

(1964) 08 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Regular First Appeal No. 72 of 1961

Mehta Mangal Rai

APPELLANT

Vs

Karam Chand and Others

RESPONDENT

Date of Decision : 26-08-1964

Acts Referred:

Citation : (1964) 08 P&H CK 0009

Hon'ble Judges : Mahajan, J;Dua, J

Bench : Division Bench

Advocate : Ram Rang and Subash Chander, for the Appellant; F.C. Mittal and Jatindar Vir Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Dua and Mahajan, JJ.—This appeal was initially heard by D.K. Mahajan and P.C. Pandit, JJ., and by their order dated 11th April, 1963, they framed an additional issue and sent the case back to the trial Court for submitting a report after giving the parties full opportunity to lead evidence on the new issue. The issue framed by them is in the following terms:

Whether the sale of the house in favour of Balram Dass was be-kami ?

2. The report of the learned Senior Subordinate Judge dated 14th August, 1963 is to the effect that Balram Dass was the real owner of the house in dispute and the sale in his favour was not benami. It is conceded before us that if the report is upheld, then the appeal must fail and if we hold that the sale in favour of Balram Dass was benami, then further questions raised in the controversy would have to be determined. I would, therefore address myself, to start with, to the question of the benami nature of the sale of the house in dispute in favour of Balram Dass.

3. Before dealing with this question, I may in a nutshell state the broad and salient features of the controversy out of which this appeal has arisen. On 28th July, 1959, Balram Dass son of the appellant entered into an agreement of sale

regarding the house in question in favour of Karam Chand for Rs. 6,000. A sum of Rs. 1,000 was paid in cash on that very date, the balance to be paid at the time of the registration of the sale-deed which was agreed to be filed within one month. The house being an evacuee property, its sale was subject to the approval of the Deputy Commissioner, with the result that the vendor had taken the responsibility of obtaining the requisite sanction. In case of breach by the vendor in the performance of his contract, he was to refund the earnest money and also pay in addition Rs. 1,000 by way of damages. In the event of breach by the vendee, this earnest money was to be forfeited. On 31st August, 1959, the sale-deed was executed and duly signed by the parties as well as the attesting witnesses. The time of registration having expired, the document could not be presented for registration on that day. Karam Chand accordingly presented the sale-deed before the Sub-Registrar for registration after its execution and registration and Balram Dass was given a notice by the Sub Registrar to appear before him which he failed to do. Karam Chand also sent a notice to Balram Dass but to no effect. The suit out of which the present appeal arises was consequently instituted on 3rd February by Karam Chand against Balram Dass. Mangat Rai, father of Balram Dass and Devki Nandan, minor son of Balram Dass, applied for being made parties to the suit on the allegation that they were the owners in possession of the house in question; they were accordingly impleaded by the Court. The suit was resisted by the defendant Balram Dass pleading that the agreement of sale had been obtained from him by undue influence, fraud and misrepresentation and the same was, therefore, void and unenforceable. The house, according to his plea, belonged to his father and he himself was incompetent to sell it. It is unnecessary to refer to the other details: suffice it to say that the trial Court held the sale of the house in favour of Balram Dass by the Rehabilitation Department not to be benami, with the result that he was found to possess the right to sell the house to the plaintiff. It is in these circumstances that on appeal this Court called for a report on the fresh issue relating to the benami nature of the sale in favour of Balram Dass.

4. The Court below has held that a sum of Rs. 130/- was paid at the time of the allotment of the house before execution of the sale-deed and a sum of Rs. 1,924/- was adjusted towards the price of the house from the claim standing in the name of Mangat Rai, father of Balram Dass. The sum of Rs. 130/- was also asserted by Mangat Rai to have been paid by him, but this payment of Rs. 130/- by Mangat Rai has been disbelieved by the Court below. The lower Court after considering the entire evidence based its final conclusion against the benami nature of the sale in favour of Balram Dass in the following words:

In the present case, the evidence on record shows that Mangat Rai and his sons constituted a joint Hindu family. Mangat Rai in his statement dated 31st July, 1963 admitted that he owned houses in village Chang that the said houses were in his name, but that was joint Hindu family property. It is also admitted that earlier Balram Dass defendant filed a suit for partition of agricultural land standing in the name of Mangat Rai in the Court of learned Senior Subordinate

Judge, Hissar, and in that suit, a compromise decree was passed by which the property was divided in four shares; one share was given to Mangat Rai and the remaining three to his three sons, In presence of this evidence, it would be reasonable to presume that this claim was also joint Hindu family property and a sum of Rs. 1,924/- which was adjusted towards the price on the house in dispute was the share of Balram Dass in this compensation. It would be proper here to note that according to the rectical in para. 6-G of Exhibit D-1, amount admissible to the claimant was only Rs. 8,440/-. Rs. 1,924/- comes about one-fourth of the entire amount admissible to the claimant. This fact also supports the contention of the plaintiff that a sum of Rs. 1,924/- which was adjusted towards the price of the house in suit was Balram Dass's share in the compensation.

5. Before us, the learned counsel for the appellant has very vehemently contended that a sum of Rs. 130/- was also paid by his client and since Rs. 1924/- have also been adjusted out of his claim, the whole of the purchase price of the house has accordingly been paid by his client. The source of the purchase price being according to the law the predominant and most important factor in considering the benami nature of a transaction, the sale of the house in question in favour of Balram Dass must be held to be benami of which the true and beneficial owner is the appellant, Balram Dass being merely an ostensible owner. He has in support of his contention sought assistance from AIR 1928 397 (Lahore) , wherein it is laid down that when a purchase of real estate is made by a Hindu in the name of one of his sons the presumption is in favour of its being a benami purchase and the burden of proof lies on the party in whose name it was purchased to prove that he was solely entitled to the legal and beneficial interest in the permanent estate and that the source from which the acquisition is made is the main criterion for deciding whether the person in whose name a benami purchase is made is or is not the real owner. Reference has also been made to Parbati Gangaram Aggarwal Vs. Firm Jai Ram Dass Bhagat Ram and Another, in which also the importance of the source from which the purchase money comes has been emphasised. Reliance has next been placed on Kedar Nath Motani and Others Vs. Prahlad Rai and Others, in which at p. 219 it has been observed that benami transactions are common in-India and have always been recognised and that in establishing the benami nature of the transaction, the cardinal point to be proved is the source of money. The counsel has in addition referred us to p. 13 of the Law of Benami Transactions, by K. Venkoba Rao revised by R. 1. Anand, (1961 edition), where it is laid down that the essential characteristic of a benami transaction is that it is not intended to be operative and that the benamidar is merely a name lender in the transaction; in other words, his name is simply an alias or that of the person beneficially interested. It is also stated there that the first thing, therefore, which has to be done is to find out the real intention of the parties for which purpose, one must have regard to the following facts:

- (i) the source from which the purchase money was derived;
- (ii) the possession of the property, i.e.

- (a) The party in possession, and the nature and character of his possession;
- (b) whether possession was taken after the alleged gift or purchase - if not taken, why not;
- (iii) the position of the parties and their relation to one another; (iv) the circumstances, pecuniary or otherwise of the alleged transferor;
- (v) his motive in making the alleged transfer;
- (vi) the custody and production of the title-deed, and
- (vii) the previous and subsequent conduct of the parties.

It is however, emphasised there that each of these circumstances taken by itself is of no peculiar value and affords no conclusive proof of the intention to transfer the ownership from one person to the other. The source of purchase money has, however, always been regarded as the most important criterion, though it in no sense affords conclusive proof of the matter.

6. After hearing the counsel, in my opinion, on the material on the present record, it is difficult to find fault with the conclusions of the learned Senior Subordinate Judge in his remand report. The statement of the appellant as D.W. 6 is most unimpressive and brings out the following salient features. He has admitted that Balram Dass has filed a suit for partition against him in the Court of the Senior Subordinate Judge, Hissar, and the suit related to agricultural land. The property in Pakistan had also been divided in four shares, three having been given to his three sons and one to himself. The house owned by him in village Chang is admitted to be joint Hindu family property, Balram Dass having a share in it. When asked as to whether he had shown the house in question to be his own property, his memory, conveniently failed him. Similar was the position when he was asked if as Government servant he had included this house in the declaration of immoveable properties owned by him. He could not even say if he had filed any such declaration. He also failed to remember if he had obtained permission from the Government for purchasing this house. He has stated that he used to pay water tax in respect of this house and the receipts for the same were with him but those receipts have not been produced. He was unable to remember even the fact whether he had ever rented the house in suit to anybody and indeed he also conceded that he had no such rent deed in his possession. Balram Dass has of course supported his father in the witness box but the version given by him as to the circumstances in which he executed the sale deed hardly inspires confidence and appears to us to be so fantastic that we find it difficult to believe. Collusion between the father and the son is clearly apparent from their statements in Court. Now, however, important the factor of the source of the purchase money, it is undisputable that this circumstance is by no means conclusive. The question has necessarily to be considered in each case on its own peculiar facts and surrounding circumstances, a general pattern of which has been reproduced above. Merely because father has supplied money for

the purchase of a house by the son it does not by itself conclusively establish the fact of the son being a benamidar without considering the attending circumstances. In the case in hand it is admitted by the appellant that he had three wives : Balram Dass is the eldest son from his first wife who is stated to have since died. Balram Das was about 30 years old in 1960 and is married. Though according to the appellant Balram Dass is doing zamindara with his father nevertheless he admittedly sought partition of agricultural land. Even in the compromise decree regarding the house in dispute between the father and the son which is apparently a collusive decree Balram Dass is shown to have relinquished possession in favour of his father which clearly suggests that possession had been with the son till then. In the back ground of all these circumstances we find it exceedingly difficult to hold that the conclusion of the Court below in the remand report is by any means erroneous justifying reversal on appeal; indeed on the existing record we are in full agreement with the conclusion at which the Court below has arrived.

7. The other contention on behalf of the appellant that specific performance should not have been granted by the Court below is sufficiently met by the observation that the appellant having not been shown to be the owner of the property has no locus stand to object to the decision of the lower Court on this point.

8. The appeal accordingly fails and is dismissed with costs.