

**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Civil First Appeal No. 63/2000

Anandi Lal Son of Shri Roodmal, by caste Kumawat, aged about 68 years, Resident of Plot No.42, Kumawat Colony, Jhotwara, Jaipur (Raj.)

----Petitioner-Appellant

Versus

1. Bhanwarlal S/o Shri Roodmal (since deceased) (deleted)

1/1. Smt. Tija Devi W/o Late Shri Bhanwar Lal.

1/2. Omprakash S/o Late Shri Bhanwar Lal.

1/3. Kailash S/o Late Shri Bhanwar Lal.

1/4. Dharmendra S/o Late Shri Bhanwar Lal.

1/5. Smt. Jankilal Devi D/o Late Shri Bhanwar Lal.

1/6. Smt. Koshallya Devi D/o Late Shri Bhanwar Lal.

1/7. Smt. Prem Bala @ Prema D/o Late Shri Bhanwar Lal.

2. Panna Lal S/o Shri Roodmal.

All by caste Kumawat R/o Village Masroor, Near Digambar Jain Mandir, Distt. Nasik, Maharashtra.

3. Ram Narain S/o Shri Roodmal, by caste Kumawat, R/o Village Bhadwa, Tehsil Sanwar, Jaipur (Raj.) at present residing at Village Masroor, Near Digambar Jain Mandir, Distt. Nasik, Maharashtra.

4. Smt. Tija Devi W/o Bhanwarlal Kumawat, R/o Jhotwara at present residing at Nasik – Near Digambar Jain Mandir, Gunjprabha, Maharashtra.

5. Ratan Lal Son of Shri Manak Chand, By caste Jain, Resident of Chowkari Modikhana, Rasta Maniharan, House No.1746, Near Dabdon Ka Mandir, Jaipur (Since Deceased)

5/1. Smt. Mena Devi W/o Late Shri Ratan Lal

5/2. Ramesh Chand Jain S/o Late Shri Ratan Lal

5/3. Suresh Chand Jain S/o Late Shri Ratan Lal

5/4. Smt. Shakuntala Jain D/o Late Ratan Lal, W/o Nemi Chand Jain R/o A-164, Madhuban Kishan Marg, Tonk Road, Jaipur.

5/5. Smt. Shashi Prabha Jain D/o. Ratan Lal, W/o Ravi Gangwal, R/o. Dadha Market, Johari Bazar, Jaipur.

5/6. Smt. Pushpa Jain D/o Ratan Lal, W/o Shri Sushil Jain, R/o 97, Neta Marg, Mansinghpura, Tonk Road, Jaipur.

----Defendant Respondents

For Appellant(s) : Dr. P.C. Jain with  
Mr. Zeeshan Khan  
Ms. Kriti Jain  
Mr. Naman Yadav

For Respondent(s) : Mr. R.K. Agarwal, Sr. Adv. assisted by  
Mr. Mamoon Khan  
Mr. S.N. Kumawat

**HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL**

**Order**

**29/11/2019**

This first appeal has been preferred by the plaintiff-appellant against the judgment and decree dated 21.12.1999 passed by learned Additional District Judge No.6, Jaipur City, Jaipur, whereby the civil suit filed by the appellant for declaration and permanent injunction has been dismissed.

The facts as emerged from the perusal of the record and as contended by the respective counsels are that Shri Janta Housing Society Limited, Jaipur, vide its allotment order dated 05.09.1974, allotted plot No.43, Kumawat Colony, Jhotwara, Jaipur to Smt. Tija Devi (defendant No.4) wife of Shri Bhanwar Lal (defendant No.1).

It was averred by the plaintiff that the aforesaid allotment in favour of the defendant No.4 was "benami" inasmuch as she did not pay any consideration for its allotment. As per plaintiff, vide deed dated 15.09.1974, it was agreed between him and the defendants No.1 to 4 as well as Smt. Tulsi Devi, mother of the plaintiff and defendants No.1 to 3, that the aforesaid plot allotted in the name of the Smt. Tija Devi, would be joint property of all of

them. It was further agreed under the said deed that construction on the plot would be raised by all of them. It was alleged that the defendant No.4 or her husband never resided in the houses constructed on the plot which were constructed by the plaintiff. It was contended that vide sale deed dated 23.01.1981, the defendants No.1 & 4, have without any authority, sold the plot No.43 with the constructions thereon in favour of the defendant No.5 for a sale consideration of ₹ 25,000/-. Thus, the decree of declaration to the effect that the defendants No.1 & 4 did not have any authority to sell the property in question; the sale deed dated 23.01.1981 was null and void against his rights as well as of permanent injunction restraining the defendant No.5 from interfering with right of the plaintiff to continue to use and occupy the subject matter of dispute, was sought for.

In the written statement filed by the defendant No.5, it was averred that the sale deed dated 23.01.1981 was validly executed by the defendants No.1 & 4. It was denied that the allotment in favour of Smt. Tija Devi was a "benami" transaction or that the property was joint property of the family members as contended by the plaintiff.

Learned trial Court has, vide its impugned judgment and decree dated 21.12.1999, dismissed the suit filed by the plaintiff.

Learned counsel appearing for the appellant, challenging the judgment and decree dated 21.12.1999, contended that from the pleading and evidence on record, it was established that allotment in favour of Smt. Tija Devi was in the nature of "benami" and the allotment consideration was paid from the joint family assets. Placing reliance upon the agreement dated 15.09.1974, it was canvassed that it was agreed between all the family members

including the allottee that it was joint property of the family members and all would be entitled to enjoy it. It was asserted that in the light of the recitals in the aforesaid deed, there was no doubt that the allotment dated 05.09.1974 was a 'benami' transaction in the name of Smt. Tija Devi. It was submitted that this also stood established from the fact that neither the defendant No.4 nor her husband, the defendant No.1 ever resided in the plot or the construction raised thereupon, nor they incurred any expenses in the construction. It was argued that the period of the construction on the plot in question was from the year 1975 to the year 1978 and at that time the defendants No.1 to 4 used to reside in house No.343, Sindhi Colony, Jawahar Nagar, Jaipur and thereafter, they shifted to Village Masroor, District Nasik (Maharashtra). It was submitted that the respondent No.5 has also admitted that the defendants No.1 & 4 were residing in Village Masroor District Nasik (Maharashtra) for some time. Referring the written statement filed by the defendant No.5, it was argued by Dr. P.C. Jain, learned counsel that since the defendant No.5 has come out with specific plea that Bhanwar Lal has raised construction of house on the plot No.43 from his expenses, it was obligatory upon him to have proved the same in which he failed, therefore, adverse inference should have been drawn against the respondent. It was asserted by the learned counsel for the appellant that the property in question was sold under suspicious circumstances in as much as Shri Bhanwar Lal has executed it as one of the sellers; whereas, as per the allotment letter, Exhibit-1, the plot was in the name of Smt. Tija only. Referring the recital in the sale deed, it was submitted that the purchaser was never physically put in possession the property. It was further contended

that since, as per the sale deed, the expenses towards stamp duty and registry charges were borne by the sellers, not being natural in the ordinary course of the business, the sale deed should have been reckoned as sham document. Drawing attention of this Court towards the written statement (Exhibit-7) filed by the defendants No.1 & 4 in the civil suit filed by the defendant No.5 for eviction, it was submitted that the defendants No.1 & 4 have categorically admitted therein that they not being sole owner of the property, had no authority to execute the sale deed dated 23.01.1981. Lastly, it was submitted that the findings of the learned trial Court are perverse and it has erred in drawing adverse inference from the facts available on record qua the validity of the deed dated 15.09.1974. It was, therefore, submitted that impugned judgment and decree be set aside and the appeal be allowed.

Per contra, learned Senior Counsel Mr. R.K. Agarwal appearing for the respondent No.5 while supporting the findings recorded by the learned Court below, contended that the same are based on cogent material on record which warrant no interference by the Courts in its limited appellate jurisdiction. It was submitted that since the plaintiff has miserably failed to assign any reason for purchasing the property in question in the name of Smt. Tija as "benami", the same can't be treated as "benami transaction". Learned Senior Counsel has relied upon judgment of the Hon'ble Supreme Court in the case of **Jaydayal Poddar (deceased) through LRs & Anr. Versus Mst. Bibi Hazra & Ors.** reported in **(1974) 1 SCC 3**, wherein in para 6 of the judgment, it has been held as under:-

"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 test, uniformly 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 color; (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."

It is further submitted that there is variance in pleadings and proof and the plaintiff's case cannot be accepted. He has, therefore, prayed for dismissal of the appeal.

Heard learned counsels for the parties and perused the record.

A perusal of plaint does not reveal any reason as to why the property, which is subject matter of dispute, was got allotted in favour of the defendant No.4 Smt. Tija as "Benami" nor, it has been averred that the allotment consideration was paid out of the

joint family assets. In absence of necessary pleadings, this Court is unable to record a finding that the allotment in favour of Tija was in the nature of "benami" transaction. Even otherwise also there is no evidence on record to warrant any such finding in favour of the allotment in question being "benami".

So far as validity of the agreement dated 15.09.1974 is concerned, I find from the record that the findings of the learned Court below are reasoned one and based on evidence on record. It has rightly been found by the learned trial Court that the stamp on which the agreement has been reduced, was purchased on 19.07.1974 for the purpose of execution of guarantee; whereas, the allotment itself was made on 05.09.1974. The plaintiff has, as PW-1 during his cross-examination, stated that the stamp was brought on the day the agreement was written on it. None of the beneficiaries-signatories except the plaintiff himself has appeared in the witness box to prove the agreement. Even otherwise also, Exhibit -3, the agreement dated 15.09.1974 amounting to transfer of the rights of defendant No.4 in the property having value more than ₹100/-, in absence of registration, cannot be read in evidence. Therefore, the learned trial Court has committed no error in disbelieving the agreement dated 15.09.1974.

With regard to construction on the plot No.43, there is great variance in between pleadings and proof by the plaintiff. While in the plaint, the plaintiff has come out the case that he has incurred entire expenses in construction on the plot in question; whereas, the plaintiff (PW-1) has, in his examination-in-chief dated 28.04.1999, stated that they all incurred expenditure in raising construction; whereas, in his examination-in-chief dated 16.08.1999, he has stated that he and his mother incurred

expenses in raising construction. Thus, it is apparent that even the plaintiff himself was not consistent on this aspect. In these circumstances it cannot be accepted that construction on the plot in question was raised by the plaintiff, the defendants No.1 to 3 and their mother.

The learned trial Court has rightly not drawn any adverse inference against the defendants qua the validity of the sale deed on account that allegedly they were not residing in the property in question, or that it was also executed by Shri Bhanwar Lal even though not being allottee of the plot or for the reason that expenses for stamp duty and registration charges were borne by the sellers. The learned counsel has failed to point out any law which forbids so or come to plaintiff's rescue.

With regard to submission of Dr. P.C. Jain learned counsel as to admission made by the defendants No.1 & 4 in their written statement in the suit filed against them for eviction by the defendant No.5, as to their incompetence to execute the sale deed dated 23.01.1981, suffice is to say that such admission is not binding on the defendant No.5 and it is also hit by Section 18 of the Evidence Act as the defendants No. 1 & 4 have already lost interest in the property, subject matter of suit, before filing the written statement.

I do not find any illegality or perversity in the findings recorded by the learned trial Court.

The first appeal, being devoid of merits, is hereby dismissed.

(MAHENDAR KUMAR GOYAL),J