

CS no. 671/17

Sangeeta Beri V/s. Chander Kant Beri

09/07/2018

Pr.:- Plaintiff with counsel.
Defendant in person.

ORDER

1. An application under Order 12 Rule 6 CPC filed by the plaintiff is pending adjudication. Submissions already heard. Record perused.

2. Briefly stated the plaintiff has filed the present suit for possession, permanent injunction and *mesne profit* on the assertion that she is absolute and registered owner of property bearing No.71, Hargobind Enclave, Delhi-110092 (hereinafter referred to as the entire property) vide Conveyance Deed 06.01.1995 executed in her favour by President of India through LAO DDA. That defendant is brother of husband of plaintiff. That the plaintiff has constructed two floors in the suit property. That defendant was allowed to occupy first floor portion consisting of one drawing room, three bed rooms set, mezanine floor (hereinafter referred to as the suit property) as licensee without payment of any charges with understanding that he would vacate the property as and when required. That now family of plaintiff has grown and she required the first floor for her personal use. That the plaintiff has revoked the licence of the defendant vide legal notice dated 27.06.2017 calling upon the defendant to handover the peaceful vacate possession of the suit property on or before 15.07.2017 failing which he shall be liable to pay damages @ Rs.25,000/- per month. That defendant in reply to the legal notice demanded Rs.5 Crores from the plaintiff and refused to vacate the suit property. Hence the present suit has been filed.

3. In the present application, it is asserted that in para no.1 (XII) defendant has admitted that Mr. Jaypal Singh Gill the original sub-lessee sold the property to plaintiff vide GPA etc. dated 11.06.1986 in favour of Mr. Ravi Kant Beri. That the defendant has thus admitted that the plaintiff is absolute owner of the suit property. That the defendant has admitted receipt of legal notice. That the defendant has raised frivolous defence that the property is held Benami in the name of the plaintiff which is barred in view of Section 4 of the Benami Transaction Prohibition Act, 1998 as amended in 2016. It is prayed that the suit of the plaintiff be decreed for the relief of possession. The defendant has filed reply to the present application asserting that there is no unequivocal admission on part of the defendant. That the defendant has already explained that he and his wife are in possession of first floor of the suit property as owner under oral family settlement.

4. It would be fruitful to refer to the assertion of the defendant in his written statement. The relevant paragraphs of the written statement are reproduced as below:-

1. That the suit is hopelessly barred by time. The defendant with his wife Mrs. Kumkum Beri is owner of the half share i.e. first floor portion of property no.71 with half share in the plot of land underneath, Hargobind Enclave, Delhi pursuant to oral family settlement and declaration in March 1987 on 1st day of March and since then, the defendant with his wife has been in continuous peaceful possession, use and enjoyment of the said portion of the property in as owners. Hence the suit being barred by time deserves to be dismissed.

2.

3. That the suit is bad for non-joinder of necessary parties. Mr. Ravi Kant Beri, husband of the plaintiff and younger brother of the defendant and Mrs. Kumkum Beri (wife of the defendant) are necessary parties to this suit. There was oral family settlement and declaration in

March 1987 on 1st day of March between Mr. Ravi Kant Beri, his wife Mrs. Sangeeta Beri (plaintiff), the defendant, his wife Mrs. Kumkum Beri and their father Mr. Yoginder Pal Beri and mother Mrs. Krishna Beri to the effect that this property No.71, Hargobind Enclave, Delhi will be owned and enjoyed by both Mr. C. K. Beri (defendant herein) with his wife on the one hand and Mr. Ravi Kant Beri with his wife Mrs. Sangeeta Beri (plaintiff herein), on the other hand equally, both sides having 50% share each, with right to occupy, possess and enjoy the same and that Mrs. Sangeeta Beri and Mr. Ravi Kant Beri would enjoy ownership right in respect of the ground floor portion and the defendant Mr. C. K. Beri and his wife Mrs. Kumkum Beri would enjoy ownership right in respect of the first floor portion of this property. Mrs. Kumkum Beri is necessary and proper party to the suit. Hence the suit is not maintainable.

5. Further more, para no. 1 (iv), (v), (vi) of the reply on merits in the written statement contain different assertions as to the various amount paid by the defendant and his late father to the husband of the plaintiff herein for treating the suit property as joint property of the parties. It is mentioned in para no. 1(iv) of reply on merits that House no. 79H, Shekh Sarai, New Delhi belonging to Ms. Kumkum Beri, wife of the defendant, was sold by husband of plaintiff for about Rs. 8 lacs which amount was received by the husband of the plaintiff. Para no. 1 (v) mentions that house no. 23, Ritu Apartments owned by Sh. Yogender Pal Beri, father of defendant and father in law of plaintiff was sold by Sh. Ravi Kant Beri, husband of the plaintiff and Rs.5,62,500/- and subsequent amount of Rs. 10 lacs was received by Sh. Ravi Kant Beri, husband of the plaintiff and adjusted towards cost of construction carried out in 1987 in the suit property. It is further mentioned that on 01/03/1987, oral family settlement and declaration took place between Sh. Ravi Kant Beri, his wife Smt .Sangeeta Beri, the defendant, his wife Ms. Kumkum Beri and their parents Sh. Yogender Pal Beri and Smt. Krishna Beri that property no. 71, Hargovind Enclave, Delhi would be owned and enjoyed by Ms.C. K. Beri and his wife on one hand and Sh. Ravi Kant Beri and

his wife on the other hand equally. Both sides having 50% share each in the property. Para no. 1 (vii) further reiterates that in March 1987 after construction of House no. Plot no. 71, Har Govind enclave, Delhi, the plaintiff and her husband alongwith their family members had been residing on the ground floor alongwith parents, while the defendant alongwith his family members was residing on the first floor of the property.

6. It is well settled that on the basis of unequivocal admissions, the suit can be decreed under Order XII Rule 6 CPC. It is well settled that the admissions can be either express or constructive. It would also be fruitful to advert to the pronouncement in Delhi Jal Board Vs Surendra P Malik 114 (2003) DLT 151 wherein it was held as under:

“9. The test, therefore, is (i) whether admissions of fact arise in the suit, (ii) whether such admissions are plain, unambiguous and unequivocal, (iii) whether the defense set up is such that it requires evidence for determination of the issues and (iv) whether objections raised against rendering the judgment are such which go to the root of the matter or whether these are inconsequential making it impossible for the party to succeed even if entertained. It is immaterial at what stage the judgment is sought or whether admissions of fact are found expressly in the pleadings or not because such admissions could be gathered even constructively for the purpose of rendering a speedy judgment.”

7. For rendering a judgment on admissions, it is thus to be seen if the admissions purportedly made are clear and unambiguous or if defendant has raised objections which go to the root of the matter. In the facts of the present case, the assertions of the plaintiff are that the defences of the defendant that there was an oral family settlement are contradictory to his assertions that he is in adverse possession of the suit property. That further more, the defence of the

defendant is barred under the Benami Transaction Prohibition Act. Plaintiff has placed reliance upon following pronouncements in Harminder Khullar V/s. Swaran Kanta Juneja and ors. 2013 Legal Eagle 923; Harish Relan V/s Kaushal Kumari Relan 2017 Legal Eagle 305; Anil Gulati V/s Promila Gulati 2015 Legal Eagle 1919;

8. The defendant has placed reliance upon following pronouncements : Rohit Rishi V/s Rahul Rishi, in CS(OS) 2343/2012 DOD: 28/08/20156 by Hon'ble High Court of Delhi; Vijaya Myne V/s. Satya Bhushan Kaura 142 (2007) DLT 483 (DB); Usha Rani Jain and ors. V/s Nirulas Corner House Pvt. Ltd. and ors. ILR (2005) II Delhi 349.

9. In the facts of the case the assertion of the defendant is that he is in possession of 50% of property bearing no. 71, Hargovind Enclave by virtue of oral family settlement dated 01/03/1987 as owner. The defendant has given particulars of properties of his wife and father, which were purportedly sold by husband of the plaintiff and the sale proceeds were adjusted towards the cost of property no. 71, Hargovind Enclave and the cost of raising construction on the same, for treating the entire property no. 71, Hargovind Enclave as joint property of the parties. It is proposed to consider the present application in view of the said assertions of the defendant.

10. The very first assertion of the plaintiff is that the defence of the defendant is barred under the provisions of the Benami Transactions Prohibition Act.

11. In the facts of the case, it would be appropriate to refer to the definition of 'Benami Transactions' as given in the Benami Transaction Prohibition Act, as

amended in 2016 which is as under:-

"(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)"

12. The necessary prerequisite for dubbing a transaction as benami is that the consideration for purchasing the property should flow from a person other than the person in whose name the property is held. In the facts of the case, it is undisputed that the property in question had already been purchased earlier by husband of the plaintiff and thereafter, there was an understanding between the parties that the property would be treated as joint property of the parties. As such, the case of the defendant is not that the property was actually purchased out of funds supplied by him and his father. Rather the case of the defendant is that there was a mutual understanding to treat the entire property as joint property. For this reason, the defence raised by the defendant would not be barred under the Benami Transaction Prohibition Act, 1988.

13. Furthermore, there is significant departure in the Benami Transaction Prohibition Act as regards the definition of a Benami transaction. Previously, the transactions wherein the property was held by a co-parcenor were only exempted from the purview of the Benami Transactions Prohibition Act, whereas, under

the present Act, the properties held even by a member of the Hindu Undivided Family, would be exempted from the definition of Benami Transaction Prohibition. Coparcenary is a concept much limited than a HUF. A HUF would include even the spouses of the coparceners whereas the coparcenary would include the male members only. In the facts of the case, the assertion of the defendant is that properties of his wife and father, were purportedly sold by husband of the plaintiff and the sale proceeds were adjusted towards the cost of property no. 71, Hargovind Enclave and the cost of raising construction on the same. It is further asserted that there was an oral family settlement on 1.3.1987 between the family members comprising of the plaintiff and her husband, the defendant and his wife and the parents of the defendant. The only interpretation that can be given to the said assertions is that the suit property although previously purchased was treated as joint family property for which the oral family settlement took place on 1.3.87. Furthermore, the defendant has asserted that specific sums were paid to the husband of the plaintiff for treating the entire property as joint property. The question as to whether the said sums were actually received by the husband of the plaintiff's husband or not and if so received what was their purport and effect would at best be a matter of trial but at this initial stage the case of the defendant cannot be discarded without affording him an opportunity to establish his case. Thus, the assertion of the defendant is that the property was held by plaintiff as member of HUF and as such, the same would be excepted from the definition of Benami Property.

14. The further assertion of the plaintiff is that defendant had taken contradictory stands in the written statement. It is submitted that the defendant is asserting himself to be owner by adverse possession and in the same breath, he is asserting that he entered into possession of the suit property under oral family

settlement with the husband of the plaintiff. Reliance is placed on Harish Relan (supra). In the facts of the said case, in the first round of litigation, the appellant/defendant had asserted that he was in permissive possession of the suit property, while in later round of litigation, he asserted that he was in adverse possession of the suit property. Against the said factual background, the plea of adverse possession taken in the second round of litigation was rejected without trial and the suit was decreed under Order XII Rule 6 CPC.

15. It can now be considered if both defences of the defendant can be discarded at this preliminary stage. In the facts of the present case the defendant has given specific particulars of the properties which were sold and the amounts which were handed over to the husband of the plaintiff for treating property no. 71, Hargovind Enclave as joint property of the parties. At the outset, this defence of the defendant cannot be rejected merely because he has taken another contradictory defence. The suit is yet at a preliminary stage and which defence the defendant chooses to go forth with would at best be a matter of trial. The ratio of Harish Relan (supra) though undisputed was passed in different facts and is of no help to the plaintiff in the facts of the case.

16. Reliance is placed by plaintiff upon Anil Gulati (supra) to contend that the defence of oral family settlement is liable to be rejected. In Anil Gulati (supra), it was observed that no particulars regarding the oral family settlement was provided in the facts of the case and the plea of oral family settlement was rejected. However in the present case, the defendant has specifically asserted the date on which oral family settlement took place, the family members who were present at that time and has also mentioned various amounts which were given to the plaintiff's husband for treating the suit property as joint property of the

parties. The defendant has also asserted that the said funds were raised by selling the properties held by his wife and father and has also given the particulars of the said properties. The ratio of Anil Gulati (Supra) thus is of no help to the plaintiff in the facts of the present case.

17. There are thus no unequivocal admissions on record warranting decree of the suit at this stage. The defendant has sufficiently pleaded an oral family settlement and veracity of assertions of the defendant is at best a matter of trial.

18. The present application accordingly stands dismissed.

Put up for admission denial of documents & framing of issues for 05/09/2018.

Parties to appear in person.

(SHARAD GUPTA)
Addl. District Judge-01(Shahdara),
Karkardooma, Delhi. 09/07/2018.

(This order contains 9 pages.)