

Understanding the Dual Ownership Structure: A Study on Ostensible Owner and Benamidar

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ABSTRACT

Ostensible owner and Benamidar are identical twins with their very own identity. Ostensible ownership and Benamidar transactions are two notions in Indian property law that entail concealed property ownership, although they have distinct legal ramifications. The article opens by describing Ostensible ownership and Benamidar transactions, as well as providing a historical backdrop for their development in Indian law. The legal concepts and legislation relating to each notion are addressed, including the theory of estoppel in the case of Ostensible ownership and the Benami Transactions (Prohibition) Act, 1988 in the case of Benamidar transactions. Ostensible ownership and Benamidar transactions' dual ownership structure brings out the intricate nature of property ownership and the governing legal principles. Ostensible ownership seeks to shield uninvolved parties, but under Indian law, Benami/ Benamidar transactions are strictly forbidden and frequently used for illegal activities. The primary distinction between the two conceptions is found in the transaction's intent. The idea of estoppel underpins Ostensible ownership, which protects innocent third parties who rely on the seeming ownership of a property. Benami/ Benamidar transactions, on the other hand, are prohibited under the Benami Transactions (Prohibition) Act of 1988. The paper explores not just the dual ownership structure of Ostensible ownership and Benamidar transactions as defined by Transfer of Property act, 1882, but also the underlying legal principles behind these two conceptions, as well as their parallels and differences.

KEYWORDS: Ostensible Owner, Benamidar, Benami Transaction, Dual Ownership structure.

INTRODUCTION:

The concepts of Ostensible ownership and Benamidar transactions have long been recognized in Indian property law, yet they continue to pose challenges for legal practitioners and scholars alike. Ostensible ownership refers to a scenario in which a person seems to be the owner of a property, but in reality, they are holding the property for the benefit of someone else. Benamidar transactions, on the other hand, entail a person possessing a property under their name, while the true ownership is held by someone else. In India, "Benamidar transactions" refer to the practice of holding property in the name of a third party referred to as "Benamidar" in order to hide the actual owner of the property. The word "Benami" comes from the Persian language which means "without a name," denoting the fact that the title deed does not list the actual owner of the land. This method is frequently utilized for shady activities like tax evasion or asset concealment from creditors. The habit of Benami transactions is still prevalent in India despite the implementation of the Benami Transactions (Prohibition) Act. The government has taken action to tighten

the act's execution and raise public understanding of the legal repercussions of Benami transactions in order to address this issue.

The term "Benaami Properties" was also coined by the government under the Income Tax Act, allowing for the attachment and confiscation of assets held by Benami. The Transfer of Property Act, 1882, which protects the rights of third parties who have relied on the Ostensible owner's possession of the property, has recognised and regulated the idea of Ostensible ownership. In situations where actual ownership of the property is confirmed, the Act also allows for the transfer of ownership from the apparent owner to the true owner. The theory of Ostensible ownership is a crucial legal idea in India because it defends uninformed third parties who might have depended on the seeming ownership of a piece of property without realising who actually owns it. It is crucial to remember that Indian law forbids the use of Ostensible ownership for illicit activities like money laundering or tax avoidance. It is acknowledged as a dual ownership structure because in both Ostensible ownership and Benami/ Benamidar transactions, there are two parties involved in the ownership of a property. The Benami Transactions (Prohibition) Act, 1988 provides for strict penalties for those involved in such transactions, including imprisonment and hefty fines.

Legal difficulties arise due to this dual ownership structure since it may be complicated identifying who really owns a piece of property. These issues are addressed by the legal rules and regulations regarding noticeable ownership and Benami/ Benamidar transactions, which work to make sure that the real owner of a piece of property is not hidden. Aside from their legal differences, Ostensible ownership and Benami/ Benamidar transactions serve different purposes and have different motivations. It is pertinent to bear in mind that in India, the usage of Benami/ Benamidar transactions has long been an area of concern. Many properties are held in the names of friends, family members, or even employees in order to conceal the true owners of the property. In addition, the legal framework for addressing these dual ownership structures is complex and requires a high degree of legal expertise to understand and apply. This can create challenges for ordinary citizens who may not have the resources or knowledge to navigate the legal system. In order to address the issues brought on by the dual ownership structure of dual ownership and Benami/ Benamidar transactions and ensure that property ownership is obvious and responsible, severe legislation, regulatory measures, and public education are often combined.

HISTORICAL BACKDROP OF BOTH THE CONCEPTS

During the British Colonial period, the Indian Landowners who had to protect their lands from expropriation by the British, gave rise to the concept of Ostensible ownership. The concept of Ostensible ownership states that an object or property belongs to someone yet seems to be the possession of someone else. This concept was later recognised by the Indian courts as a legitimate doctrine and was also incorporated into the Indian law in the contemporary era. The concept of Benamidar had also emerged around the same time period as an Ostensible owner to possess properties by avoiding specific legal transactions. Previously, Benamidar transactions were recognized in India, but the British government later hindered them. In the case of **Gopeekrist Gosain v Gungapersaud Gosain**¹, in the year 1854, Benami transactions were recognised as part of Hindu custom by the privy council. However, Benami transactions were still practiced in India, and it was not until 1988 that the Indian government passed the Benami Transactions (Prohibition) Act, which made Benami transactions illegal.

¹ <https://www.lawyerservices.in/Gopeekrist-Gosain-Versus-Gungapersaud-Gosain-1854-07-18>

In a historic judgment, the Supreme Court of India defined the word Benami Transaction as two distinct types of transactions that fall under its ambit. The Honourable Supreme Court decided the matter of **Thakur Bhim Singh v. Thakur Kan Singh**² in 1980, in which Benami transactions were widely defined as two sorts of transactions. This lawsuit claimed that two types of Benami Transactions are widely identified in India. The transaction is Benami if the true intention of the beneficial owner is not to benefit the other person on whose name the property is being purchased, in this case, the transferee holds the property for the benefit of beneficial owner who contributed the acquisition of cash to purchase the property, he is the real proprietor, whereas in the other case the transferor continues to be the real owner. The distinction between the two types of Benami transactions mentioned above is that, in the former case, there is an operative transfer from the transferor to the transferee even though the transferee holds the assets for the benefit of the person who contributed the purchase money, in the latter case, there may be no operative switch at all and the name remains with the transferor regardless of the execution of the conveyance. However, one common element in each of these cases is that the real title is separate from the Ostensible title, and they may be vested in several distinct individuals.

CHALLENGE FOR THE COURTS TO DISTINGUISH:

It is a challenge for courts in India to distinguish between Ostensible ownership and Benamidar transactions because the legal principles and evidentiary requirements for each concept are different. There are certain inherent similarities Ostensible ownership and Benami transactions. Both the notions involve a person owning property on behalf of another, and both may be used to disguise the real ownership of a property. As a result, it might be a challenge for courts to discern between the two types of transactions simply on their surface characteristics. The evidential criteria for Ostensible ownership and Benami transactions varies. The real challenge for courts arises when the facts of a particular case are not clear, or when there is conflicting evidence as to the intention of the parties involved. In such circumstances, the court must carefully analyse the information given and reach a conclusion as to the genuine nature of the transaction. The theory of estoppel applies to Ostensible ownership, which implies that the court will seek for proof of a representation made by the Ostensible owner and rely upon the other party for that representation. In contrast, the court may look for evidence of the parties' motive at the period of the transaction in Benami transactions, which may be difficult to demonstrate. Furthermore, there is a risk of abuse in both Ostensible ownership and Benamidar transactions, as they can be used to conceal the true ownership of a property or to avoid legal obligations such as taxes or debts. This further complicates the task of the courts in distinguishing between these two concepts and ensuring that justice is served.

The resemblance between both the concepts is a never-ending challenge due to its mystifying nature. In the case of Ostensible ownership, the doctrine of estoppel applies, which means that if a person has held themselves out to be the owner of a property, and another person has relied on that representation to their detriment, the first person will be estopped from denying the other person's ownership rights. In contrast, the Benami Transactions (Prohibition) Act, 1988 governs Benamidar transactions, and requires that the real ownership of the property be determined based on the intention of the parties at the time of the transaction. This requires a careful examination of the surrounding circumstances, including the source of the funds used to purchase the property and the nature of the relationship between the parties involved. A Beneficial owner is a person, whether his name is known, who benefits from the Benami Property owned

² [1980] 3 SCC 72

by a Benamidar. The Ostensible owner has no aim of impersonating anyone beneath Ostensible ownership, whereas the intention in Benami/Benamidar transactions is to conceal the genuine ownership of the property. Ostensible refers to something that looks to be true yet is not. An Ostensible owner is someone who appears to be the owner of a specific property but is not. Ostensible ownership is demonstrated by Benami transactions. A Benami transaction means that one person holds the property while another provides the consideration. Consequently, the real owner is the person who supplies the consideration, whereas the Ostensible owner is the person whose name the property is registered under.

THE ROLE OF TRANSFER OF PROPERTY ACT, 1882:

The transfer of property act, 1882, deals with the transfer of immovable property, in fact, the essential elements here are two parties with consensus ad idem. Under the Transfer of Property Act of 1882, one party transfers property to another party for a legal consideration by transferring not only the interest but also the title, enjoyment and possession of the property. Section 41 of the transfer of property act, 1882, though has certain exceptions, protects the innocent parties from the outsider's phoney demonstrations. The consequences of such a conduct will fall on the person who committed or failed to prevent the deception. The transfer of property act, 1882, under section 41 of the Act sets out that when a person acts on the express or implied consent of a person who is interested in an immovable property, the person who acts on such consent is the Ostensible owner of the property.

Transfer of a property by an Ostensible owner is one such notion that has been implemented to safeguard the rights of innocent third parties in connection with the property owners. The Judicial Committee initially used this notion in the well-known case of **Ramcoomar Koondoo v. John and Maria McQueen**³. In this case, the plaintiff, who had inherited a property through a bequest, discovered that someone else had previously acquired the property in her name and then sold it to a third party by convincing him that he had valid title to the property. It was determined that the plaintiff could not reclaim the property from the third party and that the transfer was legal in the eye of the law. The syntax utilized in this case may be found in Section 41 of the Act, which deals with Ostensible owner.

The doctrine of transfer of property by Ostensible owner is an exception to the statement 'nemo dat quod non habet,' which means that no one can present a higher right on the property which he has, at the end of the day. The Ostensible owner possesses all the hallmarks of proprietorship, such as the right to title, ownership, archives, and so on. He can shift the property for the transferee's consideration. While looking at the concepts of Ostensible Owner & Benamidar, Burden of proof plays a unique role. It creates an obligation to prove a fact to the person who claims the fact to be true. Section 115 of Indian Evidence Act, 1872, is similar to section 41 of The Transfer of Property Act, 1882. However, when a person intentionally induces another person to act, the case falls under Section 115 of the Indian Evidence Act, 1872, and the burden of proof is on the person induced to demonstrate that the transferee knew the truth and thus is not entitled to rely on the estoppel plea.

ROLE OF BENAMI TRANSACTIONS (PROHIBITION) ACT, 1988 & ITS AMENDMENTS:

The Benami Transaction (Prohibition) Act's principal goal is to prevent all persons from engaging in Benami transactions, and it's worth noting that the law went into effect in 1988 with only eight parts. The same was amended in the year 2016 with multiple additions and has 72 sections. The recently enacted

³ (1872) 11 Beng LR 46, p 52.

legislation widened the definition of a "Benami" transaction and introduced severe repercussions, bringing numerous businesses and individuals beneath the spotlight of government purview. The SC while striking down provisions in the law, held that Benami Transactions (Prohibition) Amendment Act, 2016 does not have retrospective application and the authorities cannot initiate or continue criminal prosecution or confiscation proceedings for transactions entered into prior to the coming into force of the legislation.⁴

In the case of **Mithilesh Kumari v. Prem Behari Khare**⁵, the term "any property held Benami" is not limited to any particular time, date or duration i.e. the Benami Transactions (Prohibition) Act, 1988 is retrospective in operation. If the property turns out to be held Benami, no suit, claim, or action to enforce any right in relation to it shall lie. Subsection (2) of Section 4 similarly renders defences based on any right in respect of any property held Benami null and void. Prior to the enactment of the Benami Transactions (Prohibition) Act, 1988, the Benamidar could not have any right, title, or interest in the property that the Benamidar might impart. According to the Supreme Court's decision in **Mithilesh Kumari (SUPRA)**, the Benamidar should be deemed to have title to the property on the date he accomplished the deed or release. In **Sh. Amar N. Gugnani vs. Naresh Kumar Gugnani**⁶, the courts had to determine ownership in an instance where a son paid for the property and transferred the title deed to his father as a Benami for security reasons. The courts enunciated that the expression fiduciary relationship and a relationship of a trustee cannot be so interpreted so as to in fact negate the Benami Act itself because all Benami transactions actually are in the nature of trust and create a fiduciary relationship and if the expression 'trustee or fiduciary relationship is interpreted liberally to even include within its fold a typical Benami transaction, then it would amount to holding that there is no Benami Act at all. The suit was dismissed by the courts under Section 4 (1) of the Benami Transactions (Prohibition) Act.

In the case of **M/S Ganpati Dealcom Pvt. Ltd. v Union of India & Anr**⁷, Benami Transactions (Prohibition) Amendment Act, 2016 is not applicable with retrospective effect. The petitioner stated that the purported Benami transactions occurred in 2011, well before the Amendment Act, 2016, within the period in which the Benami Transactions (Prohibition) Act, 1988 ("1988 Act"), was in effect. In order to be claimed under that amendment, the alleged breach must have occurred after the date on which the revised 1988 Act went into effect. The Supreme Court stated that the Amendment Act, 2016, profoundly altered the concepts of Benami transaction and property. The citation of instances supported the argument that the Amendment Act, 2016, cannot initiate charges against the petitioner for the alleged conduct committed by the petitioner in 2011. The Supreme Court determined that the Central government on the basis of the Amendment Act, 2016, Could not have asserted breach and unveiled prosecution in connection with a transaction in 2011. In the light of preceding circumstances, the respondent's show cause notice was quashed and set aside.

SUGGESTIONS:

Due to the dual ownership system created by tangible ownership and Benamidar transactions in Indian property law, legislation is required to provide openness, stop misuse, and uphold a level playing field. It can be tricky for courts to discern between these two concepts because of their overlaps and differences.

⁴<https://www.deccanherald.com/national/explained-the-benami-act-2016-and-changes-brought-by-supreme-court-1138840.html>

⁵ 1989 AIR 1247

⁶ MANU/DE/3774/2015

⁷ M/S Ganpati Dealcom Pvt. Ltd. v Union of India & Anr [CIVIL APPEAL No. 5783 of 2022]

Furthermore, it is crucial to make sure that justice is carried out because there is a potential of misuse in both Ostensible ownership and Benamidar transactions. In order to ensure openness and fairness in real estate transactions, as well as to prevent ownership hiding and legal responsibility avoidance, it is crucial that laws are explicit and well-defined. The existing laws, such as the Transfer of Property Act and the Benami Transactions (Prohibition) Act, can be amended to make them more effective in preventing the use of Ostensible ownership and Benamidar transactions for illegal purposes. The penalties for violating these laws may also be increased to act as a deterrent. We can be stricter in the enforcement of the existing laws to prevent the use of Ostensible ownership and Benamidar transactions for illegal purposes.

This can be achieved by increasing the resources allocated to law enforcement agencies and introducing new measures to track and identify such transactions. We should send a strong message that such practices will not be tolerated in India by holding accountable those who engage in Ostensible ownership and Benamidar transactions for illegal purposes, including the Benamidars and the true owners of the properties involved. We must also promote transparency in property transactions by introducing measures such as digitization of property records, online property registration, and mandatory disclosure of the true ownership of the property in all property transactions. This will make it harder for people to use Ostensible ownership and Benamidar transactions to conceal their true ownership of the property. By addressing the challenges, the Indian legal system may encourage accountability and openness in real estate deals, stop these tactics from being used for illicit ends, and defend the rights of any innocent third parties who might be impacted.

CONCLUSION:

In conclusion, the principles of Ostensible ownership and Benamidar transactions play an integral role in Indian property law. While the Benami Transactions (Prohibition) Act of 1988 guides Benamidar transactions, which necessitate an extensive examination of the surrounding circumstances to determine the true ownership of the property, the theory of estoppel is applied in the case of Ostensible ownership to protect innocent third parties who rely on the seeming ownership of a property. The provisions of the Benami Transactions Act, 1988 apply to the theory and concept of Ostensible ownership. Following a review of various case laws and the concept of Ostensible ownership, we have come to the conclusion that Ostensible ownership is a concept whose authenticity and validity are derived from ideas of equity and natural justice, particularly the theory of estoppels. It makes an exemption to the rule of "*nemo dat quod non habet*," allowing Ostensible owners to transfer genuine ownership rights to bona fide transferees for grounds of equity. The concept of Benami transactions is heavily linked to Ostensible ownership. In 2016, the Benami Transactions (Prohibition) Act was amended to provide a thorough regulation for authority, transaction, and other associated issues in order to build a robust legal framework for Benami transactions. The restrictions of this Act do not apply in general bona fide transactions if a person purchases property in the name of his wife or unmarried daughter. The scope of Section 41 has been narrowed as a result of the development of the Benami Transactions Act.