

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12263 of 2014

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Renu Kumari, W/o Sanjay Kumar, D/o Shiv Narayan Prasad Sinha, presently residing at Mohalla-A-135, People Co-operative Colony, P.S. - Kankarbagh, District Patna

.... Petitioner

Versus

Deo Vihar Sahkari Grih Nirman Samiti through its Secretary Sri Shiva Narayan Prasad Sinha, S/o Late Deochandra Prasad Sinha, Resident of Mohalla - Rajendra Nagar, Road No. 3, P.S. Kadam Kuan, District Patna

.... Respondent

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Appearance :

For the Petitioner : Mr. Vipin Kumar, Advocate

For the Respondent : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 23-08-2016

Heard learned counsel for the petitioner.

Questioning the legal sustainability of the impugned order, by which the learned court below has deferred the determination of the prayer under Order 7, Rule 11 of the Code of Civil Procedure by the defendant-petitioner in the suit, for rejection of the plaint, the present application has been filed under Article 227 of the Constitution of India.

The suit has been filed, primarily, for setting aside the sale deed standing in the name of the defendant. The plaintiff is the co-operative society and has claimed that the sale deed in favour of the defendant is vitiated and not a legally valid document. The materials on record disclose that the sale deed has been executed by the mother of the defendant in her favour and the plaintiff-



society is represented by the Secretary who is nonelse than the father of the defendant. The petition under Order 7, Rule 11 of the C.P.C. has been filed by the defendant praying for rejection of the plaint on various grounds stated therein. By the impugned order, the learned court below has come to the finding that the objections raised by the defendant involved mixed question of law and fact and, therefore, has directed for determination of the same at the time of final hearing.

The learned counsel for the petitioner has submitted that the suit was barred under the provisions of Bihar Co-operative Societies Act. It has further been submitted that the suit is barred by the provisions of Benami Transaction Prohibition Act, 1988. Elaborating his submissions, the learned counsel has pointed out that the sale deed has been executed in favour of the defendant who was the member of the society, but no permission has been taken by the society before execution of the sale deed. It has been contended, therefore, that in any view of the matter the dispute which has arisen in the suit is the dispute between the co-operative society and the vendor and for redressal of the same the provisions of the Bihar Co-operative Societies Act would be applicable and the suit is barred. It has also been contended that the suit is barred by Benami Transaction Prohibition Act, 1988 because the

plaintiff has claimed the property as own property and his allegations disclose the ingredients which attract the bar of Section 4 of the said Act.

After considering the submissions and perusal of the averments made in the petition, it is manifest that the suit has been filed for setting aside the sale deed for the suit land. The sale deed, which is registered document, stands in the name of the respondent. It has not been disputed by the learned counsel for the petitioner that the defendant has never been or is the member of the plaintiff-co-operative society.

In this view of the matter, it cannot be said that the suit raises a dispute between the society and its members past or present. The fact that the vendor of the defendant was a member of the society and, therefore, the permission was required before transferring the land by her in favour of the defendant is a mixed question of law and fact and cannot be determined without evidence. Even otherwise also, the principles of rejection of plaint under Order 7, Rule 11 of the C.P.C. are now well settled and objection involving mixed question of law and fact cannot be said to be an objection within the purview of Order 7, Rule 11 of the C.P.C. The learned court below has not committed illegality in passing the impugned order deferring the consideration of the issue

at the time of hearing. In this backdrop, this Court is not inclined to invoke the jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order.

The application is, accordingly, dismissed.

(V. Nath, J.)

Kundan

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CAV DATE	
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