

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 15<sup>th</sup> January, 2020.**

+ **CS(OS) 210/2016 & IA No.1167/2019 (of D-7 u/O VII R-11 CPC)**  
**& CC No.10/2018**

**VINAY KHANNA & ANR**

**..... Plaintiffs**

Through: Mr. Kuber Giri and Mr. Sumeer Nath,  
Advs.

Versus

**KRISHNA KUMARI KHANNA & ORS**

**..... Defendants**

Through: Mr. Prashant Bhardwaj and Mr. Rishi  
Bharadwaj, Advs. for D-2&7.  
Mr. Jagjit Singh, Adv. for D-3.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. Vinay Khanna and Anil Kumar Khanna have instituted this suit against defendants, for (i) declaration that property No.M-174, Greater Kailash Part-II, New Delhi is owned by the Joint Hindu Family (HUF) comprising of the plaintiffs and the defendants; (ii) declaration that the original defendant No.1 Prem Prakash Khanna was suffering from old age dementia and cognitive failure and was incompetent to take any decision; (iii) declaration that defendant No.2 Krishna Kumari Khanna was under absolute dominance and control of defendant No.7 Anu Narula and was incompetent to exercise her free will; (iv) declaration that the Power of Attorney dated 24<sup>th</sup> July, 2015 and consequent Gift Deed dated 4<sup>th</sup> August, 2015 executed by defendant No.2 Krishan Kumari Khanna on behalf of herself and as attorney of defendant No.1 Prem Prakash Khanna in favour of

the defendant No.7 Anu Narula is null and void; and, (v) for partition of property No.M-174, Greater Kailash Part-II, New Delhi.

2. The defendant No.3 Ravinder Khanna, besides filing his written statement, also filed a Counter-Claim, being Counter-Claim No.10/2018, seeking (a) declaration that the defendant No.3 Ravinder Khanna is the exclusive owner of property No.M-174, Greater Kailash Part-II, New Delhi and that the Sale Deed executed by DLF Limited in respect of plot No.M-174 in favour of the defendants No.1&2 was a document of title in favour of the defendant No.3 Ravinder Khanna; (b) declaration that the Gift Deed dated 4<sup>th</sup> September, 2015 executed by defendants No.1&2 of the property in favour of defendant No.7 Anu Narula is illegal, and, (c) mandatory injunction directing the defendant No.7 Anu Narula to deposit the original Power of Attorney executed by defendant No.1 Prem Prakash Khanna in favour of defendant No.2 Krishan Kumari Khanna, on the basis of which Gift Deed was executed in this Court by defendant No.2 Krishan Kumari Khanna on behalf of herself and defendant No.1 Prem Prakash Khanna in favour of the defendant No.7 Anu Narula in this regard.

3. The defendant No.7 Anu Narula has filed IA No.1167/2019 under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) for rejection of the Counter-Claim.

4. The counsels were heard on 10<sup>th</sup> January, 2020 and in the order of the said date, *inter alia* the following was recorded:

*“2. What has emerged is, (i) that property no.M-174, Greater Kailash Part-II, New Delhi is recorded in the name of Prem Prakash Khanna and Krishna Kumari Khanna, who have three sons namely Vinay Khanna, Anil Kumar Khanna and Ravinder*

*Khanna and four daughters namely Shashi Bala Wasdev, Sudha Gupta, Savita Mathur and Anu Narula; (ii) Vinay Khanna and Anil Kumar Khanna instituted this suit against their parents, Ravinder Khanna and their four sisters, for declaration that the property though recorded in the name of the parents, is of the Joint Hindu Family (HUF) and along with the parents, the three sons and four daughters also have a share; (iii) the father Prem Prakash Khanna has died during the pendency of the suit; (iv) the father Prem Prakash Khanna in his lifetime had appointed the mother Krishna Kumari Khanna as his attorney; and, (v) Krishna Kumari Khanna, for herself and as attorney of her husband Prem Prakash Khanna has executed a Gift Deed of the entire property in favour of one of her daughter Anu Narula.*

*3. Hence in this suit the relief of declaration as null and void of the Power of Attorney dated 24<sup>th</sup> July, 2015 and Gift Deed dated 4<sup>th</sup> August, 2015, for the reason of the property, being of the HUF and not of the parents and for the reason of the parents at the time of execution of the Gift Deed being not in a capacity to take decision and execute the Gift Deed has also been claimed besides the relief of partition.*

*4. Ravinder Khanna has filed the Counter Claim No.10/2018 in this suit claiming declaration that he is the exclusive owner of the property for the reason of purchase consideration of the property having been contributed by him.*

*5. On 4<sup>th</sup> December, 2019 it was enquired from the counsel for Ravinder Khanna, how the Counter Claim was maintainable in view of Benami laws.*

*6. Today Mr. Jagjit Singh, Advocate for Ravinder Khanna informs, (i) that Ravinder Khanna filed a suit before Civil Judge, for injunction to restrain the parents from interfering with the right of Ravinder Khanna to use of the property and in the said suit the parents filed an application for rejection of the plaint and the plaint in the said suit was rejected on the ground of the suit claim being barred by Benami law; (ii) that Ravinder Khanna filed First Appeal before the District Judge against the order of rejection of the plaint and which was allowed and the*

suit restored; (iii) the parents filed Second Appeal against the order of restoration of the suit and which was admitted but subsequently withdrew the same; (iv) the trial in the said suit pending in the Court of the Civil Judge has been completed and Ravinder Khanna has filed a Transfer Petition in this Court for transfer of the said suit to this Court for being heard along with the present suit and which Transfer Petition is pending; and, (v) Ravinder Khanna, after the parents executed the Gift Deed aforesaid, instituted CS(OS) No.358/2016 for declaration as null and void of the said Gift Deed but the said suit was dismissed in limine on 22<sup>nd</sup> March, 2017 and RFA(OS) No.31/2017 preferred thereagainst was also disposed of vide order dated 16<sup>th</sup> May, 2017 and which order has attained finality.

7. I have enquired from the counsels that since the father Prem Prakash Khanna has died without leaving any Will and parties have already litigated for long, whether the parties are willing to the claim in this suit being confined to setting aside of the Gift Deed on the ground of the parents not having the mental capacity to execute the same and not on the ground of HUF.

8. The counsels state that they will have to take instructions.

9. I have also enquired from the counsel for Ravinder Khanna that since Ravinder Khanna has already filed the suit for injunction before the Civil Judge and in which evidence on the question of title has been recorded, though in a suit for injunction simplicitor title is not to be adjudicated, how can Ravinder Khanna maintain a Counter Claim for the same relief in this suit.

10. The counsel for Ravinder Khanna states that the Transfer Petition be also called before this Bench.

11. The counsel for Ravinder Khanna has been made aware that if the application for rejection of Counter Claim is heard and the Counter Claim is rejected, the same will also sound a

*death knell for the civil suit, if at all a finding as to title can be given therein.*

*12. The counsel for Ravinder Khanna today also seeks adjournment.*

*13. List on 15<sup>th</sup> January, 2020.*

*No further opportunity shall be given.”*

5. The counsel for the defendant No.3 Ravinder Khanna has today in Court, without any Index, handed over a bunch of documents, being the certified copies of Regular Second Appeal No.103/2010 preferred by the defendants No.1&2 against the order in First Appeal, preferred by defendant No.3 Ravinder Khanna against the order of dismissal of the suit aforesaid filed by the defendant No.3 Ravinder Khanna, allowing the appeal and restoring the suit and which Regular Second Appeal, as was informed on the last date of hearing, was withdrawn by the defendants No.1&2.

6. The aforesaid bunch of documents is taken on record and be tagged to Part-III file.

7. The said bunch of documents contains a copy of the plaint in the suit filed by the defendant No.3 Ravinder Khanna in the Court of Civil Judge, for permanent injunction restraining defendants No.1&2 herein from transferring the possession of property No.M-174, Greater Kailash Part-II, New Delhi and for mandatory injunction directing the defendants No.1&2 herein to provide proper accommodation to the defendant No.3 Ravinder Khanna and his family members in the said property during their visits to India.

8. Though as observed in the order dated 10<sup>th</sup> January, 2020, in a suit for injunction simpliciter, title to the property is not to be investigated and it was the case of the defendant No.3/counter-claimant Ravinder Khanna that in the said suit, evidence on title has been recorded but inspite thereof, the counsel for the defendant No.3/counter-claimant Ravinder Khanna has not brought the issues framed in the said suit.

9. The only argument of the counsel for the defendant No.3/counter-claimant Ravinder Khanna is, (i) that on filing of the present suit, a fresh cause of action has accrued to the defendant No.3/counter-claimant Ravinder Khanna to file the Counter-Claim; and, (ii) that the suit in which recording of evidence stands concluded, be called to this Court.

10. As far as the second of the aforesaid contentions is concerned, a Transfer Petition filed by the defendant No.3/counter-claimant Ravinder Khanna in this Court, as also recorded in the order dated 10<sup>th</sup> January, 2020, is pending consideration and the question of this Court, seized of the suit and the Counter-Claim, exercising the transfer jurisdiction does not arise. Thus, the only ambit of today's hearing is to consider whether the Counter-Claim is liable to be rejected summarily as sought by the defendant No.7 Anu Narula. Though the counsel for the defendant No.3/counter-claimant Ravinder Khanna, in the order dated 10<sup>th</sup> January, 2020 had been cautioned in this regard, but since the defendant No.3/counter-claimant Ravinder Khanna has persisted, this Court has no option but to proceed.

11. It is the plea of the defendant No.3/counter-claimant Ravinder Khanna in the Counter-Claim, (a) that the defendants No.1&2 migrated from Lahore, Pakistan along with defendant No.3/counter-claimant Ravinder

Khanna, who was about one year and four months old and the defendant No.1 Prem Prakash Khanna joined the Punjab Government (Finance) as Lower Divisional Clerk (LDC); (b) that after partition, five more children were borne to the defendants No.1&2; (c) that the defendant No.3/counter-claimant Ravinder Khanna, in the year 1967 went to Canada and suggested to his parents defendants No.1&2 to establish an independent home in Delhi; (d) that in furtherance thereto, the defendant No.3/counter-claimant Ravinder Khanna started sending money to his parents defendants No.1&2 and sent a total sum of Rs.1,39,250/- from 2<sup>nd</sup> March, 1972 to 28<sup>th</sup> December, 1973; (e) that the plot of land underneath the aforesaid property No.M-174, Greater Kailash Part-II, New Delhi was purchased by the defendants No.1&2 from the monies sent by the defendant No.3/counter-claimant Ravinder Khanna; (f) that the defendant No.3/counter-claimant Ravinder Khanna, between 12<sup>th</sup> March, 1974 and 24<sup>th</sup> December, 1974, sent an amount of Rs.1,33,548.09 and which was utilized for constructing a structure on the aforesaid plot of land; (g) that the defendants No.1&2, being the parents of the defendant No.3/counter-claimant Ravinder Khanna, taking advantage of the benevolence, love and affection of their son defendant No.3/counter-claimant Ravinder Khanna, got the property registered jointly in their own names; (h) that the defendants No.1&2 got title to the house in their fiduciary capacity, as trustees/parents of the defendant No.3/counter-claimant Ravinder Khanna; (i) that neither the defendants No.1&2 nor any of the other siblings of defendant No.3/counter-claimant Ravinder Khanna contributed anything for purchase or construction of the house; and, (j) that the defendants No.1&2 do not have any right to the property and are holding

the property as trustees of the defendant No.3/counter-claimant Ravinder Khanna.

12. The defendant No.7 Anu Narula seeks rejection of the Counter-Claim on the ground of the same having not been properly valued for the purposes of court fees and jurisdiction and appropriate court fees having not been paid thereon. It is argued that the Gift Deed shows the value of the property as Rs.6.60 crores and the defendant No.3/counter-claimant Ravinder Khanna, seeking setting aside of the said Gift Deed, is liable to pay *ad valorem* court fees thereon.

13. The counsel for the defendant No.3/counter-claimant Ravinder Khanna, in response to the above, merely states that it has been held in ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh*** (2010) 12 SCC 112 that a non-party to a deed, does not have to sue for cancellation of the deed and can sue merely for declaration that the deed is invalid, illegal or non-binding.

14. Undoubtedly so, but the said judgment is being applied selectively. It also holds that if the non-party to the deed seeking declaration as null and void of the deed is not in possession, ad valorem court fees has to be paid.

15. However the need to call upon the defendant No.3/counter-claimant Ravinder Khanna to make up the deficiency in court fees is not felt, since the Counter-Claim, even otherwise on the pleas therein is not found to be disclosing any cause of action.

16. Merely because the money for purchase of plot underneath the property and/or for making construction thereon may have flowed from the

defendant No.3/counter-claimant Ravinder Khanna to the defendants No.1&2, does not make the property of the defendant No.3/counter-claimant Ravinder Khanna in law and the right, if any of the defendant No.3/counter-claimant Ravinder Khanna was only for recovery of the amounts so paid by him to defendants No.1&2 with interest, if entitlement thereto is proved. The said question is no longer *res integra*. Reference in this respect may be made to *K.L. Garg Vs. Rajesh Garg* 2013 SCC OnLine Del 323, *Kalpna Balupuri Butta Vs. Pritendra Kumar Butta* 2018 SCC OnLine Del 10716, *Satya Prakash Vs. Natho Devi* 2018 SCC OnLine Del 10263 and *Satish Kumar Gupta Vs. Shanti Swaroop Gupta* 2018 SCC OnLine Del 9651.

17. Even otherwise, the claim in the Counter-Claim is in the teeth of the bar contained in the Benami Transactions (Prohibition) Act, 1988, since known as the Prohibition of Benami Property Transactions Act, 1988. The Act, prior to its amendment and now, bars a suit, claim or action, to enforce any right in respect of any property held benami against the person in whose name the property is held or any other person, by or on behalf of a person claiming to be the real owner of such property.

18. 'Benami transaction' in the Act, prior to its amendment, was described as 'any transaction in which property is transferred to one person for a consideration paid or provided by any another person'.

19. The amended Act defines 'benami property' as meaning any property which is the subject matter of a benami transaction and describes a 'benami transaction' as meaning a transaction or an arrangement "where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and the property is

held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration.

20. The defendant No.3/counter-claimant Ravinder Khanna in his Counter-Claim has pleaded:

*“12. Plot No.M-174, Greater Kailash –II, New Delhi was thus purchased by Defendant no.1 & 2 from the aforesaid money sent by Ravinder Khanna. Defendants 1 & 2 had no contribution because they were hardly able to support the family out of meagre income of salary. Plot was purchased from DLF Ltd. in 1972 by defendant no.1 & 2.*

.....  
*15. Defendant No.1 and 2 taking the benevolent love and affection of Ravinder Khanna took advantage and got the property registered jointly in the name of defendant No.1 & 2. Sale Deed was executed and Registered in their name who represented Ravinder Khanna in fiduciary capacity as trustee. Defendants 1 and 2 spent time towards construction of house. Defendants 1 and 2 got title of house in fiduciary capacity / as trustee/ as parents of Ravinder Khanna being his parents. Property No.M-174 thus is stated to be joint property of defendants 1 and 2 on the one part and Ravinder Khanna-defendant No.3 on the other part. No other person except Ravinder Khanna contributed any amount whatsoever either towards purchase of plot or towards construction of plot or in furnishing of house.”*

and which is a plea of benami and the defendant No.3/counter-claimant Ravinder Khanna is prohibited by law from enforcing any right in respect of the subject property held benami, against defendants No.1&2 in whose names the said property is held as well as against other parties who are the heirs of defendant No.1 Prem Prakash Khanna, who has since died.

21. As far as the plea, of the defendants No.1&2 holding the property in trust or for the benefit of the defendant No.3/counter-claimant Ravinder Khanna is concerned, it has been held in *Mahesh Karwal Vs. Satya Devi* 2018 SCC OnLine Del 12090 and *Amar N. Gugnani Vs. Naresh Kumar Gugnani* 2015 SCC OnLine Del 11248 that though the parent may be a trustee of a minor son but not of a major son and thus the question of the transaction being within the exception to benami does not arise. Even otherwise, no particulars of the defendants No.1&2 standing in any fiduciary capacity to the defendant No.3/counter-claimant Ravinder Khanna are disclosed.

22. I am thus of the opinion that the Counter-Claim, on the averments therein, does not disclose any cause of action or entitlement of the defendant No.3/counter-claimant Ravinder Khanna to obtain a declaration of being the real and/or benami owner of the property for partition of which the suit is filed.

23. IA No.1167/2019 is thus allowed.

24. Counter-Claim No.10/2018 is dismissed.

**RAJIV SAHAI ENDLAW, J.**

**JANUARY 15, 2020**

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