

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 351 of 2008**

Saurabh Sharma S/o Late Manharan Lal Sharma, Aged about 36 years, Occupation Agriculturist and Advocate, R/o Village Bahinga, Tahsil Berla, District Durg, Chhattisgarh.

---Appellant/Plaintiff

Versus

1. Bankelal (died) through LR's :-

(a). Smt. Tarini Dubey, W/o Late Bankelal Dubey, Aged about 55 years, R/o Village Bahinga, Tahsil Berla, District Bemetara, Chhattisgarh.

Present Address Maruti vihar, Mahoba Bazaar, Raipur, District Raipur, Chhattisgarh.

2. State of Chhattisgarh, through the Collector, Durg, Chhattisgarh.

--- Respondents/Defendants

For Appellant :- Mr. A.K. Prasad, Advocate

For State :- Mr. Sanjeev Kumar Agrawal, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

04/02/2020

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the appellant/plaintiff under Section 100 of the CPC against the impugned judgment and decree passed by the first appellate Court affirming the judgment and decree by which

the trial Court dismissed the suit finding no merits.

2.Mr. A.K. Prasad, learned counsel for the appellant/plaintiff would submit that both the Courts below have concurrently erred in dismissing the suit of the plaintiff by holding that plaintiff's father had not purchased the suit property in the name of defendant No. 1 by making payment of the consideration amount to the seller Ameena Bai ignoring the fact that the sale deed (Ex. P/1) contains recitals showing the payment of consideration amount made by plaintiff's father himself by recording a finding which is perverse and contrary to the record, as such, the second appeal deserves to be admitted by formulating substantial question of law in this regard.

3.Plaintiff brought a suit for declaration of title stating that the suit property bearing Khasra No. 1154/19 admeasuring 0.037 hectare was purchased by his father namely Manharanlal on 08/05/1981 in the name of plaintiff's uncle defendant No. 1 namely Bankelal by making payment of the sale consideration amount to the seller Ameena Bai. It is also the case of the plaintiff that earlier plaintiff's father was in possession of the suit

property and after his death, plaintiff came into possession of the suit property to which defendant No. 1 denied asserting his title over the suit property stating that he is the real owner of the suit property.

4. Learned trial Court, upon appreciation of oral and documentary evidence on record, dismissed the suit holding that plaintiff has failed to prove that his father purchased the suit property in the name of defendant No. 1 by making payment of the consideration amount which was also affirmed by the first appellate Court in the appeal preferred by the plaintiff.

5. Plaintiff claimed that his father purchased the suit property on 08/05/1981 in the name of defendant No. 1 and claimed decree for declaration of title.

6. The Benami Transaction (Prohibition) Act, 1988 came into force w.e.f. 05/09/1988. Section 4 of the Act provides for prohibition of the right to recover property held *benami*. Section 4 (1) of the Act provides 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.

7. The Supreme Court, in the matter of Om Prakash v.

Jai Prakash¹ has held that by virtue of Section 4 of the Act, there is a total prohibition against any suit based on benami transaction and the plaintiff/respondent is not entitled to get any decree in such a suit or in appeal.

8. Thus, the suit filed by the plaintiff seeking declaration of title on the basis that the suit property was purchased by his father on 08/05/1981 in the name of defendant No. 1 by making payment of the consideration amount to the seller Ameena Bai is totally barred by Section 4(1) of the Act of 1988. In view of that, I do not find any illegality or perversity in the finding recorded by both the Courts below that plaintiff has failed to prove that his father purchased the suit property on 08/05/1981 in the name of defendant No. 1 and therefore, he is not entitled for decree for declaration of title.

9. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet