

A.F.R.

Judgment Reserved on- 16.09.2025

Judgment Delivered on- 25.09.2025

Neutral Citation No. - 2025:AHC:173194

Court No. - 35

Case :- FIRST APPEAL No. - 719 of 2022

Appellant :- Shailesh Kumar

Respondent :- Smt. Vibha Gupta

Counsel for Appellant :- Shashi Prakash Rai, Shrinath

Counsel for Respondent :- Anand Kumar Srivastava, Udayan Nandan

Hon'ble Sandeep Jain, J.

1. The instant appeal under Section 96 of the CPC has been filed by the plaintiff in O.S. No. 465 of 2017 Shailesh Kumar versus Smt. Vibha Gupta, against judgment and decree dated 4.5.2022 passed by the ACJM Court no. 3, Gautam Buddha Nagar, whereby the plaintiff's suit has been rejected under Order 7 Rule 11 CPC on the ground that, one of the immovable property regarding which relief has been claimed by the plaintiff, was situated in District Auraiya, which was outside the jurisdiction of the Court and further, the plaintiff had not claimed relief of cancellation of lease deed executed in favour of the defendant by the Noida.

2. Factual matrix is that the plaintiff – appellant Shailesh Kumar filed O.S. no.465 of 2017 against the defendant Smt. Vibha Gupta with the averments that plaintiff was a freelance journalist by profession, who published weekly newspaper 'Cyber Infosis'. The defendant's second marriage was solemnised with the plaintiff on 4.3.2000 as per the rights and rituals of Arya Samaj in Noida. The defendant's first marriage was solemnised with Rishindra Jai Piparsaniya son of unknown, resident of Chattarpur, Madhya Pradesh, out of that wedlock a son Shishil Kumar was born. The defendant in furtherance of criminal conspiracy by disclosing that she was widow, solemnised marriage with the plaintiff and refused to bear children and emotionally pressurised him for adopting her 10-year-old son, from her previous marriage. In deference to the defendant's wishes, the plaintiff performed his duties as husband and father, for the sake of happy marital life, did not procreate any children from the wedlock with the defendant and agreed to adopt the son of the defendant from a previous marriage, as his heir.

3. The plaintiff further averred that since he was not having any fixed source of income, from the savings made from his income, for securing the future of his family, he applied for a plot, for publication of his newspaper in institutional category of a scheme of Noida, through

application no. 369, registration number 18/2 dated 15.1.2003, accompanied with processing fees of ₹ 5000, which was paid by pay order no. 895834 dated 15.1.2003 and also deposited 10% of the estimated cost of the plot amounting to rupees 1,65,000 through demand draft with the State Bank of Patiala, Noida Branch on 15.1.2003.

4. The plaintiff further submitted that the defendant on the pretext of her son's future, began to emotionally pressurise him and compelled him for getting allotment of the above plot in her favour. Thereafter, the plaintiff in order to get the allotment in favour of the defendant, moved an application supported by an affidavit, before Noida, on the basis of which lease deed of plot number C – 20/6B, area 350 yd² in sector – 62, Noida, Gautam Buddha Nagar was executed in favour of the defendant by Noida on 6.6.2003.

5. The plaintiff further averred that since the defendant was previously married and not taken divorce from her previous husband as such, in order to avoid any legal complication, the defendant began to write the name of her father in all the documents, in place of her husband- plaintiff.

6. The plaintiff further averred that defendant pressurised him on the pretext that if the plot was allotted in the name of plaintiff then if, some thing untoward happened to him, then the plaintiff's siblings will claim the plot, which will harm the financial and legal interests of her son. Due to this pressure, in order to secure the interests of the defendant and her son, the plaintiff was compelled to get the allotment of plot made in favour of the defendant.

7. The plaintiff further averred that besides the above property, he from his own funds purchased in the defendants village Udanpura, Mauja Chichauli, tehsil and District Auraiya, plot having Gata no. 430Ka/5.29 ha and half share of Gata no. 432Ka/1.72 ha, by three sale deeds, for establishing college, in the name of the defendant, which were registered in the office of the sub-registrar Auriya in book no.1, khand 714, page number 15/32 serial no. 3331, page number 45/70 serial no. 3333 and page number 33/44 serial no. 3332. The defendant appointed him as her power-of-attorney in respect of the above property situated in District Auraiya, which was registered in the office of sub-registrar Auraiya in book no.4, Jild no.9, page no. 101 – 112, serial no. 22 on 27.4.2013, which was subsequently, by hatching criminal conspiracy, without obtaining the consent of plaintiff, was cancelled on 30.9.2014 which was registered in book no.4, Jild no. 10, at pages 261 – 271 at serial no. 20. According to the plaintiff, the defendant made a false statement for cancelling the above power-of-attorney that her husband remained out of the station

due to his professional/personal work and was not able to look after her property.

8. It is the specific assertion of the plaintiff that he is the owner of the above-mentioned properties, which was purchased from his personal income. The plaintiff further averred that the defendant in collusion with her son from her previous marriage, was threatening to misuse his documents, to falsely implicate him in cases of woman harassment, domestic violence and criminal conspiracy. He further averred that his entire savings had been spent on the educational expenses of defendant's son Shishil Kumar. At present, he was suffering from diabetes and other ailments, was living in penury, as such, he intended to sell the above properties for meeting out the expenses of his treatment and future expenses. The defendant was neither willing to get him treated nor willing to transfer the property in his favour. He further averred that at present the market value of the plot situated in Noida was about rupees one crore. Despite having property, he was financially dependent on the defendant. He was not able to utilise the above properties for his own need.

9. The plaintiff specifically averred that since the above plot of Noida was purchased from his own income, he was the real owner of that plot and after the allotment of plot in the year 2003, he was in continuous and undisputed possession of that plot. He further averred that the defendant ordered him to remove his possession from the above plot on 7.7.2017 and was intending to sell the above plot and if, the defendant succeeded in doing so, the purpose of the suit shall be frustrated.

10. The plaintiff claimed the following reliefs in the suit:-

(i) By declaratory decree granted in favour of the plaintiff against the defendant, the plaintiff be declared the real owner of property number C – 20/6B, sector 62, Noida, Gautam Buddha Nagar.

(ii) By decree of permanent injunction granted in favour of the plaintiff against the defendant, the defendant be restrained from selling, mortgaging, alienating, transferring in any manner whatsoever and from interfering in the peaceful possession of the plaintiff and from dispossessing him, except by adopting due procedure of law, from the above property.

(iii) By declaratory decree granted in favour of the plaintiff against the defendant, the plaintiff be declared the real owner of the property situated in khasra no. 430 ka/area 5.29 ha and half share of khasra no.432ka/area 1.72 ha situated in village Udanpura, mauja Chichauli, District Auraiya.

11. The defendant moved an application under Order 7 Rule 11 CPC with the averments that the plaintiff has filed the suit against her for the relief of declaration and permanent injunction. The plaintiff has averred that she was previously married and not divorced her previous husband, which implies that there was no relationship of husband-and-wife between the plaintiff and the defendant. It was also evident that the plaintiff has alleged that the defendant was the Benami owner of the disputed property and has claimed the relief that he be declared the real owner of the disputed property as such, the suit was barred by Section 4(1) of the Benami Transactions (Prohibition) Act of 1988. It was also averred that the plaintiff sought declaration of ownership regarding agricultural land situated outside District Gautam Buddha Nagar, the jurisdiction for which vests in the revenue court, as such, the court was not competent to grant that relief. Due to this, the suit was liable to be dismissed under Order 7 Rule 11(d) CPC.

12. The plaintiff opposed the above application of the defendant in the trial court by submitting that provisions of Order 7 Rule 11 CPC was not applicable in the facts and circumstances of the case. The defendant had already executed 15 sale deeds in respect of the disputed property, during the pendency of the suit and intended to sell the remaining property, as such, the defendant's application be rejected.

13. The trial court concluded that undisputedly the lease deed of Noida property was executed on 6.6.2003 in favour of the defendant, there was no proof of possession of plaintiff on the above disputed property. It was further concluded that regarding the other property situated in District Auraiya, no relief can be granted by the court because it was outside the jurisdiction of the court. In view of the above, it was concluded that the plaintiff had no cause of action to file the suit. It was further concluded by the trial court that the plaintiff had not challenged the lease deed dated 6.6.2003 and since there was no dispute regarding its execution, as such, the suit was also barred on this ground.

14. Learned counsel for the plaintiff-appellant submitted that the impugned order of the trial Court is perverse. Learned counsel submitted that at the stage of deciding Order 7 Rule 11 CPC application, only the plaintiff's averments and the documents submitted in support, by the plaintiff are to be examined, neither the written statement of the defendant nor any documents submitted by it, can be looked into by the trial court, while deciding the above application. Learned counsel also submitted that at this stage the merits of the case of plaintiff was also not to be examined. The court was not

supposed to examine whether the plaintiff is telling truth or not.

15. Learned counsel further submitted that the trial court erred in concluding that with respect to the property situated in District Auraiya, the court had no jurisdiction to grant any relief to the plaintiff. Learned counsel submitted that since the cause of action between the plaintiff and defendant is same, as such, under Section 17 of the CPC, the court also had the jurisdiction in respect of the property situated in District Auraiya.

16. Learned counsel further submitted that the plaintiff had specifically averred that there was relationship of husband-and-wife between the plaintiff and the defendant and for proving this relationship, plaintiff had filed power-of-attorney granted by the defendant in favour of the plaintiff, which specifically mentioned that the defendant was the wife of the plaintiff. Learned counsel further submitted that since there was a relationship of husband-and-wife between the plaintiff and the defendant as such, the disputed property was not a benami property. With these submissions, it was prayed that the appeal be allowed. Learned counsel for the plaintiff / appellant has relied upon the following judgments in support of his submissions:-

- (i) Shivnarayan(D) By Lrs. vs. Maniklal(D) Through Lrs. & Ors. (2020)11 SCC 629*
- (ii) Manoj Arora vs. Mamta Arora 2018 SCC OnLine Del 10423*
- (iii) Saurabh Gupta vs. Archana Gupta & 2 Ors. 2024 SCC OnLine All 2268*
- (iv) Gagandeep Kaur vs. Rattandeep Singh Grover & Ors. 2025 Supreme(Online)(Del)3297*

17. Per contra, learned counsel for the defendant-respondent submitted that the impugned order of the trial court was perfectly legal because the trial court was not having jurisdiction with respect to the immovable property situated in District Auraiya. Learned counsel also submitted that there was no relationship of husband-and-wife between the plaintiff and the defendant. The disputed property was purchased by the defendant, from her own funds, which was self acquired property of defendant, as such, the plaintiff had no right to claim declaration with respect to that property. Learned counsel further submitted that the defendant had already executed several sale deeds of the disputed land regarding which, relief of cancellation of sale deeds had not been claimed by the plaintiff, the plaintiff was also not in possession of the disputed property as such, the plaintiffs suit for simplicitor relief of declaration, without seeking possession of the disputed land and also without seeking cancellation of the sale deeds executed by the defendant in favour of the third parties, was not

maintainable and relief of declaration cannot be granted to the plaintiff regarding the disputed property. The plaintiff 's suit was barred by section 34 of the Specific Relief Act. With these submissions, it was prayed that the appeal is meritless and is liable to be dismissed.

18. I've heard the learned counsel of both the sides and perused the record of the trial court.

19. The Apex Court in the case of ***Vinod Infra Developers Ltd. vs. Mahaveer Lunia and others*** 2025 SCC OnLine SC 1208 has held that at the preliminary stage of deciding Order 7 Rule 11 CPC application, 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 cannot be summarily rejected.

20. The Apex Court in the case of ***Keshav Sood vs. Kirti Pradeep Sood and others*** 2023 SCC OnLine SC 2459 has held that the scope of Rule 11 of Order 7 of CPC is concerned, the law is well settled. The court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of defendant and documents relied upon by him cannot be looked into while deciding such application.

21. The Apex Court in the case of ***Shivnarayan(dead) by Lrs.(supra)***, while discussing the place of suing, where the immovable property or properties is situate in jurisdiction of different courts, held as under:-

“33. Sections 16 and 17 CPC are part of the one statutory scheme. Section 16 contains general principle that suits are to be instituted where subject-matter is situate whereas Section 17 engrafts an exception to the general rule as occurring in Section 16.

34. From the foregoing discussions, we arrive at the following conclusions with regard to ambit and scope of Section 17 CPC:

34.1. The word “property” occurring in Section 17 although has been used in “singular” but by virtue of Section 13 of the General Clauses Act it may also be read as “plural” i.e. “properties”.

34.2. The expression “any portion of the property” can be read as portion of one or more properties situated in jurisdiction of different courts and can be also read as portion of several properties situated in jurisdiction of different courts.

34.3. A suit in respect of immovable property or properties situate in jurisdiction of different courts

may be instituted in any court within whose local limits of jurisdiction, any portion of the property or one or more properties may be situated.

34.4. A suit in respect of more than one property situated in jurisdiction of different courts can be instituted in a court within local limits of jurisdiction where one or more properties are situated provided suit is based on same cause of action with respect to the properties situated in jurisdiction of different courts.”

22. It is apparent from the above law laid down by the Apex Court in the case of ***Vinod Infra Developers Ltd.(supra)*** and ***Keshav Sood(supra)*** that at the time of deciding Order 7 Rule 11 CPC application, the court has to look into only the averments made in the plaint and the documents submitted by the plaintiff. The court has not to examine the written statement of the defendant or the documents submitted by it. Further, the court has also not to examine the plaintiffs case on merit to determine whether he is going to succeed or not ? It is also apparent that if any triable issue arises out of the pleadings of the plaintiff, then the plaint cannot be summarily rejected.

23. From the law laid down by the Apex Court in the case of ***Shivnarayan(supra)*** it is clear that Section 17 of the CPC can be applied in the event there are several properties, one or more of which may be located in different jurisdiction of Courts. It is also clear that the suit filed in a court pertaining to properties situate in jurisdiction of more than two courts, the suit is maintainable only, when it is filed on one cause of action. It is clear that the suit in respect of immovable property or properties situate in jurisdiction of different courts may be instituted in any court within whose local limits of jurisdiction, any portion of the property or one or more properties may be situated.

24. It is apparent that in the instant case one immovable property is situated in District Gautam Buddha Nagar and the other is situated in District Auraiya as such, the plaintiff can file suit for declaration of his rights in the above properties, in any court within whose local limits of jurisdiction any portion of the property or one property is situated. In this case, the plaintiff could have filed the suit either in the court of District Gautam Buddha Nagar or in Auraiya, but he has chosen to file the suit in the court of District Gautam Buddha Nagar, which cannot be said to be barred, insofar as the issue of jurisdiction of the court is concerned. From the above law laid down by the Apex Court in the case of ***Shivnarayan(supra)*** it is clear that the suit filed by the plaintiff claiming the relief of declaration of ownership of the disputed property held in the jurisdiction of district court Gautam Buddha Nagar and Auraiya, is maintainable in the civil court of

District Gautam Buddha Nagar, because the cause of action of both the suits was same. The plaintiff was claiming declaration in respect of both the disputed properties on the ground that he was the real owner of these properties and the defendant, his alleged wife, was only benami owner.

25. It is also apparent that the plaintiff has specifically averred that his marriage was solemnised with the defendant on 4.3.2000 as per rights and rituals of the Arya Samaj in Noida. The plaintiff has also filed the copy of the power-of-attorney dated 27.4.2013 executed by the defendant in favour of plaintiff, in which it is specifically averred that the plaintiff is the husband of defendant. This power-of-attorney relates to the disputed immovable property situated in District Auraiya.

26. It is also apparent that the trial court concluded in the impugned order that the disputed property belongs to the defendant and there was no dispute about this, which is totally incorrect because, the plaintiff has alleged in the plaint that he was the real owner of the disputed property, the disputed property was purchased from his money, only on the pressure exerted by the defendant. It has been specifically averred by the plaintiff that he was the real owner of the disputed property and the defendant was in reality, the benami owner.

27. Besides this, the plaintiff also averred in the plaint that he was in possession of the disputed property. The trial court was not supposed to examine the issue of possession on merits at that stage, by holding that no documentary proof regarding possession has been filed by the plaintiff. If any documentary proof was ever required, then a copy of the above mentioned power-of-attorney dated 27.4.2013 itself was sufficient to prima-facie prove the possession of the plaintiff, in which, the address of the plaintiff is recorded as C-20/6B, sector 62, Noida, Gautam Buddha Nagar, which is also the address of the disputed property.

28. The trial court also concluded in the impugned order that the lease deed of the disputed property situated in Gautam Buddha Nagar was executed in favour of the defendant by Noida on 6.6.2003 but in the instant suit filed in the year 2017, the plaintiff has not claimed the relief of cancellation of the above lease deed as such, the suit was also barred by law.

29. It is also apparent that though the defendant had taken a plea in her Order 7 Rule 11 CPC application that the plaintiff 's suit was barred under Section 4(1) of the Benami Transactions(Prohibition) Act, 1988 but the trial court did not record any finding on this. However, this issue has been pressed by the learned counsel for the

defendant-respondent, as such, this Court has deemed appropriate to record its finding on that issue.

30. For appreciating the controversy in correct perspective, it will be appropriate to examine the relevant provisions of **The Benami Transactions (Prohibition) Act, 1988**. Section 2(a), 2(c), 3 and 4, of the Act, insofar as they are relevant, reads as under:-

“2. Definitions. - *In this Act, unless the context otherwise, requires,—*

(a) “benami transaction” means any transaction in which property is transferred to one person for a consideration paid or provided by another person;

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(c) “property” means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.

3. Prohibition of benami transactions. - *(1) No person shall enter into any benami transaction.*

(2) Nothing in sub-section (1) shall apply to-

(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter;

*(b) ******

*Explanation-******

*(3)******

*(4)******

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.”

31. The Apex Court in the case of ***Pushpalata vs. Vijay Kumar(Dead) through Lrs. and others 2022 SCC OnLine SC 1152***, while discussing the circumstances which can be taken as a guide to determine the nature of the transaction, held as under:-

“22. The court's approach in cases, where the claim is that a property or set of properties, are benami, was outlined, after considering previous precedents, in Binapani Paul v. Pratima Ghosh (2007) 6 SCC 100, where this court cited with approval extracts from Valliammal v. Subramaniam (2004) 7 SCC 233:

“47. Burden of proof as regards the benami nature of transaction was also on the respondent. This aspect of the matter has been considered by this Court in Valliammal (D) By LRS. v. Subramaniam (Supra) wherein a Division Bench of this Court held:

“13. This Court in a number of judgments has held that it is well established that burden of proving that a particular sale is benami lies on the person who alleges the transaction to be a benami. The essence of a benami transaction is the intention of the party or parties concerned and often, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. Refer to Jaydayal Poddar v. Bibi Hazra [(1974) 1 SCC 3], Krishnanand Agnihotri v. State of M.P. [(1977) 1 SCC 816 : 1977 SCC (Cri) 190], Thakur Bhim Singh v. Thakur Kan Singh [(1980) 3 SCC 72], Pratap Singh v. Sarojini Devi [1994 Supp (1) SCC 734] and Heirs of Vrajlal J. Ganatra v. Heirs of Parshottam S. Shah [(1996) 4 SCC 490]. It has been held in the judgments referred to above that the question whether a particular sale is a benami or not, is largely one of fact, and for determining the

question no absolute formulas or acid test, uniformly applicable in all situations can be laid. After saying so, this Court spelt out the following six circumstances which can be taken as a guide to determine the nature of the transaction:

(1) the source from which the purchase money came;

(2) the nature and possession of the property, after the purchase;

(3) motive, if any, for giving the transaction a benami colour;

(4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;

(5) the custody of the title deeds after the sale; and

(6) the conduct of the parties concerned in dealing with the property after the sale. (Jaydayal Poddar v. Bibi Hazra [(1974) 1 SCC 3], SCC p. 7, para 6)

14. The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless, the source from where the purchase money came and the motive why the property was purchased benami are by far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another. We would examine the present transaction on the touchstone of the above two indicia.

18. It is well settled that intention of the parties is the essence of the benami transaction and the money must have been provided by the party invoking the doctrine of benami. The evidence shows clearly that the original plaintiff did not have any justification for purchasing the property in the name of Ramayee Ammal. The reason given by him is not at all acceptable. The source of money is not at all traceable to the plaintiff. No person named in the plaint or anyone else was examined as a witness. The failure of the plaintiff

to examine the relevant witnesses completely demolishes his case.””

23. As a matter of law, the principle that one who alleges that a property is benami and is held, nominally, on behalf of the real owner - in cases which form the exception, under Section 4 (3) - has to displace the initial burden of proving that fact. Such proof can be through evidence, or cumulatively through circumstances. This fact was brought home, by this court, in Marcel Martins v. M. Printer (2012) 5 SCC 342. In that case, the issue was whether the transfer of rights in favour of one of the siblings, in the absence of a will, by the person having interest (as a tenant in the property), after her death, operated to exclude the other heirs. The court held that the transfer was made to fulfil a municipality's requirement, and the property was held by the one in whose name it was mutated, in a fiduciary capacity, under Section 4(3)(a) of the Act, on behalf of the siblings:

“22. It is manifest that while the expression “fiduciary capacity” may not be capable of a precise definition, it implies a relationship that is analogous to the relationship between a trustee and the beneficiaries of the trust. The expression is in fact wider in its import for it extends to all such situations as place the parties in positions that are founded on confidence and trust on the one part and good faith on the other.

23. In determining whether a relationship is based on trust or confidence, relevant to determining whether they stand in a fiduciary capacity, the Court shall have to take into consideration the factual context in which the question arises for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case. Having said that, let us turn to the facts of the present case once more to determine whether the appellant stood in a fiduciary capacity vis-à-vis the plaintiffs-respondents.

24. The first and foremost of the circumstance relevant to the question at hand is the fact that the property in question was tenanted by Smt. Stella Martins-mother of the parties before us. It is common ground that at the time of her demise she had not left behind any Will nor is there any other material to suggest that she intended that the tenancy right held by her in the suit

property should be transferred to the appellant to the exclusion of her husband, C.F. Martins or her daughters, respondents in this appeal, or both. In the ordinary course, upon the demise of the tenant, the tenancy rights should have as a matter of course devolved upon her legal heirs that would include the husband of the deceased and her children (parties to this appeal). Even so, the reason why the property was transferred in the name of the appellant was the fact that the Corporation desired such transfer to be made in the name of one individual rather than several individuals who may have succeeded to the tenancy rights. A specific averment to that effect was made by plaintiffs-respondents in para 7 of the plaint which was not disputed by the appellant in the written statement filed by him. It is, therefore, reasonable to assume that transfer of rights in favour of the appellant was not because the others had abandoned their rights but because the Corporation required the transfer to be in favour of individual presumably to avoid procedural complications in enforcing rights and duties qua in property at a later stage. It is on that touchstone equally reasonable to assume that the other legal representatives of the deceased-tenant neither gave up their tenancy rights in the property nor did they give up the benefits that would flow to them as legal heirs of the deceased tenant consequent upon the decision of the Corporation to sell the property to the occupants. That conclusion gets strengthened by the fact that the parties had made contributions towards the sale consideration paid for the acquisition of the suit property which they would not have done if the intention was to concede the property in favour of the appellant. Superadded to the above is the fact that the parties were closely related to each other which too lends considerable support to the case of the plaintiffs that the defendant-appellant held the tenancy rights and the ostensible title to the suit property in a fiduciary capacity vis-à-vis his siblings who had by reason of their contribution and the contribution made by their father continued to evince interest in the property and its ownership. Reposing confidence and faith in the appellant was in the facts and circumstances of the case not unusual or unnatural especially when

possession over the suit property continued to be enjoyed by the plaintiffs who would in law and on a parity of reasoning be deemed to be holding the same for the benefit of the appellant as much as the appellant was holding the title to the property for the benefit of the plaintiffs.

25. The cumulative effect of the above circumstances when seen in the light of the substantial amount paid by late Shri C.F. Martins, the father of the parties, thus puts the appellant in a fiduciary capacity vis-à-vis the said four persons. Such being the case the transaction is completely saved from the mischief of Section 4 of the Act by reason of the same falling under Sub-section 3(b) of Section 4. The suit filed by the respondents was not, therefore, barred by the Act as contended by the learned counsel for the appellant.”

27. In the light of these factors, and the law declared by this court which has elaborated the circumstances under which a claim against a benami owner can be said to be proved, under Section 4(3)(a) of the Act, the conclusions drawn by the trial court and first appellate court, are plainly erroneous, given the evidence on record. The High Court, in the opinion of this court, fell into error in not noticing the correct position in law.

*30. In the opinion of this court, the High Court fell into error, in ignoring that the circumstances of this case, where the first plaintiff had proved that the properties had been purchased, with his funds, and the sons were minors, with no source of income. The second defendant's position-throughout all the proceedings, was that the properties were that of the first plaintiff; in other words, he admitted to the suit averments. The plaintiff also proved that he had possession of the property, by adducing positive evidence of tenants, who paid rent to him. In these circumstances, the elements necessary to establish benami ownership within the meaning of Section 4 (3) (a) of the Act, in terms of the judgments in *Binapani Paul and Valliammal (supra)* have been satisfied by the first plaintiff.”*

32. The Apex Court in the case of ***Mangathai Ammal(Died) through Lrs. and others vs. Rajeswari and others (2020)17 SCC 496***, while discussing the applicability of the Amendment Act of 2016, held as

under:-

“11. It is required to be noted that the benami transaction came to be amended in the year 2016. As per Section 3 of the Benami Transaction (Prohibition) Act, 1988, there was a presumption that the transaction made in the name of the wife and children is for their benefit. By the Benami Transactions (Prohibition) Amendment Act, 2016, Section 3(2) of the Benami Transactions (Prohibition) Act, 1988, the statutory presumption, which was rebuttable, has been omitted. It is the case on behalf of the respondents that therefore in view of omission of Section 3(2) of the Benami Transaction Act, the plea of statutory presumption that the purchase made in the name of wife or children is for their benefit would not be available in the present case. The aforesaid cannot be accepted. As held by this Court in Binapani Paul [Binapani Paul v. Pratima Ghosh, (2007) 6 SCC 100] the Benami Transactions (Prohibition) Act would not be applicable retrospectively. Even otherwise and as observed hereinabove, the plaintiff has miserably failed to discharge his onus to prove that the sale deeds executed in favour of Defendant 1 were benami transactions and the same properties were purchased in the name of Defendant 1 by Narayanasamy Mudaliar from the amount received by him from the sale of other ancestral properties. ”

33. The Apex Court in the case of **Marcel Martins vs. M.Printer and others (2012)5 SCC 342**, while discussing Section 4 of the Benami Transactions(Prohibition) Act,1988 held as under:-

“26. Section 4 of the Act, upon which heavy reliance was placed by Mr Chaudhary, may be extracted in extenso:

“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.”

A plain reading of the above will show that no suit, claim or action to enforce a right in respect of any property held benami shall lie against the person in whose name the property is held or against any other person at the instance of a person claiming to be the real owner of such property.

*27. It is common ground that although the sale deed by which the property was transferred in the name of the appellant had been executed before the enactment of above legislation yet the suit out of which this appeal arises had been filed after the year 1988. The prohibition contained in Section 4 would, therefore, apply to such a suit, subject to the satisfaction of other conditions stipulated therein. **In other words unless the conditions contained in Sections 4(1) and (2) are held to be inapplicable by reason of anything contained in sub-section (3) thereof the suit filed by the plaintiff-respondents herein would fall within the mischief of Section 4.***

28. The critical question then is whether sub-section (3) of Section 4 saves a transaction like the one with which we are concerned.

29. Sub-section (3) to Section 4 extracted above is in two distinct parts. The first part comprises clause (a) to Section 4(3) which deals with acquisitions by and in the name of a coparcener in a Hindu Undivided Family for the benefit of such coparceners in the family. There is no dispute that the said provision has no application in the instant case nor was any reliance placed upon the same by the learned counsel for the respondent-plaintiffs.

30. What was invoked by Mr Naveen R. Nath, learned counsel appearing for the respondents was Section 4(3)(b) of the Act which too is in two parts viz. one that deals with the trustees and the beneficiaries thereof and the other that deals with the persons standing in a fiduciary capacity and those towards whom he stands in such capacity. It was argued by Mr Nath that the circumstances in which the purchase in question was made in the name of the appellant assumes great importance while determining whether the appellant in whose name the property was acquired stood in a fiduciary capacity towards the

respondent-plaintiffs.

37. We may at this stage refer to a recent decision of this Court in *CBSE v. Aditya Bandopadhyay* [(2011) 8 SCC 497], wherein Raveendran, J. speaking for the Court in that case explained the terms “fiduciary” and “fiduciary relationship” in the following words : (SCC pp. 524-25, para 39)

“39. The term ‘fiduciary’ refers to a person having a duty to act for the benefit of another, showing good faith and candour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term ‘fiduciary relationship’ is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction(s). The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third party.”

It is manifest that while the expression “fiduciary capacity” may not be capable of a precise definition, it implies a relationship that is analogous to the relationship between a trustee and the beneficiaries of the trust. The expression is in fact wider in its import for it extends to all such situations as place the parties in positions that are founded on confidence and trust on the one part and good faith on the other.

38. In determining whether a relationship is based on trust or confidence, relevant to determining whether they stand in a fiduciary capacity, the court shall have to take into consideration the factual context in which the question arises for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case. Having said that, let us turn to the facts of the present case once more to determine whether the appellant

stood in a fiduciary capacity vis-à-vis the respondent-plaintiffs.

44. The cumulative effect of the above circumstances when seen in the light of the substantial amount paid by late Shri C.F. Martins, the father of the parties, thus puts the appellant in a fiduciary capacity vis-à-vis the said four persons. Such being the case the transaction is completely saved from the mischief of Section 4 of the Act by reason of the same falling under sub-section (3)(b) of Section 4. The suit filed by the respondents was not, therefore, barred by the Act as contended by the learned counsel for the appellant. The view taken by the High Court to that effect is affirmed though for slightly different reasons. ”

(emphasis supplied)

34. The Apex Court in the case of ***Shaifali Gupta vs. Vidya Devi Gupta and others*** 2025 SCC OnLine SC 1181 held as under:-

“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 v. Babu Lal (2019) 4 SCC 367, a similar issue arose before this Court in a matter concerning rejection of plaint under Order 7 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 7 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 7 Rule 11 CPC on the above score.”

(emphasis supplied)

35. From the above law laid down by the Apex Court in the case of

Pushpalata (supra), *Mangathai Ammal (supra)*, *Marcel Martins (supra)* and *Shaifali Gupta(supra)* dealing with the Benami Transactions (Prohibition) Act, 1988 before its amendment in the year 2016, and after its amendment, it is apparent that a person can purchase property, whether movable or immovable, in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter. It is also clear that the bar enacted by Section 4(1) of the Act, is not applicable where the property is held by a person who is the coparcener in Hindu undivided family and the property is held for the benefit of the coparcener in the family. It is also not applicable when the person in whose name property is held is a trustee or stands in a fiduciary capacity for the benefit of the person towards whom he stands in such capacity.

36. It is also apparent that the husband can file a suit claiming himself to be the true owner of the property by alleging that his wife is only the benami owner. The husband can prove the above fact by leading evidence or cumulatively through circumstances. It is also clear that the burden of proof lies upon the husband to prove that the property is benami. Of course, the wife can rebut the above presumption, by proving that the alleged property was not benami and she purchased it from her own funds.

37. It is also apparent that whether the matter falls within the purview of exception under Section 4(3) of the Act of 1988 or not, is an aspect which is to be gone into on the strength of the evidence on record. Only on the basis of the plaint averments, it cannot be decided that the plaintiff's suit is barred under Section 4(1) of the Act.

38. The Apex Court in the case of *Pawan Kumar vs. Babulal(Since deceased through Lrs.) & Others (2019) 4 SCC 367* has held that the plea of benami cannot be decided at the stage when the application under Order 7 Rule 11 CPC is taken up for consideration because the matter required fuller and final consideration after the evidence was led by the parties. It was held that 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 7 Rule 11 CPC.

39. It is also evident that whether the plaintiff should have claimed cancellation of the allotment dated 6.6.2003 in favour of the defendant by Noida or not, will depend upon whether the plaintiff is the real owner of the disputed property or not. At the stage of considering an application under Order 7 Rule 11 CPC, the plaintiff's

suit cannot be rejected on this ground.

40. From the above discussion, it is apparent that the trial court has committed material illegality in allowing the defendants application under Order 7 Rule 11 CPC. The impugned order is perverse and is liable to be set aside. Consequently, the appeal has merit and is liable to be allowed.

41. **Accordingly, this appeal is hereby allowed.** The impugned judgment and decree dated 4.5.2022 of the trial court in O.S. no. 465 of 2017 is set aside. The defendants application under Order 7 Rule 11 CPC stands dismissed. The O.S. no. 465 of 2017 is restored to its original number.

42. The trial court is directed to decide the suit **within six months**, from the date of receipt of certified copy of this order, without granting unnecessary adjournment to any party.

43. However in the facts and circumstances of the case, the parties shall bear their respective costs. Office is directed to prepare the decree accordingly.

44. Interim order, if any, stands vacated.

45. Office is directed to send back the original trial court record, forthwith.

Order Date:- 25.09.2025

Jitendra/Himanshu/Mayank

(Sandeep Jain,J.)