

(2009) 09 P&H CK 0114

High Court Of Punjab And Haryana At Chandigarh**Case No:** Regular Second Appeal No. 1367 of 1996 (O and M)

Sampuran Singh and another

APPELLANT

Vs

Smt. Samittri Devi and another

RESPONDENT

Date of Decision: Sept. 10, 2009**Hon'ble Judges:** Sabina, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

Sabina, J.

Plaintiff-Samittri Devi filed a suit for declaration and permanent injunction by alleging that she was owner in possession of the house shown by letters ABCD and in red colour in the site plan attached with the plaint. The suit of the plaintiff was dismissed by the Sub Judge Ist Class, Pathankot vide judgment and decree dated 3.10.1991. Aggrieved by the same, the plaintiff filed an appeal which was allowed by the Additional District Judge, Gurdaspur vide judgment and decree dated 22.2.1996 Hence, the present appeal by the defendants.

2. The facts of the case, as noticed by the Additional District Judge in paras 3 to 7 of its judgment, read as under:

3. Briefly stated the version of the plaintiff is that the house in dispute was purchased by the plaintiff from S/Shri Romesh Chand and Chattar Chand vide registered sale deed dated 26.2.1985 for consideration of Rs. 40,000/-; that the sale deed was executed benami in the name of defendants Nos. 1 and 2; that defendant No. 1 is the son of the plaintiff, whereas defendant No. 2 is the cousin of the wife of defendant No. 1; that the entire sale consideration of Rs. 40,000/- was paid by the plaintiff out of her bank account in the State Bank of Patiala. Vide two bank drafts dated 26.2.1985; that the original sale deed continued to be in possession of the plaintiff but the defendants Nos. 1 and 2 stealthily removed the same; that the actual possession of the house at the time of the execution of the sale deed was with the tenant of the previous owner. It is alleged that defendant No. 2 in an illegal

way and without any right or title and without the consent of the plaintiff sold 1/2 share of the suit house to defendant No. 3 vide registered sale deed dated 13.4.1987 despite the fact that defendant No. 3 was informed vide letter dated 8.4.1987 sent under certificate of posting that the plaintiff was the real owner of the suit house. The conduct of defendant No. 3 in purchasing the suit house is malafide. It is further alleged that the defendants are threatening to alienate the disputed house by claiming themselves to be full fledged owner and as such, a cloud is cast on the ownership right of the plaintiff qua the suit house. Besides this the defendants have started threatening to dislodge the plaintiff from the suit house. Accordingly, she filed the suit on 30.9.1987.

4. Defendant No. 1 submitted his separate written statement wherein it is admitted that the house in dispute was purchased by the plaintiff from S/Shri Romesh Chand and Chattar Chand vide registered sale deed dated 26.2.1985 for a consideration of Rs. 40,000/-and the sale deed was executed benami in favour of defendants Nos. 1 and 2. It is also admitted by him that defendant No. 2 has illegally and without any right or title transferred 1/2 share of the house in dispute to defendant No. 3 vide registered sale deed dated 13.4.1987. He also admitted it to be correct that the plaintiff is the owner of the house in dispute as she had paid the entire sale consideration.

5. Defendant No. 2 submitted his separate written statement wherein it is pleaded that a suit for declaration is not maintainable as the plaintiff is not in possession of the property in dispute. He further pleaded that the relief of injunction is not available to the plaintiff against the answering respondent as he has already executed the sale deed dated 13.4.1987 and sold his share in the property in dispute to defendant No. 3. His case is that the suit is collusive between the plaintiff and her son Kamal Chand defendant No. 1.

6. Defendant No. 2 further pleaded that the plaintiff is neither the owner nor in possession of the property in suit and that the property in dispute was purchased jointly by the answering defendant and Shri Kamal Chand defendant No. 1 in equal shares from its previous owners for Rs. 40,000/-vide sale deed dated 26.2.1985 duly registered with the Sub Registrar, Pathankot; that the mutation was duly sanctioned in favour of defendant No. 3. As a matter of fact the answering defendant is a very near relation of the plaintiff,as the wife of defendant No. 1 is the cousin of the answering defendant; that the answering defendant had to come from Gurdaspur-for the execution of the sale deed and he had left the money with the plaintiff. He stated to be incorrect that the entire amount of consideration was paid out of the funds of the plaintiff. He further pleaded that an amount of Rs. 20,000/-had been kept in Trust with the plaintiff by the answering defendant; that the answering defendant was fully competent to execute the sale deed in favour of defendant No. 3 and that the sale deed has been validly executed in favour of defendant No. 3 for a consideration of Rs. 30,000/-. He,therefore, denied the claim

of the plaintiff and prayed for dismissal of the suit with costs.

7. Defendant No. 3 also submitted his separate written statement and pleaded inter alia that the present suit is not maintainable as the plaintiff is not in possession of any part of the suit property. He also pleaded that he is a bona fide purchaser for consideration and without notice; that he purchased the property from defendant No. 2, who is the registered owner in the records of the Sub Registrar, Pathankot; that the plaintiff is estopped by her act and conduct from filing the suit; that defendant No. 2 was the co-owner to the extent of 1/2 share and the sale has been effected by him legally and for consideration and that the plaintiff has got no locus standi to challenge the same; that the sale deed executed in favour of defendants Nos. 1 and 2 is not benami as alleged; that even if it is proved that the sale in favour of defendants Nos. 1 and 2 is benami even then in the face of the recent legislation on 'benami' transaction, defendants Nos. 1 and 2 were the owners of the suit property and were competent to alienate the same; that the suit has been filed in collusion with defendant No. 1. He further pleaded that in fact the house in dispute was purchased by defendants Nos. 1 and 2 for a consideration of Rs. 40,000/- in equal shares vide registered sale deed dated 26.2.1985 and as such, the plaintiff has got no concern whatsoever with the said house; that the answering defendant is not aware of the relationship of defendant No. 2 with defendant No. 1. It is, however, correct that defendant No. 1 is the son of the plaintiff. He denied the allegations that the original sale deed was in possession of the plaintiff or that it was removed by defendants Nos. 1 and 2 clandestinely as alleged. He further pleaded that defendant No. 2 was the owner of the house to the extent of 1/2 share and he has legally transferred his share in favour of defendant No. 3 by executing sale deed dated 13.4.1987 for a consideration of Rs. 30,000/-; that defendant No. 3 is bona fide purchaser for consideration and without notice and that the conveyance deed in his favour has been effected legally and that the plaintiff has got no concern with the suit property. He, therefore, denied the averments of the plaintiff and prayed for the dismissal of the suit of the plaintiff with costs.

3. On the pleadings of the parties, the following issues were framed by the trial Court:

1. Whether the plaintiff is owner in possession of the house in dispute? OPP
2. Whether the sale deed dated 26.2.1985 is Benami and to what effect? OPD
3. Whether the sale deed dated 13.4.87 is illegal and not binding on the plaintiff? OPP
4. Whether the plaintiff is in possession of the house in dispute and to what effect? OPP
5. If issue No. 1 proved, whether the defendant No. 3 is a bona fide purchaser and without consideration and without notice? OPD(3)
6. Whether this suit is not legally maintainable in the present form? OPD

7. Relief.

4. Issue No. 5, as mentioned above, was amended on 16.5.1991 which reads as under:-

Issue No. 5. If issue No. 1 is proved, whether the defendant No. 2 is a bonafide purchaser for consideration and without notice? OPD(3)

An additional issue (6-A), " Whether the plaintiff is entitled to any amount? If so and from whom", was framed on 2.5.1989.

5. In addition to it, vide order dated 22.8.1991, the following issues were also framed:

6-A Whether the plaintiff is entitled to alternative relief as prayed for regarding amount of Rs. 40,000/- and interest?

OPP 6-B Whether there is collusion between plaintiff and defendant No. 1? OPD(2)

6-C Whether alternative claim of the plaintiff regarding Rs. 40,000/- is time barred as alleged? OPD" 2.

6. Learned counsel for the appellants has argued that, in fact, the property in question had been purchased by defendants No. 1 and 2. Appellant No. 1 was a bona fide purchaser of the suit land. Plaintiff had no concern with the property in question. Plaintiff herself admitted, in her cross-examination, that she had never received rent qua the suit property.

7. Learned counsel for the respondents, on the other hand, has submitted that the property in dispute had been purchased out of the account of the plaintiff and hence, plaintiff was owner of the suit land. Defendants No. 1 and 2 had no concern with the suit land. Defendant No. 3 was not a bona fide purchaser of the suit land. In fact, on coming to know about the transaction between the defendants, plaintiff served a notice on the defendants. But despite that defendant No. 3, purchased half share of the suit property from defendant No. 2.

8. The substantial question of law that arises in this case is 'as to whether the learned Additional District Judge has misread the evidence on record while coming to the conclusion that the suit property was benami property of the plaintiff'.

9. Admittedly, the sale deed dated 26.2.1985 (Exhibit D4/1) is in the name of defendants No. 1 and 2. As per the said sale deed, Romesh Chand and Chattar Chand had sold the suit property to defendant Nos. 1 and 2. Jiwan Kumar sold his share out of the suit property vide Exhibit DA to defendant No. 3. Sampuran Singh. The case of the plaintiff is that, in fact, the suit property was owned by her as, admittedly, the amount of sale consideration had been paid to Romesh Chand and Chattar Chand at the time of execution of the sale deed on 26.2.1985 out of the account of the plaintiff. But plaintiff, in her cross-examination, deposed that when the house in dispute was purchased by her, there was Office of Home Guard in the

house. The said Office was still in the house. The Office of the Home Guard was there in the house about 10 years prior to its purchase at a monthly rent of Rs. 80/-. She had never received a rent of the house from the Office of the Home Guard. This shows that the plaintiff had no concern with the house in dispute. Had the plea taken by the plaintiff that, in fact, it was a benami transaction and although the sale deed was in favour of defendant Nos. 1 and 2 yet in the real sense she was the owner of the house in dispute then the plaintiff would have taken the rent of the premises in dispute. However, the rent was not taken by the plaintiff. Apparently, the rent must have been taken by the defendants No. 1 and 2 in equal shares of the premises in dispute. The reason why the sale consideration was paid out of the account of the plaintiff by defendants No. 1 and 2 has not come on record yet it is evident that the plaintiff was not benami owner of the suit property.

10. Learned appellate Court has ignored this material piece of evidence, i.e., the cross-examination of plaintiff herself. It is evident that she had no concern with the premises in dispute.

11. Plaintiff has taken the plea that she had informed defendant No. 3 vide notice Exhibit P16 Under Postal Certificate (for short 'UPC') Exhibit P17. However, there is nothing on record to suggest that defendant No. 3 had, in fact, been served with the said notice. The UPC was dispatched on 8.4.1987 and the sale deed was executed on 13.4.1987 just after five days of the dispatch of the said UPC. But there is nothing on record to suggest that, in fact, notice had been delivered to defendant No. 3 before the execution of the sale deed. Hence, the finding of the learned Additional District Judge to the effect that defendant No. 3 was not a bona fide purchaser is based on misreading of evidence. In these circumstances, since the plaintiff has no concern with the suit property, her suit was liable to be dismissed. The substantial question of law stands answered accordingly.

12. Consequently, this appeal is allowed. The impugned judgment and decree of the learned Additional District Judge are set aside and the judgment and decree of the learned trial Court are upheld.