IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 214 OF 2017
ALONGWITH
CIVIL APPLICATION NO. 1335 OF 2016

Manohar Kashinath Bhandare
and anr. .....Appellants
V/s.
Anandrao Balkrushana Bhandare
and Ors. ....Respondents

* * * *

Mr. Vaibhav R. Gaikwad, Advocate for the appellants.

Mr. V.S. Talkute, Advocate for the respondents.

CORAM : SANDEEP K. SHINDE, J.

Friday, 18th January, 2019.

P.C. :

1. The appellants-plaintiffs had filed a suit and claimed that their father, Kashinath was the real owner of the suit property and the defendants are merely benamidaars. Suit was filed in 2007 seeking declaration

that the sale deed dated 26th November, 1981 held in favour of the defendants are benamidaar and Kashinath is the real owner of it. The plaintiffs are claiming through Kashinath.

2. The learned Counsel appearing for the respondent submitted that the suit was not maintainable in view of the provisions of Section 4(1) of the Benaami Transactions (Prohibition) Act, 1988 ("the said Act" for short). Reliance was placed on the judgment of the Supreme Court in the case of **R. Rajagopal Reddy (Dead) by L.R.s and Ors. Vs. Padmini Chandrasekharan (Dead) by L.R.s (1995) 2 Supreme Court Cases 630.**

. In the case in hand, the suit was filed in the year 2007 seeking a declaration that defendants are ostensible owners claiming under sale-deed of January, 1987. The said Act came into force on 19th May, 1988. The prohibition under Section 3(1) of the said Act is against the persons who are to enter into benami transactions and it is laid down that no person shall enter in benami transactions which obviously means from the date on which this prohibition comes into operation i.e. w.e.f. 5th September,

1988. That takes care of future benami transactions. Sub-section 3 of Section 3 states that whoever enters into benami transactions shall be punished with imprisonment for a term which may extend to three years or with fine or with both. Therefore, the provisions of sub-section 3 creates a new offence of entering into such benami transactions. It is obvious that when statutory provision creates new liability and a new offence, it would naturally have a prospective operation and would cover only those offences which takes place after Section 3(1) comes into operation.

3. In the case in hand, the benami transaction was entered in the year 1981, that is, much before the Act came into force, however, the plaintiff sought a declaration that it was a benami transaction by filing a suit after the Act came into force. The question is, whether the suit was maintainable. In the cited judgment (supra), it was held that, in view of the provisions of Section 4(1) of the said Act, no such claim, suit 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 meaning thereby that, no such suit, action shall be permitted to be filed or entertained or admitted to the portals of any Court for seeking such a relief after coming into force of Section 4(1). Thus, the suit filed by the plaintiff was not maintainable.

3. The Courts below have not examined the aspect of maintainability of suit and by rendering a finding, dismissed the suit on merits. Once it is held that the suit itself was not maintainable, the Court is not required to deal with the other points/grounds raised by the appellant in the present appeal. The Appeal is therefore dismissed.

4. In view of dismissal of the appeal, Civil Application No. 1335 of 2016 does not survive. The same is disposed of.

(SANDEEP K. SHINDE, J)