SUPREME COURT OF INDIA

Pawan Kumar

Vs.

Babulal

C.A.No.3367 of 2019

(Uday Umesh Lalit and Indu Malhotra,JJ.,)

02.04.2019

JUDGMENT

Uday Umesh Lalit,J.,

SLP(Civil)No.36694 of 2017

1. Leave granted.

2. This appeal questions the final judgment and order dated 18.08.2017 passed by the High Court of Judicature for Rajasthan at Jaipur in SBRFA

3. The appellant filed a suit for declaration of title with respect to premises in Kasba Fatehpur's main market which were more particularly described in the plaint and prayed that he be declared owner of the premises and that the sale deed dated 24.07.2006 executed by the first defendant in favour of the second defendant be cancelled. The material averments in the plaint were:

> (a) A shop in said premises was held by the first defendant, namely, father of the appellant on rent from the erstwhile owner;
>
> (b) The first defendant having become old, it was the appellant who had been looking after the entire business;
>
> (c) The erstwhile owner had filed suit for possession which matter came right upto this Court;
>
> (d)There was a compromise between the erstwhile owner and the first defendant under which the premises where the shop is situate, were agreed to be sold in favour of first defendant;
>
> (e) The first defendant was not having enough money and as such it was the appellant who arranged all the money on his own after borrowing from money

lenders on interest;

(f) At the time of preparing the sale deed, the first defendant had indicated that the premises be taken in his name;

(g) Even after purchase of the premises in the name of the first defendant, the appellant was conducting the business in the said shop;

(h) The first defendant had executed a document on a stamp paper on 14.03.2002 in the presence of witnesses which was verified by Notary Public acknowledging that the appellant had paid the entire consideration towards purchase of the premises.

(i) The second defendant was also a tenant in the premises and after the purchase as aforesaid he was making payment of rent to the appellant.

(j) Taking undue advantage of the old age and fragile health of the first defendant, the second defendant got written a document in his favour with respect to first floor of the disputed shop from the first defendant on 19.07.2002. With the case as aforesaid, Civil Suit No.126 of 2006 was filed by the appellant in the court of District Judge, Sikar.

4. The second defendant filed his written statement denying the case pleaded by the appellant. Nine years later, the second defendant submitted an application under Order VII Rule 11 of the Code of Civil Procedure (for short 'CPC') praying for rejection of the plaint on the ground that the suit was barred under Section 4 of the Benami Transaction (Prohibition) Act, 1988 (hereinafter referred to as 'the Act').

5. The trial court allowed said application under Order VII Rule 11, CPC and by its order dated 23.09.2016 rejected the plaint. The relevant portion of true translation of the decision of the trial court was as under:

> "11. In this way in the present case, the Plaintiff in his Plaint has himself stated that he wants to purchase the disputed property in the name of his father from his own income or by the money which he had taken on interest. In my humble opinion under Section-4 of the Benami Transaction (Prohibition) Act, 1988 filing of present Suit is prohibited. Hence, the judgment of the Hon'ble Court produced on behalf of the Applicant/Defendant are applicable on the present case. The Plaint of the Plaintiff is prohibited under Order-7 Rule-11(3) C.P.C."

6. The appellant, being aggrieved filed SBRFA No.511 of 2016 in the High Court which appeal was dismissed by the High Court vide its judgment and order dated 18.08.2017. It was observed by the High Court as under:

> "From the averments made in the plaint it is clear that plaintiff is seeking declaration in his name in respect of suit property with a clear stipulation that he

purchased the said property from his own funds/sources in the name of his father and his father was not real owner of the suit property, the Act of 1988 provides that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held, shall lie by or on behalf of a person claiming to be the real owner of such property. It is not the case of the plaintiff that property in question was held by the defendant No.1 - father, for joint benefit/joint ownership. The suit was clearly hit by section 4 of the Act of 1988 and the learned trial court rightly allowed the application under Order 7 Rule 11 CPC."

7. The decision rendered by the High Court is presently under appeal. Mr. Abhishek Gupta, learned Advocate appearing for the appellant invited our attention to the documents on record including the writing dated 14.03.2002 executed by First Defendant and father of the Appellant. The relevant portion of said document dated 14.3.2002 was as under:

> "I, Babu Lal Son of late Shri Tara Chand Meharishi, Caste - Brahmin, am the Resident of Near Laxminath Press, Fatehpur, District-Sikar (Raj.) In my name in Kasba Fatehpur near Saraswati Library there is shop along with rooms made over its terrace. Since this property (shop) was purchased by my elder son Pawan Kumar by the money earned with his own income, but in order to give respect to me he had got the Registry of this shop in my name. Hence, over this entire property only his right. In future neither mine nor any of my other successors shall have any right in this property.
>
> I have written my this script in my full senses, with healthy and sound mind, without under any coercion or influence in the presence of two witnesses to my elder son Pawan Kumar, so that it shall remain as proof and in future during their mutual partition amongst brothers, in connection with this shop any kind of dispute would not arise."

8. Mr. Abhishek Gupta, learned Advocate relied upon the decision of this Court in *Marcel Martins v. M. Printer and others*[1] and submitted that the case pleaded of the Appellant was fully covered by Section 4 (3) of the Act and that the courts below were not justified in rejecting the plaint under Order VII Rule 11, CPC. Mr. R.K. Singh, learned Advocate appearing for the respondent, on the other hand, contested the submission and relied upon a decision of this Court in *Om Prakash and another v. Jai Prakash*[2]
.

9. Before we consider the rival submissions, we must note Section 4 of the Act, as it stood before it was amended by Act 43 of 2016, was as under:

> "4. Prohibition of the right to recover property held benami.—
>
> (1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this section shall apply,—

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity."

10. In Marcel Martins1 a suit was filed in the year 1990 praying for declaration that the plaintiffs were co-owners of certain properties to the extent of their contribution. After a full-fledged trial, the Suit was dismissed by the Trial Court but the judgment was reversed by the High Court. While considering the question whether the case of the plaintiffs would come within the purview of Sub-Section (3) of Section 4 of the Act, the matter was dealt with by this Court as under:-

"28. The critical question then is whether sub-section (3) of Section 4 saves a transaction like the one with which we are concerned.

29. Sub-section (3) to Section 4 extracted above is in two distinct parts. The first part comprises clause (a) to Section 4(3) which deals with acquisitions by and in the name of a coparcener in a Hindu Undivided Family for the benefit of such coparceners in the family. There is no dispute that the said provision has no application in the instant case nor was any reliance placed upon the same by the learned counsel for the respondent-plaintiffs.

30. What was invoked by Mr Naveen R. Nath, learned counsel appearing for the respondents was Section 4(3)(b) of the Act which too is in two parts viz. one that deals with the trustees and the beneficiaries thereof and the other that deals with the persons standing in a fiduciary capacity and those towards whom he stands in such capacity. It was argued by Mr Nath that the circumstances in which the purchase in question was made in the name of the appellant assumes great importance while determining whether the appellant in whose name the property was acquired stood in a fiduciary capacity towards the respondent-plaintiffs.

31. The expression "fiduciary capacity" has not been defined in the 1988 Act or any other statute for that matter. And yet there is no gainsaying that the same is an expression of known legal significance, the import whereof may be briefly examined at this stage.

32. The term “fiduciary” has been explained by Corpus Juris Secundum as under:

“A general definition of the word which is sufficiently comprehensive to embrace all cases cannot well be given. The term is derived from the civil or Roman law. It connotes the idea of trust or confidence, contemplates good faith, rather than legal obligation, as the basis of the transaction, refers to the integrity, the fidelity, of the party trusted, rather than his credit or ability, and has been held to apply to all persons who occupy a position of peculiar confidence toward others, and to include those informal relations which exist whenever one party trusts and relies on another, as well as technical fiduciary relations. The word ‘fiduciary’, as a noun, means one who holds a thing in trust for another, a trustee, a person holding the character of a trustee, or a character analogous to that of a trustee with respect to the trust and confidence involved in it and the scrupulous good faith and condor which it requires; a person having the duty, created by his undertaking, to act primarily for another’s benefit in matters connected with such undertaking. Also more specifically, in a statute, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person, trust or estate.”

33. Words and Phrases, Permanent Edn. (Vol. 16-A, p. 41) defines “fiducial relation” as under:

“There is a technical distinction between a ‘fiducial relation’ which is more correctly applicable to legal relationships between parties, such as guardian and ward, administrator and heirs, and other similar relationships, and ‘confidential relation’ which includes the legal relationships, and also every other relationship wherein confidence is rightly reposed and is exercised. Generally, the term ‘fiduciary’ applies to any person who occupies a position of peculiar confidence towards another. It refers to integrity and fidelity. It contemplates fair dealing and good faith, rather than legal obligation, as the basis of the transaction. The term includes those informal relations which exist whenever one party trusts and relies upon another, as well as technical fiduciary relations.”

34. Black’s Law Dictionary (7th Edn., p. 640) defines “fiduciary relationship” thus:
“Fiduciary relationship.—A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships— such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client—require the highest duty of care. Fiduciary relationships usually arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognised as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.”

35. Stroud's Judicial Dictionary explains the expression "fiduciary capacity" as under:

"Fiduciary capacity.—An administrator who [had] received money under letters of administration and who is ordered to pay it over in a suit for the recall of the grant, holds it 'in a fiduciary capacity' within the Debtors Act, 1869 so, of the debt due from an executor who is indebted to his testator's estate which he is able to pay but will not, so of moneys in the hands of a receiver, or agent, or manager, or moneys due on an account from the London agent of a country solicitor, or proceeds of sale in the hands of an auctioneer, or moneys which in the compromise of an action have been ordered to be held on certain trusts or partnership moneys received by a partner."

36. Bouvier's Law Dictionary defines "fiduciary capacity" as under:

"What constitutes a fiduciary relationship is often a subject of controversy. It has been held to apply to all persons who occupy a position of peculiar confidence towards others, such as a trustee, executor, or administrator, director of a corporation or society, medical or religious adviser, husband and wife, an agent who appropriates money put into his hands for a specific purpose of investment, collector of city taxes who retains money officially collected, one who receives a note or other security for collection. In the following cases debt has been held to be not a fiduciary one: a factor who retains the money of his principal, an agent under an agreement to account and pay over monthly, one with whom a general deposit of money is made."

37. We may at this stage refer to a recent decision of this Court in *CBSE v. Aditya Bandopadhyay*[3], wherein Raveendran, J. speaking for the Court in that case explained the terms "fiduciary" and "fiduciary relationship" in the following words: (SCC pp. 524-25, para 39)

"39. The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and candour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction(s). The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third party."

It is manifest that while the expression "fiduciary capacity" may not be capable of a

precise definition, it implies a relationship that is analogous to the relationship between a trustee and the beneficiaries of the trust. The expression is in fact wider in its import for it extends to all such situations as place the parties in positions that are founded on confidence and trust on the one part and good faith on the other.

38. In determining whether a relationship is based on trust or confidence, relevant to determining whether they stand in a fiduciary capacity, the court shall have to take into consideration the factual context in which the question arises for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case. Having said that, let us turn to the facts of the present case once more to determine whether the appellant stood in a fiduciary capacity vis-a- vis the respondent-plaintiffs."

11. The factual aspects of the matter were, thereafter, considered and in paras 42 and 43 it was observed:-

"42 That conclusion gets strengthened by the fact that the parties had made contributions towards the sale consideration paid for the acquisition of the suit property which they would not have done if the intention was to concede the property in favour of the appellant.

43 Reposing confidence and faith in the appellant was in the facts and circumstances of the case not unusual or unnatural especially when possession over the suit property continued to be enjoyed by the plaintiffs who would in law and on a parity of reasoning be deemed to be holding the same for the benefit of the appellant as much as the appellant was holding the title to the property for the benefit of the plaintiffs."

12. It was, thus, concluded that the transaction was completely saved from the mischief of Section 4 of the Act by reason of the same falling under Sub-Section (3)(b) and that the Suit was not barred under the Act. This judgment was rightly relied upon by Mr. Abhishek Gupta, learned Advocate. On the other hand, the reliance placed by Mr. R.K. Singh on the decision in Om Prakash2, in our view, is completely misplaced. The issue there was whether prohibition under Section 4 would apply in relation to actions initiated before the coming into force of the Ordinance or not? In any event of the matter, the issue whether the provisions of the Act are retrospective has already been *settled*[4].

13. In the present case, the controversy has arisen in an application under Order VII Rule 11 CPC. Whether the matter comes within the purview of Section 4(3) of the Act is an aspect which must be gone into on the strength of the evidence on record. Going by the averments in the Plaint, the question whether the plea raised by the appellant is barred under Section 4 of the Act or not could not have been the subject matter of assessment at the stage when application under Order VII Rule 11 CPC was taken up for consideration. The matter required fuller and final consideration after the evidence was led by the parties. It cannot be said that the plea of the appellant as raised on the face of it, was barred under the Act. The approach must be to proceed on a demurrer and see whether accepting the

averments in the plaint the suit is barred by any law or not. We may quote the following observations of this Court in *Popat and Kotecha Property vs. State Bank of India Staff Association*[5]:

> "10. Clause (d) of Order 7 Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force."

14. We, therefore, allow this appeal, set aside the view taken by the courts below and dismiss the application preferred by the second defendant under Order VII Rule 11 CPC. Since the Suit has been pending since 2006, we direct the Trial Court to expedite the matter and dispose of the pending Suit as early as possible and preferably within six months from today. Needless to say that the merits of the matter will be gone into independently by the Trial Court.

15. The appeal stands allowed in aforesaid terms. No costs.

Judgment Referred.

[1]*(2012) 5 SCC 0342*
[2]*(1992) 1 SCC 0710*
[3]*(2011) 8 SCC 0497*
[4]*R. Rajgopal Reddy through LRs. Vs. Padmini Chandrasekharaiah through LRs.*
(1995) 2 SCC 630
[5]*(2005) 7 SCC 0510*