

CASE NO.:
Appeal (civil) 7117 of 2000

PETITIONER:
V. Shankaranarayana Rao (D) by Lrs. & Ors

RESPONDENT:
Leelavathy (Dead) by Lrs. & Ors

DATE OF JUDGMENT: 11/05/2007

BENCH:
S.B. SINHA & MARKANDEY KATJU

JUDGMENT:
J U D G M E N T

S.B. SINHA, J :

1. Defendants in the suit are appellants before us. Smt. Leelavathi, predecessor in interest of the present respondents filed a suit for partition. The properties in the suit belonged to one G. Venkata Rao. He died on or about 18.10.1974 leaving behind three sons, V. Shankaranarayana Rao, V. Sathya Murthy and V. Surendranath and a daughter Smt. Leelavathi.

2. Wife of Shri G. Venkata Rao, Smt. Sharada Bai pre-deceased him. V. Shankaranarayana Rao died on or about 24.12.1995 i.e during the pendency of the appeal. Mr. V. Sathya Murthy died on or about 10.10.1999 leaving behind a son Srinivasa. V. Surendranath was the defendant No. 3 (appellant). Plaintiff Leelavathi also died during the pendency of the appeal leaving the respondents herein as her heirs and legal representatives. Leelavathi filed a suit on or about 24.3.1976 which was registered as O.S. No. 43 of 1976 for partition of the suit properties claiming 1/4th share in the properties of the said G. Venkata Rao.

3. Defendants/Appellants denied and disputed that G. Venkata Rao had purchased any property in their names alleging that schedule Item No. 1(a) is the personal property of the third defendant, whereas item Nos. 1 (b) and 1(c) thereof belong to the second defendant. It was contended that the properties standing in their names are exclusively owned by them and even three fixed deposits were their own personal properties. It was averred that a joint saving bank account in the Syndicate Bank, Bangalore was being operated in the joint names of the deceased Venkata Rao and the defendant No. 2 and only a small amount had been lying therein. As regards item No. (3), it was alleged that no debt was due or payable to the deceased. It was furthermore contended that he had left no jewellery. In regard to the household articles which were described in items 10, 12, 19, 20, 21 and 22, of the plaint schedule the valuation whereof was assessed also at Rs. 400, were, however said to be available for partition.

4. The learned Trial Judge framed a large number of issues, some of which are as under:-

"1. Whether the plaintiff proves that the suit schedule immovable and movable properties as described in schedule-I to V are the self acquired properties of her father ?

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 the 3rd defendant.

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 the 2nd defendant.

4. Whether the suit schedule-I (C) property is the self acquired property of the first defendant.

5. Whether 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 item 10, 12, 19, 20, 21 and 22 of the 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 ? "

5. Whereas issue No. 1 was answered in the negative, issues Nos. 2 to 6 were answered in the affirmative. The learned Trial Judge opined that although the properties were purchased with the money of G. Venkata Rao, the same having been done for the benefit of his sons and/or by way of a family arrangement, were not in benami in character.

6. Except the household articles, schedule-I to V however, the suit for partition was dismissed.

7. On an appeal having been preferred by the plaintiff, the High Court by reason of the impugned judgment dated 26.2.1999 set aside the judgment and decree passed by the learned Trial Court holding that although the properties were in the name 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.

8. Mr. G.V. Chandrasekhar, learned counsel appearing on behalf of the appellant in support of this appeal would submit that the High Court committed a manifest error insofar as it proceeded on the basis that G. Venkata Rao having provided for the amount of consideration for purchasing the immovable properties in the names of his three sons, by itself was sufficient to arrive at a conclusion that the transactions, in question, were benami in character. It was submitted that the High Court failed to notice that for the purpose of establishing a plea that the suit properties were purchased for the benefit of his sons and/or by way of a family settlement was not required to be specifically pleaded. Strong reliance in this behalf has been placed on Thakur Bhim Singh (Dead) by Lrs and Another v Thakur Kan Singh [(1980) 3 SCC 72]. It was, furthermore, contended that although the learned Trial Judge had taken great pains in discussing other issues which were relevant for the purpose of determination of the principal dispute between the parties viz. as to whether the transactions, in question, were benami in nature and had been entered into for the benefit of the original defendants, had at all not been considered by the High Court. The backdrop of events, according to Mr. Chandrasekhar, namely that the plaintiff within a few months of her marriage came back to her parents' place and had been residing with her husband and financial assistance had also been rendered to them for construction of their house as also for starting a business was sufficient to show that the deceased Venkata Rao intended to provide something for each of his children. In any event, the High Court having not arrived at any finding in regard to the intention of Venkata Rao to purchase the properties in the name of his sons, the impugned judgment cannot be sustained. Our attention in this connection has also been drawn to the fact that although the learned trial court has taken into consideration the fact that the fixed deposit receipts were also obtained in the name of the defendants and a joint bank account was also being operated, the High Court has not bestowed any consideration in this behalf. Jewellery of the family

according to the trial judge were not partitioned but, the High Court has, it was urged, did not consider the said question at all.

9. The learned counsel appearing on behalf of the respondent on the other hand, would support the impugned judgment.

10. The trial court had framed a large number of issues. The materials brought on records by the parties had been taken into consideration by the learned Trial Judge in great details.

11. Principle on the basis whereof determination of the question as to whether a transaction is a benami one or not depends upon a large number of factors. Some of them had been noticed by this Court in *Thakur Bhim Singh (Dead) By LRs and Another v. Thakur Kan Singh* [(1980) 3 SCC 72] in the following terms:

"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."

The said principle has been reiterated by this Court in *Binapani Paul v. Pratima Ghosh & Ors.* [2007 (6) SCALE 398]

In the aforementioned judgments, this Court has inter alia emphasised on the fact that the role and / or the motive on the part of the person who had advanced the amount of consideration plays an important role in determination of the nature of transaction. The High Court unfortunately had not considered the question from the said angle. The High Court while pronouncing the impugned judgment had also not considered the effect and purport of the requisite ingredients for arriving at a decision as to whether the transaction in question is benami or not.

12. The High Court did not deal with the question thoroughly. It had not taken into consideration the totality of the circumstances. We, therefore, are of the opinion that in the fitness of things, the impugned judgment should be set aside and matter remitted back to the High Court for consideration of the matter afresh which would meet the interest of justice. As the matter has to be remitted to the High Court, we have not considered the findings of the High Court in respect of other items of the property in regard where to different conclusions have been arrived at by the courts below. We are sure, High Court would consider the same in the light of its findings on the principal issue.

13. For the reasons aforementioned, the impugned judgment is set aside. The appeal is allowed. The matter is remitted back to the High Court for consideration of the matter afresh. In the facts and circumstances of this case, however, there shall be no order as to costs.