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C.R.P.(PD).No.4995 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.4995 of 2023 &
C.M.P.No.29167 of 2023

R.Hemanth ... Petitioner/2nd Defendant

-Versus-

1.K.Vijaya ... 1st respondent/Plaintiff

2.V.Kamaraj

3.R.Saraswathi

4.K.Saravanan ... Respondents/defendants

Common Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and decreetal order in I.A.No.3 of 2023 in O.S.No.3358 of 2021 dated 15.09.2023 on the file of the VII Additional City Civil Court at Chennai.

For Petitioner : Mr.V.V.Giridhar

For Respondent 1 : Mr.P.Gunaraj

For Respondents : Mr.K.R.Krishna Bharath
2 to 4



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ORDER

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This Civil Revision Petition arises against the order of dismissal of an application for rejection of plaint.

2. The petitioner before me is the second defendant in the suit. According to the plaintiff, she and the first defendant are the wife and husband. Due to natural love and affection that they had for one Chitra who was their first daughter, they had purchased item Nos.1 and 2 of the suit schedule mentioned properties in the name of their daughter. According to them, though the property stood in the name of Chitra, it was purchased by them in her name and it was only nominally stood in the name of their daughter Chitra. They would further plead that the second defendant had not married the said Chitra and he is a meddlesome interloper in the property. Therefore, they filed a suit for partition of item Nos.1 and 2 of the suit schedule mentioned properties and for declaration that there was no marriage between the second defendant and the deceased Chitra.

3. The second defendant entered appearance in the suit and filed a detailed written statement. Thereafter, he took out an application for rejection of



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plaint. The said application was numbered as I.A.No.3 of 2023 and it came to be dismissed, against which the present revision.

4. Mr.V.V.Giridhar would submit that Section 15 of the Hindu Succession Act is inapplicable to the facts of the case, and the plaint, which is predicated on this provision, deserves to be rejected. He would further plead that the suit for declaration alone should have been sought and not a suit for partition.

5. Mr.P.Gunaraj would submit that the plaintiff has taken a specific plea that there was no marriage between the plaintiff and the second defendant and therefore, he is nothing but a stranger to the family. Section 15 was sought to be applied because even if the court were to come to a conclusion that the plaintiff had not purchased the property in the name of the deceased Chitra, then Section 15 would apply and the property would go to her parents.

6. I considered the arguments made on either side.

7. This suit has been filed in the year 2021, which is after the amendment



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to the Prohibition of Benami Property Transactions Act, 1988. On and from

01.11.2016, the declaratory nature of the amendment has come into force.

Under Section 2(9) of the Act, the term 'Benami' has been defined. The Act also excludes certain properties under 2(9)(A)(b)(iv). By the said provision, any property purchased by an individual in the name of his spouse or in the name of his child is excluded from the concept of a Benami transaction. Therefore, the suit cannot be said to be barred by virtue of the said Act.

8. If the property has been purchased by the plaintiff and the first defendant in the name of the deceased Chitra as pleaded in the plaint, and she passed on, then it has to be treated as property jointly purchased by the plaintiff and the first defendant. If the court comes to such a conclusion, then the property would necessarily have to be partitioned between the plaintiff and the first defendant.

9. These are all matters bristling with legal issues and cannot be decided in an application for rejection of plaint. This is because, while dealing with the application for rejection of plaint, which is a plea in demurrer, the court would have to take the averments made in the plaint to be true and thereafter come to



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the conclusion that the suit is barred.

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10. A meaningful reading of the plaint in the present case shows that the cause of action is disclosed, the purchase by the parents, namely, the plaintiff and the first defendant in the name of the deceased, Chitra is disclosed and they would plead that she was only a nominal holder of the property and it was not purchased for her benefit. The plea that has been raised by Mr.V.V.Giridhar is a matter which necessarily has to be agitated at the time of trial.

11. I do not find any exception to the order passed by the learned trial judge and the same is confirmed. Accordingly, the civil revision petition is dismissed. It is made clear that this Court has only dealt with the aspect of rejection of plaint and any observation made in this order would not bind the court at the time of final disposal. No costs. Consequently, the connected miscellaneous petition is closed.

03.06.2024

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Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order



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To

1.The VII Additional City Civil Court at Chennai.



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V.LAKSHMINARAYANAN, J.

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