
(2008) 05 P&H CK 0072
In the Punjab And Haryana At Chandigarh

Pritu	Vs	APPELLANT
Gurdas		RESPONDENT

Date of Decision : 05-05-2008

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 4
Constitution of India, 1950 — Article 14
Transfer of Property Act, 1882 — Section 53A

Citation : (2008) 4 CivCC 291 : (2008) 152 PLR 20 : (2008) 4 RCR(Civil) 942

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Permod Kohli, J.—When this appeal came to be admitted on 16.1.1984, no substantial question of law was framed. During the course of hearing, the appellant filed a memo containing alleged substantial questions of law which are reproduced hereunder:

1. Whether the learned lower appellate court erred in law in reversing the well considered and well reasoned judgment of the learned trial court by misreading and mis-interpreting oral and documentary evidence on record?
2. Whether the findings of learned lower appellate court on issue No. 1 are preverse because documents Ex.P6 has been misread showing that the plaintiff is shown in occupation of land in dispute as vendee whereas learned lower appellate court has observed that plaintiff is shown as tenant?
3. Whether the finding of the learned trial court on issue No. 1 that the plaintiff is owner in possession of land in suit and defendant was only Benamidar are correct and based on documentary evidence and the learned lower appellate court wrongly reversed these findings on erroneous grounds by mis-interpreting the oral and documentary evidence?
4. Whether the finding of the learned trial court on issue No. 1 are correct and

the learned lower appellate court reversed these findings on erroneous grounds?

5. Whether protection u/s 53-A of Transfer of Property Act is available to the appellant/plaintiff and the findings of the learned lower appellate court on this point are contrary to law and liable to be set aside.

2. During the course of arguments, learned Counsel for the appellant primarily concentrated on the document dated 18.10.1970 (Ex.P1). Briefly stated the facts of the case are that the present appellant filed suit for declaration claiming to be owner in possession of the land measuring 17 kanals and 19 marlas comprising in Khewat/Khatoni No. 16/25 Killa No. 10//13(6-19), 18(8-0), 23/1(3-0) situated in village Yusafpur Allewal, Tehsil Nakodar, District Jullundur and for permanent injunction restraining the defendant from interfering in plaintiff's possession. The claim for ownership is based upon the fact that the plaintiff allegedly paid 1/2 of the consideration amount about 12 years back to the defendant for purchase of 40 kanals of land which was allotted to the defendant in auction. It is alleged that 40 kanals of land was allotted to the defendant by Government, but he had no money to pay the installments and he approached the plaintiff for money to the installments with this understanding that plaintiff will be entitled to 1/2 of the share of the land. The sale certificate was issued in the name of the defendant for the entire land, though the plaintiff paid half of the sale consideration i.e. Rs. 2,500/-. It is also stated that the name of the plaintiff is entered in the Jamabandi for the years 1976-77 and is also in possession of the land which was given to him by the defendant. The defendant also executed a pronote and receipt for Rs. 2,000/- on 12.6.1975 and another amount of Rs. 500/- was given by the plaintiff to one Lakhbir Singh on behalf of defendant-Gurdas which was borrowed by him to pay the installment. It is also alleged that the document dated 18.10.1970 was executed by the defendant acknowledging the right of the plaintiff over half share in the allotted land and also possession was delivered to him. During the course of the trial, plaintiff proved pronote and receipt PW5/A and PW5/B and also produced witnesses, PW4 Malooka and PW6 Lakhbir Singh who were the witnesses to the pronote and the receipt. Another witness, PW7 Amarjit Singh, Constable brought Roznamcha of Police Post Lohian dated 21.3.1980 and proved the D.D. Report No. 6 dated 21.3.1980 Ex.PW7/A to establish that plaintiff was in possession of 2-1/2 killas of land for the last 10 to 11 years from the date of the report. On the other hand, defendant produced the sale certificate dated 23.6.1979 issued by the Tehsildar (Sales), Ex.D1, Report Roznamcha (Ex.D2), Ex.D3, copy of khasra Girdawari, Ex.D4, copy of order of Naib Tehsildar vide which entries in the khasra Girdawari were corrected on 14.7.1980. It has come on record that against the correction of khasra Girdawaris in favour of defendant vide the aforesaid order dated 14.7.80, an appeal was preferred by the plaintiff before the Collector which was pending at the time of decision of the suit on 16.4.1981. On the basis of the aforesaid material on record, the trial Court decreed the suit of the plaintiff and declared him to be entitled to half of the share in the allotted land and the defendant was declared as Benamidar. Consequently, defendant was restrained from interfering

in the peaceful possession of the plaintiff over the land and from alienating the same in any manner.

3. Defendant's appeal against the aforesaid judgment and decree of the trial court succeeded before the Additional District Judge, Jalandhar who reversed the findings of the trial Court, both on the question of ownership as also possession and dismissed the suit vide judgment and decree dated 11.8.1983. It is against this judgment and decree that the plaintiff has come in appeal before this Court.

4. When this appeal came up for consideration on 17.10.2007, it was argued that in view of the Benami Transactions (Prohibition) Act, 1988, no claim of any person can be entertained on the ground that he is real owner and some one else is holding the property as Benami and reliance was placed on the case of Om Prakash and another Vs. Jai Prakash, . It was argued that the aforesaid Act applies to the pending appeals. However, later on when this matter was again taken up on 12.12.2007, another judgment passed in the case of R. Rajagopal Reddy and Others (deceased by legal representatives) Vs. Padmini Chandrasekharan (deceased by legal representatives), , was brought to the notice of this Court wherein Hon''ble Supreme Court held that Section 4 of the aforesaid Act has no retrospective operation and does not apply to pending suits already filed prior to coming into force of Section 4. In the case of Om Parkash (supra) following observations have been made:

8. ...In our view, Section 4 of the Benami Act is a total prohibition against any suit based on benami transaction and the plaintiff-respondent is not entitled to get any decree in such suit or in appeal.

5. Whether in the case of R. Rajagopal Reddy (supra) following observations have been made:

13. According to us this difficulty is inbuilt in Section 4(2) and does not provide the rationale to hold that this section applies retrospectively. The legislature itself thought it fit to do so and there is no challenge to the vires on the ground of violation of Article 14 of the Constitution, It is not open to us to rewrite the section also....

6. From the dictum of the above judgment, particularly, the later judgment which is by three Hon''ble Judges of the Supreme Court, it is clear that operation of Banami Transactions (Prohibition) Act, 1988 is not retrospective and does not apply to the pending suit. The present suit was instituted on 22.5.1980 whereas the aforesaid Act became operational in the year 1988. This Act has no application to the pleading in suit/appeal. The right of the parties are thus required to be determined independent of the aforesaid Act.

This takes me to considers the validity of the impugned judgment dated 11.8.1983 passed by the lower appellate court which has reversed the findings of the trail Court. The entire claim of the plaintiff/appellant is that he paid half of the sale consideration and thus has become owner of the land purchased by the

defendant. Title of the defendant over the suit property by virtue of the sale certificate is not in dispute. The plaintiff's claim is that he paid Rs. 2,000/- to Gurdas, defendant by virtue of pronote and receipt dated 18.10.1970 and Rs. 500/- to Lakhbir Singh from whom Guaras, defendant had obtained loan to pay the installments. Plaintiff himself has proved pronote and receipt. If the intention of the parties was to purchase the land in equal share and the plaintiff was required to contribute half of the amount as a part of the sale consideration payable by the defendant to the Government, there was no purpose of procuring a pronote and receipt of sum of Rs. 2,000/- which was allegedly paid by the plaintiff towards the sale consideration. The pronote and receipt clearly indicates that the defendant borrowed the money from the plaintiff. The plaintiff has heavily relied upon document dated 12.10.1970 which is said to be an agreement executed by defendant Gurdas agreeing to give half of the property to the plaintiff/appellant and also allegedly delivered possession. Defendant-Gurdas has denied his signatures on the said document. The document is termed as a family settlement. It is not in dispute that the parties have no relationship and in any case they have no common property. The question of family settlement does not arise. Plaintiff has not proved by any cogent evidence that the document bears signatures of the defendant. The lower appellate court has discussed the text of the document which is basically an offer by the defendant. Keeping in view the text of the document, the lower appellate has held that it does not confer any right and title upon the plaintiff over half share of the property. The lower appellate court has also referred to the Jamabandi wherein the entries in favour of plaintiff were that he was in cultivating possession on account of sale. At the same time, he was recorded as a tenant in the suit property. There is no evidence that plaintiff was ever a tenant in the suit property. According to plaintiff/appellant, he was put in possession on 18.10.1970 whereas the cultivating possession of the plaintiff is shown only from 1970 onwards. Even the entries in khasra Girdawari were later corrected by the Naib Tehsildar. No material has been brought on record as to show that the appeal preferred by the plaintiff against the correction of entries in Khasra Girdawari in favour of defendant has been accepted and the order of correction of entries set aside by the appellate court. It is, however, admitted position that an appeal was pending at the time of decision of the suit. The lower appellate court has properly appreciated the evidence. None of the questions placed on record constitute substantial question of law. I do not find that there is any misreading of the evidence or there is a misconstruction of the document dated 18.10.1970.

7. Dismissed.