

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CIVIL REVISION No. 13 of 2018

1. Dukhiya Bai Wd/o Baharan Verma, aged about 65 years, Occupation–Cultivators, Village Mohbhatta, Tahsil and District Bemetara (C.G.)
2. Teekaram Verma, S/o Rama Verma, aged about 38 years, Occupation–Cultivators, Village Mohbhatta, Tahsil and District Bemetara (C.G.)

---- Petitioners/Defendants

Versus

1. Pheruram Verma S/o Khorbahara Verma, aged about 62 years, Occupation – Cultivator, Village Mohbhatta, Tahsil and District Bemetara (C.G.)
2. Radhe D/o Khorbahara Verma, aged about 65 years, Occupation – Cultivator, Village Mohbhatta, Tahsil and District Bemetara (C.G.)
3. State of Chhattisgarh, through Collector Bemetara, Tahsil and District Bemetara (C.G.)

--- Respondents

For Petitioner	:	Mr. Viprasen Agrawal, Advocate.
For Respondent No. 1 & 2	:	Mr. Rajkumar Pali, Advocate.
For Respondent No. 3/State	:	Mr. Adhiraj Surana, Dy. G. A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

15/11/18

1. Taking exception to the impugned order dated 13.11.2017 (Annexure-P/1) passed by the trial Court deciding the issue No. 14 in negative which relates to suit being hit by the provision of Benami Transactions (Prohibition) Act, 1988 (hereinafter referred to as 'the Act of

1988'), this civil revision invoking jurisdiction of this court under Section 115 of CPC has been preferred by the petitioners, who are defendants before trial Court.

2. Mr. Viprasen Agrawal, learned counsel appearing for the petitioners/defendants submits that the trial Court is absolutely unjustified in answering the issue in negative holding that the issue No. 14 relates to mixed question of law and fact and it will be decided after recording the evidence of the parties and as such, the impugned order is liable to be set aside, as the said question is a pure question of law.

3. Mr. Rajkumar Pali, learned counsel appearing for respondents No. 1 & 2/plaintiffs, on the other hand, would support the impugned order and submits that the trial Court is absolutely justified in answering the issue in negative as the issue No. 14 relates to mixed question of law and fact and can be decided only after recording the evidence of the parties and further submits that the issue has not yet been decided as such, revision filed deserves to be dismissed.

4. Mr. Adhiraj Surana, learned Deputy Government Advocate appearing for the State submits that State is a formal party in the plaint.

5. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

6. In order to consider the plea raised at the Bar, it would be

appropriate to notice Section 4(1) of the Act of 1988 which reads as follows: -

“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.”

7. A careful perusal of Section 4(1) of the Act of 1988 would show that in the opening word there is a clear legislative intention that no such claim, suit or action to enforce any right in respect of any property held *benami* would be maintainable. So what has been barred is bringing and institution of suit to make a claim and not that a particular transaction is *benami* or not, meaning thereby, if a suit is instituted after coming into force of the Act of 1988 claiming any right, title or interest on the basis of any *benami* transaction whether it has been entered into prior to coming into force of the Act of 1988 or after coming into force of the Act of 1988, such suit would be barred by virtue of the provisions contained in Section 4(1) of the Act of 1988.

8. The question as to whether bar would be applicable in suits which are filed after coming into force of the Act of 1988 has been considered by the Supreme Court in the matter of **Duvuru Jaya Mohana Reddy and another v. Alluru Nagi Reddy and others**¹ and it has been held that Section 4(1) of the Act of 1988 would apply to proceedings pending on the date of the commencement of the Act and the provisions were held

¹ AIR 1994 SC 1647

applicable to an appeal that was pending. Similar is the proposition laid down by the Supreme Court in the matter of **Prabodh Chandra Ghosh v. Urmila Dassi**². Thereafter, in the matter of **G. Mahalingappa v. G.M. Savitha**³, the Supreme Court has again considered nature and applicability of Section 4(1) of the Act of 1988 and held that the Act of 1988 is prospective except to a certain extent.

9. In the matter of **R. Rajagopal Reddy (Dead) by LRs and others v. Padmini Chandrasekharan (Dead) by LRs**⁴ the Supreme Court in paragraph 11 of its judgment has clearly held that no such suit, claim or action shall be permitted to be filed or entertained or admitted to the portals of any court for seeking such a relief after coming into force of Section 4(1) of the Act of 1988. The Supreme Court further held as follows: -

“On the contrary, clear legislative intention is seen from the words 'no such claim, suit or action shall lie', meaning thereby no such suit, claim or action shall be permitted to be filed or entertained or admitted to the portals of any court for seeking such a relief after coming into force of Section 4(1).”

The Supreme Court in the same paragraph observed as under: -

“With respect, the view taken that Section 4(1) would apply even to such pending suits which were already filed and entertained prior to the date when the section came into force and which has the effect of destroying the then existing right of plaintiff in connection with the suit property cannot be sustained in the face of the clear language of Section 4(1). It has to be visualised that the legislature in its wisdom has not expressly

2 AIR 2000 SC 2534

3 (2005) 6 SCC 441

4 (1995) 2 SCC 630

made Section 4 retrospective. Then to imply by necessary implication that Section 4 would have retrospective effect and would cover pending litigations filed prior to coming into force of the section would amount to taking a view which would run counter to the legislative scheme and intent projected by various provisions of the Act to which we have referred earlier. It is, however, true as held by the Division Bench that on the express language of Section 4(1) any right inhering in the real owner in respect of any property held benami would get effaced once Section 4(1) operated, even if such transaction had been entered into prior to the coming into operation of Section 4(1), and henceafter Section 4(1) applied no suit can lie in respect to such a past benami transaction. To that extent the section may be retroactive.”

(emphasis supplied)

10. Thereafter, in G. Mahalingappa (supra), R. Rajagopal Reddy's case (supra) was followed with approval.

11. Reverting to the facts of the present case, in light of the provisions contained in section 4(1) of the Act of 1988 and read with the principles of law laid down by the Supreme Court in the above stated judgments, it is quite vivid that the plaintiff filed a suit for declaration of title and possession on 28.03.2017 in which he has clearly stated in paragraph-6 of that the suit land was purchased by the plaintiff on 13.03.1981 but the sale deed got nominally registered in favour of defendant No. 1 Dukhiya Bai and Baharan and he came in possession of the suit land immediately after and also purchased other suit land on 09-06-1988 in name of Dukhiya Bai and all the documents were got registered in the name of Dukhiya Bai nominally. It was also pleaded that Baharan (husband of Dukhiya Bai) died on 23.02.2015, & taking advantage that defendant No.

1 being illiterate woman, defendant No. 2 got the sale deed executed in his favour. As such, the defendant No. 2 is not the title holder of the suit land and the alienation made by defendant No. 1 in favour of defendant No. 2 is null and void and he is also entitled for possession from defendant No. 2 and declaration that he is the title holder.

12. Undisputedly, the instant suit has been filed on 28.03.2017 after coming into force of the Act of 1988 and plaintiff is claiming title on the basis of Transaction which is said to have been taken place on 13.03.1981 and 09.06.1988. This being so, the prohibition imposed under Section 4(1) of the Act of 1988 is squarely attracted as the plaintiff has filed the suit after coming into force of Act of 1988 in order to enforce his right under Benami Transaction which is specifically barred under Section 4(1) of the Act of 1988 and as such the plaint is barred by virtue of Order 7 Rule 11(d) of CPC, therefore, the trial Court is absolutely unjustified in holding that the said question is mixed question of law and fact, as it is pure question of law.

13. Accordingly, the impugned order is set aside and it is held that the suit is barred by Section 4(1) of the Benami Transaction Act, 1988 and therefore, it is liable to be rejected under Order 7 Rule 11(d) of CPC. The civil revision is allowed as indicated hereinabove with no order as to cost(s). The order passed by the trial Court is hereby set aside and the suit is held barred by Section 4(1) of the Act of 1988 and the plaint filed by the plaintiff stands rejected.

14. A copy of this order be sent to the trial Court directly as well as through the concerned District Judge for needful and compliance.

SD/-
(Sanjay K. Agrawal)
Judge

Priyanka



HIGH COURT OF CHHATTISGARH AT BILASPUR

(SB : Hon'ble Shri Justice Sanjay K. Agrawal)

CIVIL REVISION No. 13 of 2018

Petitioners

Dukhiya Bai & Other

Versus

Pheruram Verma & Others

Respondents

(Head-note)

(English)

The suit filed by the plaintiff claiming the declaration that he is owner of the suit property is barred by Section 4(1) of Act of Benami Transaction Act (Prohibition) Act, 1988.

(हिन्दी)

वादी द्वारा यह दावा करते हुए कि वह विवादग्रस्त सम्पत्ति का स्वामी है दायर किया गया वाद बेनामी संव्यवहार (प्रतिषेध) अधिनियम 1988 की धारा 4(1) द्वारा वर्जित है।