
(1993) 03 CAL CK 0024
In the Calcutta High Court
Case No : C.O. No. 3858 of 1991

Amiya Kanti Bhadra and Others

APPELLANT

Vs

Bishnupada Sur and Others

RESPONDENT

Date of Decision : 02-03-1993

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 3, 4
Civil Procedure Code, 1908 (CPC) — Section 115, 47

Citation : (1993) 1 CALLT 363

Hon'ble Judges : Rabin Bhattacharyya, J

Bench : Single Bench

Advocate : Ajit Kumar Roy, Subrata Das Gupta and Narayan Ch. Podder, for the Appellant; Manas Ranjan Chakraborty and Achyut Basu, for the Respondent

Final Decision : Dismissed

Judgement

Rabin Bhattacharyya, J.—This rule is directed against the order No. 106 dated 29.6.1991, passed by the Id. Munsiff, 4th Court, Sealdah, in Misc. Case No. 161 of 1984.

The main thrust of the application preferred u/s 47 of the CPC was that, that the Benami Transactions (Prohibition) Act, 1988 snapped of not only the right title interest of the decree holder opposite parties but also the possession with respect to the disputed property. The title to the property never developed on the decree holder opposite parties.

2. Rejection of the application u/s 47 by the learned court below has pushed them to revision for the desired objective.

3. In the background of the rejection of the claim of the judgment debtors, I shall now set out the factual premises of the case in which the instant litigation was launched.

4. The plaintiff-decree holder Jagadish Sur, since deceased, came by the disputed property of which one Subarnalata Dutta was the ostensible owner. The title to

the property was perfected by a series of litigations fought between the plaintiff-decree holder including his successors-in-interest and the judgment-debtors followed by affirmation in the appeal. Even, the apex court in the state was approached for the relief.

5. To stall the right of the decree holder-opposite parties, there was a spate of litigations of which the judgment-debtors were the authors. The suit by cooperative societies against the decree holder-opposite parties for recovery of the suit property and for permanent injunction is awaiting decision.

6. The decree holder-opposite parties when put the decree into execution passed in the title suit, triggered off a dispute in the executing court to forestall the execution of decree.

7. It is needless to repeat, that the judgment-debtors in order to subterfuge the execution of the decree passed in title suit 56.5 of 1973, preferred an application with a sinister motive to snatch an order at the peril of the interest of the decree holders. The determination of the question is if, there is any scope for interference with the order by a court of revision in exercise of the power u/s 115 of the Code of Civil Procedure, 1908.

8. The learned Advocate, Mr. Chakraborty, appearing for the decree holder opposite parties has most laboriously and succinctly contended that the order impugned does not call for any interference from the court of revision. The claim of the judgment-debtors has been assailed in various courts which could not help keeping their fingers crossed to the claim of the judgment debtors, on the basis of tangible materials on record. The present assault on the right of the decree holder-opposite parties with the aid of Section 47 of the CPC is not susceptible to both fact and law.

9. The learned Advocate appearing for the judgment-debtors has seriously disputed that the impugned order is manifestly illegal as the foundation of the right, title and possession of the decree holder-opposite parties, since regulated by the Benami Transactions (Prohibition) Act, 1988, the learned executing court overlooked it and straight away dismissed the application preferred u/s 47 of the Code of Civil Procedure. It has been further contended by him that the Benami Transactions (Prohibition) Act, 1988 is retrospective in operation and appropriately applicable to pending suits where appeal and execution are no exception. The appeal since the rehearing of the suit, it is applicable fully. Another side fact has been contended that execution originates from the decree and, therefore, the provisions of the Benami Transactions (Prohibition) Act, 1988 are not beyond the reach of suit, appeal and execution. It is a continuing process until discharge, execution and satisfaction of the decree are made.

10. I have been addressed by both the learned Advocates on the aforesaid points which invite careful consideration.

11. On a true analysis of the materials en record, the pathological history of the

case proves that the judgment-debtors on this plea or that sought to have thwarted the claim of the decree holder-opposite parties in various courts. It is found from the record that the predecessor-in-interest of the deceased decree-holder Jagadish acquired right, title, interest and possession of the property in dispute. The judgment-debtors have throughout cultivated the plea of benami which was not sustained in the court of appeal. This specious plea is sought to have been explored by the judgment-debtors, since the inception of the lis presented by late Jagadish and followed up by his heirs to secure possession.

12. The revisionist could not place any tangible material before me that they had any semblance of title to the property. Nor they have succeeded in proving that they were related to Subarnalata; nor they were heirs of Subarnalata nor they went into possession of the suit proper independent of the right of Subarnalata. The claim engineered by the judgment-debtors to cut down the right of the opposite parties was always aimed at with an oblique motive i.e. on the plea of benami which was stricken with falsehood. Even, the objection preferred by the judgment-debtors in Misc Case No. 122 of 1971 exposes the infirmity of the claim of theirs as they went into possession of the disputed property in occupation of Santilata on 2.3.71. Therefore, the plea of benami is a rumour afloat in the air. It is less said the better about benami as such tall claim by the reason of failure, to discharge the onus falls like a pack of cards.

13. The learned Advocate for the revisionist has relied on the case of Mithilesh Kumar and Another Vs. Prem Behari Khare, . The facts of the case at hand are not applicable, to the facts of the case under reference as detailed in paragraph 6 at page 1250. A synopsis of the case under reference will undo the claim of the revisionist. It is found from the case under reference that Mr. Khare's wife was survived by her two sons who were aged 2 & 3 years respectively. It was not possible for Mr. Khare to look after them and he established a relationship with Mithilesh Kumari in view of her estrangement of feeling with her husband and as a result whereof two sons were born to her. Thereafter, a decree for judicial separation was followed between Mithilesh and her husband, the object being to legalize their de facto living as man and wife.

14. In the background of the above, the acquisition of property in the name, of Mithilesh was held to be benami. It was found that consideration money was paid entirely by Mr. Khare, although the claim of Mithilesh Kumari was otherwise. She claimed that she also contributed towards the consideration money which was disbelieved by court. The circumstances listed above are very much absent to the facts and circumstances of this case.

15. Much has been canvassed about the retroactivity of Sections 3 & 4 of the Benami Transactions (Prohibition) Act, 1988. But, it will not cut the ice, in the background of signally failure of the judgment-debtors to prove any element of benami and proof of acquisition of independent right to the exclusion of Subarnalata. It is really ludicrous that a trespasser can put up a claim for benami. The judgment-debtors are rank trespassers who could not take

protection under the Act 45 of 1988. It was a matter between Jagadish Sur and Subarnalata and the judgment-debtors, being the rank trespassers having had no propinquity with her could vindicate their grievance in a court of law to secure relief. The order passed by the learned court below is water and air tight. It is not a fit case where revisional power could be exercised by the High Court u/s 115 of the Code of Civil Procedure. The case of Chaube Jagdish Prasad and Another Vs. Ganga Prasad Chaturvedi, where the Supreme Court has laid down the law relating into invoking jurisdiction in revision u/s 115 of the Code of Civil Procedure.

16. The Supreme Court observed the parameters of Section 115 of the CPC holding as follows:

- (a) that the order made by the subordinate court is within its jurisdiction;
- (b) that the case is one in which the court ought to exercise its jurisdiction; and
- (c) that in exercising the jurisdiction the court has not acted illegally i.e., in breach of some provision of law or with material irregularity i.e. by committing some error of procedure in the course of trial which is material in that way may have affected the ultimate decision.

17. Accordingly, Section 115, Civil Procedure Code, empowers the High Court, in cases where no appeal lies to satisfy itself on three matters.

18. Therefore, if an erroneous decision of subordinate court resulted in its exercising jurisdiction not vested in it by law or failing to exercise the jurisdiction so vested or acting with material irregularity or illegality in the exercise of powers of revision by the High Court is made out. If a subordinate court has jurisdiction to make the order, it made and has not acted in breach of any provision of law or committed any error of procedure which is material and may have affected the ultimate decision then the High Court has no power to interfere.

19. In the background of the above celebrated decision and the guidelines laid down by the Supreme Court, the impugned order does not call for any interference from this end. As the learned court below has rightly exercised the jurisdiction as vested in him. The executing court has given a detailed reasons in support of the order. It would not be fit and proper for this court to interfere with the order.

In the result, in my view, the revisional application is bound to fail as failed.

The revisional application, is, therefore, dismissed and the rule discharged.

Mentioned

2.3.93. Mr. Manas Ranjan Chakraborty for the Opposite Party.

Learned Advocate for the opposite party has submitted that he will deposit the cost for transmitting the order passed in the revision to the executing court as the execution is awaiting disposal. Accordingly, he is directed to put in the cost

by tomorrow and a special messenger be deputed to transmit the order of this court to the learned executing court for compliance in accordance with law.