

(2010) 05 DEL CK 0343

In the Delhi High Court

Case No : Regular First Appeal 301 of 2008 and CM No. 9982 of 2008

Sunita Rajput and Others

APPELLANT

Vs

Yogender Ratawal and Others

RESPONDENT

Date of Decision : 31-05-2010

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 2, 3(1), 3(2), 4, 4(1)
Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, 151, 21

Citation : (2010) 5 ILR Delhi 389

Hon'ble Judges : Reva Khetrapal, J

Bench : Single Bench

Advocate : J.P. Singh and S.K.Bhaduri, for the Appellant; K.R. Gupta, for Respondents No. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Reva Khetrapal, J.—The appellants in this appeal seek to assail the judgment and decree dated 12.05.2008 passed by the learned Additional District Judge, Delhi whereby and whereunder the learned Additional District Judge by a decree passed in this behalf directed the appellants to hand over the possession of the suit premises bearing No. 2153, Naiwalan, Karol Bagh, New Delhi-110005 to the respondents No. 1 to 3 by allowing the application of the said respondents under Order XII Rule 6 of the Code of Civil Procedure.

2. The facts relevant for the disposal of the present appeal as set out in the plaint are that the respondent No. 5 Smt. Vidya Wati, since deceased, was the absolute owner in possession of the suit property bearing Municipal No. 2 135, 2136 and 2153, Nai Walan, Karol Bagh, Delhi by virtue of a registered sale deed dated 11.01.1972 executed in her favour. The respondent No. 5 Smt. Vidya Wati sold the said property to the respondents No. 1 to 3 by executing two sale deeds, both dated 19.06.1996 in favour of the respondent No. 1 and the respondents No. 2 and 3 respectively. Simultaneously, with the execution of the said registered sale deeds in favour of the respondents No. 1 to 3, the respondent No.

5 delivered physical possession of the entire first floor of the property to the respondents No. 1 to 3 herein. The possession of the ground floor was also delivered by the respondent No. 5 to the said respondents except for a room and a kitchen, which she undertook to deliver within 15 days of the execution and registration of the sale deeds. Proprietary rights and symbolic possession of a shop on the ground floor on rent with one M/s. Prakash Automobiles were also delivered to the respondent No. 1.

3. Thereupon, the appellants No. 2 and 3 through the appellant No. 1, their mother, filed a suit bearing No. 205/2001 for declaration, permanent injunction and mandatory injunction against the respondents No. 1 to 5 inter alia with the following prayers:

(a) a Decree of Declaration be passed in favour of the plaintiffs and against the defendants, declaring the sale deeds dated 19.6.1996 executed by the defendant No. 2 in favour of the defendants No. 3 to 5 as null and void, cancelling the same;

(b) a Decree for Permanent Injunction be also passed in favour of the plaintiffs and against the defendants, restraining the defendants No. 1 and 2 from handing-over the possession of their room situated on the ground floor of the disputed property which is shown as GREEN in the site plan attached, to the defendants No. 3 to 5 and further restraining the defendants from dispossessing the plaintiffs from their respective portions of ground floor of the disputed property No. 2153, Gali No. 60, Naiwala, Karol Bagh, New Delhi-5 which are shown as RED in the site plan attached illegally and forcibly or otherwise without due process of law and further restraining the defendant No. 1 and 2 from selling, transferring and parting-with the possession of the disputed property to anyone without prior division of the disputed property;

(c) a Decree for mandatory injunction be also passed in favour of the plaintiffs and against the defendants No. 3 to 5, directing them to restore the peaceful, physical and vacant possession of the entire first floor of the disputed property No. 2153, Gali No. 60, Naiwala, Karol Bagh, New Delhi-5 to the defendants No. 1 and 2 in the interest of justice.

4. It was alleged in the said suit that the suit property was not the self- acquired property of the respondent No. 5 Smt. Vidya Wati nor the respondent No. 5 was the owner of the same. The property had been purchased by the late grand father of the appellants No. 2 and 3 (the plaintiffs in the said suit) Shri Bhim Singh Rajput in the name of his wife Smt. Vidya Wati on 11.01.1972. Smt. Vidya Wati was the benami owner of the disputed property and she had no right to sell the disputed property to anyone without prior division of the said property among the legal heirs of the deceased owner Shri Bhim Singh Rajput. Smt. Vidya Wati, it was alleged, had sold the disputed property to the respondents No. 1 to 3 illegally in order to push the appellants out of the said property and to grab their share.

5. A written statement to the aforesaid suit was filed on behalf of the defendants

No. 1 and 2 (Shri Ashok Rajput and Smt. Vidya Wati, the respondents No. 4 and 5 herein) denying the allegations made in the suit, but admitting that the husband of Smt. Vidya Wati had invested the money in the purchase of the property in question in the name of Smt. Vidya Wati. A written statement was also filed by the defendants No. 3 to 5 in the said suit (the respondents 1 to 3 herein) to the effect that they were bonafide purchasers of the suit property.

6. On a consideration of the pleadings of the parties, the learned Additional District Judge in the said suit framed the following preliminary issue:

(i) Whether the suit is barred by Section 4(1) of the Benami Transaction Act, 1988?

7. The said preliminary issue was decided by the judgment and order of the learned Additional District Judge dated 15th January, 2002, the relevant portion of which reads as under:

22. The question raised is whether the suit is barred under the provisions of Benami Transaction Act, 1988. The second question raised is whether suit is hit by the principles of res judicata and constructive res judicata. In this regard we need to delve into the contentions put forth by the parties. Section 4 of the Benami Transaction Act reads as under:

Section 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 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.

23. Section 2(a) of the Benami Transaction (Prohibition) Act defines benami transaction as "any transaction in which property is transferred to one person for a consideration paid or provided by another person". The word "provided" in the said clause cannot be construed in relation to the source or sources from which the real transferee made up funds for buying the sale consideration. The words

"paid or provided" are disjunctively employed in the clause and each has to be tagged with the word "consideration". The correct interpretation would be to read it as "consideration paid or consideration provided". If consideration was paid to the transferor then the word provided has no application for the said sale. Only if the consideration was not paid in regard to a sale transaction the question of providing the consideration would arise. In some cases of sale transaction ready payment of consideration might not have been effected and then provision would be made for such consideration. The word "provided" in Section 2(a) of Benami Transaction (Prohibition) Act cannot be understood in a different sense. Any other interpretation is likely to harm the interest of persons involved in genuine transactions, e.g. a purchaser of land might have availed himself of loan facilities from financial institutions to make up purchase money. Could it be said that since the money was provided by the financial institution it was a benami transaction.

24. Thus the word "provided" in Section 2(a) cannot be construed narrowly. So even if appellant-landlord had availed himself of the help rendered by his father for making up the sale consideration that would not make the sale deed a benami transaction so as to push it into the forbidden area envisaged in Section 3(1) of the Benami Transaction (Prohibition) Act as held in Pawan Kumar Gupta Vs. Rochiram Nagdeo, In view of the above it cannot be said that if the late Shri Bhim Singh Rajput provided the consideration, the property would necessarily be Benami.

25. The learned Counsel for plaintiffs has relied on Nand Kishore Mehra v. Sushila Mehra 59 DLT 497 to support his contention. It has been held in the said case where property has been purchased in the name of wife or the daughter, suit filed or taking of defence in respect of benami transaction is not prohibited.

26. The property in question was purchased by the defendants No. 3 to 5 in 1996 vide sale deed signed by Vidya Wati wife of Shri Bhim Singh Rajput.

27. The present suit has been filed after coming into force of Benami Transaction (Prohibition) Act, 1988. Section 4(i) of the Act states that no suit claim or action to enforce any right held against a benami person in whose name property is held or against any other person lies or on behalf of any person claiming to be the real owner of the property. As such Section 4(i) of the said Act specifically prohibits the present suit. Supreme Court after consideration of earlier judgment in Mithilesh Kumar and Another Vs. Prem Behari Khare, enunciated in Om Prakash and Ors. v. Jai Prakash 1992 SCC 710 that the provisions of Benami Transaction Act would apply to properties which had been purchased benami in the name of persons other than the real owners. Under the provisions of Section 4(1) no suit claim or action to enforce any right in terms of any property held benami against the persons in whose name property is held or against any person shall lie by or on behalf of persons claiming to be the real owner of property. Section 4(1) as such specifically prohibits the filing of the present suit.

28. It is undisputed fact that the owner of the property was Smt. Vidya Wati wife

of Sh. Bhim Singh Rajput but for the plaintiffs to bring the suit under the provisions of Benami Transaction (Prohibition) Act have to show contrary intention for the purchase of the property, and prove accordingly. Sub-section 2 of the Section 3 states as under:

Section 3(2) Nothing in Sub-section shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed unless contrary is proved that the said property had been purchased for the benefit of the wife or the unmarried daughter.

29. The question raised is whether the defendant No. 2 held the property for the benefit of the coparceners. First and foremost the defendant No. 2 should also be a coparcener. Defendant No. 2 to be brought under the term coparcener within Clause (a) of Sub-section 3 of Section 4 of the said Act. Hon''ble Supreme Court has elucidated the concept of coparcenary and coparcener in *Surjit Lal Chadha v. Commissioner Income Tax Bombay* AIR 1976 109 as such "a Hindu coparcenary is much narrower body than the joint family. It includes only those persons who acquire by birth an interest in the joint or coparcenary property namely the sons, grandsons and great grandsons of the holder of the joint property for the time being, that is to say, the three generations, next to the holder in unbroken male descent. In Mitakshara Law, the right to joint family property by birth is vested in the male issues only. Females, who come in only as heirs, to obstructed heritage cannot be coparceners. This position in law has always been understood and holds good till date. The same decision also says that a Joint Hindu Family consists of persons lineally descended from a common ancestor and includes their wives and unmarried daughters. The daughter, on marriage, ceases to be a member of her father''s family and becomes a member of her husband''s family.

30. Therefore as per the said judgment Smt. Vidyawati, defendant No. 2 cannot be termed as a coparcener and as such Kumari Swati, the plaintiff No. 1 also does not come within the ambit of coparcener and accordingly, Section 4 Sub-section 3 the exception to general rule under Clause (a) is not applicable in the present case. The question then would arise whether plaintiff No. 2 the male child of Ashok Rajput the grand child of late Shri Bhim Singh Rajput was entitled to claim the relief? The answer would have to be in negative.

31. The plaintiffs at the time of death of Sh. Bhim Singh Rajput were not even born so it cannot be said that the property was held for the benefit of the plaintiffs. For the Clause (a) of Sub-section (3) of Section 4 to be applicable the defendant No. 2 would have to be a coparcener. Defendant No. 2 cannot be termed as a coparcener as at the relevant time Bhim Singh Rajput and Ashok Kumar Rajput were the only two male members of the family and said defendant No. 1 has not challenged the sale by defendant No. 2. In the suit filed in the Court of Sh. P.K. Saxena, Civil Judge, Delhi, the defendant No. 1 was overtly eager in admitting the ownership of Smt. Vidyawati W/o Sh. Bhim Singh. From the facts and circumstances of the case it seems that legitimate right of defendants Nos. 3 to 5 is being thwarted on a pretext of a quarrel within the

family.

32. The provision was further elucidated in the illustrated suit for partition and possession wherein, a plea of benami property was raised. It was held that Act of 1988 to apply to every suit filed after coming into effect of the Act even if transactions was for a period prior to passing of Act, it was not open to plaintiff to agitate in 1996 that suit property was benami in hands of defendant. Suit deserves to be rejected. It was held: An argument was raised by the learned Counsel for the plaintiffs that the title deeds of property relate to 1972 and/or earlier and therefore the Act shall not preclude the filing of the suit in 1996. There is a plethora of precedents to the effect that the Act would apply on a construction of the explicit language of Section 4(1) of the Act, to every suit filed after coming into effect of the Act even if the transaction is for a period prior to the passing of the Act. In this view the suit is clearly not maintainable.

"In my considered opinion the suit deserves to be rejected at the threshold for the reasons that it is not open to the plaintiffs to agitate, in 1996 that the suit property was Benami in the hands of defendant No. 1. This plea is barred u/s 4(1) of the Act. No purpose whatsoever will be served in keeping the litigation live; it is not the interest of justice of any of the parties since its consideration has been statutorily barred. I accordingly dismiss the suit." This proposition was enunciated in *Santosh Malik v. Maharaj Krishan* 1999 (82) DLT 862 by Hon"ble Mr. Justice Vikramajit Sen.

33. For the foregoing reasons and as per (82) 1999 page 862 (supra) wherein it was held that no useful purpose would be served if the case as in the present is kept pending in view of there being a total prohibition against filing of suit based on benami transaction. The property not being held by a coparcener for the benefit of other coparceners as per Section 4(3)(a) of the Benami Transaction (Prohibition) Act, the plaintiff is not entitled to any relief and as such the suit of the plaintiff is liable to be dismissed under the facts and circumstances of the case.

34. Consequently the suit of the plaintiff is dismissed with no order as to costs. Decree sheet be drawn. File be consigned to record room.

8. In the above backdrop, the respondents No. 1 to 3 instituted the suit from which the present appeal arises, being Suit No. 295/04/03 for recovery of possession, mesne profits/damages for use and occupation and perpetual injunction against the appellants No. 1 to 3 and the respondents No. 4 and 5. The respondents No. 4 and 5 chose not to contest the suit and were proceeded ex parte. In the written statement filed by the appellants, it was contended that the respondent No. 5 Smt. Vidya Wati had no right or authority to sell the entire property as it was a Hindu undivided family property. It was averred that the property was purchased by her husband late Shri Bhim Singh Rajput with his money. It was further contended that both the sale deeds were for a sum of Rs. 1,00,000/- each, totalling Rs. 2,00,000/-, while the market value of the property

was more than Rs. 40,00,000/- in the year 1996. It was stated that the appellant No. 1 was the wife and the appellants No. 2 and 3 were the minor children of the respondent No. 4 and the suit property was the matrimonial home of the appellant No. 1, who, along with the appellants No. 2 and 3, was staying in the suit property. It was alleged that the respondent No. 4, the father of the appellants No. 2 and 3, was not providing any maintenance either to them or the appellant No. 1 and the respondents were in collusion with each other.

9. After the pleadings of the parties had been filed, the respondents No. 1 to 3 (the plaintiffs in Suit No. 295/04/03) moved an application under Order XII Rule 6 read with Section 151 CPC, relying upon the judgment of the learned Additional District Judge in Civil Suit No. 205/2001. It was stated that the said judgment having attained finality and the Court having negated the defence of the appellants (the defendants No. 3 to 5 in the suit) that the suit property was a Hindu undivided property by judgment dated 15.01.2002, the present suit was liable to be decreed.

10. Adverting to the provisions of Order XII Rule 6 CPC and concluding that the provisions thereof could be invoked when the defence raised by the defendant even if taken to be correct would not constitute a defence in law, and that admissions could be inferred from the facts and circumstances as was apparent from the use of the word "otherwise" by the legislature, the learned trial court allowed the application under Order XII Rule 6 CPC. Resultantly, as already stated above, a decree for possession was passed in favour of the respondents No. 1 to 3 and against the appellants in respect of the suit premises with the direction to the appellants to hand over the possession of the suit premises to the respondents No. 1 to 3 on or before 31st July, 2008.

11. Aggrieved by the aforesaid judgment and decree, the present appeal has been preferred. Arguments in the appeal were advanced by Shri. J.P. Sengh, Senior Advocate on behalf of the appellants and Shri K.R. Gupta, the learned Counsel for the respondents No. 1 to 3.

12. The main grievance of Mr. Singh, the learned Counsel for the appellants is that the impugned judgment decreeing the suit of the respondents No. 1 to 3 under the provisions of Rule 6 of Order XII of the Code is not sustainable in the eyes of law, in that the appellants had not admitted anything in their written statement so as to justify the passing of the decree under Order XII Rule 6 of the Code of Civil Procedure. It was contended that the learned trial court had failed to appreciate that the suit property was the ancestral property of the appellants apart from being the matrimonial home of the appellant No. 1, and that the respondent No. 4 (the husband of the appellant No. 1) had planted the respondents No. 1 to 3 only with a view to get the property vacated and to dispossess the appellants. The learned trial court had also failed to take note of the fact that no order against the appellants could have been passed without any evidence having been adduced by the parties. In fact, the appellants had taken a number of objections in their written statement to the maintainability of the suit,

including the objection that the learned trial court had no pecuniary jurisdiction to try the suit, and that the sale deeds executed by the respondent No. 5 were sham documents. The learned trial court without considering the said objections proceeded to pass a decree against the appellants on the basis of its earlier judgment rendered in Suit No. 205/2001, which decision could not have been made a ground for the passing of a decree under Order XII Rule 6 CPC in the present suit.

13. Reliance was placed by the learned senior counsel for the appellants on the judgments rendered by this Court, in *State Bank of India Vs. Midland Industries and Others*, *Puran Chand Packaging Industrial Pvt. Ltd. Vs. Smt. Sona Devi and Another*, *Manisha Commercial Ltd. Vs. Shri N.R. Dongre and Another*, and *The Crown Commercial House and Others Vs. ICICI Bank and Others*, , to contend that the respondents No. 1 to 3 had failed to make out a case for the passing of a decree under the provisions of Order XII Rule 6 of the Code, whereunder the Court can act only if the admission made by the defendant is clear, unambiguous, unconditional and unequivocal. If a case involves questions which cannot be conveniently disposed of on a motion under this rule, the Court is free to refuse to exercise jurisdiction in favour of the party invoking it. Thus, where the defendants had raised objections which go to the very root of the case, it would be neither proper nor desirable to exercise this discretion and pass a decree in favour of the plaintiff and in such an eventuality the plaintiff would be bound to lead evidence on the specific issues raised by the defendants.

14. It was also contended by the learned Counsel for the appellants that the judgment dated 15.01.2002, which is the mainstay of the present judgment, was rendered per incuriam, inasmuch as it was contrary to the provisions of Section 4(1) of the Benami Transactions (Prohibition) Act, 1988.

15. Rebutting the aforesaid contentions of Mr. J.P. Sengh, the learned Counsel for the respondents No. 1 to 3 Mr. K.R. Gupta placed reliance on the judgment of the Supreme Court in *Uttam Singh Dugal and Co. Ltd. Vs. Union Bank of India and Others*, to urge that the scope of Rule 6 Order XII CPC was of the widest amplitude and in particular Mr. Gupta invited the attention of this Court to paragraphs 12, 13 and 15 of the said judgment, which read as under:

12. As to the object of the Order XII, Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that "where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled." We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible

for the party making such admission to succeed.

13. The next contention canvassed is that the resolutions or minutes of meeting of the Board of Directors, resolution passed thereon and the letter sending the said resolution to the respondent bank cannot amount to a pleading or come within the scope of the Rule as such statements are not made in the course of the pleadings or otherwise. When a statement is made to a party and such statement is brought before the Court showing admission of liability by an application filed under Order XII, Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the Court, we do not think the trial Court is helpless in refusing to pass a decree. We have adverted to the basis of the claim and the manner in which the trial Court has dealt with the same. When the trial Judge states that the statement made in the proceedings of the Board of Directors meeting and the letter sent as well as the pleadings when read together, leads to unambiguous and clear admission with only the extent to which the admission is made is in dispute. And the Court had a duty to decide the same and grant a decree. We think this approach is unexceptionable.

14. ...

15. Even without referring to the expression "otherwise" in Rule 6 of Order XII, CPC, we can draw an inference in the present case on the basis of the pleadings raised in the case in the shape of the applications under that Rule and the answering affidavit which clearly reiterates the admission. If that is so, interpretation of the expression "otherwise" becomes unnecessary.

16. It was further contended by Mr. Gupta on behalf of the respondents No. 1 to 3 that the judgment dated 15.01.2002 passed by the learned trial court in the earlier suit had been rendered after affording to the parties an opportunity to adduce evidence on the preliminary issue framed by the Court with regard to the suit being barred by Section 4(1) of the Benami Transactions (Prohibition) Act, 1988. The onus of proving the said bar, quite evidently, is on the person who alleges the same. It was for the appellants herein to have proved, by adducing cogent evidence, that the suit property which stood in the name of the respondent No. 5 was held benami by her though had not been purchased for her benefit. No evidence was adduced in this regard and after noting that the parties to the suit had not led any evidence on the preliminary issue, the learned trial court observed that in view of the judgment of the Supreme Court in Pawan Kumar Gupta Vs. Rochiram Nagdeo, , it could not be said that if late Shri Bhim Singh Rajput had provided the consideration, the property was necessarily held benami by Smt. Vidya Wati, wife of Shri Bhim Singh Rajput. The learned trial court then proceeded to observe that the question raised was whether Smt. Vidya Wati held the property for the benefit of the co-parceners as alleged so as to fall within the exception carved out by the legislature, but came to the conclusion, relying upon the judgment of the Supreme Court in Surjit Lal Chhabda Vs. The Commissioner of Income Tax, Bombay, , that Smt. Vidya Wati

could not be termed as a co-parcener. Therefore, it was not open to the appellants to allege that the suit property was benami in the hands of Smt. Vidya Wati and, in any case the only person who could have relied upon the provisions of the Benami Transactions (Prohibition) Act in the instant case was the son of Smt. Vidya Wati, the father of the appellants herein, i.e., the respondent No. 4, who had chosen not to do so.

17. Next, reliance was placed by the learned Counsel for the respondent on the provisions of Section 21 of the CPC to contend that the objection raised with regard to the pecuniary jurisdiction was of no avail to the appellants for the reason that the law is well settled that unless the judgment is a nullity or the Court lacks inherent jurisdiction, a judgment operates as *res judicata* between the parties in law and on facts. Reference in this regard was made by the learned Counsel for the respondent to the judgment of the Supreme Court rendered in *P.K. Ramachandran v. State of Kerala and Anr.* (2005) 11 SCC 486, wherein it was held that Section 21 of the Code envisaged that the appellate or the revisional court would not upset the order or decree passed by the trial court unless it is satisfied that there has been a consequent failure of justice even in cases where the Court lacks territorial jurisdiction. Paragraph 4 of the said judgment reads as under:

4. u/s 21 of the Code of Civil Procedure, want of territorial jurisdiction in the trial court must be pleaded at the earliest possible opportunity and, in all cases where issues were settled, at or before such settlement and even then an appellate or revisional court would not upset the order or decree passed by the trial court unless it is satisfied to hold that there has been a consequent failure of justice.

18. Reliance was also placed by the learned Counsel for the respondents upon the decision of the Supreme Court in *Subhash Mahadevasa Habib Vs. Nemasa Ambasa Dharmadas (D) by LRs. and Others*, wherein a distinction was drawn between lack of inherent jurisdiction and objection to territorial jurisdiction and pecuniary jurisdiction, and the Supreme Court opined that lack of inherent jurisdiction may render the decree void, but lack of territorial or pecuniary jurisdiction would not. At best, it may render the decree voidable in the sense that it could be challenged in appeal therefrom provided the conditions stipulated in Section 21 of the Code were satisfied, viz., the objection to the pecuniary jurisdiction had been taken in the first instance at the earliest possible opportunity and there had been a consequent failure of justice.

19. Reference was also made by Mr. Gupta to the judgment of the Supreme Court in *Hasham Abbas Sayyad v. Usman Abbas Sayyad and Ors.* AIR 2007 SC 1077, wherein in paragraph 23, it was elucidated as follows:

23. We may, however hasten to add that a distinction must be made between a decree passed by a court which has no territorial or pecuniary jurisdiction in the light of Section 21 of the Code of Civil Procedure; and a decree passed by a court having no jurisdiction in regard to the subject matter of the suit. Whereas in the

former case, the appellate court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with.

20. Having heard the learned Counsel for the parties and considered the impugned judgment as well as the judgment of the learned trial court dated 15.01.2002 rendered in Suit No. 205/2001, which admittedly has attained finality no appeal having been filed therefrom, I am of the opinion that the provisions of Rule 6 of Order XII CPC were rightly pressed into service in the instant case for the purpose of decreeing the suit. The findings rendered in the earlier suit between the appellants and the respondents, in view of the provisions of Section 11 of the Code, even otherwise are binding on the appellants herein. It would not have been permissible for the learned trial court in the present suit, which is the subsequent suit, to examine the correctness of the earlier judgment and to again go into the question as to whether the suit property was in fact joint Hindu family property held benami by the respondent No. 5. The alleged matrimonial dispute between the appellant No. 1 and the respondent No. 4 is also of no significance. The said matrimonial dispute as is evident from the record, arose in the year 2004 or thereabout when the application for maintenance was filed by the appellant No. 1. The sale deeds were executed in the year 1996. The appellants also have no locus standi to raise any dispute with regard to the sale price of the suit property or to contend that the suit property was sold at a lower price than the market price in view of the fact that the said property was the property of the respondent No. 5. The appellants did not choose to adduce any evidence to prove that the said property was held benami by the respondent No. 5 when they were given opportunity to do so in the earlier suit and it no longer lies in their mouth to again allege that the suit property was in fact the property of the joint Hindu family, more so, as the respondent No. 5, in whose name the property was held, is not a co-parcener.

21. In view of the aforesaid, the judgments relied upon by the learned senior counsel for the appellants in Midland Industries and Ors. (supra), Puran Chand Packaging Industrial P. Ltd. (supra), Manisha Commercial Ltd. (supra) and Crown Commercial House and Ors. (supra) are of no assistance to the appellants. None of the said judgments deal with the question in issue in the instant appeal.

22. To conclude, though there is no manner of doubt that the provisions of Order XII Rule 6 would not cover equivocal, vague, conditional and ambiguous admissions, it is equally well settled that where the issue raised in the suit has been decided in an earlier suit after affording opportunity to the parties to adduce their evidence, the same cannot be re-agitated in a subsequent suit. As regards the lack of pecuniary jurisdiction, as reiterated by the Supreme Court time and again, the provisions of Section 21 mandate that unless such an objection is raised at the earliest and unless it is clear that there is a consequent failure of justice, the mere lack of pecuniary jurisdiction, even assuming that the Court lacked pecuniary jurisdiction, is not sufficient for the appellate court to

interfere with the decree.

23. In view of the aforesaid, in my view, there is no merit in the appeal.

The same is accordingly dismissed.

RFA 301/2008 and CM No. 9982/2008 stand disposed of accordingly.