

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition (PD) No.874 of 2014
and M.P.No.1 of 2014

1.N.Manjula

2.S.Nithiya Arasu

..Petitioners/ Defendants
3 & 4

Vs

1.G.Vedhachalam

2.P.Manonmani(deceased)

3.R.Parthasarathy

4.P.Shankar

5.P.Suresh

6.P.Ragu

7.T.Ponni

(3 to 7 are the legal heirs of (Late) P.Manonmani-2nd plaintiff added as legal heirs as per order dated 12.07.2012 in I.A.No.4950/2012 and amendment carried out as per dated 24/07/2012 in I.A.No.10616/2012)

8.G.Veeramani @ Veeranarasimhan

9.S.Palani

10.The Chairman

The Tamil Nadu Slum Clearance Board

Kamarajar Salai

Chennai-600 005

..Respondents 8 to 10
/Defendants 1, 2 and 5

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 16.12.2013 passed in I.A.No.142/2013 in O.S.No.3712 of 2004 by the VII Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.V.Raghavachari for Mr.K.S.V.Sethuraman

For Respondent : Mr.S.Babu for R1.
R2 to R7 Served to Lower Court counsel
Mr.K.S.Narasimhan-no appearance.
R9- given up vide order dated 03.10.2019.
Mr.S.Prabhu, AGP for R10.

ORDER

The respondents 1 to 7 herein filed suit against respondents 8, 9, petitioners 1 and 2 and 10th respondent herein, as defendants 1 to 5 in O.S.No.3712 of 2004 on the file of 7th Asst. Judge, City Civil Court, Chennai. The petitioners herein shown as 3rd and 4th defendants in the said suit. During the pendency of the suit, the petitioners/3rd and 4th defendants had filed application in I.A.No.142/2013 to reject the plaint under Order 7 Rule 11 CPC on the ground that the suit is barred under the provisions of Benami Transactions (Prohibition) Act 1988. The said application was contested by respondents 1 to 7 herein/plaintiffs and the trial court dismissed the petition in I.A.No.142 of 2013 in O.S.3712 of 2004. Challenging the said

order passed by the trial court, the petitioners have filed this Civil Revision Petition.

2. The learned counsel for the petitioners would submit that in the plaint itself, the respondents 1 to 7/plaintiffs had stated that suit properties are originally acquired in the name of the 1st defendant in the suit/8th respondent in this CRP, from and out of the funds and one V.Gopal Pillai. Therefore, it is seen from the plaint averments itself that the property was purchased in the name of the 1st defendant out of the funds of one Gopal pillai. It clearly shows that Benami Transactions (Prohibition) Act would attract. After the death of Gopal Pillai, the 1st defendant sold the property to the petitioners. Therefore, the respondents 1 to 7 filed the suit for partition declaring the sale deed executed by 1st defendant/8th respondent herein in favour of the 3rd defendant /1st revision petitioner as null and void and it will not bind the respondents 1 to 7/plaintiffs. Since the plaintiffs themselves admitted that V.T.Gopal Pillai purchased the property in the name of the 1st defendant/8th respondent herein, after the death of Gopal Pillai, the 1st defendant dealt with the property, therefore, the suit has to be rejected on the ground that the Benami Transactions (Prohibition) Act is applicable to the facts of the case, so plaint has to be rejected under Order 7 Rule 11 of CPC.

3. In support of the above contentions, the learned counsel for revision petitioners, placed reliance on the following judgments of Honourable Supreme Court and this court.

- (i) CDJ 1986 SC 277 [Ram Singh and others Vs. Gram Panchayat Mehal Kalan and others]
- (ii) CDJ 2012 SC 446 [The Church of Chrish Charitable Trust & Educational Charitable Society, represented by its Chairman Vs. M/s.Ponniamman Educational Trust represented by its Chairperson/Managing Trustee.]
- (iii) CDJ 2005 SC 625 [Popat & Kotecha Property Vs. State Bank of India Staff Association]
- (iv) (1995) 2 SCC 630 [R.Rajagopal Reddy (dead) by LRs. And others Vs. Padmini Chandrasekharan (Dead) by Lrs.]
- (v) CDJ 1997 SC 840 [Rebti Devi Smt Vs. Ram Dutt and another]
- (vi) CDJ 2000 SC 349 [Rajappa Hanamantha Ranoji Vs. Mahadev Channabasappa and others]
- (vii) 2014 SCC Online Mad 2617 [K.R.Rajeesh Kumar Vs. 1.K.Nalini Raghavan and others]
- (viii) 2009-2-L.W.560 [P.Gopalasamy Vs.A.Palanisamy Chettiar]

The learned counsel further submitted that the trial court failed to consider that Benami Transactions (Prohibition) Act is retrospective in nature; even though the purchase is prior to the Act, by giving force of the Act to the transaction, as per the law laid down by the Honourable Supreme Court, Benami Transactions (Prohibition) Act would attract and the suit is barred by law and hence, plaint has to be rejected. Further, it is submitted that the plaint does not disclose any cause of action and therefore, it can be rejected at any point of time even after filing written statement also.

4. The learned counsel for the respondents 1 to 7/plaintiffs would submit that respondents 1 and 8 are the sons of Gopal Pillai and at the time of the purchase of the suit property, age of the 8th respondent/1st defendant is only 19 years and he has no means to purchase the property independently. Since Gopal Pillai was working in the Food Corporation of India, he has purchased the property in the name of the 8th respondent/1st defendant in the fiduciary capacity. After the death of Gopal Pillai, 1st respondent's 1/2 share in the suit property is on par with the 8th respondent. Therefore, the sale made by Power of Attorney of the 1st respondent to the petitioners is null and void and not binding the 1st respondent herein. Further, Benami Transactions (Prohibition) Act will not apply to the present case. After

purchasing the property by Gopal Pillai in the name of one of his sons, it shows that the property was purchased in fiduciary capacity since at that time, person named in the property has no means to purchase the property and it is only coparcener property and after Gopal Pillai, both the sons are entitled for the said property and therefore, all the facts have to be decided in the suit and not in the interlocutory application filed before the trial court and there is no merit in the present revision petition and it is liable to be dismissed.

5. Heard both sides and perused the records carefully.

6. It is to be noted that respondents 1 to 7 herein filed suit for partition against the respondents 8 to 10 and the revision petitioners herein. The petitioners herein are arrayed as 3rd and 4th defendant in the said suit. The case of the 1st respondent herein is that one Gopal Pillai is the father of the 1st respondent and the 8th respondent. The said Gopal Pillai was working in Food Corporation of India. He purchased the property in the name of the 8th respondent and after the death of Gopal Pillai, the 1st defendant/8th respondent sold the suit property through Power of Attorney to the petitioners herein and therefore, respondents 1 to 7 herein/plaintiffs filed the suit for partition and also seeking to declare the sale deed in favour of the petitioners

herein and Power of Attorney as null and void and it will not bind the 1st respondent/1st plaintiff.

7. During the pendency of the suit, 1st defendant, 4th and 5th defendants therein filed written statement. Thereafter, the petitioners herein/3rd and 4th defendants filed application in I.A.142 of 2013 for rejection of the plaint under Order 7 Rule 11 CPC, stating that the suit is barred by Benami Transactions (Prohibition) Act. The learned counsel for the petitioners would submit that though the 8th respondent is the son of the concubine of Gopal Pillai, the 1st respondent is the only son of Gopal Pillai, therefore, the son of Gopal Pillai and concubine son cannot be coparcener. Under the Hindu Law, concubine son is not the coparcener. Therefore, any purchase of property in favour of the 8th respondent is not in the status of fiduciary capacity. Therefore, it clearly falls under Benami Transactions (Prohibition) Act. Even though in the pleadings, the plaintiffs have stated that 8th respondent/1st defendant is the son of concubine, the fact remains that both of them are not the brothers born to Gopal Pillai. Therefore, they are neither coparcener nor having fiduciary capacity. Therefore, plaint has to be rejected.

8. The learned counsel for the respondents 1 to 7/plaintiffs vehemently

denied that 8th respondent/1st defendant is not the son of concubine, he is only son of 2nd wife. As per Hindu Law, the son of 2nd wife is also entitled to a share of his father's property. However, he has submitted that averments stated in the written statement cannot be taken into consideration. The averments made in the plaint are only to be taken into consideration at the time of deciding the petition filed under Order 7 Rule 11 CPC for rejection of plaint.

9. A careful reading of the plaint, would go to show that Gopal pillai is the father of 1st and 8th respondents. While Gopal pillai was working in Food Corporation of India at Madras Harbour, at that time, he purchased the property in the name of the 8th respondent. At that time, the age of the 8th respondent is only 19 years and studying in the school. For the sake of investment, the said property was acquired by Gopal pillai in the name of 8th respondent and the said property was in the possession of Gopal Pillai. After the death of Gopal Pillai dated 20.03.1994, taking advantage of the same, in the year 2001, 8th respondent has executed General Power of Attorney in favour of the 9th respondent herein and sold the property in the name of the petitioners. Therefore, the 1st respondent came to knowledge of the sale deed on 30.03.2004 and after that the respondents 1 & 2/plaintiffs applied for the

certified copy of sale deeds and thereafter, they filed the suit in O.S.No.3712 of 2004.

10. It is settled proposition of law while dealing with the application filed under Order 7 Rule 11 of CPC, the court has to see the averments made in the plaint not the defence taken by the defendants and also defence taken in the written statement in the suit. In the written statement filed by the 8th respondent/1st defendant, he has not stated that the sale in favour of 8th respondent is barred under Benami Transactions (Prohibition) Act. Though the court need not go into the averments made in the written statement, it can go into the averments made in the plaint alone. The issues raised by the petitioners herein who are defendants 3 and 4 in the suit that 8th respondent is the concubine son; the question that whether the 8th respondent is concubine son or second wife son and the property purchased in fiduciary capacity or not; whether the sale is prohibited under Benami Transactions (Prohibition) Act, 1988, are all issues to be decided only after recording the evidence and after trial and not at this stage.

11. There is no quarrel over the proposition of law laid down by the Supreme Court in the various decisions cited by the learned counsel for the

petitioners. Admittedly, in this case, the 1st respondent/plaintiff in his plaint has stated that 1st and 8th respondents are coparcener and the sons of Gopal Pillai who purchased the property out of his funds in the name of the 8th respondent. So, Gopal Pillai, was in possession of the property. After the death of Gopal Pillai, without the knowledge of the 1st respondent, 8th respondent executed General Power of Attorney in the name of the 9th respondent. 9th respondent sold the property to the petitioners. So the issues raised herein that (i) as to whether the property is purchased by Gopal Pillai in the name of the 8th respondent out of his funds; if so at the time of purchase, whether the 8th respondent has got the means to purchase the property and (iii) as to whether Gopal Pillai has purchased the property in the fiduciary capacity or the purchase of property alleged to have been made by Gopal Pillai in the name of the 8th respondent is hit by Benami Transactions (Prohibition) Act, are all points can be decided only after recording evidence in the suit.

WEB COPY

12. Time and again, the Honourable Supreme Court and this Court have reiterated that at the time of deciding the application under Order 7 Rule 11, of CPC, the court has to see only the averments made in the Plaint not the defence taken by the defendants in the case. The facts of this

case are peculiar in nature and therefore, that has got to be decided only after trial and not at this stage. Therefore, at these circumstances, this court does not find any merit in the Revision and therefore, the Revision is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected MP is closed.

29.07.2020

Index: Yes/No
Internet: Yes/No
nvsri

To

- 1.The VII Assistant Judge, City Civil Court, Chennai.
- 2.The Section Officer, V.R. Section, High Court, Madras



WEB COPY

C.R.P.(PD).No.874 of 2014

P.VELMURUGAN,J.

nvsri



C.R.P.(PD).No.874 of 2014

29.07.2020

WEB COPY