

Gopal Jha Vs. Bhubneshwar Jha

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Court : Patna

Decided On : Jul-12-2004

Appeal No. : Appeal From Appellate Decree No. 90 of 1989 12 July 2004

Appellant : Gopal Jha

Respondent : Bhubneshwar Jha

Judgement :

S.K. Katriar, J.

The plaintiff is the appellant against a judgment of affirmance. This appeal is directed against the judgment and decree dated 29-11-1988, passed by the learned 3rd. Additional District Judge, Saharsa, in Title Appeal No. 17 of 1981 (Gopal Jha v. Bubneshwar Jha), whereby he has dismissed the appeal preferred by the plaintiff, and has upheld the judgment and decree dated 27-8-1981, passed by the learned Munsif, Supaul, in Titles Suit No. 1 of 1979 (Gopal Jha v. Bhubneshwar Jha). We shall go by the description of the parties occurring in the plaint.

2. According to the plaint, the plaintiff (the appellant) had purchased the lands in question by a registered deed of absolute sale dated 12-6-1929 (Exhibit-3), from Janak Lal Jha, the father of defendant No. 3 (respondent No. 3, Chandranand Jha). In view of the threat to his title he instituted the suit for declaration that the registered deed of absolute sale dated 12-6-1929 (Exhibit-3) is a valid document

and conveys right, title and interest to the plaintiff. Defendant No. 1 filed his written statement and stated therein that his father (Nasib Lal Jha) was the real owner of the lands in question who had purchased the same in the name of the said Janak Lal Jha, the vendor of the plaintiff. In other words, defendant No. 1 stated that he was the real owner of the land in question and Janak Lal Jha was the ostensible owner, i.e. his Benamidar.

3. The trial court framed the following issues for adjudication :

(a) Is the suit as framed maintainable ?

(b) Has the plaintiff got a valid cause of action to file the suit ?

(c) Whether the suit is barred by law of limitation and principles of estoppel, waiver and acquiescence ?

(d) Whether the suit is bad for the defect of parties ?

(e) Whether the defendant third party (i.e., defendant No. 3 Chandranand Jha) had right, title, interest and possession over the suit lands to execute the sale-deed in favour of the plaintiff ?

or

Whether the sale deed executed by the defendant No. 3 in favour of the plaintiff is a valid transaction and whether the same is binding on the defendant Nos. 1 and 2 ?

(f) Whether the sale deed executed by Boua Kamat in the name of Janak Lal was a Farzi (Benami) purchase of the father of defendant No. 1 and 2 and whether the father of defendant No. 3 was a "Farzidar" of the father of defendant no. 1 and whether the father of defendant no. 3 was the real owner. or simply an ostensible owner of the suit land as described in Schedule II of the plaint ?

(g) Has the plaintiff got title and possession over the suit lands on the strength of the sale deed executed by the defendant No. 3 in his favour ?

(h) Whether the plaintiff is entitled for the reliefs as claimed for and if so to what relief or reliefs ?

4. The trial court on contest upheld the plea of Benami transaction set up by defendant No. 1. He found that Nasib Lal Jha was the real owner, Janak Lal Jha was his Benamidar, and right, title and interest of the suit property has always remained with Nasib Lal Jha. Therefore, Janak Lal Jha (being the Benamidar of Nasib Lal Jha) did not have the right, title and interest to alienate the same in favour of the plaintiff. In other words, the plaintiff never acquired right, title and interest from the Benamidar (Janak Lal Jha) which always remained with the real owner (Nasib Lal Jha). The suit was accordingly dismissed. The plaintiff preferred appeal which has been dismissed by the impugned judgment on same or similar grounds.

5. The following substantial question of law was formulated at the time of admission of this appeal on 17-5-1989 which is set out hereinbelow for the facility of quick reference.

"The substantial question of law involved in this appeals as to whether the defendants can raise the plea of Benami in view of the Benami Transaction Act."

6. Learned counsel for the plaintiff (appellant) submits that the provisions of section 4(2) of the Benami Transactions (Prohibition) Act 1988 (hereinafter referred to as the Act) is retrospective in character. Therefore, he is entitled to the benefit of the provisions of the Act. In other words, in his submission, the provision engrafted in section 4 of the Act disallowing 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, will apply to all past transactions and to all pending suits, appeals, or revisions pending on the date of enforcement of the Act, i.e. 19-5-1988. If this contention is sustained, it is submitted, then defendant No. 1 cannot be permitted to take the plea that the real owner, and not the Benamidar, had the title. In other words, if the provisions of section 4 of the Act are held to be retrospective in operation, then Nasib Lal Jha would not be entitled to take the plea that his right as the real owner subsists. He relies on the judgment of the Supreme Court *Mithilesh Kumari v. Prem Behari Khare* AIR 1989 SC 1247.

7. Learned counsel for defendant No. 1 (respondent No. 1) has supported the impugned judgment. He, inter alia, submits that the aforesaid judgment of the Supreme Court in Mithilesh Kumari case (supra) has been overruled by the Supreme Court in its judgment in R. Rajgopal Reddy v. Padmini Chandrasekharan AIR 1996 SC 238 and it has been held that the Act is prospective in operation and shall affect benami transactions, suits or action after the Act was enforced with effect from 19-5-1988. The present suit was instituted in January 1979.

8. I have perused the materials on record and considered the submissions of learned counsel for the parties. The provisions of section 4 of the Act are set out hereinbelow for the facility of quick reference :

"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.

(3) Nothing in this section shall apply,

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.'

9. A Division Bench Judgment of the Supreme Court in Mithilesh Kumar's case (supra) held that the Act is retrospective in its operation and, therefore, a suit, claim or action to enforce any right in respect of any property held benami against

the person in whose name it is held is maintainable. Correctness of the same was referred to a larger Bench for consideration and authoritative pronouncement which was considered by the Supreme Court in its judgment in R. Rajgopal Reddy's case (supra), whereby the judgment in Mithilesh Kumari (supra) has been overruled, and it has been held that the provisions of section 4(2) of the Act are prospective in operation.

10. The Supreme Court formulated the question for an authoritative pronouncement in R. Rajgopal Reddy's case (supra) whether section 4(1) of the Act can be applied to suit, claim or action to enforce any right in property held benami against person in whose name such property is held or any other person, such proceeding is initiated by or on behalf of a person claiming to be real owner thereof, prior to the coming into force of section 4(1) of the Act. Sections 3, 5 and 8 came into force on 5-9-1988 when the Act received the President's assent, and the remaining sections were deemed to have come into force on 19-5-1988. It has been held that the provisions of the Act are prospective in nature and section 4 came into effect with effect from 19-5-1988. It was a legal right of the plaintiff to contend prior thereto that even though the transfer of the property had been effected in the name of the Benamidar for the real owner from whom the consideration money had moved to the vendor, he was the real owner and, therefore, the Benamidar was bound to restore such property to the real owner. If the Benamidar took up a defiant attitude, then the law provided a substantive right to the real owner to come to the court for getting appropriate declaration and relief of possession on that ground. Various courts in India over a century used to entertain such suits and such suits on proof of relevant facts used to be decreed. In other words, prior to coming into force of the Act, a benamidar had no right, title and interest to alienate the suit property. After 19-5-1988, the real owner cannot set up a claim against the benamidar and, therefore, the alterations made by the latter prior to coming into force of the Act could not be invalid. Therefore, if the suit filed by a transferee from the Benamidar has been instituted prior to 19-5-1988, then the alienations by the benamidar in favour of the transferee is bad in law, because the real owner will continue to be the real owner notwithstanding the provisions of the Act which have been held to be prospective in its operation. The real problem centers round the effect of section 4(1) of the Act on pending

proceeding wherein claim to any property on account of it being field benami by of her side is on the anvil and such proceedings had not been finally disposed of by the time section 4(1) came into operation, namely, 19-5-1988. Section 4 shall apply even to past benami transactions provided the suit or action have been filed after 19-5-1988.

11. In the present case, the plaintiff claims title to the suit property by means of a registered deed of absolute sale dated 12-6-1929 from the Benamidar (Janak Lal Jha). In view of the position that the suit had been instituted prior to 19-5-1988, the plaintiff does not get the benefit of the provisions of section 4 of the Act, as a result of which the real owner can set up his case that the right, title and interest of the suit property always remained with him in the capacity of the real owner, and the Benamidar can not set up the plea that the real owner is disallowed from setting up the said claim. The net result, therefore, is that Nasib Lal Jha, father of defendant No. 1, was the real owner, and Janak Lal Jha (the vendor of the plaintiff), was a mere a Benamidar and did not have the right, title and interest to alienate the suit property in favour of the plaintiff. The issue has been correctly decided by the learned courts below. The issue is also concluded by concurrent findings of facts which bind this court in second appellate jurisdiction.

12. This appeal is without any merit and is accordingly dismissed with costs throughout.

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