

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

CIVIL REVISION APPLICATION NO.227 OF 2016

Shri R. Vasudevan & Anr. ... Applicants

Vs

Mrs. Loubanan Rafiq Jumabhoy ... Respondent

...

Mr. P. B. Bhargude for the Applicants.

Mr. Kunal Bhanage i/b. Mr. Javed Gaya for the Respondent.

CORAM : M. S. SONAK, J.
DATE :24 NOVEMBER, 2017

P.C. :

1. Heard Mr. Bhargude for the Applicants and Mr. Kunal Bhanage for the Respondent.

2. The challenge in this Revision Application is to the order dated 15th September 2015 by which the learned Trial Judge has rejected the Applicants-defendants application under Order VII Rule 11 of the Civil Procedure Code.

3. Mr. Bhargude the learned counsel for the Applicants submits that from the statement of the plaint, it is very clear that the suit is barred under the provision of Benami Transaction (Prohibition) Act, 1988. He submits that the Plaintiff claims to be the owner of the property which is in the name of the Defendant Nos. 1 and 2, on the ground that she had

contributed to the purchase of the property in question. He submits that this is sufficient to bar the suit under the provisions of the 1988 Act.

4. Upon perusal of the averments in the plaint, it appears that the Plaintiff has applied for a declaration of co-ownership to the suit property and sought for partition on the said basis. The issue as to whether 1988 Act is applicable or not, again, in the facts of the present case, be decided only on the basis of the averments in the plaint. The issue, at the highest, is a mixed question of law and fact. The matter will therefore, have to go to trial. In such circumstances, it cannot be said that there is an jurisdictional error on the part of learned Trial Judge in dismissing the application under Order VII Rule 11 of the Civil Procedure Code, 1908.

5. However, the issue as to whether the suit is barred under the 1988 Act or not is required to be kept open. Therefore, nothing in the impugned order, may be taken as of the conclusion of the such issue. The contentions of all the parties as regard such issue, are also kept open.

6. With the aforesaid observation, this Civil Revision Application is disposed of.

7. All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)