

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

**C.O. 849 of 2020
Shaikh Sabir Ali & Ors.
VS.
Sk. Afsar Ali**

For the petitioners :Mr. Tanmoy Mukherjee, Adv.
Mr. Kajal Ray, Adv.
Mr. Soumava Santra, Adv.

For the Opposite Party :Mr. Angshuman Chakraborty, Adv.

Heard On :07.11.2024, 18.11.2024

Judgement On :07.01.2025

Bibhas Ranjan De, J. :

1. The instant civil revision application has been filed challenging the order dated 16.01.2020 passed by the Ld. Civil Judge (Senior Division) 2nd Court, Hooghly in connection with Title Suit No. 9 of 2018.

Backdrop:-

2. The opposite party herein being the plaintiffs filed a suit before the Ld. Civil Judge (Senior Division) 2nd Court, Hooghly with a prayer for declaration, partition and injunction in connection with the Title Suit No. 9 of 2018 wherein the defendants/revisionist appeared and filed their written statements. In course of the Title Suit, the petitioner filed an application under Order 7 Rule 11 of the Civil Procedure Code (for short CPC) with a prayer for dismissal of the suit being barred by the law of limitation as well as Section 4 of the Benami Transaction Prohibition Act, 1988 (for short Act of 1988).
3. The said application was taken up for hearing by the Ld. Judge and vide the impugned order the Ld. Judge rejected the application filed by the petitioner herein. Being aggrieved and dissatisfied, the petitioner has preferred the instant civil revision application.

Arguments:-

4. Ld. Counsel, Mr. Tanmoy Mukherjee, appearing on behalf of the petitioners has mainly canvassed his arguments on the following two points -

- The opposite party admittedly had the knowledge of execution of the sale deed dated 25.06.1984 but still after expiry of 35 years he preferred the suit which clearly debars it under the Law of Limitation.
- In addition to that, Mr. Mukherjee has vehemently submitted that the principle prayer of the suit with regard to the fact that the subject property was not purchased by the stridhan money of the mother of the plaintiff but it was actually purchased with the money of the Plaintiff and defendant, as a result of which plaintiff and defendant are the real owners of the subject property renders the suit barred under Section 4 of the Act of 1988.

5. In support of this contention, Mr. Mukherjee has relied on a couple of cases which are :-

- ***R. Rajagopal Reddy Vs. Radmini Chandrasekharan*** reported in ***(1995) 2 Supreme Court Cases 630***
- ***Union of India and another vs. Ganpati Dealcom Private Limited*** reported in ***(2023) 3 Supreme Court Cases 315***

6. In opposition to that, Ld. Counsel, Mr. Angshuman Chakraborty appearing on behalf of the opposite party has submitted that the

suit is not barred by limitation as the cause of action only arose in the year 2017 when he first came to know that the subject property was already transferred by the mother of the opposite party in favour of wife of the petitioner (since deceased).

7. Before parting with, Mr. Chakraborty has contended that prayer (E) of the Title suit can be segregated from the rest and has duly supported the order impugned in this revision application. By virtue of which he has tried to make this Court understand that there is no requirement for any kind of interference whatsoever.

Ratio of the cases:-

8. In ***R. Rajagopal Reddy*** (supra) the Hon'ble Supreme Court held Section 4 of the Act of 1988 does not operate retrospectively and it only provides that from the date of its coming into operation, no suit, claim or action preferred by the real owner to enforce any right in respect of any property held benami, would lie in any Court.
9. In ***Ganpati Dealcom*** (supra) the Hon'ble Apex Court held Section 3 and Section 5 of the Act of 1988 unconstitutional for being manifestly arbitrary, vague and violative of substantive due process.

Analysis:-

- 10.** After adhering to the rival contentions of the parties, I am of the humble view that this Court has to figure out the following two issues:-

Issues

- i. Whether provision of Section 4 of the Act of 1988 is applicable in the case at hand.
 - ii. Whether the suit is barred by the Law of Limitation or not.
- 11.** Before delving into the contentious issues involved in this revision application, I feel it necessary to first discuss about the nitty gritty of Order VII Rule 11 of the CPC. The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision. Rule 11 of Order VII lays down an independent remedy which is made available to the defendant to challenge the maintainability of

the suit itself, irrespective of his right to contest the same on merits. The provision 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. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint. It is akin to that of the power available to High Court under Section 482 of the Code of Criminal Procedure in quashing criminal proceeding. Order VII Rule 11(d) of the Code has limited application.

12. The Courts must remember that if on a meaningful – not formal – reading of the plaint, it is found to be manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 of the C.P.C., taking care to see that the ground mentioned therein is fulfilled. The Courts need to be cautious in dealing with requests for dismissal of the petitions at the threshold and should exercise their powers of dismissal only in cases where even on a plain reading of the petition no cause of action is disclosed. But the Court cannot conduct a rowing

enquiry to find out whether the averments made in the plaint claiming how the suit was in time, are true or false.

13. It is well settled that the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. It is also well settled that the Court is called upon to exercise jurisdiction to reject the plaint under Order 7 Rule 11 of CPC, only on the averments made in the plaint and documents filed along with the plaint, which form part thereof, alone would be taken into consideration and the Court cannot consider the defence plea or materials submitted by the defendant for the purpose of rejecting the plaint.

14. Therefore, this Court also cannot go beyond the averments of the plaint.

Issue no. 1

15. Ld. Counsel, Mr. Mukherjee appearing on behalf of the petitioners at the very outset has referred to Section 4 of the Act of 1988 which runs as follows:-

“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.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.”

16. By referring to the aforesaid provision, Mr. Mukherjee has tried to make this Court understand that by filing the suit, the plaintiff/opposite party herein prayed for a declaration that the sale deed being no. 4303 was purchased with the half of the consideration money of the plaintiff and such declaration prayer squarely attracts the provision of Section 4 of the Act of 1988 as it has been alleged *inter alia* that the petitioner no. 1 (since deceased) and opposite party herein respectively are the real owners of the property as the same was purchased through their money although it was purchased in the name of their mother.

17. The specific provisions of the Act of 1988 explicitly allows for exemptions for purchases in the name of a wife or unmarried daughter but the basic intention of the legislature behind the enactment of the provision of the Act of 1988 lays special emphasis on the **intention** behind the transaction. If it is the case of the opposite party herein that the purchase was made by him in order to assert his ownership then he must provide substantial evidence to rebut the presumption of a benami transaction. If he fails to provide sufficient evidence regarding the source of funds and intention behind the purchase then it will definitely be treated as benami transaction.

18. Having said that, the possibility of asserting ownership or challenging the classification of transaction at the behest of the opposite party herein cannot be ruled out at the very threshold by invoking power under Order 7 Rule 11 of the CPC as it will be highly unjustified that the opposite party herein will not even get an opportunity to prove his case. Moreover, there is nothing to show that any proceeding

under Section 24 of the Act of 1988 has ever been initiated at the instance of the concerned initiating officer.

19. In this regard, it would also be pertinent to mention that the opposite party herein has refuted the claim of the petitioners herein in his plaint that the subject property was purchased through the srtidhan articles of the mother of the plaintiff.

20. Therefore, the rival contentions clearly point out that the purchase of the property is indeed under challenge and involves various mixed questions of fact and law which need further appreciation of evidence for crystallization on this issue of benami transaction.

Issue no. 2

21. So far as the point of limitation is concerned, in common parlance the law of limitation gets activated only from the date of cause of action and that cause of action arises from the date of knowledge of incident in respect of which the suit is filed.

22. It is the claim of the petitioner that the suit property was purchased in the year 1984 of which the opposite party

herein had knowledge since the beginning, therefore it is definitely barred by limitation. Per Contra, the opposite party in respect of the plaint has duly submitted that the cause of action arose only in the year 2017 when he first came to know that the petitioner no. 1 (since deceased) managed to transfer the subject property in favour of his wife i.e. petitioner no. 2 herein in the year 1993. Whether this information was already known to the opposite party herein since the beginning is again a mixed question of fact and law which cannot be determined at this nascent stage without properly catering to all the necessary evidence in this regard.

23. In the light of the aforesaid discussion, it cannot be said with conviction that there is any specific content in the plaint which prima facie shows that the suit is barred by any law. Therefore, the question regarding the maintainability of the suit in connection with the instant revision application should be kept open for final adjudication only after thorough appreciation of evidence which can only be achieved through proper trial.

- 24.** As a sequel, I do not find any valid reason to make any sort of interference in the order impugned dated 16.01.2020 passed by Learned Civil Judge (Senior Division), 2nd Court, Hooghly in connection with Title Suit no. 9 of 2018.
- 25.** Accordingly, Civil revision application being no. C.O. 849 of 2020, being devoid of merits stands dismissed.
- 26.** Interim Order, if there be any, stands vacated.
- 27.** Connected applications, if there be, also stand disposed of accordingly.
- 28.** Parties to act on the server copy of this order duly downloaded from the official website of this Court.
- 29.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]