
(2019) 05 DEL CK 0450
In the Delhi High Court
Case No : Civil Suits (OS) No. 343 Of 2017

Sangita Mundhra	Vs	APPELLANT
Madhurica Mundhra		RESPONDENT

Date of Decision : 07-05-2019

Acts Referred:

Benami Transaction Prohibition Act, 2016 — Section 2(9), 4

Citation : (2019) 05 DEL CK 0450

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Shreyans Singhvi, Ekta Mehta, Vidit Gupta

Judgement

Jayant Nath, J

1. This matter is fixed for framing of issues. The suit is filed by the plaintiff seeking a decree of partition in respect of the suit property being Ground floor and roof right of the second floor of property N-43, Greater Kailash.-I, New Delhi. Plaintiff and defendant are sister-in-laws i.e. their respective husbands being real brothers. The case of the plaintiff is that via sale deed dated 21.1.2014 this suit property was bought jointly each party having 50% undivided share. It is stated that the plaintiff issued a notice to the defendant for partition of the suit premises but there was no response. Hence, the present suit.

2. Defendant has filed her written statement. In the written statement it is stated that the original owners agreed to sell the suit property at a lower rate as it was occupied by Shri Madan Lal Mundhra the father in law of the parties as a tenant and the tenancy was protected under the Delhi Rent Control Act, 1958. It is also stated that in a suit filed by the plaintiffs in the

Calcutta High Court a plea was raised that the suit property belongs to Shri Madan Lal Mundhra HUF. It is further stated that the plaintiff has not paid the sale consideration for purchasing the suit property jointly with the defendant. The entire consideration was paid by Shri Suresh Kumar Mundhra HUF and the Karta of this HUF is the husband of the defendant. It is stated that the said amount is duly entered in the ITRs of the plaintiff and Shri Suresh Kumar Mundhra, HUF.

3. On 30.10.2018 this court passed the following order:-

â?? It has been argued by the learned counsel appearing for the plaintiff that the suit property belongs jointly to the plaintiff and the defendant as the sale deed is jointly registered in their favour.

This plea has been denied by the defendant who states that the entire consideration for purchase of the suit property was paid by Sh.Suresh Kumar Mundhra HUF i.e. being the husband of the defendant.

The learned counsel for the defendant has also relied upon the suit for partition filed by the plaintiff before the Calcutta High Court where the plaintiff has taken a plea that the said suit property belongs to Sh.Madan Lal Mundhra HUF.

A query was put to the learned counsel for the plaintiff as to whether the plaintiff has shown the said property in her name in the Income Tax returns.

The learned counsel for the plaintiff seeks some time to take instructions in this regard.

List on 22.01.2019.â??

4. I have perused the balance sheets of the plaintiff that have been filed by the defendant and also the plaint that was filed before the Calcutta High Court.

5. I may first deal with the plea of the defendant that the suit property was bought by consideration paid by Shri Suresh Kumar Mundhra HUF. A

perusal of the balance sheets of the plaintiff filed by the defendant would show that the balance sheets of the plaintiff for the year ending on 31.3.2011

merely shows a loan from Shri Suresh Kumar Mundhra HUF for a sum of Rs.2,55,000/-.

6. There is nothing in the balance sheets to show that the consideration for purchase of the suit property was paid by Shri Suresh Kumar Mundhra

HUF. At best some loan transaction has taken place between the parties possibly for purchase of the suit property. Based on this loan transaction the

said Shri Madan Lal Mundhra cannot claim any title to the suit property. At best a claim may perhaps arise for return of the loan.

7. Even otherwise, section 2(9) of the Benami Transaction Prohibition Act, 2016 reads as follows:-

â??(9) ""benami transaction"" means,-

(A) a transaction or an arrangement-

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person;

and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the

property is held by-

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the

family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee,

executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and

any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has

been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or

descendant and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the

known sources of the individual; or

.....â??

8. Hence, it is only a property which is held by the Karta or a member of the Hindu Undivided Family as the case may be and where consideration for

the said property has been paid from the known source of the Hindu Undivided Family which falls outside the definition of a Benami Transaction.

Admittedly, as has been agreed to by learned counsel for the parties the plaintiff is not a member of Suresh Kumar Mundhra HUF. The property is

held by her in her individual name and not for the benefit of Suresh Kumar Mundhra HUF. Hence even if in case consideration was paid by Shri

Suresh Kumar Mundhra HUF as claimed, it would not be exempted from Benami Transaction Prohibition Act. Such a defence would be barred under

section 4 of the said Benami Transaction Prohibition Act.

9. I may also deal with the issue of pleadings raised by the defendant before the Calcutta High Court. I may note that the suit was ultimately

withdrawn by the plaintiff. It is a matter of fact that in the plaint it is stated by the plaintiff that by an MOU was entered into in October 2003 and the

assets of the said Surajmal Mundhra were partitioned by and between the members thereof. It is further stated that the suit property was exclusively

allotted to Madanlal Mundhra HUF. As against this averment made in the plaint the defendant herein in the written statement in that suit took a

completely different stand stating that the said suit property belongs equally to the parties to the present suit. A clear admission is made on the part of

the defendant that the parties are joint undivided owner in equal shares of the suit property. The relevant portion of the affidavit of Mr. Nikhil

Mundhra son of the defendant reads as follows:-

â??f) The residential property N-43, Greater Kailash, Part- I, New Delhi-110048 is not a property of Madan Lal Mundhra (HUF). In fact said

property is consisting of 3 floors, first floor was purchased by defendant no.3, second floor by plaintiff no.2 and ground floor was purchased by

plaintiff no.2 & defendant no.3 jointly, vide 3 separate sale deeds dated 21.01.2004 for the respective portions.....â??

10. The defendant herein has not opposed this affidavit filed by her son in the Calcutta proceedings. Even otherwise it is nobodyâ??s case that this

property belongs to Madan Lal Mundhra HUF. Hence reliance on the Calcutta Court Proceedings does not help the case of the defendant.

11. A perusal of the sale deed dated 21.1.2004 shows that the same is executed in favour of the parties, namely, Smt.Madhulika Mundhra and

Smt.Sangita Mundhra. In the light of this registered sale deed being in favour of

the parties the submission made by the defendant is of no consequence and effect.

12. Reference in this context may be had to the judgment of the Supreme Court in the case of Prem Singh & Ors. v. Birbal & Ors., AIR 2006 SC

3608, where the court held as follows:

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law.

The onus of proof, thus would be on a person who leads evidence to rebut the presumption.....”

13. In view of the above, no issue arise in the present suit. A preliminary decree of partition is liable to be passed holding the parties share as 50%

each. A preliminary decree of partition is passed holding the share of the plaintiff and the defendant each as 50% undivided share.

14. It is also admitted by the parties that Sh.Madanlal Mundhra is in physical occupation of the suit property since 1970 being a protected tenant under the Delhi Rent Control Act. Learned counsel for the plaintiff states that she does not seek his eviction from the suit property.

15. Learned counsel for the parties state that they will take instructions as to whether final partition can be effected by consent.

16. List on 29.8.2019.

OA 137/2018

This appeal is filed against the order dated 15.10.2018 where the application filed by the defendant seeking discovery and production of

documents/records of the plaintiff was dismissed. In view of the above order the present appeal is infructuous and is disposed of.

IA No.13173/2018

Learned counsel for the parties state that they will not sell/alienate or transfer this property till pendency of the suit. Taking the statement on record

present application is disposed of.

IA No.13174/2018

Exemption allowed, subject to all just exceptions.

IA No.8498/2017

In view of the above statement made by the parties above, present application is infructuous and stands disposed of.