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## Manoj Arora Vs Mamta Arora

### Regular First Appeal No.522 OF 2017 and C.M. No.19306 OF 2017

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**Court:** Delhi High Court

**Date of Decision:** Aug. 7, 2018

**Acts Referred:**

Code Of Civil Procedure, 1908 " Section 96, Order 7 Rule 11#Benami Transactions (Prohibition) Act, 1988 " Section 3(2), 4

**Hon'ble Judges:** VALMIKI J. MEHTA, J

**Bench:** Single Bench

**Final Decision:** Disposed Off

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### Judgement

VALMIKI J. MEHTA, J

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment

of the Trial Court dated 19.12.2016 by which trial court has rejected the plaint under Order VII Rule 11 CPC by applying provisions of Sections 4 read

with repealed Section 3(2) of the Benami Transactions (Prohibition) Act, 1988.

2. The subject suit was filed by the appellant/plaintiff/husband pleading that the two properties with respect to which reliefs of declaration and

injunction were claimed in the suit, namely B-1/58, New Moti Nagar, New Delhi-15 and bearing no. B-206, C-DOT, CGHS Apartments, Sector-56,

Gurgaon, were purchased by the appellant/plaintiff/husband from his own sources as stated in the plaint including paras 9 and 11 of the plaint.Ā, Paras

9 and 11 of the plaint read as under:-

ĀĀ9. That the earnest money for the purchase of the property was bearing no. B-1/58, New Moti Nagar, Delhi of Rs.25,000/- (Rs Twenty Five

thousand only) has been paid by the Plaintiff vide cheque no.511459 dated 03.02.2001 for the amount of Rs.20,000/- (Rs. Twenty thousand only) and

Rs.5,000/- (Rs Five thousand only) in cash.

That the balance amount of Rs Eight lacs has been paid by the Plaintiff from the sources which are as follows:

Fixed deposit matures on 19.05.2001, -Rs.69,085

Sale of shares of Reliance Industries, Sold Janta -Rs.63,000

Flat in Tagore Garden

(Property was in the name of Plaintiff), -Rs.1,85,000

Provident fund 28.05.2001 -Rs.79,600

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Personal loan secured from CitiBank, Personal loan-Rs 80,000

taken from Brother-

In-law and returned to Sister vide cheque -Rs.60,000

Rest of the amount was arranged by taking loan from friends.

, xxxx, xxxx, , xxxx, , xxxx

11. That thereafter the Plaintiff purchased another property bearing no. B-206, C-DOT, CGHS Apartments, Sector-56 Gurgaon for the amount of

Rs.47,00,000/- (Rs Fourty Seven Lacs only). That the above said property has been planned to be purchased by the parties in the joint name of the

Plaintiff as well as Defendant from the joint owners Smt. Sangeeta Srivastava and Sh. Rajmohan Srivastava. However due to change in the policies

of the society, Plaintiff had to purchase the aforementioned property also in the name of the Defendant. Details of the payment and the source of

income is mentioned herein below:

From A/C of Plaintiff vide

cheque bearing no.160517, -Rs.5,00,000/-

cheque bearing no.160518, -Rs.5,00,000/-

Vide Cheque bearing no.914362/

, 363/364 in the name, , -Rs.2,60,000/-

of Vikrant Madaan as per request of vendee.

Loan Sanctioned from ICICI Bank -Rs.30,99,000/-

Monthly installments for the amount of Rs.34,123 earlier and for the amount of Rs.30,457/- has regularly been debited from the savings account of

Plaintiff since August 2007. That further an amount of Rs.5,00,000/- has also been paid to the Bank towards prepayment of the loan. , ,

3. Accordingly in the suit, reliefs of declaration and injunction were claimed that it was the appellant/plaintiff/husband who was the owner of the

properties and not the respondent/defendant/wife.

4. Unfortunately, the trial court has committed a grave and fundamental error in rejecting the suit plaint under Order VII Rule 11 CPC by relying upon

the provision of Section 4 and repealed provision of Section 3(2) of the Benami Transactions (Prohibition) Act. When the impugned judgment was

passed on 19.12.2016, what was, and is now applicable is the Prohibition of Benami Property Transactions Act, 1988 which became applicable w.e.f

1.11.2016. As per Section 2(9) of the Amended Act what is a Benami Transaction is stated/specified, and also those transactions which are not

benami are also stated/specified. As per the suit plaint/averments, in the present case the existence of the properties in the name of the

respondent/defendant/wife will fall as an Exception to the prohibited benami transaction in view of Section 2(9)(A)(b) Exception (iii) inasmuch as it is

legally permissible for a person to purchase an immovable property in the name of his spouse from his known sources, and in which position, the

property purchased will not be a benami property but the property will be of the de jure owner/plaintiff/husband and not of the de facto owner (in

whose name title deeds exist), being the respondent/defendant/wife in the present case.Ã, Ã, Ã, Ã, Ã,

5. By the impugned judgment since the suit has been held to be barred at the threshold by applying Order VII Rule 11 CPC, and the plaint has been

rejected by applying the repealed provision of Section 3(2) of the Act which was no longer applicable, and by ignoring the provision of Section 2(9)(A)

(b) Exception (iii) which was applicable, the impugned judgment is hence illegal and is set aside. Whether or not the appellant/plaintiff/husband will or

will not have the benefit of Section 2(9)(A)(b) Exception (iii) is a matter of fact which requires trial and such a suit cannot be rejected at the threshold

by applying Order VII Rule 11 CPC.

6. In view of the aforesaid position, this appeal is allowed. Impugned Judgment dated 19.12.2016 is set aside. Suit would be tried and disposed of by

the trial court in accordance with law after trial/evidence. Ã,

7. Parties to appear before the District & Sessions Judge, West, Tis Hazari Courts, Delhi on 29th August, 2018 and the District & Sessions Judge will

mark the suit for disposal to a competent court in accordance with law.Ã, Ã, Ã, Ã, Ã, Ã,

8. Appeal is disposed of in terms of aforesaid observations.