



C.R.P.(MD)No.1406 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 13.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.1406 of 2024

Pathamuthu Jogara Beevi

... Petitioner / Petitioner / 1st Defendant

Vs.

1.N.M.A.Mohammed Gani

2.N.M.A.Gulam Mohammed

3.Rajathi Begum

4.Basheer Ali

5.Sajitha Banu

6.Abusabanu

7.Sathakathullah

... Respondents 1 to 7 / Respondents 1 to 7 /
Plaintiffs 1 to 7

8.The Sub Registrar,
Office of the Sub Registrar,
Annavaasal.

9.The District Registrar,
Office of the District Registrar,
Pudukkottai.

... Respondent 8 & 9 / Respondents 8 & 9/
Defendants 2 & 3



C.R.P.(MD)No.1406 of 2024

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair order and decretal order in I.A.No.259 of 2023 in O.S.No.152 of 2023, dated 18.03.2024 on the file of the Additional District Court, Pudukkottai.

For Petitioner : Mr.N.Balakrishnan

For Respondents : Mr.M.J.Ameer
for R1 to R7
: Mr.K.Balasubramani
Special Government Pleader for R8 & R9

ORDER

Heard the learned counsel on either side.

2. The first defendant in O.S.No.152 of 2023 on the file of the Additional District Judge, Pudukkottai is the revision petitioner herein. The respondents 1 to 7 herein filed the said suit seeking declaration that the suit property belongs to them and to restrain the first defendant (revision petitioner herein) from interfering with the plaintiff's possession. Admittedly, the suit property stands in the name of the revision petitioner. According to the plaintiffs, the plaintiffs 1 & 2 are the siblings of the revision petitioner. The plaintiffs 3 to 7 are the legal heirs of another deceased brother by name Sarbutheen. According to the plaintiffs, the suit properties were purchased by the brothers in the name



C.R.P.(MD)No.1406 of 2024

of the first defendant. In other words, according to them, it was a benami transaction and that the real owners are the brothers and that the first defendant was only a ostensible owner. To reject the suit, the revision petitioner filed I.A.No.259 of 2023 under Order 7 Rule 11 of C.P.C. It was dismissed vide order dated 18.03.2024. Questioning the same, this civil revision petition came to be filed.

3. The issue raised in this revision petition is no longer *res integra*. Section 4(1) of Benami Transactions (Prohibition) Act, 1988 is as follows:-

“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.”

This provision was authoritatively considered and interpreted by the Hon'ble Supreme Court in the decision reported in *(1995) 2 SCC 630 (R.Rajagopal Reddy Vs. Padmini Chandrasekharan (dead) by LRS)*. It was held therein as follows:-

“It is however, true as held by the Division Bench that on the express language of Section 4(1) any right inhering in the real owner in respect of any property held benami would get effaced once Section 4(1) operated, even if such transaction had been entered into prior to the coming into operation



C.R.P.(MD)No.1406 of 2024

of Section 4(1) and henceafter Section 4(1) applied no suit can lie in respect to such a past benami transaction. ”

WEB COPY

4. In this case, transaction had taken place on 14.06.1979 and 29.06.1981. Even though the transaction took place before the statute came into operation, still in view of the retrospective effect of the statute, the suit on hand will be hit by Section 4(1) of the Act. The plaint is liable to be rejected, if it is barred under law. Section 4(1) of the Benami Transactions (Prohibition) Act, 1988 comes in the way of institution of the present suit. The court below ought to have allowed the application.

5. In this view of the matter, the impugned order is set aside. The Civil Revision Petition is allowed. No costs.

13.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
rmi

To:

The Additional District Court, Pudukkottai.



WEB COPY



C.R.P.(MD)No.1406 of 2024

G.R.SWAMINATHAN, J.

rmi

C.R.P.(MD)No.1406 of 2024

13.09.2024