

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2015

CORAM

THE HON'BLE MS. JUSTICE R. MALA

S.A.No.573 of 2015

and

M.P.No.1 of 2015

1.V.Rathnavelu

2.Gopi

3.R.Jayashankar

4.R.Loganathan ...Appellants/Appellants/Defendants

Vs

1.E.Raja @ Rajaram

2.M.Vijayaragavan ...Respondents/Respondents/Plaintiffs

Prayer:

Second appeal filed under Section 100 of CPC against the judgment and decree dated 13.11.2014 made in A.S.No.128 of 2014 on the file of the Subordinate Court, Arakkonam, confirming the judgment and decree dated 12.09.2013 passed in O.S.No.145 of 2007 on the file of the District Munsif Court, Sholinghur.

For Appellants : Mr.N.Anand Venkatesh

For Respondents : Mr.Lakshmi Narayanan,
for Mr.A.Gauthaman

J U D G M E N T

Heard the learned counsel appearing on either sides.

2. The appellants who are the defendants in the suit, who lost the battle before both the Courts below have come forward with the present second appeal. The learned counsel appearing for the appellants would submit that the respondents herein as plaintiffs had filed the suit for declaration of title and also for injunction stating that the suit properties originally belong to one Narasimma Mudaliar from whom Vellai Pillai purchased the same under Ex.A.1/Sale Deed, dated 20.12.1940. However, the allegation in the plaint is that the said property was purchased by one Govinda Pillai in the name of Vellai Pillai, who is none other than his brother-in-law. Thereafter, Govinda Pillai sold the property comprised in Ex.A.1/Sale Deed, dated 20.12.1940 in favour of one Munusami Pillai as per Ex.A.2/Sale Deed, dated 16.05.1966 stating about the benami nature of Ex.A.1/Sale Deed. The said Munusami Pillai died in the year 1969 and after his death, his son V.M.Krishnan was in possession and enjoyment of the suit property. While so, V.M.Krishnan sold the property in favour of the 1st respondent/1st plaintiff under Exs.A.9 and A.10/Registered Sale Deeds. Since the appellants/defendants attempted to interfere with their possession, the respondents herein as plaintiffs had filed the suit for declaration of title and for permanent injunction.

3. The learned counsel appearing for the appellants would contend that the respondents/plaintiffs are not entitled to raise the plea of benamidhar as per the Benami Transaction (Prohibition) Act, 1988. In the plaint pleadings itself, it has been stated that the property has been purchased in the name of Vellai Pillai by Govinda Pillai. However, the provisions of the Benami Transaction (Prohibition) Act, 1988 was not considered by both the Courts below and hence, he prayed for admission of the second appeal. The learned counsel would further submit that the claim made by the respondents/plaintiffs are not sustainable since they had taken inconsistent plea. At one instance, they claim title under Ex.A.2/Sale Deed and at another instance, they claim title by adverse possession. Hence, To substantiate his arguments, the learned counsel for the appellants relied upon the following decisions:

1. 1998-1-L.W.346, Smt.Rebti Devi v. Ram Dutt and Another.
2. 2011 (6) CTC 1, R.Rathnappa and Another v. V.Lakshmma.

4. Resisting the same, the learned counsel appearing for the caveator would submit that there is no substantial question of law arising in the case. As per the decision of the Hon'ble Apex Court

reported in 1998-1-L.W.346, Smt.Rebti Devi v. Ram Dutt and Another, the Benami Transaction (Prohibition) Act, 1988 does not have retrospective effect and the same was also followed in the decision of this Court reported in 2011 (6) CTC 1, R.Rathnappa and Another v. V.Lakshmma. The property was purchased in the year 1940 by one Govinda Pillai in the name of Vellai Pillai from one Narasimma Mudaliar under Ex.A.1/Sale Deed. The said Govinda Pillai alone possessed the original sale deed and he alone dealt with the said property and sold the same to Munusami Pillai under Ex.A.2/Sale Deed, dated 16.05.1966. After the death of Munusami Pillai, his son V.M.Krishnan inherited the property. During the UDR scheme, patta was issued in his favour and he sold the same in favour of the 1st respondent/1st plaintiff under Exs.A.9 and A.10/Sale Deeds. Furthermore, to prove their possession, the respondents/plaintiffs had produced the documents from the year 1940. If really the appellants/defendants were the original owner, they could have produced the original documents. However, no document was produced by the appellants/defendants to prove their title. Hence, both the Court below has rightly held the right of the respondents/plaintiffs over the suit property and hence, the learned counsel for the respondents/caveators prayed for dismissal of the appeal.

5. Considered the rival submissions made by both sides and perused the typed set of papers.

6. The suit properties were originally owned by one Narasimma Mudaliar from whom Govinda Pillai purchased the same under Ex.A.1/Sale Deed, dated 20.12.1940 in the name of Vellai Pillai. The said Govinda Pillai is the attestor of the document. Thereafter, Govinda Pillai sold the property to one Munusami Pillai under Ex.A.2/Sale Deed, dated 16.05.1966, wherein in the description Govinda Pillai has stated that he has purchased the property in the name of Vellai Pillai. After purchase, Munusami Pillai was in possession and it was recognized by issuance of UDR patta in favour of V.M.Krishnan, son of Munusami Pillai from whom the respondents/plaintiffs had purchased the property. Now the appellants/defendants attempt to claim title on the basis of the Ex.A.1. However, the revenue authorities had issued patta in favour of the respondents/plaintiffs and they are paying the kists. Further, to prove the benami transaction, the original documents were filed only by the respondents/plaintiffs and not by the LRs of the deceased Vellai Pillai in whose name the Ex.A.1/Sale deed stands. Furthermore, as per the decision of the Hon'ble Apex Court reported in 1998-1-L.W.346, Smt.Rebti Devi v. Ram Dutt and Another, the Benami Transaction (Prohibition) Act, 1988 does not have retrospective effect.

7. In such circumstances, both the Courts below had rightly considered the matter in proper perspective and no substantial question of law arise in the present appeal. Hence, the present second appeal stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge,
Arakkonam.

2.The District Munsif,
Sholinghur.

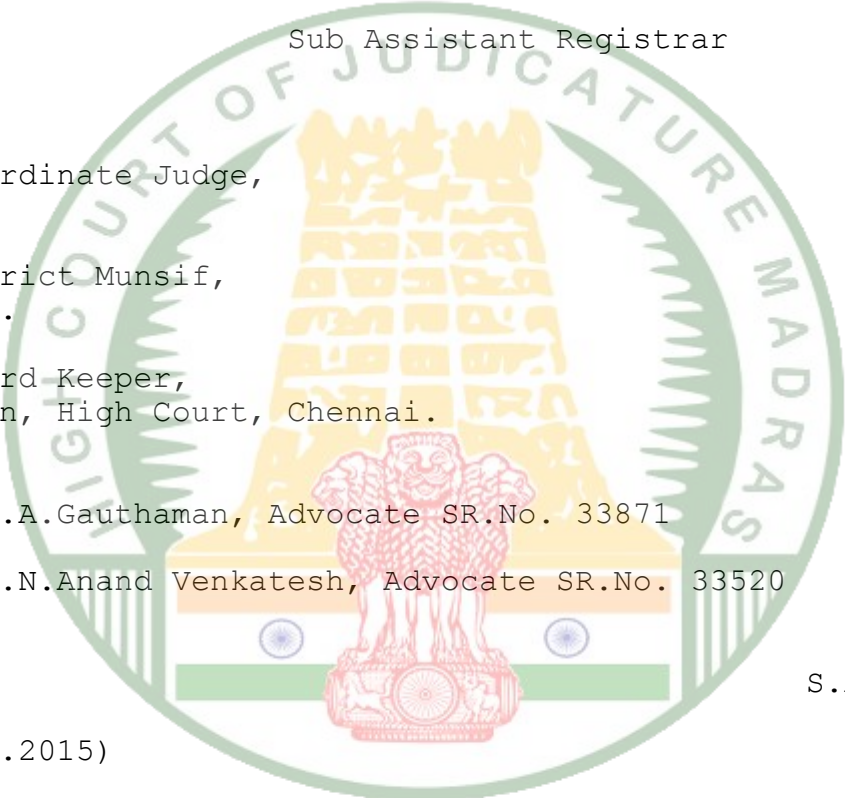
3.The Record Keeper,
V.R.Section, High Court, Chennai.

1 CC to Mr.A.Gauthaman, Advocate SR.No. 33871

1 CC to Mr.N.Anand Venkatesh, Advocate SR.No. 33520

CNR (CO)
PSI (29.07.2015)

S.A.No.573 of 2015



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