



2025:DHC:2244



\$~21

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **RSA 228/2019 & CM APPL. 49651/2019****SUBHASH CHANDER KAUSHIK & ANR**AppellantsThrough: **Ms. Somya Goel, Mr. Rohit Yadav,**
Advs.

versus

KISHNI DEVI @ KRISHNA DEVIRespondentThrough: **Mr. Deepak Kohli, Mr. Mohd. Shariq,**
Advs.

%

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. This present appeal has been filed under Section 100 of the Code of Civil Procedure against the impugned judgment dated 17.08.2019, passed by District and Sessions Judge, South-West, New Delhi, in R.C.A. No. 15/2019 (RCA Civil DJ ADJ/48/2019), titled *Subhash Chander Kaushik & Ors. vs. Kishni Devi @ Krishna Devi*, whereby the learned appellate court upheld the judgment dated 13.03.2019, passed by the learned ACJ-cum-CCJ-cum-ARC (West), Tis Hazari Courts, Delhi.

RSA 228/2019

Page 1 of 14



2. The brief facts, as stated in the appellate court order dated 17.08.2019, are that the respondent instituted a suit asserting her title over property No. RZ-H-57, Main Mehrauli Road, Gali No.-10, Raj Nagar Part-II, Islam Colony, New Delhi, claiming to have purchased it through a General Power of Attorney, Agreement to Sell, Will, and other sale documents executed on 24.07.1985 by Smt. Ghoghari Devi, Sh. Shri Kishan, and Sh. Sukhbir Singh. She contended that the sale consideration was paid from her savings earned through her provision store and dairy business at her matrimonial home in Sonapat before shifting to Delhi.
3. The appellants contested the suit, questioning her financial capacity to purchase the property and asserting that she had no independent source of income, alleging instead that their deceased father had purchased the land '*benami*' in her name. They further challenged the authenticity of the sale documents, arguing that they did not bear the plaintiff's signatures or thumb impression. Furthermore, the appellants claimed ownership through adverse possession while denying that their possession was as licensees. They also asserted that a family settlement had taken place in 1997, pursuant to which they were in possession of their respective portions of the property.
4. Learned counsel for the appellants submits that the learned court below overlooked the crucial distinction between the *de jure* owner, their deceased father, and the *de facto* owner, the respondent, in whose name the title deeds exist. It is submitted that the respondent failed to establish her independent source of income or provide evidence of the purchase of the suit property, reinforcing the claim that it was acquired



by their father as a *benami* transaction. Furthermore, the appellants assert that the learned court failed to consider the settlement deed dated 05.08.1997, which was undisputed by the respondent and reflected the true owner's intention to distribute the property among his children. Relying on ***Rajender Abbot v. Dr. Vijay Abbot & Ors.***CS(OS) 2036/1994, and ***Kale v. Deputy Director of Consolidation & Ors.***,1976 INSC 6, they emphasize that a family settlement does not require stamping and registration and should be admissible as evidence.

5. Learned counsel for the appellant submitted that their exclusive and uninterrupted possession of the suit property until 2005-2006 establishes their adverse possession, while the respondent failed to prove that they were mere licensees paying an annual fee. Lastly, they submit that the appellate court erred in failing to recognize that the respondent, despite claiming ownership, neither has her signature nor thumb impression on the sale documents, nor was she present during the execution of the sale deed, reinforcing her *de facto* rather than *de jure* ownership.
6. The respondent submits that a second appeal is not a matter of right and must be based on substantial questions of law, which the appellants have failed to establish. To seek possession, the respondent was required to prove exclusive ownership over the suit property, which she did by producing and exhibiting her title documents in deposition. The appellants challenged these documents as forged, arguing that the property was purchased by the respondent's husband using his own funds and a loan from his brother. However, Hari Chand Sharma (DW3), a witness to the title documents, verified their authenticity,



thereby proving the respondent's ownership.

7. The appellants' claim that the respondent's husband was the de jure owner was unsupported by any evidence, and they failed to prove the alleged sources of funds for the purchase, whereas registered receipts (Ex. PW3/A & Ex. PW3/B) established that the payment was made by the respondent. Their assertion of adverse possession based on an unregistered family settlement (Ex. DW1/1) is baseless, as the respondent, the registered owner, was neither a party to nor had endorsed the document, and they failed to prove hostile possession adverse to her knowledge. Moreover, the respondent's deposition that the appellants were licensees in the property since 15.01.1998, and that their license was terminated on 11.09.2005 via legal notice dated 07.09.2005, remains unrebutted, and mere denial of service of notice is inconsequential, especially when the postal address was correct.
8. Learned Trial Court from the pleadings of the parties, framed the following issues vide order dated 13.03.2019:

“Issue No.-1:-Whether plaintiff is entitled for possession of property bearing No.-RZH-57, Main Mehrauli Road, Gali No.-10, Raj Nagar, Part-II, Palam Colony, New Delhi 110045? OPP

Issue No.-2:-Whether plaintiff is entitled for mesne profit and damages, if yes at what rate and for which period? OPP

Issue No.-3:-Whether there is no cause of action in favour of plaintiff and against defendant? OPD

Issue No.-4:-Whether documents filed by the plaintiff are forged and fabricated as contended in written statement? OPD

Issue No.-5:-Whether suit is barred by limitation as contended in



para no.-9 of preliminary objection of written statement? OPD

Issue No.-6:-Relief.”

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

“16. The defendants then assailed the ownership of the plaintiff as the documents relied upon by her are not sufficient to transfer the title upon her. It is pertinent to observe that this defence was not developed by the defendants. Be that as it ay, since the objection has been raised in the written statement, it is being considered. The law in this regard has been well settled in Suraj Lamp and Industries Pvt. Ltd. through its Director Vs. State of Haryana & Anr. (2012) 1 SCC 656 that the only legal mode for transfer of ownership of an immovable property is a registered sale deed and that execution of Agreement to Sell/Affidavit/Receipt/Will etc. was deprecated. In Maya Devi Vs. Lalta Prashad dated 19.02.2014 in Civil Appeal 2458/2014 Hon'ble Mr. Justice Sh. Vikramajit Sen has observed as under:

I completely concur with the view that since General Power of Attorney (GPA) in favour of the Appellant was executed and registered on 12.05.2006, it could not be impacted or affected by the Suraj Lamp dicta. Furthermore, a reading of the order of the Executing Court as well as of the High Court makes it palpably clear that both the Courts had applied the disqualification and illegality imposed upon GPAs by Suraj Lamp, without keeping in mind that the operation of that judgment was pointedly and poignantly prospective. This question has been dealt with by my esteemed Brother most comprehensively.

Therefore, the ratio of Suraj Lamp (supra) should have a prospective effect.

17. The defendants have also questioned the ownership of the plaintiff as 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 Benami Transactions (Prohibition) Act, 1988 and since the transactions are of 1985, defendant No.1 shall still be the de jure owner of it. It is the case of the plaintiff that the suit property has been purchased by her from her own income and the documents relied upon by her prima facie record her name as the beneficiary.

18. It has been held in Jayadayal Poddar Vs. Bibi Hazra, AIR 1979 SC 171 as under:

"... It is well settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of Benami or establish circumstances unerringly and reasonably raising an Inference of that fact. The essence of a benami is the intention of the party or parties concerned; and not unoften such intention is shrouded in a thick veil which cannot 'be, easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation and the, person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question, whether a particular sale is Benami or not, is largely one of fact, and for determining this question, no absolute formula or acid tests, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the courts are usually guided by these circumstances: (1) the source from which 'the purchase money' came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami color; (4) the position of the parties and the relationship, If any between the claimant and the alleged



benamidar; (5) the custody of the title-deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale"

Further, it has been held in Nand Kishore Mehra Vs. Sushila Mehra, AIR 1995 SC 215 as under:

"...But, it has to be made clear that when a suit is filed or defence is taken in respect of such benami transaction involving purchase of property by any person in the name of his wife or unmarried daughter, he cannot succeed in such suit or defence unless he proves that the property although purchased in the name of his wife or unmarried daughter, the same had not been purchased for the benefit of either the wife or the unmarried daughter, as the case may be, because of the statutory presumption contained in sub-section (2) of Section 3 that unless a contrary is proved that the purchase of property by the person in the name of his wife or his unmarried daughter, as the case may be, was for her benefit".

Reliance is also placed upon G. Mahalingappa Vs. G.M. Savitha, (2005) 6 SCC 441. The judgment relied upon by the defendant that is Yogita Dasgupta Vs. Kaustav Dasgupta, MAT.APP. (FC)7/2014 pronounced on 27.07.2016 by Delhi High Court reiterates that the aforesaid law.

19. Thus, in view of statutory presumption in favour of the plaintiff, the defendants have to by way of cogent and credible evidence rebut the presumption. Mere conjectures and surmises will not be sufficient to non-suit the plaintiff.

20. In the considered view of this Court, the defendants have failed to substantiate their claims by way of credible evidence. The defendants have taken mutually destructive pleas that the property had been purchased in the name of the plaintiff 'so that tomorrow she may not have any difficulty after the death of defendant No.1' (in paragraph No.2, reply on merits in the written statement filed by all the defendants in. CS No.8637/2016) and then that the property had been purchased for the benefit of all the family members by defendant No.1 (since deceased) out of his own



income and loan taken from his brother. It has been asserted that defendant no, 1 was employed as a driver with DDA and out of his own salary and loan taken from his 1 brother, he had purchased the suit property in the year 1985. The plaintiff has successfully elicited responses from DW-1 which disprove that the father had made payment towards the consideration of suit property. Even though he admitted that there are some receipts, he failed to produce them or substantiate by way of credible evidence that the plaintiff had stolen them in the year 1997. Though he deposed that loan of Rs.20,000/- was taken by defendant No.1 (since deceased) from his brother Sh. D. R. Sharma, no documentary proof of the cheque vide which payment was made could be produced and he also denied to be a witness to the same. The witness also waived as regards the time when the loan was taken. DW1 was also controverted during cross examination regarding the provident fund which was allegedly withdrawn by defendant No.1 (since deceased) to raise funds for the purchase of the property. The plea of the defence that the receipts Ex. PW3/A and Ex. PW3/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 S. 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, the defendants have miserably failed to rebut the presumption.

21. The plea of adverse possession raised by the defendants was for them to prove by way of cogent and convincing evidence that a hostile animus and possession adverse to the knowledge of the plaintiff existed since 1985 and thereafter, since 1997 when the family settlement was arrived at. Reliance is placed upon Thakur Kishan Singh Vs. Arvind Kumar (1994) 6 SCC 591, Gaya Parshad Dikshit Vs. Dr. Nirmal Chander & Anr. (1984) 2 SCC 286 and L. N. Aswathama Vs. P. Prakash (2009) 13 SCC 229. The defendants for the aforesaid purpose relied upon family settlement dated 05.08.1987 which was arrived at between the defendants and Sh. Rishi, third son of the plaintiff and defendant No.1 (since



deceased) pursuant to which the parties divided/partitioned the property between them and were residing in their portions and have raised constructions out of their own income. However, DW-1 in his examination-in-chief though has stated that both the defendants contributed to the construction of the 1 suit property in paragraph no. 5 of Ex. DW1/A but it is stated that the same was done in an around 1991 when they were residing as a single family unit. There is no assertion of any hostile act having being done with the knowledge of the plaintiff after the licence was terminated by the plaintiff. PW-1 was also cross examined to elicit responses to that effect, however, she has stated that as soon as the defendants took to raise construction, she had filed the connected suit for permanent injunction. Thus, the defendants failed to discharge the onus. Further, it has been urged that the plaintiff has not denied the execution of family settlement but has stated that it is not right. The stipulations of the Family Settlement Ex. DW1/1 are categorical that by way of the same, the parties thereto (which excludes the plaintiff herein) agreed with mutual consent to divide/partition the aforesaid property in the manner provided in the same. For two reasons, this Court is of the view that the aforesaid document is of no consequence. Firstly, due to reasons stated above, as the plaintiff has shown that the property which was partitioned stood in her name as her self-acquired property. By way of Ex. DW1/1, the defendants have tried to create rights in their favour over a property upon which they had no rights. The document Ex. DW1/1 is not the appropriate mode for legal transfer of rights and title. Secondly, Ex. DW 1/1 is not a registered document and therefore, is inadmissible in evidence. Reliance is placed upon *Kale & Ors. Vs. Deputy Director of Consolidation & Ors. (1976) 3 SCC 119*. Even for the co-lateral purpose, it does not come to the rescue of the defendants to explain their nature of possession.

22. Thus, the ownership of the plaintiff has been proved. The plaintiff has further affirmed that the defendants were staying in the property as licencees w.e.f. 15.01.1998 and the same has been terminated w.e.f 11.09.2005 vide legal notice dated 07.09.2005. The witness has not been controverted on the aspect that the defendants were residing in the property with her permission.



Even though, the defendants have questioned the service of legal notice, they have not denied the postal addresses. By virtue of Section 27 of the General Clauses Act, 1897, the defendants are deemed to have been served with the legal notice for termination of licence. Accordingly, as the licence stood terminated with effect from service of legal notice, the occupation by the defendant of the suit property is unauthorized and it is liable to be vacated. The issue is therefore, decided in favour of the plaintiff.

10. The Learned Appellate Court, in its judgment dated 17.08.2019 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 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.

8.3 I am supported in this view by law laid down in Valliammal (D) by LRs Vs. Subramaniam & Ors. reported as 2004 0 AIR (SC)4187. 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. 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.

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

11. 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.

12. 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;*

13. 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.

14. 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.

15. In the absence of any such material, the Court finds no substantial



2025:DHC:2244



question of law. Accordingly, the appeal, along with the pending application, stands dismissed.

DINESH KUMAR SHARMA, J

MARCH 18, 2025

Pallavi/NA