A SMT. REBTI DEVI

v.

RAM DUTT AND ANR. ETC.

NOVEMBER 19, 1997

B [S.B. MAJMUDAR AND M. JAGANNADHA RAO, JJ.]

Benami Transactions (Prohibition) Act, 1988:

Sections 3 and 4—Benami transaction—Property purchased in the
C *name of wife—Held—Plea of benami is open even after coming into force of the Act—Burden of proof—Persons Pleading benami transaction have to discharge initial burden of proof.*

A Suit was filed by the appellant for possession of property from one
D **of her sons, 'R'. It was contended that the property was self acquired, bought from her own money. The defendants i.e the legal heirs of 'R', pleaded that the real owner of the property was the appellant's husband, who had purchased the property in his wife's name However, the plea of benami transaction raised by the defendants was rejected by the trial court. The appellate court reversed the finding of the trial court which was confirmed by the High**
E **Court. In the present appeal it was contended for "M", son and sole legal heir of the appellant, that persons pleading benami transaction have to discharge the initial burden of proof and the plea of benami would not be open to the respondents after the Act of 1988 and that in *Nand Kishore Mehra's* case the Principles decided in *Rajagopala Reddy's* case were doubted and therefore, the Act of 1988 is applicable to the facts of the case, even though**
F **the defence of benami had been raised before the Act came into force. On the other hand, the respondents contended that *Rajagopala Reddy's* case hold good and has not been doubted in *Nand Kishore's* case also, the finding of fact arrived at by the first appellate court has rightly not been interfered with by the High Court and does not call for any interference by this Court.**

G **Dismissing the Appeal, this Court**

HELD : 1. The Respondent-defendants who have raised a defence of benami in their written statement have to discharge the initial burden of proof and establish the plea of benami. When both sides had adduced evidence
H **the question of burden of proof pales into insignificance. The High Court was**

therefore right in not interfering with the finding of the lower appellate court that the defendants had discharged the said burden. The said finding of fact cannot be canvassed in this appeal. [241-B-C] A

2.1. The principles decided in the case of *Rajagopala Reddy's* case with regard to the Benami Transactions (Prohibition) Act. 1988 while overruling *Mithilesh Kumari* v. *Prem Behari Khare,* are as follows : B

(i) While section 4(1) prohibited a plea of benami to be raised in a suit, claim or action and again section 4(2) precluded a defence of benami in suits, claims or actions, these two provisions did not come in the way of a decision on such pleas in matters pending as on 19.5.88 if such pleas were already raised before 19.5.88 by one party or other. This was because such pleas which were already raised before 19.5.88 were not intended to be affected by the Act, if they were raised in suits claims or actions pending as on 19.5.88. The repeal provision in section 7 repealed Section 82 of the Trust Act only in that manner and to that extent. C

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(ii) On the express language of Section 4(1) any right inhering in the real owner in respect of any property held benami would be not enforceable once Section 4(1) operated, even if such transaction had been entered into prior to 19.5.88 and no suit could be filed on the basis of such a plea. after 19.5.88. The same prohibition applied in a case of Section 4(2) to defence taken after 19.5.88 pleading benami in respect of a transaction prior to 19.5.88 The Act could be said to be retrospective only to that extent. But from this it did not follow that where such a plea was already taken before 19.5.88 to the effect that the property was held benami, such a plea got shut out merely because the proceeding in which such a plea was raised before 19.5.88 was pending on 19.5.88. E

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(iii) Where a suit had been filed before 19.5.88 and in any written statement filed on or after 19.5.88 a plea of benami was raised, then such a plea of benami could not also be gone into. If however such a plea in defence had been raised before 19.5.88, the Act did not preclude that question to be decided in proceedings which were pending on 19.5.88 *Mithilesh Kumari's* case was wrong in holding that such a defence could not be decided after 19.5.88 even though the plea was raised before 19.5.88. G

(iv) If such an interpretation as stated in (i) to (iii) was given, it could not be validly contended that a question of invalid discrimination arose between cases where suits were filed on or before 19.5.88 and those filed on H

A **or before 19.5.88 and those filed after 19.5.88.**

(v) Even though the word 'suit' might include appeal or further appeals, Section 4(1) and 4(2) could not be made applicable to these subsequent stages.

B **(vi) Pleas by plaintiffs or applicants and defences after 19.5.88 of real owners against benamidars were barred under Section 4(1) and section 4(2), only to the extent indicated above. [241-D-H; 242-A-F]**

2.2. To the aforesaid six principles culled out from *R. Rajagopala Reddy's* case, the following further principles decided in *Nand Kishore* C ***Mehra's* case be added:**

(vii) If in a suit, claim or action a plea or defence based on benami is raised even after 19.5.88 and the purchase is in the named of a wife or unmarried daughter. Such a plea of benami is permissible and *Rajagopala Reddy's* case will not come in the way merely because the plea is raised after D **19.5.88. Such a plea if raised, will however have to be decided taking into account the statutory presumption laid down in Section 3(2). This is because the Act says that if the purchase is in the name of the wife or unmarried daughter, the prohibition in section (1) will not apply. Section (2) is enacted as an exception to the provisions in the Act and does not depend for its interpretation on the question as to what extent sections 4(1) and 4(2) are** E **retrospective.**

(viii) If the case falls within the exception in section 4(3)(a) i.e. where the person in whose name the property is held is a coparcener in Hindu Undivided Family and the property is held for the benefit of the coparceners in the family or where as stated in section 4(3) (b) the person in whose name F **the property is held is 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, then in both situations if such a plea or defence is raised in a suit filed after 19.5.88 the same can be decided by the Court notwithstanding sections 4(1) or 4(2) and** G **notwithstanding what is decided in *R. Rajagopala Reddy's* case.**

[243-G-H; 244-A-E]

***Nand Kishore Mehra v. Sushila Mehra,* [1995] 4 SCC 572 and *Rajagopala Reddy* v. *Padmini Chandrasekharan,* [1995] 2 SCC 630, explained and relied on.**

H ***Mithilesh Kumari* v. *Prem Behari Khare,* [1989] (2) SCC 95; Heirs of**

Vrajlal Ganatra **v.** *Heirs of Parshottam S. Shah,* **[1996] (4) SCC 490 and** *Sankara Hali and Sankara Institute* **v.** *Kishori Lal Goenka,* **[1996] 6 SCC 55, referred to.**

3. In view of the above, it cannot be said that *Nand Kishore's* **case doubted** *Rajagopla Reddy's* **case. The judgment in** *Rajaopala's* **case is not in any manner shaken by anything said in** *Nand Kishore's* **case. Infact, it proceeds to accept the judgment and then considers the case of exceptions provided in Section 3(2) of the Act. Both the cases deal with different aspects of the Act and each of the cases continues to govern different provisions of the Act. [244-E; 245-E]**

CIVIL APPELLATE JURISDICTION : Civil Appeal no. 6486 of 1983 Etc.

From the Judgment and Order dated 29.2.80 of the Allahabad High Court in S.A. No. 1001 of 1973.

Arvind Kumar and Mrs. Laxmi Arvind for the Appellant.

Mrs. S. Janani for the Respondents.

The Judgment of the Court was delivered by

M. JAGANNADHA RAO, J. Civil Appeal No. 6486 of 1983 is filed by Smt. Rebti Devi (since deceased) and is being continued by her son Sri Mahesh Dutt Gupta, claiming to be her sole legatee under a registered will dated 18.12.1972. This appeal is preferred against the judgment of the Allahabad High Court in Regular Second Appeal No. 1001/1973 dated 29.2.1980 arising our of Suit No. 1263 of 1968. In the Civil appeal the respondents are the legal heirs of the brother of Mahesh Dutt Gupta, i.e. late Ram Dutt Gupta.

Special Leave Petition No. 17883/1997 is filed by the legal representatives of Ram Dutt Gupta (brother of Mahesh Gupta) impleading Mahesh Gupta and other family members against the judgment of the Allahabad High Court in First Appeal No. 378 of 1996 dated 30.5.1997 allowing the appeal of Mahesh Dutt Gupta and granting probate in respect of the Will dated 18.12.1972 of Rebti Devi in his favour. Learned counsel for the petitioners in S.L.P has fairly stated that the S.L.P and IA1 of 1996 therein are not being pressed. Therefore, we are left only with civil Appeal No. 6486 of 1983 and in view of the dismissal of S.L.P Mahesh Dutt Gupta can continue the said Civil Appeal in the place of his deceased mother Rebti Devi. The result also is that Mahesh Dutt can

A also claim as heir to such interest which Rebti has even if her case of being real owner of the property is rejected once again in this Court.

The Suit No. 1263 of 1968 out of which the Civil Appeal arises was filed by Smt. Rebti Davi for possession of property from the occupation of one of her sons Ram Dutt Gupta. The plaintiff has impleaded Ram Dutt Gupta as 1st B defendant and his son Surendra Nath Gupta as 2nd defendant. She claimed that she purchased the suit property on 1.6.1955 under a registered sale deed for Rs. 5000. Out of the money acquired by sale of her jewellery and ornaments and money given to her by her relatives and also out of the income derived by her by lending her money regularly. She also pleaded that her husband C Ujagar Lal had no movable or immoveable property. Apart from Ram Dutt, she has other children Brahm Dutt, Ramesh Dutt, Mahesh Dutt and daughters prem Devi, Chandrakanta. She claims that the sons separated and that in 1960 she *permitted* Ram Dutt to occupy the ground floor of the suit property for his business and as Ram Dutt did not vacate. She was suing for possession. The defence of Ram Dutt and his son was that the property was purchased D by his father Ujagar Lal in the name of Ram Dutt's mother Rebti Devi benami on 1.6.1955 and that the entire consideration was paid by this father, that his father was the real owner and that after his death, the property has devolved on his wife (plaintiff) and other children in accordance with law.

Both sides led evidence. The trial Court accepted the plaintiff's case in E its judgment dated 18.11.1971 and held that the plaintiff was not a benamidar and her husband was not the real owner. But on appeal, the appellate Court, in a well considered judgment reversed the judgment and decree and dismissed the suit on 9.3.1973. That judgment was affirmed by the High Court in Second Appeal on 29.2.1980 plaintiff preferred this Civil Appeal in this Court.

F Learned counsel for the plaintiff-appellant (legal representative of Rebti Devi) submitted that the property was standing in the name of Rebti Devi and that the defendants who had come up with a plea of benami had not discharged the onus that was on them. It was also contended, referring to Benami Transactions (Prohibition) Act. 1988 that the plea of benami raised in defence G was not open to the defendants and that in *Nand Kishore Mehra* v. *Sushila Mehra,* [1995] 4 SCC 572 (which is a three Judge judgment), the principles decided in *R. Sajagopala Reddy* v. *Padmini Chandrasekharan,* [1995] 2 SCC 630 (which is also decision of three learned Judges) have been doubted and hence the said Act is applicable to the facts of the case even though the defence of benami was raised long before 19.5.1988 when the Act came into H force. Learned counsel for the respondent contended that the finding of fact

arrived at by the first appellate Court was not rightly interfered with by the High Court, and that it did not call for any interference under Article 136 of the Constitution of India. It was also submitted that *R. Rajagopala Reddy's* case holds good and has not been doubted in *Nand Kishore Mehra's* case.

So for as the first submission of the appellant's counsel is concerned, we are of the view that it is true that the respondents defendants who have raised a defence of benami in their written statement have to discharge the initial burden of proof and establish the plea of benami. Parties adduced oral and documentary evidence. The lower appellate Court had considered the evidence adduced by both sides and arrived at a conclusion that defendants had discharged the said burden. When both sides had adduced evidence, the question of burden of proof pales into insignificance. The High Court was therefore right in not interfering with the said finding. The said finding of fact cannot be convassed in this Civil Appeal by the plaintiff or her legal representative.

In order to appreciate the second submission, we have to start here with *Rajagopala Reddy's* case [1995] 2 SCC 630 and find out what it actually decided in regard to the Benami Transactions (Prohibition) Act, 1988 (hereinafter called the Act). Sections 3, 5 and 8 of the Act came into force at once i.e. w.e.f. 5.9.1988 while the remaining provisions were deemed to have come into force from 19.5.1988. The principles decided in that case, while overruling *Mithilesh Kumari* v. *Prem Behari Khare,* [1989] 2 SCC 95, can be summarised as follows :

(1) "*Firstly,* while section 4 (1) prohibited a plea of benami to be raiser in a suit, claim or action and again section 4(2) Precluded a defence of benami in suits claims or actions,- these two provisions did not come in the way of a decision on such pleas in matters pending as on 19.5.1988 if such pleas were already raised before 19.5.1988 by one party or other. This was because such pleas which were already raised before 19.5.1988 were not intended to be affected by the Act, if they were raised in suits, claims or actions pending as on 19.5.1988. The repeal provision in Section 7 repealed Section 82 of the Trust Act only in that manner and to that extent.

(2) *Secondly,* on the express language of Section 4(1), any right inhering in the real owner in respect of any property held benami would be not enforceable once Section 4(1) operated, even if such transaction had been entered into prior to 19.5.1988 and no suit could

A be filed on the basis of such a plea after 19.05.1988. The same prohibition applied in case of section 4(2) to a defence taken after 19.5.1988 pleading benami in respect of a transaction prior to 19.5.88. The Act could be said to be retrospective only to that extent. But from this it did not follow that where such a plea was already taken before 19.5.1988 to the effect that the property was held benami, such a plea got shut out merely because the proceedings in which such the plea was raised before 19.5.1988 was pending on 19.5.1988.

(3) *Thirdly,* where a suit had been filed before 19.5.1988, and in any written statement filed on or after 19.5.1988, a plea of benami was raised, then such a plea of benami could not also be gone into. If however such a plea in defence had been raised before 19.5.1988, the Act did not preclude that question to be decided in proceedings which were pending on 19.5.1988 *Mithmilesh Kumari's* case was wrong in holding that such a defence could not be decided after 19.5.1988 even though the plea was raised before 19.5.1988.

(4) *Fourthly,* if such an interpretation as stated in (1) to (3) was given it could *not* be validly contended that question of invalid discrimination arose between cases where suits were filed on or before 19.5.1988 and those filed after 19.5.1988.

(5) *Fifthly,* even though the word suit might include appeal or further appeals, Section 4(1) and 4(2) could not be made applicable to these subsequent stages.

(6) *Sixthly,* pleas by plaintiffs or applicants and defences after 19.5.1988 of real owners against benamidars were barred under Section 4(1) and section 4(2), only to the extent indicated above.

This in substance is what was decided in *R. Rajagopala Reddy's* case.

We shall now take up *Nand Kishore Mehra's* case [1995] 4 SCC 572. As we shall presently show, that case was concerned with a different factual situation and different legal principles. We have sent for the record in that case and find that there the suit was filed on 24.1.1992 (i.e. after 19.5.1988) by the appellant pleading that he purchased the property on 24.4.1964 in trust for himself but in the name of his wife (the defendant). The wife relied on the Act and filed an I.A. for rejection of the paint under Order 7 Rule 11 C.P.C. The Delhi High Court (on Original Side) in its order dated 18.11.1993 dismissed the application under Order 7 Rule 11 filed by the wife for rejection of the

plaint. On appeal by the defendant - wife, a Division Bench of the High Court by judgment dated 21.4.1994 allowed the (wife's) appeal and directed rejection of the claint as the division Bench felt that Section 3(1) of the Act applied. On further appeal by the plaintiff husband, this Court allowed the appeal and the application under Order 7 Rule 11 filed by the defendant wife was dismissed and the suit was directed to be disposed of on merits, taking into account the statutory presumption under Section 3(2) and holding that Section 3(1) did not apply because the case fell under the exception contained in Section 3(2).

This Court referred to *R. Rajagopala Reddy's* case [1995] 2 SCC 630. The plaint being subsequent to 17.5.1988, the principle that the Act was not retrospective as stated in *R. Rajagopala Reddy's* case was no doubt initially not attracted to that case. That would mean that Section 4(1) applied unless of course the case fell within the exceptions stated either in Section 3(2) or in section 4(3) of the Act. In that case, this Court permitted the plea of benami in a post 19.5.1988 suit because the Court was concerned with the exception in Section 3(2). The Court also incidentally referred to the other exceptions falling under Section 4(3). This Court in that case noticed that the purchase was on 24.4.1964 and was in the name of the wife. That was why this Court proceeded to refer to the exception in Section 3(2) which concerns benami purchases in the name of a wife or unmarried daughters. This Court also referred to the presumption contained under the same exception in section 3(2) to the effect that unless the contrary was proved, in the cases of purchases in the name of wife or unmarried daughters, it *shall* be presumed that the property had been purchased for the benefit of the wife or the unmarried daughters. In view of the exception in Section 3(2), the prohibition under Section 3(1) was held not to apply. It was held that-even though the plaint was filed after 19.5.1988 such a plea of benami was not shut out. This Court directed that the suit to be disposed of of course by applying the statutory presumption contained in Section 3(2) which is to be mandatorily drawn but which is rebuttable. The plaintiff in a suit filed after 19.5.1988 could still prove that the property had not been purchased by him for the benefit of his wife and he could rebut the presumption and claim that he was the real owner.

Therefore, to the six principles hereinbefore culled out from *R. Rajagopala Reddy's* case, the following further principles decided in *Nand Kishore Mehra's* case can be added :

"(7) *Seventhly,* if in a suit, claim or action a plea or defence based on

A benami is raised even after 19.5.1988 and the purchase is in the name of a wife or unmarried daughter, such a plea of benami is permissible and *R. Rajagopal Reddy's* case will not come in the way merely because the plea is raised after 19.5.1988. Such a plea if raised, will however have to be decided taking into account the statutory presumption laid down in section 3(2),. This is because the Act says B that if the purchase is in the name of the wife or unmarried daughter, the prohibition in section 3(1) will not apply. Section 3(2) is enacted as an exception to the provisions in the Act and does not depend for its interpretation on the question as to what extent sections 4(1) and 4(2) are retrospective.

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(8) *Eighthly,* if the case falls within the exception in section 4(3) (a) i.e., where the person in whose name the property is held is a coparcener in a Hindu Undivided Family and the property is held for the benefit of the coparceners in family or where as stated in section 4(3) (b) the person in whose name the property is held is a trustee or D 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 then in both situations if such a plea or defence is raised in a suit filed after 19.5.1988 the same can be decided by the Court notwithstanding sections 4(1) or 4(2) and notwithstanding what is decided in *R. Rajagopal Reddy's* case."

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For the above reasons, we are unable to find how *Nand Kishore Mehra's* case can be said to have doubted *R. Rajagopal Reddy's* case. In fact far from doubting it. It proceeds of accept the said judgment and then considers the case of exceptions provided in Section 3(2). It holds incidentally F that there is another exception contained in Section 4(3) of the Act. These exceptions apply even to suits filed after 19.5.1988 and are not affected by what is decided in *R. Rajagopala Reddy's* case.

In order to complete discussion, we shall also refer to two subsequent cases. The case in *Heirs of Vrajlal Ganatra* v. *Heirs of Parshottam S. Shah,* G [1996] 4 SCC 490 was one where the suit was filed in 1981 claiming that the defendant in whose name the deed dated 16.12.1963 stood was benami. The plaintiff's heirs filed appeal in Gujarat High Court in 1990 against the judgment of the trial Court. No. contention based on the Act of 1988 was raised in the High Court. For the first time it was argued in this Court that the plea was prohibited by the Act. This Court followed *R. Rajagopala Reddy's* case and H held that the plea was raised in a suit filed before 19.5.1988 and it was not

barred under the Act. This Court then proceeded to decide the case on merits, dismissing the plaintiff's appeal. A

Sankara Hali & Sankara Institute v. *Kishori Lal Goenka,* [1996] 7 SCC 55 decided on 6.12.1994 is by a three Judge Bench. It was decided before *R. Rajagopala Reddy's* case but is reported later. In a way it took the same view as in *R. Rajagopala Reddy's* case. It noticed that Section 3, 5 and 8 of the B Act came into force at once i.e. 5.9.1988 and the remaining provisions came into force from 19.5.1988. It was held that the plea of benami was raised before 19.5.1988 and that the objection that the deed of release dated 24.2.1964 by the benamidar in favour of the firm was invalid because of the Act, could not be permitted to be raised after 19.5.1988. In that case, the rent control C proceedings started around 1970 and the plea of benami was raised and was also proved by the firm, the real owner by relying on the release deed dated 24.12.64 executed by the benamidar in favour of the firm. The objection that the deed was invalid because of the provisions of the Act. was raised after 19.5.1988 relying upon *Mithilesh Kumari's* case, [1989] 2 SCC 95 which held that Act was retrospective. That judgment has since been reversed in *R.* D *Rajagopala Reddy's* case. It is clear that the conclusion arrived at in *Sankara Halis* case can now be easily justified by *R. Rajagopala Reddy's* case overruling *Mithilesh Kumari's* case and on the basis of the principles laid down in the said case.

For the aforesaid reasons we hold that the decision in *R. Rajagopala* E *Reddy's* case is not in any manner shaken by anything said in *Nand Kishore Mehra's* case and that both cases deal with different aspects of the Act as stated above and each of the cases continues to govern different provisions of the Act.

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Civil Appeal and Special Leave petition are dismissed.

S.K. Appeal and Petition dismissed.