

Before Mahabir Singh Sindhu, J.

SONIA JETHI—*Petitioner*

versus

RAGHAV JETHI AND OTHERS—*Respondents*

CR No. 1378 of 2021

July 27, 2021

A. Constitution of India, 1950, Article 227 - Civil Procedure Code, 1908, Order 7, Rule 11 - Prohibition of Benami Property Transactions Act, 1988, Section 2(9)A - "Benami transaction" - Dismissal of application for rejection of plaint - Held, in view of clause A (a) (ii) (ibid) of Section 2(9)(A) of Benami Act, where property is transferred to or held by person and consideration for such property provided or paid by another person and it is held by person standing in fiduciary capacity for benefit of another person towards whom he stands in such capacity not covered within ambit of benami transaction - Moreover, for declaring transfer of property as benami transaction, proper procedure has been prescribed under Benami Act and mere assertion at instance of petitioner would not abort claim of respondent - Plaint does not disclose any cause of action - Hence. dismissal of application for rejection of plaint proper.

Held that although, a plea of benami transaction has been raised at the instance of petitioner, but that is wholly misplaced in view of the exception carved out under Section 2(9) A of the Prohibition of Benami Property Transactions Act, 1988 (for short 'Benami Act') and which reads as under:-

“2. Definitions.— In this Act, unless the context otherwise requires,—

(1) to (8).....

(9) “benami transaction” means,—

(A) a transaction or an arrangement—(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by—

(Mahabir Singh Sindhu, J.)

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv)

Perusal of clause A (a) (ii) (ibid) clearly reveals that where a property is transferred to or held by a person and the consideration for such property has been provided or paid by another person and it is held by a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity then it is not covered within the ambit of benami transaction and as such, contention to that effect is liable to be rejected. Moreover, for declaring the transfer of property as benami transaction, proper procedure has been prescribed under the Benami Act and mere assertion at the instance of petitioner would not abort the claim of respondent Nos.1 & 2 at the threshold.

(Para 12)

Held that above all, it is one thing to say that there is no cause of action for the plaintiffs to file the suit and it is another thing to say that plaint does not disclose any cause of action.

(Para 14)

B. Registration Act, 1949, Section 17 - Compulsory registration of property having value of more than Rs. 100/- - Held, both properties were transferred in terms of section 17 of Registration Act by way of Sale Deeds in name of petitioner with oral understanding that same shall be transferred in favor of respondents

on attaining age of 20 years - Therefore, plea of defence cannot be looked into while deciding application under Order 7, Rule 11 CPC.

Held that the plea raised on behalf of the petitioner regarding compulsory registration of property, having value of more than Rs. 100/-, is also not helpful in view of the fact that both the properties were transferred in terms of Section 17 of the Registration Act by way of Sale Deeds in name of the petitioner with an oral understanding that same shall be transferred in favor of respondent Nos.1 & 2 on attaining the age of 20 years. Again, this is the plea of defence and as such, the same cannot be looked into while deciding the application under Order 7 Rule 11 CPC.

(Para 13)

Arun Singal, Advocate, *for the petitioner/defendant No.1.*

MAHABIR SINGH SINDHU, J.

(1) Present petition has been filed under Article 227 of the Constitution for setting aside the impugned order dated 14.07.2021 (P-4), passed by learned Civil Judge (Junior Division), Panipat (*for short 'trial Court'*), whereby an application moved under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (*for short 'CPC'*) at the instance of petitioner (defendant No.1) was dismissed.

(2) Petitioner is the mother of respondent Nos.1 &2-plaintiffs, whereas respondent No.3 happens to be her husband. Respondent Nos.1 & 2 filed civil suit (P-1) for declaration to the effect that they are owners in possession of the suit property, measuring 56 Sq. Yd. (part of Property No.333-R, Model Town, Panipat) as well as property measuring 115.65 Sq. Yds. (part of Property No.236-R, Model Town, Panipat), both registered in the name of petitioner, vide Sale Deeds bearing Vasika No.3896 dated 14.09.2012 & Vasika No.8736 dated 01.02.2016, respectively, with the understanding that same shall be transferred in favour of respondent Nos.1 & 2 on attaining the age of 20 years. Further prayer is for consequential relief of permanent injunction restraining petitioner from interfering in their peaceful possession and not to alienate the same in any manner.

(3) Upon notice, petitioner entered into appearance and filed application under Order 7 Rule 11 CPC for rejection of the plaint, which was opposed at the instance of respondent Nos.1 & 2 by way of joint reply.

(4) Learned trial Court, after taking into consideration the

averments made in plaint, dismissed the application while passing the impugned order.

(5) Hence, the present petition.

(6) Learned Counsel for the petitioner contends that plaint does not disclose any cause of action; in case the averments made in plaint are to be accepted as correct, then also both the Sale Deeds would be treated as *benami* transactions and as such, the suit is barred by law. Further contended that in view of the provisions of the Registration Act, 1908 (*for short 'Registration Act'*), every immovable property, valued more than Rs.100/-, shall require compulsory registration, thus, respondent Nos.1 & 2 cannot claim ownership merely on the basis of alleged oral understanding.

(7) Heard learned Counsel for the petitioner and perused the paper-book along with the impugned order.

(8) For adjudication of the present matter, relevant part of Order 7 Rule 11 of the CPC is extracted as under:-

11. Rejection of plaint.-The plaint shall be rejected in the following cases-

(a) where it does not disclose a cause of action ; (b & c)

.....

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e & f)

It is well settled that while considering the application under Order 7 Rule 11 of the CPC, the averments made in the plaint are to be read as a whole to find out as to whether it discloses a cause of action or whether the suit is barred by any law and reference in this regard can be made to para No.8 of judgment of the Hon'ble Supreme Court, titled as *Madanuri Sri Rama Chandra Murthy versus Syed Jalal*¹, which is as under:-

“The plaint can be rejected under Order VII Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order VII 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

¹ (2017) 13 SCC 174

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 VII Rule 11, CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order VII Rule 11 of 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 VII Rule 11 of 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.”

Hon’ble Supreme Court in the case of *Swamy Atmananda versus Sri Ramakrishna Tapovanam*² while explaining the “cause of action” in para 24 of the judgment observed as under:-

“ A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the

² (2005) 10 SCC 51

material facts on which it is founded.”

In view of the law laid down by the Hon’ble Supreme Court, it is very much clear that averments in the written statement as well as the contentions of the defendant(s) are wholly irrelevant while considering the application for rejection of the plaint and so far as cause of action is concerned, it would not be limited only to the actual infringement of the right sued, but also includes all the material facts on which it is founded.

(9) Learned trial Court, upon perusal of the plaint and specifically making reference to Para No. 26 thereof, came to the conclusion that it discloses a cause of action. Although, petitioner raised the plea regarding concealment of facts also, but it was negated by learned trial Court on the premise that such a ground is not available while considering the application under Order 7 Rule 11 CPC.

(10) This Court has also gone through the plaint in entirety and para 9, 14, 15, 16 & 26 of the same being relevant are reproduced as under:-

“9. That two properties, which are subject matter of the present suit were bought/purchased by the Defendant No.2 in the name of the Defendant No.1, from the funds/consideration provided by him. The said two properties, which are subject matter of the present suit, funds/consideration whereof were provided by the Defendant No.2, are as under:-

(a) Property measuring 56 Square Yards, forming part of house No.333-R, Model Town, Panipat. This property was purchased vide sale deed dated 14.09.2012 in the name of the Defendant No.1 by the Defendant No.2. This property was purchased for a consideration of Rs.11,00,000/- (Rupees Eleven Lacs Only) from Smt. Prem Kumari and Shri Rajesh Kumar. [Hereinafter referred to as the “**the Property No.1.**”

(b) Property measuring 115.65 square yards, forming part of Property No.236-R, Model Town, Panipat. This property was purchased for a consideration of Rs.26,80,000/- (Rupees Twenty Six Lacs Eighty Thousand Only) vide sale deed dated 01.02.2016 in the name of the Defendant No.1 by the Defendant No.2, from M/s Gobind Diamonds Private Limited. [Hereinafter referred to as the “**the Property**”

No.2.”

14. That when the two properties were acquired/ purchased in the name of the Defendant No.1, both times it was orally decided, agreed, understood and confirmed by the two Defendants and also conveyed to the two Plaintiffs that the Defendant No.1 shall hold the two properties in trust and for the benefits of the two Plaintiffs, standing in a fiduciary capacity towards the Plaintiffs. The parties to this suit and particularly the Defendant No.1 knew right from the beginning that she has no right, title or interest in the suit properties and she was merely holding it in trust for the Plaintiffs and that ultimately the suit properties have to be transferred in the names of the two Plaintiffs, in equal share, when both of them attain the age of 20 years. It is stated that the Plaintiff No.1 attained the age of 20 years on 29.01.2019 and the Plaintiff No.2 attained the age of 20 years on 26.06.2020. It is stated that right from the date of purchase of the two suit properties, the rights of the Plaintiffs qua the same were well recognized. Therefore, in terms of the oral understanding after 26.06.2020, the Defendant No.1 ought to have transferred the suit properties in favour of the Plaintiffs. It was the duty and obligation of the Defendant No.1.

15. That the reason why the suit properties were not purchased by the Defendant No.2 in the names of Plaintiffs, right in the beginning, when the said properties were purchased on 14.09.2012 and 01.02.2016, respectively, was that the Defendant No.2 wanted the Plaintiffs to first complete basic education and become mature enough to handle the properties. Therefore, it was decided that the said properties would be transferred to the Plaintiffs when they attain the age of 20 years.

16. That it was all throughout well understood by the parties that the Defendant No.1 was standing in a fiduciary capacity for the benefit of the Plaintiffs towards whom she was standing in such capacity. The properties were held by the Defendant No.1 in trust and for the benefit of the two Plaintiffs, while standing in a fiduciary capacity towards them being her children.

26. That the cause of action to file the present suit arose in

favour of the Plaintiffs and against the Defendant No.1 on various dates as mentioned in the plaint. The cause of action arose when the Defendant No.1 illegally started claiming and asserting rights in respect of the suit properties, by resiling from the oral understanding that she was only holding the suit properties in trust and for the benefit of the two Plaintiffs and was only standing in a fiduciary capacity towards the plaintiffs. The cause of action arose when the Plaintiff No.1 turned 20 years of age on 29.01.2019. The cause of action arose when the Plaintiff No.2 turned 20 years of age on 26.06.2020. The cause of action arose when the Defendant No.1 refused to transfer the suit properties to Plaintiffs, in equal shares in a meeting with Plaintiff No.1 at Chandigarh in December, 2020. The cause of action further arose when from the conduct of the Defendant No.1 it became apparent that she wants to deprive the Plaintiffs of their properties, which she was holding in trust and for benefit of the Plaintiffs, while standing in fiduciary capacity towards the Plaintiffs. The cause of action arose as the Defendant No.1 has interfered in the possession of the two properties. So far as property No.1 is concerned, the showroom of M/s. Krishna Krishna Jewellers & Investments Private Limited is being run from there. The Plaintiff No.1 is a director in the said company. The Defendant No.1 has also attempted to take forcible possession of the property No.2, which is in the tenancy of M/s. Interior Dreams Private Limited and interfering in possession of the said tenant. The cause of action is continuing in favour of the Plaintiffs and against the Defendant No.1.”

As per the averments made in above paragraphs, entire consideration for both the Sale Deeds was paid by father of respondent Nos.1 & 2. No doubt, the Sale Deeds were executed in the name of petitioner, but those are stated to be with an oral understanding between the parties that petitioner shall hold properties in trust due to fiduciary relationship for the benefit of respondent Nos.1 & 2 and same shall be transferred in their favour on attaining the age of 20 years. In para 15 of the plaint, it is duly explained that properties were purchased in the name of petitioner for the reason that firstly respondent Nos.1 & 2 should complete their basic education and when they will become mature enough, then the properties shall be transferred in their favour.

(11) Obviously, respondent Nos.1 & 2 will have to prove the factum of the oral understanding as well as source of funds allegedly provided by their father (respondent No.3) regarding Sale Deeds, but certainly the plaint discloses cause of action.

(12) Although, a plea of *benami* transaction has been raised at the instance of petitioner, but that is wholly misplaced in view of the exception carved out under Section 2(9) A of the Prohibition of Benami Property Transactions Act, 1988 (*for short 'Benami Act'*) and which reads as under:-

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(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv)

Perusal of clause A (a) (ii) (*ibid*) clearly reveals that where a property is transferred to or held by a person and the consideration for such property has been provided or paid by another person and it is held by a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity then it is not covered within the ambit of *benami* transaction and as such, contention to that effect is liable to be rejected. Moreover, for declaring the transfer of property as *benami* transaction, proper procedure has been prescribed under the Benami Act and mere assertion at the instance of petitioner would not abort the claim of respondent Nos.1 & 2 at the threshold.

(13) The plea raised on behalf of the petitioner regarding compulsory registration of property, having value of more than Rs.100/-, is also not helpful in view of the fact that both the properties were transferred in terms of Section 17 of the Registration Act by way of Sale Deeds in name of the petitioner with an oral understanding that same shall be transferred in favor of respondent Nos.1 & 2 on attaining the age of 20 years. Again, this is the plea of defence and as such, the same cannot be looked into while deciding the application under Order 7 Rule 11 CPC.

(14) Above all, it is one thing to say that there is no cause of action for the plaintiffs to file the suit and it is another thing to say that plaint does not disclose any cause of action.

(15) In view of the facts and circumstances, discussed hereinabove, this Court is of the considered opinion that plaint discloses sufficient cause of action for continuation of the suit at the instance of respondent Nos.1 & 2.

Resultantly, while agreeing with the opinion of learned trial Court, there is no option except to dismiss the petition.

Ordered accordingly.

However, it is clarified that observations made above be not construed as an expression of opinion on the merits of the suit pending before learned trial Court in any manner.

Ritambra Rishi