

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 06-11-2017

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.No.1348 OF 2011

K.Periasamy

...Appellant/Appellant/Plaintiff

-vs-

Veerathal

...Respondent/Respondent/Defendant

Second Appeal filed under section 100 of CPC against the judgment and decree, dated 30.08.2011, passed in A.S.No.13 of 2010 on the file of Sub-Court, Udumalpet. Confirming the Judgment and Decree dated 17.08.2010 made in O.S.No.538 of 2005 on the file of the District Munsif, Udumalpet.

For appellant : Mr.N.Aravind Kumar

For respondent : Mr.S.Sivasankar

JUDGMENT

Plaintiff is the appellant before this Court. The suit was filed for declaration of title and permanent injunction, restraining the defendant from alienating the property.

2. The case of the plaintiff is that he was employed in Amaravathi Co-operative Sugar Mills and, from the income he got from the employment, he purchased the suit schedule property in the name of his mother, with a fond hope that she will transfer it to him whenever need be, but, due to the animosity which has arisen at a later point of time, the defendant is attempting to alienate the property, which is funded and purchased by him. Further, the plaintiff averred that the property was purchased in a fiduciary capacity in the name of his mother and that his mother has no independent source of income. Hence, the suit.

3. Per contra, the defendant denied all the averments and stated that she is the absolute title holder of the property and there is no animosity entertained by her against the plaintiff; the defendant alone solemnised the marriage of the

plaintiff; the plaintiff, for no reason, has entertained animosity against her; the property was purchased from her savings and, accordingly, she sought for dismissal of the suit.

4. The trial Court has gone into the issue whether the suit is barred by Benami Transactions (Prohibition) Act, 1988, or not, and marked the documents filed on the side of the plaintiff as Exs.A-1 to A-18. No oral evidence on behalf of the parties or documents on the side of the defendant were marked. On the basis of the documents filed by the plaintiff, the trial Court has decided that the suit itself is not maintainable, as the same is hit by the provisions of Benami Transactions (Prohibition) Act.

5. Aggrieved over the same, the plaintiff preferred an appeal before the first appellate Court, which held that the transaction in dispute in the suit is decided as a benami transaction and since the Court has no jurisdiction to try benami transactions, the contention of the plaintiff to afford him an opportunity to let in evidence is not acceptable and, accordingly, dismissed the appeal.

6. Considering the issue between the parties, this Court feels, that the Courts below ought to have given an opportunity to the parties to let in evidence as to whether the transaction is benami or not or does it fall under the exemption clause specified under section 4 of the Act or not. Instead, without there being any oral evidence, on the basis of the pleadings and the documents, the trial Court has decided that it is a benami transaction. The lower appellate Court too, instead of deciding the issue as to whether the transaction is benami or not, has proceeded on the basis of the findings rendered by the trial Court that it is a benami transaction. An opportunity, which is sought for to let in evidence on the basis of the pleadings and the documents to prove the factum, was denied.

7. Under the above circumstances, this Court is not inclined to go into the merits of the matter. However, it considers fit to remand the matter to the trial Court to decide the issues, after recording the evidence of both the parties.

8. In the result, this Second Appeal is disposed of, remanding the matter to the trial Court, with a direction to permit the parties to let in evidence, mark documents and, thereafter, decide the issues. The said exercise shall be completed within a period of six months from the date of receipt

of a copy of this order. No costs. Consequently, the connected M.P.No.1 of 2011 is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dixit

To

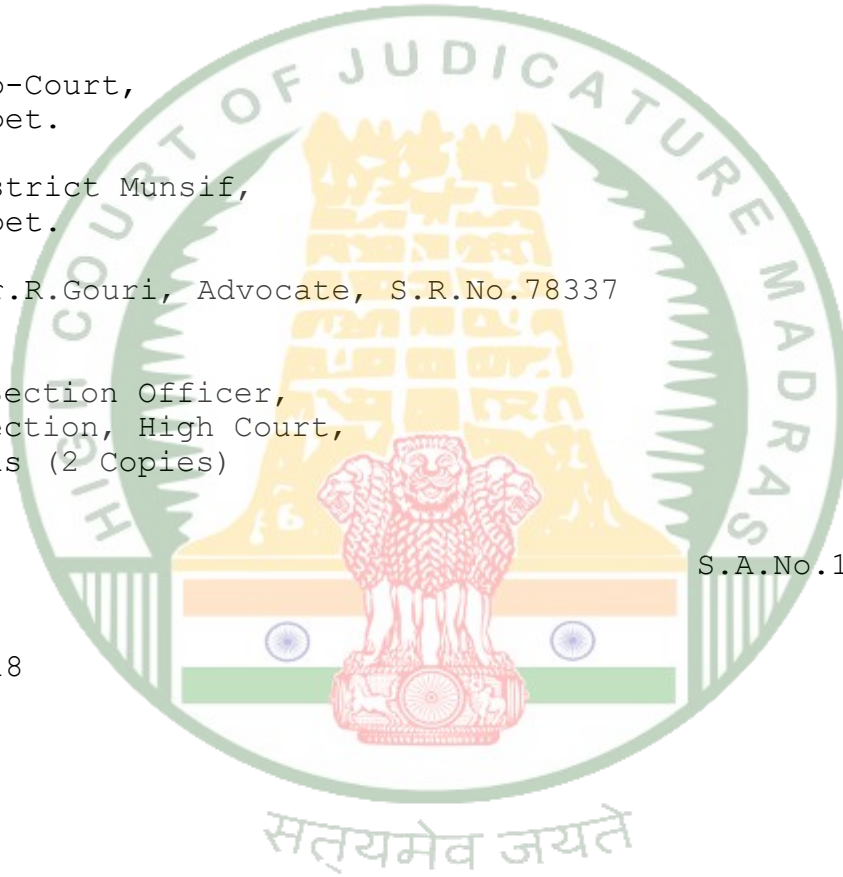
1. The Sub-Court,
Udumalpet.
2. The District Munsif,
Udumalpet.

+1cc to Mr.R.Gouri, Advocate, S.R.No.78337

Copy To
The Section Officer,
ER Section, High Court,
Madras (2 Copies)

S.A.No.1348 OF 2011

TM(CO)
CS/14/05/18



WEB COPY