

VIJAY KUMAR & ANR.

V.

DHARAM PAL & ORS.

Civil Appeal No. 854 Of 2009

FEBRUARY 10, 2009

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

*Possession – Suit for possession – Plea of defendants that the property in question was purchased benami in the name of plaintiff and the defendants themselves were the real owners – Trial Court negated the plea of benami on ground that such plea was not available after enactment of the Act, and upon considering the evidence led by the parties, came to a finding that the plaintiff owned the suit property and decreed the suit – Order upheld by First Appellate Court and High Court – Held: The Courts below erred in applying the provisions of the Act to the suit, since it had been filed prior to coming into effect of the Act – However, de hors the question of applicability of the Act, the Courts below were right in holding that the plaintiff was owner of the suit property in view of the evidence adduced by him – Appeal accordingly dismissed – Benami Transactions (Prohibition) Act, 1988 – s.4 – Applicability of.*

**Respondent no.1 filed suit for possession contending that he had purchased the property in question and owned it. Appellants claimed that the property was purchased benami in the name of respondent no.1 and the appellants themselves were the real owners. Trial Court negated the plea of benami on the ground that such plea was not available after enactment of the Benami Transactions (Prevention) Act, 1988, and upon considering the evidence led by the parties, came to a finding that respondent no.1 owned the suit property and decreed the suit. The order was upheld by both the First Appellate Court and the High Court. Hence the present appeal.**

A Dismissing the appeal, the Court

B HELD:1.1. Since the point regarding the applicability of the Benami Transactions (Prohibition) Act, 1988, to the suit has been conceded on behalf of the respondent No.1 in favour of the appellants, the same need not detain this Court, except to state that the trial Court, the first appellate Court and the High Court had erred in applying the provisions of the Act to the suit, since it had been filed prior to the coming into effect of the Act. [Para 16] [ 7- E]

C 1.2. However, de hors the question of the applicability of the Benami Transactions (Prohibition) Act, 1988, the Courts below had rightly held that the respondent No.1 was the owner of the suit properties relying on the documentary and oral evidence adduced by him, including an agreement (Exhibit PW3/3) executed by the appellants and the respondent no.1 which was proved as mentioned in the judgment of the trial Court. [Para 17] [ 7-G, H]

E 1.3. Consequently, even while holding that the Courts below, including the High Court, had erred in applying the provisions of the Act to the suit of the respondent No.1, the appeal must fail on the ground that in addition to the above, the Courts had found the respondent No.1 to be the owner of the suit properties on the basis of the evidence adduced by him, which finding was not disturbed by any of the Courts below. [Para 18] [ 8-A, B ]

F *R. Rajagopal Reddy (dead) by L.Rs. & Ors. v. Padmini Chandrasekharan (dead) by L.Rs.* AIR (1996) SC 238 – referred to.

G Case Law Reference

AIR (1996) SC 238 referred to Para 13

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 854 of 2009

H

From the final Judgement and Order dated 3.5.2006 of the High Court of Punjab and Haryana at Chandigarh in R.S.A. No. 244 of 1998

R.K. Dhawan, Rahul Gaur, M.A. Chinnasamy, Preetam Shah and Kishan Kumar, for the Appellant.

Dhruv Mehta, Yashraj Singh Deora, Mohit Abraham and T.S. Sataush (for M/s. K.L. Mehta & Co.), for the Respondent.

The Judgement of the Court was delivered by

**ALTAMAS KABIR,J.**

1. Leave granted.

2. This appeal has been listed after notice had been served on the Respondent No.1 and learned counsel has entered appearance and has filed counter affidavit on his behalf.

3. One Dharam Pal, Respondent No.1 herein, filed a suit for possession by claiming that he had purchased two properties situated at Nakodar by two conveyances dated 24<sup>th</sup> April, 1959 and 12<sup>th</sup> June, 1959. It is his further case that having raised constructions in the said properties after obtaining sanction from the Municipality and having recorded his name in the House Tax Records as an assessee of the local body, he proceeded to the United Kingdom in 1964 and at the time of leaving, he had handed over possession of the said properties to his father, who was living along with his other son, Mr. Ram Aggarwal. Subsequently, the father of the Respondent No.1 also left for England and died there in 1970. The brother of the Respondent No.1/plaintiff, Mr. Ram Aggarwal, thereafter started a business in the said premises under the name and style of Vijay Agencies and remained in possession thereof as licencees of the Respondent No.1. On being asked to hand over possession of the suit properties by the Respondent No.1, Mr. Ram Aggarwal, refused to do so, which resulted in the filing of the civil suit, after revocation of the licence.

A 4. The claim of the Respondent No.1 was denied by the  
defendant/appellant, Mr. Ram Aggarwal, who claimed that an  
old shop had been purchased by a sale deed dated 24<sup>th</sup> April,  
1959 in the name of the Respondent No.1 on account of their  
love and affection for him. Similarly, a second shop was also  
B purchased by them on 12<sup>th</sup> June, 1959, in the name of the Re-  
spondent No.1 on the same ground. The claim of the appellants  
is that they had subsequently demolished the old structure and  
had raised the new structure, of which they were in possession  
and were, in fact, the real and ostensible owners. It was also  
C asserted by the appellants that a large sum of money had been  
spent by them on the new constructions and that they had been  
depositing local taxes in respect thereof, though the bills were  
issued in the name of the Respondent No.1 whose name was  
recorded in the local records as the owner thereof. It was also  
D admitted by the appellants that the electric connection and wa-  
ter connection were in the name of the Respondent No.1. In this  
context a plea of benami was raised by the appellants which  
was negated by the trial Court on the ground that such plea was  
not available after the enactment of the Benami Transactions  
(Prevention) Act, 1988, which had been held to have retrospec-  
E tive effect.

5. Considering the case made out by the respective par-  
ties and the evidence led by them, the Trial Court upon holding  
that the Respondent No.1 was the owner of the suit properties,  
F decreed the suit in favour of the Respondent No.1 by a judg-  
ment and decree dated 9<sup>th</sup> August, 1991. The appeal preferred  
by the appellants from the said judgment and decree was dis-  
missed by the lower Appellate Court by its judgment dated 5<sup>th</sup>  
September, 1997, confirming the reasoning of the trial Court,  
G which gave rise to a second appeal filed before the High Court.  
Having regard to the fact that both the sale deeds were in the  
name of the Respondent No.1, but the appellants claimed that  
the properties had been purchased benami in the name of the  
Respondent No.1 and the appellants were the real owners  
H thereof, the question of ownership was remanded to the First

Appellate Court. Upon reconsideration of the evidence, the First Appellate Court re-affirmed its earlier decision holding the Respondent No.1 to be the owner of the property.

6. The appellants filed a fresh Second Appeal against the order of the First Appellate Court which was again dismissed by the High Court upon holding that in view of the specific bar under Section 4 of the Benami Transactions (Prohibition) Act, 1988, the appellants could not take up the plea of the properties being benami.

7. The present appeal is directed against the judgment of the High Court dismissing the appellants' Second Appeal.

8. The Second Appeal was once again dismissed by the High Court on the ground that the defence taken in the suit by the defendants was barred in view of Section 4 of the Benami Transactions (Prohibition) Act, 1988 which had come into force. The High Court held that since the aforesaid Act and its provisions were retrospective, the appellants were not entitled to take the plea that the properties were benami in character in view of such specific bar.

9. The High Court also took notice of Exhibit PW3/3 which was signed by Mr. Ram Aggarwal and the Respondent No.1. In the said document, the appellants had admitted the ownership of the Respondent No.1 over the disputed properties and had agreed to transfer some properties in Chandigarh to the Respondent No.1 in lieu of the shops in question. In the course of his deposition in the Trial Court, Mr. Ram Aggarwal admitted his signatures on Exhibit PW3/3 and it was further observed that the said agreement was presumably as a consequence of the notice issued by the Respondent No.1 on 30<sup>th</sup> August, 1986 (Exhibit PW3).

10. The High Court came to a finding that there could be no escape from the conclusion that the Respondent No.1 was the owner of the suit properties and that the appellants had been

A permitted to use the same as licencees when the Respondent No.1 had gone abroad.

11. In view of the aforesaid finding, the High Court dismissed the Second appeal, which had been filed by the defendants who are the appellants herein.

B  
12. Mr. R.K. Dhawan, learned Counsel, who appeared for the appellants, submitted that the High Court had erroneously held that the provisions of the Benami Transactions (Prohibition) Act, 1988, had been given retrospective effect and would, therefore, apply to the instant case. He urged that since the suit had been filed on 5.1.87 and the Act had come into force thereafter on 5.9.1988, the same would have no application to the suit and the parties were entitled to prove their ownership of the suit properties on leading evidence, such as payment of rates and taxes, in support thereof. Mr. Dhawan submitted that the very fact that the Respondent No.1 herein had not taken any steps to claim title over the properties in question for about 30 years, clearly indicated that the suit had been filed as an afterthought and with the intention of taking a chance to take possession of the suit properties.

13. In support of his submission that the bar of Section 4 of the Benami Transactions Act would not apply retrospectively, Mr. Dhawan referred to and relied on the decision of a Three Judge Bench of this Court in the case of R. Rajagopal Reddy (dead) by L.Rs. & Ors. Vs. Padmini Chandrasekharan (dead) by L.Rs. [AIR 1996 SC 238], wherein the same proposition was considered and accepted. Mr. Dhawan submitted that the High Court had committed a serious error in applying the provisions of the above Act and also relying on the Agreement (Exhibit PW 3/3), which was said to have been executed by Mr. Ram Aggarwal and Dharam Pal. It was submitted that the judgment and order of the High Court was not sustainable and was liable to be set aside.

H 14. On behalf of Respondent No.1, it was conceded by

Mr. Dhruv Mehta, learned Advocate, that since the suit had been filed on 5<sup>th</sup> January, 1987 and the Benami Transactions (Prohibition) Act, 1988, came into force subsequently on 5<sup>th</sup> September, 1988, the provisions of the Act would have no application to the suit.

15. Mr. Mehta urged that even if the bar of Section 4 of the 1988 Act was not available in the instant case, the Respondent No.1 had been able to prove his ownership of the suit properties on the basis of the evidence adduced by him. Mr. Mehta submitted that once Exhibit PW3/3, which contained an admission of Ram Aggarwal acknowledging the ownership of the Respondent No.1 in the suit premises, was accepted, the courts below had rightly relied on the same along with other documents such as Municipal records, the receipts, electric and water connection in support thereof in holding that the Respondent No.1 was the owner of the suit properties and decreeing the suit of the Respondent No.1 and dismissing the appeal preferred by the appellants.

16. Of the two points urged by Mr. Dhawan, since the first point regarding the applicability of the Benami Transactions (Prohibition) Act, 1988, to the suit has been conceded on behalf of the Respondent No.1 in favour of the appellants, the same need not detain us, except to state that the trial Court, the first appellate Court and the High Court had erred in applying the provisions of the Act to the suit, since it had been filed prior to the coming into effect of the Act.

17. However, on the second question, we are inclined to agree with Mr. Mehta that *de hors* the question of the applicability of the Benami Transactions (Prohibition) Act, 1988, the Courts below had rightly held that the Respondent No.1 was the owner of the suit properties relying on the documentary and oral evidence adduced by him, including Exhibit PW3/3 executed by the appellants and the Respondent No.1 which was proved by Audhiya Parshad as mentioned in the judgment of the trial Court.

- A 18. Consequently, even while holding that the Courts below, including the High Court, had erred in applying the provisions of the Benami Transactions (Prohibition) Act, 1988, to the suit of the Respondent No.1, the Appeal must fail on the ground that in addition to the above, the Courts had found the
- B Respondent No.1 to be the owner of the suit properties on the basis of the evidence adduced by him, which finding was not disturbed by any of the Courts below.

19. The appeal is, therefore, dismissed.

20. There will be no order as to costs.

B.B.B.

Appeal dismissed.