
(2019) 02 MP CK 0085

In the Madhya Pradesh High Court

Case No : Civil Revision No. 135 Of 2019

Gulrej & Others

APPELLANT

Vs

Md. Sabir & Another

RESPONDENT

Date of Decision : 25-02-2019

Acts Referred:

Benami Transaction Act, 1988 — Section 3, 3(1), 4(1)

Citation : (2019) 02 MP CK 0085

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Sunil Verma

Final Decision : Dismissed

Judgement

1. The petitioner/defendants have filed the present revision being aggrieved by order dated 11.2.2019 whereby application filed u/s. 9 read with Order 7 Rule 11 of the C.P.C. has been dismissed.

2. Facts of the case, in short, are as under :

(i) The respondents being the plaintiffs have filed the suit for permanent injunction in respect of suit property, as mentioned in Para 4 of the Plaint. The plaintiffs are seeking the relief that the defendants be restrained by way of permanent injunction to alienate the suit property. The cause of action accrued in their favour on 5.10.2014 when the defendants tried to sale the suit property. According to the plaintiffs, the suit property was purchased by father of the plaintiffs and their uncle viz. Md. Hussain by sale-deed dated 12.5.1971 from the joint income. Since then, defendants' sons Abdul Wahab, elder brother of Md. Shafi were permitted to reside in the suit property. Now, the defendants are claiming exclusive right over the suit property.

(ii) After notice, defendants filed an application stating that the plaintiffs are assailing the sale-deed dated 12.5.1971 as 'Benami' transaction and in view of Section 4(1) of Benami Transaction Act, 1988 the suit is not maintainable.

Learned trial Court vide order dated 11.2.2019 has turned down such objection and held that the suit is maintainable and fixed the case for plaintiffs' evidence, hence the present revision before this Court.

3. Shri Sunil Verma, learned counsel for the petitioner, submits that though the plaintiffs are claiming the relief of permanent injunction, but according to them, sale-deed dated 12.5.1971 is 'Benami' transaction, hence the suit is barred and liable to be dismissed under Order 7 Rule 11 of C.P.C. In support of his contention, he has placed reliance over the judgment of apex Court in the case of R. Rajagopal Reddy V/s. Padmini Chandrasekharan : 1995 MPLJ 402 and judgments of this Court in the case of Anand Kumar V/s. Vijay Kumar : 2012 (3) MPLJ 129; Shantabai V/s. Pushkarlal : 2012 (1) MPLJ 423; Kallu Khan V/s. Abdul Aziz : 2007 (4) MPLJ 498; Jagdish Prasad Agrawal V/s. Rajkumar : 2006 (2) MPLJ 603; Govind Sharan V/s. Har Govind : W.P. No.1911/2006 decided on 27.3.2012; Mukesh V/s. Shantilal : C.R. No.262/2007 decided on 10.8.2011; Khateeja Bai V/s. Union of India : F.A. No.160/1988 decided on 12.7.1993; Smt. Kamlesh V/s. Devendra Bahadur : S.A. No.269/1992 decided on 28.8.2006; Anand Kumar V/s. Vijay Kumar : C.R. No.409/2011 decided on 26.4.2012; Sita Bai V/s. Smt. Sadda Bai : C.R. No.9/2012 decided on 2.11.2017.

4. In the present case, the alleged sale transaction took place on 12.5.1971 i.e. much prior to enactment of Benami Transaction Act which came into force on 19.5.1988. But in the case in hand, issue under consideration is whether the suit filed in respect of the Benami Transaction which took place prior to the coming into the Benami Transaction Act in force is maintainable or not. For the applicability of Section 3 of the Act, 1988 the Apex court has held that the provision is prospective in nature and would cover the only those offence, which takes place after Section 3(1) of the Act 1988 came into the force. In the present case, the suit is filed in the year 2017, challenging the transaction took prior to the coming to force the Benami Transaction Act. This specific issue came up for consideration before the Apex Court in the case of Sankara Hali & Sankara Institute of Philosophy and Culture v. Kishori Lal Goenka : (1996) 7 SCC 55 and the Apex court has held that the transaction entered into prior to the coming into the force of the Act, 1988 between ostensible owner and the real owner is not voided by any provision whatsoever. Para 5 of the aforesaid judgment is reproduced below :

"5. The Act prohibits entering into benami transactions and says that no person shall enter into any benami transaction and further provides that whoever enters into such a transaction, shall be punishable with imprisonment for a term which may extend to three years or with fine or with both. Section 4 bars a suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is so held or against any other person by or on behalf of a person claiming to be the real owner of such property. Similarly, no defence based on any right, in respect of any property held benami, whether against the person in whose name the property is held or against any other

person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property. Section 5 deals with the question of property held benami being liable to acquisition and Section 6 lays down that nothing in the Act shall affect the provisions of Section 53 of the Transfer of Property Act or any law relating to transactions for an illegal purpose. 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 of the release deed by Surender Kumar on 24-7-1964 (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."

Emphasis supplied.

5. In view of the foregoing discussion and in the light of law laid down by the apex Court, as above, this revision fails and is hereby dismissed in limine.