REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1099 OF 2008

Smt. P. Leelavathi (D) by LRs .. Appellant

Versus

V. Shankarnarayana Rao (D) by LRs .. Respondent

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Karnataka at Bangalore dated 06.09.2007 in RFA No. 220 of 1991, by which the High Court has dismissed the said First appeal preferred by the original plaintiff Smt. P. Leelavathi (now deceased and represented through her legal heirs) and has confirmed the judgment and decree passed by the learned trial Court dismissing the suit, the legal heirs of the original plaintiff Smt. P. Leelavathi have preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:

That Smt. P. Leelavathi instituted Original Suit No. 1248 of 1980 in the Court of the XIV Additional City Civil Judge at Bangalore against the original defendants – V. Shankaranarayan Rao (now deceased and represented through his legal heirs) and two others for partition and for recovery of 1/4th share of the plaintiff in the plaint scheduled properties. That the original plaintiff Smt. P. Leelavathi and the original defendants are the sister and brothers and the daughter and sons of Late G. Venkata Rao, who died on 08.10.1974.

2.1 It was the case on behalf of the original plaintiff that her father Late G. Venkata Rao was an Estate Agent and he was doing money lending business in his name and also in the names of his sons and he was purchasing properties in the names of his sons, though his father was funding those properties. According to the plaintiff, at the time of his death, G. Venkata Rao was in possession of a large estate comprising of immoveable properties, bank deposits etc.

shown in the plaint schedule. It was the case on behalf of the original plaintiff that the suit schedule properties were as such joint family properties and/or they were purchased in fact by their late father G. Venkata Rao and the same was funded by their father. That, it was the case on behalf of the original plaintiff that the plaintiff was entitled to 1/4th share in all the said properties belonging to her father. It was the case on behalf of the original plaintiff that as the defendants refused to give her 1/4th share and gave an evasive reply, which prompted the plaintiff to demand in writing her share and for early settlement. That, thereafter she got a notice dated 18.07.1975 issued demanding partition and amicable settlement. But the defendants have failed to settle the matter. Therefore, the plaintiff instituted the aforesaid suit for partition and for recovery of her 1/4th share in the plaint schedule properties.

3. That the original defendants resisted the suit by filing the written statement. It was the case on behalf of the original defendants that the plaint schedule properties are exclusively owned by the defendants in their individual

rights. Item No. 1 of the plaint schedule i.e., premises No. 32/1, Aga Abbas Ali Road is the personal property of defendant No. 3. Item (b) of schedule 1 belongs to defendant No. 2 and Item (c) belongs to defendant No. 1. These properties never belonged to their deceased father G. Venkata Rao and they do not form part of his estate. Coming to Item No. II, the three fixed deposits were the personal properties of each of the defendants. There was a joint saving bank account in the Syndicate Bank, Cantonment Branch in the joint names of the deceased and defendant No. 2. There is a small amount still lying in the said account. At any rate, there is no outstanding of Rs.10,000/- in the said account. Regarding Item No. III, there were no debts due and payable to the deceased. 939 shares were in the joint names of the deceased and the plaintiff. 840 shares were in the names of the deceased and defendant No. 1. Another 840 shares were in the names of the deceased and defendant No. 2. 949 shares were in the names of the deceased and defendant No. 3. The plaintiff had major share which were purchased by the deceased in the names of himself and the plaintiff. Late G. Venkata Rao was a head clerk attached to an advocate's

office in Civil Station, Bangalore. On retirement, the deceased indulged in and acted as an estate agent in a most casual manner. At any rate, he was not doing money-lending business nor did he purchase properties as is sought to be made out in the plaint. The deceased was at no point of time in affluent circumstances. The solvency of the deceased was at a very low ebb at the time of his death and he left no jewellery. Even the furniture available at Premises No. 138, Aga Abbas Ali Road, Bangalore was not worth mentioning inasmuch as the pieces left could be counted on finger tips. The value of the entire hold effects would not exceed Rs.400.00. Only Items 10, 12, 19, 20, 21 and 22 out of the said premises were valuable articles of the deceased. The other items never existed at any point of time. The plaintiff had the best of things from her father while he was alive. She was the recipient of favours shown by her father from time to time. The deceased stretched his generosity even to his son-in-law, the husband of the plaintiff. The deceased in fact emptied his resources at the calls of her daughter and her husband. The son-in-law also collected cash from the deceased. The plaintiff and her husband are also due in a

sum of Rs.3000/- borrowed by them under a pro-note dated 11.06.1966 from the deceased and defendant No. 3. They are also due a sum of Rs.1500/- under another pro-note dated 29.11.1966 payable to the deceased. The above amounts also carry interest at stipulated rates. The defendants serve their right to recover the said amounts through proper legal remedies. The plaintiff constructed a house bearing No. 150, Veerapillai Street with the said and financial assistance of her father. The plaintiff in active connivance with her husband ransacked the house No. 138, Aga Abbas Ali Road during the absence of the deceased and defendant No. 2 who had gone to Tirupathi and Madras. The plaintiff had made wrongful gains about this time somewhere in 1963. The plaintiff stayed with her husband at Chicmagalur only for about three months after her marriage. Thereafter she came with her husband to Bangalore and stayed with her father for nearly six years. The plaintiff is enjoying the special privilege and she has benefits bestowed on her, her husband and her children almost regularly. In addition to her father, defendant No. 2 was also looking after the needs of the plaintiff's family at considerable expenses.

All the defendants are residing in rented houses. The claim of the plaintiff in respect of Item A to C in the plaint schedule is not tenable, in view of provisions of Section 2 of Benami Transactions (Prohibition of Right to Recover Property) Ordinance, 1988, the plaintiff has no cause of action and no relief can be given to her. The suit is therefore liable to be dismissed with costs.

3.1 That the trial Court framed the following issues:

1) Whether the plaintiff proves that the suit schedule immovable and movable properties as described in Schedule I to V are the self-acquire properties?
2) Whether the suit schedule I(a) vacant site bearing No. 32/1, Aga Abbas Ali Road, Civil Station, Bangalore, is the self acquired property of defendant No. 3?
3) Whether the suit schedule I(b) vacant site bearing No. 32/1, Aga Abbas Ali Road, Civil Station. Bangalore, is the self acquired property of defendant No. 2?
4) Whether the suit schedule I(c) property is the self acquired property of defendant No. 1?
5) Whether the defendants prove that the suit schedule II Bank deposits are the personal properties of each of the defendants?

6) Whether the defendants prove that there were furniture mentioned as Items 10, 12, 19, 20, 21 and 22 of suit Schedule V in page-5 of the plaint, hardly worth Rs.400/- in premises No. 138/A (New No. 6) Armstrong Road, Civil Station, Bangalore?

7) Whether the plaintiff is entitled to partition and possession of her 1/4th share in the suit schedule properties?

8) Whether there is cause of action for the suit?

9) To what reliefs is the plaintiff entitled?

Additional Issue: Is the claim of the plaintiff barred by Section 2 of the Benami Transaction (Prohibition of Right to Recover Property) Ordinance, 1988 as alleged?

3.2 That the learned trial Court dismissed the suit by holding that the suit schedule properties are not the self-acquired properties of Late G. Venkata Rao; suit Item Nos. I(a), I(b) and I(c) are the properties of original defendant Nos. 1 to 3; the bank deposits mentioned in Scheduled II of the plaint are the personal properties of defendant Nos. 1 to 3. The learned trial Court further observed and held that in respect of moveable properties mentioned in Schedule V as suit Item Nos. 10, 12, 19, 20, 21 and 22, the plaintiff is

entitled for 1/4th share and therefore the learned trial Court granted the decree for recovery of 1/4th share to the plaintiff which was hardly worth Rs.400/- (sic) available in the premises bearing No. 138/A (New No. 6) Armstrong Road, Civil Station, Bangalore.

4. Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned trial Court dismissing the suit and holding that the suit schedule properties were not the self-acquired properties of Late G. Venkata Rao and they were the properties of defendant Nos. 1 to 3, the original plaintiff preferred an appeal before the High Court. The High Court vide judgment and order dated 26.02.1999 set aside the judgment and decree passed by the learned trial Court holding that all though the properties were in the names of the original defendants, the transactions, in question, were benami in nature and in that view of the matter, the plaintiff had inherited 1/4th share therein.

4.1 Feeling aggrieved and dissatisfied with the judgment and order passed by the High Court dated 26.02.1999 allowing the appeal and quashing and setting aside the judgment and decree passed by the learned trial Court and,

consequently decreeing the suit and holding that the plaintiff had inherited 1/4th share in the said schedule properties, the legal representatives of the original defendants approached this Court by way of Civil Appeal No. 7117 of 2000.

4.2 That by judgment and order dated 11.05.2007, this Court allowed the appeal and remitted the matter back to the High Court observing that the High Court has not properly appreciated and/or considered whether the transaction in question is benami or not.

4.3 That thereafter, on remand, the High Court has by the impugned judgment and order dismissed the appeal confirming the judgment and decree passed by the learned trial Court dismissing the suit, by specifically observing that the purchase/transaction in favour of defendant Nos. 1 to 3 with respect to the suit schedule properties were not the benami transactions and that they were the self-acquired properties of defendant Nos. 1 to 3 and, therefore, the plaintiff is not entitled to any share in the suit schedule properties. The High Court has further observed and held that the provisions of the Benami Transactions (Prohibition) Act, 1988 are retroactive in application.

5. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court in dismissing the appeal and confirming the judgment and decree passed by the trial Court dismissing the suit, the original plaintiff (now the deceased and represented through the legal heirs) has preferred the present appeal.

6. Learned counsel appearing on behalf of the appellants has vehemently submitted that, in the facts and circumstances of the case, the High Court has committed a grave error in dismissing the appeal and confirming the judgment and decree passed by the trial Court dismissing the suit.

6.1 It is vehemently submitted by the learned counsel appearing on behalf of the appellants that the Courts below have materially erred in not accepting the case of the plaintiff that the suit properties acquired in the names of defendant Nos. 1 to 3 were benami in nature.

6.2 It is submitted by the learned counsel appearing on behalf of the appellant that the findings recorded by the learned trial Court and confirmed by the High Court that the suit properties acquired in the names of defendant Nos. 1 to

3 were not benami in nature, but were the self-acquired properties of defendant Nos. 1 to 3 are contrary to the evidence on record.

6.3 It is submitted by the learned counsel appearing on behalf of the appellants that it has come in evidence that the sale consideration was paid by the father of the plaintiff and defendant Nos. 1 to 3. It is submitted that DW1 admitted that he had borrowed a sum of Rs.1,030/- from his father Late G. Venkata Rao and that Late G. Venkata Rao sent a demand draft for a sum of Rs.1,030/- directly to the Tamil Nadu Housing Board. It is submitted that even the entire consideration for acquisition of suit properties - Item Nos. 1(a) to 1(c) were paid by Late G. Venkata Rao.

6.4 It is further submitted by the learned counsel appearing on behalf of the appellant that the High Court having concluded that the purchase money of suit properties -Item Nos. 1(a) to 1(c) came from Late G.Venkata Rao, thereafter, the High Court is not justified in concluding that the plaintiff was required to give further evidence to establish that the suit properties were acquired for the benefit of defendants or Late G. Venkata Rao had other reasons to acquire the suit

properties in the names of his sons – original defendant Nos. 1 to 3. Relying upon the decision of this Court in ***Thakur Bhim Singh v. Thakur Kan Singh*** (1980) 3 SCC 72, it is vehemently submitted by the learned counsel appearing on behalf of the appellant that, as held by this Court in the aforesaid decision, if it is proved that the purchase money came from a person other than the person in whose favour the property was transferred, the purchase is *prima facie* assumed to be for the benefit of person who supplied the purchase money, unless there is an evidence to the contrary.

6.5 It is further submitted by the learned counsel appearing on behalf of the appellant that both the Courts below have materially erred in observing and consequently holding that the plaintiff was not a member of the joint family.

6.6 Making the above submissions, it is prayed to allow the present appeal and quash and set aside the judgment and decree passed by both the Courts below and consequently to decree the suit.

7. Shri G. V. Chandrashekar, learned advocate appearing on behalf of the original defendants, while opposing the

present appeal, has vehemently submitted that the finding recording by the learned trial Court, confirmed by the High Court that the suit properties – Item Nos. I(a) to I(c) were not benami transactions, are on appreciation of evidence. It is submitted that, as rightly observed by the High Court, merely because some financial assistance might have been given by the father to the defendants while purchasing the suit properties, the same would not become a benami transaction, unless the contrary intention is established and proved.

7.1 It is vehemently submitted by the learned counsel appearing on behalf of the defendants that, in the present case, all the three suit properties were purchased by defendant Nos. 1 to 3 by registered sale deeds and some financial assistance was given by the father Late G. Venkata Rao, which was given to the plaintiff also. It is submitted that, in the present case, it has come on record that the plaintiff married with PW-1 in the year 1954; the marriage of the plaintiff was performed by Late G. Venkata Rao; and that after the marriage of the plaintiff, Late G. Venkata Rao and defendant Nos. 1 to 3 were living together. It is submitted that it has also come on record that Late G. Venkata Rao

provided the financial assistance to the plaintiff to acquire the house bearing No. 150, Veerapillai Street, Civil Station, Bangalore. It is submitted that even the evidence on record would disclose that after the marriage, the plaintiff and her husband were maintained by her father for a period of 10 years. It is submitted that, considering the aforesaid circumstances, as rightly observed by the High Court, the intention of Late G. Venkata Rao in providing financial assistance to his sons for acquisition of properties was to provide shelter to his sons and, therefore, the acquisition of the suit properties – Items I(a) to I(c) by defendants, out of the financial assistance provided by their father Late G. Venkata Rao, did not involve any benami transaction.

7.2 It is further submitted on behalf of the defendants that, as such, the provisions of the Benami Transactions (Prohibition) Act would not be applicable retrospectively. It is vehemently submitted by the learned counsel appearing on behalf of the original defendants that, as observed and held by this Court in the case of ***Binapani Paul v. Pratima Ghosh*** (2007) 6 SCC 100, the burden of proving of benami nature of transaction lies on the person who alleges the

transaction to be a benami. It is submitted that in the aforesaid decision, it is further observed and held by this Court that the source of money can never be the sole consideration and it is merely one of the relevant considerations, but not determinative in character. It is submitted that, in the present case, the plaintiff has failed to establish and prove that the purchase of the properties – Item Nos. I(a) to 1(c) were benami in nature and/or that the intention of Late G. Venkata Rao was to purchase the suit properties for and on behalf of the family, but were purchased in the names of defendant Nos. 1 to 3. It is submitted that, therefore, in the facts and circumstances of the case, the High Court has rightly dismissed the appeal and has rightly confirmed the judgment and decree passed by the learned trial Court dismissing the suit, by specifically observing and holding that the suit properties – Items I(a) to I(c) were not benami in nature. Therefore, it is prayed to dismiss the present appeal.

8. Heard learned counsel appearing on behalf of the respective parties at length. In the present case, the original plaintiff instituted the suit claiming 1/4th share in the suit

properties, including the suit properties – Item Nos. I(a) to I(c). Admittedly, the suit properties were purchased by defendant Nos. 1 to 3 respectively. However, it was the case on behalf of the plaintiff that the purchase of the suit properties was benami transaction as the sale consideration was paid by their father Late G. Venkata Rao. The aforesaid is not accepted by the High Court and the High Court has observed and held that the plaintiff has failed to establish and prove by leading cogent evidence that the intention of Late G. Venkata Rao to purchase the suit properties in the names of defendant Nos. 1 to 3 was to purchase for and on behalf of the family and, therefore, the transaction cannot be said to be benami in nature.

8.1 Therefore, the short question that is posed for consideration of this Court is, whether in the facts and circumstances of the case and merely because some financial assistance has been given by the father to the sons to purchase the properties, can the transactions be said to benami in nature?

9. While considering the aforesaid question, few decisions of this Court on the benami transactions/transactions of benami nature, are required to be referred to:

9.1 In the case of ***Thakur Bhim Singh*** (supra), it is observed and held by this Court that while considering a particular transaction as benami, the intention of the person who contributed the purchase money is determinative of the nature of transaction. It is further observed by this Court as to what the intention of the person who contributed the purchase money, has to be decided on the basis of the surrounding circumstance; the relationship of the parties; the motives governing their action in bringing about the transaction and their subsequent conduct etc. In the aforesaid decision, this Court considered the earlier decision of this Court in ***Jaydayal Poddar v. Bibi Hazra (Mst.)*** (1974) 1 SCC 3, more particularly para 6, and thereafter summed up in para 17 and para 18. Paras 17 and 18 of that judgment are as under:

> "**17.** The principle enunciated by Lord Macmillan in the case of *Manmohan Das* [AIR 1931 PC 175 : 134 IC 66 9 : 1931 ALJ 550] has been followed by this Court in *Jaydayal*

Poddar v. *Bibi Hazra* (*Mst*) [(1974) 1 SCC 3 : (1974) 2 SCR 90] where Sarkaria, J., observed thus: (SCC p. 6, para 6)

> "It is well-settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of a benami is the intention of the party or parties concerned; and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation, and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question whether a particular sale is benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid tests, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the courts are usually guided by these circumstances:(1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving

> the transaction a benami colour; (4) the position of the parties and the relationship if any, between the claimant and the alleged benamidar; (5) the custody of the title deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale."
>
> **18.** The principle governing the determination of the question whether a transfer is a benami transaction or not may be summed up thus: (1) the burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction; (2) it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is prima facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary; (3) the true character of the transaction is governed by the intention of the person who has contributed the purchase money and (4) the question as to what his intention was has to be decided on the basis of the surrounding circumstances, the relationship of the parties, the motives governing their action in bringing about the transaction and their subsequent conduct, etc."

9.2 In ***Binapani Paul*** case (supra), this Court again had an occasion to consider the nature of benami transactions. After considering a catena of decisions of this Court on the point, this Court in that judgment observed and held that the source of money had never been the sole consideration. It is merely one of the relevant considerations but not

determinative in character. This Court ultimately concluded after considering its earlier judgment in the case of ***Valliammal v. Subramaniam*** (2004) 7 SCC 233 that while considering whether a particular transaction is benami in nature, the following six circumstances can be taken as a guide:

> "(1) the source from which the purchase money came;
>
> (2) the nature and possession of the property, after the purchase;
>
> (3) motive, if any, for giving the transaction a benami colour;
>
> (4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;
>
> (5) the custody of the title deeds after the sale; and
>
> (6) the conduct of the parties concerned in dealing with the property after the sale. (*Jaydayal Poddar v. Bibi Hazra* (supra), SCC p. 7, para6)"

10. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has rightly come to the

conclusion that the plaintiff has failed to prove that the purchase of the suit properties – Item Nos. I(a) to I(c) in the names of defendant Nos. 1 to 3 were benami in nature. It is true that, at the time of purchase of the suit properties – Item Nos. I(a) to I(c), some financial assistance was given by Late G. Venkata Rao. However, as observed by this Court in the aforesaid decisions, that cannot be the sole determinative factor/circumstance to hold the transaction as benami in nature. The plaintiff has miserably failed to establish and prove the intention of the father to purchase the suit properties for and on behalf of the family, which were purchased in the names of defendant Nos. 1 to 3. It is required to be noted that, as such, the plaintiff – daughter has not stepped into the witness box and that the evidence on behalf of the plaintiff has been given by her husband who, as such, can be said to be an outsider, so far as the joint family is concerned. Apart from that, it has come on record that the plaintiff and her husband were maintained by Late G. Venkata Rao. The financial assistance was also given to the plaintiff and her husband to purchase the residential house at Bangalore. Late G. Venkata Rao, therefore,

provided a shelter to his daughter and, as observed herein above, also gave the financial assistance to purchase the residential house at Bangalore. It has also come on record that Late G. Venkata Rao even purchased the share certificates and his daughter-original plaintiff was also given certain number of shares. Therefore, considering the aforesaid facts and circumstances of the case, Late G. Venkata Rao also must have given the financial assistance to defendant Nos. 1 to 3 – sons and helped them in purchase of the properties. Therefore, the intention of Late G. Venkata Rao to give the financial assistance to purchase the properties in the names of defendant Nos. 1 to 3 cannot be said to be to purchase the properties for himself and/or his family members and, therefore, as rightly observed by the High Court, the transactions of purchase of the suit properties – Item Nos. I(a) to I(c) in the names of the defendant Nos. 1 to 3 cannot be said to be benami in nature. The intention of Late G. Venkata Rao was to provide the financial assistance for the welfare of his sons and not beyond that. None of the other ingredients to establish the transactions as benami transactions, as held by this Court in

the aforesaid decisions, are satisfied, except that some financial assistance was provided by Late G. Venkata Rao. In the facts and circumstances of the case and considering the evidence on record, the purchase of the suit properties – Item Nos. I(a) to I(c) in the names of defendant Nos. 1 to 3 cannot be said to be benami transactions and, therefore, as rightly observed and held by the learned trial Court and confirmed by the High Court, the plaintiff has no right to claim 1/4th share in the suit properties – Item Nos. I(a) to I(c) which were purchased by the sons in their names by separate sale deeds. We are in complete agreement with the view taken by the High Court.

11. In view of the above and for the reasons stated above, the present appeal fails and deserves to be dismissed and is accordingly dismissed. No costs.

.....J.
[L. NAGESWARA RAO]

.....J.
[M. R. SHAH]

New Delhi,
April 9, 2019.