

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-5418-2017 (O&M)
Date of decision: 11.04.2023

DAVINDER KUMAR ...Appellant
VS
SUDARSHAN KUMAR & ORS ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Sanjay Majithia, Senior Advocate with
Mr. Sumit Sinha, Advocate,
For the appellant.

ARUN MONGA, J. (ORAL)
CM-14422-C-2017

For the reasons stated in the application, same is allowed and
delay of 48 days in re-filing stands condoned, subject to all just exceptions.

Main case

For convenience, parties herein are described as per recitals
before the trial Court.

2. Having suffered concurrent adverse findings by the two Courts
below, plaintiff in second appeal before this Court assailing learned trial
Court judgment and decree dated 18.11.2013, as upheld by learned First
Appellate Court vide its judgment and decree dated 14.10.2016, dismissing
the suit for partition, recovery, declaration, permanent injunction and
rendition of accounts filed by appellant/plaintiff.

3. The dispute relates to the properties previously held in the
names of Prithi Raj Vohra and his wife Swarna Devi, who were the father
and mother respectively of the plaintiff and defendant No. 1. Prithi Raj

Vohra had died on 28.12.1984 and Swarna Devi died on 03.09.2007. The plaintiff filed the suit for rendition of accounts and recovery of his share of the profits of the suit properties; declaration that sale deeds dated 27.04.2005 and 14.11.2006 executed by Swarna Devi in favour of defendant No. 1 are illegal, null and void qua high rights of title, declaration of his title and for consequential injunction.

4. Upon notice, defendants No.1 to 10 appeared and filed written statement taking preliminary objections that the property in dispute is not joint between the parties and property which was joint stood partitioned in a family partition, the memorandum of which was reduced into writing on 08.04.1988; that the suit is not properly valued for the purposes of Court fee and jurisdiction. The plaintiff challenged two sale deeds and *advalorem* court fee on the valuation of the said sale deeds is required to be paid.

4.1 On merits, various paras of plaint were denied as wrong. However, it was admitted that the property shown in the head note 'A' and 'C' was earlier owned by Pirthi Raj. It was submitted that property shown in the head note 'B' of the plaint was jointly purchased by answering defendant No.1 and his mother Swarna Devi in equal shares from its original owner Lakshmi Devi vide sale deed dated 20.03.1957 and thereafter Swarna Devi sold her half share to the answering defendants vide sale deed dated 14.11.2006, thus the property detailed in sub head note 'B' of the plaint is the exclusive property of the answering defendants. Similarly, the property detailed in sub head note 'D' of the plaint was also earlier owned by Smt. Swarna Devi, but she sold the same to the answering defendant No.1 vide sale deed dated 27.04.2005. Thus, the said property is also the exclusive

property of the answering defendant No.1 and is not joint property of the parties.

4.2. Defendants No.2 and 3 also appeared and filed joint written statement taking preliminary objections with regard to mis-joinder, cause of action.

4.3. On merits, it was submitted that answering defendants are tenants and they have nothing to do with the controversy between the plaintiff and defendant No.1. Swarna Devi was receiving rent from them. It was submitted that answering defendants are the tenant and their tenancy rights are not at all going to be affected in any way in the controversy between plaintiff and defendant No.1. All other averments made in the plaint were also denied.

4.4. Defendant No.4 filed separate written statement stating that the answering defendant was inducted as tenant in the shop in question more than 35-year ago and he has been paying rent regularly to Smt. Swarna Devi. It was further submitted that ejectment application filed by one Sanjay Vohra, claiming himself to have become owner of the shop under the possession of the answering defendant, is *sub judice* before learned Rent Controller, Hoshiarpur.

4.5. Likewise, defendants No.5 and 7 filed their separate written statement taking similar pleas as taken by defendant No.4 in his written statement.

5. Replication was also filed. Based on rival pleadings, following issues were framed:

*“1. Whether the plaintiff is entitled for preliminary decree by way of partition of the suit property to the extent of his share?
OPP*

- 2. Whether the plaintiff is entitled for rendition of account of the business run by defendants No.2 to 6 in the joint property? OPP*
- 3. Whether the plaintiff is entitled to recovery of Rs.200/- or other sums being share of his profit? OPP*
- 4. Whether the sale deed executed by Swarana Devi dated 24.04.2005 is illegal, null and void? OPP*
- 5. Whether the plaintiff is entitled for permanent injunction restraining the defendant No.8 from realizing/issuing the amount lying in the account No.0169314 in the name of Swarana Devi in favour of defendant No.1 or any other claimant? OPP*
- 6. Whether the plaintiff is entitled for permanent injunction restraining defendant No.1 from alienating the movable as well as immovable properties and not to change its nature as well as restraining the defendant No.1 from recovering the rent from the defendant No.2 to 6? OPP*
- 7. Whether the suit is not maintainable? OPD*
- 8. Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP*
- 9. Relief.”*

6. On appraisal of evidence vis-à-vis pleadings, issue Nos.1,3 and 4 were decided against plaintiff and in favour of defendants No.1 to 10. Issue Nos.2, 5 and 7 were decided in favour of defendants and against plaintiff. Issue No.6 was decided in favour of defendant No.1. Issue No.8 was decided in favour of plaintiff and against defendants. Consequently, suit of plaintiff was dismissed with costs by learned trial Court vide impugned judgment and decree dated 18.11.2013.

7. Feeling aggrieved, plaintiff went in appeal, which was also dismissed by learned First Appellate Court, resulting in instant Regular Second Appeal by plaintiff before this Court.

8. I have heard the learned Senior Advocate for the appellant and with his able assistance have gone through the record.

9. The precise contentions in this appeal are that Sudarshan Kumar defendant No. 1 was minor when the suit properties (mentioned at headnotes B and D of the plaint were purchased by Prithi Raj Vohra in the

names of his wife Swarna Devi (mother of the plaintiff and defendant No. 1) and Sudarshan Kumar defendant No. 1 and that no contribution was made by them for its purchase and that they were benamidars while the real owner of the said properties was Prithi Raj Vohra and that, in any case, these properties had been purchased prior to the promulgation of the Benami Properties(Prohibition) Act, 1988 and, therefore, defendant No. 1 is liable to rendition of accounts of the income of the property. The findings on issues No. 1, 3 and 4 recorded against the plaintiff-appellant by learned courts below are wrong and the same not sustainable. I am unable to accept these contentions.

10. The plea in the written statement of defendant No. 1 as noted by the learned First Appellate Court is that In a family settlement, the memorandum of which was reduced into writing on 08.04.1988 in the life time of Prithi Raj Vohra, the atta chakki was given to the plaintiff and the two adjoining shops were given to defendant No. 1 which are in possession of the tenants. In the family settlement, the house was also given to defendant No. 1 and he had reconstructed the same after getting the building plan sanctioned from the Municipal Council. The said two shops and the house are exclusively owned by defendant No. 1. The properties shown at A and C of the head note of the plaint were earlier owned by Prithi Raj Vohra. The property shown at head note B of the plaint had been purchased by defendant No. 1 Sudarshan Kumar and his mother Swarna Devi from its original owner Lakshmi Devi vide sale deed dated 20.03.1957 and thus, they were its owners in equal shares. Thereafter, Swarna Devi had sold her half share in the same to defendant No. 1 vide sale deed dated 14.11.2006 and in this way, defendant no. 1 became its sole and exclusive owner.

Similarly, property at head note D of the plaint was earlier owned by Swarna Devi who sold the same to defendant No. 1 vide sale deed dated 27.04.2005 and thus defendant No. 1 is its exclusive owner.

11. There is no challenge in the suit to the family settlement, the memorandum of which was reduced into writing on 08.04.1988 in the life time of Prithi Raj Vohra.

12. The recitals about plaintiff's pleadings as recorded in the judgments of the learned Courts below do not show if the plaintiff had even pleaded either in the plaint or the replication, let alone led any evidence showing that qua properties mentioned at head notes B and D of the plaint, Swarna Devi and Sudarshan Kumar defendant No. 1 were mere benamidars and no contribution was made by them for purchase these properties and their real owner of the said properties was Prithi Raj Vohra. The said contention raised for the first time in this second appeal that too without any foundation in the record cannot be entertained and accepted.

13. I am also unable to accept the contention of the learned Senior counsel for the appellant that since these properties had been purchased prior to the promulgation of the Benami Properties (Prohibition) Act, 1988, they were not hit by its provisions. For ready reference, the relevant section 4 of the Act *ibid* is reproduced herein below :

“Section 4 in THE BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988

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.

(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.

(3) Nothing in this section shall apply,-

(a) 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 in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.”

Perusal of the above shows that transactions prior to the promulgation of the Benami Properties (Prohibition) Act, 1988 would come within its mischief. The contention of learned senior is thus contrary to the object, spirit and the provisions of the Act *ibid*, more specifically section 4 thereof.

14. To my mind, judgments under challenge have been rendered after due and correct appreciation of record including the evidence adduced by the parties.

15. There seems no perversity or illegality in the concurrent findings of facts returned by the Courts below. No interference is thus called for to disturb the said concurrent findings. In this second appeal, no fresh ground worthy of interference is made out.

16. No question of law, much less substantial one, a *sine qua non* for entertaining regular second appeal, is involved herein, for exercise of appellate jurisdiction of this Court under Section 100 of Civil Procedure Code.

- 17. As an upshot of my preceding discussion, the appeal is dismissed, being bereft of any merit. Resultantly, both the impugned judgments and decrees passed by learned Courts below are upheld.
- 18. Pending application/s, if any, shall also stand disposed of.
- 19. No order as to costs.

(ARUN MONGA)
JUDGE

11.04.2023
vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No