Supreme Court of India
Heirs Of Vrajlal J. Ganatra vs Hairs Of Parshottam S. Shah on 30 April, 1996
Equivalent citations: 1996 SCC (4) 490, JT 1996 (4) 725
Author: T K.T.
Bench: Thomas K.T. (J)

PETITIONER:
HEIRS OF VRAJLAL J. GANATRA

Vs.

RESPONDENT:
HAIRS OF PARSHOTTAM S. SHAH

DATE OF JUDGMENT: 30/04/1996

BENCH:
THOMAS K.T. (J)
BENCH:
THOMAS K.T. (J)
PUNCHHI, M.M.

CITATION:
1996 SCC (4) 490 JT 1996 (4) 725
1996 SCALE (4)53

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T THOMAS, J.

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. Defendant in the suit (Parshottam S. Shah) is now being substituted by his Legal heirs. The suit relates to a property covered by Ext.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. Suit was filed in 1981 for declaration of plaintiff's title to the suit property and also for an injunction for restraining the defendant from disturbing the possession of the plaintiff. Trial court while dismissing the suit held that plaintiff failed to prove his title that he was the real owner of the property and that plaintiff failed to establish that he was in possession of it on the date of suit. 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: Defendant was a money-lender and plaintiff was a dealer in land transactions. Plaintiff had borrowed money from the defendant for purchasing lands and he had taken sale-deeds in the name of the defendant as security to the loan amounts advanced and that on clearance of loan amount defendant would reconvey the land concerned. In the case of Ext.66 sale-deed also, according to the plaintiff, the same pattern was followed as 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 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 owner of the property although it might have been thought that if plaintiff would pay the amount which 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 vs. Prem Bihari Khare, 1989 (1) SCR 621 : JT 1989 (1) SC 275, to the effect that Section 4(1) of the said Act can apply to the suit filed even prior to the coming into force of the said Act stood over-ruled by the decision of a larger Bench of this Court in R. Rajgopal Reddy (D) Lrs. and others vs. Padmini Chandrasekharan (D) by Lrs., JT 1995(2) SC 667, as 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 neigh 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 facts, that the purchase was for the benefit of the person who supplied purchase money. This is, of course, a rebuttable presumption (Bhim Singh (D) by Lrs. and another vs. Ken singh, AIR 1980 SC 787; Controller of Estate Duties, Lucknow vs. Aloke Mitra (AIR 1981 SC 102; His Highness Maharaja Pratap Singh vs. Her Highness Maharani Sarojini Devi, 1994 Supple.(1) SCC 734).

In this case, as it is admitted that defendant is the recorded owner and when purchase money had 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, appellant had projected certain circumstances to show that he was dealing in lands for which defendant had advanced money to him.

Learned counsel for the appellant tried to draw support from Ext.79 sale-deed dated 22.2.1962, 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 defendant in that transaction was a

benamidar. Learned counsel for the appellants. therefore, contended that Ext. 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 Ext.66 sale-deed.

But Ext.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 plaintiff paid back all the amount 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 Ext.66, the fact that such a safeguard was not adopted in the case of Ext.66 is sufficient to suggest that the intention was otherwise.

Ext.163 is a letter sent by the plaintiff to the defendant on 8.6.1968. It mentioned about certain dealings as between them and plaintiff had acknowledged a balance of Rs. 17,000/- as remaining outstanding with the defendant. Plaintiff then said in the letter that since the suit property was sold to the defendant plaintiff had not 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, plaintiff had disowned the said document but the trial court and the High Court have found it proved. Further, plaintiff had admitted his signature therein.

Though reliance was sought to be placed on Ext.160 letter sent by defendant to the plaintiff on 23.12.1975. it is of no avail to the appellants. It is unnecessary for us to go into the other documents referred to by the counsel as none of them helps the appellants to establish that defendant ever entertained the idea that 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. Trial court found that plaintiff had failed to prove that the property was in his possession. 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 fellow 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 plaintiff had failed to establish his possession on the land.

We, therefore, dismiss this appeal. No costs.