

:: Order below Exh. 56 ::

01. This is an application by the defendant No. 2 for rejection of plaint, on two counts :

- (i) That, the suit property is standing in the name of defendant No. 1 and at the time of filing of suit he was alive. Therefore, succession was not opened. Hence, there is no cause of action to file the present suit.
- (ii) As per the plaintiff's case, the suit property was purchased by her mother in the name of the defendant No. 1, who is father of the plaintiff and husband of her mother. The plaintiff claiming that, since the suit property is purchased by her mother, it was owned by her and therefore, she is claiming partition. The plea of the plaintiff is barred by the provisions of the Benami Transaction (Prohibition) Act, 1988.

02. Application is opposed by the plaintiff by filing say at Exh. 58. As per the plaintiff, the objections raised by the defendant No. 2 in the present application were not raised in the written statement. Further, the plaintiff claiming suit property belongs to her mother, the succession would be open on the death of mother. Therefore, there was cause of action to file this suit. The suit is not hit by the provisions of Benami Transaction (Prohibition) Act, 1988. Hence, prayed to reject the application.

03. Heard both sides. Perused record. The defendant No. 2 filed written notes of arguments and also relied on several authorities

on the point that, a suit can not be instituted for claiming benefit of benami transaction and for considering application under Order-7, Rule-11 of the Code of Civil Procedure, the pleadings in plaint are only required to be considered. There is absolutely no dispute to above propositions of law.

04. In the present application, the defendant contended that, there is no cause of action to file the suit, as the suit property is standing in the name of defendant No. 1 at the time of filing the suit. As per plaintiff's case, the suit property is purchased by her mother in the name of defendant No.1, who is her husband and father of the plaintiff and defendant Nos. 2 to 4. The mother was died on 24-09-2015 (i.e. before filing of the suit). Since the plaintiff is claiming that, the suit property belongs to her mother and as per avernments of plaint only, there was cause of action to file this suit, as the plaintiff being daughter is entitled for share in property of her mother.

05. As far as second part about, the suit is hit by the provisions of the Benami Transaction (Prohibition) Act, 1988 is concerned, the specific provision is Section-4 and same is reproduced below for reference.:

Section- 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.

- (2) No 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, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.
- (3) Nothing in this section shall apply :-
- (a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family, or
- (b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.

As per section 4 (1) and (2) there would be no suit to claim property held benami. But the important provision is section (3) (b), which provides that, this section would not be applied if the property is held in the name of a person who is standing in the fiduciary capacity and the property is held for the benefit of that person. In the present case, the property is purchased by plaintiff's mother in the name of plaintiff's father. Definitely, a husband is standing in a fiduciary capacity to his wife. Therefore, as per sub-section 3 (b) of section 4 of the Benami Transaction (Prohibition) Act, 1988, the plaintiff's case is not hit by said provision. Hence, application is liable to be rejected. Accordingly, following order is passed.:

:: Order ::

- 1) Application is rejected.

Date : 23-01-2020.

(U. B. Kalapagar)
Civil Judge Junior Division,
Deoni.

I affirm that the contents of the P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer	M.Y. Wadiwale.
Name of the Court	Shri.U.B.Kalapagar, Civil Judge Jr. Division, Deoni.
Date of Dictation	23/01/2020
Order signed by the P.O. on	24/01/2020
Order uploaded on	24/01/2020