexterity. Purpose would be served by summarizing the legal position which is that the purpose and objective in enacting the provision like Order 12 Rule 6, CPC is to enable the Court to pronounce the judgment on admission when the admissions are sufficient to entitle the plaintiff to get the decree, inasmuch as such a provision is enacted to render speedy judgments and save the parties from going through the rigmarole of a protracted trial. The admissions can be in the pleadings or otherwise, namely in documents, correspondence etc. These can be oral or in writing. The admissions can even be constructive admissions and need not be

specific or expressive which can be inferred from the vague and evasive denial in the written statement while answering specific pleas raised by the plaintiff. The admissions can even be inferred from the facts and circumstances of the case. No doubt, for this purpose, the Court has to scrutinize the pleadings in their detail and has to come to the conclusion that the admissions are unequivocal, unqualified and unambiguous. In the process, the Court is also required to ignore vague, evasive and unspecific denials as well as inconsistent pleas taken in the written statement and replies. Even a contrary stand taken while arguing the matter would be required to be ignored.”

22. Similarly, reference may also be had to the judgment of the Division Bench of this court in ***Delhi Jal Board v. Surendra P. Malik, 104 (2003) DLT 151*** wherein this court had laid down the following tests:-

"9. The test, therefore, is (i) whether admissions of fact arise in the suit, (ii) whether such admissions are plain, unambiguous and unequivocal, (iii) whether the defense set up is such that it requires evidence for determination of the issues and (iv) whether objections raised against rendering the judgment are such which go to the root of the matter or whether these are inconsequential making it impossible for the party to succeed even if entertained. It is immaterial at what stage the judgment is sought or whether admissions of fact are found expressly in the pleadings or not because such admissions could be gathered even constructively for the purpose of rendering a speedy judgment."

23. Reference may also be had to the observation of this court in the case of ***Sagar Ghambhir Vs. Sukhdev Singh Ghambir, 231(2016) DLT 247***, where this court held as follows:

"10. In view of the above, it is clear that the suit as per the pleadings, documents and the undisputed/admitted position does not show existence of a cause of action with respect to HUF and its properties. At the cost of repetition, and also so stated in para 12 in

the judgment in the case of Surender Kumar (supra), it is to be noted that Courts are flooded with litigations which are frivolous in nature, simply by making vague and illusionary allegations of facts as to the traditional concept of HUF and which no longer exists

24. Clearly, vague, unsubstantiated and evasive pleas have been held to be sufficient ground to hold that there are admissions in the pleadings and a decree is liable to be passed under Order 12 Rule 6 CPC. As noted above, the pleas taken by the defendant in the written statement are vague, inconsistent and do not in any manner whatsoever show that any worthwhile defence is raised or any right exists in favour of the defendant to enable her to continue to occupy the suit property.

25. In my opinion, the defence taken by the defendant is vague and unsubstantiated and a mere attempt to prolong the present litigation. Accordingly, no defence is available to the defendant. The present application under Order 6 Rule 12 CPC is liable to be allowed.

26. In view of the above, the application is allowed.

CS(OS) 392/2017

27. A decree is passed in favour of the plaintiff and against defendant No.2 for possession of the suit property.

28. Learned counsel for the plaintiff states that if the property is vacated pursuant to this decree, they will not press for mesne profits.

29. At this stage, learned counsel for defendant No. 2 state that nine months may be given to defendant No. 2 to vacate the suit property.

30. Let defendant No.2 file an affidavit of undertaking to vacate the suit property within nine months from today. In case, such an undertaking is filed within two weeks from today, the plaintiff shall not execute the present

decree before 9 months from today.

31. The suit stands disposed of. Pending applications also stand disposed of.

JAYANT NATH, J

FEBRUARY 18, 2019/rb

corrected & released on 09.04.2019

