

**ORDER BELOW EXHIBIT 34**

(Dated 29/06/2020)

Defendant no.5 has filed this application for rejection of the plaint. Adv.Shri.S.S.Shivpurkar on behalf of defendant no.5 has argued that, the plaintiff has filed the suit for declaration and injunction. The plaintiff has pleaded in the suit that, the suit property i.e. land Gat no.93 admeasuring 48 R. of village Gugdal, Tq.Ahmedpur, Dist.Latur was purchased by defendant no.4 in the name of defendant no.5 vide registered sale deed Day Book No.2365/2010. Therefore, the plaintiff and other alleged members of the proposed Rajsarathi Co-op. Gruh Nirman Sanstha, Ahmedpur have ownership in the suit land. He has further argued that, the plaintiff has also pleaded that, out of the suit land admeasuring 500 sq.m. was acquired by defendant nos.1 to 3 for the National Highway No.361 and they have allotted the compensation to defendant no.5, as she being the real owner of the suit land. The plaintiff is claiming the reliefs of ownership and injunction over the suit land.

2) He has further argued that, as per the pleadings in the suit para nos.5, 6 and 7 it is clear that, defendant no.4 has purchased the suit land Gat no.93 admeasuring 48 R. of village Gugdal in the name of defendant no.5. Defendant no.4 has paid the consideration amount to purchase the said suit land. He has further argued that, as per the pleadings of the plaintiff it is clear that, the transaction of purchase of the suit land by defendant no.4 in the name of defendant no.5 is the

Benami transaction. In support of his argument he has relied on the citation of the Hon'ble Supreme Court in R.Rajagopal Reddy Dead by L.Rs. and others vs. Padmini Chandrasekharan (dead) by L.Rs. : 1995 (2) SCC 630 and in it the Hon'ble Supreme Court has held that, Benami Transactions (Prohibition) Act, 1988 - Section 4(1) is not retrospective in operation - Does not apply to pending suits already filed and entertained prior to coming into force of Section 4 - It provides that, only from the date of its coming into operation, no suit, claim or action preferred by the real owner, to enforce any right in respect of any property held benami, would lie in any Court. He has further relied on the citation of the Hon'ble High Court, Chhattisgarh, Bilaspur in the Civil Revision No.13 of 2018 Dukhiya Bal Wd/o. Baharan Verma and Anr. Vs. Pheruram Verma S/o. Khorbahara Verma and Ors. which was decided on 15/11/2018 and in it the Hon'ble High Court has 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 VII Rule 11(d) of the Code of Civil Procedure. He has further prayed that, as per the Section 4 of the Prohibition of Benami Property Transactions Act the suit is barred and the plaint is liable to be rejected as per the provisions of Order VII Rule 11 (d) of the Code of Civil Procedure.

3) Adv.Shri.S.B.Murkute on behalf of the plaintiff has argued that, in the Benami Transactions (Prohibition) Amendment Act, 2016 the Section 4 of the Principle Act had omitted. Defendant no.5 has falsely stated that, the transaction of the suit property is Benami and she is benamidar and defendant no.4 is the beneficial owner. Thus, she abets or induces defendant no.4 to enter into Benami transaction. He has further argued that, defendant no.5 has admitted that, defendant no.4 is her husband and

who is Karta of her family. She has given the source of consideration amount of the suit property in her written statement and on the other hand she had filed the said application only to grab the suit property. Defendant no.4 is the Chief trustee of the proposed Rajsarathi Co-op. Housing Society Ltd. Ahmedpur and including the plaintiff, defendant no.5 and other 98 members are its promoters. Defendant no.4 had purchased the suit property in the name of defendant no.5 in fiduciary capacity for the benefit of all members of the said society. The exception under Section 2(9)(A)(ii) of the Benami Transactions (Prohibition) Amendment Act, 2016 is attracted to the present suit.

4) He has further argued that, the plaintiff has filed the suit for declaration and for injunction on the strength of joint title and possession including him, other 98 persons with defendant nos.4 and 5, as a partners to seek the relief against the defendants. The plaintiff has not pleaded about the Benami Transaction in his plaint. The exception under Section 2(9)(A)(b)(ii) of the Benami Transaction (Prohibition) Amendment Act, 2016 for the adjudication of issues of fact and law. The said issues cannot be considered as issues of law only. He has further prayed that, the application is not maintainable and liable to be rejected with heavy compensatory cost.

5) I have perused the plaint, from it reveals that, the plaintiff has filed the suit for declaration of ownership and for the permanent injunction. In the plaint para nos.5, 6 and 7 the plaintiff has pleaded that, defendant no.4 has behind him and other members of the proposed Rajsarathi Co-op. Housing Society Ltd. Ahmedpur manipulated the layout map of the said

Society. Defendant no.4 has created additional 9 plots in the open land admeasuring 3559 Sq.m. of the proposed Rajsarathi Co-op. Housing Society Ltd. Ahmedpur. Defendant no.4 has illegally sold the said plots to the defendants which were parties in the Special Civil Suit no.1/2012. The plaintiff has further pleaded that, defendant no.4 has purchased the land Gut no.93 admeasuring 48 R. of Mauje Gugdal by way of sale deed no.2365/2010. The said purchased land was owned and possessed by all the members of the proposed Rajsarathi Co-op. Housing Society Ltd. Ahmedpur. Defendant nos.4 and 5 are not having the exclusive rights over the said land. In the plaint para no.6 the plaintiff has pleaded that, out of the suit land 500 Sq.m. land was acquired by defendant nos.1 to 3 for the National Highway no.361. The plaintiff has requested to defendant no.3 not to grant the compensation amount in favour of defendant no.5. But, in collusion with defendant nos.4 and 5, defendant no.3 has granted the compensation amount in favour of defendant no.5. On 28/03/2019 defendant no.3 has not accepted the request of the plaintiff regarding not to disburse the compensation amount in favour of defendant no.5, therefore, the cause of action was arose for filing the said suit which was pleaded in para no.7 of the plaint.

6) As per the pleading of the plaintiff it reveals that, the plaintiff has contended that, defendant no.4 has purchased the suit land in the name of defendant no.5 by giving the amount of the proposed Rajsarathi Co-op. Housing Society Ltd. Ahmedpur. Therefore, the plaintiff has filed the suit as a member of the proposed Rajsarathi Co-op. Housing Society Ltd., Ahmedpur and claimed the relief of declaration and permanent injunction. From the pleadings of the plaintiff it does not reveal that, the transaction is

the Benami Transaction and he has preferred his claim as a real owner to enforce his right in respect of said transaction.

7) Defendant no.5 has contended that, in the plaint para nos.5, 6 and 7 the plaintiff has pleaded about the Benami Transaction. But, as per the pleading of the plaintiff it does not reveal that, he has pleaded about the Benami Transaction and sought the relief as a real owner of the Benami Property. The objection raised by defendant no.5 regarding the Benami Transaction and the plaintiff has pleaded that, defendant no.4 had purchased the suit property in the name of defendant no.5 in fiduciary capacity for the benefit of all members of the said society. Whether the plaintiff is claiming the relief on the basis of the benami transaction cannot be decided at this stage without leading the evidence. Therefore, the ratio laid down in the citation of the Hon'ble Supreme Court in R.Rajagopal Reddy Dead by L.Rs. and others vs. Padmini Chandrasekharan (dead) by L.Rs. : 1995 (2) SCC 630 and in the citation of the Hon'ble High Court, Chhattisgarh, Bilaspur in the Civil Revision No.13 of 2018 Dukhiya Bal Wd/o. Baharan Verma and Anr. Vs. Pheruram Verma S/o. Khorbahara Verma and Ors. are not applicable to the case in hands because from the pleadings of the plaintiff it does not reveal that, he has pleaded about the Benami Transaction and sought the reliefs on the said basis.

8) In view of the above discussion, it is held that, defendant no.5 has failed to prove that, as per the Section 4 of the Prohibition of Benami Property Transactions Act the suit is barred and liable to be rejected as per the provisions of Order VII Rule 11(d) of the Code of Civil Procedure.

Therefore, I pass the following order :-

**ORDER**

The application is rejected.

Ahmedpur.  
Date : 29/06/2020.

(A.R.Surve)  
Civil Judge Senior Division,  
Ahmedpur.

Certified that PDF copy of Order supra is word-to-word identical to the original Order.

Name of Stenographer : A.S.Kodgire  
Dictated on : 29.06.2020  
Checked on : 29.06.2020  
Signed on : 29.06.2020  
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