

(2013) 09 DEL CK 0416

In the Delhi High Court

Case No : CS (OS) 2154 of 2007 and 571 of 2008 and Test. CAS. 9 of 2009

Mr. Ajay Batra

APPELLANT

Vs

Mr. Y.P. Batra and Others
 Ms. Ambalika Batra and
Others Vs Sh. Ajay Batra and Others
 Geeta Batra Vs
State and Others

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 3, 4(1), 4(3)(a)
Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 7 Rule 11, 11

Citation : (2014) 1 AD 156

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Abhinav Vashisht, Mr. Sacchin Puri, Ms. Kaadambari, Ms. Namitha Mathews, Mr. Anuj Malhotra and Ms. Monica Chugh, in CS OS 2154/2007, Mr. Anil Sapra and Mr. Saket Sikri in CS OS 571/2008 and Mr. Arvind Nayar, Mr. Vikas Kumar and Mr. Zarkab Anwar, in Test. Cas. 9/2009, for the Appellant; Arvind Nayar, Vikas Kumar and Mr. Zarkab Anwar for D-2 for in CS (OS) 2154/2007 and for D-3 in CS (OS) 571/2008, Mr. Gaurav Mitra, Rishabh Maheshwari and Ms. Samreen for D-3 and 4. in CS (OS) 2154/2007, for D-4 and 5 in CS (OS) 571/2008 and for D-3 in Test. Cas. 9/2009, Mr. Abhinav Vashisht Mr. Sacchin Puri, Ms. Kaadambari, Ms. Namitha Mathews, Anuj Malhotra and Ms. Monica Chugh for D-1 in CS (OS) 571/2008 and Mr. Sacchin Puri, Ms. Kaadambari, Ms. Namitha Mathews and Ms. Monica Chugh, Advocates for objector No-2 in Test. Cas. 9/2009, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.

I.A. No. 6616/2010 in CS (OS) No. 2154/2007 & I.A. No. 907/2011 in CS (OS) No. 571/2008 (both u/o. 12 R- 6 CPC)

1. CS(OS) No. 2154/2007 has been filed by the plaintiff against his father (defendant No. 1), mother (Mrs. Geeta Batra, defendant No. 2), his sister (Mrs.

Jaya Batra defendant No. 3) and against the daughter of his said sister (Ms. Deeksha Laxmi Wadhera Batra defendant No. 4) claiming,

(a) that the following eight properties i.e.

(i) C-173, Defence Colony, New Delhi-110 024.

(ii) Plot of land bearing No. 1035, Sector 40, Gurgaon.

(iii) C-28, Defence Colony, New Delhi-110 024.

(iv) J-10, 2nd Floor, Saket, New Delhi. (Benami-holder defendant No. 4)

(v) Flat No. 901B, Kukreja Center, Central Business District, Belapur, Navi Mumbai.

(vi) Plot No. 1029, Sector 17B, Gurgaon.

(vii) Building No. 3, Ground Floor, Resort Garden, Mashobra, Shimla, Himachal Pradesh.

(viii) House No. 8, Block F-1, Hauz Khas, New Delhi

are the properties of Mr. Y.P. Batra HUF or properties purchased out of HUF funds;

(b) relief of permanent injunction restraining the defendants from dealing with the said properties;

(c) declaration that the Gift Deed of property No. C-173, Defence Colony, New Delhi executed by the defendant No. 1 in favour of the defendant No. 4 as void and in the alternative for declaration that the said Gift Deed pertains only to the share of the defendant No. 1 in the property No. C-173, Defence Colony, New Delhi;

(d) declaration that the plaintiff is the owner of 25% of property No. C-173, Defence Colony, New Delhi in his individual capacity and the remaining 75% share in the said property is to be partitioned amongst the coparceners; and,

(e) partition of all the aforesaid properties.

CS (OS) No. 571/2008 has been filed by the children of the plaintiff in CS(OS) No. 2154/2007 for the same reliefs as claimed in CS(OS) No. 2154/2007.

2. The plaintiff/s in the two suits seek decree on admission qua property No. C-173, Defence Colony, New Delhi. It is contended that the contesting defendants have in their written statement admitted to the rent of the said property being credited in the account of Mr. Y.P. Batra HUF. It is thus argued that there is no dispute at least of the said property being HUF property and the same be partitioned declaring the share of different parties in accordance with law. It is further contended that the plea of the contesting defendants, of the said property also being the personal property of Sh. Y.P. Batra and the rent being received in the name of Mr. Y.P. Batra HUF only by way of tax planning without

making the HUF the owner of the said property, is of no avail. It is yet further contended that the said defendants themselves had filed documents being returns of income tax of Mr. Y.P. Batra HUF signed by Sh. Y.P. Batra as Karta, also admitting the said property to be of the HUF.

3. It is thus contended that the plaintiff/s are immediately entitled to a preliminary decree for partition of C-173, Defence Colony, New Delhi and of declaration of the Gift Deed by Sh. Y.P. Batra of the said property in favour of Ms. Deeksha Laxmi Wadhera Batra as null and void.

4. Needless to state that Mrs. Jaya Batra & Ms. Deeksha Laxmi Wadhera Batra and Mrs. Geeta Batra have contested the application. Sh. Y.P. Batra has since died.

5. I have perused the written statement of the contesting defendants and am unable to find any unequivocal and unambiguous admission therein. There is however no need to elaborate further on the matter inasmuch as it is also the plea in the written statement that there was ultimately a family settlement in December, 2003 whereunder flat No. LCG-0204A, Laburnum, Sector-28, Sushant Lok, Gurgaon, Haryana and plot of land ad-measuring 500 sq. yds., DLF, Phase-III, Gurgaon, Haryana in the joint names of Mr. Ajay Batra and Mrs. Geeta Batra were vested exclusively in Mr. Ajay Batra and a Power of Attorney was also executed by the defendant Mrs. Geeta Batra in favour of Mr. Ajay Batra to enable him to exclusively deal with the said properties and the Gift Deed of property No. C-173, Defence Colony, New Delhi in the name of Ms. Deeksha Laxmi Wadhera Batra was executed in terms of the Family Settlement only. The said plea of the contesting defendants has to be put to trial and cannot be summarily dismissed at this stage. Thus no case of granting any decree on admission is made out and accordingly I.A. No. 6616/2010 in CS(OS) No. 2154/2007 & I.A. No. 907/2011 in CS(OS) No. 571/2008 both under Order 12 Rule 6 of the CPC are dismissed.

I.A. No. 4137/2011 in CS(OS) No. 571/2008 (of D-2 to 4 u/o. 7 R-11 CPC)

6. The contesting defendants in CS(OS) No. 571/2008 seek rejection of the plaint in that suit on the ground of the plaintiffs therein having not valued the suit which is inter alia for the relief of possession properly and having not paid the appropriate court fees thereon and on the ground that the plaintiffs therein are not entitled to maintain a suit for partition during the lifetime of their father Mr. Ajay Batra who has already instituted CS(OS) No. 2154/2007. Reliance in this regard is placed on S. Jasdeep Singh Vs. S. Kehar Singh and Others, .

7. The senior counsel for the plaintiffs in CS(OS) No. 571/2008 has on the contrary referred to the judgment of the Division Bench of this Court in Radhika Narang and Others Vs. Kuldeep Narang and Another, .

8. As far as the rejection on the ground of CS(OS) No. 571/2008 being not properly valued for the purpose of court fees and jurisdiction and appropriate court fees having not been paid thereon is concerned, the plaintiffs in CS(OS)

No. 571/2008 have valued the suit for the purpose of declaration and partition at Rs. 6.69 crores and paid ad-valorem court fees on their share of the property. The counsel for the applicants/defendants in CS(OS) No. 571/2008 has contended that the valuation of the properties is not correct. The same cannot be determined at the stage of Order 7 Rule 11 of the CPC and has to be the subject matter of evidence and the plaint cannot be rejected on this ground.

9. As far as the other ground of rejection is concerned, if it were to be held that the properties qua which the suit is filed are indeed HUF properties, the plaintiffs in CS(OS) No. 571/2008 would acquire a right therein by birth and their such right in my view is not dependent upon their father Mr. Ajay Batra, plaintiff in the other suit.

10. Insofar as the reliance by the counsel for the applicants/defendant on S. Jasdeep Singh supra is concerned, in my view, the counsel is misconstruing the said judgment. A Full Bench of the Lahore High Court in AIR 1944 220 (Lahore) held that a Hindu son does not claim under his father within the meaning of Section 11 of the CPC inasmuch as a son in a joint Hindu family becomes entitled in his own right on birth. To the same effect is the judgment in (Kintali) Chandramani Prushti Vs. Jambeswara Rayagaru and Others, .

11. Thus I.A. No. 4137/2011 under Order 7 Rule 11 of the CPC is also dismissed.

CS(OS) No. 2154/2007, CS(OS) No. 571/2008 & TEST. CAS. No. 9/2009

12. With the consent of the counsels, the three proceedings are consolidated for the purpose of trial.

13. All the three suits are ripe for framing of issues and proposed issues were also handed over at the time of hearing.

14. However while going through the records, I find that of the eight properties supra for partition of which CS(OS) No. 2154/2007 and CS(OS) No. 571/2008 are filed, it is the plea of the contesting defendants in the suits:

(i) that property No. C-28, Defence Colony, New Delhi was purchased by Mrs. Jaya Batra and the Sale Deed thereof is in her name;

(ii) that property No. J-10, 2nd Floor, Saket, New Delhi was acquired by Mr. Y.P. Batra in the name of Ms. Deeksha Laxmi Wadhera Batra and the Sale Deed thereof is also in the name of Ms. Deeksha Laxmi Wadhera Batra (the plaintiff/s also in the plaint have admitted the property to be in the name of Ms. Deeksha Laxmi Wadhera Batra but pleaded her to be a benami owner of the property);

(iii) that Flat No. 901B, Kukreja Center, Central Business District, Belapur, Navi Mumbai was acquired by Mr. Y.P. Batra for the benefit of his wife Mrs. Geeta Batra and the title thereof is also in the name of Mrs. Geeta Batra;

(iv) that plot No. 1029, Sector 17B, Gurgaon was purchased by Mr. Y.P. Batra for the benefit of Ms. Jaya Batra and the title thereof is in her name;

(v) that building No. 3, Ground Floor, Resort Garden, Mashobra, Shimla, Himachal Pradesh was purchased by Mrs. Geeta Batra and the Sale Deed thereof is in her name; and,

(vi) that house No. 8, Block F-1, Hauz Khas, New Delhi was purchased by Mrs. Geeta Batra and the Sale Deed thereof is in her name.

15. I have wondered as to how the plaintiff/s can maintain the suit for declaration and partition of properties which are in the name of either Mrs. Geeta Batra or Mrs. Jaya Batra or Ms. Deeksha Laxmi Wadhera Batra and the title whereof is in their names, even if it is the admitted position that the sale consideration thereof flowed from Mr. Y.P. Batra.

16. The senior counsel for the plaintiffs in suit No. 571/2008 had during the hearing also invited attention to the amended written statement of the defendants No. 2 to 5 in the said suit containing an admission in paras No. 10 & 11 of the preliminary objections therein of Mr. Y.P. Batra acquiring the six properties aforesaid from his own income in the name of Mrs. Geeta Batra, Mrs. Jaya Batra and Ms. Deeksha Laxmi Wadhera Batra and had contended that the said properties were thus from funds of the HUF.

17. Though the contesting defendants do not appear to have taken objection but the reliefs claimed by the plaintiff/s with respect to the aforesaid six properties tantamount to the plaintiff/s enforcing rights therein against Mrs. Geeta Batra, Mrs. Jaya Batra and Ms. Deeksha Laxmi Wadhera Batra in whose name the properties are held, claiming them to be benami owners for the reason of the consideration paid for the property having flown from the HUF funds.

18. The Benami Transactions (Prohibition) Act 1988 vide Section 4(1) thereof prohibits such a suit. Though section 4(3)(a) of the Act makes the said prohibition inapplicable to the case where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners of the family, however neither could Mrs. Geeta Batra, Mrs. Jaya Batra & Ms. Deeksha Laxmi Wadhera Batra be said to be coparceners of Mr. Y.P. Batra HUF nor is there any plea in the plaint to the said effect nor is it pleaded that the property was held for the benefit of the coparceners of the family. Thus the claim of the plaintiff/s qua the aforesaid six properties cannot be said to be exempt from the prohibition contained in the Benami Act.

19. Not only so, Section 3 of the Benami Act makes the prohibition contained therein against entering into a benami transaction inapplicable to purchase of property by a person in the name of his wife or unmarried daughter and also provides that the property shall be presumed to have been purchased for the benefit of the wife or the unmarried daughter. The plaintiff/s having not pleaded any case for rebutting the said presumption.

20. I am therefore of the prima facie view that the plaint in both the suits,

insofar as claiming reliefs with respect to the aforesaid six properties, is liable to be rejected and the trial should not be burdened with the evidence with respect to the said six properties.

21. However, since the contesting defendants have not taken the aforesaid objection in their application under Order 7 Rule 11 of the CPC and the counsels for the plaintiff/s having not been heard on the said aspect, it is deemed appropriate to give them an opportunity to address on the said aspect before issues are framed. List before the Roster Bench for the said purpose on 23rd October, 2013.