

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.59 of 2015

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Gauri Devi @ Srimati Gauri Devi

.... Petitioner/s

Versus

Bal Mukund Prasad Gupta

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amarnath Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

4 15-09-2017 Heard learned counsel for the petitioner as well as
learned counsel for the opposite party.

Petitioner has challenged the order dated 01.05.2015
passed by Sub-Judge-IV, Saharsa in Title suit no. 183 of 2012 by
which and whereunder he rejected the petition filed on behalf of
the petitioner under Order VII Rule 11 read with Section 151 of
the Civil Procedure Code and accordingly, refused to reject the
plaint of Title suit no. 183 of 2012.

The opposite party brought the above stated Title suit
no. 183 of 2012 against the petitioner in respect of properties
mentioned in respective schedule of the plaint on the ground that
the properties were purchased by him in the name of petitioner.
The petitioner is admittedly, wife of the opposite party and it has
specifically been pleaded at Para-3 of the plaint that the opposite
party purchased the disputed property in the name of petitioner



with an object to save himself from the ceiling proceeding as well as out of love and affection with the petitioner. The opposite party has sought reliefs for declaration of his right, title in respect of disputed plots as well as declaration that the petitioner be treated as Benamidar of the disputed land.

Learned counsel appearing for the petitioner submits that the suit of the opposite party is hit by section 42 of Banami Transaction Act 1988 because there is specific pleading at Para-3 of the petition that the opposite party purchased the disputed property in the name of petitioner with an object to save himself from the ceiling proceeding and, therefore, the aforesaid pleading goes to show that the disputed property was not purchased by the opposite party for the benefit of petitioner and, therefore, the Title suit no. 183 of 2012 comes under the teeth of Section 4(2) of Banami Transaction Act 1988 but the learned Sub-Judge, Saharsa failed to consider the above stated fact in its right perspective and, accordingly, committed illegality.

On the other hand, learned counsel appearing for the opposite party submits that at Para-3 of the plaint, it has specifically been pleaded that the disputed property was purchased by the opposite party in the name of petitioner out of love and affection and also to save the said property from ceiling



proceeding and, therefore, the learned court below rightly, rejected the petition filed under Order VII Rule 11 of the Civil Procedure Code.

Having heard the contentions of both the parties, I have gone through the record. The photo stat copy of the plaint of Title suit no. 183 of 2012 has been annexed as Annexure-1 to this petition and Para-3 of the aforesaid plaint goes to show that it has, specifically, been pleaded by the opposite party in his plaint that the property in question was purchased by him in the name of petitioner with an object to save himself from the ceiling proceeding and out of love and affection and, therefore, the opposite party has taken two stands in his plaint regarding the motive of purchase of the aforesaid property.

Although learned counsel appearing for the petitioner submits that even if the property in question was assumed to be purchased by the opposite party in the name of petitioner out of love and affection, then also, it cannot be said that the property in question was purchased by opposite party for the benefit of petitioner but, I am not, at all, convinced with the aforesaid contentions because the word out of love and affection has wider dimension to reflect the motive of the concerned party. Moreover, it is not the stage to decide as to whether, the property in question



was purchased for the benefit of petitioner or not and it can be decided in course of trial after taking evidence of both the parties and, therefore, I am of the opinion that the learned court below rightly rejected the petition filed on behalf of the petitioner.

On the basis of above stated discussions, this Civil Revision Petition stands dismissed on admission stage itself and, accordingly, the impugned order passed by the learned court below, is hereby confirmed.

(Hemant Kumar Srivastava, J)

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