

(1947) 05 CAL CK 0009

In the Calcutta High Court

Case No : Civil Revision Case No. 1499 of 1946

Protiva Sundari Chaudhury

APPELLANT

Vs

The Reliance Bank Ltd. and Others

RESPONDENT

Date of Decision : 16-05-1947

Acts Referred:

Citation : (1947) 05 CAL CK 0009

Judgement

Harries, C.J.—This is a petition for revision of an order of a learned Subordinate Judge dismissing a claim under Or. 21, r. 58 of the Code of Civil Procedure. A certain house in Comilla was attached and a claim was made by one Protiva Sundari, wife of Jogendra. The attachment was made under a decree which the Opposite Party held against two brothers Surendra and Jatindra, who were also brothers of Jogendra.

2. The claimant Protiva Sundari claimed that she had purchased this property with her own money, that it stood in all the records in her name, and that she was in possession of it through tenants and had in fact been in possession of it herself sometime previously.

3. The case for the decree-holders was that the house had been bought with the joint funds of the family of Surendra, Jatindra and Jogendra and that two-thirds of the property was liable to attachment for the debts of Surendra and Jatindra.

4. The learned Judge held that Protiva Sundari was merely a benamdar for her husband and his two brothers and that the property had been bought with joint family funds.

5. To arrive at this conclusion the learned Judge had to consider a mass of evidence as to whether the transaction was a benami one or not and also as to whether the money paid for the property came from family funds or from individuals. Eventually he held that the money was family money and therefore the property belonged to the three brothers.

6. He, therefore, dismissed the claim.

7. It has, been urged before me that it was not open to the learned Judge to go into this question of benami and it appears to me that there is abundant authority for that proposition. One of the most recent cases is the case of Ganesh Lal Sarawagi Vs. Mahabir Sahu and Another, . In that case Fazl Ali, J. (as he then was) held that in a claim case arising under Or. 21, r. 58, the Court was not entitled to go into the question of benami. He purported to follow an earlier case of Ram Kishun Singh and Others Vs. Damodar Proshad and Others, . There is also abundant authority in this Court that in claim cases the matter which is to be decided is that of possession and the Court cannot go into abstruse questions of title in order to determine that question. In one particular case of Butto Kristo Poul & Co. Ltd. v. Harendra Nath Ghose 64 C.L.J. 399 [1936], Ameer Ali, J., appears to have been satisfied that a transaction was benami, yet he declined to hold so in claim proceedings. At p. 405, he observed:

I held without hesitation on the question of possession which is the only question which I should be asked to decide under rr. 59 and 60. Had this been a title suit I should have come to the conclusion with great difficulty that the Plaintiffs have failed to discharge the burden of proof. I feel that this was a benami transaction. Therefore the result is that the claim is allowed.

8. Though that very learned Judge in that case felt and would have been prepared to hold that the transaction which the claimant relied upon was benami yet he found for the claimant. There are Bench cases of this Court also to the effect that in cases under Or. 21, r. 58 the Court must not go into intricate matters of title. The authorities, therefore, compel me to hold that in the present case the Court below was not entitled to go into this mass of evidence on the question of benami and also to decide what was really a more intricate question, namely, the nature of the funds used to purchase this property.

9. On the face of it, Protiva Sundari was in possession as the records show and the only way it could be shown that the judgment-debtors were in possession was by showing that the transaction was benami and that the property had been purchased with family funds. This could not be done in proceedings under Or. 21, r. 58.

10. In the result I am bound to allow this petition, set aside the order of the learned Subordinate Judge and allow the claim of Protiva Sundari.

11. Ordinarily I should not have interfered in this case because Protiva Sundari could have brought a suit under Or. 21, r. 63. However, the authorities show that this is an exception to the rule that the Court should not interfere with orders in claim cases in revision. I wish to make it clear that I express no opinion whatever upon the correctness or otherwise of the learned Subordinate Judge's findings on the nature of the transaction and the source of the money which went to purchase this property. I am merely allowing this revision on the ground that the Judge proceeded to enter into and decide questions which by law, he could not do. The proper proceedings to decide these questions will be a suit

under Or. 21, r. 63 and there is yet ample time for the present Opposite Party to bring that suit.

12. The result, therefore, is that this Rule is made absolute.

13. In all the circumstances I think the parties here should bear their own costs in this Court and in the Court below. Let the counter affidavit filed to-day be kept on the record.