

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 9<sup>th</sup> OF FEBRUARY, 2023**

**FIRST APPEAL No. 578 of 2021**

**BETWEEN:-**

**SATISH KUMAR JAIN S/O KAILASH  
CHANDRA JAIN, AGED ABOUT 48 YEARS,  
OCCUPATION: SELF EMPLOYED R/O  
STATION ROAD HARPALPUR, TAHSIL  
NOWGAON DISTRICT CHHATARPUR (M.P.)  
PRESENTLY R/O FLAT NO.2 SHIKHAR  
HOMES PUNJABI BAAG RAISEN, DISTRICT  
BHOPAL (MADHYA PRADESH)**

**.....APPELLANT**

***(BY SHRI AVINASH ZARGAR – ADVOCATE )***

**AND**

- 1. KAILASH CHANDRA JAIN S/O LATE  
GULAB CHANDRA JAIN, AGED ABOUT  
74 YEARS, R/O STATION ROAD,  
HARPALPUR TEHSIL NOWGAON  
DISTRICT CHHATARPUR (M.P.)  
PRESENTLY R/O H-34 VRDHMAN  
GREENPARK COLONY, ASHOKA  
GARDEN, BHOPAL, DISTRICT BHOPAL  
(MADHYA PRADESH)**
- 2. SHARAD KUMAR JAIN S/O KAILASH  
CHANDRA JAIN, AGED ABOUT 50  
YEARS R/O STATION ROAD  
HARPALPUR TAH. NOWGAON  
DISTRICT CHHATARPUR (M.P.)  
PRESENTLY H-34 VARDHMAN  
GREENPARK COLONY, ASHOKA  
GARDEN, BHOPAL DISTRICT BHOPAL  
(MADHYA PRADESH)**

3. **SUNIL KUMAR JAIN S/O KAILASH CHANDRA JAIN, AGED ABOUT 42 YEARS, R/O H-34 VARDHMAN GREENPARK COLONY, ASHOKA GARDEN, BHOPA, DISTRICT BHOPAL (MADHYA PRADESH)**
  
4. **STATE OF M.P. THROUGH COLLECTOR, CHHATARPUR, DISTRICT CHHATARPUR (MADHYA PRADESH)**

**.....RESPONDENTS**

**(BY SHRI PRADEEP NAVERIA- ADVOCATE )**

.....  
*This appeal coming on for hearing this day, the court passed the following:*

### **JUDGMENT**

This First Appeal has been filed against the order dated 14.07.2021 passed by Second Additional District Judge, Nowgaon, District Chhatarpur (M.P.) in RCSA No.100001/2014 by which the suit filed by the appellant for declaration of title, permanent injunction as well as for declaring the sale deed dated 24.12.2012 as null and void was dismissed under Order 7 Rule 11 CPC on the ground that the suit does not disclose any cause of action.

2. The facts necessary for disposal of the present appeal in short are that the plaintiff and the defendants No.2 and 3 are real brothers, whereas the defendant No.1 is the father of the plaintiff. It is the claim of the plaintiff that the property in dispute i.e. Khasra Nos.237, 242, 244, 248 total area 2.328 hectares situated in Mauja Ranipura, Tahsil Nowgaon, District Chhatarpur is in the ownership and in possession of

the plaintiff as well as the defendant No.2. Since, the plaintiff and the defendant No.2 were busy in their business, therefore they executed a general power of attorney in favour of the defendant No.1 in respect of the property in dispute. The defendant No.1 on the strength of the power of attorney entered into an agreement with Dr. Rajesh Agrawal to alienate the property and an amount of Rs.60 Lakh was received and the remaining amount of Rs.1 Crore and 71 Lakh was to be received at the time of the execution of the sale deed. Time was the essence of the contract and it was mentioned that the sale deed shall be executed by the month of April, 2013. Out of total amount of Rs.60 Lakh, Rs.45 Lakh was paid in cash, whereas Rs.15 Lakh were paid by cheque. After the execution of the agreement, the intention of the defendant No.1 became dishonest and in order to play fraud on the appellant, the defendant No.1 executed a sale deed in favour of his youngest son defendant No.3 on 24.12.2012. It is the case of the plaintiff that the entire transaction has been done with an intention to defraud the plaintiff and the land, which was agreed to be sold for an amount of Rs.2 Crore 31 Lakh just four days back from the date of the execution of sale deed in dispute, the sale deed in question was executed for a consideration amount of Rs.24 Lakh only. The plaintiff has not been given his share in the consideration amount, which was received by the defendant No.1. The entire transaction is fraud and a sham transaction. The plaintiff had not given any consent for the sale deed. The power of attorney, which was executed in favour of the defendant No.1, has already been cancelled on 16.01.2013. The plaintiff had requested the defendants not to act upon on the sale deed dated 24.12.2012 but they did not agree for the same and accordingly, the plaintiff has also raised his objections before the revenue authorities and thus, the suit was filed for declaration of title,

permanent injunction as well as for declaration of sale deed dated 24.12.2012 as null and void to the extent of share of the plaintiff.

3. The defendants filed their written statement.

4. It appears that the trial Court directed the plaintiff to file the original copy of the agreement purportedly executed between the defendant No.1 and Dr. Rajesh Agrawal. However, the original agreement was not filed but a coloured photocopy of the agreement, which has been attested by the Notary, was filed. Even, the plaintiff could not file the cheque of Rs.15 Lakh, which according to the plaintiff was given by Dr. Rajesh Agrawal to the defendant No.1. Accordingly, it was observed that an adverse inference can be drawn against the plaintiff and thus, it was held that since no cause of action has arisen, therefore, the plaint is liable to be rejected.

5. Challenging the order passed by the Court below, it is submitted by the counsel for the appellant that it is well established principle of law that for deciding an application under Order 7 Rule 11 CPC, the Court is required to go through the plaint averments only. In the present case, the trial Court had directed the plaintiff to file certain documents. The trial Court has held that since the original copy of the agreement executed between the defendant No.1 and Dr. Rajesh Agrawal and the cheque of Rs.15 Lakh, which was given by Dr. Rajesh Agrawal to the defendant No.1 have not been filed, therefore an adverse inference can be drawn. It is submitted by the counsel for the appellant that the adverse inference drawn by the Court below is *per se* illegal. It is the case of the appellant that the agreement of sale was executed between the defendant No.1 and Dr. Rajesh Agrawal, therefore, the defendant

No.1 must be in possession of the original agreement. Furthermore, the case of the appellant is that a cheque of Rs.15 Lakh was given by Dr. Rajesh Agrawal to the defendant No.1 and therefore, the cheque must be with the defendant No.1 and non-production of the same by the appellant would not lead to any adverse inference against the claim of the appellant specifically when the appellant/plaintiff has specifically pleaded in his plaint that no share in the consideration amount has been paid to the appellant.

6. *Per contra*, it is submitted by the counsel for the respondents that the appellant has relied upon the power of attorney in which it is mentioned that the properties were purchased by the defendant No.1 in the names of the plaintiff and the defendant No.2, thus, the father was the owner of the property in dispute and even in absence of power of attorney, he was well within his right to dispose of the property as per his likings and disliking. It is further submitted that once the appellant has admitted that a power of attorney was executed in favour of the defendant No.1, then the plaintiff is bound by each and every act of the holder of power of attorney and he cannot say that the power of attorney holder has played fraud on him.

7. Heard the learned counsel for the parties.

8. It is well established principle of law that for considering the application under Order 7 Rule 11 CPC, only the plaint averments are to be seen.

9. The Supreme Court in the case of **Shaukathussain Mohammed Patel Vs. Khatunben Mohmmmedbhai Polara** reported in (2019) 10 SCC 226 has held as under:

“6. It is well settled that for the purposes of the provisions of Order 7 Rule 11 of the Code, the entirety of the averments in the plaint have to be taken into account. Going by the version of the appellant as detailed in the plaint, there was an element of deception and fraud which was practised upon him as a result of which the document concerned got entered into. It is also a matter of record that the consideration in respect of the transfer of the property in question was stated to have been paid in cash.

7. Again going by the averments made in the plaint, the information in respect of the transaction came to the knowledge only in the year 2013-2014. According to the assertions in the plaint, the appellant-plaintiff was always in possession of the property. In the entirety of the circumstances, as pleaded in the plaint, the issues raised in the matter were certainly required to be considered on merit.”

10. The Supreme Court also in the case of **Madanuri Shri Rama Chandra Murthy Vs. Syed Jalal** reported in (2017) 13 SCC 174 has held as under:

“7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7

Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

**11.** In the plaint, it is specifically mentioned that the plaintiff/appellant and the defendant No.2 are the owner of the property in dispute and since they were busy in their individual businesses, therefore, they had executed a power of attorney in favour of defendant No.1. The defendant No.1 entered into an agreement to sell the property in dispute to Dr. Rajesh Agrawal for a consideration amount of Rs.2 Crore 31 Lakh, out of which Rs.60 Lakh were received by him. Rs.45 Lakh were paid in cash, whereas a cheque of Rs.15 Lakh was given by

Dr. Rajesh Agrawal to the defendant No.1. The remaining amount of Rs.1 Crore 71 Lakh was to be paid on the date of the execution of the sale deed. Just four days thereafter, the defendant No.1 executed a sale deed in favour of his youngest son/defendant No.3 for a meager amount of Rs.24 Lakh and accordingly, it was claimed that the sale deed executed by defendant No.1 in favour of defendant No.3 on 24.12.2012 is null and void to the extent of share of the plaintiff/appellant. By executing a power of attorney including the right to sell, the principal cannot say that his power of attorney holder has no right to alienate or deal with the property but if any fraud is played by the power of attorney holder on the principal itself, then it cannot be said that the principal would be estopped from challenging that fraudulent act of the power of attorney holder.

**12.** In the present case, it is not the claim of the appellant that defendant No.1 had no authority whatsoever to execute a sale deed in favour of the defendant No.3. His case is that just four days prior to the impugned sale deed, the defendant No.1 had entered into an agreement to sell the same property in dispute to Dr. Rajesh Agrawal for a consideration amount of Rs.2 Crore 31 Lakh, out of which Rs.60 Lakh were also received by the defendant No.1 in the form of cash as well as cheque. However, just four days thereafter, the same land was sold by the defendant No.1 to defendant No.3 for a consideration amount of Rs.24 Lakh. Thus, it is the case of the plaintiff that the act of the defendant No.1 in executing a sale deed in favour of his youngest son/defendant No.3 is a fraudulent act done with a solitary intention to defraud the appellant. By no stretch of imagination, it can be said that the principal would be bound by the fraudulent act of the power of



attorney holder also.

**13.** It is next contended by the counsel for the respondents that in the power of attorney itself, it is mentioned that the property was purchased by defendant No.1 in the names of the appellant and the defendant No.2. Thus, the defendant No.1 is the owner of the property in dispute and he has every right to deal with the property in accordance with his likings and disliking.

**14.** Considered the submission made by the counsel for the respondent.

**15.** Section 4 of the Prohibition of Benami Property Transactions Act, 1988 reads as under:

**“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 the real owner of such property.”

**16.** Sub-section 3 of Section 4 was omitted by Act No.43 of 2016. Thus, in the light of the bar as contained under Section 4 of the Prohibition of Benami Property Transactions Act, 1988, the defendant

No.1 cannot claim ownership on the land, which might have been purchased in the names of the appellant as well as the defendant No.2. It is well established principle of law that while entertaining an application under Order 7 Rule 11 CPC, the defence of the defendants or the correctness of the pleadings cannot be looked into. By no stretch of imagination, it can be said that the plaint filed by the appellant had not disclosed any cause of action.

17. Accordingly, this Court is of the considered opinion that the trial Court committed a material illegality by rejecting the plaint under Order 7 Rule 11 CPC on the ground that it does not disclose any cause of action.

18. As a consequence thereof, the order dated 14.07.2021 passed by Second Additional District Judge, Nowgaon, District Chhatarpur (M.P.) in RCSA No.100001/2014 is hereby **set aside**. The matter is remanded back to the trial Court to proceed in accordance with law. The parties are directed to appear before the trial Court on 13.03.2023. No further notice is required.

19. With aforesaid observation, the Appeal is **allowed** with cost. Pleader's fee Rs.10,000/-, if certified.

20. Since the appeal has been allowed and the matter has been remanded back therefore, the appellant shall be entitled for refund of the Court fee paid before this Court.

(G.S. AHLUWALIA)  
JUDGE

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