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A.S.No.162 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.162 of 2017
and
C.M.P.No.7097 of 2017

T.K.Krishnan

... Appellant

Vs.

1.Mrs.Kalavathy

2.Mrs.Manjula

... Respondents

Prayer: Appeal Suit is filed under Section 96 read with Order 41 Rule 1 of the Civil Procedure Code, to set aside the judgement and decree dated 03.01.2017 in O.S.No.236 of 2009 passed by the learned District Judge, Kancheepuram District at Chengalpet.

For Appellant : Mr.K.Kannan

For R1 : Mr.V.G.Anbarasu

For R2 : Mr.B.Jaya Suriyan



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J U D G M E N T

The Appeal Suit has been instituted challenging the judgment and decree dated 03.01.2017 passed in O.S.No.236 of 2009.

2. The appellant is the plaintiff, who instituted a suit for declaration and for consequential relief of permanent injunction. The averments in the plaintiff reveal that the plaintiff married one Smt.Yosodha as his first wife and she died in the year 1979. Thereafter, the plaintiff married one Smt.Vijayalakshmi and subsequently divorced her in the year 1985. After divorce, the 1st defendant / Smt.Kalavathi joined with the plaintiff in the year 1986 and they lived jointly as husband and wife. Two sons namely Kalaiarasan and Thellamuthan were born to them. The plaintiff was a retired Government servant. Since he was working in the Government Department at that time of purchase of the suit properties, he purchased the properties in the name of 1st defendant under the sale deeds dated 09.11.1994 and 24.10.1994. The properties were purchased in the name of the 1st defendant for the sentimental reasons. The consideration had been paid by the plaintiff out of his personal saving and Provident Fund alone. The plaintiff is enjoying the property as of now.



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3. On 06.05.2009, the plaintiff mortgaged a portion of Item No.2 to one Karpagam to meet out the family expenses. Similarly, he mortgaged another portion of Item No.2 to Thiru.Murthy for Rs.2,00,000/-. Though the plaintiff and the 1st defendant lived together till April 2009, there was difference of opinion between the plaintiff and the 1st defendant. The 1st defendant without the knowledge of the plaintiff shifted the residence, which resulted in filing of G.W.O.P.No.111 of 2009 to take custody of the minor son Thellamuthan. Since the misunderstanding aroused between the 1st defendant and the plaintiff, she had attempted to sell the properties by taking advantage of the fact that the sale deeds stand in her name. She made an attempt to interfere with the peaceful possession of the plaintiff and thus, the plaintiff instituted a Suit.

4. The 1st defendant filed a written statement denying the plaintiff averments. The plaintiff is not the owner of the suit schedule properties. The 1st defendant / wife of the plaintiff has begotten two sons through plaintiff. The fact that the plaintiff purchased the property in the name of the 1st defendant was not accepted. The defendant purchased the properties with



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the financial assistance from her mother and her sister. The plaintiff had not contributed any money for the purchasing the property. There is no necessity for the plaintiff to assist the defendant in purchasing the properties. By denying all the plaint averments in the Suit, the defendant sought for dismissal of the Suit instituted by the plaintiff.

5. The 2nd defendant filed a written statement separately by stating that she had purchased the property in the Suit Item No.1 from the 1st defendant after verifying the documents. The 2nd defendant had no knowledge about the disputes between the plaintiff and the 1st defendant. The 2nd defendant is the bona fide purchaser of the property for valuable consideration and further the Suit is hit by the provisions of the Benami Transactions (Prohibition) Act. The 2nd defendant is in peaceful possession and enjoyment of the suit schedule property Item No.1 and thus, the Suit is to be dismissed.

6. Based on the pleadings between the parties, the Trial Court made the following issues:

(1) Whether the plaintiff is the absolute owner of the suit property in consequence that the defendant, her men and



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agents are to be restrained from in any way interfering with the plaintiff's peaceful possession and enjoyment of the suit property?

(2) To what relief is the plaintiff entitled for?

7. The plaintiff was examined as PW1 and marked Ex.A1 to Ex.A14 as plaintiff side documents. On the side of the defendants, two witnesses were examined as DW1 and DW2. No documents were marked.

8. There is no dispute between the parties in respect of the relationship. The 1st defendant is the third wife of the plaintiff and admittedly the title deeds for the suit properties stand in the name of the 1st defendant. According to the plaintiff, he purchased the properties in the name of the 1st defendant, who is none other than his wife. On the other hand, in the written statement it has been stated that the 1st defendant purchased the properties from and out of her own funds, which she borrowed from her parents and sisters.

9. The plaintiff instituted a Suit for declaration of title contrary to the title of the documents. Thus, the burden lies on the plaintiff to prove that he had purchased the property from and out of his own income. Purchasing the



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property in the name of wife or daughter is not covered under the Benami Transactions (Prohibition) Act. However, in this regard, burden lies on the plaintiff to prove his case. No independent witness was examined. The plaintiff has chosen to file the original title deeds Ex.A1 relating to Item No.1. Mere possession of the document by the plaintiff / husband does not create any inference about the title of the property, which admittedly stand in the name of the 1st defendant.

10. Admittedly, the plaintiff was a Government servant. He retired as a Manager in the Block Development Office. The 1st defendant was a temporary employee, who worked as typist in the office in which the plaintiff served as a Manager. Subsequently, the plaintiff married the 1st defendant and the said facts are admitted by the DW1 in her evidence. The DW1 in her deposition admitted that plaintiff married the defendant as third wife and her father had not given any consent for the said marriage. The plaintiff had married twice before the solemnisation of the marriage of the 1st defendant with the plaintiff in the year 1986.

11. The Trial Court considered the deposition of DW1 and found that after her marriage with the plaintiff, she had not gone for work and thus,



drew an inference that the 1st defendant had no independent income for purchasing the property. Taking note of the discrepancies in the deposition of the 1st defendant and her statement in the written statement, the Trial Court drew an inference that there are chances of purchasing the property by the plaintiff in the name of the 1st defendant.

12. Though it appeared that the property had been purchased by the plaintiff in the name of the 1st defendant, the law presumes that it had been purchased in the name of the 1st defendant for her benefit. As per Clause 3(2)(a) of the Benami Transactions (Prohibition) Act, 1988, the Court shall presume unless the contrary is proved that the property has been purchased for the benefit of the wife or unmarried daughter. The suit property has been purchased in the name of the wife, the husband and wife lived together in the suit property Item No.2 till dispute arose between them. Thus, the legal presumption is in favour of the 1st defendant. Though the deposition of PW1 and DW1 reveals that several disputes arose between them regarding their matrimonial issues, admittedly, the suit schedule property stands in the name of the 1st defendant and that being the factum established, the Trial Court made a finding that even if the property was purchased from and out



of the funds of the plaintiff, it was purchased for the benefit of the 1st defendant / wife.

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13. Taking note of the facts and circumstances and considering the documents and evidences, the Trial Court arrived at a conclusion that the property was purchased by the plaintiff in the name of his wife / 1st defendant and it was purchased for her benefits.

14. During the pendency of the Suit the 2nd defendant purchased the suit property Item No.1 dated 15.05.2013. The suit was pending from the year 2009. Thus, it was hit by Doctrine of *lis pendens*. The 2nd defendant purchased the property without the original title deeds. Getting a sale deed without pursuing the original sale deed, which is in the possession of the plaintiff and filing it in the Court, would show that the 2nd defendant is not a *bona fide* purchaser. Thus, the Trial Court held an additional issue against the 2nd defendant.

15. The suit was instituted for declaration and permanent injunction. Though the plaintiff was in possession of the Suit property the Trial Court found that the plaintiff purchased the property for the benefit of the 1st



defendant, who is none other than his wife and from out of their relationship two sons were born and at a later point of time there was a dispute between the plaintiff and the 1st defendant and subsequently, the 1st defendant lived separately.

16. Admittedly, the suit property was purchased in the name of the 1st defendant and the sale deed was marked as Ex.A1 and Patta was marked as Ex.A2, which also stand in the name of the 1st defendant. The transaction and execution of sale deed in favour of the 1st defendant has not been hit by the provision of the Benami Transactions (Prohibition) Act, since the plaintiff is the husband of the 1st defendant.

17. This being the facts and circumstances considered by the Trial Court, this Court do not find any infirmity or perversity in respect of the judgment and decree passed in O.S.No.236 of 2009.



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18. Accordingly, the judgement and decree dated 03.01.2017 in O.S.No.236 of 2009 passed by the District Court, Kancheepuram District at Chengalpet stands confirmed and consequently, the Appeal Suit in A.S.No.162 of 2017 is dismissed. No costs. Connected Miscellaneous Petition is closed.

16.02.2023

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

The Judge,
District Court,
Kancheepuram District.
Chengalpattu.



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S.M.SUBRAMANIAM, J.

Jeni

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