

A

P.V. SANAKARA KURUP

v.

LEELAVATHY NAMBIAR

AUGUST 16, 1994

B

[K. RAMASWAMY AND G.N. RAY, JJ.]

Code of Civil Procedure 1908 / Benami Transactions (Prohibition) Act. 1988 / Trust Act. 1882 :

C

S.66(1)/Ss.4, 7/S.88—Agent and Power of Attorney—Holder purchasing property in his name—Consideration for purchase and improvement with principle's money—Whether property vests in Principal or agent—Held : Agent held the property in trust in his fiduciary capacity and property vests in Principal—Hence entitled to declaration and recovery of possession of the property.

D

Abuse of Judicial Process : Party acting fraudulently and abusing judicial process—Exemplary costs awarded.

E

This Special Leave Petition challenged the High Court's judgment reversing the concurrent findings of the Courts below that the petitioner was an agent and power of Attorney holder of the respondent-plaintiff and was looking after her thavazhy properties which was outstanding on a lease. The property was purchased by the petitioner in his name, in a court auction. But the consideration for the purchase as well as the improvements of the property were met with the funds of the respondent for whom the petitioner was acting as an agent and Power of Attorney.

F

The questions which arose in this petition were, whether the title to the suit property vested in the petitioner or his principal—the respondent and whether the respondent was entitled to the declaration and recovery of possession sought in that behalf

G

Dismissing the Special Leave Petition, this Court

H

HELD : 1.1. Obviously, at the time of the sale, Section 66 of C.P.C. was on the statute which was deleted by the Benami Transactions (Prohibition) Act, 1988. It is true that Sub-section (1) of Section 66 prohibits the maintainability of a suit against any person claiming title under the

purchase-certificate issued by the Court on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims and that the defendant also it enjoined not to plead that the purchase was made on his behalf or on behalf of some one to whom the defendant claims. The public policy behind Section 66(1), as it then stood, was to prevent fraud on purchase and to prohibit benami purchase at execution sale enabling genuine participants in the bid to secure the best price for the property sold in the court auction and highest bidder secures clear title of it. It prohibits a suit by beneficial owner or one claiming through him. Therefore, if a real owner purchase the property but the name of a third person was fraudulently an without consent of the real purchaser was inserted, the real purchaser is entitled to obtain a declaration to that effect. [663-B-E]

1.2. In the instant case, it is clear that the real purchaser is the respondent, the petitioner as an against and power-of-Attorney, had purchased the property but ostensibly had his name entered in the sale certificate, fraudulently and without the consent of the respondent. That apart, under Section 88 of the Indian Trust Act, an agent or other person is bound in a fiduciary character to protect the interests of the principal and the former would hold the property for the benefit of the principal or the person on whose behalf he acted as an agent. The question of benami, therefore, does not arise, though Section 4 of the Benami Transactions (Prohibition) Act, prohibits such a plea. Section 7 thereof does not repeal Section of Trust Act. When an agent was employed to purchase the property on behalf of his principal and does so in his own name, then, upon conveyance or transfer of the property to the agent, he stands as a trustee for the principle. [663-F-H, 664-A-B]

1.3. The property in the hands of the agent is for the principal and the agent stands in the fiduciary capacity for the beneficial interest he had in the property as a trustee. The petitioner has acted as an agent as a *cestui que* trust, is a trustee and he held the property in trust for the respondent in his fiduciary capacity as an agent or trustee and he has a duty and responsibility to make over the unauthorised profits or benefits he derived while acting as an agent or a trustee and property account for the same to the principal. [664-C]

1.4. Section 4 of the Benami Transactions (Prohibition) Act does not stand in the way for the declaration of title and possession of the plaint

A schedule property. The courts below, therefore, wrong in dismissing the suit relying on Section 66 (1) of C.P.C. The High Court was perfectly right in reversing the decree of the appellate court and that of the trial court and decreeing the suit as prayed for. [664-E]

B 2. Since the petitioner has fraudulently acted and abused judicial process, exemplary costs of Rs. 10,000 are awarded and it would go to the Supreme Court Legal Aid Committee. [664-F]

CIVIL APPELLATE JURISDICTION : Special leave Petition No. 12392 of 1994.

C From the Judgment and Order dated 2.3.94 of the Kerala High Court in Second Appeal No. 564 of 1989.

M.K. Sasidharan and R.Sathish for the Petitioner

D The following Order of the Court was delivered :

E The petition-defendant impugnes the judgment and decree dated March 2, 1994 of the Kerala High Court in Second Appeal No. 564 of 1989. The courts below concurrently found that the petitioner was an agent and Power-of-Attorney holder of the respondent- plaintiff and was looking after her thavazhy properties. The property in question lies in the midst of thavazhy properties. It was outstanding on a lease. In execution a court auction for recovery of the arrears of rent, the suit-property was purchased by the petitioner in his name. The expenses incurred for the litigation till obtaining the sale certificate were all credited to the account of respondent-plaintiff. For laying coconut grove the expenses incurred were credited to the account of the respondent. Thus the consideration for the purchase as well as the improvements of the property were met with the funds of the respondent for whom the petitioner was acting as an agent and Power-of-Attorney. He, thereby, obviously had acted in a fiduciary capacity as agent of the respondent. The sale- certificate though ostensibly stands in his name but obviously he obtained it while acting as an agent and Power-of-Attorney of the respondent. The sale-certificate thus was obtained without her knowledge and consent playing fraud on her. The facts manifest that the petitioner had purchased the property for the benefit of the estate of the respondent.

H From these facts the substantial questions of law, therefore, are whether the title to the suit-property vests in the petitioner or his principle-

respondent, and whether she is entitled to the declaration and recovery of possession sought in that behalf. The High Court has rightly considered these substantial questions of law. Obviously, at the time of the sale, Section 66 of C.P.C. was on the Statute which was deleted by the Benami Transactions (Prohibition) Act, 1988. It is true that Sub-section (1) of Section 66 prohibits the maintainability of a suit against any person claiming title under the purchase-certificate issued by the court on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims and that the defendant also is enjoined not to plead that the purchase was made on his behalf or on behalf of some one to whom the defendant claims. The public policy behind Section 66(1), as it then stood, was to prevent fraud on purchase and to prohibit benami purchase at execution sale enabling genuine participants in the bid to secure the best price for the property sold in the court auction and highest bidder secures clear title of it. It, therefore, prohibits a suit by beneficial owner or one claiming through him. Sub-section (2) mitigates against the rigour and embargo and creates an exception which provides that "nothing in this Section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that "it is liable to satisfy a claim of such third person against the real owner." Therefore, if a real owner purchases the property but the name of a third person was fraudulently and without consent of the real purchaser was inserted, the real purchaser is entitled to obtain a declaration to that effect.

In the light of the facts recorded earlier, it is clear that a real purchaser is the respondent, the petitioner as an agent and Power-of-Attorney, had purchased the property but ostensibly had his name entered in the sale certificate, fraudulently and without her consent. That apart under Section 88 of the Indian Trust Act, an agent or other person bound in a fiduciary character to protect the interests of the principal and the former would hold the property for the benefit of the former would hold the property for the benefit of the principal of the person on whose behalf he acted as an agent. The question of benami, therefore, does not arise, though Section 4 of the Benami Transactions (Prohibition) Act, prohibits such a plea. Sub-section (3) provides that "nothing in the said section would apply where the person in whose name the property is held is a

- 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." Section 7 does not repeal Section 88 of Trust Act. When an agent was employed to purchase the property on behalf of this principal and does so in his own name, then, upon conveyance or transfer of the property to the agent, he stands as a trustee for the principal. The property in the hands of the agents is for the principal and the agent stands in the fiduciary capacity for the beneficial interest he had in the property as a trustee. The petitioner has acted as an agent as a *cestui que* trust, is a trustee and he held the property in trust for the respondent in his fiduciary capacity as an agent or trustee and he has a duty and responsibility to make over the unauthorised prohibits or benefits he derived while acting as an agent or a trustee and properly account for the same to the principal.

- Therefore, the High Court is clearly right in its holding that the petitioner is an agent and trustee acted in the fiduciary capacity on behalf of the respondent-plaintiff as General Power-of-Attorney. He held the property in *cestui que* trust for and on behalf of the respondent though he fraudulently got inserted his name in the sale-certificate issued by the court without the respondent's knowledge and consent. Section 4 of the Benami Transactions (Prohibition) Act does not stand in the way for the declaration of title and possession of the plaint schedule property. The courts below were, therefore, wrong in dismissing the suit relying on Section 66(1) of C.P.C. The High Court was perfectly right in reversing the decree of the appellant court and that of the trial court and decreeing the suit as prayed for. The petition is accordingly dismissed. Since the petitioner has fraudulently acted and abused judicial process, the special leave petition is dismissed with exemplary costs of Rs. 10,000. The costs would go to the Supreme Court legal Aid Committee. (The order be communicated to the Supreme Court Legal Aid Committee for the recovery of the amount).

G.N.

Petition dismissed.