

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

FAMILY COURT APPEAL No.222 OF 2010

JUDGMENT: (Per Hon'ble Dr. Justice Shameem Akther)

This Family Court Appeal, under Section 19 of the Family Courts Act, 1984 (for short, 'the Act'), is filed by the appellant, challenging the order, dated 30.06.2010, passed in FCOP No.456 of 2008 by the Judge, Family Court, Hyderabad, whereby, the subject FCOP filed by the appellant under Section 7 of the Act against the respondent No.1/wife and the respondent No.2/purchaser seeking **(a)** declaration that the appellant is the owner and possessor and the respondent No.1 is the Benamidar of the property bearing No.619-A, forming part of Survey No.403/1 (old) 120 (new) of Shaikpet Village and 102/1 of Hakimpet Village admeasuring 1478 square yards or 1236 square metres situated within the approved layout of the Jubilee Hills Cooperative House Building Society Limited (for short, 'the Society') at Road No.33, Jubilee Hills, Hyderabad (hereafter referred to as 'petition schedule property'); **(b)** to direct the respondents to vacate and handover the vacant possession of the petition schedule property and on their failure, to evict them and put him in possession thereof; **(c)** to declare the title of the appellant and cancel the agreement of sale-cum-Irrevocable General Power of

Attorney, dated 07.05.2008 purported to be executed and registered by and on behalf of respondent No.1 in favour of respondent No.2 as illegal, *void ab initio*, fraudulent, collusive and not binding on the appellant; and **(d)** grant permanent injunction restraining the respondents, their agents, servants, power of attorneys, employees, nominees, assignees etc., or any person or persons claiming through the respondents from alienating either by way of sale, lease, mortgage or encumbering or charging or making demolition or construction of any nature or any other manner in respect of the petition schedule property, was dismissed.

2. We have heard the submissions of Sri B.Shashidhar, learned counsel for the appellant, Sri B.Chandrasen Reddy, learned senior counsel appearing for Sri P.S.P.Suresh Kumar, learned counsel for the respondent No.1, Sri Vedula Srinivas, learned senior counsel appearing for Sri P.V.Krishna Murthy, learned counsel for the respondent No.2 and perused the record.

3. Learned counsel for the appellant would contend that the findings recorded and the conclusions reached by the Court below are against the evidence on record and probabilities of the case. The Court below did not appreciate the facts and circumstances of the case in its entirety and erred in dismissing the subject FCOP. The appellant and respondent No.1 are husband and wife. The appellant

purchased the petition schedule property for valuable consideration in the name of respondent No.1 from his brother-in-law K.K.Sanghyam, through the Society. The respondent No.1 without any manner of right and without knowledge of the appellant, alienated the petition schedule property in favour of respondent No.2 under an agreement of same-cum-Irrevocable GPA, dated 07.05.2008. Originally, the petition schedule property was allotted to K.K.Sanghyam by the Society. The appellant paid a sum of Rs.6 lakhs to his brother-in-law K.K.Sanghyam towards consideration for transfer of petition schedule property in the name of respondent No.1, which includes reimbursement of Rs.19,600/- paid by said K.K.Sanghyam to the Society towards consideration of the petition schedule property. At the request of the appellant, K.K.Sanghyam requested the Society to transfer the allotment of petition schedule property in the name of respondent No.1 and accordingly, the Society transferred the allotment as well as membership in favour of respondent No.1 and later, the Society executed a sale deed, dated 11.02.1992 (Ex.P4) in favour of the respondent No.1. The appellant obtained the sale deed in the name of the respondent No.1, who is his wife, out of good faith and trust and the evidence of the appellant who deposed as PW.1 coupled with PWs.7 and 9 establishes the same. Further, there is evidence of PW.9-Administrative Officer of the Society that the original purchaser of the petition schedule

property is the appellant and that the respondent No.1 is the benami of the appellant. The respondent No.1 was a household woman and she has no source of income. The entire sale consideration was contributed by the appellant for purchase of the petition schedule property. The petition schedule property was purchased for the welfare of the family of the appellant and respondent No.1. The respondent No.1 without information and knowledge of the appellant, alienated the petition schedule property in favour of respondent No.2 under agreement of sale-cum-irrevocable GPA, dated 07.05.2008. Since the respondent No.1 is a benami and the appellant is the owner of the petition schedule property, there is no valid transaction under agreement of sale-cum-irrevocable GPA, dated 07.05.2008. The act of the respondent No.1 had deprived the appellant and his children from possessing and enjoying the petition schedule property. The Court below did not consider several documents which demonstrate correspondence in between the appellant, respondent No.1 and the Society. There is no single document from the side of respondent No.1 to demonstrate that the sale consideration was paid by her in respect of the petition schedule property covered under Ex.P4. In the absence of any such evidence and in view of the convincing evidence placed on record on behalf of the appellant, the Court below ought to have declared the appellant as the owner and possessor of the petition schedule property and ought to have

cancelled the agreement of sale-cum-irrevocable GPA, dated 07.05.2008. The impugned order is unsustainable in the eye of law and ultimately prayed to allow the appeal as prayed for.

4. On the other hand, the learned senior counsel appearing for respondent Nos.1 and 2 would submit that the respondent No.1 is the real owner of the petition schedule property. She was working as teacher in Iran for the period between 1989 and 1992 and was earning considerable income. The appellant had also admitted the same. The respondent No.1 contributed the sale consideration and other expenses to purchase the petition schedule property under Ex.P4. The appellant and the respondent No.1 were living separately from the year 2000 onwards. For want of additional stamp duty, the subject sale deed was not released. However, in the year 2008, it was released and the original sale deed pertaining to the petition schedule property is in possession of respondent No.1. Respondent No.1, being the absolute owner of the petition schedule property, alienated the same in favour of respondent No.2 for valuable sale consideration. There is no iota of truth in the averments made by the appellant in the subject FCOP. Further, since the appellant claims that he is the absolute owner of the petition schedule property, the burden lies heavily on him to prove the same. The appellant has not filed a single document to establish his absolute

ownership and possession over the petition schedule property. Further, the appellant did not file a single document to show that he paid the sale consideration to his brother-in-law K.K.Sanghyam or to the Society. The evidence of PW.7 also supports the case of the respondent No.1 with regard to allotment and registration of the petition schedule property in favour of respondent No.1. The Court below, having dealt with the matter in great detail, rightly negated the claim of the appellant. There are no circumstances to interfere with the order under challenge and ultimately prayed to dismiss the appeal.

5. In view of the above rival contentions, the points that arise for determination in this appeal are as follows:

- 1. Whether the appellant had paid the sale consideration in respect of the petition schedule property?***
- 2. Whether the respondent No.1 is 'Benamidar' with regard to the petition schedule property, as contended by the appellant?***
- 3. Whether the appellant had made out a case to declare him as the owner and possessor of the petition schedule property and cancel the agreement of sale-cum-irrevocable General Power of Attorney, dated 07.05.2008?***
- 4. Whether the impugned order, dated 30.06.2010, passed in FCOP No.456 of 2008 by the Judge, Family Court, Hyderabad, is liable to be set aside?***

POINTS:-

6. The appellant and the respondent No.1 are husband and wife. While the appellant claims that he paid the entire sale consideration for purchase of the petition schedule property in the name of respondent No.1 and that respondent No.1 is his Benamidar, it is the case of the respondent No.1 that she is the absolute owner of the petition schedule property, which was purchased from out of her earnings and that she is not the Benamidar of the appellant. To substantiate the case of the appellant, the appellant himself got examined as PW.1 apart from examining PWs.2 to 7 and got marked Exs.P1 to P44. On behalf of the respondents, the respondent Nos.1 and 2 were examined as RWs.1 and 2 apart from examining RW.3 and Exs.R1 to R15 were marked.

7. Ex.P1 is the Xerox copy of Form Nos.II and III of the office of Registrar of Marriages, dated 26.11.1979. Ex.P2 is Joint photographs, (two in number). Ex.P3 is the letter in respect of transfer of membership in favour of R1, dated 22.07.1991. Ex.P4 is Xerox copy of Sale Deed, dated 11.02.1992 by the Society in favour of respondent No.1. Ex.P5 is Xerox copy of Agreement of sale-cum-Irrevocable GPA, dated 07.05.2008. Ex.P6 is market value assistance, dated 21.05.2008 issued by Registering Officer, Registration and Stamps Department. Ex.P7 is Public notice issued

in Eenadu, Telugu, dated 21.05.2008. Ex.P8 is Public notice issued in Times Global, dated 22.05.2008. Ex.P9 is Xerox copy of confirmation letter, dated 22.05.2008 by K.K.Sangyam. Ex.P10 is Encumbrance Certificate, dated 26.05.2008. Ex.P11 is Xerox copy of suit site. Ex.P12 is Photographs of suit site (4 in number). Ex.P13 is Photographs of suit site (12 in number). Ex.P14 is Certificate issued by Ministry of Health, Iran, dated 01.03.1983. Ex.P15 is Certificate issued by Ministry of Health and Medical Education to Dr.M.Vinod Kumar, petitioner, dated 10.03.1993. Ex.P16 is Certificate issued by Ministry of Health, Malaysia to M.Vinod Kumar, petitioner dated 12.11.2009. Ex.P17 is letter issued by K.K. Sangyam, dated 12.06.2008. Ex.P18 is Letter issued by K.K.Sangyam dated 12.06.2008. Ex.P19 is letter issued by Halifax Bank, dated 26.06.2008 to Dr.K.K.Sangyam. Ex.P20 is Certificate, dated 03.02.2009 issued by Arthur Kenneth Unsworth, Notary Public, England. Ex.P21 is Xerox copy of Certificate, dated 05.07.1990 in favour of K.K.Sangyam by the society of plot No.619-A. Ex.P21(A) is Xerox copy of Certificate, dated 05.07.1990 in favour of K.K.Sangyam by the society. Ex.P22 and P22-A are Receipts issued by the Society in favour of first respondent. Ex.P23 is Draw Intimations pertains to petition schedule property, for allotment of plots. Ex.P24 is Details of Account issued by HSBC Bank, Malaysia Berhad, dated 15.03.2001 of petitioner. Ex.P25 & P26 are copies of

letter written by petitioner to the Manager, Indian Bank, dated 11.12.2007 and 01.04.2008 respectively. Ex.P27 is copy of locker rent record issued by Indian Bank. Ex.P28 is Bye-laws of society. Ex.P29 is Letter written by petitioner to Society, dated 01.05.2008. Ex.P30 is letter written by petitioner to Joint Registrar, Registrar Office, dated 19.05.2008. Ex.P31 is C.C. of Form No.11 (Rule 15) Pertains to this OP. Ex.P32 is C.C. of order in CRPMP No.2515/09 in CRP No.1775/09 of the Hon'ble High Court of A.P, dated 24.04.2009. Ex.P33 is C.C. of order in CRP No.1775/09, dated 24.07.2009. Ex.P34 is Draw intimation letter issued by Society to Mr.K.K.Sangyam, dated 21.04.1998. Ex.P35 is Intimation issued to PW7 requesting him to participate in draw. Ex.P36 is Receipt, dated 17.11.1983 of Rs.4,000/- issued by Society. Ex.P37 is site plan in which the number of membership mentioned. Ex.P38 is Tax receipts issued by MCH. Ex.P39 is permission granted by MCH to K.K.Sangyam for construction of house, dated 07.08.1990. Ex.P40 is Xerox copy of Savings Account in Halifax Bank. Ex.P41 is Xerox copy of Passport of petitioner. Ex.P42 is Xerox copy of paper publication published in The Hindu, dated 03.11.1992. Ex.P43 is Xerox copy of paper publication published in The Hindu, dated 13.11.1992. Ex.P44 is the authorisation in favour of PW9 to attend the Court, dated 18.02.2010 given by President of the Society. Ex.R1 is the Certificate issued by Principal, Indian Senior Secondary School, dated

10.10.1992 in favour of respondent No.1. Ex.R2 is the Certificate issued by Principal, Indian SR.SEC School, Tehran, dated 21.03.1993 in favour of respondent No.1. Ex.R3 is the Certificate issued by Principal, Sri Aurobindo Memorial School, dated 10.11.1995 in favour of respondent No.1. Ex.R4 is letter written by Principal, Kinabalu International School to respondent No.1, dated 13.05.1997. Ex.R5 is the Certificate issued by the Principal, Kinabalu International School in favour of respondent No.1, dated 16.05.1997. Ex.R6 is letter written by Administrator, University of Cambridge, dated 20.04.1998 to respondent No.1. Ex.R7 is Paper clipping published in "HOME", dated 20.04.1998. Ex.R8 is Letter written by Administrator, University of Cambridge, dated 07.12.1998 to respondent No.1. Ex.R9 is Certificate issued by Principal in favour of first respondent, dated 19.06.2000. Ex.R10 is Letter written by Administrator, University of Cambridge, dated 07.08.2000 to respondent No.1. Ex.R11 is letter written by Manager, Examinations Services (The British Council), dated 09.09.2000 to respondent No.1. Ex.R12 is Certificate issued by Principal, Sophia High School, dated 28.02.2008 in favour of first respondent. Ex.R13 is Sale Deed, dated 11.02.1992 by the Society in favour of first respondent. Ex.R14 is Agreement of sale-cum-Irrevocable G.P.A., dated 07.05.2008 between respondents 1 and 2. Ex.R15 is Paper publication (Public notice) published in Deccan Chronicle, dated 24.04.2008.

8. Here, it is apt to state that the true character of a transaction is governed by the intention of the persons who contributed the purchase money and the question as to what his intention was, has to be decided by (a) surrounding circumstances; (b) relationship of the parties; (c) motives governing their action in bringing about the transaction; and (d) their subsequent conduct. All the four factors may have to be considered cumulatively. In **Jayadaya! Poddar (deceased) through his LRs Vs. Mst. Bibi Hazra and others**¹, the Hon'ble Apex Court held as follows:-

"It is well settled that the burden of proving that a particular sale is 'benami' and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character, which would either directly prove the fact of Benami or establish circumstances, unerringly and reasonably raising an inference of that fact. The essence of a 'benami' is the intention of the party or parties concerned; and not unoften such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be 'benami' of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question, whether a particular sale is Benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid tests uniformly applicable in all situations can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the Courts are usually guided by these circumstances – (a) the source from which the purchase money came; (b) the nature and possession of the property, after the purchase; (c) motive, if any, for giving the transaction a benami color; (d) the position of the parties and the relationship, if any between the claimant and the alleged benamidar; (e) the custody of the title-deeds after the sale; and (f) the conduct of the parties concerned in dealing with the property after the sale."

¹ (1974) 1 SCC 3

In the instant case, the appellant deposed as PW.1. His case is that he is the real purchaser of the petition schedule property and the respondent No.1 is Benami. In support of his case, the appellant filed several documents, i.e., Exs.P1 to P44, mentioned *supra*. In none of the said documents, there is a mention that the appellant had paid the sale consideration of Rs.19,600/- to PW.7/his brother-in-law or to the Society. Ex.P4-certified photocopy of the sale deed, dated 11.02.1992 executed by the Society in favour of respondent No.1 reveal that the total sale consideration of Rs.19,600/- was paid by the respondent No.1 to the Society. PW.7 is the brother-in-law of the appellant. He is an interested witness. He supported the case of the appellant, but there is no document to substantiate that the sale consideration of Rs.19,600/- was paid by the appellant and not by the respondent No.1. It is also contended before this Court that the respondent No.1 was a household woman and the same is reflected in Ex.P4 sale deed also. However, PW.1 admitted in his cross-examination that the respondent No.1 was working as Honourary Teacher at Iran from the year 1989 onwards till September, 1992. Hence, it cannot be inferred that the respondent No.1 did not have any source of income to purchase the petition schedule property. Mere mention of the occupation of the respondent No.1 as housewife in Ex.P4 sale deed would not be sufficient to prove that the respondent No.1 had no source of income to purchase the petition

schedule property. Ex.P4 sale deed is dated 05.02.1992. So, by the time of execution of Ex.P4 sale deed, the respondent No.1 was working as Honourary Teacher at Iran. Further, PW.9 deposed in his evidence that the respondent No.1 is the absolute owner of the petition schedule property, she got title in her name and the title deed is in her possession and she is in possession of the petition schedule property. Thus, it can be safely held that the petition schedule property is the self acquired property of the respondent No.1.

9. Learned counsel for the appellant contended that PW.9 deposed in his evidence that originally, the petition schedule property was allotted to PW.7-Dr.K.K.Sangyam and that the respondent No.1 is not the owner of the petition schedule property. We do not see any force in the said contention. PW.9 deposed in his evidence that there is no provision even in bye-laws enabling a member of the Society in favour of whom the plot is allotted to transfer the plot in favour of any of his relatives etc. Further, by the date of execution of original of Ex.P3, no transfer fee was collected. Further, according to PW.9, PW.7 had paid only nominal amount, but not the entire sale consideration and that the sale deed under Ex.P4 was executed by the Society in favour of the respondent No.1 after collecting full consideration. Further, according to PW.9, he was not the Secretary

of the Society, but he was an Engineer and that the respondent No.1 came to the office of the Society and he observed the same. During the cross-examination, PW.9 stated that neither PW.1 nor PW.7 gave any complaint or requisition to the Society requesting to cancel the sale deed executed in favour of respondent No.1. He further stated that the respondent No.1 is the owner of the petition schedule property. The Court below, after adverting to the evidence on record, held that the evidence of PW.1, RW.1, PW.7 and PW.9 clearly establishes that the transaction under Ex.P4 is not a Benami transaction, but it is a genuine transaction and that it is respondent No.1 who had paid the entire sale consideration to the Society in respect of the petition schedule property and that she is the absolute owner of the petition schedule property purchased under Ex.P4, dated 11.02.1992. Further, it is settled law that burden heavily lies on the person who has taken a plea of Benami. In the instant case, there is no cogent and convincing evidence to show that the appellant had purchased the petition schedule property and hence, the question of Benami does not arise. On the other hand, the evidence let in by the respondent No.1 establishes that she purchased the petition schedule property for a valuable consideration from her own earnings. Therefore, as rightly held by the Court below, the subject transaction would not fall under the provisions of Section 3(2) 4(3)(6) of the Benami Transaction (Prohibition) Act,

1988. Further, though the learned counsel for the appellant contended that the appellant paid a sum of Rs.6 lakhs to his brother-in-law K.K.Sanghyam towards consideration for transfer of petition schedule property in the name of respondent No.1, which includes reimbursement of Rs.19,600/- paid by said K.K.Sanghyam to the Society towards consideration of the petition schedule property, no scrap of paper is filed to establish the same. In the subject suit, the sale proceedings were completed by execution of the original of Ex.P4, i.e., by 11.02.1992. There is no single document to show that any consideration/amount was paid on the date of execution of original of Ex.P4 or prior to that by the plaintiff to PW.7, his brother-in-law. Though the bank transactions, receipts and vouchers filed substantiates that some amounts were paid by the plaintiff to RW.1 in the year 2008, but those transactions have nothing to do and would not substantiate that those payments relates to the payment of sale consideration shown in the original of Ex.P4 and those transactions are not at all helpful to the appellant/plaintiff to substantiate that the sale consideration covered under the original of Ex.P4 was paid by the plaintiff, either to the Society or to his brother-in-law (PW.7). There is no iota of evidence to show that the appellant had purchased the petition schedule property in the name of the respondent No.1 or contributed any amount for purchasing the same. Even the appellant failed to prove that he was present at the

time of sale transaction under Ex.P4 and also on the day of its registration.

10. Learned counsel for the appellant contended that the E-mail from PW.7 to the appellant on 21.05.2008 confirming the receipt of sale consideration from the appellant and transfer of the petition schedule property in the name of the respondent No.1 establishes that the appellant paid the entire sale consideration in relation to the petition schedule property and transferred the same in the name of his wife (respondent No.1). The said contention cannot be accepted for the reason that even according to the evidence of PW.7, he received 6000 pounds in the month of May, 1992 and the said amount was kept in Bank. When the amount was paid in the year 1992 to PW.7 by the appellant and the membership of PW.7 was already cancelled by the Society on 22.07.1991 itself, such transaction on 21.05.2008 cannot be said to be pertaining to petition schedule property or in relation to the sale consideration in question. In view of the material evidence on record, it can be safely concluded that the respondent No.1 is the absolute owner of the petition schedule property, she got every right to transfer, alienate or mortgage the petition schedule property in favour of any person. Therefore, respondent No.1 alienating the petition schedule property under Ex.R14-agreement of sale-cum-irrevocable GPA, dated

07.05.2008 in favour of respondent No.2 for valuable consideration, cannot be faulted.

11. The Court below, after adverting to the pleadings of the parties and the contentions raised on their behalf in great detail, rightly negated the claim of the appellant. We concur with the findings recorded and conclusions reached by the Court below, which are based on sound reasoning. There is nothing to take a different view. There is no perversity or illegality in the impugned order. The appeal is devoid of merit and is liable to be dismissed.

12. Accordingly, this appeal is dismissed. No costs.

Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

Dr. SHAMEEM AKTHER, J

NAGESH BHEEMAPAKA, J

29th November, 2022
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