

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.172 of 2012

- 1.1. Aditya Pratap Sinha Son of late Birendra Kumar Sinha @ Virendra Kumar Sinha, Resident of Nina Niketan, Thana Road, Muhalla - Bhabdeopur, P.S. and District- Sitamarhi.
- 1.2. Laxmi D/o late Birendra Kumar Sinha @ Virendra Kumar Sinha, Resident of Nina Niketan, Thana Road, Muhalla - Bhabdeopur, P.S. and District- Sitamarhi.
- 1.3. Shatakshi D/o Late Birendra Kumar Sinha @ Virendra Kumar Sinha, Resident of Nina Niketan, Thana Road, Muhalla - Bhabdeopur, P.S. and District- Sitamarhi.

... .. Appellant/s

Versus

1. Raj karan Chaudhary Son of Late Jagdeo Chaudhary, Resident of Village Pachgachhia, P.O. - Sirauli, P.S. Bathnaha, Distt. - Sitamarhi.
2. Krishna Devi Wife of Sri Raj Karan Chaudhary, Resident of Village Pachgachhia, P.O. - Sirauli, P.S. Bathnaha, Distt. - Sitamarhi.
3. Pintu Kumar Son of Ramjee Sah Resident of Janki Sthan, Sitamarhi, Ward No. 1, P.S. and Distt. - Sitamarhi.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vaidehi Raman Prasad Singh
For the Respondent/s	:	Mr. Shankar Kumar

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

CAV JUDGMENT

Date : 28-01-2026

The present First Appeal has been filed under

Section 96 of the Code of Civil Procedure (hereinafter referred

to as “CPC”) against the Judgment & decree dated 04.06.2012



passed by the learned Sub-ordinate Judge 1st Sitamarhi, in Title Suit No. 196 of 2011 whereby and whereunder the petition filed on behalf of petitioner under Order VII rule 11(d) of the CPC was rejected as the same is barred under Section 4 of the Prohibition of Benami Property Transactions Act, 1988 (hereinafter referred to as “Act”).

2. The case of the plaintiff in brief, is that the defendant no. 2 is the *mamari* sister of plaintiff and defendant no.1 is the husband of defendant no. 2. There is very close and cordial relations among the plaintiff and both the defendants no 1 and 2 and on account of such close relationship and mutual confidence, the plaintiff purchased in the year 1980 lands measuring 17.5 decimals of Plot No. 262, 9.5 decimals of Plot No. 265 and 14.5 decimals of Plot No. 264 situated at *Mauza*, Sitamarhi *Bazar*, the detail of the land is mentioned under schedule 1 of the plaint, through two registered sale deeds dated 02.01.1980. However the sale deeds were registered in the names of defendant nos. 1 and 2. The plaintiff was retired government employee under Road Construction Department of Government of Bihar. It is specific case of the plaintiff that at the relevant time the plaintiff was in Government service and due to certain technical and service-related constraints he could



not purchase the lands in his own name as well as in the names of his family members, and therefore, with the consent of the defendant nos. 1 and 2, the sale deeds were obtained in their names, they being merely name-lenders, while the entire consideration was paid by the plaintiff.

3. It is further alleged in the plaint that the plaintiff is the real purchaser of the land, paid the entire consideration money and came in exclusive and peaceful possession over the disputed land since the date of purchase. The defendants are simply name lenders of the plaintiff. The original sale deed is in the custody of the plaintiff and the defendants have no right, title and interest in the disputed land nor have they ever come in the possession of the land in question.

4. Furthermore, the case of the plaintiff as stated in the plaint is that the plaintiff constructed a residential house over the disputed land and from roadside he constructed commercial shops and let out to different persons for carrying business for which they are paying rent to the plaintiff and in the aforesaid residential house the plaintiff is residing along with his family members. It is further alleged that the defendant nos. 1 and 2 never came in possession of the suit land and have no



right, title or interest therein, but taking advantage of the sale deeds dated 02.01.1980 standing in their names, they started creating obstruction and attempted to alienate a portion of the suit land, which gave rise to the cause of action in April 2011, culminating in the filing of the suit seeking declaration that the defendant nos. 1 and 2 are merely name-lenders, declaration of the plaintiff's title and confirmation of possession, along with consequential injunction.

5. The defendant nos. 1 and 2 in their joint written statement denied the claim of the appellant/plaintiff and stated that the suit is not maintainable in the eyes of law and the suit is barred by estoppel, waiver, acquiescence and also by limitation. It is stated that the plaintiff has no cause of action or locus standi to file the suit. The defendant nos. 1 and 2 have specifically asserted that the suit is hit by the provisions of the Act and is also barred under the provisions of the Bihar Consolidation of Holding and Prevention of Fragmentation Act, 1956 as consolidation operations are applicable in that area. It is further stated that the suit property has been grossly undervalued and proper court fee has not been paid, the market value of the land being much higher than what has been shown by the plaintiff. Moreover, the defendant nos. 1 and 2 have



categorically denied that the plaintiff purchased the suit land or paid the consideration amount, or that the defendant nos. 1 and 2 were name-lenders or benamidars. It has been asserted that defendant no. 1 and defendant no. 2 independently purchased the respective portions of the suit land by registered sale deeds dated 02.01.1980 out of their own funds, came in possession thereof from the date of purchase, got their names mutated, paid rent and municipal dues, and constructed residential houses and shops at their own expense. The defendant nos. 1 and 2 have further denied the alleged cordial relationship or fiduciary confidence pleaded by the plaintiff and have stated that the plaintiff was never in possession of the suit land, and has never constructed any house or shops, and never collected rent from any tenant. It is also stated that the plaintiff is not in custody of the original sale deeds, as only certified copies were filed, which itself falsifies the entire claim. It is, therefore, stated that the plaintiff has no right, title or interest in the suit land and is not entitled to any relief, declaratory or injunctive.

6. Moreover, on 23.04.2012, an application under Order VII Rule 11 of the CPC was filed on behalf of the intervenor, namely Pintu Kumar, praying for rejection of the plaint on the ground that the suit filed by the plaintiff was barred



by law, particularly under Section 4 of the Act, and the plaint did not disclose any cause of action. It is further evident from the record that the said intervenor claimed interest in a portion of the suit land on the basis of subsequent registered sale deed executed in his favour by the defendant no. 1. The learned Trial Court allowed his prayer for impleadment as a defendant and while considering his application under Order VII Rule 11 of the CPC, proceeded to examine the maintainability of the suit at the threshold.

7. After hearing both the parties, upon due consideration of the pleadings, materials available on record, and the settled position of law, the learned Trial Court found that the core controversy in the present case is crystallized into two determinative issues for adjudication, namely, first, *whether the present suit was instituted after the coming into force of the Act?*; and second, *if so, whether the provisions of the Act operate as a statutory bar to the maintainability of the suit?*

8. Based on facts and circumstances of the case and upon consideration of the materials available on record, learned Trial Court held that although earlier benami transactions were not invalidated retrospectively, the present suit having been instituted after the coming into force of the Act,



was squarely governed by the provisions of the said Act. The learned Trial Court concluded that the reliefs claimed by the plaintiff were barred by Section 4 of the Act, as the plaintiff sought to enforce rights in respect of property standing in the names of others on the plea of benami. It was further held that, in view of such statutory bar, the suit was not maintainable and fell within the scope of rejection of plaint under Order VII Rule 11(d) of the CPC. On the aforesaid reasoning, the learned Trial Court accepted the application filed on behalf of defendant no.3 (intervenor Pintu Kumar) dated 23.04.2012 and dismissed the suit as not maintainable.

9. Aggrieved by the judgment and decree dated 04.06.2012 passed by the learned Trial Court, whereby the plaint was rejected by allowing the application under Order VII Rule 11 of the CPC and the suit was dismissed as not maintainable on the ground of statutory bar under the Act. Hence, the present first appeal.

10. Learned counsel on the behalf of the appellant/plaintiff submitted that the learned Trial Court has failed to appreciate the pleadings and evidence on record in their correct legal perspective and has committed a grave error in rejecting the plaint. He submits that the appellant/plaintiff had



specifically pleaded and proved that the entire consideration amount for purchase of the suit land was paid by him in the year 1980 and that the sale deeds were obtained in the names of defendant nos. 1 and 2 only on account of close familial relationship and due to technical constraints arising out of the appellant/plaintiff being in government service at the relevant time.

10.i. He further submitted that the appellant/plaintiff has been in exclusive, peaceful and continuous possession of the suit land since the date of purchase and he has constructed a residential house and commercial shops thereon. Moreover, he is residing with his family members and has inducted tenants, and has been paying municipal taxes and electricity charges, all of which clearly establish his possession and enjoyment of the suit property as the real owner.

10.ii. He further submitted that the defendant nos. 1 and 2 never came in possession of the suit land and have not produced any evidence to show exercise of ownership rights. The learned Trial Court failed to draw the correct inference from long, uninterrupted possession coupled with payment of consideration and custody of original sale deeds by



the appellant/plaintiff. He further submitted that the cause of action clearly arose when the defendant nos. 1 and 2, taking advantage of the sale deeds standing in their names, attempted to create third-party interest, necessitating the filing of the suit.

10.iii. He further submitted that the two sale deeds in question were registered on 02.01.1980 and the Act came into force on 05.09.1988. Hon'ble Apex Court in ***R. Rajagopal and Ors. v. Padmini Chandrasekharan*** reported in ***AIR 1996 SC 238*** has held that the provision of Section 4 of the Act would not have retrospective effect and hence the suit in question would not be barred by Section 4 of the Act. The heading of Section 4 of the Act i.e., "Prohibition of the right to recover property held Benami" suggests that it prohibits right to recover property held Benami, but in the instant case there is no case for "recovery of property" from benamidar, in as much as, the property in suit is not in possession of benamidar. The specific case of the appellant/plaintiff is that he has been coming in possession of the suit land since its purchase on 02.01.1980 and he has constructed his residential house over the land where he is residing along with his family and he has constructed some shops over the suit land, which have been let out to different persons and a holding has been created in the name of the



appellant/plaintiff and electric connection in the house has been taken in the name of his father and the entire premise is in one compact block within boundary wall and hence in the facts of the case the appellant/plaintiff is entitled for confirmation of his possession over the suit land, but the learned Trial Court has failed to take into consideration these aspect of the case and has illegally rejected the plaint on the basis of provision of Section 4 of the Act.

10.iv. He further submitted that even assuming for the sake of argument, though not accepting, that the suit is barred by Section 4 of the Act, the benamidar's right to property under suit has been extinguished by operation of Section 27 of the Limitation Act, 1963 and the question as to whether ownership and possession can be pleaded alternatively is required to be considered at trial and it would not make the plaint barred by the provision of Section 4 of the Act. Moreover rejection of plaint must be on the basis of averments in plaint, for this he placed reliance on the judgement passed by Hon'ble Apex Court in ***Bhau Ram v. Janak Singh and Ors.*** reported in ***(2012) 8 SCC 701*** and ***Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust***, reported in ***(2012) 8 SCC 706***.



10.v. He further submitted that from bare perusal of the plaint it would appear that complicated pleas and factual aspects are involved in the case and the same could be denied only at the time of trial and these aspects of the suit/case remained untouched by the learned Trial Court while deciding application for rejection of plaint as held by the Hon'ble Apex Court in the case of *Saleem Bhai and Ors. v. State Of Maharashtra and Ors.* reported in *AIR 2003 SC 759* and hence, rejection of plaint at the threshold of the proceeding is wholly illegal and unjustified. He further contended that the law is well-settled on the point that the power of rejection of plaint should be exercised sparingly and cautiously, as the provision related to rejection of the plaint, as envisaged under Order VII Rule 11 of the CPC are aimed at preventing vexatious and frivolous litigation, but the learned Trial Court has passed the impugned judgment and decree without taking into consideration these important aspects of the case.

10.vi. He lastly submits that for the aforesaid grounds, the impugned judgment and decree are unsustainable in law and on facts and are liable to be set aside and the suit of the appellant/plaintiff deserves to be decreed as prayed for.

11. *Per contra*, learned counsel for the



respondents/defendant nos. 1 and 2 submitted that the original registered sale deeds dated 02.01.1980 were not filed along with the plaint rather the certified copy of both the sale deeds were filed on 28.07.2011 with plaint which itself proves that appellant/plaintiff had no original registered sale deeds as claimed by him. He further submitted that the appellant/plaintiff requested the defendants nos. 1 and 2 for relinquishing their claim from the suit property, which was refused by them. He further submitted that when the plaintiff/appellant got the knowledge that original defendant no.1 sold some part of suit land in favour of defendant no. 3, hence necessity arose for filing the suit.

11.i. Learned counsel further submitted that the plaintiff/appellant preferred Mutation Appeal no. 46 of 2011-12 before the Court of Deputy Collector, Land Reforms, Sitamarhi Sadar, challenging the aforesaid order which was dismissed vide order dated 14.06.2013 confirming the peaceful possession of original defendant nos. 1 and 2 over the suit land since 02.01.1980. These documents are already on record annexed with I.A. No. 05 of 2025 of this appeal for better appreciation and for kind perusal of this Hon'ble Court. These documents falsified the claim of plaintiff/appellant's peaceful possession



over the suit property at any mount.

11.ii. He further relied on the judgment passed by Hon'ble Apex Court in *Mithilesh Kumari & Anr. v. Prem Behari Khare* reported in *AIR 1989 SC 1247* and in *Om Prakash and anr v. Jai Prakash* reported in *AIR 1992 SC 885* in which it has been held that Section 4 of the Act is total prohibition against any suit based on benami transaction. He further submitted that the learned Trial Court heard the matter at length and rightly came to the finding that the suit is barred by Section 4 of Act thereafter, dismissed the suit as not maintainable. He lastly contended that in view of the aforesaid reasons, the present appeal is not maintainable and fit to be dismissed.

12. Learned counsel for the respondent/defendant no. 3 submitted that respondent no. 3 purchased the 10 decimal of disputed land from respondent no.1 through the registered sale deed dated 05.04.2011. He further submitted that at the time of taking possession of purchased land the appellant/petitioner claimed his title over the said property and alleged that he had purchased the said land in the name of respondent nos. 1 and 2 as they were the close relatives of the appellant/petitioner. Thereafter appellant/petitioner filed the Title Suit No. 196 of



2011, wherein he failed to produce any document or proof of transaction in order to support his claim. He further submitted that the contentions of the appellant/petitioner are false and even if it is assume that disputed property was purchased by the appellant/petitioner, without admitting to the same, then the same property shall be considered as a benami property and as such the same is barred by Section 4 of Act.

12.i. He further submitted that on being satisfied by the averments advanced by the respondent no. 3, the learned Trial Court categorically rejected the claim of the appellant/petitioner and allowed application under Order VII Rule 11(d) of the CPC for rejection of plaint dated 23.04.2012, filed by the respondent/defendant no. 3 and was further pleased to dismiss the aforementioned suit. It is further submitted that after legally purchasing the land in question from respondent no. 1, by way of valid transaction and also after the judgment and decree passed by the learned Trial Court, the respondent no. 3 was able to take possession over the said portion of land purchased by him. After taking possession of the said portion of land, respondent no. 3 applied for its mutation which was rejected by the Circle Officer, Riga. Further, respondent no. 3 preferred an appeal before the learned DCLR, wherein the said



portion of land was mutated under the name of the respondent no. 3 and thereafter, land receipts were also issued in the name of the respondent no. 3.

12.ii. He further submitted that it would not be out of place to refer that the respondent no. 3 in the year 2019, had sold about 4 decimals of land from the share purchased by him in the year 2011 and as such presently, he only has about 6 decimals of land under his possession. In the year 2023, after the demises of the original appellant/plaintiff, his son namely, Aditya Pratap Sinha, preferred a Mutation Appeal No. 71 of 2023-24, in which he challenged the earlier Order passed by the learned DCLR, Sitamarhi in Mutation Appeal No. 1567 of 2018-19, whereby the learned DCLR, Sitamarhi had allowed the mutation in favor of respondent no. 3.

12.iii. He further submitted that even though Mutation Appeal No. 71 of 2023 -24, was barred by the doctrine of *Res Judicata*, despite that the said appeal was entertained and allowed by the learned DCLR Sitamarhi, in a mechanical manner, as such being aggrieved by the said order, the respondent no. 3 has presently preferred a revision application before the learned ADM, Sitamarhi bearing Case No. 63 of 2023 24, challenging the Order dated 07.06.2023, passed in Mutation



Appeal No. 71 of 2023-24, which is pending adjudication.

12.iv. He further submitted that the suit is barred under Section 4 of the Act, which stipulates that there is a bar of any 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. Further, Section 4 of the Act the said also enumerates that 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.

12.v. He further submitted that the learned Trial Court has rightly exercised its jurisdiction and rejected the plaint filed by the appellant/plaintiff under Order VII Rule 11(d) of the CPC, as the suit is barred under Section 4 of the Act. The appellant/plaintiff has admittedly filed the suit in the year 2012, after enforcement of the Act, thus a suit of civil nature for enforcement of benami right was barred in the year 2012, in terms of the aforesaid section of the Act. In consequent therewith, the learned Trial Court has rightly rejected the suit



under Order VII Rule 11(d) of the CPC, as the aforesaid legal position is well apparent from bare perusal of the plaint itself. Learned counsel, in support of his averments, relied on the judgement of Hon'ble Apex Court in *Mithlesh Kumari(supra)*, and in *R. Rajagopal Reddy (Dead) by lrs. & Ors. v. Padmini Chandrasekharan (Dead) by lrs*, reported in (1995) 2 SCC 63.

12.vi. It is next submitted that the present appeal is liable to be dismissed on the ground of delay in approaching this Court, as allegedly the cause of action arose for the appellant/plaintiff in the year 1982 itself when he had allegedly purchased the land in question. Nonetheless, in the year 2012, the appellant/plaintiff approached any court of law for the maiden time, which demonstrates that he patiently waited for about 30 years before approaching any court. Hence, the rule of laches and delay may be employed by this Court as a tool for administration of justice and a bulwark against abuse of the process of courts. He further submitted that, in cases, where claims are filed after inordinate delay, then lives and affairs of the concerned individuals and institutions would be in disarray for no fault of the other party, who has genuine right over the alleged claim. Also, their lives and affairs would be clouded with uncertainty and they would face prospects of long and



fruitless litigation, despite owning the said property legally. It is submitted that the respondent no. 3 has legally purchased the aforementioned portion of the land in question after paying the legal stamp duty, however, still for no fault, he has been contesting legal battels since the year 2012.

12.vii. He further submitted that the present appeal does not merit consideration and deserves to be dismissed at once on account of non-joining of necessary party by the appellant/plaintiff. It is stated that after purchasing 10 decimals of land from respondent no. 1, by way of registered sale deed dated 15.04.2011 and subsequently sold about 4 decimals of land in the year 2019 to a third party, the respondent no. 3 becomes a necessary party. Despite knowing the said fact, the appellant/plaintiff has not inducted the said respondent as party to the suit, this in itself is a ground for dismissal of the present appeal. He further submitted that for a suit to be bad for non-joinder of party, it has to be proved that the party who has not been impleaded in the suit is a necessary party without whose presence the suit cannot be decided, thus, when the aforementioned portion of land in question was sold in the year 2019, it was incumbent upon the appellant/plaintiff to implead respondent no. 3 as a party in the present appeal.



12.viii. Learned counsel for respondent/defendant no.3 lastly submitted that the plaint filed by the appellant/plaintiff has rightly been dismissed by the learned Trial Court after going through the merits of the case and after hearing the parties at length and even after considering the reply of all the parties. It is submitted that the remedy under Order VII Rule 11 of the CPC is an independent and special remedy, wherein the court concerned 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, provided it is satisfied that the action should be terminated on any of the grounds contained in the said provision. Thus, the judgment and decree passed by the learned Trial Court is correct and has rightly been dismissed warranting no interference by this Court. Therefore, in view of the submissions made above, this first appeal is fit to be dismissed and the appellant/plaintiff is not entitled to any relief prayed in the present first appeal.

13. Having heard the learned counsels for the parties and considering the submissions advanced by them, the point of determination arises before this Court for consideration in this first appeal is *whether in the facts and circumstances of*



the case the learned Trial Court is justified in rejecting the plaint under Order 7 Rule 11(d) of the CPC?

14. At this stage it is pertinent to examine the scope of Order VII Rule 11 of the CPC explained in various decisions and the legal principles deducible. The Hon'ble Apex Court in ***Kamla and Others Vs K.T. Eshwara Sa and Others*** reported in ***(2008) 12 SCC 661*** held that for invoking clause (d) of Order VII Rule 11 of the CPC, only the averment in the plaint would be relevant. For this purpose, there cannot be any addition or subtraction. No amount of evidence can be looked into. The issue on merit of the matter would not be within the realm of the Court this stage. The material to be considered for rejecting the plaint has been dealt with in the case of ***Dahiben v. Arvind Bhai Kalyanji Bhanusali*** reported in ***(2020) SCC OnLine SC 563*** The Apex court has settled the principle and made the following observations:

“12.6- At this stage, 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.

“12.7- The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken entirety, in conjunction with the documents relied upon, would the same result in a



decree being passed”.

“23.2. The remedy under Order 7 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.

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.9. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint [Sopan Sukhdeo Sable Vs. Charity Commr. (2004) 3 SCC 137] on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

23.12. In Hardesh Ores (P.)Ltd. v. Hede & Co. (2007) 5 SCC 614 the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court



cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D.Ramachandran v. R.V. Janakiraman, (1999)3 SCC 267; See also Vijay Pratap Singh Vs. Dukh Haran Nath Singh, AIR 1962 SC 941].

23.13. *If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.*

23.15. *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.*

15. The Hon'ble Apex Court reiterated the said principle in ***Kum. Geetha Vs. Nanjundaswamy & Ors.*** reported in ***2023 SCC OnLine SC 1407*** and observed in para 7 that in simple terms, the true test is first to read the plaint meaningfully and as a whole, taking it to be true. Upon such reading, if the plaint discloses a cause of action, then the application under Order VII Rule 11 of the CPC must fail. To put it negatively, where it does not disclose a cause of action, the plaint shall be rejected.



16. On meticulously examination of the aforesaid facts and circumstance, I am of the considered opinion that the genuineness and validity of the sale deed in question can only be examined after proper adjudication of the suit at the stage of trial. Moreover, a plaint cannot be rejected at the initial stage based on applicability of Section 4 of the Act. This is because rejection of plaint under Order VII Rule 11 of the CPC requires the court concerned to look only at the averments in the plaint and documents attached therewith. The Hon'ble Apex Court in the case of *Shaifali Gupta v. Vidya Devi Gupta and others* reported in **2025 SCC OnLine SC 1181** held that:

“27. In such circumstances, whether a property is a benami, has to be considered not in the light of Section 4 of the Benami Act alone but also in connection with Sections 2 (8) and 2 (9) of the said Act i.e. whether the property if benami falls in the exception. It is only where the property is benami and does not fall within the exception contained in Sub-Section (9) of Section 2 that a suit may be said to be barred. However, the issue whether the property is benami and is not covered by the exception, is again an issue to be decided on the basis of evidence and not simply on mere averments contained in the plaint. The defendants have to adduce evidence to prove the property to be benami.”

“28. In Pawan Kumar v. Babu Lal (2019) 4 SCC 367, a similar issue arose before this



*Court in a matter concerning rejection of
plaint under Order VII Rule 11 (d) CPC.
This Court held that for rejecting a plaint,
the test is whether from the statement made
in the plaint it appears without doubt or
dispute that the suit is barred by any
statutory provision. Where a plea is taken
that the suit is saved by the exception to the
benami transaction, it becomes the disputed
question of fact which has to be adjudicated
on the basis of the evidence. Therefore, the
plaint cannot be rejected at the stage of
consideration of application under Order
VII Rule 11 CPC.”*

emphasis supplied.

17. Moreover, from the facts and circumstances of the instant case it appears that there is mixed question of law and fact that requires a full trial for proper adjudication after evidence has been presented. The application of Section 4 of the Act in the present case is a complex issue that requires further examining of evidence. At this stage, adjudicating on the point of benami transaction would be a premature determination of a mixed question of law and fact, which is only suitable for a trial after examination of evidence. Therefore, it cannot be decided merely on assertions made in the application seeking rejection of plaint under Order VII Rule 11 of CPC.

18. In the present case, if the statements in the plaint are taken to be true, it cannot be said that it does not disclose a cause of action and the plaint shall be rejected. This is



a matter of trial, the result of which would depend upon the evidence adduced by the appellant/plaintiff. At this stage, the Court is not concerned with the correctness of the averments, except to state that the appellant/plaintiff has to discharge the burden of proving this case. Insofar as the application under Order VII Rule 11 of CPC is concerned, this court will proceed only that far, to examine whether the plaint discloses a cause of action or suit is barred by law and no further. The genuineness, validity and binding nature of document will have to be adjudicated at the appropriate stage in trial of the case after the parties adduce oral and documentary evidence.

19. At this outset, it is relevant to mention that the court concerned shall not reject the plaint based on a claim of benami transaction at the initial stage. The issue shall be addressed during the trial, after all parties had an opportunity to present their case as well as the evidence in support of their case.

20. So far as the ground of limitation is concerned, it is needless to emphasis that limitation is a mixed question of fact and law. The fact regarding the date on which the appellant/plaintiff was acquainted with the knowledge of the essential facts from which cause of action arose, is crucial for



deciding the question whether the suit is barred by limitation or not. It becomes a triable issue and hence, the suit cannot be thrown out at the threshold. Law is well settled that a plaint cannot be rejected under Order VII Rule 11(d) of the CPC if the issue of limitation is a mixed question of fact and law, such as, the date of knowledge of a cause of action, as it requires a full trial and evidence. In view thereof, such issues cannot be decided summarily without allowing the parties to lead evidence on arising of the cause of action.

21. In view of the aforesaid facts and circumstances and the law discussed above, the impugned judgment and decree is liable to be set aside.

22. The appeal is accordingly, allowed. The application under Order VII Rule 11(d) of the CPC is dismissed and the suit is hereby restored. The impugned judgment and decree is set aside and the learned Trial Court shall proceed with the trial of the suit. Both the parties are directed to appear before the learned Trial Court in Title Suit No. 196 of 2011. The learned Trial Court shall adjudicate the suit on its own merits in accordance with law and uninfluenced by the observation made by this Court in this judgment.

23. Let the Trial Court Record be returned to the



concerned Court forthwith.

(Ramesh Chand Malviya, J)

Mayank/-

AFR/NAFR	AFR
CAV DATE	12.01.2026
Uploading Date	28.01.2026
Transmission Date	N/A

