

(2013) 07 DEL CK 0263

In the Delhi High Court

Case No : Regular First Appeal No. 42 of 2008

Sh. Harminder Khullar

APPELLANT

Vs

Mrs. Swaran Kanta Juneja and Others

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 2(a), 4, 4(3)
Civil Procedure Code, 1908 (CPC) — Section 96
Transfer of Property Act, 1882 — Section 54

Citation : (2013) 8 AD 517 : (2013) 4 BC 382 : (2013) 202 DLT 222

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sandeep Sharma, for the Appellant; Jaykant Prasad, for R-1 to 4, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—This first appeal u/s 96 of the CPC impugns the judgment and decree dated 14th December, 2007 of the Court of Addl. District Judge, Delhi dismissing Suit No. 119/2006 filed by the appellant/plaintiff. Notice of the appeal was issued and vide ex parte order dated 5th February, 2008 status quo was directed to be maintained. Vide subsequent order dated 7th May, 2008 the appeal was admitted and Trial Court record requisitioned and the interim order made absolute during the pendency of the appeal. On application of the respondents that they are senior citizens, hearing was expedited. The counsels have been heard. The suit from which this appeal arises was filed by the appellant/plaintiff pleading:-

(i). that Smt. Shanti Devi Khullar being the paternal grandmother of the appellant/plaintiff and mother of the respondents no. 1 & 2 Ms. Swaran Kanta Juneja and Ms. Vijay Lakshmi was the owner of immovable property No. D-11/1, Model Town, Delhi admeasuring 250 sq. yds.;

(ii). that the said Smt. Shanti Devi Khullar vide Will dated 20th February, 1991 bequeathed the said Model Town property in favour of the appellant/plaintiff

subject to the rider that respondent no. 2 Ms. Vijay Lakshmi who was/is unmarried, if chooses to marry, her marriage expenses shall be borne by the appellant/plaintiff and if she remains unmarried, she would be maintained by the appellant/plaintiff;

(iii). that the respondent no. 2 remained unmarried;

(iv). that Smt. Shanti Devi Khullar died in the year 1996 and under her Will aforesaid the appellant/plaintiff became the owner of the said Model Town property;

(v). that the respondent no. 1 though married, was deserted by her husband within three months of her marriage and had been residing with the mother Smt. Shanti Devi Khullar in the Model Town Property along with her son respondent no. 3 Shri Rajesh Juneja and under the Will aforesaid, the appellant/plaintiff was to also provide for lodging and boarding of respondent No. 1;

(vi). that upon the marriage of the respondent no. 3 Shri Rajesh Juneja with the respondent no. 4 Ms. Simmi Juneja, disputes and differences arose and which forced the appellant/plaintiff to sell the Model Town property on 13th July, 1998 for a sale consideration of Rs. 10,50,000/-;

(vii). that from the consideration received from the sale of the Model Town property, another property No. A-39, Derawal Nagar, Delhi was purchased, with the Sale Deed of the ground floor thereof being in favour of respondent no. 2 Ms. Vijay Lakshmi, the Sale Deed of the first floor and roof rights of the said property being in favour of the appellant/plaintiff and the Sale Deed of the second floor of the said property being in the names of respondents no. 1,3&4;

(viii). that since the appellant/plaintiff was the sole and absolute owner of the Model Town property with the respondents no. 1&2 only having rights of lodging and boarding therein during their lifetime, the Derawal Nagar property also belonged to the appellant/plaintiff only with the respondents no. 1&2 only having right of residence therein during their lifetime;

(ix). that the parties however could not live harmoniously in the Derawal Nagar property also and which was sold in the year 2002 and from the said sale proceeds thereof, with an intent to make separate dwelling units for the sake of peace, second floor of property No. 1226 Dr. Mukherjee Nagar, Delhi was purchased in the name of the respondents no. 1,3&4, the ground floor of property No. C-176, Prashant Vihar, Delhi was purchased in the name of the respondent no. 2 and the second floor of the property No. C-176, Prashant Vihar, Delhi was purchased in the name of the appellant/plaintiff;

(x). that since the Dr. Mukherjee Nagar property and the ground floor of the Prashant Vihar property were bought out of funds received originally from the sale of Model Town property of which the appellant/plaintiff was the sole owner, the appellant/plaintiff continued to be the owner of the said two properties also with the respondents only having a right of residence therein; and,

(xi). that the respondents no. 3&4 threw out the respondent no. 1 from the Dr. Mukherjee Nagar property and the respondent no. 1 thereafter has also been residing along with the respondent no. 2 on the ground floor of the Prashant Vihar property.

The appellant/plaintiff thus sought the relief:-

(a). of declaration that he is the owner of the Dr. Mukherjee Nagar property and the ground floor of the Prashant Vihar property and that the respondents have no right title or interest therein; and,

(b). for permanent injunction restraining the respondents from alienating, encumbering or parting with possession of the said two properties.

2. The respondents/defendants filed a joint written statement contesting the suit inter alia on the grounds:-

A. that the appellant/plaintiff had no right over the said two properties;

B. denying the Will dated 20th February, 1991 supra of Smt. Shanti Devi Khullar but at the same time pleading that upon Smt. Shanti Devi Khullar in her lifetime coming to know that the appellant/plaintiff had fabricated her Will dated 20th February, 1991, she had sought to cancel the same and the appellant/plaintiff had got her signatures again on blank papers assuring her that the same were for cancellation of the Will dated 20th February, 1991;

C. that the appellant/plaintiff thus after the demise of Smt. Shanti Devi Khullar did not become the owner of the Model Town house;

D. that in fact the respondents no. 1&2 were the owners of the Model Town property;

E. that the disharmony in the house was created by the appellant/plaintiff and his wife;

F. that the parties wanted to get rid of the family dispute and the legal remedy decided was an oral family settlement to sell the Model Town Property and thereafter purchase another house and make such arrangement that all should get separate accommodation;

G. that the purchase consideration of the portions of the Derawal Nagar property Sale Deeds of which were in favour of the respondents, was paid by the respondents from their personal savings;

H. that the respondents purchased the ground floor of Prashant Vihar property and the Dr. Mukherjee Nagar property out of sale proceeds of their portions of the Derawal Nagar property;

I. that the appellant/plaintiff being a practicing Advocate has filed the suit to harass the respondents.

3. The appellant/plaintiff filed a replication to the written statement aforesaid but need is not felt to advert thereto.

4. On the pleadings of the parties, the following issues were framed in the suit:-

1. Whether the suit has not been properly valued for the purpose of Court fee? OPD

2. Whether the suit is without any cause of action? OPD

3. Whether the plaintiff is entitled to decree of declaration as prayed for? OPP

4. Whether the plaintiff is entitled to decree of permanent injunction as prayed for? OPP

5. Relief.

5. The appellant/plaintiff examined himself and closed his evidence. The respondents/defendants No. 1,2&3 examined themselves as DW-1 to DW-3 and closed their evidence. No evidence was led by the appellant/plaintiff in rebuttal.

6. The learned Addl. District Judge by the impugned judgment dismissed the suit of the appellant/plaintiff finding/observing/holding:-

a. that though the case of the appellant/plaintiff was based on the Will dated 20th February, 1991 of Smt. Shanti Devi Khullar and on certified copy thereof the appellant/plaintiff in his examination-in-chief had put Ex. PW1/A but the appellant/plaintiff had neither placed the original Will before the Court nor examined any attesting witness thereof; Will could have been proved only by examining the attesting witness thereof and same having not been done, the Will remained unproved;

b. that the existence of the Will dated 20th February, 1991 of Smt. Shanti Devi Khullar had not been accepted by the respondents/defendants and it was thus necessary for the appellant/plaintiff to prove the Will by producing the attesting witness thereof;

c. that the appellant/plaintiff had thus failed to prove that he acquired absolute ownership rights in the Model Town property;

d. that even if in view of certain admissions of the respondents no. 1&2 in their cross examination, the existence of the Will dated 20th February, 1991 of Smt. Shanti Devi Khullar is to be believed, the appellant/plaintiff had not led any evidence to show that he carried out the last Will of the deceased in letter and spirit;

e. that the appellant/plaintiff had failed to prove that he provided maintenance to the respondent no. 2 or that he provided boarding and lodging to the respondents no. 1&2;

f. that the Model Town property was sold on 5th June, 1998 by three separate

Sale Deeds though executed by the appellant/plaintiff as seller but to which the respondents no. 1&2 were the confirming parties; that the said Sale Deeds contained a recital that after the death of Smt. Shanti Devi Khullar the appellant/plaintiff as well as the respondents no. 1&2 had inherited the said property;

g. that the Sale Deeds of purchase of the Derawal Nagar property also showed that after the Model Town property was sold, the appellant/plaintiff and the respondents purchased separate portions of Derawal Nagar property by three separate Sale Deeds;

h. that the aforesaid supported the plea of the respondents in their written statement of oral settlement pursuant to which Model Town property was sold and thereafter separate portions were purchased by the respective parties;

i. that it appeared that instead of providing maintenance in terms of the Will, the appellant/plaintiff had given shares to the respondents no. 1&2 towards their claim of lodging and boarding and maintenance;

j. that after the properties were purchased by the respective parties through their respective Sale Deeds in their respective names, they acquired independent right, title and interest in their respective portions of the Derawal Nagar property;

k. that the parties had similarly sold their respective portions of the Derawal Nagar property through separate sale deeds and had thereafter purchased Dr. Mukherjee Nagar property and the floors aforesaid of the Prashant Vihar property and they thus had independent right, title and interest in the said properties in terms of Section 54 of the Transfer of Property Act, 1882; and,

l. that in the face of the Sale Deeds the appellant/plaintiff cannot claim ownership rights in the properties Sale Deeds whereof are in the name of the respondents.

7. In the aforesaid state of affairs, it has been enquired from the counsel for the appellant/plaintiff as to what is the right in law claimed by the appellant/plaintiff in the ground floor of the Prashant Vihar property in the name of the respondent no. 2 and in the Dr. Mukherjee Nagar property in the name of the respondents no. 1, 3&4.

8. The counsel for the appellant/plaintiff has contended that since under the Will dated 20th February, 1991 of Smt. Shanti Devi Khullar, the Model Town property vested solely in the name of the appellant/plaintiff and further since the sale consideration for the purchase of the ground floor of the Prashant Vihar property and the Dr. Mukherjee Nagar property has flown from the sale proceeds of the Model Town property and which sale proceeds belonged to the appellant/plaintiff alone, the appellant/plaintiff is the owner of the ground floor of the Prashant Vihar property and the Derawal Nagar property and is entitled to the reliefs claimed of declaration of his title and injunction restraining the respondents from dealing with the said properties.

9. It has next been enquired from the counsel for the appellant/plaintiff whether not the aforesaid claim of the appellant/plaintiff is prohibited/barred by Section 4 of the Benami Transactions (Prohibition), Act, 1988.

10. I may mention that Section 2(a) of the Benami Act defines a "benami transaction" as a transaction in which property is transferred to one person for a consideration paid or provided by another person. The claim of the appellant/plaintiff of being the owner of the ground floor of the Prashant Vihar property and the Dr. Mukherjee Nagar property for the reason of having paid the purchase consideration thereof is clearly in the teeth of the Benami Act. Section 4 of the said Act provides that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held shall lie by or on behalf of a person claiming to be the real owner of such property.

11. The counsel for the appellant/plaintiff contends that no such defence was taken by the respondents and the learned Addl. District Judge also has not dismissed the suit of the appellant/plaintiff on the said ground.

12. Though undoubtedly so, but the legislature having enacted the Benami Act, the Courts, even if the parties fail to take a plea with respect thereto, cannot be oblivious thereto and if find the claim to be in the teeth of the prohibition contained in the Benami Act, are obliged to reject/dismiss the same.

13. Faced therewith the counsel for the appellant/plaintiff has contended that the appellant/plaintiff is covered by the exceptions to the prohibition contained in Section 4(3) of the said Act. Section 4(3) makes the prohibition inapplicable.

(a) 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 in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.

14. However it is neither the case of the appellant/plaintiff that the respondents in whose name the ground floor of Prashant Vihar and the Dr. Mukherjee Nagar properties are held are coparceners in any Hindu Undivided Family or are holding the said properties for the benefit of the coparceners in the family nor is it the case that the respondents are the trustees or otherwise standing in a fiduciary capacity towards the appellant/plaintiff.

15. The counsel for the appellant/plaintiff then draws attention to Sri Marcel Martins Vs. M. Printer and Others,

16. Though undoubtedly the Supreme Court in the said case held that in determining whether a relationship is based on trust or confidence, relevant to

determine whether they stand in a fiduciary capacity, the Court shall have to take into consideration the factual context in which the question arises but in the present case as aforesaid neither in the pleadings nor in the evidence is there any case of trust or confidence or fiduciary relationship pleaded or established. Moreover Marcel Martin turned on its own facts, in that case the common predecessor of the parties had valuable tenancy rights in a property and which on her demise and for the reason of the landlord, municipality having a procedure to mutate the same in the name of one of the family members only, were mutated in the name of one of the heirs only though all charges thereof were paid by all the heirs together. It was in these circumstances that a relationship of trust and fiduciary capacity was found. The same is not the position here.

17. Here as per the own case of the appellant/plaintiff, the respondents no. 1&2 in the Will dated 20th February, 1991 of Smt. Shanti Devi Khullar under which the appellant/plaintiff claims to have become the sole owner of the Model Town property, had a right of residence for their lifetime therein. The relevant clauses of the said Will are as under:

As well as by these presents and deed in sound state of mind and body before the two witness witnessing the execution of those presents/deed, I bequeath and give my total immovable property described in three portions in para 3 above to my only grand son Shri Harminder Khullar aged 25 years son for Shri R.C. Khullar enjoined with Miss Vijay Laxmi upto her life time to provide maintenance to her by Shri Harminder Khullar but in case she chooses to marry herself then the whole expenses for marriage shall be incurred by my grandson Harminder Khullar and thereafter the immovable property aforesaid shall be exclusively held, owned and enjoyed by him alone.

That my daughter Smt. Swaran Kanta Juneja, due to her ill health had been living with me and I had been providing for her lodging and boarding. After my death my grandson shall provide to her viz. Swaran Kanta Juneja during her life time, the lodging and boarding as before.

The appellant/plaintiff thus could not have sold the Model Town property during the lifetime of the respondents no. 1&2, without their consent. The right of residence of the respondents no. 1&2 during their lifetime in the said Model Town property was in the nature of an encumbrance to the right of ownership of the appellant/plaintiff of the said property.

18. The Sale Deeds of the Model Town Property executed by the appellant/plaintiff as Vendor and Respondents/Defendants 1 and 2 as Confirming Parties, contain the following recitals.

AND WHEREAS Shrimati Shanti Devi executed a Will on 20.2.1991 which is registered in the Office of Sub-Registrar, Delhi as Document No. 5270 I Additional Book No. III, Volume No. 953 on pages 37 to 41 dated 20.2.1991, bequeathing the said Property in favour of her grandson Shri Harminder Khullar

i.e., the Vendor to this sale deed and the Confirming Parties i.e., Shrimati Swaran Kanta acquired the rights for lodging and boarding and Miss Vijay Laxmi being unmarried the life interest upto her marriage. Miss Vijay Laxmi is still unmarried.

AND WHEREAS Shrimati Shanti Devi died on 27.11.1995 so by virtue of her last Will dated 20.2.1991, Shri Harminder Khullar, Shrimati Swaran Kanta and Miss Vijay Laxmi inherited the abovesaid Property in the manner described above.

19. Even though humans may lie but the position which emerges from the registered Will and the registered sale/purchase documents executed by the parties from time to time is that the parties at the contemporaneous time did not consider the appellant/plaintiff to be the sole owner of the Model Town property or having exclusive right to the sale proceeds thereof and understood the appellant/plaintiff as well as the respondents/defendants no. 1&2 to be together having rights therein including right to convey title to the said property; out of the sale consideration of the Model Town property three different properties (being different portions of the Derawal Nagar property) were purchased, one in the name of the appellant/plaintiff, second in the name of respondents no. 2 and 3 and the third in the name of appellant/plaintiff and the respondents no. 2 &3. The purchase consideration of the said three properties even if flowed from the sale price of the Model Town property, in the facts aforesaid it cannot be said that the appellant alone was entitled thereto. The respondents no. 1&2 as aforesaid were acknowledged to be having rights in the Model Town property and were joined in sale deeds thereof and the purchase of the Derawal Nagar properties in the names of the respondents no. 2 and son of respondent no. 1, even if out of the sale consideration of Model Town property, was in lieu of the rights of respondents no. 1&2 in the Model Town property. Again, though in one of the three Derawal Nagar properties, the appellant/plaintiff had 50% share and the respondents no. 2&3 other 50% share but when the said properties were sold, the ground floor of Prashant Vihar property was purchased in the name of respondent no. 2 alone and the Dr. Mukherjee Nagar property in the names of respondents no. 3&4 being the son and daughter-in-law of respondent no. 1, without any mention of the appellant/plaintiff having right therein. The appellant/plaintiff thus cannot even claim that the sale consideration received for Model Town property belonged to him and cannot, de hors the Benami Act also, claim any right thereto.

20. The appellant/plaintiff has thus not been able to make out any legal right to the properties qua which he claims declaration of title.

21. As far as the findings of the learned Addl. District Judge are concerned, though undoubtedly the appellant/plaintiff did not examine any attesting witness to the Will dated 20th February, 1991 of Smt. Shanti Devi Khullar but from the written statement of the respondents as well as the cross examination of the respondents the respondents are found to have admitted the existence of the said Will. The said Will is a registered one and it is not the case of the respondents that the Will dated 20th February, 1991 of which they admitted the

existence, is anything other than as produced by the appellant/plaintiff.

22. Not only so, the respondents no. 1&2 as confirming parties to the Sale Deed of the Model Town property also admitted therein the existence of the said Will bequeathing the Model Town property in favour of the appellant/plaintiff only subject to the rights of lodging and boarding of the said respondents. I am therefore unable to concur with the finding on which the learned Addl. District Judge has non-suited the appellant/plaintiff. Be that as it may, having found the claim of the appellant/plaintiff to be barred by the Benami Act and otherwise untenable in law, the appeal fails and is dismissed. Though the claim of the appellant/plaintiff is fantastic and without any basis in law and inspite of the appellant/plaintiff being a lawyer himself, I refrain from imposing any costs on the appellant/plaintiff in the hope that good sense will prevail upon him and he would desist from any such attempt in future.

Decree sheet be drawn up.