

(1995) 11 DEL CK 0018
In the Delhi High Court
Case No : E.A. No. 142 of 1989

Smt. Harjinder Kaur and Others

APPELLANT

Vs

Mrs. Usha Gupta and Another

RESPONDENT

Date of Decision : 16-11-1995

Acts Referred:

Citation : (1995) 4 DLT 150 : (1996) 222 ITR 200

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : S.K. Bhaduri, Adv R.C. Pandey and R.N. Verma, for the Appellant;

Judgement

N.G. Nandi, J.—A suit being Suit No. 294 of 1972 for specific performance for an agreement to sell, came to be filed by Seth Narain Singh and others against Smt. Usha Gupta and another in respect of property bearing No. 28 situate at Khewat No. 1, Khatauni No. 1392, Khasra No. 2022/1558 measuring 1,583 sq. yards, 1,402 sq. meters approximately situate on Pusa Road, Ajmal Khan Road, Karol Bagh, New Delhi (hereinafter referred to as "the property"). It is suggested that the suit came to be decreed on 19th May, 1978, and the Execution Proceedings No. 90 of 1978 for the execution of the said decree. It is also suggested that the plaintiff (decree-holder, legal representative of deceased, Narain Singh) pursuant to the decree deposited the consideration amount for getting the sale deed in her favor. At that stage, the TRO, Mayur Bhawan, New Delhi, vide their letter No. TRO - XX, New Delhi, dt. 17th June, 1988, addressed to the Registrar, Delhi High Court, New Delhi, preferred a claim to the sale proceeds amounting to Rs. 6,45,000 lying with the Registrar, Delhi High Court, New Delhi towards the recovery of outstanding demand against Shri J. C. Gupta, resident of 204, Ashutosh Building, 9th Floor, Napean Sea Road, Bombay, which has led to the filing of this E A No. 142 of 1989, under Order 21, r. 58 of the CPC objecting to the attachment of the amount of Rs. 6,45,000. The objector is judgment-debtor No. 1 (original defendant).

It has been the say of the objector (judgment-debtor No. 1) that the objector

was the absolute owner of the property by virtue of gift deed dt. 16th March, 1970, registered on 18th Jan., 1981, in the office of the Sub-Registrar, Bombay; that the said property was gifted to her by her mother-in-law, Smt. Shanti Devi, wife of Shri J. C. Gupta, who was the previous absolute owner of the property; that the objector as an absolute owner had entered into an agreement for sale dt. 17th May, 1970, with Seth Narain Singh for a total consideration of Rs. 7,45,000. That Seth Narain Singh on 28th July, 1972, filed a suit for specific performance against the objector. After the death of Seth Narain Singh, his legal representatives were brought on record in Suit No. 294 of 1972 and the suit was ultimately compromised between the parties and the compromise decree on 19th May, 1978. That the statement of this objector was also recorded on 19th May, 1978. That in October-November, 1988 Mr. J. C. Gupta, her father-in-law, told her that the IT authorities had issued notice for attachment to him in respect of the said property and till then the objector was not aware of the execution of the sale deed and the deposit of the sale proceeds in the Registry of the Delhi High Court. It is stated that the IT authorities had neither issued notice to the objector nor they had filed any proper application before this Court regarding their claim to the sale proceeds of the said property. That the IT authorities cannot withdraw the aforesaid amount of Rs. 6,45,000 in view of the fact no amount whatsoever is due and payable from the objector to the IT Department. That the amount is the exclusive property of the objector and the IT authorities have no concern with the said amount. In substance, the objector contends that she is the absolute owner of the property and Mr. J. C. Gupta has no right, title or interest in the said property and, Therefore, the amount is not liable to be attached on account of the tax liabilities of Mr. J. C. Gupta or any other person.

2. It is not in dispute that the property originally belonged to Mr. J. C. Gupta, father-in-law of the objector, and that the said property came to be gifted to Smt. Shanti Devi, wife of Mr. J. C. Gupta, in the year 1949. It is also the admitted position that the property came to be gifted by Smt. Shanti Devi to her daughter-in-law, the objector (judgment-debtor No. 1) on 16th March, 1970, and thereafter the objector, Smt. Usha Gupta, entered into an agreement to sell the said property to Seth Narain Singh and the said property came to be conveyed to the legal representatives of the deceased Seth Narain Singh under the Court decree for specific performance of the agreement and the sale proceeds deposited with the Registrar, Delhi High Court, New Delhi, and then the claim by the IT Department against the sale proceeds for the recovery of tax liabilities of Mr. J. C. Gupta.

3. It is submitted by the objector that the property and the sale proceeds thereof belonged to the objector and the same has been wrongly attached and that the Income Tax dues are against Mr. J. C. Gupta; that the objector became the owner of the said property on 16th March, 1970, by gift deed in her favor by her mother-in-law, Smt. Shanti Devi; that she is the absolute owner and is entitled to the sale proceeds lying with the Registry of the High Court and that the objector is not liable for the tax dues payable by Mr. J. C. Gupta. As against this,

it has been submitted by Mr. R. C. Pandey, counsel for the IT Department, that Mr. J. C. Gupta on 8th Nov., 1949, gifted the property to his wife, Smt. Shanti Devi Gupta; that this gift was never accepted by the IT Department as Smt. Shanti Devi Gupta was merely a benami holder/owner and that Mr. J. C. Gupta continued to be the real owner of the said property; that till 1989, the objector, Smt. Usha Gupta, did not do anything and these objections are only in the year 1989 belatedly. That Rs. 27,15,000 was the IT liabilities in the year 1987 against Mr. J. C. Gupta. It is further contended that the provisions of the Benami Transactions (Prohibition) Act do not apply and that the rights of the third party are not affected by benami transactions and that the rights of the IT Department cannot be affected. It is further contended that in view of s. 156 of the IT Act, the objector, Smt. Usha Gupta, is not entitled to the notice. That the sale proceeds in reality belonged to Mr. J. C. Gupta and liable to be attached for the recovery of Income Tax dues even if the documents of gifts are valid, the property belonged to Mr. J. C. Gupta.

4. Copy of the letter dt. 25th Aug., 1983, at page 15, addressed by Smt. Shanti Devi Gupta to the WTO, District III D(4), New Delhi, suggests that the value of the property in question had been deleted from her hands from net wealth under s. 25 of the WT Act for the asst. yrs. 1960-61 to 1973-74 and that the refund had been given to her after giving effect to the orders under s. 25 of the WT Act. It is also stated that Mr. J. C. Gupta purchased the said property in her name and she was a benami owner of the said property and later on the said property was included in the hands of her husband, Mr. J. C. Gupta, for Income Tax and wealth-tax purposes and that later on the WTO excluded this property from her hands from the asst. yrs. 1972-73 onwards and by the said letter Smt. Shanti Devi requested the WT authority to withdraw notices issued to her under s. 16(4) of the WT Act.

The letter dt. 20th Oct., 1981, which is a reply to notice under s. 16(4) of the WT Act, by the objector to the ITO, District IV, New Delhi, suggests that the income from the property in question has been assessed in the hands of Mr. J. C. Gupta at Bombay and the said property has been excluded by the IT authorities from the net wealth of the objector (Smt. Usha Gupta) for the asst. yrs. 1970-71 to 1973-74. It is also suggested that the said property had been deleted by the AAC, F-Range, New Delhi, vide Appeals Nos. 804 to 808 of 1979-80 dt. 7th Oct., 1980, and that the value of the said property had also been deleted from the hands of Smt. Shanti Devi, the mother-in-law of the objector, who gifted the property to her, vide revision order of the CIT-IV, New Delhi, under s. 25 of the WT Act, dt. 24th April, 1978, and the effect of such orders have been given in her case and the refund of 1970-71 to 1974-75 years have been adjusted in the asst. yr. 1975-76. By this letter, the objector requested that the net wealth made may please be computed after due consideration of the above orders wherein the property has been deleted from her net wealth and which is now being assessed in the hands of her father-in-law, Mr. J. C. Gupta, who is the real owner of this property.

In my opinion, this letter by the objector would go a great way in suggesting that the property in question even after the gifts of 1949 and 1970, respectively, remained the property of Mr. J. C. Gupta, the original owner thereof. On the objector's say, the property was excluded from the hands of Smt. Shanti Devi, her predecessor in title and the effect of this was also given for the asst. yrs. 1970-71 to 1973-74 and the adjustment in the subsequent years and that the value of the property was also excluded from the net assessable wealth of the objector, Smt. Usha Gupta for the asst. yrs. 1976-77 to 1978-79 and the objector, herself requested that her net wealth may be computed after due consideration of the above orders. The conduct of the objector in accepting the orders of the authorities under the WT Act and the IT Act and requesting for the computation of her wealth after due consideration of the orders, referred to above, especially with regard to the deletion of the said property from her net wealth and an admission that her father-in-law, Mr. J. C. Gupta, is the real owner of the property is indicative of the benami nature of the transactions of 1949 and 1970.

Thus, the above two letters clearly suggest that even on the say of Smt. Shanti Devi and Smt. Usha Gupta (objector) they were the benamidars of the real owner, Mr. J. C. Gupta. As seen above, Smt. Shanti Devi Gupta in her letter dt. 25th Aug., 1983, referred to above, has besides other things, clearly stated that the property was purchased by Mr. J. C. Gupta in Smt. Shanti Devi's name and she was only a benamidar and that the real owner of the property is Mr. J. C. Gupta would suggest that even Smt. Shanti Devi, the donee, after the passing of the orders by the IT and WT authorities admitted the position that the property was purchased in her name by her husband who was the real owner of the property and she is merely a benamidar of the said property which would suggest that Smt. Shanti Devi could not have gifted the property to the objector, Smt. Usha Gupta, by gift deed dt. 16th March, 1970, when the donor, Smt. Shanti Devi did not have title over the property in question, she being the benamidar only and not the real owner.

5. It is settled principle of law that benamidar transactions cannot affect the rights of the third party. In the case of Gopal Bariha Vs. Satyanarayan Das and Others, , it has been held by the Division Bench of the Orissa High Court that the provisions contained in the Benami Transactions (Prohibition) Act do not have the effect of affecting the rights of the third party and the third party can apply for declaration that the property had been purchased benami. In the instant case, the IT Department is the third party which seeks the recovery of the Income Tax dues payable by Mr. J. C. Gupta to whom sale proceeds of the property would belong as he is the real owner of the said property despite the gift deeds of 1949 and 1970, respectively, in favor of Smt. Shanti Devi and Smt. Usha Gupta for the reasons aforesaid.

6. In the case of R. Rajagopal Reddy and Others (deceased by legal representatives) Vs. Padmini Chandrasekharan (deceased by legal

representatives), , it has been held by the Supreme Court that : "where a statutory provision which is not expressly made retrospective by the legislature seeks to affect vested rights and corresponding obligations of parties, such provision cannot be said to have any retrospective effect by necessary implication. That the Benami Transactions (Prohibition) Act cannot be treated as declaratory in nature. Sec. 4(1) is not retrospective and does not apply to pending proceedings. Sec. 4(1) has limited operation in pending cases. Sec. 3 is not retrospective". I am in respectful agreement with this proposition of law. In my humble opinion, the principle laid down in this decision would be of no application to the present case, since, the question here is not of retrospective or prospective effect of s. 3, s. 4(1) and (2) of the Act.

7. In the case of Manmohanlal and Others Vs. Income Tax Officer, Ward-E, City Circle, Cuttack, ; that it is settled by authority long accepted that tax can be recovered from an assessee only when it becomes a debt due from him and that it becomes a debt due when a notice of demand calling for payment of the tax has been served on the assessee. If an assessee objects to the recovery proceedings taken under s. 226(4) of the Act on the ground that there has been no valid service of a notice of demand and that, Therefore, no debt is due, the Court must decide the objection, and if it upholds the objection, it cannot permit recovery of the tax claimed. It is pertinent to note that Mr. J. C. Gupta, who is an assessee, is judgment-debtor No. 2 of these execution proceedings. The question of issuance/non-issuance of notice of demand would be between the assessee, i.e., Mr. J. C. Gupta, and the IT Department. As long as the assessee Mr. J. C. Gupta, objects to the recovery proceedings taken under s. 226(4) of the Act on the ground that there is no valid service of notice of demand, this Court would not be called upon to decide the objection that there is no valid service of notice of demand, since Mr. J. C. Gupta, an assessee, has not come forward in these execution proceedings as judgment-debtor No. 2 raising the objection on this score. Suffice it to say for the present purpose that the objector who is not the assessee, is not entitled to the notice of demand under s. 156 of the IT Act.

8. In the case of Iqbal Begum and Others Vs. Tax Recovery Officer and Others, , the Division Bench of the Madras High Court has held that "..... the rules do not contemplate any notice to the person who holds property benami for the defaulter before the actual order of attachment is issued but contemplate only a notice to the defaulter calling upon him to pay the amounts specified in the certificate of the officer within the specified time and intimating that in default steps would be taken to realise the amount under the Second Schedule..... whether the property really belonged to the defaulter or the person in whose name it actually stood would be decided by the TRO when a claim is filed before him under r. 11.... it cannot, Therefore, be contended that the TRO is empowered by the Second Schedule to the Act to attach and sell only the properties which stand in the defaulter's name and not any property which does not stand in his name but is held benami or in trust or for the benefit of the defaulter." Applying this principle to the present case, the amount lying with the Registry would be

liable to be attached since the same appears to have been held benami by the objector in trust or for the benefit of the defaulter, i.e., Mr. J. C. Gupta.

9. One of the arguments advanced on behalf of the objector is that once the gift deed is executed and has been delivered to the donee the same cannot be revoked or questioned. As far as the principle of law is concerned, the same cannot be questioned and I am in agreement with the proposition of law that once the gift deed is executed and has been delivered to the donee, the donor cannot revoke the gift, even before its registration on the ground that the gift cannot be completed until the deed is registered. In the instant case, there is no question of the donor, Mr. J. C. Gupta, revoking the gift made in favor of Smt. Shanti Devi. The above principle would apply when the gift deed is sought to be revoked by the donor. That being not the position here, and also on the principle that the benami transaction, even by the registered document cannot affect the third party interest, the submission on behalf of the objector in this regard, does not deserve any consideration and for this reason the decision reported in AIR 1927 42 (Privy Council) would be of no assistance to the objector, though the principle enunciated cannot be questioned and I am in respectful agreement with the same.

10. For the reasons above stated this application under Order 21, r. 58 of the CPC, being devoid of merit is liable to be dismissed and the amount of Rs. 6,45,000 paid over to the TRO, Mayur Bhawan, New Delhi, vide their Letter No. TRO - XX, New Delhi, dt. 17th June, 1988, addressed to the Registrar, Delhi High Court, New Delhi.

It, Therefore, follows from the above, that the IT Department would be entitled to enforce recovery of its dues payable by Mr. J. C. Gupta against the amount lying with the Registry, Delhi High Court, New Delhi, lying deposited in the name of the objector/judgment-debtor No. 1, Smt. Usha Gupta.

In the result, EA No. 142 of 1989 fails.