

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD)No.1059 of 2006

and

C.M.P(MD) No.216 of 2024

1.Indirani Sathiyendran (died)

2.Bhavani Rajendran

3.Ramkumari

4.Rajeswari

5.Chandra

... Appellants

(Memo presented before the Court on 12.10.2022 is recorded as first appellant died vide Court order dated 08.11.2022 made in S.A(MD) No.1059 of 2006)

Vs

1.Habeeb Mohamed Mahaboob

Rep by his Power Agent Furoskhan

2.R.Ananthalingam

... Respondents

(Second respondent is impleaded vide Court order dated 30.09.2022 made in C.M.P(MD) No.8150 of 2022 in S.A(MD) No.1059 of 2006)

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 26.02.2001 made in A.S.No.72 of 2000 on the file of the Principal District Court, Ramanathapuram, confirming the judgment and decree dated 27.10.1999 made in O.S.No.386 of 1993 on the file of the Additional District Munsif Court, Ramanathapuram.

For Appellants : Mr.J.Barathan

For R2 : Mr.D.Nallathambi

For R1 : No appearance

JUDGMENT

The first respondent herein filed a suit for declaration and injunction with the alternative prayer for recovery of possession against the appellants. The suit was decreed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the defendants 2 to 6 have come by way of this second appeal.

2. According to the plaintiff, the suit property originally belonged to one Gangumuthu Pillai and he purchased the same from the legal representative of Gangumuthu Pillai by way of a registered sale deed dated 04.02.1975. It was asserted by the plaintiff that from the date of purchase, he had been in possession and enjoyment of the suit property with mutation of revenue records in his name. It is also claimed by the plaintiff that the first defendant, son of Gangumuthu Pillai, entered into an agreement of sale with the plaintiff on 03.09.1987 admitting the

plaintiff's title over the suit property. Later on, taking advantage of the order passed by the Revenue Divisional Officer in his favour, the deceased first defendant attempted to interfere with the possession of the first respondent/plaintiff and hence, he was constrained to file a suit for aforesaid relief. Pending suit, the first defendant died and her legal representatives were brought on record as Defendants 2 to 6.

3.In the written statement, it was claimed by the defendants that the original owner Gangumuthu Pillai was an accountant under first defendant's father-in-law, Sathaiah Servai. The suit property was purchased by the said Sathaiah Servai in the name of Gangumuthu Pillai by utilizing his own funds. Therefore, the Gangumuthu Pillai had no right over the suit property to convey the good title to the plaintiff. The defendants also denied the alleged sale agreement pleaded by the plaintiff. It was also claimed by the defendants that the plaintiff obtained the revenue records in his favour by producing the documents created in his name and on appeal filed by the defendants, the Revenue Divisional Officer passed an order recording the names of the defendants in the village records. On these pleadings, the defendants sought for dismissal of the suit.

4.The trial Court, on appreciation of oral and documentary evidence available on record, came to conclusion that the defendants failed to establish that the property was purchased in the name of Gangumuthu Pillai by the first defendant's father-in-law Sathaiah Servai by utilizing his own funds. Further, the trial Court also came to the conclusion that the defence of benami could not be raised after coming into force of The Prohibition of Benami Property Transactions Act. Therefore, the defence raised by the plaintiff was not accepted by the trial Court and consequently, the suit was decreed. Aggrieved by the same, the defendants filed an appeal in A.S.No.72 of 2000 on the file of the Principal District Court, Ramanathapuram. The first appellate Court also concurred with the findings of the trial Court and dismissed the first appeal. Hence, the defendants 2 to 6 are before this Court.

5. At the time of admission, this Court formulated the following substantial questions of law, by order, dated 08.11.2006:-

1. Whether P.W.1 who is the Power of Attorney of the plaintiff can depose for Principal in respect of matters of which only the principal can have personal knowledge and in respect of which principal is liable to be cross examined?

2.Whether the Benami Transactions and Prohibition Act will apply against the Real Owner viz., Sathaiah Servai when he purchased the property long time back in the name of Gangu Muthu Pillai who was holding the same as a trustee to him?

6.The learned counsel for the appellants submitted that the plaintiff examined only his power agent as P.W.1 and he failed to enter the box. The power agent is not competent enough to depose in respect of the matter, which are within the personal knowledge of the plaintiff. When the title of the plaintiff's vendor had been disputed in the written statement, the plaintiff should have entered the box and deposed. In the absence of any evidence by the plaintiff, the Courts below ought not to have upheld the title of the plaintiff. The learned counsel further submitted that the property was purchased by the first defendant's father-in-law Sathiah in the name of the Gangumuthu Pillai well prior to coming into force of The Prohibition of Benami Property Transactions Act. Hence, the bar available under the Act is not applicable to the facts and circumstance of the present case.

Substantial Question of Law No.2

7.The learned counsel for the appellants submitted that the

property was purchased originally in the name of Gangumuthu Pillai well prior to coming into force of The Prohibition of Benami Property Transactions Act. Therefore, the bar under the said Act, which came into force in the year 1988, cannot be made applicable to the facts of the present case. Section 4 of the Prohibition of Benami Property Transactions Act reads as follows:-

Section 4: Prohibition of the right to recover property held benami-

(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

8.A reading of the above provision would make it clear that no defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person shall be allowed in any suit, claim or action by or on

behalf of a person claiming to be the real owner of such property. Therefore, whether the property was purchased prior to coming into force of the Act or subsequent to coming into force of Act is irrelevant for the purpose of bar created under Section 4(2) of the said Act. Even if the property had been purchased prior to coming into force of the Act, after the Act, the person claiming himself as real owner of the property is disabled from raising the defence of benami. Therefore, both the Courts below rightly came to the conclusion that the defence of benami raised by the appellants is barred by Section 4 of the Act. Therefore, the second question of law is answered against the appellants and in favour of the respondents.

Substantial Question of Law No.1

9. It was vehemently contended by the learned counsel for the appellants that the plaintiff failed to examine himself in support of his title and therefore, the Courts below ought not to have granted the relief of declaration in his favour. In order to prove his title, the plaintiff produced the registered sale deed in his favour as Ex.A2. A reading of the above document would suggest the legal representatives of the Gangumuthu Pillai sold the suit property to the plaintiff. It is admitted by both the parties that property was originally purchased in the name of

Gangumuthu Pillai. The main defence raised by the defendants was that the property was purchased by Sathiah in the name of the Gangumuthu Pillai by utilizing his own funds. This Court already has come to the conclusion that the defence of benami is not available to the defendants in view of bar under the Act. Therefore, the plaintiff by producing the registered sale deed in his favour proved his title over the suit property. Therefore, non-examination of plaintiff is not fatal to the case, when the title of plaintiff is proved by production of registered sale deed in his favour. Hence, there is no necessity for the plaintiff to enter the box and depose any other fact which are within his personal knowledge. Therefore, the first question of law is also answered against the appellants and in favour of the respondents.

10. In view of the conclusion reached by this Court in respect of the questions of law No.1 and 2, this Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.04.2024

NCC : Yes / No
Index : Yes / No
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To

- 1.The Principal District Judge,
Ramanathapuram.
- 2.The Additional District Munsif,
Ramanathapuram.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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S.SOUNTHAR, J.

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