

(1977) 07 BOM CK 0038

Bombay High Court

Case No: Special Civil Application No. 1614 of 1972

Mrs. Maya Bhagwandas Advani

APPELLANT

Vs

Bhagwandas Tarachand Advani

RESPONDENT

Date of Decision: July 20, 1977

Acts Referred:

- Constitution of India, 1950 - Article 226
- Trusts Act, 1882 - Section 82

Citation: (1979) 81 BOMLR 126 : (1978) MhLj 449

Hon'ble Judges: Jahagirdar, J; Chandurkar, J

Bench: Division Bench

Judgement

Chandurkar, J.

This petition arises out of a dispute raised by opponent No. 1, who is the husband of the petitioner, in respect of five shares which admittedly stand in the name of the petitioner but which, according to her husband-opponent No. 1, are really owned by him and opponent No. 1, therefore, wanted to have an award directing the housing society-opponent No. 2 to transfer the said shares in his name. According to opponent No. 1, he and his mother agreed to acquire a flat from one Messrs. Motumal Balchand Construction for a sum of Rs. 21,000 and this amount was paid by them as also a further sum of Rs. 1,300 towards various deposits including a sum of Rs. 251 as entrance fee and the value of the five fully paid up shares of Rs. 50 each in the proposed co-operative housing society. In course of time in or about April 1963, according to opponent No. 1, possession of the flat was delivered to him and the acquirers of the different flats in the building formed a co-operative housing society which was duly registered. It appears that the husband and wife have now fallen out and the husband raised a dispute that all the amounts paid for the purchase of the flat were paid by him out of the funds of the Hindu undivided family and the shares are really held by him but were acquired merely for the sake of convenience in the name of the present petitioner, his wife. Therefore, according to

opponent No. 1, his wife was under a legal obligation to transfer and to take all steps for transfer of the said shares, the said flat and other interest held in her name in the records of the society-opponent No. 3, in the name of opponent No. 1 in his capacity as manager and karta of the Hindu undivided family. Opponent No. 1 alleged that the said flat was shown in the Income Tax assessment records as being the property of the Hindu undivided family and the exclusive possession of the flat was also with opponent No. 1 and his mother. The immediate cause of taking the dispute to the Registrar's nominee was, according to opponent No. 1, the fact that the present petitioner had left the matrimonial home in the month of June 1971 and that necessitated a declaration in favour of opponent No. 1 that his wife was a mere benamidar and that she had no real or beneficial right, title and interest in the said flat. The Officer on Special Duty issued notice to the present petitioner whereupon, it appears, the present petitioner filed this petition under Article 226 of the Constitution of India seeking a writ quashing the reference of the dispute to opponent No. 3 as, according to the petitioner, such a dispute is not covered by Section 91 of the Maharashtra Cooperative Societies Act (hereinafter referred to as "the Act").

2. Mr. Nain, who appears on behalf of the disputant-opponent No. 1, has relied on Clause (b) of Section 91(1) of the Act in order to contend that the petitioner who is a member of the housing society is a benamidar of opponent No. 1 and that when opponent No. 1 seeks a declaration that he is the true owner of the shares which stand in the name of the petitioner, he is claiming through the present petitioner and the dispute, therefore, is squarely fell u/s 91 of the Act.

3. So far as is material, Section 91(1) reads as follows:

Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the office bearers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to the Registrar, if both the parties thereto are one or the other of the following:-

(a) ...

(b) a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society or a person who claims to be member of the society;

..."

According to Mr. Nain, the transaction of purchase of shares in, the name of the present petitioner was a benami transaction with the result that the beneficial ownership vested in the present petitioner and it was this beneficial ownership which was sought to be got transferred by opponent No. 1 in his favour. Thus

according to opponent No. 1, since he claims the beneficial ownership from his wife, the benamidar, he will be claiming through his wife so far as the beneficial interest in the shares of the society is concerned.

4. It is not possible for us to accept this contention. In the case of a benami transaction, it is well-known that the benamidar is merely a nominal owner of the property which is the subject of the benami transaction and always the real title vests in the true owner. Mulla in his book on Hindu Law dealing with benami transactions has, observed that effect will always be given to real title and not to the nominal title. In para. 605 of the fourteenth edn., the following passage occurs:

Where a transaction is once made out to be benami, effect will be given to the real and not to the nominal title, unless the result of doing so would be-

- (i) to violate the provisions of a statute; or
- (ii) to defeat the rights of innocent transferees for value from the benamidar; or
- (iii) the object of the benami transaction was to defraud the creditors of the real owner, and that object has been accomplished; or
- (iv) the transaction is against public policy.

Therefore, the nature of the title of the benamidar would be merely nominal and as between the benamidar and the true owner, the rights would be governed by Section 82 of the Indian Trusts Act. Section 82 of the Indian Trusts Act reads as follows:

Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Apart from what is implicit in the nature of a benami transaction, the effect of Section 82 of the Trusts Act is that the benamidar holds the property for the benefit of the true owner who has provided the consideration. Therefore, in a benami transaction not only does the real title vest in the true owner, but the true owner is also the beneficiary of the transaction. There is, therefore, no question; of the benamidar having any beneficial title which could be asked to be transferred to the true owner. Where a person claims through another, the presumption is that the person through whom the claim is made has some title which the person purporting to claim through him is able to derive. If in the case of the benami transaction, the real title, whether it is legal or beneficial, vests in the true owner, there is nothing which can be claimed by the true owner through the benamidar who is the holder as between the benamidar and the true owner merely of a nominal nature. Opponent No. 1 cannot, therefore, say that he was claiming any kind of ownership in respect of

the shares of the society through his wife in whose name the shares stood. All that the true owner is entitled to in a case like this is a declaration that he is the true owner because his rights as true owner are being disputed by the person in whose name the property stands. Since the real title always vests in a benami transaction in the true owner, a mere declaration that he is the true owner is enough for the purposes of the true owner. In our view, the Officer on Special Duty to whom the dispute was transferred for decision was clearly acting in excess of the jurisdiction u/s 91 in entertaining the dispute. The proceedings before the Officer on Special Duty are, therefore, liable to be quashed and the petitioner is entitled to a writ of prohibition prohibiting the Officer on Special Duty from proceeding with the reference. The petitioner will be entitled to her costs.