



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 09.09.2020

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A(MD)No.351 of 2020

A.Syed Moosa

: Appellant/Appellant/Plaintiff

Vs.

Mahmutha Beevi (Died)

1.A.Jaffer

2.E.M.Yusuf Ali

3.E.M.Sahul Hameed

4.M.Sikandhar Quasim

5.E.M.Abdul Shappar

6.Jalal

: Respondents 1 to 6/Respondents 2 to 7/
Defendants 2 to 7

PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree of the learned Additional District Fast Track Court, Paramakudi in A.S.No.28 of 2018 dated 28.11.2019 dismissed the appeal by confirming the decree and judgment of the learned Sub Court, Mudukulathur in O.S.No.118 of 2017, dated 26.02.2018.

For Appellant

: Mr.A.Haja Mohideen

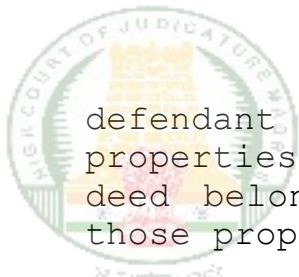
J U D G M E N T

The plaintiff laid a suit for declaration of his title over the suit property and that certain sale deed executed by the first defendant in favour of the defendants 3 to 6 as null and void. The suit came to be dismissed concurrently by the Courts below. Hence, the plaintiff is before this Court with this Second Appeal.

2. The brief facts necessary to appreciate the controversy are that the suit and other properties originally belonged to a certain Abdul Rahman. Abdul Rahman was married to the first defendant. The couple have six children. The plaintiff is one among them. Two of his other sons are Ismayil and Mohideen.

3.While so, under Ex.A1 partition deed dated 18.01.1971 Abdul Rahman and his son partitioned the property. Under the partition deed, Ismayil was allotted the 2nd schedule and Mohideen was allotted the 4th schedule. According to the plaintiff, he had purchased both 2nd schedule and 4th schedule properties from the respective allottees in Ex.A1 in the name of his mother, the first defendant, under sale deeds dated 28.06.1990 and 28.06.1991. The first defendant, however, had sold the property so purchased to the third party. Hence, the plaintiff had filed the suit.

4.The suit is resisted essentially by the purchaser, as the first



defendant remained ex-parte. Both the Courts below found that the properties covered under 2nd and 4th schedule to Ex.A1 partition deed belonged to the first defendant based on the purchase of those properties.

5.Heard the learned counsel for the appellant.

6.What both the Courts below have ignored, and what the counsel for the appellant missed is that under Section 4 of the Prohibition of Benami Property Transactions Act, 1988, it is impermissible for any party to plead benami either in the plaint or in the written statement. It is a statutory bar.

7.Reading the plaint wholly and plainly, what the plaintiff in effect alleges is that these properties were purchased in the name of the first defendant with his money. If at all the appellant could raise this plea, then, he ought to have pleaded that the purchase falls under exempted transaction as provided in Section 4 (4) of Prohibition of Benami Property Transactions Act, 1988. However, he has not pleaded anything to bring the transactions within the exemption provided.

8.Since there is a statutory bar to plead the benami, the suit itself is not maintainable.

9. Accordingly, this Second Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

msa/CM

To

1. The Additional District Fast Track Court, Paramakudi.

2. The Subordinate Judge, Mudukulathur.

3. The Section Officer-2 copies

V.R.Section, Madurai Bench of Madras High Court,
Madurai.

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