

IN THE COURT OF SH.BHUPESH KUMAR, LD. ADJ-02,
DWARKA COURTS, NEW DELHI

CS 16379/16

GEETA DEVI ORS. Vs. RAGHUVANSH SINGH ORS.

13.09.2017

Present: Mr.Rajesh Aggarwal, Ld. counsel for plaintiff
Mr.N.K.Aggarwal,Ld. counsel for defendant no.1 to 3

Arguments heard on the application moved by defendant no. 1 to 3 u/o 7 Rule 11 CPC for rejection of plaint. The application has been filed on the ground that in the present suit plaintiff claimed that both the properties in question were self acquired properties of their predecessor in interest Sh. Baleshwar Prasad. But one of the property situated at Mahavir Enclave stands in the name of defendant no.1 and his wife and property situated at Janak Puri is in the name of defendant no.2 and 3. The defendants have mentioned this fact in written statement. It is further submitted that in view of provisions of Benami Transaction Act, the suit is barred. Hence, the plaint should be rejected.

On the other hand, the application has been contested by plaintiff, by filing written reply, wherein, it has been inter alia,

submitted that application has been filed at belated stage when plaintiff nos. 1 & 2 have already concluded their evidence. It has been further submitted that issues in this matter were framed way back in the year 2006 and issue no. 3 was framed to the effect if the suit is barred by Benami Transaction Act. The onus to prove this issue is on defendants.

Heard. Material perused.

It is found that issues in this matter were framed on 11.08.2006 and the present application has been moved on 8.9.2016 i.e. after about 10 years of framing of issues. For rejection of plaint u/Order 7 Rule 11 CPC, the Court is required to see the contents of plaint only and the allegations made in WS are not to be considered. Reliance in this respect can be made in case *Mayor (HK) Ltd. Vs Owner and Parties Vessel MV Fortune Express*, AIR 2006 SC 128.

In this matter, plaintiff has inter alia, claimed for decree of declaration and permanent injunction on the ground that both properties in question were self acquired properties of their predecessor in interest Sh.Baleswar Prasad. On the other hand, defendants have taken plea in their WS that both properties did not belong to late Sh.Baleswar Prasad and claim the same to be

Benami Properties. But there is nothing in the plaint which reflects that plaintiff has filed the present suit claiming any right on the basis of Benami Transaction. What defence has been taken by defendants in the written statement cannot be considered for disposal of application U/o 7 Rule 11 CPC, in view of judgment *Mayor (HK) (Supra)*. Whether the properties in question are Benami properties or not, is a matter of trial for which issue no.3 has already been framed.

Hence, it is found that the present application under Order 7 Rule 11 CPC is found to be not maintainable and stands dismissed accordingly.

(BHUPESH KUMAR)
ADJ-02 : Dwarka Courts
New Delhi/13.09.2017