

R-14

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No. 199/1997

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14th December, 2010

SH. PREM SAGAR

..... Appellant

Through: Mr. K.R. Gupta, Ms. Kiran

Dharam,

Advocates

VERSUS

SH. QAMRUDDIN

.... Respondent

Through: S.K. Bhalla, Advocate

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. By means of the present appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC), the plaintiff/appellant challenges the impugned judgment and decree of the trial court whereby the suit for possession of the appellant/plaintiff was dismissed with respect to Plot

No. 7, Khasra No. 38, Gali No. 1, Aram Park, Shastri Nagar, Delhi
admeasuring 100 sq. yards.

2. The case of the appellant/plaintiff was that the sale deed of the subject plot was in his name and the defendant was a trespasser and, therefore, liable to be evicted in the suit for possession. The case of the defendant/respondent was that he had purchased the property pursuant to an agreement to sell dated 28.9.1983 entered into between him and the father of the appellant Sh. Sarda Ram. Further the case was that on the failure of the father of the plaintiff to execute a sale deed, a suit for specific performance was filed and which was ultimately decreed in favour of the respondent and in enforcement of the decree, a sale deed of the suit property was executed in favour of the respondent.

3. The only issue, therefore, which was basically argued before the trial court and also before this Court was/is as to whether the plaintiff was the owner of the subject property and, consequently, his father was incompetent to enter into an agreement to sell dated 28.9.1983 with the defendant/respondent. The trial court framed issues after completion of pleadings on 5.10.1989 and the relevant issues in this

regard are Issue Nos. 1,3,5 and 7 which read as under:

- “1. Whether the plaintiff is owner of property in suit? OPP
 3. Whether Sarda Ram was competent to enter into an agreement to sell with the deft. with respect to the property in dispute? OPP
 5. Whether the decree passed in the suit by Sh. P.K. Bahari, ADJ “(as his Lordship then was)” is valid and is binding on the plaintiff?
 7. Whether Sharda Ram entered into agreement with the deft. with the plaintiff’s consent? If so, its effect?”
4. These issues were dealt with together by the trial court exhaustively from paragraphs 11 to 38 of the judgment. Dealing with the aforesaid aspect of the ownership, the trial court has arrived at the following conclusions:-

(i) That not the plaintiff/appellant but really his father Sarda Ram was the owner of the subject property and the plaintiff was only a benami owner. The father of the plaintiff/appellant had duly executed an agreement to sell dated 28.9.1983 in favour of the respondent/defendant and on his failure to perform his obligation under the Agreement, the respondent filed a suit for specific performance which was ultimately

decreed in his favour and thereafter through the Court a sale deed was also executed in favour of the respondent.

(ii) The plaintiff was present when the agreement to sell dated 28.9.1983/was entered into by the father of the plaintiff/appellant with the respondent. This aspect has been held to be proved on account of testimonies of the witnesses of the defendant/respondent.

(iii) The suit was in substance an abuse of the process of law because its object was to overcome a final decree for specific performance by which the defendant/respondent had become owner of the property.

(iv) It is not correct to say that the father of the plaintiff was of unsound mind because the so-called unsoundness of mind was shown for a few days, i.e. 15 days, of the year 1955 and whereas the agreement to sell was of the year 1983.

To the above conclusions, I may only add that the proved fact which appears on record is that it is not the case in the pleadings of the appellant/plaintiff or proved by him that his father was having bad relations with the plaintiff/appellant. In my opinion, it was very

vital for having pleadings and proof of strained relations between the plaintiff/appellant son and his father Sh. Sarda Ram who executed the agreement to sell dated 28.9.1983 in favour of the respondent because it cannot stand to reason that the father would be acting against the interest of the plaintiff/son unless there were bad relations and the father wanted to mis-appropriate the property. It is also conceded by the counsel for the appellant that there are no pleadings or any evidence to show any such bad relations and litigations between the plaintiff/ son and his father Sh. Sarda Ram.

6. Though I have stated above, as many as 28 paragraphs are devoted to the findings on the issue of lack of ownership of the appellant/plaintiff, and it is not feasible to reproduce all the paragraphs herein, however some of the relevant paragraphs, I would seek to reproduce and which are paragraphs 16,17, 19, 23, 24, 26, 27, 32 and 36, and the findings/conclusions with which I wholly agree:-

“16. As against this, the case of the defendant is that he was inducted as a tenant by the father of the plaintiff namely Shri Sarda Ram in the suit property in the year 1977 and has been realizing the rent; and that Shri Sarda Ram entered into an agreement to sell the said property for Rs. 35,000/- and interest money of Rs.10,000/- was paid to Shri Sarda Ram, who executed the sale-agreement Ex.P1.

He also deposed that at the time of negotiation, the plaintiff, in the present case, was present alongwith his father; but, it is further deposed that he had been requesting Shri Sarda Ram, a number of times to accept the balance amount and to execute the sale-deed and when he failed to do so, he filed the suit against Shri Sarda Ram, which was duly contested by said Shri Sarda Ram and suffered a decree of specific performance; and, on his failure to execute the sale-deed, the property was got registered through the court by him in his favour. It is further deposed, at the time of the agreement to purchase the suit property, the plaintiff did not raise any objection against the sale and rather represented that he had no concerned with the property, as his father was absolute and exclusive owner of the same; that he also told that he was a smaller child when the property was purchased by his father.

17. The defendant has sought corroboration, to his testimony with regard to the presence of the plaintiff at the time of negotiations for agreement to sell of the suit property from the two witnesses namely Sh. Babu Khan DW2 and Alijan DW3 while regarding his having been occupying the premises as a tenant prior to his alleged purchase, he sought corroboration from Shamsuddin DW4.

19. DW3 has deposed that the agreement to sell was executed in his presence; and that besides Sarda Ram, his son Prem Sagar, the plaintiff, Kalia (Tao of the plaintiff). also known as Mangal, Yakoob and Babu, Shaki Jan were present; and that, this agreement was entered into with the mutual consent of the plaintiff and his father, both of whom, told that they needed money for solemnization of the marriage of the plaintiff's sister. He proved the certified copy of the agreement to sell as Ex.PW3/1. He also deposed that Prem Sagar did not raise any objection at the time of execution of the document; and rather, himself, asked his father to execute the same. This is the case of the

defendant set up by him in the written statement. He further deposed that after the negotiation, the plaintiff left for his duty and the deed of agreement to sell was signed by the plaintiff's father thereafter.

23. It is submitted on behalf of the plaintiff that in view of sale-deed Ex.PW1/1 the plaintiff is the owner of the suit property and that his father Sarda Ram has no right to enter into any agreement to sell; and that, since, he was not of sound state of mind; the defendant, in collusion with him, got executed, alleged, agreement to sell by concocting the false story of need for the marriage of the daughter of Shri Sarda Ram. It is contended that had the plaintiff been present at the time of negotiations, it was the duty of the defendant to insist upon the plaintiff having signed the agreement to sell which as per the sale -deed, he was named as the owner.

24. It is further submitted that in the light of the clear title of the plaintiff on the basis of Ex.AW1/1, onus was on the defendant to prove that Sarda Ram was competent to enter-into-agreement to sell; and he failed to adduce any evidence to show that any power of attorney was held by Sh. Sarda Ram, on behalf of the plaintiff to sell the property owned by the plaintiff. He, however, admitted that when the property was purchased, the plaintiff was only a small child; but, it is the case of the plaintiff that since the money was paid by the maternal grand-mother of the plaintiff to purchase the property, therefore, after the same was purchased in his name and he attained the age of majority, he had full right to hold the property without any intermediary including his father who had never been authorised to enter into any agreement to sell; and, therefore, if any decree has been suffered by his father, who was otherwise mentally insane, could not be binding on the plaintiff, in any way. It has come in the evidence of the plaintiff that he was told by his maternal-grand-mother that

the plot in dispute was purchased with the money paid by her; while admitting his date of birth as 5.8.55. The sale deed Ex.PW1/1 shows the date of execution as 25.1.61 which is in respect of plot No.6.

26. There is no doubt that the plaintiff was a child of about 6 years when the property was purchased. From the perusal of the sale-deed Ex.PW1/1, it is clear that it was Sarda Ram through whom the property was purchased though in the name of the plaintiff.

27. Now, it is pleaded that the money was paid by the maternal-grand-mother of the plaintiff but there is no evidence, excepting the bald testimony of the plaintiff, himself.

32. After carefully examining the facts, as have come on record, I find that the pltf. who claims ownership in respect of plot No.7 on the basis of Ex.PW1/1, which concerns plot No.6 only is a Benami of his father Sarda Ram, who had purchased the plot vide Ex.PW1/1 and it is all a cock & bull story that the money for the purchase of the plot was paid by the maternal-grand-mother of the plaintiff. This is admitted case that he was just a child and having no source of income, to fund the purchase.

36. The plea of the plaintiff that he was not present at the time of negotiation or agreement, which is, otherwise, rebutted by the defendant who deposed himself as well as the other witnesses, that the pltf. was present at the time, does not make any difference to the defendant's case. Having come to the conclusion that it was Sarda Ram, himself, who was the owner of the property, no Power of Attorney was required to be looked in by the deft. Plea of his insanity, as raised by the pltf. also fails to convince me that he was incompetent to enter into the agreement to sell for want of cogent evidence to prove that at the time of

agreement to sell dated 28.9.83, he was suffering from any such ailment. Whatever has been proved through PW2, is that, as per record of the medical officer of Safdarjang Hospital dated 11.6.95, constable Sarda Ram was under observation as a mental case for a period from 12th April to 15th April 1955 only. Even if Sarda Ram has suffered some mental ailment in the year 1955, and, was, later on, dismissed from service, as deposed by the plaintiff, it cannot be presumed as established that on the day of execution of the sale-agreement i.e. 28.9.83, Sarda Ram was insane person, incapable of understanding right or wrong.”

7. Sitting as an Appellant Court, I can interfere with the findings of the trial court only if the same are perverse or illegal. Merely because two views are possible on the basis of the facts which have come on record and the evidence which has been led would not entitle to this Court to interfere with the findings and conclusions of the trial court. In view of the detailed discussions in paras 11 to 38 of the judgment, and some of the paragraphs which I have reproduced above, it cannot be said that the findings and the conclusions are in any manner illegal or perverse. In fact, in my opinion, grave prejudice and harm will be caused to the defendant/respondent who not only purchased the property and paid the price, but who thereafter was forced to file a suit for specific performance which was subsequently decreed. No

doubt, the plaintiff was not a party to the said suit, however, it otherwise has been proved before the trial court that the father of the plaintiff was the actual owner of the property and also that the father of the plaintiff/appellant acted with the active consent of the plaintiff/appellant/son to enter into an agreement to sell.

8. Before this Court, the learned counsel for the appellant very strenuously argued that the tests laid down for proving that the son was only a benami owner and the father was the real owner, have not been proved and which tests are those as laid down by the Supreme Court in the judgment of *Jaydayal Poddar (Deceased) through LRs. & Anr. Vs. Mst. Hazara & Ors., AIR 1974 SC 171*. Great stress was laid on the fact that no intention has been proved for the benami transaction and nor has it been proved that the consideration flowed from the father to the original seller of the property. It has also been argued that since the agreement to sell states that possession will be delivered at the time of the execution of the sale deed, this was indicative of lack genuineness of agreement because the respondent/defendant was already in possession claiming to be a tenant of the property. It is also argued that there is no presumption

that when a property is purchased in the name of minor the same should automatically be taken as a benami property.

9. I am afraid that I am unable to agree with any of the contentions as raised by the counsel for the appellant. A decision in a civil case is based on balance of probabilities. There are always pros and cons in every case, meaning thereby, there is always something for and against each of the parties as per the evidence which comes on record. Further, the court ultimately puts the same in a melting pot and thereafter arrives at a decision on the balance of probabilities. The balance of probabilities clearly show that the claim of respondent/defendant in this case, who has paid the price of the plot, should not be defeated by the act of the plaintiff in claiming possession of the property which was sold by the father of the plaintiff/appellant when admittedly there are no bad or strained relations between the plaintiff/appellant son and his father Sh. Sarda Ram. Also the agreement to sell nowhere states that the monies paid for the property purchased in the name of the plaintiff/appellant were not paid by the father, and in fact, the agreement to sell uses the expression “through father” and which, in my opinion, is an indication

of the father having paid the price for the property. Also, the trial court has not acted illegally or perversely in finding nothing on record that it was not from the funds of the grand-mother of the plaintiff that the price for the subject property was paid and thus the property was accordingly purchased in the name of the plaintiff/appellant.

10. Therefore, I am not inclined to interfere with the impugned judgment and the decree in the facts and circumstances of the present case. The appeal is, therefore, dismissed, leaving the parties to bear their own costs. The trial court record be sent back.

DECEMBER 14, 2010
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VALMIKI J. MEHTA, J.