

Delhi High Court Sh. Suresh Chand Gupta And Ors. vs Sh. Man Mohan Gupta And Anr. on 10 September, 2003 Equivalent citations: 2003 VIIIAD Delhi 65, AIR 2004 Delhi 282, 107 (2003) DLT 160 Author: O Dwivedi Bench: O Dwivedi JUDGMENT O.P. Dwivedi, J. 1. The plaintiffs have filed suit for partition of immovable property No. A-44, Inder Puri, New Delhi, constructed over land admeasuring about 200 Sq.Yds. Briefly stated, the plaintiffs case is that the property in suit namely A-44, Inder Puri, New Delhi was owned by Sh. Shambhu Mal Gupta. Construction on the said plot was raised by Sh. Shambhu Mal Gupta in the year 1967-68. Shri Shambhu Mal Gupta had four sons namely Sh. R.M.Gupta (since deceased now represented by his LR s who are plaintiff Nos. 4 (a) to (c), Sh. M.M.Gupta, defendant No.1, Sh. Suresh Chand Gupta, plaintiff No.1, Sh. Mahesh Gupta, plaintiff No.2 and one daughter Smt. Raj Rani Garg who is plaintiff No. 3 in the suit. Sh. Shambhu Mal Gupta had been realizing rent from tenant. Defendant No. 1 had also admitted the ownership of Shri Shambhu Mal in respect of the said property. In this regard he had executed a Release Deed dated 11.2.71 declaring that he (defendant No.1) has no right, title or interest whatsoever in the said property. The said Release Deed was registered in the office of Sub-Registrar as document No. 1259 in the Addl. Book No. 1, Volume No. 1361 on pages 141 and 142 on Feb. 1971. Sh. Shambhu Mal Gupta died intestate on 15.11.1986 and after his death his widow Smt. Kapoori Devi started realizing rent from the tenant with the consent of all the brothers. However, in the receipt issued on behalf of Smt. Kapoori Devi name of the owner was described as Shambhu Mal Gupta. In para 5 of the plaint, the plaintiff has given one specific instance of the receipt issued by Smt. Kapoori Devi for the month of May, 1988. The said receipt was signed by defendant No.1 for and on behalf of his mother Smt. Kapoori Devi and in the said receipt the name of the owner was described as late Sh. Shambhu Mal Gupta. Smt. Kapoori Devi has been missing since 13.4.1993 and has not been heard of since then. At that time she was aged about 85 years. It is claimed that plaintiffs and defendant No. 1 are the only legal heirs of the deceased Sh. Shambhu Mal Gupta and they are entitled to one fifth share each in the said property. Defendant No. 2 is only proforma party. No relief has been claimed against him. The plaintiffs have filed suit for partition and separation of their one fifth share each in the suit property. 2. Defendant No. 1 Sh. Man Mohan Gupta has contested the suit. His defense is that the plot underneath the property in question was purchased by him from his own funds from Engineering and Industrial Corporation Limited for a total sale consideration of Rs.1867-8 annas vide Sale Deed dated 11.7.54. He also raised construction on the said plot from his own funds in the year 1967 and for this purpose he had raised a loan of Rs.10,000/- from the Assistant Commissioner (Loans) Delhi Administration by mortgaging the plot in question and in this regard a registered mortgage deed dated 22.9.67 was executed by him. Thus according to the defendant No. 1 he is the exclusive owner of the property in question. As regard execution of Release deed of 11.2.71, the defendant's case is of complete denial. His case is that he never signed any such document purporting to be Release Deed disclaiming his right, title and interest in favor of Sh. Shambhu Mal or anybody else.

According to him the said document purporting to be Release Deed is a forged document which appears to have been manipulated by the plaintiff and late Sh. Shambhu Mal Gupta to get the property mutated in the name of Sh. Shambhu Mal Gupta. It is further pleaded by the defendant that said property was got mutated by Sh. Shambhu Mal Gupta in municipal records without obtaining any NOC from him (defendant No.1). This fact was never brought to his notice during the life time of Sh. Shambhu Mal Gupta. It is the contention of the defendant No.1 that since the title of the property already vested in him, the realization of rent by Sh. Shambhu Mal Gupta on his behalf has no meaning. It is admitted that after the death of Sh. Shambhu Mal Gupta all the heirs thought it proper that the rent realized from the property in question be paid to Smt. Kapoori Devi so that she can lead a better life. Defendant No. 1 admits having signed the receipt issued to the tenant for the month of May 1988 wherein Sh.Shambhu Mal Gupta was described as owner of the property but according to him the blanks in the receipt were filled in by somebody else and in any case the description of deceased Sh.Shambhu Mal Gupta as owner in this receipt has no meaning as he had no title in property in question. In nut shell defendant's case is that property in question is exclusively owned by him and the alleged Released Deed dated 11.2.1971 is forged document which he never signed. The plaintiffs have no right, title and share in property in question and therefore no right to claim partition thereof. 3. In replication, the plaintiffs have denied that property in question was acquired by defendant No.1 from his own funds. The plaintiff has reasserted the genuineness of the Release Deed dated 11.2.1971 which contains specific affirmation from the side of the defendant No.1 to the effect that his father Lala S. Mal had purchased the plot out of his own funds but the sale Deed was got registered in the name of defendant No.1 as benamidar and that the construction thereon was also raised by their father in the year 1967 onwards. The allegation regarding manipulative execution of the Release Deed dated 11.2.1971 and mutation in the municipal records in the name of Sh. Shambhu Mal Gupta is denied. 4. On the basis of these pleadings, the following issues were framed on 18.3.99. 1. Whether the suit property was owned and possessed by late Shambhu Mal? 2. Whether on 11.2.71 the defendant executed the release deed in favor of late Shambhu Mal? If so, its effect? 3. What is the share of the parties in disputed property? 4. Relief and costs. 5. In proof of their case, the plaintiffs have examined Sh. S.K.Mathur, Advocate PW-1, Sh. Suresh Chand Gupta, plaintiff PW-2, Mr. A. Nagesh, Clerk, (House Tax Department). Defendant No. 1 on the other hand examined Sh. Surender Gupta, LDC, Housing Loan Office of the Assistant Housing Commissioner as DW-1 and Sh. Man Mohan Gupta, defendant himself as DW-2. Plaintiff S.C.Gupta, PW-2, and defendant Man Mohan Gupta, DW-2, have made generalized statements on oath to substantiate their respective stands as contained in their pleadings. Issue No.2 6. In order to prove execution of the registered Release Deed (Ex. PW-1/1), the plaintiff examined Sh. S.K.Mathur, Advocate PW-1 who is one of the attesting witnesses to the Release Deed. The original register containing the entry regarding registration of Release Deed was brought from the office of Sub-Registrar by an official from office of Sub-

Registrar and after examining the said record Sh. S.K.Mathur, PW-1, deposed that the said Release Deed dated 11.2.71 was drafted by him and also signed by him as an attesting witness. Certified true copy of Release Deed is Ext. PW1/1X. He signed the Release Deed at various places shown by points X-1. Sh. S.K.Mathur, Adv. stated that the defendant Man Mohan Gupta had also signed the Release Deed in his presence at point X 2. Sh. Mathur specifically identified the defendant Man Mohan Gupta who was present in the Court as the person who signed the Release Deed in his presence. Giving previous history of the family relations of Sh. Shambhu Mal Gupta and his own family Sh. Mathur, PW-1, stated that he knew Sh. Shambhu Mal Gupta, who was the municipal contractor as one of his first clients and they had developed family relations since 1952. He also knew defendant Man Mohan Gupta as the son of late Sh. Shambhu Mal Gupta. According to Sh.Mathur, PW-1, he drafted the Release Deed dated 11.2.71 on the instructions of defendant Man Mohan Gupta and his father Sh. Shambhu Mal Gupta. After the registration, original Release Deed was taken away by defendant Man Mohan Gupta and later on it was handed over to lala Shambhu Mal Gupta. In cross examination he was asked to explain as to why should the defendant execute a document adverse to his own interest and in response thereto Sh. Mathur gave an elaborate reply. Sh. Mathur stated in cross examination that the plot in question was purchased by Sh. Shambhu Mal Gupta from his own funds and he raised construction from his own money but in the name of Man Mohan Gupta, Defendant. Later on Sh. Shambhu Mal Gupta became apprehensive that after his death there might be some dispute with regard to the title of the said property amongst his sons. Therefore, in order to clear any doubt regarding title, the Release Deed was executed by the defendant. He further stated that at the time of execution of the Release Deed Sh. Man Mohan Gupta, defendant, was in Government service. He specifically denied the suggestion that plot in question was purchased by defendant Sh. Man Mohan Gupta from his own earnings and savings. Sh. S.K.Mathur, Adv. further deposed that during conversation, defendant Man Mohan Gupta had told him that defendant Sh. Man Mohan Gupta did not have sufficient funds to build the house and this fact was confirmed by late Sh. Shambhu Mal Gupta also. He denied the suggestion that defendant Man Mohan Gupta never instructed him to draft Release Deed nor he ever appeared or signed the Release Deed before the Sub-Registrar. In cross examination Sh. Mathur also gave names of other family members of Sh. Shambhu Mal Gupta which shows that Sh. Mathur, Advocate, was quite close to Sh. Shambhu Mal Gupta and knew about his family members also. It must be borne in mind that Sh. Mathur Advocate, PW-1, made this statement in Court on 4.5.1999 i.e about 15 years after the death of Sh. Shambhu Mal Gupta. Therefore, the criticism that Sh. Mathur made the statement under the influence of his family friend late Shambhu Mal Gupta is absolutely unjustified and deserves outright rejection. After the death of a family friend, Sh. Mathur Advocate or for that matter any other family friend with honest intentions will not take sides dishonestly in a dispute between the legal heirs of his friend. Rather he will try his best to settle the matter amicably between the descendant of his deceased friend in a manner which is just and

fair to them. I am, therefore, not inclined to accept the suggestion of learned counsel for the defendant that Sh. Mathur, Advocate, PW-1, has made a false statement. The execution of release deed to my mind, stands duly proved from the statement of Sh. Mathur, Advocate, PW-1. 7. As against this there is bare denial of by defendant Man Mohan Gupta who in his examination in chief stated that he did not executed any Release Deed in respect of property in question. No satisfactory explanation has been offered as to why a legal practitioner with standing at the Bar and a family friend Mr.Mathur, Advocate, of Sh. Shambhu Mal Gupta his father would make a false statement against him regarding his appearance before the Sub-Registrar and his executing the Release Deed, PW-1/1. Under the circumstances, bald denial of defendant Man Mohan Gupta does not inspire confidence. 8. It is important to note that even in cross examination, the defendant did not specifically deny his signatures appearing on the Release Deed dated 11.2.71. In this regard his plea in the written statement and also the contention put forward at the time of the arguments was that he has always been signing as M.m.Gupta but the signatures appearing on the Release Deed have been made as Man Mohan Gupta. At the time of the arguments, my attention was also drawn towards the signatures appearing at the various other documents e.g pleadings, bank accouts, to show that the defendant has always been signing as M.m.Gupta. To my mind this cannot be made the basis for disbelieving the execution of Release Deed by the defendant. It is entirely up to the executant to put his signatures in whatever manner he likes. Some variation in the style of signatures, therefore, will not be sufficient to belie the execution of Release Deed, particularly, when the same is attested by an Advocate and family friend who has fully supported the case. Having carefully perused the evidence on record, I find no cogent reason to disbelieve the statement of Sh. S.K.Mathur, Advocate, PW-1, who had attested the Release Deed, PW-1/1 executed by the defendant. 9. In this context the conduct of the defendant after execution of the Release Deed is also note worthy. Admittedly, he did not pay any property tax in respect of his property after 1971 nor rent realised from this property was ever credited to his account. His father died some times in the year 1986. According to defendant Man Mohan Gupta, he authorised his father to deal with the property and had complete trust in his father and taking undue advantage of this fiduciary relationship his father got the property mutated in his own name in connivance with the municipal officers. According to him he came to know about change of mutation only after the death of his father. This is rather unbelievable. Admittedly, the house tax assessment notice and bills which have been filed on record were received on the address of the property in question wherein both father and son were residing. It is, therefore, most unlikely that for this long period of 15 years from 1971-1986, the defendant had no occasion to know that the property in municipal records stands mutated in the name of his father. Similarly, it is also unbelievable that during this long period of 15 years he could not come to know the fact that the rent from the property is not being deposited in his bank account. Further, admittedly, he did not show rental income from this property in his income tax returns. On the other hand his father has been showing rental income from this property in

his own income tax returns as is evident from the copies of income tax returns of his father placed on record. This indicates that after the execution of the Release Deed on 11.2.71 the plaintiff never asserted any claim over the property in question. In receipt Ex. PW-2/38 which is rent receipt for the month of May 1988, late Sh. Shambhu Mal Gupta is shown to be the owner of property and this receipt is signed by the defendant himself on behalf of his mother. In para 5 of the written statement, defendant has admitted his signatures on this receipt but when he appeared in the witness box as DW-2, he denied his signatures thereon. This somersault considerably erodes the credibility of the defendant. 10. Further, in the year 1991, the defendant himself wrote a letter dated 5.8.91 (Ex.PW-3/5) to the Assistant Collector, MCD for supply of certified copy of survey report, Demand Collection Report, in respect of his property. In this letter, the defendant himself described his father as owner of the said property A-44, Inderpuri, Delhi. The fact that the defendant wrote such a letter to the MCD in the year 1991 much after the death of his father completely knocks out the bottom of his case. There is another letter dated 16.8.91 (Ex.PW3/7) written by the defendant to the MCD objecting to mutation being effected in the name of his father in the year 1972. According to Man Mohan Gupta, DW-2, his objection regarding mutation was rejected by the MCD as time barred. Yet the defendant did nothing in the matter thereafter. The defendant has been in Government service since 1952. He retired from the Government service in 1990. It is impossible to believe that he could not have come to know about the mutation in favor of his father during his father's life time or soon after his death. His complete silence in the matter for such a long time indicates that he had acquiesced the ownership of his father after execution of the Release Deed in 1971. 11. In view of my discussion above, I hold that defendant No. 1 had executed Release Deed dated 11.2.1971 which was duly registered. Issue No.2 is decided accordingly in favor of the plaintiff and against the defendant. Issue No.1 12. The registered Release Deed, Ex. PW-1/1, contains a recital to the following effect:- RELEASE DEED 13. THIS RELEASE DEED executed by me, MAN MOHAN GUPTA, son of L. Shambhu Mal, resident of House No. 1405, Chapparwala Kuan, Karol Bagh, New Delhi RECITETH AND WITNESSETH: 14. WHEREAS my father, L. SHAMBHU MAL, son of L.Panna Lal resident of House No. 1405, Chapparwala Kuan Karol Bagh, New Delhi, out of his own money, purchased a plot of land bearing No. A-44 in Inderpuri Colony, New Delhi from the Engineering and Industrial Corporation Limited, New Delhi and got the Sale-deed in respect of the said plot of land executed Benami in my name AND WHEREAS as my father having now constructed a building on the said plot of land, it is necessary and expedient that all doubts and clouds on the title of my said father, L. Shambhu Mal, in respect of the said plot of land and the building thereon that may be there on account of the presence of my name in the relevant sale-deed of the said plot of land be dispelled and removed for all time; NOW BE IT KNOWN TO ALL that I, MANMOHAN GUPTA aforesaid, of my own free will and without any outside influence or pressure DO HEREBY DECLARE that I have no interest, claim or title of any kind whatsoever to or in the said plot of land and the building constructed thereon and I dis-claim any

such interest, claim or title thereto in favor of my said father L. Shambhu Mal who has throughout been the real and exclusive owner of the said plot of land and the building constructed thereon. 15. IN WITNESS WHEREOF I have signed this on the 11th day of February, 1971. E X E C U T A N T Witnesses:- 1. 2. Drafted by Sh. S.K.Mathur, Advocate, Delhi. 16. The above recital in the Release Deed contains a categorical admission on the part of the defendant as to the ownership rights of his father in respect of the plot underneath as well as construction thereon of the property in question i.e. A-44, Inderpuri, Delhi. In this recital the defendant has clearly admitted that plot in question was purchased by his father from his own money but the sale deed was got executed benami in his name. He further admits that his father raised the construction from his own funds and to clear any doubt about his fathers' title, he executed the Release Deed. This specific admission on the part of the defendant must be sufficient to hold that the plot underneath was purchased by his father from his own funds in the year 1954, vide registered sale deed Ex.DW-2/1 albit in the name of defendant. Defendants' case now is that the plot underneath was purchased by him for a sum of Rs.1868/-, the first installment of Rs.450/- was paid in the year 1951 and the balance two installments were paid in the year 1954. In cross examination it was specifically put to him that plot was purchased by his father benami in his name and that 2nd installment was paid in the year 1952 but he specifically denied the suggestion. According to him last two installments were paid in the year 1954. This is contrary to the recital contained in the Sale Deed (Ex.DW-2/1) itself. The details of payment made towards sale consideration of the plot as given in the Sale Deed are as under:- 1.By way of earnest money vide receipt No. 24 dated 5.6.51 Rs.450/-. 2.Paid towards part payment of purchase price vide receipt No. 1239 dated 10.5.52 and receipt No. 1921 dated 2.7.54 Rs.1417/- 17. Thus the Sale Deed itself recite that the 2nd installment was paid in the year 1952 but the defendant has categorically denied this on oath . This means that defendant is not even aware of payments made from time to time in respect of plot in question. According to the defendant he was working with M/s Aggarwal Sons from 1.4.51 @ Rs.150 per month. He has placed on record a certificate (PX-1) issued by M/s Aggarwal Sons & Company in this regard. Admittedly this M/s Aggarwal Sons & Company is none other than the business concern of his father Sh. Shambhu Mal Gupta and this letter was issued under the signature of his father only to help him to seek some employment. The letter does not mention that defendant was a paid employee of the said concern nor does it disclose salary, if any, paid to him. He was hardly aged about 18-20 years at that time. In absence of any definite evidence to show that he was actually earning in those days, it is not possible to believe his version that he paid sale consideration of the plot from his own earnings. He got the Government job at the monthly of Rs.55/- in the year 1952 as is clear from (Ex.DW-2/5). No evidence has been placed on record to show that he was an earning hand and had sufficient funds to pay the installments towards sale consideration of the plot. The fact that he does not know even the year of the payment of the second installment clearly indicates that he had hardly any concern or knowledge about the acquisition of property

in his name at that time. The obvious inference under the circumstances would be that it is his father who paid the sale consideration in respect of the plot but the defendant's name was mentioned benamidar in the Sale Deed. Regarding the cost of construction the estimate as given by the defendant himself in his statement on oath is that he spent about Rs. 30,000/- on the construction of the property out of which he raised a loan of Rs.10,000/- from Government vide mortgage deed (Ex.PW-2/X-1). Besides, he had taken a loan of Rs.15,000/- from his mother-in-law. As regards raising of loan from mother-in-law there is no reliable evidence to prove the same. Even in his written statement there is no such plea that he raised any loan from mother-in-law for the construction of the house. Therefore, his evidence in this regard cannot be looked into being beyond pleadings. It may be that he also made some contribution towards cost of construction but the substantial amount must have been spent by his father which fact defendant himself admitted in the recital contained in the Release Deed Ex. PW-1/1 dated 11.2.71. The evidence on record is not sufficient to hold that the defendant had paid price of the plot underneath or that he had raised the construction entirely from his own funds. 18. Learned counsel for the defendant contended that plaintiffs who have come on the basis of title have to prove the ownership of suit property by deceased Sh. Shambhu Mal Gupta and the entry in the municipal record will not be sufficient to confer title on Sh. Shambhu Mal Gupta. Reliance was placed on various decisions in this regard. There is no dispute with the proposition of law that entries made in the municipal record or jamabandi are not proof of title. In order to prove that a particular transaction was benami the burden of proof lies on the party who asserts it. In order to ascertain whether a particular transaction is benami, the court has to ascertain whether the purchase money came from the person other than the person in whose favor the property is transferred. If the answer is in affirmative, the sale transaction is assumed to be for the benefit of the person who supplied the purchase money. The true character of the transaction is governed by the intention of the person who contributed the purchase money and the question of his intention has to be decided on the basis of surrounding circumstances viz. the relationship between the parties and their subsequent conduct also. As already observed in the present case there is no reliable evidence from the defendant's side to show that he had paid the price of the plot underneath from his own funds. Rather his statement on oath indicates that he is not aware as to when second installment was paid. Except his bald statement there is no material on record to indicate that he had sufficient funds available with him at that time to pay price of the plot. It will therefore be quite reasonable to presume that sale consideration was paid by his father Sh. Shambhu Mal Gupta and the defendant's name was mentioned in the Sale Deed as benami. Once the execution of Release Deed (Ex.PW-1/1) is proved which contains specific admission on the part of the defendant himself of all the relevant facts as to the investment made by his father towards sale consideration of the plot and also on the construction raised thereon, the burden of proof shifted upon the defendant. A heavy burden lies on the defendant to dislodge the weight of the admission made by him in the recital contained in the Release

Deed but the defendant has failed to do so . Under the circumstances there appears to be no reason why admission contained in the release Deed (Ex.PW 1/1) be not accepted and acted upon. An admission by itself is the best evidence to prove a fact. Moreover, as already stated the conduct of the defendant after execution of the Release Deed dated 11.2.1971 is clearly indicative of the fact that he had acquiesced the ownership of his father in respect of suit property. Under the circumstances, even though plaintiffs have not brought any direct evidence to prove that purchase of the plot in the name of the defendant was a benami transaction, they will not be prejudiced in any way because of the admission of material fact by the defendant as contained in the Release Deed and the conduct of the parties as referred to above. It is accordingly held that suit property was actually purchased by Sh. Shambhu Mal Gupta from his own funds and the defendant was named only benamidar in the Sale Deed. 19. It was next contended by the learned counsel for the defendant that Release Deed by itself cannot convey titled as it is without consideration and is not a conveyance deed. Therefore, the document Release Deed (Ex.PW-1/1) could not confer ownership rights on Sh. Shambhu Mal Gupta. This argument is clearly untenable. Once it is held that the defendant was only a benamidar, the question of his holding any right, title and interest in the suit property as true owner does not arise and therefore, there need not be any consideration for his executing Release Deed in favor of the real owner. If the person executing the Release Deed himself holds some right, title or interest in the property, release of that interest would amount to conveyance which has to be for a consideration. The question of consideration does not arise for the release of the property in respect of which he was only benamidar because benamidar himself has no right, title and interest in the property. The apex court in observed that a person who holds right, title and interest in the property even while describing the document as a Release Deed, he actually executing a deed of conveyance. A Release Deed can only feed title but cannot Transfer title . Release must be in favor of the person who already has a title to the estate. The effect of the release is only to enlarge that right. Release does not vest title where it did not exist In the present case as already held, Sh. Shambhu Mal Gupta was the real owner of the property and the defendant had no right, title and interest therein, being only a benamidar. Therefore, the release deed was sufficient to vest the property in Shambhu Mal Gupta who was real owner thereof. Since this does not amount to transfer of title the question of it being without consideration does not arise. 20. Issue No. 1 accordingly decided in favor of the plaintiff. 21. Issue No.3. In view of my finding above in issue No.1 and 2 it follows that four plaintiffs and the defendant who are class I the legal heirs of deceased Shambhu Mal Gupta will have equal share (1/5th each) in the property left behind by their deceased father late Sh. Shambhu Mal Gupta. 22. The issue is answered accordingly. 23. Issue No.4. In the result suit for partition of the property No. A-44, Inderpuri, New Delhi, deserves to be decreed with costs. Order. ORDER 24. In the result suit for partition for property number A-44, Inder Puri, New Delhi, is decreed with costs. Four plaintiffs and defendant will have equal share in the property i.e (1/5 share) each. Let a preliminary decree be drawn accordingly.