

**IN THE COURT OF SH. RAMESH KUMAR-II,
ADDITIONAL DISTRICT JUDGE-01, SHAHDARA
DISTRICT, KARKARDOOMA COURTS, DELHI**

CS No. 671/17

In the matter of:-

Smt. Sangeeta Beri

.....Plaintiff

Vs.

Chander Kant Beri

.....Defendant

22.08.2022

ORDER

Vide this order I shall dispose off the application filed by plaintiff under order XIV rule 2 & 5 CPC for framing of additional preliminary issue.

Brief facts as stated by the plaintiff in the present application are that the plaintiff has filed the present suit for possession, permanent injunction and damages against the defendant as the plaintiff is owner of the suit property and defendant was permitted to occupy the suit property as licensee without any payment of charges. It is further stated that the said license was revoked w.e.f. 15.07.2017 by serving a legal notice dt. 27.06.2017 which was duly served on the defendant wherein he was called upon to handover the peaceful vacant possession of the suit premises on or before 15.07.2017, otherwise he will be considered as unauthorized occupant of the suit property and shall also be liable to pay damages of Rs.2500/- per month. It is further stated that the defendant in the entire written statement has acknowledged the ownership of the plaintiff. It is further stated that the defendant has raised frivolous defence that the said property is held benami in the name of plaintiff which is not

legally sustainable in view of section 4 of the Benami Transaction (Prohibition) Act 1998, as amended in 2016. Thus it is necessary to frame additional preliminary issue which is necessary for determining the matter in controversy between the parties.

Defendant has filed reply to the present application stating that the plaintiff has filed this application only to prolong litigation rather than to lead evidence and the Hon'ble High Court of Delhi was pleased to refrain from adjudicating the aspect of the claim being barred by the Prohibition of Benami Property Transaction Act and even the present application has become infructuous as the defendant filed application under order 6 rule 17 CPC for deleting the word 'benami' from written statement and the said application is pending adjudication before this court.

Ld. counsel for plaintiff and ld. counsel for defendant both have filed written arguments on the present application.

In written arguments it is contended by the plaintiff that the defendant filed written statement and he acknowledged the ownership of the plaintiff in reply on merits in para 1 (xii) that original one Mr. Jai Pal Singh Gill was the Sub Lessee vide sub lease deed dt. 06.03.1979 who sold the same to the plaintiff by executing documents like agreement to sell, GPA etc. dt. 11.06.1986, the General Attorney being Mr. Ravi Kant (husband of the plaintiff)". It is further contended that in view of above it is crystal clear that the defendant has admitted the fact that the plaintiff had purchased the suit property in her name which is clear admission on the part of defendant and that the plaintiff is the absolute owner of the suit property. It is further contended

that defendant raised frivolous defence that the said property is held Benami in the name of plaintiff but the defence raised by the defendant is even otherwise not legally sustainable on the facts as alleged by the defendant in view of section 4 of the Benami Transaction (Prohibition) Act 1998, as amended in 2016. It is further contended that the defendant and his wife had filed a civil suit no. CS (OS) 455/18 before Hon'ble High Court of Delhi for declaration, partition and permanent injunction against the plaintiff and her husband but the said suit was dismissed by Hon'ble High Court of Delhi vide its judgement dt. 13.05.2019 with observation that the claim of the defendant is apparently barred by the prohibition of Benami Property Act. Ld. counsel for plaintiff further referred to para 8 (k) of the said judgment which is as follows:

"However, before parting with this judgment, I may observe that I do not find any issue to have been struck in the previously instituted suit on the plea herein raised by the defendants of bar of the Prohibition of Benami Property Transactions Act. I may remind the counsels that Section 4 of the said Act bars not only a claim with respect to any property held benami against the real owner thereof but also a 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".

It is further contended that in view of the specific observation of the Hon'ble High Court of Delhi it has become imperative and necessary to frame an additional issue which is necessary for determining the matter in controversy between the parties which issues is as follows:-

VIII. Whether the claim of the defendant is barred by the prohibition of Benami Transaction Act? OPD

On the other hand, it is contended by the defendant in written arguments that the plaintiff filed the present suit for possession, permanent injunction and mesne profits claiming possession of first floor in property no. 71, Hargobind Enclave, Delhi-110092 and the defendant had taken the plea in his written statement to the effect that the husband of the plaintiff had purchased plot of land no. 71, Hargobind Enclave, Delhi-110092 benami in the name of the plaintiff (his wife). It is further contended that after the plaintiff and his wife filed a suit bearing no. CS (OS) 455 of 2018 before Hon'ble High Court of Delhi, which was disposed off vide order dt. 13.05.2019 with an observation that the claim of the defendant is barred by the prohibition of Benami Property Act and the Hon'ble High Court observed in para 8 (k) that there is no issue to this effect in the previously instituted suit on this plea i.e. in the present suit. It is further contended that after the order dt. 13.05.2019 was passed by the Hon'ble High Court, the defendant in view of the judgments passed by Hon'ble Supreme Court of India cited in the said order dt. 13.05.2019 was advised to give up this plea of Benami. Hence, an application dt. 05.07.2019 for amendment of written statement under order 6 rule 17 CPC was filed for giving up/deleting the word Benami from paras 5 and 15 of the written statement and also the plea of the defendant and his wife being owners by adverse possession. It is further contended that in case, the amendment is allowed, this application under order 14 rule 5 CPC does not survive anymore and no useful purpose will be served by framing an additional issue as prayed for by the

plaintiff as even if framed, the defendant is not going to press this plea taken in the written statement and even otherwise, the suit hinges on the basis issue of oral family settlement and declaration, already framed as issue no. (ii) on 05.09.2018. Therefore, it is prayed that the present application of the plaintiff be dismissed.

Arguments heard. Record perused. On perusal of record, it is revealed that the defendant has filed an application under order 6 rule 17 CPC on 05.07.2019 for amendment in written statement for removing the word 'benami' and subsequent to the filing of said application by the defendant, the plaintiff has also filed an application under order 14 rule 2 & 5 CPC for framing of additional preliminary issue. Since defendant has already filed application under order 6 rule 17 CPC regarding amendment in written statement, it appears that the present application filed by the plaintiff is an afterthought. Further, the application filed by the plaintiff is not maintainable since court has not yet decided the application of the defendant under order 6 rule 17 CPC, therefore, the present application of the plaintiff is not maintainable being infructuous and same is hereby dismissed.

Application is disposed off accordingly.

(Typed to the dictation directly corrected
and pronounced in open court on 22.08.2022)

(RAMESH KUMAR-II)
ADJ-01/SHD/KKD COURTS
DELHI