



SA(MD)No.856 of 2006

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.09.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.856 of 2006
and M.P(MD)No. 1 of 2006

Chellaiah

... Appellant/1st Respondent/Plaintiff

Vs

1.Velayutham

..1st Respondent/Appellant/2nd Defendant

2.Pandarathi Ammal

3.Rangarajan

... Respondents 2 & 3/Respondents 2 & 3/
Defendants 1 & 3

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 24.03.2006 made in A.S.No.75 of 2005 on the file of the Subordinate Court, Tiruchirappalli reversing the judgment and decree dated 10.11.2004 made in O.S.No.2265 of 2004 on the file of the Principal District Munsif Court, Tiruchirappalli.

For Appellant : Mr.S.Ramesh

For R1 : Mr.R.Sunder

For R2 & R3 : Died



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JUDGMENT

The plaintiff, who was successful in his suit for recovery of possession in O.S.No.2265 of 2004 on the file of the Principal District Munsif Court, Tiruchirappalli. but suffered a reversal before the First Appellate Court in A.S.No.75 of 2005 preferred by the defendants, has approached this Court by this Second Appeal. For narrative convenience, the parties are referred to by their rank before the trial court.

2. The case of the plaintiff may be stated as below:

- The suit property is described as a plot measuring 3,962 sq.ft. with a residential building therein.
- On 28.01.1977, the plaintiff had purchased the suit property in the name of his mother Pandarathi Ammal, the first defendant herein. The other defendants are the plaintiff's brothers, Velayutham, the second defendant, Rengarajan, the third defendant. He has a sister Vasantha Kumari, who is



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not a party to the suit.

- While so, the plaintiff had laid O.S.No.17 of 1984 before the I Additional Sub Court, Tiruchirappalli, for declaration of his title on the allegation that the sale deed dated 28.01.1977 stands in the name of his mother Pandarathi Ammal is a benami transaction. The said suit came to be decreed Vide Ext.A.1 judgment. The said decree was registered before the Sub Registry and the same is marked as Ext.A.2;
- Subsequently, Pandarathi Ammal laid a suit in O.S.No.940 of 1985 to the effect that Ext.A.1 decree is null and void. This was dismissed Vide Ext.A.3 decree.
- Thereafter, the defendants 2 and 3 along with their sister Vasantha Kumari had laid a separate suit in O.S.No.950 of 1985 wherein they have contended that the suit property belonged to their father Shanmugavel and sought partition of their 3/5 share in the suit property and this suit was laid against the present plaintiff and Pandarathi Ammal.



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- Both O.S.Nos.940 of 1985 and 950 of 1985 came to be tried jointly and the trial court dismissed both the suits Vide the judgment dated 27.01.1988. Pandarathi Ammal preferred separate first Appeals in A.S.No.200 of 1988. Both these appeals came to be dismissed Vide separate judgments. While A.S.200 of 1988 was dismissed vide Ext.A.11 judgment and Ext.A.10 decree, dated 15.02.1989, A.S.No.42 of 1988 vide Ext.A.12 decree = Ext.B.1 dated 07.03.1990;
- There was no further appeal against Ext.A-10 decree in A.S.200 of 1988 whereas Pandarathi Ammal would now prefer S.A(MD)No.1173 of 1990 against the decree Ext. A12 decree in A.S.No.42 of 1988. This Second Appeal was later came to be dismissed as withdrawn Vide judgment of the court dated 06.09.1999, and this was marked Ext.A.4
- Having confirmed his title in multiple times, the plaintiff laid the suit for recovery of possession. The resistance to the suit was founded on a plea under the provisions of the Benami Transactions (Prohibition) Act, 1988.



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- In Ext.B.1 judgment, the First Appellate Court was faced with a piquant situation in that while the present plaintiff as the second defendant had claimed the suit property and that his mother Pandarathi Ammal was only the name lender, the plaintiff in that suit (the present first defendant) would claim that she was benami for their father Shanmugavel. Applying the ratio in ***Mithilesh Kumari and another Vs. Prem Behari Khare*** [AIR 1989 SC 1247], it was held that neither the present plaintiff nor the present defendants could plead benami. While Pandarathi Ammal as the first defendant had sought her 1/5th share in the property, the First Appellate Court held that inasmuch as the property is Pandarathi Ammal's, no cause of action arose for partition. Since O.S.No.950 of 1985 itself was dismissed, she is not an aggrieved party to maintain the appeal.

3. The dispute went to trial where both sides adduced oral and documentary evidence. On appreciating the same, the trial court decreed the suit. The First Appellate Court however relied again on ***Mithilesh Kumari's*** case to non-suit the plaintiff. Hence, this Second Appeal.



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4. This Second Appeal is admitted for considering the following substantial questions of law:

- a) *Whether the defendants are not bound by the findings in O.S.Nos.17 of 1984 and 950 of 1985 on the file of the Sub-Court, Tiruchirappalli and whether the findings of the lower appellate court to the contrary is not perverse?*
- b) *When the suit in O.S.No.950 of 1985 filed by the defendants 2 and 3 and one Vasantha Kumari had been dismissed holding that they are not entitled to any share, whether the lower appellate court is justified in permitting those defendants to re-agitate the same issue in the suit for recovery of possession filed at the instance of the appellant?*
- c) *Whether the appeal at the instance of the second defendant is maintainable under Section 96 of CPC, especially when he is not an aggrieved person competent to challenge the title of the appellant?*

5. The learned counsel for the appellant made the following pointed submissions:

- The trust of the First Appellate Court is on the ratio of ***Mithilesh Kumari's***



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case. However, this case has been overruled by the larger bench of the Hon'ble Supreme Court in ***R.Rajagopal Reddy (dead) and others Vs. Padmini Chandrasekharan (dead) by lrs.*** [(1995) 2 SCC 630] wherein the Hon'ble Supreme Court has held that the bar under Section 4 of the Benami Transactions (Prohibition) Act, 1988, does not have retrospective operation. This was overlooked not only by the First Appellate Court in A.S.No.42 of 1988 but also by the First Appellate Court in the later litigation in A.S.No.75 of 2005, some 11 years after the judgment in ***Rajagopal Reddy's case*** wherein the Supreme Court has settled the law.

- Turning to merits, he submitted that the plaintiff has secured his title *vis-a-vis* his mother Pandarathi Ammal even in O.S.No17 of 1984 wherein the judgment was delivered on 03.02.1984 some 4 years prior to the advent of the Benami Transactions (Prohibition) Act, 1988, and it has become final. All successive attempts either by Pandarathi Ammal or by the present defendants ended in vain when O.S.No.940 of 1985 and 950 of 1985 have all been dismissed. So far as the judgment in A.S.No.42 of 1988 is concerned, the First Appellate Court itself was in wrong in ignoring the



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fact that the plaintiff had already secured his title Vide Ext.A.1 decree and also pressed into service the provisions of the Benami Transactions (Prohibition) Act, 1988 when it was not even available for the court to invoke.

- The plaintiff having been secured his title in multiple rounds of litigation justly entitled to have possession of the suit property and it is delayed infinitively by the design of the defendants.

6. Heard the learned counsel for the first respondent/second defendant. His line of argument is in tune with line of reasoning of the First Appellate Court's judgment.

7. The error committed by the First Appellate Court is obvious and too apparent. The plaintiff has claimed his title against his mother in whose name the suit property was purchased on 28.01.1977. He had instituted the suit against his mother in O.S.No.17 of 1984 and obtained a decree Vide Ext.A.1 dated 03.2.1984 and it has become final. Subsequent litigations have little to affect the plaintiff's



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title since all the efforts either by the plaintiff's mother or by his siblings have gone against them. The plaintiff having established his title under Ext.A.1 decree few years prior to the advent of the Benami Transactions (Prohibition) Act, 1988 to telescope the ratio in *Mithilesh Kumari's* case itself is impermissible. At any rate, the ratio in *Mithilesh Kumari's* case has been overruled in *R.Rajagopal Reddy (dead) and others Vs. Padmini Chandrasekharan (dead) by lrs.* [(1995) 2 SCC 630]. Necessarily, the suit has to be decreed and it is done now.

8. In conclusion, this Second Appeal is allowed. Accordingly, the judgment and decree dated 24.03.2006 made in A.S.No.75 of 2005 on the file of the Subordinate Court, Tiruchirappalli reversing the judgment and decree dated 10.11.2004 made in O.S.No.2265 of 2004 on the file of the Principal District Munsif Court, Tiruchirappalli, is set aside. No costs. Consequently, connected miscellaneous petition is closed.

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