

21.04.2022
SL No.5
Court No.8
(gc)

FAT 86 of 2018
With
CAN 1 of 2019
(Old No: CAN 1066 of 2019)

Smt. Rama Dutta & Anr.
Vs.
Chanchal Kumar Dutta

Mr. Moloy Bhattacharyya,
Mr. Subhrojyoti Ghosh,
...for the Appellants.
Ms. Shebatee Datta,
...for the Respondent.

The appeal is directed against a preliminary decree in a suit for partition by which the counter-claim of Sri Sanat Kumar Dutta was rejected.

We have heard the learned Counsel for the parties. The counter-claim is based on an assertion that the appellants had in the year 2003 purchased the property in the name of Chanchal Kumar Dutta and wives of two brothers of Chanchal Kumar Dutta. It was alleged that he had paid consideration money for purchasing the suit property and entire suit property was purchased by two separate sale deeds. However, during evidence, Sanat Kumar Dutta had failed to establish that the said property was acquired with the money of the plaintiff, and the plaintiff and the wives of two brothers of the plaintiff are benamdars in respect of the suit property. On the contrary, the evidence of D.W.-1 would show that Chanchal Kumar Dutta had paid to the D.W-1 a sum of Rs.5,00,000/- by a cheque and there was no

claim ever made by Sanat Kumar Dutta that D.W.-1 is not the owner of the property but is a benamdar.

Learned Counsel for the appellants has relied upon Section 3 sub-section (2) as it stood prior to 1st November, 2016 and unamended Section 4(3) of the Prohibition of Benami Property Transactions Act, 1988 to contend that once it is established that the property is purchased in the name of the wife of the plaintiff that the said property was held as a trustee for the benefit of his brother and the two wives, the Trial Court is required to consider the said property as an exclusive property of Sanat Kumar Dutta. There cannot be any dispute that when the suit was filed, the unamended provisions were applicable to the plaintiff. However, the plaintiff has to establish that he has purchased the property in the name of wife or that he is holding the said property as a trustee for the benefit of his elder brother and the wives of the two brothers.

The learned Counsel for the appellants has also referred to the judgment of the Hon'ble Supreme Court in ***Binapani Paul Vs. Pratima Ghosh & Ors.*** reported at ***(2007) 6 SCC 100, Paragraph 47*** to argue that the Trial Court has failed to take into consideration the circumstances mentioned in the said paragraph to determine the nature of the transaction.

Moreover, six guidelines mentioned in Paragraph 47 of **Binapani Paul** (supra) could not be established by the plaintiff. The circumstances are:

- (1) the source from which the purchase money came;*
- (2) the nature and possession of the property, after the purchase;*
- (3) motive, if any, for giving the transaction a benami colour;*
- (4) the position of the parties and the relationship, if any, between the claimant and the alleged benamdar;*
- (5) the custody of the title deeds after the sale; and*
- (6) the conduct of the parties concerned in dealing with the property after the sale.*

The onus is on the appellants to prove the transaction benami.

We have not been shown any evidence which would prove that the said property was purchased out of the fund of the appellants or the conduct of the parties are such which would create an impression that the property was purchased for the benefit of Chanchal Kumar Dutta and wives of the two brothers. On the contrary, D.W.-1 has categorically admitted that Chanchal Kumar Dutta is the co-sharer in respect of the property over which Sanat Kumar Dutta is claiming absolute ownership. D.W.-1 is the wife of Sanat Kumar Dutta. Moreover, as noticed earlier D.W.-1 has admitted to have received fund from Chanchal Kumar Dutta to raise certain constructions in the house which

would demolish the case of exclusivity of Sanat Kumar Dutta in relation to the property in question.

We have carefully examined the evidence. We do not find from evidence that the appellants have able to satisfy the aforesaid two conditions in claiming as the true owner of the suit property. On such lack of evidence and establishing his right over the property as owner thereof or that such consideration money was paid by him alone, we do not find any reason to interfere with the order passed by the learned Civil Judge (Senior Division), 1st Court, Alipore, South 24-Parganas in Title Suit No.45 of 2013.

With the aforesaid observation, the appeal being FAT 86 of 2018 and the application being CAN 1 of 2019 (Old No: CAN 1066 of 2019) stands dismissed.

However, there shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Ajoy Kumar Mukherjee, J.)

(Soumen Sen, J.)