

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

RSA.NO. 380 OF 2015

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AGAINST THE JUDGMENT IN AS 233/2012 OF II ADDITIONAL DISTRICT COURT,
PALAKKAD**

**AGAINST THE JUDGMENT IN OS 457/2011 OF PRINCIPLE MUNSIFF'S COURT,
PALAKKAD**

APPELLANT (APPELLANT/DEFENDANT):

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MANI, AGED 43 YEARS
S/O.PONNUMANI MOOTHAN, THANKAMMA NIVAS
LAL BAHADUR STREET, NEAR BHAJAN MADAM, KARNAKI NAGAR
MOOTHANTHARA, VADAKKANTHARA, PALAKKAD TALUK
PALAKKAD DISTRICT. P.O. VADAKKANTHARA 678 012.**

**BY ADVS.SRI.D.KRISHNA PRASAD
SMT.MINI V.MENON
SRI.P.VISHNU PRASAD**

RESPONDENT (RESPONDENT/PLAINTIFF)

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P.SUJATHA, AGED 41 YEARS
D/O.PONNUMANI MOOTHAN, THANKAMMA NIVAS
LAL BAHADUR STREET, NEAR BHAJAN MADAM, KARNAKI NAGAR
MOOTHANTHARA, VADAKKANTHARA, PALAKKAD TALUK
PALAKKAD DISTRICT. P.O VADAKKANTHARA 678 012.**

R1 BY ADV. SRI.RAJESH SIVARAMANKUTTY

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
17-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AS

A.HARIPRASAD, J.

R.S.A.No.380 of 2015

Dated this the 17th day of June, 2015

J U D G M E N T

Defendant in a suit for recovery of possession on the strength of title is the appellant herein. Facts stated briefly are as follows: Plaint schedule property originally belonged to Thankamma, mother of the plaintiff and defendant. She obtained the property as per Ext.A1 document. Thereafter, by Ext.A2 document of the year 2005, she settled the property in favour of the plaintiff. Ever since the execution of the settlement deed and delivery of possession, the plaintiff is in actual possession of the property as absolute owner. The defendant/appellant, being the brother of the plaintiff/respondent, was permitted to occupy the plaint schedule property. Later, the respondent cancelled the permission given to the appellant and asked him to vacate the premises. Later the suit was filed by the respondent against the appellant.

2. Appellant filed a written statement contending

that the plaint schedule property never belonged to Thankamma in absolute right. Likewise, settlement deed in favour of the plaintiff is also disputed. According to the appellant, plaint schedule property was obtained by father of the plaintiff and defendant. After his death, the property devolved on the legal heirs. According to the appellant, he has a co-ownership right over the property. The suit for recovery of possession is legally incompetent.

3. Heard the learned counsel for the appellant and the learned counsel for the respondent.

4. Learned counsel for the appellant submitted that the courts below erred in decreeing the suit without properly considering the contentions raised by the appellant. It is the contention of the appellant that though the property stood in the name of his mother Thankamma, actually the consideration for purchasing the property in her name was derived out of the sale proceeds of a property belonged to their father. Therefore, it is contended that their mother held the property in fiduciary capacity for all the co-owners. In a way, the contention

raised by the appellant is that though the document stood in the name of the mother of the plaintiff and defendant, she is only one of the co-owners and both the contesting parties are also having rights over the properties. It goes without saying that the said contention is squarely hit by Section 3 of the Benami Transactions (Prohibition) Act, 1988 (in short 'the Act'). The Section says that no person shall enter into any benami transaction. Unless the transaction falls within the excepted category in Sub-Section 2 of Section 3 of the 1988 Act, it can only be said that the provision creates an absolute bar in entering into a benami transaction. The exception provided in Sub-Section 2 is in respect of a person purchasing property in the name of his wife or unmarried daughter. In that event it shall be presumed, unless a contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter. However, this provision has no application to the facts of this case. Section 4 of the Act clearly prohibits any action or defence based on a benami transaction. Therefore, the first contention of the

appellant cannot be legally countenanced. Learned counsel for the appellant placed reliance on the decision in **Krishnan Narayanan v. Kunchali Ummini (1949 KLT 171)**. On going through the facts and circumstances of the case, it can only be held that the ratio of the decision is not applicable to this case for two reasons. Firstly, the facts are totally dissimilar. Secondly, the impact of the 1988 Act was not considered in that decision because the decision was rendered much earlier to the Act.

5. On going through the impugned judgments, I am of the view that the courts below correctly appreciated the facts and applied the law. I do not find any substantial question of law warranting interference in a second appeal. Learned counsel for the appellant prayed that the appellant may be permitted to continue in the house for a period of one year. This submission is strongly opposed by the learned counsel for the respondent. It is the submission of the respondent that the appellant not only ceased to reside in the house, but also causes

interference in the enjoyment of the land. Considering the entire facts and circumstances, the following directions are issued:

The appeal is found to be devoid of any merit. Hence, it is dismissed. However, regarding the request made by the learned counsel for the appellant to permit his continued residence, I hereby direct that the appellant shall be permitted to reside in the house without causing any obstructions to the respondent in the matter of enjoyment of the property, provided he files an affidavit before the trial court, within two weeks, unconditionally undertaking that after six months he shall vacate the house without any claims. If this direction is complied with in the stipulated time, the appellant shall be allowed to reside in the house for a period of 'six months' from today.

Sd/-

A.HARIPRASAD, JUDGE.

AS

/True Copy/

P.A. to Judge