Heirs of Vrajlal J. Ganatra

Vs

Heirs of Parshottam S. Shah.

Civil Appeal No. 9884 of 1995

(M.M. Punchhi, K.T. Thomas JJ)

30.04.1996

JUDGMENT

K.T. THOMAS J. –

The legal heirs of a plaintiff (Vrajlal J. Ganatra), who suffered defeat both at the original side as well as at the appellate stage (High Court of Gujarat) have filed this appeal by special leave. The defendant in the suit (Parshottam S. Shah) is now being substituted by his legal heirs. The suit relates to a property covered by exhibit-66 sale deed, dated December 16, 1963. It was claimed to be the property of the plaintiff even though the defendant was shown in the document as the vendee. The suit was filed in 1981 for declaration of the plaintiff's title to the suit property and also for an injunction for restraining the defendant from disturbing the possession of the plaintiff. The Trial court while dismissing the suit held that the plaintiff failed to prove his title that he was the real owner of the property and that the plaintiff failed to establish that he was in possession of it on the date of suit. The High Court concurred with the finding of the trial court regarding title but did not proceed to consider the other issue regarding possession. However, the High Court further held that suit had been barred by limitation.

The case of the plaintiff, in short, is this : The defendant was a money-lender and the plaintiff was a dealer in land transactions. The plaintiff had borrowed money from the defendant for purchasing lands and he had taken sale deeds in the name of the defendant as security for the loan amounts advanced and that on clearance of the loan amount, the defendant would reconvey the land concerned. In the case of exhibit-66 sale deed also, according to the plaintiff, the same pattern was followed as the defendant advanced a sum of Rs. 13,000 (rupees thirteen thousand only) to the plaintiff for buying the land and so it was incumbent on the defendant to reconvey the property.

As the expression "real owner" used in the case tends to create some confusion, we would prefer to refer to the plaintiff as the claimant and the defendant as "the recorded owner" (or ostensible owner). The High Court held that the intention when the sale deed was taken, was nothing other than making the defendant the owner of the property although it might have been thought that if the plaintiff paid the amount which the defendant had shelled out the property would be reconveyed to the plaintiff.

We may mention here itself that no contention has been advanced before the High Court that the suit is not maintainable in view of section 4(1) of the Benami Transactions (Prohibition) Act, 1988. By the time the High Court delivered the impugned judgment, the legal position which emerged by virtue of the decision of this court in Mithilesh Kumari v. Prem Bihari Khare [1989] 177 ITR 97 to the effect that section 4(1) of the said Act can apply to suits filed even prior to the coming into force

of the said Act stood overruled by the decision of a larger Bench of the court in R. Rajagopal Reddy v. Padmini Chandrasekharan [1995] 213 ITR 340. As the provisions of the Act have been held to be prospective only the sale deed in this case being of the year, 1963, remains unaffected by the said Act.

The question whether a particular sale is benami or not is largely one of fact. Though there is no formula or acid test uniformly applicable it is well nigh settled that the question depends predominantly upon the intention of the person who paid the purchase money. For this, the burden of proof is on the person who asserts that it is a benami transaction. However, if it is proved that the purchase money came from a person other than the recorded owner (ostensible owner) there can be a factual presumption at least in certain cases, depending on the facts, that the purchase was for the benefit of the person who supplied the purchase money. This is, of course, a rebuttable presumption (Bhim Singh v. Kan Singh, AIR 1980 SC 727; CED v. Aloke Mitra [1980] 126 ITR 599 (SC) and His Highness Maharaja Pratap Singh v. Her Highness Maharani Sarojini Devi [1994] Supp. 1 SCC 734).

In this case, as its is admitted that the defendant is the recorded owner and when the purchase money has not admittedly gone from the appellant for execution of the sale deed of 1963, it is an uphill task for the appellant to establish that the sale deed was taken benami for him. Of course, he appellant had projected certain circumstances to show that he was dealing in lands for which the defendant had advanced money to him.

Learned counsel for the appellant tried to draw support from exhibit- 79 sale deed, dated February 22, 1962, which is a deed executed by another person in favour of the defendant. There is no dispute that the purchase money for that transaction was advanced by the defendant and the deed was executed in the name of the defendant. It was an admitted case that the defendant in that transaction was a benamidar. Learned counsel for the appellants, therefore, contended that exhibit- 79 not only shows that there were similar dealings between the parties even earlier but it has a perceptible impact on the crucial question relating to the transaction involved in exhibit-66 sale deed.

But exhibit-79, far from helping the appellants, would help the respondents because the document contained a clear recital that the land would remain with the defendant as security for the amount advanced by him and when the plaintiff paid back all the amounts outstanding from him, the defendant would give back the property and execute a registered deed for that purpose. If this was the safeguard adopted by the plaintiff relating to another sale transaction which took place just one year prior to exhibit-66, the fact that such a safeguard was not adopted in the case of exhibit-66 is sufficient to suggest that the intention was otherwise.

Exhibit-163 is a letter sent by the plaintiff to the defendant on June 8, 1968. It mentioned about certain dealings as between them and the plaintiff had acknowledged a balance of Rs. 17,000 as remaining outstanding with the defendant. The plaintiff then said in the letter that since the suit property was sold to the defendant, the plaintiff had no more concern about it. The following sentences in the letter are important. "From now onwards nothing remains outstanding between us and the account between us stands cleared off. This decision is agreed upon by both of us and it is finally settled by mutual consent." Of course, the plaintiff had disowned the said document but the trial court and the High Court have found it proved. Further, the plaintiff had admitted his signature therein.

Though reliance was sought to be placed on exhibit-160 letter sent by the defendant to the plaintiff

on December 23, 1975, it is of no avail to the appellants. It is unnecessary for us to go into the other documents referred to by counsel as none of them helps the appellants to establish that the defendant ever entertained the idea that the property should belong to the plaintiff.

Learned counsel pointed out that the High Court has failed to decide the question of possession of land and contended that in fact the land was in the possession of the plaintiff and continues to be in the possession of the appellants. The trial court found that the plaintiff had failed to prove that the property was in his possession. The High Court would have considered it superfluous to go into the question of possession. As the plaintiff claimed possession only as the true owner of the land, it is not necessary to consider the question of possession separately unless his title was upheld by the court. The presumption is that possession would follow title. That presumption is stronger in this case as we noted that the property remained as a bare land. No particular act of possession could normally be pointed to establish possession. Non-consideration of the question of possession in such a situation is inconsequential though we are in agreement with the finding that the plaintiff had failed to establish his possession on the land.

We, therefore, dismiss this appeal. No costs.