

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal No.53 of 2014

1. Ravindra Sharma, aged about 68 years, S/o Karmchand Sharma, R/o Sector-1, Pt. Dindyal Upadhyay Ward, Near Ashtha Provision Stores, Raipur, Tahsil & District Raipur (C.G.)
2. Vinod Dutt Sharma, aged about 71 years, S/o Karmchand Sharma, R/o Near Gol Chowk, Rohinipuram, Raipur (C.G.)

(Defendants)
---- Appellants

Versus

1. Arun Kumar Sharma (Dead) Through LRs
 - 1.a. Smt. Suman Sharma, Wd/o Late Shri Arun Sharma, aged about 57 years, R/o Jawahar Nagar, Raipur, Tahsil & District Raipur (C.G.)
 - 1.b. Shri Rohan Sharma, S/o Late Shri Arun Sharma, aged about 28 years, R/o Jawahar Nagar, Raipur, Tahsil & District Raipur (C.G.)
2. Kamal Kumar Sharma, aged about 60 years, S/o Sohanlal Sharma, R/o Jawaharnagar, Raipur, Tahsil & District Raipur (C.G.)
3. Sohanlal Sharma, aged about 88 years, S/o Amirchand Sharma, R/o Jawahar Nagar, Raipur, Tahsil & District Raipur (C.G.)

(Plaintiffs)

4. State of Chhattisgarh, Through Collector, District Raipur (C.G.)
(Defendant No.3)
---- Respondents

For Appellants:	Mrs. Renu Kochar, Advocate.
For Respondents No.1.a. to 3:	None present though served.
For Respondent No.4/State:	Mr. Ashish Surana, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

08/02/2017

1. This miscellaneous appeal is directed against the order dated 28-11-2013 passed by the District Judge, Raipur in Civil Appeal No.12-A/

2012 by which the learned District Judge has allowed the appeal preferred by the appellants and set aside the order of the trial Court rejecting the plaint in exercise of jurisdiction under Order 7 Rule 11 of the CPC.

2. The respondents herein/plaintiffs filed a civil suit for declaration of their title and permanent injunction stating inter alia that father of plaintiffs No.1 and 2 Shri Sohanlal Sharma, who is plaintiff No.3, has purchased suit land in the name of their sister Tirath Bai by registered sale deed dated 25-11-1964 and the plaintiffs are in possession of the suit land by cultivating the land, and prayed for relief that they be declared title holders over the suit land and decree for permanent injunction be passed in their favour and against the petitioners herein/defendants.
3. After service of summons, the defendants filed an application under Order 7 Rule 11 of the CPC for rejection of plaint stating inter alia that the suit is barred by virtue of Section 4(1) of the Benami Transactions (Prohibition) Act, 1988 (for short 'the Act of 1988') and as such, the plaint is liable to be rejected in exercise of power under Order 7 Rule 11(d) of the CPC. The trial Court by its order dated 26-9-2012 held that the suit is barred by Section 4 of the Act of 1988 and rejected the plaint. Being aggrieved against the order of the trial Court, the plaintiffs preferred first appeal before the first appellate Court and the first appellate Court by its impugned order, set aside the order of the trial Court and remanded the matter back to the trial Court against which this miscellaneous appeal has been preferred questioning the

order of the first appellate Court.

4. Mrs. Renu Kochar, learned counsel appearing for the appellants, would submit that the alleged *benami* transaction is related to 25-11-1964 and by virtue of Section 4(1) of the Act of 1988 what has been barred is institution of suit to enforce the Benami transaction, if any, therefore the bar would strictly be applicable and the learned first appellate Court is absolutely unjustified in reversing the order passed by the trial Court rejecting the plaint under Order 7 Rule 11 of the CPC.
5. No one has appeared on behalf of the private respondents despite service of notice to the private respondents.
6. I have heard learned counsel for the parties present and considered their rival submissions and also perused the order impugned and the order of the trial Court with utmost circumspection.
7. It would be appropriate to notice Section 4(1) of the Act of 1988 which reads as follows: -

“4. Prohibition of the right to recover property held *benami*.--(1) No suit, claim or action to enforce any right in respect of any property held *benami* against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.”

8. A careful perusal of Section 4(1) of the Act of 1988 would show that in the opening word there is a clear legislative intention that no such claim, suit or action to enforce any right in respect of any property held *benami* would be maintainable. So what has been barred is bringing and institution of suit to make a claim and not that a particular transaction is *benami* or not, meaning thereby, if a suit is instituted after

coming into force of the Act of 1988 claiming any right, title or interest on the basis of any *benami* transaction whether it has been entered into prior to coming into force of the Act of 1988 or after coming into force of the Act of 1988, such suit would be barred by virtue of the provisions contained in Section 4(1) of the Act of 1988.

9. The question as to whether bar would be applicable in suits which are filed after coming into force of the Act of 1988 has been considered by the Supreme Court in the matter of **Duvuru Jaya Mohana Reddy and another v. Alluru Nagi Reddy and others**¹ and it has been held that Section 4(1) of the Act of 1988 would apply to proceedings pending on the date of the commencement of the Act and the provisions were held applicable to an appeal that was pending. Similar is the proposition laid down by the Supreme Court in the matter of **Prabodh Chandra Ghosh v. Urmila Dassi**². Thereafter, in the matter of **G. Mahalingappa v. G.M. Savitha**³, the Supreme Court has again considered nature and applicability of Section 4(1) of the Act of 1988 and held that the Act of 1988 is prospective except to a certain extent.
10. In the matter of **R. Rajagopal Reddy (Dead) by LRs and others v. Padmini Chandrasekharan (Dead) by LRs**⁴ the Supreme Court in paragraph 11 of its judgment has clearly held that no such suit, claim or action shall be permitted to be filed or entertained or admitted to the portals of any court for seeking such a relief after coming into force of Section 4(1) of the Act of 1988. The Supreme Court further held as

1 AIR 1994 SC 1647

2 AIR 2000 SC 2534

3 (2005) 6 SCC 441

4 (1995) 2 SCC 630

follows: -

“On the contrary, clear legislative intention is seen from the words 'no such claim, suit or action shall lie', meaning thereby no such suit, claim or action shall be permitted to be filed or entertained or admitted to the portals of any court for seeking such a relief after coming into force of Section 4(1).”

The Supreme Court in the same paragraph observed as under: -

“With respect, the view taken that Section 4(1) would apply even to such pending suits which were already filed and entertained prior to the date when the section came into force and which has the effect of destroying the then existing right of plaintiff in connection with the suit property cannot be sustained in the face of the clear language of Section 4(1). It has to be visualised that the legislature in its wisdom has not expressly made Section 4 retrospective. Then to imply by necessary implication that Section 4 would have retrospective effect and would cover pending litigations filed prior to coming into force of the section would amount to taking a view which would run counter to the legislative scheme and intent projected by various provisions of the Act to which we have referred earlier. It is, however, true as held by the Division Bench that on the express language of Section 4(1) any right inhering in the real owner in respect of any property held benami would get effaced once Section 4(1) operated, even if such transaction had been entered into prior to the coming into operation of Section 4(1), and henceafter Section 4(1) applied no suit can lie in respect to such a past benami transaction. To that extent the section may be retroactive.”

(emphasis supplied)

11. Thereafter, in **G. Mahalingappa** (supra), **R. Rajagopal Reddy's** case (supra) was followed with approval.

12. Thus, if the facts of the present case are examined in light of the decisions rendered by the Supreme Court in afore-cited cases (supra), it is quite apparent that the suit was filed on 28-7-2011 on the basis of transaction dated 25-11-1964 in which declaration has been sought by

the plaintiffs that though the property is in the name of their sister, but it is the property held by their father in their favour. Since the suit has been brought after coming into force of the Act of 1988 and the plaintiffs are claiming title on the basis of *benami* transaction which is said to have been taken place on 25-11-1964. This being so, the prohibition under the Act is squarely applicable and attracted and such a plaint was hit by Order 7 Rule 11(d) of the CPC. Therefore, the trial Court was absolutely justified in rejecting the plaint and the first appellate Court is absolutely unjustified in reversing the finding of the trial Court on the basis of the ground which is wholly untenable and contrary to the scheme of Section 4(1) of the Act of 1988.

13. Resultantly, the appeal is allowed. The order impugned passed by the first appellate Court is set aside and that of the trial Court is affirmed. The application under Order 7 Rule 11 of the CPC allowed by the trial Court is hereby restored meaning thereby, the suit filed by the respondents / plaintiffs is held to be barred under Section 4(1) of the Act of 1988 and the plaint filed by the plaintiffs stands rejected. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge