(1993) 07 MP CK 0011

In the Madhya Pradesh High Court

Case No : F.A. No. 160 of 1988

Khateeja Bai APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 12-07-1993

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 2, 3(2), 4

Citation : (1993) ILR (MP) 599 : (1994) JLJ 521 : (1993) 2 MPJR 299 : (1993) 38 MPLJ 674 : (1993) MPLJ 674

Hon'ble Judges : P.P. Naolekar, J

Bench : Single Bench

Advocate : S.C. Jain, for the Appellant; P.D. Gupta, for the Respondent

Final Decision : Allowed

Judgement

P.P. Naolekar, J.

Plaintiff/appellant filed a suit for declaration that the house attached by the Income Tax dues belongs to the plaintiff /appellant and is not liable to attachment or sale, further for injunction restraining the defendants from attaching and selling the house.

As per plaintiff''s case, by registered sale deed dated 11-10-1971 House No. 22, situated at Central (Azad) Library Road, Itwara, Bhopal, was purchased by the plaintiff from Punamchand s/o Ramchand, for consideration of Rs. 30,000/- and, since then plaintiff is in possession of the house in her own right. There were Income Tax dues against the partnership Firm M/s Kabir Ahmad Haji Abdul Karim Ahmad of which the plaintiff''s husband, respondent No. 3 Shri Ahmad was the partner. On 17-12-1977 the suit house No. 22, was attached by the Income Tax Department for Income tax dues. The suit House No. 22, is exclusive property of the plaintiff, and therefore, it could not have been attached by the Income Tax Department for the Income Tax dues against the Firm of which the plaintiff''s husband was partner. The defendants Union of India and Income Tax Recovery

Officer filed their written statement contending that the house in fact and law belongs to the husband of the plaintiff/appellant and, plaintiff is only a benamindar of the suit property. The Department is within its right to attach and sell the suit property for the recovery of Income Tax dues against the Firm of which the plaintiffs husband respondent No. 3 Shri Ahmad was the partner. It was further contended that the suit as ft is filed is not maintainable as there is remedy provided for appeal under Rule 86, of the Second Schedule to the Income Tax Act, 1961, before the Tax Recovery Commissioner.

The trial Court has held that the House No. 22, of the Central (Azad) Library Road, Itwara, Bhopal, was purchased benami in the name of wife plaintiff/ appellant by her husband Ahmad and Ahmad was the real owner of the suit property. The Department was within its right to attach the suit house and recover the Income Tax dues from the property held by the plaintiff. The objection as to the maintainability of the civil suit however was rejected. The trial Court has dismissed the suit filed by the plaintiff/appellant. The plaintiff/ appellant has challenged the Judgment and decree passed by the trial Court on 2-7-1988 by filing appeal in this Court on 18-7-1988.

During the pendency of the suit in the trial Court the Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988, was promulgated on the 19th May, 1988, and has come into force at once, later on substituted by the Benami Transactions (Prohibition) Act (No. 45 of 1988) received the assent of the President of India on 5th September. 1988. The provisions of the Sections 3, 5 and 8 of the Act came into force at once on that date, and the remaining provisions were deemed to have come into force on the 19th of May, 1988.

On the basis of the Benami Transactions (Prohibition) Act. 1988 (No. 45 of 1988) (hereinafter referred to as ''Act, 1988''), counsel for the appellant argued that the respondents were and are prohibited from challenging the title of the plaintiff/ appellant as benami and, in view of the express provision made u/s 4 of the Act. 1988, the findings arrived at by the trial Court that the plaintiff is mere benamidar is liable to be set aside. On the other hand, it is contended by the counsel for the respondents that by virtue of Sub-section (2) of Section 3 of the Act, 1988, it is open for the defendants to prove that the transaction is benami where the property is held by wife or unmarried daughter and restriction imposed u/s 4(2) does not apply to the case in hand. To appreciate the arguments of both the counsel it is necessary to decipher Sections 2(a) and Section 3 and 4, which are-

2(a) "Benami transaction" means any transaction in which property is transferred to one person for a consideration paid or provided by another person."

Prohibition of benami transactions. --(1) No person shall enter into any benami transaction.

(2) Nothing in Sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed,

unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter.

(3) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this section shall be non-cognizable and bailable."

Prohibition of the right to recover property held benami. -- (1) 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.

(2) 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.

(3) Nothing in this section shall apply, --

(a) Where the person in whose name the property is held is a coparcener in a Hindu Undivided Family and the property is held for the benefit of the coparceners in the family, or (b) Where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity."

The Benami Transactions (Prohibition) Act, 1988, is a piece of prohibitory legislation and it prohibits benami transactions subject to stated exceptions and such transaction is made punishable. The Act prohibits the right to defence against recovery of benami transaction as defined in Section 2(a) of the Act. As a result of the provisions of the Act all the properties held benami at the moment of the Act coming into force may be affected irrespective of their beginning, duration and origin. This is so even if the legislation is not retrospective. Thus, the provisions of the Act shall be applicable to all transactions which have been said to be benami in nature. The reliance is placed on Mithilesh Kumar and Another Vs. Prem Behari Khare, and Om Prakash and another Vs. Jai Prakash,

Section 2(a) defines a benami transaction to be a transaction where under property is transferred in the name of one person whereas consideration for such transaction was provided or paid by some other person. The benami transaction is prohibited under Sub-section (1) of Section 3, and Section 3(3) of the Act, 1988, provides penalty of imprisonment if there is violation of prohibition imposed by sub Section (1) of Section 3 to the effect that no person shall enter into a benami transaction. Sub-section (2) of Section 3 is in the nature of exception in the limited sense whereunder although the property is purchased in the name of wife or unmarried daughter for consideration provided or paid by the husband or father of unmarried daughter, as the case may be shall be presumed to be purchased for their benefit, unless otherwise proved. Thus, property purchased in the name of wife or unmarried daughter from a consideration provided or paid by the husband or father such transaction is taken out of the vigour of Sub-section (3) of Section 3 unless it is proved that the property so purchased is not for the benefit of wife or daughter. But, for the provision of Sub-section (2) of Section 3, property purchased by husband or father in the name of wife or unmarried daughter, respectively, would have been a benami transaction prohibited under Clause (1) of Section 3 of the Act, 1988, i.e. although the transaction is benami under the definition of Clause (a) of Section 2 but it shall not be punishable u/s 3(3) of the Act. 1988, in the case of wife or unmarried daughter. Sub-section (2) of Section 3 recognises the doctrine of advancement as obtaining in the English Law. It is however permissible to bring it within the purview of Sub-section (1) of Section 3. It can be proved that intention to purchase the property is not for the benefit of the wife or unmarried daughter, and therefore, the transaction is benami and punishable under Sub-section (3) of Section 3. The evidence permissible u/s 3(2) is only to establish an offence, punishable under Sub-section (3) of Section 3; whereas under Sub-section (2) of Section 4, there is express bar for raising a defence based on any right in respect of any property held benami, against any person in whose name the property is held or against any other person, in a suit, claim or action by or on behalf of any person claiming to be the real owner of such property. Similarly, under sub Section (1) there is clear ban on filing a suit, claim or action to enforce any right to property held benami by a person or against any person by a person claiming to be the real owner or on behalf of that person. Sub-section (3) of Section 4 is an exception to the general rule whereunder if the property is held in the name of coparcener of a Hindu Undivided family and the property is held for the benefit of the coparcener or where the property stands in the name of a trustee or in the name of any person standing in a fiduciary capacity and such property is held for the benefit of other person for whom the person on whose name the property stands is a trustee or towards whom he stands in such capacity it can be proved that holder of such property is benamidar. The exception to the general provision creating complete bar is provided only in two circumstances. Nothing would have been more easy for the legislature to incorporate in the exception the property held by the wife or the unmarried daughter along with the aforesaid two exceptions, had it been the intention of the legislature to permit, challenge to the property held by the wife or unmarried, daughter. The proof of the purchase of the property held in the name of Wife or the daughter is not for their benefit, and therefore, is a benami transaction is permissible only u/s 3(2) and riot u/s 4(2) of the Act, 1988. Sections 3 and 4 operate in different fields. The provision of Section 3(2) is designed to meet certain exceptional cases whereby interest of wife or unmarried daughter in the property purchased in their name by husband or father is protected. It is only when the property is not purchased for the benefit of wife or daughter that fact can be proved, to bring it within the mischief of Sub-sections (1) and (3) of Section 3 of the Act. Evidence is permissible to prove criminal act punishable whereas there is total bar to disentitle a person of his right, title and interest in the property on the ground that such person is benamidar.

On coming into force of the Benami Transactions (Prohibition) Act. 1988, any defence raised for the proof of the fact that the property held by a person is in the capacity of benamidar is expressly prohibited. That being the position, the respondents are prohibited from raising a defence that the suit property held by the plaintiff/appellant is benami and, the real owner is respondent No. 3, husband of the plaintiff. Neither the court is permitted in law to consider such defence nor, to record its findings.

In view of the foregoing discussion, the findings recorded by the trial Court on the, defence raised that the plaintiff is not owner of the suit property and the real owner is the husband of the plaintiff is set aside. Admittedly, the property is purchased by the plaintiff by a registered sale-deed dated 11-10-1971 (Ex. P-1), and the plaintiff is the owner of the suit property. The Income Tax Authorities have no jurisdiction or authority under the law to recover the amount of Income Tax dues against the Firm of which the plaintiff''s husband was partner from the property of the plaintiff. The defendants are restrained from recovering the Income Tax dues against the firm M/s. Kabir Ahmad Haji Abdul Karim Ahmad by the attachment and sale of house No. 22, situated at Central (Azad) Library Road, Bhopal.

As the result of above discussions, the appeal is allowed but without costs.