

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 24.10.2019

Pronounced On : 28.11.2019

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.2379 of 2014

and M.P.No.1 of 2014

Mrs.Sangeetha

... Petitioner

...Vs..

1. S.Shyam Sunder

2. S.Satish

3. S.Banumathy

4. Minor S.Manasa

5. Gomathi Shyam Sunder

... Respondents

[R3 to R5 brought on record as Lrs of the deceased R1 viz., S.Shyam Sunder vide Court order dated 29.07.2019 made in CMP No.15138, 15141 and 15143 of 2019 in CRP No.2379 of 2014 (AQJ)]

**Prayer:** This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the order and decretal order passed in I.A.No.1210 of 2013 in OS No.212 of 2012 dated 09.04.2014 on the file of the learned Sub Judge, Poonamallee and consequently, reject the plaint in OS No.212 of 2012 on the file of Sub Court, Poonamallee.

For Petitioner : Mr.S.Ramesh

For Respondents : Mr.S.Vijaya Ganesh (for R2, R4 & R5)  
for Mr.T.Senthil Kumaran  
No Appearance (for R3)  
R1-Died

**ORDER**

Aggrieved over the order dated 09.04.2014, passed in IA No.1210 of 2013 in OS No.212 of 2012 on the file of the learned Subordinate Judge, Poonamallee, the petitioner, who is the 2<sup>nd</sup> defendant in the above said suit, has preferred this Civil Revision Petition, praying to set aside the order passed in IA No.1210 of 2013 dated 09.04.2014.

2. Before the trial Court, the deceased 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent in the Civil Revision Petition filed a suit in OS No.212 of 2012 as against the revision petitioner and one Mrs.S.Banumathi for the relief of partition and separate possession.

3. The 2<sup>nd</sup> defendant/revision petitioner after entering appearance in the month of November 2013, filed an application under Order VII Rule 11(d) of CPC to reject the plaint, as barred by law. The learned Subordinate Judge, Poonamallee, after receiving the counter from the respondents/plaintiffs, by order dated 09.04.2014 dismissed the application filed by the revision petitioner / defendant. Challenging the same, petitioner / 2<sup>nd</sup> defendant is before this Court with this Civil Revision Petition.

4. The averments made in the petition filed by the revision petitioner/2<sup>nd</sup> defendant before the trial Court, in short, are as follows:

(i) The suit schedule property is a land comprised at No.84, Valasaravakkam Village, Ambattur Taluk, Thiruvallur District, situated in Survey No.148/1, Plot No.236, Janaki Nagar, 6<sup>th</sup> Cross Street, Valasaravakkam, Chennai - 600 087. The property in question was purchased by the 1<sup>st</sup> defendant viz., the father of the revision petitioner/2<sup>nd</sup> defendant and the respondents/plaintiffs, vide sale deed dated 27.07.1998, registered as Document No.4707 of 1998 on the file of Sub Registrar's Office, Virugambakkam.

(ii) A bare reading of the plaint discloses the fact that the sale made in favour of the 1<sup>st</sup> defendant is barred by the provisions of Benami Transactions (Prohibition) Act, 1988. Only from and out of the funds given by Mrs.Saradammal, the paternal grandmother of the revision petitioner/2<sup>nd</sup> defendant and the respondents/plaintiffs, the suit schedule property was purchased in the name of the 1<sup>st</sup> defendant. The said Mrs.Saradambal sold a flat in Besant Nagar and the entire sale proceeds were used for the purchase of suit schedule property in the name of the 1<sup>st</sup> defendant. The said Mrs.Saradambal and the respondents/plaintiffs, contributed for purchase of

the property and for the sake of convenience, parties have agreed for sale deed being executed in favour of the 1<sup>st</sup> defendant, their mother.

(iii) It is the specific case of the revision petitioner/2<sup>nd</sup> defendant that the said Mrs.Saradambal and the respondents contributed for purchase of the property and the relief sought for in the suit, is hit by the provisions contained in the Benami Transactions (Prohibition) Act, 1988. The revision petitioner/2<sup>nd</sup> defendant is the absolute owner of the suit schedule property by virtue of settlement deed executed by her mother, the 1<sup>st</sup> defendant in the suit.

(iv) The term 'Benami Transaction' has been defined as the transaction in which the property is transferred to one person for consideration paid or provided by another person. In the present case, the respondents/plaintiffs have specifically pleaded that the suit schedule property has been transferred in favour of the 1<sup>st</sup> defendant for a consideration which has been allegedly paid by them and their grandmother Mrs.Saradambal and therefore, they have pleaded that they have right for partition and for separate possession.

(v) The suit schedule property was settled by the 1<sup>st</sup> defendant in favour of the revision petitioner / 2<sup>nd</sup> defendant by way of a registered Settlement Deed dated 29.12.1999, registered as Document No.179 of 1999 on the file of Sub Registrar's Office, Virugambakkam. For establishing a right of partition, the respondents/plaintiffs would have to disclose prima facie that it is a common property lying in the hands of the plaintiffs and the revision petitioner/defendants. In the absence of any declaration in the settlement deed executed by the 1<sup>st</sup> defendant in favour of the revision petitioner/2<sup>nd</sup> defendant, a right of partition cannot be sustained. Hence, the plaint to be visited.

5. The case of the 1<sup>st</sup> respondent/plaintiff from the averments made in the counter affidavit filed before the trial Court, is as follows:

(i) The mother-in-law of the 1<sup>st</sup> respondent/plaintiff viz., Mrs.Saradambal owned a flat, which was allotted by the Tamil Nadu Housing Board. During her life time, the said Mrs.Saradambal sold the flat and the sale proceeds of the said flat was used to purchase the suit schedule property in the name of the 1<sup>st</sup> defendant by a sale deed dated 27.08.1998.

(ii) The plaintiffs and 2<sup>nd</sup> defendant, have contributed their salary towards purchase of the suit schedule property and also for the construction

of building, consisting of ground and first floors. The parties have orally agreed that the plaintiffs would occupy the ground floor measuring an extent of 1500 sq.feet and the revision petitioner/2<sup>nd</sup> defendant would occupy the first floor with her family. They occupied the respective portions as per the oral agreement, in the month of July 1999.

(iii) After the demise of their grandmother viz., Mrs.Saradambal on 05.01.2011, the respondents/plaintiffs approached the 1<sup>st</sup> defendant in the month of 2001 with their demand in their ½ (half) share in the suit schedule property. But the 1<sup>st</sup> defendant did not encourage the partition and she requested them to wait till May 2012. During May 2012, when they renewed their demand for partition, the 1<sup>st</sup> defendant disclosed the fact that she had settled the entire property, in the year 1999, in favour of the revision petitioner / 2<sup>nd</sup> defendant, to avoid certain complications. The 1<sup>st</sup> defendant also handed over the copy of the Settlement Deed along with the contribution made by them towards the purchase and construction of the said property.

(iv) The plaintiffs and 2<sup>nd</sup> defendant are having equal shares in the suit schedule property. The settlement of the property in favour of the 2<sup>nd</sup> defendant is entirely illegal. The respondents/plaintiffs came to know the settlement deed in the second week of May 2012 from the 1<sup>st</sup> defendant and

immediately, made an oral demand for partition of their shares. The revision petitioner / 2<sup>nd</sup> defendant refused to their demands for partition and they also threatened the respondents/plaintiffs to vacate from the premises.

(v) The respondents/plaintiffs are entitled to ½ (half) share in the suit schedule property under the Hindu Succession Act. The grandmother has acquired the property absolutely. The revision petitioner / 2<sup>nd</sup> defendant cannot acquire property to the exclusion of the respondents/plaintiffs. The interim petition filed by the revision petitioner / 2<sup>nd</sup> defendant deserves to be dismissed.

6. Having considered the materials placed before the Court below, the learned Subordinate Judge, Poonamallee, by order dated 09.04.2014, dismissed the application filed by the revision petitioner/2<sup>nd</sup> defendant, by saying that the contentions raised by the respective parties have to be decided only by allowing the parties to let in oral and documentary evidence. Further, Court below has held that as per the averments set out in the plaint the Court could not come to any specific conclusion that the suit is barred under the provisions of Benami Transactions (Prohibition) Act, 1988.

7. Challenging the same, the petitioner / 2<sup>nd</sup> defendant is before this Court with the Civil Revision Petition to set aside the dismissal order and to allow the application.

8. Today, when the Civil Revision Petition came up for hearing, both the learned counsel appearing for the revision petitioner/2<sup>nd</sup> defendant and the respondents/plaintiffs, were present and made their respective submissions.

9. The learned counsel appearing for the revision petitioner/2<sup>nd</sup> defendant would contend that in plaint at paragraph No.4, the respondents/plaintiffs have admitted that only from and out of the sale proceeds made by Mrs.Saradambal, mother-in-law of the 1<sup>st</sup> defendant, who is related as grandmother to the revision petitioner/2<sup>nd</sup> defendant and the respondents 1 and 2 /plaintiffs, the suit schedule property measuring an extent of 2900 sq.ft at Plot No.236, Janaki Nagar, 6<sup>th</sup> Cross Street, Valasarvakkam, Chennai - 87, has been purchased under the sale deed dated 27.07.1998. In the said circumstances, instead of filing a suit challenging the settlement deed executed by the deceased 1<sup>st</sup> defendant in favour of the revision petitioner / 2<sup>nd</sup> defendant, they have filed a suit for partition.

10. According to the pleadings set out in the plaint, the deceased Mrs.Saradambal have purchased the property in the name of the deceased 1<sup>st</sup> defendant as Benami. Further as per Section 4(1) of the Benami Transactions (Prohibition) Act, 1988 the said claim made by the respondents/plaintiffs, is barred by law. However, the respondents/plaintiffs have filed a suit for partition, claiming as above. In this aspect, the Court below without appreciating the same, dismissed the application filed by the revision petitioner/2<sup>nd</sup> defendant, which is erroneous in law.

11. Per contra, the learned counsel appearing for the respondents/plaintiffs would contend that the specific case of the respondents/plaintiffs is that only for the welfare of the Hindu undivided joint family, the deceased Mrs.Saradambal paid a part of sale consideration and thereafter, for the construction made in the said property, the respondents/plaintiffs and the revision petitioner/2<sup>nd</sup> defendant have provided necessary money to the deceased 1<sup>st</sup> defendant. Therefore, without recording evidence from either side allowing the application filed under Order VII Rule 11(d) of CPC, will defeat the ends of justice. According to him the impugned order passed by the trial Court is a well considered one and therefore, interference of this Court is unnecessary.

12. The specific case of the respondents/plaintiffs before the trial Court is that Mrs.Saradambal the mother of the late R.S.Santharam and also the mother-in-law of the 1<sup>st</sup> defendant and the grandmother of the plaintiffs and 2<sup>nd</sup> defendant, owned a land and building i.e. a flat in the first floor measuring about 852 sq.feet situated at Besant Nagar, Chennai, which she had purchased from the Tamil Nadu Housing Board. The said flat was purchased by Mrs.Saradambal under the monthly scheme out of her savings and out of her self earned income. Accordingly, the flat was her absolute property and the respondents/plaintiffs state that the said flat was sold during the life time of Mrs.Saradambal, viz., the grandmother of the plaintiffs and the 2<sup>nd</sup> defendant and the mother-in-law of the 1<sup>st</sup> defendant. The sale proceeds of the said flat were utilised for purchasing the vacant land measuring 2900 sq.feet at Plot No.236, Janaki Nagar, 6<sup>th</sup> Cross Street, Valasaravakkam, Chennai - 600 087.

13. The plaintiffs and the 2<sup>nd</sup> defendant were majors at the time of purchase and have agreed that the suit schedule property being a vacant land could be purchased in the name of the 1<sup>st</sup> defendant, for the sake of convenience and as the elder member of the family. Mrs.Saradambal, who was 83 years also wished that property at Valarsarvakkam would be purchased in the name of her daughter-in-law Mrs.Banumathi, the 1<sup>st</sup> defendant herein.

14. The plaintiffs and the defendants 1 and 2, have impliedly agreed that all of them have a share in the land purchased in Valasarvakkam in the name of the 1<sup>st</sup> defendant. As of now the respondents/plaintiffs prayed partition only for the suit schedule property, which stands in the name of the 1<sup>st</sup> defendant.

15. The above averments set out in the plaint would clearly disclose the fact that the sale proceeds for purchasing the land property was borne by Mrs.Saradambal. The respondents/plaintiffs at any point of time, have not stated anything that the sale proceedings for the purchase of plot in the name of 1<sup>st</sup> defendant, was invested by them. Their contention is, only for constructing the building in the suit property, they have invested some amount. So, in the above circumstances it cannot be said that the entire property was purchased from the money invested by Mrs.Saradambal. It has to be decided only at the time of trial.

16. In fact, where a property is purchased in the name of another for one's own benefit, such transaction is popularly known as 'Benami Transaction'. The expression 'Benami' is of Persain origin the meaning of which is fictitious. The word 'Benami' in Section 4 of the Act does not include nominal transaction.

17. Further, it is well settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. The burden has to be strictly discharged by adducing legal evidence of a definite character, which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raisins and interference of that fact.

18. Though the question whether a particular sale is benami or not is largely one of fact, and for determining this question, no absolute formulas or acid test, uniformly applicable in all situations can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the Courts are usually guided by the these circumstances viz.,

1. the source from which the purchase money came;
2. the nature and possession of the property, after the purchase;
3. motive, if any for giving the transaction a benami colour;
4. the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;
5. the custody of the title deeds after the same; and
6. the conduct of the parties concerned in dealing with the property after the sale.

19. So in all aspects, letting in evidence by either party is necessary to find out whether the claim made by the respondents/plaintiffs, is reasonable or not. In otherwise, it is the admitted case of the plaintiffs that they have not directly invested any money for the purchase of property, which now stands in the name of the 1<sup>st</sup> defendant and that the construction in the suit property was put by the amount spent by them. Therefore, it cannot be said that the said circumstances create a benami transaction and thereby the suit filed by the plaintiffs are barred by law.

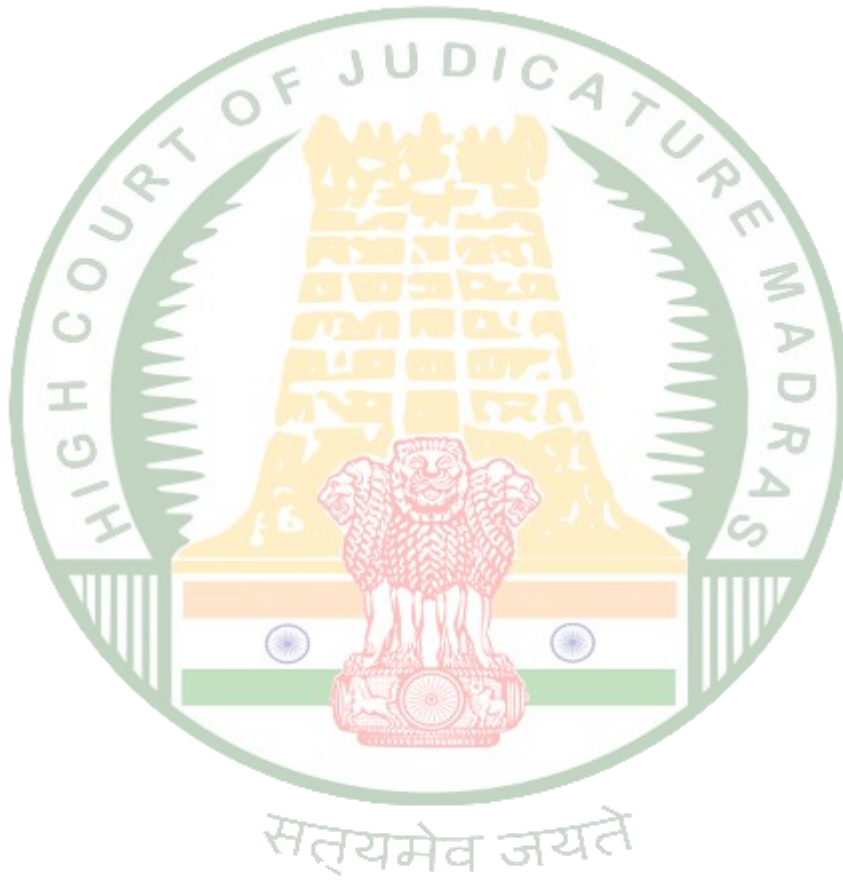
20. In the impugned order, the Court below has rightly observed as above and has come to the conclusion that without recording the evidence from either side, it cannot be possible to hold that the suit filed by the respondents/plaintiffs, is barred under Section 4 of the Benami Transactions (Prohibition) Act, 1988. Therefore, this Court is of the opinion that no material irregularity is found in the impugned order, warranting interference. Accordingly, the Civil Revision Petition is dismissed. No Costs. Consequently, the connected Miscellaneous Petition is closed.

28.11.2019

Index: Yes/No.

Internet: Yes.

Speaking / Non-speaking Order  
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R.PONGIAPPAN, J.,

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To  
The Subordinate Court, Poonamallee



Pre-delivery order

CRP (PD) No.2379 of 2014  
and M.P.No.1 of 2014

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