
(2010) 02 MAD CK 0026
In the Madras High Court
Case No : C.R.P. (PD) No. 973 of 2009

E. Yesodammal	Vs	APPELLANT
E. Govindan		RESPONDENT

Date of Decision : 10-02-2010

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 4, 4(1), 4(2)
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Transfer of Property Act, 1882 — Section 41

Citation : (2010) 3 BC 80

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : Subramani, for the Appellant; R.S. Ranganathan, for the Respondent

Final Decision : Allowed

Judgement

M. Jeyapaul, J.—Heard the submissions made on either side.

2. The defendant aggrieved by the dismissal of the petition filed by him under Order 7 Rule 11 of C.P.C. to reject the plaint, has preferred the present revision petition.

3. The respondent/plaintiff filed a Suit for declaration that he is the owner of the suit property. The respondent/plaintiff is none other than the eldest son of the petitioner/defendant.

4. The contention of the respondent/plaintiff is that he purchased the suit property of course in the name of his mother, as the petitioner herein was a bachelor then. The mother has no independent source of income. Therefore, he is the absolute owner of the suit property.

5. The petitioner/defendant resisted such a plea emanated from the plaintiff. The petitioner/defendant contends that she is the absolute owner of the

suit property. It is further contended that as per Section 4 of the Benami Transaction (Prohibition) Act, 1988 the respondent/plaintiff is debarred

from filing a Suit making a claim over the property which was allegedly held Benami in the name of his mother.

6. A separate petition in I.A. No. 5010 of 2007 was filed by the petitioner/defendant praying to reject the Plaint under Order 7 Rule 11 of C.P.C.

7. The learned Counsel appearing for the petitioner/defendant would submit that there is a clear bar u/s 4 of the Benami Transaction (Prohibition)

Act, 1988 to file a Suit to enforce the right in respect of the property held Benami. As the scope of the Suit falls squarely under the ambit of

Section 4 of the said Act, the Suit is liable to be rejected under Order 7 Rule 11 of C.P.C., he submits.

8. Per contra, the learned Counsel appearing for the respondent/plaintiff would contend that Section 4 of the said Act is prospective in operation

and it would not have retrospective operation with respect to the Benami transaction that took place long ago.

9. Section 4 of the Benami Transaction (Prohibition) Act, 1988 would read that no Suit, claim or action to enforce any right in respect of any

property held Benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person

claiming to be the real owner of such property. Even the real owner of the property cannot set up a defence based on any right in respect of such

property held as Benami as per the aforesaid provision of law.

10. The sum and substance of the provision u/s 4 of the Benami Transaction (Prohibition) Act, 1988 is that the real owner of the property shall not

lay any Suit after coming operation of the said Act as on 19th May, 1988 by instituting any Suit or defend the Suit which was laid as against him.

The said provision will not apply to a Suit or appeal which was already pending. The Courts have held that Section 4 of the said Act will have

prospective operation and not retrospective operation to mean that Section 4(1) and (2) of the Benami Transaction (Prohibition) Act, 1988 would

not apply to the pending Suit or Appeal.

11. The Hon"ble Supreme Court in Rajappa Hanamantha Ranoji Vs. Sri Mahadev Channabasappa and Others, , has categorically held as follows:

9. In R. Rajagopal Reddy v. Padmini Chandrasekharan, this Court has overruled

the excision in the case of Mithilesh Kumari and has held that the provisions of Section 4(1) of the Benami Transactions (Prohibition) Act, 1988 are not retrospective in operation and do not apply to pending Suits filed and entertained prior to the coming into force of Section 4.

Section 4 of the Act would not apply to a Suit filed by the plaintiff prior to the coming into operation of the Benami Transaction (Prohibition) Act,

1988. The present Suit has been filed only in the year 2005 well after the said Act came into force. If the plaintiff had already filed the Suit to

reiterate his right under the Benami Transaction (Prohibition) Act and the same is pending disposal, of course, as per the aforesaid ratio laid down

by the Hon''ble Supreme Court. Section 4(1) of the said Act will have no application as the said provision will apply only prospectively and not

retrospectively. But at any rate, the Court is unable to accept the contention of the learned Counsel for the respondent/plaintiff that Section 4(1) of

the said Act will apply only to the Benami transaction which took place after 19th May, 1988 and not to the Benami transaction which took place

prior to the coming into force of the said Act. Such a meaning which would completely nullify the very purpose of the Act cannot be assigned.

12. The learned Counsel appearing for the respondent would submit that the provision u/s 4 of the Benami Transaction (Prohibition) Act, 1988

would not apply to the past Benami transaction. Such a submission goes squarely against the ambit of the provision u/s 4 of the said Act. That is

not the involvement of the Legislature while imposing an embargo on the institution of a Suit by the real owner as against the ostensible owner to

enforce his right with respect to the Benami transaction.

13. To fortify his submission, the learned Counsel appearing for the respondent submits a decision of the Hon''ble Supreme Court in (1996) 7

SCC 55 Sankra Hali and Sankara Institute v. Kishori Lal Goenka , wherein the Hon''ble Supreme Court has held as follows:

A reading of Section 4 of the Act shows that the real owner is precluded from claiming title to the property against the person holding the same

Benami either by way of assertion or defence. Under the Act any transaction entered into prior to the coming into force of the Act, between the

ostensible owner and the real owner is not voided by any provision, whatsoever. If that be so, the execution on the release deed by Surrender

Kumar on 24.7.1954 (sic 24.12.1964) in favour of the firm had extinguished his title as an ostensible owner in favour of the firm, the real owner,

which had paid the consideration to Amar Chand Gangwal, the original vendor. Section 41 of the Transfer of Property Act, in terms states that

where with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and

transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it provided that

the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, had acted in good faith. This provision

is clearly intended to protect third party transferees who bona fide and after due care and caution purchase the property from the ostensible owner

taking him to be the real owner. It may next be noted that even if it is so assumed, we are of the opinion that in the instant case Surender Kumar

having already released his right, title and interest as ostensible owner of the property in favour of the firm, the firm had acquired complete title over

the property long before the Act came into force. Such a transaction which preceded the coming into force of the Act has not been voided by any

specific provision in the Act. We are, therefore, of the opinion that the High Court was wrong in concluding that the title continued in Surender

Kumar. We set aside that part of the High Court's finding and hold that the appellant was the owner of the property insofar as it related to the

interest of Surender Kumar therein.

That was the case where a tenant in occupation of the premises resisting the proceedings initiated for eviction, contended that the petitioner who

laid the eviction proceedings was not the real owner of the property. On facts set out in the said case, it is found that the ostensible owner released

his interest in the property in favour of the real owner admitting his position as Benamidar way back in the year 1964. Thereafter, the landlord who

purchased the property from the real owner laid eviction proceedings as against his tenant. The question arose before the Hon"ble Supreme Court

as to whether a tenant can set up a plea that the landlord is not the real owner of the property inasmuch as the transaction under which he became

the owner was hit by the provision u/s 4 of the Benami Transaction (Prohibition) Act, 1988. The Hon"ble Supreme Court held that the real owner

has got the interest of the ostensible owner way back in the year 1964 itself and thereafter the real owner alienated the entire property in favour of

the landlord in that case. In the aforesaid facts and circumstances of that case, the Hon''ble Supreme Court has held referring to Section 4 of the

said Act that such a transaction entered into prior to the coming into force of the said Act between the ostensible owner and the real owner in the

year 1964 is not voided by the provision u/s 4 of the said Act.

14. With due respect to the learned Counsel appearing for the respondent, the aforesaid decision rendered by the Hon''ble Supreme Court has no

application to the facts and circumstances of the case where the real owner makes an attempt to enforce his right as against the ostensible owner,

quite against the letter and spirit of embargo found u/s 4 of the said Act. The said provision would not have any application to a case where

ostensible owner had relinquished his right in the property in favour of the real owner of the property long prior to the coming into force of the

present Act.

15. In view of the above, the Court find that the plaintiff has filed the Suit after coming into force of the Benami Transaction (Prohibition) Act, 1988

in order to enforce his right under Benami transaction which is specifically barred u/s 4(1) of the Benami Transaction (Prohibition) Act, 1988.

16. The Trial Court has simply made an observation that sufficient materials were not produced before it to come to a decision as to whether the

subject transaction squarely falls under the provision of the Benami Transaction (Prohibition) Act, 1988 and chose to dismiss the petition filed by

the defendant seeking rejection of the Plaint. The petitioner/defendant has established that the present suit is squarely barred under law and

therefore the respondent/plaintiff cannot sustain the Suit. Therefore, the Suit filed by the plaintiff is liable to be rejected.

17. In view of the above, the order passed by the Trial Court in I.A. No. 5010 of 2007 in O.S. No. 186 of 2005 is set aside and the plaint filed

by the plaintiff in the above Suit stands rejected under Order 7 Rule 11 of C.P.C.

18. In the result, the Revision Petition is allowed. There is no order as to cost. Connected Miscellaneous Petition is closed.

Revision Petition allowed.