

## **DELHI HIGH COURT**

S. Fauja Singh

Vs.

Kuldip Singh, (Delhi)

Suit No. 422 of 1969.

(F.S. Gill, J.)

23.5.1978

### **ORDER**

**F.S. Gill, J.**

The plaintiff has alleged that he and Kuldip Singh (defendant No. 1) jointly owned plot of land (R-6) in Green Park, New Delhi, which was purchased from Urban Improvement Housing and Construction Company Private Limited on or about 10th March, 1959. The plot measured 215 sq. yards. A sala deed in respect thereof was duly executed in their favor.

2. After the purchase of the plot of land, the plaintiff and defendant No. 1 decided to build a house thereon. A plan of the building was accordingly sent to the Municipal Authorities. It was duly sanctioned.

3. It is further added that the plaintiff and defendant No. 1 constructed a house on the said plot. The expenditure on the construction was also borne in equal shares as each one had one-half share. It is further added that the building was practically completed in July, 1965 and a completion certificate was also obtained from the Municipal Committee, Delhi in this behalf.

4. It is further alleged that the plaintiff and defendant No. 1, who are the co-owners of the building in question, rented out the first floor of the house to the Military Estate Officer, Delhi Cantt. with effect from 1st November, 1965 at Rs. 350 per month. This rented portion was, however, allotted by the Military Estate Officer to Major Jaswant Singh, defendant No. 2, who is the father of Kuldip Singh defendant No. 1. At that time Major Jaswant Singh was serving in the Army and was posted at Delhi. The said portion was thus occupied by Major Jaswant Singh on the basis of the allotment order. He continued the possession

in this capacity till about August, 1967.

5. It is further stated that Kuldip Singh, defendant No. 1 had appointed his father, Major Jaswant Singh and also his cousin Karamjit Singh, defendant No. 3, as his attorneys, representatives and agents, to act for and on his behalf and to manage the affairs of the aforesaid building. Rents were collected from the tenants and were deposited in the Bank where a joint account had been opened by the plaintiff and Karamjit Singh, defendant No. 3, while acting as attorney and representative of Kuldip Singh. Karamjit Singh was also allowed to operate the said account jointly and severally.

6. It is further averred that without the knowledge and consent of the plaintiff, Karamjit Singh, defendant No. 3, under the instructions and at the instance of Kuldip Singh, defendant No. 1, withdrew the entire amount on the rent which had been deposited in the Bank. After withdrawal he appropriated the whole money according to the instructions of Kuldip Singh and, without the knowledge and consent of the plaintiff. Defendants Nos. 1 and 3 also never informed the plaintiff about the withdrawals.

7. It is further added that apart from the first floor, two shops on the ground floor, were also let-out by Karamjit Singh, defendant No. 3, under the instructions of Kuldip Singh, defendant No. 1, and that from January, 1966 Karamjit Singh, defendant No. 3, had alone been receiving or realising the rents of the said shops from the tenants viz. M/s. Garcha Automobile Engineers and others. The rent of each shop was Rs. 500 per month and the same was realised by defendant No. 3.

8. Another portion of the house which was rented out was the Barsati on the top floor. It is stated that the Barsati had been leased out by Kuldip Singh, defendant No. 1 through his attorneys Major Jaswant Singh and Karamjit Singh, defendants 2 and 3 with effect from 1-9-1966 at Rs. 120 per mensem.

9. It is also alleged that the sala Barsati was vacated by the first tenant and was let-out to another on 1-10-1967 at about Rs. 150 per mensem. The second tenant continued in occupation till 19-3-1969.

10. It is further added that Kuldip Singh, defendant No. 1, in collusion and conspiracy with defendants Nos. 2 and 3, had, in order to cause unlawful loss to the plaintiff and to have unlawful gain to himself, withdrawn all the amounts of

rents collected and deposited in the Bank. It is also stated that he has also been receiving the rents from the various tenants directly and that he has appropriated all those amounts to his own use and has failed to render any account to the plaintiff. Defendant No. 1 had thus failed to pay the share of the plaintiff in respect of the aforesaid rental income.

11. The plaintiff has also stated that the house is assessed to house tax and that he had been paying his share of the house tax to the Municipal authorities and that the entire rent had been retained and appropriated by the defendants.

12. It is accordingly submitted that the plaintiff is entitled to the rendition of accounts of the various collections made and appropriated by the defendants.

13. The plaintiff has further stated that Kuldip Singh, defendant No. 1, through his attorneys and representatives i. e. defendants 2 and 3, has acted wrongly, illegally, and fraudulently and, therefore, he (plaintiff) was not interested in keeping the property joint. He has further added that in spite of repeated requests, the defendants have not partitioned the property and given his share to him nor they have rendered the account of the income and expenditure. The plaintiff, therefore, seeks a decree for the partition of the property and also for the rendition of the accounts. A prayer for the appointment of Receiver has also been made.

14. Defendants Nos. 1 to 3 filed their joint written statement and alleged that the plaintiff was not in possession of any part of the property and, therefore, ad valorem court-fee was payable on his one-half share of the value of the suit property. Pleas regarding misjoinder and cause of action have also been taken. It has been contended that Amarjit Kaur alias Harpreet Kaur, widow of Tarlok Singh Mann was a necessary party as she owned one-half share. It was further stated that the plaintiff had no share in the plot R-6, Green Park, New Delhi nor the construction had been made by him. It is also averred that Major Jaswant Singh wanted to purchase the plot in question for his son and daughter but the plaintiff insisted that half of the share in the plot should either be in the name of his son T. S. Mann or in his own name and not in the name of Amarjit Kaur as purchasing the property in the name of the female would cause great insult to him and his family. It is stated that to satisfy the whim of the plaintiff, half of the share in plot No. R-6, Green Park was shown in the plaintiffs name. He was to be a sheer benamidar for Amarjit Kaur, daughter of Major Jaswant Singh. It

is further alleged that the whole material for the construction of the building was purchased by Amarjit Kaur and Kuldip Singh, defendants and that the entire investment had also been made by them, whereas nothing had been spent by the plaintiff. With these submissions it was stated that the suit be dismissed.

15. In his replication, the plaintiff re-asserted his averments and denied that Amarjit Kaur was the real owner and that he was only a benamidar.

16. The plaint was later amended on the application of Amarjit Kaur alias Harpreet Kaur and she was impleaded as defendant No. 4. She filed her written statement and alleged that she was the real owner of one-half share in the plot and the building standing thereon as she had spent the whole amount herself, whereas the plaintiff was only a benamidar.

17. From the pleadings of the parties, the following issues were framed :-

1. Whether the plaintiff is in possession of any portion of the property in suit and the suit is properly valued for the purpose of court-fee and jurisdiction?

2. Whether the suit is bad for multifariousness?

3. Whether the plaintiff is only benamidar of the property in suit to the extent of one-half share ?

4. If issue No. 3 is proved, whether Smt. Amarjeet Kaur defendant No. 4 is the real owner of the property in suit to the extent of one-half share along with the defendant No. 1 and whether she is in possession of any part of the property in suit?

5. Whether the plaintiff is entitled to a decree for rendition of accounts? If so, for what period and against whom?

6. What directions, if any, should be issued to the local Commissioner in the matter of the rendition of accounts?

7. Whether the plaintiff had authorized defendant No. 3 to re-imburse the rental income withdrawn from the bank or received otherwise to defendant No. 1 and defendant No. 4?

8. Relief.

Both the parties have produced oral as well as documentary evidence in support

of their respective assertions. The same will be discussed presently.

Issue No. 1.

18. The valuation for the purposes of court fee and jurisdiction is to depend on the question whether the plaintiff is in possession of any portion of the property in dispute. The plaintiff has stated that he has been in possession of a portion of this property much before the filing of the suit. This fact has been denied in the written statements.

19. To prove his possession, the plaintiff has examined Balwant Singh, P.W. 1, Karmainder Singh, P.W. 2, Harihar Parshad, P.W. 3, Bam Phal Singh, P.W. 4, Gurdial Singh, P.W. 5, H. C. Bhoop Singh, P.W. 6, and has himself appeared as P.W. 7. Balwant Singh, P.W. 1 is a neighbor of the plaintiff, who lives at a distance of about 300 yards. He has stated that the plaintiff lives in a part of the house in dispute. Karmainder Singh is also a neighbor and lives in R-11, Green Park. He has stated that the plaintiff resides in House No. R-6, Ex. PW3/1 is the Directory of the Residents published in 1970. It has been proved by Harihar Prasad, P.W. 3. The name of the plaintiff appears in this directory against House No. R-6.

20. Ram Phal, P.W. 4, is a clerk in the Municipal Corporation, Delhi. On the basis of the assessment register of 1965, he has stated that Captain Fauja Singh and Kuldip Singh were shown in self occupation of R-6, Green Park. Gurdial Singh, P.W. 5, was a tenant in 1967. He has stated that he had taken the house on rent from the plaintiff and Major Jaswant Singh and had returned the possession to them on vacation. H. C. Bhoop Singh, P.W. 6, has proved a complaint made by Major Jaswant Singh, in the police station. A copy thereof is Ex. PW6/1. It was stated by Jaswant Singh in the complaint that Captain Fauja Singh was in possession of a room in the Barsati from 26-2-1969. This fact was even admitted by Kuldip Singh Garcha (defendant No. 1), who has appeared as D.W. 15. The possession of the plaintiff in the Barsati, at the time of filing the suit in October, 1969, is also admitted by Major Jaswant Singh in his statement made as D.W. 17. The defendants have not produced any evidence to show that the plaintiff is not in possession of a part of the property in question. In fact they have admitted his possession in their statements.

21. From the above evidence, it is clearly proved that the plaintiff is in possession of a part of the property in dispute. The plaintiff has, therefore,

lightly valued the suit for the purposes of court-fee in accordance with Section 7 (4) (b) read with Article 17 of Schedule II of the Court-fees Article He is not enjoined to pay ad valorem court-fee. Issue No. 1 is, therefore, decided in favor of the plaintiff and against the defendants. Issue No. 2.

22. The learned counsel for the defendants has not pressed this issue regarding multifariousness of the suit. Nor there is any substance in the allegation. This issue is, therefore, decided against the defendants.

Issues 3 and 4.

23. Both these issues are intermingled. They will, therefore, be discussed together. The allegation of the defendants is that the plaintiff is only a benamidar of one-half share in the property in dispute and that the real owner is Smt. Amarjit Kaur, defendant No. 4. Whether or not the plaintiff is a benamidar is the most vital question requiring determination in this suit.

24. The onus, therefore, heavily lies on Amarjit Kaur defendant to prove that she is the real owner of one-half share in the house in dispute, whereas the plaintiff is only a benamidar. The law on the point has been very lucidly laid down in *Jaydayal Poddar v. Mst. Bibi Hazra*,<sup>1</sup> The relevant portion is reproduced below (at p. 172) :

"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 conjecture or surmises, as a substitute for proof.

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, uniform ally 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.

The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless No. 1, viz. the source whence the purchase money came, is by far the most important test for determining whether the sale standing in the name of one person, is in reality for the benefit of another." Keeping the above principles in view, the evidence of the parties will be presently gauged.

25. First of all I will consider the evidence about the purchase of the plot (R-6) on which the house has been built. To begin With Sri T. S. Mann son of the plaintiff had booked plot No. W-14 and also plot No. R-6 or R-7 with promoter i.e. Urban Improvement and Construction Company Limited. Ex. D-46 is a provisional receipt dated 7-8-56 for Rs. 10 issued by the Company in favor of Tirlok Singh Mann towards the booking of plot No. 14-W, Green Park; whereas Ex. D-48 is the provisional receipt for Rs. 15 issued by the same Company in the name of Tirlok Singh Mann about the booking of plot No. 6 or 7-R, Green Park, New Delhi.

26. For Plot No. 14-W a sum of Rupees 2,755 was paid by Tirlok Singh Mann on 8-8-56 towards the entire sale price (see receipt Ex. D-47). In Ex. D-47 there is also a mention of the provisional receipt issued earlier. For the same plot i.e. 14W, another sum of Rs. 117.8 Annas was paid by T. S. Mann on 8-8-56 towards the registration charges (c. f. Ex. D-50). Thus Tirlok Singh Mann had absolute interest in plot No. W-14.

27. Now regarding plot No. R-6. Receipt Ex D-49 issued on 16-8-56 shows that a sum of Rs. 1,548 had been paid by Captain Ajaib Singh and Captain Jaswant Singh towards the price of this plot. The area mentioned in this receipt is 344 sq. yards. It may be stated that originally this plot was registered by Tirlok Singh Mann but this receipt shows that the payment of the price was made by Captain Ajaib Singh and Captain Jaswant Singh to the Urban Improvement and Construction Company Private Ltd. Another sum of Rs. 2064 was paid by

Captain Ajaib Singh and Captain Jaswant Singh on 24-9-56 towards the price of the same plot (Ex. D-2). Yet one more installment of Rupees 2,064 was paid by the same persons, namely, Captain Ajaib Singh and Captain Jaswant Singh on 8-11-56 and receipt Ex. D-3 was issued in their favor.

28. Later the area of plot No. R-6 was reduced from 344 to 215 sq. yards. Captain Ajaib Singh then decided to withdraw and transfer his share to Captain Fauja Singh plaintiff. This was to be with the consent of the other co-sharer i.e. Major (then Captain) Jaswant Singh. To compensate Major Jaswant Singh. T. S. Mann son of the plaintiff agreed to induct Jaswant Singh in plot No. W-14 by transferring his one-half share in favor of Jaswant Singh. This would be evident from the following documentary evidence.

29. Ex. P-15 is a letter sent by Captain Fauja Singh to the Secretary, Urban Improvement and Construction Co. Ltd., on 13th January, 1957. It also bore an endorsement made by Captain Jaswant Singh. It seems very relevant to reproduce this letter:-

"The Secretary,

Urban Improvement Housing

And Construction Co. Ltd.

**Subject :-** Plot No. R-6 in Green Park. With ref. to letter dated 10th Jan. 1957 addressed to you by Capt. Ajaib Singh. I hereby undertake to purchase the share of Capt. Ajaib Singh in plot No. R-6 and accept Capt. Jaswant Singh as my partner. I hereby pay my share of the plot paid by Capt. Ajaib Singh. Capt. Jaswant Singh is willing to take me as my partner.

Sd/- Fauja Singh

C/o. Sardar T. S. Mann

C. A. Section

L. Block CPWD

Dated : 13th Jan. 57 NEW DELHI. I concur with the above proposal.

Sd/- Jaswant Singh

No. 3 Wireless-

Experimental Company

Barrack pore

decided on 13th Jan, 57. W. Bengal."

30. Ex. P-16 is another letter, which shows that Captain Jaswant Singh had transferred his own share to his son Kuldip Singh with the concurrence of the Company. This letter was also confirmed by Captain Fauja Singh, plaintiff, indicating that he had no objection to the transfer and taking Kuldip Singh as a partner.

31. The transfer of the share in favor of Captain Fauja Singh is amply explained by the fact that T. S. Mann, son of Captain Fauja Singh was the sole-owner of plot No. W-14 and he had inducted Captain Jaswant Singh in that plot as joint owner on the condition that his father Captain Fauja Singh would be inducted in plot No. R-6. A letter to that effect was written by T. S. Mann to the Secretary, Urban Housing and Construction Company Limited on 13th January, 1957. It has been exhibited as P-17 and reads as under:-

"T. S. Mann

C. A. Section

L. Block

CPWD New Delhi.

decided on 13th Jan. 57.

To

The Secretary,

Urban Housing and

Construction Co. Ltd.

New Delhi.

**Subject :-** Registration plot No. W-14. Dear Sir,

This is to request you to register the abovementioned plot on the joint names of Capt. Jaswant Singh s/o S. Ram Singh (No. 3 Wireless Experimental Company, Barrack pore) and myself instead of myself alone.

My reason for the same is that my father Capt. Fauja Singh is getting R-6 registered jointly with him and we are adjusting the amount of payment for both plots i.e. W-14 and R-6 mutually.

Yours faithfully,

Sd/- "

32. From the narration of the above facts it is evident that Jaswant Singh or Ajaib Singh had never come to book any of the plots and that it was T. S. Mann only who had booked them. In his statement Captain Ajaib Singh deposed that he does not know anything about plot No. W-14. From the above correspondence it is also evident that it is factually wrong that plot R-6 had been registered in the sole name of Major Jaswant Singh. Statement of Smt. Amarjit Kaur defendant in this behalf is a deliberate lie. At the time of the booking or purchasing the plot, Amarjit Kaur was not even married. The assertion of the defendants that Captain, Fauja Singh did not want the plot to be purchased in the name of Amarjit Kaur is not correct. It is a fantastic story that the plaintiff was dead against the induction of a female as a partner in the plot. She had not been married at that time. If Major Jaswant Singh could transfer his share in the plot in the name of his son, there was no impediment in his way to transfer his interest in the name of his daughter. No credence can therefore, be given to such a fabricated story.

33. It is thus proved that half share in plot No. R-6 had been purchased by Captain Fauja Singh, plaintiff and that he had also made the payment for the same. This fact was duly intimated to the Company in writing, which was also consented to by Major Jaswant Singh. Thus the plaintiff had one half share in the plot in question.

34. Before the evidence about the actual construction of the house is considered, I would like to find out the financial position of Major Jaswant Singh, defendant No. 2, who is the father of Smt. Amarjit Kaur, defendant No. 4. The object in doing so is to see whether he was in a position to help his daughter as alleged by him.

35. Both oral as well as documentary evidence on the record shows that the financial position of Major Jaswant Singh was far from satisfactory and he had no ability to render any financial assistance to her. Jagmal Singh, DW 2, who is the cousin of Major Jaswant Singh, has stated that Jaswant Singh had borrowed a sum of Rs. 3000/- from him during the course of the construction of the house. Lt. Col. Avtar Singh Mann, DW 4, is a friend of Major Jaswant Singh. He has deposed that he had advanced a loan of Rs. 3000/- to Major Jaswant Singh on four different occasions (Rs. 700/- on 28-7-65, Rs. 700/ on 30-7-65, Rs. 600/- on 31-7-65 and Rs. 1000/- on 9-7-67). He has deposed that Major Jaswant Singh required this money for the construction of the house and for paying his creditors. Dr. N. S. Grewal, DW 9, has stated that Major Jaswant Singh had taken a loan of Rs. 999/- from him in 1965 as he needed the money for the construction of his house. This witness is also a friend of Major Jaswant Singh.

Hari Singh, DW 10, has deposed that he had advanced a loan of Rs. 2000/- to Major Jaswant Singh in 1965 as he wanted the same for the construction of the house. Patwari Sukhdev Singh, DW 12, is the first cousin of Major Jaswant Singh. He has stated that in June or July, 1965 Major Jaswant Singh had asked him for financial help and that he had advanced a sum of Rs. 2000/- to him. He has further added that on his inability to repay the loan, he had transferred to him a piece of his land for the consideration of the loan.

36. From the above statements of the close relatives and friends produced by the defendants themselves, it is proved that Major Jaswant Singh had secured a loan of Rs. 11,000/- from them for the construction of the house. Obviously Major Jaswant Singh had no funds of his own.

37. Ex. P. 25 is a letter which had been sent by Major, Jaswant Singh defendant to the plaintiff on 3-12-1966. In this letter he had asked the plaintiff to pay his share of the Municipal taxes amounting to Rs. 807.30P. In this letter he categorically stated that he was not in a position to make the payment of the plaintiff's share. The following portion of the letter is very significant as it speaks volumes of Major Jaswant Singh's financial position :-

"Since I still owe Rs. 12,558/- to friends/LIC and Gurdwara fund, I am not in a position to pay your share. You are, therefore, requested to remit a draft of Rs. 807.30 P. payable to Karamjit Singh Grewal at State Bank of India, Parliament Street, New Delhi forthwith or send by money order."

38. The above dismal financial position of Major Jaswant Singh disclosed on 3rd Dec. 1966 leaves no manner of doubt about his helpless condition. The learned counsel for the plaintiff has submitted that Major Jaswant Singh was not in a happy position to help anybody else in the construction of the house, so much so, he himself was obliged to appropriate the Gurdwara funds which obviously were with him as trust money. He must, however, have been forced by the circumstances to resort to take such an action. In short, Major Jaswant Singh was in poor financial condition and was not in a position to help his daughter Amarjit Kaur.

39. Next I deal with the construction of the house on plot R-6, Green Park. It is admitted by the parties that the marriage of T. S. Mann, son of the plaintiff was solemnized with Amarjit Kaur, defendant No. 4, daughter of Major Jaswant Singh, in Oct. 1956. T. S. Mann however, died on 10-7-1965. The construction of the house had actually started during the lifetime of T. S. Mann i. e. in October/November, 1964. It was, however, completed after his death and had taken about one year. The first floor of the house was given on rent to the Military Estate Officer from October, 1965, which in turn was allotted to Major Jaswant Singh.

40. The case of the plaintiff is that he had spent half of the amount on the construction of the house and the other half was spent by Kuldip Singh through his father Major Jaswant Singh. On the other hand Amarjit Kaur, defendant No. 4, has alleged that half of the expenditure on the entire house was incurred by her and not by the plaintiff. According to her the name of the plaintiff appears in the records only as a benamidar.

41. The learned counsel for the plaintiff has submitted that after the death of T. S. Mann, the only son of his client, Amarjit Kaur had re-married and that she and her father Major Jaswant Singh have contrived to grab the share of the plaintiff. T. S. Mann died on 10-7-65 when most of the construction work had been completed. On 30-7-65 Amarjit Kaur defendant wrote letter Ex. P34 to the plaintiff and intimated about the details of the expenditure incurred on the house. She gave the details as under:-

"1. Amount spent by the plaintiff for the construction of the house. Rs. 12,530/-

2. Loans taken from various persons amounting to

Rs. 8800/- were :-

From Gurdial Singh Rs. 2800/-

From Karamjit Singh Rs. 1200/-

From Harbail Singh Rs. 1800/-

From Gurbachan Singh Rs. 3000/-

3. The amount which had been spent

from the savings (obviously meant

savings made by T. S. Mann

and Amarjit Kaur) Rs. 3168.10

The total amount spent by the family of the plaintiff was Rs. 24,498.10P."

On the date of the writing of the letter the entire amount spent on the construction was mentioned to be Rs. 56,931.64P. It was stated that a sum of Rs. 3967.72 had been spent in excess by the co-sharer i. e. by Kuldip Singh through his father. This excess amount had been mentioned to be payable to Major Jaswant Singh.

42. Major Jaswant Singh has stated that he was building the house for his son (defendant No. 1) and daughter (defendant No. 4). If that was so, then his daughter would not have written to the plaintiff (her father-in-law) that a sum of Rs. 3067.72 P. was payable to Major Jaswant Singh. If the plaintiff was not financing the construction, Amarjit Kaur could have simply informed him that he was not entitled to demand any account as she was herself meeting the expenditure from her own resources and was being helped by her father. On the other hand she did not take up this position, but categorically stated that a sum of Rs. 3967.72 was payable to Major Jaswant Singh on account of overspending than his share. The story of Major Jaswant Singh that he was building the house for his daughter is belied by the evidence on record. Gurbachan Singh, PW 11 is the brother of the plaintiff. He has stated that he had advanced a loan of Rs. 3000/- to T. S. Mann and the same was repaid by the plaintiff. Similar is the statement made by Gurdial Singh, PW 15. He has deposed that the loan amount of Rs. 2800/- was advanced by him to the plaintiff through his son T. S. Mann and that the same was repaid to him by the plaintiff. Gurdial Singh has

contradicted Amarjit Kaur that she had repaid the loan.

43. The plaintiff has given the following details of the expenditure incurred by him in the construction of the house. This statement appears at page 251 of his statement.

1. Personally spent by the plaintiff from time to time Rs. 15830/- Rs. 15830

2. Sent to T. S. Mann for the construction of the house Rs. 3168/-

Received from LIC Rs. 11328/-

4. Loans raised From Gurbachan Singh Rs. 3000/-

From Gurdial Singh Rs. 2800/-

From Karamjit Singh Rs. 1200/-

Total Rs. 37,326/-

In her statement Smt. Amarjit Kaur has deposed that she had spent the amount from the following sources :-

1. Received from LIC Rs. 11328/-

2. On raising loans Rs. 11,450/-

Details of the loans are as below:-

(a) From Karamjit Singh Rs. 1500/-

(b) From Harbail Singh Rs. 3000/-

(c) From Gurbachan Singh Rs. 3000/-

(d) From Gurdial Singh Rs. 2800/-

(e) From School Friends Rs. 1150/-

3. Income from Land Rs. 8500/-

4. Provident Fund Rs. 1106/-

5. Gratuity Rs. 226/-

6. Savings from Nov. 1964 to July, 1964. Rs. 3200/-

Gurbachan Singh and Gurdial Singh have stated that they had given the loan to the plaintiff through his son T. S. Mann and that the plaintiff had repaid them. Amarjit Kaur is, therefore, clearly contradicted by them.

44. A sum of Rs. 11,328/- was paid by Life Insurance Corporation to Amarjit Kaur on the authority letter of Captain Fauja Singh, plaintiff. Both of them assert their right to receive the same. The amount was admittedly spent on the construction. Let us find out who was entitled to this amount.

45. T. S. Mann son of the plaintiff and husband of Amarjit Kaur, defendant No. 4, had a life insurance policy. The plaintiff was the nominee in the insurance policy. T. S. Mann died on 10-7-65. It has been stated on behalf of the plaintiff that the insurance amount of Rs. 11,328/- was payable to the plaintiff, being a nominee, whereas it is alleged on behalf of defendant No. 4 that this amount was payable to the widow being a legal heir. In this connection it has to be seen whether such an amount is payable to a nominee or to an heir.

46. It may be observed here that Smt. Amarjit Kaur, defendant No. 4 is not the sole legal heir of her deceased husband. The deceased had also left behind a daughter and his mother. The estate of the deceased had devolved on these three legal heirs. It has been argued on behalf of the plaintiff that if it is held that the nominee of the policy had no right, Amarjit Kaur could at the most claim 1/3rd share in the estate of the deceased and not the entire estate. There is no dispute about this legal position. It is, however, contended that the plaintiff was entitled to the whole insurance amount, being a nominee. In this connection Sri L. R. Gupta, the learned counsel for the plaintiff, has relied on sub-sections (1) and (6) of Section 39 of the Insurance Act, 1938. These provisions are in following terms:-

"(1) The holder of a policy of life insurance on his own life may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death :

6) Where the nominee or, if there are more nominees than one, a nominee or nominees survive the person whose life is insured, the amount secured by the policy shall be payable to such survivor or survivors."

It is submitted that under the above provisions the whole insurance amount was

payable to the plaintiff, being the nominee. In support of his contention Shri Gupta has relied on *Matin v. Mahomed Matin*,<sup>2</sup> in which it was held that nomination in an insurance is like a will. It is submitted that the right to secure the amount vests in the nominee. He is not a trustee. Another case relied on by Sri Gupta is *Kesari Devi v. Dharma Devi*,<sup>3</sup> In this case the assured died but before the policy amount could be obtained by the nominee, he too died. It was held that the heirs of the nominee and not that of the assured were entitled to the payment under the policy.

47. The learned counsel for the defendants has relied on *Life Insurance Corporation of India v. United Bank of India Ltd.*,<sup>4</sup> where it was held that the proceeds of policy though payable to nominee do not vest in him. Reliance was placed on sub-sections (1) to (5) of Section 39, but subsection (6) was not considered and discussed. It is sub section (6) which applies in such cases. It clearly states that the nominee is not merely a trustee or collector of the insurance policy amount but is the real person entitled to the same.

48. Thus, Amarjit Kaur, defendant No. 4 cannot bank on this amount of the insurance policy as the plaintiff and not she, was entitled to this sum. The mere fact that the plaintiff had authorized her to collect the said amount from the Insurance Company had not taken away his right in the money. He was the sole person entitled to this amount

49. It is the case of both the parties that this amount was used for the construction of the house in question. The amount will, therefore, be considered to have been spent by the plaintiff after its collection through defendant No. 4. Moreover, as already pointed out, Smt. Amarjit Kaur is not the sole heir of the deceased. The daughter and mother of the deceased were also there and they too had 1/3rd share each in the estate of the deceased. The insurance amount was, however, payable to the nominee alone and, therefore, it belonged to the plaintiff. It will be deemed to have been spent by the plaintiff.

50. Further, Major Jaswant Singh has stated that he had given Rs. 5100/- in cash to the plaintiff at the time of the marriage of his daughter. He has admitted that three cheques were issued. One was issued in the name of the plaintiff, which was for Rs. 2100/-, the others were for Rs. 1500/- each in the names of T. S. Mann and Amarjit Kaur. Major Jaswant Singh has not produced his bank pass-book to show as to who had encashed them. It is stated by the plaintiff that

two cheques for Rs. 1500/- were never received by him and that the amounts were appropriated by T. S. Mann and Amarjit Kaur after encashment. The defendants have stated that the sum of Rs. 5100/- given at the time of marriage was utilized by the plaintiff for the purchase of the land in the name of T. S. Mann and the income derived there from was spent in the construction of the house. The receipt of the entire amount by the plaintiff is not proved. It is contended by the learned counsel for the plaintiff that the land was purchased in the name of T. S. Mann as he was the only son of the plaintiff, who had retired from the Army. The story of purchasing the land with the money of Major Jaswant Singh is not proved. The source of income from the land, therefore, cannot be taken into account while considering the financial ability either of Amarjit Kaur or of her deceased husband.

51. Admittedly T. S. Mann was a low paid employee. So was Amarjit Kaur, defendant No. 4. From their meager hardly make any saving for the construction of the house. It has been stated by Amarjit Kaur in her letter Ex. P. 34 written to the plaintiff that she and her husband had been paying Rs. 65/- each to Major Jaswant Singh during their stay with him and even after the death of T. S. Mann, Amarjit Kaur had been paying Rs. 70/- per mensem to her father. Paying of the mess expenses to her father, more especially when she had become a widow, shows that Major Jaswant Singh was in bad financial position. It was for this reason that he had not shirked getting mess charges from his daughter even after she had become a widow. I find force in the contention of Shri Gupta that Major Jaswant Singh, who was getting mess charges from his daughter after T. S. Mann's death, could not be expected to help his daughter in the construction of the house. This fact alone seems to be sufficient to show that Major Jaswant Singh had not at all helped in the construction of the house.

52. The other source of income stated by Amarjit Kaur is from tuition. The evidence produced by her in this regard is most scanty and implausible. The same is accordingly rejected.

53. The plaintiff has stated that the account of the construction was maintained by his son T. S. Mann and that at the time of his death at Delhi all the receipts showing the purchase of building material were in his house. He has further stated that after his death, all those receipts and other documents had been taken away by Amarjit Kaur. It is submitted that since those receipts were in the name of the plaintiff and Kuldip Singh jointly, they have, therefore, been deliberately

withheld from the Court. No receipt has been produced by the defendants about the purchase of bricks, cement, or other building material. Only two books (one diary and the other an exercise book) have been produced where the account is mentioned. They are Exs. D4 and D5. They are not authentic accounts. These account books had been produced on 14-11-75 i. e. long after the filing of the written statements by the defendants. They seem to have been fabricated in order to support the present case. In my view no value can be attached to such accounts.

54. Admittedly Major Jaswant Singh had occupied the first floor of the house as a tenant of the plaintiff and defendant No. 1 through the Military Estate Officer. After his retirement, Major Jaswant Singh has continued staying there. T. S. Mann died on 10-7-65 and Amarjit Kaur had remarried in March, 1968 (see statement of PW 13 at p. 257). The plaintiff had come to Delhi and had started living in the Barsati of the house. It is stated by the learned counsel for the plaintiff that the endeavour of the defendants was to oust him from there as he was demanding his one half share in the property. Reports had been lodged with the police. The relations had certainly become very strained after Amarjit Kaur's re-marriage. Naturally the defendants are keen to turn out the plaintiff from the house and have complete possession.

55. It is pointed out by Shri Gupta that in their written statement, jointly filed by defendants 1 to 3, the plea of benami had not been taken and that it was only an afterthought. Amarjit Kaur was arrayed as a defendant in the suit at a later stage after the amendment of the plaint. It was she, who alleged that she was the real owner, whereas the plaintiff was only a benamidar.

56. It is contended on behalf of the plaintiff that never before the filing of the written statement by Amarjit Kaur. the plea of benami had been taken. On the other hand all through the plaintiff was acknowledged to be the owner of one half share in the house. It was on that account that he was pressed to send one half share in the taxes payable to the Municipal Corporation. Major Jaswant Singh had been writing time and again to pay the Municipal taxes for the preservation of the property. The taxes were accordingly paid by the plaintiff to the extent of his one half share. That itself shows that the plaintiff was never treated by the defendants as a benamidar but as the real owner. The account in the Bank where the rent was to be deposited was also opened in the name of the plaintiff and Karamjit Singh, attorney of Kuldip Singh.

57. It is also stated by the plaintiff that he had supervised the construction of the house and that some of the building material was purchased by him and receipts were issued in his name. Since all the records were taken away by Amarjit Kaur after the death of T. S. Mann, he could, therefore, not produce the receipts. It is pertinent to observe that no receipt issued in the name of Amarjit Kaur, Kuldip Singh or Major Jaswant Singh before the death of T. S. Mann has been produced. Documents Exs. P18, P22, P23, P25, P27 to P31, P34, DW16/2 and DW16/3 clearly show that Amarjit Kaur had clearly admitted in her letters that the plaintiff was real owner and that is why she rendered the detailed account to him. Jaswant Singh had also been asking that the plaintiff should pay the taxes. Moreover, when the house was rented out permission of the plaintiff was also obtained. Jaswant Singh had failed to pay the liability of the taxes and had threatened the plaintiff that if he would not pay in time, the penalty which would be imposed on Kuldip Singh's share would also be paid by him. Jaswant Singh had been paying only the share of his son.

58. From the evidence discussed above and also from the conduct of the parties and the admissions made by the defendants, it is abundantly proved that the plaintiff has one half share in the plot and also in the house constructed thereon. The expenditure was also incurred by the plaintiff to the extent of his share. The allegation of Amarjit Kaur that the plaintiff is only a benamidar and that she is the real owner, has remained unsubstantiated. She has palpably failed to discharge the onus. Issues Nos. 3 and 4 are accordingly decided against the defendants and in favour of the plaintiff.

Issue No. 5.

59. The plaintiff has one half share in the house in dispute. He is, therefore, entitled to the rendition of accounts from all the defendants from the date of its completion.

Issue No. 7.

60. There is no evidence to show that the plaintiff had authorised defendant No. 3 to reimburse the rental income withdrawn from the bank or received otherwise by defendant No. 1 and defendant No. 4. This issue is therefore, also decided against the defendants. Relief.

61. As a result of the above findings, it is held that the plaintiff is the owner of

one half share in the house in dispute (R-6, Green Park) and that he is entitled to the partition thereof. He is also entitled to a decree for rendition of accounts.

62. I accordingly grant a preliminary decree for the partition of the house in dispute and also for rendition of accounts in favor of the plaintiff and against the defendants. Costs to follow the final event.

63. Shri Arun Kumar, Advocate is appointed as Local Commissioner who will suggest the mode of partition and also submit his report taking the accounts from the defendants. Commissioner's fee is tentatively fixed at Rupees 1,000/- to be borne by the parties in equal shares. The Commissioner shall go into the accounts and submit his report regarding the same. The report be submitted within three months.

Orders accordingly.

Cases Referred.

1. AIR 1974 Supreme Court 171.
2. AIR 1922 Lahore 145
3. AIR 1962 Allahabad 355.
4. AIR 1970 Calcutta 513,