

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.31858 OF 2014

Shri. Subhash Vitthal Jagdale

.. Petitioner

Versus

Anil Pandurang Bhosale and others

.. Respondents

Shri. Drupad S. Patil, for the Petitioner.

Shri. P. D. Dalvi, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 12th MARCH, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 17.10.2014 passed by the Learned Civil Judge, Junior Division, Panhala, by which order the application Exh.274 for framing of two issues sought by the Defendant came to be rejected. The issues framing of which was sought were the following :-

“1. Whether plaintiffs claim regarding title of the suit property, raised in plaint para No.2, is hit by the provisions of Benami Transactions (Prohibition) Act, 1988 ?

2. Whether the suit as framed is maintainable ?”

The framing of the said issues is sought on the basis of the amendment to the written statement which was carried out in the year 2013 by inclusion of paragraphs 20 and 21 in the written statement filed by the Plaintiff. In paragraph 20 a reference is made to the provisions of Benami Transactions

(Prohibition) Act, 1988 and it is averred in the said paragraph that the suit as filed by the Plaintiff is not maintainable. The suit in question being Regular Civil Suit No.91 of 2006 has been filed by the Plaintiff for seeking an injunction restraining the Defendant from interfering with the Plaintiff's possession. In paragraph 2 of the plaint, the averment is to the effect that Pandurang through whom the Plaintiffs claim and who is their father purchased the property in the name of Sakhubai who was the mother of Pandurang as Pandurang was in government service at the relevant time. It is further averred that since the date of purchase till the expiry of the said Pandurang on 27.12.1976 the said Pandurang was having the possession of the suit property and that the Plaintiff Nos.1, 2, 5, 6 and 7 are the heirs of the said Pandurang. The Defendant appears to be the son of the daughter of the said Sakhubai. As mentioned above the Defendant has amended his written statement on 12.03.2013 and thereby incorporated paragraphs 20 and 21 to the written statement. As indicated herein above, the Defendant has averred in the said paragraph 20 that the suit is not maintainable in view of the provisions of Benami Transactions (Prohibition) Act, 1988. It is on the said basis framing of the said two issues were sought.

2. The Trial Court has rejected the said application by the impugned order dated 17.10.2014. The Trial Court has observed that the

said transaction has taken place prior to the year 1988 Act coming into force and since the reading of the said Act indicates its operation is prospective the Sale Deed cannot be questioned on the said basis. The Trial Court has also observed that the Defendant has very vaguely raised the issue about the maintainability of the suit and therefore, deemed it appropriate to reject the application for framing of the said two additional issues.

3. A reading of Section 4 of the said Benami Transaction (Prohibition) Act, 1988, indicates the nature of the proceedings that are barred. The proceedings that are barred are proceedings filed by the person claiming to be the true owner of the property against the person who holds the property or against any person. Hence, a reading of the said provision leads to a conclusion that no proceeding would lie against a person who is holding a property filed by a person who claims to be its true owner. Hence, even applying the provisions of Section 4(1) of the said Benami Transactions Act, the impugned order can be sustained and therefore there was no warrant to frame the additional issues, framing of which was sought by the Defendant. Hence, on both the counts the impugned order does not merit any interference at the hands of this Court in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]