

HON'BLE SRI JUSTICE SAMUDRALA GOVINDARAJULU

S.A.No.674 of 2010

JUDGMENT:

The unsuccessful plaintiff in both the Courts below is the appellant in this second appeal. He filed the suit in the trial Court for partition of items 1 to 5 of the plaint schedule and for separate possession etc. The 1st defendant is brother of the plaintiff. The defendants 2 to 5 are sisters of the plaintiff and the 1st defendant. The 6th defendant is mother of the plaintiff and the defendants 1 to 5. The sale deeds for items 1 and 2 of the years 1970 and 1977 respectively stand in the name of 1st defendant. Ex.B.21 sale deed for item No.5 of the year 1989 stands in the name of the 6th defendant. It is contention of the plaintiff that his father late Mohammed Ehsanullah was working as Wireless operator in Police Department and he being Government servant, purchased the properties in the names of the defendants 1 and 6 for the said items. On the other hand, it is the defendants' case that the 3rd defendant who was also a Government servant gave monies for purchase of the said properties in the names of the defendants 1 and 6 and no

part of sale consideration passed from their deceased father Mohammed Ehsanullah. Admittedly, items 3 and 4 stood in the name of late Ehsanullah himself. After trial, the trial Court passed preliminary decree for partition of items 3 and 4 of the plaint schedule and dismissed the suit in relation to items 1, 2 and 5 of the plaint schedule. On appeal by the plaintiff, the lower appellate Court confirmed decree of the trial Court, driving the plaintiff to this Court with this second appeal.

2. It is contended by the appellant's counsel that the Benami Transactions (Prohibition) Act, 1988 (in short, the Act) is not retrospective in nature and cannot be applied in the present litigation which started in the year 2001. If the Act is only prospective, then it may not apply to Exs.A.1 and A.2 sale deeds of the years 1970 and 1977 relating to items 1 and 2 of the plaint schedule. Ex.B.21 relating to item No.5 of the plaint schedule is of the year 1989 subsequent to the Act and so provisions of the Act are applicable to that transaction. Section 3(2)(a) of the Act excepts applicability of 3(1) of the Act in the case of purchase of property in the name of his wife, in which event, there is statutory presumption to the effect that unless contrary is proved, the

said property had been purchased for the benefit of the wife and it cannot be held that it was a benami purchase. No endeavour was made in this case to prove that Ex.B.21 sale deed in the name of 6th defendant was obtained by her late husband as a benami transaction or that her late husband did not intend to benefit his wife/the 6th defendant, even assuming for the sake of argument that Ex.B.21 is a benami transaction. For the purpose of disposal of this matter, this Court need not go into the question whether the Act is retrospective or prospective in nature. The said question arises only in case the plaintiff is able to prove that Exs.A.1, A.2 and B.21 are benami transactions.

3. The only reason alleged by the plaintiff for purchase of items 1, 2 and 5 of the plaint schedule in the names of the defendants 1 and 6 is that late Ehsanullah was working as Government servant. That by itself will not give proper reason for late Ehsanullah to enter into benami transactions. It is not as if the Government servant is prohibited from purchasing properties in his name with valid or known source of income. Unless the Government servant wanted to purchase properties with his ill-got money

or bribe amount, he need not resort to benami transactions. He can validly purchase any property after giving intimation to his departmental head and if necessary, by obtaining permission. Therefore, the fact that Ehsanullah was working in Government service cannot by itself form reason for him to enter into benami transactions. There is no direct evidence to show that consideration for the purchases covered by Exs.A.1, A.2 and B.21 passed from Ehsanullah. It is contended by the appellant's counsel that there is no evidence of the 3rd defendant also providing funds for purchase of properties by the defendants 1 and 6 under Exs.A.1, A.2 and B.21. The plaintiff has to stand or fall on merits of his own case and cannot be allowed to rely upon infirmities and lack of evidence on behalf of the defendants. In those circumstances, this Court is not impressed about Exs.A.1, A.2 and B.21 being benami transactions and this Court has no hesitation to agree on facts, the conclusion of the Courts below on this aspect. The Courts below after considering entire arguments of both the counsel and other material on record, came to right conclusion against the plaintiff insofar as items 1, 2 and 5 are concerned. Judgment of the lower appellate Court is in no way perverse

or based on no material. I find no reason to reverse the concurrent views expressed by both the Courts below. I find that no substantial question of law arises for determination in this second appeal.

4. Accordingly, the second appeal is dismissed with costs.

SAMUDRALA GOVINDARAJULU,J

Dt.31st January, 2013

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