

Siddaiah Vs. Channappa and Another

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Court : Karnataka

Decided On : Apr-07-1995

Reported in : ILR1995KAR1421; [1996]217ITR739(KAR);
[1996]217ITR739(Karn); 1995(3)KarLJ501

Judge : G.C. Bharuka, J.

Acts : Benami Transactions (Prohibition) Act, 1988 - Sections 4 and 4(1)

Appeal No. : Regular Second Appeal No. 588 of 1989

Appellant : Siddaiah

Respondent : Channappa and Another

Advocate for Def. : M.S. Gopal, Adv.

Advocate for Pet/Ap. : T.N. Manjuladevi, Adv.

Judgement :

G.C. Bharuka, J.1. This second appeal had been filed by the second defendant.

2. The present suit had been filed by the plaintiff against the defendants to declare the suit schedule properties as joint family properties of the plaintiff (first respondent herein) and to declare the sale deed dated February 11, 1965 (exhibit P-2), as benami and for a permanent injunction restraining defendant No. 2 from interfering with the plaintiff's peaceful possession and enjoyment of the suit

schedule property.

3. Defendant No. 1 is the wife of the plaintiff. She is the ostensible purchaser under the sale deed dated June 11, 1965 (exhibit P-2), which is the subject-matter of the suit. The suit properties had been subsequently sold by defendant No. 1 to defendant No. 2 under a sale deed dated October 3, 1974 (exhibit P-6). Both the courts below on the basis of the evidence led in the case, have concurrently expressed that the suit properties had been acquired by the plaintiff out of the joint family funds in the name of his wife, i.e., defendant No. 1, and have accordingly declared the property to be that of the joint family and the defendants were restrained in terms of the prayer made.

4. The present appeal was admitted for considering the following substantial question of law : 'Having regard to the provisions contained in section 4(1) of the Benami Transactions (Prohibition) Act, 1988 (in short, 'the Act'), whether the courts below are justified in law in decreeing the suit?'

5. Section 4(1) of the Act reads as under : '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.'

6. In the case of *Mithilesh Kumari v. Prem Behari Khare* : [1989]177ITR97(SC) , it had been held by the Supreme Court that section 4(1) of the Act will have its application even to such pending suits which were already filed and entertained prior to the date when the section came into force and had the effect to destroying the then existing right of the plaintiff in connection with the property. Following the said decision a similar view has been taken by a Bench of this court in the case of *B. G. Gangadharappa v. S. Chandrashekhar* : ILR 1991 KAR3772 . But, now the larger Bench of the Supreme Court in the case of *R. Rajagopal Reddy v. Padmini Chandrasekharan* : [1995]213ITR340(SC) thereof, has held that the view taken by the apex court in its earlier judgment in *Mithilesh Kumari's case* : [1989]177ITR97(SC) does not lay down the correct law. In view of the larger Bench decision of the Supreme Court, the provisions of section 4(1) of the Act are prospective in nature and cannot be pressed in service in connection with suits

filed prior to the coming into operation of the said section. In view of this latter decision of the Supreme Court in the case of B. G. Gangadharappa [1992] 196 ITR 277, has to be held as impliedly overruled to that extent.

7. In the present case, admittedly, the suit in question was filed in 1974, whereas the Act has come into force on May 19, 1988, and, therefore, the provisions of section 4(1) of the Act will have no application to the facts of the present case.

8. There being no other substantial question law arising in this appeal, the same has to be dismissed. Ordered accordingly. No order as to costs.

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