

HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

SINGLE BENCH

BEFORE JUSTICE S.K.AWASTHI

Civil Revision No.56/2013

Mohd. Shakeel

Versus

Smt. Husna Bano & Others

Shri S.K.Shrivastava, learned counsel for the applicant.

Shri R.P.Rathi, learned counsel for the respondent No.1.

Shri Mohd. Irshad, learned Panel Lawyer for the
respondent No.7/State.

None for other respondents though served.

O R D E R
(31.01.2017)

The applicant is aggrieved by rejection of its application filed under order 7 Rule 11 of C.P.C. vide order dated 18.03.2013 passed in Civil Suit No.53-A/2012 by the Civil Judge, Class-II, Sironj, District Vidisha preferred this revision application.

2. The relevant facts necessary for disposal of the present case lie in a narrow compass. The respondent No.1 Smt. Husna Bano is representing herself as the sister of applicant/defendant No.1 and claims that the agricultural land, described in paras 1 and 2 of the plaint, is recorded in the name of the applicant/defendant No.1 since the years 1971-

1972 and at such point of time the applicant/defendant No.1 was a minor which makes it clear that the consideration for purchase of suit property was paid by father of the plaintiff/respondent no.1 and the defendant. By making such assertion, the plaintiff seeks to draw conclusion that even though the land was recorded in the name of the defendant No.1 but in a reality, the actual owner is their father and as per the prevailing Muslim Law, the plaintiff/respondent No.1 has ownership over the suit property to the extent of 1/6th share. Consequently, a suit for declaration of title and partition has been filed by the respondent No.1.

3. The present applicant/defendant No.1 and other defendants were invited by the trial court to file their written statement. Upon entering appearance before the Court below, the applicant filed an application under Order 7 Rule 11 of C.P.C., canvassing the ground that the plaint is defeated by law as the contents of the plaint reveal that the ownership is claimed on the basis of 'Benami Transaction'. The trial Court has rejected the application on the ground that the issue whether the claim is on the basis of 'Benami Transaction' or not will be determined after completion of evidence.

4. Learned counsel for the applicant has invited attention of this Court to paragraphs 4 and 5 of the plaint and submitted that from the contents of the plaint itself, it is clear that the declaration for the ownership is sought in relation to a property purchased by 'Benami Transactions', which is prohibited under Section 4 of Benami Transactions (Provision) Act, 1988 (in short 'Act of 1988'). In order to support this contention, learned counsel for the applicant has placed reliance on the judgment of this Court pronounced in the case of **Anand Kumar vs. Vijay Kumar and Others**, reported in **(2012) 3 M.P.L.J. 129**.

5. Per contra, learned counsel for the respondent supported the reasoning given in the impugned order and submitted that the rejection of the plaint at the thresh-hold is done in exceptional circumstances as the same has implication of endorsing the ownership over a property. He has also contended that transaction referred to in the plaint occurred in the years 1971 and 1972 whereas the provision under the Act of 1988 has been introduced subsequently which would have no implication to the facts of the present case.

6. Having considered the rival contentions of

the parties, in the considered opinion of this Court, would be proper to appreciate the facts of the case in the light of the law laid down by this Court in the case of **Anand Kumar (supra)**, which will answer both the submissions canvassed by the respondents. The relevant portion is reproduced herein below :-

“7. Undisputedly, the Act was enacted in the year 1988 but the bar was created under sub-section (1) of section 4 of the Act that no claim would be made on the basis of any benami transaction. The bar is to file a suit or to make a claim and not that a particular transaction is benami or not. If a suit is filed after coming into force of the Act, claiming any right, title or interest on the basis of any benami transaction, whether it was done prior to coming into force of the Act or after coming into force of the Act, would be barred under sub-section (1) of section 4 of the Act. For proper appreciation, the provision of subsection (1) of section 4 of the Act is reproduced :-

“(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.”

8. *This particular aspect has been*

considered by the Courts on various occasions. This particular aspect that the bar would be applicable in the suits which were required to be filed after coming into force of the Act has been considered by the Apex Court in the case of Duvuru Jaya Mohana Reddy vs. Alluru Nagi Reddy, AIR 1994 SC 1647. Further it is considered by the Apex Court that if a claim was pending prior to coming into force of the Act, the same would not be barred under the provisions of section 4 of the Act. Please refer Prabodh Chandra Ghosh vs. Urmila Dassi, AIR 2000 SC 2534. In view of the pronouncement of these law by the Apex Court, it is clear that the bar is only with respect to filing of suit or making of a claim in defence only after coming into force of the Act and not in respect of the claim which are made prior to coming into force of the Act. It is also abundantly clear from this that, if a transaction is said to be done prior to coming into force of the Act but the claim is made after coming into force of the Act, based on such a transaction, the bar prescribed under the Act would be applicable.”

7. From the perusal of the reproduced portion, it is safe to deduce that the submission of the respondent that, the transaction referred to in the plaint occurred in the year 1971 and 1972 and therefore, the Act of 1988 will not defeat the same, is ill-founded as the prohibition under the Act barres any claim or suit or action on the

basis of a 'Benami Transaction'. Therefore what is relevant, the date on which the suit has been filed and not the date of transaction itself which may be prior to coming into force of the Act of 1988 but the suit has been filed after introduction of the Act of 1988. Further, upon perusal of the plaint, this Court has no hesitation in concluding that the averments in the plaint referred to the 'Benami Transaction' as the basis of claiming title. Thus, the plaint deserves to be rejected in terms of under Order 7 Rule 11 CPC.

Consequently, the revision application is hereby allowed and the suit as filed by the plaintiff is dismissed as barred by law.

(S.K.Awasthi)
Judge