PETITIONER:
RAJAPPA HANAMANTHA RANOJI

Vs.

RESPONDENT:
SRI MAHADEV CHANNABASAPPA & ORS.

DATE OF JUDGMENT: 11/05/2000

BENCH:
Y.K.Sabharwal, S.R.Babu

JUDGMENT:

Y.K.SABHARWAL J.

The appellant and respondent no.4 are brothers. Respondent nos. 2 and 3 are also brothers. Respondent no.1 is the son of respondent no.2. Respondent no.4 came in possession of the property under rent note dated 24th December, 1968 executed in favour of respondent no.1. His eviction was sought by respondent no.1 on the ground of non-payment of rent and sub-letting. The eviction petition was filed some time in the year 1970. In answer to the eviction petition, the case set-up by respondent no.4 was that there was no relationship of landlord and tenant between the parties and that had entered into an agreement with the vendors for the purchase of the property. The said agreement was brought about in the name of his elder brother because the family was joint. Respodents 2 and 3 had agreed to advance to him Rs.15,000/- which was the balance amount payable to the vendors. By way of security they insisted that the conveyance deed should be in the name of respondent no.1 and to cover the interest on the loan amount of Rs.15,000/-, Rent note dated 24th December, 1968 was executed. In fact there was no relationship of landlord and tenant between the parties. An order of eviction was passed in favour of respondent no.1 and against respondent no.4. The case set up by respondent no.4 was not believed. Respondent no. 4 also failed in appeal and further in the revision petition preferred by him before the High Court. Thus eviction order in respect of the property in question became final against respondent no.4 and in favour of respondent no.1. The execution was pending. At about this stage, the suit, out of which this appeal has arisen, was filed by the elder brother of respondent no.4.

In this suit, a decree for declaration was sought that the appellant is the owner of the property and respondents 1 to 3 are entitled only to Rs.15,000/- with interest. Further a decree for injunction was also sought restraining respondents 1 to 3 from disturbing his possession. The younger brother (respondent no.4) was impleaded as defendant no.4 in the suit. The case set up in the plaint was that an agreement dated 11th January, 1968 was entered into between the appellant and vendors for sale of property in question for a consideration of Rs.19001/- ; earnest amount of

Rs.2,000/- paid and the sale deed was to be executed within six months. On 10th July, 1968 vendors took Rs.1,000/- from the appellant and extended the time for execution of sale deed upto 9th September, 1968. The time was further extended on payment of another sum of Rs.1,000/- and that a public notice had given by the appellant. It was published in "Vishala Maharashtra" on 10th September, 1968. The appellant was unable to arrange the balance amount of Rs.15,000/-. Respondent nos.2 and 3 agreed to advance him the said sum but they asked for sale deed in favour of respondent no.1. The sale deed is said to have been executed in the name of respondent no.1 only to operate as security for the amount of Rs.15,000/- advanced by respondents 2 and 3. Substantially, the case of the appellant in regard to purchase of property was the same as was the case set up by his brother in the eviction petition except that in the said proceedings brother claimed ownership and in this suit elder brother claimed ownership.

In the written statement respondents 1 to 3 took the plea that the suit was got filed by respondent no.4, with a view to delay the execution of decree and delivery of possession. They said that the appellant has never been in possession of the suit property The averments in regard to purchase of the property as made in the plaint were denied. It was further pleaded that if the appellant was correct there was no reason for him to remain quiet from 1968 up to the filing of the suit. The same plea was taken by the brother in the eviction proceedings and having failed, suit in question was filed. The revision petition filed by respondent no.4, against the appellate authority confirming the order of evition was dismissed on 18th November, 1975. The High Court granted three months time i.e. up to 18th February, 1976 to vacate the premises. On the application of respondent no.4 for extension of time till end of 19th May, 1976 the High Court further granted time to him to vacate the premises. Since the premises were not still vacated the execution proceedings were filed and during the pendency of the said proceedings, as stated earlier, the suit in question was filed and the ex-parte order of injunction obtained.

The suit aforesaid for declaration and injunction was dismissed by trial court but the judgment and the decree was set aside in appeal by Principal District Judge, Belgaum and the suit was decreed as prayed.

In the Regular Second Appeal filed by the present respondent no.1, at the time of admission, the following questions of law were framed: "1. Whether on facts and circumstances of the case the plaintiff's suit is maintainable in view of Sec.281-A of the Income Tax Act as amended by Taxation Laws (Amendment) Act, 1972?

2. Whether on facts and circumstances of the case, respondent No.1 could be said to be the owner of the suit property as held by the appellate Court?"

In view of the decision of this court in Mithilesh Kumari Vs. Prem Behari Khare, [(1989) 2 SCC 95] interpreting Section 4 of the Benami transactions (Prohibition Act, 1988) and holding the said provision to be retrospective in operation, the High Court without deciding the aforesaid said questions, allowed the appeal and set aside the judgment and decree passed by the First Appellate

Court. The High Court held that the suit where the property said to be held benami by present respondent no.1 would not be maintainable.

The special leave petition was filed challenging the judgment of the High Court by pointing out that in another case leave had been granted and this court may have the occasion to reconsider Mithilesh Kumari's case. Under these circumstances, the leave was granted on 3rd September, 1991. This court, however, noticed in the order dated 3rd September, 1991 that in view of the decision of the High Court being based only on the decision of this Court in Mithilesh Kumari's case, the High Court had not decided the other contentions raised in the second appeal and the decision of this appeal may take long time and it may cause unreasonable delay and hardship. Therefore, the High Court was requested to forward to this court its findings on the other points as well so that the matter can be disposed of finally as and when it comes up for hearing. Both the parties had agreed to this course. The High Court has forwarded its findings dated 20th April, 1994 to this court with a conclusion that the First Appellate Court erred in allowing the appeal and decreeing the suit. The High Court had recorded that: "1) That plaintiff has not proved his title to the property.

2) The sale deed dated 25.9.69 executed by Desai brothers in favour of first defendant cannot be construed as a security document for the loan alleged to have been advanced by the second and third defendants to the plaintiff.

3) Plaintiff has failed to establish his possessory title in the suit schedule property

4) Plaintiff has failed to establish that he inducted the fourth defendant as licensee.

5) Plaintiff has failed to prove that rent received by defendants 2 and 3 from fourth defendant was by way interest to the loan advanced.

6) Plaintiff has failed to prove the possession of suit schedule property."

In R.Rajagopal Reddy (dead) by Lrs.& Ors. Vs. Padmini Chandrasekharan (dead) by Lrs. [(1995) 2 SCC 630], this Court has overruled the decision in the case of Mithilesh Kumari and has held that the provisions of Section 4(1) of the Benami Transactions (Prohibition) Act, 1988 are not retrospective in operation and do not apply to pending suits and entertained prior to coming into force of Section 4.

The suit of the appellant is not barred under the provisions of the Benami Transactions (Prohibition) Act, 1988. That, however, does not conclude the matter. In law and facts, the question still to be examined is whether the suit of the appellant was rightly decreed by the First Appellate Court or not. Learned counsel for the appellant contends that now in view of legal position after Rajagopal Reddy's case, the matter may be remanded to the High Court for fresh decision of the Regular Second Appeal which was filed by respondent no.1 challenging the judgment of the First Appellate Court. We, however, do not think that it is

necessary to remand the matter to the High Court in view of the order passed on dated 3rd September, 1991 requesting the High Court to forward to this court its findings on other issues as well. The said findings have been recorded in the order of the High Court dated 20th April, 1994 which has already been sent to this Court inter alia holding that the First Appellate Court erred in allowing the appeal of the appellant.

Having perused the order of the High Court dated 20th April, 1994 and the record of the case we find no infirmity in the view expressed by the High Court. We are unable to accept the contention of the learned counsel for the appellant that the High Court has re- appreciated the evidence as if it was deciding the first appeal. It was contended that the jurisdiction of the High Court was confined to the two questions of law which were framed at the time of admission of the second appeal and it had no jurisdiction to reappreciate the evidence as a First Appellate Court. Though the High Court has observed that findings arrived at by the First Appellate Court are not based on proper appreciation of the evidence on record and the same are set aside but for all intents and purposes and in substance the conclusion of the High Court is that the decision of the First Appellate Court is based on no evidence and is perverse. We are in complete agreement with the conclusions of the High Court. The High Court has rightly drawn adverse inference on account of non-examination of respondent no.4 as a witness by the appellant. On the facts and circumstances of the case that was vital and was rather the heart of the entire matter going to the root of the whole case. There was no explanation for non-examination of respondent no.4. Clearly, the decree of the First Appellate Court is based on no evidence and is perverse.

The appellant had admittedly knowledge of the eviction petition filed by respondent no.1 against his brother respondent no.1. On the facts of the case, it was over simplification for the First Appellate Court to observe that what transpired between the appellant and his brother was of no consequence in so far as the appellant is concerned. It is evident that the appellant was set-up by his brother after having lost in the eviction petition upto High Court and the suit was filed in the year 1976 during the pendency of the execution proceedings of the eviction order. We fail to understand what appellant was doing from 1968 upto 1976. The net result of all this has been that despite lapse of nearly 30 years since filing of the eviction petition, respondent no.1 was unable to recover the possession and that is despite the respondent no.1 having succeeded up to High Court in the eviction case nearly a quarter century ago. For the aforesaid reasons we dismiss the appeal with costs.

It is distressing to note that many unscrupulous litigants in order to circumvent orders of Courts adopt dubious ways and take recourse to ingenious methods including filing of fraudulent litigation to defeat the orders of Courts. Such tendency deserves to be taken serious note of and curbed by passing appropriate orders and issuing necessary directions including imposing of exemplary costs. As noticed, despite eviction order having become final nearly a quarter century ago, respondent no.1 still could not enjoy the benefit of the said order and get

possession because of the filing of the present suit by the brother of the person who had suffered the eviction order. Under these circumstances, we quantify the costs payable by the appellant to respondent no.1 at Rs.25,000/-.