

Suseelan Vs. Leela

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Court : Kerala

Decided On : Jan-22-2004

Reported in : AIR2004Ker312; IV(2004)BC441; II(2004)DMC499; 2004(2)KLT606

Judge : J.B. Koshy and; K. Thankappan, JJ.

Acts : Benami Transactions (Prohibition) Act, 1988 - Sections 3(2)

Appeal No. : M.F.A. No. 1007 of 2000

Appellant : Suseelan

Respondent : Leela

Advocate for Def. : P. Nandakumar,; G.G. Shisheer,; K. Ramakumar and;

Advocate for Pet/Ap. : M. Unnikrishna Menon, Adv.

Disposition : Appeal dismissed

Judgement :

J.B. Koshy, J.

1. This appeal is filed by the husband against the judgment of the Family Court, Thrissur in O.P.No. 719 of 1997.

2. O.P.No. 719 of 1997 (originally filed before the Sub Court, Thrissur as O.S. No. 308 of 1992) was filed by the appellant against his wife for a declaration that the petition scheduled immovable properties which were purchased in the name of the wife actually belonged to him. The first item in the schedule was 14 cents of property with a building thereon and the second item is another 14 cents of property. The wife, first respondent herein, filed three cases against the husband seeking return of certain immovable properties as well as gold ornaments. The petition filed by the husband as well as the three petitions filed by the wife were dismissed by the Family Court. Since appeal is filed only against the judgment in O.P.No. 719 of 1997, we are considering only that matter.

3. It is the definite case of the appellant that he was employed in the Gulf countries. On 30.9.1976 he purchased petition schedule item No. 1 and on 6.12.1976 he purchased item No. II, the adjacent property, both in the name of the first respondent. According to the appellant, both the properties were purchased with his funds. Thereafter a residential building was constructed in the petition schedule item No. 1 and fund for the obstruction was also provided by the appellant. According to the appellant, he is the real owner of the properties and the first respondent - wife is only a benami. It was also contended by the appellant that the building in the property was rented out to the second respondent and after the filing of the suit, the first respondent sold the petition schedule properties to the third respondent. Ext.B20 is the sale deed executed by the first respondent with the third respondent. Since sale deed was executed pendente lite, sale is invalid. There is no contention that Ext.B20 was executed to defeat the rights of the appellant or that the sale consideration is inadequate.

4. The contention of the first respondent before the Family Court was that she was employed in the Post and Telegraph Department and she purchased the properties in question using her funds. According to her, some amount was gifted to her by the appellant and she had also availed of a loan. Her definite case was that the properties were purchased by her and the building was constructed with her own funds. After constructing the building, it was rented out to the second respondent and she was receiving rent and enjoying the property. She contended that she was not a mere beneficiary or a benamidar but was the real owner of the

properties.

5. The Family Court found that the main source of income for purchasing the properties was from the appellant who was employed abroad. Further, in the permission sought for from the Department for construction of the building, the first respondent had declared that the money for construction was from her husband. The Family Court, however, found that after the introduction of the Benami Transactions (Prohibition) Act, 1988 (hereinafter referred to as 'the Act'), even though the husband can purchase properties in the name his wife or unmarried daughter, there is a presumption that it is for the benefit of the wife or unmarried daughter unless the contrary is proved. The Family Court found that such a presumption was not rebutted and, therefore, the appellant was not able to prove that the transaction was a benami transaction. The Family Court took into account the fact that the first respondent - wife was dealing with the properties as her own and was also receiving rent from the second respondent to whom the building in question was rented out. She was in absolute possession and enjoyment of the properties after purchase and, therefore, the claim of benami transaction was found against the appellant.

6. The main contention of the appellant is that such a pleading based under Section 3(2) of the Act was not raised in the written statement and without definite pleading the court cannot enter such a finding on the basis of mere arguments placed before it at the time of hearing. It was further argued by the appellant that even if there is such a presumption, it can be rebutted by adducing sufficient evidence. According to the appellant, he had adduced sufficient evidence to show that it was a benami transaction and that he had purchased the properties with his own funds.

7. In *Gangadara Ayyar v. Subramania*, AIR 1949 F.C. 88, the Federal Court held that it is settled law that the onus of establishing that a transaction is benami is on the plaintiff and it must be strictly made out. It is for the plaintiff to conclusively establish that it was a benami transaction. A Constitution Bench of the Supreme Court in *Surasaibalini v. Phanindra Mohan*, AIR 1965 SC 1364 reiterated the above proposition of law. The Supreme Court in the above decision held that

eventhough the source of the funds from which the purchase is made is one of theconsideration, the manner of enjoyment of the property is a very important factor forestablishing the case of benami and the mere proof of the source of the purchasemoney would not finally establish the benami nature of the defendant's title. TheCourt will presume an ostensible owner to be the real owner unless a plaintiff whoseeks to assert the contrary pleads and proves that the ostensible owner is not the realowner. In Jaydayal Poddar v. Bibi Hazra, AIR 1974 SC 171, the Supreme Courtagain reiterated the above position and held that it is well settled that the burden ofproving that a particular sale is benami and the apparent purchaser is not the realowner, always rests on the person asserting it to be so. This burden has to be strictlydischarged by adducing legal evidence of a definite character which would eitherdirectly prove the fact of benami or establish circumstances unerringly and reasonablyraising an inference of that fact. The Supreme Court further held that a deed is a solemn document prepared and executed after considerable deliberation and the person expressly shown as the purchaser or transferee in the deed starts with the initialpresumption in his favour that the apparent state of affairs is the real state of affairs.The nature of possession of the property after purchase, the motive, if any, for givingthe transaction a benami colour, position of the parties and their relationships, custodyof the title deeds after the sale and the conduct of the parties concerned in dealingwith the property after sale are also important factors in determining the nature oftransaction apart from the origin of money.

8. Here, the first thing to consider is whether the appellant has succeeded in proving that the transaction was a benami transaction and whether he was able to adduce contrary evidence to rebut the presumption mentioned above. In the written statement filed by the first respondent it is stated as follows:

It is further stated in the written statement as follows:

In paragraph 4 of the written statement, it is stated that name leader (this defendant is not a name lender). It shown that sufficient pleadings are made out by the first respondent in the written statement to show that she was not a benamidar and the properties were purchased by her.

9. It has come out in evidence that the properties in question were in the possession and enjoyment of the first respondent. She had rented out the building to the second respondent and was getting rent from him. It has also come out in evidence that during 1984 and 1990 the property was pledged by her for availing of a loan. It is also in evidence that the appellant had given her Rs. 75,000/- as a gift which was utilised by her for the construction of the residential building. Gift tax was also paid by her for the above amount. After money is gifted, it is the property of the donee.

10. It is contended by the appellant that it was he who spent major part of the money for purchase of the properties. He further contended that even though he purchased other properties in his name, petition schedule Item Nos. 1 and 2 were purchased in the name of the first respondent so as to put an end to her quarrel. That goes against the pleadings of benami transaction. In cross-examination, he deposed as follows:

11. The first respondent was employed in the Post and Telegraphs Department. She had obtained loan for purchase of the properties. The appellant had also gifted some amount to her. Even though major amount was contributed by the appellant in purchasing the scheduled properties, the evidence as a whole would show that the first respondent was the real owner of the properties and she was in absolute possession and enjoyment of the properties. The Family Court correctly found that the appellant was not able to discharge his burden that ostensible owner is not the real owner and is only a benamidar. The Family Court rightly dismissed the petition filed by the husband. We see no ground to interfere with the finding of the Family Court.

The appeal is accordingly dismissed. On the facts of the case, parties shall bear their own costs.