

(1994) 09 AP CK 0015

In the Andhra Pradesh High Court

Case No : Second Appeal No. 81 of 1984

Pheema Audiseshaiah

APPELLANT

Vs

Gopalam Venkata Krishnaiah (died) per L.Rs. and Others

RESPONDENT

Date of Decision : 07-09-1994

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 4(1), 4(2)
Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (1995) 1 ALT 1

Hon'ble Judges : S.V. Maruthi, J

Bench : Single Bench

Advocate : C.V. Kanyaka Prasad and A. Rama Subbaiah, for the Appellant; Y.G. Krishna Murthy, for the Respondent

Final Decision : Allowed

Judgement

S.V. Maruthi, J.—The question that was now argued after the second appeal was posted for rehearing was that in view of the Benami Transactions (Prohibition) Act, 1988 (hereinafter referred to as "the Act") the defendants are not entitled to raise the plea that the property was purchased by Shaik Ali in the year 1924 benami in the name of Abdul Khadar and the sale deed was nominally executed in the name of Abdul Khadar but the property was purchased for the benefit of Shaik Ali. The question whether the real owner of the property is entitled to plead the benami nature of transaction was considered by the Supreme Court in Mithilesh Kumari v. Prem Behari Khare, AIR 1969 SC 1247. It was held that the Act is retrospective in operation. Therefore, in view of the said judgment the defendants are not entitled to plead that the property was purchased benami in the name of the plaintiff.

2. In Duvuru Jaya Mohana Reddy and another Vs. Alluru Nagi Reddy and others, the Supreme Court reiterated what they have stated in Mithilesh Kumari v. Prem Behari Khare, AIR 1969 SC 1247. The relevant observations are as follows:

"It has been held mat the said provision would apply to proceedings pending on

the date of the commencement of the Act and the provisions were held applicable to an appeal that was pending in this Court. In view of the said decision it must be held that the defence raised by the contesting respondents that the transaction of sale under the sale deed dated October 9, 1956 executed in favour of the appellants was a benami transaction is prohibited in view of Section 4(2) of the Act."

3. The finding of both the Courts below is that the property was purchased benami in the name of Abdul Khadar. That being a finding of fact, cannot be interfered in a second appeal u/s 100 of the Code of Civil Procedure. In view of the said finding and in view of the judgments of the Supreme Court referred to above, the defendants are debarred from raising the said plea u/s 4(2) of the Act.

4. Sri Y.G. Krishna Murthy, the learned Counsel appearing for the respondents, contended that the prohibition u/s 4(2) of the Act is applicable only to the real owner and not successors-in-interest. The learned Counsel also relied on a judgment of this Court in Mohd. Yousuf Ali and Others Vs. Ghousia Begum alias Anwar Pasha and Others, . That was a case where a suit for partition in respect of "Matruka" property was filed, which was contested by the 1st defendant on the ground that the properties are his exclusive properties and whereas defendants 2 to 4 claimed item Nos. 1 to 3 of the plaint schedule properties under an oral gift. The suit was decreed for partition. During the pendency of the appeal the Act was brought into force and, therefore, the appellants filed C.M.P. No. 18096 of 1989 raising an additional ground that even assuming that item No. 2 of plaint "B" schedule house and item Nos. 1 and 2 of plaint "A" schedule lands are Benami in the name of the 1st defendant, yet they are not liable to be partitioned under the provisions of Sub-sections (1) and (2) of Section 4 of the Act. It was held that "a reading of Section 4(1) of the Act clearly shows mat the intention of the legislature is not to prohibit every type of benami transaction but only suits filed or claims made by a person claiming to be the real owner of the property. The intention of the legislature does not seem to cover every type of transaction or to prohibit any type of suit including of a suit for partition".

5. The above judgment is clearly distinguishable as it was a suit for partition and the learned judges are right in holding that the suit for partition is not prohibited under the Act. The contention of the learned Counsel that the Act is applicable only to claims made by the real owner but not successors-in-interest cannot be accepted. In this context I may refer to the language used u/s 4(1) of the Act. It reads as follows:

"4. 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."

In other words, no claim shall lie either by the real owner or on behalf of the real owner. Admittedly, the defendants are claiming on behalf of the real owner as the

successors of the real owner. Therefore, Section 4(1) of the Act applies even to the successors-in-interest. If the interpretation placed by the learned Counsel is accepted the object of Section 4(1) of the Act would be defeated and, therefore, the contention that the provision is not applicable to the successors-in-interest cannot be accepted.

6. The contention of the learned Counsel for the respondents is that they have perfected their title by adverse possession. In the pleadings a plea was taken by the defendants. However, both the Courts below have not considered this aspect in the matter.

7. The second appeal is, therefore, allowed and remanded to the trial Court for the purpose of considering whether the defendants have perfected their title by adverse possession. The costs will abide by the result of the remand order.