



CRP(PD).No.2992 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 29.09.2022]

[ORDERS PRONOUNCED ON : 28.10.2022]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP (PD).No.2992 of 2016

and

C.M.P.No.15100 of 2016

V.Thangavel

....Petitioner

.. Vs ..

1.P.V.Nachimuthu

2.S.Saroja

...Respondents

PRAYER: Petition filed under Article 227 of the Constitution of India, to allow the C.R.P., setting aside the fair and decreetal order of the learned Subordinate Judge, Sankagiri dated 03.08.2015 in I.A.No.220 of 2014 in O.S.No.184 of 2013 an to order the said I.A as prayed for.

For Petitioner : Mr.T.M.Hariharan

For R1 : Mr.R.Marudhachala Murthy

For R2 : No appearance

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ORDER

This petition is filed to set aside the fair and decreetal order of the learned Subordinate Judge, Sankagiri dated 03.08.2015 made in I.A.No.220 of 2014 in O.S.No.184 of 2013.

2. The first defendant in the suit is the revision petitioner herein.

3.The first respondent/plaintiff filed a suit in O.S.No.184 of 2013 seeking partition of the schedule property on the ground that the first respondent and the petitioner and the second respondent are brothers and sisters and there was a family partition among the petitioner herein and the first defendant herein and their mother on 04.02.1987 and the subject matter of the suit covered under the said partition deed. Further contended that the first respondent and the petitioner herein jointly contributed money towards the purchase of half share in the suit property while the second respondent/second defendant has contributed 50% of the suit property and thereafter they put up 9 shops and the door number of the terraced shops are 1/309,



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1/310 and 1/311; the door numbers of the six asbestos rooms are 1/311, 1/312, 1/313, 1/314, 1/315 and 1/316. The terraced shops and the asbestos roof rooms were rented. The plaintiff and the defendants were receiving the rent and shared the same and hence filed a suit for partition claiming 1/4th share of the property.

4. On receiving the summons, the first defendant/petitioner herein filed petition under 7 Rule 11(d) of the C.P.C., to reject the petition on the ground that going by the pleadings in the plaint to the effect that the suit property was purchased by the joint contribution of the plaintiff and the first defendant along with the second defendant at the ratio of 25%:25%:50% and even as per pleadings it is not a joint family property or not an ancestral property and hence, the first defendant/revision petitioner filed the above petition for rejection of the plaint on the ground that the controverted averment in the plaint is clearly false upon Benami Transaction Act and hence they cannot be taken in a suit for a partition and besides the suit is barred by limitation, seeks rejection of the plaint. Counter was filed in the above I.A and after arguments, petition was dismissed and hence, the present revision is filed by the first petitioner/first defendant.



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5. After hearing both side submissions and on perusal of the plaint in O.S.No.184 of 2013, it is specifically mentioned that the plaintiff/the first respondent herein and the first defendant (revision petitioner herein) jointly contributed for the purchase of the half share in the property and the second defendant/second respondent contributed 50% of the remaining half share. It is their further case that the construction was put up in the various Door numbers as stated supra.

6. On perusal of the plaint, I find that there is a austerity in pleadings in avoiding the nature of the claim.

7. The petitioner in the plaint does not state that the suit property is a coparcenar property. The plaintiff claims that though half share of the suit property was purchased in the defendants name the plaintiff had contributed the money towards 1/4th share and having common 1/4th share out of the 1/2 share and the remaining 1/2 belongs to the second petitioner and hence, as per the uncontroverted pleadings, I find that it is in the nature of benami transaction and sale deed stands in the name of the first petitioner herein and the second respondent herein at the rate of undivided share.



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8. Mr.T.M.Hariharan, learned counsel for the revision petitioner would contend that when the law is clear on the point that clause under Section 2(9) of the Benami Transaction Act, only deals with the joint family property which is standing in the name of the karta of the property alone is exempted from the purview of the Prohibition of Benami Property Transactions Act, 1988 (in short 'Benami Act) and as per Section 4 of the said Act, no suit can be laid before the civil Court which is in the nature of the benami transaction, either direct or indirect. In other words, a suit is barred when the pleadings are in the nature of benami transaction. The exception is under Section 2(9) of the said Act.

9. As per the pleadings, though the first respondent herein contributed the amount to the extent of 25% of the sale consideration, 50% share has been in the name of the revision petitioner herein and balance is in the name of the second respondent herein and hence, I find that by clever drafting, the word 'benami' has been deliberately avoided. However, the sum and substance of the pleadings is to the effect that the revision petitioner herein is acting as a benami for the first respondent herein (plaintiff).



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10. The learned counsel for the petitioner could contend that once the suit is barred under Section 4 of the Benami Act, the defendant cannot be called upon to undergo the ordeal of trial. Even going by the uncontraverted pleadings in the plaint, the plaintiff has stated that the suit property is not covered under the earlier partition deed between the brother and the mother. The 50% of the suit property has been purchased in the sister namely the second respondent herein. Balance amount being contributed by the sister. However the sale deed was written in the name of his brother namely the first petitioner and hence, I find that except describing the word 'benami', the entire substance of the Benami Act has been mentioned in the plaint and hence, I find that the pleadings are nothing but benami transaction and accordingly, by virtue of Section 4 of the Benami Act, the suit is barred.

11. The next contention raised by the learned counsel for the 1st respondent is that the petition for rejection of the plaint was filed in the month of February 2014 and written statement was filed only in the month of April 2014. The application for rejection of the plaint being filed before the written statement does not hold good and hence, the said contention could not be countenanced.



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12. Accordingly, I find that going by the pleadings the first respondent/plaintiff has pleaded benami and sale deed has been registered in the name of his brother namely the first defendant/revision petitioner and by virtue of section 4 of the benami Act, the suit is barred.

13. Therefore, this Civil Revision Petition is allowed. The order dated 03.08.2015 made in I.A.No.220 of 2014 is set aside and the same allowed. Consequently the suit in O.S.No.184 of 2013 on the file of the Sub-Court, Sankagiri stands struck off from the register. Consequently, connected C.M.P is closed.

28.10.2022

Internet :Yes
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To

- 1.The Sub-Court, Sankagiri.
- 2.V.R.Records, High Court,Madras.



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RMT.TEEKAA RAMAN, J.

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