

Meera Vs. Heera Bai

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Court : Madhya Pradesh

Decided On : Sep-27-2004

Reported in : [2006]154TAXMAN355(MP)

Appeal No. : Misc. Appeal No. 46 of 2003 27 September 2004

Appellant : Meera

Respondent : Heera Bai

Advocate for Def. : Smt. Shimla Jain

Advocate for Pet/Ap. : Sanjay Agrawal, *for the Assessee* Smt. Shimla Jain, *for the Revenue*.

Judgement :

This appeal under order 43, rule I (u) of the Code of Civil Procedure has been directed against the judgment and decree dated 25-10-2002 passed by the learned VI Additional District Judge, Sagar, in Civil Appeal No. 28A/02 setting aside the order dated 16-8-2000 passed by the II Civil Judge, Class II, Sagar, in Civil Suit No. 13A/2000.

2. Shortly stated the facts of the case are that the respondents/plaintiffs filed a civil suit alleging that the plaintiff and the defendant are members of joint Hindu family. Kashiram Raj, husband of plaintiff No. 1, father of plaintiff Nos. 2 to 5 purchased a plot out of joint Hindu family property in the name of defendant who is his

daughter-in-law. It is further pleaded that the plaintiff No. 2 is husband of the defendant and because of matrimonial disputes between them the defendant threatened to evict the plaintiffs from the suit property and also trying to sell the suit property. Accordingly, the plaintiffs prayed for following reliefs:

A. The land purchased vide sale deed dated 14-11-1977 in the name of the defendant and the house constructed over the same be declared to be the joint family property as the land in question was purchased by late Kashirarn Raj, husband of plaintiff and father of plaintiff Nos. 2 to 5 in the name of his grand daughter defendant.

B. The defendant be restrained from seeking eviction of the plaintiffs, recovery of rent and from selling the suit property.

3. The appellant/ defendant filed written statement and contended that the property is not a joint family property but of her own as she purchased the same out of her own funds. An application was also filed by the defendant under order VII, rule 11 of the Civil Procedure Code seeking rejection of the plaint on the ground that in view of the prohibition contained in section 4(l) of the Benami Transactions (Prohibition) Act, 1988 ('the Act'), the suit filed by the plaintiffs is barred. Accordingly, it was prayed that, the plaint be rejected.

4. After hearing on the application the trial court vide order dated 16-8-2002 dismissed the suit holding it to be barred by the Act. The plaintiffs being aggrieved filed appeal before the learned VI Additional District Judge, Sagar. The appeal was allowed by the learned Additional District Judge and he remanded the case to the trial court for deciding the suit on merits. Hence, this appeal.

5. Shri Sanjay Agrawal, learned counsel for the appellant, contended that the judgment and decree passed by the lower appellate court holding the respondents suit to be maintainable is erroneous. According to him, from the plaint averments itself, the suit being hit by the provisions of section 4 of the Act, the trial court has rightly dismissed the same. He also contended that the plaintiffs' suit is not covered under sub-clause (a) of clause (3) of section 4 of the Act and, therefore, the prohibitory section is attracted.

6. Smt. Shimla Jain, learned counsel for the respondent, has contended that the trial court while deciding the application filed under order VII, rule 11 of the Civil Procedure Code, was required to see only the plaint averments. On the basis of the plaint averments, the suit cannot be said to be a suit to claim right in respect of any property held Benami by the defendant. The property being a joint Hindu family property, the suit to enforce right in respect of the said property filed by the appellant cannot be said to be barred. In support, learned counsel for the respondents has relied on the Division Bench judgment passed in the case of Subhash Chandra Gupta v. Gyanchand 1994 JLJ 262 and submitted that the lower appellate court has committed no error in setting aside the order passed by the trial court.

7. The Division Bench of this court in the case of Subhash Chandra Gupta (supra) while examine the provision contained in order VII, rule 11 (d) of the Code of Civil Procedure has held as under :

'to enable rejection of the plaint at its threshold, it is only the statement in the plaint which can be looked into. The documents filed with the plaint may also be looked into. The pleas taken in the written statement or any application filed by the defendant or the documents relied on by him cannot be looked into by the court for forming an opinion on rejection of plaint within the meaning of clause (d) abovesaid. The court has to accept the statement of the facts as made in the plaint to be correct and then determine whether it would be disabled from granting any relief to the plaintiff on account of bar created by any law for the time being in force.'

8. In the light of the Division Bench judgment of this Court, it would be appropriate to consider the plaint averments. As per the plaint, the plaintiffs' case is that they are members of joint Hindu family. The suit property was purchased by late Kashiram, husband of plaintiff No. 1, father of plaintiff Nos. 2, 3, 4 and 5, in the name of his daughter-in-law the defendant who is wife of plaintiff No. 2. It is also the case of the plaintiff that in the year 1977, the suit plot was purchased and thereafter a house was constructed on it. In the year 1997 Kashiram died. The plaintiff Nos. 3 4 and 5 are running shops in the front portion of the said house and

the defendant is living at the back side of the house. The suit property is undivided joint Hindu family property. The defendant has got only 1/5th share in the said house but since the sale deed is in her favour she is threatening to sell the house without any division of the shares and she is also threatening to get the house vacated from the plaintiffs. Accordingly, the plaintiffs claimed the relief as stated above.

9. From the perusal of plaint averments it is apparent that the plaintiffs are claiming their right from a property held by joint Hindu family but standing in the name of a member of a joint Hindu family. In the case of Subhash Chandra Gupta (supra), this court while dealing with the identical situation has observed as under:-

'11. A property held benami has to be distinguished from a property held by a joint Hindu family as joint Hindu family property though standing in the name of a member of joint Hindu family. A joint Hindu family consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. Joint family property may be ancestral property or separate property of any coparcener thrown into common hotchpot. Property jointly acquired by the members of a joint family with the aid of ancestral property or with the aid of joint family property, becomes joint family property. (See paras 212, 220 and 228(2) of Hindu Law by Mulla, sixteenth edition, 1990). When the joint family funds are utilized for acquiring a property in the name of any member of the joint Hindu family, it is not the case of one person acquiring property for a consideration paid or provided by another person. Each member of joint family has an undivided undefined fluctuating interest in the joint family funds which interest comes to be determined and defined only on disruption of jointness. It is presumed that a joint family continues to be joint but there is no presumption that a family, though joint, possesses joint property or any property. Yet where it is established or admitted that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the presumption arises that it was joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property. Where the existence of nucleus is shown and no other source of income is disclosed, the

presumption may be made that the nucleus was sufficient to enable the property being acquired. Such being the presumption, if any member of the family claims any property as his separate property, the burden lies upon to show acquisition by him in circumstances which would constitute it his separate property (See para 233, Hindu Law by Mulla, supral. In view of such clear distinction between 'property held benami' and joint Hindu Family Property standing in name of a member of such family, it will be a misnomer to say that the property standing in the name of a member of the joint Hindu family alleged to have been acquired by the joint Hindu family with the aid of joint family property or funds amounts to pleading a case of Benami.'

10. Examining the case in the light of the aforesaid Division Bench judgment of this Court, I am of the opinion that the pleadings raised by the plaintiffs can by no stretch be said to be pleading a case of Benami. Neither what has been stated in the plaint is a case of Benami Transactions nor a right to recover property held Benami is being sought to be enforced. The learned trial court committed error in holding the case pleaded by the plaintiffs attracting provisions of section 4 of the Act and hence barred thereby. The learned appellate court has correctly appreciated the pleadings of the plaintiffs and has rightly remanded the matter to the trial court for deciding the suit on merits. So far as the point urged about the plaintiffs suit is not covered under section 4(3)(a) of the Act, and, therefore, is barred is not tenable. In my opinion, on the basis of plaint averments it cannot be said that the suit is to enforce right in respect of property held Benami which is prohibited.

11. For the aforesaid reasons, this appeal being of no merit is dismissed. The order of the learned appellate court remanding the case to the trial court is maintained.

Appeal dismissed.