# Vijesh Chadha and Another Vs Rajindra Chadha

**Court:** Delhi High Court

**Date of Decision:** Nov. 6, 2008

**Hon'ble Judges:** Pradeep Nandrajog, J; J.R. Midha, J

**Bench:** Division Bench

**Advocate:** Pramod Ahuja, for the Appellant; M.M. Kalra, for the Respondent

**Final Decision:** Dismissed

## Judgement

Pradeep Nandrajog, J.
Delay in filing the appeal is condoned. CM No. 10091/2007 is allowed.

2. Heard learned Counsel for the parties.

3. The appellants who are the son and daughter-in-law of the respondent have suffered a decree of possession and mesne profits against them.

4. The case of the respondent was that she was the owner of property No. U-6 and U-4 West Patel Nagar and that she had permitted her son

and her daughter-in-law to occupy a portion on the second floor shown red in the site plan annexed with the plaint. She stated that her son and

daughter-in-law started misbehaving with her and made life fairly miserable for her, compelling her to required them to move out of the said

premises.

5. By a notice dated 7.11.2004, she requested them to vacate the premises in their occupation/possession. They did not do so and hence she had

no option but to sue for possession and mesne profits.

6. The defence taken by the appellants was that the mother was the registered owner of only property No. U-6 West Patel Nagar. They stated

that the same was acquired by the mother with the ancestral funds i.e. funds of the grandfather of appellant No. 1. Thus, the appellants denied the

right of the mother to seek possession.

7. We note that the appellants merely denied the ownership of the mother with respect to U-4 West Patel Nagar, New Delhi in the pleadings

without stating as to who was the owner thereof.

8. On the pleadings of the parties following five issues were settled on 9.11.2005:

1. Whether the defendants are occupying the premises in dispute as a licencee? OPP

2. Whether the plaintiff is entitled to claim relief of possession, as prayed for? OPP

3. Whether the plaintiff is entitled to claim damages. If so, at what rate and from what period? OPP

4. Whether the property had been purchased from out of the ancestral funds of the Hindu Family for the residence and benefit of family members.

If so its effect? OPD

5. Relief.

9. It would be important to note that no issue was got settled whether the mother was not the owner of property No. U-6 West Patel Nagar.

From a perusal of the issues it is apparent that the issue which was got settled was, whether the subject property has been purchased from out of

the ancestral funds.

10. It does happen that many a times a plea is raised in the written statement but at the time of settlement of issues the same is not pressed. It is

important to note that in the instant case appellants never requested the learned Trial Judge to re-settle the issues or re-frame issue No. 4.

11. From the evidence led it is apparent that parties went to trial on the understanding that the defence taken was that the mother was a mere name

lender of the properties and that the same was purchased from out of the ancestral funds.

12. Before analyzing the evidence, on the issue at hand, it is impossible to note that though the property had two municipal numbers the same is

conceptually and physically a single entity property.

13. On the issue of property being purchased benami; the onus of proof and how the same has to be discharged; we had penned a decision on

20.10.2008 disposing of RFA No. 784/2003 Satish Kumar v. Prem Kumar and Ors. In paras 14 to 19 of the said decision we had culled out the

law relating to a plea of benami and in particular when the plea is raised by a close relation. We had noted as under:

14. The law relating to onus of proof of a property being benami and discharge of said onus was first expounded by the Federal Court in the

decision reported as AIR 1949 88 (Federal Court) in following terms:

It was contended by the learned Counsel for the appellants that the decision of the Court below against the appellants regarding these properties

had been reached because of a wrong approach to this matter in law and that the rule of onus of proof as regards benami transactions had not

been fully appreciated. It is settled law that the onus of establishing that a transaction is benami is on the plaintiff and it must be strictly made out.

The decision of the Court cannot rest on mere suspicion, but must rest on legal grounds and legal testimony. In the absence of evidence, the

apparent title must prevail. It is also well established that in a case where it is asserted that an assignment in the name of one person is in reality for

the benefit of another, the real test is the source whence the consideration came and that when it is not possible to obtain evidence which

conclusively establishes or rebuts the allegation, the case must be dealt with on reasonable probabilities and legal inferences arising from proved or

admitted facts. The Courts below proceeded to decide the case after fully appreciating the above rule and in our judgment their decision does not

suffer from the defect pointed out by the learned Counsel for the appellants.

(Emphasis Supplied)

15. In the decision reported as M. Nagendriah Vs. M. Ramachandraiah and Another, the Hon''ble Supreme Court explained the law relating to

proof of benami transactions in following terms:

...Now if that is so, then the onus of proving that these purchase were benami was on the appellant and it was for him to show by convincing

evidence that the source of money for these acquisitions was traceable to the joint funds from this business. Admittedly this has not been shown by

any affirmative evidence, Shri Gupta, however, laid stress on the contention that the respondent had also not been shown to possess sufficient

funds with which properties in question could be acquired. On this reasoning the counsel tried to induce us to infer that the properties must be held

to be joint of the appellant and Ramachandraiah. This, in our opinion, is not a correct approach. Ostensible owner must be held to be a true owner

in the absence of cogent evidence establishing that he is a mere benamidar, or is holding property for another person who claims to be the

beneficial or real owner. The onus also does not change merely because the beneficial owner and the ostensible owner are brothers or they may be

owning some other property jointly. The mere circumstance that the ostensible owner has not proved that he had himself paid the price or that he

had sufficient funds to be able to do so, would also net be enough by itself to sustain the claim of the alleged beneficial owner. The initial onus is

always on the party seeking to dislodge the ostensible title. We are not unmindful of the fact that in this country benami transactions are not

uncommon and they are certainly not forwarded upon. We are equally conscious of the fact that the appellant and respondent Ramachandraiah are

real brothers and not utter strangers. But at the same time it cannot be ignored, as just observed, that the initial onus must as a matter of law be on

the party asserting benami nature of title....

(Emphasis Supplied)

16. The observations of the Hon''ble Supreme Court in M. Nagendriah''s case (supra) to the effect that the onus of proof of benami transactions

cannot be discharged merely on account of some deficiency in the evidence led by the alleged benami owner leads to an irresistible conclusion that

the onus of proof of benami transaction is very heavy on the person alleging the same and can be discharged only by leading positive evidence.

17. In the decision reported as Jaydayal Poddar (Deceased) through L.Rs. and Another Vs. Mst. Bibi Hazra and Others, the Hon''ble Supreme

Court enumerated six circumstances which must be looked into by the courts in determining whether a particular transaction is benami or not. At

this juncture, it would be apposite to refer to following observations made by the Hon''ble Court in the said decision:

It is well settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the

person asserting it to be so. 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 that fact. The essence of a benami is the

intention of the party or parties concerned; and not unoften such intention is shrouded in a thick veil which cannot be easily pierced through. But

such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the

acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after

considerable deliberation and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour

that the apparent state of affairs is the real state of affairs. Though the question, whether a particular sale is Benami or not, is largely one of fact,

and for determining this question, no absolute formulae or acid tests, uniformally applicable in all situations, can be laid down; yet in weighing the

probabilities and for gathering the relevant indicia, the courts are usually guided by these circumstances : (1) the source from which the purchase

money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4)

the position of the parties and the relationship, if any between the claimant and the alleged benamidar; (5) the custody of the title-deeds after the

sale and (6) the conduct of the parties concerned in dealing with the property after the sale.

The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless No. I, viz. the source whence the

purchase money came, is by far the most important test for determining whether the sale standing in the name of one person, is in reality for the

benefit of another.

(Emphasis Supplied)

18. After noting leading judicial authorities on the point, the Hon''ble Supreme Court in the decision reported as Valliammal (D) by Lrs. Vs.

Subramaniam and Others, summarized the law relating to proof of benami transactions as under:

There is a presumption in law that the person who purchases the property is the owner of the same. This presumption can be displaced by

successfully pleading and proving that the document was taken benami in name of another person for some reason, and the person whose name

appears in the document is not the real owner, but only a benami. Heavy burden lies on the person who pleads that recorded owner is a benami-

holder.

(Emphasis Supplied)

19. Having laid down the afore-noted legal position in respect of proof of benami transactions, the Hon''ble Supreme Court proceeded to note the

six circumstances enumerated in Jaydayal Poddar''s case (supra) and concluded that the source from where the purchase money came and the

motive as to why the property was purchased benami are the most important tests for determining whether the sale standing in the name of one

person, is in reality for the benefit of another person. The Hon''ble Court emphasized that a party invoking the plea of benami in order to prove the

real ownership of the property which is the subject-matter of lis is required to show that there were valid reasons for purchase of the property in

name of the benamidar and that the purported real owner had paid the sale consideration for the purchase of the property.

14. It is obvious that the onus to prove that the mother was a mere benamidar was on the appellants.

15. The learned Trial Judge has noted, in para 7 of the impugned decision, that the appellant No. 1 was a toddler aged 3 years when his

grandfather died and had no personal knowledge of what was the estate left behind by his grandfather. There being no documentary evidence led

to show that the source of funds was a source other than that of the mother, learned Trial Judge has held that the appellants failed to establish that

the respondent was a benami owner of the property and that the same was acquired from out of the ancestral funds.

16. Holding that it was a case of a permissive possession akin to a gratuitous licensee, since the mother had wanted her son and daughter-in-law to

leave the house, learned Trial Judge has held that the mother was entitled to a decree of possession.

17. Mesne profits have been awarded to the mother @ Rs. 4000/- per month with effect from the date the children were asked to vacate the suit

premises.

18. It is urged at the hearing today that there exists an award which shows the ancestral funds which were used for the acquisition of the property.

19. Where is that award? We do not know.

20. We have gone through the record of the learned Trial Judge. We do not find any award on the record of the learned Trial Judge. We have

gone through the evidence of the appellants. Not a word has been spoken by them about any award.

21. Except for a bald statement made by appellant No. 1 when he entered the witness box that the source of funds is ancestral, we find no

evidence to sustain the said statement.

22. Presumption of law is that he who is the recorded owner of a property in a sale deed is presumed to have paid the funds for acquiring the

same.

23. There has to be strong and cogent evidence showing that the source of funds was elsewhere to displace the presumption in favour of the

registered owner of the property.

24. We find no merits in the appeal. The appeal is dismissed.

25. Costs shall follow.