2026:CGHC:11067

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on 26-02-2026

Judgment delivered on 03-03-2026

SA No. 84 of 2015

Vimal Kumar Agrawal S/o Shri Shravan Kumar Agrawal Aged About 27 Years R/o Arang, Tahsil Arang, Civil And Revenue Distt. Raipur C.G. , Chhattisgarh

... Appellant

versus

1 - Shravan Kumar Agrawal S/o Shri Loknath Agrawal R/o Arang, Tahsil Arang Civil And Revenue Distt. Raipur C.G.

2 - Shyam Kumar Arora S/o Shri Harikishan Arora R/o Main Road, Arang, Tahsil-Arang Civil And Revenue Distt. Raipur C.G.

3 - Smt. Neelam Arora W/o Shri Shyam Arora R/o Main Road, Arang, Tahsil-Arang Civil And Revenue Distt. Raipur C.G.

...Respondents

For Appellant :Mr. Rakesh Thakur, Advocate

For Respondents No.2 & 3 :Mr. Rishikant Mahobia, Advocate

Hon'ble Shri Bibhu Datta Guru, J

C A V Judgment

1. By the present appeal under Section 100 of the Code of Civil Procedure, 1908 (for brevity 'the CPC'), the appellant/plaintiff challenging the impugned judgment and decree dated 16/12/2014 passed by the learned 2nd Additional District Judge, Raipur, C.G. in Civil Appeal No.15A/2013 (Vimal Kumar Agrawal Vs. Shravan Kumar Agrawal & Ors), arising out of the judgment dated 05/01/2012 passed by the learned 12th Civil Judge Class-II, Raipur, C.G. in Civil Suit No.20A/2008 (Vimal Kumar Agrawal Vs. Shravan Kumar Agrawal & Ors) whereby the learned appellate Court dismissed the appeal and affirmed the judgment passed by the learned trial Court.

2. For the sake of convenience, the parties would be referred as per their status before the learned trial Court.

3. This appeal has been admitted on 27/07/2015 on the following substantial question of law:

> "1. Whether the findings of the 1st Appellate Court regarding prayer for taking additional documents on record under Order 41 Rule 27 of the CPC are perverse?

2. Whether the findings and judgment and decree passed by the trial Court and the First Appellate Court regarding Section 4 of the Benami transactions (Prohibition) Act, 1988 and Section 8(2) of the Hindu Minority & Guardianship Act, 1956 are perverse?"

4. The plaintiffs preferred a suit seeking to declare the sale deed executed on 3rd April 1999 in favor of defendants 2 and 3 as null and void, the possession of the disputed land to be handed over to the plaintiff, and a permanent injunction to prevent the defendants from transferring or altering the land in any way. The plaintiff pleading *inter alia* that the land situated at Village Rasani, Plot No. 61, R.I. Circle Arang, Tehsil Arang, District Raipur, specifically part of Khasra number 792, with an area of 1.30 hectares, was under the ownership and possession of the plaintiff. The plaintiff continued agricultural activities on this land both during his minority and after becoming an adult. The defendant No. 1, who is the father of the plaintiff, had purchased the land in the name of plaintiff through a registered sale deed dated 25th November 1994. In 1999, defendant No.1 sold 1.31 hectares of this land to defendants 2 and 3. However, the

defendants neither informed the plaintiff nor obtained permission from a competent Court as provided under Section 8 of the Hindu Minority and Guardianship Act, 1956 (for short 'the Act, 1956'). As a result, defendant No.1 illegally sold the plaintiff's land to defendants 2 and 3, contrary to the plaintiff's interests. This sale was illegal and void under Section 8(2) of the Act, 1956. The plaintiff also pleaded that the Defendants 2 and 3 have no right to transfer the land to any other person. During the plaintiff's minority, the plaintiff's elder brother of full blood, Vinay Kumar Agarwal, filed a case on his behalf on 25th July 2003 before the 3rd Civil Judge, Class II, Raipur, seeking to declare the sale as void. However, the same was dismissed on 7th January 2008 on the grounds that it was not filed by the natural guardian as required. Thus, this suit.

5. While admitting the plaint averments, the defendant No.1 contended that without obtaining permission from a competent Court, the plaintiff's(minor) land was sold to defendants No. 2 and 3.

6. Defendants No.2 and 3 in their written statement, denied the plaint averments and submitted that when the plaintiff was 8 years old, defendant No. 1 had purchased the land (Khasra

No. 792, area 1.489 hectares) from Vishwanath, son of Loknath, through a registered sale deed on 25th November 1994 in the name of his minor son, Vimal Kumar Agarwal (plaintiff) as a benamidar (nominee). The land in question originally belonged to defendant No. 1 and later, during the settlement process, the area of Khasra No. 792 was recorded as 1.31 hectares. Since defendant No. 1 was the actual owner of the land and the land was merely registered in the name of his son, the need to seek permission from the Court for its sale was not required. Therefore, the sale was not subject to the provisions of Section 8 of the Act, 1956.

7. The learned Trial Court, after framing the issues and duly appreciating the oral and documentary evidence adduced by both parties, as well as the material available on record, dismissed the suit filed by the plaintiff. The Court held that, in respect of the suit property, the plaintiff's natural guardian (his father) was not required to obtain prior permission from the competent Court for transferring the property. The Court further held that the suit instituted by the plaintiff was barred by limitation, had not been properly valued for the purposes of jurisdiction and court fees, and that appropriate court fees had not been affixed. Against the said judgment and decree,

the plaintiff filed the Civil Appeal before the learned appellate Court who by order impugned, dismissed the Civil Appeal by maintaining the judgment and decree passed by the learned trial Court. Thus, this appeal by the appellant/plaintiff.

8. (a) Learned counsel for the appellant submits that both the Courts erred in considering and appreciating the provisions of sub-sections (2) and (3) of Section 8 of the Act, 1956. The findings recorded by the Courts are based on the age of the plaintiff as mentioned in certain documents on record, which are apparently unreliable. Both the Courts failed to appreciate that the Plaintiff himself had not declared his age in those documents and, therefore, he cannot be bound by such entries. Learned counsel further submits that both the Courts further erred in observing that the plaintiff ought to have mentioned his running age as 21 years in the plaint. The plaintiff had specifically pleaded that he filed the suit within the prescribed period of limitation after attaining majority. It is also pertinent to note that the age mentioned in the pleadings were never specifically challenged by the defendants.

(b) Learned counsel further submits that the learned First Appellate Court committed a serious error in rejecting the

application under Order XLI Rule 27 of the Code of Civil Procedure. The Appellate Court ought to have considered the necessity and relevance of the additional evidence sought to be adduced and should have decided the application along with the merits of the appeal. To buttress his contention, he placed reliance upon the decision rendered by the High Court of Karnataka in the matter of **Sangawwa v Shankarappa** reported in **1991 LawSuit (Kar) 287** and this Court in the matter of **Ganga Singh & Ors. v Jamuna Prasad** reported in **SA No.340 of 2009 (31.1.2024)**.

9. On the other hand, learned counsel for the respondents No.2 and 3 would submit that the impugned judgment and decree passed by both the Courts are wholly legal and justified. Defendant No. 1 is the father of the plaintiff. Both father and son, in collusion with each other, have filed the present appeal with an ulterior motive to harass Defendant Nos. 2 and 3. Hence, they have prayed for dismissal of the present appeal. In support of his contention, he placed reliance upon the decision rendered by the Supreme Court in the matter of **Pushpalata Vs. Vijay Kumar (dead) Thr. LRs & Or**s reported in **2022 SCC OnLine SC 1152** and **Sri Narayan**

Bal And Ors Vs. Sridhar Sutar And Others reported in **(1996) 8 SCC 54**.

10. I have heard learned counsel for the parties, perused the material available on record.

11. So far as the first substantial question of law whether the findings of the 1st Appellate Court regarding prayer for taking additional documents on record under Order 41 Rule 27 of the CPC are perverse is concerned, the documents submitted by the plaintiff are his own educational certificates, namely: (1) the District Pre-Matriculation (Class VIII) Certificate for the year 2002, and (2) the Chhattisgarh Board of Secondary Education, Raipur, High School Certificate Examination (Class 10+2) 2004 Certificate along with mark sheet. These certificates were not only available to the plaintiff from the beginning but were also fully known to him. The plaintiff claims to have pursued engineering studies; therefore, it is evident that he cannot claim ignorance of his own examination certificates or his date of birth. Accepting such a claim in any way would be unreasonable.

12. Further, the plaintiff had filed the claim before the trial Court on 22.01.2008. Even if it is assumed that the documents were submitted along with the engineering examination

application, considering the duration of the engineering course, he could have submitted the certificates of 2002 and 2004 before the trial Court, since the case was presented before the trial Court in 2008 and was disposed of on 05.01.2012. It is therefore clear that the plaintiff did not exercise due diligence that would demonstrate he was unable to present these certificates earlier. These documents were not only in his possession but were fully known to him from the outset.

13. In view of these circumstances, the appellate Court has rightly observed that it was not appropriate to admit the additional evidence submitted by the plaintiff. Consequently, the said documents are rejected in light of the principles enunciated under Order 41, Rule 27, sub-rule (1)(c) of the Code of Civil Procedure.

14. As far as second substantial question of law is concerned, Plaintiff-Vimal Kumar Agrawal (P.W.1) stated that when he was minor his father, defendant No.1-Shravan Kumar Agrawal, had purchased the suit land in his name on 25-11-1994 and got the sale deed registered accordingly. At that time, he was approximately 7–8 years old. His father sold the said land in the year 1999 to defendant Nos. 2 and 3

without obtaining permission from the competent Court as required under Section 8 of the Act, 1956. During cross-examination, he admitted that the suit land had been purchased by his father in his name. The negotiations, documentation, and transaction relating to the purchase and sale of the land were conducted by his father, and the sale consideration was also received by his father. The witness further stated that the payment was made by withdrawing money from his bank account by his father. He further stated that the money deposited in his account had been deposited by his parents; however, he also stated that he does not know when or how much money he received as a gift.

15. Defendant No.1-Shravan Kumar Agrawal (D.W.1), also supported the plaintiff's statement and stated that he had purchased the suit land in the name of his minor son Vimal Kumar Agrawal on 25-11-1994 and had issued a cheque of Rs. 36,000/- from Vimal Kumar's savings bank account to the seller. He further stated that he had sold the suit land for his personal needs and that he did not give the sale proceeds to plaintiff. He categorically stated in his cross-examination at para 8 that at the relevant they are joint

family and he maintains the joint family in the capacity of Karta.

16. Defendant No.2, Shyam Kumar Arora (D.W.2), stated that defendant No.1 had informed him regarding the suit property that he had purchased the property from his own income in the name of his minor son, who is the real owner, and that he (Defendant No. 1) is the head (karta) of his family. Only thereafter he purchased the suit property. The real owner of the suit property was defendant No.1, while the plaintiff was merely a benamidar.

17. At the time of execution of the sale deed dated 03-04-1999, the plaintiff was a minor. During his minority, the sale deed (Exhibit D-1) was executed by his father/defendant. However, prior permission from the competent Court, as required under law, was not obtained for such execution. Since this is in contravention of the provisions of Section 8(2) of the Hindu Minority and Guardianship Act, 1956, the said sale deed is void and not binding upon the plaintiff.

18. Section 8 of the Hindu Minority and Guardianship Act, 1956 reads as under:

8. Powers of natural guardian.

(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

19. The disputed property was purchased by the plaintiff's father, Shravan Kumar Agrawal, when the plaintiff was minor and the consideration amount was also paid by him. This fact has been admitted by the plaintiff as well. Therefore, the plaintiff is merely a nominal owner of the suit property, while the real owner is his father, Shravan Kumar Agrawal. The plaintiff

holds the status of a benamidar, and consequently, no permission from the competent Court was required for transfer of the suit property.

20. From the evidence on record, it is clear that through the sale deed (Exhibit D-1), the suit property was sold on behalf of the minor Vimal Kumar by his father, Shravan Kumar, to Defendants No. 2 and 3.The suit property had originally been purchased by the plaintiff's father, Shravan Kumar, through a registered sale deed (Exhibit D-2) dated 25 November 1994 from Vishwanath Agrawal for a consideration of ₹44,000/-. The entire sale consideration was paid by Shravan Kumar Agrawal himself, which has also been admitted by the plaintiff.

21. The plaintiff has further admitted that the suit property was purchased by his father and that all negotiations and documentation relating to the transaction were carried out by his father. He stated that the money was withdrawn from his account by his father; however, he also admitted that the amount deposited in his account had been deposited by his father and mother themselves.

22. Thus, at the time when the suit property was purchased by the plaintiff's father, Shravan Kumar, the plaintiff was only 8

years old. There is neither any pleading nor any evidence to show that the plaintiff had any independent source of income at that time. On the contrary, the plaintiff himself has stated that the suit property was purchased by his father in his name and that the consideration amount was also paid by his father.

23. There is also no pleading that the amount used for purchasing the suit property was received by the plaintiff by way of any gift or donation. Rather, in cross-examination, he stated that he does not know when and how much money he had received as gifts. At the time of purchase of the suit property, the plaintiff and his father were members of a joint family, and the entire sale consideration was paid by the plaintiff's father. Therefore, it is clear that the disputed property was in fact purchased by the plaintiff's father. The plaintiff's name was recorded merely as a nominal owner, whereas the real owner was his father, Shravan Kumar Agrawal.

24. The Supreme Court in the matter of **Pushpalata (supra)** spelt out the circumstances, which can be taken as a guide to determine the nature of transactions at para 22, which reads as under :

“The court’s approach in cases, where the claim is that a property or set of properties, are benami, was outlined, after considering previous precedents, in **Binapani Paul Vs. Pratima Ghosh** reported in **(2007) 6 SCC 100**, where this Court cited with approval extracts from Valliammal Vs. Subramaniam reported in **(2004) 7 SCC 233: 2004 Supp (1) SCR 966**:”

> 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 [(2004) 7 SCC 233] wherein a Division Bench of this Court held:
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> 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. Ref to Refer to Jaydayal Poddar v.

Bibi Hazra [(1974) 1 SCC 3), Krishnanand Agnihotri v. State of M.P. ((1977) 1 SCC 816 1977 SCC (Cri) 190], Thakur Bhim Singh v. Thakur Kan Singh [(1980) 3 SCC 72], Pratap Singh v. Sarojini Devi [1994 Supp (1) SCC 734) and Heirs of Vrajlal J. Ganatra v. Heirs of Parshottam S. Shah ((1996) 4 SCC 490]. 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 Vs. Bibi Hazra [(1974) 1 SCC 3] , SCC p. 7, para

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.

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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."

25. By applying the aforesaid guidelines, after examination of the fact & evidence available on record in the case at hand, it is very clear that, though the property purchased in the name of plaintiff by his father i.e. defendant No.1, but the motive, source of income, relation of plaintiff & defendant No.1 shows that the original owner of the property is the defendant No.1 only. Hence, being the Karta of joint family, the defendant No.1 has purchased & sold the land, which is stood in the name of plaintiff, who is the minor son of the defendant No.1 and as such, the provision of Section 8 of the Act, 1956 is not attracted.

26. In respect of obtaining permission under Section 8 of the Act, 1956 for disposing of the undivided interest of the minor in the joint family is concerned, the Supreme Court in the matter of **Sri Narayan Bal (supra)** held thus at para 5 :

> "5. With regard to the undivided interest of the Hindu minor in joint family property, the provisions afore-culled are beads of the same string and need to be viewed in a single glimpse, simultaneously in conjunction with each other. Each provision, and in particular Section 8, cannot be viewed in isolation.

If read together the intent of the legislature in this beneficial legislation becomes manifest. Ordinarily the law does not envisage a natural guardian of the undivided interest of a Hindu minor in joint family property. The natural guardian of the property of a Hindu minor, other than the undivided interest in joint family property, is alone contemplated under Section 8, whereunder his powers and duties are defined. Section 12 carves out an exception to the rule that should there be no adult member of the joint family in management of the joint family property, in which the minor has an undivided interest, a guardian may be appointed; but ordinarily no guardian shall be appointed for such undivided interest of the minor. The adult member of the family in the management of the joint Hindu family property may be a male or a female, not necessarily the Karta. The power of the High Court otherwise to appoint a guardian, in situations justifying, has been preserved. This is the legislative scheme on the subject. Under Section 8 a natural guardian of the property of the Hindu minor, before he disposes of any immovable property of the minor, must seek permission of the court. But since there need be no natural guardian for the minor's undivided interest in the joint family property, as provided under Sections 6 and 12 of the Act, the previous permission of the court under Section 8 for disposing of the undivided interest of

> the minor in the joint family property is not required. The joint Hindu Family by itself is a legal entity capable of acting through its Karta and other adult members of the family in management of the joint Hindu Family property. Thus Section 8 in view of the express terms of Sections 6 and 12, would not be applicable where a joint Hindu Family property is sold/disposed of by the Karta invilving an undivided interest of the minor in the said joint Hindu Family property. The question posed at the outset therefore is so answered."

27. Even otherwise, the scope of interference in a Second Appeal under Section 100 of the Code of Civil Procedure is extremely limited. Interference is permissible only when the appeal involves a substantial question of law. Concurrent findings of fact recorded by both the Courts cannot be interfered with unless such findings are shown to be perverse, based on no evidence, or contrary to settled principles of law.

28. In the present case, both the Trial Court and the First Appellate Court have concurrently recorded findings, on the basis of evidence available on record, that the appellant/plaintiff failed to establish its case by placing cogent and sufficient material. The appellants have failed to

demonstrate any perversity, illegality, or misapplication of law in the findings so recorded.

29. The questions sought to be raised in the present Second Appeal essentially relate to re-appreciation of evidence and challenge to concurrent findings of fact. Such questions do not give rise to any substantial question of law within the meaning of Section 100 of the Code of Civil Procedure.

30. It is well established that when there is a concurrent finding of fact, unless it is found to be perverse, the Court should not ordinarily interfere with the said finding.

31. In the matter of ***State of Rajasthan and others Vs. Shiv Dayal and another,*** reported in ***(2019) 8 SCC 637***, reiterating the settled proposition, it has been held that when any concurrent finding of fact is assailed in second appeal, the appellant is entitled to point out that it is bad in law because it was recorded *de hors* the pleadings or based on misreading of material documentary evidence or it was recorded against any provision of law and lastly, the decision is one which no Judge acting judicially could reasonably have reached.

32. Be that as it may, the argument advanced by learned counsel for the appellants and the proposed question of law

cannot be regarded as satisfying the test of being ‘substantial question of law’ within the meaning of Section 100 of CPC. These questions, in my view, are essentially question of facts. The appellants failed to raise any substantial question of law which is required under Section 100 of the CPC. In any event, the Second Appeal did not involve any substantial question of law as contemplated under Section 100 of the CPC, no case is made out by the appellant herein. The judgments impugned passed by the learned trial Court as well as by the learned First appellate Court are just and proper and there is no illegality and infirmity at all.

33. Accordingly, the present appeal is liable to be and is hereby dismissed. **SD/-**

(Bibhu Datta Guru)
Judge

Gowri/
Amardeep