

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**  
**BEFORE HON. SHRI JUSTICE ALOK VERMA,J**  
**C.R. No.24/2016**

**Kasturi Bai W/o Late Popsingh @ Koksingh**

**Vs.**

**Smt. Kushumlata Bai W/o Narayan Singh and others**

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Shri Navneet K. Verma, learned counsel for the applicant.  
Shri Shahid Sheikh, learned counsel for the non-applicant No.1.  
Shri S.S. Pandey, learned counsel for the non-applicant No.2.  
Shri Manish Sankhala, learned counsel for the non-applicants  
No.3 and 4.

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**ORDER**  
**(Passed on 04/07/2016)**

This Civil Revision is directed against the order passed by the 2<sup>nd</sup> Civil Judge, Class-I, Dewas in Civil Suit No.6A/2015 dated 04.01.2016 whereby the learned Civil Judge dismissed an application filed under Order 7 Rule 11 CPC filed by the applicant, who is defendant No.1 before the lower court.

2. The brief facts relevant for disposal of this civil revision are that the non-applicant No.1 filed a suit for partition, possession and permanent injunction against the present applicant and also against non-applicant No.2-Smt.

Durga Bai and non-applicants No.3 and 4 - Pradeep Singh and Navin Singh. According to non-applicant No.1/plaintiff, the suit property was purchased by her father Late Popesingh, who was working as an employee of Standard Mill Balgarh, Dewas. From his self earned income, the property was purchased in the name of the present applicant/defendant No.1, who is mother of the plaintiff/non-applicant No.1. According to the plaintiff, her father used to care for her mother, and therefore, the property was purchased in her name though she had no source of independent income at the relevant time when the property was purchased. Non-applicant No.2 is sister of non-applicant No.1/plaintiff and non-applicants No.3 and 4 are sons of Late Gitabai, who was third daughter of Late Popesingh and applicant- Kasturibai. According to plaintiff, she had 1/4<sup>th</sup> share in the suit property and accordingly she claimed partition, possession and permanent injunction against the defendants.

**3.** The applicant filed an application under Order 7 Rule 11 of CPC before the trial court on two grounds:- (i) that transaction is covered by a Benami Transaction (Prohibition) Act 1988 and (ii) Section 3(1) & Section 4(1) bar such suit,

and therefore, suit is not maintainable.

4. It is further submitted though the property was purchased way back 30.05.1975 by a registered sale deed, and therefore, this suit is barred by limitation. Accordingly, it is prayed that the impugned order be set aside. The application filed by the applicant be allowed and the plaint filed by the non-applicant No.1 be rejected under Order 7 Rule 11 (a) & (b) of CPC.

5. Learned counsel appearing for non-applicant No.1, however, supports the order passed by the learned Civil Judge and prays that the same may be confirmed.

6. Sections 3 and 4 of Benami Transaction (Prohibition) Act, 1988 may be reproduced below for convenience:-

**“3. Prohibition of benami transactions.-(1)**

No person shall enter into any benami transaction.

(2) Nothing in sub-section (1) shall apply to -

(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter;

(b) the securities held by a -

(i) depository as registered owner under sub-section (1) of section 10 of the Depositories Act, 1996

(ii) participant as an agent of a depository.

Explanation.- The expressions “depository” and “Participants shall have the meanings respectively assigned to them in clauses (e) and (g) of sub-section (1) of section 2 of the Depositories Act, 1996.

(3) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under this section shall be non-cognizable and bailable.

**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 real owner of such property.

(3) Nothing in this section shall apply,-

(a) 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; or

(b) 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 towards whom he stands in such capacity.”

7. Learned counsel for the applicant places reliance on

judgment of this Court in case of **Khateeja Bai (Smt.) vs. Union of India and others; 1994 J LJ 521**, in which it was held that sub-section (2) of section 3 of the Act provides an exception to sub-section (1) of section 3. If the property is purchased in the name of wife or unmarried daughter, the presumption is that the property is purchased for the benefit of wife or unmarried daughter, as the case may be. If such a property is purchased, the transaction may be benami, but it is taken out of rigour of sub-section (3) of section 3. It is further held that the same principle applied on bar of suit under section 4, sub-section (1) and sub section (2), by a person claiming to be the real owner of the property. It is also held that bar created by section 4 is applicable only when the suit is filed by a person who claimed to be the real owner of the property. The applicant cites judgment of Hon'ble Apex Court in case of **Uma Gupta vs. Sushela; (1993) 0 Supreme (MP)720, (1994) 1 MPWN 113**, in which it is held that under section 4 of Benami Transaction (Prohibition) Act 1988, a suit to obtain declaratory decree against the defendant that the defendant is only Benamidar while plaintiff is real owner is barred by section 4. On this point, only he cites the judgment of this Court in case of **Anand Kumar and another vs. Vijay**

**Kumar and others; 2012(3) MPHT 245**, in this case the plaintiff filed a suit for declaration of title alleging that the suit property was purchased by him benami in name of his mother. Here also the suit was found barred by provisions of the Act. The applicant also cites judgment of Hon'ble Apex Court in case of **Fatima Begum vs. Usman Mohammad; (2012) 0 Supreme (Ori) 273** in this case it was held that provisions of section 4 does not apply to an appeal filed prior to 19.05.1988 when the provisions of the Act came into force. He also places reliance on judgment of Hon'ble Apex Court in the case of **Vidyut Kumar Nath vs. D.K. Nath; (2014) 4 CGLJ 23** in this case two brothers were plaintiffs, they filed a suit for declaration against their sister/defendant No.2 and her husband claimed title over the suit property which is a shop and which was allegedly allotted by their father in name of defendant No.2, their sister for their benefit as they were unemployed. According to them, the defendant No.2, her sister was only a Benamidar. However, the Hon'ble Apex Court held that it was barred by section 4(1) of the Act, as the plaintiffs were claiming to be real owner of the shop which was purchased in name of defendant No.2.

8. Learned counsel for the applicant also places reliance

on judgment of Hon'ble Apex Court in case of **R. Rajgopal Reddy vs. Padmini Chandrashekharan; (1995) 2 SCC 630** and **Rebti Devi vs. Ram Dutt and another; (1997) 11 SCC 714**. The judgment of Hon'ble Apex Court in the case of **Nand Kishore Mehra vs. Sushila Mehra; (1995) 4 SCC 572** was relied by both the counsels. These cases raised down the principle in respect of retrospective effect of the Benami Transaction (Prohibition) Act 1988 and held that the defence of benami cannot be taken after coming into force of the Act but it will not be applicable in those cases where the suit is pending and defence was already raised in pending suits.

9. Reverting back to the present case here the plaintiff is daughter of Popsingh who allegedly purchased the property. The property was admittedly purchased in name of wife by father of the plaintiff. As per the suit averments, mother had no source of income for the purpose of an application under Order 7 Rule 11 only averments made in the plaint to be seen and from the averments made in the plaint, it is apparent that the transaction was saved by a provisions of sub-section (2) of section 3 of the Act. Applicability of provisions of the Benami Transactions (Prohibition) Act, 1988 can be seen only when

facts stated in the plaint are proved or not proved. At this stage, looking to the averments in the plaint, the suit appears maintainable. Accordingly, this revision appears to have no force and liable to be dismissed and dismissed accordingly. The applicant is at liberty to raise any valid defence in the written statement.

**( ALOK VERMA )**  
**JUDGE**