

Supreme Court of India

Vishwanath Ramchandra Iparkar vs Bhanudas Shankar Iparkar And Ors. on 4 February, 1987

Equivalent citations: JT 1987 (3) SC 163, 1987 Supp (1) SCC 625

Author: M Thakkar

Bench: B Ray, M Thakkar

ORDER M.P. Thakkar, J.

1. Special leave granted limited to the question of Survey No.7/2. Heard both the sides.

2. We are of the view that in so far as Survey No. 7/2 is concerned, the High Court was not right in rejecting the claim of appellant (original 'defendant .No. 4) that it was his self acquired property purchased benami in the name of original defendant No. 1. Admittedly, there had been an earlier transaction where the appellant had purchased a property in the name of original defendant No. 1 Shankar who was his elder brother, presumably, in view of the fact that he was in government service and did not want to go through the cumbersome procedure of obtaining permission to purchase a property. Be that as it may, in view of the evidence on record and circumstances of the case, particularly the circumstances that sale deed pertaining to Survey No.7/2 was in the possession of the appellant, the contention urged on behalf of the appellant that it was his property which he had purchased benami in the name of original defendant No. 1 appears to be well founded. Original defendant No. 1 has not been able to offer any explanation in regard to this vital circumstance. How and why was the sale deed of the said property purchased in the name of defendant No. 1 found in the possession of the appellant could have been explained away by defendant No. 1 if some convincing explanation existed. That the defendant No. 1 did not do so tells its own tale and lends strength to the appellant's claim. The trial court after taking into consideration this circumstance along with the other evidence and the circumstances had recorded a finding in favour of the appellant that Survey No. 7/2 was his property though it was purchased benami in the name of original defendant No. 1 Shankar. We are of the opinion that the trial court was right in taking this view. We accordingly allow this appeal partly to this extent and grant a declaration in favour of the appellant that Survey No.7/2 belongs to the appellant though it is purchased benami in the name of original defendant No. 1. Having regard to the fact that the appellant has already taken over the possession of Survey No.7/2 and is at present in possession thereof, no further directions are required to be issued. The appellant will be entitled to continue in possession of Survey No.7/2 by virtue of the present declaration as an owner. Subject to this modification, the order of the High Court is confirmed. The appeal is disposed of accordingly with no order as to costs.