

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.482 of 2016
and C.M.P.No.2497 of 2016

1.Uma Srinivasan
2.Sarayu Srinivasan

...Petitioners

Vs.

1.R.Komathi
2.P.Nandakumar
3.D.Madhavan
4.K.U.Sivakumar
5.S.Selvanayagam
6.B.Palani

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the dismissal order dated 02.06.2015 in I.A.No.911 of 2014 in O.S.No.124 of 2014 on the file of the District Munsif cum Judicial Magistrate Court, Sriperumbudur.

For Petitioners : Mr.V.Seshachari

For Respondents : Mr.K.Bhasker

ORDER

This Civil Revision Petition is directed as against the dismissal order dated 02.06.2015 in I.A.No.911 of 2014 in O.S.No.124 of 2014 on the file of the District Munsif cum Judicial Magistrate Court, Sriperumbudur, thereby dismissing the petition filed for rejection of the plaint.

2.The petitioners are the defendants 2 and 3 in the suit filed by the respondents herein. The respondents filed the suit for declaration that the sale deed executed in favour of the petitioners herein by the 1st defendant dated 19.08.2013, vide registered document No.11225 of 2013 as null and void.

3.The case of the plaintiffs is that the 1st defendant, while she was working as a temporary employee under the plaintiffs, they decided to purchase a property in the name of the 1st defendant. She is only a lame lender. Accordingly, they purchased the suit property by the registered sale deed dated 28.03.2007, in the name of the 1st defendant. Thereafter, they formed a Company in which the 1st defendant invested a sum of Rs.3,00,000/-. Thereafter, there was a dispute and she has no longer than the Director of the company. Utilizing the said opportunity, she executed sale deed in favour of the 2nd and 3rd defendants by the registered sale deed

dated 19.08.2013.

4.The learned counsel for the petitioners would submit that admittedly, the 1st defendant is the lame lender and as such entire transaction is a Benami transaction. Therefore, the suit itself is not maintainable and it is barred under Section 4 of the Prohibition of Benami Property Act, 1988.

5.That apart, the respondents filed the suit only to declare that the sale deed executed in favour of the petitioners alone as null and void and without asking for any relief for declaration in their favour in respect of the suit schedule property.

6.The learned counsel for the respondents submitted that there was a share to the tune of 90 % in the Company in favour of the 1st defendant and only 10 % of the share stands in the name of the respondents herein. Therefore, there are tribal issues and it can be culled out only in the enquiry. In fact, the memorandum of understanding entered between them and decided to purchase the property in the name of the 1st defendant. Therefore, she is the only lame lender and hence the 1st defendant has no power of title over the suit property to alienate or to encumber the suit

property in favour of the petitioners.

7.Considering the above facts and circumstances, the trial Court rightly dismissed the petition in I.A.No.911 of 2014.

8.Heard the learned counsel for the petitioners and the learned counsel for the respondents and perused the materials available on record.

9.On perusal of the records, it shows that the suit property was purchased by the 1st defendant vide registered sale deed dated 28.03.2007. The sale deed revealed that the said suit property was purchased in her name and there is no recital in respect of the partnership. The suit property stands in the name of the 1st defendant on her personal capacity. Even according to the respondents after purchase of the sale there was a Company in which the 1st defendant has 90 % of the share over the Company, for which no iota of evidence was produced by the respondents in respect of the Company or the partnership firm.

10.Therefore, admittedly, the suit property purchased in the name of the 1st defendant. According to the respondents she is the only name lender and as such it is the benami transaction. If it is a benami transaction, Section 4 of the Prohibition of Benami Property transaction Act, 1988, will

come into play. It is relevant to extract the Section 4 of the Prohibition of Benami Property transaction Act, 1988 as follows:-

"4.Prohibition of the right to recover property

held benami - (1) No 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 or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property."

11. Accordingly, no suit is main maintainable in respect of any property held by the Benami against the person in whose name the property stands or in other person. According to the respondents the suit property was purchased in the name of the 1st defendant and she is none other than their Benami. Without considering this fact, the Court below dismissed the petition only on the ground that the 1st defendant was a share holder of the

Company property purchased by the respondents in the name of the 1st defendant, which cannot be termed as a Benami transaction as per Section 4 of the Benami Transaction Act.

12.As discussed above, no document has been produced by the respondents to prove their contention that the 1st defendant is having his share of the Company to the tune of 90 %. In fact the respondents failed to produce any name of the partnership firm and as such the suit itself is not maintainable as per Section 4 of the Benami Transaction Act.

13.In view of the above discussion, the order dated 02.06.2015 in I.A.No.911 of 2014 in O.S.No.124 of 2014 on the file of the District Munsif cum Judicial Magistrate Court, Sriperumbudur, is set aside and the Civil Revision Petition stands allowed. No costs. Consequently connected miscellaneous petition is closed.

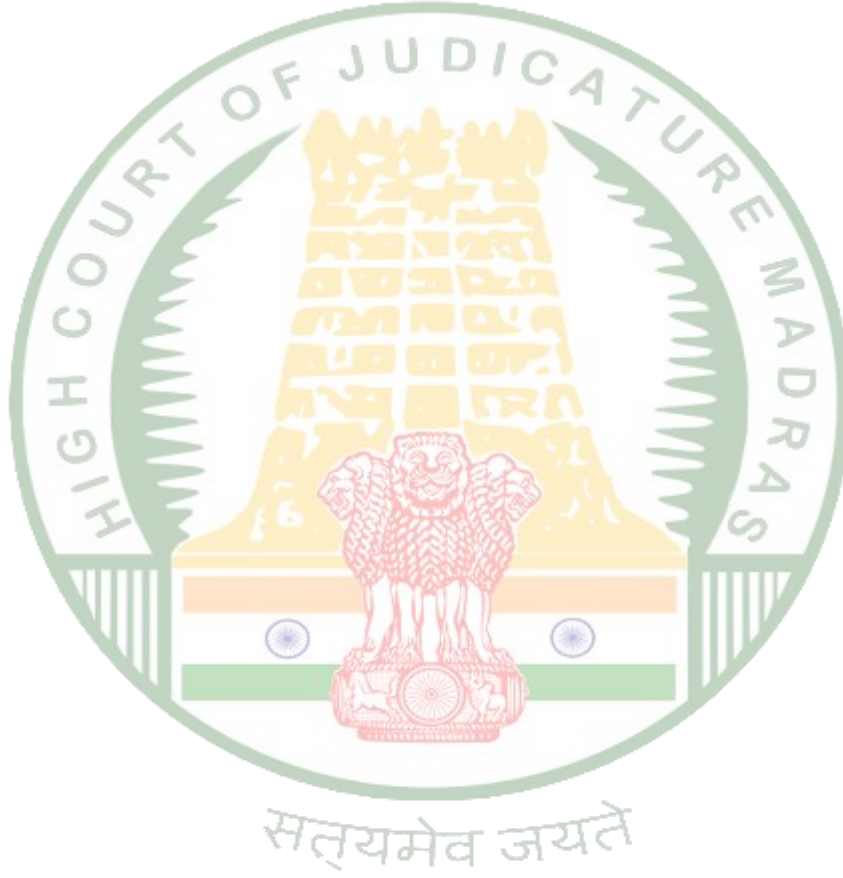
सत्यमेव जयते

Index: Yes/No
Speaking Order: Yes/No
Jer

WEB COPY

10.02.2021

To
The District Munsif cum Judicial Magistrate Court, Sriperumbudur.

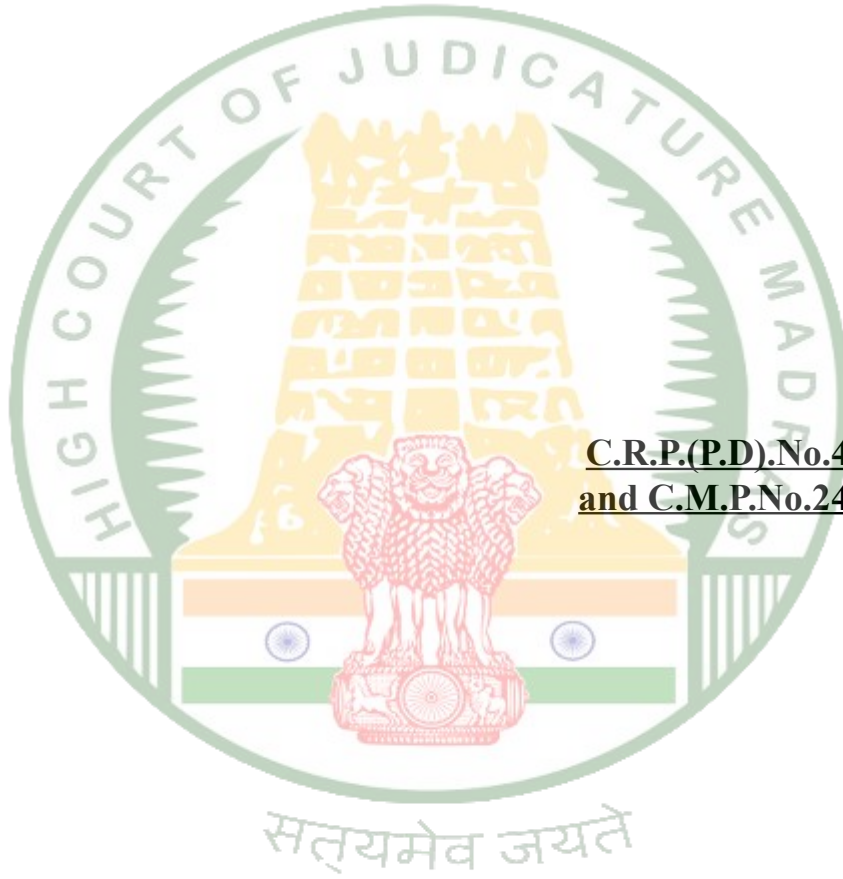


WEB COPY

C.R.P.(P.D).No.482 of 2016

G.K.ILANTHIRAIYAN.J,

Jer



C.R.P.(P.D).No.482 of 2016
and C.M.P.No.2497 of 2016

WEB COPY

10.02.2021