

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-04-2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1373 of 2017
and C.M.P.No.6401 of 2017

Mrs.Lalitha ... Petitioner

Vs.

1.Mr.Sundar

2.Mrs.Chitra ... Respondents

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India against the fair and final order dated 16.02.2017 made in I.A.No.241 of 2015 in O.S.No.02 of 2015 on the file of the District Munsif Court, Coonoor.

For Petitioner : Ms.P.T.Asha for
M/s.Sarvabhauman Associates

ORDER

This Civil Revision Petition is filed against the fair and final order dated 16.02.2017 made in I.A.No.241 of 2015 in O.S.No.02 of 2015 on the file of the District Munsif Court, Coonoor.

2. The petitioner is the second defendant, first respondent is the plaintiff and the second respondent is the first defendant in the suit in O.S.No.02 of 2015 on the file of the District Munsif Court, Coonoor. The first respondent/plaintiff filed the above suit for declaration to declare that the sale deed executed by the second respondent/first defendant in favour of the petitioner/second defendant dated 15.07.2013 as null and void.

3. According to the first respondent, he purchased the suit property in the year 2000 in the name of his wife / 2nd respondent herein, out of love and affection and for the benefit of wife & children. The property was purchased to construct a residential house, after obtaining loan from a Nationalised Bank. However, in the year 2002, due to some misunderstanding, the second respondent left the matrimonial home and took away the original sale deed in respect of

the suit property. The first respondent, coming to know of intending sale by the second respondent, in favour of the petitioner, issued legal notice dated 10.07.2013 to the petitioner. The petitioner having received the notice, did not send any reply. Knowing full well that the second respondent herein has no title over the property, the petitioner herein purchased the same by deed of sale dated 15.07.2013 and hence the same is invalid and null & void.

4. In the above said circumstances, the first respondent herein filed a suit for the above stated relief. The petitioner herein filed written statement in the month of July 2015 contesting the suit. The petitioner also filed I.A.No.241 of 2015 under Order 7 Rule 11 of CPC to reject the plaint in the suit. According to the petitioner, the first respondent herein has admitted that he had purchased the property in the name of his wife/second respondent herein, out of love and affection and for the benefit of his wife & children and hence the suit is barred by the provisions of Section 3(2) of the Benami Transactions (Prohibition) Act, 1988 and no cause of action for the suit has arisen. Further, the suit is abuse of process of court.

5. The first respondent filed counter and denied all the averments made in the affidavit and submitted that the purchase of property in the name of his wife / second respondent herein is not hit by provisions of Benami Transactions (Prohibition) Act, 1988. It is further contended that the suit property purchased by the first respondent herein is not only for the benefit of his wife/second respondent but also for the benefit of his children. The property was purchased for the specific purpose of construction a residential house after obtaining loan from a Nationalised Bank. Even before the purchase of the suit property by the petitioner by way of sale deed dated 15.07.2013, the first respondent issued legal notice to the petitioner but having received the said notice, she had not sent any reply. Only the second respondent can take the stand that the suit is barred by Benami Transactions (Prohibition) Act, 1988 and the petitioner is not entitled to raise such plea.

6. The learned Trial Judge, after considering the averments made in the affidavit and counter affidavit, materials available on record, Sections 3(2) and 4 of the Benami Transactions (Prohibition) Act 1988, dismissed the application, holding that whether the purchase of the suit property by the first respondent in favour of the

second respondent is hit by the provisions of Benami Transactions (Prohibition) Act, 1988 or not is a question to be decided only after detailed trial. Aggrieved by the said order, the petitioner has preferred the present Civil Revision Petition.

7. The learned counsel for the petitioner submitted that the first respondent, in the plaint itself has admitted that he purchased the suit property in the name of the wife/second respondent, for the benefit of the second respondent and children. In view of the said admission, the suit is barred by the provisions of the Benami Transactions (Prohibition) Act, 1988. It is further submitted that the provisions of the Act applicable at the time of filing of the suit must be considered to decide the issue and that the learned Trial Judge erred in dismissing the application, taking into consideration the Amendment Act. A reading of the plaint would clearly show that the suit is barred under Section 3 (2) of the Benami Transactions (Prohibition) Act, 1988. The suit is also barred by Section 4(1) of the Act.

8. The learned counsel for the petitioner relied upon the following judgments in support of his contention.

(i) Judgment of this Court reported in 2010 (2) CTC 705
[E.Yasodammal v. E.Govindan]

(ii) Judgment of this Court reported in 2015 (3) CTC 316
[Shanthi @ Shanthi Sathya & Ors. v. M.Masanam]

9. Heard the learned counsel appearing for the petitioner and perused the records.

10. The petitioner had filed I.A.No.241 of 2015 for rejection of plaint on the ground that on the admission made by the first respondent in the plaint that he purchased the suit property in the name of his wife/second respondent herein, out of love & affection and also for their benefit, hence, the suit is hit by the provisions of Sections 3 & 4 of the Benami Transactions (Prohibition) Act, 1988.

11. In the plaint, the first respondent has stated that he had purchased the suit property out of his income in the name of his wife, the second respondent herein, out of love & affection and for their benefit as well as for the benefit of their children to construct the residential building after obtaining loan from a Nationalised Bank. The first respondent has also stated that after purchase, he was in

possession of the suit property and all the original documents of title were with him. Due to misunderstanding, the second respondent left the matrimonial home taking all the original documents of title of the suit property. When the first respondent came to know about the intending sale of the suit property in favour of the petitioner by the second respondent, he issued a legal notice to the petitioner. Even after receipt of such notice, the petitioner had purchased the suit property.

12. Whether the plaint has to be rejected in view of the provisions of Benami Transactions (Prohibition) Act, 1988 or not can be decided only by considering Section 3 of the Act which reads as follows –

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 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 “participants” 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.

As per Section 3 (1) of the Benami Transactions (Prohibition) Act, 1988, benami transactions are prohibited. But as per Section 3 (2) of the Act, a person can buy property in the name of his wife or unmarried daughter and such purchase is not hit by Section 3 (1) of the Act. When a property is purchased in the name of wife or unmarried daughter, there is a presumption that the said purchase is for their benefit. At the same time, a person who purchases the property in the name of his wife or unmarried daughter can prove that the same is not for their benefit. In the present case, the purchase in the name of second respondent/wife, according to the first respondent is not for her exclusive benefit but for the benefit of the children as well as for the construction of a residential house, after obtaining loan from a Nationalised Bank. Considering Section 3 (2) (a) of the Act, the first respondent has a right to let in evidence to rebut the presumption that the property was purchased for the exclusive benefit of second respondent. This issue is not a pure question of law but mixed question of fact and law. In view of the same, the judgment relied upon by the learned counsel for the petitioner, do not advance

the petitioner's case at this stage.

13. The learned Judge has rightly held that the issue raised by the petitioner can be decided only after detailed trial by appreciating the oral and documentary evidence let in by the parties and it cannot be decided at this stage. In the above circumstances, I do not find any illegality or irregularity in the order passed by the trial court warranting interference by this Court.

14. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

27.04.2017

Speaking/Non-speaking order
Index : Yes
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To

The District Munsif,
Coonoor.

V.M.VELUMANI, J.

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