

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL**

**ON THE 27<sup>th</sup> OF SEPTEMBER, 2024**

**CIVIL REVISION No. 558/2017**

***SHEIKH SIDDIQUI QURESHI***

***Versus***

***OMKAR SINGH AND OTHERS***

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**Appearance:**

*Shri Arpan Shrivastava, Advocate for petitioner.*

*None for the respondents 1-2.*

*Shri Ramji Pandey, Govt. Advocate for respondent-State.*

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**ORDER**

This civil revision has been preferred by the petitioner/defendant 2 challenging the order dtd.13.07.2017 passed by 3<sup>rd</sup> Civil Judge Class-II, District Seoni in RCSA No.1600204/2016 whereby trial Court has dismissed petitioner/defendant 2's application under Order VII Rule 11 CPC.

2. In short the facts are that the plaintiff-Omkar Singh has instituted a suit for declaration of title and permanent injunction and for declaring the sale deed dtd. 24/25.05.2016 to be null and void and ineffective as against the plaintiff executed in respect of agricultural land Khasra No. 567 area 4.01 hectare, situated in Village Gangerua, Tahsil and District Seoni with the contentions that the plaintiff is bhumiswami and in possession of the

land, which he purchased in the name of his minor son Harsh Kumar-defendant 1 on 22.06.1984 for consideration of Rs.6,000/-. It is alleged in the plaint that the defendant 1 being involved in bad habits of consuming liquor etc., the defendant 2 firstly got executed an agreement dtd.07.07.2014 in his favour from defendant 1 in respect of the disputed land @ Rs.1,60,000/- per acre, on the basis of which a civil suit No.4-A/2015 was filed by him and during pendency of such suit the defendant 2 abducted the defendant 1, which was also complained by the plaintiff to the police and during this period, without making any payment of sale consideration, got executed sale deed on 24/25.05.2016 in his favour and after one month of execution of sale deed, judgment and decree was passed on 18.06.2016 in the suit for specific performance, which in the light of already executed sale deed, is of no use and is null and void. It is also contended that the plaintiff is in possession of the land since execution of sale deed dtd.22.06.1984. During pendency of suit an application for amendment was also filed seeking amendment in the plaint to the effect that the suit land is undivided property of the joint Hindu family, which was purchased for the benefit of members of joint Hindu family and similarly, relief clause was also amended in that regard.

**3.** Upon service of summons of the suit, the defendant 2 appeared and instead of filing written statement, filed an application under Order VII

Rule 11 CPC raising objection of maintainability of the suit as well as objection in respect of territorial jurisdiction of the Court and payment of Court fee. It is contended in the application, that the suit as filed, is barred by provisions contained in Section 3, 4 and 45 of the Benami Transactions (Prohibition) Act, 1988 (in short “the Act”) and the Civil Court has no jurisdiction. It is also contended that the sale deed is of value of Rs.7,97,000/- and the Court is having pecuniary jurisdiction only to the extent of Rs.5,00,000/-, on which the plaintiff is required to pay ad-valorem Court fee. With these objections, the suit was prayed to be dismissed.

4. By filing reply to the application, the plaintiff prayed for rejection of the application with the contentions that the suit as has been filed, is maintainable before the Civil Court and even in presence of said provisions of the Act, the suit is maintainable before the Civil Court. On inter alia contentions, application was prayed to be dismissed.

5. After hearing the parties, Trial Court vide impugned order dtd.13.07.2017, dismissed the application, holding thereby that the plea taken in the plaint requires evidence and does not appear to be barred by provisions of the Act and that the plaintiff is not required to value the suit on basis of sale deed dtd.24/25.05.2016 and to pay court fee.

6. Learned counsel submits that the suit in question was filed on 22.09.2016 whereas amendment in the Act was notified on 10.08.2016. He submits that in the light of amended provisions of the Act, even the application for amendment in the plaint could not have been allowed because the plea of benami is not available to the plaintiff. In support of his submissions, he relied upon the judgment of Hon'ble Supreme Court in the case of Om Prakash and another v. Jai Prakash **AIR 1992 SC 885**; R. Rajagopal Reddy and others (Deceased By Legal Representatives) v. Padmini Chandrasekharan (Deceased By Legal Representatives) **(1995) 2 SCC 630**; Om Prakash Gupta v. Ranbir B. Goyal **(2002) 2 SCC 256**; as well as of coordinate Benches of this Court in the case of Mohd. Shakeel v. Husna Bano and others **2017(2) MPLJ 167**; Anand Kumar v. Vijay Kumar and ors. **ILR (2012) MP 2554** and an unreported decision dtd.11.08.2023 in the case of Smt. Reena Jain vs. Ashok Kumar Jain in **CR No. 193 of 2019 (Gwalior Bench)**.

7. Heard learned counsel for the parties and perused the record.

8. Previous position of Sections 3 and 4 of the Benami Transactions (Prohibition) Act, 1988 was as under:

**"3. Prohibition of benami transactions-**

- (1) No person shall enter into any benami transaction.
- (2) Nothing in sub-section (1) shall apply to –
  - a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter;
  - b) the securities held by a –
    - i) depository as registered owner under sub-section(1) of section 10 of the

Depositories Act, 1996 (22 of 1996);

ii) participant as an agent of a depository.

*Explanation* – The expressions “depository” and “participants” shall have the meanings respectively assigned to them in clauses (e) and (g) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996).

(3) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this section shall be non-cognizable and bailable.

#### **4. Prohibition of the right to recover property held benami-**

(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this section shall apply,-

(a) 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 the family; or

(b) where the person in whose name 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.”

9. After amendment in the Act w.e.f. 10.08.2016 (came in effect on

01.11.2016), the position of Sections 3 and 4 is as under :

#### **“3. Prohibition of benami transactions.**

(1) No person shall enter into any benami transaction.

(2) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(3) Whoever enters into any benami transaction on and after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016, shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in Chapter VII.

(4)\*\*\*\*\*.

#### **4. Prohibition of the right to recover property held benami.**

(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action or by or on behalf of a person claiming to be the real owner of such property.

(3) \*\*\*\*”

**10.** Taking into consideration the scope of unamended Section 4(3)(a) of the Act, Hon'ble Supreme Court has, in the case of Pushpalata vs. Vijay Kumar (Dead) through LRs. and others, **AIR 2022 SC 4118**, held as under :

“**29.** In the opinion of this court, the High Court fell into error, in ignoring that the circumstances of this case, where the first plaintiff had proved that the properties had been purchased, with his funds, and the sons were minors, with no source of income. The second defendant's position- throughout all the proceedings, was that the properties were that of the first plaintiff; in other words, he admitted to the suit averments. The plaintiff also proved that he had possession of the property, by adducing positive evidence of tenants, who paid rent to him. **In these circumstances, the elements necessary to establish benami ownership within the meaning of Section 4 (3) (a) of the Act, in terms of the judgments in Binapani Paul and Valliammal (supra) have been satisfied by the first plaintiff.**”

**11.** Similarly, taking into consideration the scope of unamended Section 4(3)(b) of the Act, Hon'ble Supreme Court has, in the case of Sri Marcel Martins vs. M. Printer and ors., **(2012) 5 SCC 342**, held as under :

“**44.** The cumulative effect of the above circumstances when seen in the light of the substantial amount paid by late Shri C.F. Martins, the father of the parties, thus puts the appellant in a fiduciary capacity vis-à-vis the said four persons. **Such being the case the transaction is completely saved from the mischief of Section 4 of the Act by reason of the same falling under Sub-section 3(b) of Section 4. The suit filed by the respondents was not, therefore, barred by the Act as contended by the learned counsel for the appellant.** The view taken by the High Court to that effect is affirmed though for slightly different reasons.”

**12.** While considering the legality of Amendment Act of 2016, Hon'ble Supreme Court has, in the case of Union of India & Anr. Vs. M/s. Ganpati Dealcom Pvt. Ltd., **(2023) 3 SCC 315**, held as under :

“18.1 In view of the above discussion, we hold as under:

a) Section 3(2) of the unamended 1988 Act is declared as unconstitutional for being manifestly arbitrary. Accordingly, Section 3(2) of the 2016 Act is also unconstitutional as it is violative of Article 20(1) of the Constitution.

b) In rem forfeiture provision under Section 5 of the unamended Act of 1988, prior to the 2016 Amendment Act, was unconstitutional for being manifestly arbitrary.

c) The 2016 Amendment Act was not merely procedural, rather, prescribed substantive provisions.

d) In rem forfeiture provision under Section 5 of the 2016 Act, being punitive in nature, **can only be applied prospectively and not retroactively**.

e) Concerned authorities cannot initiate or continue criminal prosecution or confiscation proceedings for transactions entered into prior to the coming into force of the 2016 Act, viz., 25.10.2016. As a consequence of the above declaration, all such prosecutions or confiscation proceedings shall stand quashed.

f) As this Court is not concerned with the constitutionality of such independent forfeiture proceedings contemplated under the 2016 Amendment Act on the other grounds, the aforesaid questions are left open to be adjudicated in appropriate proceedings.”

**13.** In view of the decision in the case of Union of India & Anr. Vs. M/s. Ganpati Dealcom Pvt. Ltd. (**supra**), it is clear that Amendment Act of 2016 is also prospective in nature. As is also clear from Section 3(3) of the amended Act of 1988, which came in force w.e.f. 01.11.2016, it is not applicable to transactions effected prior to 01.11.2016. In the instant case transaction in question is of the date 22.06.1984, therefore, the Amendment Act of 2016 is not applicable to the instant case.

**14.** Admittedly, in the instant case, plea of benami has been taken by father with respect to the transaction which took place in the name of his minor son, which was permissible in the light of provisions contained in Section 4(3)(a) & (b) of the unamended Act of 1988.

**15.** Although originally in the plaint, plea contained in Section 4(3)(a) or (b) of the unamended Act of 1988 was not taken specifically, but by way of amendment allowed by trial Court on 07.04.2017, plea covered by

section 4(3)(a) of the unamended Act of 1988 was incorporated in the plaint. Due to no challenge to the order dtd. 07.04.2017, the same has attained finality.

**16.** It is well settled that the amendment made in pleadings generally relates back to the date of suit, unless it is barred by time. If the amended pleadings were/are barred by time or not, is in question, then amendment made in pleadings, cannot relate back to date of suit but to the date of filing of amendment application. Apparently, the suit in question was filed on 20.09.2016 challenging the sale deed dtd.24/25.05.2016 as well as decree of specific performance dtd.18.06.2016. Although the plea taken by way of amendment, prima facie does not appear to be barred by limitation, but no plea of limitation has been taken in the application under Order VII Rule 11 CPC, which is otherwise a mixed question of law and fact.

**17.** While considering the applicability of amended pleadings, from date of filing of suit or from date of application, Hon'ble Supreme Court has, in the case of South Konkan Distilleries & Anr. Vs. Prabhakar Gajanan Naik & Ors., **AIR 2009 SC 1177**, held as under :

“15. In Ragu Thilak D.John vs. S. Rayappan & Ors. [2001 (2) SCC 472], this Court also observed that where the amendment was barred by time or not, was a disputed question of fact and, therefore, that prayer for amendment could not be rejected and in that circumstances the issue of limitation can be made an issue in the suit itself. In a decision in Vishwambhar & Ors. vs. Laxminarayan (Dead) through Lrs. & Anr. [(2001) 6 SCC 163], this Court held that the amendment though properly made cannot relate back to the date of filing of the suit, but to the date of filing of the application. Again in Vineet Kumar vs. Mangal Sain Wadhera [AIR 1985 SC 817]



this Court held that if a prayer for amendment merely adds to facts already on record, the amendment would be allowed even after statutory period of limitation.”

**18.** As of now, only in a single judgment, Hon’ble Supreme Court has, in the case of Pawan Kumar vs. Babulal Since Deceased Thr. LRs. And Ors. (2019) 4 SCC 367, while considering the plea available under Section 4(3) of the Act that too in the light of provisions of Order VII Rule 11 CPC, held as under :

“**12.** It was, thus, concluded that the transaction was completely saved from the mischief of Section 4 of the Act by reason of the same falling under Sub-Section (3)(b) and that the Suit was not barred under the Act. This judgment was rightly relied upon by Mr. Abhishek Gupta, learned Advocate. On the other hand, the reliance placed by Mr. R.K. Singh on the decision in Om Prakash, in our view, is completely misplaced. The issue there was whether prohibition under Section 4 would apply in relation to actions initiated before the coming into force of the Ordinance or not? In any event of the matter, the issue whether the provisions of the Act are retrospective has already been settled [*R. Rajgopal Reddy through LRs. v. Padmini Chandrasekharaiah through LRs. (1995) 2 SCC 630*].

**13.** In the present case, the controversy has arisen in an application under Order VII, Rule 11 CPC. Whether the matter comes within the purview of Section 4(3) of the Act is an aspect which must be gone into on the strength of the evidence on record. Going by the averments in the Complaint, the question whether the plea raised by the appellant is barred under Section 4 of the Act or not could not have been the subject matter of assessment at the stage when application under Order VII, Rule 11 CPC was taken up for consideration. The matter required fuller and final consideration after the evidence was led by the parties. It cannot be said that the plea of the appellant as raised on the face of it, was barred under the Act. The approach must be to proceed on a demurrer and see whether accepting the averments in the complaint the suit is barred by any law or not. We may quote the following observations of this Court in *Popat and Kotecha Property v. State Bank of India Staff Association*, (2005) 7 SCC 510:

"10. Clause (d) of Order 7, Rule 7 speaks of suit, as appears from the statement in the complaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7, Rule 11 CPC. Clause (d) of Rule 11 Order 7 applies in those cases only where the statement made by the plaintiff in the complaint, without any doubt or dispute shows that the suit is barred by any law in force."

**19.** Now the question of applicability of decisions cited by learned counsel for the petitioner, is being considered:

i) In the case of *Om Prakash and another vs. Jai Prakash (supra)*, firstly the question of rejection of complaint under Order VII Rule 11 CPC

was not involved, secondly, for the purpose of plea available under Section 4(3) of the unamended Act, this judgment has been held to be inapplicable by Hon'ble Supreme Court in the case of Pawan Kumar (**supra**).

ii) In R. Rajagopal Reddy and others (**supra**), Hon'ble Supreme Court has taken different view from Mithilesh Kumar and another, **1989(2) SCC 95** and declared the Act of 1988 to be prospective. However, it has neither considered Section 4(3) of the Act nor its effect in the light of provision contained in Order VII Rule 11 CPC. This judgment has also been taken into consideration by Hon'ble Supreme Court in the case of Pawan Kumar (**supra**).

iii) In Mohd. Shakeel (**supra**); Anand Kumar (**supra**); and Smt. Reena Jain (**supra**), three coordinate Benches of this Court have dismissed the suits under Order VII Rule 11 CPC holding them to be barred by law in view of Section 4(1) of the Act, however the provisions of Section 4(3)(a) and (b) of the unamended Act of 1988 have not been taken into consideration,

iv) In the case of Om Prakash Gupta vs. Ranbir B. Goyal (**supra**), Hon'ble Supreme Court has held that the rights of the parties stand crystallised on the date of institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. This decision has no relevance in the factual scenario of the case in hand.

As such, all the aforesaid judgments cited by learned counsel for the petitioner, do not help to the case of petitioner.

**20.** Having considered the aforesaid legal position, especially the ratio decidendi in the case of Pushpalata (**supra**) and Sri Marcel Martins

**(supra)**, I am of the considered opinion that when the transaction is saved by reason of the same falling under Sub-section 3(a) or (b) of Section 4 of the unamended Act of 1988, the suit filed, cannot be dismissed under Order VII Rule 11 of CPC holding it to be barred by the Act of 1988 or by the Amendment Act of 2016, as has been held by Hon'ble Supreme Court in the case of Pawan Kumar **(supra)**.

**21.** In the present case, the plaintiff is not party to the sale deed dtd.24/25.05.2016, therefore, there is no question of valuation of suit or payment of court fee, as per consideration mentioned in the sale deed.

**22.** Resultantly, declining interference in the impugned order, the Civil Revision fails and is hereby dismissed.

**23.** Misc. application(s), pending if any, shall stand **closed**.

**(DWARKA DHISH BANSAL)**  
**JUDGE**

KPS