



## MAJESTY LEGAL

Advocates & Solicitors

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### **TRANSFER OF MONEY BY HUSBAND TO WIFE - NOT A BENAMI TRANSACTION**

**(SRI SEKHAR KUMAR ROY V/S SMT. LILA ROY & ANOTHER<sup>1</sup>)**

The Calcutta High Court has clarified that the mere transfer of money from a husband to his wife for the purchase of property does not automatically qualify as a benami transaction. The court emphasized that the intention of the supplier of the consideration money is crucial in determining whether a transaction is benami. While the source of money is an important factor, it is not decisive. The court stated that the burden of proving the intention behind the transaction lies with the party asserting it as benami.

#### **HELD BY THE HON. COURT:**

- The case involved a dispute over a property purchased by the father of the husband /appellant in the name of his wife. The appellant claimed that his father had bought the property as a benami transaction in his mother's name. On the other hand, the respondents, the appellant's mother and sister, contended that the property was purchased by the mother using her own funds, and she became the absolute owner. The crucial question before the court was whether the purchase of the property constituted a benami transaction under the Benami Transaction (Prohibition) Act, 1988<sup>2</sup>.
- Hon'ble Court held that the appellant had failed to discharge the burden of proving that the transaction was benami. Hon'ble Court emphasized that the burden of proof lies with the party asserting a transfer as benami. In this case, the appellant was unable to provide any documentary evidence regarding the actual consideration paid for the property and he failed to show any motive on the part of his father to create a benami transaction. Since the title deed and related documents were in the custody of the respondents, who had paid municipal tax and got the property mutated in their name, Hon'ble Court concluded that the appellant had not provided sufficient evidence to support his claim. Therefore, the appeal was dismissed, and the judgment and decree of the lower court were upheld.

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<sup>1</sup> FA 109 of 2018 dated 07.06.2023

<sup>2</sup> Benami Transaction (Prohibition) Act, 1988

<sup>3</sup> Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.