ORDER PASSED BELOW EXH.21
IN REGULAR CIVIL SUIT NO.30/2025

[CNR No.MHKO090000982025]

The application is filed by the defendant no.5 for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure.

2. Defendant No.5 has raised four objections to the maintainability of the suit. It is contended that the plaintiff is a third party to the document in question and, therefore, has no privity of contract. Consequently, no cause of action arises in favor of the plaintiff, making the suit liable for rejection under Order VII Rule 11(a) of the CPC.

3. Defendant No.5 further argues that the suit must be valued in accordance with the valuation specified in the document. Failure to do so renders the plaint liable to rejection under Order VII Rule 11(b) of the CPC.

4. It is also asserted by defendant no.5 that since the plaintiff is not a party to the document, he lacks the legal standing to challenge its validity. On this ground, the plaint is said to be liable for rejection under Order VII Rule 11(d) of the CPC.

5. Lastly, it is contended that the suit is barred under Section 4 of the Benami Transactions (Prohibition) Act, making it not maintainable in law. Consequently, the plaint is liable for rejection under Order VII Rule 11(d) of the CPC

6. The present application is strongly opposed by the plaintiff. In essence, the plaintiff contends that the objections raised by Defendant No.5 are not applicable to the present suit. Regarding the issue of valuation, it is argued that the proper course of action is to first direct the plaintiff to deposit the requisite court fee, and only upon failure to comply with such a direction can the plaint be considered for rejection. As for the other objections, the plaintiff asserts that there is no legal bar to the suit, and therefore, the application is liable to be rejected.

7. Considering the rival submissions, following points arise for my determination and my findings thereon, with reasons, are as under -

Sr. No.	**Points**	**Findings**
1]	Whether the plaint does not disclose cause of action ?	.... No
2]	Whether the relief claimed is under valued ?	.... No

3]	Whether the plaintiff does not having locus standi to ask the relief ?	.... No
4]	Whether the suit is barred by any law ?	.... No
5]	Whether the plaint is liable to be rejected under Order VII Rule 11 of CPC ?	.... No
6]	What order ?	.... As per final order

REASONS

As to point nos.1 to 6 -

8. The law regarding the rejection of a plaint is well-settled. Various pronouncements have established that it must appear from the plaint itself that the suit is barred by the provisions of any other law. In this exercise, the defenses raised in the written statement or its averments cannot be considered; the bar specified in another statute must be evident from the plaint alone. It is also a well-settled principle that the plaint needs to be read as a whole and not in parts. With these guiding principles, I am considering the objections raised by defendant.

9. The point nos.1 and 3 deals with the cause of action and locus standi of the plaintiff to file the suit. It is the prime contention of defendant no.5 that the plaintiff is not having any

locus standi or privity of contract, therefore, he cannot challenge that document. Thus, he is not having any cause of action to institute the present suit.

10. I have given careful consideration to the submissions made. Admittedly, the plaintiff is not a party to the document. However, the plaintiff claims that the property, though standing in the name of Defendant No.4 in the revenue records, is actually held benami by Defendant No.4, with the plaintiff being the real owner. Thus, even though the plaintiff is not a party to the document, as per his pleadings, any transaction concerning the property would directly affect his rights.

11. As stated earlier, only the averments in the plaint need to be considered at this stage, without examining the defence raised by the defendants. When the plaintiff asserts a case based on the Benami transaction theory and alleges that a transaction regarding the disputed property has taken place, he undoubtedly has the locus standi to challenge the said transaction.

12. Regarding the cause of action, it is an undisputed fact that a transaction has occurred between Defendant Nos.4 and 5. The plaint, therefore, discloses a cause of action, and the plaintiff has the necessary standing to challenge the transaction. Hence, these objections are not sustainable.

13. As regards the valuation of the suit and payment of court fees, the issue is now well settled. When the plaintiff is neither a party to the document nor an executant of the document, he is not liable to pay ad valorem court fees under Section 6(iv)(ha) of the Bombay Court Fees Act. Instead, the court fees should be calculated under Section 6(iv)(j) of the said Act. Thus, the objection regarding valuation is also not sustainable.

14. The objection regarding the Benami transaction goes to the root of the matter. All the parties at length argued that point. The Advocate for the plaintiff to substantiate their contention, relied on the case of *Pawan Kumar Gupta V/s. Rochiram Nagdeo -- 1999 (4) Civil LJ 331* ; *Marcel Martins V/s. M. Printer and others -- 2012 (4) Civil LJ 1* ; *Govind Goverdhandas Daga V/s. Field Mining & Ispat Ltd. Nagpur -- 2009 (6) Mh.L.J. 398* ; *Rajendra Bhaiyyaji Zade V/s. Harbanssingh -- 2018 (6) Mh.L.J. 78* ; *C. Gangacharan V/s. C. Narayanan -- 2000 (2) CivilLJ 616*. On other hand, the defendant no.5 to substantiate their argument, relied on the case of *Vishram alias Prasad Govekar V/s. Sudesh Govekar -- AIR 2017 SC 583* ; *Satish Kumar Gupta V/s. Shanti Swaroop Gupta -- AIROnline 2018 Del 1147* ; *Daya Shankar Singh V/s. Uma Shankar Singh -- AIROnline 2018 Pat 377* ; *Union of India V/s. M/s. Ganpati Dealcom Pvt. Ltd. -- 2022 LiveLaw (SC) 700*.

15. I have considered the judgments cited. The first question before me is whether, at the stage of deciding an application under Order VII Rule 11 of the CPC, the plea of bar under Section 4 of the Benami Transactions (Prohibition) Act can be adjudicated. If the answer is in the affirmative, it would be necessary to examine the plaint and its averments to determine whether it is barred under Order VII Rule 11 of the CPC in light of Section 4 of the Benami Transactions (Prohibition) Act. However, if such a determination requires an assessment of evidence, the issue would have to be considered at a later stage after both parties have led their evidence.

16. In the case of ***Pawan Kumar V/s. Babulal -- 2019 (4) SSC 367***, the Hon'ble Supreme Court considered the similar issue and held as under :-

> *"13. In the present case, the controversy has arisen in an application under Order VII Rule 11 CPC. Whether the matter comes within the purview of Section 4(3) of the Act is an aspect which must be gone into on the strength of the evidence on record. Going by the averments in the Plaint, the question whether the plea raised by the appellant is barred under Section 4 of the Act or not could not have been the subject matter of assessment at the stage when application under Order VII Rule 11 CPC was taken up for consideration. The matter required fuller and final consideration after the evidence was led by the*

parties. It cannot be said that the plea of the appellant as raised on the face of it, was barred under the Act. The approach must be to proceed on a demurrer and see whether accepting the averments in the plaint the suit is barred by any law or not. We may quote the following observations of this Court in Popat and Kotecha Property vs. State Bank of India Staff Association :

"10. Clause (d) of Order 7 Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 CPC. Clause (d) of Rule 11 of Order applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force."

17. Even the Hon'ble Bombay High Court in ***Rajendra (cited supra)***, observed that whether the relationship based on trust or confidence and whether a person stands in fiduciary capacity, the Court shall take into consideration actual context for deducing the existence of such relationship. This demonstrates that it could be a matter of evidence. Whether the provisions of Benami Transaction Act would apply to a transaction, cannot be the ground for rejection of the plaint at the threshold. It would certainly be a matter of requiring evidence.

18. Hence, from the cases cited supra, it is well settled that at the threshold stage, while deciding an application under

Order VII Rule 11 of the CPC, the issue of whether a transaction is barred under the Benami Transactions (Prohibition) Act cannot be determined. Such an inquiry requires detailed evidence and trial. Therefore, any finding on this issue at this stage would be premature. Consequently, the cases relied upon by the defendant do not support his contention at this juncture.

19. Having considered all aspects, a meaningful reading of the plaint indicates that it does not warrant rejection under Order VII Rule 11 of the CPC. Hence, I answer point nos.1 to 5 in the negative and proceed to pass the following order in answer to point no.6 :-

ORDER

The application is rejected.

Digitally signed by NARENDRA
Date: 2025.03.25 11:47:36 +0530

Place : Gadhinglaj.
Date : 24.03.2025.

(N. S. Puri)
Civil Judge Senior Division,
Gadhinglaj