

(2009) 08 CHH CK 0009
In the Chhattisgarh High Court
Case No : First Appeal No. 439 of 1997

Ramgopal and Others

APPELLANT

Vs

Shyamlal and Another

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 3, 4
Contract Act, 1872 — Section 182
Court Fees Act, 1870 — Section 7
Depositories Act, 1996 — Section 10(1), 2(1)
Trusts Act, 1882 — Section 82

Citation : (2009) 3 CGLJ 457 : (2010) 2 MPJR 9

Hon'ble Judges : N.K. Agarwal, J

Bench : Division Bench

Advocate : Ravish Chandra Agrawal and Sanjay S. Agrawal, for the Appellant;
Pradyumna Bharat and Rajeev Bharat, for the Respondent

Final Decision : Allowed

Judgement

N.K. Agarwal, J.—This appeal is directed against the judgment and decree dated 13-8-1997 in Civil Suit No. 10A/97 passed by 7th Additional District Judge, Bilaspur whereby the suit filed by the Plaintiff has been dismissed with costs.

2. Undisputed facts of the case are that the Appellant/Plaintiff is father of Respondent No. 1/Defendant No. 1 and grandfather of Respondent No. 2/Defendant No. 2 (son of Defendant No. 1.)

(hereinafter the parties shall be referred to as per their description before the trial Court)

The Defendants are residing in the suit house. The suit land and suit house (hereinafter referred to as the suit property) constructed thereupon stands mutated in Plaintiff's name in revenue as well as SADA, Korba record, in pursuance of Dastbardarnama (Ex.P-1) executed by one Maniram son of Sevakram. The Plaintiff executed a power of attorney (Ex. P-2) in the joint name

of Defendant No. 1 and his other son Ramgopal Dixena. Defendant No. 1 executed a settlement deed in favour of the Defendant No. 2 on behalf of the Plaintiff (Ex. D-28).

3. The facts giving rise to this appeal in nutshell are that the Plaintiff instituted suit against the Defendants for seeking the relief of declaration of title and eviction of suit property by way of mandatory injunction claiming Defendant to be his licensee.

4. The Defendants by filing joint written statement denied the title of the Plaintiff over the suit property and also possession as licensee, pleaded that they are in possession of the suit property on their own right. For that, it was pleaded that Defendant No. 1 purchased the suit land benami in the name of one Maniram son of Sevakram, obtained its possession, constructed Khapraposh house, which was further renovated in the year 1991-92 and since then are residing in it in their own right and title.

It was further pleaded that in breach of assurance, the Plaintiff got executed the registered Dastbardarnama (Ex. P-1), from Maniram on his own name in place of Defendant No. 2 which is ineffective. However exercising powers conferred upon the Defendant No. 1 by Plaintiff, by power of attorney (Ex. P-2) he executed a settlement deed in favour of Defendant No. 2 with the consent of the Plaintiff. It was further pleaded that Defendants have perfected their title over the suit property by adverse possession. It was also pleaded that the suit has not been properly valued and proper Court fee has not been paid.

5. Learned trial Court on appreciation of the pleading of the parties, material placed on record and the evidence led, came to the conclusion that the Defendant No. 1 is owner of the suit property by its purchase in the name of Maniram and is in possession on his own right and title. The settlement deed (Ex. P-28) is validly executed by Defendant No. 1 in favour of the Defendant No. 2. Thus almost all the issues framed are decided against the Plaintiff. However, it was held that the suit has been properly valued at Rs. 1,25,000/- but held that advalorem Court fee is payable. Thus suit has been dismissed.

6. Shri Ravish Chandra Agrawal, Learned Sr. Advocate, appearing for the Appellants would submit:

(i) On the date of suit i.e. 5-4-1994, in view of Sections 3 and 4 of Benami Transaction (Prohibition) Act, 1988, (hereinafter referred to as the Act of 1988), the Defendants are neither entitled to claim title over the suit property by saying that they purchased the same benami in the name of Maniram, nor can defend the suit taking such plea.

(ii) On a true construction of power of attorney (Ex. P-2), it is crystal clear that the settlement deed executed by the Defendant No. 1 in favour of Defendant No. 2 is totally unauthorized and therefore, is ineffective.

(iii) Defendant No. 1 being a son, is in permissive possession of suit property and

therefore is a licensee.

(iv) The reliefs of declaration and permanent injunction are distinct and independent and therefore, proper Court fee has been paid on the relief of mandatory injunction u/s 7(iv)(d) of the Court Fee Act.

(v) The learned trial Court's finding on all issues is perverse and deserves to be set aside.

7. Per contra, Shri Pradumna Bharat and Shri Rajeev Bharat, learned Counsel appearing for the Respondents supported the decree and submitted that the Plaintiff/Appellant is required to prove his title on his own strength and cannot take benefit of the weakness of Defendants; title over the suit property not being joint property of Maniram and Plaintiff could not be acquired by the Plaintiff in pursuance of relinquishment deed (Ex. P-1); admittedly the Defendants are in settled possession over the suit property, cannot be evicted by the Plaintiff, who is not real owner.

8. Following questions arise for determination of this appeal:

(i) Whether the Plaintiff purchased the suit property benami in the name of Maniram son of Sevakram who executed the relinquishment deed (Ex. P-1) in his favour prior to coming into force of Act of 1988?

(ii) Whether in view of Sections 3 and 4 of the Act of 1988, the Defendants are prohibited from claiming title over the suit property by taking the plea of Benami purchase in the name of Maniram and also prohibited to defend the suit upon such plea?

(iii) Whether the Defendant No. 2 gets any title over the suit property in pursuance of execution of settlement deed (Ex. P-28) by the Defendant in his favour ? and

(iv) Whether the suit has been properly valued and proper Court fee has been paid ?

9. Under various legal provisions holding the field, prior to the coming into operation of this Act, benami transactions were recognized species of legal transactions pertaining to immovable properties under the Indian Trust Act, 1882 almost 113 years back, the then Legislature enacting the law laid down in Section 82 as under:

82. Transfer to one for consideration paid by another.- Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Therefore, it was a legal right of the Plaintiff to content in those days that even though the transfer of property had been affected in the name of Benamidar for

the Plaintiff from whom the consideration had moved the Plaintiff was the real owner and, therefore, if Benamidar took up a defiant attitude then the law provided a substantive right to the Plaintiff to come to the Court for getting appropriate declaration and relief of possession on that ground.

10. By applying above the settled legal principles holding the field prior to coming into force of the Act of 1988 in the facts of this case, it is clear that by deed (Ex. P-1) dated 7-7-80, i.e. the date much prior to the date of coming into force of Act of 1988, Maniram declared that he was holding the suit property as a benamidar of Plaintiff, who is real owner of the suit land as well as of house constructed thereupon and is in its possession; he is relinquishing all his rights which may be said to be accrued in his favour because of the sale deed registered in his name. Therefore, it is clear that by way of such relinquishment deed no right or title has been transferred by said Maniram in favour of the Plaintiff but he acknowledged the existing right/title of the Plaintiff over the suit property and relinquished his right, if any, which may be said to be accrued in his favour pursuant to the fact that the sale deed has been registered in his name. Pursuant thereto, the land and house stands mutated in the name of the Plaintiff. Therefore, it is not correct to say that claim of ownership putforth by the Plaintiff is based upon the relinquishment deed (Ex. P-1) and therefore, no title passes in favour of the Plaintiff over the suit property.

Moreover, the Respondent No. 1 by executing the settlement deed dated 28-11-91, in his son's favour on behalf of the Plaintiff, admitted the title of the Plaintiff over the suit property and is estopped from saying anything contrary to it, contrary to his own admissions in document as well as in written statement Para 6. The authority cited by Shri Bharat in Katragadda China Anjaneyulu and Another Vs. Katragadda China Ramayya and Others, and in Mst. Samrathi Devi Vs. Parasuram Pandey and Others, thus has no application in the facts and circumstances of the present case. Therefore, in my opinion the Plaintiff has successfully proved his title.

Second question for decision making is "whether in view of Sections 3 and 4 of the Act of 1988, the Defendants are prohibited from claiming title over the suit property by taking the plea of Benami purchase in the name of Maniram and also prohibited to defend the suit upon such plea".

11. Section 3 and 4 of the Benami Transactions (Prohibition) Act, 1988 read thus:

3. Prohibition of benami transactions.-

(1) No person shall enter into any benami transaction.

[(2) Nothing in Sub-section (1) shall apply to-

(a) 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;

(b) the securities held by a-

(i) depository as a registered owner under Sub-section (1) of Section 10 of the Depositories Act, 1996;

(ii) participant as an agent of a depository.

Explanation.- The expressions "depository" and "participant" shall have the meanings respectively assigned to them in Clauses (e) and (g) of Sub-section (1) of Section 2 of the Depositories Act, 1996.]

(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 (2 of 1974), an offence under this section shall be non-cognizable and bailable.

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.

(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.

12. A bare perusal of the aforesaid provision would reveal that no such suit, claim or action shall be permitted to be filed or entertained or admitted to the portals of the any Court for seeking relief regarding right to recover property to 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.

13. The instant suit is filed on 5-4-1994, a date much after coming into force of the Act of 1988 and, therefore, the Defendants in this case are clearly prohibited to claim any right over the suit property on the ground that they hold the suit property as benami and, therefore, the finding recorded by the trial Court on issues to the effect that the Defendant No. 1 purchased the suit property as a

benami in the name of one Maniram and constructed the house thereupon is contrary to the provisions contained in the Act of 1988.

Third question is whether the Defendant No. 2 gets any title over the suit property in pursuance of execution of settlement deed (Ex. P28) by the Defendant in his favour?

14. A bare perusal of the power of attorney (Ex. P-2) would reveal the following facts:

(i) The power of attorney has been executed in the name of Defendant No. 1 and the Plaintiff's other son Ramgopal Dixena jointly. As per description and Clause (1) of the power of attorney, the Plaintiff being unable to attend the Government offices and Courts for the purpose of his business, authority has been given. Clause (2) of the power of attorney which is most relevant clause speaks that the attorney will have the authority to plead in various Courts and (although these words are disputed by the Plaintiff on two grounds first that these words are misfit with the words used in the deed and secondly there is overwriting in these words), then Clause 4 of the attorney reads as under:

15. Shri Ravish Chandra Agrawal, learned Sr. Advocate appearing for the Plaintiff vehemently submitted that if the document is construed in its right perspective, it is clear that this deed does not authorize the Defendant No. 1 to execute the settlement deed in favour of his son and, therefore, execution of settlement deed by the Defendant No. 1 is without any right and authority which does not confer any right in favour of Defendant No. 2.

Shri Bharat, learned Counsel for the Respondent did not rebut this aspect of the matter seriously and his main stress was upon the fact that relinquishment deed does not confer title to the Plaintiff.

16. Section 182 of the Contract Act reads thus:

182. "Agent" and "principal" defined.- An "agent" is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

17. The supreme Court in case of Syed Abdul Khader Vs. Rami Reddy and Others, , has observed that what power of attorney authorizes depends on its terms and the purpose for which it is executed. Ordinarily a power of attorney is construed strictly by the Court. It was further observed in para 18 of the judgment by the Supreme Court as under:

18. The next contention is that even if the Court were to accept that the authority conferred by the power of attorney encompasses the authority to sell land, the power to sell land has hedged in with a precondition or with a prerequisite that the land could be sold either for financing litigation or if for that purpose a loan was borrowed, to repay the loan....

18. The observation of the Supreme Court in para 8 of its judgment in the Case of Abdulla Ahmed Vs. Animendra Kissen Mitter, are also relevant to resolve the controversy in the present case, reads thus:

As pointed out by K.K. Vij, J,... The parties therefore, do not ordinarily contemplate that the agent should have the authority to complete the transaction in such cases. That is why it has been held, both in England and here, that authority given to a broker to negotiate a sale and find a purchase, without furnishing him with all the terms, means "to find a man willing to become a purchaser and not to find him and make a purchaser.

19. In Janki Prasad Singh v. Yahia Hussain 13 Indian Cases 637 reported in 13 Indian Cases 637, it has been observed that the husband was authorized to execute, amongst other documents, deeds of sale and to admit execution thereof being the Registering Officer. This power of attorney obviously does not authorize the husband to enter into an agreement for sale of the property owned by his wife.

20. By applying the aforesaid principles of law in construing the power of attorney (Ex.P-2), it would be clear that the authority given by it was in fact relates to the business of the Plaintiff, not to enter into sale transaction or any transaction leading to transfer of suit property. If the words is construed in the light of the aforesaid legal proposition, it does not give authority to the Defendant to execute a registered deed of settlement in his son's favour. Therefore, execution of settlement deed by the Defendant No. 1 in favour of the Defendant No. 2 is void and ineffective and it confers no title or right over the suit property to the Defendant No. 2.

21. As far as the fact whether the Defendant is in possession of the suit property as licensee or not is concerned, once it is held that the Defendant's possession is neither in their own right nor adverse to the Plaintiff, then Plaintiff and Defendants being father and son, necessary inference would be that the Defendant No. 1 is in permissive possession and thus can be said to be a licensee and as the licence has been validly revoked, the plain tiff is entitled to the relief, as prayed for.

22. Coming to the question of payment of Court fee, two reliefs have been claimed by the Plaintiff in the suit, one is for declaration for which a fixed Court fee is provided under the Courts Fee Act has been paid. The dispute centers around the payment of Court fee with regard to the relief of injunction claimed. The relief of mandatory injunction has been claimed and thereby eviction of Defendants is sought in the form of mandatory injunction. The Plaintiff claimed relief of declaration of title with a further relief of possession of the suit property by revoking the licence of Defendants. In the facts and circumstances of the case, in my opinion, the relief of mandatory injunction seems to be consequential relief in respect of declaration as sought for by the Plaintiff and, therefore, the suit would be governed by Section 7(iv)(c) of the Court Fee Act and for the relief

of mandatory injunction, the Court fee is payable on the valuation of the suit property. Even otherwise, the relief claimed is essentially a relief for possession and if it is held that the relief of mandatory injunction is independent of declaration, even then the suit has to be valued for such relief in accordance with Section 7(v) of the Court Fee Act and for that also, the Court fee has to be paid on the market value of the property. Therefore, advalorem Court fee on Rs. 1,25,000/- i.e. as per valuation of the suit, is payable. However, no suit or appeal can be dismissed without affording an opportunity to pay the remaining Court fee.

23. In view of the above, I have no hesitation to hold that the trial Court has dismissed the suit of the Appellant Plaintiff contrary to documentary evidence and settled principles of law, and therefore, the same deserves to be set aside.

24. In the result, the appeal is allowed. The judgment and decree passed by the lower Court is set aside and instead, following decree is passed:

- (i) It is declared that the Plaintiff/Appellant is the owner of the suit property.
- (ii) The Defendants are directed to hand over vacant possession of the suit property to the Plaintiff/Appellant within 3 months from today.
- (iii) Cost of the suit throughout shall be borne by the Defendants. Counsel fee as per rules.
- (iv) The Plaintiff is directed to deposit the amount of deficit Court fee before the executing Court and the decree shall be executable only on payment of Court fee.

The decree shall be drawn accordingly.