

(2006) 09 KAR CK 0014
In the Karnataka High Court
Case No : Regular First Appeal No. 36 of 2001

Muralidhar Deshpande @ Raja and Smt. Annapurna	APPELLANT
Vs	
Hanumantha Rao Deshpande	RESPONDENT

Date of Decision : 26-09-2006

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 3, 4, 4 (1), 4 (3) (b)

Citation : (2007) 2 KarLJ 47 : (2007) 1 KCCR 159

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : M.J. Alva, for the Appellant; B.N. Suresh, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—This Regular First Appeal is by the defendants in OS No. 78 of 1994, on the file of the City Civil (Sr. Dn.), Gulbarga.

2. The suit filed by the plaintiff who is the respondent in this appeal, one for declaration of the plaintiffs title and possession of the suit schedule property, was decreed in terms of the prayer in the plaint, as per the judgment and decree dated 19-10-2000 passed in the suit and aggrieved defendants are in appeal before this Court.

3. Parties are referred to by their respective ranks before the trial court for the sake of convenience.

4. The plaintiff is the father of the first defendant and the second defendant is the wife of first defendant. The subject matter of the suit was an immovable property bearing No 1-867/33B-3 and 1-867/33B-4 of Mahaveer Nagar, Gulbarga, This property had been purchased in the name of the first defendant-son by the plaintiff-father in terms of the sale transaction dated 18-8-1989. According to the plaintiff, the father paid the sale consideration and had purchased the property in the name of his eldest son the first defendant - out of love and affection for him and because of the relationship between the parties.

5. The plaint pleading is that the suit schedule property has been purchased in the name of first defendant with an expectation that the first defendant who was behaving in an erratic manner would reform himself with some responsibility shouldered on him and to guide him properly also, the property had been purchased in the name of first defendant, but the expectation was belied, as the conduct and behaviour of first defendant proceeded from bad to worse and the first defendant also indulged in transferring the property to the second defendant-wife and in such circumstance, it became necessary for the (father)-plaintiff to file the present suit for a declaration that he is the real beneficiary and owner of the property; that the title to the property should be declared in his name and also the plaintiff is unable to recover the suit schedule property from the possession of the defendants.

6. The suit had been contested. The plea of the plaintiff that he is the beneficial owner of the suit schedule property was denied. It was the stand of the defendants that the property had been purchased only for the benefit of the first defendant; that he is full owner and he can transfer it to any person including the second defendant and therefore the plaintiff was not entitled for the declaration sought for.

7. The provisions of the Benami Transactions (Prohibition) Act, 1988 [for short, the Act] was also pleaded as a defence with regard to the maintainability of the prayer of declaration in favour of the plaintiff. One other technical/legal objection raised was that the suit haired by limitation even on the very pleadings in the plaint viz., the cause of action for the suit arose on 25-3-1991 i.e. the day when to the knowledge of the plaintiff the first defendant had denied title of the property in favour of the plaintiff and the suit itself having been filed on 25-3-1994, it was just barred by limitation and therefore the suit was not maintainable and the plaint should have been rejected on the ground of limitation.

8. In the light of these rival pleadings, the trial court had framed as many as seven issues and two additional issues, which reads as under:

Issues

1. Whether plaintiff proves that he is owner of suit schedule properties?
2. Whether defendants prove that suit schedule properties are their self acquired properties?
3. Whether the valuation of suit properties for the purpose of payment of court fee is proper and court fee paid is proper and sufficient?
4. Whether valuation of suit properties for the purpose of jurisdiction of court is proper and this Court has jurisdiction to try the suit?
5. Whether the plaintiff is entitled to the relief of declaration and possession of suit properties?

6. Whether defendants are entitled to compensatory costs of Rs. 5,000/-?

7. What decree order?

Additional Issues:

1 Whether the defendants prove that suit is not maintainable for the reasons cited (sic) in para No 1 of Addl. Pleas of W.S?

2. Whether the suit of plaintiff is in time

9. Parties went to trial on these issues. While the plaintiff got himself examined as PW1, four more witnesses were examined on behalf of the plaintiff. The first defendant examined himself as DW1 and another witness on behalf of the defendants. Ex-P1 to 74 were marked on behalf of the plaintiff and the defendants choose not to mark any document.

10. The trial court answered the issues in favour of the plaintiff including the additional issues. The additional issue No. 1 with regard to the maintainability of the suit in view of the provisions of the Act was answered in favour of the plaintiff, accepting the contention on behalf of the plaintiff that the suit was saved in the light of the exception provided under Sub-clause (b) of Sub-section (3) of Section 4 of the Act, which reads as under:

4. Prohibition of the right to recover property held benami:

(1) No suit, drum 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 be 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 co-parcener 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.

11. The trial court was of the view that the suit schedule property having been purchased by the father in the name of the son and they standing in fiduciary relationship to each other, Sub-clause (b) of Sub-section (3) of Section 4 of the Act attracted and therefore the suit is not barred.

12. In so far as the limitation is concerned, the learned judge of the trial court proceeded to hold that the suit is in time, being of the view that the suit was filed on 24-3-1994 and the cause of action for the suit having arisen on 25-3-1991, the suit was just three years from the date of cause of action and was not barred by law of limitation.

13. In this regard, it has been pointed out by the learned Counsel for the appellant that the suit in fact was filed on 25-3-1994. However, a perusal of the judgment of the trial court in para-26, answering this issue, it is specifically mentioned that the suit was filed on 24-3-1994. There is an endorsement on the original plaint which bears the date as 24-3-1994, giving details of the value of the court fee affixed on the plaint. Perhaps it is because of this reason, the trial court proceeded to hold that the suit is within time.

14. To ascertain and examine this question of limitation, the original records which are before the court were perused and it was also examined both by the counsel for appellants as well as respondent and it is noticed there is an endorsement on the plaint indicating the total stamp value furnished on the presentation of the plaint at Rs. 10850/- bearing the date 24-3-1994, as also an endorsement on the back side of first page of the plaint under the seal and sign of the learned trial judge to indicate that the plaint was presented on 24-3-1994. It is in view of this matter, the contention urged on behalf of the Sri M.J. Atva, learned Counsel for the appellants that the suit itself was barred by limitation and the plaint should have been rejected cannot, be accepted.

15. That leaves us with the rest of the judgment on the merits of the case.

16. Sri M.J. Alva, learned Counsel for the appellant has urged that even otherwise the suit was not maintainable in view of the provisions of the Act; that the suit filed on 24-3-1994 praying for a declaration that the transaction of the year 1980 in respect of a property standing in the name of the first defendant was in reality for the benefit of and real ownership of plaintiff and the suit for such purpose should not have been filed after the Act has come into force; that the learned trial judge is totally in error in coming to the conclusion that the transaction having taken place earlier to the Act coming into force i.e. in the year 1980 and that the Act not having any retrospective effect, the provisions of the Act are not applicable to hold that the suit is not attracting Section 4 of the Act.

17. It is also submitted by the learned Counsel for the appellants that even to hold that prohibition is lifted u/s 4(3)(b) of the Act in the circumstance of the case, is also not. a proper finding or one being in consonance with the statutory provisions, having regard to the very pleading, evidence placed on record and the conduct of the parties. It is submitted that if at all the pleading and the evidence was one to project a case that the transaction was a benami transaction and not a transaction which was in the nature of a owner holding the property in a fiduciary capacity i.e. the first defendant holding the property in a fiduciary capacity vis-a-vis the plaintiff. Submission is that there was no pleading to this

effect and in fact it is not so and therefore the learned trial judge could not have proceeded to conclude that the bar to maintain a suit of this nature imposed u/s 4(1) of the Act is lifted, in the instant case, in terms of the provisions of Section 4(3)(b) of the Act.

18. In support of such submission, learned Counsel for the appellant has placed reliance on the decision of the Supreme Court in the case of Association of Managements of Aided Engineering Colleges in Karnataka Vs. State of Karnataka, and submits that the Supreme Court having clearly held that a suit of the present nature cannot be maintained on and after the Act has come into force only because the transaction is benami the transaction was one which had been entered into before the Act came into force. Submission is that even when the law had been clearly declared in the case of Rajagopal Reddy [supra], the learned trial judge has not applied this law and therefore the judgment and decree passed by the trial court in favour of the plaintiff cannot be sustained; that the judgment and decree has to be set aside by allowing this appeal and the suit should be dismissed.

19. Countering the submission made by learned Counsel for the appellants, Sri Suresh, learned Counsel for the respondent has contended that the instant case is one which clearly comes within the exception u/s 4(3)(b) of the Act; that when once Section 4(3)(b) is attracted, having regard to the facts and circumstances of the case, prohibition u/s 4(1) of the Act automatically does not apply; that even after the Act has come into force, a suit for declaration that it is a benami transaction can be maintained if it is shown that there is a relationship of fiduciary capacity between the claimant and the person in whose name the property stands; that it is found that there exists a fiduciary relationship in the sense the property is held by the owner for the benefit of others and he stands in a fiduciary capacity vis-a-vis the person claiming beneficial ownership, then the Act and the prohibition u/s 4(1) of the Act does not apply and in the instant case there being no dispute about the existence of the relationship of father and the son between the plaintiff and the first defendant and the plaintiff having provided the consideration for the purchase of the property and the property having been purchased for the benefit of other children also, though it was in the name of first defendant, fiduciary capacity is obvious that having regard to the definition of fiduciary capacity", learned trial judge has rightly concluded that this is a situation where the exception u/s 4(3)(b) of the Act operates and therefore the judgment of the trial court is proper and the suit has been rightly decreed and warrants no interference in this appeal and prays for dismissal of the appeal.

20. In the light of the rival submissions, the points that arise for determination in this appeal are,

[1] As to whether the learned trial Judge should have dismissed the suit as one barred by limitation.

[2] As to whether the learned trial Judge is right in holding that the suit of the

plaintiff was not tenable, hit by the provisions of Section 4(1) of the Act.

(3) As to whether the learned trial Judge is right in holding that the circumstances justify in concluding that the provisions of Section 4(3)(b) are attracted to the facts of the case and therefore the prohibition under Section 4(1) does not operate.

21. So far as the first point is concerned, it is already indicated above that the plaint in fact had been presented as per the endorsement figuring on the very plaint that the suit had been filed on 24-3-1994 and even later while answering additional issue No. 2, though the learned trial Judge had noticed in the body of the Judgment that the suit had been filed on 24 3 1994 and therefore the suit was in time, on verification of the records it is found to be the correct factual position which is confirmed by learned Counsel for the parties also after perusing the record.

22. This question has to be answered in favour of the plaintiff as was done by the trial court and therefore it is to be held that suit was not barred by limitation.

23. With regard to the second point as to whether the prohibition u/s 4(1) operated for filing of the suit as on 24-3-1994, the learned trial Judge has taken the view that the provisions are prospective; that the transaction having been entered into in the year 1980, the provisions of the Act cannot operate on the transaction and therefore the suit can be maintained.

24. Though this is the finding, Sri. Suresh, learned Counsel for the respondent has also vehemently contended that even if this legal position is otherwise, the case of the plaintiff fell within the scope of Section 4(3)(b) i.e., the person in whose name the property is held being in a fiduciary capacity to the other person and the property is held for the benefit of such other person, the bar u/s 4(1) of the Act is lifted and therefore the suit was not only tenable but has been rightly decreed by the trial court.

25. In so far as operation of the provisions of Section 4(1) of the Act and as to whether it is prospective or retrospective as understood by the learned trial Judge is concerned, the matter was not res integra and was covered by the decision of the Supreme Court in RAJAGOPAL REDDY'S case [supra]. The confusion that has crept in the discussion by the learned trial Judge is in not realising the distinction between Sections 3 and 4 of the Act.

26. While u/s 3 of the Act, no person can enter into a benami transaction on and after the Act has come into force i.e., the said transactions are not recognised and not taken note of etc., u/s 4 of the Act, even if such transactions if had been entered into before the Act coming into force, a suit for declaration of the nature of transaction is not tenable on and after the Act has come into force.

27. It is not in dispute that the suit filed in the year 1994 is much subsequent to the Act coming into force and therefore necessarily the prohibition u/s 4(1) of the Act operates for any declaration in favour of the plaintiff to declare that the

defendant was a benamidar or a name lender for the plaintiff in respect of a particular transaction and the plaintiff is the real owner etc.,.

28. If such is the legal position, the point No. 2 has to be necessarily answered in favour of the defendants i.e., the present appellants.

29. However, this is still subject to a further rider that occurs in Section 4(3) of the Act which acts as an exception to Section 4(1) of the Act

30. The question therefore is as to whether the case of the plaintiff fell within the exception carved out in Section 4(3)(b) of the Act as is sought to be contended and as had been understood by the learned trial Judge.

31. In this regard, submission of Sri. Alva, learned Counsel for the appellants is that the mere existence of a relationship of father and son does not necessarily automatically bring about the fiduciary relationship with regard to the property also; that the person in whose name the property stands being in the role of a fiduciary person vis-a-vis the other person claiming the property is a question of fact which has to be pleaded and established in each case; that even on the very pleadings of the plaintiff, that, was not. the case pleaded by the plaintiff, that it had never been pleaded by the plaintiff that the defendant-son was holding the property for the benefit of either the father or for any other member of the family and therefore if at all the relationship and the case pleaded by the plaintiff was that the defendant-son was a benamidar for the father who had provided consideration for purchase of the property and therefore the real case of the plaintiff was that the defendant was only a benamidar and not that he was standing in a fiduciary capacity by holding the property in trust for the benefit of the plaintiff- father or any other person.

32. Sri. Suresh, learned counsel for the respondent submits that when it is a fact that the relationship does exist and having regard to the nature of relationship and the meaning of the term "fiduciary capacity" as had been judicially noticed, the learned trial Judge taking the view that the fiduciary capacity was established and therefore the case fell within the exception u/s 4(3)(b) of the Act is a proper finding and that it does not call for interference in this appeal with the Judgment and decree in favour of the plaintiff.

33. So far as this aspect of the matter is concerned, the learned trial Judge has accepted the submission with regard to the definition of the term "fiduciary capacity" as it occurred in the Book T.S. Venkatesa Aiyar's The Law of Contracts and Tenders, 17th Edition in Volume-I at Page 259 by way of illustration as to what are fiduciary relationships. It is indicated that a parent and the child, guardian and ward are in fiduciary relationship or having fiduciary relationship etc., and has therefore concluded that there is fiduciary relationship and therefore the exception u/s 4(3)(b) of the Act is attracted.

34. Submission of Sri. Alva, learned Counsel for the appellant in this appeal who was the defendant in the suit is that the mere relationship of father and son by

itself will not lead to an inference of the existence of a fiduciary capacity vis-a-vis the property; that the relationship is different and holding a property in a fiduciary capacity is different and if the property is held in a fiduciary capacity for the benefit, of some other person, it should exist in reality and should be demonstrated or made good by placing evidence.

35. In this regard. I have perused the pleadings of the parties and also been taken through the deposition of P.W.-1.

36. On a reading of the plaint, it does not indicate that the defendant was holding the property for the benefit of either the father or the other members of the family though it is pleaded that for some time the kirana shop and also a flour mill that were being run in the premises was being looked after by other members of the family, it is not the plea that it is a permanent arrangement and that it was the position on the date of filing of the suit. On the other hand, the plea of the defendant-son is that the property had been purchased in his name for his benefit and even as conceded by the plaintiff to rehabilitate the son. It is also the pleadings of the defendant that he has been enjoying the property and on the date of filing of the suit and he was in enjoyment and possession of the property as his own.

37. In fact, the subsequent conduct is also to indicate that he has treated to be in possession and enjoyment of the property like the one of effecting changes in the municipal records by having the property in the name of his wife etc.,.

38. Even a perusal of the evidence of the plaintiff does not reveal that the property was being enjoyed by others or that the defendant was so utilising the property and giving/using the usufruct of the property for the benefit of either the father or his own brothers, but on the other hand, the defendant in whose name the property was standing had enjoyed the property as his own.

39. If such is the factual position, the fiduciary capacity is never established, but on the other hand, at the best it can amount that if the plaintiff had provided the sale consideration and if it is proved that it was not his intention to actually give the property to the defendant, the defendant was a benamidar for the plaintiff.

40. In a situation of this nature, while the case does not come within the scope of the exception u/s 4(3)(b) of the Act, on the other hand, even on the very pleadings, it is a clear case of a plea of benami. Even if the version of the defendant that he had supplied any part of the consideration for the purchase of the property is to be disbelieved and it is to be taken that the plaintiff-father had provided the full sale consideration, at the best it can amount to a benami transaction and not an arrangement which attracts the provisions of Section 4(3) (b) of the Act where relationship is in the nature of a fiduciary capacity.

41. If the relationship is not one in respect of the property vis-a-vis the fiduciary capacity which exists as between the person in whose name the property stands and the person who is claiming the benefit of the property under the

arrangement and who also claims enjoyment of the property, then the exception is not attracted. The case just remains within the scope of Section 4(1) of the Act and if so, the suit is not maintainable or tenable on the day when the suit was presented.

42. This being a clear case where only the provisions of Section 4(1) of the Act is attracted, as the suit was not maintainable on the day it was presented as it is barred u/s 4(1) of the Act, the learned trial Judge should have dismissed the suit.

43. in the result, the appeal is allowed. The Judgment and Decree passed by the trial court is set aside and suit dismissed without any order as to costs throughout.