

Siddu Venkappa Devadiga

Vs

Smt. Rangu S. Devadiga and Others

Civil Appeal No. 1895 of 1968

(CJI Ray, P.N. Shinghal, M.H. Beg JJ )

06.01.1977

JUDGMENT

SHINGHAL, J. –

1. This appeal of the defendant by certificate, is directed against the appellate judgment of the High Court of Bombay dated June 27/28, 1968. As the appeal must succeed on a short point of law, it will be enough to state those facts which bear on it. It is a matter of regret that a voluminous paper-book should not have been prepared in this case and its hearing delayed for so long.

2. Shivanna Devadiga, husband of plaintiff 1 and father of the remaining plaintiffs, had a hotel known as Krishnanda Upahar Graha in Bombay. Defendant Siddu Venkappa Devadiga was his sister's son. According to the plaintiffs, Shivanna started another hotel known as Purshottam Restaurant at a distance of about a furlong from Krishnanda Upahar Graha. As the parties were governed by Aliay Santhana Law, Shivanna looked after the defendant was brought to Bombay by Shivanna and was employed by him in Purushottam Restaurant upto about 1955. He then went to his place in South Kanara, and did not return to Bombay until after Shivanna's death on September 8, 1958. The plaintiffs further pleaded that as the defendant gave an assurance that he would look after the interests of Shivanna's widow (plaintiff 1) and her children, they made over the key of Purshottam Restaurant to him. It was also the case of the plaintiffs that the defendant began to claim that the Purshottam Restaurant belonged to him, and refused to deliver possession thereof to them when they returned to Bombay after performing the obsequies ceremonies of Shivanna. The plaintiffs accordingly instituted the suit which has given rise to this appeal on February 14, 1961, claiming possession of Purshottam Restaurant, a sum of Rs. 7000 as damages and/or compensation from September 9, 1958 upto the date of the suit, with interest, and any further amount as damages which the Court deemed just and proper.

3. The defendant controverted the claim of the plaintiffs and claimed that he had always been the sole and exclusive owner of Purshottam Restaurant ever since 1940 when it was started, that he had taken the premises of the restaurant on lease from the landlord in his own name, had obtained the municipal licences, the police licences and authorisation in his own name from the very inception, and that he had always been in custody and possession of that business.

4. The trial Court found that there were several circumstances which negatived the claim of the plaintiffs, and dismissed the suit by its judgment dated September 30, 1963. The plaintiffs went in appeal to the High Court and as it has been allowed and the suit has been decreed, the defendant has come up in appeal to this Court.

5. It has been argued by Counsel for the appellant that the High Court committed a serious error of law in setting up a new case for the plaintiffs, in its impugned judgment, by holding that the Purshottam Restaurant was a 'benami' transaction of Shivanna, who was its real owner, when it found that there could be no other ground for interfering with the finding of the trial Court about the defendant's ownership and possession of the business. It has accordingly been urged that the judgment and decree of the trial Court were wrongly set aside, and should be restored. As we shall show, there is justification for this argument.

6. We find that the High Court took several "circumstances" into consideration while examining the competing claims of the parties to the restaurant. It found that some of the circumstances were in favour of the plaintiffs. But it was faced with a "difficulty" which has been stated by it as follows :

The difficulty in the present case has been created because the Municipal licences, Police licences and authorizations are in the name of the defendant, to say that the mere fact that the business is run in the name of particular person should be presumptive of the fact that the business belongs to him. However it is well known that a large number of persons in this country do business in names other than their own, and if circumstances are established which are consistent with the case that it belongs to someone else, the Court cannot hesitate to draw that inference, since the presumption then would be rebutted.

The High Court again made a reference to the circumstances in favour of the plaintiffs and held as follows :

In the light of all these the circumstances of the tenancy of the premises being in defendant's name and the licence and authorizations in his name, should be considered. In this country is not unknown that people carry on business in the names of others, viz. dependents upon them. If it is accepted that Shivanna was the real owner of the hotel and that, the name of the defendant was used for purposes of licence and authorization, all these facts fall in a patten and fit in.

7. It is thus apparent that the High Court set aside the finding of the trial Court, and gave its decision in favour of the plaintiffs, because it reached the conclusion that the Purshottam Restaurant was the 'benami' business of Shivanna, and not of the defendant. The High Court adopted that course of reasoning because there were a number of facts and circumstances which were heavily in favour of the defendant e.g. the tenancy of the restaurant was in the name of the defendant from the very beginning, the rent bills showed that it was the defendant who was paying for the lease, the licences issued by the Commissioner of Police and the Bombay Municipal Corporation were in the name of the defendant from the very beginning, the permits and cards for the use of foodgrains and milk in the restaurant were in the name of the defendant from the commencement of the business, and it was the defendant who had filed several other applications in connection with the transaction of the business of the restaurant. Moreover Shivanna, who had executed a will on August 30, 1953, about a year before his death, made a reference to only one tea shop, and not to the other in the will, which also shows that he claimed to be the owner of the other restaurant known as Krishnanda Upahar Graha and not of the Purshottam Restaurant. These were every important facts and circumstances which had weighed in favour of the defendant, and formed the basis of the trial Court's judgment in his favour. But the High Court was swayed by the impression that the transaction was 'benami', and that was held to be the reason why these facts and circumstances came into existence. The question however is whether any such plea had been taken by the plaintiffs and,

if not, whether it was permissible for the High Court to interfere with the finding of the trial Court by setting up a plea which had never been taken in the plaint?

8. We have examined the plaint and we find that it was clearly pleaded there that Shivanna was the absolute owner of the Purshottam Restaurant until his death on September 8, 1958, that the defendant was "employed" by him in that business, that the defendant came to Bombay soon after the death of Shivanna posing to be a friend and well-wisher of the plaintiffs and that possession of the Purshottam Restaurant was given to him on his assurance that he would look after the interests of the plaintiffs and would carry on the business on the behalf. The plaintiffs totally excluded them from the control and management of the business. It became necessary for them to take action against him. It was further stated in the plaint that the plaintiffs first filed a criminal complaint against the defendant but it was dismissed for want of appearance, and thereafter filed the present suit alleging that Shivanna was the absolute owner of the restaurant and was the tenant of the premises where it was being carried on. As has been stated, the defendant traversed that claim in his written statement and pleaded that the business always belonged to him as owner. There was thus no plea that the business was 'benami' for Shivanna. We also find that the parties did not joint issue on the question that the business was 'benami'. On the other hand, the point at issue was whether Shivanna was the owner of the business and the tenancy rights of the premises where it was being carried on. It is well-settled, having been laid down by this Court in *Trojen and Co. Ltd. v. RM. N. N. Nagappa Chettiar* (1953 SCR 789 : AIR 1953 SC 235 : 23 Com Cas 307) and *Raruha Singh v. Achal Singh* (AIR 1961 SC 1097 : 1960 Jab LJ 870), that the decision of a case cannot be based on grounds outside the plea of the parties and that it is the case pleaded which has to be found. The High Court therefore went wrong in ignoring this basic principle of law, and in making out an entirely new case which was not pleaded and was not the subject-matter of the trial.

9. The appeal is allowed, the impugned judgment and decree of the High Court are set aside, and the decree of the trial Court is restored with costs.

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