

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.13 of 2022

Jagdish Chand Agarwal son of Tara Chand Agarwal @ Tara Chand Dhanuka
resident of Dak Bangla Road, Thakurganj, P.O. and P.S. Thakurganj, District-
Kishanganj.

... .. Petitioner/s

Versus

1. Onkarnath Rai @ Omkarnath Rai son of Late Vibhuti Narayan Rai resident of Village- Galgalia, P.O. and P.S. Galgalia, Thakurganj, District-Kishanganj.
2. Smt. Shyampyari Devi wife of Late Vishwanath Singh resident of Village-Kokilpur, P.O. Latthudih- Hartmanpur (Gandhinagar), Via- Karimuddinpur, Police Station- Karimuddinpur, District- Ggazipur (U.P.).
3. Shri Sanjay Singh son of Late Vishwanath Singh resident of Village-Kokilpur, P.O. Latthudih- Hartmanpur (Gandhinagar), Via- Karimuddinpur, Police Station- Karimuddinpur, District- Ggazipur (U.P.).
4. Shri Ashok Singh son of Late Vishwanath Singh resident of Village-Kokilpur, P.O. Latthudih- Hartmanpur (Gandhinagar), Via- Karimuddinpur, Police Station- Karimuddinpur, District- Ggazipur (U.P.).
5. Shri Santosh Singh son of Late Vishwanath Singh resident of Village-Kokilpur, P.O. Latthudih- Hartmanpur (Gandhinagar), Via- Karimuddinpur, Police Station- Karimuddinpur, District- Ggazipur (U.P.).
6. Smt. Asha Devi D/o Late Vishwanath Singh resident of Village- Kokilpur, P.O. Latthudih- Hartmanpur (Gandhinagar), Via- Karimuddinpur, Police Station- Karimuddinpur, District- Ggazipur (U.P.).
7. Smt. Geeta Devi D/o Late Vishwanath Singh resident of Village- Kokilpur, P.O. Latthudih- Hartmanpur (Gandhinagar), Via- Karimuddinpur, Police Station- Karimuddinpur, District- Ggazipur (U.P.).
8. Pratima Devi D/o Late Vishwanath Singh resident of Village- Kokilpur, P.O. Latthudih- Hartmanpur (Gandhinagar), Via- Karimuddinpur, Police Station- Karimuddinpur, District- Ggazipur (U.P.).
9. Vimla Devi wife of Late Ram Awadh Singh resident of Village- Kokilpur, P.O.- Latthudih- Hartmanpur (Gandhinagar), Via- Karimuddinpur, Police Station- Karimuddinpur, District- Ggazipur (U.P.).
10. Pradeep Singh son of Late Ram Awadh Singh resident of Village- Kokilpur, P.O.- Latthudih- Hartmanpur (Gandhinagar), Via- Karimuddinpur, Police Station- Karimuddinpur, District- Ggazipur (U.P.).
11. Mithilesh Singh son of Late Ram Awadh Singh resident of Village-Kokilpur, P.O.- Latthudih- Hartmanpur (Gandhinagar), Via- Karimuddinpur, Police Station- Karimuddinpur, District- Ggazipur (U.P.).
12. Bhanu Pratap Singh S/o Late Ram Awadh Singh, resident of Village-Kokilpur, P.O. Latthudih-Hartmanpur (Gandhinagar), Via-Karimuddinpur, Police Station-Karimudinpur, District-Ggazipur (U.P.).
13. Shri Umashankar Singh son of Late Dudhnath Singh resident of Village-Kokilpur, P.O.- Latthudih- Hartmanpur (Gandhinagar), Via- Karimuddinpur, Police Station- Karimuddinpur, District- Ggazipur (U.P.).
14. Shri Ganesh Prasad Rai son of Late Jai Narayan Rai resident of Village-Galgalia, P.O. and P.S. Galgalia, Thakurganj, District- Kishanganj.
15. Shri Mahesh Rai son of Late Jai Narayan Rai resident of Village- Galgalia, P.O. and P.S. Galgalia, Thakurganj, District- Kishanganj.
16. Smt. Nilo wife of Late Ramesh Rai resident of Village- Galgalia, P.O. and



P.S. Galgalia, Thakurganj, District- Kishanganj.

17. Shri Shaita (minor) son of Late Ramesh Rai through Smt. Nilo (mother), resident of Village- Galgalia, P.O. and P.S. Galgalia, Thakurganj, District- Kishanganj.
18. Shri Vallabh Rai son of Late Vibhuti Narayan Rai resident of Village- Galgalia, P.O. and P.S. Galgalia, Thakurganj, District- Kishanganj.
19. Shri Vishnu Mohan Rai son of Late Vibhuti Narayan Rai resident of Village- Galgalia, P.O. and P.S. Galgalia, Thakurganj, District- Kishanganj.
20. Shri Raman Rai son of Late Vibhuti Narayan Rai resident of Village- Galgalia, P.O. and P.S. Galgalia, Thakurganj, District- Kishanganj.
21. Smt. Seema Agarwal wife of Jagdish Chand Agarwal Director Tapowan Delar Pvt. Ltd., 5 Hari Sarkar Lane, Kolkata- 800007 (West Bengal), presently residing at Dak Bunglow Road, Thakurganj, District- Kishanganj.
22. Kuldeep Dhanuka son of Jagdish Chand Agarwal Director Tapowan Delar Pvt. Ltd., 5 Hari Sarkar Lane, Kolkata- 800007 (West Bengal), presently residing at Dak Bunglow Road, Thakurganj, District- Kishanganj.
23. District Board, Kishanganj through the Chief Executive Officer, Kishanganj, P.O. and P.S. Kishanganj, District- Kishanganj.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Satish Kumar Sinha
For the Respondent/s : Mr.Shahbaj Alam

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV ORDER

14 19-01-2024 I have already heard the learned counsel for the
petitioner as well as learned counsel for opposite party no.21.

2. Opposite party no.1/plaintiff did not appear,
despite notice being served upon him.

3. Being aggrieved by the order dated 30.10.2021
passed by the Sub-Judge-I, Kishanganj in Title Suit No. 19 of
2007, whereby the application filed by the petitioner under
Order VII, Rule 11(d) of the Code of Civil Procedure
(hereinafter to be referred to as 'the Code'), was rejected by the



court below.

4. The petitioner/defendant filed a petition dated 12.07.2019 under Order VII, Rule 11(d) of the Code, mentioning therein that the suit filed by the opposite party no.1/plaintiff is barred under Section 4(1) of the Prohibition of Benami Property Transactions Act, 1988 (hereinafter to be referred to as 'the Act 1988'), as such, the plaint should be rejected under the above-mentioned provision of 'the Code'. The learned court below rejected the petition filed by the petitioner on the following two grounds:-

(1) Already similar petition filed by other defendants was rejected, vide order dated 28.10.2016.

(2) Section 4(1) of the Act 1988 is prospective and the sale deed, which is said to be a *benami* transactions is prior to coming into force of the said Act 1988.

5. The plaintiff's case, in brief, is that the father of the plaintiff and defendant no.5 Late Vibhuti Narayan Rai and husband of defendant no.1 and father of defendant nos. 2 to 7, Late Vishwanath Singh were friends and they were resident of Uttar Pradesh. They earned jointly 137.79 acres of land in village *Bhatgaon (Galgalia)*. In survey *khatiyon*, the land appertaining to khata no. 425 mentioned in Schedule-I of the



plaint was recorded in the name of Late Vishwanath Singh and other lands of Schedule-I appertaining to khata nos.426 to 435 were jointly recorded in the name of Late Vishwanath Singh and Vibhuti Narayan Rai. In order to save the land from ceiling proceeding, Late Vishwanath Singh persuaded the father of the plaintiff to execute a sale deed of khata no.435 in favour of Jai Narayan Rai and also a sale deed appertaining to khata nos. 433 and 434 in favour of Ram Awadh Singh. The father of the plaintiff executed a sale deed in favour of Jai Narayan Rai (younger brother of father of the plaintiff) in respect to khata no.435 dated 18.04.1963. This deed was without consideration money and it was a 'farzi transaction' and second sale deed was executed in favour of Ram Awadh Singh, the younger brother of Late Vishwanath Singh. This *kewala* was also a *farzi kewala* and without consideration money. These two sale deeds were executed only to save the lands from the operation of the Land Ceiling Act. Amongst other reliefs, the relief of title as well as for declaration of those sale deeds as void was claimed. The relief of partition was also claimed.

6. The learned counsel for the petitioner submitted that the plaintiff himself admitted that those two sale deeds were *benami* transactions, and as per the provision of Section 4(1) of



the Act 1988, the suit filed by the plaintiff is barred and if a suit is barred under any provision of law, the plaint shall be rejected as per the provision of Order VII, Rule 11(d) of the Code.

7. Section 4(1) of Act 1988 reads as under:-

4. Prohibition of the right to recover property held benami.- (1) 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.”

8. From bare perusal of the said Section, it transpires that the person claimed to be the real owner of a property of *benami* transaction cannot file a suit to enforce any right in respect of that property. This provision clearly bars the suit and the learned trial court committed illegality in rejecting the petition filed by the petitioner/defendant. The learned court below rejected the petition on two grounds mentioned above. So far as the first ground is concerned, the learned counsel for the petitioner drew my attention towards the copy of the order dated 28.10.2016 which is Annexure-4.

9. From perusal of the order dated 28.10.2016, it appears that the plea of non-service of notice as per the provision of Section 80(2) of the Code



was taken, and the petition filed by the defendant earlier under Order VII, Rule 11 was relating to non-issuance of notice to the State of Bihar, as per the provision of Section 80(2) of the Code.

10. So far as ground no.2 is concerned, the learned counsel for the petitioner relied upon two decisions of this Court the first of which is in the case of *Raj Kumar Sant Balabhacharya Vs. Sawo Devi, Laloo Yadav* {2011 (e) PLJR-HC 1739006: 2014(1) PLJR 324:2012(1) BLJud 280}, paragraph 8 of which reads as under:-

*“8. The learned senior counsel for the petitioner has further submitted that the plea of adverse possession had been raised by the defendant in a proceeding under Section 145 Cr.P.C. which had been subsequently dropped and the said proceeding was before coming into force of the Benami Transactions (Prohibition) Act, 1988 and as such the bar contained in section 4(2) of the Act will not be attracted in view of the legal position settled by the judgment of the Apex Court in *R.Rajagopal Reddy (dead) and Ors. Vs. Padmini Chandra Shekharan(dead)*, reported in *A.I.R. 1996 Supreme Court 238*. This submission of the learned counsel for the appellant appears to be misconceived. The abovesaid judgment of*



the Apex Court nowhere deals with the situation as it has been projected on behalf of the appellant to do rather the law laid down in this judgment is clearly against the appellant. Admittedly, the suit has been filed after coming into force of the Benami Transaction (Prohibition) Act which by virtue of Section 4(2) prohibits a defence based upon the claim of Benami. The Apex Court in R.Rajagopal Reddy's case (supra) has held:-

“.....It is also pertinent to note that Section 4(2) enjoins that no such defence “shall be allowed” in any claim, suit or action by or on behalf of a person claiming to be the real owner of such property.....”

11. The learned senior counsel for the petitioner has also relied upon another decision in the case of *Pawn Kumar Gadodia Vs. Radha Devi* {2007(e) PLJR-HC 1715369 : 2007(4) PLJR 624 : 2007 (3) BLJud 263}, paragraph 10 whereof reads as follows:-

“10. Although the deed in question dated 9.7.1965 is much prior to coming into force of the said Act on 9.05.1988, but the suit was filed thereafter in the year 2004 and hence the provision of the said Act would be applicable to the instant case and the defendants are prohibited by law to raise question of Benami



transaction in the instant suit. The parties did not raise the said question on any earlier occasion. However, only if the parties are accepting the said acquisition as the acquisition of joint family, then the exception provided in sub-sec. (3)(a) of Sec. 4 of the Benami Transactions (Prohibition) Act, 1988, would be attracted.”

12. From perusal of abovenoted decisions, it is clear that Section 4(1) of the Act 1988 has a retrospective effect. It bars not only a suit brought on the basis of the transaction, which is subsequent to coming into force of the Act 1988, but also the suit instituted on the basis of a benami transaction, which is prior to coming into force of the said Act 1988.

13. In my view, the impugned order dated 30.10.2021 passed in Title Suit No. 19 of 2007 suffers from illegality and hence it is set aside.

14. Consequently, this civil revision application is allowed.

(Nawneet Kumar Pandey, J)

HR/-

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