(2004) 05 AHC CK 0004

In the Allahabad High Court

Case No : Second Appeal No. 578 of 1986

State of U.P. and Others — APPELLANT

Vs

Smt. Shyam Murti — RESPONDENT

Date of Decision : 27-05-2004

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2004) 5 AWC 4993

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : S.C, for the Appellant; R.K. Misra, N.K. Srivastava, M.B. Sharma, B. Singh and S. Rathi, for the Respondent

Final Decision : Dismissed

Judgement

Tarun Agarwala, J.—This is a Defendant''s second appeal against the judgment of the lower appellate Court dated 18.11.1985, whereby the appeal of the Plaintiff was allowed and the suit was decreed. The brief facts are that the Plaintiff filed a suit for a declaration that the house of the Plaintiff was not liable for attachment and sold in realisation of the alleged sales tax dues standing against Defendant No. 4. The Plaintiff alleged that she was the owner and in possession of the house in question and had purchased the said house vide a registered sale deed dated 2.6.1966 executed by Defendant No. 4 and others. The Plaintiff alleged that the property was purchased from her own funds and that the Defendant No. 4 had no concern and that he was never in possession of the property in question. The Plaintiff alleged that the Defendant Nos. 1, 2 and 3 initiated recovery proceedings against the Defendant No. 4 on account of alleged sale tax dues and that the Defendant Nos. 1, 2 and 3 had wrongly attached the disputed house of the Plaintiff. The Plaintiff contended that against the attachment order, the Plaintiff had filed objections, which was rejected by the Defendant No. 3. Accordingly, a notice u/s 80, CPC was served upon the Defendants and after the expiry of the period of the notice, the present suit was filed.

2. The Defendant Nos. 1, 2 and 3 contested the suit and denied the plaint allegations and contended that the house was owned by the Defendant No. 4 and that the Defendant No. 4 was in arrears of sale tax dues. The Defendants contended that the Plaintiff was the daughter-in-law of Defendant No. 4 and that the sale deed executed by the Defendant No. 4 in favour of the Plaintiff was only a benami transaction. The property was transferred in order to frustrate the recovery of the sale tax dues. The Defendant further submitted that even after the execution of the sale deed, the Defendant No. 4 continued to remain the owner and was also in possession and that the Plaintiff and her husband lived with Defendant No. 4 as members of a joint family. It was also contended that the husband of the Plaintiff and Defendant No. 4 were doing business as partners and that the Plaintiff and Defendant No. 4 were in collusion and submitted that the property in question was rightly attached by the Defendants towards the recovery of the sales tax dues.

3. The Defendant No. 4 did not contest the suit and died during the pendency of the suit and his legal representatives were brought on record.

4. The trial Court after framing the issues and after considering the evidence brought on record, dismissed the suit of the Plaintiff holding that the Defendant No. 4 was in possession of the house, even after the execution of the sale deed and that the Plaintiff and her husband were residing with Defendant No. 4 till the death of Defendant No. 4. The trial Court further found that the Defendant No. 4 was in arrears of sales tax dues and therefore, the Defendant No. 4 transferred the property surreptitiously in favour of the Plaintiff in order to defeat the claim of the tax authorities. The trial Court found that no positive evidence was led by the Defendants to prove that the Defendant No. 4 had paid the sale consideration. The trial Court, however, placed the burden upon the Plaintiff in proving that she had paid the consideration and held that the Plaintiff had not been able to prove that she had sufficient funds on her own and that she had paid the consideration. The trial Court held that since the Plaintiff did not have any sufficient funds towards the sale consideration, the trial Court, therefore, presumed that the sale consideration must have been paid by the Defendant No. 4 and therefore, dismissed the suit.

5. Aggrieved by the judgment of the trial Court, the Plaintiff filed an appeal, which was allowed and the suit of the Plaintiff was decreed. The appellate Court also held that the Defendant No. 4 continued to remain in possession of the house and that the Plaintiff and her husband used to live with the Defendant No. 4 as members of the Joint Family. The appellate Court further found that the Defendant had a motive to execute the sale deed in favour of the Plaintiff in order to defeat the recovery of the sale tax dues. The appellate Court, further, found that the presumption drawn by the trial Court with regard to the consideration being paid by the Defendant No. 4 was based on surmises and conjectures. The appellate Court further held that the mere fact that the Plaintiff did not have sufficient funds of her own could not lead to a presumption that the

Defendant No. 4 had in fact paid the consideration. The appellate Court, however, found that the Plaintiff had enough funds of her own and that she was also the owner of other immovable properties. The appellate Court further found that another property in the joint names of the Plaintiff and the Defendant No. 4 was sold, in which, she had received her share of money and that the said money was utilised towards the sale consideration while purchasing the property in question. The appellate Court, on the basis of the evidence, held that the Plaintiff had sufficient funds of her own and that she had purchased the property from her own funds. The appellate Court further found that the Defendant Nos. 1, 2 and 3 had not led any evidence nor proved that the Defendant No. 4 had paid the sale consideration. Accordingly, the appellate Court allowed the appeal and decreed the suit of the Plaintiff holding that the disputed house was not liable to be attached or sold in realisation of the sales tax dues, etc. against the Defendant No. 4.

6. Aggrieved by the judgment of the lower appellate Court, the Defendant Nos. 1, 2 and 3 have now preferred the second appeal.

7. Heard Sri V.N. Agarwal, the learned standing Counsel for the Defendants-Appellants and Sri. R.K. Mishra, the learned Counsel appearing for the Plaintiff-opposite party.

8. The sole question that arises for consideration is whether the Plaintiff is the real owner of the property in question and whether the transfer of the property by the Defendant No. 1 in favour of the Plaintiff was in fact a benami transaction. In Jaydayal Poddar (Deceased) through L.Rs. and Another Vs. Mst. Bibi Hazra and Others, , the Supreme Court held that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances to the effect that the transaction was one of benami nature. The Supreme Court further held that the question whether a particular sale is benami or not is a question of fact and for determining this question, there are no absolute formulae or acid test, which could be applied uniformly in all kinds of situations. The Supreme Court, however, laid down certain guidelines by which, the Court could decide whether a particular sale is benami or not. The circumstances indicated by the Supreme Court are: (1) the source from which the purchase money came ; (2) the nature and possession of the property, after the purchase ; (3) motive, if any, for giving the transaction a benami colour ; (4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar ; (5) the custody of the title-deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale.

9. The Supreme Court held that the aforesaid circumstances are not exhaustive and their efficacy varies according to the facts of each case. However, the Supreme Court categorically stated that the most important test for determining

whether the sale is benami and that the purchaser is not the real owner is the source from which the purchase money came.

10. In the light of the aforesaid guidelines laid down by the Supreme Court, it will be seen that in the present case, both the Courts below have given a categorical finding that the Defendant No. 4 had a motive to transfer the property in favour of the Plaintiff in order to defeat the recovery of sales tax dues. Both the Courts below have also found that the Defendant No. 4 continued to remain in possession of the property in question even after the execution of the sale deed. Both the Courts below have also found that the Plaintiff was the daughter-in-law of the Defendant No. 4. However, the lower appellate Court, after appraising the evidence on record found that the custody of the title deeds after the sale was with the Plaintiff and that the property had been recorded in her name after the execution of the sale deed. The appellate Court further found that the Plaintiff after the execution of the sale deed had been dealing with the property by paying the taxes, etc. The appellate Court further found that no evidence had been led by the Defendants-Appellants to prove that the consideration was paid by the Defendant No. 4. In fact the lower appellate Court found that the Plaintiff had sufficient funds of her own and that she had earlier purchased properties in her own name and that recently she received a certain amount of money by selling another property and therefore, the Plaintiff had sufficient funds to pay the consideration.

11. The Supreme Court in Jaydayal Poddar''s case (supra), has categorically stated that the most important test for determining whether the sale sanding in the name of one person, is in reality for the benefit of another depends upon the source of the purchase money. In the present case, the trial Court wrongly placed the burden upon the Plaintiff. The burden to prove that the sale is a benami transaction, squarely falls upon the Defendant-Appellant and, thus, the burden had to be specifically discharged by satisfactory evidence by the Defendants-Appellants. In the present case, the Appellants have not given any evidence to show that the Defendant No. 4 had paid the consideration. Further, the lower appellate Court, after appraising the evidence on record had given a categorical finding of fact that the Plaintiff had sufficient funds of her own to pay the consideration. This finding, is a finding of fact, which cannot be interfered with in the second appeal.

12. Even, otherwise it is not proper for this Court to substitute its opinion with the opinion given by the lower appellate Court being the last fact finding Court. The findings arrived at by the lower appellate Court is based on appraisal of evidence and it is not proper for this Court to reappraise the evidence on record and come to a different conclusion.

13. In Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others, , the Supreme Court held that the High Court could not substitute its own opinion for the opinion of the first appellate Court unless it finds that the conclusions drawn by the lower appellate Court were erroneous being contrary to the mandatory

provisions of law or contrary to the law pronounced by the Apex Court or was based upon inadmissible evidence.

14. In Pakeerappa Rai Vs. Seethamma (Dead) by LRs and Others, , the Supreme Court held that even an erroneous finding of fact, howsoever grave in nature, could not be interfered with in a second appeal.

15. In view of the aforesaid, I hold that the Plaintiff was the owner of the property in question and that the sale deed executed by the Defendant No. 4 in favour of the Plaintiff was not a benami transaction. Accordingly, the appeal is devoid of any merit and is dismissed. In the circumstances of the case, there shall be no order as to cost.