

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2018

Coram

The Honourable Mr. Justice M.DHANDAPANI

S.A.No.1496 of 2002

K. Palanimallal

... Appellant/3rd defendant

vs.

1. Vadivel Padayachi1st respondent/plaintiff

2. Saradham

3.Paneerselvam

4.Sekar @ Kaliaperumal

(Respondents 2 to 4 are given up)

... Respondents 2,3 and 4/
defendants 1,2 and 4

Second Appeal filed under Sec.100 of the Civil Procedure Code against the judgment and decree passed in A.S.No.88 of 2001 on the file of the Additional Subordinate Court, Mayiladuthurai dated 29.01.2002 preferred against the judgment and decree in O.S.No.183/1992 on the file of the District Munsif Court, Sirkali dated 18.09.2001.

For Appellant : Mr.V. Venkkatasamy

For R.1 : Mr.S. Sounthar

For R.2 to R.4 : Given up

JUDGMENT

The unsuccessful third defendant filed the present second appeal against the judgment of the lower appellate court. The third defendant is the appellant herein and the plaintiff is the first respondent in this second appeal.

2. For the sake convenience, the parties may be referred to as plaintiff and the third defendant.

3. The sum and substance of the plaint averments are as follows:

The plaintiff filed a suit for declaration, declaring that the plaintiff is the absolute owner of the suit property and consequently restraining the defendants and their men and agents

from in any manner interfering with the plaintiff's possession and enjoyment of the suit property by means of permanent injunction.

4. The plaintiff was employed at Singapore during the period 1950 to 1982. The plaintiff married the first defendant in the year 1959. Thereafter, in view of the first defendant eloped with the second defendant and ran away from the family, the plaintiff divorced the first defendant as per the order dated 30.04.1990 passed in divorce proceedings in O.P.No.72 of 1986 on the file of Subordinate Judge, Mayiladuthurai. The third defendant is the plaintiff's daughter out of the wedlock.

5. During the subsistence of the marriage between the plaintiff and the first defendant, the plaintiff used to send money from Singapore to the first defendant. From and out of money, so sent by the plaintiff, the first defendant purchased the suit property and the other properties in the name of her daughter, viz., the third defendant and in her name also. The schedule property was purchased under a sale deed dated 28.07.1979. Though the suit property was purchased in the name of the third defendant, the real owner of the same is the plaintiff, as the money utilised for payment of sale price, was plaintiff's money and therefore, the plaintiff is the absolute and exclusive owner of the suit property.

6. After completing the employment in Singapore, the plaintiff came to India in the year 1982. At that time, the first defendant was having illicit intimacy with the second defendant. When the plaintiff questioned the same, the first defendant eloped with the second defendant with cash and jewels. They also gave threats to the plaintiff's right and possession. Therefore, the plaintiff instituted a suit in O.S.No.16/1983 on the file of Subordinate Court, Mayiladuthurai for declaration and for consequential injunction in respect of the suit property and also for other properties. The suit was dismissed by the Sub Court. Against which, the plaintiff preferred an appeal in A.S.No.113/84 before District Court, Nagapattinam.

7. In the appeal, a compromise was arrived at and a compromise decree was passed on 17.12.1984. As per the terms of compromise decreed dated 17.12.1984, the plaintiff was declared as the absolute owner of the suit property and other properties and injunction was granted in favour of the plaintiff. A condition was also imposed in the compromise decree that the plaintiff should bring the daughters and conduct their marriages. It was further agreed that marriage between the plaintiff and the first defendant be dissolved through Court of Law. Accordingly, the first defendant was divorced in O.P.No.72/86.

8. The plaintiff has brought up the third defendant and performed her marriage. The third defendant was residing with the fourth defendant. The plaintiff had spent Rs.50,000/- towards the marriage of the third defendant and had also given twenty sovereigns of jewels by way of Sridhana to the third defendant. Thus, the third defendant was put in a comfortable position, in her life span. Thereafter, the third defendant also executed a hand letter dated 07.03.1988 ratifying the compromise decree in A.S.No.113/1984.

9. Though the third defendant was married off and her case was settled, due to ill-advice of the defendants 1 and 2, the third defendant is giving out threats that she would claim right over the suit property. Admittedly, the third defendant has no right over the suit property. The sale deed dated 28.07.1979 in her name was only a nominal document. At the time of purchase of the suit schedule property, the third defendant was minor. The money sent by the plaintiff, out of his hard earned income from Singapore to the first defendant, was spent for the purpose of purchasing the suit schedule property in the name of the third defendant. The suit property was in the possession of the first defendant. After the plaintiff came to India, he came to possession of the suit property and the same was confirmed through compromise decree in A.S.No.113/1984. Thus, the plaintiff is deemed to be in possession and enjoyment continuously of the suit property from the date of sale deed dated 28.07.1979. Since the third defendant and the defendants 1,2 and 4 have conspired together and are giving out on and from 10.07.1992 they forcibly enter upon the suit property claiming some right on behalf of the third defendant. Therefore, the plaintiff filed a suit for declaration in respect of suit schedule property, declaring that the suit property belongs to him.

10. The sum and substance of the written statement, filed by the third defendant, are as follows:

This defendant admitted the relationship between the plaintiff and the defendants 1 and 3. However, the defendant does not admit the various allegations made in the plaint about her mother/second defendant. The defendant is not a party to the suit in O.S.No.16/1983 on the file of Sub Court, Mayiladuthurai and she is also not aware of the alleged appeal, preferred by the plaintiff. It is totally false that the plaintiff was declared as absolute owner of the suit property. The defendant learnt and believed the same to be true that the suit property was not subject matter of the suit in O.S.No.16/1983 on the file of Sub Court, Mayiladuthurai. Even if there was any compromise or declaration, it will not bind the defendant. This defendant is not aware of other terms of the compromise. This defendant was brought up by her mother and it is false to state that the plaintiff gave Rs.50,000/- towards the marriage of the defendant

and also denies that 20 sovereigns of gold was given by the plaintiff. The defendant specifically denies the allegation that she executed a hand written letter on 07.03.88 ratifying the compromise decree in A.S.No.113/84 and this letter must have been concocted for the purpose of the suit.

11. The defendant further averred that the suit property and another property, extent of 20 cents in R.S.No.342/4 was purchased under a registered sale deed dated 28.07.1979 by this defendant's mother, when this defendant was a minor and her mother/first defendant was guardian for a consideration of Rs.700/-. The sale amount was paid by the first defendant by her hard earned money by working in the fields and selling milks. The property was purchased for the benefit of the defendant and the plaintiff has nothing to do with the same. The third defendant was cultivating the suit property and other extent with the help of her husband. This defendant is in possession in her own right and not on behalf of the plaintiff. It is again false to allege that the plaintiff took possession after he came back from Singapore. This defendant has got every right over the suit property. The sale deed dated 28.07.1979 is not a sham and nominal document as alleged in the plaint. It is false to state that the decree in A.S.No.113/84 on the file of District Court, Nagapattinam confirms the right of the plaintiff. It is also false to state that the plaintiff is deemed to be in possession and enjoyment of the suit property continuously from the date of sale. The suit is barred by Benami Transaction prohibition Act. Since the suit property is not included in the suit in O.S.No.16/83, the suit is barred under Order 2 Rule 2 of Civil Procedure Code. The defendant also states that nobody poisoned her mind and there was no conspiracy or threat either on 10.07.1992 or any other date as alleged in the plaint.

12. After considering the documents filed by either parties and after framing issues, the lower Court dismissed the suit. As against the dismissal, the plaintiff preferred an appeal before the lower appellate Court and the lower appellate court decreed the suit and reversed the finding of the lower court. Aggrieved over the same, the third defendant filed the present second appeal.

13. At the time of admission of appeal, this Court framed the following substantial questions of law:

- (i) Whether the lower appellate Court is correct in law in holding that the purchase in the name of defendant is benami without referring Section 3(2) of the act in view of the relationship between the plaintiff and defendant being father and daughter?

2) Whether the lower appellate Court is correct in decreeing the suit in the absence of specific pleading and proof that it is not for the benefit of the defendant when there is specific pleading by the defendant to the contrary?

14. The learned counsel appearing for the appellant/third defendant would submit that admittedly the property was purchased by her mother/first defendant in the name of the appellant/third defendant and since the property was not purchased out of fund earned by the plaintiff from Singapore, the plaintiff was not entitled to claim over the suit property. However, the lower appellate Court influenced by the compromise decree in A.S.No.113/84, granted decree in favour of plaintiff is not sustainable and the same is liable to be interfered with.

15. The learned counsel for the plaintiff would submit that admittedly, the property was purchased by the plaintiff while he was working in Singapore and out of money earned in Singapore. The money was sent to the first defendant and out of the said money, the suit property was purchased. Thereafter, there was a family dispute, resulting which, the first defendant eloped with second defendant. In view of the above, the plaintiff filed a suit in O.S.No.183/1992 on the file of District Munsif Court, Sirkali and the suit was dismissed, against which, the plaintiff preferred an appeal before the Subordinate Court, Mayiladuthurai. Before the first appellate court, there was a compromise decree between the plaintiff and the first defendant. As per the terms of compromise decreed dated 17.12.1984, the plaintiff was declared as the absolute owner of the suit property and other properties and injunction was granted in favour of the plaintiff. A condition was also imposed in the compromise decree that the plaintiff should bring the daughters and conduct their marriages. To fulfill his obligation, as a father, he performed marriage of the third defendant, by spending Rs.50,000/-and also gave 20 sovereigns of jewels but due to ill-advice of other persons, the plaintiff was chased away by the third defendant, against which, the suit was filed and the lower appellate court rightly decreed the suit in favour of the plaintiff, after perusing the compromise decree entered into between the first defendant and the plaintiff.

16. Heard both sides and perused the materials available on record.

17. On perusal of the materials available on record, admittedly the property was purchased by the plaintiff through the first defendant in the name of the third defendant and there was a compromise decree in between the plaintiff and the first defendant . As per the terms of compromise decreed dated

17.12.1984, the plaintiff was declared as the absolute owner of the suit property. Though there was a discussion with regard to Sec.3(2) of Benami Transaction Prohibition Act, this Court framed the substantial question of law whether the lower appellate Court is correct in law in holding that the purchase in the name of defendant is benami without referring Section 3(2) of the Act in view of the relationship between the plaintiff and defendant being father and daughter? However, the defendant filed written statement stating that the suit property was purchased by her mother, the first defendant as guardian for a sale consideration of Rs.700/-. The sale amount was also paid by the first defendant by her hard earned money. Perusal of Section 3(2) of Benami Transaction Prohibition Act shows that if the property is purchased in the name of blood relatives, that property may be excluded from prosecution under the name of benami transaction.

18. In the present case, there was a compromise decree between the plaintiff and the first defendant and the third defendant admitted that the property was purchased by the first defendant when the third defendant was minor and the third defendant specifically admitted that the property was not purchased out of her earning but she admitted that the property was purchased by her mother.

19. However, the averment is contrary to the compromise decree entered into between the plaintiff and the first defendant and there is no evidence available to show that the first defendant purchased the property in favour of third defendant. In the absence of any material, I do not find that the property has been purchased by the first defendant in favour of third defendant.

20. On perusal of the depositions of the third defendant as well as the fourth defendant, it is clear that the third defendant's marriage was performed by the plaintiff and there is no contra evidence available in order to prove that the third defendant's marriage was performed by the first defendant. As per the terms of compromise decree, the plaintiff completed his obligation by performing the marriage of the third defendant .

21. In view of the above, the suit property was purchased by the plaintiff in the name of the third defendant and the suit property was allotted by way of compromise decree in A.S.No.113/84. The defendants 1 and 2 set ex-parte and they have not come forward to disapprove the compromise decree entered into between the plaintiff and the first defendant.

22. In the absence of any material, I do not find any error or illegality in the judgment passed by the lower appellate court. Accordingly, the substantial questions of law are answered against the appellant.

23. In the result, the second appeal is dismissed and the judgment and decree passed by the lower appellate Court in 88/2001 on the file of Additional Sub Court, Mayiladuthurai are confirmed and the suit is decreed in favour of the plaintiff. No costs.

sr

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

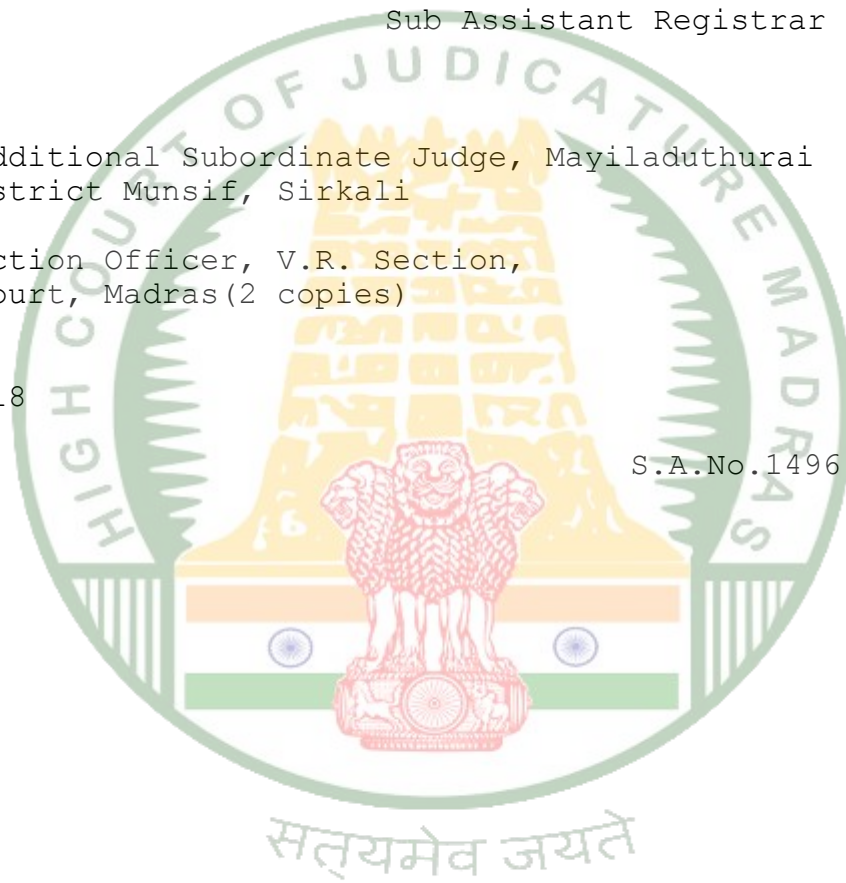
To

1. The Additional Subordinate Judge, Mayiladuthurai
2. The District Munsif, Sirkali
3. The Section Officer, V.R. Section,
High Court, Madras (2 copies)

KK(CO)

sm:6.4.2018

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