

**W.P. No.5486/2012**

**29/6/2012**

Shri Yogesh Purohit, learned Counsel for the petitioners.

Heard on admission.

By this petition filed under Section 227 of the Constitution of India, petitioners Ayyub Patel and Ansar Patel have challenged the order dated 24.04.2012 passed by the Civil Judge, Class-I, Badnavar, Distt. Dhar in Civil Suit No.279A/07 rejecting the application of the defendant filed under Order 7 Rule 11 of the C.P.C.

Briefly stated the plaintiff respondent No.1 Jagannath Patidar had filed a suit for declaration and possession and it was the contention of the present petitioner defendant that the disputed land was purchased by the plaintiff 30 years ago allegedly from respondent No.1 Bardibai. However, there is no document on record to prove her title, besides Bardibai had also died during the pendency of the suit and mere allegations without adequate evidence the suit was liable to be dismissed and hence the petitioner had filed an application under Order 7 Rule 11 for dismissal of the suit and by the impugned order the learned Judge of the Trial Court has dismissed the application. Hence the present petition.

Counsel for the petitioner has vehemently urged

the fact that the plaint is rendered vague and is based only on general averments. Even if the provisions of benami transactions are considered, the suit itself would not be maintainable due to the death of Bardibai and Counsel submitted that there was no substance in the suit for declaration and he prayed that the impugned order be set aside.

On considering the impugned order, however, I find that the learned Judge of the lower Court has categorically held that it was a matter of evidence to prove whether the transaction had taken place 30 years ago was reliable or not and since there are averments that the disputed land was purchased by Jagannath due to love and affection for his wife Bardibai then under these circumstances, full opportunity should be given to the plaintiff to prove his suit. In these circumstances, I find that the impugned order does not call for any interference.

However, under the circumstances considering the candid statements of the Counsel for the petitioner that he has already filed a written statement and he wishes to file some more documents in support of his defence, it is directed that the petitioner defendant is at liberty to do so and the lower Court shall not raise any objection if it be filed properly along with the application in accordance with the provisions of law.

With these observations, the petition is partly  
allowed to the extent herein above indicated.

CC as per rules.

**(MRS. S.R. WAGHMARE)**  
**JUDGE**

**soumya**