

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

CCCA No.65 of 1999

JUDGMENT:

The unsuccessful plaintiff has filed this appeal suit assailing the judgment and decree dated 27.03.1997 in OS No.1280 of 1988 on the file of the learned III Additional Judge, City Civil Court at Secunderabad.

2. The original suit on OS No.1280 of 1988 was filed by the plaintiff against defendant Nos.1 to 3 for declaration that the plaintiff is the original owner of the house bearing No.4-1-188 consisting of one front mulgi and rear room in the area of 30.94 square yards situated at Subhash Road, Secunderabad with precise boundaries as mentioned in the schedule of property (hereinafter referred to as "suit schedule property") and also for cancellation of the sale deed document No.53 of 1987 dated 12.01.1987, consequential injunction restraining the defendants and their agents from interfering with the possession of the plaintiff and her children over the suit schedule property.

3. The trial Court after full length of trial, on appreciation of the oral and documentary evidence available on record dismissed the suit of the plaintiff. Feeling aggrieved by the same, the present appeal is filed. During pendency of the appeal, the sole appellant/plaintiff died and her legal heirs were brought on record as appellant Nos.2 to 4. Similarly, respondent No.2/defendant No.2 died and his legal representative was brought on record as respondent No.4.

Pleadings in the plaint and written statement:

4. In brief, the case of the plaintiff is that she is the legally wedded wife of defendant No.1, out of the wedlock, she begot three sons and three daughters through him. The entire family of the plaintiff is living in the said house and they are dealing with the preparation of solid sweets and roasted bengal grams, til and dal laddu, patti etc. They used to sell the commodities in front of the mulgi in the said premises and used to live in the rear room. The suit house is purchased with the earnings of the plaintiff though the name of defendant No.1 as purchaser is

mentioned in the sale deed dated 29.04.1973 nominally. The defendant No.1 has taken away gold necklace of the plaintiff weighing about 4 tulas in the year 1970 and again in the year 1973. He has taken away the gold ornaments consisting of ear rings etc., weighing about 3½ tulas from the plaintiff, sold the same and paid the sale consideration of Rs.10,500/- and obtained sale deed on 29.04.1973. Thereafter in the year 1979, the defendant No.1 has married another woman and started living with her at Tupran, and in view of the disputes between the plaintiff and defendant No.1, he has clandestinely executed the sale deed dated 12.01.1987 in favour of defendants 2 & 3. The plaintiff has come to know about it only in August 1987. She has questioned the defendant No.1. The defendant No.1 has become enimical towards the plaintiff and her children and he failed to look after them. Thereafter, she has filed a maintenance case in M.C.No.198 of 1987 on the file of the Mahila Court-cum-II Additional Chief Metropolitan Magistrate at Hyderabad. The plaintiff is continuing her possession over the suit schedule property. If the sale deed is not cancelled, the plaintiff and her

children will be deprived of their right in respect of the suit schedule property. The defendant No.1 appears to have executed a rental agreement in favour of defendant Nos.2 & 3 with a mala fide intention to harass the plaintiff, accordingly prayed to decree the suit with costs declaring the plaintiff as absolute owner of the suit schedule property and to cancel the sale deed executed by defendant No.1 in favour of defendants 2 & 3 on 12.01.1987 and also sought for injunction against the defendants.

5. The first defendant remained absent before the trial Court and he was set *ex parte*. The defendants 2 & 3 have filed detailed written statement alleging that they are the bona fide purchasers of the suit schedule property for a valuable consideration of Rs.80,000/-. They have purchased it in good faith. They have taken all necessary precautions including giving paper publication about their intention to purchase. Thereafter, the first defendant has executed the sale deed. The defendants 2 & 3 had no notice of any kind of claim made by the plaintiff in respect of the suit schedule property. In fact, as per the rental agreement

executed by defendant No.1, it was agreed to pay Rs.200/- per month rent and to vacate by the end of August 1987. But the defendant No.1 and the plaintiff failed to pay the rent amount and also failed to vacate the suit schedule property. The defendants 2 & 3 are entitled for eviction of defendant No.1. In fact, there is a collusion of the plaintiff and defendant No.1 and accordingly, defendant No.1 remained *ex parte* in the original suit. All the documents that are filed by the plaintiff in support of her claim except the document executed on 12.01.1987 and the link document dated 29.04.1973 are all false. The suit is liable to be dismissed and prayed for dismissal of the suit.

Issues:

6. Basing on the above pleadings, the following issues were framed by the trial Court:

- i) Whether the plaintiff is entitled for the declaration as prayed for?
- ii) Whether the plaintiff is entitled for cancellation of the sale deed dated 12.01.1987?;
- iii) Whether the plaintiff is entitled for consequential injunction as prayed for?

- iv) Whether the defendants 2 & 3 are the bona fide purchasers for valid consideration? And
- v) To what relief?

Evidence and findings of the trial Court:

7. During trial, on behalf of the plaintiff, she herself got examined as PW.1, besides examining independent witness/PW.2 who is the grandson of the vendor. In all, Exs.A.1 to A.15 are marked on behalf of plaintiff. Thereupon, on behalf of defendants, DWs.1 to 3 are examined. Exs.B.1 to B.20 documents are marked. The trial Court upon hearing of both sides and on appreciation of the entire material available on record dismissed the suit of the plaintiff holding that the plaintiff is not entitled for declaration as prayed for. She is also not entitled for cancellation of the sale deed dated 12.01.1987 and not entitled for consequential injunction as prayed for. The issue No.4 was also answered holding that defendants 2 & 3 are bona fide purchasers. Feeling aggrieved by the judgment and decree dated 27.03.1997, the plaintiff has filed this appeal suit.

8. Heard learned counsel for the appellant/plaintiff and the respondents 2 & 3/defendants 2 & 3. The submissions made on either side have received due consideration of this Court. The learned counsel for the appellant also filed written arguments.

9. In the light of the rival contentions and the material available on record, the following points would arise for consideration:

- i) Whether the plaintiff is entitled for declaration of her title and also for cancellation of registered sale deed dated 12.01.1987 executed by defendant No.1 in favour of defendants 2 & 3 as prayed for?;
- ii) Whether the defendants 2 & 3 are bona fide purchasers for valid consideration?
- iii) Whether the order impugned is sustainable?

Point Nos.(i) to (iii):

10. Since all the points are inter-related, to avoid repetition and for the sake of brevity, it is proposed to answer all the points together as under:

11. The parties are hereinafter referred to as plaintiff and defendants as arrayed in the original suit.

12. The case of the plaintiff is that, she is the legally wedded wife of defendant No.1 and out of the wedlock she gave birth to six children and they were leading happy marital life. During subsistence of marital life, in the year 1973 she gave all her gold ornaments weighing about 7½ tulas and with the sale proceeds of the same her husband/defendant No.1 has purchased the suit schedule property as per the sale deed document No.53 of 1987 dated 12.01.1987. The plaintiff along with her children used to prepare the solid sweets and roasted bengal gram, til, dal laddu, patti and used to sell all these commodities in front of the suit mulgi by residing in the adjoining room. The suit house was purchased for an amount of Rs.10,500/-. The entire sale consideration was paid by her, but in the sale deed dated 29.04.1973 the name of the defendant No.1, husband of the plaintiff No.1 has mentioned as 'purhcaser'. All of sudden on 12.01.1987 the first defendant taking advantage of the fact that the

suit schedule house is standing on his name sold away the same to the defendants 2 and 3 under registered sale deed. The plaintiff has come to know about it in August 1987 only, she enquired with the defendant No.1, but in vain. She has also filed maintenance case claiming maintenance against the defendant No.1 as such the present suit is filed for declaration of her title, cancellation of said sale deed executed by defendant No.1 in favour of defendants 2 & 3 dated 12.01.1987 and for consequential injunction.

13. In support of her claim, the plaintiff herself got examined as PW.1. In her evidence, Exs.A.1 to A.15 documents are marked. In her oral evidence, the plaintiff has tried to improve her case stating that in addition to 7½ tulas gold, she has also paid an amount of Rs.2,000/- to her husband towards sale consideration of the suit house and the entire sale consideration was only paid by her. The sale deed as in Ex.A.1 equivalent to Ex.A.15. It is further stated that the defendant No.1 has executed a document dated 28.04.1975 giving all his rights in respect of suit house in favour of the plaintiff. She has further

stated that she has been in continuous possession and enjoyment of the suit house and she is paying the property tax in respect of the same. She has further stated in her evidence that she purchased the suit schedule property in the year 1972, whereas according to Exs.A.1 and A.15, it was obtained on 29.04.1973. She has mentioned that she gave her gold weighing 7½ tulas and an amount of Rs.2,000/- to her husband, who converted the gold into cash and paid the entire sale consideration. This evidence of payment of additional amount of Rs.2,000/- is an improvement from the pleadings in the plaint. Though PW.1 has stated that right from 1973 onwards, she has been paying the tax, she has only filed Exs.A.9 to A.12 receipts towards payment of property tax. They are dated 23.10.1981, 17.01.1991, 25.02.1983 and 25.03.1989 respectively.

14. All these receipts as indicated above in Exs.A.9 to A.12 only relates to the period from 1981 to 1991. Ex.A.9 relates to the year 1981. Perusal of the same shows that tax was paid by the plaintiff. Ex.A.11 relates to the

year 1983 wherein it is mentioned that the municipal tax was paid by the plaintiff. Whereas, Exs.A.10 and A.12 pertaining to the year 1991 and 1989 respectively, the amount was paid towards tax by the first defendant alone. Thus, these documents Exs.A.9 to A.12 are at best can be said that either the defendant No.1 or the plaintiff on his behalf paid the tax in the Municipal office. Undisputedly, the suit schedule property was sold under the original of Ex.B.1 in favour of defendants 2 & 3 by defendant No.1 in the year 1981. Subsequent to the said transaction covered under Ex.B.1 at no point of time, the plaintiff has paid municipal tax in respect of the suit schedule property. Exs.A.13 and A.14 are the acknowledgements, wherein it is found that the first defendant has executed the receipt in favour of plaintiff acknowledging her gold ornaments.

15. In this context, I may refer to the value of gold during the relevant period as per Exs.B.11 to B.13, the price of 24 carat gold in the market was between Rs.291/- to Rs.320.50 paise for 10 grams. Therefore, even if it is assumed that the plaintiff has given her entire 7½ tulas of

gold to the defendant No.1 towards payment of sale price, viewed from any angle, it will not fetch more than Rs.2,000/-. Whereas, the sale consideration is Rs.10,500/- over the suit schedule property. Added to this, defendant No.1 has also executed a promissory note for an amount of Rs.2,000/- in favour of his vendors, subsequently, paid the said amount as in Ex.A.4. There is no other evidence available on record to show that the plaintiff has paid some other amounts for purchase of suit schedule property under the original of Ex.A.1.

16. It is the specific case of plaintiff that in the year 1975 defendant No.1 has married another woman at Tupran and started living with her. Later on 12.01.1987 the first defendant executed the sale deed in respect of suit house in favour of defendants 2 & 3. Be it stated that the plaintiff has examined PW.2, who is claiming to be attesting witness to Ex.A.1 equivalent to Ex.A.15. His evidence does not inspire any confidence. He is the grandson of vendor under Ex.A.1. This witness stated that the plaintiff's son is his friend, he came to the Court to give

evidence at his instance. Though in the chief examination he has stated about the sale of gold and jewelry by the plaintiff for payment of sale consideration, in the cross-examination this witness stated that he does not know to whom the jewelry of the plaintiff was sold and what was the amount procured by selling the gold ornaments. He fairly admitted that since the plaintiff's son is his friend and at his instance, though he deposed about disposal of jewelry and he does not know when it was sold.

17. Similarly, PW.2 has stated that he does not know when PW.1 has sold the suit house to the defendants 2 & 3. He has admitted that DW.1 is having agricultural lands and he was also getting income from the lands situated at Tupran and he never saw the defendants 1 & 2 consuming liquor at Balesha compound. Therefore, viewed from any angle, the evidence of PW.2 is not helpful to the plaintiff either to show that he was attestor of Ex.A.1 or that the plaintiff has paid the entire sale consideration for purchase of the suit house by selling her gold ornaments or by procuring from other source.

18. Thus, on careful appreciation of the evidence of PWs.1 & 2, it is crystal clear that throughout her evidence the plaintiff as PW.1 has tried to improve her case from time to time. Though she has pleaded in the plaint that the suit house was purchased in the year 1973, in her evidence she has stated that it was purchased in the year 1972, which is not a fact. Again she has stated that apart 7½ tulas of gold she has paid Rs.2,000/- to her husband and that he has converted the gold into cash and paid the entire sale consideration. There is no proof to the effect of payment of Rs.2,000/- in cash. That apart, as per Exs.B.11 to B.13 in the year 1972-73 the entire gold of 7½ tulas would not fetch more than Rs.2,000/-. She has claimed that from 1973 onwards she has been paying property tax, but Exs.A.9 to A.11 would only show that subsequent to Ex.B.1 in the year 1987 the property tax was paid by her in the name of defendant No.1 and there is no proof to show that from 1973 onwards she has been paying property tax in respect of suit schedule property on her name, besides paying electricity and water charges.

19. PW.1 further stated that when she raised a dispute with her husband regarding the second marriage the document dated 28.04.1975 was executed by him, giving up his right in respect of suit schedule property in her favour. This evidence by itself would clinchingly establish that defendant No.1 was having right in respect of suit schedule property and accordingly he gave up his right. But no such document is filed to the effect that the defendant No.1 has executed any such deed or document dated 28.04.1975. Finally, it may be stated that there is no document filed by the plaintiff stating that her husband has given up his right, share or interest in respect of suit schedule property. All the documents as in Exs.A.1 to A.15 would only reflect that it is the defendant No.1, who has purchased the suit property from the grandfather of PW.2 for a valid consideration on 29.04.1973 and it is he who has also executed a promissory note as in Ex.A.4 undertaking to repay the said amount of Rs.2,000/- towards part of sale consideration. In such circumstances, the evidence of PWs.1 & 2 and the contents of Exs.A.1 to A.15 do not inspire any confidence to hold that the plaintiff

was in exclusive possession as absolute owner of suit schedule property and entitled for declaration of her title and cancellation of Ex.B.1 dated 12.01.1987 said to be executed by defendant No.1 in favour of defendants 2 & 3.

20. On behalf of the defendants, the second defendant got examined as DW.1, one of the attestors of Ex.B.1 is examined as DW.2 and independent witness, who has a barber in the locality, is examined as DW.3. In all, Exs.B.1 to B.20 documents are marked on behalf of the defendants.

21. Ex.B.1 is the registered sale deed in question which was sought to be cancelled by the plaintiff. Exs.B.2 and B.3 are the receipts for payment of sale consideration. These two receipts were executed by defendant No.1 in favour of defendants 2 & 3. Ex.B.4 is the original rental agreement executed by defendant No.1 in favour of defendants 2 & 3 agreeing to vacate the suit schedule premises after execution of the registered sale deed. Ex.B.5 is the original sale deed dated 29.04.1973. The certified copies of the same are filed by the plaintiff as in

Ex.A.1 and A.15. Exs.B.6 and 7 are other link documents. Exs.B.11 to B.13 are the paper publication of Hindu daily newspaper in proof of price of gold in the bullion market during the relevant period in the year 1972-73 and it was roughly between Rs.290/- to Rs.320.50 paise per tula. Exs.B.14 to B.20 are the counter foils of the receipts in proof of payment of rent from January 1987 to August 1987.

22. The oral and documentary evidence adduced on behalf of defendants would establish that defendants 2 & 3 have obtained Ex.B.1 sale deed from defendant No.1 for a valid consideration. On receipt of sale price, he has executed receipts under Exs.B.2 and B.3. Subsequent to the execution of Ex.B.1-sale deed, possession was not delivered, as such Ex.B.4 rental agreement was executed agreeing to vacate the suit schedule premises after August 1987, but failed to execute the same.

23. The plaintiff has filed the original suit for declaration of title and for cancellation of Ex.B.1-sale deed. In a suit of declaration of title, the burden is always on the

plaintiff to make out and establish a clear case for granting such relief and weakness, if any of the case set by the defendant would not be a ground to grant the relief in favour of the plaintiff. If the plaintiffs are to succeed in a suit for declaration, they must do so on the strength of their own title [***Union of India and others Vs. Vasavi Cooperative Housing Society Limited and others***¹).

24. Exs.A.1 and A.15 and the original of Ex.B.5 are the sale deeds under which the plaintiff is claiming her title and possession. Be it stated that the said document is on the name of defendant No.1. Though the plaintiff has claimed that she has paid the entire sale consideration, she is not able to prove the same. On the other hand, the evidence adduced on behalf of plaintiff itself is sufficient to show that defendant No.1 has paid the sale consideration, also executed the pro-note as in Ex.A.4 for balance sale consideration and subsequently paid the said amount. Though the plaintiff has claimed that she has been paying the property tax right from 1973 onwards i.e., from the

¹ (2014) 2 SCC 269

date of Ex.A.1, there is no such proof to that effect as to payment of property tax from 1973 to 1981.

25. Whether a particular sale is Benami transaction or not is largely one of the fact and for determining the question, no absolute formula or acid test is laid, uniformly applicable in all the situations. Therefore, in weighing probabilities and gathering the relevant indications, the Courts are generally guided by the following factors.

- i) The source from which the purchase money came;
- ii) The nature and possession of the property, after purchase;
- iii) The motive, if any for giving the transaction a benami colour;
- iv) The position of the parties and the relationship, if any, between the claimant and the alleged benamidar;
- v) The custody of the title deed after the sale; and
- vi) Conduct of the parties concerned in dealing with the property after the sale.

26. Here in the case on hand, though the plaintiff has claimed that she has paid the entire sale

consideration, as stated supra, if the gold of 7½ tulas alleged to have been given by her to her husband is converted into cash during the relevant period, it would not fetch more than Rs.2,000/-. But as per Ex.A.1, the sale price is mentioned as Rs.10,500/-. On the other hand, there is evidence on record to show that defendant No.1 has paid the sale price and also towards payment of balance sale consideration executed a pro-note. The original of Ex.A.1 was only in the custody of defendant No.1. Though the plaintiff has claimed that she gave it to her husband in the year 1980, the evidence on this aspect is not reliable. In fact, subsequent to the execution of Ex.B.1, the original of Ex.A.1 was handed over to defendants 2 and 3. Though the plaintiff has claimed payment of property tax as stated supra, no such receipts are filed for payment of tax right from 1973 till 1981.

27. All these circumstances would lead to one and the only irresistible conclusion that the plaintiff has failed to establish her claim in respect of suit schedule property and she is not entitled to take the plea of benami

transaction in the absence of such cogent and convincing evidence. That apart, the law is well settled that the operation of Benami Transactions (Prohibition) Act, 1988 is not retrospective and it does not apply to the pending suits which were already filed prior to the Act coming into force [***R. Rajagopala Reddy (dead) by LRs Vs. Padmini Chandrasekharan (dead) by LRs***²].

28. Therefore, viewed from any angle, the appellant /plaintiff has failed to establish her title in respect of suit schedule property. Whereas, defendant No.1 as an owner of the property has executed Ex.B.1 sale deed in favour of defendants 2 and 3 for a valid consideration. The evidence adduced on behalf of defendants clinches the issue showing that they have taken required precautions and also notice was got published inviting the objections, if any in respect of the said sale transaction. Therefore, in my considered opinion, there is no infirmity or irregularity in the appreciation of evidence and findings recorded by the trial Court and such findings do not warrant any

² (1995) 2 SCC 630

interference by this Court. Accordingly, point Nos.(i) to (iii) are answered in favour of the respondent/defendants and against the appellant/plaintiff holding that the judgment impugned is sustained.

29. In the result, the appeal suit is dismissed, confirming the judgment and decree dated 27.03.1997 in OS No.1280 of 1988 on the file of the learned III Additional Judge, City Civil Court at Secunderabad. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending in this appeal suit, shall stand closed.

A. VENKATESHWARA REDDY, J.

Date: 01.12.2022
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