

SMT. SATYA GUPTA @ MADHU GUPTA

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v.

BRIJESH KUMAR

AUGUST 14, 1998

[M.M. PUNCHHI C.J., AND K. VENKATASWAMI, J.]

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*Benami Transaction—Determination of—Defendant's husband B purchased property in the joint names of himself and the plaintiff—Entire purchase money came from B—After B died plaintiff filed suit for partition of his half share in the property and rendition of account—Plaintiff, except alleging that half of the property belonged to him, had not disclosed how and on what basis such a claim was made in the plaint—It was not averred in the plaint that B intended the purchase of the property to be for the benefit of the plaintiff as well—Trial court found that the defendant had discharged the initial burden to show that the sale deed in the joint name of the plaintiff was only a benami transaction—But trial court found that B intended the property should be of the plaintiff as well and decreed the suit—However, Lower Appellate Court disagreed with the view of the trial court regarding intention of B as there was no averment in the plaint to that effect—Lower Appellate Court found plaintiff's evidence extremely vague and unsatisfactory to rebut the presumption that the sale deed was obtained benami by B - Taking all factors into consideration Lower Appellate Court found that B did not intend to purchase the property for plaintiff's benefit—Held : In the circumstances of the case, High Court in Second Appeal erred in upsetting the finding of facts by Lower Appellate Court by illegally re-appreciating the evidence.*

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*Code of Civil Procedure, 1908 : Section 100.*

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*Finding of fact—By Lower Appellate Court—Based on evidence—Reversal of—In Second Appeal—By High Court—Validity of—Held : High Court in Second Appeal cannot reverse the findings of Lower Appellate Court on facts by re-appreciation of evidence merely on the ground of the possibility of another view.*

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**The defendant's (deceased appellant) husband, B, purchased the property in the joint names of himself and the plaintiff-respondent. The entire purchase money came from B. After the death of B, the plaintiff filed a suit for partitioning his half share in the property and for rendition of account. The plaintiff, except alleging that half of the property belonged to him, had not**

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A disclosed how and on what basis such a claim was made in the plaint. It was not averred in the plaint that B intended the purchase of the property to be for the benefit of the plaintiff as well. The trial court found that the defendant had discharged the initial burden to show that the sale deed in the joint name of the plaintiff was only a benami transaction. But the trial court came to the conclusion that B intended the property should be of the plaintiff as well.

B Consequently, the trial court decreed the suit. However, the Lower Appellate Court disagreed with the view of the trial court regarding intention of B as there was no averment in the plaint to that effect. The Lower Appellate Court found that the plaintiff's evidence was extremely meagre and unsatisfactory to rebut the presumption that B obtained the sale deed benami. Taking all

C factors into consideration the Lower Appellate Court found that B did not intend to purchase the property for the plaintiff's benefit and dismissed the suit.

Being aggrieved the plaintiff preferred a Second Appeal to the High Court. The High Court after re-appreciating the evidence differed from the

D conclusions reached on facts by the Lower Appellate Court and allowed the Second Appeal. Hence this appeal.

Allowing the appeal, this Court

HELD : 1. The trial court and the Lower Appellate Court found that

E the plaintiff had not disclosed in the plaint how and on what basis the plaintiff claimed partition of the property. The Lower Appellate Court also found that the plaintiff's evidence was extremely meagre and unsatisfactory. Taking all factors into consideration, the Lower Appellate Court found that defendant's (deceased appellant) husband did not intend to purchase the house for the

F plaintiff's benefit. This finding has been upset by the High Court illegally by re-appreciating the evidence. This is not permissible. [1192-B]

*Bhim Singh v. Kan Singh*, AIR (1980) SC 727, relied on.

*Gopal Trimbak Bhate v. Keshoosa Vishnoosa Lad*, AIR (1930) Nag

G 185, referred to.

2. In the instant case, the findings on facts by the Lower Appellate Court as a final court on facts, are based on appreciation of evidence and the same cannot be treated as perverse or based on no evidence. The High Court, after re-appreciating the evidence and without finding that the conclusions

H reached by the Lower Appellate Court were not based on the evidence,

reversed the conclusions on facts on the ground that the view taken by it was also a possible view on the facts. The High Court, it is well settled, while exercising jurisdiction under Section 100 of the Code of Civil Procedure, 1908 cannot reverse the findings of the Lower Appellate Court on facts merely on the ground that on the facts found by the Lower Appellate Court another view was possible. [1189-G-H; 1190-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4012 of 1983.

From the Judgment and Order dated 14.2.83 of the Allahabad High Court in S.A. No. 1847 of 1974.

H.N. Salve, C. Mukhopadhyaya and V. Krishnamurthy for E.C.V. Sagar, for the Appellant.

Rakesh K. Sharma (S.K. Gupta) (NP) (AC) for the Respondent.

The Judgment of the Court was delivered by

**K. VENKATASWAMI, J.** This appeal is preferred against the judgment and decree dated 14.2.83 of the Allahabad High Court in Second Appeal No. 1845 of 1974. Brief facts giving rise to this appeal by special leave are the following :-

The respondent herein filed an Original Suit No. 43 of 1962 in the Court of the Second Civil Judge. Meerut, for partitioning his half share in the property described in the plaint and for rendition of account in respect of the same. The appellant was the defendant in the said suit, now represented by legal representatives as she died pending this appeal. For easy appreciation, we refer the parties as plaintiff (respondent herein) and defendant (deceased appellant) in this judgment. One Battu Mal was the husband of the defendant. The said Battu Mal purchased the suit property under a Sale Deed dated 9.5.53 for a sum of Rs. 17,000 in the joint names of himself and the plaintiff, who was then a minor aged 16 years. The said Battu Mal was murdered in June, 1956. The plaintiff was prosecuted for the murder of said Battu Mal and was convicted and sentenced to imprisonment and factually when the suit was filed he was in prison. The plaintiff was the son of a cousin of the said Battu Mal. Battu Mal had no issue.

In the plaint, though a claim was made that the plaintiff was the adopted son of Battu Mal, the suit was based not on that ground but expressly on

A the basis that Battu Mal purchased half of the property for him (the plaintiff).

B The suit was resisted by filing the Written Statement. It was, inter alia, stated in the Written Statement that there was no disclosure in the plaint as to how the property in dispute belonged to the plaintiff and Battu Mal equally. It was also stated that the said Battu Mal purchased the suit property exclusively for him by paying the entire sale consideration. There was no intention on the part of Battu Mal to share the property or gift half share to the plaintiff when the name of the plaintiff was jointly included in the sale deed. The Trial Court found that the entire sale consideration came from the deceased Battu Mal and the plaintiff did not contribute any money towards the purchase of the suit property.

D The Trial Court also found that the defendant has discharged the initial burden to show that the sale deed in the joint name of the plaintiff was only a Benami transaction. After finding that the entire sale consideration was advanced by the said Battu Mal, the Trial Court observed that the burden was on the plaintiff to establish that the deceased Battu Mal intended to gift away half of the property purchased by him to the plaintiff. The Trial Court has noticed the fact that the plaintiff, except alleging that half of the suit property belonged to him, had not disclosed how and on what basis such claim was made in the plaint. After discussing the evidence of P.Ws. 1 to 3 and after noticing that the defendant had not entered in the witness box but tendered evidence through her brother's son as D.W. 1, came to the conclusion that the deceased Battu Mal, in fact, intended to pay half of the consideration of the sale deed for the benefit of the plaintiff. Consequently, the Trial Court decreed the suit of the plaintiff for half share in the suit property and for rendition of accounts for past three years before the institution of the suit.

F The defendants, aggrieved by the judgment of the Trial Court, preferred an appeal to the Additional District Judge, Meerut. The learned District Judge, while confirming the finding of the Trial Court that the entire sale consideration was given by the deceased Battu Mal, expressed his inability to endorse the Trial Court's finding that the deceased Battu Mal intended that the property should be of the plaintiff as well. The learned District Judge took note of the fact that in the Plaint it was nowhere averred that Battu Mal intended the purchase of the suit house to be for the benefit of the plaintiff as well. The Lower Appellate Court agreed with the contention advanced on behalf of the defendant that if there was any truth in the claim of the plaintiff that Battu Mal really intended to share the property with the plaintiff, that

should have been pleaded expressly in the plaint itself. After referring to the pleadings, the Lower Appellate Court examined in detail the oral evidence given on behalf of the plaintiff. The Lower Appellate Court found that 'the plaintiff's evidence is, thus, extremely meagre and unsatisfactory to rebut the presumption that the sale deed was obtained benami by Shri Battu Mal'. The Lower Appellate Court has also given reasons in the judgment why it differed with the conclusions reached by the Trial Court on this point. The Lower Appellate Court observed as follows :-

"In the present case, the plaintiff was not the son (natural or adopted) of Sri Battu Mal. The plaintiff was the son of Sri Battu Mal's cousin and from the mere fact that the plaintiff lived with and was loved by Sri Battu Mal, we cannot conclude that it was intended to purchase the house for the plaintiff's benefit."

After referring to a judgment of the Nagpur High Court in *Gopal Trimbak Bhate v. Keshoosa Vishnoosa Lad* [AIR 1936 Nagpur 185], the Lower Appellate Court held as follows :-

"Relying on the case of 6 M I A 53 (P.C.) it was held that where a Hindu father purchases property out of his own money in the name of his son, the presumption is that he intended to make the purchase for his own benefit and not for the benefit of his son....."

I need hardly emphasize that the plaintiff being not the son of Sri Battu Mal could not be held in greater love than a son. His case is, therefore, on no higher footing and in view of law laid down in the above mentioned cases, I must hold that the sale was obtained benami by Sri Battu Mal. There should have been something more than the mere existence of love to rebut the presumption of the transaction being benami."

In the light of the above conclusion, the Lower Appellate Court allowed the appeal and consequently dismissed the suit filed by the plaintiff.

The plaintiff, aggrieved by the reversing judgment of the Lower Appellate Court, preferred a Second Appeal to the High Court. The High Court, after going into the evidence and reappreciating the same, differed from the conclusions reached on facts by the Lower Appellate Court. The High Court observed as follows :-

"I am of opinion that the proper inference to be drawn in this case

A on the aforesaid facts and circumstances was that Lala Battu Mal intended to make the plaintiff a joint owner of the property with him and that it was not a case of Benami transaction.”

The High Court initially delivered the judgment without hearing the counsel for the defendant. Later on, on an application to recall the judgment  
B passed without hearing the defendant’s counsel, the learned Judge, after hearing learned counsel for the defendant, confirmed the earlier judgment by referring to passages from it.

When the learned counsel, appearing for the defendant before the High Court, invited its attention to the cases decided by the Privy Council and of  
C this Court, the High Court, distinguishing those cases, held as follows :-

“I then took note of the fact that the theory of advancement said not to apply in India because the habit of making Benami purchase was rampant among ‘the natives’ which was the name given to us by the British. It is said that the theory applied only in England. In then  
D noticed the change that has over taken our country since the first pronouncement of the Privy Council on which the pronouncements of the Privy Council in *Guran Ditta and Anr. v. T. Ram Ditta*, [AIR (1928) P.C. 172] and *Lakshmiah v. Kothandarama*, [AIR (1925) P.C. 1981] were based. I observed that the presumptions, which could be raised more than a century ago, can longer be raised in the present  
E day social conditions and the said decisions of the Privy Council must accordingly be applied with some caution. I then took note of the law declared by the Supreme Court in *Bhim Singh v. Kan Singh*, [AIR (1980) S.C. 72], wherein the true test for determining whether a transaction was Benami or not was laid down to be that of intention and instead of presuming that the purchase made by Lala Battu Mal was Benami in so far as the plaintiff was concerned, and that the  
F theory of advancement not being applicable in India, the plaintiff could not be said to have had an equal share in the property on account of his name having been joined as a co-purchaser by Lala Battu Mal unless it were proved that Lala Battu Mal had, in fact, made a gift of an equal share in the property when he purchased it in the plaintiff’s name, I looked at the surrounding facts and  
G circumstances in an attempt to find out the intention, with which Lala Battu Mal joined the plaintiff’s name as a co-purchaser with him in the sale deed of the property in question and on that test according to the view taken by me, the surrounding facts and  
H circumstances all lead to the inference that when Lala Battu Mal

joined the plaintiff as a co-purchaser with him and described him as his adopted son living under his guardianship, he intended to make the plaintiff a joint equal owner in the property with him.”

Ultimately, the High Court held as follows :-

“It rested on the facts and circumstances brought out by the evidence on the facts on the record. One fact which weighed with me considerably was the fact that the purchase was made by Lala Battu Mal in the joint names of himself and the plaintiff and that there was nothing secretive about the transaction.”

On the basis of the said conclusions, the High Court allowed the Second Appeal, set aside the judgment of the Lower Appellate Court and decreed the suit of the plaintiff.

The defendant aggrieved by the judgment of the High Court has filed this appeal.

Mr. Salve, learned senior counsel appearing for the appellant, submitted that the High Court went wrong in reappreciating the oral evidence and also distinguishing the cases which are directly on point and allowing the Second Appeal. He placed reliance on Guran Ditta’s case (supra), which has been referred to with approval in Bhim Singh’s case (supra) by this Court. According to the learned counsel, in the light of law settled in these cases, the Judgment of the High Court is liable to be set aside and that of the Lower Appellate Court has to be restored.

Mr. Rakesh K. Sharma, learned counsel appearing for the plaintiff, supporting the judgment of the High Court, submitted that on the facts of this case the High Court was right in distinguishing the cases relied on by the learned counsel for the defendant.

We have considered the rival submissions.

At the outset, we would like to point out that the findings on facts by the Lower Appellate Court as a final Court on facts, are based on appreciation of evidence and the same cannot be treated as perverse or based on no evidence. That being the position, we are of the view that the High Court, after reappreciating the evidence and without finding that the conclusions reached by the Lower Appellate Court were not based on the evidence, reversed the conclusions on facts on the ground that the view taken by it

A was also a possible view on the facts. The High Court, it is well settled, while exercising jurisdiction under Section 100, C.P.C., cannot reverse the findings of the Lower Appellate Court on facts merely on the ground that on the facts found by the Lower Appellate Court another view was possible.

B In Bhim Singh's case (supra), this Court, after considering the number of cases on an identical issue, held as follows :-

C "The principle governing the determination of the question whether a transfer is a benami transaction or not may be summed up thus : (1) The burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction; (2) if it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is prima facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary; (3) the true character of the transaction is governed by the intention of the person who has contributed the purchase money and (4) the question as to what his intention was has to be decided on the basis of the surrounding circumstances, the relationship of the parties, the motives governing their action in bringing about the transaction and their subsequent conduct, etc."

E Again, in *The Controller of Estate Duty, Lucknow v. Alope Mitra*, [1981] 1 SCR 943 this Court considered the similar issue and held as follows:-

F "The law in this matter is not in doubt and is authoritatively stated by a long line of decisions of the Privy Council starting from the well known case of *Gopeekrist Gosain v. Gungapersaud Gosain to Sura Lakshmiah Chetty v. Kothandarama Pillai* and of this Court in *Shree Meenakshi Mills Ltd. v. CIT*. As observed by Knight Bruce L.J. in *Gopeekrist Gosain's* case, the doctrine of advancement is not applicable in India, so as to raise the question of a resulting trust. When a property is purchased by a husband in the name of his wife, or by a father in the name of his son, it must be presumed that they are benamidars, and if they claim it as their own by alleging that the husband or the father intended to make a gift of the property to them, the onus rests upon them to establish such a gift. In *Sura Lakshmiah Chetty's* case, the law was stated with clarity by Sir John Edge in these words :

“There can be no doubt now that a purchase in India by a native of India of property in India in the name of his wife unexplained by other proved or admitted facts is to be regarded as a benami transaction, by which the beneficial interest in the property is in the husband, although the ostensible title is in the wife.”

It is but axiomatic that a benami transaction does not vest any title in the banamidar but vests it in the real owner. When the banamidar is in possession of the property standing in his name, he is in a sense the trustee for the real owner; he is only a name-lender or an alias for the real owner. In *Petheperumal Chetty v. Muniandy Servai*, the Judicial Committee quoted with approval the following passage from Mayne’s Hindu Law 7th ed., para 446 :

“Where a transaction is once made out to be a mere benami, it is evident that the banamidar absolutely disappears from the title. His name is simply an alias for that of the person beneficially interested.”

The cardinal distinction between a trustee known to English law and a banamidar lies in the fact that a trustee is the legal owner of the property standing in his name and cestui que trust is only a beneficial owner, whereas in the case of a benami transaction the real owner has got the legal title through the property is in the name of the banamidar. It is well settled that the real owner can deal with the property without reference to the latter. In *Gur Narayan v. Shoo Lal Singh*, the Judicial Committee referred to the judgment of Sir George Farwell in *Mst. Bilas Kunwar v. Dasraj Ranjit Singh*, where it was observed that a benami transaction had a curious resemblance to the doctrine of English law that the trust of the legal estate results to the man who pays the purchase-money, and went on to say :

“.....the banamidar has not beneficial interest in the property or business that stands in his name; he represents, in fact, the real owner, and so far as their relative legal position is concerned he is a mere trustee for him.”

In *Guran Ditta v. Ram Ditta*, the judicial Committee reiterated the principle laid down in Gopeekrist Gosain’s case and observed that in case of a benami transaction, there is a resulting trust in favour of the person providing the purchase money.”

A In the light of the above exposition of law by this Court and in the light of the findings of the Lower Appellate Court, the judgment of the High Court, on reappreciation of evidence, cannot be upheld. We have noticed earlier the vagueness in the plaint about non-disclosure of how and on what basis the plaintiff claimed partition in the suit property. We have also noticed that the Trial Court and the Lower Appellate Court noticed this aspect. The Lower Appellate Court also found that the plaintiff's evidence was extremely meagre and unsatisfactory. Taking all factors into consideration, the Lower Appellate Court found that Battu Mal did not intend to purchase the house for the Plaintiff's benefit. This finding has been upset by the High Court illegally by re-appreciating the evidence. This is not permissible.

C The High Court was not justified in ignoring/distinguishing the law laid down by this Court in Bhim Singh's case without properly appreciating the ratio of that decision.

D In the circumstances, we set aside the judgment of the High Court under appeal and restore that of the Lower Appellate Court in First Appeal No. 130 of 1963.

In the result, the appeal succeeds and is allowed accordingly with no order as to costs.

E V.S.S.

Appeal allowed.