

Satya Gupta (Smt.) Alias Madhu Gupta

Vs

Brijesh Kumar

Civil Appeal No. 4012 of 1983

(CJI M. M. Punchhi, K. Venkataswami JJ)

14.08.1998

JUDGMENT

K. VENKATASWAMI, J.

This appeal is preferred against the judgment and decree dated 14-2-1983 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 to the parties as the plaintiff (respondent herein) and the 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 9-5-1953 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 the 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.

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

3. 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.

4. 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. 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 PWs 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 DW 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 the past three years before the institution of the suit.

5. 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 Shri Battu Mal. The plaintiff was the son of Shri Battu Mal's cousin and from the mere fact that the plaintiff lived with and was loved by Shri Battu Mal, we cannot conclude that it was intended to purchase the house for the plaintiff's benefit".

6. After referring to a judgment of the Nagpur High Court in *Gopal Trimbak Bhate v. Kesheosa Vishnoosa Lad* (AIR 1936 Nag 185 : ILR 1936 Nag 65) the lower appellate court held as follows:

"Relying on the case of *Gopeekrist Gosain v. Gungapersaud Gosain* ((1854) 6 MIA 53 (PC)) 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 Shri Battu Mal could not be held in greater love than a son. His case is, therefore, on no higher footing and in view of the law laid down in the above-mentioned cases, I must hold that the sale was obtained benami by Shri Battu Mal. There should have been something more than the mere existence of love to rebut the presumption of the transaction being

benami."

7. In the light of the above conclusion, the lower appellate court allowed the appeal and consequently dismissed the suit filed by the plaintiff.

8. 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 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 a benami transaction."

9. The High Court initially delivered the judgment without hearing the counsel for the defendant. Later on, on an application to recall the judgment 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.

10. 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 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. I then noticed the change that has overtaken our country since the first pronouncement of the Privy Council on which the pronouncements of the Privy Council in *Guran Ditta v. T. Ram Ditta* (AIR 1928 PC 172 : 55 IA 235) and *Sura Lakshmiah Chetty v. Kothandarama Pillai* (AIR 1925 PC 181 : 52 IA 286) were based. I observed that the presumptions, which could be raised more than a century ago, can no longer be raised in the present-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 *Thakur Bhim Singh v. Thakur Kan Singh* ((1980) 3 SCC 72 : AIR 1980 SC 727) wherein the true test to 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 insofar as the plaintiff was concerned, and that the 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 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 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."

11. 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.

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

13. 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 case (AIR 1928 PC 172 : 55 IA 235) which has been referred to with approval in Bhim Singh case ((1980) 3 SCC 72 : AIR 1980 SC 727) by this Court. According to the learned counsel, in the light of the 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.

14. 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.

15. We have considered the rival submissions.

16. At the outset, we would like to point out that the findings on facts by the lower appellate court as a final court of 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 was also a possible view on the facts. The High Court, it is well settled, while exercising jurisdiction under Section 100 CPC, 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.

17. In Bhim Singh case ((1980) 3 SCC 72 : AIR 1980 SC 727) this Court, after considering the number of cases on an identical issue, held as follows : (SCC p. 84, para 18)

"18. 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."

18. Again, in *CED v. Alope Mitra* ((1981) 2 SCC 121 : 1981 SCC (Tax) 71 : (1981) 1 SCR 943) this Court considered a similar issue and held as follows : (SCC pp. 132-33, paras 30-31)

"30. 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* ((1854) 6 MIA 53 (PC)) to *Sura Lakshmiah Chetty v. Kothandarama Pillai* (AIR 1925 PC 181 : 52 IA 286) and of this Court in *Sree Meenakshi Mills Ltd. v. CIT* ((1957) 31 ITR 28 : AIR 1957 SC 49)). As observed by Knight Bruce, L.J. in *Gopeekrist Gosain* case ((1854) 6 MIA 53 (PC)) 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* case (AIR 1925 PC 181 : 52 IA 286) 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.'

31. It is but axiomatic that a benami transaction does not vest any title in the benamidar but vests it in the real owner. When the benamidar 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 *Petherpermal Chetty v. Muniandi Servai* ((1907-08) 35 IA 98 : ILR 35 Cal 551) the Judicial Committee quoted with approval the following passage from *Mayne's Hindu Law*, 7th Edn., para 446 :

'Where a transaction is once made out to be a mere benami, it is evident that the benamidar 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 benamidar 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 though the property is in the name of the benamidar. It is well settled that the real owner can deal with the property without reference to the latter. In *Gur Narayan v. Sheo Lal Singh* ((1918-19) 46 IA 1 : AIR 1918 PC 140) the Judicial Committee referred to the judgment of Sir George Farwell in *Bilas Kunwar v. Dasraj Ranjit Singh* ((1915) 42 IA 202 : AIR 1915 PC 96) 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 benamidar has no 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* (AIR 1928 PC 172 : 55 IA 235) the Judicial Committee reiterated the principle laid down in *Gopeekrist Gosain* case ((1854) 6 MIA 53 (PC)) and observed that in case of a benami transaction, there is a resulting trust in favour of the person providing the purchase-money."

19. 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 the 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 reappreciating the evidence. This is not permissible.

20. The High Court was not justified in ignoring/distinguishing the law laid down by this Court in *Bhim Singh* case ((1980) 3 SCC 72 : AIR 1980 SC 727) without properly appreciating the ratio of that decision.

21. 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.

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