Samittri Devi & Anr vs Sampuran Singh & Anr on 21 January, 2011

Equivalent citations: AIR 2011 SUPREME COURT 773, 2011 AIR SCW 680, 2011 (2) AIR JHAR R 839, AIR 2011 SC (CIVIL) 437, (2011) 1 CIVILCOURTC 650, (2011) 3 MAH LJ 740, (2011) 113 REVDEC 500, 2011 (3) SCC 556, (2011) 1 RECCIVR 860, (2011) 99 ALLINDCAS 50 (SC), (2011) 3 ALL WC 2368, (2011) 1 SCALE 605, (2011) 3 MPHT 252, (2011) 1 CLR 413 (SC), (2011) 85 ALL LR 462, (2011) 3 CIVLJ 313, (2011) 1 LANDLR 296, (2011) 5 MAD LJ 343, (2011) 3 MAD LW 183, (2011) 3 MPLJ 1, (2011) 2 RAJ LW 1030, (2011) 4 ANDHLD 6, (2011) 2 ICC 163, (2011) 1 WLC(SC)CVL 434, (2011) 2 JCR 22 (SC), (2011) 2 CAL HN 37, (2011) 112 CUT LT 198, 2011 (1) KLT SN 75 (SC), 2011 (2) KCCR SN 107 (SC)

Bench: H.L. Gokhale, Dalveer Bhandari

REPORTAB

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 846 OF 2011

ARISING OUT OF SPECIAL LEAVE PETITION (C) NO. 1305 OF 2010

Samittri Devi and another. ...Appellants

Versus

Sampuran Singh and another ...Respondents

JUDGMENT

Gokhale J.

Leave Granted.

2. This Appeal by Special Leave raises the question as to whether the suit of the first appellant for the recovery of her house property filed prior to the Benami Transactions (Prohibition) Act, 1988 coming into force could be considered to be prohibited by Section 4 of that Act.

3. This appeal seeks to challenge the judgment and order passed by a Learned Judge of the Punjab

and Haryana High Court dated 10.9.2009 in Regular Second Appeal (R.S.A) No. 1367 of 1996 (O & M), whereby the Judge has allowed the Second Appeal filed by Respondent No. 1 herein, and set aside the judgment and order dated 22.2.1996 passed by the Additional District Judge, Gurdaspur in Civil Appeal No. 203 of 1991 filed by appellant No.1 herein. The Learned Additional District Judge had allowed the Civil Appeal filed by appellant No. 1 herein whereby he decreed Civil Suit No. 138 of 1987 filed by appellant No.1, which suit had been dismissed by the Sub-Judge at Pathankot by his judgment and order dated 3.10.1991.

4. Short facts leading to this appeal are as follows:-

> The appellant No.1 herein purchased a house property situated at Pathankot from Sarvashri Romesh Chand and Chatar Chand sons of Shri Kartar Singh, vide registered sale deed dated 26.2.1985 for a consideration of Rs. 40,000/-. This sale deed was, however, executed in the name of her son namely Shri Kamal Chand (the appellant No.2 herein) and his brother-in-law Shri Jiwan Kumar (respondent No.2 herein). The appellant no.1 paid the money by two bank drafts for purchasing the house property which was actually in the possession of a tenant of the previous owner i.e. Home Guard Department and it continues to be in their possession.

5. It is the case of the appellant No.1 that taking advantage of her old age (presently 93 years), the above referred Kamal Chand and Jiwan Kumar stealthily removed the sale deed from her possession, and this Jiwan Kumar sold half share of the suit house to one Sampuran Singh (Respondent No. 1 herein) and that too without her knowledge and consent. The sale was executed by a registered sale deed dated 13.4.1987 despite the fact that appellant No.1 had sent, in the meanwhile, a letter dated 8.4.1987 to Respondent No. 1 herein informing him that she was the real owner of the Suit House.

6. The appellant No. 1 therefore, filed Suit No. 138 of 1987 on 30.9.1987 for a declaration that she was the real owner in possession of the Suit House shown in red in the site plan attached by letters A B C D part of No. Khasra 574/1, No. Khawat 262, No. Khatauni 401, as entered in the Jamabandi for the year 1976-77 situated in village Daulatpur HB No. 331, Pathankot. She prayed for a permanent injunction also restraining the defendants from alienating any part of the suit house and forcibly interfering with the possession of the plaintiff of the suit house. By moving an amendment, she claimed an alternative relief for a decree of Rs. 40,000/- with interest. Her son Kamal Chand was joined as defendant No. 1, his brother-in-law the above referred Jiwan Kumar as defendant No. 2, and the purchaser Sampuran Singh as defendant No. 3. They are appellant No.2, respondent No.2 and respondent No. 1 respectively to this appeal.

7. Defendant No. 1 admitted the entire claim of the appellant, but the defendant No. 2 disputed it, and contended that half of the consideration of Rs. 40,000/- had been paid by him. He denied that it was a Benami Transaction. Defendant No. 3 filed his written statement and contended in para 5 thereof that even if it is proved to be a Benami Transaction, due to the recent legislation of Benami Transactions (Prohibition) Act 1988, the defendants Nos. 1 & 2 were the owners of the Suit property, and that the alienation of his share in the property by defendant No. 2 in his favour had been

effected legally. He contended that he had purchased the share of the defendant No. 2 by sale deed dated 13.4.1987 for a consideration of Rs. 30,000/-, and that he was a bonafide purchaser for value, and that the Suit should be dismissed.

8. The trial court framed the necessary issues including whether the sale deed dated 26.2.1985 was Benami, and whether the sale deed dated 13.4.1987 was illegal, and also whether defendant No. 3 was a bonafide purchaser without notice.

9. The appellant No. 1 laid the evidence amongst others of a clerk from a branch of State Bank of Patiala at Chaki, Pathankot, who deposed to the fact that the appellant had made the payment for the sale consideration from her account. Defendant No. 2 had contended that he had arranged Rs. 20,000/- from friendly loans to purchase half the share of the Suit House, but he did not lead any evidence for proving the availability of such funds with him. The Trial Court therefore, held that it was obvious that the payment was not made by defendant nos. 1 & 2, but by the plaintiff i.e. the appellant No.1 herein.

10. The appellant No.1 had produced before the trial court a copy of the notice dated 8.4.1987 which she had sent to defendant no. 3, to point out to him that she was the real owner of the suit house. She produced the same alongwith the certificate of posting. The sale deed between defendant Nos. 2 & 3 was executed on 13.4.1987. The trial court held that the delivery of the notice was not proved, and therefore, defendant No. 3 was a bonafide purchaser for valuable consideration without notice. That apart, at the time when the Suit was decided on 3.10.1991, the law laid down by this Court in Mithilesh Kumari and Anr. Vs. Prem Behari Khare [AIR 1987 SC 1247] : [1989 (2) SCC 95] was governing the field viz. that the provisions of Benami Transactions (Prohibition) Act 1988 were retroactive. It had been held that the prohibition under Section 4 of the Act to recover the Benami property was applicable to suits, claims or action pending on the date of commencement of the Act. The appellant No.1 had filed her suit on 30.9.1987. The Benami Transactions (Prohibition) Act 1988 came into force on 5.9.1988. Thus, this Suit was pending on the date on which the Act came into force. The Trial Court, therefore, followed the judgment in Mithilesh Kumari (supra), and held that the appellant no longer retained the right to recover the property from the Benami holder. The suit was, therefore, dismissed for being barred by virtue of the provisions of the said Act, though without any order as to costs.

11. The appellant No.1 carried the matter in first appeal to the Additional District Judge, Gurdaspur. As we have noted, the trial court had already held that appellant No. 1 had purchased the suit house by making the payment from her account. It had, however, declined to decree her suit on two grounds, firstly due to the prohibition under Section 4 of the Benami Transactions (Prohibition) Act 1988 as interpreted in Mithilesh Kumari judgment (supra), and secondly on the ground that the appellant did not prove the service of her notice dated 8.4.1987 on respondent No. 1 herein. By the time the first appeal was being heard, the judgment of the two Judges bench in Mithilesh Kumari (supra) had been over-ruled by a bench of three Judges of this Court in R.Rajagopal Reddy Vs. Padmini Chandrasekharan decided on 31.1.1995 and reported in [AIR 1996 SC 238] : [1995 (2) SCC 630]. This Court had held that Section 4 or for that matter the Act as a whole was not a piece of declaratory or curative legislation. It creates substantive rights in favour of benamidars and destroys

substantive rights in favour of the real owners. It creates a new offence of entering into such benami transactions. It had therefore, been held that when a statutory provision creates a new liability and a new offence, it would naturally have a prospective operation, and Section 4 will not apply to pending suits which were already filed and entertained prior to the Act coming into force. The first appellate Court therefore, held that the suit filed by appellant No.1 was not prohibited by the said Act. As far as the notice dated 8.4.1987 is concerned, the Court held that there was a presumption under the law that the letter which was proved to have been posted well in advance must have reached the addressee. The first appellate court therefore, held that the notice will have to be presumed to have been served, and yet respondent No. 1 herein got the sale deed executed on 13.4.1987. It was therefore, held that respondent No. 1 could not be held to be a bonafide purchaser without any notice of the rights of appellant No.1 in the suit property. The first appellate court therefore, decreed the suit filed by appellant No.1 to the effect that she was the real owner in possession of the house and the sale deed dated 13.4.1987 was null and void. It also granted an injunction against the defendants that they shall not alienate any part of the suit house and will not interfere in her possession of the suit house. The Court awarded cost of Rupees 1,000/-.

12. Feeling aggrieved by this decision, the first respondent herein filed a Regular Second Appeal bearing RSA No. 1367 of 1996. The Learned single Judge of the High Court, who heard the matter, framed the following substantial question of law - "Whether the Learned Additional District Judge has misread the evidence on record while coming to the conclusion that the suit property was benami property of the plaintiff." The Learned Judge did not dispute the fact that appellant No. 1 had purchased the suit house out of her money, but he noted that the office of the Home Guard continued in that property. The Learned Judge did not give any importance to the notice dated 8.4.1987 being sent under postal certificate, but held that there was nothing on record to prove that defendant No.3 had been served with that notice. The Learned Single Judge therefore, found fault with the finding of the Additional District Judge to the effect that defendant No. 3 (Respondent No. 1 herein) was not a bonafide purchaser, and further held that, it amounted to misreading of evidence. The Regular Second Appeal was therefore, allowed and the judgment and decree of the Addl. District Judge was set aside.

13. Being aggrieved by the judgment and order passed by the High Court this Appeal has been filed by the appellant. This time, the son of appellant No.1, the original defendant No.1 has joined her as appellant No. 2. Mr. Saikrishna Rajagopal, learned counsel appearing for the appellants pointed out that the order passed by the High Court does not deal with the law laid down in the judgment of this Court in R. Rajagopal Reddy case (Supra). The Judgment was binding on the Learned Judge, and in view thereof the suit filed by the appellant No.1 was not hit by the prohibition under Section 4 of the Act. He also pointed out that the appellants as well as the respondent No. 1 were staying in the same area i.e. College Road, Pathankot, and therefore, the Learned Additional District Judge was right in his inference that the notice dated 8.4.1987 must be presumed to have been duly served on respondent No. 1 prior to 13.4.1987 when respondent No. 3 purchased half share of the suit house. He submitted that the appellants were ready to return the amount of Rs.30,000/- with interest to respondent No. 1 which amount he claims to have paid to respondent No. 2 to purchase his half share in the property.

14. As against this submission of the appellant, Mr. V.K. Monga, learned counsel appearing for respondent No. 1 repeated the same submissions made in the courts below, namely, that he was a bonafide purchaser without notice, and that the original defendant No. 2 had purchased half the share of the suit house from his money, and from him the respondent No.1 had purchased that share, and therefore, the present appeal should be dismissed.

15. We have noted the submission of the rival parties. As far as the purchase of the suit house by the appellant No. 1 from her own money is concerned that finding of the trial court has remained undisturbed all throughout and cannot be re-opened in this appeal. The appellant No.1 led cogent evidence before the trial court, and it had been held in her favour that it is out of her funds that she had purchased the suit house. The submission of the original defendant no. 2 that he had arranged the amount of Rs. 20,000/- through friendly loans was negated by the trial court since there was no supporting evidence at all. There is no reason for us to disturb that finding. Once the High Court held that the appellant had purchased the suit house out of her funds, it ought to have held that it follows that the defendant No. 2 had no right to deal with it or to sell his half share merely because his name was shown as a purchaser alongwith the appellant No. 2. Consequently the purchase of the share of the defendant No. 2 by the respondent No. 1 herein without the consent of the appellant No. 1 gave him no rights whatsoever. Therefore, the High Court ought to have held that the suit of appellant No. 1 for declaration of her ownership to be valid and maintainable.

16. The High Court has clearly erred in ignoring the binding judgment of a Bench of three Judges of this Court in R. Rajagopal Reddy (supra). By this decision, this Court had reversed its earlier judgment in Mithilesh Kumari (supra) and had held in terms that suits filed prior to the application of the act would not be hit by the prohibition under Section 4 of that act. Section 4(1) of the Benami Transactions (Prohibition) Act 1988 reads as follows:

> "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."

While reversing the earlier decision of this Court in Mithilesh Kumari (supra), a bench of three Judges observed in para 11 of R. Rajagopal Reddy (supra) as follows:-

> "Before we deal with these six considerations which weighed with the Division Bench for taking the view that Section 4 will apply retrospectively in the sense that it will get telescoped into all pending proceedings, howsoever earlier they might have been filed, if they were pending at different stages in the hierarchy of the proceedings even up to this Court, when Section 4 came into operation, it would be apposite to recapitulate the salient feature of the Act. As seen earlier, the preamble of the Act itself states that it is an Act to prohibit benami transactions and the right to recover property held benami, for matters connected therewith or incidental thereto. Thus it

> was enacted to efface the then existing right of the real owners of properties held by others benami. Such an Act was not given any retrospective effect by the legislature. Even when we come to Section 4, it is easy to visualise that sub- section (1) of Section 4 states 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 or against any other shall lie by or on behalf of a person claiming to be the real owner of such property. As per Section 4(1) no such suit shall thenceforth lie to recover the possession of the property held benami by the defendant. Plaintiff's right to that effect is sought to be taken away and any suit to enforce such a right after coming into operation of Section 4(1) that is 19-5-1988, shall not lie. The legislature in its wisdom has nowhere provided in Section 4(1) that no such suit, claim or action pending on the date when Section 4 came into force shall not be proceeded with and shall stand abated. On the contrary, clear legislative intention is seen from the words "no such claim, suit or action shall lie", meaning thereby no such suit, claim or action shall be permitted to be filed or entertained or admitted to the portals of any court for seeking such a relief after coming into force of Section 4(1)." (Emphasis supplied)

17. In the impugned judgment, the High Court nowhere refers to the judgment in R. Rajagopal Reddy's case (supra) although the same was very much referred to and relied upon by the appellant to counter the contrary submission of the respondent No. 1. The High Court has therefore, committed a serious error of law in holding that the Additional District Judge has misread the evidence on record while coming to the conclusion that the suit property was the Benami Property of the plaintiff-appellant No.1 herein and that her suit to enforce the right concerning the same shall not lie. In fact there was no such misreading of evidence on the part of the first appellate court, and hence there was no occasion for the High Court to frame such a question of law in view of the prevailing judgment in R. Rajagopal Reddy which had been rightly followed by the first appellate court.

18. The High Court has held that there is nothing on record to suggest that respondent No.1 herein had, in fact, been served with the notice dated 8.4.1987 and thereby reversed the finding rendered by the first appellate court. It is material to note in this behalf that it was canvassed by respondent No.1 before the first appellate court that a certificate of posting is very easy to procure and it does not inspire confidence. The Additional District Judge observed that there was no dispute with this proposition of law, but there was no such averment or even allegation against appellant No.1 herein, that she had procured the certificate of posting nor was there any such pleading to that effect. It is on this background that the first appellate court has drawn the inference that the notice must be deemed to have been served within the period of five days thereafter i.e. before 13.4.1987, the date on which the respondent No.1 herein entered into an agreement to purchase the suit property. It is also material to note that the appellant's premises are situated on College Road, Pathankot and so also the residence of the first respondent where the notice was sent. Therefore, there was nothing wrong in drawing the inference which was permissible under Section 114 of the Evidence Act that such notice must have been duly served in the normal course of business before 13.4.1987.

19. We may fruitfully refer to a few judgments laying down the propositions relating to service of notice. To begin with, we may note two judgments in the context of the notice to quit, sent to the tenants under Section 106 of the Transfer of Property Act 1882, though both the judgments are concerning the notices sent by registered post. Firstly, the judgment in the case of Harihar Banerji Vs. Ramshashi Roy [AIR 1918 PC 102], wherein the Privy Council quoted with approval the following observations in Gresham House Estate Co. Vs. Rossa Grande Gold Mining Co. [1870 Weekly Notes 119] to the following effect:

> ".....if a letter properly directed, containing a notice to quit, is proved to have been put into the post office, it is presumed that the letter reached its destination at the proper time according to the regular course of business of the post office, and was received by the person to whom it was addressed. That presumption would appear to their Lordships to apply with still greater force to letters which the sender has taken the precaution to register, and is not rebutted but strengthened by the fact that a receipt for the letter is produced signed on behalf of the addressee by some person other than the addressee himself."

20. Secondly, we may refer to the judgment of a Full Bench of the Allahabad High Court in the case of Ganga Ram Vs. Smt. Phulwati [AIR 1970 Allahabad 446], wherein the Court observed in paragraphs 12 and 13 as follows:

> "12. When a registered article or a registered letter is handed over to an accepting or receiving post office, it is the official duty of the postal authorities to make delivery of it to the addressee. Human experience shows that except in a few exceptional cases letters or articles received by the post office are duly, regularly and properly taken to the addressee. Consequently as a proposition it cannot be disputed that when a letter is delivered to an accepting or receiving post office it is reasonably expected that in the normal course it would be delivered to the addressee. That is the official and the normal function of the post office.
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> 13. Help can also be taken from Section 16 of the Indian Evidence Act which reads as follows:-
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> "When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.
>
> Illustrations:
>
> (a) The question is, whether a particular letter was dispatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place, are relevant.

(b) The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Dead Letter Office, are relevant."

21. As far as a notice sent under postal certificate is concerned, in Mst. L.M.S. Ummu Saleema Vs. B.B. Gujaral & Anr. [1981 (3) SCC 317], a bench of three judges of this Court on the facts of that case, refused to accept that the notice sent under a postal certificate by a detenue under the Conservation of Foreign Exchange and Smuggling Activities Act, 1974, to the Assistant Collector of Customs, retracting his original statement had been duly served on the concerned office. This was because the respondent rebutted the submission by producing their file to show that such a letter had not been received in their office in the normal course of business. However, the proposition laid down in that case is relevant for our purpose. This Court observed in paragraph 6 of that judgment as follows:

> "6. .....The certificate of posting might lead to a presumption that a letter addressed to the Assistant Collector of Customs was posted on August 14, 1980 and in due course reached the addressee. But, that is only a permissible and not an inevitable presumption. Neither Section 16 nor Section 114 of the Evidence Act compels the court to draw a presumption. The presumption may or may not be drawn. On the facts and circumstances of a case, the court may refuse to draw the presumption. On the other hand the presumption may be drawn initially but on a consideration of the evidence the court may hold the presumption rebutted and may arrive at the conclusion that no letter was received by the addressee or that no letter was ever despatched as claimed. After all, there have been cases in the past, though rare, where postal certificates and even postal seals have been manufactured. In the circumstances of the present case, circumstances to which we have already referred, we are satisfied that no such letter of retraction was posted as claimed by the detenu."

22. The proposition laid down in this judgment has been followed in two subsequent cases coming before this Court in the context of Section 53(2) of the Companies Act 1956 providing for presumption of service of notice of the board meeting, sent by post. In M.S. Madhusoodhanan vs. Kerala Kaumudi (P) Ltd. and others [2004 (9) SCC 204], a bench of two Judges of this Court referred to the proposition in Mst. L.M.S. Ummu Saleema (supra) in para 117 of its judgment, and held in the facts of that case, that the notice by postal certificate could not be presumed to have been effected, since the relations between the parties were embittered, and the certificate of posting was suspect. As against that, in a subsequent matter under the same section, in the case of VS Krishnan Vs. Westfort Hi-Tech Hospital Ltd. [2008 (3) SCC 363], another bench of two Judges referred to the judgment in M.S. Madhusoodhanan (supra), and drew the presumption in the facts of that case that the notice sent under postal certificate had been duly served for the purposes of Section 53(2) of the Companies Act, 1956, since the postal receipt with post office seal had been produced to prove the service. Thus, it will all depend on the facts of each case whether the presumption of service of a notice sent under postal certificate should be drawn. It is true that as observed by the Privy Council in its above referred judgment, the presumption would apply with greater force to letters which are sent by registered post, yet, when facts so justify, such a presumption is expected to be drawn even in the case of a letter sent under postal certificate.

23. Having seen the factual and the legal position, we may note that in the present case it has already been established that the appellant had purchased the property out of her own funds. Therefore, it could certainly be expected that when she came to know about the clandestine sale of her property to respondent No.1, she would send him a notice, which she sent on 8.4.1987. As noted earlier, the notice is sent from one house on the College Road to another house on the same road in the city of Pathankot. The agreement of purchase is signed by the defendant No.3 five days thereafter i.e. 13.4.1987. The appellant had produced a copy of the notice along with postal certificate in evidence. There was no allegation that the postal certificate was procured. In the circumstances, it could certainly be presumed that the notice was duly served on respondent No.1 before 13.4.1987. The High Court, therefore, erred in interfering in the finding rendered by the Additional District Judge that respondent No.1 did receive the notice and, therefore, was not a bona fide purchaser for value without a notice.

24. The judgment of the High Court, therefore, deserves to be set aside. The appellants through their counsel have, however, in all fairness offered to compensate the first respondent herein by paying him the amount of Rs. 30,000/- with appropriate interest. The first respondent did not evince any interest in this suggestion. Yet, the end of justice will be met, if this amount of Rs. 30,000/- is returned by the appellants to him as offered by them with simple interest at the rate of 10%.

25. In the circumstances this appeal is allowed. The Judgment and order dated 10.2.2009 passed by the High court in R.S.A No. 1367 of 1996 and that of the Sub-Judge, Pathankot in Civil Suit No. 138 of 1987 dated 3.10.1991 are set aside. The judgment and order dated 22.2.1996 passed by Addl. District. Judge, Gurdaspur in Civil Appeal No. 203 of 1991 is confirmed. The suit filed by the appellant No.1 bearing Civil Suit No. 138 of 1987 is decreed and it is declared that the appellant No. 1 is the owner of the suit house. There shall be a permanent injunction restraining the defendants from alienating any part of the suit house and forcibly interfering into the possession of the plaintiff of the house in dispute. In view of the offer given by the appellants to compensate the first respondent, the appellants shall pay him the amount of Rs. 30,000/-(Rupees thirty thousand only), with simple interest at the rate of 10% for the period from 13.4.1987 till the decision of the first appellate court i.e. 22.2.1996, within twelve weeks from today, though it is up to the respondent No. 1 to receive the amount. The interest is restricted upto 22.2.1996 for the reason that respondent No.1 ought to have accepted the decision of the First Appellate Court, particularly in view of the judgment of this Court in R. Rajagopal Reddy (supra), and should not have dragged the appellants to the High Court in Second appeal.

26. The first respondent will pay a cost of Rs. 10,000/- to the 1 st appellant for this appeal.

.....J. (Dalveer Bhandari) .....J. (H.L. Gokhale) New Delhi Dated: January 21, 2011