

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.21 of 2022

Rajesh Kumar Singh

... .. Petitioner/s

Versus

Anshuman Singh

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Jitendra Prasad Singh, Advocate Mr. Sripriya Sinha, Advocate Mr. Rajeev Kumar, Advocate
For the Opposite Party/s	:	Mr. Mrigank Mauli, Advocate Mr. Sanket, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

11 13-03-2023 This Civil Revision application has been filed under Section 115 of the Code of Civil Procedure against the order dated 20.07.2018 passed by the learned Sub-Judge, Manjhaul (Begusarai) in Title Suit No. 30 of 2016 whereby, petition filed by the defendant no. 17 and 19 under Order VII Rule 11(d) of the Code of Civil Procedure has been rejected.

The suit was filed by the opposite party no. 1-plaintiff for declaration of title over Schedule-A land described in the plaint and further for declaration that sale deed executed by defendant 2nd party in favour of defendant 1st party be declared *void ab initio* and be set aside. Apart from this, recovery of possession with respect to Schedule B property has also sought for as well as permanent injunction against the defendant from interfering in the peaceful possession of the plaintiff and other



reliefs.

It is mentioned in the plaint that the purchase was made in the name of Babu Triveni Prasad Singh and Babu Ram Bhajan Singh and Babu Ramotar Singh, who had subsequently separated by registered deed of partition dated 06.12.1941. In such a manner 6 Anna was allotted in the share of Babu Triveni Prasad Singh and rest was allotted to Babu Ram Bhajan Singh and Babu Ramotar Singh half and half. It is also pleaded in the plaint that Babu Triveni Prasad Singh was simply a name lender and has no concern with the said land nor he paid rent either to ex-landlord or the State of Bihar.

As a matter of fact, the sale deed in favour of Babu Triveni Prasad Singh was entered into Zamindari Serista and subsequently in Register-II. It is submitted that Babu Gajendra Narain Singh and others used to pay rent to the ex-landlord as well as State of Bihar and obtained marfati rent receipts. Learned counsel for the opposite party draws my attention to paragraph 8 of the plaint, which shows that the land in question was never purchased by Triveni Prasad Singh rather he was in fiduciary relation with ancestor of the plaintiffs and ancestor of these plaintiffs came in and continued in possession over the same and Triveni Prasad Singh considering the actual state of



affairs and also hard facts executed a deed of relinquishment on 11.06.1968 acknowledging the facts and in this way nothing was inherited by descendants of Triveni Prasad Singh, especially Rajesh Kumar and sale deed executed by Rajesh Kumar in favour of defendants is not only forged and fabricated, without consideration rather he transferred a bag of wind.

Learned counsel for the petitioner submits that the suit is barred under Section 4(1) of the Benami Transactions (Prohibition) Act, 1988. Learned counsel for the petitioner submits that the lower Court wrongly relied and considered the provisions of Section 4(3)(b) of the Benami Transactions (Prohibition) Act which has been amended in the year 2016 and present suit is squarely covered under Order VII Rule 11(d) of the Code of Civil Procedure.

Learned counsel for the opposite party submits that Section 4(3)(b) amendment came into force w.e.f from 01.11.2016 with regard to amendment under Section 3(3) and the suit was filed on 30.04.2016 and the said amendment is prospective in nature and not retrospect, hence, the suit is not hit by the Benami Transactions (Prohibition) Act.

After considering the submissions and perusal of the impugned order, it is manifest that the suit has been filed by the



plaintiff, firstly, for the relief of declaration of sale deed executed by the defendant 2nd party in favour of defendant 1st party as *void ab initio* and cancellation of sale deed. However, other reliefs have been prayed for permanent injunction against the defendants from interfering in the peaceful possession of the plaintiff and other reliefs.

It is now well settled that while considering the prayer for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, the averments made in the plaint are to be taken as correct.

In the aforesaid background of the case, there is no illegality and jurisdictional error in the impugned order. This court is not inclined to interfere in the impugned order. The learned lower Court is required to frame an issue at the time of framing of the issues with regard to Section 4(1) of the Benami Transactions (Prohibition) Act so that the matter is finally adjudicated on each and every issue.

With the aforesaid observation this Civil Revision is disposed of.

(Khatim Reza, J)

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