

Vivek Bindra vs.geetika Bindra

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Court : Delhi

Decided On : Oct-01-2019

Appellant : Vivek Bindra

Respondent : Geetika Bindra

Advocate for Pet/Ap. : Mr. Sudhir Nandrajog, Mr. Dinesh Rastogi, Mr. Gaurav Puri, Mr. Sarthak Gupta

Judgement :

\$~19 * + IN THE HIGH COURT OF DELHI AT NEW DELHI CS(OS) 514/2019
VIVEK BINDRA Plaintiff Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr.
Dinesh Rastogi, Mr. Gaurav Puri & Mr. Sarthak Gupta, Advs. Versus
Defendant Through: None. GEETIKA BINDRA CORAM: HON'BLE MR. JUSTICE
RAJIV SAHAI ENDLAW %

ORDER

0110.2019 IA No.13849/2019 (for exemption) 1.

2. Allowed, subject to just exceptions. The application is disposed of. CS(OS) 514/2019 & IA No.13848/2019 (u/O XXXIX R-1&2 CPC) 3. The plaintiff has sued his wife, for (i) declaration that the plaintiff is the sole and absolute owner of property No.D-6/8, Okhla Block-D, Okhla Industrial Area, Phase-II, New Delhi-110020; (ii) mandatory injunction directing the defendant to handover the original Sale Deed of the said property; and (iii) permanent injunction restraining the

defendant from parting with possession of the Sale Deed or creating any third party interest in the property.

4. The plaintiff, in the plaint itself has admitted that as per the title documents with respect to the aforesaid property, the property is in the joint names of the plaintiff and the defendant. CS(OS) No.514/2019 Page 1 of 5 5. I have thus enquired from the senior counsel for the plaintiff, whether not the claim in the suit, insofar as of declaration, is barred by the Prohibition of Benami Property Transactions Act, 1988.

6. The senior counsel for the plaintiff draws attention to Section 2(9)(A)(iii) of the said Act which, while defining a benami transaction as a transaction where a property is transferred to or is held by a person and the consideration for such property has been provided or paid by another person, exempts therefrom the property held by any person being an individual, in the name of his spouse and the consideration of such property has been provided or paid out of the known sources of the individual.

7. Having not found any plea in the plaint, of the consideration for the property having been paid out of the known sources of the plaintiff, I have enquired so from the senior counsel for the plaintiff.

8. The senior counsel for the plaintiff draws attention to paragraph 8 of the plaint which is as under: 8. That although the suit property and the Faridabad Property were bought in the joint names of the plaintiff and the Defendant, but the entire money towards the purchase of the said properties has been paid by the Plaintiff. It is stated that the money which has come from the account of the Defendant towards sale consideration of the said properties are actually being paid by the plaintiff as the Defendant has all along being a housewife and never worked and has no source of income. The plaintiff out of love and affection towards his wife has bought the suit property and the property in Faridabad in the joint names of the plaintiff and the Defendant. CS(OS) No.514/2019 Page 2 of 5 and has contended that the plaintiff has pleaded so in the aforesaid paragraph.

9. However neither in the aforesaid paragraph nor elsewhere in the plaint is there any averment, of the property having been bought out of the known sources of the plaintiff. In fact, the plaintiff has not even pleaded his income of the year in which the property was purchased. Though under Section 3(2)(a) of the Act as it earlier existed, the provisions of the Act did not apply where the property was proved to be for the benefit of the wife but the legislature having made the change aforesaid, for a plaintiff to be entitled to make a claim in contravention of the law, it is essential for the plaintiff to make a specific plea, of the consideration of the property having been provided out of the known sources of the plaintiff.

10. The legislature has sought to balance out the law prevalent since earlier time in India, of benami transactions, and the laws prohibiting concealment of income. Thus, before a plea out of the net of benami property can be entertained, it is necessary for the plaintiff to plead and prove that, the consideration for purchase, though in name of wife, had flown from the known sources of income of the plaintiff.

11. The senior counsel for the plaintiff has referred to Manoj Arora Vs. Mamta Arora 2018 SCC OnLine Del 10423 but without a plea in the plaint in compliance with the provisions of the statute under which exemption from the benami law is claimed, no amount of precedent can help the plaintiff. CS(OS) No.514/2019 Page 3 of 5 12. Though the senior counsel for the plaintiff has also contended that the plaintiff can always, during the pendency of the suit prove the said fact but in the absence of a plea, no amount of evidence, even if led, can be entertained.

13. I have also enquired from the senior counsel for the plaintiff, whether the defendant, in the relevant years and now, was/is an income tax assessee.

14. The senior counsel for the plaintiff under instructions states maybe.

15. From the tenor of the plaint it appears that when the plaintiff claims to be doing everything, he would certainly know whether his wife was an income tax assessee or not and as to how the property was dealt with in the income tax returns of the plaintiff and the defendant. It also needs adjudication, whether without saying the property is being held benami by an individual in the income tax returns, a plea of

benami can be entertained.

16. Though the senior counsel for the plaintiff has also contended that the defendant, on the basis of the plaintiff also being a 50% owner of the property, be at least restrained from dealing with the property but till there is a proper plaint before this Court and till the plaintiff takes a categorical stand with respect to benami, it is not deemed appropriate to entertain the suit.

17. The senior counsel for the plaintiff, under instructions, gives up the relief claimed of declaration and confines the suit to that for prohibitory and mandatory injunction only.

18. Subject to the aforesaid, the suit is entertained. CS(OS) No.514/2019 Page 4 of 5 19. Issue summons of the suit and notice of the application for interim relief to the defendant by all modes including dasti and electronic, returnable on 22nd November, 2019.

20. Till further orders, the plaintiff as well as the defendant are restrained from dealing with the property No.D-6/8, Okhla Block-D, Okhla Industrial Area, Phase-II, New Delhi-110020 in any manner whatsoever including from alienating, encumbering or parting with possession of the property and / or title deeds with respect to the same.

21. The provisions of Order XXXIX Rule 3 CPC be complied by 9th October, 2019 as sought. RAJIV SAHAI ENDLAW, J OCTOBER01 2019 gsr CS(OS) No.514/2019 Page 5 of 5

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