Syed Sardaruddin Vs Syed Khaja Moinuddin

Court: Andhra Pradesh High Court

Date of Decision: Nov. 2, 2004

Acts Referred: Benami Transactions (Prohibition) Act, 1988 â€" Section 2, 4

Citation: (2005) 144 TAXMAN 45

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: R. Raghunandan, Eranki Phani Kumar, for the appearing parties;

Judgement

The concurrent judgments and decrees passed by the Courts of learned Junior Civil Judge, Shadnagar and learned II Additional District Judge,

Mahabubnagar, are under challenge in this second appeal. This is the second round of litigation between the parties.

2. The appellant and Respondents 1 and 2 are brothers and Respondents 3 to 5 are sisters. Respondents 1 and 2 filed O.S. No. 24 of 1995 for

partition of the suit schedule property. According to them, it was purchased by their father for the benefit of the entire family in the name of the

appellant and that the latter did not accede to their request to partition the property. The appellant pleaded that he is the exclusive owner of the

property and that Respondents 1 and 2 have no share in it. Respondents 3 to 5 did not file any written statement, nor did they claim any share in

the property. The Trial court decreed the suit through its judgment, dated 20-10-1998. Aggrieved by the same, the appellant filed A.S. No. 63 of

1999. The appeal was also dismissed through judgment, dated 2-8-2004.

3. Sri R. Raghunandan, learned counsel for the appellant, submits that it is a matter of record that the property was purchased in the name of the

appellant and having regard to the provisions of the Benami Transactions (Prohibition) Act, 1988 (hereinafter referred to as "the Act"), the suit was

not maintainable. He submits that even if there existed any concession on the part of the appellant permitting the Respondents 1 and 2 to enjoy the

property, that by itself does not render the provisions of the Act inapplicable. Another contention advanced by the learned counsel is that though

Respondents 3 to 5 are entitled to a share in the property, in the event of it being held as joint, the Trial court did not allot any shares to them.

4. Sri E. Phani Kumar, learned counsel for Respondents 1 and 2, on the other hand, submits that the property was purchased by the father of the

parties in the name of the appellant for the sake of convenience and ever since the date of purchase, it was treated as the property belonging to the

family. He submits that in the earlier round of litigation, this court categorically held that the property belongs to all the members of the family,

though it stands in the name of the appellant and that it is not open to the appellant to raise the plea of benami transaction at this stage.

5. The suit schedule property was purchased way back in the year 1962. The sale deed is in favour of the appellant. After the death of their father,

Respondents 1 and 2 were said to have started interfering with the possession of the appellant over the said property. That necessitated him to file

O.S. No. 64 of 1975 for the relief of declaration of title and perpetual injunction against Respondents 1 and 2 herein. The suit was dismissed on

27-12-1976. A.S. No. 23 of 1978 was filed by him in the court of the District Judge, Mahabubnagar. This was also dismissed on 4-4-1980. He

filed S.A. No. 868 of 1981 before this Court. While dismissing the second appeal, this court in its order, dated 16-10-1986, recorded a

categorical finding to the effect that though the property was purchased in the name of the appellant herein, it is for the benefit of all the members of

the family, Respondents 1 and 2 also. That finding became final.

6. In the present round of litigation, Respondents 1 and 2 sought for partition of the same property. The appellant resisted the suit mainly by relying

on section 4 of the Act. It is true that section 4 of the Act prohibits filing of suit in relation to a property held benami by a different person. The only

exceptions carved out u/s 4 of the Act are those in relation to Hindu joint families or where the property is held in trust for the benefit of others.

Admittedly such exceptions do not exist in the present case. The expression "benami transaction" is defined u/s 2(a) of the Act.

7. If O.S. No. 24 of 1995, which gave rise to this second appeal, was not preceded by any proceedings, for adjudication of rights of the parties,

the bar u/s 4 of the Act would have straightaway got attracted. However, as observed in the preceding paragraphs, the appellant filed O.S. No. 64

of 1975 for the relief of declaration that the suit schedule property exclusively belongs to him and for injunction against Respondents 1 and 2. In

that suit Ex.B.1, which is said to be an agreement between the appellant and Respondents 1 and 2, was relied upon, and it was found that the

appellant himself admitted the fact that the property was purchased for the benefit of the family. In S.A. No. 868 of 1981, which arose out of O.S.

No. 64 of 1975, this court observed as under:

The question is whether it is open to the parties, irrespective of the fact whether they belong to Hindu or Muslim Community to treat the property

jointly when they purchased the property in the name of one of the co-owners and enjoying the same as co-owners. With regard to the above,

there is no distinction in principle whether the parties belong to either Hindu or Muslim Community. Ostensibly when all of them are living together

and when the property was purchased by the appellant and it was jointly enjoyed by all the brothers jointly the necessary conclusion is that the

property was purchased benami for the benefit of all the members of the family and it must be a benami transaction for the benefit of all the

members of the family. Therefore, it cannot be said that such a joint enjoyment cannot be inferred, because the parties belong to Muslim

community.

8. This observation has the effect of declaring the nature of the property and the status of the parties vis-a-vis the same. Notwithstanding the fact

that the property was purchased in the name of the appellant, this court held in unequivocal terms that it was for the benefit of the family members

and is held in joint. Once that finding became final, the appellant cannot plead that he continues to be the exclusive owner.

9. The necessity to file a suit referred to above in section 4 of the Act would arise, if only the ostensible owner disputes the right of the real owner

in relation to a property. Section 4 of the Act does not have the effect of wiping away the findings, which were Already recorded by the Courts in

relation to a property in the proceedings, which were instituted and became final before the Act came into force.

10. In this context, it is necessary to refer to a couple of important judgments rendered by the Supreme Court, while interpreting section 4 of the

Act. In Mithilesh Kumar and Another Vs. Prem Behari Khare, it was held that the bar contained in section 4 of the Act would apply to the

proceedings that were pending at any stage as on the date, when the Act came into force. In that case, the suit was filed in the year 1971 for a

declaration that the plaintiff therein be declared as the real owner of the suit schedule property. The suit was decreed, holding that the suit property

was purchased benami in the name of the defendant and that the plaintiff is the real owner. The decree was upheld in appeal and second appeal.

When the civil appeal was pending in the Supreme Court, the Act came into force. Section 4 was applied and the decree was set aside. The

Supreme Court took the view that such a course would not amount to giving retrospective effect to the provisions of the Act.

11. This very question fell for consideration in R. Rajagopal Reddy''s case. Overruling its own judgment in Mithilesh Kumar and Another Vs. Prem

Behari Khare, the Supreme Court held that the bar u/s 4 of the Act would operate only in respect of suits filed after the Act came into force. As to

sub-section (2) of section 4 of the Act, it was held that if a defence was delivered or filed by the time the Act came into force, the bar does not

operate against it. This being the clear view taken by the Supreme Court as to the proceedings, which were pending by the time the Act came into

force, it is too difficult to imagine that section 4 of the Act has the effect of annulling an adjudication, which has Already taken place resulting in the

declaration of rights in relation to a property covered by a benami transaction. It has to be noticed that section 4 of the Act does not contain any

non obstante clause, to neutralize the effect of the judgments and decrees, which have Already been passed, in relation to the benami transactions.

As held by the Supreme Court in R. Rajagopal Reddy''s case (supra), what section 4 of the Act prohibits is a suit, claim or action to enforce any

right in respect of any property held benami. It does not wipe away the rights, which have Already accrued to the parties on the basis of an

adjudication in relation to a benami transaction. Therefore, the contention of the learned counsel for the appellant cannot be accepted.

12. His other contention is as to non-allotment of shares to Respondents 3 to 5. This cannot be accepted for two reasons. Firstly, Ex.B.1, which

constituted the basis in the earlier and present rounds of litigation, is to the effect that it is only the appellant and Respondents 1 and 2 that are

entitled to share the suit schedule property. There is no reference to their sisters in it. Secondly, Respondents 3 to 5 did not express any grievance

either in the suit or at subsequent stages and the appellant cannot canvass their rights.

13. Therefore, this court does not find any ground to interfere with the judgment under appeal. The Second Appeal is accordingly dismissed. There

shall be no order as to costs.