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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **RSA 10/2024****SHRI NIRANKAR**

.... Appellant

Through: **Mr. Awadhesh Kumar, Adv**

versus

SHRI PAWANSUT & ANR.

..... Respondents

Through:

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****JUDGMENT (ORAL)**

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11.01.2024

1. This is a second appeal preferred under Section 100 of the Code of Civil Procedure, 1908. The dispute relates to a property admeasuring 50 sq. yds. situated at E-92, Khasra No.143/18/2, 19/20/22, in Village Dichaon Kalan, Hanuman Park, New Delhi (hereinafter the "suit property").

2. The present appellant Nirankar was Plaintiff 1 before the learned Administrative Civil Judge (the learned ACJ) in CS No.38/2017 and Appellant 1 in appeal before the learned Additional District Judge (the learned ADJ) in Regular Civil Appeal 41/2020. The respondents were the defendants before the learned ACJ and the respondents before the learned ADJ. Nirankar and Appellant 1 Pawansut are brothers.



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3. The appellants' suit having been dismissed, and the first appeal preferred against the dismissal having also been rejected, the appellants have invoked the jurisdiction vested in this Court by Section 100 of the CPC.

4. In the plaint, Nirankar, as the plaintiff, claimed to have purchased the suit property from one Balihari on 5 April 2006 along with Defendant 1 Pawansut. Nirankar's case was that, though the sale documents had been executed in the name of Pawansut, the property had been jointly purchased by Nirankar and Pawansut, with each paying ₹ 35,000/- towards consideration for the purchase of the property, which was purchased for a total price of ₹ 70,000/-.

5. It was alleged in the plaint that, on 25 November 2016, the defendants called upon the plaintiffs to vacate the suit property and that the demand was predicated on a settlement dated 3 September 2016, whereby the ancestral property of the parties had been partitioned and Pawansut had relinquished his share in the ancestral property in favour of Nirankar. Nirankar denied the settlement.

6. It was further alleged in the plaint that, on 3 December 2016, the defendants again tried to forcibly dispossess Nirankar from the suit property. It was also alleged that Pawansut had forcibly appropriated the documents relating to the said property from Nirankar and had refused to return them.

7. It was in these circumstances that CS 38/2017 was instituted by



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the plaintiffs (Nirankar and his wife Saroj) against the defendants (Pawansut and his wife Ranjana Devi). The plaintiffs sought a declaration that Nirankar was half owner of the suit property, as well as permanent and mandatory injunction restraining the defendants from interfering with possession of the suit property by the plaintiffs.

8. Various issues were framed by the learned ACJ, to which it is not necessary to advert for the purpose of this order.

9. In the written statement, the defendants disputed Nirankar's title in the suit property. Defendant 1 Pawansut contended that the suit property had been purchased by him, of which he was the sole owner, and that he had permitted Nirankar to stay in the suit property as a licensee, which permission he had later revoked.

10. The learned ACJ held, in his judgment dated 26 February 2020 that Nirankar had failed to prove any right in respect of the suit property. Nirankar placed reliance on two receipts, which are the documents on which Mr. Awadesh Kumar, learned counsel for the appellant has placed reliance before this Court as well. The first receipt does not bear any date but was stated to have been executed contemporaneously with the transfer of the property, for ₹ 35,000/-. The second receipt, which was exhibited as Ex. PW-1/6, was of 2014. The first receipt was never exhibited in the proceedings and was only marked as Mark A. Apropos the contention of the plaintiff that he had titular rights in the suit property, the learned ACJ has held, in paras 13 to 16 of his judgement dated 26 February 2020, thus:



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“13. The plaintiff no. 1 has claimed ½ share in the suit property on the ground that he had paid Rs 35000/- out of total consideration amount of Rs 70,000/-. Now, since the entire claim of plaintiffs is based on the alleged 50% payment, therefore, issue no. 7 i.e. whether plaintiff no.1 has contributed any amount towards the purchase and/ or construction of the suit property is being first taken up for adjudication. To prove the alleged payment, plaintiff no. 1 has relied upon document Mark A (Bayana receipt) which bears signature of plaintiff no.1 also. The contention of plaintiff no.1 is that his signatures on the document Mark A are showing that he was also party to the sale transaction of the suit property. Defendant no. 1 has denied this argument of plaintiff no. 1 on the ground that this document Mark A was fraudulently obtained by plaintiff no. 1 and he might had put his signatures on the same subsequently. Defendant no.1 has stated that plaintiff no. 1 never paid any amount towards purchase/ construction of the suit property.

14. Firstly, the original of the document Mark A has not been produced in the court. The photocopy is not admissible piece of evidence. Further, the contents of document Mark A would show that the vendor namely Balihari had entered into bayana agreement only with defendant no. I and not with plaintiff no.1. Another undisputed document i.e receipt ExDWI/5 shows that the final payment of Rs 30,000/- was made by defendant no. I only and not by plaintiff no. I. Plaintiff no. I has also relied upon document ExPWI/6 wherein some money was advanced by him to defendant no. I in the year 2014. Perusal of the document ExPWI/6 would show that it is nowhere mentioned that the alleged money paid to defendant no.1 was paid towards the construction of the suit property. Moreover, the suit property was purchased in the year 2006 whereas the alleged payments made via document ExPWI/6 were made in the year 2014. The time gap between the sale transaction and alleged payments in 2014 is sufficient to show that payments were not made towards the sale transactions of the suit property.

15. No other document has been produced by plaintiff no.1 to show that he had made the payment towards the sale consideration or for constructions of the suit property. The issue no. 7 is accordingly decided against the plaintiffs and in favour of defendants.

16. Section 4 of Benami Transaction (Prohibition) Act specifically bars the suits and any other proceedings for enforcing rights in a property against the person in whose name the property



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is actually held. Issue no. 8 is whether the present suit against defendant no.1 is not maintainable because defendant no.1 is the exclusive owner of the suit property. The onus to prove this issue was upon the defendants. To discharge his onus, defendant no. I has relied upon the sale documents ExDWI/2 to ExDWI/7 executed by the previous owner in favour of defendant no.1. During cross examination of DW-1, the genuineness of aforesaid sale documents has not been disputed, as not even a single suggestion was given to defendant no. I regarding the execution and genuineness of the aforesaid sale documents. Moreover, Id. Counsel for the plaintiffs himself gave a suggestion to the witness that he had purchased the suit property from Balihari for sum of Rs 70,000/- and not for Rs 30,000/-. Via this suggestion, plaintiff no. 1 went to admit that the property was purchased in the name of defendant no.1 and not in the name of plaintiff no. I. The aforesaid documents are sufficient to prove that suit property was purchased in the name of the defendant no.1 and the documents had also been executed in the name of defendant no.1. Since the documents of the property are in the name of defendant no. I, he is the exclusive owner of the same and the claim of the plaintiffs is barred U/s 4 of Benami Transaction Prohibition Act. Issue no.8 is accordingly decided in favour of the defendants.”

11. As the plaintiff had failed to prove any title or rights in respect of the suit property, it was held that prayer for declaration of ownership of half the share in the suit property was without merit and could not be granted. In that view of the matter, learned ACJ dismissed the suit.

12. In first appeal, the learned ADJ concurred with the findings of the learned ACJ. The observations and findings of the learned ADJ are contained in paras 13 to 16 of the impugned order which read thus:

“13. These points of determination are overlapping each other, therefore, are disposed by this common order. It may be noted that the Id. trial court has observed that suit property has been purchased in the name of defendant no. 1. The plaintiff no.1 has claimed half share in the suit property as he has claimed to have paid Rs. 35,000/- as half of the sale consideration for purchase of the suit property. Plaintiff has relied upon document Mark A to support his



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contention that he has paid half of the sale consideration for purchase of the suit property and this document (Mark A) being not exhibited cannot be taken into consideration. There is no other material on record to support the claim of plaintiff no.1 that he has purchased the suit property by making payment of half of the sale consideration. The final payment of Rs. 30,000/- for purchase of the suit property was paid by defendant in terms of the receipt Ex. DW1 /5. The reliance placed upon by plaintiff on document Ex. PW1/6, to support his claim that he has paid the sale consideration, pertains to the year 2014, whereas the suit property has been purchased in the year 2006, therefore, there is no evidence on record to connect the sale transaction with the alleged receipt Ex. PW1/6. Otherwise also this document Ex. PW1/6, did not depict as to for what purpose this amount was given by plaintiff no.1 to defendant no.1.

14. It is the pleaded case of the plaintiffs that suit property was purchased jointly by plaintiff no.1 and defendant no.1, however, defendant no.1 has got executed the sale documents in his favour fraudulently, but no pleadings are to this effect as to how and in what manner defendant no.1 has practiced fraud upon plaintiff no.1 and got managed the sale documents of the suit property in his name only. Otherwise also, the said defence is also barred by Section 4 of The Prohibition of Benami Property Transactions Act, 1988.

15. There is no material on record even to infer that plaintiff no.1 has paid even a single penny as sale consideration for purchase of suit property and plaintiff no.1, viewed from any angle, cannot claim to have any right, title or interest over the suit property. Therefore, both the above said point of determinations are decided in terms of the above said observations and disposed off accordingly.

16. From the above discussion, I found no ostensible reason to disagree with the findings so recoded by Id. trial court. This appeal being devoid of merits deserves to be dismissed and is hereby dismissed and disposed off accordingly. Trial court record be sent back along with copy of this judgment. Decree sheet be drawn accordingly. Appeal file be consigned to the record room.”

13. It is clear that the basis of both the orders passed by the Courts below is that Nirankar had completely failed in establishing any title to the suit property. Before me too, Mr. Awadesh Kumar placed



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reliance on the aforementioned two receipts. The first receipt, as noted by both the learned ACJ and the learned ADJ, was merely marked as Mark A and never exhibited in the proceedings and could not be relied upon. The second receipt, which was exhibited as Ex. PW1/6 was of 2014. The transaction in question had taken place in 2006. Both the Courts below have concurrently held that there was nothing to link the receipt Ex.PW1/6 with the transaction that took place in 2006. Mr. Awadesh Kumar, learned counsel for the Petitioner, has also not been able to draw my attention to any evidence to link the said receipt to the transaction which took place in 2006. Even otherwise, as has been currently held by both the Courts below, there was nothing in the receipt itself to indicate that it pertained to the said transaction.

14. Though these evidence are by themselves sufficient to uphold the concurrent findings of the learned ACJ and the learned ADJ, both the Courts have also discountenanced the challenge by Nirankar to the title documents of Pawansut. Nirankar had sought to contend that the documents had been executed by fraud. There are concurrent findings of fact that Nirankar had failed to prove the allegation of fraud.

15. Where the Courts below have returned concurrent findings of fact, the scope of interference in Section 100 of the CPC is heavily circumscribed. One may refer in this context the following passage from the judgment in *Hero Vinoth v. Seshammal*¹:

“24. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

¹(2006) 5 SCC 545



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(iii) The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to “decision based on no evidence”, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

16. The facts of the present case do not attract any one of the three exceptional circumstances in which, as per the afore-extracted passage, the rule of non-interference with concurrent findings of fact in second appeal can be relaxed.

17. Within the ambit laid down by the Supreme Court with respect to the circumstances in which this Court can interfere under Section 100 of the CPC with concurrent findings returned by the Courts below, I am of the opinion that no scope of interference exists in the present case.

18. As a result, no substantial question of law is found to arise in the present appeal. The appeal is dismissed.

C.HARI SHANKAR, J

JANUARY 11, 2024/yg

Click here to check corrigendum, if any