

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13273 of 2014

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Smt. Neeta Choudhary & Anr

.... Petitioner/s

Versus

Arun Kumar Choudhary & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 11-01-2016

Heard learned counsel for the petitioners and learned counsel for the respondents.

At the time of hearing of the Interlocutory Application No. 3296 of 2015, the learned counsel for the petitioners submitted that the writ application itself may be heard on merit in admission matter. Accordingly, I heard him on merit in admission matter.

By the impugned order dated 10th June 2014, the learned Sub-Judge II, Muzaffarpur in Partition Suit No. 293 of 2011 rejected the application filed by the defendants-petitioners under Order 7 Rule 11 C.P.C.

It appears that the plaintiffs-respondents filed Title Suit No. 293 of 2011 for declaration of title over the suit property alleging that in fact the suit property has been purchased by the joint family in the name of the wife of the brother of the plaintiffs. The wife of

brother of the plaintiffs is also defendant in the suit. The petitioner and his wife appeared and filed contesting written statement and also filed separate application under Order 7 Rule 11 C.P.C. for rejection of the plaint on the ground that the suit is barred by the provision of Section 4 of Benami Transaction Act, 1988.

By the impugned order, the Court below had rejected the said application. The only grievance of the petitioner is that the suit itself is barred under Section 4 of the Benami Transaction Act, in view of the statement made in paragraphs- 5 and 6 of the plaint.

Perused the order passed by the Court below. The Court below found that the suit has been filed for declaration of the title and not simple suit for partition. The declaratory Court fee has been paid. So far the submission that the suit is barred under Section 4 of the Benami Transaction Act, is concerned, it may be mentioned here that there is no absolute bar under Section 4 of the Benami Transaction Act because it is always subject to Section 3 of the Benami Transaction Act.

Further this Court in the case of ***Rameshwar Mistry and Another Versus Bebulal Mistri AIR 1991 Patna 53*** relying on the earlier decision of the Patna High Court in the case of ***Kaulasan Singh and others Versus Ramdut Singh and others AIR 1951***

Patna 633 has held that “the declaratory court fee is payable when the properties stands in the name of strangers to the coparcenary”.

It may be mentioned here that in that case the suit was simple suit for partition. Here the plaintiff is praying for declaration of title. Therefore, it can not be said that the suit is barred under Section 4 of the Benami Transaction Act unless the Court records clear finding on the basis of evidence produced by the parties.

In the result, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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