

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 79 of 2017**

- Rohin Shukla, S/o Shri Ravi Shankar Shukla, Aged About 35 Years, R/o A-14, Amrapali Sahakari Samiti, Lalpur Road, Behind Colour Mall Raipur, Post And Tehsil Raipur, P.S. New Rajendra Nagar, District Raipur (C.G.)

---- Petitioner

Versus

- Ravi Shanker Shukla, S/o Chandra Dutt Shukla, Aged About 63 Years, R/o A - 14, Amrapali Sahakari Samiti, Lalpur Road, Behind Colour Mall Raipur, Post And Tahsil Raipur, P.S. New Rajendra Nagar, District Raipur (C.G.)

---- Respondent

For Petitioner : Shri Surfaraj Khan, Advocate.

For Respondent : Shri Varun Sharma, Advocate.

Hon'ble Thottathil B. Radhakrishnan, Chief Justice
Order on Board

28.06.2018

1. This revision is filed under Section 115 of the Code of Civil Procedure, 1908; for short 'CPC'. The Defendant is the Petitioner.
2. The Plaintiff is the father of the Defendant. He filed the suit on the plea that the suit property was purchased by him in the name of the Defendant-son and that the father, his wife, the Defendant-son, and another son, are, as a Hindu Undivided Family, in ownership and possession of the property which is the subject matter of the suit. Defendant filed an application under Order 7 Rule 11 of CPC seeking rejection of the plaint on the premise that the suit is barred by the provisions of the Benami Transactions (Prohibition) Act, 1988; hereinafter referred as 'Act', before its amendment as per the Benami Transaction Amendment Act, 2016; hereinafter referred as 'Amending Act'. While the aforesaid application was pending consideration, the Amending Act came into force. Then, the Defendant filed yet another application pleading that, in terms

of the amended provisions of the Act, the plaint has to be transferred to the Adjudicating Authority as per Section 65 of the Act. The Trial Court dismissed that application. Hence, this revision.

3. Referring to the different provisions of the Act, as amended, the learned counsel for the Revision Petitioner argued that bar to suit is created by law and consequential transfer of plaint is provided for in terms of the Act, as amended. The learned counsel for the Respondent/Plaintiff argued that the issue of maintainability is a matter to be dealt with by the Civil Court and the question raised by the Defendant cannot be considered on the basis of an application for transfer of proceeding in terms of the provisions of the Act, as amended; or, even under Order 7 Rule 11 of CPC.
4. Order 7 Rule 11 of CPC provides for rejection of plaint where the suit appears, from the statements in the plaint, to be barred by any law. On its plain reading, the plaint discloses that the Plaintiff seeks declaration and further reliefs on the strength of alleged title and possession by him, his wife and his two sons, including the Defendant, as a Hindu Undivided Family and such ownership and possession is asserted in the plaint to seek relief as against the Defendant. The relief sought for is as if it is on behalf of the Hindu Undivided Family as a unit, though the Plaintiff has asserted that the suit property was acquired utilizing funds belonging to him as well. The question whether the plea setup by the Plaintiff is one amounting to a benami transaction which would fall within provisions of the Act would call for the adjudication of issues of fact and law. Such issues cannot be considered as issues of law only. The reading of the plaint does not satisfy the judicial mind that it is barred by law. Hence, the plaint in the litigation in hand is not liable to be rejected under Order 7 Rule 11 of CPC on the ground that it is barred by law.
5. The plea of bar to suit is projected by the Defendant on the premise that what the Plaintiff has pleaded would amount to a plea as to Benami Transaction. The

question for determination by Adjudicating Authority under Section 26 of the Amending Act, among other things, is as to whether a particular person is a Benamidar or the beneficiary owner etc. Such adjudication is called for upon a reference to be made under Section 24 of the Amending Act. That Section 24 provides for notice and adjudication where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person is a *benamidar* in respect of a property. He may, after recording reasons in writing, issue a notice to the person to show cause within such time as may be specified in the notice, as to why the property should not be treated as *benami* property. The aforesaid provision will indicate that in all cases where issues may tend to be one relatable to the plea of Benami would not necessarily be required to be referred to the Adjudicating Authority. It would be well within the jurisdiction of the Civil Court to consider whether the plea setup by the Plaintiff or the Defendant, as the case may be, is as regards the Benami Transaction or that a particular item of property is held Benami, noticing that the definition of the term 'Benami Transaction' as it stood in the unamended Act has been spaciouly enlarged through the Amending Act. However, the question of transfer of case to the Adjudicating Authority ought not to be done unless the Court where proceedings are pending takes the view that the matter relates to a Benami Transaction.

6. In the aforesaid view of the matter there is no illegality or error of jurisdiction committed by the Court below in passing the impugned order or in the further consideration of the suit by the Civil Court.
7. For the aforesaid reason, this revision fails. In the result, the same is dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
 Chief Justice