

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17892 of 2010

=====

Md.Obais @ Chunnu Son of Abdul Rab Resident of Village +P.O.-
Rahimabad, Police Station- Bangra, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Land Reforms Department, Govt. of Bihar, Old Secretariat, Patna, Bihar.
2. Shahnaz Begum Wife of Md. Mumtaz , D/o late Md. Haroon All Resident of Village +P.S. Fahimabad, P.S. Bangra, District- Samastipur.
3. Farhat Jahan W/o Md. Nisar , D/o late Md. Haroon
4. Imtiaz Khatoon W/o Md. Angar , D/o late Md. Haroon
5. Nuzhat Khatoon W/o Md. Fahim , D/o late Md. Haroon
6. Nikhat Parween D/o late Md. Haroon
7. Nusrat Begum D/o late Md. Haroon
8. Md. Tanweer Son of late Md. Haroon
9. Basi Ahmad Son of Late Ali Ahmad, Resident of Village+P.O.- Shahpur Bhagauni, Police Station- Pusa (Waini), District- Samastipur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Abdul M. Khan, Advocate Md.Najmul Hoda, Advocate
For the Respondent no.2 :		Mr. Bhubneshwar Prasad, Advocate
for the State	:	Mr. Chittaranjan Sinha, PAAG-2 Mr. Shailendra Kumar, AC to PAG-2.

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT

Date : 19-12-2018

Petitioner before this Court is defendant of Title Suit No.192 of 2002 pending in the Court of Civil Judge, Senior Division-III, Samastipur. He has filed this application for quashing the order dated 03.05.2010 whereby and whereunder, his prayer to dismiss the suit under Order VII Rule 11 (d) of the C.P.C. was rejected.

2. Heard learned counsel for the petitioner and the respondents.



3. It appears that the respondents filed aforesaid suit for declaration that the plaintiff is the real owner and purchaser of the suit land and the defendant no.2 was the name holder only. The plaintiff further sought relief to declare that the sale deeds dated 20.05.2002 and 06.06.2002 executed by defendant no.2 in favour of defendant no.1 as illegal, void without consideration, collusive and inoperative. The defendant no.2 had no right to execute the sale deeds in favour of defendant no.1.

4. On going through the pleadings of both the parties, I find that the land in dispute was admittedly acquired in the name of defendant no.2 by virtue of registered sale deeds dated 24.06.1981. The plaintiff has filed the present suit after 21 years of the execution of sale deed for declaring that the land was actually purchased by him in the benami name of defendant no.2. The defendants filed petition before the court below to dismiss the suit under Order VII rule 11(d) of the Code of Civil Procedure holding that the suit is hit by Section 4 of the Benami Transaction Act, 1988. The learned court below without considering submission of learned counsel for the petitioner rejected the petition observing that the law point which is being raised will be considered after settlement of issues. The order of learned court below is very cryptic and does not disclose the ground refusing to decide the



maintainability of suit under Order VII Rule 11 of the C.P.C. the initial stage. The court is required to examine the pleadings of the plaint and if in the pleadings, it appears to the Court that there is ground that the suit is barred by any law and such argument is substantiated by any provisions of law, then of course the trial court can exercise its power to reject the plaint under order 7 rule 11 of the CPC.

5. In this view of the matter, the impugned order is not sustainable and is accordingly set aside. The matter is remitted and the court below is directed to pass order in accordance with Law.

6. This writ application is accordingly allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21.12.2018
Transmission Date	N/A

