



A.S.No.112 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

Date :12.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.112 of 2022

S.Vijayarangan

... Appellant

Versus

V.Balakrishnan

... Respondent

PRAYER : This Appeal Suit has been filed under section 96 read with under Order 41 Rule 1 of Code of Civil Procedure to set aside the judgment and decree made in O.S.No.492 of 2021 before the III Additional District Judge, Coimbatore, dated 28.10.2021.

For Appellant : Mr.B.Kumarasamy

For Respondent : No appearance



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JUDGMENT

Challenge has been made to the decree and judgment of the trial Court dismissing the suit filed by the plaintiff seeking declaration and permanent injunction, in the present Appeal Suit.

2. The parties are arrayed as per their own ranking before the trial Court.

3. Brief background of the case is as follows :

The plaintiff is the father of the defendant. According to the plaintiff, he worked as a principal in a college and he retired in the year 2017. At the time of retirement, the plaintiff received a sum of Rs.1,75,750/-. The defendant is the son of the plaintiff and apart from the defendant, the plaintiff has another son. According to the plaintiff, the suit property was purchased out of the savings of the plaintiff in the name of the defendant. The defendant was working as an Instructor in a computer center and he was earning a sum



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of Rs.5000/- at the relevant point of time. That apart, the plaintiff has availed housing loan from HDFC bank for construction of his house. The plaintiff has paid monthly instalment of Rs.38,830/-. Hence, the suit for declaration and permanent injunction.

4. The defendant remained exparte before the trial Court.

5. On the basis of the above pleadings, the following issues have been framed for determination in the suit :

1. Whether the plaintiff is the real owner of the suit schedule property?

2. Whether the plaintiff is entitled to declaration of his title over the suit property?

3. Whether the plaintiff is entitled to permanent injunction as prayed for?

6. On the side of the plaintiff, plaintiff examined himself as P.W.1 and



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Ex.A.1 to A8 have been marked. Considering the evidence of P.W.1 and the documents marked on the side of the plaintiff, the trial Court dismissed the suit. Though the trial Court has found that the plaintiff is in possession of the property, as he is not the owner, injunction relief has also been declined. Challenging the same, the present appeal has been filed.

7. The learned counsel appearing for the appellant mainly would contend that the documents filed by the plaintiff show that the payments have been made to the bank by the plaintiff, which has not been taken note by the trial Court. Further, the plaintiff has clearly proved his possession in the property. Therefore, the trial Court, ought to have granted atleast permanent injunction in favour of the plaintiff.

8. Despite notice sent to the defendant and name printed in the cause list, none appeared for the defendant.

9. On the basis of the above submission, now the points that arise for



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consideration are as follows :

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1. Whether the plaintiff is not entitled to raise the plea of Binami by virtue of statutory bar?

2. Whether the plaintiff is entitled for permanent injunction?

10. The relationship between the parties is not in dispute. The only contention of the plaintiff is that the defendant was earning only a sum of Rs.5000/- at the time of purchase of the suit property under Ex.A.1. Therefore, according to the plaintiff, the sale consideration has been meted out by his retirement benefits. Thereafter, housing building loan has also been obtained and cleared by the plaintiff. To substantiate the stand of the plaintiff, Ex.A.4 loan agreement and Ex.A.5 closure report of the HDFC Bank has been filed by the plaintiff. On a perusal of Ex.A.4 and Ex.A5, this Court is of the view that those documents, at the most, will be useful to show that the plaintiff also stood as a co-applicant in the loan agreement and he has also paid some amount. Merely because some amount has been paid, the plea of binami



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cannot be countenanced as a matter of right.

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11. It is relevant to note that to raise the plea of binami is totally barred under law. Even in the Binami Transactions [Prohibition] Act 1988, even prior to the amendment in the year 2016, as per unamended Act 1988, makes it clear that no persons shall enter into a binami transaction. The only exception provided under section 3 of the Unamended Binami Transactions [Prohibition] Act 1988 is to purchase the property in the name of wife or unmarried daughter. Other than that, there is total bar for purchase of property in the name of binami. That apart, Section 4[3] of Binami Transactions [Prohibition] Act 1988 also clearly bars any such claim or action or any right in respect to a binami transaction. Therefore, the very plea of binami raised by the plaintiff cannot be sustained in the eye of law. The trial Court, has in fact, clearly found that the plea of binami has not been established and dismissed the suit.

12. As far as injunction relief is concerned, though the plaintiff is in



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possession of the property, since, he claims injunction and the same has also been rejected by the trial Court, the finding of the trial Court legally cannot be found fault. However, taking note of the fact that the plaintiff is the father and he is residing in the property, which has not been disputed by the defendant, since, the defendant is the owner of the property, he cannot throw his father from the property, except by due process of law and he cannot take law into his hands and throw his father from the property. Such being the position, it is for the defendant to resort to due process of law to evict the plaintiff from the suit property. Hence, there is no merits in this appeal. The points are answered according.

13. In the result, this Appeal Suit is dismissed and the decree and judgment of the trial Court in O.S.No.492 of 2021 dated 28.10.2021 is confirmed. There shall be no Order as to costs.

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Internet: Yes

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Speaking/non speaking order

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To,

1. The III Additional District Judge,
Coimbatore.
2. V.R. Section, High Court, Madras.



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N. SATHISH KUMAR, J.

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