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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 160 OF 2023
WITH
INTERIM APPLICATION NO. 13521 OF 2024
INTERIM APPLICATION NO. 1818 OF 2023
IN
SECOND APPEAL NO. 160 OF 2023**

Jagannath Narayan Shinde

.....Appellant

Vs.

Nagnath Sambhaji Shinde
(Since Decd. Thr. LRs) and ors

.....Respondents

Mr. Anirudha Valsangkar a/w Mr. Chaitanya Joshi, Ms. Anjali Shaw, Mr. Shivam Walekar i/b Mr. Samir Kumbhakoni Advocate for the Appellant

CORAM : GAURI GODSE, J.

DATE : 26th FEBRUARY 2025

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ORDER:

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1. Heard learned counsel for the appellant. This appeal is preferred by the original plaintiff to challenge the concurrent judgments and decrees dismissing his suit for injunction to protect his possession. The plaintiff claimed that he is in possession of the suit property as owner. It is contended by the plaintiff that the defendant was ostensible owner and the property purchased by the plaintiff in the name of the defendant. Both the Courts have disbelieved the plaintiff's contention

of ownership as well as possession and dismissed the suit.

2. Learned counsel for the appellant submits that the suit property was purchased in the name of the defendant as there was a fiduciary capacity as the defendant was plaintiff's nephew. He submits that the plaintiff's son was minor at the relevant time, hence, the plaintiff purchased the said property in the name of the defendant. He submits that *prima facie* the burden to indicate that the plaintiff purchased the property in the name of the defendant by making payment of the entire consideration amount was proved and therefore, the burden shifted upon the defendant to prove that he had any source of income and payment of consideration was made by the defendant.

3. To support his submission, learned counsel for the appellant relies upon the evidence of power of attorney holder of the vendor who had signed and executed the sale deed. He submits that the witness clearly admitted that the consideration amount was paid by the plaintiff. To support the contention of being in possession, learned counsel for the appellant relies upon a panchanama produced on record which according to the learned counsel for the appellant refers that the plaintiff is in possession of the suit property. Learned counsel

for the appellant, thus, submits that all the requirements to prove that the plaintiff was the real owner and the defendant was ostensible owner, because the sale deed was executed in his name were satisfied. However, both the Courts erroneously disbelieved the plaintiff's theory of ownership and possession.

4. To support his submission that the transaction in the name of the defendant was a benami transaction and the real owner was the plaintiff, he relies upon the decision of the Hon'ble Apex Court in the case of *Valliammal (D) By LRs Vs. Subramaniam and Ors*¹. He submits that six circumstances which are considered as guiding factors to determine the real nature of the said transaction is specified by the plaintiff. He submits that the intention of the plaintiff to purchase the property in the name of defendant, payment of consideration paid by the plaintiff, absence of any proof that consideration amount was paid by the defendant and the conduct of the parties showing the plaintiff in possession of the suit property, satisfies all six tests for determining the nature of the suit transaction. Learned counsel for the appellant submits that the evidence led by the plaintiff to support these tests are not considered by both the Courts. He, therefore, submits

¹ (2004) 7 Supreme Court Cases 233

that the second appeal would require consideration as it raises substantial questions of law on interpretation of the document as a Benami document in the name of the defendant.

5. To examine the submissions made on behalf of the appellant, I have perused the papers of the second appeal as well as the pleadings. The suit is filed simplicitor for injunction on the ground that the plaintiff is owner and is in possession of the suit property. The plaintiff has not asked for any declaration on the nature of the sale deed in favour of defendant. The sale deed executed in favour of the defendant is dated 5th February 1990 and the suit is filed on 26th August 2010 on the ground that the plaintiff's possession was sought to be disturbed. Both the Courts have concurrently held that the plaintiff failed to prove that he was owner of the suit property and that the transaction was a Benami transaction in the name of defendant. The theory of possession was also disbelieved by both the Courts after examining the oral as well as documentary evidence on record.

6. The cross-examination of vendor's power of attorney relied upon by the learned counsel for the appellant would not be a sufficient proof of payment of consideration amount by the plaintiff. The witness

admits the presence of defendant's father at the time of execution of the sale deed.

7. Except for the oral evidence, the plaintiff has not proved payment of consideration amount. Even otherwise, there is no prayer for declaration that the sale deed executed in the name of defendant was executed by the plaintiff in fiduciary capacity and the real intention was not to execute the sale deed in the name of defendant. So far as the possession is concerned, both the Courts have exhaustively dealt with the documentary as well as oral evidence relied upon by the defendant to indicate that he is in possession of the suit property. The reasons recorded by both the Courts is based on documentary evidence on record which are referred to by both the Courts with reference to the supporting oral evidence.

8. The reasons recorded by both the Courts to accept the defendant in possession of the suit property refers to relevant oral evidence. The copy of the Panchanama relied upon by the learned counsel for the appellant is also examined by both the Courts. The revenue entries in the name of defendant and the challenge to the same is also considered by both the Courts to conclude that the

entries in the revenue record shows that defendant is in possession of the suit property. Except for oral evidence, the plaintiff has not produced any evidence to support his theory of being in possession.

9. It is well established legal principles that there is presumption of ownership of the person in whose name the title document is executed. The presumption can be displaced only by successful pleading and supporting evidence. In the decision relied upon by the learned counsel for the appellant, Hon'ble Apex Court held that the burden to prove the document as Benami transaction is upon a person who alleges the document to be a Benami transaction. In the present case, except for oral evidence, there is no satisfactory evidence produced on record that would satisfy the basic principles for treating the document as Benami transaction. The plaintiff has not prayed for declaration of title in his favour. The legal principles settled by the Hon'ble Apex Court therefore supports the contentions of the defendant. The decree for injunction is thus rightly refused by both the Courts.

10. Concurrent findings of facts recorded by both the Courts would not require any consideration by this Court. I do not see any illegality

or perversity in the reasons recorded by both the Courts.

11. In view of the well settled legal principles, the arguments raised on behalf of the appellant would not require any consideration by this Court. The second appeal does not raise any substantial question of law.

12. Hence, the second appeal is dismissed.

13. In view of dismissal of second appeal, pending applications are disposed of as infructuous.

[GAURI GODSE, J.]