

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL (ST.) NO.28547 OF 2019
WITH
INTERIM APPLICATION NO.1 OF 2019**

Balasaheb Govind Basugade	...	Applicant
Versus		
Rajendra Shivaji Kumthekar		
And Others	...	Respondents

.....

Mr. V.G. Rajure i/b Mr. Nikhil N. Pawar for the Appellant/Applicant.
Mr. Kuldeep U. Nikam for Respondent No.1.

.....

CORAM : S.C. GUPTE, J.

DATE : 28 NOVEMBER 2019

(Oral Judgement)

. Heard learned Counsel for the parties.

2 This Second Appeal challenges concurrent judgments and decrees passed by the courts below on a suit filed by Respondent No.1 herein (original plaintiff) against the Appellant (original defendant No.1) and others. The Plaintiff's suit was for possession based on his title. It was the Plaintiff's case that land including the suit property, which was originally owned by Shidappa Mahaling Mahajan, was purchased by the Plaintiff's grandfather, Rama Bhau Kumathekar (since deceased), for valuable consideration and under a registered sale deed.

After sale of a share to one Laxman Bhau Basugade by a registered sale deed, remaining land with deceased Rama, which is the suit property, was renumbered as CST No.1429-A, whilst the share sold to Laxman was allotted CTS No.1429-B. The suit property, being CTS No.1429-A, was in possession of Rama. Rama was in police department and living in another village for his service. One Govind Martanda Basugade, who was the brother-in-law of deceased Rama, who was in need of a house, approached Rama and on his request, the latter put the former in permissive possession of the suit property. Defendant No.1, who is Govind's son, and others of his family (being defendant nos.2 to 7 to the suit) were accordingly said to be in permissive possession of the suit property after Govind died. It was the plaintiff's case in the suit that after the death of Rama, the plaintiff, his father (defendant no.8 to the suit, since deceased and deleted from the casue title), who were, respectively, grandson and son of deceased Rama, and who succeeded to the suit property, required the same and approached the defendants, including defendant no.1 (the Appellant herein), for its possession. This was on 15 May 2006. It was submitted by the plaintiff in the plaint, that on this day, the defendants refused to hand over possession of the suit property, stating that the plaintiffs had no connection with it. In the premises, the plaintiff applied for a decree of possession against the defendants based on the former's title to the suit property.

3 Both courts below have come to a concurrent finding of fact that the predecessor of the plaintiff (deceased Rama) was the

purchaser of the suit property vide sale deed dated 17 December 1928. There was no dispute that the plaintiff was the legal heir of deceased Rama and was entitled to succeed to his estate. The only defence raised by the defendants to the suit, including defendant no.1 (the Appellant herein), was that the property was purchased by their predecessor in the name of deceased Rama. In other words, they set up a case of benami transaction claiming title in their predecessor as opposed to the apparent owner (deceased Rama), who was the purchaser named in the sale deed. Both courts below have come to a conclusion that after coming into force of Benami Transactions (Prohibition) Act, 1988, no plea of benami transaction could be set up as a defence. The other ground urged by the defendants was of the bar of limitation. It was submitted that the defendants and their predecessor in title were in possession of the suit property ever since Rama purchased the same and that the suit for possession was clearly barred by the law of limitation. Both courts below have come to a conclusion that there was no case of dispossession of the plaintiff more than twelve years prior to the filing of the suit. The lower appellate court observed that the plaintiff's case was that possession of the suit property was demanded from the defendants on 15 May 2006 (till which date the defendants were in permissive possession under the plaintiff and his predecessor), and the suit was filed immediately after the demand was resisted by the defendants and the suit was thus within time.

4 Neither of the two conclusions concurrently arrived at by the

courts below can be faulted in the second appeal. After coming into force of Benami Transactions (Prohibition) Act, i.e. with effect from 19 May 1988, when Section 4 of that Act came into force, no right inherent in a real owner in respect of any property held benami could be enforced and no such plea could be taken in defence to any action by the apparent owner. Section 4(1) of the Act *inter alia* prohibits any 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, whereas Section 4(2) precludes any defence of benami to any suit, claim or action filed by the person in whose name such property is held. These two provisions came into force on 19 May 1988. As explained by the Supreme Court in the case of **Rebti Devi Vs. Ram Dutt**¹, on the express language of Section 4, no right inhering in the real owner in respect of any property held benami could be enforced, once Section 4 operated, even if the transaction had been entered into prior to the coming into force of the Act, that is to say, prior to 19 May 1988. After 19 May 1988, no suit could be filed on the basis of a plea of benami and likewise no defence could be set up to any suit action or claim on the basis of a plea of benami property. Learned Counsel for the Appellant relies on the case of **Ramkrishna Mahadeo Wagh Vs. Ramchandra Keshav Kulkarni**² decided by our court. That was a case, where the suit was filed in 1981; written statement was filed on 23 September 1982; the suit was decided on 13 March 1984; and the appeal filed against that order was also decided on 20 April 1988. All this happened before the Act came into force. In the

1 (1997) 11 SC 714

2 2011(3) ALL MR 559

circumstances, this court countenanced the plea of benami set up by the defendants and upheld by the courts below. Our court has, accordingly, after extensively setting out the decision of the Supreme Court in **Rebti Devi's** case (supra), which, as we have noted above, affirms impermissibility of enforcement of any right in an immovable property based on a plea of benami after 19 May 1988, distinguished the facts of the case before our court. The submission that if the transaction of purchase of the property benami has taken place before 19 May 1988, the transaction is permissible, thus, is in the teeth of what the Supreme Court held in **Rebti Devi's** case and followed by courts all over in a number of cases. The question is in fact no more *res integra* in view of the judgments, which are noted by the learned single Judge in **Ramkrishna Wagh's** case relied upon by the Appellant.

5 There is no merit even in the defence of limitation. In a suit for possession based on the plaintiff's title, the cause of action accrues to him when the defendant sets up a title adverse to him, that is to say, when the possession of the defendant becomes adverse to the plaintiff. It is the plaintiff's own case here, and which is not disbelieved by either of the courts below, that all along, till possession of the suit property was demanded from the defendants, their possession was permissive, first through the predecessor of the plaintiff (deceased Rama) and later through the plaintiff and his father (also deceased). It was only on 15 May 2006, when possession was demanded by the plaintiff and his father and denied by the defendants

that the cause of action to seek recovery of possession on the basis of their title accrued unto the plaintiff and his father and the suit filed immediately thereafter was within time.

6 Accordingly, there is no merit in the challenge to the impugned orders. No substantial question of law arises for the consideration of this court. The Second Appeal is, accordingly, dismissed.

7 In view of the dismissal of the appeal, the interim application does not survive and is disposed of.

8 Learned Counsel for the plaintiff applies for stay of this order. Two courts below having concurrently held against the appellant/defendant on the basis of a legal proposition, which, as we have noted above, is no more *res integra*, and this court having heard the matter comprehensively and rejected the appeal accordingly finding no issue of law arising for its consideration, there is no question of ordering stay. The application is rejected.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

Digitally signed
by Rajesh V.
Chittewan
Date: 2020.01.07
14:39:42 +0530