**HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

**Second Appeal No.938 of 1998**

**JUDGMENT:**

Aggrieved by the judgment dated 29.06.1998 in A.S.No.16 of 1994 passed by the learned I Additional Chief Judge, City Civil Court, Secunderabad, allowing the appeal and consequently decreeing the plaintiff's suit in O.S.No.2420 of 1987 on the file of XI Assistant Judge, City Civil Court, Secunderabad, the defendant preferred the instant Second Appeal.

2) The parties in the appeal are referred as they were arrayed before the Trial Court.

3) The factual matrix of the case is thus:

a) Plaintiff is the elder brother of the defendant. He filed the suit— O.S.No.2420 of 1987 before the XI Assistant Judge, City Civil Court, Secunderabad, seeking declaration that he is the owner of the suit house No.31/SRT (New No.1-8-771) and for injunction restraining the defendant and his men from disturbing his possession and enjoyment of the suit house. The plaint averments are that prior to 1957 the plaintiff and defendant were living jointly in Sithaphalmandi, Secunderabad. The defendant was working in Municipal Corporation of Hyderabad (MCH). In 1957, MCH, Secunderabad announced scheme of allotting houses at Prakash Nagar colony to the municipal employees. The plaintiff and defendant applied for allotment of house in the name of defendant since he was an employee in MCH. In 1957, house bearing No.31/SRT i.e, suit house was allotted in the name of the defendant. Thereafter, plaintiff and his family members and the defendant lived in the suit house jointly. The plaintiff paid money towards initial deposit and subsequently hire purchase instalments to the municipality in the name of the defendant as the house was purchased for the benefit of the plaintiff. In or around 1960, the defendant got married a girl from Madras and left the job in MCH and went away to Madras. He started living there only, though he was visiting Secunderabad now and then. The defendant agreed for the continuation of the plaintiff in the suit house by paying hire purchase instalments. It was specifically agreed that the plaintiff would continue as owner and at the time of execution of the registered sale deed by the Municipal Corporation, he would obtain registration in the name of the plaintiff. Thus the plaintiff has been in exclusive possession and enjoyment of the suit house since about 1960. He made material improvements to the suit house by constructing two extra rooms. He also carried out periodical repairs to the suit house. While-so, in February, 1985 the defendant approached the plaintiff and requested for Rs.4,000/- to obtain registered sale deed from the Municipal Corporation in his favour. Believing him, the plaintiff paid the said sum. Receiving the amount, the defendant assured that he would get the sale deed registered in the name of plaintiff directly and if it was not possible for the reason that the allotment was made in favour of the defendant, he would first obtain registration in his name and later transfer the property in the name of plaintiff. However, the defendant played fraud and obtained the registration in his name and later issued notice to the plaintiff to vacate the suit property. Plaintiff issued a befitting reply. The defendant has been making hectic efforts to dispossess the plaintiff from the suit house.

Hence, the suit.

b) The defendant filed written statement denying the plaint averments. His case is that the father of the plaintiff had 8 sons including plaintiff and defendant. All of them were living separately. Plaintiff and defendant never lived jointly prior to 1957. The defendant worked in Municipal Corporation of Hyderabad from 1950 to 1960. In 1957, the defendant was allotted the suit house as he was a municipal employee. Since then, the defendant was in occupation of the suit house from 1957 to 1960. The plaintiff lived at Mylargadda, Sithaphalmandi in a rented premises. The plaintiff has six sons and two daughters. When the suit property was allotted to the defendant, the plaintiff requested the defendant to allow him to stay in the suit house as he was finding it difficult to maintain his family. On his request and persuasion of their father, the defendant allowed plaintiff to live in the suit house as a licensee and both the plaintiff and defendant started living together in two different portions with separate mess in that house. Thus plaintiff's possession was only as a licensee and a permissive one. In 1960, the defendant married a girl from Madras and shifted to Madras by resigning his job in the Municipality. The plaintiff continued in the suit premises with an understanding that he would vacate the premises as and when required by the defendant. Throughout, the defendant retained a portion of the suit premises and kept his belongings in it. The defendant used to visit the suit house once in 2 or 3 months as he used to visit Hyderabad frequently for effecting repairs to the projectors. During the said period, he used to stay in the suit premises sometimes continuously for one month also. From 1957 to 1960, the instalments were collected by MCH from out of the salary of the defendant. Thereafter, the defendant used to pay the instalments as and when he came to Secunderabad. The initial deposit was also made by the defendant but not by the plaintiff as claimed. The defendant kept his belongings including the receipts and documents in the portion occupied by him and the plaintiff must have secreted them and on the basis of which, he put up a false claim. The defendant never agreed the plaintiff to be owner of the suit house by paying the instalments. In fact the plaintiff never paid any instalments. The defendant was in occupation of the portion of the suit premises till 1985, at which time, he asked the plaintiff to vacate but the plaintiff refused. Hence the defendant got issued a legal notice dated 05.05.1985 and another notice dated 30.11.1985 demanding the plaintiff to vacate the premises. The defendant denied that the plaintiff made any improvements in the suit premises. The defendant pleaded that when the plaintiff was adamant in vacating the suit premises, he sold the house to one Shakelli Prakash for Rs.1,20,000/- under a registered sale deed dated 09.03.1989.

c) The trial went on.

d) The Trial Court though found some defects in the plea of the defendant, however, ultimately dismissed the suit mainly on the ground that the suit transaction which according to plaintiff is a benami transaction was hit by the provisions of Benami Transactions (Prohibition) Act, 1988. However, considering that the plaintiff has been in possession of the suit house since decades, the Trial Court held, he cannot be evicted without following due process of law.

e) Aggrieved, the plaintiff filed A.S.No.16/1994 before the I Additional Chief Judge, City Civil Court, Secunderabad. Basing on the respective pleas of both parties, the lower Appellate Court framed the following points for consideration:

> i) *Whether the suit house was purchased for the benefit of the plaintiff and he is the real owner?*
>
> ii) *Whether the Benami Transactions (Prohibition) Act, 1988 effects the rights of the plaintiff?*

f) Point No.1 is concerned, the lower Appellate Court having taken the facts such as plaintiff has been in possession of the suit property since 1960 and defendant did not demand rent from him and that the plaintiff has improved the suit premises by constructing two more rooms, for which act, the defendant did not make any objection nor did he contribute for the construction of two rooms, has held that the plaintiff was indeed the owner of the suit house though the instalments were paid in the name of the defendant and registered sale deed was obtained in the name of the defendant. Sofaras point No.2 is concerned, the lower Appellate Court relying on the decision of the Apex Court reported in ***R.Rajagopal Reddy v. P.Chandrasekharan***[1], held that the provisions of Section 4(2) of Benami Transactions (Prohibition) Act, 1988 are not retrospective in operation and therefore, the suit transaction cannot be said to be hit by the said Act. It ultimately allowed the appeal and decreed the suit in favour of the plaintiff.

Hence the Second Appeal at the instance of defendant.

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[1] AIR 1996 SC 238

4) While admitting the Second Appeal, this Court has framed the following substantial question of law on 11.12.1998:

> *"The action of the lower appellate Court in reversing the judgment of the trial Court on each of the issues solely on the ground of a wrong decision was rendered in respect of application of the provisions of the Benami Transactions (Prohibition) Act, 1988 is erroneous leading to a substantial question of law"?*

5) Pending Second Appeal, sole respondent died and respondents 2 to 8 were brought on record as his LRs vide Court Order dated 18.03.2018 in S.A.M.P.No.520/2005.

6) Heard arguments of Sri Mummaneni Srinivasa Rao, learned counsel for appellant and Sri K. Mahipathi Rao, learned counsel for respondents.

7) Severely castigating the judgment of the lower Appellate Court, learned counsel for appellant would argue that learned Judge simply carried away by holding that Benami Transactions (Prohibition) Act has no application to the suit transaction and decreed the suit and thereby committed grave error. Learned counsel argued that even if the said Act has no application to the instant case, still the plaintiff cannot get the decree automatically. In expatiation, he would submit, in a suit for declaration and injunction, the trite principle of law is that plaintiff has to establish his case to deserve for a decree without depending on the weakness if any in the case of the defendant. This basic principle was given a total go by in the present case by the lower Appellate Court. Arguing on factual side, he would submit that according to plaintiff, the suit house was allotted in the name of the

defendant because he was working in MCH, however, the parties agreed that the plaintiff would own the said allotted house and pursuant to the said agreement, the plaintiff made the initial payment to MCH and thereafter also he paid instalments and obtained receipts. It is his further case that he has been residing in the house since 1960 as an owner of the property. Further, he made improvements to the suit house by constructing two more rooms. All these facts, according to plaintiff would assert his right in the suit property as a true owner and at the same time, depict the defendant only as an ostensible owner. When this is the case of plaintiff, the Court should expect him to establish these facts by cogent evidence irrespective of the weakness in the defence taken by the defendant denying plaintiff's case and pleading that plaintiff was only a licencee. However, when the matter of evidence comes, learned counsel would argue, the plaintiff has not produced any cogent and reliable evidence to establish the above facts. Except filing Exs.A.1 to A.8—instalment-payment receipts, which too stood in the name of the defendant and copies of the legal notices exchanged between the parties and Exs.A.14 and A.15—tax receipts which relate to the period subsequent to the filing of the suit, the plaintiff has not produced any other reliable evidence to confer decree in his favour.

a) Learned counsel would argue that sofaras Exs.A.1 to A.8 are concerned, it is the specific case of the defendant that the instalments under those receipts were paid by him, whenever he used to come to Hyderabad on his office work and he kept those receipts in his portion of the suit house reserved by him and those receipts might have been stealthily secreted by the plaintiff. Learned counsel lamented that the lower Appellate Court unfortunately has not considered this counter plea in a proper perspective and held that when the house consisted of only one room, the question of defendant living in one room by keeping his articles and leaving the other room to plaintiff, whose family consisting of six sons and two daughters cannot be accepted because with such large family, there is no possibility for the plaintiff to spare any room to the defendant. On this erroneous observation, the lower Appellate Court held that the contention of the defendant that he was keeping his luggage or articles in the suit house and plaintiff taking away receipts stealthily, cannot be accepted. Learned counsel would forcefully argue that it is admitted case of the plaintiff and defendant that as soon as the house was allotted to the defendant in the year 1957, both the brothers along with their father and some other brothers lived in the suit house for some time and after marriage only, the defendant left for Madras in or about 1961. When it is their admitted case that they lived together in the suit house for a considerable period, the question whether the house consisted of one room or many rooms, pales into insignificance. He would further argue that it is also admitted by PW.1 that whenever the defendant used to visit Hyderabad from Madras, he was staying in the suit house. Therefore, there was every possibility for him to keep his articles in the suit house since the parties were only brothers. It was also possible that the defendant might have kept Exs.A.1 to A.8 in the portion occupied by him and the plaintiff might have stealthily taken away. Learned counsel thus remonstrated the finding of the lower Appellate Court that there was no possibility of defendant residing in the suit house and keeping his belongings therein and plaintiff stealing them. He thus argued that Exs.A.1 to A.8 will not enure to the advantage of plaintiff in any appreciable manner.

b) Nextly, he would argue, the lower Appellate Court erroneously esteemed the long stay of the plaintiff in the suit house without paying any rent to the defendant as a factor to hold that he was the owner of the house. He would vehemently argue that because of the financial constraints of the plaintiff, as he was an RTC driver and getting meagre salary and having large family to fend i.e, six sons and two daughters and was residing in a rented house, on the persuasion of his father, defendant allowed him to stay in the suit house along with him till 1961 and even subsequent to his migration to Chennai. The status of plaintiff was only a licencee and therefore, his stay in the suit house for any length of time will not confer ownership on him. He never proclaimed ownership to the world at large. He has not examined his family members i.e, other brothers to show that there was an agreement between him and defendant that the plaintiff should own the suit house though it was allotted to the defendant. He thus argued that the lower Appellate Court was not right in treating the free stay of plaintiff in the suit house as his ownership.

c) Improvements made by the plaintiff are concerned, learned counsel argued that the lower Appellate Court erroneously held as if the plaintiff constructed two rooms because of the availability of the suitable vacant space abutting to the suit house. He would submit that the defendant flatly denied any improvements such as construction of two rooms by the plaintiff. Except examining PW.2—a third party, the plaintiff has not produced any documentary evidence to show that he made any constructions.

Learned counsel thus summed up, Exs.A.1 to A.8 or the long stay of the plaintiff in the suit house or his plea of making improvements to the suit house, do not stand to legal scrutiny to establish his case. However, the lower Appellate Court on a perverse appreciation of facts and evidence, erroneously decreed the suit. He would conclude that a perverse appreciation of facts and evidence, can also be treated as a substantial question of law. He thus prayed to allow the appeal.

8) Per contra, while supporting the judgment of the lower Appellate Court, learned counsel for respondents would argue that when the Trial Court erroneously held that the plaintiff's suit was hit by the provisions of Benami Transactions (Prohibition) Act, the lower Appellate Court has set right that error and held that the provisions of the said Act have no application since the suit was filed long prior to the advent of the said Act. The lower Appellate Court has also considered the facts and evidence in a right perspective. Considering the facts that though the plaintiff resided in the suit house for long period defendant did not demand any rent, when plaintiff made improvements to the suit house by constructing two rooms, the defendant did not object or made any contribution, the lower Appellate Court rightly held that the plaintiff was the real owner of the suit house. He thus prayed to dismiss the appeal.

9) The main ground on which the second appeal is filed by the defendant is that though the plaintiff's suit is not hit by the provisions of Benami Transactions (Prohibition) Act, still on that ground alone the lower Appellate Court ought not to have decreed the suit. The said Court committed perverse appreciation of facts and evidence in holding that the plaintiff was the real owner of the suit property.

10) It is in the light of above contention, the substantial question of law as stated supra was framed by this Court. The substantial question of law can be discussed under the following points:

*(i) Whether the suit transaction is hit by the provisions of Benami Transactions (Prohibition) Act?*

*(ii) Whether the appreciation of facts and evidence by the lower Appellate Court to arrive at the finding that the plaintiff is the real owner of the suit property is perverse?*

11) **POINT No.1**: The first point is concerned, from the pleadings and evidence led by the plaintiff, it is clear that he sets up ownership in the suit property on the ground that he in fact paid the initial amount and subsequent instalments though suit house was allotted in the name of defendant and registration was done in his favour. In short, it resonates the benami transaction. In that view, the question is whether the suit is hit by the provisions of the Benami Transactions (Prohibition) Act, 1988. Section 4 of the Act is germane for consideration and it reads thus:

*"Section 4 - Prohibition of the right to recover property held benami*

*(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.*

*(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property."*

*(3) xx xx …*

In ***R.Rajagopal Reddy***'s case (1 supra), the Apex Court has expounded the scope and ambit of Section 4 of the Act including the retrospectivity and retroactivity of the said Section if any. This High Court in a judgment reported in ***Syed Jaffar Ali and others v. Mahmooda Bi and others***[2], relying upon the above decision of Apex Court observed thus:

*"Para 16: In R. Rajagopal Reddy's case (AIR 1996 SC 238) (supra), the three Judges Bench of Hon'ble Apex Court has expounded that Sec. 4 of the Act is only prospective in operation. Section 4(1) of the Act is concerned, Hon'ble Apex Court made it clear that said provision is prospective in operation in the sense, no suit, claim or action contending that a transaction relating to a property is benami is maintainable after the advent of the Benami Transactions (Prohibition) Act, 1988. The Apex Court made it further clear that the said provision has a limited sphere of retrospectivity to the effect that though a transaction took place prior to the advent of the Act, still, a suit or claim contending that the said transaction was benami cannot be instituted after the Act came into force. To this extent only, Sec. 4(1) of the Act was held retrospective. However, it was emphasized that if a benami transaction and institution of the suit, were both taken place prior to the advent of*

[2] 2017 (3) ALD 736

*the Benami Transactions (Prohibition) Act, 1988, Sec. 4(1) of the Act would have no application.*

*Para 17: xx xx ….*

*Section 4(2) of the Act is concerned, the Apex Court observed that no defence that a transaction was a Benami shall be allowed for the first time after coming into operation of Section 4(2), but, if such a defence was already taken in a pending suit prior to the coming into operation of Section 4(2), then the validity of such a plea has to be decided by the Court. Basing on the above observation, the Apex Court overruled its earlier decision reported in Mithilesh Kumar vs. Prem Behari Khare (AIR 1989 SC 1247) which propounded a contra view.*

*Para 18: In a subsequent judgment in Samittri Devi's case (2011) 3 SCC 556 (supra), the Apex Court relied upon R. Rajagopal Reddy's case (supra)."*

Thus from the above precedential jurisprudence, it is clear that generally Section 4(1) of the Act is prospective in operation i.e, no suit claim or action contending that the transaction relating to property is benami is maintainable after the advent of Benami Transactions (Prohibition) Act, 1988. However, the said provision has a limited sphere of retrospectivity in the sense, though the original transaction took place prior to the advent of the Act, still, a suit or claim or action contending that the said transaction was benami cannot be instituted after the Act came into force. To this extent only, Section 4(1) of the Act was held retrospective. It would mean, if a benami transaction and institution of the suit, both were taken place prior to the advent of the Act, Section 4 of the Act would have no application. In the instant case, the suit house was allotted to defendant by MCH in the year 1957 and the registration of sale deed under Ex.A.13 took place on

21.03.1985, whereas plaintiff filed the suit—O.S.No.2420/1987 on 04.08.1986 claiming the transaction as a benami. Since the transaction and filing of the suit both were occurred prior to advent of the Benami Transactions (Prohibition) Act, applying the ratio in ***R.Rajagopal Reddy***'s case (1 supra), the suit is not hit by the provisions of the said Act and to this extent, the lower Appellate Court is right. Ofcourse, the appellant has not much disputed this legal position.

12) **POINT No.2**: Coming to the second point, the argument of the appellant in vehemence is that the lower Appellate Court made a perverse appreciation of facts and evidence in arriving at the finding that the plaintiff is the real owner.

a) In the decision reported in ***Abdul Raheem v. Karnataka Electricity Board***[3], it was observed that consideration of irrelevant fact and non-consideration of relevant fact would give rise to substantial question of law. It was further observed that reversal of a finding of fact arrived at by the first appellate Court ignoring vital documents may also lead to a substantial question of law.

b) In the decision reported in ***Dinesh Kumar v. Yusuf Ali***[4], the Apex Court observed that Second Appeal is maintainable basically on a substantial question of law and not on facts. However, if the High Court comes to the conclusion that the findings of fact recorded by the courts below are perverse

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[3] (2007) 14 SCC 138
[4] (2010) 12 SCC 740

being based on no evidence or based on irrelevant material, the appeal can be entertained and it is permissible for the Court to re-appreciate the evidence.

Thus, the substance of the above precedential jurisprudence is that if the verdict of the lower appellate Court is vitiated by perverse finding due to non-consideration or misconsideration of the material evidence on record, the High Court in the Second Appeal can interfere with. Hence it has now to be seen, whether the lower Appellate Court committed blunder as argued by the appellant.

13) It is a suit for declaration and injunction, the cardinal principle is that the plaintiff has to establish his own case without depending on the weakness of the defence side. In ***Union of India and others v. Vasavi Co-op. Housing Society Ltd. and another***[5], the Apex Court held thus:

> *"Para 15: The legal position, therefore, is clear that the Plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the Defendants have proved their case or not. We are of the view that even if the title set up by the Defendants is found against, in the absence of establishment of Plaintiff's own title, Plaintiff must be non-suited.*

Therefore, the burden rests heavily on the plaintiff to establish his case. The lower Appellate Court came to conclusion that the plaintiff is the real owner on the following findings:

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[5] AIR 2014 SC 937

(i) Exs.A.1 to A.8—receipts though stand in the name of the defendant, were produced by the plaintiff indicating that he paid instalments. The plea of defendant that when he kept his belongings including the receipts in his portion of the suit house, the plaintiff might have stolen them is unbelievable as the house contained only one room and plaintiff's family was very big and he could not have accommodated the defendant in the suit house.

(ii) That the plaintiff has been residing in the suit house since long time i.e, from 1957 onwards and defendant never demanded him to pay rents is a proof positive that the plaintiff is the real owner.

(iii) Plaintiff had made improvements to the suit house by constructing two rooms to the knowledge of the defendant. However, defendant neither contributed nor objected. His conduct would manifest that he claimed no interest in the suit property.

14) I have carefully scrutinised the facts and evidence on record to test the veracity of the above findings.

a) The first finding was based on the observation that there was no second room in the suit house and so the plaintiff could not have accommodated defendant and consequently the question of defendant keeping his belongings including Exs.A.1 to A.8 in his allotted room and plaintiff stealing them does not arise. It must be said, this finding is wrong because the lower Appellate Court has not taken into consideration certain vital facts emanated in the evidence. It is the admitted case of both plaintiff and defendant in their evidence that they lived together in the suit house for sometime after it was allotted to defendant in the year 1957. Plaintiff in his chief-examination stated that after allotment of the suit house in 1957, all of them settled in the suit house and lived jointly therein. The defendant was married in the year 1960, when they were living jointly in the suit house and after his marriage, the defendant settled in Madras and resigned his job in MCH. In the cross-examination also he admitted that the defendant also resided in the suit house along with him. Himself, his father, other brothers and defendant all resided in the suit house. He further admitted that whenever the defendant comes from Madras, he used to stay in the suit house with them. Then PW2 also deposed in the same lines stating that the suit house was allotted by MCH to defendant in the year 1957 or so and the plaintiff and his brothers were living in the suit house. Then defendant is concerned he deposed that after allotment of the suit house in 1957, he occupied the suit premises with his parents. The plaintiff came to the suit premises in the year 1960 at the request of his father and occupied a portion of the suit premises with his permission. The plaintiff occupied one room and he occupied another room in the suit premises but they are having separate kitchen. Thus the fact admitted by both parties is that they lived together in the suit house. In that view, as rightly argued by learned counsel for appellant, whether the house consists of one room or two rooms has no much significance. It is true, as per the plan attached to Ex.A.13—sale deed, the allotted house as on the date of registration consisted of one room, veranda and kitchen with open yard. It is not clear whether the structure of the house was same even in the year 1957. Even assuming the position of the house in 1957 was same as reflected in the plan, still it can be inferred that the defendant, as he was bachelor by 1957 might have retained veranda portion for his use and treated the same as a room and gave the other room to the plaintiff for his occupation. It should be noted that even in the chief of plaintiff, he stated that at the time of allotment, the suit house consisted of two rooms only. It is not certain whether he too was referring the veranda portion as the second room. Whatever may be the structural appearance, both the parties admitted that the suit house consisted of two rooms and they lived therein jointly for some time and whenever defendant visited Hyderabad, he used to stay in the suit house. Unfortunately, the lower Appellate Court has not taken into consideration the above vital facts emanated in the evidence and held as if the defendant staying in the suit house and his keeping his articles is unbelievable. When we accept from the admitted facts that both the brothers lived in the suit house for sometime, the necessary corollary is that the defendant must have kept his belongings including Exs.A.1 to A.8 therein. Therefore, the contention of the defendant that the plaintiff must have stolen Exs.A.1 to A.8 from his portion, cannot be brushed aside easily. Hence merely because plaintiff produced Exs.A.1 to A.8, one cannot readily infer that he paid the instalments covered by them and that he was the owner.

In another angle also Exs.A.1 to A.8 will not clinch the title of the plaintiff. These exhibits would show, most of them related to the period from 1964 to 1967 that is the period when the defendant was in Madras. Since he was away, the possibility of plaintiff obtaining receipts and preserving the same if not stealing them from the belongings of the defendant, cannot be obviated. Therefore, production of Exs.A.1 to A.8 by the plaintiff is not conclusive proof of plaintiff paying the instalments as an owner. Had he produced the instalments-receipts covering the initial period i.e, 1957 to 1960, when the defendant was also residing at Hyderabad, such receipts may establish his title on the assumption that since the defendant left the house to the plaintiff, he paid the instalments and obtained receipts though defendant was very much available at Hyderabad. Such is not the case here. Another angle in the issue that would weaken the case of plaintiff is that in the cross-examination he admitted that some of the instalments were deducted from the salary of the defendant for the suit house. If really, the defendant left the house to plaintiff and he himself paid the instalments and obtained receipts under Exs.A.1 to A.8, there was no reason for defendant to pay some instalments by way of deduction from his salary.

So all the aforesaid facts would manifest that the defendant must have paid amounts under Exs.A.1 to A.8 and the plaintiff somehow got their possession. Since the lower Appellate Court has soaringly missed the evidence surrounding Exs.A.1 to A.8, its finding must be denoted as perverse.

b) The second finding is concerned, merely because the defendant did not demand rents from plaintiff, there cannot be any automatic conclusion that the plaintiff was the owner. Plaintiff's financial status is depicted from his evidence. He admitted that he has no property of his own. In 1944, he worked in MES and from 1946 to 1975 he worked as Driver in RTC. He has eight children. In 1957, he stayed in a rented house at Mylargadda. Though he denied that on the recommendation of his father the defendant accommodated him in the suit house, the above facts would give a scope for drawing conclusion that the defendant must have accommodated him on rent free basis, as after-all they are own brothers. It is significant to note that plaintiff has not examined his other brothers to establish that the defendant agreed that the plaintiff would own the house. Therefore, the stay of plaintiff is only as a licencee and non-collection of rent from him would not give an inference of his ownership. However, the lower Appellate Court did not consider these aspects in proper manner.

c) The third finding is concerned, the defendant emphatically denied the construction of two rooms by the plaintiff. Except orally harping, the plaintiff has not produced any documentary proof in that regard. For construction of two rooms, he must apply to MCH for approval of the plan. He has not produced any such record. Further, in the plan appended to Ex.A.13 also, there is no reference about the two rooms allegedly constructed by the plaintiff. Therefore, the plea of construction of two rooms cannot be accepted.

15) So at the outset, the findings of the lower Appellate Court on whose basis it held, plaintiff as the owner of the suit house are not based on the acceptable evidence and hence I am constrained to hold that the said conclusion is a perverse one.

16) Thus on a conspectus, it is held, the plaintiff failed to establish that he is the real owner of the suit house.

17) In the result, this Second Appeal is allowed by setting aside the judgment in A.S.No.16 of 1994 on the file of I Additional Chief Judge, City Civil Court, Secunderabad. Consequently, O.S.No.2420 of 1987 on the file of XI Assistant Judge, City Civil Court, Secunderabad, is dismissed. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

**U. DURGA PRASAD RAO, J**

Date: 04.06.2018
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