



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.11 OF 2024

Mahesh s/o Shankarrao Almale,
Age : 40 years, Occu.: Service,
R/o.: S. 8/4, Plot No.35,
Shivtirth Nagar, Kalewadi Phata,
Theraon, Pune – 411 017

... **APPLICANT**
(Orig. Defendant)

VERSUS

Vishnu s/o Shankarrao Almale,
Age : 43 years, Occu.: Agriculturist,
R/o.: At Post Apsinga, Tq. Tuljapur,
District : Osmanabad,
At Present : Building No. C/36,
Shashwat Housing Society,
In front of Kai, Manisha Bhoir
Virangula Kendra, Premlok Park,
Chinchwad, Pune – 411 033

... **RESPONDENT**
(Orig. Plaintiff)

....
Mr. S. V. Suryawanshi, Advocate for the Applicant
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CORAM : SANDIPKUMAR C. MORE, J.

DATED : 18/07/2024.

ORDER :

1. The applicant, who is original defendant in Regular Civil Suit No.429 of 2019, has challenged the order passed below Exhibit-41 by the learned trial court i.e. 2nd Joint Civil Judge (Junior Division), Tuljapur. Under the impugned order, the learned trial court has rejected the application filed by the applicant / defendant

for rejection of the plaint of the respondent / plaintiff under Order-VII Rule-11(d) of C.P.C.

2. The learned counsel for the applicant / defendant vehemently argued that the learned trial court despite there being clear contention of the respondent / plaintiff that the suit property, at Pune, was purchased in the name of the applicant / defendant for a consideration mentioned therein, which was paid by him, erroneously rejected application Exhibit-41.

3. It is significant to note that the present applicant / defendant has sought rejection of the plaint mainly on the contention of the respondent / plaintiff in para-4 of the plaint, wherein it is mentioned that the suit property at Pune was purchased in the name of defendant but the consideration thereof was paid by the plaintiff. On this contention, the applicant / defendant is claiming that the suit is barred by Section 4(1) of the Prohibition of Benami Property Transaction Act, 1988, which reads thus :

“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.”

4. From the record it indicates that the respondent / plaintiff had opposed the application Exhibit -41 by contending that there is no bar under Section 4(1) of the said Act, as such, it is not a case of *benami* transaction but his case is that the suit property at Pune was jointly purchased by himself and the applicant / defendant and he paid the consideration falling to his share to the original owner by way of cheque.

5. On going through the said plaint, the plaintiff / respondent in para-4 of the plaint, has specifically claimed that the suit property at Pune was jointly purchased by himself and applicant / defendant by paying the consideration. Likewise in para-5 of the plaint, it is also specified by the respondent / plaintiff that he paid his part of consideration to the original owner of the property by way of cheque. As such, the respondent / plaintiff has not come with the case that the entire transaction was *benami* and he had himself purchased the entire suit property at Pune by paying the required consideration but in the name of the applicant/defendant. Further, even if the photo copy of the registered sale deed at Pune is perused, nothing is there to indicate that suit property was

purchased by the respondent / plaintiff by paying the consideration but in the name of the applicant / defendant. Thus, it appears that the learned trial court by considering these facts in the light of provisions of the aforesaid Act in respect of benami property, rightly rejected application Exhibit-41 filed by the present applicant / defendant. Thus, the present civil revision application has no substance at all and therefore, stands rejected at admission stage and disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)