

Padmini Chandrasekharan (Since Deceased) Through Lrs.

Vs

R. Rajagopal Reddy (Since Deceased) Through Lrs. and Others

Civil Appeal No. 4254 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

19.02.1996

ORDER

1. Leave granted.
2. We have heard the learned counsel on both sides.
3. This appeal by special leave arises from the judgment and decree dated 16-8-1995 of the Division Bench of the Madras High Court made in OSA No. 27 of 1980.
4. The appellant, (since deceased) represented by the executors of her Will in CS No. 110 of 1971, laid the suit for declaration that she was the sole and exclusive owner and in possession, in her own right, of the house and ground bearing Door No. 40, Fourth Main Road, Gandhi Nagar, Adyar, Madras-20 as owner thereof and for permanent injunction restraining R. Rajagopala Reddy, the first defendant in the suit, or his agents or servants, from interfering with her possession and enjoyment thereof. Initially, the suit was decreed but on appeal, following the judgment of this Court in *Mithilesh Kumari v. Prem Behari Khare* ((1989) 2 SCC 95 : AIR 1989 SC 1247) holding that Section 4 of the Benami Transactions (Prohibition) Act, 1988 operates retrospectively, the High Court held that the second defendant, Venugopal Reddy was a benamidar and the joint family had no matter of right whatsoever over the suit property. The earlier partition deed was not valid. On appeal to this Court, the view taken in *Mithilesh Kumari* case ((1989) 2 SCC 95 : AIR 1989 SC 1247) was overruled by a three-Judge Bench in this very case and the matter was remitted to the High Court for a decision afresh. The Division Bench after considering the evidence held that Venugopal Reddy was allotted the plot by Madras Cooperative Housing Construction Society (Housing Society); at a partition in 1955, the suit property was allotted to Srinivasulu Reddy, elder brother of Rajagopal Reddy belonging to one branch - Petta family; Venugopal Reddy was benamidar for joint family. Accordingly, the High Court allowed the appeal, set aside the decree of the trial Judge and dismissed the suit. Thus this appeal by special leave.
5. When the matter had come up before us for admission, the question raised by Shri Kapil Sibal, the learned Senior Counsel was that the Division Bench had not considered the effect of the benami transaction in proper perspective and, therefore, the decision is vitiated by grave error of law. Accordingly, notice was taken by the respondents and they have filed their counter and have placed on record the entire evidence.
6. The only question is whether Venugopal Reddy, the second defendant is a benamidar of the property which belongs to Rajagopal Reddy, the first defendant. It is not in dispute that on an application made by Venugopal Reddy, the second defendant on 9-7-1947 to the Housing Society

the site was allotted in his name. The three families were living as composite Hindu Joint Family who dealt with extensive properties situated in various places including Thada, Venadu etc. in Andhra Pradesh and in the city of Madras. Three families are for short stated as Petta, Vakatti and Eswaravakka families. Rajagopal Reddy equally applied for allotment to the Housing Society. Venugopal Reddy had allotment of the suit property. At a partition that took place between the three families on 29-9-1955 under partition deed (Exh. D- 9), several properties including the suit land fell to the share of Petta family represented by Srinivasulu Reddy and Rajagopal Reddy, the first defendant. After the partition, the appellant paid rents to Srinivasulu Reddy from 1956 to 1957. Srinivasulu Reddy also paid hire-purchase instalments to the Housing Society. Pursuant to the letter dated 7-11-1958, Venugopal Reddy directed the appellant to pay the balance amount and also rents to Srinivasulu Reddy and accordingly she paid the same. By letter dated 24-2-1961, the husband of the appellant enquired from Srinivasulu Reddy whether he was prepared to transfer the said property in his name to which Srinivasulu Reddy declined to execute the sale deed. Thereafter, the litigation started.

7. From these facts, the question that emerges is whether Rajagopal Reddy is a benamidar for Venugopal Reddy and whether the appellant had the property from Venugopal Reddy ? The Division Bench has recorded a finding, in our view rightly, that the 1955 partition (Exh. D-9) was not questioned by Venugopal Reddy as vitiated by any fraud or misrepresentation. Therefore, it was not open to the appellant to question the same. Her plea that she discharged the amount due and payable to the Housing Society on behalf of Venugopal Reddy pursuant to an agreement she had entered into with Venugopal Reddy and thereby she became the owner, has also been negated by the Division Bench in our view quite rightly. The only question, therefore, is whether Venugopal Reddy is the real owner and Rajagopal Reddy is benamidar in purchasing the property from the Housing Society ? The Division Bench has recorded, as a fact, the finding based on voluminous evidence that "(v)arious items of properties purchased in the names of different individuals of the family were put into the common pool and divided amongst the members of the composite family. All the three families alone had the right, title and interest in all the properties. They have acted upon by adjusting their rights mutually in terms of the deed by taking their respective shares in the various properties. In our view, the partition, which was acted upon by the parties to the same, cannot be set aside on the contention of the learned counsel for the first respondent that it was not a composite family." The partition deed was no a sham or nominal document nor was it vitiated by fraud or misrepresentation only in respect of one item. There cannot be any ulterior motive or extraneous consideration for the parties to enter into such a partition in the year 1955. The partition having remained unquestioned for a long period of time by any of the parties to the deed, it does not lie in the mouth of a third party to impeach the nature of the transaction recorded in the said document when Venugopal Reddy himself had not questioned the partition deed (Ex. D-9).

8. From these facts, the question emerges whether Rajagopal Reddy is only a benamidar for Venugopal Reddy ? In the face of the conduct of the appellant and her husband in paying the rents to Srinivasulu Reddy, brother of Rajagopal Reddy and her husband asking Srinivasulu Reddy of his willingness to transfer the property in his favour; on payment of rent, the appellant-plaintiff amounts to have attorned Srinivasulu Reddy as owner of the demised property and, therefore, she was estopped under Section 116 of the Evidence Act to deny title of Srinivasulu Reddy, brother of Rajagopal Reddy, the first respondent. The decree of eviction had by Rajagopal Reddy from the Rent Controller binds the appellant-plaintiff which had become final, though the question of title was left open. In those circumstances, the plea of benami is only a collusive one between her and Venugopal Reddy to defraud Srinivasulu Reddy and Rajagopal Reddy of the property had in the partition. Though the High Court has not dealt with this aspect of the matter in proper perspective,

from the above consideration we find that the decree is not vitiated by any error of law.

9. The appeal is accordingly dismissed. No costs.