

**Bharat Kumar and ors. Vs. State and ors.**

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**Court :** Delhi

**Decided On :** May-15-2014

**Judge :** Pradeep Nandrajog

**Appellant :** Bharat Kumar and ors.

**Respondent :** State and ors.

**Judgement :**

§~3 & 4 \* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision: May 15, 2014 + FAO(OS) 465/2013 BHARAT KUMAR & ORS Represented by: ..... Appellant Mr.Sunil Magon, Advocate versus STATE & ORS Represented by: ..... Respondents Mr.Amit Sibal, Senior Advocate instructed by Mr.Peeyoosh Kalra, Mr.Rakesh Kumar Garg and Mr.Anirban Sen, Advocates RFA(OS) 123/2013 BHARAT KUMAR Represented by: ..... Appellant Mr.Sunil Magon, Advocate versus ASHOK SAHDEV AND ORS ..... Respondents Represented by: Mr.Amit Sibal, Senior Advocate instructed by Mr.Peeyoosh Kalra, Mr.Rakesh Kumar Garg and Mr.Anirban Sen, Advocates for R-1 CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR. JUSTICE JAYANT NATH PRADEEP NANDRAJOG, J.

(ORAL) Caveat No.839/2013 in RFA (OS) No.123/2013 Since counsel as above appears for the caveator, the caveat is discharged. CM No.14953/2013 in RFA (OS) No.123/2013 Allowed subject to just exceptions. FAO (OS) No.465/2013 & RFA (OS) No.123/2013 1. The appellant Bharat Kumar has been held disqualified

to compete with his brother and his sister-in-law. The latter two have thus got a walk over. Suit filed by Bharat Kumar has been held to be barred by law. The game has not been played. The evidence has not been led. Issues have not been settled. The suit has been dismissed.

2. Testamentary Case No.61/2010 filed by Bharat Kumar seeking Letters of Administration of the Will dated April 09, 1998 statedly executed by Sh.Sahdev has been dismissed summarily with liberty to Bharat Kumar, his two sons and a daughter, who were co-petitioners to seek revival of the petition but limited to the assets of late Sh.Sahdev mentioned at Sl.No.2 to 8 of the schedule to the petition, after giving full particulars thereof.

3. The order is a composite order dated September 09, 2013.

4. Under RFA (OS) 123/2013 challenge is to the order dated September 09, 2013 dismissing CS(OS) No.1517/2010 as the claim has been held to be barred by law. Under FAO(OS) 465/2013 the challenge is to the said order in so far Testamentary Case No.61/ 2010 has been dismissed with liberty for revival granted on the condition aforesaid in paragraph 2 above.

5. Concerning Testamentary Case No.61/2010, seeking Letters of Administration of the Will dated September 09, 1998 statedly executed by Sh.Sahdev, in the Schedule of Property left behind by late Sh.Sahdev who died on January 09, 2000, the estate is described as under:- Sl.No.Value 1. Half ownership of No.92, Golf Links, `15 crores New Delhi (approx.) 2.

3. Cash deposits in State Bank of India, Rajpur Road, Delhi Investments in Unit Trust of India 4. Jewellery and household goods 5. Investment in India Trading House 6. Household goods like furniture, fixtures, carpets, decorative articles, Godrej Almirah 50% share in the firm India Trading House Akai T.V, Onida T.V. and VCR 7 8.

6. Assets Claim in CS(OS) 1517/2010 by Bharat Kumar is to an alleged 50% share of late Sh.Sahdev in property No.92, Golf Links, New Delhi, partition whereof has been prayed on the plea that late Sh.Sahdev, the father of Bharat

Kumar and Ashok Sahdev, owned 50% share in the property. Stating that the two sisters of Bharat and Ashok Sahdev have relinquished their interest in the estate of the father, on the death of Sahdev, Bharat Kumar would inherit 25% share in the property.

7. In what manner late Sahdev came to own 50% share in 92, Golf Links, New Delhi has been pleaded by claiming that India Trading House was a partnership firm of which Sahdev, Ashok and his wife Sarita were partners. It has been pleaded that an industrial plot belonging to the firm was sold by Sahdev and from the money realized property No.92, Golf Links was purchased with clear intent that Sahdev would have 50% share therein and the remaining 50% would be that of Ashok and his wife Sarita.

8. No reference whatsoever has been made in the pleadings to any document by which right, title or interest in property No.92, Golf Links was acquired, as pleaded in the plaint. The averment in para 17 of the plaint would be necessary to be noted. It reads:

That without there being a formal conveyance of the property, the father late Sh.Sahdev and defendant No.1 and defendant No.2 became entitle to the suit property No.92, Golf Links as co-owners.

9. In the written statement filed by Ashok and his wife Sarita, to which they found a support from Prabha and Sobha, the two daughters of late Sh.Sahdev, it was denied that the father purchased property No.92, Golf Links, New Delhi or had any interest therein. Ashok and Sarita pleaded that whereas the ground floor of the property was purchased by Ashok from the previous owners Surinder Singh Dhingra and Ravinder Singh Dhingra with proportionate interest in the land, the first floor and the barsati floor, with proportionate interest in land, was purchased by Sarita. It was pleaded that interest as aforesaid was purchased by an under : (i) agreement(s) to sell, (ii) General Power of Attorney, (iii) Possession letter, (iv) Receipt, and (v) Wills. They relied upon :(i) An agreement to sell dated October 25, 1997 in favour of Sarita executed by Surinder Singh Dhingra and Ravinder Singh Dhingra acknowledging therein that for a consideration of `48,00,000/- (Rupees Forty Eight Lacs only) they had agreed to sell to Sarita the first floor and

the barsati floor with proportionate interest in the land; (ii) Agreement to sell dated November 01, 1997 in favour of Ashok Kumar executed by Surinder Singh Dhingra and Ravinder Singh Dhingra acknowledging therein that for a consideration of `46,00,000/- (Rupees Forty Six Lacs only) they had agreed to sell to Ashok the ground floor with proportionate interest in the land; (iii) Possession letter of January 1998 acknowledging having received `42,00,000/- (Rupees Forty Two Lacs only) from Ashok pursuant to the agreement dated November 01, 1997 and having handed over the ground floor to Ashok and being left with no interest in the ground floor, with a stipulation that Surinder and Ravinder have a claim of only `4,00,000/(Rupees Four Lacs only) against Ashok. (iv) Possession letter dated January 01, 1998 acknowledging having received `42,00,000/- (Rupees Forty Two Lacs only) from Sarita pursuant to the agreement dated October 25,1997 and having handed over the first floor and the barsati floor to Sarita and being left with no interest in the said floors, with a stipulation that Surinder and Ravinder have a claim of only `6,00,000/- (Rupees Six Lacs only) against Sarita. (v) A registered irrevocable power of attorney constituting and appointing Mr.R.N.Marwaha as the attorney of Surinder Singh and Ravinder Singh to manage and deal with the ground floor of property 92, Golf Links, New Delhi (vi) A registered irrevocable power of attorney constituting and appointing Mr.R.N.Marwaha as the attorney of Surinder Singh and Ravinder Singh to manage and deal with the first floor and the barsati of property 92, Golf Links, New Delhi. (vii) Registered Will dated April 15, 1998 by Ravinder Singh Dhingra in favour of Sarita bequeathing her his half share in the property 92 Golf Links, New Delhi. (viii) Registered Will dated April 15, 1998 by Surinder Singh Dhingra in favour of Ashok bequeathing him his half share in the property 92, Golf Links, New Delhi. (ix) An undated receipt acknowledging having received `45,50,000/- (Rupees Forty Five Lacs Fifty Thousand only) from Ashok Kumar towards sale consideration of the ground floor of 92, Golf Links, New Delhi, recording that balance sale consideration to be received is only `50,000/(Rupees Fifty Thousand only). (x) An undated receipt acknowledging having received `42,00,000/- (Rupees Forty Two Lacs only) from Sarita towards sale consideration of the first floor and the barsati floor of 92, Golf Links, New Delhi recording that the balance sale consideration to be receives is only `6,00,000/- (Rupees Six Lacs only). (xi) An agreement to sell dated February 04,

2009 on which stamp duty in sum of `8,48,900/- (Rupees Eight Lacs Forty Eight Thousand Nine Hundred only) has been affixed executed by Surinder Singh and Ravinder Singh in favour of Ashok Kumar and Sarita recording past payments received pursuant to the earlier agreements to sell and further fact that full sale consideration having been received from Ashok Kumar and Sarita, the two, Surinder Singh and Ravinder Singh would sell property No.92, Golf Links, New Delhi to Ashok Kumar and Sarita who were already in possession of the property

(xii) A General Power of Attorney dated February 04, 2009 duly registered, constituting and appointing Ashok Kumar and Sarita as their constituted attorneys.

(xiii) A declaration dated February 04, 2009 affirming that Surinder Singh and Ravinder Singh have been left with no title or interest in 92, Golf Links and that the same vests absolutely in Ashok Kumar and Sarita.

(xiv) A Special Power of Attorney in favour of Prabha, the sister of Bharat Kumar and Ashok Kumar empowering her to execute the sale deed in favour of Ashok Kumar and Sarita.

10. In the replication filed by Bharat Kumar he simply pleaded that the documents were illegally created.

11. We note that entire payment made to Surinder Singh Dhingra and Ravinder Singh Dhingra is by cheques drawn on the account of Ashok Kumar and Sarita. The details of the cheques have been recorded in the agreement to sell executed on February 04, 2009. The same would be as under:

| Payments Received by Sh.Surinder Singh Dhingra: |          | Cheque No. |          | Date        |          | Amount   |          |
|-------------------------------------------------|----------|------------|----------|-------------|----------|----------|----------|
| 220059                                          | 152533   | 152534     | 179383   | 228316      | 410035   | 410039   | 154202   |
| 179404                                          | 179421   | 913553     | 540308   | 01.11.97    | 08.12.97 | 31.12.97 | 26.5.98  |
| 23.08.98                                        | 25.10.97 | 10.12.97   | 01.01.98 | 26.05.98    | 23.08.99 | 04.02.09 | 04.02.09 |
|                                                 |          |            |          | Amount      |          |          |          |
|                                                 |          |            |          | `2,00,000/` |          |          |          |
|                                                 |          |            |          | .9,00,000/` |          |          |          |
|                                                 |          |            |          | 10,00,000/` |          |          |          |
|                                                 |          |            |          | 1,00,000/`  |          |          |          |
|                                                 |          |            |          | 75,000/`    |          |          |          |
|                                                 |          |            |          | 5,00,000/`  |          |          |          |
|                                                 |          |            |          | 6,00,000/`  |          |          |          |
|                                                 |          |            |          | 10,00,000/` |          |          |          |
|                                                 |          |            |          | 1,50,000/`  |          |          |          |
|                                                 |          |            |          | 1,25,000/`  |          |          |          |
|                                                 |          |            |          | 25,000/`    |          |          |          |
|                                                 |          |            |          | 25,00,000/` |          |          |          |

| Payments Received by Sh.Ravinder Singh |          | Cheque No. |          | Date        |          | Amount   |          |
|----------------------------------------|----------|------------|----------|-------------|----------|----------|----------|
| 220058                                 | 152532   | 152535     | 179384   | 228317      | 410036   | 410040   | 154201   |
| 179403                                 | 179422   | 913551     | 540307   | 12.25.10.97 | 08.12.97 | 31.12.97 | 26.05.98 |
| 23.08.99                               | 15.11.97 | 10.12.97   | 01.01.98 | 26.05.98    | 23.08.99 | 04.02.09 | 04.02.09 |
|                                        |          |            |          | Amount      |          |          |          |
|                                        |          |            |          | `5,00,000/` |          |          |          |
|                                        |          |            |          | 6,00,000/`  |          |          |          |
|                                        |          |            |          | 10,00,000/` |          |          |          |
|                                        |          |            |          | 1,00,000/`  |          |          |          |
|                                        |          |            |          | 75,000/`    |          |          |          |
|                                        |          |            |          | 2,00,000/`  |          |          |          |
|                                        |          |            |          | 9,00,000/`  |          |          |          |
|                                        |          |            |          | 10,00,000/` |          |          |          |
|                                        |          |            |          | 1,50,000/`  |          |          |          |

Section 4 of the Benami Transactions (Prohibition) Act, 1988 reads as under:

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.

13. It is apparent that no claim or action to enforce any right in respect of any property can be made against the person in whose name the property is held on the plea that the property is held benami, with the exception that 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 coparceners of the family or where the person in whose name the property is held is a trustee or stands in a fiduciary capacity to another.

14. It may be true that Ashok and Sarita are not the registered owner of the property for the reason under the Transfer of Property Act, right, title or interest in immovable property can be conveyed and hence acquired by a registered sale-deed where value of the immovable property is more than `100/-; and the value of the suit property is admittedly more than `100/-. But, registered documents executed by the registered owners i.e. Surinder Singh and Ravinder Singh, details whereof we have noted in paragraph 9 above are in favour of Ashok and Sarita.

15. The learned Single Judge has noted that it may be true that defendants No.1 and 2 have no sale-deed in their favour but has noted that Bharat has made no reference to any title document in support of his claim. The learned Single Judge

has noted that the Benami Transactions (Prohibition) Act, 1988 defines a benami transaction as one in which property is transferred to one person for a consideration paid or provided by another and that except of the two situations contemplated by sub-Section 3 of Section 4, sub-Section 1 of Section 4 of the Act prohibits any claim in a property held benami.

16. The learned Single Judge has noted that apart from the fact that in the plaint Ashok made no reference to any title document in support of his claim, in the replication filed a challenge was made to ownership rights claimed by Ashok and Sarita under the various documents executed by Surinder and Ravinder in their favour.

17. The learned Single Judge has noted that there was no plea in the plaint that Ashok and Sarita held the property as trustees or the two being in a fiduciary capacity towards Sahdev. The learned Single Judge has taken the view that a positive averment requires to be made in the plaint to bring the case within the two exceptions contemplated by sub-Section 3 of Section 4 of the Benami Transactions (Prohibition) Act, 1988.

18. The learned Single Judge has noted that the usual practice prevalent in Delhi to sell property was through the medium of an agreement to sell coupled with delivery of possession in part performance thereof, powers of attorney, wills etc. The learned Single Judge has noted that this Court in the decision reported as 94 (2001) DLT841Asha M.Jain Vs. Canara Bank recognized the said practice. The learned Single Judge has noted that the said view was overruled by the Supreme Court but prospectively, in the decision reported as 2012 (1) SCC656Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana. The learned Single Judge has noted the decision pronounced by the Supreme Court in the decision reported as (2012) 5 SCC342Marcel Martins Vs. M.Printer with reference to Bharats plea that in the said decision it was noted that the expression fiduciary capacity has not been defined in the Benami Transactions (Prohibition) Act, 1988 and thus the expression must take its meaning from the non jural recognized concept of what would be a fiduciary capacity. The learned Single Judge has noted that purchase of a property in the name of a son/brother, if in trust or for hte benefit of the

father/sisters, the prohibition under the Benami Transactions (Prohibition) Act, 1988 would not be applicable. With reference to Marcel Martins case, the learned Single Judge noted that the Supreme Court not merely traced the flow of the purchase consideration from the father but three other facts : (i) the fact of the right to purchase being available to all the occupants of hte property, (ii) the father and the daughters being in occupation also having a right to purchase and having desired to purchase in the joint names but the purchase being effected in the name of the son/brother only for the reason of the seller insisting on sale in a name of only one, and (iii) the agreement between the parties recording the son/brother holding the property in trust and for the benefit of the father and the sisters also. The learned Single Judge has distinguished the decision in Marcel Martins case with reference to the existing pleadings in the instant suit.

19. Same arguments which were advanced before the learned Single Judge have been reiterated before us.

20. Concerning the issue that the Benami Transactions (Prohibition) Act, 1988 would not be applicable because there is no sale-deed in favour of Ashok and his wife Sarita, the argument of the appellant overlooks the fact that there is no sale-deed in favour of either Sahdev or anyone else executed by the registered owners of the property Sh.Surinder Singh Dhingra and Ravinder Singh Dhingra. As noted by the learned Single Judge, in the replication filed, Ashok Kumar has challenged the documents on which Ashok and Sarita rely upon for their title. Indeed, it was the common practice in Delhi, judicially recognized by this Court in the decision in Asha Jains case (supra) that in Delhi title in immovable property was being transferred on the basis of registered agreements to sell, power of attorney, receipts acknowledging payments and possession handed over in part performance. The said decision has been prospectively overturned by the Supreme Court in Suraj Lamps case (supra). The transaction between Surinder Singh Dhingra and Ravinder Singh Dhingra on the one hand and Ashok Kumar and his wife Sarita on the other hand precedes the decision of the Supreme Court.

21. The concept of beneficial ownership is recognized by law. Under the documents executed by Ravinder Singh Dhingra and Surinder Singh Dhingra,

Ashok Kumar and Sarita claim beneficial ownership. Bharat challenges the same. The plea of benamidar is inherent in his claim.

22. Bharat's argument that there is no title document in the form of a sale-deed in favour of Ashok and Sarita and thus the two cannot claim title while acknowledging that there is no title document whatsoever, much less a sale-deed in favour of his father but he could still stake a claim to the property on the strength of a title of his father, would be a situation akin to just as the inverse and the converse of a conditional are logically equivalent to each other the conditional and its contrapositive are logical equivalent to each other, but the inverse of a conditional is not inferable from the conditional.

23. Indeed, there are no averments in the plaint to bring the case within the exception provided by sub-Section 3 of Section 4 of the Benami Transactions (Prohibition) Act, 1988. Since we are adopting the reasoning of the learned Single Judge on said aspect of the pleadings, we need not like a copy cat re-peat the view of the learned Single Judge by imitating his words. Likewise, we concur with the ratio of law culled out by the learned Single Judge in Marcel Martins decision.

24. We would supplement that pleadings in the plaint are speculative. A title to a property has to be pleaded with material particulars such as the nature of document conferring the title, the date of its execution and by whom. The instant plaint filed by Bharat Kumar lacks in material particulars and it has to be held that the so called pleadings of title of Late Sh.Sahdev are no pleadings in the eyes of law.

25. We dismiss RFA (OS) No.123/2013.

26. Concerning Testamentary Case No.61/2010 the view taken by the learned Single Judge is that since Sahdev does not have any title to property No.92, Golf Links, New Delhi it would be futile to decide whether the Will dated April 09, 1998 was the last legal and valid testament executed by him. The learned Single Judge has noted that the estate at serial No.2 to 8 of the Schedule to the Testamentary Case was sans any particulars. We have noted the contents of the schedule to the Testamentary Case in paragraph 5 above and from which it would be apparent

that there is no reference to the amount or the folio number under which Sahdev has cash deposits with the State Bank of India, Rajpur Road, Delhi. There is no reference to the amount or the particulars of the investment in the Unit Trust of India. There is no reference to the amount for the nature of investment in India Trading House. There is no reference to the value or the extent of jewellery or house hold goods. Mere reference to furnitures, fixtures, almirahs, Onida TV, AKAI TV or VCR is worthless. The learned Single Judge has thus correctly opined that proceedings in the Testamentary Case have to be terminated with liberty to Bharat to seek revival thereof if he could supply particulars of the estate of the deceased as per serial No.2 to 8 of the schedule.

27. FAO (OS) No.465/2013 is accordingly dismissed.

28. Parties shall bear their own costs. CM No.14954/2013 in RFA (OS) No.123/2013 Dismissed as infructuous. (PRADEEP NANDRAJOG) JUDGE (JAYANT NATH) JUDGE MAY15 2014 skb/mamta

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