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

+ RSA 106/2022, CM 40074/2022 & CM 40075/2022

PREM KUMAR SHRIVASTAVA ..... Appellant  
Through: Mr. Vidur Kamra, Adv.

versus

MEENU VERMA ..... Respondent  
Through: Mr. Manuj Aggarwal and Mr.  
Lakshyam Dogra, Advs.

**CORAM:**  
**HON'BLE MR. JUSTICE C. HARI SHANKAR**

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**J U D G M E N T**  
**12.10.2022**

1. CS 501A/2011 was instituted by the respondent Meenu Verma against the appellant Prem Kumar Shrivastava. They shall be referred to, hereinafter, as “Meenu” and “Prem”, for the sake of convenience.

2. Meenu claimed, in the aforesaid suit instituted by her, to have purchased Shop No. 11, Kashmere Gate, Delhi – 110006 (“the suit property”) on 12<sup>th</sup> April 2004 from the erstwhile owner of the suit property through General Power of Attorney, Will, Agreement to Sell, Affidavit, Receipt and Possession Letter, against sale consideration of ₹ 7.50 lakhs. The plaint averred that Meenu, thereafter, permitted Prem to use the suit property as a shop, at a licence fee of ₹ 4,500/- per month. It was alleged that, when Meenu enhanced the licence fee to ₹ 6,000/- per month, Prem discontinued payment of the licence fee.



Meenu, thereupon, called upon Prem to vacate the suit property, but he did not do so. In the circumstances, Meenu instituted CS 501A/2021 seeking (i) a decree of mandatory injunction, directing Prem to remove his goods and articles from the suit property and (ii) a decree of recovery of arrears of licence fee, along with mesne profits.

3. Contesting the suit, written statement was filed by Prem. Prem asserted, in the written statement, that the suit property was, in fact, purchased by him but that, as he was short of funds, he approached Meenu and her husband, seeking a loan of ₹ 3 lakhs, payable over a period of five years. Prem sought to contend that, in return, Meenu and her husband required the sale of the suit property to be reflected in the name of Meenu, with the understanding that, on liquidation of the loan amount by Prem, the suit property would be transferred in his name. The written statement also sought to contend that there was an understanding that for all practical purpose, Prem would remain the owner and would enjoy exclusive possession of the suit property. It was further asserted, in the written statement, that Prem had invested certain amounts in the suit property and was running the property as a shop, as was permitted by Meenu and her husband. The written statement further asserted that interest @ ₹ 4,500/- was being paid by Prem to Meenu and her husband.

4. The written statement further sought to contend that, though Prem desired to repay the loan with the request that transfer papers in respect of the suit property be executed in his favour, Meenu and her husband demurred and claimed ownership in respect of the suit



property on the basis of the titular documents earlier executed, contrary to the understanding allegedly existing between Meenu and her husband on one hand and Prem on the other. In the circumstances, Prem filed CS 513/2011, seeking a direction to Meenu and her husband to accept ₹ 3 lakhs from Prem and to execute the transfer documents in respect of the suit property in his favour. It was claimed that Meenu, far from being the owner of the suit property, had nothing to do with it. Other technical objections were also raised.

5. CS 501A/2021, instituted by Meenu, was dismissed by the learned Civil Judge *vide* judgment dated 5<sup>th</sup> December 2016. During the course of proceedings before him, the learned Civil Judge framed the following issues as arising for consideration, on 2<sup>nd</sup> March 2012:

- “1. Whether the plaintiff has no locus standi and has no cause of action to file the present suit? OPD
2. Whether the plaintiff is entitled to a decree for mandatory injunction, as prayed for? OPP
3. Whether the plaintiff is entitled for a recovery of arrears of licence fee of Rs. 13,500/-?OPP
4. Whether the plaintiff is entitled for a recovery of Rs. 6,000/per month towards the damages and measne profit and for pendent lite and future damages? OPP
5. Whether the plaintiff is entitled to any interest, if yes then at what rate and for what period? OPP
6. Relief.”

6. The learned Civil Judge disbelieved the titular documents i.e.



GPA, Agreement to Sell, Will, Receipt, Letter of Possession, exhibited as Ex. PW-1/2 to PW-1/5, filed by Meenu, on the ground that the documents did not disclose as to how the persons who were claimed to have passed on title to Meenu under the said documents had themselves acquired title in the first place. Reliance was placed, by the learned Civil Judge on the cross-examination of PW-3, the husband of Meenu, who was stated to have admitted that the suit property was *Tehbazari* property in the name of Rampyari, who had not transferred the property to anyone else. The learned Civil Judge also observed that PW-3 had admitted that the executants of Ex. PW-1/2 to Ex. PW-1/5 did not have titular documents in respect of the suit property in their favour. Observing that the land on which a person was allowed to vend on licence basis on *Tehbazari*, could not be transferred, the learned Civil Judge observed that Meenu had no *locus standi* to maintain the suit.

7. Aggrieved thereby, Meenu appealed to the learned ADJ *vide* RCA 26/2017, which has come to be allowed by the impugned judgment dated 6<sup>th</sup> August 2022.

8. The learned ADJ has, in the impugned judgment, observed that, in the written statement filed by him, the appellant Prem had acknowledged that the suit property was registered and mutated in the name of Meenu. The plea of ownership, raised by Prem on the premise that the property had been purchased by him in the name of Meenu, against a loan advanced to Prem by Meenu and her husband, notes the learned ADJ, was not available to Prem in view of Section



4(1)<sup>1</sup> of the Benami Transactions (Prohibition) Act, 1988. Nor, notes the learned ADJ, were any documents placed on record by Prem to support the pleas advanced by him. The documents on record did not reveal any loan of ₹ 3 lakhs having been availed by Prem from Meenu and her husband, or of the titular documents having been executed in the names of Meenu and her husband against the said loan, or of any understanding that consequent on liquidation of the loan, the property would be transferred to Prem. The initial fact of advancement of loan by Meenu and her husband to Prem was itself not proved.

9. Inasmuch as (i) Meenu had been able to establish her right in respect of the suit property by way of titular documents, the execution of which was admitted by Prem himself, (ii) Prem's stand that the documents were executed in the names of Meenu as a consideration against a loan advanced by Meenu to Prem, was not available to Prem in view of Section 4<sup>1</sup> of the Benami Transactions (Prohibition) Act, (iii) even otherwise, on facts, there was no material placed by Prem on record to support these averments and (iv) Prem had admitted, in the written statement, payment to Meenu of ₹ 4,500/- per month, the learned ADJ held that Prem had to be regarded as a licensee of Meenu in respect of the suit property.

10. Following the aforesaid discussions, the learned ADJ has, *vide* the impugned judgment and decree dated 6<sup>th</sup> August 2022, decreed

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<sup>1</sup> 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.



RCA DJ 26/2017 instituted by Meenu against Prem, in the following terms:

“(a) The appellant-plaintiff is entitled for mandatory injunction thereby the respondent-defendant is directed to vacate and deliver the vacant and peaceful possession of the suit shop i.e. bearing shop no. 11, area 6’x8’ situated at Kashmere Gate, Delhi – 110006, more specifically shown in red colour in the site plan, after removing his goods, articles and other itself therefrom.

(b) The appellant-plaintiff is also entitled to recover mesne profit @ ₹6000/- per month from 01.10.2010 alongwith interest @ 9% per annum from respondent-defendant till peaceful possession is handed over to the appellant-plaintiff on filing of appropriate court fees as per law.

(c) The appellant-plaintiff is also entitled to recover arrears of license fee for a sum of ₹ 13500/- along with interest @9% per annum from the respondent-defendant.

(d) The appellant-plaintiff is also entitled for costs of the appeal.”

11. Aggrieved thereby, Prem has approached this Court by way of present appeal under Section 100 of the CPC.

#### Petitioner’s contentions

12. The only contention advanced by Mr. Vidur Kamra, learned Counsel for the appellant Prem, before this Court, is that the suit property was municipal property, in respect of which *Tehbazari* rights had been granted. He submits that *Tehbazari* property cannot be transferred and that, therefore, the alleged purchase of the suit property by Meenu from the erstwhile “owners” thereof had no



sanctity in law. He further submits that, in fact, among the documents which had been filed with his written statement, were contained documents evidencing payment, by his client, to the municipal authorities, of *Tehbazari*. He submits that the effect of the impugned order of the learned ADJ would be that, having already paid *Tehbazari* to the municipal authorities, Prem would have, all over again, have to pay licence fee to Meenu. He places reliance, to support this submission, on the evidence in cross-examination of PW-3 before the learned Civil Judge.

**13.** Inasmuch as the fact of the suit property having been given on licence basis under *Tehbazari* had been concealed in the suit instituted by Meenu, Mr. Vidur Kamra sought to contend that the suit itself was liable to be dismissed as having been filed with unclean hands.

### Analysis

**14.** There is no whisper, in the entire written statement, filed by Prem, in response to the suit instituted by Meenu, of the suit property being municipal property given on license basis under *Tehbazari*. Nor is there any averment that Prem was paying licence fee to the municipal authorities in respect of the suit property.

**15.** Significantly, no issue was framed, by the learned Civil Judge, either, regarding the suit property being *Tehbazari* land, or on whether, having paid *Tehbazari* to the municipal authorities, the appellant could be called upon, once again, to pay licence fee to the



respondent.

16. The reason is obvious. The case set up by Prem, to contest the suit, was that titular documents had, in fact, been executed by the erstwhile owners of the suit property in favour of Meenu. Prem sought to overcome the effect of these documents by seeking to contend that the documents were executed in favour of Meenu only because Prem had availed a loan of ₹ 3 lakhs from Meenu, against which the titular documents function as security. Prem also sought to contend that there was an understanding between Meenu and her husband on the one hand and Prem on the other, that consequent to Prem liquidating the loan of ₹ 3 lakhs, documents transferring the suit property to Prem would be executed by Meenu and her husband.

17. These assertions, which form basis of the defence of Prem in the written statement filed by Prem in response to the suit, in fact, are completely incompatible with the stand of Mr. Vidur Kamra, before this Court, that the suit property could not have been transferred at all, as it was in the nature of *Tehbazari* property. Allowing Mr. Kamra to take the said stand today would amount to allowing the appellant Prem to approbate and reprobate. That this is not permissible has been held authoritatively by the Supreme Court in several decisions including *Kanwal Tanuj v. State of Bihar*<sup>2</sup> and *Tripower Enterprises (P) Ltd. v. S.B.I.*<sup>3</sup>. The stand of Prem, before the Courts below, was that Prem was the owner of the suit property, as the property had been purchased

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<sup>2</sup> (2020) 20 SCC 531

<sup>3</sup> (2020) 20 SCC 125



in the name of Meenu merely as a security against a loan of ₹ 3 lakhs extended by Meenu to Prem. Prem also asserted his right to have the suit property transferred in his name consequent on his liquidating the said loan. No plea of the title of Meenu, in respect of the suit property, being defective as the property was *Tehbazari* was either raised or pleaded, obviously because the contention would defeat the titular rights that Prem himself sought to assert. It is well settled that, while a party may set out inconsistent pleas in his pleadings, as alternative to one another, he cannot set up mutually destructive pleas.<sup>4</sup>

**18.** Mr. Kamra, learned Counsel for the appellant, also seeks to contend that the titular documents executed in favour of Meenu merely gave rights to the respondent under Section 53-A of the Transfer of Property Act, 1882 and did not entitle Meenu to claim any right against Prem. This contention is squarely answered by para 26 of the report in *Suraj Lamp & Industries Pvt Ltd v. State of Haryana*<sup>5</sup>, which clearly holds that GPA, will, and associated titular documents, even if not documents of title, could be used to defend possessory rights or claim specific performance.

**19.** Insofar as the evidence in cross-examination of PW-3 is concerned, it is well settled that evidence beyond pleadings, cannot be taken into account. One may refer, in this context, to the following words from para 6 of the report in *Ram Sarup Gupta v. Bishun*

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<sup>4</sup> Refer *Steel Authority of India Ltd v. U.O.I.*, (2006) 12 SCC 233, *Shiromani Gurdwara Prabhandak Committee v Jaswant Singh*, (1996) 11 SCC 690

<sup>5</sup> (2012) 1 SCC 656



***Narain Inter College<sup>6</sup>:***

“6. The question which falls for consideration is whether the respondents in their written statement have raised the necessary pleading that the license was irrevocable as contemplated by Section 60(b) of the Act and, if so, is there any evidence on record to support that plea. *It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it.* The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should state the essential material facts so that other party may not be taken by surprise. The pleadings however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the Court to ascertain the substance of the pleadings to determine the question.”

Howsoever broadly one may construe the pleadings in the written statement filed by Prem in response to the suit filed by Meenu, it is not possible to discern, therein, any assertion, to the effect that (i) the suit property was municipal land given on *Tehbazari*, (ii) it was not transferrable, (iii) consequently, the titular documents which have been executed in favour of Meenu were null and void and (iv) Prem was paying *Tehbazari* to the municipal authorities in respect of the same property.

**20.** This sole contention, advanced before this Court by Mr. Vidur being foreign to the pleadings in the suit, no case for interference with

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<sup>6</sup> (1987) 2 SCC 555



the impugned order, on the basis thereof, can be said to exist.

21. The findings of the learned ADJ, even otherwise, are pure findings of fact. The learned ADJ has correctly relied upon Section 4<sup>1</sup> of the Benami Transactions (Prohibition) Act, which foreclosed Prem from claiming rights against and to the prejudice of Meenu, in respect of the suit property. The learned ADJ has also correctly held that there was no evidentiary material on record to indicate that the titular documents in respect of the suit property had been executed in favour of Meenu as a consideration against a loan of ₹ 3 lacs, which have been extended by Meenu and her husband to Prem or that there was any understanding that, consequent on Prem liquidating the said loan, the suit property would be transferred to Prem.

22. Prem having accepted that he was paying ₹ 4,500/- per month to Meenu in respect of the suit property, and not having been able to establish any independent right to continue in possession thereof, the learned ADJ correctly decreed the suit in favour of Meenu and against Prem.

23. No substantial question of law arises for consideration in the present appeal, which is accordingly dismissed *in limine* with no order as to costs. Miscellaneous applications are also disposed of.

**C.HARI SHANKAR, J**

**OCTOBER 12, 2022 /r.bararia**