

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4153 of 2016

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Sri Sudhanshu Kumar

.... Petitioner/s

Versus

Smt. Sulochana Devi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 08-03-2016

Heard the learned senior counsel, Mr. S.S.Dvivedi for the petitioner.

By the impugned order dated 09.10.2015, the learned Sub Judge I, Khagaria rejected the application filed by the petitioner under Section 10 of the Code of Civil Procedure for stay of the Eviction Suit No.3 of 2012 till the pendency of Title Partition Suit No.129 of 2012, on the ground that the issue involved in the eviction suit is not directly or substantially issue in the partition suit.

The learned senior counsel for the petitioner submitted that in the partition suit, the plaintiff has prayed for declaration that the property standing in the name of the plaintiff No.6 and the defendant No.7 is the property of joint family and the plaintiff No.1 and defendant No.1 as they were purchased from the nucleus of the joint family by late Ramudit Sah, the father of the plaintiff

No.1 and defendant No.1 and, therefore, if it is so declared in the said suit for partition, the eviction suit will automatically fail but the learned Court below without considering this aspect of the matter, has rejected the application under Section 10 of the Code of Civil Procedure.

The plaint of Title Partition Suit No.129 of 2012 has been annexed as Annexure 2 to this writ application. From perusal of the plaint, it appears that the plaintiff's case is that Ramudit Sah used to purchase the property in the name of himself, his wife Sumitra Devi, his sons Arvind Kumar and Sudhanshu Kumar and his daughter-in-law, Sulochana Devi and Manju Devi. Admittedly, the eviction suit was filed by Sulochana Devi who is daughter-in-law of Ramudit Sah.

Section 3 of the Benami Transactions (Prohibition) Act, 1988 provides that no person shall enter into any benami transaction. This prohibition shall not apply to the purchase of property by any person in the name of his wife or unmarried daughter and 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. Admittedly, the plaintiff on eviction suit is neither wife of Ramudit Sah nor unmarried daughter of Ramudit Sah.



Section 4 of the Benami Transaction Act provides that 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. Here, admittedly the plaintiff is not claiming to be the real owner of the property. His case is that the property is purchased by the karta in the name of the plaintiff of eviction suit who is daughter-in-law.

Section 4(3)(b) provides that 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. This provision as contained in Section 4 will not apply. In the present case, it is not the case of the plaintiff in the plaint that plaintiff of eviction suit was standing in a fiduciary capacity and, therefore, the property was purchased by the joint family in the name of the plaintiff.

Sub-section (3)(a) of Section 4 provides that 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. Then this provision as contained in

Section 4 is not applicable.

Now, therefore, from perusal of the plaint of the title suit itself, it is clear that claim has been made that the plaintiff of eviction suit is benamidar of the coparceners. Admittedly, that plaintiff of eviction suit is not a coparcener. However, this is a matter that can be decided finally at the time of hearing of the suit. But on that issue which is not involved in the present suit for eviction, the eviction suit cannot be stayed because in the eviction suit, the only issue to be decided is whether there is relationship of landlord and tenant between the parties and whether the plaintiff has been able to prove any of the ground mentioned in Section 11 of the B.B.C. Act. No doubt, in the present case, the petitioner has raised the question that the property is joint family property and suit has been filed for partition and, therefore, there is no relationship of landlord and tenant between the parties but that is an issue in the eviction suit which will be decided on the basis of evidence. If it will be found by the Court below that there is no relationship then in such circumstances, the eviction suit will be dismissed but in my opinion, on the ground that partition suit is pending, the eviction suit cannot be stayed under Section 10 of the Code of Civil Procedure.

The Hon'ble Supreme Court in the case of **Nand**

Kishore Mehra v. Sushila Mehra AIR 1995 Supreme Court

2145 has held that the prohibition to plea of benami is not applicable to purchase of property by person in the name of his wife or unmarried daughter but he has to prove that said property had not been purchased for their benefit in order to succeed. It appears that in that case, the husband has filed the suit that he has purchased the property in the name of his wife. The Hon'ble Supreme Court has dismissed on the ground that the plaintiff will not succeed unless he proves that it was purchased not for the benefit of the wife. In the present case, no such statement has been made in the plaint.

In view of my above discussion, I find no reason to interfere with the impugned order. Thus, this writ application is dismissed. However, any observation made by this Court or the Court below in the impugned order shall not prejudice any party in future in deciding the issue in respective cases before the Court below.

(Mungeshwar Sahoo, J)

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