

Gapadibai

Vs

State of Madhya Pradesh

Civil Appeal No. 1120 of 1970

(Syed M. Fazal Ali, P. S. Kailasam, A. D. Koshal JJ)

08.02.1980

### JUDGMENT

1. This appeal by the plaintiff in pursuance of certificate under Article 133 of the Constitution is directed against the judgment of Madhya Pradesh High Court dated April 11, 1969 reversing the judgment and decree of the trial Court and dismissing the plaintiff's suit. It appears that certain proceedings were taken against defendant 5, husband of the plaintiff, for recovery of sums due to the government and in consequence the house in suit was attached. The plaintiff claimed release of the property on the ground that the house was her personal property and could not be attached for sums owing by her husband. The defence of the State was that the property belonged to the husband and that, therefore, attachment was valid. The trial Court accepted the plaintiff's case and decreed the suit. The High Court disagreed with the trial Court and dismissed the suit.

2. We have gone through the judgment of the trial Court as also that of the High Court and find that the High Court had made a wrong approach to this case. In the first place, the State never pleaded that the house in question was purchased by the husband through a benami transaction in the name of his wife. It was also not pleaded clearly that the property belonged to the husband and that it had been sold to the wife with the intention to defeat the creditors of the husband. A vague allegation of this type seems to have been made in the written statement but no evidence whatsoever has been led to show as to whether there was any such intention on the part of defendant 5. Even the date when the sums sought to be recovered became due has not been proved or indicated to the satisfaction of the court. The trial Court, after a very careful consideration of the evidence of the plaintiff and the documents produced by her found that she had established that the property in question belonged to her and not to defendant 5. In the instant case as the plaintiff relied on a registered document which was proved to have been duly executed, a finding which has not been reversed by the High Court, the onus lay on the State to prove that what was apparent was not the real. No evidence on behalf of the State was adduced to displace the presumption arising from the registered sale deed in favour of the plaintiff. On the other hand, the plaintiff led evidence, oral and documentary, to show that she had sufficient means to purchase the house. In fact, the sale deed was only for Rs. 1000 which was a small amount and the plaintiff had stated that she had various sources of income, namely, income from agriculture and contracts and that she owned certain moveables given to her by her father's sister, Daya Bai. The High Court, instead of displacing the reasons given by the trial Court, has rejected the oral evidence on a general ground that there were some contradictions here and there and has also misconstrued the documents produced by the plaintiff which were in the nature of applications to the municipality for purchasing a backyard of the house in dispute and which were allowed on the footing that the house belonged to her. These documents, which were exhibited as P 2 and P 4, were fully considered by the trial Court but were completely overlooked by the High Court. Once the plaintiff proved by virtue of the registered sale deed that she was the owner of the

house and also explained the source of the price paid by her for it, that was sufficient to hold that the property belonged to her and could not be attached for the recovery of dues owing by her husband. The State never pleaded or proved that the property was purchased by defendant 5 in the name of his wife, the plaintiff. The onus to prove these facts lay on the State in the face of the registered sale deed and the other evidence produced by the plaintiff.

3. It was suggested by the State that plaintiff was really a benamidar for defendant 5. Apart from the fact that there was no such plea taken by the State, no issue on this point was suggested by it before the trial Court. In order to prove the benami nature of the transaction the State could have led evidence to show (1) that defendant 5 paid the consideration, (2) that he had the custody of the sale deed, (3) that he was in possession of the property and (4) the motive for the transaction. None of these factors has been proved by the State. The High Court appears to have misplaced the onus on the plaintiff to prove that she was the real owner of the house in question instead of finding whether or not defendant 5 had any title to it. The evidence of PWs 1, 2, 3, and 6 clearly proved that the house was purchased by the plaintiff. The trial Court believed the evidence of these witnesses which was supported by the documents including Exs. P 2 and P 4 as also a revenue receipt. The High Court made no serious attempt to examine the intrinsic merits of the testimony of these witnesses. Even if the evidence of these witnesses is excluded from consideration, the registered sale deed duly executed was sufficient to prove the title of plaintiff in respect of the house in absence of any plea of benami or evidence by the State to show that defendant 5 was real purchaser. For these reasons we find ourselves unable to agree with the decision of the High Court and hold that in dismissing the plaintiff's case, it has committed an error of law. The appeal is allowed, the judgment and decree of the High Court are set aside and the plaintiff's suit stands decreed. The appellant will be entitled to her costs throughout.

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