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Court : Delhi

Decided On : Feb-28-1986

Reported in : 30(1986)DLT86

Judge : D.K. Kapur, C.J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 10C

Appeal No. : Regular Second Appeal No. 225 of 1980

Appellant : Chander

Respondent : Sheela Devi and ors.

Advocate for Pet/Ap. : R.M. Tiwari and; K.P. Kapoor, Advs

Judgement :

D.K. Kapur, C.J.

(1) This is a Regular Second Appeal directed against the judgment of the Additional District Judge affirming the decree passed in favor of the plaintiff-respondent, for recovery of possession of house bearing No. 457, Rampura, Delhi.

(2) The plaintiff, Shrimati Sheela Devi had sued for recovery of possession on the ground that she was the absolute owner of the house in question. The first defendant, Shri Chander, was the brother of the plaintiff, who claimed to be in permissive possession for the last seven or eight years. The other defendants in

the Suit were the sub-tenants. The present appellant had taken the stand that the plot was purchased by the father in the name of his daughter who was nine years old at that time. The appellant was a Conductor in the Delhi Transport Corporation and the plot was to serve as a security for the marriage of the daughter, i.e., the plaintiff. The plot was purchased benami in the name of the daughter. It was claimed that the appellant had purchased the property with his own funds at the instance of the father. It was also further claimed that the appellant had expended the entire expenses on the marriage of the sister, so there was no need to sell the plot. And furthermore, the appellant had the continuous possession of the plot since the date of its purchase.

(3) In view of the nature of the dispute, the real point in controversy turns on whether there was any benami transaction in the name of the plaintiff, and if so, what was its effect.

(4) The both Courts below have held that there was no benami transaction. In this appeal, it has been strongly urged that the conclusion of the Courts is against law. It is stated that the plaintiff was only a child of nine years and to offer some security for her marriage, the property was purchased in her name. It is also stated that the funds for making the house were supplied by the appellant.

(5) I may say, that the appellant died some years ago and is now represented by his legal representatives. The question as to what happened at the time of the purchase of the property, i.e., the plot, is obscure, because there does not seem to be evidence before the Court as to who acted as the guardian of the plaintiff at the time of the transaction. If it is true that the plaintiff was nine years old when the property was purchased, the property could only be purchased in her name if the sale-deed was executed by some guardian on her behalf. The sale-deed is not on record and the ownership has not been disputed, but presuming that it must be the father who executed the sale-deed, and therefore, the purchase if any, made in this case was by the father and not by the appellant. It is settled law that a benami transaction can be established by first proving the source of the consideration, and secondly, from proving that the circumstances were such that the purchase was made benami. Obviously, the father of the plaintiff could have bought the plot

benami in the name of the daughter. In other words, Bhagwan Dass, who was the father of Shrimati Sheela Devi, could have bought the property benami in his daughter's name. There is nothing on record to show that the father ever said that the property is benami. It was equally possible for the father to buy the property in the name of the daughter using some funds he had set aside for her, i.e., being her guardian, he might have gifted her some funds with which he bought the property in her name. Equally, he could have bought the property intending it to be a kind of gift to the daughter. There are three possibilities. As Bhagwan Dass never indicated that the property was benami, it must be presumed that it was intended to belong to the plaintiff.

(6) Now turning to the case of the appellant that it was he who had supplied the money and it was he who constructed the building, the judgments of the various Court regarding law of benami have to be seen. It is settled law that benami is a kind of resulting trust. In other words, consideration is supplied by 'X' to purchase the property in the name of 'Y'. 'Y' then becomes a trustee for 'X'. In a parallel way, the child in whose name the property is bought would become a kind of figure-head, not the real owner, but the paper-owner of the property. In order to establish that the appellant had anything to do with it, he would have to prove the funds with which the property was bought. This presents an up-hill task as far as the appellant is concerned. Firstly, the property was never bought by him in the sense that it was not he who acted as a party to the sale-deed. At least, there is no evidence that he had entered into any transaction. The next step that he should prove is that he supplied the funds. We do not even know how much the property was bought for. We do not even know the date of the sale-deed. We are told that the sale-deed was in 1955. At that time the defendant was 22 years old. He is said to have become a Conductor in the Delhi Transport Corporation, but there is no indication as to what was the amount he was receiving from that Body. It is all oral. Furthermore, he never had a Bank account. It is impossible to believe that he could have bought the plot when he was 22 years old and a mere Conductor in the Delhi Transport Corporation. It is also impossible to believe that he could have got the funds necessary for constructing the building. The onus was heavily on the defendant to prove that he had the money not only to buy plot, but also to build the building. In my view, this just cannot be established on the oral statement that I

bought the plot by my money and I built the house with my money. This is not a discharge of the onus of this type. The real ownership is shown in the form of documents. If somebody wants to show that the transaction is benami, he has to establish that he had the funds and he spent them.

(7) Then there is another factor which seems to belie the defendant's case. If the plaintiff was only nine years old, the question of building a house in her name requires some analysis. Why should the appellant have built a house in the name of this girl who was only nine years old She was much below marriageable age and there seems to be no reason at all why the plot should be used as a security for her marriage. No security is required for any marriage. What is required are things like dowry and expenses to meet the cost of marriage. With the cost of security, obviously, the cost of marriage could not have been met. Then there is the further circumstance that the first defendant bought another plot which he sold and that plot was in his name. This plot was purchased from Panna Lal and was sold in 1961. There is yet another property belonging to the father situated in Manakpura concerning which there is a dispute between the plaintiff, her mother and the step-brother, i.e., the present appellant.

(8) In other words, it is difficult to believe that a Conductor in the Delhi Transport Corporation, who had just about joined service, could have bought a plot in the name of minor step-sister, and then also built a house on it. The learned Courts below were quite right in rejecting the plea of the defendant and decreeing the Suit. This appeal dismissed with costs.

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