

A C. GANGACHARAN
v.
C. NARAYANAN

DECEMBER 14, 1999

B [B.N. KIRPAL AND R.P. SETHI, JJ.]

Indian Trust Act, 1882:

C S.4(3)(b), 82—Property held in the name of trustee—Plaintiff sending
money from abroad to dependent to purchase property in former's name—
D Defendant purchasing property in his own name—Suit by plaintiff for
possession decreed—Execution—Meanwhile Benami Transactions
E (Prohibition of the Right to Recover Property) Ordinance, 1980
promulgated—Objection filed by judgment debtor that in view of provisions
of Ordinance decree could not be executed, disallowed by executing court—
High Court in revision held in favour of judgment debtor—Held, High Court
F erred in setting aside the decision of executing court—Executing court cannot
go behind the decision of a court of competent jurisdiction except when the
decree is void-ab-initio or without jurisdiction—In view of the finding that
the property was held in the name of the defendant as a trustee, the question
of the defendant invoking the provisions of the Benami Transactions
Ordinance or Act, did not arise—Provisions of the Act did not prohibit a suit
being filed against a trustee for recovery of trust property—Besides Benami
Transaction Act and the Ordinance were not retrospective in operation and
did not apply to pending suit already filed and entertained prior to coming
into force of s.4 of the Act—Benami Transactions (Prohibition of the Right
to Recover Property) Act, 1988—S.4.

*Rajagopal Reddy (Dead) by LRs and Ors. v. Padmini Chandrashekhara
(Dead) by LRs., [1995] 2 SCC 630, relied on.*

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1782 of
1989.

From the Judgment and Order dated 2.8.88 of the Kerala High Court in
C.R.P. No. 1161 of 1988.

H T.L.V. Iyer and V.B. Saharya for M/s. Saharya & Co., for the Appellant.

E.M.S. Anam, for the Respondent. A

The following Order of the Court was delivered :

There is more than one reason for allowing this appeal. It appears that the appellant had sent money from abroad to the respondent to enable him to purchase immovable property in the name of the appellant. The respondent purchased properties in his own name and in the names of his other brothers in India. The appellant on 20th July, 1983 filed O.S. No. 349/83 for possession of the suit property or its market value. The case of the appellant was that the money which was sent was wrongly utilised in purchasing the properties in the name of respondent and the brothers instead of purchasing the same in the name of the appellant. B C

On 31st July, 1985, suit for possession was decreed with costs and mesne profits were to be determined in execution proceedings. The respondent filed an appeal to the High Court which dismissed the same on 27th August, 1987, *inter alia*, holding as follows: D

“There is no evidence in this case to show that the plaintiff wanted to benefit the defendants when he provided funds for purchase of landed properties. On the other hand, the evidence is overwhelming in this case to the effect that money was sent by the plaintiff to the defendant in O.S. No. 349 of 1983 for the specific purpose of purchasing landed properties in the name of the plaintiff, but, instead, he purchased the properties in the name of himself and his other brothers with the fund so provided by the plaintiff, Therefore it has to be held that the plaintiff is the beneficial owner and he is entitled to recover possession of the plaint schedule properties from the defendants in these suits. In our view this is a case where S.82 of the Indian Trusts Act squarely applies.” E F

A special leave petition filed by the respondent was dismissed by this Court on 7th April, 1988.

The appellant then filed an execution application being E.P. No. 90/88 before the trial court. Before the said application was disposed of, on 19th May, 1988 the Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988 was promulgated. Basing on this Ordinance, objections were filed by the respondent to the effect that the decree could not be executed in view of the provisions of the said Ordinance. The executing H

A court disallowed the objections and thereafter the respondent filed a revision petition before the High Court. By judgment dated 2nd August, 1988, the petition was allowed and in the impugned judgment it was observed that the said Ordinance of 1988 prohibited the recovery of possession of the suit property which was being held by the respondent as a benami of the appellant herein.

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It is now well settled that the executing court cannot go behind the decree of a court of competent jurisdiction except when the decree is *void ab initio* or without jurisdiction. In the present case, the High Court on 27th August, 1987, as is evident from the passage quoted hereinabove, had given a categorical finding to the effect that the respondent herein was only a trustee and the case was governed by Section 82 of the Indian Trusts Act. Section 4 which contains the prohibition to recover the property held benami expressly provides in sub-section (3), clause (b) that the said Section is not to apply, *inter alia*, in a case where the property is held in the name of a trustee. In view of the finding of the High Court in its judgment of 27th August, 1987 that the property was being held in the name of the respondent as a trustee, the question of the respondent invoking the provisions of the Benami Transactions Ordinance or the Act did not arise. The provisions of the Act did not prohibit a suit being filed against a trustee for the recovery of the trust property.

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That apart, this Court in *R. Rajagopal Reddy (Dead) by LRs and Ors. v. Padmini Chandrasekharan (Dead) by LRs.*, [1995] 2 SCC 630, has held that the said Act and the Ordinance were not retrospective in operation and the Act did not apply to pending suits which had already been filed and entertained prior to the coming into force of Section 4 of the Act. This being so, the High Court in the present case fell in error in setting aside the decision of the executing court and in holding that the right of the appellant to recover possession had come to an end by virtue of the said Act.

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For the aforesaid reasons, the appeal is allowed and the judgment of the High Court under appeal dated 2nd August, 1988 is set aside, with costs throughout.

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By order dated 16th September, 1991, the respondent herein was directed to deposit Rs. 10,000 in the trial court towards annual mesne profits. When this deposit was not made, an application was filed by the appellant for appointment of a Receiver in respect of the suit property. By order dated 8th February, 1993, the appellant himself was appointed as a Receiver and was put in possession but he was required to deposit Rs. 10,000 per year in the trial court. In view of the fact that the appellant has now succeeded in this

appeal, he is entitled to retain the possession of the property as an absolute owner thereof and will be entitled to withdraw from the trial court the amount deposited by him pursuant to the aforesaid order of this Court. A .

R.P.

Appeal allowed.