

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No. 25 of 2015**

Akhilesh Khandelwal, aged about 46 years S/o Shri Satish Khandelwal, R/o Mahalaxmi Enclave Dhamtari, Civil and Revenue District Dhamtari, Chhattisgarh Pin Code 493773

---- Appellant**Versus**

Smt. Savita Khandelwal aged about 42 years, W/o Shri Akhilesh Khandelwal, R/o Amaltaspuram Rudri Road, Dhamtari, Civil and Revenue District Dhamtari, Chhattisgarh, Pin Code 493773.

---- Respondent

For Appellant : Shri Sachin Singh Rajput, Advocate.
For Respondent : None.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri P. Sam Koshy, J.****Judgment on Board****Per Navin Sinha, Chief Justice****26/04/2016**

1. No one appears on behalf of the Respondent despite service by publication. The matter has therefore proceeded ex-parte against the Respondent.
2. The present appeal arises from order dated 5.12.2014 dismissing Civil Suit No. 3-A/2014 passed by the District Judge, Dhamtari.
3. Learned Counsel for the Appellant submits that the Respondent is his estranged wife. She did not appear before the Court below also despite valid service of notice. The Suit was therefore also heard ex-parte. The Trial Judge completely failed to appreciate from the evidence on record that the Appellant was the exclusive title holder of the subject property purchased benami in the name of his wife and that it was not for her exclusive possession. The Appellant remained in constructive possession of the suit property even if he had allowed his wife to

stay in the house pending divorce proceedings. The property had been purchased by the Appellant from his own funds, taken a loan for the purpose and was repaying the installments. Merely because the name of his wife was mentioned in the revenue receipt did not make her the exclusive owner of the property and neither could she be said to be in exclusive possession to the exclusion of the Appellant. Sufficient evidence had been led under Section 3(2)(a) of the Benami Transactions (Prohibition) Act, 1988 (hereinafter referred to as 'the Act') that the property had been purchased for the benefit of the family and not for the exclusive benefit of the Respondent. There was no occasion for the Appellant to ask for possession of his own property merely because his estranged wife may have been living in it with their two sons one of whom was also ousted by her at a later stage. The suit property was not in the possession of a third party stranger requiring recovery of possession by the Appellant. There was thus no occasion for him to seek a decree of possession. In the alternative, it was argued that even if he filed an amendment application on 3.12.2014 seeking possession of the property also apart from the original relief for declaration of title and and permanent injunction restraining the Respondent from alienating the suit property or creating any third party interest, it did not change the nature of the suit so as to warrant rejection of the amendment application and disposal of the suit in haste two days later. The amendment ought to have been allowed as it was only a consequential relief only with no other change in the fact circumstances.

4. We have considered the submissions.

5. The suit property in village Gokulpur is identified as Patwari Halka No. 18/24 situated in Amaltaspuram Residential Colony, Dhamtari, bearing House No. B-1, Khasra No. 165/40 having area of 40X60 = 2400 sq.ft. The Appellant was married to the Respondent on 11.3.1992. Two sons were born from the wedlock. Relationship turned sour between Appellant and the Respondent leading to institution of Divorce case No. 22-A/2014 by the Appellant before the Family

Judge, Dhamtari which has subsequently been decreed on 17.8.2015. The pendency of the present appeal has been noticed in paragraph 25 of the order passed by the Family Court notwithstanding which the Respondent has chosen not to enter appearance even while she has filed First Appeal (M) No. 155 of 2015 against grant of divorce.

6. It is the case of Appellant that the property in question was purchased by him from his own money on 2.8.2006 for a value of Rs. 3,60,000/-. He procured a loan of Rs. 10 lacs from the Oriental Bank of Commerce, Dhamtari for making further construction and having repaid part of the loan, a sum of Rs. 8,51,000/- still remains outstanding and payable by him. The suit property was presently valued at approximately Rs. 50 lacs. The parties were living together in the suit property which was their matrimonial home. Because of the nature of relationship between the parties as husband and wife, the property was purchased for convenience in the name of the Respondent. She was not the exclusive owner of the same and neither had it been purchased for her exclusive use. The name of the Respondent was entered in the revenue records for payment of rent only and which did not make her the title holder.

7. The Appellant was the exclusive title holder of the property in question. Even if for the purposes of discussion, a distinction is noticed between title and possession, in the facts of the present case, and the nature of relationship between the parties, it can safely be held that the Appellant always remained in constructive possession of the property in question. The question of his asking for possession of the property already in his possession did not arise. The Respondent resided therein with her two sons, one of whom was ousted later, as part of the arrangement arrived at between the parties during pendency of the divorce suit. Having learnt that the Respondent was planning to alienate the suit property by negotiating sale with third parties as deposed by PW-2, Jhumuk Lal Sahu and PW-4, Raj Kumar Sharma, the Appellant preferred a suit for

declaration of title and permanent injunction restraining the Respondent from disposing or alienating the property to a third person.

8. Section 3(2)(a) of the Act provides that if a property is purchased by a person in the name of his wife, it would be presumed unless the contrary was shown that the property had been purchased for the benefit of the wife. We do not find any material to arrive at the conclusion that the Appellant had purchased the property in the name of his wife for her exclusive benefit. On the contrary the materials on record reveal that the Appellant had purchased the property for himself as the matrimonial home. The Court below has mechanically reiterated that Section 3 of the Act prohibited benami transaction without considering the absence of any evidence on record that it had been purchased for the exclusive benefit of the Respondent alone especially when the Appellant was contending to the contrary and led evidence in that regard both of himself and also PW-3, Dinesh Jagatap. The Trial Court completely failed to appreciate and arrived at a perverse finding that the Respondent was the exclusive owner of the property in question by mere reference to the Act in absence of any material to arrive at such conclusion.

9. In the given nature of relationship between the parties, the entire investment having been made by the Appellant, that it was their matrimonial home and the Respondent had been allowed to stay in view the estranged relationship pending the divorce suit, the Trial Court completely failed to consider the question of the Appellant already being in constructive possession of the property and that therefore there was no occasion for him to seek a specific decree for possession of his own property from himself. Originally, the suit had been filed for a declaration of title and permanent injunction. On 3.12.2014, as a matter of abundant caution, the Appellant filed an amendment application seeking a decree of possession also. In a given case, a title holder may or may not have possession. If the Appellant was already in constructive possession of the

property as held by us, the amendment application was only a formality and did not create or seek to introduce a new case or a new cause of action fundamentally different and distinct from the original suit. The subject matter of the dispute remains the same as did the parties. The amendment did not even plead any new facts or seek to introduce any new evidence. It was only for a confirmation as a matter of abundant precaution of the constructive possession already with the Appellant.

10. An amendment of a plaint has always been looked upon liberally by the Courts to facilitate a proper final adjudication of disputes in one suit instead of multifarious suits. If the amendment application filed under Order VI Rule 17 CPC was not creating or introducing a new cause of action different and distinct from that originally sought for by the Appellant, the Trial Court grossly erred in holding that to allow the application for amendment and to grant a decree for possession would be changing the nature of the suit completely. If a person seeks declaration of title, possession is a necessary concomitant of the same and it does not make out a different or new cause of action always. To insist that the Appellant should have filed a separate suit for recovery of possession would be contrary to the spirit of Order VI Rule 17 CPC giving rise to multifarious suits between the same parties. That the amendment sought did not change the nature of the suit finds support from (2007) 15 SCC 52 (Jageshwari Devi v. Shatrughan Ram) observing as follows :-

“4. The other petition which was filed by the plaintiff was for amendment of the plaint to introduce a prayer for recovery of possession and an averment to the effect that ad valorem court fee is paid on the plaint. This amendment was filed in view of the objection taken by the defendant that a suit for declaration of title simpliciter was not maintainable. The trial court considered the matter on the touchstone of settled principles of law regarding amendment of pleadings and took the view that this was a fit case for allowing the prayer for amendment. We find no illegality in the order.”

11. We further find that the amendment application was rejected on 3.12.2014 and the suit decided in haste on 5.12.2014 without even an opportunity to the Appellant to challenge the order rejecting the prayer for amendment before a superior forum. It appears from the judgment of the divorce suit that the Respondent sought to claim that she had purchased the property from her own resources but did not lead any evidence in support of the same.

12. In conclusion, the order rejecting the amendment application dated 3.12.2014 is therefore held to be bad. The amendment application is allowed. The final order dated 5.12.2014 is also held to be bad and is set aside. The matter is remanded to the District Judge, Dhamtari for fresh decision and disposal in accordance with law from the stage of filing of the amendment application and dispose the same preferably within a maximum period of one year from the date of receipt and/or presentation of a copy of this order, subject to the parties cooperating.

13. The appeal is allowed.

Sd/-

(Navin Sinha)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE