



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.197 OF 1995

WITH

CIVIL APPLICATION NO.3262 OF 1995
IN SECOND APPEAL NO.197 OF 1995

Safdar Ali Deshmukh S/o Sujat Ali Deshmukh,
Since deceased through his legal representative,

Sirajuddin s/o Safdarali Deshmukh,
Age major, Occu. Agril.,
R/o Beed, Tq. & Dist. Beed.

... Appellant.

Versus

1. Atiya Sultana W/o S.K. Nazir,
Since died through her legal representatives,
- 1/1 SK Abdul Nazir s/o Abdul Kadar,
Age 75 years, Occu. Nil,
R/o Nariman Nagar, Near Railway Station,
Old Jalna, Jalna, Dist. Jalna.
- 1/2 Md. Jameel Shaikh,
Age 46 years, Occu. Business,
R/o Nariman Nagar, Near Railway Station,
Old Jalna, Jalna, Dist. Jalna.
- 1/3 Muzammil Begum D/o SK Abdul Nazir,
Age 44 years, Occu. Household,
R/o Nariman Nagar, Near Railway Station,
Old Jalna, Jalna, Dist. Jalna.
- 1/4 Mudassir Begum D/o SK Abdul Nazir,
Age 42 years, Occu. Household,
R/o Nariman Nagar, Near Railway Station,
Old Jalna, Jalna, Dist. Jalna.
- 1/5 Anjum Begum D/o SK Abdul Nazir,
Age 39 years, Occu. Household,
R/o Nariman Nagar, Near Railway Station,
Old Jalna, Jalna, Dist. Jalna.

- 1/6 Md. Khalil Shaikh S/o SK Abdul Nazir,
Age 37 years, Occu. Business,
R/o Nariman Nagar, Near Railway Station,
Old Jalna, Jalna, Dist. Jalna.
- 1/7 Md. Hakim Shaikh S/o SK Abdul Nazir,
Age 34 years, Occu. Business,
R/o Nariman Nagar, Near Railway Station,
Old Jalna, Jalna, Dist. Jalna.
- 1/8 Farheen Begum D/o SK Abdul Nazir,
Age 31 years, Occu. Household,
R/o Nariman Nagar, Near Railway Station,
Old Jalna, Jalna, Dist. Jalna.
- 1/9 Md. Mujeeb Shaikh S/o SK Abdul Nazir,
Age 29 years, Occu. Business,
R/o Nariman Nagar, Near Railway Station,
Old Jalna, Jalna, Dist. Jalna.
2. Asmat Beg S/o Dilawar Beg,
Age 34 years, Occu. Labourer,
3. Asad Beg S/o Dilawar Beg,
Age 33 years, Occu. Labourer,
4. Shahad Beg S/o Dilawar Beg,
Age 19 years, Occu. Nil,
5. Naseem Sultana D/o Dilawar Beg,
Age 24 years, Occu. Nil,
6. Nayeem Beg, Age 22 years,
7. Javed Beg, Age 20 years,
8. Wasim Beg, Age 16 years,
9. Salim Beg, Age 16 years,

Nos.8 & 9 minors u/g of their brother
plaintiff No.2

Above all R/o Jalna, Tq. & Dist. Jalna.

10. Aquila Sultana W/o Salar Khan,
Age 40 years, Occu. Household,
R/o Mandwa, Taluka Mehkar,
District Buldhana.

... Respondents.

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Advocate for Appellant : Mr. M. M. Patil-Beedkar.
Advocate for Respondent Nos.1/1 to 1/9, 2 to 10 : Mr. Kshitij
Surve – Through V. C.

...

CORAM : S. G. MEHARE, J.

RESERVED ON : 11.12.2023

PRONOUNCED ON : 19.01.2024

JUDGMENT :-

1. Heard the learned counsels for the respective parties.
2. The defendant has preferred this second appeal against the judgment and decree of learned 3rd Additional District Judge, Beed, passed in Regular Civil Appeal No.286 of 1984, dated 11.01.1995.
3. The "appellant" will be referred to as the "defendant", and the "respondents" will be referred to as the "plaintiffs".
4. The plaintiffs had a case that the suit field of village Pendgaon, Taluka Beed, were owned by Dilawar Beg, their father. Dilawar Beg died five years back. The defendant had no concern with the suit lands. The defendant was an influential person and a big landlord. The defendant took advantage of

the poverty of the deceased Dilawar Beg and illegally dispossessed him seven years back. The possession of the defendant was illegal and unauthorized. He was a trespasser. They often requested the defendant to hand over the possession, but he denied it. Hence, they filed a suit for possession.

5. The defendant resisted the suit, claiming that the deceased Dilawar was a Benamidar. The plaintiff did not plead how Dilawar acquired the title of the suit field. The plaint is vague and ambiguous. The defendant is the real owner and actual possessor of the suit field. Late Dilawar Beg was the Benamidar. He had no beneficial interest in the suit field, which was standing in his name nominally. His legal heirs were only the trustees and never acquired the title. Dilawar Beg was his maternal brother. He was financially poor. The family of Dilawar Beg had no property. He was brought from the village Antarwali. He educated him. Dilawar Beg started looking after the defendant's properties. He was MLA. He had no time to look after the lands. He had confidence in the deceased Dilawar Beg. The defendant performed his post-death ceremonies. The suit fields were purchased in the name of Dilawar Beg. Dilawar Beg had no financial capacity to purchase

the suit fields for Rs.1,000/- and Rs.2,000/- each. The sale deeds were Benami. Therefore, the suit is liable to be dismissed.

6. The learned Court of first instance appreciated the evidence and dismissed the suit. However, the First Appellate Court reversed the judgment of the Court of First Instance, holding that Section 4 of the Benami Transactions (Prohibition) Act, 1988 (the Act of 1988) prohibits the defence of Benamidar. It was further held that the defendant could not claim the real ownership of the suit fields based on the sale deed dated 17.06.1960 (Exh.54). The plaintiffs, being the legal heirs of Dilawar Beg, were entitled to get the possession and decreed the suit.

7. The second appeal was admitted as per the following order :

"There involves a substantial question of law on the point of Benami Transaction."

8. Hearing the respective learned counsels, the substantial question of law is re-formulated as follows :

1. Was the defendant prohibited from raising the defence of Benamidar as provided under Section 4 of the Benami Transactions Act, 1988?

2. Did the Benami Transactions (Prohibition) Act 1988 has a retrospective effect?

9. Learned counsel for the appellant, referring to the facts of the case, has vehemently argued that the Act of 1988 came into force during the pendency of the suit. Since the Act came into force subsequent to the defence raised, Section 4 of the Act of 1988 does not apply. The ratio laid down in ***Mithilesh Kumari Vs. Prem Behari Khare ; AIR 1989 SC 1247*** has been declared not a good law. He relied on the case of ***R. Rajagopal Reddy (Dead) by L.Rs. and others Vs. Padmini Chandrasekharan (Dead) by L. Rs. ; 1995 AIR SCW 1422***. He also relied on the case of ***Rebti Devi Vs. Ram Dutt and another ; (1997) 11 Supreme Court Cases 714*** and ***Samittri Devi and another Vs. Sampuran Singh and another ; 2011 AIR SCW 680***. The sole question of law is whether the defendant could raise the defence of Benami involved in the case. He further argued that the defence was available to the defendant because the Act of 1988 was not enacted when the defence was raised. The First Appellate Court did not consider the facts in detail. It was proved that the defendant paid the sale

consideration. The First Court of Instance correctly appreciated the evidence. Dilawar Beg had no means to purchase the suit lands. During his lifetime, he never complained about dispossession because he knew that the defendant was the owner of the suit field and he was cultivating for him. Revenue entries are for fiscal purposes. It does not confer the title. Once the title goes, 7/12 entries are immaterial. He prayed to allow the appeal.

10. Per contra, learned counsel Mr. Surve for the respondents has vehemently argued that the First Appellate Court has correctly applied the law laid down in the case of *Mithilesh Kumari (supra)*. The First Appellate Court correctly held that the revenue record was in favour of the plaintiffs. The relationship, as claimed by the defendant, was denied. The presumption of the revenue record was not rebutted. The case law relied upon by the defendant does not apply to the case at hand. The defendant could not raise the defence of the benami transaction in view of Section 4 of the Act of 1988. The Act of 1988 was retrospective. Hence, it was applied to the pending cases.

11. Considering the issues involved in this case. Particularly, upon the retrospective effect of the Act of 1988, it would be

profitable to mention certain dates. The suit was filed on 16.01.1979. The written statement was filed on 30.08.1979. The Act of 1988 came into force on 19.05.1988. However, Sections 3, 5 and 8 of the said Act came into force on 05.09.1988.

12. The First Appellate Court dismissed the defence of the defendant/present appellant, relying on the ratio laid down by the Supreme Court in the case of *Mithilesh Kumari*. In the said case, the ratio was that though Section 3 is prospective and though Section 4(1) is also not expressly made retrospective by the legislature by necessary implication, it appears to be retrospective and would apply to all pending proceedings wherein the right to property allegedly held Benami is in dispute between the parties and that Section 4(1) will apply at whatever stage the litigation might be pending in the hierarchy in the proceeding. The ratio laid down in the case of *Mithilesh Kumari* was the sole pronouncement of the Hon'ble Supreme Court when the appeal was decided. The issue of the defence of the Benami transaction went to the Supreme Court. The landmark judgment of the 3 Judges Bench of the Supreme Court in the case of *R. Rajagopal Reddy (Dead) and others Vs. Padmini Chandrasekharan (Dead) by L. Rs. ; 1995 AIR SCW*

1422 overruled the two Judges' Bench in *Mithilesh Kumari*. It has been held in the said case that Section 4, or for that matter the Act as a whole, was not a piece of declaratory or curative legislation. It creates substantive rights in favour of Benamidars and destroys the substantive rights in favour of the real owners. It creates a new offence of entering into such Benami transactions. It was, therefore, held that when a statutory provision creates new liability and a new offence, it would naturally have a prospective operation, and Section 4 will not apply to pending suits which are already filed and entertained prior to the Act coming into force. It was further observed that Section 4(1) places a bar on a plaintiff pleading 'Benami', while Section 4(2) places a bar on a defendant pleading 'Benami' after coming into force of the Act. In this context, it would be anomalous if the bar in Section 4 is not applicable. If the suit pleading "Benami" is already filed prior to the prescribed date, it is treated as applicable only to the suit which he had filed thereafter.

13. As discussed above, the respondents filed a suit on 16.01.1979, and the defendant filed his written statement on 30.08.1979. The pleadings were completed before the Act of 1988 came into force. In view of the ratio laid down by the

Hon'ble Supreme Court in the case of *R. Rajagopal (cited supra)* and the facts of the present case, the Court is of the view that Section 4(2) of the Act of 1988 does not prohibit the defendant from raising the defence of benami transaction. Hence, question No.1 is answered in negative.

14. A clear verdict has been given in the case of *R. Rajagopal (cited supra)* that Sections 4(1) and 4(2), as well as Section 3 of the Act of 1988, have no retrospective effect. Hence, question No.2 is answered in the negative.

15. The evidence led before the Trial Court was not seriously objected to before this Court. It was proved that Dilawar Beg was the defendant's relative. The defendant brought him to his village. He was looking after his properties. The defendant had huge properties. The defendant proved that the original plaintiffs had no financial condition to purchase the land. The Court of First Instance appreciated the evidence and held that it was a Benami transaction, and the defendant was the real owner. The father of the plaintiffs was not the true owner. Appreciating evidence, the learned Court of First Instance recorded the correct findings. The discussion above leads this Court to conclude that the appeal should be allowed. Hence, the following order :

ORDER

- (i) The appeal is allowed.
- (ii) The judgment and decree of learned 3rd Additional District Judge, Beed, passed in Regular Civil Appeal No.286 of 1984, dated 11.01.1995, is quashed and set aside.
- (iii) No order as to costs.
- (iv) R & P should be returned to the Court of the first instance.
- (v) Civil Application No.3262 of 1995 stands disposed of.

(S. G. MEHARE, J.)

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vmk/-