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SMT. TULSA BAI
v.
STATE OF MADHYA PRADESH AND ORS.

NOVEMBER 7, 1996

B

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

Benami Transaction:

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E
Proceedings for recovery of sales tax initiated against the husband—House in the name of wife sought to be attached—Wife filed suit for declaration of her right and title in the house claiming that she had purchased the plot and constructed the house thereon out of her own funds, and sought an injunction restraining the defendant-respondents from selling it—Revenue's case was that it was a Benami transaction—Trial Court decreed the suit—The High Court on appreciation of evidence, dismissed the suit holding that there was no proof that the house was constructed by the wife with her own funds; the husband being a businessman, had constructed the house in the name of his wife, as such, it was a benami transaction liable to be proceeded with for recovery of arrears of sales-tax from the husband—Held, there is no illegality in the conclusion reached by the High Court nor is there any error of law in the judgment of the High Court warranting interference.

Gapadibai v. State of M.P., [1980] 2 SCC 327, cited.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3100 of 1980.

From the Judgment and Order dated 19.4.80 of the Madhya Pradesh High Court in F.A. No. 8 of 1975.

Fazlin Anam for S.K. Mehta for the Appellant.

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U.N. Bachawat, (A.K. Sanghi) (NP), Niraj Sharma and S.K. Agnihotri for the Respondents.

The following Order of the Court was delivered :

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This appeal by special leave arises from the judgment of the Division

Bench of the High Court of Madhya Pradesh, Jabalpur Bench, made on April 19, 1980 in F.A.No.80/75. The appellant had filed the suit for declaration of her right to and title in the suit property situated in Shankar Ward, Bhatapara Municipality in Madhya Pradesh and for incidental injunction restraining the defendants from selling off the same. Her plea was that she had purchased a plot on September 23, 1971 by herself out of her own money. After obtaining the permission from the municipality she had constructed the house by herself after taking loans from various sources and thereby she is the absolute owner of the built-in house. Therefore, the said house is not liable to attachment and sale to recover Rs. 63,063.25 towards arrears of sales-tax from the appellant's husband impleaded as 3rd defendant in the suit. The Trial Court decreed the suit No. 7-A of 1972. But on appeal it was reversed and the suit was dismissed. Thus this appeal by special leave.

The learned counsel for the appellant, placing strong reliance on the judgment of this Court in *Gapadibai v. State of M.P.*, [1980] 2 SCC 327, contended that when the appellant had pleaded and proved that she is the owner of the property and had constructed the house from her own funds and the trial Court having accepted the same, the High Court was not right in reversing the decree. The burden is on the respondent-State to prove that this is case of benami transaction and that the third defendant-husband of the appellant is the real owner. The state had miserably failed to do the same. Consequently, the decree of the High Court is not correct in law. We find no force in the contention.

It is true that that when the plea of benami transaction has been raised and on passing different tests laid down in that case, namely, having been in possession of the house in her own right, purchasing the property by a registered conveyance in her name, the title deed remained to be in her custody, the payment of property-tax after the purchase were considered to be indicia to conclude that she was the real owner and it was not a benami transaction standing in the name of the plaintiff for and on behalf of her husband. But, in this case, it is difficult to give acceptance to the contention of the learned counsel for the appellant. The High Court has pointed out in paragraphs 5 and 6 of the judgment the entire evidence. The finding is based on oral testimony of the witnesses. PW-1, Jagdish Prasad examined on behalf of the plaintiff, had admitted that he purchased the plot in 1969 for Rs.4425/- and in 1971, he is stated to have sold the property for Rs. 4,000/-. It is incredible to believe that after two years he had sold the property for less than the purchase price of 1969. One Radheshyam Purohit was examined to show that the respondent had sold

- A her gold ornaments to him after 10-15 days of Holi of the year 1971 for a sum of Rs. 4220/-. The said Radheshyam is no other than the clerk of Jagdish Prasad, P.W.1. No credence can be given to his evidence. Evidence of one Himmatbhai, a relation of the appelland, of her lending money, was disbelieved. P.W.3, a contractor who constructed the house during October 1970, had stated that the cost of construction was Rs. 27,000/- whereas the
- B Municipal Overseer, P.W.4 examined on behalf of the appelland had proved that the cost of the construction was Rs. 45,000/-. One Pitamberlal Agrawal, P.W.5 relative of the appelland, was claimed to have lent Rs. 10,000/- for construction of the house in October 1972. It is not the case that this Rs. 10,000/- was utilized in the construction of the house. In the absence of any material connecting the alleged oral lending of Rs. 10,000/- and
- C repayment thereof, the contention was not accepted by the High Court. Another witness is the sister of the appelland's mother, one Bhotibai. She claimed to have gifted Rs. 5,000/- to the appelland for construction of the house. The appelland had admitted as a witness that at the time of her marriage she was given Rs. 5,000/- cash and ornaments worth Rs.10,000/-. She also admitted that after the house was constructed, she
- D had in her possession Rs. 5,000/- to Rs.6,000/- in cash. In other words, she had Rs.16,000/- in her possession before construction and she retained Rs.5,000/- to Rs.6,000/- in cash after construction. In the absence of any specific evidence as to source from which the amount of Rs. 45,000/- was secured by her, the High Court had concluded that there is no proof that the house was constructed by her with her own funds and the husband
- E being a businessman, obviously had constructed the house in the name of his wife for herself and family. Accordingly, it was concluded that it was a benami transaction liable to be proceeded with for recovery of the arrears of sales-tax from the third defendant, the husband of the appelland. This being a finding of fact based on appreciation of evidence, we do not find
- F any illegality in the conclusion reached by the High Court nor do we find any error of law in the judgment of the High Court warranting interference.

The appeal is accordingly dismissed. No costs.

R.P.

Appeal dismissed.