

**Shivnarayan Vs. Daulal**

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**Court :** Madhya Pradesh

**Decided On :** Nov-13-1987

**Reported in :** AIR1988MP123

**Judge :** G.C. Gupta, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 66

**Appeal No. :** Second Appeal No. 325 of 1975

**Appellant :** Shivnarayan

**Respondent :** Daulal

**Advocate for Def. :** S.D. Sanghi, Adv.

**Advocate for Pet/Ap. :** S.L. Garg, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**G.C. Gupta, J.**

1. This appeal is by the defendant and is directed against the judgment and decree dt. 13-2-1975, passed by the Fourth Additional District Judge, Ujjain, in Civil Appeal No. 19-B of 1973 confirming the judgment and decree dated 8-3-1973 passed by the Civil Judge Class, I, Ujjain in Civil Suit No. 73-B of 1971, decreeing

the respondent's suit for declaration that he was entitled to half share amounting to Rs. 2667-50 being the compensation for acquisition of a part of the house No. 3/2 in Gudari Bazar, Ujjain.

2. There is no dispute that the suit house was purchased by the appellant Shivnarayan in a court auction sale on 10-2-1936. The said auction has taken place in execution of a decree of the District Judge, Ujjain. Later on a sale certificate was also issued in favour of the appellant Shivnarayan. The case of the respondent-plaintiff was that there was an agreement between him and the appellant to purchase the suit house in auction jointly with half share each. In pursuance to this, he claimed to have paid half of the purchase price. It was also his case that in order to avoid any dispute between them in future the appellant executed an agreement on 27-11-1938 (Ex.P. 2) incorporating the terms of the earlier oral agreement. It appears that by a notice dt. 14-3-1967 (Ex.P. 3) the respondent required the appellant to comply with the aforesaid agreement. The appellant in reply to the notice (Ex.P. 4) denied execution of the agreement and also its legality. In the meantime a part of the suit house was acquired by the Municipal Corporation, Ujjain for implementing their scheme. The respondent claimed half of the said compensation. The authority concerned, however, was of the opinion that it could not decide the title of the parties in compensation matter and therefore, directed that the same be decided by filing a regular suit. In pursuance of the same, the present suit was filed.

3. The learned trial Judge was of the opinion that there was an agreement between the parties to purchase the house jointly. It also held that there was no partnership between the parties. The court also held that Section 66 of the Civil P. C. does not apply to the facts of the present case. On these findings, the suit was decreed. The said findings have been affirmed by the learned lower appellate Court and hence this appeal.

4. The only question that required consideration of this Court is whether the suit as filed was not maintainable because of Section 66 of the Civil P. C.? Before entering into consideration of this question, it may be noticed that the trial Court and the appellate Court have both held that there was no partnership as such

between the parties at the time of purchase of the suit house. This finding is not under any serious challenge and is otherwise binding on this Court being a concurrent finding of fact. It is also the concurrent finding that there was an agreement between the parties to purchase the suit house jointly and agreement dt. 27-11-1938 (Ex.P. 2) incorporates these terms. There is also no challenge to this finding or the agreement. Under the circumstances, it is clear that both the parties had, by an agreement, purchased the suit house jointly. The present suit is for recovery of half of the compensation on the basis that the respondent-plaintiff has half interest in the acquired property. Though the interest of the respondent in the remaining property is not directly in question, the question relating his interest in the acquired property would necessarily involve this question also. The submission of the learned counsel for the appellant is that Section 66 of the Civil P. C. bars such a suit, and therefore, the impugned judgment and decree are illegal. The learned counsel for the respondent, however, relies on the judgment and decree and submits that the present case is not covered by the aforesaid section.

5. Section 66(1) of the Civil P.C. which is relevant for our purpose, is as under : --

'(1) No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of the some one through whom the plaintiff claims and in any suit by a person claiming title under a purchase so certified, the defendant shall not be allowed to plead that the purchase was made on his behalf or on behalf of some one through whom the defendant claims.(2) \* \*\*\*\*'

A plain reading of this provision indicates that it intends to give effect to the title of the purchaser in a court's sale and prohibits challenge on the ground that it was benami. It provides in effect that the certified purchaser shall be conclusively deemed to be the real purchaser and shall not be liable to be ousted on the ground that his purchase was really made on behalf of the other. Since this provision bars the jurisdiction of the civil Court to entertain the suit, it will have to be construed strictly. Submission of the learned counsel for the respondent,

however, appears to be that it applies to benami purchases and is inapplicable in cases of joint purchasers. Reliance has been placed by him on Vishwanath v. Pandharinath, AIR 1926 Bom 525. A perusal of this judgment indicates that the Court felt that an agreement of two persons to jointly purchase the property at the court's sale was treated more or less like a partnership agreement and on that basis it was held that the section was not applicable. If the agreement between the parties in the instant case can be treated to be partnership agreement this judgment will help the respondent-plaintiff. There is, however, a concurrent finding of fact that there is no partnership agreement. Under the circumstances this decision cannot help the respondent. Then this decision was considered by a Division Bench of the Allahabad High Court in Bishan Dayal v. Kesho Prasad, AIR 1937 All 176 and dissented from. In this case two persons by their agreement had purchased the property in the name of one of them in a court auction sale. The Court on consideration of several decisions held that the other person was not entitled to maintain the suit as the same was barred under Section 66 of the Civil P. C. This decision is on identical facts and must, therefore, govern the decision in the present case. The case of Rangasami Gounder v. Easwaramurthi, AIR 1967 Mad 437 is the latest authority on the subject and has considered the matter in detail, The learned Judge has held that an agreement between the two persons to purchase the property in the court auction sale does not amount to partnership agreement as there is no element of business. It has also been held that the person in whose name the sale has taken place must, therefore, be held to be the real owner and suit by others for claiming interest in the property is barred under Section 66 of the Civil P. C. The learned trial Judge has, however, relied on a Division Bench of this Court in Seth Bhudarsao Nanhasao v. Samrathmal. AIR 1940 Nag 1. In this case the plaintiff had claimed his share in a partnership adventure and the defendant was not disputing that the suit house was bought for the partnership. It was in that circumstance held that Section 66 of the Civil Procedure Code has no application. This case, therefore, is not the authority relevant for purposes of this case.

6. Not only the weight of legal authority but also the objective behind the provision compels this Court to hold that the suit was not maintainable under Section 66 of the Civil P. C. The intention of the legislature was to permit real purchaser to bid in

the court auction. This purpose would be frustrated not only by permitting benami transactions but also by permitting joint purchases. A person not entitled to bid in the court auction may like to join the person able to bid and thereby by-pass the legal provisions, if Section 66 Civil P. C. was not to be applied. This would then defeat the very objective behind the provision. It, therefore, appears that Allahabad and Madras views decide the controversy on the realistic basis and give full effect to the intention of the legislature.

7. In view of the discussion aforesaid, this Court is of the opinion that the suit was not maintainable because of Section 66 of the Civil P. C. In this view of the matter, the impugned judgment and decree cannot be allowed to stand. This appeal succeeds and is allowed. The impugned judgment and decree are set aside and the suit filed by the respondent-plaintiff is dismissed. Parties, however, shall bear their own costs.

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