

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.217 of 2017**

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Sarita Singh @ Sarita Sharma

.... Petitioner/s

Versus

Shyamdeo Singh

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Kumar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 06-02-2017

Heard the learned counsel for the petitioner.

Perused the impugned order dated 18.10.2016 passed by the learned Sub Judge V, Gaya in Title Suit No.827 of 2014/95 of 2016 whereby the learned Sub Judge V, Gaya has rejected the application filed by the defendant-petitioner under Order VII rule 11(a), (b) and (d) of the Code of Civil Procedure.

It appears that the plaintiff-respondent filed the aforesaid title suit praying for declaration of title and confirmation of possession and prayed for restraining the defendant from forcefully dispossessing the plaintiff. The defendant-petitioner filed application under Order VII Rule 11(a), (b) and (d) praying for rejection of the plaint firstly on the ground that plaintiff possesses no right to sue and thus he has got no cause of action. Secondly, the plaintiff prayed for rejection of the plaint on the ground that the suit is barred under Section 3 and 4 of the Benami



Transaction Prohibition Act, 1988 and thirdly, that the value of the suit property is more than Rs.1 crore.

The learned counsel for the petitioner submitted that the property in suit stands in the name of the petitioner.

Admittedly, the sale deed is of the year 1984. So far the ground mentioned in Order 7 rule 11(d) i.e. the suit is barred under Section 3 and 4 of the Benami Transaction Act is concerned, from the relief portion claimed by the plaintiff, it appears that the plaintiff never prayed for declaration that the defendant-petitioner is benamidar of the plaintiff. Moreover, the petitioner was unmarried daughter on the date of the sale deed. Section 3 sub-section 2(a) of the Benami Transaction Act provides that the provision of sub-section 1 of Section 3 of Benami Transaction Act is not applicable, if the purchase is made in the name of either wife or the unmarried daughter.

So far the second ground that the plaintiff possesses no right to sue and thus he has got no cause of action, it may be mentioned here that this is not a ground for rejection of the plaint under Order VII Rule 11(a).

So far the third ground that the suit is undervalued or value is more than Rs.1 crore is concerned, is also not a ground for rejection of the plaint under Order VII rule 11(b) C.P.C.



Thus, I do not find any reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this civil miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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