

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

**CR No.5128 of 2023
Decided on: 12.09.2023.**

Shefali Grover

....Petitioner

Versus

Pawan Grover

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Sanjay Vij, Advocate
for the petitioner.

VIKRAM AGGARWAL, J. (ORAL)

1. The present revision petition preferred under Article 227 of the Constitution of India assails the order dated 23.08.2023 (Annexure P-1) passed by the Civil Judge (Junior Division), Gurugram, vide which the application filed by the petitioner under Order 7 Rule 11 CPC for rejection of plaint was dismissed.

2. The parties to the *lis* are husband and wife. The respondent-plaintiff i.e., the husband filed a Civil Suit (Annexure P-2) for declaration that he was the sole and exclusive owner in possession of plot bearing No.2086, Sector 46, Gurugram, measuring 98.67 Sq. yards (hereinafter referred to as the disputed plot) and that the name of the petitioner-defendant mentioned in sale deed dated 07.09.2009 reflecting her as the owner of the disputed plot was not binding upon the respondent-plaintiff. Consequential relief of permanent injunction restraining the petitioner-defendant from alienating the plot in dispute or from taking forcible possession thereof or from interfering in the possession of the respondent-plaintiff was sought. The basic case of the respondent-plaintiff was that the disputed plot had been purchased in the name of the wife despite the fact that he had contributed a substantial amount and the loan had been obtained in the name of the wife. It was the case of the respondent-plaintiff that the disputed plot had been

purchased in the name of the wife on account of the fiduciary relationship between the two.

3. An application under Order 7 Rule 11 CPC was filed by the petitioner-defendant (Annexure P-3) for rejection of the plaint. Various grounds were taken *vis locus standi* to file the suit, non-affixation of *ad valorem* Court fee, there being no cause of action, the suit being a counter-blast to the complaints filed by the petitioner-defendant, the suit being barred by law, a simpliciter suit for declaration not being maintainable since the respondent-plaintiff was not in possession, the suit being barred by limitation etc.

4. Reply to the application was filed (Annexure P-4), wherein all averments made in the application were denied.

5. By way of the impugned order, the trial Court dismissed the application leading to the filing of the present revision petition.

6. I have heard learned counsel for the petitioner-defendant.

7. Learned counsel representing the petitioner-defendant has strenuously urged that the order passed by the trial Court is not sustainable. Arguments have been addressed mainly on three points i.e., *ad valorem* Court fee not having been affixed, the suit being barred by limitation and the suit being barred by law i.e., by The Prohibition of Benami Property Transactions Act, 1988 (hereinafter referred to as the 1988 Act). With regard to the *ad valorem* Court fee it has been submitted that the challenge to the sale deed amounted to seeking cancellation of the same and, therefore, *ad valorem* Court fee was required to be affixed. With regard to limitation, it has been contended that the sale deed was of the year 2009 and the suit had been filed in the year 2023 meaning thereby that the same was barred by limitation. In so far as the suit being barred by law is concerned, it has been contended that the suit would be barred by the provisions of 1988 Act. Reference

has been made to the provisions of Section 2 (9) of the Act and it has been contended that the transaction would be a *benami* transaction and, therefore, the suit would not be maintainable. Learned counsel placed reliance upon the judgment of the Hon'ble Apex Court in the case of ***Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra) dead through legal representatives and others (2020) 7 SCC 366*** and ***Jamila Begum (dead) through legal representatives Vs. Shami Mohd. (dead) through legal representatives and another (2019) 2 SCC 727.***

8. I have considered the submissions made by learned counsel for the petitioner.

9. In the case of ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010(3) ICC 182***, the Hon'ble Apex Court held that where the plaintiff is a non-executant, is in possession and sues for a declaration that the deed is null or void, he has to merely pay a fixed Court fee. It was further held that if he is a non-executant and is not in possession and he seeks not only a declaration but also the relief of possession, he has to pay an *ad valorem* Court fee as provided under Section 7(iv)(c) of the Act. It was further held that where the executant of a deed wanted the same to be annulled, he would have to seek cancellation of the deed, whereas in the case of a non-executant, it would be a declaration. It was held that in case of the executant seeking cancellation of the deed, *ad valorem* Court fee would have to be paid on the consideration stated in the sale deed where the plaintiff is a non-executant, is in possession and sues for a declaration that the deed is null or void, he has to merely pay a fixed Court fee. It was further held that if he is a non-executant and is not in possession and he seeks not only a declaration but also the relief of possession, he has to pay an *ad valorem* Court fee as provided under Section 7(iv)(c) of the Act. It was further held that where the executant of a deed wanted the same to be annulled, he would

have to seek cancellation of the deed, whereas in the case of a non-executant, it would be a declaration. It was held that in case of the executant seeking cancellation of the deed, *ad valorem* Court fee would have to be paid on the consideration stated in the sale deed.

10. In the present case, the respondent-plaintiff was not the executant of the sale deed and further, he had not sought possession. Therefore, in accordance with the ratio laid down by the Hon'ble Supreme Court of India in the aforesaid judgment, *ad valorem* Court fee would not to be payable.

11. Coming to the question of limitation, the same is a mixed question of facts and law especially in this case where the respondent-plaintiff himself averred in the plaint that the dispute arose amongst the parties in the year 2023. It would therefore, be a matter of evidence and the plaint would not be liable to be rejected on the ground of limitation. No doubt, in certain cases, the Hon'ble Apex Court, did lay down that where on the face of it, the suit was barred by limitation and the same had been concealed by way of clever drafting, the plaint would be liable to be rejected. However, in the present case, as already observed, it has been pleaded that differences cropped up amongst the parties only in the year 2023. Under such circumstances, the issue of limitation would have to be decided by leading evidence.

12. Coming to the last argument i.e, is the suit being barred by law, the same also is found to be devoid of merit. Admittedly, the parties were in a fiduciary relationship. Whether the transaction can be called a *benami* transaction or not cannot be decided either way at this stage and even for this, evidence would have to be led. Section 2(9) of the 1988 Act lays down as under:-

“(9) “*benami* transaction” means,—

(A) a transaction or an arrangement—

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration,

except when the property is held by—

(i) a *Karta*, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

(B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or

(C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;

(D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;

Explanation.—For the removal of doubts, it is hereby declared that *benami* transaction shall not include any transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882), if, under any law for the time being in force,—

- (i) consideration for such property has been provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold ownership of such property;
- ii) stamp duty on such transaction or arrangement has been paid; and
- (iii) the contract has been registered.”

13. In the case of ***Niranjan Kaur (since deceased) Vs. Amarjit Kaur and others, CR No.8252 of 2016 decided on 27.01.2023***, a Co-ordinate Bench of this Court, while dealing with a similar issue held that in order to establish that the suit land was *benami*, evidence would have to be led and the plaint would not be liable to be rejected on this ground. It was held as under:-

“9. A bare reading of Section 4 shows that in order to establish that the present Suit is prohibited thereunder, or falls in the exception carved out under Section 2(9) of the Benami Act, evidence is required to be led. It is an established position in law that under Order 7, Rule 11 CPC, only averments made in the plaint have to be seen and nothing else can be considered while adjudicating upon such an application. In order to establish that the suit property is *benami* and it was purchased out of funds sent by son of the petitioner and it falls under the prohibition of Section 4, or falls in the exception under Section 2(9), evidence will have to be led. As such, in the present case, plaint could not have been rejected under Order 7, Rule 11 CPC.”

14. I have gone through the judgments relied upon by learned counsel for the petitioner. In the case of ***Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) dead through legal representatives and others*** (supra), the Hon’ble Supreme Court laid down in detail as to when a plaint would be liable to be rejected. In this case, a sale deed was executed on 02.07.2009 for a sale consideration of ₹1,74,02,000/-. It was stated in the plaint that even though the sale consideration was mentioned as ₹1,74,02,000/-, actually only a sum of ₹40,000/- had been paid and the remaining 31 cheques mentioned in the sale deed were bogus or false. The suit was filed after a delay of five and a half years from the execution of the sale deed. It was averred in the plaint that the period of limitation commenced on

21.11.2014 when the plaintiff obtained a copy of the index of the sale deed. This was disallowed by the Hon'ble Apex Court and it was held that the cause of action arose in 2009 itself when the bulk of the sale consideration had not been paid. Under the circumstances it was held that the plaint was the result of clever drafting and was an attempt to make out an illusory cause of action with a view to bring the suit within the period limitation. This judgment would not come to the aid of the petitioner because in the present case, though the respondent-plaintiff was aware that the sale deed was in the name of the petitioner-defendant, the dispute amongst the parties arose in the year 2023 and, therefore, *prima face*, it cannot be said that the suit was barred by limitation and the issue of limitation would, therefore, have to be proved by leading evidence. In the case of ***Jamila Begum (Dead) through legal representatives case Vs. Shami Mohd. (Dead) through legal representatives and another*** (supra), it had been held by the Hon'ble Apex Court that a registered sale deed has a presumption of truth and the plea of absence of free will etc., in execution of such a sale deed is liable to be rejected. This judgment would also not come to the aid of the petitioner since the very foundation of the case is a fiduciary relationship between the parties and the sale deed is not being challenged on any other account.

15. In view of the above, this Court is of the considered opinion that the trial Court did not commit any error in dismissing the application filed by the petitioner-defendant under Order 7 Rule 11 CPC.

In view of the same, I do not find any merit in the present revision petition. The same is accordingly dismissed.

September 12th, 2023
Rekha

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.