

(2008) 09 DEL CK 0203

Delhi High Court

Case No: Regular First Appeal No. 311 of 2004

S. Gurdeep Singh

APPELLANT

Vs

S. Surjeet Singh and Others

RESPONDENT

Date of Decision: Sept. 12, 2008

Hon'ble Judges: Sunil Gaur, J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: S.P. Pandey, for the Appellant; Maninder Acharya, for the Respondent

Final Decision: Dismissed

Judgement

Pradeep Nandrajog, J.

Appellant, S. Gurdeep Singh sought partition of the estate left behind by the father of the parties, Late S. Hakam Singh. The defendants in the suit were brothers of S. Gurdeep Singh namely S. Surjeet Singh and S. Gurmail Singh and their sister Ms. Avtar Kaur. It was stated in the plaint that S. Hakam Singh owned 4 immovable properties namely:

i) House No. 2294, Raja Park,

Shakur Basti, Delhi.

(single storey building on an area

measuring about 160 sq. yards)

ii) House No. 2259, Raja Park,

Shakur Basti, Delhi.

(Double-storey building on an area

measuring about 140 sq. yards)

(iii) Plot of land bearing No. 2345, measuring about

225 sq. yards situated just at the back side of the property bearing No. 2294, Raja Park, Shakur Basti, Delhi.

(iv) Plot of land bearing No. 2348/B-1 measuring about 75 sq.yards in front of the above said plot (hereinafter referred to as disputed properties No. 1 to 4 respectively).

2. There was no dispute between the parties qua the ancestral nature of the 3 properties at serial No. i, ii and iv above. The dispute was whether property bearing No. 2345, Raja Park, Shakur Basti was that of their late father. All the defendants, in the respective written statements filed, stated that said property was the self-acquired property of S. Surjeet Singh.

3. Thus, on the pleadings of the parties the only material issue which needed adjudication was whether property bearing No. 2345, Raja Park, Shakur Basti was owned by defendant No. 1. Needless to state each party having 1/4th share in the estate of the father was not in dispute. Qua 3 properties it was not in dispute that being the properties of the late father and the father having died intestate the same had to be partitioned amongst the 4 siblings.

4. Vide impugned judgment and decree dated 12.4.2004, learned Trial Judge has held that property bearing No. 2345, Raja Park, Shakur Basti, Delhi was that of S. Surjeet Singh and hence has excluded the same from being partitioned.

5. The reasoning of the learned Trial Judge is as under:

(i) The sale deed of the property in question, Ex.DW-2/P-1, is in the name of S. Surjeet Singh who was a major when the property was purchased. The plea of the plaintiff that the father purchased the said property in the name of S. Surjeet Singh i.e. that S. Surjeet Singh was a benamidar has been repelled holding that there was no reason why late S. Hakam Singh purchased, the same in the name of his son. Learned Trial Judge has found sustenance in reaching said finding from the fact that S. Hakam Singh purchased the other 3 properties in his own name.

(ii) Testimony of DW-4, S. Gurbachan Singh, the maternal uncle of the wife of S. Surjeet Singh revealed that Rs. 510/- out of the sale consideration of Rs. 1,000/- when the property was purchased was the money gifted to S. Surjeet Singh at the time of his engagement with the niece of DW-4 and that the balance amount was from the savings of S. Surjeet Singh.

(iii) That the other brother and the sister supported the case of S. Surjeet Singh was a relevant fact because the said brother and the sister would lose a share in the

property by supporting S.Surjeet Singh.

6. Learned Counsel for the appellant, Sh. S.P. Pandey has urged at the hearing today that S. Surjeet Singh got married in the year 1960 and that the testimony of DW-4 did not inspire any confidence for the reason, in cross-examination he stated that his niece got married to S. Surjeet Singh in the year 1962. Counsel urges that this belies the testimony of DW-4 of witnessing the father-in-law of S. Surjeet Singh gifting him Rs. 510/- at the time of engagement. Second contention urged is that the learned Trial Judge has gravely erred in ignoring Ex.PW-1/13-A, Ex.PW-1/1, Ex.PW-1/2, Ex.PW-1/3, Ex.PW-1/4, Ex.PW-1/5, Ex.PW-1/6, Ex.PW-1/7, Ex.PW-1/8, Ex.PW-1/9, Ex.PW-1/10, Ex.PW-1/11, Ex.PW-1/12 and Ex.PW-1/13, which document, according to Learned Counsel for the appellant reveal a joint status of the family and that, during his life time, S. Hakam Singh was realizing the rent of all the 4 properties, meaning thereby was acting as the owner of all the properties, including the property in dispute.

7. It would be relevant to note that S. Surjeet Singh, in his deposition, stated that he got engaged in the 2nd week of May 1960. The sale deed Ex.DW-2/P-1 has been executed on 20th May, 1960. That DW-4 stated that the engagement took place in 1962 is neither here nor there for the reason in the preceding sentence he stated that his niece got married in the summer month of the year 1960-65. It is obvious that the marriage could not take place in the year 1960 as well as in the year 1965. DW-4 deposed on 30.5.2000 and as per his deposition was aged 80 years on said date. Being an old man with failing memory nothing much turns on these minor discrepancies.

8. He who asserts the plea of a property being benami has a heavy onus to discharge that the real consideration was paid by somebody else. The presumption is in favour of the registered owner being the real owner of the property.

9. Normally, when a purchaser uses the name of somebody else to purchase a property, effective control and possession is exercised by he who finances the benami purchase.

10. There is no evidence that during his life time S. Hakam Singh exercised control over the property in dispute.

11. Ex.PW-1/1 to Ex.PW-1/13 and Ex.PW-1/13-A relied upon by Learned Counsel for the appellant do not reveal that S. Hakam Singh exercised ownership control over the property in dispute.

12. Ex.PW-1/2 to Ex.PW-1/13 are a record of accounts roughly maintained in the hand of late S. Hakam Singh. They only reveal that the deceased used to maintain rough accounts. They show no more. The documents, at best reveal some kind of a family discord requiring S. Hakam Singh to show what he was spending.

13. Ex.PW-1/1 is a memorandum recording that a total rental income of Rs. 18,000/- was accruing and the manner in which it was being spent. The document is very inchoate and does not record that the property in dispute was getting a rent which formed part of Rs. 18,000/-. Ex.PW-1/13-A is dated 11.5.1985. It records some kind of dispute between the appellant and S. Surjeet Singh. It records that the two brothers have agreed to a settlement within the community. Names of 9 persons have been recorded as the community members who would resolve the dispute. It is important to note that Ex.PW-1/13-A does not record that the subject property is in dispute and that S. Surjeet Singh has agreed that the same be adjudicated through the intervention of the community members.

14. In the decision reported as AIR 1974 SC 170 Jai Dayal Poddar thr. Lrs. v. Mst. Bibi Hazara and Ors. it was held that the burden of proving that a particular sale is benami and that the apparent purchaser is not the real owner always rests on the person asserting it to be so and this burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of the fact. Similar view was expressed in 2 other later decisions reported as [Thakur Bhim Singh \(Dead\) by Lrs and Another Vs. Thakur Kan Singh](#), and [Prem Kumar Vs. Ved Parkash and Others](#),

15. We find no merits in the appeal.

16. Dismissed.

17. Costs shall follow.

18. TCR be returned forthwith.