

PBPO020003472018



Presented on : 16-03-2018
Registered on : 17-03-2018
Decided on : 16-12-2024
Duration : 6 years, 9
months, 0 days

IN THE COURT OF
Civil Judge (Junior Division), Pathankot
Presided Over by Ms. Parminder Pindu

CS/195/2018

1. Karnail Singh son of Charan Singh Resident of Village
Khoobaayi Tesiyan Shanni, Tehsil and District, Pathaniot.

....Plaintiff

Versus

1. Jarnail Singh
2. Ramel Singh

Both sons of Charan Singh, Resident of village and Post
Office, Ferozpur Kalan, Tehsil and District, Pathankot.

3. Harbhajan Singh son of Charan Singh R/o Gali No.3, Ishwar
Nagar, Pathaniot.

....Defendants

*Suit for declaration to the effect that the plaintiff is
owner of land measuring 36 kanal 6 marlas comprising over khewat
No. 21/15, 548/540, 555/548 Khatoni No. 29, 705, 715, Rect. 101
Killa 22(3-5), 23(3-0), 24(8-3), 26(2-4), Rect. 106 killa 1/2(5-19),*

2(6-18), 3(3-17), 10/1(3-0) situated in the revenue estate of village Sujanpur, H.B No. 229 Tehsil and District, Pathankot as per jamabandi for the year 2014-2015 and the defendants have no any kind of right, title or interest in the suit land.

With consequential relief of permanent injunction restraining the defendants from alienating in any manner any part of suit land illegally.

And suit for possession of the part of suit land which is in possession of defendants.

**Present: Sh. J.D. Sharma Advocate for plaintiff.
Sh. Navanbir Gill Advocate counsel for defendants.**

JUDGMENT

1. Present suit has been filed by plaintiff against defendants, seeking relief for permanent injunction, declaration and possession as fully detailed and described in the head-note of the plaint.

2. Briefly, it has been stated that plaintiff is the real owner of suit land. It is further averred that plaintiff has purchased the suit land on 16.05.1990. The mother of plaintiff and defendants in consultation with defendants suggested to purchase the land in the name of plaintiff and defendants in equal shares. Although plaintiff would pay the entire consideration amount. It is further settled that in

case defendants failed to purchase equivalent land in favour of plaintiff, then they would repay the amount to plaintiff and amount would be equivalent to the amount spent by plaintiff along with interest. It is further averred that all the defendants were agreed at that time. It is averred that after the sale deed dated 16.05.1990 plaintiff and defendants had been cultivating amicably the suit land jointly. Defendant assuring plaintiff till November 2017 they stands for the terms and conditions of family settlement/agreement of May 1990. But defendants have not fulfilled their legal, moral obligations of either purchasing equivalent land purchased in sale deed dated 16.05.1990 or repaying the current market price of the land. It is further averred that defendants threatened to dispossess plaintiff from the suit land illegally and forcibly without any reason. Plaintiff requested defendants number of times not to pass any threat or to dispossess plaintiff from suit land but defendants refused to accede the request of plaintiff. As such, present suit has been filed.

3. Upon being put to notice, defendants have appeared and filed written statement and took preliminary objection of not come with clean hands, concealment of material facts, cause of action, non maintainability etc. It is submitted that no family settlement has ever taken place between family. It is stated that plaintiff is co-sharers to the extent of 1/4th share. Remaining averments were denied by defendants. Request is made to dismiss the present suit.

4. From the pleadings of the parties, following issues have been framed:-

1. *Whether plaintiff is entitled to decree of declaration as prayed for?OPP*
2. *Whether plaintiff is entitled for decree of permanent injunction as prayed for?OPP*
3. *Whether plaintiff is entitled for decree of possession of suit land as prayed for?OPP.*
4. *Whether suit of plaintiff is not maintainable?OPD*
5. *Whether suit of plaintiff is not property valued for the purpose of court fee and jurisdiction?OPD*
6. *Whether relief claimed by plaintiff is within law of limitation?OPP*
7. *Relief.*

5. In support of his case, plaintiff examined following witnesses:

a) **PW-1 Senior Assistant Gulzar** proved on record copy allotment No.887 dated 31.05.1989 of HIG Dwelling Unit No./Flat No. 3062 Ex.PW1/A, copy of physical possession of slip dated 07.07.1989 Ex.PW1/B, agreement to sell Ex.PW1/C, will Ex.PW1/D, General power of attorney Ex.PW1/E and Ex.PW1/F.

b) **PW-2 Karnail Singh** himself stepped into witness box and recorded his evidence by way of affidavit Ex.PW2/A. He proved on record document Ex.PW1/A to Ex.PW1/F and certified copy of sale deed Ex.P1, jamabandi for the year 2014-2015 Ex.P2.

6. Thereafter on 04.03.2024 counsel for plaintiff after tendering document Ex.DA/1 closed the evidence.

7. In defence counsel for defendant did not examine any witness. Accordingly, defendant evidence was closed by order on 30.10.2024.

8. No rebuttal evidence intended to be lead.

9. I have heard the counsel for the parties and have gone through the file carefully. My issue-wise findings are as follows:

ISSUE NO.1 to 3

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

2. Whether plaintiff is entitled for decree of permanent injunction as prayed for?OPP

3. Whether plaintiff is entitled for decree of possession of suit land as prayed for?OPP.

10. Onus to prove these issues was upon plaintiff. In order to prove his case, plaintiff has leaded both the oral as well as the documentary evidence. Plaintiff has sought the declaration that land situated in village Sujampur, as mentioned in the head note of the plaint is owned by him and defendants have no right, title or interest. Further, Suit for Permanent Injunction and possession. Thus, the matter in controversy between the parties is that whether the suit

land situated in village Sujanpur is owned by Plaintiff. In order to prove that suit land was purchased on 16.05.1990 out of the financial sources and income of the plaintiff examined Senior Assistant Gulzar Singh as PW-1 he produced the record i.e. original file relating to HIG Dwelling Unit NO. 3062 at sector 44-D Chandigarh and attested copy of agreement to sell dated 07.07.1989 as Ex. PW-1/C to Ex. PW-1/F and the plot was further sold to Gyatri Sood on the basis of Agreement to Sell as Ex. PW-1/C. Plaintiff Karnail Singh has stepped into witness box as PW-2. He in his affidavit Ex-PW2/A has categorically stated that suit land situated in village Sujanpur and purchased by him out of his income. He has also stated that defendants have no right, title or interest in the Suit land.

11. In order to rebut the above referred evidence adduced by the plaintiff, defendants have never stepped into witness box.

12. As per the case of the plaintiff, the suit property as mentioned in the head note of the plaint was purchased by him. Plaintiff alleges that he sold his residential Flat at Chadigarh which was situated in Sector 44-D, HIG Flat, Ground Floor No. 3062 and the flat was sold for the amount of 3 Lakhs. Plaintiff purchased the suit land out of that and part of the land was in the name of defendants as benami owner. The onus was heavily on the plaintiff to prove that the transaction in question was a Benami transaction.

13. It has been held by **the Hon'ble Supreme Court of India in the case of Vallamal (D) by LRs v. Subramaniam & Ors., AIR 2004 SC 4187** that there is a presumption in law that the person who purchases the property is the owner of the same. This presumption can be displaced by successfully pleading and proving that the property was taken benami in the name of another person from some reason, and the person whose name appears in the document is not the real owner, but only a benami. Heavy burden lies on the person who pleads that the recorded owner is a benami-holder.

14. The Hon'ble Supreme Court of India in a number of judgments held that it is well established that burden of proving that a particular sale is benami lies on the person who alleges the transaction to be a benami. The essence of a benami transaction is the intention of the party or parties concerned and often, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises, as a substitute for proof.

15. It has been held by the Hon'ble Supreme Court in the many judgments that the question whether a particular sale is benami or not, is largely one of fact, and for determining the question no

absolute formulas or acid test, uniformly applicable in all situations can be laid. The Hon'ble Apex Court spelt out following six circumstances which can be taken as a guide to determine the nature of the transaction:

- 1) the source from which the purchase money came;
- 2) the nature and possession of the property, after the purchase;
- 3) motive, if any, for giving the transaction a benami colour;
- 4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;
- 5) the custody of the title deeds after the sale; and
- 6) the conduct of the parties concerned in dealing with the property after the sale.

16. The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless, the source from where the purchase money came and the motive why the property was purchased benami are, by far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another.

17. The transaction in question in the present case is being examined on the touchstone of the above indicia. In the present case, as per agreement to sell Ex. PW-1/C to Ex. PW-1/F, the Flat No. 3062 at sector 44-D Chadigarh was allotted to Karnail Singh s/o Charan Singh. Therefore, Karnail Singh was the absolute owner of the Flat. The Said Flat No. 3062 sector 44-D Chandigarh was

transferred in the name of Gayatri Sood as per Ex. PW-1/C for the amount of Rs. 3 Lakhs. Perusal of the Ex. PW-1/C, shows that it was executed on 15th May, 1990 and amount 1 Lakh was paid in cash to the plaintiff Karnail Singh by Gayatri Sood. The suit property as per Ex. D-4 was purchased on 16.05.1990. As per law the title to the property vests in the person in whose favour the sale deed was executed. By way of a registered sale Deed dated 16.05.1990, Ex. D-4 the suit was registered in the name of plaintiff along with defendants. The presumption in favour of defendants could be displaced only if the plaintiff was able to prove that there were circumstances which warranted the purchase of the property benami in the name of defendants by him on asking of his mother. The plaintiff, in order to prove that on asking of his mother he purchased the suit land in his name and the defendants in equal shares, was required to show that there were valid reasons for purchase of the property in the name of defendants and that plaintiff had paid money for the purchase of the property in question. The plaintiff has placed on record Ex. PW1/C to Ex.PW1/F document in support of his contention that the suit property was purchased out of the funds of plaintiff and defendant by placing document Ex.P2 proved the capacity of plaintiff to purchase the suit land.

18. Further, plaintiff proved the motive for giving the transaction a benami colour; as family relations. Plaintiff further

proved the nature and possession of the property, after the purchase; that after the sale deed dated 16.05.1990 the plaintiff and defendants had been cultivating amicably the suit land jointly. Plaintiff shows that till 2017 the conduct of the parties i.e. defendants in dealing with the property after the sale was that they stands with the term of the family settlement but thereafter, defendants threaten the plaintiff to dispossess from the land illegally and forcibly without any reason.

19. Further, the position of the parties and the relationship in the present case is of brothers. Plaintiff and all the defendants are real brothers. Plaintiff in his evidence proved that his mother and his brothers suggested plaintiff to purchase the land in the name of the plaintiff and defendants in equal shares. Plaintiff paid the entire consideration amount. Plaintiff further alleges that due to the oral settlement between the parties it was decided that part purchased on the name of the defendants would remain trust in their hands and they would be ostensible owners. if any, between the claimant and the alleged benamidar.

20. It is well settled law that intention of the parties is essence of the benami transaction and the money must have been provided by the party invoking the doctrine of benami. The evidence on record shows clearly that the plaintiff has justification for purchasing the property in the name of defendants. Reason given by the plaintiff as to why the property was allegedly purchased in the

name of defendants as a benami owner has been sufficiently proved by the plaintiff. The source of money is also proved by the plaintiff and plaintiff has also explained the motive behind purchasing the suit property.

21. From the perusal of document and evidence adduced on record it is proved that the suit property was purchased out of the income source of plaintiff. From this uncontroverted evidence led by the plaintiff, it is to be stated that plaintiff has been able to tilt the scale of balance of preponderance of probability in his favour.

22. Therefore, from the discussion made herein above, issue No.1 to 3 are decided in favour of plaintiff and against the defendants.

RELIEF

23. Resultantly, In view of the discussions and findings given on above issues, the suit of the plaintiff succeeds and same is hereby, decreed without costs and a decree for declaration to the effect that plaintiff is owners of land measuring 36 Kanal 6 Marlas comprising over Khewat No. 21/15, 548/540,555/548 Khatoni No. 29, 705, 715 Rect. 101 Killa 22(3-5) 23(3-0) 24(8-3) 26(2-4)Rect. 106 Killa ½ (5-19) 2(6-18) 3(3-17) 10/1(3-0) situated in the revenue Esate of Village Sujanpur HB NO. 229 Tehsil and District Pathankot as per jamabandi for the year 2014-15 and defendants have no right, titled or interest in the suit land and defendants are hereby

restrained from further alienating any part of the suit property and further plaintiff is entitled for the possession of the suit land as mentioned in the head note of the plaint. Decree sheet be prepared accordingly. File be consigned to the Judicial Record Room, Pathankot. Any pending application, if any, stands disposed off.

Pronounced: In Open Court

Dated 16.12.2024

Pankaj (JW)

**Parminder Pindu, PCS,
Civil Judge (Junior Division),
UID No. PB0674
Pathankot.**