D/L.4.
September 25, 2025.
MNS.

CO No. 363 of 2024

Sri Swapan Das
Vs.
Sri Tapan Das and another

Mr. Anirban Kar,
Mr. Munshi Ashiq Elahi,
Mr. Rohit Mahato

… for the petitioner.

Mr. Animesh Paul,
Ms. Krity Keshri,
Ms. Manisha K. Upadhaya

…for the opposite party no. 1.

1. The present challenge has been preferred against an order whereby an application of the defendant/petitioner under Order VII Rule 11 of the Code of Civil Procedure (Code) was rejected by the learned Trial Judge on the ground that mixed questions of law and fact are involved.
2. The brief facts of the case are that a suit for declaration of title and for permanent injunction has been instituted by the plaintiff/opposite party no. 1.
3. In paragraph no. 2 of the plaint, it has been claimed that the property mentioned in the Schedule-A (with regard to which the

declaration has been sought) belonged to Horibol Pal, Padmavati Pal, Shyamali Chakraborty and Piyali Bhattacharyya and they intended to sell the property mentioned in Schedule-A and that the plaintiff, from his own fund, purchased the Schedule-A property. It has further been stated in paragraph no. 2 that the plaintiff at that time was a bachelor and he thought if after marriage, the proposed wife of the plaintiff does not accept the other brothers of the plaintiff, namely, Sandip and Swapan (the proforma defendant and the defendant no. 1 in the suit respectively) and to keep a good relationship in the family and to please his mother, he purchased the Schedule-B property in the name of the proforma defendant.

4. It is also averred in paragraph no. 2 that at the said time, the defendant no. 1 and the proforma defendant had no financial capacity to purchase the property in their names.

5. In paragraph no. 6 of the plaint, it has been alleged by the plaintiff / opposite party no. 1 that the defendant no.1 / petitioner

started divulging after twenty-nine years that he is the absolute owner of Schedule-A property and he will transfer the Schedule-A property to another person. Again, in paragraph no. 8 of the plaint, it is alleged that the plaintiff asked the defendant no. 1 / petitioner what was the reason for the “drama” and stated that the defendant no. 1 / petitioner is not the absolute owner of the Schedule-A property, rather, he is a name lender.

6. The principal relief sought in the suit is a declaration that the plaintiff is the absolute owner in respect of Schedule-A property, having sixteen *annas* right, title and interest and possession thereof, and that the defendant no. 1 is the mere name lender and by virtue of sale deed no. 1034/1993, the defendant no. 1 did not acquire any right, title or interest therein.

7. Thus, it is *ex facie* evident from the aforesaid paragraphs in the plaint as well as the principal relief sought therein that the plinth of the plaint case is that the plaintiff is the real owner of the Schedule ‘A’ property (regarding which declaration

has been sought) and the defendant no. 1 / petitioner is a mere name lender or, in other words, a *Benamdar*. Hence, the suit is categorically barred under Section 4 of the Prohibition of Benami Property Transactions Act, 1988 (hereinafter referred to as “the 1988 Act”).

8. Sub-section (1) of Section 4 of the said Act provides that 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.

9. Learned counsel for the plaintiff/opposite party no. 1 seeks to rely on Section 2(9)(A)((b)(ii) of the 1988 Act to argue that where a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity holds the property, it forms an exception to the definition of ‘*benami* transactions’.

10. It is argued that since the plaintiff and the defendant no. 1 were bachelors at the relevant point of time and in fiduciary

relation with each other, the bar under Section 4 does not apply.

11. It is also sought to be submitted by the plaintiff/opposite party no. 1 that apart from declaration, a decree of permanent injunction was also sought in the suit, which is not barred under Section 4.

12. Since it is well-settled that a plaint cannot be partially rejected, the learned Trial Judge was justified in rejecting the application under Order VII Rule 11 of the Code.

13. However, the contentions of the plaintiff/opposite party no. 1 cannot be accepted.

14. The expression "fiduciary capacity" indicates that one person is dependent on the other in some manner whatsoever. Two adults, who are not financial dependents of each other, cannot in law be said to be in fiduciary relationship with each other. Since the plaintiff and the defendant no. 1 are brothers, they could at best, at the relevant point of time, be in a fraternal relationship but not in a "fiduciary

relationship” or in a position of trust as such.

15. Sub-section (3) of Section 4 also provides for certain exceptions to the bar under the said Section.

16. Clause (a) of sub-section (3) envisages a situation where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family. On other hand, Clause (b) of sub-section (3) contemplates a situation where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity and the property is held for the benefit of another person for whom he is a trustee or with whom he stands in such capacity.

17. To come within the exceptions carved out under Section 4 (3), the plaintiff had to plead at least one of the said exceptional situations. Whereas the concept of coparcener in an Hindu undivided family has not been brought in the picture in the plaint at all, there is no averment in the plaint either that the property was held for

the benefit of another person by the plaintiff, for whom the plaintiff was a trustee and towards whom he stood in fiduciary capacity.

18. Thus, the exceptions to the bar under Section 4 (1) of the 1988 Act are not attracted to the present case.

19. On a plain reading of the plaint itself, a bar of law under Section 4 of the 1988 Act is evident, bringing the plaint within the ambit of Order VII Rule 11(d) of the Code of Civil Procedure.

20. Insofar as relief (b) regarding permanent injunction is concerned, the same is merely a consequential relief, entirely dependent upon the principal relief sought in prayer (a) of the plaint, that is, a decree of declaration that the plaintiff is the absolute owner in respect of Schedule-A property which admittedly stands in the name of the defendants.

21. In such view of the matter, the learned Trial Judge refused to exercise jurisdiction vested in him by law in dismissing the application of the defendant no. 1/petitioner under Order VII Rule 11 of the Code of

Civil Procedure instead of allowing the same and rejecting the plaint.

22. Accordingly, CO No. 363 of 2024 is allowed on contest, thereby setting aside the impugned order, bearing Order No. 15 dated December 5, 2023 passed by the learned Civil Judge (Junior Division), First Court at Hooghly in Title Suit No. 220 of 2022, and rejecting the plaint in the said suit.

23. There will be no order as to costs.

24. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)