

PADMINI CHANDRASEKHARAN  
(SINCE DECEASED) THROUGH LRS.

A

v.

R. RAJAGOPAL REDDY (SINCE DECEASED)  
THROUGH LRS. AND ORS.

B

FEBRUARY 19, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Benami Transactions (Prohibition) Act, 1988 :*

C

*S.4—House site allotted by the Housing Society—At a partition the site fell to the share of another branch of the joint family—That branch paid the hire purchase instalments to the Housing Society—Partition not questioned as vitiated by fraud or mis-representation—Therefore it cannot be challenged—Appellant and her husband paying rent to that branch and asking for willingness to transfer the property in their name—Hence they are estopped from denying the title of the respondent—Hence decree of eviction binds the appellant—Plea of benami collusive between appellant and the original allottee to defraud respondents of the property they got at the partition—Evidence Act—S.116.*

D

*Mithilesh Kumari & Anr. v. Prem Behari Khare, AIR (1989) SC 1247, referred to.*

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4254 of 1996.

F

From the Judgment and Order dated 16.8.95 of the Madras High Court in O.S.A. No. 27 of 1980.

G. Subramaniam, S. Sivasubramaniam, N.J. Varadachary, A. Ranganadhan and A.V. Rangam for the Appellants.

G

Mohan parasaran for V. Balachandran for the Respondents.

The following Order of the Court was delivered :

Leave granted.

H

A We have heard learned counsel on both sides.

This appeal by special leave arises from the judgment and decree dated August 16, 1995 of the Division Bench of Madras High Court made in OSA No. 27 of 1980.

B The appellant, (since deceased) represented by the executors of her will in C.S. 110 of 1971, laid the suit for declaration that she was the sole and exclusive owner and in possession, in her own right, of the house and ground bearing Door No. 40, Fourth Main Road, Gandhi Nagar, Adyar, Madras-20 as owner thereof and for permanent injunction restraining R. Rajagopala Reddy, the first defendant in the suit, or his agents or servants, from interfering with her possession and enjoyment thereof. Initially, the suit was decreed but on appeal, following the judgment of this Court in *Mithilesh Kumari & Anr. v. Prem Behari Khare*, AIR (1989) SC 1247 holding that Section 4 of the Benami Transactions (Prohibition) Act, 1988 operates retrospectively, the High Court held that the second defendant, Venugopal Reddy was a benamidar and the joint family had no manner of right whatsoever over the suit property. The earlier partition deed was not valid. On appeal to this Court, the view taken in *Mithilesh Kumari's* case was overruled by a three-Judge Bench in this very case and the matter was remitted to the High Court for a decision afresh. The Division Bench after considering the evidence held that Venugopal Reddy was allotted the plot by Madras Co-operative Housing Construction Society (Housing Society): at a partition in 1955, the suit property was allotted to Srinivasalu Reddy, elder brother of Rajagopal Reddy belonging to one branch Petta family; Venugopal Reddy was benamidar for joint family. Accordingly, the High Court allowed the appeal, set aside the decree of the trial Judge and dismissed the suit. Thus this appeal by special leave.

When the matter had come up before us for admission, the question raised by Shri Kapil Sibal, learned senior counsel was that the Division Bench had not considered the effect of the benami transaction in proper perspective and, therefore, the decision is vitiated by grave error of law. Accordingly, notice was taken by the respondents and they have filed their counter and have placed on record the entire evidence.

The only question is whether Venugopal Reddy, the second defendant is a benamidar of the property belongs to Rajagopal Reddy, the first defendant. It is not in dispute that on an application made by Venugopal

Reddy, is second defendant on July 9, 1947 to the Housing Society the site was allotted in his name. Three families were living as composite Hindu Joint Family who dealt with extensive properties situated in various places including Thada, Venadu etc. in Andhra Pradesh and in the City of Madras. Three families are for short stated as Petta, Vakatti and Es-waravakka families. Rajagopal Reddy equally applied for allotment to the Housing Society. Venugopal Reddy had allotment of the suit property. At a partition that took place between three families on September 29, 1955 under partition deed (Exh.D-9), several properties including the suit land fell to the share of petta family represented by Srinivasalu Reddy and Rajagopal Reddy, the first defendant. After the partition, the Appellant paid rents to Srinivasalu Reddy from 1956 to 1957. Srinivasalu Reddy also paid hire-purchase instalments to the Housing Society. Pursuant to the letter dated November 7, 1958, Venugopal Reddy directed the appellant to pay the balance amount and also rents to Srinivasalu Reddy and accordingly she paid the same. By letter dated February 24, 1961, the husband of the appellant enquired from Srinivasalu Reddy whether he was prepared to transfer the said property in his name to which Srinivasalu Reddy declined to execute the sale deed. Thereafter, the litigation started.

From these facts, the question that emerges is : whether Rajagopal Reddy is benamidar for Venugopal Reddy and whether the appellant had the property form Venugopal Reddy ? The Division Bench has recorded a finding, in our view rightly, that the 1955 partition (Exh.D-9) was not questioned by Venugopal Reddy as vitiated by any fraud or misrepresentation. Therefore, it was not open to the appellant to question the same. Her plea that she discharge the amount due and payable to the Housing Society on behalf of the Venugopal Reddy pursuant to an agreement she had entered into which Venugopal Reddy and thereby she became the owner, has also been negated by the Division Bench in our view quite rightly. The only question, therefore, is whether Venugopal Reddy is the real owner and Rajagopal Reddy is benamidar in purchasing the property from the Housing Society ? The Division Bench has recorded, as a fact, the finding based on voluminous evidence that "(various items of properties purchased in the names of different individuals of the family were put into the common pool and divided amongst the members of the composite family. All the three families alone had the right, title and interest in all the properties. They have acted by adjusting their rights mutually in terms of the deed by taking their respective shares in the various properties. In

A our view, the partition, which was acted upon by the parties to the same, cannot be set aside on the contention of the learned counsel for the 1st respondent that it was not a composite family". The partition deed was not a sham or nominal document nor was it vitiated by fraud or misrepresentation only in respect of one item. There cannot be any ulterior motive or extraneous consideration for the parties to enter into such a partition in

B the year 1955. The partition having remained unquestioned for a long period of time by any of the parties to the deed, it does not lie in the mouth of a third party to impeach the nature of the transaction recorded in the said document when Venugopal Reddy himself had not questioned the partition deed (Ex.D-9).

C From these facts, the question emerges whether Rajagopal Reddy is only a benamidar for Venugopal Reddy ? In the face of the conduct of the appellant and her husband in paying the rents to Srinivasalu Reddy, brother of Rajagopal Reddy and her husband asking Srinivasalu Reddy of

D his willingness to transfer the property in his favour; on payment of rent, the appellant- plaintiff amounts to have attorned Srinivasalu Reddy as owner of the demised property and, therefore, she was stopped under Section 116 of the Evidence Act to deny title of Srinivasalu Reddy, brother of Rajagopal Reddy, the first respondent. The decree of eviction had by Rajagopal Reddy from the Rent Controller binds the appellant-plaintiff

E which had become final, though the question of title was left open. In those circumstances, the plea of benami is only a collusive one between her Venugopal Reddy to defraud Srinivasalu Reddy and Rajagopal Reddy of the property had in the partition. Though the High Court has not dealt with this aspect of the matter in proper perspective, from the above consideration we find that the decree is not vitiated by any error of law.

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The appeal is accordingly dismissed. No costs.

G.N.

Appeal dismissed.