

Item No.34
15.04.2024
Court. No. 19
GB

C.O. 595 of 2023

Sandhya Mukherjee
Vs.
Swadhin Mukherjee

Mr. Somnath Gangopadhyay

...for the Petitioner.

*Mr. Partha Pratim Roy,
Ms. Sudeshna Basu Thakur,
Ms. Banani Bhattacharya*

...for the Opposite Party.

1. The revisional application arises out of an order dated January 11, 2023, passed by the learned Civil Judge (Senior Division), 7th Court at Alipore in Title Suit No.160 of 2021. By the order impugned, the learned court rejected an application for recalling of the order dated March 4, 2021.
2. The learned advocate for the petitioner submits that the suit was barred under the provisions of the Prohibition of Benami Property Transaction Act, 1988 (hereinafter referred to as the 'said Act'). It is contended that admittedly the plaint records that the suit property stood in the name of the wife. The plaint also records that the wife had paid a considerable amount of money for purchase of the property. Under such circumstances, this transaction would not fall within the exceptions to the definition of a benami transaction.
3. It is also contended that the relief of declaration was indirectly claimed in order to avoid a prayer for declaration that the suit property was held in the benami

of the wife. This was a case of clever drafting. The deletion to sub-section 2 of Section 3 of the said Act, would not permit such prayer. The learned advocate further contended that the prayers with regard to gold ornaments were made only to clothe the the suit as one for declaration, partition and injunction. Essentially, all the ingredients of a benami transaction exist and a meaningful reading of the plaint would reflect so. The prayers were also barred under the provisions of the Specific Relief Act. Hence, it is prayed that the plaint be rejected, upon setting aside the orders of the learned trial judge.

4. Mr. Roy, learned advocate appears on behalf of the opposite party/plaintiff and submits that the said Act could not be pressed into action in this case as per the exception clause in the definition of benami transaction. It is further contended that even before the amendment of the said Act, a property could be held in the name of the wife or an unmarried daughter. Thus, the contention of the petitioner that subsequent deletion of sub-Section 2 of Section 3 of the said Act, would bar the suit under the said Act, was also not the correct proposition of law. The definition of benami transaction and the exception clause, would make the suit maintainable.
5. It has further been contended that there were prayers for partition and passing of preliminary decree and final decree. The preliminary decree would be passed upon declaring the shares of the co-owners of the property and

the final decree would be passed by effecting partition by metes and bounds.

6. The learned trial judge rejected the application under Order 7, Rule 11 of the Code of Civil Procedure on the ground that the issue as to whether the husband had contributed towards purchase of the property and whether he had any right, title and interest in the property in question, was a matter of trial on evidence. The question whether the property had been purchased jointly by the husband and the wife although the same stood in the name of the wife, is also a matter of evidence. Moreover, definition of benami transaction had made an exception to a man holding property in the name of his wife. Thus, the learned court was of the view that the plaint could not be rejected at such an early stage.
7. Having perused the plaint and paragraphs 2, 3, 4, 7, 8, 9 and 10, it appears there are pleadings that the parties had purchased the property jointly. Both had contributed financially. The opposite party also carried out construction work. The couple was childless. Gradually, disputes cropped up. The parties also had a dispute with regard to other movable property, namely, jewellery which were lying in the locker of the State Bank of India in the names of the petitioner and her sister. That the relatives had joint meetings to settle the dispute, but the same failed.
8. Under such circumstances, the suit was filed for declaration of shares and partition of jewellery/gold

ornaments and the immovable property. The plaint discloses a cause of action. The opposite party has not prayed for any declaration that the property was a benami property, held in the name of the wife. Rather, the plaint discloses that the parties had jointly purchased the property in the name of the wife. As disputes and differences cropped up with regard to the property and other gold ornaments which belonged to the parties, the suit was filed with the necessary prayers. At this stage, the plaint case has to be treated as true and correct. The defence case cannot be looked into. No amount of evidence can be considered.

9. Reference is made to decision of ***G. Nagaraj and Anr. vs, B.P. Mruthunjayanna and Ors.*** decided in ***Civil Appeal No.- 2737 of 2023***. The Hon'ble Apex Court held as follows:-

“6. The law is well settled. For dealing with an application under Rule 11 of Order VII of CPC, only the averments made in the plaint and the documents produced along with the plaint are required to be seen. The defence of the defendants cannot be even looked into. When the ground pleaded for rejection of the plaint is the absence of cause of action, the Court has to examine the plaint and see whether any cause of action has been disclosed in the plaint.

7. A perusal of the judgments of the Trial Court and the High Court will show that the Courts have gone into the question of correctness of the averments made in the plaint by pointing out inconsistent statements made in the plaint. The Courts have

referred to the earlier suits filed by the appellants and have come to the conclusion that the plaint does not disclose cause of action.

8. The learned counsel appearing for the second and third respondents vehemently submitted that on a plain reading of the plaint, it is crystal clear that cause of action is not disclosed. Therefore, we have perused the plaint. After having perused the plaint and in particular paragraphs 16 and 17, we find that the cause of action for filing the suit has been pleaded in some detail. It is pleaded how the first appellant acquired title to the property. The facts constituting alleged cause of action have been also incorporated in paragraph 17.

9. We are of the view that merely because there were some inconsistent averments in the plaint, that was not sufficient to come to a conclusion that the cause of action was not disclosed in the plaint. The question was whether the plaint discloses cause of action. As observed earlier, the plaint does disclose cause of action. Whether the appellants will ultimately succeed or not is another matter.”

10. In the decision of ***Kamala and ors. vs. K.T.***

Eshwara Sa and ors., reported in **(2008) 12 SCC**

661, the Hon’ble Apex Court held as follows:-

“21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be

invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision."

11. Under such circumstances, this Court is of the view that the learned trial judge was correct in holding that the issues involved in the suit were to be decided on elaborate evidence. This Court does not find that this is a fit case for interference at this stage. The suit must proceed in accordance with law and be disposed of on evidence to be led by the parties. The question whether the suit was maintainable or hit by the provisions of the said Act, and whether the suit should fail upon application of the provisions of the Specific Relief Act, etc., are matters to be decided in the suit. The learned court shall frame and dispose of the issues in accordance with law. Moreover, there are prayers for partition and injunction.
12. It is well-settled that even if one or two prayers in the suit are found to be barred by law, but other prayers are found to be maintainable, the plaint should not be rejected but the suit should proceed in accordance with law, as a whole. The point of limitation is also kept open to be decided as a separate issue.
13. The revisional application is accordingly disposed of. The learned court shall dispose of the suit within a year.
14. There shall be no order as to costs.

15. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)