IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 824 of 2010 & IA Nos. 5600 of 2010 (u/O 39 R 1 & @ CPC), 8351, 8352 of 2010 (u/S 16 r/w O VII R 11 CPC), 13922 of 2012 (u/O XII R 6 CPC), 16912 of 2012 (u/O VI R 17 CPC)

HEMANT SATTI ..... Plaintiff

Through: Mr. Gaurav Mitra with
Mr. Vijayender Kumar, Ms. Samreen
and Ms. Megha Bansiwal, Advocates.

versus

MOHAN SATTI & ORS. ..... Defendants

Through: Mr. Rahul Sharma, Advocate for D-1.
Ms. Jyoti D. Sharma, Advocate for D-2.

CORAM: JUSTICE S. MURALIDHAR

O R D E R
07.11.2013

I.A. No. 8351 and 8352 of 2010 (u/S 16 r/w O VII R. 11 CPC)

1. The background to these applications is that the aforementioned suit has been filed by Mr. Hemant Satti against his brother, Mr. Mohan Satti (Defendant No. 1), his mother Mrs. Chander Kanta Satti (Defendant No. 2), his sister Mrs. Rachana Mundepi (D-3) and his other sister Mrs. Madhu Preet Kaur (D-4) for partition and permanent injunction.

2. The case of the Plaintiff is that late Mr. Tek Chand Satti, the father of the Plaintiff and Defendants 1, 3 and 4 and the deceased husband of Defendant

No. 2 had, during his life time, accumulated a considerable amount of funds and had, on 24th September 2004, purchased house No. 967, Type – I, Haryana Housing Board Colony, Saraswati Vihar, Gurgaon admeasuring 100 sq. yds (hereafter the 'Gurgaon property') for a consideration of Rs. 1,55,585.

3. It is further stated that at the same time, Mr. Tek Chand Satti purchased another property at R-18/2, 1st Floor, Ramesh Park, Laxmi Nagar, Delhi-110092 (hereafter the 'Delhi property'). However, the conveyance deed was executed in the name of his wife, i.e., Defendant No. 2.

4. In para 7 of the plaint, it is stated as under:

> "7. It is respectfully submitted that since the purchase of the property situated at R-18/2, 1st Floor, Ramesh Park, Laxmi Nagar, Delhi – 110092, the said property was at all times treated as Joint Family Property of Late Mr. Tek Chand Satti and his family members and that the Defendant No.2 was holding the said property in trust for others. It is submitted that till the date of filing of the present suit, the said property has been understood, treated and believed as co-owned property of all the legal heirs of Late Mr. Tek Chand Satti as a joint family property for the common benefit and enjoyment by all such legal heirs."

5. The case of the Plaintiff is that late Mr. Tek Chand Satti allowed the Plaintiff and his family members to reside at the Gurgaon property and in similar fashion allowed Defendant No. 1 together with his family members to

reside at the Delhi property. The Plaintiff is stated to be in possession of the Gurgaon property as of date and Defendant No. 1 of the Delhi property. Apart from these two immovable properties, it is stated that Mr. Tek Chand Satti left behind shares and debentures of various companies and these three items have been collectively referred to in the plaint as suit properties.

6. The Plaintiff states that after the demise of Mr. Tek Chand Satti, he requested Defendant No. 1 that the suit properties be partitioned in the ratio of 1/5th share each in favour of the legal representatives of late Mr. Tek Chand Satti, the father. It is further stated that the Defendant No.1 rejected this request and further threatened to dispossess the Plaintiff from the Gurgaon property. In the above circumstances, the suit was filed for a preliminary decree of partition in respect of the suit properties followed by a division of the properties by metes and bounds by passing a final decree of partition.

7. While directing summons to be issued on 30th April 2010, an order was passed by this Court restraining the Defendants from creating any third party interest in respect of the Gurgaon property and also maintain *status quo* with regard to the shares and debentures in the various companies a list of which has been filed along with the plaint. As regards the Delhi property, the Court

observed that since it was in the name of the mother and the mother was alive, "prima facie the plaintiff is not entitled to any share in the said property".

8. Thereafter the Defendant No. 2 filed IA 8351 of 2010 and Defendant No. 1 filed IA 8352 of 2010 both under Order VII Rule 11 CPC for rejection of the plaint. This was simultaneous with the written statements filed by both of them. In both applications, it is submitted that the suit is not maintainable on the grounds (a) that the Court lacks territorial jurisdiction as far as the Gurgaon property is concerned and (b) that the suit is bad in law. It is stated by Defendant No. 2 that the Delhi property was not purchased out of the funds of late Mr. Tek Chand Satti or the Plaintiff or the Defendants 3 and 4. It is stated that the Delhi property was purchased on 10th April 2000 in the name of the Defendant No. 2 but the entire sale consideration was actually paid by Defendant No. 1 and his wife out of their own funds. It is stated that the title documents were registered in the name of Defendant No. 2 with the understanding that whenever she felt the need, she would transfer the Delhi property in the name of Defendant No. 1 or his wife and nobody else. It is stated that after the purchase of Delhi property in April 2000, the Defendant No. 1 and his wife moved in the Delhi property and had been staying with

their family. As far as the Gurgaon property is concerned, it is stated that it is outside the territorial limits of the Court and, therefore, the Court has no jurisdiction to deal with the said property. As regards the shares and debentures, it is stated to be jointly owned by late Mr. Tek Chand Satti and Defendant No. 2 and therefore no claim could lie on the said properties till such time Defendant No. 2 was alive.

9. In the reply filed to the aforementioned applications, it is reiterated by the Plaintiff that the Delhi property was not purchased out of the funds provided by Defendant No. 1 or his wife but by late Mr. Tek Chand Satti. As regards the Gurgaon property, it is contended that an issue concerning territorial jurisdiction could be framed and set down for trial. On 6th August 2012, the Plaintiff filed IA 16912 of 2012 seeking amendment of the plaint to challenge the transfer of the Delhi property by Defendant No. 2 to Defendant No. 1 on 20th May 2010 by a registered sale deed as null and void.

10. This Court has heard the submissions of Mr. Gaurav Mitra, learned counsel appearing for the Plaintiff and Mr. Rahul Sharma and Ms. Jyoti Dutt Sharma, learned counsel for Defendant No. 1 and Defendant No. 2 respectively.

11. Mr. Mitra referred to Section 2 read with Sections 3 and 4 of the Benami Transactions (Prohibition) Act, 1988 ['BTA'] as well as Section 14 of the Hindu Succession Act, 1956 ('HSA') to contend that the plea of benami transaction raised by the Plaintiff in respect of the Delhi property was tenable notwithstanding Section 14 of the HSA. A reference was made to Mayne's Treatise on **Hindu Law & Usage (15th Edition) 2003 @ p.1166**. In particular a reference is made to the explanation under Section 14 of HSA to the effect that "unless it is shown that (the Hindu female) she is only a benamidar, or the purchase by her was in trust for another, it is her absolute property under Section 14(1)". Reliance is also placed on the decisions in ***Nand Kishore Mehra v. Sushila Mehra (1995) 4 SCC 572*** and ***Gangamma v. G. Nagarathnamma (2009) 15 SCC 756*** to contend that the Plaintiff would be entitled to prove at the trial that the purchase of the Delhi property by late Mr. Tek Chand Satti in the name of Defendant No.2 was not in fact for the benefit of Defendant No.2 and in that event the bar under Section 3 of the BTA would not apply. As far as the Gurgaon property is concerned, it is submitted that question whether the Court lacks territorial jurisdiction could be decided at the time of trial. In any event under Section 17 of the CPC where one of the properties sought to be partitioned falls within the territorial

jurisdiction of the Court, the Plaintiff is entitled to approach this Court for relief in respect of both the properties.

12. Mr. Rahul Sharma and Ms. Jyoti Dutt Sharma, learned counsel appearing for Defendant No. 1 and Defendant No. 2 respectively, on the other hand, submitted that admittedly the Delhi property was in the name of the Defendant No. 2 and has now been transferred to Defendant No. 1 under a registered sale deed. The plea set up by the Plaintiff, according to them, is clearly barred under Section 3 of the BTA since it is not even the Plaintiff's case that the Delhi property was not purchased for the benefit of Defendant No. 2. As regards the Gurgaon property, it is submitted that inasmuch as it is outside the territorial jurisdiction of this Court, no relief in respect thereof can be granted. The shares and debentures are admittedly in the joint names of late Mr. Tek Chand Satti and Defendant No. 2 and during her life time no partition could be sought of that property either.

13. Section 14 of the HSA reads as under:

> "**14. Property of a female Hindu to be her absolute Property**.
>
> (1) Any property possessed by a Female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

> Explanation.—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.
>
> (2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

14. As explained by the Supreme Court in ***Gangamma v. G. Nagarathnamma***, Section 14(1) HSA contemplates that a female Hindu becomes the full owner of a property that comes into her possession and she has also all the powers of disposition of such property. The said decision reiterated what was explained in an earlier decision in ***Punithavalli Ammal v. Minor Ramalingam (1970) 1 SCC 570*** that the rights conferred under Section 14(1) HSA are not restricted or limited by any rule of Hindu law.

15. The effect of Section 3(2) read with Section 4(2) of the BTA was considered in ***Nand Kishore Mehra v. Sushila Mehra***. It was clarified by the Supreme Court as under (SCC @ p. 575-76):

"6.....it has to be made clear that when a suit is filed or defence is taken in respect of such benami transaction involving purchase of property by any person in the name of his wife or unmarried daughter, he cannot succeed in such suit or defence unless he proves that the property although purchased in the name of his wife or unmarried daughter, the same had not been purchased for the benefit of either the wife or the unmarried daughter, as the case may be, because of the statutory presumption contained in sub-section (2) of Section 3 that unless a contrary is proved that the purchase of property by the person in the name of his wife or his unmarried daughter, as the case may be, was for her benefit."

16. The collective reading of both provisions makes the following position clear:

(i) The right under Section 14(1) HSA accruing to a Hindu female in respect of the property in her possession is absolute and untrammelled. It includes property that comes to her through acquisition or "in any other manner whatsoever", and not limited to purchase of the property. She is free to deal with the property in any manner which she pleases.

(ii) The position under Section 3(2) BTA can be harmonised with Section 14 HSA. Section 3(2) BTA does not dilute the right of a Hindu female to her property under Section 14(1) HSA. It is only where it is able to be proved under Section 3(2) BTA that the property purchased by the husband of the Hindu female in her

name was not for her benefit, could a challenge to her absolute right thereto be entertained.

(iii) However, in order to prove such a defence, it has to be pleaded, in the first place, to be pleaded.

17. In the present case, on a plain reading of the plaint it is clear that the Plaintiff is setting up a plea of a *benami* transaction in respect of the Delhi property. His specific plea is that although the Delhi property stood in the name of mother, it in fact belonged to his father since it was his father who paid the entire sale consideration. If it is a benami transaction, then under Section 3 of the BTA it cannot be accorded any recognition unless the Plaintiff is able to bring his case under the exceptions under Section 3(2) BTA. In other words, to avoid the bar of Section 3 BTA the Plaintiff would have to plead and then prove that the suit property was in fact not acquired for the benefit of his mother.

18. Mr. Mitra repeatedly referred to para 7 of the plaint and urged that since the plea was that the mother was holding the Delhi property in trust for the joint family, the corollary was that such property was in fact was not acquired for her benefit. Even while conceding that this was not specifically pleaded,

he submitted that it should be inferred from a reading of paras 1 to 6 with para 7 of the plaint.

19. This Court is unable to accept the above submission of Mr. Mitra. The plaint should be read as it is. It obviously cannot be read as statute. In other words, the Court cannot possibly read into the plaint, words that do not find a place therein. Nowhere in para 7, or for that matter in the earlier plaint, is it stated that the Delhi property was not acquired for the benefit of the mother. When there is no plea to that effect in the first place, the question of proving that the Delhi property was not acquired for the benefit of the mother, simply does not arise. It is a futile exercise to permit the Plaintiff to raise such a plea at this belated stage. Interestingly even in the application for seeking amendment to the plaint, the Plaintiff does not seek to amend para 7 of the plaint to incorporate such a plea. Consequently, the Plaintiff cannot seek to bring the case under the exception in Section 3(2) of the BTA and avoid the bar under Section 3(1) BTA against raising the plea of a *benami* transaction as regards the Delhi property. The Delhi property belonged absolutely to Defendant No.2 and she was free to deal with it in any way which she pleased during her lifetime.

20. Consequently, therefore, the Plaintiff cannot be granted the relief of partition in respect of the Delhi property. Such a relief would be barred under Order VII Rule 11(d) CPC.

21. As regards the Gurgaon property, there can be no manner of doubt that it is outside the territorial jurisdiction of the Court. Consequently if no relief can be granted in respect of the Delhi property, the question of entertaining the suit for the purpose of Gurgaon property alone does not arise. It will be, however, open to the Plaintiff to seek appropriate remedies in respect of the Gurgaon property in accordance with law in the court of appropriate jurisdiction.

22. As regards the shares and debentures, since they were in the joint names of the Plaintiff's late father and Defendant No. 2 and it has now come entirely to the share of Defendant No. 2, the question of seeking their partition during her life time does not arise. Therefore, none of the prayers in the suit can be entertained in law.

23. The applications are accordingly allowed and the plaint is rejected with liberty to the Plaintiff to seek relief in respect of only the Gurgaon property in

other appropriate proceedings in accordance with law. The interim order is vacated. All pending applications are disposed of.

S. MURALIDHAR, J.

NOVEMBER 07, 2013
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