



C.R.P.(PD).No.2517 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.11.2021
PRONOUNCED ON : 04.02.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.R.P.(PD).No.2517 of 2017
and
C.M.P.No.11872 of 2017

Tmt.A.Gowriammal

... Petitioner/1st defendant

Vs.

Mrs.K.Vijayalakshmi

... Respondent/plaintiff

Prayer:- This Civil Revision Petition has been filed, against the fair and decreetal order, dated 04.04.2017, made in I.A.No.533 of 2016 in O.S.No.40 of 2016, by the III Additional District and Sessions Judge, Coimbatore.

For Petitioner : Mrs.A.L.Ganthimathi

For Respondent : Mr.P.Valliappan



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ORDER

This Civil Revision Petition has been filed against the fair and decreetal order, dated 04.04.2017, made in I.A.No.533 of 2016 in O.S.No.40 of 2016, passed by the learned III Additional District and Sessions Judge, Coimbatore.

2.The 1st defendant in O.S.No.40 of 2016, on the file of the District Judge, Coimbatore is the revision petitioner in this Civil Revision Petition.

3.The facts of the case, in a nutshell, are that the petitioner is the 1st defendant and the respondent is the plaintiff in O.S.No.40 of 2016. The suit was filed by the respondent herein for declaration, declaring that items 1, 4 to 6 of the suit properties are held by the 1st defendant as benami of Late.Annamalai Gounder and dividing the suit properties into 10 equal shares by metes and bounds and allot 1/10th share to the plaintiff, for passing final decree by appointing an Advocate Commissioner to divide the suit properties and for permanent injunction. The petitioner herein had filed the above application in I.A.No.533 of 2016 seeking for rejection of plaint.

Since the said application was dismissed by the impugned order, dated



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04.04.2017, this Civil Revision Petition has been filed by the petitioner/1st defendant against the respondent/plaintiff.

4.The learned counsel for the petitioner has submitted that the suit properties in respect of items 1, 4 to 6 of the suit Schedule is barred under Section 4 of Benami Transactions (Prohibition) Act, 1988, which bars any 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 lie by or on behalf of a person claiming to the real owner of the suit property. Therefore, the suit is prohibited under the said Act and there is no cause of action to file the suit in respect of the above mentioned suit properties.

5.The learned counsel for the respondent has submitted that the petition is not maintainable in view of the reason that the petitioner has not impleaded the other defendants as a party as per Civil Rules and Practice. He would further submit that being a suit for declaration and partition, the defendants are considered as plaintiffs in the eye of law and as such, all the



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defendants are necessary parties to the present petition. He further submitted that the petition seeking rejection of plaint partially in respect of item Nos.1 & 4 to 6 of the suit properties alone, is not permissible in law and that the suit is barred by Section 4 of Benami Transactions (Prohibition) Act, 1988, the respondent would claim that the suit falls within the exception under Sub Section 3 of Section 4 of Benami Transactions (Prohibition) Act, 1988 and hence, he seeks for dismissal of this Civil Revision Petition.

6.Heard both the learned counsel for the petitioner and the respondent.

7.The petitioner herein is the 1st defendant in the suit. The respondent herein has filed a suit for declaration, declaring that the items 1 & 4 to 6 of the suit properties held by the 1st defendant as benami of late. Annamalai Gounder, for partition against the petitioner and other defendants to partition the suit property into 10 equal shares and allot her 1/10th share and for permanent injunction restraining the defendants from alienating or encumbering the suit properties to any third parties.



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8. According to the respondent/plaintiff, the respondent is the daughter of one Annamalai Gounder and Janaki Ammal, who is the 1st wife of Annamalai Gounder. D2 to D5 are the sons and daughters born to Annamalai Gounder and Janaki Ammal and D6 and D7 are the wife and daughter of the deceased Thangaraj. It is the case of the respondent/plaintiff that D1/revision petitioner is the 2nd wife of Annamalai Gounder and the defendants 8 to 10 are the children born to her. The respondent herein, in her plaint, sought a first prayer for a declaration that the items 1 & 4 to 6 of the suit properties held by the 1st defendant i.e., revision petitioner herein as benami of late. Annamalai Gounder. The respondent has averred in her plaint that the above suit items 1 & 4 to 6 are purchased by her father Annamalai Gounder out of his own income in the name of the 1st defendant, the revision petitioner herein for the benefit of entire family since the 1st defendant is the elder member of the family.

9. The revision petitioner herein who is the 1st defendant in the suit filed I.A.No.533 of 2016, for rejection of plaint since the respondent sought for prayer in the plaint to declare the items 1 & 4 to 6 of the suit properties



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held by her as benami of late. Annamalai Gounder and as per the Provisions of Benami Transactions (Prohibition) Act, 1988, the above suit is barred under Section 4 of the said Act. The respondent herein filed her counter denying the contention of the revision petitioner herein and sought for dismissal of the petition.

10.The Trial Court, after hearing both the parties and after perusal of materials on record, dismissed the petition. The Trial Court at para No.8 of its order has discussed elaborately about Section 4 of Benami Transactions (Prohibition) Act and Sub Section 3 of Section 4.

11.As per Section 4 of Benami Transactions (Prohibition) Act, 1998, (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 on behalf of the person claiming to be a real owner of the 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



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any suit, claim or action by or on behalf of a person claiming to be the real owner of such property. But Sub Section 3 of Section 4 provides an exception for the general provision in Sub Section 1 and 2, by excepting the properties held by a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family or held by a trustee or other person standing in a fiduciary capacity and the property is held for the benefit of another person for whom, he is a trustee or towards whom, he stands in such capacity.

12.The Trial Court has also relied on the Judgment reported in *AIR 2012 Supreme Court 1987*, with regard to “Fiduciary Capacity”. The Trial Court has also observed that the 1st defendant stood in fiduciary capacity either to Annamalai Gounder or to his Children requires to be looked into before deciding whether the suit fell within the exception of Sub Section 3 of Section 4 of the Act and for that evidence is required and the suit has allowed to be tried and rightly dismissed the petition. Apart from that, the Trial Court has also dismissed the petition on the ground of (a) non impleadment of other defendants in the petition (b) plaint can neither be



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partially rejected nor the pleadings be ordered to be struck off or amended,
which warrants no interference by this Court.

13.In view of the above, this Civil Revision Petition is dismissed. No
costs. Consequently, the connected miscellaneous petition is also closed.

04.02.2021

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Index : Yes/No

Internet: Yes/No

Speaking Order : Yes/No

To

1. The III Additional District and Sessions Judge,
Coimbatore.
2. The Section Officer,
V.R.Section,
High Court of Madras.

S.KANNAMMAL,J.



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Pre-Delivery Order made in
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