

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CR No.1307 of 2022

Date of Decision: 16.05.2022

Rama Rani and another

.....Revisionists-petitioners.

Versus

Isha Rani

.....Respondent.

CORAM: *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA*

Argued by:- Mr. Kulwant Singh Boparai, Advocate
for the revisionists-petitioners.

MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the order dated 12.02.2020 passed by learned Civil Judge (Junior Division), Patiala (for short, 'the trial Court') whereby the application moved by the petitioners-defendants (here-in-after to be referred as 'the defendants') under Order 7 Rule 11 CPC for seeking rejection of the plaint in the Civil Suit filed by the respondent-plaintiff (here-in-after to be referred as 'the plaintiff') against them (defendants) for seeking a decree for mandatory injunction, has been dismissed, they have chosen to prefer the instant revision petition.

I have heard learned counsel for the petitioners-defendants in the present revision petition and have also perused the file carefully.

Learned counsel for the defendants has contended that the plaintiff has filed the said civil suit for claiming her ownership over ½ share in each of the suit properties but she has not affixed the proper court-

fee on the plaint and moreover, as per her (plaintiff's) own version, her husband had purchased one of the suit properties in the name of defendant No.2, his brother, while pledging her gold ornaments with the Bank and he had purchased the other suit property in the name of defendant No.1, his mother, out of affection and respect for her and thus, it is explicit that both the above-mentioned sale transactions were 'benami' and hence, the suit for claiming ownership over the said properties is barred under the Benami Transactions (Prohibition) Act, 1988 (for short, 'the Act of 1988') and it being so, the plaint was liable to be rejected but vide the impugned order, learned trial Court has wrongly dismissed the application as moved by the defendants for this purpose and therefore, the said order is not legally sustainable. To buttress his contentions, he has placed reliance upon the observations made in **Anand Kumar Versus Vijay Kumar and others 2012(58) R.C.R. (Civil) 93 (MP)** and in **Lalsa Prasad Singh Versus Chanderwala and another 2017(8) AD (Delhi) 653.**

However, the afore-raised contentions are devoid of any merit because so far as the ground of non-affixation of proper court-fee on the plaint is concerned, the present revision is not maintainable on this score in view of the observations made by the Apex Court in **Sri Rathnavarmaraja Versus Smt. Vimla 1961 AIR (Supreme Court) 1299** to the effect that "*the question of affixation/payment of the Court fee is between the plaintiff and the State and the defendant had no right to move the superior Courts by way of appeal or revision petition in the eventuality of the said question having been decided against him*".

As regards the contention qua the suit being barred under the provisions of the Act of 1988, it is worth-while to mention here that Hon'ble Supreme Court has categorically held in **Pawan Kumar Versus Babulal Since Deceased through LRs and others, Civil Appeal No.3367 of 2019 (Arising Out of Special Leave Petition (Civil) No.36694 of 2017) decided on 02.04.2019** that “where the plaintiff claimed that the property in question was purchased by his money in the name of his father, the question whether the plea raised by the plaintiff was barred under Section 4 of the Act of 1988 or not, could not have been the subject matter for assessment at the stage when the application under Order 7 Rule 11 CPC was taken up for consideration and the matter required fuller and final consideration after the evidence was led by the parties.” In view of the above-discussed verdict, the observations made in **Anand Kumar's case (supra)** and **Lalsa Prasad Singh's case (supra)** would be of no avail to the defendants.

As a sequel to the fore-going discussion, it follows that the impugned order does not suffer from any illegality, infirmity, irregularity or perversity so as to warrant any interference by this Court. Resultantly, the revision petition in hand, being *sans* any merit, stands dismissed.

May 16, 2022
Yag Dutt

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No