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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 32/2021 & CM No. 11572/2021**

KARIMUDDIN Appellant

Through Mr. Vijay Kinger, Advocate.

versus

CHUNNU KHAN Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

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26.03.2021

Present appeal has been preferred against the impugned judgment and decree dated 10.02.2021 passed by the Appellate Court in case no.RCA SCJ No.07/2019 whereby the appeal of the Appellant against the judgment and decree dated 23.02.2019 passed in CS No.706/2018 has been dismissed.

The Plaintiff / Respondent herein had filed a suit seeking relief of mandatory and permanent injunction and recovery of damages / mesne profits in respect of property bearing no.K-433, Gali No.4, Gautam Vihar, Delhi. The claim in the plaint was that the plaintiff had purchased the property from its erstwhile owner vide registered GPA, Will and Agreement to Sell and since then he was in possession of the property.

The Appellant herein / Defendant contested the suit and filed a written statement as well as an application under Order VII Rule 11 CPC.

Counsel for the Appellant submits that the Appellant and his brother namely Azeemuddin had purchased the suit property in the year 1998 and



while they had paid the consideration, the property was in the name of the plaintiff as he was his real brother-in-law and residing in Delhi. The Appellant is in possession of the property since the year 2000 and when in the beginning of the year 2018, the Appellant asked the Respondent to transfer the title in his name, the Respondent although assured him that he would do the needful but instead of taking necessary action, the present suit was filed. Learned counsel submits that with the intervention of the relatives and respectable persons of the society, in a panchayat meeting a Settlement Agreement was drawn up between the parties but despite this the Respondent prosecuted the suit against him.

The orders of the Court below are assailed by the Appellant on the ground that the Trial Court has erroneously decreed the suit partly under Order XII Rule 6 CPC and even the Appellate Court has erred in upholding the order of the Trial Court that the plea of the Appellant is hit by provisions of Section 2(9) of the Benami Transactions (Prohibition) Amendment Act, 2018 and that the Appellant in view of provision of Section 4 of the Act cannot take the defence that he is the actual owner of the suit property.

Mr. Vijay Kinger learned counsel for the Appellant has relied on a judgment of Supreme Court in the case of ***Sri Marcel Martins v. M. Printer & Ors. in Civil Appeal No. 6645/2003*** wherein the Court has held that when the parties are related to each other in fiduciary capacity, the transaction is saved from the mischief of Section 4 of the Benami Transactions (Prohibition) Act, 1988 by reason of the same falling under Sub-Section 3 (b) of Section 4 of the Act.

Learned counsel further draws the attention of the Court to the definition of word 'fiduciary relationship' as occurring in Black's Law



Dictionary, which has been taken into account by the Supreme Court.

Accordingly, the following substantial questions of law arise in the present appeal :-

- (i). Whether the defence of the Appellant is saved from the mischief of Section 4 of the Benami Transactions (Prohibition) Act, 1988 in view of the fiduciary relationship between the Appellant and the Respondent.
- (ii). Whether there is any relationship of licensor and licensee between the parties, which has formed the basis of the finding of the Courts below.

Issue notice to the Respondent on the Petitioner taking requisite steps through all permissible modes, returnable on 17.05.2021.

Till the next date of hearing operation of the impugned judgment and order dated 10.02.2021 and the judgment and decree dated 23.02.2019 is stayed.

JYOTI SINGH, J

MARCH 26, 2021
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