

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI
ON THE 9th OF JULY, 2022

CIVIL REVISION No. 555 of 2017

Between:-

- SMT. CHINTAMANI W/O LATE SHRI ANOKHILAL SONI, AGED ABOUT 67 YEARS, OCCUPATION: SELF EMPLOYED R/O GOVIND NAGAR, JASWADI ROAD, KHANDWA, TEHSIL AND DISTRICT KHANDWA (MADHYA PRADESH)**
- 1.

- ATUL S/O LATE ANIKHILAL SONI, AGED ABOUT 44 YEARS, OCCUPATION: SELF EMPLOYED R/O GOVIND NAGAR, JASWADI ROAD, KHANDWA, TEHSIL AND DISTRICT KHANDWA (MADHYA PRADESH)**
- 2.

.....PETITIONERS

(BY SHRI AVINASH ZARGAR - ADVOCATE)

AND

- AJAY KUMAR S/O LATE ANOKHILAL SONI, AGED ABOUT 48 YEARS, R/O WARD NO. 13, MAIN ROAD CHANERA, TEHSIL HARSOOD, DISTRICT KHANDWA (MADHYA PRADESH)**
- 1.

- VIJAY KUMAR S/O LATE ANOKHILAL SONI R/O WARD NO. 13, MAIN ROAD CHANERA, TEHSIL HARSOOD, DISTRICT KHANDWA (MADHYA PRADESH)**
- 2.

.....RESPONDENTS

(NONE FOR THE RESPONDENTS)

This revision coming on for hearing this day, the court passed the following:

ORDER

No one appears for the respondents despite issuance of SPC.

2. The instant revision under Section 115 of the Code of Civil Procedure, 1908 (for short 'CPC') assails the order dated 04.10.2017 (Annexure A/1) passed by the Sixth Civil Judge, Class-I, Khandwa in Civil Suit No.12-A/2015, whereby the application under Order VII Rule 11 of CPC filed by the petitioners/defendants has been rejected.

3. The brief facts leading to filing of this case are that the respondents/plaintiffs have filed a suit seeking relief(s) of declaration of title and permanent injunction. In para 2 of the plaint it has been pleaded by the respondents/plaintiffs that the property detailed as Schedule 'A' was purchased by late Anokhilal (father of the respondents/plaintiffs and defendant No.2/petitioner No.2 and husband of defendant No.1/petitioner No.1) vide registered sale deed dated 20.10.1984 in the name of his wife (defendant No.1) out of love and affection but entire sale consideration was paid by late Anokhilal. Thus, the respondents/plaintiffs have claimed the right over the said property. Since the suit has been filed in respect of *benami* transaction, the same is admittedly barred by Section 4 of the Benami Transactions (Prohibition) Act, 1988 (for short 'Act'); therefore, the petitioners/defendants filed an application under Order

VII Rule 11 of CPC seeking dismissal of the suit as barred by Section 4 of the Act. Respondents/plaintiffs filed the reply and opposed the prayer. However, the trial Court vide order dated 04.10.2017 rejected the application holding that the suit is saved by Section 3(2) of the Act. Being aggrieved, the petitioners/defendants have challenged the order inter alia on various grounds.

4. Shri Avinash Zargar, learned counsel for the petitioners submitted that the suit filed by the respondents/plaintiffs was not maintainable and the plaint was liable to be rejected as the same is barred under the provisions of the Act. He further contended that on bare perusal of provisions of Section 4 of the Act makes it clear that the suit filed by the respondents/plaintiffs was prohibited under Section 4 of the Act. It was also contended that the suit was hit by Sub-section (1) of Section 4 of the Act and the same was not maintainable, therefore, the plaint was liable to be rejected. The application filed by the petitioners/defendants under Order VII Rule 11 of CPC has been wrongly rejected by the trial Court, therefore, the impugned order deserves to be set aside and the application needs to be allowed.

5. No one appeared for the respondents. However, in the reply to the application the respondents/plaintiffs have stated that they have got right over the property since the amount of sale consideration was paid by their father Anokhilal and if the property is purchased in the name of his wife/petitioner No.1, then the provisions of

the Act would not be maintainable; therefore, the trial Court has rightly rejected the application and the revision deserves to be dismissed.

6. Heard the learned counsel for the petitioners and perused the record.

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 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. With a view to make proper appreciation, Sub-section (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. So far as applicability of the Act is concerned, the Apex Court in the case of **Duvuru Jaya Mohana Reddy and another Vs. Alluru Nagi Reddy and others, AIR 1994 SC 1647** has held that if a claim was prior to coming into force of the Act, the same would not be barred under the provisions of Section 4 of the Act. The coordinate Bench of this Court in the case of **Anand Kumar Vs. Vijay Kumar and**

others, 2012 Vol. 3 (MPLJ) 129 has also held that 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.

9. In view of the aforesaid pronouncements by the Apex Court as well as the coordinate Bench of this Court, the prohibition under the Act is squarely applicable and such a plaint was hit by Order VII Rule 11(d) of the CPC. This being so, the learned Court below was not right in rejecting the application of the petitioners/defendants. Resultantly, civil revision is **allowed** and the order dated 04.10.2017, Annexure A/1 is hereby set aside. The application of the petitioners/defendants under Order 7 Rule 11 of CPC is allowed. The suit filed by the respondents/plaintiffs is dismissed as barred under Sub-section (1) of Section 4 of the Act.

No order as to costs.

(S.A. DHARMADHIKARI)
JUDGE

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