



2025:CGHC:52387

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA No. 106 of 2016

1. Umashankar Purohit Dead Through Their Legal Representatives Aged About 18 Years Smt. Alka Purohit W/o Umashankar Purohit, Aged About 45 Years, R/o M.I.G. C-528, Padmanabhpur, Durg, District Durg, Chhattisgarh, Chhattisgarh
2. Vishal Purohit S/o Umashankar Purohit, Aged About 14 Years Minor Represented Through Mother Smt. Alka Purohit, R/o M.I.G. C-528, Padmanabhpur, Durg, District Durg, Chhattisgarh, District : Durg, Chhattisgarh
3. Ku. Milani Purohit D/o Umashankar Purohit, Aged About 15 Years Minor Represented Through Mother Smt. Alka Purohit, R/o M.I.G. C-528, Padmanabhpur, Durg, District Durg, Chhattisgarh, District : Durg, Chhattisgarh
4. Smt. Shalini Jain D/o Umashankar, Aged About 26 Years W/o Preman Jain, R/o Old Bus Stand, Rajnandgaon, District Rajnandgaon, ChhattisgarhPlaintiffs, District : Rajnandgaon, Chhattisgarh

... Appellant(s)

versus

1. Chandrashekhar Purohit S/o Late Prabhulal Purohit, Aged About 51 Years Address- Purohit Lodge, Kachahari Road, Durg, At Present R/o Near New Anaj Mandi, Sawai Madhopur Road, Aol Sot, District Dausa Rajsthan, Rajasthan
2. Shaymsunder Khandelwal @ Lalu Seth, S/o Late Madholal Khandelwal, Aged About 48 Years Business Of Rice Mill, R/o Khandelwal Colony, Durg, Tahsil And District Durg, Chhattisgarh, District : Durg, Chhattisgarh
3. Rohit Khandelwal S/o Shyamsunder Khandelwal, Aged About 25 Years R/o Khandelwal Colony, Durg, Tahsil And District Durg, Chhattisgarh, District : Durg, Chhattisgarh

4. Smt. Nisha Khandelwal W/o Shyamsunder Khandelwal, Aged About 43 Years Legal Representative Of Dead Son Roshan Khandelwal, R/o Khandelwal Colony, Durg, Tahsil And District Durg, Chhattisgarh, District : Durg, Chhattisgarh
5. State Of Chhattisgarh, Through District Collector, Durg, ChhattisgarhDefendants, District : Durg, Chhattisgarh
... **Respondent(s)**

For Appellants	:	Mr. T.K. Jha, Advocate
For Respondent No. 1	:	None, though served
For Respondents No. 2 to 4	:	Mr. B.P. Sharma, Advocate along with Ms. Nidhi Tiwari, Advocate
For State	:	Mr. Trevenee Shankar Sahu, P.L.

Hon'ble Shri Justice Rakesh Mohan Pandey

Judgment On Board

27-10-2025

- 1) The appellants/plaintiffs have preferred this first appeal under Section 96 of CPC challenging the order passed by learned District Judge, Balod, District Balod (C.G.) in Civil Suit No. 4A/2013 dated 26.2.2015, whereby the plaint was rejected applying provisions under Order 7 Rule 11(d) of CPC.
- 2) Facts of the present case are that the original plaintiff namely Umashankar Purohit filed a civil suit for declaration of title and permanent injunction pertaining to Survey numbers 141, 145 and 200 total ad-measuring 15.05 acres situated at Village – Limora, Tehsil – Gunderdehi, District – Balod (C.G.). The original plaintiff further sought declaration to the effect that sale-deed executed by respondent no. 1 in favor of the respondent no. 2 to 4 dated 31.10.2007 be declared null and void inter alia on the ground that

late Kasturichand Purohit, who was father of original plaintiff had purchased the suit property from his own income through registered sale-deed dated 27.2.1974 in the name of minor Chandrashekhar Purohit (defendant No. 1) on account of love and affection. In that sale-deed, name of defendant No. 1 was entered as purchaser and name of Kasturchand Purohit as guardian. The appellants herein are the legal representatives of original plaintiff Umashankar Purohit.

- 3) Defendants No. 2 to 4 filed written statement and denied plaintiff's averments. A specific plea was taken by defendants No. 2 to 4 with regard to *benami* transaction and it was also pleaded that the suit is hit by the provisions of Section 4(1) of The *Benami* Transactions (Prohibition) Act, 1988 [hereinafter to be referred as "The Act, 1988"]. Learned Trial Court framed preliminary issue with regard to maintainability of civil suit in light of Section 4(1) of The Act, 1988. Learned trial Court considered the pleadings made in the plaint and came to the conclusion that suit property was not a coparcenary property and suit is hit by the provisions of Section 4(1) of The Act, 1988 and consequently, rejected the plaint.
- 4) Mr. T.K. Jha, learned counsel appearing for the appellants submits that learned Trial Court committed error of law while rejecting the plaint and the Trial Court ought to have recorded the evidence of the parties after framing issues and suit should have been tried. He further submits that whether the suit property was *benami* or

not, it could not have been decided by the Trial Court at preliminary stage. He contends that suit property was purchased in the name of defendant No. 1 in the year 1974 before enactment of The Act, 1988, therefore Trial Court committed error of law by applying the provisions of The Act, 1988 retrospectively. He has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the matter of ***Union of India & Another Versus M/s Ganpati Dealcom Pvt. Ltd.*** passed in **Civil Appeal No. 5783 of 2022** wherein it is held that the forfeiture provision under Section 5 of the amended 2016 Act being punitive in nature, can only be applied prospectively and not retroactively. He further contends that Trial Court ought to have considered the averments made in the plaint alone but in the instant case, Trial Court has considered the written statement filed by the defendants No. 2 to 4 and came to conclusion that suit filed by the plaintiff was hit by the provisions of Section 4(1) of The Act, 1988. He prays to set aside the order impugned.

- 5) On the other hand, Mr. B.P. Sharma, learned counsel appearing for the respondents No. 2 to 4 would oppose. He submits that according to the provisions of 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. He further submits that Trial Court has rightly rejected the plaint treating it hit

by the provisions of Section 4(1) of The Act, 1988.

- 6) Heard learned counsel for the parties and perused the record with utmost circumspection.
- 7) In para–2 of the plaint, plaintiffs have pleaded that suit property was purchased by Kasturchand Purohit i.e. father of original plaintiff from his own income in the name of Chandrashekhar Purohit (defendant No. 1) out of love and affection through registered sale-deed dated 27.2.1974. In para–4 of the plaint, plaintiffs have pleaded that name of Chandrashekhar Purohit was entered in the revenue records but he he never remained in possession. In para–6, it is pleaded that Kasturchand Purohit died on 8.2.2000 and at that time, it was stated by defendant No. 1 that he has no right over the suit property.
- 8) Admittedly, the sale-deed was executed in favor of defendant No. 1 and his name was also entered in the revenue records. Subsequently, by virtue of the right accrued through registered sale-deed and entries made in revenue record, defendant No. 1 alienated the property in favor of defendants No. 2 to 4 through registered sale-deed dated 31.10.2007.
- 9) Section 4 of The Act, 1988 reads as under :-

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.

Bare reading of this provision would make it clear that 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. Sub-Section (3) would make it clear that Sections 4(1) and (2) would not apply if 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 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.

10) A bare perusal of the plaint would make it clear that the suit property was purchased by Kasturchand Purohit in the name of Chandrashekhar Purohit (defendant No. 1) on account of love and affection and name of Chandrashekhar Purohit was entered in revenue records. It is nowhere pleaded in the plaint that plaintiffs were coparceners or Chandrashekhar Purohit was trustee of the suit property. Trial Court has applied the provisions of Section 4(1) of The Act, 1988 and concluded that suit was hit by the provisions of Section 4(1) of The Act, 1988.

11) In the matter of ***Ganpati Dealcom Pvt. Ltd.*** (supra), Hon'ble Supreme Court has dealt with the scope of Section 5 of The Act, 1988 which deals with property held *benami* liable to acquisition. However, in the present case, provisions of Section 5 of The Act, 1988 have neither been considered nor discussed, therefore appellants would not get any help from the judgment cited above.

12) Also, it is well settled principle of law that while applying the provisions of Order VII Rule 11 of CPC, the Court has to look into the averments made in plaint alone and defense is not to be considered. The contention made by Mr. Jha can not be accepted in the light of recent judgment passed by Hon'ble Supreme Court in the matter of ***Urban Infrastructure Real Estate Fund Versus***

Neelkanth Realty Private Limited & Ors.¹ where Hon'ble Supreme Court has crystallized the governing principles on the plea of demurrer - a legal plea that tests the sufficiency of a claim in law without questioning the truth of the facts pleaded. *By taking a plea of demurrer, the other party questions the validity of the legal claim.* The Apex Court further held that *demurrer is a legitimate procedural tool to challenge the legal sufficiency of a claim at the outset, but it must be confined to pure questions of law apparent on the face of the pleadings.* The aforementioned judgment has summarized the position of law on demurrer as follows :

(i) The plea of demurrer is an act of objecting or taking exception or a protest. It is a pleading made by one party which “assumes” the truth of the matter as alleged by the opposite party, but sets up that it is insufficient in law to sustain the claim, or that there is some other defect in the pleadings which constitutes a legal reason as to why the suit must not be allowed to proceed further. In other words, that even assuming those facts as pleaded are true, the court does not have jurisdiction as a matter of law. The party raising the plea challenges legal sufficiency of a complaint/plaint/action rather than its factual accuracy.

(ii) To put it simply, a decision on demurrer has to be determined ex-facie the plaint.

(iii) The decision of this Court in *Man Roland Druckmaschinen AG v. Multicolour Offset Ltd.* and Another reported in (2004) 7 SCC 447 brought to the fore an important perspective – that only certain objections are capable of being decided by way of demurrer. Only those objections which do not involve questions of facts nor the adducing of any further evidence, could be decided by way of demurrer.

1 . 2025 LiveLaw (SC) 1028

(iv) The rule that when a mixed question of law and fact is decided on the basis of a demurrer, the issue would not be permanently foreclosed was also inherent in the decision of this Court in *Indian Mineral & Chemical Co. and Others v. Deutsche Bank* reported in (2004) 12 SCC 376.

(v) This Court in *Ramesh B. Desai and Others v. Bipin Vadilal Mehta and Others* reported in (2006) 5 SCC 638 was directly concerned with the issue of limitation being decided by way of demurrer and it directed attention to the mandate under Order XIV Rule 2 which provides that only if the court is of the opinion that the case or any part thereof may be disposed of on a pure issue of law alone, it may try that issue first. This issue of law can very well be whether the suit is barred by limitation or not, but, provided that such a question of limitation is purely an issue of law.

(vi) The parallel between an issue of limitation raised by way of demurrer and an application for rejection of plaint under Order VII Rule 11(d) CPC was drawn for the first time in *Ramesh B. Desai* (supra). Disputed questions cannot, as a matter of rule, be decided while considering an application filed under Order VII Rule 11(d). What has to be decided is whether on the face of it, the averments made in the plaint, without any doubt or dispute, show that the suit is or is not barred by limitation or any other law in force.

(vii) This Court in *Ramesh B. Desai* (supra) went on to discuss the nature of a plea of limitation. It was stated that “a plea of limitation cannot be decided as an abstract principle of law divorced from facts, as in every case, the starting point of limitation has to be ascertained, which is entirely a question of fact”. Therefore, it was reiterated that, more often than not, a plea of limitation would be a mixed question of law and fact. Therefore, there may arise situations wherein it cannot be decided whether the suit could be dismissed as barred by limitation or not without the aid of proper pleadings, the framing of an issue of limitation and the taking of evidence. In other words, it cannot be decided ex-facie the plaint.

(viii) Therefore, it is inherent in the nature of a decision as regards the rejection of a plaint that, if the court deems it fit to not reject the plaint at the

threshold upon an examination of the averments in the plaint, the ground that the suit is still barred by any law can be taken by the defendant in the course of the suit proceedings, after leading evidence.

(ix) This is because the defendant is not given an opportunity to put forward his defence as regards the issue that the suit is barred by any law, on record, during the Order VII Rule 11(d) stage. Even if he does, the court would not look into the defendant's written statements or any evidence which he may want to adduce. Therefore, a decision which goes against him, at the preliminary stage, without giving him an opportunity to properly defend it, must not be to his detriment. Since a plea of demurrer is akin to an application made under Order VII Rule 11(d), the same principles must apply.

(x) It cannot be said that at the stage of rejection of plaint, the defendant/respondent chooses to waive his right to plead and instead, adopts the course of only testing the sufficiency of the plaint in law. At this stage, there is no choice between either pleading or demurring and the defendant/respondent cannot be taken to have elected to demur instead of pleading. This is simply because, there exists no burden of proof on him, at that stage, to plead. He can simply pause or wait for the plaintiff to prove the sufficiency of his claim in law, without affecting his right to plead or lead evidence in the future.

(xi) In *Kanhaya Lal v. The National Bank of India Ltd.* reported in 1913 SCC OnLine PC 4, the Privy Council clarified that, while the decision on the objection or the plea raised by way of demurrer would be given assuming that the averments of the plaint are true, the defendant, would simultaneously reserve the right to show that these allegations are either wholly or partially false in the further stages of the action, should his objection be overruled. However, insofar as the decision on the objection which is raised as a preliminary point is concerned, everything stated in the plaint would be taken as true. In other words, the Privy Council had unequivocally and clearly stated that a decision on a mixed point of law and fact, taken by way of demurrer, would not be foreclosed in a situation where the party taking such a plea is unsuccessful.

(xii) The Calcutta High Court in ***Angelo Brothers Limited v.***

Bennett, Coleman and Co. Ltd. & Anr.² also buttressed that when a defendant/respondent raises a plea by way of demurrer, it cannot be said that it constitutes an admission of the facts in the suit or the application, whose dismissal is sought for, for all times to come. In other words, the assumption made while seeking a decision on a preliminary point cannot be said to have the consequence of such an applicant forfeiting his right to contest the case later. Such an assertion cannot be made by adverting to the principles contained in Order VIII because a decision herein is sought for on a point of maintainability and not on the merits of the matter.

13) Hon'ble Supreme Court in the matter of ***Vinod Infra Developers Ltd. Versus Mahaveer Lunia & Ors.***³ held that *rejection of a plaint under Order VII Rule 11 of CPC is permissible only when the plaint, on its face and without considering the defense, fails to disclose a cause of action, is barred by any law, is undervalued, or is insufficiently stamped.* Relevant para is reproduced herein below:-

8. The position of law is that rejection of a plaint under Order VII Rule 11 CPC is permissible only when the plaint, on its face and without considering the defence, fails to disclose a cause of action, is barred by any law, is undervalued, or is insufficiently stamped. At this preliminary stage, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims. If any triable issues arise from the pleadings, the suit

2. 2017 SCC OnLine Cal 7682

3. 2025 LiveLaw (SC) 630

cannot be summarily rejected. Keeping in mind this settled principle of law, we proceed to examine whether the High Court was justified in rejecting the plaint under Order VII Rule 11 CPC.

- 14)** Recently, Hon'ble Supreme Court in the matter of ***Karam Singh Versus Amarjit Singh & Ors.***⁴ passed in **Civil Appeals @ SLP(C) Nos. 3560-3561/2023** held that *at the stage of deciding the application under Order VII Rule 11 of CPC, defense is not be considered and whether the suit is barred by any law or not is to determined on the basis of averments made in the plaint.*
- 15)** *It is true that while deciding application for rejection of plaint, defense is not to be considered but at the same time legal sufficiency of claim at the outset can be considered if same is confined to pure question of law. In the present case learned Trial Court prima facie found the civil suit barred by law, therefore, applied the provisions of Order 7 Rule 11(d) of the CPC and rejected the plaint.*
- 16)** A contention has been made by Mr. Jha to the effect that the provisions of Section 4(1) of The Act, 1988 cannot be applied retrospectively. In this regard, Hon'ble Supreme Court in the matter of ***C. Gangacharan Versus C. Narayanan.***⁵ held that *Benami transactions Act and the Ordinance are not retrospective in operation and do not apply to pending suits.* Relevant para is reproduced herein below :-

5. That apart, this Court in **R. Rajagopal Reddy (Dead)**

4. 2025 LiveLaw (SC) 1011

5 AIR 2000 SC 589

by L.Rs. v. Padmini Chandrasekharan (Dead) by L.Rs., (1995) 2 SCC 630: 1995 AIR SCW 1422: (AIR 1996 SC 238), has held that the said Act and the Ordinance were not retrospective in operation and the Act did not apply to pending suits which had already been filed and entertained prior to the coming into force of Section 4 of the Act. This being so, the High Court in the present case fell in error in setting aside the decision of the executing Court and in holding that the right of the appellant to recover possession had come to an end by virtue of the said Act.

In the instant case, the suit property was purchased through registered sale-deed dated 27.2.1974 but the suit was filed by the plaintiffs on 10.5.2012 after enactment of The Act, 1988, therefore learned Trial Court has rightly applied the provisions of Section 4(1) of The Act, 1988 and it has not been given retrospective effect by the learned Court below.

17) Taking into consideration the above-discussed facts, no case is made out to interfere with the order impugned. Consequently, this appeal fails and is hereby **dismissed**.

Sd/-
(Rakesh Mohan Pandey)
 JUDGE

Aj i n k y a

FA No. 106 of 2016**Head Note**

Plea of demurrer is a legitimate procedural tool to challenge the legal sufficiency of a claim at the outset, which is confined to pure questions of law apparent on the face of the pleadings.

डेमरर का अभिवचन, किसी दावे की कानूनी पर्याप्तता को प्रारंभ में ही चुनौती देने के लिए एक वैध प्रक्रियात्मक साधन है, जो कि अभिवचनो के मुख पर स्पष्ट रूप से दिखाई देने वाले विधि के विशुद्ध प्रश्नों तक सीमित है।