

Manoj Arora vs.mamta Arora

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Court : Delhi

Decided On : Aug-07-2018

Appellant : Manoj Arora

Respondent : Mamta Arora

Advocate for Def. : Mr. Rajiv Kumar Ghawana, Ms. Akshita Chhatwal, Mr. Anirudh Ahuja

Advocate for Pet/Ap. : Mr. M. Sufian, Mr. Rakesh Bhugra

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI RFA No.522/2017 and C.M. No.19306/2017(stay) + % MANOJ ARORA MAMTA ARORA7h August, 2018 Through: Mr. M. Sufian Appellant Siddiqui, Advocate with Mr. Rakesh Bhugra, with appellant in person. Advocate versus Respondent Through: Mr. Rajiv Kumar Ghawana, Advocate with Ms. Akshita Chhatwal, Advocate and Mr. Anirudh Ahuja, Advocate with respondent in person. CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. YES VALMIKI J.

MEHTA, J (ORAL) 1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the Trial Court dated 19.12.2016 by which trial court has rejected the plaint under Order VII Rule 11 CPC by RFA5222017 Page 1 of 6 applying provisions of Sections 4 read with repealed Section 3(2) of the Benami

Transactions (Prohibition) Act, 1988.

2. The subject suit was filed by the appellant/plaintiff/husband pleading that the two properties with respect to which reliefs of declaration and injunction were claimed in the suit, namely B-1/58, New Moti Nagar, New Delhi-15 and bearing No.B-206, C-DOT, CGHS Apartments, Sector-56, Gurgaon, were purchased by the appellant/plaintiff/husband from his own sources as stated in the plaint including paras 9 and 11 of the plaint. Paras 9 and 11 of the plaint read as under:-

"9. That the earnest money for the purchase of the property was bearing No.B-1/58, New Moti Nagar, Delhi of Rs.25,000/- (Rs Twenty Five thousand only) has been paid by the Plaintiff vide cheque no.511459 dated 03.02.2001 for the amount of Rs.20,000/- (Rs. Twenty thousand only) and Rs.5,000/- (Rs Five thousand only) in cash. That the balance amount of Rs Eight lacs has been paid by the Plaintiff from the sources which are as follows: Fixed deposit matures on 19.05.2001 Sale of shares of Reliance Industries Sold Janta Flat in Tagore Garden (Property was in the name of Plaintiff) Provident fund 28.05.2001 Personal loan secured from CitiBank Personal loan taken from Brother- In-law and returned to Sister vide cheque Rest of the amount was arranged by taking loan from friends.-
.Rs.1,85,000 -Rs.79,600 -Rs 80,000 -Rs.69,085 -Rs.63,000 -Rs.60,000

RFA5222017 Page 2 of 6 xxxx xxxx xxxx xxxx 11. That thereafter the Plaintiff purchased another property bearing No.B-206, C-DOT, CGHS Apartments, Sector-56 Gurgaon for the amount of Rs.47,00,000/- (Rs Fourty Seven Lacs only). That the above said property has been planned to be purchased by the parties in the joint name of the Plaintiff as well as Defendant from the joint owners Smt. Sangeeta Srivastava and Sh. Rajmohan Srivastava. However due to change in the policies of the society, Plaintiff had to purchase the aforementioned property also in the name of the Defendant. Details of the payment and the source of income is mentioned herein below: From A/C of Plaintiff vide cheque bearing no.160517 cheque bearing no.160518 Vide Cheque bearing no.914362/

in the name of Vikrant Madaan as per request of vendee. Loan Sanctioned from ICICI Bank Monthly installments for the amount of Rs.34,123 earlier and for the amount of Rs.30,457/- has regularly been debited from the savings account of Plaintiff since August 2007. That further an amount of Rs.5,00,000/- has also been

paid to the Bank towards prepayment of the loan. -Rs.5,00,000/- -Rs.5,00,000/- - Rs.30,99,000/- -Rs.2,60,000/

Accordingly in the suit, reliefs of declaration and injunction were claimed that it was the appellant/plaintiff/husband who was the owner of the properties and not the respondent/defendant/wife. RFA5222017 Page 3 of 6 4. Unfortunately, the trial court has committed a grave and fundamental error in rejecting the suit plaint under Order VII Rule 11 CPC by relying upon the provision of Section 4 and repealed provision of Section 3(2) of the Benami Transactions (Prohibition) Act. When the impugned judgment was passed on 19.12.2016, what was, and is now applicable is the Prohibition of Benami Property Transactions Act, 1988 which became applicable w.e.f 1.11.2016. As per Section 2(9) of the Amended Act what is a Benami Transaction is stated/specified, and also those transactions which are not benami are also stated/specified. As per the suit plaint/averments, in the present case the existence of the properties in the name of the respondent/defendant/wife will fall as an Exception to the prohibited benami transaction in view of Section 2(9)(A)(b) Exception (iii) inasmuch as it is legally permissible for a person to purchase an immovable property in the name of his spouse from his known sources, and in which position, the property purchased will not be a benami property but the property will be of the de jure owner/plaintiff/husband and not of the de facto owner (in whose name RFA5222017 Page 4 of 6 title deeds exist), being the respondent/defendant/wife in the present case.

5. By the impugned judgment since the suit has been held to be barred at the threshold by applying Order VII Rule 11 CPC, and the plaint has been rejected by applying the repealed provision of Section 3(2) of the Act which was no longer applicable, and by ignoring the provision of Section 2(9)(A)(b) Exception (iii) which was applicable, the impugned judgment is hence illegal and is set aside. Whether or not the appellant/plaintiff/husband will or will not have the benefit of Section 2(9)(A)(b) Exception (iii) is a matter of fact which requires trial and such a suit cannot be rejected at the threshold by applying Order VII Rule 11 CPC.

6. In view of the aforesaid position, this appeal is allowed. Impugned Judgment dated 19.12.2016 is set aside. Suit would be tried and disposed of by the trial court in accordance with law after trial/evidence.

7. Parties to appear before the District & Sessions Judge, West, Tis Hazari Courts, Delhi on 29th August, 2018 and the District RFA5222017 Page 5 of 6 & Sessions Judge will mark the suit for disposal to a competent court in accordance with law.

8. Appeal is disposed of in terms of aforesaid observations. AUGUST07 2018 Ne VALMIKI J.

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