

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.44 of 2014

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1. Smt. Lalmuni Devi D/O Late Ramrati Devi Wife Of Arun Prasad
2. Ajeet Kumar Son Of Arun Kumar
3. Ranjit Kumar Son Of Arun Kumar
4. Varun Kumar Son Of Arun Kumar All R/O Jehanabad Town, Near Sabzi Mandi,
P.S. Jehanabad, District Rohtas

.... Petitioners

Versus

Satish Kumar Verma Son Of Lakhi Prasad R/O Mohalla Nagla, P.S. Malsalami,
Patna City, District-Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Mr.Satish Kumar Verma, Adv.
Counsel for Revisionist: Mr. K.N.Choubey, Sr.Adv.
Mr.Ambuj Nayan Choubey, Adv.
Mr.Ashok Kumar Garg, Adv.
Mr.Rito Priyadarshini, Adv.
Mr. Yogendra Kumar Dwivedy, Adv.
Mr.Dhaneshwar Pandey, Adv.
Homa Yunus, Adv.

For the Respondent/s : Mr. Binay Kant Mani Tripathi, Adv.
Mr.Ajay Kumar Mishra, Adv.
Mrs. Reena Mishra, Adv.
Miss Ajita, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 02-02-2017

Heard Mr. K.N.Chaubey, learned senior counsel
appearing on behalf of the defendant-petitioners in this revision
application, and Mr. Binay Kant Mani Tripathi, learned counsel who
has appeared for the plaintiff-opposite party.

Earlier the notice was issued to the plaintiff
opposite party in the admission matter.



The present revision application has been filed assailing the impugned order passed by the learned court below whereby the objection by the defendant-petitioners pertaining to the bar of the suit under Section 4(i) of the Benami Transaction (Prohibition) Act , 1958 has been turned down.

From the plaint (Annexure-1) of T.S.No.327/2011, it transpires that the plaintiff has prayed for the reliefs in paragraph-12(a) for declaration that the plaintiff is the real owner in possession of the suit property and for further declaration that the defendants have no title whatsoever over the suit land. The alternative relief by way of adverse possession has also been prayed by the plaintiff in paragraph-12(b). The reliefs prayed in paragraph-12(c) and onwards are only by way of ancillary or consequential reliefs. The defendants who have claimed their title over the suit property on the basis of the sale deed which is in their names have raised the objection to the maintainability of the suit in view of the statutory bar as abovementioned.

The fact has not been disputed by the learned counsel for the plaintiff-opposite party that the sale deed in question for the suit land is in the name of the predecessor of the defendant-petitioners.

Mr. Chaubey, learned senior counsel for the



petitioners has relied upon the decision of the apex court in the case of ***R.Rajagopal Reddy Vs. Padmini Chandrasekharan, AIR 1996 SC 238*** in support of the proposition that the suit filed after coming into force of the Benami Transaction (Prohibition) Act even with regard to past transaction would be hit by Section 4 of the Act.

Mr. Tripathi, learned counsel appearing for the plaintiff-opposite party, however, has placed reliance upon a decision in the case of ***Smt. Rebti Devi Vs. Ram Dutt, AIR 1998 SC 310*** in support of his submissions for upholding the legal acceptability of the impugned order..

After considering the submissions and perusal of the materials on record including the impugned order, it transpires that the principles of law as laid down by their lordships in the case of ***R.Rajagopal Reddy*** (Supra) are directly applicable to the facts and circumstances of the case. The impugned order is clearly inconsistent with the principles as laid down therein and the learned court has committed error of jurisdiction in holding that the suit would not be hit by the provision of Section 4(1) of the Benami Transaction (Prohibition) Act. The decision relied by the learned counsel for the plaintiff-opposite party as reported in the case of ***Smt. Rebti Devi*** (Supra) has been rendered in a different setting of facts where the apex court has considered the exceptions as envisaged under Section 3



of the said Act.

As the learned court below has not taken into notice the principles as laid down by the apex court in the case of ***R.Rajagopal Reddy*** (Supra), this Court comes to the conclusion that the matter requires reconsideration by the learned court below. At this juncture, the learned counsel for the plaintiff-opposite party has filed an affidavit before this Court where it has been stated that the plaintiff-opposite party does not propose to proceed with the suit for the relief as mentioned in paragraph-12 (a) of the plaint and is confining his relief in the suit as mentioned in paragraph-12(b) onwards. As this Court is proposing to remit the matter back to the learned court below, this Court refrains from expressing any opinion on the merits of the stand as now taken on behalf of the plaintiff-opposite party.

In result, this revision application is allowed and the impugned order is set aside. The matter is remitted back to the learned court below to pass a fresh order on the petition dated 10.04.2012 filed by the defendants in the suit, after granting opportunity to the parties for hearing afresh as well as after taking into notice the principles laid down by the apex court in ***R.Rajagopal Reddy*** (Supra). The plaintiff-opposite party shall also be at liberty to make appropriate prayer in accordance with law with regard to



abandonment of the part of the relief. It is clarified that this Court has not gone into merits of the claim as made on behalf of either of the parties and the same shall be decided by the learned court below in accordance with law without being prejudiced by observations in this order. The learned court below is further directed to pass fresh order preferably within a period of three months from the date of receipt/production of a copy of this order. The learned counsel for the parties have assured this Court regarding cooperation by the parties to the suit for expeditious disposal of the proceeding of the suit.

(V. Nath, J)

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