



ORDER PASSED BELOW APPLICATION EXH.12

IN R.C.S. No. 90/2024

(CNR : MHWS050004902024)

01. This application is submitted by defendant No.1 to 3 under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908 for rejection of plaint.

02. Perused application and say Exh.27 submitted by Advocate for the plaintiff. This application was submitted by defendant nos.1 to 3 on 3.12.2024 and say submitted by advocate for plaintiff on 30.7.2025 but after getting sufficient opportunity defendants have not argued present application. Hence, this application is decided on merit, without the argument of defendants. Heard Advocate Shri. R.S. Surve for plaintiff.

03. After considering the contention of defendants in this application and argument of advocate for plaintiff, following point arise for my determination and I have recorded my findings thereon with the reasons as follows :-

Sr. No.	Points	Findings
1)	Whether defendant No.1 to 3 prove that, plaint does not disclose a cause of action as per Order VII Rule 11(a) of Civil Procedure Code,1908 ?	... In the negative
2)	Whether defendant No.1 to 3 prove that, present suit appears from the statement in the plaint to be barred by Section 4 of Benami Transaction (Prohibition) Act, 1988 ?	... In the negative
3)	What order ?	... As per

		final order.
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: REASONS :

AS TO POINT NO. 1 & 2 :-

04. Present application is submitted by defendant no. 1 to 3 contending that, in MJC No.57/2023 an application Exh.11 was submitted by third person Ku. Shobha Domaji Belkhede (who is plaintiff in present suit) under Order I Rule 10 of the the Civil Procedure Code,1908 for adding her as a party but said application was rejected by Civil Judge Junior Division, Manora on 18/9/2024. But said third person/plaintiff had not filed revision or appeal against said order dated 18.9.2024. So plaintiff has no cause of action for filing this suit. Suit property purchased in the name of deceased Bharat Belkhede. So, there is a bar of section 4 of the Benami Transaction (Prohibition) Act, 1988. So this suit may be rejected as per Order VII Rule 11 (a) and (d) of Code of Civil Procedure Code, 1908.

05. On the contrary, advocate for the plaintiff has submitted that, as per sale deed dated 5/7/2006 land of 4 H 4 R of Gat No.85 situated at Umbarda (Lahan), Tal. Manora in the name of Bharat Belkhede from the income of joint family property. Afterwards on 18/6/2023 Bharat Belkhede was died. Plaintiff Ku. Shobha and deceased Bharat were brother and sister. Suit property is purchased from the income of ancestral properties. Plaintiff had specifically mentioned cause of action in paragraph No.15 of the plaint, for institution of this suit.

Plaintiff had instituted this suit for declaration that, heirship certificate obtained by defendant no.1 as per order dated 4.10.2024 passed in MJC No.57/2023 was illegal and for perpetual injunction. So, there is no bar of section 4 of the Benami Transaction (Prohibition) Act, 1988. Hence, present application submitted by defendant no.1 to 3 may kindly be rejected. In support of his above submission advocate for plaintiff had relied on ruling of Hon'ble Supreme Court in case of *Pavan Kumar Vs. Babulal since deceased through LRs and Others in Civil Appeal No.3367 of 2019 decided on 2.4.2019.*

06. I have perused above ruling of Hon'ble Supreme Court relied by advocate for plaintiff. In said case a suit for declaration was instituted and plaintiff prayed that, he be declared as owner of premises and sale deed dated 27.4.2006 executed by first defendant in favour of the second defendant be cancelled and second defendant submitted an application under Order VII Rule 11, for rejection of plaint on the ground that, the suit was barred by Section 4 of Benami Transaction (Prohibition) Act, 1988. Relevant paragraph No. 4 and 13 of above ruling are reproduced as under -

4. The second defendant filed his written statement denying the case pleaded by the appellant. Nine years later, the second defendant submitted an application under Order VII Rule 11 of the Code of Civil Procedure (for short 'CPC') praying for rejection of the plaint on the ground that the suit was barred under Section 4 of the Benami Transaction (Prohibition) Act, 1988 (hereinafter referred to as 'the Act').

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 7 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.”

07. Present application is submitted by defendant nos.1 to 3 under Order VII, Rule 11(a) and (d) of Civil Procedure Code, 1908 for rejection of plaint. Order VII Rule 11 of Civil

Procedure Code, 1908 is attracted only when on admitted facts as appearing from the plaint itself, the suit is prima facie not maintainable. To attract Rule 11(d) of Order VII of Civil Procedure Code, 1908 no investigation into fact is necessary. It is well settled that, for the purpose of deciding an application under Order VII Rule 11 of Civil Procedure Code, 1908, the Court has to look in to averments in the plaint only and the averments in the written statements are immaterial at that stage and it is the duty of the Court to scrutinize the averments/pleas in the plaint.

08. It is well settled that, cause of action is a bundle of facts. Plaintiff in paragraph No.14 and 15 of the plaint have specifically mentioned cause of action and there is merit in the submission of advocate for the plaintiff in that regard. So it can not be said that, plaint does not disclose a cause of action.

09. Section 4 of the Benami Transaction (Prohibition) Act, 1988 is reproduced below :-

"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 as 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."

In terms of sub-section (1) of Section 4 of the said Act, 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.

10. As per Section 2 (a) of Benami Transaction (Prohibition) Act, 1988, a benami transaction means any transaction in which property is transferred to one person for a consideration paid or provided by another person. The definition of benami transaction in Section 2 (a) is not restricted in its application to Section 3 alone but also applies to Section 4 and 5 of the Benami Transaction (Prohibition) Act, 1988.

11. The burden of showing that, purchase of suit property as per sale deed dated 5.7.2006 was a benami transaction lies on defendant nos.1 to 3. The purchase money came from a person

other than the person in whose favour the property is transferred, the purchase is prima facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary. The true character of the transaction is governed by the intention of the person who has contributed the purchase money. The question as to what his intention was has to be decided on the basis of surrounding circumstances, the relationship of the parties, the motive governing their action in bringing about the transaction and their subsequent conduct etc.

12. It is necessary to consider pleading in the plaint while considering present application. In the plaint it is specifically mentioned that, as per sale deed dated 5/7/2006 land of 4 H 4 R of Gat No.85 situated at Umbarda (Lahan), Tal. Manora, in the name of Bharat Belkhede from the income of joint family property and specific cause of action was mentioned in paragraph No. 15 of the plaint.

13. From the above pleading in the plaint, it can be said that, suit property land Gat No. 85 was purchased by Bharat Domaji Belkhede. Then, (a) Whether said suit property was purchased from the income of joint family properties, (b) whether deceased Bharat Belkhede held suit property is a coparcener in Hindu Undivided family and same is held for the benefit of the coparceners in the family, (c) Whether plaintiff has lawful possession and whether plaintiff is entitled for perpetual injunction as prayed, and (d) Whether plaintiff is entitled for a declaration that, heirship certificate obtained by defendant no.1

from Civil Judge Junior Division Manora Court in MJC No. 57/2023 as per order dated 4.10.2024 was illegal, all these questions can be determined only after adducing relevant oral and documentary evidence of plaintiff and defendants. In other words it can be said that, all above questions (a) to (d) required fuller and final consideration after the evidence was led by both parties.

14. After considering all above facts, and ruling of Hon'ble Supreme Court in case of ***Pavan Kumar Vs. (Cited Supra)***, it is clear that, defendant nos.1 to 3 have failed to prove that, plaintiff does not disclose a cause of action and it is case of plaintiff that suit property was covered by the exception under clause (a) of Sub-Section 3 of section 4 of the Benami Transaction (Prohibition) Act, 1988, so the suit is not covered by the prohibition contained in sub-section 1 of section 4 of said act. So present suit is not appears from the statement in the plaint to be barred by Section 4 of Benami Transaction (Prohibition) Act, 1988, and there is merit in the submission of advocate of plaintiff in that regard. Hence, I answer point No.1 and 2 in the negative and proceed to pass following order.

ORDER

1. Present application Exh.12 submitted by defendant No.1 to 3 under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908 for rejection of plaint is hereby rejected.

2. No order as to cost.
(Pronouced in open court)

Date:27.10.2025

(D. B. Hambire)
Civil Judge Senior Division
Mangrulpir.

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

Name of Stenographer	:	C.R.Gadge
Name of Court	:	Shri. D. B. Hambire, C.J.S.D., Mangrulpir.
Date of Decision	:	27.10.2025
Order signed by the P.O. on	:	27.10.2025
Order uploaded on	:	28.10.2025