

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

(126)

RSA No. 923 of 2023 (O&M)

Date of Decision : 17.04.2023

Manoj Gupta

...Appellant

Versus

Manju Rani and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ajay Kumar Sharma, Advocate for the appellant.

Harsimran Singh Sethi J. (Oral)

1. In the present regular second appeal, the challenge is to the order passed by the trial court on application filed under Section 11 read with Section 151 CPC as well as under Order 7 Rule 11 CPC by which, the suit filed by the appellant-plaintiff was held to be not maintainable as well as the order dated 03.12.2022 passed by the lower appellate court by which, the appeal filed by the appellant-plaintiff was also dismissed.

2. Learned counsel for the appellant-plaintiff submits that the application, which was filed by the respondents-defendants under Order 7 Rule 11 CPC raising the objection that the suit is barred by Section 11 CPC as well as keeping in view the limitation provided, has been allowed without appreciating the correct facts. Learned counsel though concedes that the property in question was *benami* and is hit by Benami Transaction (Prohibition) Act, 1988 (hereinafter referred to as 'the 1988 Act') but as the said Act was perspective in nature, dismissing the suit filed by the appellant-plaintiff holding that keeping in view the provisions of the 1988

Act, no challenge can be raised qua the property in question, is against the settled principle of law.

3. Learned counsel for the appellant-plaintiff further argues that even the finding recorded by the courts that the challenge to the sale deed No. 544 dated 01.06.1984, which came to his notice in the year 2007, could not have been challenged in the year 2011 as the same was not barred by limitation in the year 2011, which ground has been taken by the courts below to non-suit the appellant-plaintiff, is incorrect.

4. It may be noticed that during the hearing of the present appeal, learned counsel for the appellant conceded that the property in question, for which the suit was filed, is hit by the 1988 Act. Once, it is a conceded position that property is a *benami* property covered by 1988 Act merely that the property was sold prior to the year 1988, will not give it a colour of not being covered under the 1988 Act. Learned counsel conceded the position of law that no suit in respect of a *benami* property lies, hence the findings, which have been recorded by the courts below that the property in question is a *benami* property and hence, no suit can be filed, needs no interference by this Court in the present regular second appeal.

5. With regard to the second argument of challenging the sale deed No. 544 dated 01.06.1984 in the year 2011, the courts below have returned a finding that as per the conceded fact that the sale deed No. 544 dated 01.06.1984 came to the knowledge of the appellant-plaintiff in the year 2007. That being so, no suit was maintainable in the year 2011 qua the said property as the limitation of 3 years already stood expired by the said date.

6. No evidence which came on record has been shown to this Court that the said finding is contrary to the facts/evidence on record. In the absence of any perversity being pointed out by learned counsel for the appellant-plaintiff, no ground is made out for any interference with regard to the orders impugned in the present appeal.

7. Even otherwise, with regard to the objection under Section 11 of the CPC, the courts have recorded a finding that with regard to the same property, the suit was filed by the appellant-plaintiff before the courts in Delhi and the said suit was also held not to be maintainable keeping in view the operation of 1988 Act. The findings, which have been recorded by the trial court in its judgment dated 20.03.2018 in paragraph 6, are as under :-

“6. So far as the grounds taken by the plaintiff that subject matter of the case is immovable property which is situated in Bahadurgarh and therefore, Delhi Courts have no jurisdiction and any judgment and decree delivered by any Court beyond jurisdiction is nullity in the eyes of law and the authority relief upon by the plaintiff of Hon'ble Apex Court i.e. Shakuntla Devi Versus Kamla & Ors., 2005 (2) RCR Civil is not applicable to the facts and circumstances of present case and the grounds taken by the plaintiff that only Bahadurgarh Court is having jurisdiction is also not tenable as the earlier suit was not dismissed on the ground of territorial jurisdiction. Rather, the same was dismissed on the ground of maintainability and therefore the present suit is hit by the principle of Section 11 of Civil Prosedure Cord.

At this stage, it would be worthwhile to refer to the relevant provision contained in Section 11 of Civil Procedure Code :-

No Court shall try any suit or issue in which the matter directly and substantially in issue has been

directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

8. Learned counsel for the appellant-plaintiff has not been able to point out that the said finding is perverse or incorrect in any manner.

9. No other argument is raised.

10. Keeping in view the above, no ground is made out for interference by this Court in the present regular second appeal.

11. Dismissed.

CM-3546-C-2023

As the main appeal has been dismissed, the present application stands dismissed.

April 17, 2023
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No