2025 INSC 739

REPORTABLE

IN THE SUPREME COURT OF INDIA

EXTRAORDINARY APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 4673 OF 2023

SMT. SHAIFALI GUPTA ...PETITIONER(S)

VERSUS

SMT. VIDYA DEVI GUPTA & ORS. ...RESPONDENT(S)

WITH

SPECIAL LEAVE PETITION (CIVIL) NO.4674 OF 2023

DEEPAK LALCHANDANI ...PETITIONER(S)

VERSUS

SMT. VIDYA DEVI GUPTA & ORS. ...RESPONDENT(S)

J U D G M E N T

PANKAJ MITHAL, J.

1. These two special leave petitions have been preferred, one by the contesting defendant No.2 to the suit and the other by one of the subsequent purchasers (defendant No.5) of

some of the suit properties against the rejection of an application under Order VII Rule 11 of Code of Civil Procedure[1] by the court of first instance as well as the High Court in revision.

2. Special Leave Petition (C) No.4673/2023[2] preferred by the main contesting defendant to the suit is taken up as the lead case, therefore, the facts as stated therein and the parties as described therein shall be narrated and taken as a base.

3. The two plaintiffs i.e. the mother and the son being Smt. Vidya Devi Gupta (plaintiff No.1) and Shri Sudeep Gupta (plaintiff No.2) instituted a Regular Suit No.630A/2018 against the other son of plaintiff No.1 i.e. Sandeep Gupta (defendant No.1) and his wife Smt. Shaifali Gupta (defendant No.2). In the said suit, the two sons of the defendant No.1 namely Siddharth Gupta and Shantanu Gupta were arrayed as defendant Nos.3 and 4. The wife of the plaintiff No.2, Smt. Shalini Gupta and his son Sankalp Gupta were added as defendant Nos.8 and 9. In addition to the above family members, Deepak Lalchandani and

[1] *In short 'CPC'*
[2] *Smt. Shaifali Gupta vs. Smt. Vidya Devi Gupta & Ors.*

Surya Prakash Mishra were also arrayed as defendant Nos.5 and 6 being the subsequent purchasers of some of the properties mentioned in the plaint.

4. The aforesaid suit is for partition, possession, declaration, mandatory & permanent injunction and for accounting with regard to the properties alleged to be the family properties purchased out of the funds of the joint family or derived from the income from the joint family business. In other words, the suit is basically between the family members. The mother and one son on one side and the other son and his family on the other side. The children of both the sons are non-active or passive parties.

5. According to the plaint allegations, the father of the two sons referred to above i.e. Shanti Prakash Gupta was into a tailoring business. Gradually his tailoring business came to an end. He died in the year 1977. He had no immovable or movable property at the time of his death.

6. In the year 1982, the two sons jointly started a tailoring business from a rented shop in New Market, TT Nagar, Bhopal, in the name of 'Himalaya Tailors'. This business was started by them by selling some jewellery of their

mother i.e. plaintiff No.1. The said business was carried on by both of them together but the younger brother (plaintiff No.2) was appointed and declared to be the sole proprietor.

7. The family, sometime in 1990, purchased a house in Harshwardhan Nagar and they started residing in it. They lived there jointly at least up to the year 2011. It appears that the elder son (defendant No.1) along with his family started residing in a house in Shalimar Park which was jointly purchased by the family from the income of the joint family business in the year 2014.

8. Side by side the tailoring business, the elder son (defendant No.1) had started a fabric business in the name of Hemi Textiles in the year 1986.

9. A shop was purchased by the family in the New Market, TT Nagar, Bhopal, from the combined income of the family business of Himalaya Tailors and the Hemi Textiles.

10. It is averred in the plaint that from the original joint family business of 'Himalaya Tailors', both the parties purchased several properties in the name of different persons of the family. All the properties were purchased out of the joint family funds or the income derived from the joint family

business. It was categorically asserted that the properties have been purchased in the name of the plaintiffs and the defendants or the members of the family and were the joint properties of the Joint Hindu Family. The said properties were described in paragraph 6 of the plaint. Some of the properties mentioned in paragraph 6 of the plaint at Serial Nos.19, 20 and 21 were sold by Shaifali Gupta (defendant No.2), wife of the elder son, in favour of defendant Nos.5 and 6 and as such it has been alleged that the said sales are void.

11. It is on the basis of the above averments that the suit for declaration, partition, injunction in respect of the suit properties was instituted by the mother (plaintiff No.1) and the younger son (plaintiff No.2). In the said suit, the subsequent purchasers defendant Nos.5 and 6 moved an application purported to be under Order VII Rule 11 CPC contending that the suit is not maintainable in view of the provisions of Benami Transaction (Prohibition) Act, 1988[3]. It is made clear that no such application was filed by the main contesting defendants to the suit i.e. by the elder

[3] *Hereinafter referred to as 'the Benami Act'*

brother or his family members. They never alleged that the suit is not maintainable or is barred by any provision of the statute.

12. The above application was contested by the plaintiffs and a reply was filed stating that the Benami Act (as amended in 2016) came into force w.e.f. 11.01.2016 and all the family properties were purchased prior to the above date and as such the suit would not be hit by the said Act. The suit is not for adjudication of any matter in relation to *benami* transaction as envisaged in the Benami Act rather it is a suit essentially under the Hindu Succession Act, 1956[4]. The suit properties are Hindu Joint Family properties and the relief claimed in the suit is purely in respect of the said properties and as such it does not stand prohibited by the Benami Act. The said Act nowhere bars the institution of a suit for a partition, declaration or injunction in connection with the properties belonging to the Hindu Joint Family. Moreover, the objections raised by defendant Nos.5 and 6 to the maintainability of the suit are mixed questions of fact and law and are to be

[4] Hereinafter referred to as 'the Act'

considered only on the basis of the pleadings and the evidence of the parties and not at the threshold on the basis of the plaint allegations alone.

13. The court of first instance by the order impugned dated 25.02.2019 after elaborately discussing the plaint averments, came to the conclusion that the issue whether suit properties are the Joint Hindu Family properties or are the properties of the individual family members and whether they are liable for partition, is a question dependent upon facts to be adjudicated upon after the parties have adduced evidence. On the averments made in the plaint, the suit is not barred by any law and in view of the judgment in the case of ***Popat and Kotecha Property vs. State Bank of India Staff Association***[5], the provisions of Order VII Rule 11 CPC are not attracted. Accordingly, application under Order VII Rule 11 CPC was rejected.

14. Aggrieved by the aforesaid decision, the subsequent purchasers i.e. defendant Nos.5 and 6 filed Civil Revision No.324/2019. The said revision has been dismissed by the

[5] (2005) 7 SCC 510

impugned judgment and order dated 26.09.2022 holding that the trial court has rightly held that the issue as to whether the properties belong to the Joint Hindu Family properties or they have been purchased from the joint hindu family funds is to be proved by the parties on the basis of evidence. The plaint of the suit is not liable to be rejected as from the averments made therein it cannot be said that it is barred by any statutory provision of law.

15. The decision of the court of first instance rejecting the application under Order VII Rule 11 CPC was not challenged by the main contesting parties i.e. the elder brother and his wife (defendant Nos.1 and 2) or their children.

16. After having failed in the two courts below in getting the plaint rejected in exercise of powers under Order VII Rule 11 CPC, Deepaklal Chandani (defendant No.5) alone has preferred Special Leave Petition (C) No.4674/2023 whereas Special Leave Petition (C) No.4673/2023 has been preferred by the Shaifali Gupta (defendant No.2).

17. At the very outset, it is pertinent to mention that Shaifali Gupta (defendant No.2) had neither moved application

under Order VII Rule 11 CPC for the rejection of the plaint nor she has filed any revision challenging the order of the court of first instance rejecting such an application moved by the defendant Nos.5 and 6. Therefore, she is not a person aggrieved by the rejection of the application under Order VII Rule 11 and cannot be permitted to assail the impugned orders. She has acquiesced to the jurisdiction of the trial court and has by her conduct accepted the order of the court of first instance and chosen to contest the suits on merits.

18. The defendant Nos.5 and 6 are only subsequent purchasers of some of the properties. They cannot claim any knowledge of the nature of the property in the hands of the original owners. They cannot have any personal knowledge as to if the said properties in the hands of the original owners are Joint Hindu Family property or are their individual properties or they have been acquired *benami* by the family members or are the properties possessed by the female hindu in absolute sense. In such a situation, they are not the right person to move application under Order VII Rule 11 CPC for the rejection

of the plaint as allegedly barred by Section 4 of the Benami Act.

19. We have heard Shri Navin Pahwa, learned senior counsel for the petitioner(s) and Shri Kavin Gulati, learned senior counsel for the respondents.

20. The submission of learned counsel for the defendants is twofold. First, the suit is barred by Section 4 read with Section 14 of the Act, as some of the suit properties are in the exclusive name of the defendant No.2 and as such would be treated in entirety as her personal properties and would not be amenable to partition. Secondly, the suit is hit by Section 4 of the Act. Lastly, since the properties stand exclusively in the name of different persons, no party can claim joint ownership or right of partition in respect thereof.

21. In response to the above argument, Shri Kavin Gulati, learned senior counsel for the plaintiffs, submitted that the bar of Section 4 read with 14 of the Act, was never raised by the defendants in their application under Order VII Rule 11 CPC and the said point was not argued on their behalf either before the court of first instance or before the High

Court. Therefore, they are not entitled to raise the said plea for the first time before this Court. Moreover, the above provisions do not bar a suit of such a nature in respect of joint family property in any manner. Secondly, the suit is also not barred by Section 4 of the Act, as according to the plaint averments, all the properties were purchased from the nucleus of the joint family, may be in the exclusive name of some of the family members. They fall in the exempted category as per Section 2(9)(A) Exception (ii) of the Benami Act.

22. He further submitted that upon the simple reading of the plaint allegations, the suit is not barred by any provision of law and, therefore, Order VII Rule 11 (d) does not stand attracted so as to reject the plaint. The defence or the issues raised by the defendants are factual in nature which are dependent upon the facts to be proved *inter se* the parties on the basis of the evidence to be adduced.

23. Section 4 of the Benami Act bars the suit, claim or action in respect of a property held *benami* by person at the behest of the person claiming to be its true owner. It 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.***"**

24. The above provision bars an action in respect of 'property held *benami*'. However, whether the property in respect of which the suit, claim or action has been brought about is a *benami* property or not, is the issue of prime consideration.

25. The plaint allegations all through describe the suit properties as the Joint Hindu Family properties and that they have been purchased either from the nucleus of the Joint Hindu Family property or the income derived from the joint family business. The properties are not described as *benami* in the name of any member of the family. Therefore, from the plaint reading, the suit properties cannot *ex-facie* be held to be *benami* properties in respect whereof the suit may not be maintainable in view of Section 4 of the Benami Act.

26. The Benami Act further defines '*benami* property' and '*benami* transaction' under Sections 2 (8) and 2 (9) of the said Act. *Benami* property is the property which is the

subject matter of *benami* transaction whereas *benami* transaction is a property held by a person in respect whereof consideration has been provided by some other person but would not include certain categories of properties such as where a person is holding a property in a fiduciary capacity for the benefit of another person.

27. In such circumstances, whether a property is a *benami,* has to be considered not in the light of Section 4 of the Benami Act alone but also in connection with Sections 2 (8) and 2 (9) of the said Act i.e. whether the property if *benami* falls in the exception. It is only where the property is *benami* and does not fall within the exception contained in Sub-Section (9) of Section 2 that a suit may be said to be barred. However, the issue whether the property is *benami* and is not covered by the exception, is again an issue to be decided on the basis of evidence and not simply on mere averments contained in the plaint. The defendants have to adduce evidence to prove the property to be *benami*.

28. In ***Pawan Kumar vs. Babu Lal***[6], a similar issue arose before this Court in a matter concerning rejection of plaint under Order VII Rule 11 (d) CPC. This Court held that for rejecting a plaint, the test is whether from the statement made in the plaint it appears without doubt or dispute that the suit is barred by any statutory provision. Where a plea is taken that the suit is saved by the exception to the *benami* transaction, it becomes the disputed question of fact which has to be adjudicated on the basis of the evidence. Therefore, the plaint cannot be rejected at the stage of consideration of application under Order VII Rule 11 CPC.

29. The ratio of the above case squarely applies to the facts of the case at hand. Accordingly, in our opinion, the courts below have not committed any error of law in rejecting the application under Order VII Rule 11 CPC on the above score.

30. As regard the contention that the plaint is also hit by Section 14 of the Act, it is important to point out that no such specific plea was taken by the defendants in the

[6] (2019) 4 SCC 367

application under Order VII Rule 11 CPC. Such a plea was never raised and argued before either of the courts below. There is no finding by any court on the above aspect. Therefore, it has rightly been submitted by the counsel for the plaintiff that the defendants cannot be permitted to raise such a plea for the first time in the Special Leave Petition without there being any foundation to that effect.

31. More importantly, Section 14 of the Act simply provides that the property possessed by a female Hindu shall be held by her as a full owner. It does not bar or prohibit a suit in respect of such a property. Therefore, in the absence of any bar contained in the above provision, the suit plaint is not liable to be rejected as barred by law.

32. The courts below have rejected the application filed by defendant Nos.5 and 6 under Order VII Rule 11 CPC and have refused to reject the plaint as barred by any statute. It means that the parties are at liberty to contest the suit on merits. They have right to get the necessary relevant issues framed in the suit including that of suit being barred by any provision of law and if any such issue is framed, it will be open for the court to consider the same

on merits after the parties have led evidence. In such a situation, the defendants have not suffered any prejudice and there is no miscarriage of justice so as to permit them to avail the discretionary jurisdiction of this Court under Article 136 of the Constitution of India.

33. Accordingly, we do not deem it necessary to entertain these Special Leave Petitions and the same are dismissed.

..... J.
(PANKAJ MITHAL)

..... J.
(AHSANUDDIN AMANULLAH)

NEW DELHI;
MAY 20, 2025.