

2025:PHHC:123487



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA No. 899 of 1989 (O&M)
Reserved On: 03.07.2025
Pronounced On: 10.09.2025**

Ram Murti (since deceased) now represented
by his legal heirs

..... Appellants

Versus

Shiv Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Argued By:- Mr. Dilraj Singh Brar, Advocate
for the appellant(s)-plaintiff.

Mr. H.K. Brinda, Advocate for
Mr. R.L. Sharma, Advocate
for the respondent-defendant.

HARKESH MANUJA, J.

[1] The legal representatives of the plaintiff-Ram Murti are in
Regular Second Appeal.

[2] By way of present appeal, challenge has been laid to the
judgment and decree dated 01.12.1988 passed by the Court of Additional
District Judge, Patiala (**hereinafter to be referred as “First Appellate
Court”**), whereby an appeal preferred against the judgment and decree
dated 17.08.1988 passed by the Court of Sub Judge First Class, Rajpura
(**hereinafter to be referred as “trial Court”**), decreeing the suit for
declaration as well as permanent injunction, filed at the instance of
appellant-plaintiff, was allowed, resultantly dismissing the suit filed at the

instance of appellant-plaintiff.

[3] Briefly stating, the appellant-plaintiff/Ram Murti (since deceased), who happened to be the nephew of respondent-defendant, filed a suit for declaration claiming himself to be owner in possession of 1/3rd share of 06 biswas of land falling in Khewat Khatoni No. 37/142 Khasra No. 1166 / 1040 / 285 (2-17), situated in the revenue limits of Village Barahman Majra, Tehsil Fatehgarh Sahib (now district). It was pleaded that the above mentioned 06 biswas land was purchased vide registered sale deed dated 16.03.1959 from Amir Chand against sale consideration of Rs. 1000/- with 2/3rd share recorded in the name of the father of appellant, whereas 1/3rd share was registered in the name of respondent-defendant, though the entire sale consideration was paid by the plaintiff from his own pocket. It was further pleaded that the father of appellant-plaintiff raised construction of residential house over the property in question about 24-25 years back and the respondent-defendant despite been aware of the same never raised any objection being fully conversant with the fact that he was only a *Benamindar* and in fact, the appellant-plaintiff was the real owner. In the alternate, it was further pleaded that the father of appellant had raised residential house 24-25 years back; with complete knowledge and notice of this fact to the respondent-defendant, the appellant-plaintiff even acquired ownership by way of adverse possession. Finally, it was pleaded that the respondent-defendant been intending to dispossess the appellant-plaintiff from the suit property in question, the suit was filed.

[4] Upon notice, the respondent-defendant appeared and filed written statement having admitted the relationship between the parties.

Further, it was admitted that the land was purchased vide registered sale deed dated 16.03.1969 against sale consideration of Rs. 1000/- in the name of respondent-defendant as well his brother, namely, Jai Ram Dass, who happened to be the father of appellant-plaintiff; in the ratio of 1/3rd and 2/3rd share respectively. It was further pleaded that the respondent-defendant was in possession of his 1/3rd share measuring 2 biswas and the remaining 4 biswas remained in possession of his brother Jai Ram Dass. The factum of sale deed dated 16.03.1969 being a *benami* transaction was specifically denied. Further, it was also pleaded that the suit filed at the instance of appellant-plaintiff was not maintainable as an earlier suit filed at his instance was withdrawn and thus, he was estopped and barred by his own act and conduct from filing this suit.

[5] Upon consideration of the pleadings, the learned trial Court framed the following issues:-

- “ 1. Whether the plaintiff is entitled to the declaration as prayed for? OPP
2. Whether the plaintiff is entitled to the permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is liable to be stayed u/s 10 C.P.C.? OPD
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the suit of the plaintiff is time barred? OPD
6. Whether the suit is bad for non-joinder of necessary parties? OPD
7. Whether the suit of the plaintiff is not maintainable? OPD
8. Whether the plaintiff is barred to file the present suit by principle of estoppel? OPD
9. Relief. ”

[6] Learned trial Court, vide its judgment and decree dated 17.08.1988, decreed the suit of the plaintiff-appellant, while declaring him to be real owner of the suit property to the extent of 1/3rd share, thereby restraining the respondent-defendant from alienating the same in any manner.

[7] Aggrieved thereof, the respondent-defendant filed first appeal, which came to be allowed vide judgment and decree dated 01.12.1988 passed by the learned First Appellate Court, while dismissing the suit filed by the appellant-plaintiff. Hence, the present appeal.

[8] Impugning the aforesaid judgment and decree dated 01.12.1988 passed by the First Appellate Court, learned counsel for the appellant-plaintiff submitted that the First Appellate Court went wrong while ignoring the material evidence on record in the shape of averments made in the sale deed wherein it was categorically stated that a sum of Rs. 740/- towards balance sale consideration was paid by the appellant-plaintiff to the vendor, namely, Amir Chand. He further submitted that even Amir Chand, while appearing as PW-3, went on to depose that the entire sale consideration against the sale deed dated 16.03.1959 was paid to him by the appellant-plaintiff only. He also contended that even the possession of the property in question always remained with the appellant-plaintiff and the said fact was even recorded in the *jamabandi* for the year 1980-81, which was produced on record by the respondent-defendant himself as Ex. D-1. Learned counsel, therefore, submitted that it was established on record that the entire sale consideration towards the sale deed dated 16.03.1959 was paid by the appellant-plaintiff besides the possession of the land in question being with

him only. He thus claimed that no interference was called for by the First Appellate Court with the findings of fact recorded by the trial Court, wherein it was held that the sale deed dated 16.03.1959 to the extent of one-third share in the name of Shiv Kumar (respondent-defendant) was *benami* and in fact purchase made by the appellant-plaintiff.

[9] On the other hand, learned counsel for the respondent-defendant, while relying upon *jamabandi* for the year 1980-81 (Ex. D-1), submitted that the ownership to the extent of one-third of 06 biswas of land was recorded in the name of respondent-defendant only and no effort was ever made by the appellant-plaintiff for getting the same corrected for long. He further submitted that a sum of Rs. 260/- was paid by the respondent-defendant to the vendor, therefore, the sale deed to the extent of one-third was executed in his favour and thus, there was no question of the transaction in question being *benami*. He also contended that the findings recorded by the learned First Appellate Court were based on proper appreciation of evidence, and thus the present appeal was liable to be dismissed.

No other argument was addressed on behalf of the appellant(s)-plaintiff as well as respondent-defendant.

[10] Having heard learned counsel for the parties and gone through the paper-book / records, I find substance in the submission(s) made on behalf of the appellant(s)-plaintiff.

[11] Before proceeding further in the matter, it may be relevant to take note of the exposition of law on the issue in hand, rendered by the Hon'ble Apex Court in case of "*Binapani Paul Versus Pratima Ghosh and others*" reported as (2007) 6 SCC 100. Relevant paras-47 thereof is

extracted hereunder:-

“ 47. Burden of proof as regards the benami nature of transaction was also on the respondent. This aspect of the matter has been considered by this Court in Valliammal (D) By LRS. v. Subramaniam and Others wherein a Division Bench of this Court held (SCC pp.239-41, paras 13-14 & 18)

"13. This Court in a number of judgments has held that it is well established that burden of proving that a particular sale is benami lies on the person who alleges the transaction to be a benami. The essence of a benami transaction is the intention of the party or parties concerned and often, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. Refer to Jaydayal Poddar v. Bibi Hazra, Krishnanand Agnihotri v. State of M.P., Thakur Bhim Singh v. Thakur Kan Singh, Pratap Singh v. Sarojini Devi and Heirs of Vrajlal J. Ganatra v. Heirs of Parshottam S. Shah. It has been held in the judgments referred to above that the question whether a particular sale is a benami or not, is largely one of fact, and for determining the question no absolute formulas or acid test, uniformly applicable in all situations can be laid. After saying so, this Court spelt out the following six circumstances which can be taken as a guide to determine the nature of the transaction:

- (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 colour;*
- (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. (Jaydayal Poddar v. Bibi Hazra1, SCC p. 7, para 6)*

14. *The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless, the source from where the purchase money came and the motive why the property was purchased benami are by far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another. We would examine the present transaction on the touchstone of the above two indicia.*

18. *It is well settled that intention of the parties is the essence of the benami transaction and the money must have been provided by the party invoking the doctrine of benami. The evidence shows clearly that the original plaintiff did not have any justification for purchasing the property in the name of Ramayee Ammal. The reason given by him is not at all acceptable. The source of money is not at all traceable to the plaintiff. No person named in the plaint or anyone else was examined as a witness. The failure of the plaintiff to examine the relevant witnesses completely demolishes his case."*

[12] Applying the aforementioned proposition of law laid down by the Hon'ble Apex Court in ***Binapani Paul's case (supra)*** to the facts and

circumstances of the present case, it becomes evident that the property in dispute was purchased by the appellant-plaintiff as *benami* transaction in the name of his real uncle i.e. defendant-respondent to the extent of 1/3rd share vide sale deed dated 16.03.1959 and the factual aspects to support are as follows:-

- (a) As per the statement made by vendor-Amir Chand while appearing as PW-3, the entire sale consideration against the registered sale deed dated 16.03.1959 was paid by the appellant-plaintiff. On the other hand, respondent-defendant while appearing as DW-1, failed to prove anything to the contrary;
- (b) The original sale deed dated 16.03.1959 always remained in possession of the appellant-plaintiff and it was tendered by him in his evidence as PW-1, whereas the respondent-defendant, while appearing as DW-1, deposed that he was not even aware of the fact as to in whose possession the original sale deed was lying since the date of its registration;
- (c) DW-1 (Shiv Kumar) / respondent in his cross-examination also admitted that he was not even present at the time of execution of the sale deed dated 16.03.1959;

- (d) Exclusive possession of the property in question being with the appellant-plaintiff was established on record through the deposition made by PW-1 (Rameshwar Das son of Sh. Atma Ram), who happened to be the neighbour besides the deposition made by plaintiff himself as PW-5 and the whole 06 biswas of land formed part of one common boundary wall. Moreover, even as per *jamabandi* (Ex. D-1) which pertains to the year 1980-81, the appellant-plaintiff has been recorded in possession of the one-third share of the suit land as '*gair mumkin makan*'.
- (e) The close relationship between the parties being of nephew and real uncle (*chacha*), besides the motive governing their action in bringing about the transaction-sale deed in the name of respondent-defendant was of appellant-plaintiff being a govt. employee at the time of purchase.
- (f) As per plaintiff, the sale deed was executed in the year 1959, but the defendant being DW-1 deposed that the sale-deed was executed in the year 1969. Even in the written statement filed on behalf of the defendant, it was alleged that the suit land was purchased vide sale deed dated 16.03.1969. On the contrary, factually the sale deed is dated

16.03.1959 as is clear from perusal of Ex. P-1. In view thereof, the defendant had no knowledge of the sale deed itself and his plea that the sale consideration was paid by him from his own pocket cannot be believed.

[13] For the aforesaid reasons, in the considered opinion of this Court, it has been clearly established on record that the plaintiff-Ram Murti (since deceased) was the real owner of the suit property; the defendant-respondent (Shiv Kumar) was only a Benamidar; the plaintiff was in possession of the suit property since the date of sale, whereas the respondent-defendant had no knowledge of the sale deed dated 16.03.1959 nor even any amount was parted by him towards the sale transaction to the vendor-Amir Chand.

[14] Accordingly, the present appeal succeeds and is thus **allowed**; the judgment and decree dated 01.12.1988 passed by the learned First Appellate Court is set aside, while upholding the judgment and decree dated 17.08.1988 passed by the learned trial Court, thereby decreeing the suit of plaintiff-appellant/Ram Murti (since deceased). Decree-sheet be drawn accordingly. No order as to costs.

[15] Pending miscellaneous application(s), if any, shall also stand disposed off.

September 10, 2025

'dk kamra'

**(HARKESH MANUJA)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>