

SL 1. 30.04.2026
Court No.39

(PA)

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

C.O. NO. 4485 OF 2024

**KALYANI MONDAL & ORS.
-Vs.-
PINTU RANI MONDAL & ORS.**

Mr. Sounak Bhattacharyya,
Mr. Sounak Mondal,
Mr. Anirban Saha Roy,
Ms. Bipasha Bhattacharyya

...for the petitioners.

1. The instant Civil Revisional application under Article 227 of the Constitution of India has been filed by the petitioners/defendants challenging the impugned order dated 07.08.2024 passed by the Learned Civil Judge (Senior Division), 10th Court at Alipore, District – 24 Parganas (South) in Title Suit No. 49 of 2015.
2. The brief fact of the instant case is that the opposite parties/plaintiffs filed a suit for partition and for permanent injunction against the Defendants/petitioners and the proforma opposite parties.
3. The Defendants/petitioners herein, after entering an appearance in the said suit, filed an application under Order 7 Rule 11 of the Code of Civil

Procedure, seeking rejection of the plaint on the ground that the suit is strictly barred by the Benami Transaction (Prohibition) Act, 1988.

4. After hearing the parties, the said application was rejected by the learned Trial Court on 14.06.2017, holding that the Benami Transaction Act does not have a retrospective effect. It was further held that since the transactions in question took place much before the Act came into operation, the plaint cannot be said to be barred by the Benami Transaction (Prohibition) Act, 1988 (in short 'the said Act').
5. Being aggrieved by and dissatisfied with the said order dated 14.06.2017, the petitioners had preferred an application under Article 227 of the Constitution of India being C.O. No. 2979 of 2017 before the Hon'ble High Court at Calcutta, wherein the then Hon'ble Co-ordinate Bench affirmed the order dated 14.06.2017 and further requested the Learned Trial Court inter alia to frame a preliminary issue as to whether the suit is barred by provisions of the said Act of 1988 on the insistence of the defendants, and answer the same without being influenced by any of the observations made in the said order in course of the decision in the suit.
6. After disposal of the said Civil Revisional application, the petitioners, along with the proforma opposite parties herein, again filed an application for framing

a preliminary issue regarding the maintainability of the said suit in terms of the aforesaid order passed by the Hon'ble High Court.

- 7.** The aforesaid application came up for hearing before the Learned Trial Court, and by an order dated 07.08.2024, the Court was pleased to fix a date to decide a preliminary issue regarding the maintainability of the suit being barred under the provisions of the Benami Transaction (Prohibition) Act, 1988. However, in the said order, the Learned Trial Court was pleased to hold that the suit is very much maintainable and the same is not hit by the said Act.
- 8.** Being aggrieved by and dissatisfied with the impugned order dated 07.08.2024, the petitioners filed this instant application.
- 9.** None appears on behalf of the opposite parties at the time of call.
- 10.** The materials on record indicate that the owners of the two scheduled properties were the sons of Krishna Chandra Mondal, and the present parties are their respective legal heirs. The essential purpose of the suit is partition and declaration of shares amongst heirs claiming through the original owners.
- 11.** Having heard the learned counsel appearing on behalf of the petitioners and upon perusal of the

records, it appears that the Learned Trial Court had framed the preliminary issue as to whether the suit is barred by the provision of Benami Transaction (Prohibition) Act, 1988 or not on insistence of the petitioners and proforma opposite parties and finally decided and rejected the same, holding therein as under:

- (a) *“Present suit has been filed for partition and permanent injunction. The fact inter alia on which the defendants have banked upon and claimed the suit is barred by the provision of Benami Transaction (Prohibition) Act 1988 or not, is Krishna Chandra Mondal since deceased being the predecessor in interest of plaintiffs, purchased schedule A property from his own income in the name of his seven sons by a registered deed dated 21.03.1949 and Probhas Chandra Mondal purchased schedule B property in the name of his five brothers from his own income by a registered deed dated 15.12.1949. It is alleged that said fact clearly shows that suit is based on a benami transaction as the plaintiffs have benami interest in schedule A and B property purchased from the income of Krishan Chandra Mondal and Probhas Chandra Mondal and for that suit is barred under the Act of 1988.*
- (b) *Admittedly, the deeds in dispute have been executed in the year 1949 and 1958 respectively whereas the Benami Transaction (Prohibition) Act 1988 came into operation subsequently and as such there is nothing in the provision of Benami Transaction*

(Prohibition) Act 1988 that it has retrospective effect.

(c) Section 4 of the Benami Transaction (Prohibition) Act 1988, creates substantive rights in favour of benamidars and destroys substantive rights of real owners who are parties to such transaction and for whom new liabilities are created under the Act. Merely because it uses the word “it is declared”, the Act is not a piece of declaratory or curative legislation. Said Act affects substantive rights and cannot be regarded as having a retrospective operation.

(d) From the above discussion, the preliminary issue under consideration is decided in favour of the plaintiffs and disposed of”.

12. Section 4 of the Benami Transactions (Prohibition) Act, 1988, prohibits the enforcement of rights in respect of property held benami. It prohibits the real owner of a benami property from filing a lawsuit, claiming, or taking legal action to recover it from the person in whose name it is held (benamidar). The provision is substantive in nature and prohibits the institution of suits and the raising of defences based on benami ownership. However, the bar is attracted only where the Court is called upon to recognise or enforce a claim founded solely on the benami character of the transaction.

13. In the present case, the basis of the dispute appears to be the determination of shares between legal heirs of the original recorded owners of the schedule

properties involved in the suit. The use of the expression “benami” in the application, by itself, is not determinative. The Court must examine whether the claim is truly one of inheritance and co-ownership as per their respective shares.

- 14.** The preliminary issue framed by the Trial Court is about issues of law to be decided that are purely questions of law or jurisdiction. According to Order XIV Rule 2 of the CPC, if the issue is particularly based on a question of law, the Court may try that issue first and postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.
- 15.** The partition suit filed by the legal heirs of their predecessor-in-interest seeking partition according to their respective shares, is maintainable and the same is not hit by the said Act. Such reasoning appears correct and within its jurisdiction.
- 16.** Accordingly, the impugned order does not suffer from a material irregularity in the exercise of jurisdiction, both in its application of the law and in the manner in which the preliminary issue has been dealt with. Such a finding does not warrant interference within the limited supervisory jurisdiction of this Court.

17. Accordingly, **C.O. No. 4485 of 2024** is, thus, **dismissed** without order as to costs. Connected applications, if any, are also, thus, disposed of.
18. Let a copy of this Order be sent to the Learned Court below for information.
19. Interim order, if any, stands vacated.
20. All parties will act on the server copies of this Order uploaded on the official website of this Hon'ble High Court.
21. Urgent photostat certified copy of this Order, if applied for, is to be given as expeditiously to the parties on compliance of all legal and necessary formalities.

(Ajay Kumar Gupta, J.)