
(1996) 02 AP CK 0027
In the Andhra Pradesh High Court
Case No : C.R.P. No. 718 of 1994

D. Mutyalu

APPELLANT

Vs

G. Kanakam

RESPONDENT

Date of Decision : 01-02-1996

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 4(2)

Citation : (1996) 3 ALT 291

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : P.S. Narayana, for the Appellant; Ch. Dhananjaya, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—This revision arises out of an order dated 23-2-1994 made in I.A.No. 1896 of 1993 in O.S.No. 26 of 1984 on the file of the Court of the Subordinate Judge, Rajahmundry. The said application was filed by the plaintiff praying the Court to record a finding that the revision petitioner-defendant is not entitled to adduce any evidence in support of his plea of benami transaction as per Ex.B-1 in view of the statutory prohibition contained in Sub-section (2) of Section 4 of the Benami Transactions (Prohibition) Act, 1988, for short "the Act. The said application is allowed by the Court below by the order under revision. Few facts which are relevant to be noted for the purpose of disposal of this Civil Revision Petition be stated briefly as under:

The respondent herein is the plaintiff. She filed the said suit O.S.No. 26 of 1984 in the Court below for a declaration of title in respect of the suit schedule house property. Earlier to the filing of the suit in the year 1984 rent control proceedings in R.C.C.No. 3 of 1979 were also filed before the Rent Control Court seeking eviction of the revision petitioner-the defendant. In the said action the revision petitioner put forth the plea that the petition schedule premises was purchased by him in the name of one Jala Rama Murthy and subsequently the said Jala Rama Murthy executed an estoppel Kararnama dated 16-1-1978 affirming the

stand taken by the defendant.

2. The learned trial Judge after noticing the provisions of Sub-section (2) of Section 4 of the Act and referring to the decisions in *B. Anasuya and Anr. v. B. Rayudu and Ors.* 1989(1) ALT 413 and *Mithilesh Kumar and Another Vs. Prem Behari Khare*, held that the defendant is prohibited under Sub-section (2) of Section 4 of the Act to lead evidence in respect of Ex.B-1. The learned counsel for the revision petitioner attacked the order under revision mainly on three grounds: Firstly, the learned Counsel would contend that the question whether a transfer is a benami transaction or not is essentially a question of fact and such a question cannot be finally adjudicated upon or decided at an interlocutory stage and that too without affording opportunity to the revision petitioner. Alternatively, the learned Counsel would point out that even otherwise no finding should have been recorded at an interlocutory stage placing reliance on the decision of the Delhi High Court in *Mahinder Singh v. Pardaman Singh*, AIR 1992 Delhi 357 and a decision of the Division Bench of this Court reported in *Mohd. Yousuf Ali and Others Vs. Ghousia Begum alias Anwar Pasha and Others*, . Thirdly but most importantly the learned counsel would point out that in view of the decision of the Apex Court reported in *R. Rajagopala Reddy v. P. Chandrasekharan* 1995 (1) SCALE 139 and *Nand Kishore Mehra Vs. Sushil Mehra*, the benami transactions effected prior to the date on which the Act came into force are not attracted by the prohibition contained in Sub-section (2) of Section 4 of the Act.

3. I do not find any necessity to pronounce the opinion of the Court upon the two contentions raised by the learned Counsel for the revision petitioners because in my considered opinion in view of the law laid down by the Apex Court in the aforementioned two decisions in *R. Rajagopal Reddy v. P. Chandra Sekharat* 1995 (1) SCALE 139 and *Nand Kishore Mehra Vs. Sushil Mehra*, the revision petition is entitled to be allowed on a short ground. There is no dispute that in the instant case the house property was purchased by the brother of the revision petitioner in the name of Jala Rama Murthy by virtue of a sale deed dated 11-1-1978 and Jala Rama Murthy executed estoppel Kararnama dated 16-1-1978. Both these transactions took place quite anterior to the date on which the Act came into force. If that is so as held by the Apex Court in the aforementioned two decisions - *R. Rajagopal Reddy v. P. Chandrasekharan* 1995 (1) SCALE 139 and *Nand Kishore Mehra Vs. Sushil Mehra*, the prohibition contained in Sub-section (2) of Section 4 of the Act is not applicable. In that view of the matter the very basis on which the application is ordered is not available to the Court. On that short ground the Civil Revision Petition is allowed and the order under revision is set aside and application I. A. No. 1896 of 1993 is rejected. No costs.