

(2014) 02 DEL CK 0118
In the Delhi High Court
Case No : CS (OS) No. 804 of 2009

Smt. Shanta L. Keshwani		APPELLANT
	Vs	
Smt. Pratima Keshwani and Others		RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 4(3)(b)

Citation : (2014) 142 DRJ 83

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Pawan Kumar Agarwal, for the Appellant; Ranvir Singh and Mr. Robin Raju, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The plaintiff has instituted this suit against the three defendants for the reliefs of, (a) recovery of possession of the entire basement, second floor and terrace floor of property No. 5/30, Sarva Priya Vihar, New Delhi; and, (b) recovery of damages/mesne profits, pendente lite and future @ Rs. 25,000/- per month, pleading:-

(i) the defendant no. 1 is the widow, the defendant no. 2 Ms. Tejswani Keshwani is the daughter and the defendant no. 3 Master Dhruv Keshwani is the son of Shri Ravi Keshwani, the deceased son of the plaintiff;

(ii) that the husband of the plaintiff Shri L.H. Keshwani was the owner of property No. A-4, Mayfair Garden, Hauz Khas Enclave, New Delhi;

(ii) that the husband of the plaintiff Shri L.H. Keshwani died intestate on 31st August, 2008 leaving the plaintiff as his widow, the aforesaid Shri Ravi Keshwani (since deceased) as his son and another son Shri Sanjay Keshwani (who is not a party to this suit), as his only natural heirs;

(iii) that disputes arose between the plaintiff and her son Shri Sanjay Keshwani on the one hand and Shri Ravi Keshwani on the other hand over the division and enjoyment of the estate left by Shri L.H. Keshwani and assets of Shri L.H.

Keshwani (HUF);

(iv) that the plaintiff and her son Shri Sanjay Keshwani filed CS(OS) No. 984/2004 in this Court against Shri Ravi Keshwani for partition of the said estate/assets;

(v) that a settlement was arrived at between the parties to the aforesaid suit and CS(OS) No. 984/2004 was decreed on 6th April, 2005 in terms of the compromise;

(vi) as per the aforesaid compromise, the property at Mayfair Garden was agreed to be sold and the sale proceeds thereof divided equally;

(vii) that the Mayfair Garden property was sold vide Sale Deed dated 13th March, 2006 for a sale consideration of Rs. 6,75,00,000/- which was received by the plaintiff and her sons Shri Sanjay Keshwani and Shri Ravi Keshwani in equal shares i.e. Rs. 2,25,00,000/- each;

(viii) that the plaintiff, out of the sale consideration of her share, purchased property at Sarva Priya Vihar, vide registered Sale Deed dated 21st March, 2006, for a consideration of Rs. 65,00,000/- and let out the first floor of the said property and herself occupied the rest thereof;

(ix) that soon thereafter Shri Ravi Keshwani and the defendant no. 1 had marital discord and separated, with Shri Ravi Keshwani being left with two minor children i.e. defendants no. 2&3 herein;

(x) that the plaintiff, in these circumstances allowed Shri Ravi Keshwani and his children defendants no. 2&3 to temporarily shift to the second floor of the property at Sarva Priya Vihar, New Delhi;

(xi) that the defendant no. 1 upon coming to know of the plaintiff having allowed Shri Ravi Keshwani and the children to occupy the second floor of the Sarva Priya Vihar house, came back and started living with Shri Ravi Keshwani;

(xii) that the defendant no. 1 also put her locks on the basement and the terrace floor portion of the Sarva Priya Vihar property; and,

(xiii) that Shri Ravi Keshwani died on 17th November, 2007 but the defendants continued to live on the second floor of the property and continued to keep the basement and the terrace floor under their lock and key, accordingly the suit for the reliefs aforesaid of recovery of possession and mesne profits has been filed.

Summons of the suit were issued and vide ex parte ad interim order dated 4th May, 2009 the defendants were restrained from transferring, parting with possession or otherwise creating third party rights in the basement, second and terrace floors of the property at Sarva Priya Vihar. Subsequently, vide order dated 27th July, 2009 the earlier ad interim order was made absolute till the decision of the suit and vide order dated 9th November, 2009 the defendant no. 1 was appointed as the guardian of the defendants no. 2&3. During the pendency

of the suit certain other interim arrangements with respect to sharing of water and electricity bills of the premises were also made.

2. The defendants contested the suit by filing a written statement, on the ground:-

(a) that the defendant no. 1 is an uneducated person who had married Shri Ravi Keshwani at a young age of 18 years and after marriage had started residing in the house at Mayfair Garden but was harassed by her mother-in-law i.e. the plaintiff;

(b) that owing to being uneducated, the defendant no. 1 did not understand the transaction which took place while partitioning the Shri L.H. Keshwani HUF, though she is aware of the filing of the suit in the High Court and of some settlement therein and the sale of the Mayfair Garden property and distribution of sale proceeds amongst the plaintiff, Shri Sanjay Keshwani and Shri Ravi Keshwani but is not aware of the details thereof;

(c) that immediately after the sale of the Mayfair Garden property, Shri Ravi Keshwani, under some arrangement with his mother i.e. the plaintiff, had purchase the Sarva Priya Vihar property in the name of the plaintiff;

(d) thus the Sarva Priya Vihar property was in fact purchased through a benami transaction by Shri Ravi Keshwani in the name of the plaintiff, in trust as the plaintiff was in a fiduciary position in the family;

(e) that the plaintiff and Shri Ravi Keshwani also had some joint business under the name of M/s. Globe Vision;

(f) that Shri Ravi Keshwani was persuaded to purchase the property in the name of the plaintiff, to save 2% stamp duty on such purchase;

(g) that it was owing to Shri Ravi Keshwani having paid the consideration for the purchase of the Sarva Priya Vihar property that Shri Ravi Keshwani along with the defendants started living in the said property;

(h) that though Shri Ravi Keshwani was the only owner of the property but had earmarked the ground and first floors of the house for his mother on account of her old age and he himself with his family occupied the second floor and basement of the house;

(i) that it was for the aforesaid reason only that the plaintiff also had not objected to Shri Ravi Keshwani and the defendants occupying the basement and the second floor of the property;

(j) that in fact Shri Ravi Keshwani was also in the process of getting the ownership of the second floor and the basement transferred in the name of the defendants, keeping in mind his own illness and his mother's old age but died before he could accomplish the same;

(k) denying that there was any marital discord between the defendant no. 1 and

Shri Ravi Keshwani or that the defendant no. 1 had ever left Shri Ravi Kishwani or Shri Ravi Keshwani along with the defendants no. 2&3 only had initially occupied the second floor of the property;

(l) that after almost one and a half years after the death of Shri Ravi Keshwani in 2007, the plaintiff executed a Will dated 18th April, 2009 in favour of Shri Sanjay Keshwani and immediately thereafter within two days on 20th April, 2009 the present suit was filed at the instance of Shri Sanjay Keshwani; and,

(m) that the plaintiff in collusion with Shri Sanjay Keshwani is taking advantage of the Sarva Priya Vihar house being in the name of the plaintiff.

3. The plaintiff filed a replication, controverting the contents of the written statement and denying that the plaintiff and Shri Ravi Keshwani were carrying on any joint business in the name of M/s. Globe Vision or in any other name and also denying that there was ever any talk of transfer of the basement and the second floor to the name of the defendants and denying that the suit was in collusion with Shri Sanjay Keshwani.

4. On the pleadings aforesaid of the parties, the following issues were framed on 15th March, 2010:-

(i) Whether the plaintiff is entitled to a decree of possession of the suit property shown in red colour in the accompanying site plan (Annexure A)? OPP

(ii) Whether the plaintiff is entitled to damages/mesne profits at the rate of Rs. 25,000/- per month from the defendants? OPP

(iii) Whether the suit property was purchased by the husband of the defendant no. 1 i.e., late Sh. Ravi Keshwani in the name of the plaintiff in a fiduciary i.e., as a benami? If so, to what effect? OPD

5. The plaintiff examined herself only in support of her case. The defendants, besides examining the defendant no. 1 examined ASI from Police Station Hauz Khas, New Delhi as DW-2, the Manager, UCO Bank, Hauz Khas Branch as DW-3 and a private witness Shri Rohit Nanda as DW-4 and closed their evidence. Vide order dated 17th September, 2013, in the light of the plaintiff being a very old lady the suit was posted for final hearing on actual date. The counsel for the plaintiff was heard yesterday and on the request of the Advocate for the defendants, the suit posted for today for hearing arguments of the counsel for the defendants. The counsels have been heard today also.

6. The contention of the counsel for the plaintiff is that the onus of issue No. (iii) was on the defendants and which the defendants have failed to discharge and resultantly the plaintiff is entitled to a decree for recovery of possession and for recovery of mesne profits. On enquiry whether there is any evidence of the other properties, similar to the portion of the property in occupation of the defendants, fetching a rent of Rs. 25,000/- per month, the counsel for the plaintiff fairly states that no such independent evidence has been led.

7. The counsel for the defendants had opened his argument by stating that a material witness remained to be examined by the defendants. However the defendants have not filed any application in this regard inspite of the suit as aforesaid having been posted for final hearing vide order dated 17th September, 2013. Upon the same being put to the counsel for the defendants, he states that this Court in exercise of its inherent jurisdiction should grant such an opportunity to the defendants. No such opportunity, in vacuum, can be given.

8. Upon it being enquired from the counsel for the defendants as to how the plea of the defendants of Shri Ravi Keshwani being the benami owner of the entire property is entertainable inspite of the prohibition contained in the Benami Transactions (Prohibition) Act, 1988, the counsel for the defendants states that the present case falls in the exception to the said prohibition as provided in Section 4(3)(b) of the Benami Act, as the plaintiff was the trustee of and standing in a fiduciary capacity towards the late Shri Ravi Keshwani. Upon it being further put to the counsel for the defendants that under which law is a mother a trustee of her adult son and/or stands in a fiduciary capacity vis-?-vis her adult son, though the counsel for the defendants could not cite any law but contended that it was so in the present case owing to the peculiar facts, of the late Shri Ravi Keshwani being joint in business with the plaintiff and of Shri Ravi Keshwani suffering from health problems. Upon it being yet further enquired from the counsel for the defendants as to why Shri Ravi Keshwani could not purchase the property in the name of his wife i.e. the defendant no. 1 or his children i.e. the defendants no. 2&3, if at all he wanted to save stamp duty or for any other reasons did not want the property in his own name, it is stated that since the defendant no. 1 is an illiterate, Shri Ravi Keshwani did not deem it appropriate to save 2% stamp duty by purchasing the property in the name of the defendant no. 1. On yet further enquiry from the counsel for the plaintiff as to why, if Shri Ravi Keshwani was the benami owner of the entire property, did he desire a Gift Deed of the basement and the second floor only in the name of the defendants, the counsel contended that since Shri Ravi Keshwani anticipated disputes after his lifetime, to avoid the same he wanted the plaintiff to execute a Gift Deed of the basement and the ground floor in favour of the defendants and had even purchased the stamp papers for the same and which have been proved in evidence.

9. I will now proceed to discuss the evidence recorded, to adjudicate whether the defendants, in evidence, have made good the contentions raised.

10. The plaintiff in her affidavit by way of examination-in-chief inter alia deposed that her husband Shri L.H. Keshwani died intestate leaving the plaintiff, Shri Sanjay Keshwani and Shri Ravi Keshwani as his only legal heirs and all of whom were also the members of L.H. Keshwani HUF; that Shri L.H. Keshwani besides the Mayfair Garden property left Bank Accounts, FDRs, shares, debentures and bonds either in his own name or in the name of L.H. Keshwani HUF and all of which were jointly and equally inherited by the plaintiff, Shri Sanjay Keshwani

and Shri Ravi Keshwani. The plaintiff also proved, the certified copies of the plaint, written statement and the compromise arrived at in CS(OS) No. 984/2004 as Ex. PW 1/1 to Ex. PW 1/7, the Sale Deed of the Mayfair Garden property as Ex. PW 1/8; the Purchase Deed of the Sarva Priya Vihar property as Ex. PW 1/9. The plaintiff also proved payment of the sale consideration of Rs. 65 lacs for the Sarva Priya Vihar property, of Rs. 40 lacs from her own bank account and of Rs. 25 lacs from the bank account of her son Shri Sanjay Keshwani. The plaintiff otherwise supported her case in the plaint and deposed of the nuisance being caused by the defendants to the plaintiff's residence on the ground floor of the property. A site plan of the basement and second floor and terrace of the Sarva Priya Vihar property qua which relief is claimed was proved as Ex. PW 1/16.

11. The Deed of Sale of the Mayfair Garden property shows the sale consideration thereof to have been received equally by the plaintiff, Shri Sanjay Keshwani and Shri Ravi Keshwani.

12. The contents of plaint in CS(OS) No. 984/2004 show the relationship of Shri Ravi Keshwani with the plaintiff and Shri Sanjay Keshwani to have been acrimonious, with Shri Ravi Keshwani having also filed a suit for permanent injunction against Shri Sanjay Keshwani; CS(OS) No. 984/2004 was of partition, not only of the Mayfair Garden property but also of the other estate aforesaid left behind by Shri L.H. Keshwani as well as the assets of L.H. Keshwani HUF.

13. The written statement filed by Shri Ravi Keshwani in CS(OS) No. 984/2004 shows that the said suit was not a collusive suit and there were indeed disputes between the plaintiff and Shri Sanjay Keshwani on the one hand and Shri Ravi Keshwani on the other hand.

14. As per the compromise arrived at in CS(OS) No. 984/2004, the entire estate of Shri L.H. Keshwani including the assets of L.H. Keshwani HUF were equally distributed between the plaintiff, Shri Sanjay Keshwani and Shri Ravi Keshwani.

15. In CS(OS) No. 984/2014, in terms of the compromise/settlement a preliminary decree was passed declaring the share of the plaintiff, Shri Sanjay Keshwani and Shri Ravi Keshwani in the estate of late Shri L.H. Keshwani and in L.H. Keshwani HUF as 1/3rd each and a final decree also passed in terms of the settlement.

16. The plaintiff, in cross examination by the counsel for the defendants denied the suggestion that the total purchase price of the Sarva Priya Vihar property was Rs. 1.5 crores and that besides Rs. 65 lacs paid vide cheques, the balance was paid in cash and further denied the suggestion that Shri Ravi Keshwani had contributed in the purchase price of the Sarva Priya Vihar property or that there was any understanding that in lieu thereof he would get basement, second floor and terrace of the Sarva Priya Vihar property.

17. The defendant no. 1 in her affidavit by way of examination-in-chief, besides reiterating the contents of the written statement, deposed that though she had

lodged several complaints against the plaintiff and Shri Sanjay Keshwani but was always persuaded to, in the interest of the family, withdraw the same; she referred to number of documents primarily showing possession of the property and the passbook of the bank account of Shri Ravi Keshwani and the photocopies of the stamp paper bought by Shri R.K. Keshwani for execution of a Gift Deed for transfer of the basement and second floor of the property in the name of the defendants but while tendering the affidavit into evidence merely stated "I rely upon the documents which are mentioned in my affidavit" and did not prove or give exhibit marks to any of the documents. The learned Joint Registrar, in order dated 23rd November, 2012 observed that except for one Police complaint dated 2nd March, 2005, all other documents referred to in the affidavit by way of examination-in-chief were photocopies and accordingly gave the Police complaint Ex. DW 1/1 and marked the other documents as mark "A" to mark "M". In cross examination the defendant no. 1 deposed (i) that her husband Shri Ravi Keshwani had paid various cash amounts to the plaintiff for purchase of the Sarva Priya Vihar property and the plaintiff had issued cheques in the name of the vendor of the said property out of the said monies given in cash by Shri Ravi Keshwani (she however admitted that this fact had not been disclosed in the plaint); (ii) that Shri Ravi Keshwani had given an amount of Rs. 80 lacs in cash to the plaintiff in her presence but could not give the date thereof and admitted that she had not conveyed so to her Advocate at the time of drafting the written statement; (iii) that the said cash had been received by her husband as his share of the cash consideration received for the sale of the Mayfair Garden property.

18. DW 2 ASI from Police Station Hauz Khas, New Delhi proved the complaint dated 2nd March, 2005 as Ex. DW 1/1. DW 3 Manager from UCO Bank proved that Shri Ravi Keshwani had made payment of Rs. 35 lacs and Rs. 25 lacs vide cheques dated 13th March, 2006 to M/s. Ambience Projects Ltd. The witness, to examine whom the counsel for the defendants wanted an opportunity was in fact disclosed to be the Director of M/s. Ambience Projects Ltd. namely Shri Raj Singh Gehlot, who according to the counsel for the defendants had agreed to in lieu of cheques of Rs. 35 lacs and Rs. 25 lacs received by M/s. Ambience Projects Ltd. from Shri Ravi Keshwani, give and had given cash of equivalent amount to Shri Ravi Keshwani and which cash according to the counsel for the defendants, Shri Ravi Keshwani had given to his mother. DW 4 Shri Rohit Nanda deposed that he was a friend of Shri Ravi Keshwani and Shri Ravi Keshwani had told him that he wanted to transfer the second floor and basement of the Sarva Priya Vihar house in the names of the defendants no. 2&3 and that he had also purchased the stamp papers for the said purpose. In cross examination he admitted he had not seen whether Shri Ravi Keshwani was the owner of the said floors.

19. I may mention that though the counsel for the defendants was not aware but the defendants had filed a list of witnesses and the said Shri Raj Singh Gehlot is mentioned therein.

20. As the a narrative itself would be sufficient to show, the defendants have

utterly failed to prove that the plaintiff was the trustee of Shri Ravi Keshwani or otherwise standing in a fiduciary capacity vis-?-vis Shri Ravi Keshwani or that the plaintiff was holding the Sarva Priya Vihar property for the benefit of Shri Ravi Keshwani. Not only so, the defendants have also failed to prove the reason given for the plaintiff being the trustee or standing in a fiduciary capacity vis-?-vis her adult son Shri Ravi Keshwani. The defendants have failed to prove that the plaintiff and Shri Ravi Keshwani were joint in business. The defendants have failed to prove that there was any trustee or fiduciary relationship owing to Shri Ravi Keshwani having any health problems. The defendant no. 1 in her cross examination admitted to have studied till the VIIIth class. Illiteracy is different from understanding. There is no presumption that an illiterate person is incapable of looking after his or her affairs or lacks in understanding sufficient for holding, owning and enjoying the property. The defendant no. 1, from a perusal of her cross examination, does not come across as a person lacking in such understanding. The 2% saving in stamp duty on account of acquiring the property in the name of a woman, cannot be said to be a reason for Shri Ravi Keshwani acquiring the property in the name of the plaintiff. The said stamp duty could have been saved even by acquiring the property in the name of the defendant no. 1.

21. The plea of "trusteeship" and "fiduciary relationship" is also demolished from the acrimonious relationship between the plaintiff and Shri Ravi Keshwani as borne out from the pleadings in CS(OS) No. 984/2004 as aforesaid noticed. The plaintiff and Shri Ravi Keshwani along with the defendants, though were residing together in the Mayfair Garden house but the same was sold owing to the differences between them. So much so that the HUF which existed was disrupted and its assets partitioned. When the plaintiff and Shri Ravi Keshwani had parted on such a note, is unbelievable that Shri Ravi Keshwani would even then acquire a property in the name of the plaintiff.

22. Even otherwise the pleas of the defendants are replete with inconsistencies. A case was made out as if Shri Ravi Keshwani was the benami owner of the entire Sarva Priya Vihar property and had paid the entire sale consideration therefor. Subsequently it was stated that he had paid Rs. 80 lacs therefor. The proof sought to be given is of 60 lacs only. The defendants have failed to prove payment of any monies by Shri Ravi Keshwani for purchase of the Sarva Priya Vihar property; on the contrary the plaintiff has proved the payment of the entire purchase consideration of Rs. 65 lacs thereof from her own bank account and from the bank account of her other son Shri Sanjay Keshwani. The defendant no. 1 herself shied from deposing that Shri Raj Singh Gehlot, Director of M/s. Ambience Projects Ltd. had given cash to Shri Ravi Keshwani in lieu of cheques of Rs. 35 lacs and Rs. 25 lacs credited in the account of M/s. Ambience Projects Ltd. from the cheques issued on the bank account of Shri Ravi Keshwani. Had she herself deposed so, she could have been cross examined whether Shri Ravi Keshwani or the defendants had made any claim against M/s. Ambience Projects Ltd. with respect to the said monies. All that can be observed though not argued

by the counsel for the defendants is that the sale by the plaintiff, Shri Sanjay Keshwani and Shri Ravi Keshwani of the Mayfair Garden property was to Smt. Sheela Gehlot wife of Shri Raj Singh Gehlot. It is well nigh possible that Shri Ravi Keshwani, besides the transaction of sale of the Mayfair Garden property had other transactions also with the said Shri Raj Singh Gehlot. Even otherwise, this Court cannot take cognizance of such contentions without any basis of cash having been received in lieu of payments made in cheque.

23. The plaintiff otherwise has proved that she is the owner of the entire Sarva Priya Vihar property. The defendants pleaded having right to the said property as benami owners but have failed to prove the same. The plaintiff is thus entitled to a decree for recovery of possession of the basement, second floor and terrace of 5/30, Sarva Priya Vihar, New Delhi as shown in red colour in the site plan Ex. PW 1/16.

24. As far as the claim for mesne profits is concerned, though undoubtedly no independent evidence of the prevalent rates of rent in the locality has been led by the plaintiff but at the same time the defendants in their evidence are also quiet in this respect. Judicial notice can be taken of Sarva Priya Vihar being a prime residential colony of South Delhi and of the rents prevailing in such localities for the basement and second floor being not less than Rs. 25,000/- per month in all, if not separately for each of the said floors. The plaintiff is thus found entitled to a decree for recovery of mesne profits at the said rate of Rs. 25,000/- per month also w.e.f. the date of the institution of the suit i.e. 29th April, 2009 till the date of delivery of possession. However in an attempt to make the defendants who are none other than the widow and the children of the deceased son of the plaintiff still see reason, it is made expedient to make the said decree for recovery of mesne profits conditional upon the defendants not vacating the said basement, second floor and terrace within three months from today. Accordingly, a decree is passed in favour of the plaintiff and against the defendants (i) for recovery of possession of basement, second floor and terrace of property No. 5/30, Sarva Priya Vihar, New Delhi as shown in red colour in the site plan Ex. PW 1/16; (ii) for recovery of Rs. 25,000/- per month w.e.f. 1st May, 2009 till the date of delivery of possession; (iii) however if the defendants vacate and deliver vacant peaceful physical possession of the said basement, second floor and terrace to the plaintiff within three months from today, the decree for recovery of mesne profits shall stand satisfied and shall not be executable by the plaintiff; and, (iv) if the defendants vacate the premises as aforesaid within three months, the plaintiff would not be entitled to any costs, else the plaintiff shall also be entitled to costs of the suit. Counsels fee assessed at Rs. 25,000/-.

Decree sheet be drawn up.