

2023:PHHC:100506

**123 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-1672-2019 (O&M)
Date of decision: 03.08.2023

Ramesh Kumar and others

..Appellants

Versus

Pritam Kaur (since deceased) through her LR's and others

.Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Satbir Rathore, Advocate for the appellants

ANIL KSHETARPAL, J (Oral)

1. Defendant no.1, 2 and 4 have filed this Regular Second Appeal against the concurrent findings of fact arrived at by the courts below.

2. The relevant facts, in brief, are required to be noticed in order to grasp the controversy involved in the present case. The plaintiff, while filing the suit, claims to be owner in possession of two different properties namely 2 marlas plot and 11 marlas plot. It is the case of the plaintiff that her husband late Sh.Paras Ram was settled out of country. He remitted certain amount and a sale deed was registered on 24.03.1956 in favour of his brother namely Sh.Ram Parkash. Subsequently, a writing was executed by Sh.Ram Parkash on 31.07.1956 acknowledging Sh.Paras Ram as the real owner of the property as Ram Parkash was only a benami owner since Sh.Paras Ram was out of country.

3. Defendant no.1 to 4, who are children of late Sh.Ram Parkash, contested the suit on the basis of a registered sale deed. Both

the courts, on appreciation of evidence, have concurrently found that the agreement dated 31.07.1956 was voluntarily executed by late Sh.Ram Parkash.

4. Learned counsel representing the appellants contends that in view of the provisions of Benami Transaction (Prohibition) Act, 1988, such a suit for grant of declaration is not maintainable.

5. This Court has considered the submissions made by the learned counsel representing the appellants. The Benami Transaction (Prohibition) Act, 1988 has not been made applicable, retrospectively. In this case, the transactions took place way back in the year 1956. Learned counsel representing the appellants has not drawn the attention of the Court to any provision or enactment debarring purchase of benami property, particularly, between the brothers.

6. In view of the aforesaid facts, no ground to interfere is made out.

7. Hence, dismissed.

8. All the pending miscellaneous applications, if any, are also disposed of.

03.08.2023

rekha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE