

(2019) 07 CHH CK 0025
Chhattisgarh High Court
Case No: First Appeal No. 189 Of 2019

Deepak Kumar

APPELLANT

Vs

Vijay Kumar And Ors

RESPONDENT

Date of Decision: July 3, 2019

Acts Referred:

- Code Of Civil Procedure, 1908 - Order 7 Rule 11(a), Order 7 Rule 11(d)

Hon'ble Judges: Ram Prasanna Sharma, J

Bench: Single Bench

Advocate: Shravan Agrawal

Final Decision: Dismissed

Judgement

Ram Prasanna Sharma, J

1. This first appeal filed under Section 96 of the Code of Civil Procedure, 1908 is preferred against the order/decreed dated 15- 1-2019 passed by the

First Additional Judge to the Court of First Additional District Judge, Durg (CG) in Civil Suit No. 47-A/2018 wherein the said court rejected the plaint

under Order 7 Rule 11(d) of the Code of Civil Procedure, 1908 on the ground that the suit is barred by The Benami Transactions (Prohibition) Act,

1988 (for short, the Act, 1988").

2. Appellant/plaintiff herein is son of late Vishambharlal Sonkar. One sale deed was executed in favour of respondent No.1/ defendant namely Vijay

Kumar on 25-3-1997 by Natthu for house situated in nazul land sheet No.30-C plot No.41 area 798 sq.ft., situated at Amapura, Tahsil and District

Durg for cash consideration of Rs.1,17,200/-.

3. It is pleaded on behalf of the appellant that actually this property was purchased out of income of his mother namely late Bisahin Bai and father late

Vishambharlal Sonkar, but respondent No.1 Vijay Kumar executed sale deed in his favour and again property was transferred to respondents No. 2

and 3 by respondent No.1. It is alleged that in the sale deed it is mentioned that respondent No.1 Vijay Kumar is adopted son of late Vishambharlal

Sonkar and late Bisahin Bai, but his adoption was declared illegal by the court of Second Additional Judge to the Court of First Civil Judge, Class-I in

Civil Suit No.39-A/2009 vide judgment/decreed dated 2-6-2018. The appellant sought that the sale deed shall be declared void and for restraining

respondents from interfering with the said property.

4. The core issue for consideration of this court is whether the suit filed by the appellant is maintainable or not. Admittedly, sale deed was executed in

favour of respondent No.1 Vijay Kumar on 25-3-1997. As per pleading of the appellant, the transaction was benami transaction.

5. Section 4(1) of the The Benami Transactions (Prohibition) Act 1988 defines benami transaction and property which reads as under:

4 (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"".

6. In the present case, Bisahin Bai and Vishambharlal Sonkar did not file any suit against respondent No.1 during their life time. The suit was filed

before the trial Court on 29-8-2018. The sale deed executed in favour of respondent No.1 was remained as it is till 2018. The cause of action as

shown in the plaint arose on 5- 11-2016 when respondent No.1 executed sale deed in favour of respondents No. 2 and 3. When sale deed executed on

25-3-1997 has not been challenged for 21 years, it is misconceived that cause of action arose on 5-11-2016 on execution of second sale deed,

therefore, no cause of action arose on the said date and the plaint ought to have been rejected as per Order 7 Rule 11 (a) of the Code of Civil

Procedure 1908i.

7. The plaint is based on benami transaction and as per Section 4(1) of the Act, 1988 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, therefore, present suit was not maintainable as per Order 7 Rule 11 (d) of the CPC.

8. In view of the above, present appeal is not maintainable and same is dismissed at motion stage itself.