
(2000) 01 MP CK 0015
In the Madhya Pradesh High Court
Case No : First Appeal No. 234/95

Abdul Hameed Khan

APPELLANT

Vs

Abdul Waheed Khan

RESPONDENT

Date of Decision : 20-01-2000

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 3, 4(1), 4(2), 5, 8
Transfer of Property Act, 1882 — Section 45

Citation : (2001) ILR (MP) 62 : (2000) 1 MPHT 654 : (2001) 1 MPLJ 341

Hon'ble Judges : V.K. Agrawal, J

Bench : Single Bench

Advocate : A.S. Usmani, for the Appellant; Sobha Menon, for the Respondent

Judgement

V.K. Agrawal, J.

This appeal is directed against the judgment and decree dated 25-4-95 in Civil Suit No. 45-A/84, by I Addl. District Judge, Bhopal, whereby the suit of the defendant-appellant for partition and possession of half the portion of the suit house, was decreed.

The facts leading to the present appeal in brief are that the plaintiff-respondent filed a suit for partition alleging that the suit house was purchased by him and his brother the defendant-appellant by their joint funds. However, since the defendant-appellant is claiming right over the whole of the property, the relief for partition in equal parts of the suit house, was sought. The defendant-appellant resisted the suit and averred that the whole of the consideration was paid by the defendant-appellant, and that the plaintiff-respondent herein, did not pay any part of consideration of the suit house. It was only out of love and affection that the name of the respondent-plaintiff was got recorded along with his own name by the defendant-appellant.

The learned trial Court framed several issues including as to whether the suit house was purchased jointly by the parties and as to whether the defendant-

appellant out of love and affection got the name of his brother-the plaintiff-respondent recorded in the registered sale deed. The learned trial Court discussed all the above issues jointly and relying upon the case reported in AIR 1994 SC 1687 (which appears to be in fact Duvuru Jaya Mohana Reddy and another Vs. Alluru Nagi Reddy and others, , it was held that since the Benami Transaction (Prohibition) Act, 1988, had retrospective operation and was applicable, the defendant-appellant could not raise the above plea. It appears that the trial Court did not consider the factual aspect of the matter and did not consider the evidence in detail in the impugned judgment in view of the dictum of law of the Supreme Court in Duvuru Jaya Mohana Reddy and Anr. v. Alluru Nagi Reddy and Ors. (supra).

The learned counsel for the defendant-appellant has urged that the Supreme Court decided the case of Duvuru Jaya Mohana Reddy and Anr. (supra), relying on the decision of that Court in Mithilesh Kumar and Another Vs. Prem Behari Khare, , in which it has been held that the provisions of Benami Transaction (Prohibition) Act, 1988 (hereinafter referred to as "Act" for short) would apply to proceedings pending on the date of commencement of the "Act". However, it has been submitted that the decision in Mithilesh Kumari v. Prem Behari Khare (supra) was over-ruled by that Court in R. Rajagopal Reddy (dead) by L.Rs. and others Vs. Padmini Chandrasekharan (dead) by L.Rs., , wherein it has been observed :

"As a result of the aforesaid discussion it must be held, with respect, that the Division Bench erred in taking the view that Section 4(1) of the Act could be pressed in service in connection with suits filed prior to coming into operation of that Section. Similarly the view that u/s 4(2) in all suits filed by persons in whose names properties are held no defence can be allowed at any future stage of the proceedings that the properties are held benami, cannot be sustained. As discussed earlier Section 4(2), will have a limited operation even in cases of pending suits after Section 4(2) came into force if such defences are not already allowed earlier. It must, therefore, be held, with respect, that the decision of this Court in Mithilesh Kumar and Another Vs. Prem Behari Khare, does not lay down correct law so far as the applicability of Section 4(1) and Section 4(2) to the extent hereinabove indicated, to pending proceedings when these Sections came into force, is concerned."

It has been submitted by the learned counsel for the appellant that the suit transaction took place on 5-1-1961 when the sale deed of the suit property was got executed, and the suit was filed on 23-6-1984. The suit transaction therefore, took place, prior to coming into force of the "Act" which came into force from 5-9-1988, so far as Sections 3, 5 and 8 of the "Act" are concerned and from 19-5-1988 for the remaining provisions. Therefore, it has been submitted that the transaction in suit having taken place in the year 1961, such prior to the promulgation of the said "Act" the suit could not be hit by any of the provisions of the "Act" as has been laid down in R. Rajagopal Reddy's case

(supra). It was also submitted that the learned trial Court erred in holding otherwise, and decreeing the suit of the plaintiff-respondent on the basis of law laid down in Duvuru Jaya Mohana Reddy's case (supra).

It has further been urged by the learned counsel for the appellant that, since the trial Court has not assessed the evidence placed on record and has not given cogent, detailed and specific reasons for discarding the evidence led by the plaintiff, the matter deserves reconsideration by the learned trial Court.

The contention as above appears to be justified. It is clear that the position of law has changed in view of the pronouncement in R. Rajagopal Reddy's case (supra), and it is therefore clear that the provisions of "Act" would not affect the suit transaction of sale of the suit house. The matter deserves consideration as to whether in the facts and circumstances of the case, the plaintiff-respondent was entitled to succeed in his claim. Reference in this connection may be made to Section 45 of Transfer of Property Act, which provides for joint transfer for consideration by two or more persons.

Since the above aspects have not been considered on merits by the learned trial Court, which has not considered and appreciated the evidence placed on record, the case deserves to be remanded back for trial afresh, as has been prayed by the learned counsel for the appellant.

Accordingly, the impugned judgment and decree is set aside. The case is remanded back to the trial Court for trial afresh, in view of the observations made as above, and it is directed that the trial Court shall decide the matter in accordance with law, within a period of one year from today.