

(1991) 03 MAD CK 0011
In the Madras High Court

Greaves Cotton and Company	Vs	APPELLANT
J. Jamal Mohammed Abdulla		RESPONDENT

Date of Decision : 04-03-1991

Acts Referred:

Citation : (1992) 2 LW 42 : (1992) 2 MLJ 236

Hon'ble Judges : Nainar Sundaram, J

Bench : Division Bench

Judgement

Nainar Sundaram, J.—The appellant in this Letters Patent Appeal is the decree-holder and in execution proceedings the appellant wanted to

proceed against properties standing in the name of the respondent, but advancing a case that the real owner of the properties is the judgment-

debtor Jamal Mohideen Papa, who is none else than the father of the respondent. In substance, the appellant wanted to say that the respondent is

only a benamidar for his father Jamal Mohideen Papa, the judgment-debtor. The respondent preferred a claim regarding the properties. The first

court dismissed the claim petition, holding that the respondent is only a benamidar for the judgment-debtor and that the real owner is only the

judgment-debtor. The order of the first court is dated 5.8.1983. The matter was taken to this Court by way of an appeal C.M.A. No. 610 of 1983.

While the said appeal was pending, the Benami Transactions (Prohibition) Act 45 of 1988, hereinafter referred to as the Act came into effect. One

of the questions that relevantly arose for consideration, on being urged on behalf of the respondent herein, before the learned single Judge who

dealt with the appeal C.M.A. No. 610 of 1983 was as to whether the decree-holder, the appellant herein, could proceed against the properties on

the basis that the respondent held and holds the properties only benami for the judgment-debtor and the real owner is only the judgment-debtor.

The learned single Judge took note of the pronouncement of the highest court in the land, after the Act came into force, speaking on the, subject

which we shall presently refer to, and also after adverting to the scope, purport and intendment of the Act, held that it is not possible to

countenance the claim of the decree-holder, the appellant herein, that the respondent herein is only a benamidar for the judgment-debtor. The

learned single Judge has also gone into the factual questions as to whether the judgment-debtor is the real owner of the properties and the

respondent herein is only a benamidar for the judgment-debtor, and answered them against the appellant herein. As a result, the learned single

Judge allowed the appeal and set aside the order of the first court. This Letters Patent Appeal is directed against the judgment of the learned single

Judge.

2. In *Mithilesh Kumar and Another Vs. Prem Behari Khare*, , it has been countenanced that the provisions of the Act are retrospective in

operation and they will apply to appeals arising out of suits, claims or actions, since appeals are only continuation of such proceedings. The

pronouncement of the Supreme Court has been taken note of by one of us (Nainar Sundaram, J.) in *Minor Habib Rahfrian and Ors. v. Ramu*

Pandaram (1990)2 L.W. 337. That was a case of the application of the law as per the Act, which came into effect subsequently at the stage of a

second appeal.

3. However, what Mr. B. Kumar, learned Counsel for the decree-holder, the appellant herein, urges is that Section 4 brings in only a prohibition

with reference to suit, claim or action by or on behalf of the person claiming to be the real owner and in the present case the decree-holder, the

appellant herein, is not a person claiming to be the real owner and he cannot also be said to be prosecuting a suit, claim or action on behalf of a

person claiming to be the real owner, namely, judgment-debtor, and hence the provisions of the Act cannot be invoked to inhibit the prosecution of

the execution proceedings against the properties, treating the judgment-debtor as the real owner thereof. This contention has been repelled by the

learned Single Judge, and in our view, rightly also. The very pronouncement of

the Supreme Court, referred to above, has exhaustively assessed the scope, purport and intendment of the Act and inspite of that, we will not be in order to construe the set of expressions"" on behalf of a person claiming to be the real owner of such a property"" occurring in Section 4 as excluding from its ambit and purview, a decree-holder who has no other case except to say that the properties though not standing in the name of the judgment-debtor are only his, so as to be available for being proceeded against in execution. The decree-holder puts forth a case that the judgment-debtor is the real owner of the properties. That is the basis for proceeding in execution against the properties. We can only view that as a case on behalf and projecting a claim of a person, namely, the judgment-debtor as the real owner of the properties. The decree-holder indirectly confers the benefit of ownership on the judgment debtor and wants to proceed against the properties in discharge of decree-debts of the judgment-debtor so as to exonerate him therefrom. Mr. B. Kumar, learned Counsel for the decree-holder, the appellant herein, read some passages from Maxwell on the Interpretation of Statutes 12th Edition. But, on going through them, we do not find any direct relevancy in them to the present question. It is significant to note here that the judgment-debtor was not made a party to the proceedings and was never called upon to make his say on the question. It is only the voice of the decree holder, the appellant herein, which spoke and that voice was only to say that the real owner is the judgment-debtor and not the respondent herein, in whose name the properties stood. The present case, in our view, will certainly come within the mischief of Section 4. On facts, we are not prepared to accept the construction put forth by the learned Counsel for the appellant on the provisions of Section 4.

4. Even otherwise, the learned single Judge has elaborately gone into the factual question as to whether the findings of the first court that the judgment-debtor is the real owner and not the respondent herein could be accepted as tenable. The discussion by the learned single Judge of this question is found in paragraph 9 of his judgment, which runs as follows:

That apart, even on the evidence, I am of the view that the findings of the court below on the issue of benami are vitiated by perversity of approach and total misdirection to the relevant legal aspects of the case. The

Court below though formulated the legal requirements of the concept of benami, miserably failed and misdirected itself in analysing the material on record. In my view, the court below erroneously placed the burden upon the appellant and proceeded to sustain the pleas of benami since in its view, the appellant could not substantiate that he is the real owner and not benamidar. Indisputably, the property stood purchased in the name of the appellant and that as an ostensible and real owner, he has also mortgaged the said properties with Tanjore Land Development Bank. In the light of such materials on record, it is rather surprising that the court below tried to draw inferences in surmises and relying upon merely the oral evidence of D:W. 1. A reading of the evidence of P.W.I does not militate against his stand that he is the real owner and he purchased the property from and out of the funds at his disposal. Likewise the oral evidence of D.W.I does not contain any clinching evidence on the relevant and vital aspects and necessary ingredients of the concept of benami and does not in any way militate against the case of the appellant. The oral evidence of D.W.I does not contain any other concrete material to substantiate the plea that the consideration for the purchase of the property was from and out of the funds of the judgment-debtor. Not only the court below embarked upon a superficial consideration of the oral evidence, but seems to have rested its conclusion on mere conjectures, surmises and suspicion, which may not be sufficient in law to deprive the appellant, who is the ostensible purchaser of his beneficial interest in the property. The court below appears to have also proceeded on a confusion as though it was considering a transaction which is either fictitious or fraudulent, and in my view went astray from the relevant legal considerations. Except the oral evidence of D.W.I, the respondent has not chosen to cause the production of any documentary evidence in support of his case. The oral evidence of D. W. 1 is also not supported by any documentary evidence. In the shapes of cultivation accounts, or extracts from the other village accounts on records in support of the case pleaded by the respondent. Consequently, I am of the view that the evidence on record are not legally sufficient to justify the finding that the appellant is only a benami in respect of the properties in question and not the real owner. On this ground also, I am not persuaded to accept the submission of the learned

Counsel for the respondent.

We fully endorse the reasonings of the learned single Judge and the ultimate decision rendered by him on the factual question also. 5. The result of

our above discussion is that this Letters Patent Appeal does not deserve being entertained for investigating into any question further. Accordingly,

this Letters Patent Appeal is dismissed.