

Supreme Court of India

Duvuru Jaya Mohana Reddy And ... vs Alluru Nagi Reddy And Others on 23 April, 1993

Equivalent citations: 1994 AIR 1647, 1994 SCC Supl. (2) 559

Author: S Agrawal

Bench: Agrawal, S.C. (J)

PETITIONER:

DUVURU JAYA MOHANA REDDY AND ANOTHER

Vs.

RESPONDENT:

ALLURU NAGI REDDY AND OTHERS

DATE OF JUDGMENT 23/04/1993

BENCH:

AGRAWAL, S.C. (J)

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AGRAWAL, S.C. (J)

ANAND, A.S. (J)

CITATION:

1994 AIR 1647

1994 SCC Supl. (2) 559

ACT:

HEADNOTE:

JUDGMENT:

## ORDER

1. Leave granted.

2. Heard learned counsel for the parties.

3. This appeal arises out of a suit filed by the appellants under Order 21 Rule 58 CPC in respect of property which was attached and sold in execution of a decree passed against Respondent 3. The appellants are the son and daughter of Respondent 3. They are claiming the property on the basis of a sale deed dated October 9, 1957 executed in their favour. They had filed objections against attachment and sale of the property in the execution proceedings but the same were dismissed and thereafter the present suit was filed. The suit was contested by Respondent 1 the auction- purchaser and respondent 2, the decreeholder. They asserted that the suit property really belongs to the judgment-debtor (Respondent 3) and that the sale transaction in favour of the appellants was in the

nature of a benami transaction. The suit was dismissed by the trial court but it was decreed in favour of the appellants by the lower appellate court. The High Court in second appeal, has reversed the judgment and decree of the lower appellate court and has restored that of the trial court. Hence this appeal.

4. During the pendency of this matter in this Court the Benami Transactions (Prohibition) Act (45 of 1988), [hereinafter referred to as 'the Act'] was enacted by Parliament and in view of the provisions of the Act the appellants have filed an application for urging the additional ground that plea about benami nature of the transaction is not available to the contesting respondents. Since the additional ground involves a pure question of law, we have permitted the appellants to urge the same.

5. Section 4 of the Act prohibits the right to recover property held benami and it provides 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."

6. The said provision came up for consideration before this Court in *Mithilesh Kumari v. Prem Behari Kharel* and this Court has dealt with the question about the applicability of the said provision to pending proceedings. It has been held that the said provision would apply to proceedings pending on the date of the commencement of the Act and the provisions were held applicable to an appeal that was pending in this Court. In view of the said decision it must be held that the defence raised by the contesting respondents that the transaction of sale under the sale deed dated October 9, 1957 executed in favour of the appellants was a benami transaction is prohibited in view of Section 4(2) of the Act. Since the suit of the appellants has been dismissed by the High Court on the view that the said transaction was a benami transaction, the said judgment of the High Court cannot be upheld and must be set aside and the decree of the lower appellate court decreeing the suit of the appellants must be restored.

7. The appeal is, therefore, allowed, the judgment and order of the High Court dated February 11, 1987 in Second Appeal No. 1135/81 is set aside and that of the lower appellate court decreeing the suit of the appellants is restored. No order as to costs.