

(1983) 05 DEL CK 0041

Delhi High Court**Case No:** Civil Miscellaneous (Main) Appeal No. 221 of 1982

Raj Narain Aggarwal

APPELLANT

Vs

Baij Nath Khanna

RESPONDENT

Date of Decision: May 26, 1983**Citation:** AIR 1984 Delhi 155 : (1983) 5 DRJ 196**Hon'ble Judges:** A.B. Rohtagi, J**Bench:** Single Bench**Advocate:** L.R. Gupta, Rajiv Gupta, R.K. Agarwal, Y.K. Sabharwal and M.M. Sudan, for the Appellant;

Judgement

A.B. Rohatgi, J.

(1) The single question raised in this petition by the tenant Raj Narain Aggarwal is whether the amendment of the written statement was wrongly refused by the Additional Rent Controller.

(2) These are the facts. The respondent landlord, Baij Nath Khanna, brought a petition for the eviction of the tenant on the ground that the premises were required bona fide by him for occupation as a residence for himself and for members of the family dependent on him u/s 14(I)(e) of the Delhi Rent Control Act, 1958 ("the Act"). The tenant is contesting the petition on several grounds. One of the grounds of defense in the written statement is that the landlord is not the owner of premises.

(3) After the case had been set down for the evidence of the landlord, an application was made by the tenant on 31-3-1982 under Order Vi Rule 17 CPC praying that he may be allowed to amend the written statement so as to incorporate the plea that the landlord Baij Nath Khanna is "at the most a benamidar and not the real owner or co-owner" of the property in question. In the amendment application it was said that in respect of the sale deed date 20-11-1947 of the property in dispute the entire sale consideration was paid by the landlord's brother Amir Chand Khanna, and not

by Baij Nath Khanna. Baij Nath Khanna's name was merely added out of affection by Amir Chand Khanna and that Amir Chand Khanna was the sole and the exclusive owner of the property in suit. The tenant said that in the year 1970 when Amir Chand Khanna directed him to pay rent to Baij Nath Khanna as "his representative, agent or nominee" that he started paying rent to him. The substance of the amendment is that the tenant wants to set up the plea that the landlord Baij Nath Khanna is merely a benarnidar and not the real owner or co-owner of the property.

(4) The amendment was opposed by the landlord. The learned Additional Controller rejected the application. He took the view that ownership of landlord has already been challenged by the tenant because there is a specific plea of the tenant disputing the ownership of the landlord. On this, he said, the tenant can lead evidence about the ownership to the extent the law permits him but the tenant cannot take the plea that the landlord is a benamidar . Therefore the amendment was refused. From the order of the Additional Controller dated 15-7-82 the tenant has filed this petition.

(5) The question is whether the tenant has locus standi to question the ownership of the landlord on the ground that he is a mere benamidar and not the real owner of the property, the real owner being Amir Chand Khanna. In my opinion it is not open to the tenant to take the plea that his landlord is a benamidar and not the real owner, though the sale deed dated 20-11-1947 evidences that Amir Chand Khanna and Baij Nath Khanna are the co-owners of the property. The only ground on which it is sought to be asserted that Baij Nath is a mere benamidar of Amir Chand, is that the entire sale consideration proceeded from Amir Chand Khanna and Baij Nath Khanna did not contribute, "even a single pie" towards the sale consideration.

(6) The short answer to the plea sought to be raised by the tenant by way of amendment is that it is only the real owner Amir Chand who can raise the question of the transaction being benami. Amir Chand is dead. His heirs can raise the objection. But not the tenant.

(7) It appears to me that this proposition is well settled. In *Sardarni Kirpal Kmir v. Bhagwant Rai*, 1962 Plr 717 Grover J. took the view that where a gift of the demised premises is made by the landlord to his wife, the tenant cannot challenge the validity of the same on the ground that the landlord was not empowered to make the gift. It was argued in that case that the property belonged to the joint Hindu family and Kuldip Singh, the husband, could not have made a valid gift in the name of his wife, Kirpal Kaur, because he could not alienate the coparcenary property. The learned judge rejected this argument. He held that it is a matter which only the sons of Kuldip Singh can agitate and it is not open to the tenant to dispute the validity of the gift. Grover J. said : "the tenant has no locus standi to object to the validity of the gift". In *Ganesh Flour Mills v. Ram -sh Chand*, 1979 Dlt 87 Sachar J. did not allow the tenant to raise the objection that the partition decree was collusive. He was of the view that the tenant cannot go behind that decree and say that it was

improperly obtained. That was a question which could be agitated only by the co-chargers of the property and not by the tenant. In *Arjan Dass v. Madan Lal* (1971) AIRCJ 2 (Short Notes of Cases) Om Prakash J. of this court held that the tenant has no locus standi to challenge the validity of the will made by the landlord as he is not an heir of the landlord. Whether it is a case of partition or gift or will the tenant cannot question the validity of the basic document of title. This is what the cases hold.

(8) Mr. L.R. Gupta, on behalf of the tenant, has mainly relied on a recent decision of the Supreme Court in [Devi Dass Vs. Mohan Lal](#), . In that case the plea of the tenant was that the sale was a sham transaction. The courts below took the view that he could not raise this objection. So no finding was recorded on that point. The Supreme Court held that he was entitled to challenge the sale transaction as sham. The case was remitted for a finding on the point raised by the tenant. The tenant had alleged that the sale deed is a sham transaction and that no right, title or interest had passed to the landlord, Mohan Lal, under that document. The facts of that case were peculiar. One Jugal Kishore, father of Mohan Lal, the landlord in that case, executed a Sales deed in the name of his son Mohan Lal, acting as the mukhtiar of Jagirilal and Vasdev. The tenant's plea was that this was done in order to create a ground of ejectment against him because on curlier occasions several applications filed by Jugal Kishore as mukhtiar of Jagirilal and Vasdev for ejectment of the tenant had been dismissed against him. On this plea of the tenant the Supreme Court took the view that there was no sale and the sale deed was merely "a paper transaction" if the tenant's place is correct. Therefore, the lower court was required to record a finding on this point.

(9) This is not the case before me. The sale deed is of the year 1947. The question of ejectment of the tenant arose only recently when the petition was filed in 1981. If there is a sham sale in order to create a cause of action in favor of the so-called landlord so that the tenant can be evicted from the property forming the subject matter of sale, I think, it is open to the tenant to alleges that the sale is a sham transaction and that the sale deed was executed merely to eject him from the property. The Supreme Court seems to be saying that if the sale is sham nothing passes by the conveyance which is no more than a ""paper transaction". And if there is a casual connection between the sham sale and the tenant's ejectment the court must find out what is the true nature and character of the sale. All the circumstances, past and present, will have to be seen. The tenant cannot be turned away merely by saying : "you have no locus stand .He has a stake. The sham sale is made to evict him and for no other purpose. That was the kind of case before the Supreme Court. That was not a case of benami transaction.

(10) A benami transaction in a sense is not a sham transaction. The essence of a benami transfer is to give it the appearance of reality, to cloak a fictitious transfer with all the appearance of a genuine one. (*Amrit v. Gurcharan*, AIR 1934 All 226 , [Sahdeo Karan Singh and Others Vs. Usman Ali Khan and Others](#),). But the dominant

question is one of intention. In benami transfer the question is : Was there an intention to benefit the ostensible owner ? In sham transfer the question is : Was it made with a view to evict the tenant ? This is the real difference between this case and the case decided by the Supreme Court. A benamidar is a mere name lender. He is an apparent owner. He is not a real owner. The criterion in these cases is to consider from what source the money came with which the purchase price was paid.

(11) The plea of the tenant in this case is absurd on the face of it because the real owner, according to him, is Amir Chand Khanna and admittedly he is also the owner of the property and is specifically named in the sale deed as owner. In cases of benami transaction the property is put in the name of a person other than the real owner. The real owner is not disclosed. But here he is fully disclosed. So no question of the landlord being a benamidar arises. It is wholly wrong to call it a benami transaction. It has none of the characteristics of a benami purchase. In benami transaction a person buys property with his own money, but in the name of another person without any intention to be neat such other person. (See Dharm Dass Pandey v. Mussamat Shama Sundri Dibiah (1843) M.I.A. 229). The tenant has misapprehended the real nature of a benami transaction. I am inclined to think that the amendment is not bonafide and is sought with a view to prolong the litigation.

(12) I was referred to a decision of the Bombay High Court in 1977 (1) R.C.R. 545, framroze Maneckji Bilimoria v. M/s Shrud Geigy Trading Ltd. That was a case of a trustee. It was held that the trustee cannot sue for the eviction of the tenant u/s 13(1)(g) of the Bombay Rent Act on the ground that the premises were required for personal occupation, though he can give the premises on rent. The point of a trustee does not arise in the present case. It is the question of the transaction being benami, which is raised here. Bhole, J. held that the trustee cannot sue because only the beneficiary can claim that he bona fide requires the premises for his occupation but not the trustee.

(13) Lastly Mr. Gupta brought to my attention a decision of H.L. Anand, J. in Mulkh Raj v. Ch. Surat Sing 1973 P.L.R. 235 (Delhi Section) in support of his submission that for purposes of the present case it was not necessary to go into the question whether the plea of the tenant on merits will succeed or not. That question, he contended, will be decided on evidence. All that the court has to see at this stage, he submitted, is whether the tenant is entitled to raise the plea by way of amendment or not. I do not agree. In my opinion it is the duty of the court to see whether under Order Vi Rule 17 CPC a plea raised by a party is "necessary for the purpose of determining the real question in controversy between the parties", to use the words of the statute. The court does not exist for so commercial a purpose as awarding costs and allowing amendments without deciding whether in a given case a certain point arises for determination or not. Only those amendments as are necessary for the purpose of determining the real question in controversy between the parties can be allowed. If the amendment sought is unnecessary or irrelevant or vexatious

or is intended to delay the proceedings it is the duty of the court to refuse such an amendment because otherwise the court will be deciding unnecessary and irrelevant questions and the trial of the suit or proceeding will become interminable.

(14) Mr. Gupta says that the true import of the expression "owner" used in Section 14(1)(e) is that only the real owner is contemplated and not a benamidar and Therefore he can raise the question to show that a particular landlord who has brought the petition is not the real owner of the property and the real title to the property vests in some one else. It is true that the expression "owner" as used means a real owner. But only in those cases can the question be raised by the tenant where a sham transaction has been entered into with a view to evict him as was the case before the Supreme Court. I am not prepared to lay down such a broad proposition as the counsel contends. If I lay down such a proposition it will mean that every tenant will be entitled to say that his landlord is not the real owner and that he is a benamidar of some one else because the consideration passed from that other person in purchasing the property. The law will become an engine of oppression. Even the ancestor's title to the property will be brought into the controversy. The litigation will have no end. An ejectment suit will be converted into a title suit. The Supreme Court has not said this.

(15) In my opinion the tenant has no locus standi to show that the landlord is a benamidar and that the real owner is Amir Chand Khanna. I have no doubt that on the facts of this case the tenant cannot raise the question. My reasons are mainly three,

(I) The Sale deed is of 1947. At that time there was no question of eviction of the present tenant. (ii) The tenant has not pleaded any ulterior motive such as to evict him. (iii) That admittedly from 1970 the tenant has been paying rent to the present landlord, Baij Nath Khanna.

(16) The Supreme Court decision in *Devi Dass v. Mohan Lal* has no application to this case. It is not the case of the tenant that the sale deed of 1947 is sham or there was any ulterior or fraudulent purpose to evict him in so far as the sale deed of 1947 is concerned. The tenant Therefore has no locus standi. As Om Prakash J. tersely put it only the heir of the testator can dispute the validity of the will. The tenant is not an heir. Grover, J. had said the same thing. Similarly here the tenant is not the owner who can raise the question of the source of the money with which the purchase price was paid.

(17) For these reasons the petition is dismissed. The parties are, however, left to bear their own costs.