

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.409 of 2017

IN

C.R. 59 of 2015

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1. Gauri Devi @ Srimati Gauri Devi wife of Sri Bal Mukund Prasad Gupta
Resident of Village - Bariyahi Bazar, P.S. - Bangaon, District - Saharsa.

.... Petitioner/s

Versus

1. Bal Mukund Prasad Gupta son of Late Ganauri Prasad Sah @ Guneshwar Prasad
Sah Resident of Village - Bariyahi Bazar, P.S. - Bangaon, District - Saharsa.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amarnath Jha

For the Respondent/s : Mr. Bal Bhushan Choudhary

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
CAV JUDGMENT

Date: 01-08-2018

1. This petition under Order 47 Rule 1 of the
CPC has been filed on behalf of the petitioner against the
order dated 15.9.2017 passed in Civil Revision no.
59/2015.

2. Opposite party filed Title suit no. 183/2012
against the petitioner in respect of disputed land for
declaration that the petitioner is Farzidar and Benamidar
of disputed land and also for declaration of his right, title
and possession over the suit land. The petitioner appeared
in Title suit no. 183/2012 and filed petition under Order
VII rule 11 read with section 151 of the CPC praying
therein for rejection of plaint of the aforesaid Title suit



no. 183/2012 on the ground that the aforesaid title suit is hit by section 4 (2) of the Benami Transactions (Prohibition) Act, 1988. The aforesaid petition filed under Order VII rule 11 CPC was rejected by the concerned court vide order dated 01.05.2015 which was challenged by the petitioner before this court by filing Civil Revision no. 59/2015. However, the aforesaid Civil Revision no. 59/2015 was, too, dismissed vide order dated 15.9.2017 holding that the question as raised by the petitioner for rejection of the plaint could not be a ground for passing order under Order VII rule 11 CPC and the question could be decided only in course of trial after taking evidence of both parties. The petitioner, being aggrieved by the aforesaid order dated 15.9.2017 passed in Civil Revision no. 59/2015, has preferred this petition.

3. Learned counsel appearing for the petitioner submits that Title suit no. 183/2012 was apparently barred by section 4 (2) of the Benami Transactions (Prohibition) Act, 1988 as opposite party sought relief to declare the petitioner as Farzidar and benamidar of the disputed property and the aforesaid fact itself goes to show that the court has got no jurisdiction to give the



aforesaid relief but while dismissing Civil Revision no. 59/2015, this court over-looked the above stated fact and, therefore, it is desirable to review the order dated 15.9.2017 passed in Civil Revision no. 59/2015. In support of his contentions, he refers several decisions such as 2003(I) SCC 557, 2004 (3) SCC 137, 2006(I) PLJR 160, AIR 1980 SC 722, 2016 (14) SCC 275, 2006 (4) SCC 78 and AIR 1996 SC 288.

4. On the other hand, learned counsel appearing for opposite party refutes the submissions advanced on behalf of the petitioner arguing that opposite party, specifically, pleaded in Title suit no. 183/2012 that he purchased the disputed land in the name of the petitioner who happens to be his wife out of love and affection and to save from ceiling proceeding and, therefore, the aforesaid fact can only be decided in course of trial. He, further, submits that the suit is not hit by section 4 (2) of the Benami Transactions (Prohibition) Act, 1988. He, further, submits that section 4 (2) of the Benami Transactions (Prohibition) Act, 1988 is not applicable, if the purchase is made in respect of wife or daughter. However, the power of review is very limited and power



of review can only be exercised, if there is apparent error on the face of record. In support of his contentions, he, too, refers several decisions such as 2000 (6) SCC 224, AIR 1995 SC 2145, 2012 (5) SCC 342, AIR 1981 SC 606, 2009 (4) PLJR 533 and 2006 (I) PLJR 160.

5. Having heard rival contentions of both parties, I went through the record. The sole grievance of the petitioner is that the original court has got no jurisdiction to grant relief as sought by opposite party in Title suit no. 183/2012 and the aforesaid fact was not considered by this court while passing the order dated 15.9.2017 in Civil Revision no. 59/2015. Admittedly, opposite party brought Title suit no. 183/2012 against the petitioner for declaration that the petitioner is Farzidar and benamidar of the disputed property and also for declaration of his right, title and possession over the suit land. The opposite party, specifically, pleaded in the aforesaid Title suit no. 183/2012 that the petitioner is his wife and he had purchased the suit land in the name of the petitioner out of love and to save the suit property from ceiling proceeding.

6. Section 3 (2) (a) of the Benami Transactions



(Prohibition) Act, 1988 says that nothing in sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter. Furthermore, section 4 of the aforesaid Act says that 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. Sub-section (2) of section 4 says that no defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

7. The bare perusal of the aforesaid provision goes to show that no person has right to enter into Benami transaction except if property is purchased in the name of wife or unmarried daughter. Furthermore, if a purchase is made in the name of wife or unmarried



daughter then, in that event, it would be presumed that property has been purchased for the benefit of wife or unmarried daughter unless contrary is proved. Furthermore, it is obvious that no suit, claim or action to enforce any right in respect of Benami property can be made and similarly, no defence based on any right in respect of any property held Benami is permitted. The Hon'ble Apex Court of this country has already set at rest that the provision of the Benami Transactions (Prohibition) Act, 1988 is perspective in nature and admittedly, in the present case, disputed land was purchased by opposite party in the name of the petitioner much prior to coming into force of the above stated Benami Transactions (Prohibition) Act, 1988. However, it is specifically, pleaded by opposite party in the plaint that he had purchased the aforesaid property in the name of his wife (petitioner) out of love and, therefore, unless contrary is proved, it shall be presumed that opposite party had purchased the suit land in the name of the petitioner for her benefit and, therefore, it has rightly been observed in the impugned order dated 15.9.2017 that point raised by the petitioner in her petition filed under



Order VII rule 11 CPC can only be decided after taking evidence of both parties and, in my view, there is no apparent error on the face of the record which requires review of the impugned order and so far as submission of the petitioner is that the court below has got no power to grant relief as sought by opposite party in his plaint is concerned, I am not in agreement with learned counsel appearing for the petitioner and, in my view, the aforesaid question can not be decided at this stage without recording evidence of both parties. Therefore, I do not find any force in this review petition and accordingly, this review petition stands dismissed on admission stage itself.

Shahid

(Hemant Kumar Srivastava, J)

AFR/NAFR	NAFR
CAV DATE	25.7.2018
Uploading Date	01.08.2018
Transmission Date	01.08.2018

