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

+ **RSA 227/2019 & CM APPL. 49561/2019**

SUBHASH CHANDER KAUSHIK & ANRAppellants

Through: Ms. Somya Goel, Mr. Rohit Yadav,
Advs.

versus

KISHNI DEVI @ KRISHNA DEVIRespondent

Through: Mr. Deepak Kohli, Mr. Mohd. Shariq,
Advs.

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Date of Decision: 18.03.2025

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present petition has been filed challenging the judgment dated 17.08.20219 passed by the learned District and Sessions Judge, South West, New Delhi in RCA No. 15/2019 (RCA Civil DJ ADJ/48/2019) titled *Subhash Chander Kaushik & Ors. v. Kishni Devi @ Krishna Devi*. Learned First Appellate Court dismissed the appeal challenging the judgment dated 13.03.2019 passed by learned ACJ-cum-CCJ-Cum-ARC(West), Tis Hazari Courts, Delhi.
2. The present suit for permanent and mandatory injunction was filed by the respondent against late Sh. Suraj Bhan and the appellants, asserting



that the plaintiff had purchased the suit property from her own income. The property comprises 100 sq. yds and 268 sq. yds, forming part of Khasara No. 61/17/1, situated in the abadi area of Village Palam, also known as Raj Nagar Part-II, Palam Colony, New Delhi-45. The plaintiff claimed to have acquired the property through two separate registered General Power of Attorney (GPA), Agreement to Sell, Will, and Receipts. The vendors were Smt. Gheghari Devi, wife of late Sh. Prabhu, and Sh. Sheri Kishan and Sh. Sukhvir Singh, both sons of Sh. Har Narain, residents of Village and P.O. Palam, New Delhi-45. The total sale consideration for the property was Rs. 82,800/-, and the plaintiff claimed to have taken possession thereof.

3. The respondent/plaintiff asserted that the property was lawfully acquired, and all relevant documents, including the GPA, Agreement to Sell, Will, and Receipts, were duly executed. It was further contended that the sale transaction was completed in accordance with legal requirements, and the plaintiff had been in possession of the property since the date of purchase. The Appellants, including late Sh. Suraj Bhan, allegedly attempted to interfere with the respondent/plaintiff's peaceful possession, prompting her to file the present suit. The respondent/plaintiff maintained that the actions of the Appellants/defendants were unlawful and sought the court's intervention to restrain them from disturbing her possession. Accordingly, the present suit for permanent and mandatory injunction was filed to safeguard her property rights.
4. The defense raised by the appellants in this suit includes the following contentions:



- a) The respondent/plaintiff concealed material facts from the Court, asserting that the property had been purchased by the late Sh. Suraj Bhan from his own funds for the benefit and enjoyment of the entire family;
 - b) The documents filed by the respondent are alleged to be false and fabricated, as she had affixed her signature and thumb impression prior to the signature of the late Sh. Suraj Bhan;
 - c) The appellants claim to be in possession of the property as owners and therefore assert that they cannot be restrained from carrying out construction;
 - d) In the absence of a registered sale deed, the Respondents/plaintiffs has not acquired any ownership rights over the property, contrary to her assertions based on the documents relied upon.
5. Learned counsel for the appellants/defendants submitted that at the relevant time, the respondent was running a provisional store at her matrimonial village in Nangal Kalan, District Sonapat, Haryana. It was further stated that the Respondents/plaintiffs constructed a superstructure on a portion of the property measuring 138 sq. yds. in the year 1986. Following the construction, the parties began residing there. The parties continued to reside amicably together until 1997. However, after the marriage of defendants No. 2 and 3, misunderstandings arose between the Respondents/plaintiffs and the Appellants/defendants. As a result, the parties ceased to reside as a single-family unit by December 1997.
6. It was further submitted that due to the misunderstandings, the parties separated, leaving the Appellants/defendants with no place to reside. Consequently, the Appellants/defendants approached the



Respondents/plaintiffs, seeking permission to reside in one portion of the suit property. The Respondents/plaintiffs permitted the appellants/defendants to reside in the property on the condition that they would pay an annual license fee of Rs. 10,000/-. It was understood that the appellants/defendants would vacate the property upon being directed to do so or upon finding suitable accommodation. The license fee was duly paid until 2003. Thereafter, however, the Appellants/defendants avoided paying the license fee and allegedly managed to install electricity and water connections by manipulating certain documents.

7. The Respondents/plaintiffs further alleged that the defendants carried out unauthorized construction of a temporary nature on the suit property. It was also contended that the defendants attempted to raise illegal construction on the open portion of the property. The Respondents/plaintiffs asserted that these actions were undertaken without their consent and in violation of their ownership rights. The plaintiffs further maintained that such unauthorized construction caused substantial inconvenience and encroachment on their property. Furthermore, the Respondents/plaintiffs alleged that the Appellants/defendants' conduct was deliberate and aimed at claiming ownership rights over the suit property.
8. In view of these developments, the Respondents/plaintiffs sought appropriate legal relief to safeguard their property rights.
9. Learned Trial Court from the pleadings of the parties, framed the following issues vide order dated 17.01.2006:

“Issue No.-1: Whether plaintiff has concealed the material facts



from the suit? OPD

Issue No.-2: Whether the plaintiff is entitled to the relief of permanent injunction, as prayed for? OPP

Issue No.-3: Whether plaintiff is entitled to the relief of mandatory injunction, as prayed for? OPP

Issue No.-4:Relief

Thereafter, while deciding the application u/o XIV Rule 5 of CPC, the Id. trial, vide separate order dated 20.11.2009 framed the following issue, which was subsequently numbered as Issue No.-3A.

'Issue No.-3A: Whether so called original documents filed by plaintiff on record are false, fabricated and manipulated with the intention to file false case against defendants? OPD”

10. The Learned Trial Court, in its judgment dated 13.03.2019, inter alia, held as under;

“14. The defendants have also asserted that the plaintiff has concealed that the money had been paid for purchase of the suit property and construction by defendant No.1 (since deceased) and the present situation will fall under the Exception-iii to Section-2 (9) (A) (b) of the Prohibition of Benami Transaction Act, 1988 and since the transactions are of 1985, defendant No.1 shall still be the de jure owner of it. For the aforesaid purpose, there was a heavy burden upon them to show by way of cogent and convincing evidence that the presumption in favour of the plaintiff had been rebutted by them to show that defendant No.1 (now deceased) was the de jure owner of the property. Reliance is placed on Jayadayal Poddar Vs. Bibi Hazara AIR 1979 SC 171, Nand Kishore Mehra Vs. Sushila Mehra AIR 1995 SC 215, G. Mahalingappa Vs. G.M. Savitha (2005) 6 SCC 441. However, this Court is constrained to hold on the basis of the material on record that the defendants have failed to discharge the burden that rested upon them. Not only have they admitted in paragraph No.2 of reply on mèrits of



their written statement that the property had been purchased for the benefit of plaintiff but have also failed to corroborate the sources from which defendant No.1 raised the funds to purchase the property. The plaintiff has elicited favourable responses from the DW 1 that show that the defendants have failed to lead sufficient evidence that brother of defendant No.1 advanced loan of Rs.20,000/-and that the provident fund was withdrawn to raise the construction. The plea of the defence that the receipts Ex. PW 3/A and Ex. PW 3/B do not provide the details of the property qua which it pertains to and who has paid it, once again, cannot be sustained. These are documents which have been executed together with other documents in a transaction and cannot be read in isolation. Reliance is placed upon \$. Chattanatha Karayalar Vs. The Central Bank of India Ltd. and Ors. AIR 1965 SC 1856. They clearly stipulate that the payment has been made by the plaintiff. Thus, once again, the preponderance of probabilities, tilts in favour of the plaintiff.

15. The defendants have also failed to lead sufficient evidence to prove that they had a title by way of adverse possession in view of residing in the property for since 1985 and thereafter, since 1997 on the basis of the family settlement. Not only is Ex.DW1/1 1 executed to the exclusion of the plaintiff in whose name the property. stands and seeks to confer right, title and interest upon a property in which the parties to the settlement do not have a title. It is an unregistered document. The plaintiff has also denied that after 1991 till the filing of the suit, any construction has been raised by the defendant. In 1991, admittedly, the parties were a single family unit and hence, hostile animus and possession adverse to the knowledge of the plaintiff has not been established. Reliance is placed upon Thakur Kishan Singh Vs. Arvind Kumar (1994) 6 SCC 591, Gaya Prashad Dixit Vs. Dr. Nirmal Chander and Anr. (1984) 2 SCC 286 and L.N. Ashwathama Vs. P. Prakash (2009) 13 SCC 229. Hence, in view of the above discussion, the issues are decided against the defendants. 1”



11. Learned Trial Court also *inter alia* held that the plaintiff is entitled to the relief of permanent injunction as prayed for.
12. The Learned Appellate Court, in its judgment on the first appeal filed against the judgment dated 13.03.2019, *inter alia*, held as under:

8.1 Challenge by the appellants to the title of respondent/ plaintiff is also on the ground that it was a 'benami' transaction. The consideration did not flow from her. It is certainly not their case that the consideration flew from them. It is their case that the consideration was paid by their deceased father. It may be noticed here that the person claimed by the appellants to be the de jure owner i.e. their father Late Sh.Suraj Bhan never challenged the plaintiff's right, title or interest in the property during his lifetime. He was alive, when the suit was instituted and during his lifetime, dispute as per the appellant themselves had arisen, when they entered into the family settlement Ex.DW-1/A, but the deceased de jure owner never challenged the status of the plaintiff/ appellant. Court is, thus, of the opinion that the appellants have no status or no right to challenge or claim that the property is 'benami' in the name of plaintiff/ respondent. It is settled law that the person, who challenges the status of a 'benami' property, the onus lies on him to prove the same.

8.2 Sh. Kohli has rightly relied upon law laid down in Valliammal (D) case's (supra). The presumption in law regarding title of the property is in favour of the person, who has been entered as the owner in the Sale document. The presumption would be rebutted only by the person, who claims to be the owner and heavy burden lies on the person, who pleads that the recorded owner is a 'benami' holder.

8.3 Even if the argument of appellant is accepted that the deceased defendant had paid the consideration or that the plaintiff/ respondent had no resources of her own, Sec.-3 (2) (a) of The Benami Transactions (Prohibition) Act, 1988 comes to the aid & assistance of plaintiff; as such a property, which is purchased by a person in the name of his wife or unmarried daughter shall



be deemed to have been purchased for the benefit of such wife or the unmarried daughter. For ready reference Sec.-3 (2) (a) The Benami Transactions (Prohibition) Act, 1988 is reproduced hereinbelow:-

3.Prohibition of benami transactions.-(1)...

(2) Nothing in sub-section (1) shall apply to

(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter."

8.4 Therefore, the legal presumption being that the property was to the benefit of the plaintiff/respondent, appellants cannot claim any interest or right, therein."

13. It is a settled proposition that there must be a substantial question of law relating to the facts and circumstances of the case. The primary issue raised by the appellant in the present case is that the property in question was purchased by late Sh. Suraj Bhan in the name of the respondent, Smt. Kishni Devi @ Krishna Devi, his wife. The appellant contends that since the property was acquired using the funds of late Sh. Suraj Bhan but registered in the name of Smt. Kishni Devi @ Krishna Devi, it was held *benami*. Consequently, the appellant asserts that the property rightfully belongs to the legal heirs of late Sh. Suraj Bhan. This forms the core of the appellant's plea in the present case.
14. Learned counsel for the appellant states that both the Courts have ignored the provision of Section 2(9) A (b) (iii). Section 2 (9) of the Benami Transactions (prohibition) Act, 1988 provides as under;

"Section 2:.....(9)"benami transaction" means,—

(b) the property is held for the immediate or future benefit,



direct or indirect, of the person who has provided the consideration, except when the property is held by—

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

15. There can be no dispute regarding the proposition that under Section 2(9)(B) of the Benami Transactions (Prohibition) Act, if an individual purchases property in the name of their spouse or child and the consideration for such property has been paid from the individual's known sources of income, it shall not be deemed *benami* property. However, to establish this exception, the burden lies upon the person claiming the benefit to prove that the payment was made from the individual's known sources of income. In the present case, the appellant claimed that the property in question was purchased by late Sh. Suraj Bhan out of his known sources of income. However, the record reveals that late Sh. Suraj Bhan never challenged the respondents' ownership, and there is no evidence on record to substantiate that property bearing No. RZ-56-57-58, measuring 368 sq. yds., forming part of Khasra No. 61/17/1, situated in the abadi area of Village Palam, now known as Street No. 10, Raj Nagar-II, Palam Colony, Old Mehrauli Road, New Delhi-110045, was purchased by late Sh. Suraj Bhan out of his known sources of income. The burden was upon the appellant to establish this claim through cogent and convincing evidence to rebut the presumption in favour of the respondents. The onus was also upon the appellant to demonstrate that late Sh. Suraj Bhan was the *de jure* owner of the property. Reliance



has been rightly placed on *Jaydayal Poddar v. Bibi Hazara*, AIR 1979 SC 171; *Nand Kishore Mehra v. Sushila Mehra*, AIR 1995 SC 215; and *G. Mahalingappa v. G.M. Savitha*, (2005) 6 SCC 441.

16. This Court has consistently held that the burden of proving a benami transaction lies on the party asserting it. In *Deept Sarup Agarwal v. S. Randhir Singh Chandhok & Ors* CS(OS) 182/2017, this Court reiterated that the burden to prove a benami transaction lies on the party alleging it. Relying on the decision in *Jaydayal Poddar* (Supra), the Court emphasized that this burden must be discharged through clear and definite legal evidence that either directly proves the *benami* nature of the transaction or establishes circumstances that strongly indicate such a conclusion. The Supreme Court further observed that the essence of a *benami* transaction lies in the intention of the parties, which is often concealed and requires substantial proof beyond conjecture or surmise. The Court outlined key factors to consider in determining a *benami* transaction, including the source of purchase money, the nature and possession of the property, any motive behind the alleged *benami* arrangement, the relationship between the parties, the custody of title deeds, and the conduct of the parties post-sale.

17. In the absence of any such material, the Court finds no substantial question of law. Accordingly, the appeal, along with the pending application, stands dismissed.

DINESH KUMAR SHARMA, J

MARCH 18, 2025

Pallavi/NA

RSA 227/2019

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