

HIGH COURT OF CHHATTISGARH, BILASPUR

FA No. 189 of 2019

- Deepak Kumar S/o Vishambhar Lal Sonkar aged About 50 Years R/o Govindwadi, Near, Lohapool, Shankar Nagar, Durg, Tahsil And District- Durg, Chhattisgarh.

---- Appellant/plaintiff

Versus

1. Vijay Kumar aged about 41 Years R/o In Front Dhanesh Kirana, Near Shiv Mandir, Rajeev Nagar, Ward No. 2, Tahsil And District- Durg, Chhattisgarh.
2. Madan Lal Shrma S/o Late Gopalchand Sharma Aged About 40 Years R/o House No. 123, Ward No. 31, Bhoipara, Apapura, Durg, Tahsil and Disrtict- Durg, Chhattisgarh.
3. Smt. Seema Sharma W/o Madan Lal Shrma Aged About 39 Years R/o House No. 123, Ward No. 31, Bhoipara, Apapura, Durg, Tahsil And District- Durg, Chhattisgarh.

---- Respondents/defendants

For appellant : Mr. Shravan Agrawal, Advocate.

For respondents : None

SB: Hon'ble Shri Justice Ram Prasanna Sharma

Oral Judgment

03-07-2019

1. This first appeal filed under Section 96 of the Code of Civil Procedure, 1908 is preferred against the order/decreed dated 15-1-2019 passed by the First Additional Judge to the Court of First Additional District Judge, Durg (CG) in Civil Suit No. 47-A/2018 wherein the said court rejected the plaint under Order 7 Rule

11(d) of the Code of Civil Procedure, 1908 on the ground that the suit is barred by The Benami Transactions (Prohibition) Act, 1988 (for short, the Act, 1988”).

2. Appellant/plaintiff herein is son of late Vishambharlal Sonkar. One sale deed was executed in favour of respondent No.1/ defendant namely Vijay Kumar on 25-3-1997 by Natthu for house situated in nazul land sheet No.30-C plot No.41 area 798 sq.ft., situated at Amapura, Tahsil and District Durg for cash consideration of Rs.1,17,200/-.

3. It is pleaded on behalf of the appellant that actually this property was purchased out of income of his mother namely late Bisahin Bai and father late Vishambharlal Sonkar, but respondent No.1 Vijay Kumar executed sale deed in his favour and again property was transferred to respondents No. 2 and 3 by respondent No.1. It is alleged that in the sale deed it is mentioned that respondent No.1 Vijay Kumar is adopted son of late Vishambharlal Sonkar and late Bisahin Bai, but his adoption was declared illegal by the court of Second Additional Judge to the Court of First Civil Judge, Class-I in Civil Suit No.39-A/2009 vide judgment/decreed dated 2-6-2018. The appellant sought that the sale deed shall be declared void and for restraining respondents from interfering with the said property.

4. The core issue for consideration of this court is whether the suit filed by the appellant is maintainable or not. Admittedly, sale deed was executed in favour of respondent No.1 Vijay Kumar on 25-3-1997. As per pleading of the appellant, the transaction was benami transaction.

5. Section 4(1) of the The Benami Transactions (Prohibition) Act 1988 defines benami transaction and property which reads as under:

“4 (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*”.

6. In the present case, Bisahin Bai and Vishambharlal Sonkar did not file any suit against respondent No.1 during their life time. The suit was filed before the trial Court on 29-8-2018. The sale deed executed in favour of respondent No.1 was remained as it is till 2018. The cause of action as shown in the plaint arose on 5-11-2016 when respondent No.1 executed sale deed in favour of respondents No. 2 and 3. When sale deed executed on 25-3-1997 has not been challenged for 21 years, it is misconceived that cause of action arose on 5-11-2016 on execution of second sale

deed, therefore, no cause of action arose on the said date and the plaint ought to have been rejected as per Order 7 Rule 11 (a) of the Code of Civil Procedure 1908i.

7. The plaint is based on benami transaction and as per Section 4(1) of the Act, 1988 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, therefore, present suit was not maintainable as per Order 7 Rule 11 (d) of the CPC.

8. In view of the above, present appeal is not maintainable and same is dismissed at motion stage itself.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju