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(15) In view of my detailed discussion above, the present revision petition is allowed and the order dated 8th September, 1993 passed by the Rent Controller, is set aside and the petitioner-tenant is granted necessary leave to defend the petition for ejection, filed by the landlady under Section 13-A of the Act with no order as to costs.

(16) Parties, through their counsel, are directed to appear before the Rent Controller on 26th August, 2002 for further proceedings in accordance with law. Considering that it was a petition for ejection, filed by the landlady under Section 13-A of the Act for ejection of the tenant on the ground of personal necessity, it is directed that the learned Rent Controller shall proceed to decide the ejection petition expeditiously in accordance with law.

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**J.S.T.**

*Before M.L. Singhal, J*

RAJINDER PRASHAD MALIK,—*Appellant*

*versus*

SHANTI DEVI MALIK & OTHERS,—*Respondents*

RSA No. 3745 of 1998

31st May, 2002

*Benami Transaction (Prohibition) Act, 1988—Code of Civil Procedure, 1908—Suit by sons against their step-mother—Step-mother claiming exclusive title of the properties purchased by her with her own funds—Plaintiffs failing to show that the property was purchased from the income of their father in the name of their step-mother—Being in Govt. service defendant was in a position to purchase the property—Purchase of property by the defendant could not be viewed as purchase by a benamidar—Merely occupation of the property cannot lead the Court to infer that the plaintiffs' father had purchased the same—Courts below finding the defendant real owner of the property—Findings of facts of the Courts below supported by evidence on record are not to be interfered with by the High Court—Appeal liable to be dismissed.*

Held, that we cannot take that Smt. Shanti Devi was benami purchaser or her husband was the purchaser because it is not that Shanti Devi did not have any source of income. She was in service even before 1947. She purchased plot in question for Rs. 4,002 in the year 1961. Later on she constructed this plot. In the case, no inference can be raised that Shanti Devi was a benamindar and that her husband was the real owner.

(Paras 20 & 24)

Further held, that if defendant had allowed her step-son to stay in the house and he got education at Chandigarh that does not mean that he became in possession of this house under some claim or right. His occupation of the house cannot lead the Court to infer that he is in occupation of this house as this house was purchased by his late father H.C. Malik.

(Para 30)

Further held, that the purchase of the properties by the defendant could not be viewed as purchase by a benamindar. If she contributed some money from her own and some money she borrowed from her husband or relations or her husband made some contribution out of love and affection as she was his second wife, no inference can be drawn that transaction was benami.

(Para 33)

Sanjay Majithia, Advocate for the *appellant*.

J.R. Mittal, Sr. Advocate with Rajiv Mittal, Advocate for the respondent.

### JUDGMENT

*M.L. Singhal, J.*

(1) For understanding the facts of this case in a better perspective, pedigree-table is necessary to be given. There was one Dhallu Ram Malik. He had three wives. He was karta of the Joint Hindu family before the partition of the country. From his second wife, he had three sons named H.C. Malik, R.B. Malik and P.C. Malik. From

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his third wife, he had four sons named Ram Malik, K.L. Malik, Charanjit Lal Malik and Om Parkash Malik. The Joint Hindu Family owned considerable agricultural land and other immovable properties in Jhang, now in Pakistan. Dhallu Ram Malik who was karta of the Joint Hindu Family died before partition of the country. After the partition of the country, all the members of the Joint Hindu Family, migrated to India leaving behind vast immovable properties in Jhang. Joint Hindu Family was allotted the following lands in lieu of the Joint Hindu Family property abandoned in Pakistan :

- (i) 20 acres plot at Garden Colony at village Lali, district Rohtak.
- (ii) A lightly bigger agricultural land at village Kharkhoda, District Rohtak.

(2) Recapitulating, Dhallu Ram had married thrice,. He had no issue from the first wife. The progeny from the second wife i.e. H.C. Malik, R.B. Malik and P.C. Malik managed property at village Lali in District Rohtak while Ram Malik, K.L. Malik, Charanjit Lal Malik and Om Parkash Malik i.e. progeny from the third wife started managing property at village Kharkhoda. H.C. Malik got allotted the following plots in his name :

- (i) A residential plot in Jhang Colony, Rohtak.
- (ii) One residential plot i.e. House No. 147, Model Town, Hissar.

(3) These plots were allotted in lieu of Joint Hindu Family property abandoned in Pakistan. The other brothers namely the progeny from the third wife of Dhallu Ram did not raise any objection presumably for the reason that all the brothers had very cordial relations and also for the reason that H.C. Malik was a civil servant holding an important post and other brothers did not want to spoil their personal relations with H.C. Malik, although the property got allotted in his own name was got allotted in lieu of Joint Hindu Family property abandoned in Pakistan. H.C. Malik married twice. From his first wife he had three sons named Varinder Kumar, Mohinder Partap Malik and Rajinder Parshad Malik and daughter Prem Saluja. From

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his second wife, H.C. Malik, did not have any progeny. After the death of his first wife, whose name was Shanti Devi, H.C. Malik married a woman around, 1947 whose name was also incidentally Shanti Devi. This Shanti Devi is defendant in the case. In this case, sons of H.C. Malik are pitted against their step-mother Shanti Devi, whom their father married around 1947, after the death of their mother, Shanti Devi. At the time of the death of plaintiffs mother-Shanti Devi, plaintiffs father H.C. Malik was posted as agriculture officer at Sirsa. At that time, defendant-Shanti Devi was employed as teacher in Girls High School, Sirsa. Plaintiffs father H.C. Malik developed considerable liking for the defendant and subsequently married her. Agricultural land held and possessed by the Joint Hindu Family at village Lali yielded considerable income. As the plaintiffs father was an agriculture officer, he derived more income by managing the agricultural properties than an average farmer could derive by managing similar quality of land. Plaintiffs were children. Their father acquired properties at Chandigarh i.e. House No. 8, Sector 11, Chandigarh and House No. 1224, Old Committee Wali Gali, Sirsa, with the income of properties situated at Lali. His own salary was hardly sufficient for the maintenance of his family which comprised his three sons, second wife, daughter, second wife's crippled mother and three unmarried sisters. It was impossible for him to acquire two properties out of his fixed salary, more particularly, when he had the plaintiffs and their step mother to support. When the plaintiffs father married defendant, defendant's crippled mother alongwith her three unmarried sisters started residing with the plaintiffs father. The entire expense for the maintenance of defendant's mother and her sisters was borne by the plaintiffs father. It was in this context that the plaintiffs stressed that their father purchased the properties at Chandigarh and at Sirsa with the income of agricultural land at Lali. Defendant being step-mother was also, member of the Joint Hindu Family alongwith the plaintiffs and their father H.C. Malik. Late Shri H.C. Malik purchased properties in the name of the defendant-Shanti Devi (his second wife who was the cynosure of his eyes) who was member of the undivided the Joint Hindu Family. Joint Hindu Family owned and possessed property at Village Lali. Out of the income of Joint Hindu Family property, plaintiffs father constructed bungalows on the plots situated at Chandigarh and at Sirsa. Although the property was purchased in the name of defendant, who was member of Joint Hindu Family, but

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it was also treated as Joint Hindu Family property. Bungalow at Chandigarh was constructed in 1960-1961. Rajinder Parshad Malik graduated from Panjab University, Chandigarh, in 1968 and during the period of his study, he stayed exclusively in the house at Chandigarh. After his graduation, he was employed as clerk in Central Bank of India at Chandigarh in 1969. He has been residing in this house and has been in exclusive possession of this house since 1963-1964, property bearing No. 1224 at Old Committee Wali Gali, Sirsa is in exclusive possession of the defendant. The property at Hissar bearing House No. 147, Model Town, Hissar which was allotted to plaintiffs father in lieu of the properties abandoned by Joint Hindu Undivided Family in Pakistan is in exclusive possession of plaintiff No. 2-Mohinder Partap Malik. Plaintiffs father died on 12th September, 1990. During his life time, defendant-Shanti Devi never asserted exclusive title in these two properties i.e. one situated at Chandigarh and other situated at Hissar. It was after the death of the plaintiffs father that the defendant came out in true colours which during the life time of H.C. Malik, she did not exhibit. She knew her exact position vis-a-vis these properties but the moment the father of the plaintiffs (H.C. Malik) died, she started asserting her exclusive title to the properties. She started negotiating through the property brokers for the sale of said two properties. In the last week of May, plaintiff No. 3-Rajinder Parshad Malik was approached by 4/5 persons at his residence who introduced themselves as property dealers duly authorised by the defendant to sell the property i.e. House No. 8, Sector 11-A, Chandigarh. When Rajinder Parshad Malik explained the factual position regarding the ownership and possession of House No. 8, Sector 11-A, Chandigarh, the said property dealers extended threats of forcibly dispossessing the plaintiffs therefrom. On these allegations, Varinder Kumar, Mohinder Partap Malik and Rajinder Parshad Malik sons of late H.C. Malik filed suit for permanent injunction against Shanti Devi (second wife of late Shri H.C. Malik) restraining her from alienating, mortgaging or creating any type of charge on the properties i.e. House No. 8, Sector 11-A, Chandigarh and House No. 147, Model Town, Hissar.

(4) Lateron, when the property i.e. House No. 8, Sector 11-A, Chandigarh was sold during the pendency of the suit by Shanti Devi defendant to Ranjit Singh and Tej Kaur, Ranjit Singh and Tej Kaur were impleaded as defendants No. 2 and 3 in the suit, Para No. 16-

A was added to the plaint consequential to the impleadment of Ranjit Singh and Tej Kaur as defendant No. 2 and 3 in the suit viz. that this sale shall not have any effect on their rights in view of Section 53 of the Transfer of Property Act enshrining "doctrine of Lis pendens".

(5) Shanti Devi-defendant contested the suit of the plaintiffs, urging that the land in village Lali was not yielding any considerable income as there was no body to look after that land. It was denied that the property in Chandigarh was acquired by H.C. Malik, rather on the contrary, property at Chandigarh was purchased by the defendant of her own,—*vide* deed of agreement dated 13th September, 1961 for Rs. 4,002 and this deed of agreement was followed by the deed of conveyance dated 26th June, 1967. She purchased this property out of her salary and tuition income. She made payment of sale consideration from her own. Besides the income from agricultural land of the defendant and her sisters was also appropriated towards the purchase of this property. She constructed the house in Chandigarh out of her own income. She also took loan from the office of Accountant General Punjab, Shimla. She is absolute owner in possession of House No. 8, Sector 11-A, Chandigarh. As far as house situated in Sirsa is concerned, she is absolute owner thereof as she is decree holder of that house. Even otherwise, Sirsa house is not in issue. As per own version of the plaintiffs, their father was having no savings to purchase any property out of his salary. H.C. Malik was not having surplus money to invest in purchasing any property. It was incorrect that the plaintiffs father derived considerable income from agricultural land. It was denied that he purchased property at Chandigarh and at Sirsa. At best, what the facts set up by the plaintiffs constitute is that H.C. Malik was the real owner of the property while the defendant was Benami owner of the property. Plaintiffs have no right to recover the property purchased by their father benami in the name of the defendant as Benami Transaction (Prohibition) Act, 1988 has ceased to operate and now benami owner shall be viewed as real owner and the real owner cannot question the character of the title of the so called benami owner. Defendant no doubt is the widow of H.C. Malik, as such she is entitled to his inheritance, but so far as house situated at Chandigarh is concerned, it is not Joint Hindu Family property. It is rather her self acquired property created out of her own sources of income. These properties were purchased by her. She is not member of the Joint Hindu Family so far as her own properties are concerned. Properties

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situated at Chandigarh and Sirsa were purchased by her with her own income and not with the income of agricultural land situated in village Lali.

(6) Defendant No. 2-Ranjit Singh contested the suit of the plaintiffs, urging that plaintiffs have no right to file suit. They cannot claim any share in the property in view of the Benami Transactions (Prohibition) Act, 1988. In view of the provisions of this Act, suit cannot proceed and it has to be dismissed forthwith. In other respects, Ranjit Singh defendant has submitted that the written statement filed by Smt. Shanti Devi-defendant be taken as his written statement also. It was prayed that the plaintiffs suit be decreed with costs by passing a decree in favour of the plaintiffs restraining the defendants permanently from alienating, mortgaging or creating any type of charge on the properties i.e. House No. 8, Sector 11-A, Chandigarh and Hosue No. 147, Model Town, Hissar. It was further prayed that a decree for declaration be passed in favour of the plaintiffs and against the defendants holding therein that property so purchased i.e. house no. 8, Sector 11-A, Chandigarh by H.C. Malik in the name of defendant No. 1-Shanti Devi was only a sham transaction and is not hit by the provisions of the Benami Transactions (Prohibition) Act, 1988 and the plaintiffs are entitled to succeed to the property in accordance with the law of succession.

(7) On the pleadings of the parties, the following issues were framed by the learned trial Court :

1. Whether the plaintiff is entitled for permanent injunction as prayed for ? OPP
2. Whether plaintiff has no right to file the present suit ? OPD
3. Relief.

(8) *Vide* order dated 7th October, 1996, Additional Civil Judge (Senior Division), Chandigarh dismissed the plaintiffs suit in view of his finding that these properties were purchased by the defendant-Shanti Devi with her own income. Assuming that these properties had been purchased benami by H.C. Malik in the name of his wife-defendant though he himself was the real owner of these properties, Smt. Shanti Devi has to be treated as the real onwer of the properties because of the Benami Transactions (Prohibition) Act, 1988. It was

found that defendants No. 2 and 3 have become owners of the property i.e. House No. 8, Sector 11-A, Chandigarh by way of purchase. Plaintiffs do not have any share. Limitation was also held as barring the suit.

(9) Plaintiffs went in appeal, which was dismissed by Additional District Judge, Chandigarh,—*vide* order dated 30th October, 1998.

(10) Still not satisfied, Rajinder Parshad Malik who is one of the plaintiffs has come up in further appeal to this Court. He has impleaded his brothers co-plaintiffs Varinder Kumar and Rajinder Parshad Malik as proforma respondents in this regular second appeal in the array of the respondents.

(11) In this case, question of law that arises is whether Shanti Devi-defendant was Benami owner of these properties and her late husband H.C. Malik was real owner of these properties and whether these properties had been purchased with the income of the land situated at village Lali, which was Joint Hindu Family property in which H.C. Malik and Shanti Devi etc. were co-owners but in the name of Shanti Devi.

(12) We can have peep into the means of Shanti Devi, if we advert to her statement made by her as DW-3. Shanti Devi DW-3 stated that she was in service as Head Mistress from 1943 to 1971. She retired in 1971. She was drawing salary of Rs. 750 per month at the time of her retirement. At present, her pension is little more than Rs. 2,250. She used to earn from tuition work. She used to earn from Superintendentship, paper marking etc. She purchased house No. 8, Sector 11-A, Chandigarh from Col. Ram Gopal in 1961. She purchased this house with her own savings. None else contributed towards the purchase of this house, Ex.D-3 is the conveyance deed. This house was constructed by her with her own funds. She took loan from Accountant General, Haryana also. The house was not Joint Hindu Family property. Property at Hissar is with her son Mohinder Partap Malik. (Mohinder Partap Malik is her step-son). He is plaintiff No. 2 in the suit. She has share in their property. She does not know about the plot at Rohtak. Property at Sirsa was her self acquired property which she had sold. The house in dispute was purchased for Rs. 4,002. Plaintiffs have no share in the house in dispute nor they have any concern with it. She alongwith her husband used to come and stay in the house in dispute for two months and the possession



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of the house had always been with her. She has sold this house to Ranjit Singh and Tej Kaur,—*vide* sale deed Ex.D-4. She had absolute right to sell this house. In her cross-examination, she stated that her mother was residing with her. It was denied that her three sisters were also residing with her. H.C. Malik was an agriculture officer, posted at Sirsa. H.C. Malik was a migrant from District Jhang, Pakistan. He had come to India before partition of the country. At that time, he was posted at Sirsa. In 1947, her salary was above Rs. 400. She was paying income tax which was deducted at source. She could not tell whether she had shown the house in dispute or income from the house in dispute in any of her income tax returns. She had no income from the house in dispute. She could not tell whether she has shown the house in dispute in her wealth tax return. She stated that R.P. Malik one of the plaintiffs was residing and is still residing in the house in dispute at Chandigarh and he was told to collect rent of this house as well and utilize the same. H.C. Malik used to appear on her behalf in various offices in respect of matters connected with this house. At the time of her marriage, only one of her sisters was un-married. It was denied that after her marriage, all her three sisters and her mother had started residing with H.C. Malik. She was not able to tell whether one residential plot at Jhang Colony, Rohtak and one plot at House No. 147, Model Town, Hissar were allotted in lieu of the properties left in Pakistan. She could not recollect anything about the land situated in village Lali. There was correspondence between her and her son R.P. Malik. Their relations got strained during the year, 1991-1992 when R.P. Malik did not allow her to enter her own house. She was not able to tell the name of the contractor/architect who had constructed the house in dispute in the year, 1960-1961. She was not able to tell whether H.C. Malik or R.P. Malik had any knowledge of the architect. House No. 1224, Old Committee Wali Gali, Sirsa was purchased by her either in 1971 or later. It was denied that the houses at Chandigarh and at Sirsa were purchased with the funds collected from the sale of land situated at Lali of H.C. Malik and the income of H.C. Malik. She stated that land in village Lali was sold after the purchase of this house. She denied the suggestion that she had spent the whole of her salary on the marriages of her three sisters and the maintenance of her crippled mother. She denied the suggestion that in the year, 1943 her salary was Rs. 25 per month. She denied that the entire of her earnings as teacher was spent by her in the looking after of her parental family.

(13) In nutshell, her case is that the suit properties had been purchased by her with her own funds and that her husband had not contributed to the purchase of these properties by her nor the income from Lali land was appropriated towards the purchase of these properties nor these properties are Joint Hindu Family properties purchased with the income of the Joint Hindu Family properties. Varinder Kumar Malik s/o H.C. Malik PW-1, on the other hand stated that Dhallu Ram Malik was his grandfather. He had married thrice. There were three children from his second wife, namely H.C. Malik, R.B. Malik and P.C. Malik. There were four children from the third wife. There was no issue from the first wife. He stated that his father H.C. Malik married twice. His father's first wife Shanti Devi has four children namely V.K. Malik, Prem Saluja, M.P. Malik and R.P. Malik. There is no issue from the second wife of H.C. Malik who is also incidentally named Shanti Devi. His grandfather constituted Joint Hindu Undivided Family with his sons namely H.C. Malik, R.P. Malik, P.C. Malik, Ram Malik, K.L. Malik, Charanjit Lal Malik and Om Parkash Malik. The Joint Hindu Family owned a lot of agricultural land and other immovable property in Jhang now in Pakistan. His grandfather died before the partition of the country. He was "Karta" of the Joint Hindu Family. After partition all the members of Joint Hindu Family migrated to India leaving behind vast properties in Pakistan. Thereafter, Joint Hindu Family was allotted the lands in lieu of the property abandoned in Pakistan i.e. 20 acre plot at Garden Colony at village Lali, District, Rohtak and agricultural land at village Kharkhoda, District, Rohtak. His late father H.C. Malik was allotted a residential plot in Jhang Colony at Rohtak and one residential plot House No. 147, Model Town, Hissar. These properties were allotted in lieu of Joint Hindu Family properties abandoned in Pakistan. The other brother of H.C. Malik did not raise any objection. They had cordial relations with the other members of the family. His fathers H.C. Malik was with the Punjab Agriculture Department. Shanti Devi was employed as teacher in Girls High School, Sirsa. His father married her. Agricultural land held by the Joint Hindu Family at village Lali yielded good income as his father was an Agriculture Officer. He could derive more income than an average farmer could derive by cultivating land situated at village, Lali. With the said income, his father purchased plot on which House No. 8, Sector 11-A, Chandigarh was constructed. Plot in question was purchased somewhere in 1960. His father's first wife Shanti Devi

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died in the year, 1947. When his father was Agriculture Officer at Sirsa, he came in contact with Shanti Devi-defendant, whom he married. At that time, he was 17 years old. Mohinder Partap was 11 years old and Rajinder Parshad was 5 years old. Their step mother Shanti Devi was spending her entire income in the looking after of her ailing mother and three sisters. He stated that right from day one when Sector 11 house was constructed, R.P. Malik plaintiff is in occupation. He got his education while staying in this house and presently he is working with some bank but is putting up in this house. As and when he (Varinder Kumar Malik) came from out station, he stayed in this house. His father told him that though he had purchased the property and raised construction on the said property but the plot had been purchased in the name of Shanti Devi for sentimental reasons. His father died in 1990 in Delhi while he was staying with him. His stepmother was also with him at that time. She never exercised her right of ownership on this property during the life time of H.C. Malik. Property in question was built up from the income derived from the agricultural land which was allotted in lieu of the land left in Jhang now in Pakistan and it was HUF Property. His step mother Shanti Devi negotiated to sell the property knowing full well that she has no right to sell this property. After the death of H.C. Malik all the sons including Shanti Devi are owners in equal shares and she is not exclusive owner in possession. The possession of the said property is with all the co-sharers through Rajinder Parshad Malik. During the pendency of the suit, Shanti Devi sold the property to defendants No. 2 and 3 though she was not competent to sell the property.

(14) In this case no account of income or expenditure of H.C. Malik has been produced. Similarly, no account of income of the land situated at village, Lali has been produced. Although the agricultural land in village Lali was sold yet no account has been produced as to how the sale proceeds of Lali land was utilised. Kharkhoda land was managed by the step brother of H.C. Malik. No account of the income of that land was produced. H.C. Malik had a house bearing No. 147, Model Town, Hissar. Younger brother of Varinder Kumar Malik PW-1 and Mohinder Partap Malik are in occupation of that house, The house is on more than 1000 square yards. They have not partitioned that house. The house is still in the name of H.C. Malik in the municipal record. He was not able to tell the salary of Shanti Devi

in 1948 nor was he able to tell the emoluments she was getting in the year, 1960 and also at the time of her retirement from service. His father told him that he had invested in the purchase of the plot in the name of defendant. His father had told him that registered sale deed was got executed for this property and also conveyance deed for this property in the name of defendant though for sentimental reasons.

(15) It was submitted by the learned counsel for the appellant that Shanti Devi did not have any serious source of income. She was merely a teacher getting meagre salary, having no capacity to purchase the property because of the burden of her crippled mother and three un-married sisters on her, while her husband was possessed of huge chunk of land measuring 20 acres in village Lali giving him huge income. He was in a position to effect fat savings. He effected fat savings. He purchased these properties with those savings but as the defendant was his later wife and issue-less one, he purchased the properties in her name. It was submitted that the property purchased by a person in the name of wife or child when they do not have any source of income of their own, it should be taken that the wife or the child was only a benami owner.

(16) In *Amar Chand and others vs. Lashkari Mal Kishori Lal and others*, (1), it was held that in this country, where a purchase is made by a person with his own money, it is assumed to be for his benefit, whether it is made in the name of a child, wife or a stranger. The criterion in the case of benami purchases in India is from what source the money comes with which the purchase is made. As benami purchases in the names of wives are very common in India, slight evidence would be sufficient to show that the purchase was made really for and on behalf of the husband, the wife being merely a benamidar.

(17) In *Heirs of Vrajlal, J. Ganatra vs. Heirs of Parshottam S. Shah* (2), the Hon'ble Supreme Court held that the source of money is a relevant consideration for determining the character of the transaction whether it is benami if purchase money comes from a person other than the recorded purchaser, there can be a factual presumption that the purchase was for his benefit. However, the presumption is rebuttable.

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(1) 1952 PLR 193

(2) 1996 (2) RRR 369

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(18) In *Paras Nath & Others vs. Rameshwar Ram and others* (3), it was held that it cannot be believed that a member of a Joint Family in her tender age would purchase the property alone out of her own income. Property purchased in the name of one person of Undivided Hindu Family becomes coparcenary property. Section 4(3) of the Benami Transactions (Prohibition) Act, 1988 shall come into play.

(19) In *Hari Krishan Doraga vs. Arjan Singh* (4), it was held that it the source of money and not the hand which actually pays it, which has to be seen for holding a particular transaction to be Benami or otherwise.

(20) In this case we cannot take that Smt. Shanti Devi was benami purchaser or her husband H.C. Malik was the real purchaser because it is not that Shanti Devi did not have any source of income. She was in service even before, 1947. She purchased plot in question for Rs. 4002 in Sector 11, Chandigarh in the year, 1961. Lateron she constructed this plot. She has stated that she obtained loan from the AG Haryana. It was submitted that it is for the party pleading benami character of the transaction to show that the transaction was benami. Suspicious circumstances are not enough to vitiate the transaction.

(21) It was held by the *Privy Council in Seth Manik Lal Mansukhbai vs. Raja Bijoy Singh Dudhoria and others* (5), that the burden of proof lies on the party assailing transaction as benami, although the circumstances may be suspicious. In such cases it is essential to take care that the decision of the Court rests not upon suspicion, but upon legal grounds established by legal testimony.

(22) In *Bhuban Mohini Dasi and others vs. Kumud Bala Dasi and others* (6), it was held that there is no presumption that a property standing in the name of Hindu female, who is a member of a joint Hindu family belongs to the joint family and is not her stridhan property. Burden lies on one asserting particular state of things. Burden of proof lies upon the person who asserts that the

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(3) 1995 (3) RRR 270

(4) 1973 Current Law Journal 590

(5) AIR 1921 Privy Counsel 69

(6) AIR 1924 Calcutta 467

apparent is not the real state of things. Slight evidence but not mere probabilities may suffice to show benami nature. Source of purchase money is the test but in absence of conclusive evidence, probabilities and conduct of parties are to be considered.

(23) In *Mehta Mangal Rai vs. Karam Chand and others* (7), it was held that merely because father has supplied money for the purchase of a house by the son, does not by itself conclusively establish the fact of the son being a benamidar without considering the attending circumstances.

(24) In this case no inference can be raised that Shanti Devi was a benamidar and that her husband was the real owner.

(25) In *Prem Kumar vs Ved Parkash* (8), it was held that 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 or any part of the serious onus that rests on him nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question whether a particular sale is benami or not, is largely one of the fact, and for determining this question, no absolute formulate or acid test, uniformly 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 colour ;
4. the position of the parties and the relationship, if any, between the claimant and the alleged benamidar ;

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(7) 1965 PLR 31

(8) 1993 (2) RRR 562

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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.

(26) Similar test was laid down by Hon'ble Supreme Court in *Jaydayal Poddar vs Bibi Hazra (9)*, for determining the character of the transaction whether it is "A" who was the real owner and it is "B" who was the only benami owner.

(27) In this case, Shanti Devi did have source of income. If she had no source of income, it could have been taken that his transaction was financed by her husband, intending that he will be the real owner of this property and the wife would continue to be the benami owner of the property. In this case there is no motive why should H.C. Malik have constituted his wife as benami owner of the property and himself stayed in the back screen.

(28) Learned counsel for the appellant submitted that he had to do so because if he were to purchase the property himself, he would have had to take permission of the Government for the purchase of this property under the Government Servant Conduct Rules. It was submitted that with a view to avoid that permission, he brought in his wife and purchased the property in her name.

(29) Suffice it to say, Shanti Devi was also in the service of the Government. She was mistress at Government Girls High School, Sirsa.

(30) It was submitted by the learned counsel for the appellant that after the purchase of this house, Rajinder Parshad Malik has all along been in possession of this house. Suffice it to say, Rajinder Parshad Malik is not a stranger. He is the son of H.C. Malik from his earlier wife. He is thus step son of defendant. If defendant had allowed him to stay in this house and Rajinder Parshad Malik got education at Chandigarh that does not mean that he became in possession of this house under some claim or right. His occupation of this house cannot lead the Court to infer that he is in occupation of this house as this house was purchased by his late father H.C. Malik. Learned counsel for the appellant submitted that H.S. Malik

wrote letter Ex. P-4 to the Estate Officer, Chandigarh for obtaining occupation certificate. No inference can be drawn from the letter Ex P-4 because it is common knowledge that husbands sometimes do act for their wives.

(31) Learned counsel for the appellant submitted that Varinder Kumar Malik appeared as witness PW-1 and stated thus :—

“My grand father constituted a joint Hindu undivided family with his sons namely H.C. Malik, R.P. Malik, P.C. Malik, Ram Malik, K.L. Malik, Charanjit Lal Malik and Om Parkash Malik. The joint Hindu Family owned a lot of agricultural land and other immovable property in Jhang now in Pakistan. My grand father who died before the partition of the country was karta of Hindu Joint Family after the partition. All the members of the Joint family migrated to India leaving behind vast properties in Pakistan. Thereafter, joint Hindu family was allotted the lands in lieu of the property abandoned in Pakistan i.e. 20 acres plot at Garden colony at village Lali, Distt. Rohtak and agricultural land at village Kharkhoda District Rohtak. My late father was allotted a residential plot in Jhang colony at Rohtak and one residential plot H. No. 147, Model Town, Hissar. The properties were allotted in lieu of Joint Hindu family property abandoned in Pakistan.”

(32) It was submitted by the learned counsel for the appellant that this part of statement of Varinder Kumar Malik has gone unchallenged in the cross-examination and therefore it should be taken that these properties were purchased by H.C. Malik and she was thus only a benamidar.

(33) Suffice it to say, we have to decide such cases on broad spectrum. Shanti Devi has stated that she was in a position to purchase these properties with her own funds. She purchased these properties, with her own funds. It would bear repetition that the purchase of these properties by her could not be viewed as purchase by a benamidar. If she contributed some money from her own and



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some money she borrowed from her husband or relations or her husband made some contribution out of love and affection as she was his second wife, no inference can be drawn that transaction was benami.

(34) In this case both the courts below have decided on appreciation of evidence that Smt Shanti was the real owner of the property. Both the courts below have decided that H.C. Malik was not the real owner of the property and that Smt. Shanti Devi was the real owner of the property and that she is rightly shown as the real owner of the property in the record. A decision on a question of fact by two courts below when that decision is supported by evidence on record is binding in second appeal on this Court, Plaintiffs' suit could be viewed as barred by time as the plaintiffs got cause of action after the death of their father H.C. Malik when Smt. Shanti Devi began asserting her exclusive title in these properties. During the life time of H.C. Malik, she gave no expression that these properties are her exclusive properties. In this regular second appeal, no substantial question of law arises. Only question of law arose, which was rightly decided by the two courts below.

(35) For the reasons given above, this regular second appeal fails and is dismissed. No order as to costs.

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**R.N.R.**

*Before Adarsh Kumar Goel, J*

TARUN BHARGAVA—*Petitioner*

*versus*

STATE OF HARYANA & ANOTHER—*Respondents*

*Crl. M. No. 24270/M/1999*

29th May, 2002

*Contract Act, 1872— Ss. 172 & 176— Indian Penal Code, 1860— Ss. 392/323/506/120-B— Complainant purchasing a vehicle through the Financier— Hire purchase agreement between the parties is only a loan agreement— Complainant real/registered owner of the*