

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.48 of 2016

Ashok Singh @ Ashok Kumar Singh son of Sri Raghupat Singh resident of Village and Post- Kunda, P.S.- Aurangabad, District- Aurangabad Bihar.

... .. Petitioner/s

Versus

1. Rajendra Singh
2. Satyendra Singh Both sons of Late Ramchandra Singh, resident of Village- Khaira Bind, Tola- Khairi, P.O.- Manjurahi, P.S.- Aurangabad M, District- Aurangabad Bihar.
3. Most. Jagmati Kuer, wife of Late Ramchandra Singh resident of Village- Khaira Bind, Tola- Khairi, P.O.- Manjurahi, P.S.- Aurangabad M, District- Aurangabad Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. J.S.Arora, Sr.Advocate Mr.Manoj Kumar Mr.Ravi Bhatia Mr. G.Pratap Mr. Himanshu
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV ORDER

15 30-01-2024 I have already heard the learned counsels for the parties.

2. This civil revision application has been preferred by the petitioner against the order dated 07.08.2015, passed in Title Suit No. 182 of 2012/54 of 2012 by the learned Sub-Judge-III, Aurangabad, by which the petition dated 26.08.2014 filed by the petitioner under Order VII, Rule 11(d) of the Code of Civil Procedure (hereinafter to be referred to as ‘the Code’), read with Section 4 of the Prohibition of Benami Property Transactions



Act, 1988 (hereinafter to be referred to as 'the Act 1988'), for rejection of the plaint, was rejected.

3. The brief facts of the case is that plaintiff/opposite party nos. 1 and 2 brought a suit against their step-mother Most. Jagmati Kuer (respondent no.3 herein) and also against the petitioner Ashok Singh, claiming the disputed land on the ground that the said land was purchased by father of the plaintiffs, namely, Late Ramchandra Singh in the name of his wife Jagmati Devi from the consideration money earned after disposal of a piece of land, which was transferred by maternal grandfather of the plaintiffs in their favour through a sale deed dated 19.06.1965. Jagmati Devi had no title over the land and she was the holder of that property in *benami* status. It has been averred further that one Surendra Singh and Harendra Singh, the sister's sons of Jagmati Devi, fraudulently created a gift deed of that land in their favour which was alleged to be executed by Jagmati Devi on 30.12.1987. The petitioner is the vendee of the sister's sons of Jagmati Devi. It has also been mentioned in the plaint that Jagmati Devi filed Title Suit No. 38 of 2007 to cancel the gift deed, but her sister's sons kidnapped her and fraudulently, without her knowledge, filed a compromise petition and obtained a compromise decree by a Lok Adalat. The



plaintiffs claimed a relief to declare themselves as the owner in possession of that property, as the transaction in the name of Jagmati Devi was *benami*.

4. The learned counsel for the petitioner submitted that the learned trial court committed gross illegality in rejecting the petition of the petitioner filed under Order VII, Rule 11 (d) of the Code. He submitted further that Order VII Rule 11(d) of the Code makes a provision of rejection of the plaint when the plaint discloses itself that the suit is barred by any law. He next submitted that the plaintiffs themselves admitted the transaction in the name of Jagmati Devi as *Benami* transaction. As such, the suit is barred under Section 4(1) of the Act 1988, and on this score, the learned trial court should have rejected the plaint. That provision is mandatory. The court below has no option but to reject the plaint. The learned trial court committed illegality in not rejecting the plaint.

5. The learned counsel for the petitioner in support of his submission has relied upon a decision of this court, reported in the case of *Rameshwar Mistry and another Vs. Bebulal Mistr* (AIR 1991 Patna page 53)

6. On the other hand, the learned counsel for the opposite parties submitted that the similar petition has already



been rejected by the court below vide order dated 09.05.2014 and that order has become final. If this issue has already been decided and become final, it cannot be re-challenged subsequently. The second petition under Order VII Rule 11(d) of the Code filed by the petitioner was not maintainable, since it was barred by the principles of *res judicata*. He submitted that, as such, the learned trial court has rightly rejected the petition filed by the petitioner. He submitted further that the said transaction is not barred by Section 4(1) of the Act 1988 as the transaction was in favour of the wife of the purchaser. He relied upon a decision of Andhra Pradesh High Court in the case of *Pradeep Kumar Vs. Mahaveer Pershad and others* (AIR 2003 Andhra Pradesh page 107).

7. So far as the submission of the learned counsel for the opposite parties that similar petition has already been rejected by the learned court below vide order dated 09.05.2014 is concerned, the petitioner has annexed a copy of the order dated 09.05.2014 passed by the trial court, which shows that the issue of bar of the suit under Section 4(1) of the Act 1988 was not an issue in the earlier petition. In the earlier application, the jurisdiction of the trial court was challenged on the ground that it had no jurisdiction to set aside the order passed by the



Lok Adalat, on the basis of compromise. Vide that order, the learned trial court held that the plaintiffs were not party in Title Suit No. 38 of 2007, as such, the order of the Lok Adalat was not binding upon them, and it is the exclusive jurisdiction of the civil court to look into the matter where the question of title of the plaintiffs is involved and considering these aspects the learned trial court rejected the application filed by the petitioner vide order dated 09.05.2014. As such, the order dated 09.05.2014 does not operate as *res judicata* over the subsequent issue, entirely different from the earlier issue.

8. The question to be decided in this case is whether the suit is barred by Section 4(1) of the Act 1988, and if it is barred, then what would be the fate of the plaint?

9. 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."*

10. From bare perusal of the said Section, it transpires that the person claiming to be the real owner cannot lodge a suit against a person, in whose name the property was purchased as



benamai. As such, the present suit is barred by Section 4(1) of the Act 1988, and the court has no option but to reject the plaint under Order VII Rule 11(d) of the Code as the provision is mandatory.

11. The Hon'ble Supreme Court in *Dahiben's case* (2020 SCC online 563 para 12.10), held that the provisions of Order VII Rule 11 is mandatory in nature. It states that the plaint **shall** be rejected, if any of the grounds specified in clause (a) to (e) are made out.

12. In my view, the learned court below committed illegality by not complying the mandatory provisions of Order VII Rule 11(d) of the Code and by rejecting the petition filed by the petitioner.

13. Considering the above-mentioned facts and circumstances of the case, the order dated dated 07.08.2015, passed in Title Suit No. 182 of 2012/54 of 2012 is set aside.

14. Consequently, the revision application stands allowed.

(Nawneet Kumar Pandey, J)

HR/-

U			
---	--	--	--

