

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 25.02.2015

Delivered on : 17.03.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

S.A.No.1260 of 2006

and

M.P.No.2 of 2006

1.Smt. Shanthi @ Shanthi Sathya
2.L.Dharmalingam
3.L.Dhanasingh ..Appellants/Defendant 1,2&4

-Vs-

M.Masanam .. Respondent/Plaintiff

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree of the III Additional Judge, City Civil Court, Chennai dated 24.02.2006 made in A.S.No.164 of 2005 confirming the judgment and decree of the II Assistant Judge, City Civil Court, Chennai dated 21.09.2004 made in O.S.No.8475 of 1995.

For Appellants : Mr.M.Ravi

For Respondent : Mr.P.Jeyaprakasam

JUDGMENT

The defendants 1, 2 and 4 in the original suit are the appellants in the second appeal. The sole plaintiff in the original suit is the respondent in the second appeal. The suit O.S.No.8475 of 1995 was filed by Masanam, the respondent herein against the appellants herein and one N.Chinniah. The said Chinniah figured as third defendant in the said suit.

2. The original suit came to be filed by the respondent herein initially against the appellants 1 and 2 herein and the above said Chinniah arraying them as defendants 1 and 2 and defendant No.3 respectively. It is an admitted fact that the first appellant Shanthi @ Shanthi Sathya is the wife of Masanam, the respondent herein/plaintiff and their marriage took place on 01.02.1979 at Ayakudi Village, Palani Taluk, Dindigul District. N.Chinniah, who figured as the third defendant in the original suit is the father of Shanthi @ Shanthi Sathya, the first appellant herein/first defendant. They had a son by name Sridhar. He was born on 22.11.1979. Due to the problem between the husband and

wife, Masanam, the respondent herein/plaintiff filed a petition for divorce in the Family Court, Chennai as O.P.No.1017 of 1992 under Section 30(1)(i) of the Hindu Marriage Act, 1955 alleging adultery as the ground for divorce. The petition was not contested and it resulted in a decree granting divorce in favour of Masanam, the respondent herein/plaintiff as he had prayed for in the said O.P. The said decree came to be passed on 01.02.1995. The suit property, namely a house site bearing Plot No.57, Konnur Village comprised in R.s.No.183 measuring 40 feet x 60 feet situated within the Registration District of North Madras and Sub-Registration District of Ambattur (presently Purasawalkam) came to be purchased on 30.12.1985 and registered as document No.888/1986 in the office of the Sub-Registrar, Ambattur. The original sale deed has been produced by the appellants as Ex.B1, whereas a certified copy of the same has been produced by the respondent herein/plaintiff as Ex.A2 before the trial Court. Contending that though the purchase was made in the name of the first appellant herein/first defendant, he was the actual purchaser who paid the sale consideration and that he alone was the owner of the property, Masanam, the respondent herein filed the above said suit O.S.No.8475/1995 for a declaration that he was the absolute owner of the property, for recovery of possession of the suit property from the defendants in the suit, for setting aside the sale transaction dated 19.01.1994 between the first appellant/first defendant on the one hand and the second and third appellants/second and fourth defendants on the other hand in respect of the plaint schedule property holding such sale to be null and void, for a permanent injunction restraining the second and fourth defendants from putting up any further construction or making improvements in the plaint schedule property and also for costs. Initially, the suit was filed against first and second appellants herein and Chinniah, arraying them as defendants 1, 2 and 3 respectively and the prayer regarding sale deed dated 19.01.1994 by setting aside the same as null and void came to be made on the assumption that the second appellant/Dharmalingam alone was the purchaser under the said sale transaction. However, during the pendency of the suit, the plaint was amended to the effect that the conveyance made under the sale deed dated 19.01.1994 by the first appellant was in favour of the second appellant as well as the third appellant (Dhanasingh) and the said Dhanasingh was impleaded as a defendant in the suit and ranked as fourth defendant. The above said reliefs were claimed by the respondent/plaintiff on the basis of the plaint averments that it was he who purchased the property with his own funds in the name of his wife out of pure love and affection towards her and with the intention of providing a security for his wife and minor son and that hence the prohibition contained in Section 4 of the Benami Transaction (Prohibition) Act, 1988 would not get attracted to his case.

3. The suit was resisted by the first respondent/first defendant contending that the suit property was purchased by her in her name with her own funds and that the contra averments found in the plaint could not be sustained. The second appellant/second defendant resisted the suit contending that he had purchased the

suit property from the first appellant/first defendant for a sale consideration of Rs.49,500/- under a sale deed dated 19.01.1994 registered as Document No.244 of 1995 in the office of Sub-Registrar, Ambattur; that thus having become the absolute owner of the suit property, got possession of the same and was enjoying the same and that no one including the respondent herein/plaintiff did have any interest of any nature whatsoever in respect of the suit property. He had also contended that after his purchase under the sale deed dated 19.01.1994, he completed the construction of a house and that after such completion of construction of the house by the second appellant/second defendant, the respondent /plaintiff approached the Court with the suit with false averments and ulterior motive.

4. The learned trial Judge, viz., Second Assistant Judge, City Civil Court, Chennai, after trial, decreed the suit in part granting the reliefs of declaration, recovery of possession and a decree setting aside the sale transaction dated 19.01.1994 between the first appellant/first defendant and the appellants 2 and 3/defendants 2 and 4 holding the said sale transaction to be null and void. However, the suit was partly dismissed in respect of the prayer for injunction. As against the decree of the trial Court dated 21.09.2004, the appellants 2 and 3 herein/defendants 2 and 4 alone preferred an appeal in A.S.No.164 of 2005 and the learned lower appellate Judge viz., III Additional Judge, City Civil Court, Chennai dismissed the said appeal by a judgment and decree dated 24.02.2006 thereby confirming the decree of the trial Court dated 21.09.2004. The above said decree of the lower appellate Court dated 24.02.2006 made in A.S.No.164 of 2005 is the subject matter of challenge in the present second appeal.

5. At the time of admission, three questions were formulated as substantial questions of law. However, at the time of hearing the second appeal, the questions were fine tuned besides splitting the second question into two and reassigning question No.3 as question No.4. Thus the substantial questions of law were reformulated as follows:

- 1)Whether the Courts below erred in law in relying upon Exs.A13, A14, A15, A17 and A18 to reject the case of the appellants?
- 2)Whether the Courts below have rendered a perverse finding that the purchase of the suit property in the name of the first appellant was made entirely out of the funds provided by the respondent?
- 3)Whether the Courts below failed to properly construe the scope of Section 3(2) and Section 4 of the Benami Transaction Prohibition Act, 1988 in coming to the conclusion that the respondent /plaintiff was entitled to maintain his claim against the appellants?
- 4)Whether the Courts below erred in law in ignoring the settlement arrived at in the presence of pachayatdhars and the Inspector of Police, Ayyakudi on 25.09.1990 by which the suit house site along with the original documents pertaining to the suit property was accepted by

the respondent/plaintiff to be the property of the first appellant/first defendant as stated in Paragraph 16 of the written statement of the first appellant/first defendant? and whether the Courts below committed an error in not holding that the respondent/plaintiff is estopped from claiming the property for himself?

6. The arguments advanced by Mr.M.Ravi, learned counsel for the appellants and Mr.P.Jeyaprakasam, learned counsel for the respondent were heard. The materials available on record were also perused. This Court carefully considered the submissions made on both sides and the materials available on record.

7. The respondent herein/plaintiff filed the original suit for a declaration that he was the absolute owner of the suit property, for recovery of possession of the suit property, to set aside the sale deed dated 19.01.1994 executed by the first appellant/first defendant in favour of appellants 2 and 3 / defendants 2 and 4 holding the sale deed to be null and void and for a permanent injunction restraining the appellants herein/defendants 1, 2 and 4 from putting up further construction in the suit property. Except the prayer for injunction, all other prayers were made on the basis of the contention of the respondent that it was he who purchased the property as a vacant site with his own funds, but in the name of his wife namely, the first appellant/first defendant and that he was the real owner of the suit property. In order to prove his contention, he examined two witnesses as Pws 1 and 2 and produced 21 documents as Exs.A1 to A21. On the side of the appellants herein/contesting defendants, two witnesses were examined as Dws 1 and 2 and 25 documents were marked as Exs.B1 to B25.

8. It is the contention of the respondent/plaintiff that it was he who purchased the suit property as a vacant site with his own funds in the name of the his wife, namely the first appellant herein/first defendant. In support of the said contention, he relied on the documents produced as Exs.A4, A5, A6, A7, A8, A20 and A21. It is not in dispute that the plaintiff was a Government servant. Ex.A11 contains two departmental communications dated 09.05.1985 and 07.08.1986. The communication dated 09.05.1985 was regarding the application submitted by the respondent/plaintiff seeking permission to purchase a house site in the name of his wife. The second communication dated 07.08.1986 was issued after he intimated the purchase of the house site in the name of his wife. In the said communication, he was asked to furnish the total value of the property purchased by him in the name of his wife. Ex.A5 is the certified extract from the Service Register of the respondent/plaintiff and it evidences that the purchase of the suit property in the name of his wife under Ex.B1 sale deed dated 30.12.1985 for a sum of Rs.17,500/- was recorded in his Service Register. A receipt dated 31.08.1985 showing that the respondent / plaintiff paid a sum of Rs.10,000/- to one R.Ramani, the vendor under Ex.B1 sale deed dated 30.12.1985. Ex.A6 is the office copy of the notice dated 16.01.1992 sent by the respondent

herein/plaintiff through his lawyer to his wife, namely the first appellant herein/first defendant and his father-in-law and N.Chinniah who figured as third defendant in the suit. Exs.A7 and A8 are the postal acknowledgments in proof of service of the above said notice on those defendants. Apart from the above said documents, the respondent herein/plaintiff relied on his own testimony as PW1 and that of PW2-B.Pitchaiah, a co-worker for proving the case that it was he who purchased the suit property with his own funds in the name of his wife. Though the copy of the original petition and order passed thereon were produced as Exs.A13 and A15 and certified copies of the deposition of the witnesses examined in H.M.O.P No.155 of 1997 were marked as Exs.A17 and A18, none of the above said documents were relied on in this case either by the trial Court or by the lower appellate Court for taking a decision as to whether the respondent herein/plaintiff proved his contention that he purchased the suit property with his own funds in the name of his wife. The said documents were produced in order to show that there was a divorce proceeding pending before the family Court instituted by the respondent/plaintiff for divorce on the ground of adultery. The above said documents were produced simply for the purpose of showing the conduct and character of the first appellant/first defendant and hence, the same are quite irrelevant for taking a decision on the issue as to whether the purchase under Ex.B1 sale deed was made by the respondent herein/plaintiff with his own funds in the name of his wife, namely the first appellant/first defendant. Hence, it is quite obvious that the appellants have wrongly formulated the first question as one of the substantial questions of law on an erroneous assumption that the Courts below relied on Exs.A13, A15, A17 and A18 for making such a decision.

9. However, it cannot be said that Ex.A14 is irrelevant for the purpose of making a decision as to whether the first respondent/first defendant could have got her own funds for the purchase made under Ex.B1 sale deed. Ex.A14 is none other than the certified copy of the petition filed by the first respondent/first defendant claiming maintenance. The same was filed as M.C.No.140 of 1995 on the file of the Family Court, Coimbatore. The said maintenance case had been originally filed in the Court of the Judicial Magistrate No.1, Coimbatore as M.C.No.12 of 1992. After the establishment of a Family Court at Coimbatore, it came to be transferred and re-numbered as M.C.No.140 of 1995 on the file of the Family Court, Coimbatore. Ex.A14 was produced to show that the first appellant/first defendant made an admission therein that she did not have any property on her own or separate income, thereby probablizing the case of the respondent/plaintiff that it was he who provided the funds for the purchase of the suit property under Ex.B1. From Ex.A14, it is obvious that the first appellant/first defendant sought maintenance on the basis of her contention made in the maintenance petition that she did not have any property of her own and she did not have any separate income to maintain herself. The sale consideration quoted under Ex.B1 sale deed is Rs.17,500/-. The respondent herein/plaintiff was getting a sum of Rs.2,500/- per month as salary, whereas admittedly the first appellant/first

defendant was unemployed and she did not have any other source of income. In order to show that such huge amount could not have been mobilized by the first respondent/first defendant and probablize the case of the respondent herein/plaintiff that he alone provided the funds for the purchase of the suit property in the name of his wife, he produced Ex.A14. The courts below have also relied on Ex.A14 for the above said limited purpose. Therefore, this Court does not find any defect or infirmity in the reliance made by the Courts below on Ex.A14 for the above said purpose.

10. In view of the forgoing discussions, this Court hereby holds that the Courts below did not rely on Exs.A13, A15, A17 and A18 for the purpose of making a decision as to whether the funds for the purchase of the suit property under Ex.B1 was provided by the respondent/plaintiff; that on the other hand, the Courts below relied on Ex.A14 alone for the above said purpose and that the reliance made on Ex.A14 is not erroneous in law. The first substantial question of law is answered accordingly.

11. It is the contention of the respondent/plaintiff that the fund for the purchase under Ex.B1 sale deed was entirely provided by him and that nothing was contributed by his wife, namely the first appellant/first defendant towards the sale consideration for the purchase under Ex.B1 sale deed since she had no other property capable of yielding income and she had no independent source of income. In this regard, the respondent/plaintiff, besides examining himself as PW1, examined a co-worker as PW2. Both of them were categorical in their assertion that the entire sale consideration was provided by the respondent/plaintiff. In addition, the respondent/plaintiff also produced Exs.A4, A5, A14, A20 and A21. Ex.A4 contains two official communications issued to the respondent/plaintiff bearing ந.க.எண்.106039/ப.தொ.4/85/எஸ்.2 dated 09.05.1985 and ப.மு.எண்.65216/ப.தொ.4/86/எஸ் dated 07.08.1986. By the first one, the department informed the respondent/plaintiff that his application dated 25.04.1985 seeking permission to purchase a house site in the name of his wife was registered and directing him to submit the necessary particulars after the purchase would be over. After the purchase of the property under Ex.B1, the same was intimated to the office by his letter dated 23.06.1986. On receipt of the said communication, the second official communication dated 07.08.1986 came to be issued to the respondent/plaintiff asking him to inform the total value of the house site purchased in the name of his wife. Ex.A5 is the certified extract of his Service Register containing the entry regarding the purchase of the suit property. From Ex.A5, it is obvious that based on the communication referred to in the second document found in Ex.A4, the purchase made under Ex.B1 sale deed for a sum of Rs.17,500/- was recorded in his Service Register.

12. Ex.A20 is the passbook relating to the account of the respondent/plaintiff in the Madras Government Servant's Co-operative Society Limited R980. The entries start from 14.08.1985. The amount at credit on the said date was only

Rs.700/-. A further sum of Rs.300/- came to be added subsequently in 1988 showing a credit balance of Rs.1000/-. The next entry was made only on 12.06.1988. None of the entries found in the said document is helpful to the respondent/plaintiff to show that any amount availed as loan from the said society was used for the purchase of the suit house site. A receipt showing payment of Rs.10,000/- on 31.08.1985 to the vendor and Ex.B1-Sale deed was also produced by the respondent/plaintiff. It is an unstamped receipt. Stamp duty and penalty were collected and the document was admitted in evidence and marked as Ex.B21. It shows that a sum of Rs.10,000/- was paid to R. Ramani, the vendor under Ex.B1 by the respondent/plaintiff. The purpose of such payment has not been mentioned in Ex.A21 receipt. However, it is the clear evidence of PW2-Pithaiah that the said amount was paid by the respondent/plaintiff to Ramani on 31.08.1985 at the residence of Ramani towards the sale consideration for the suit house site. It is also his clear evidence that he attested the said document as a witness. There is no contra evidence to show that the said amount was paid for any other purpose or that the respondent/plaintiff and the vendor under Ex.B1 had some other transactions also. Ex.A14 is the certified copy of the petition in M.C.No.140 of 1995 on the file of the Family Court, Coimbatore. It was filed by the first appellant/first defendant originally in the Court of Judicial Magistrate I, Coimbatore, taken on file as M.C.No.12 of 1992 and subsequently re-numbered as M.C.No.140 of 1995 on its transfer to the Family Court consequent to the establishment of a Family Court at Coimbatore. In the said petition, while claiming maintenance from the respondent/plaintiff, she had made an averment that she was not having any property or income. The relevant portion in vernacular is culled out and reproduced:

“1வது மனுவாதிக்கோ வேலையோ, வருமானமோ, சொத்துக்களோ இல்லை”

The said admission was relied on by the respondent/plaintiff as a corroborating piece of evidence to prove his contention that the entire sale consideration for the purchase made under Ex.B1 sale deed was provided by him alone.

13. As against such a clear evidence adduced on the side of the respondent/plaintiff, the first appellant/first defendant did not figure as a witness to depose that she had the necessary funds and with her own funds the suit house site was purchased by her and that the funds were not provided by the respondent /plaintiff as contended by him. The second respondent/second defendant alone figured as DW1. He did not speak about the financial position of the first appellant/first defendant at the time of purchase of the suit house site under Ex.B1. There is nothing in his evidence to show that the respondent/plaintiff did not provide the fund for the purchase of the suit house site under Ex.B1. On the other hand, his evidence is projected towards showing that he was a bonafide purchaser from the ostensible owner for value without notice of the claim of the respondent/plaintiff and that hence, his right should be protected. DW2 is the third appellant/fourth defendant. He

charges and the charges levied by the Tamil Water Supply and Sewerage Board. Those are the documents produced as Exs.B15 to B25. His evidence is also not helpful to defeat the contention of the respondent/plaintiff that it was he who provided the funds for the purchase of the suit house site in the name of his wife, namely the first appellant/first defendant.

14. The discussions appearing supra shall make it clear that the respondent/plaintiff was able to prove that it was he who provided the funds for the purchase of the house site under Ex.B1 in the name of his wife, namely the first respondent/first defendant. The concurrent findings of the courts below to the above said effect cannot be said to be defective or erroneous, much less perverse warranting an interference by this Court in exercise of its power in this second appeal. The second substantial question of law is answered accordingly.

15. Before dealing with the third substantial question of law, it shall be convenient to deal with the fourth substantial question of law. The fourth substantial question of law has been formulated on the basis of the contention of the appellants that there was a settlement between the respondent/plaintiff and his wife, the first appellant/first defendant on 25.09.1990 and the said settlement was arrived at in the presence of Panchayatdhars and the Inspector of Police, Ayakudi Police Station. It is the further contention of the appellants that in the said Panchayat, the respondent herein/plaintiff admitted that the suit property was the property of his wife, namely the first appellant/first defendant and that the said fact was clearly averred in the written statement filed by the first appellant/first defendant. It is the contention of the appellants that the Courts below committed an error in not holding that the respondent/plaintiff was estopped from claiming the suit property for himself in view of his acknowledgment made in the settlement alleged by the first appellant/first defendant. The respondent/plaintiff approached the trial Court with a categorical plea that the suit property was purchased by him with his own funds in the name of his wife (first appellant/first defendant); that the first appellant/first defendant while leaving the matrimonial home took along with her sale deed under which the suit property was purchased; that when he issued a legal notice calling upon her and her father (the deceased third defendant Chinniah) to hand over the suit property and the documents relating to the suit property to the respondent/plaintiff, the first appellant/first defendant clandestinely executed sale deed in favour of appellants 2 and 3 / defendants 2 and 4 and that the same was the reason why he had to file the suit for the reliefs indicated supra. Only after the filing of the suit, the first appellant/first defendant chose to raise a contention that based on the complaint lodged by her in Ayakudi Police Station, the respondent herein/plaintiff returned the documents relating to the suit property and the jewels of the first appellant/first defendant along with other Sridhana properties on 29.05.1990 in the presence of Panchayatdhars and the Inspector of Police, Ayakudi Police Station and that the same was

acknowledged in an acknowledgment written on a stamp paper dated 25.05.1990 by the first appellant/first defendant and also by the respondent/plaintiff.

16. The respondent/plaintiff, who figured as PW1, stoutly denied having made any admission as averred by the first respondent/first defendant in her written statement. As against such a denial by the respondent/plaintiff, the first appellant/first defendant has not adduced any evidence, oral or documentary, to prove her case of admission on the part of the respondent / plaintiff acknowledging the title of the first appellant/first defendant in respect of the suit property. In addition, there is an inbuilt contradiction in paragraph 6 of the written statement of the first appellant herein/first defendant. The averment found therein is to the effect that pursuant to the complaint made by the first appellant/first defendant at Ayakudi Police on 09.05.1990, the respondent/plaintiff returned the documents relating to the suit property and jewels along with other Stridhana properties on 29.05.1990 in the presence of Panchayatdhars and Inspector of Police, Ayakudi Police Station and that the same was acknowledged by the respondent herein/plaintiff along with the first appellant/first defendant in a stamp paper on 25.05.1990. The jewels and other Sridhana properties and also the documents relating to the suit property were alleged to have been handed over to the first appellant/first defendant in the presence of Panchayatdhars and the Inspector of Police on 29.05.1990, whereas the acknowledgment of the same, namely handing over the jewels and sridhana properties and also the documents relating to the suit property, was stated to have been made on 25.05.1990 itself i.e., 4 days prior to the actual date of handing over. The same will indicate the improbability of the contention raised by the first appellant/first defendant in her written statement.

17. Furthermore, none of the Panchayatdhars, not even the Inspector of Police in whose presence the properties were allegedly returned by the respondent/plaintiff to the first appellant/first defendant and in whose presence the alleged acknowledgment of title of the first appellant/first defendant in respect of the suit property was made by the respondent/plaintiff, was examined as a witness on the side of the appellants/contesting defendants. The document referred to in Paragraph 6 of the written statement of the first appellant/first defendant as containing the acknowledgment made by the respondent/plaintiff has not seen the light of the day. In the absence of any witness and in the absence of any document, based on the mere averment made in the written statement alone, the Court cannot hold that the said averment stands substantiated by the first appellant/first defendant. As the above said contention of the first appellant /first defendant has not been substantiated either by oral or documentary evidence, there shall be no question of holding the respondent/plaintiff to be estopped from denying the title of the first appellant/first defendant in respect of the suit property on the basis of the alleged acknowledgment of title. Hence, the fourth substantial question of law is answered accordingly, holding that the appellants have not proved that the

respondent/plaintiff had acknowledged the title of the first appellant/ first defendant and hence he was estopped from denying her title to the suit property. The Courts below have not committed any error in not rendering a finding that the respondent herein/plaintiff was estopped from disputing the title of the first respondent/first defendant in respect of the suit property in the light of the averments contained in paragraph 6 of the written statement of the first appellant/first defendant. The fourth substantial question of law is answered accordingly.

18. The third substantial question of law is more vital and it needs a detailed consideration. The appellants/surviving defendants contend that even if it is assumed that the suit property was purchased by the respondent/plaintiff with his own funds, since it was purchased in the name of the first appellant/first defendant, in view of the bar provided under Section 4 of the Benami Transaction (Prohibition) Act, 1988, the respondent/plaintiff cannot maintain a claim on the basis of his contention that he is the real owner having purchased it with his own funds.

19. In this regard, it is the contention raised on behalf of the respondent/plaintiff that a purchase made by a person in the name of his wife or unmarried daughter is excluded from the purview of prohibited benami transaction under Section 3 of the Benami Transaction (Prohibition) Act, 1988 and that hence the bar under Section 4 of the said Act does not get attracted to the claim made by the respondent/plaintiff. It is the further contention made on behalf of the respondent/plaintiff that by the exemption provided under sub clause (2) of Section 3 of the Benami Transaction (Prohibition) Act, 1988, all purchases made by a person in the name of his wife or unmarried daughter shall not be benami transactions, as the presumption contemplated therein gets attracted; that the prohibition contained in Section 4 is made applicable only in respect of the properties held benami and that since the suit property cannot be construed to be one held by the first appellant/first defendant as benami, the bar provided under Section 4 shall not get attracted to the plea made by the respondent/plaintiff for declaration and recovery of possession of the property.

20. Per contra, the following contentions have been raised on behalf of the appellants/surviving defendants:-

" i) Sub-section 1 of section 3 makes every benami transaction a punishable offence, besides making such property subject to acquisition by the competent authority without paying compensation. Only as an exemption from the penal consequence and the consequence of the property becoming liable to be acquired under section 5, section 3 (2)(a) has been provided. It does not say that though it is a benami transaction, it will not attract the abovesaid penal consequence or the consequence contemplated under section 5. On the other hand, it implies a presumption that it shall not be a benami transaction if the purchase is made with the

funds provided by the husband or the father of the unmarried daughter as the case may be. In other words, such act of making available the funds can be treated to be a gift in favour of wife or unmarried daughter. That is the reason why the Parliament, in its wisdom, has chosen to state that such a purchase made by a person in the name of the wife or unmarried daughter shall not be deemed to be a benami transaction and it shall be deemed to have been purchased for the benefit of the wife or the daughter as the case may be. In other words, it is implied that the purchaser is none other than the wife or the daughter as the case may be and that the husband or the father providing fund cannot claim to be the real purchaser or owner of the property.

ii) In Section 4 itself, certain exemptions are provided. Such exemptions protect the interest of the members of the Hindu Undivided Family and the person claiming to be a beneficiary for whose benefit the property is held by another person as trustee in a fiduciary capacity. The definition clause in section 3(2)(a) excluding the transaction from benami transaction found cannot be read into section 4. Then the further questions that arise are: 1) who shall be competent to rebut the presumption contemplated under section 3(2)(a)? and 2) on such rebuttal, what shall be the consequences. The State, which is given the power to punish the person entering into benami transaction and the power to acquire the property purchased benami without paying compensation by virtue of sections 3(3) and 5 of the Benami Transactions Prohibition Act, 1988, shall have the competence to rebut the presumption. If a person purchases a property with his own funds in the name of his wife or in the name of his unmarried daughter, the transaction will be protected and the person in whose name the purchase is made, shall stand protected unless it is established that it has not been for the benefit of the wife or the daughter, as the case may be, and that it is actually a purchase made by the husband or the father, as the case may be, for his own benefit. Then, he can be punished under section 3(3) and the property can be confiscated (acquired without compensation) under section 5 of the Benami Transactions (Prohibition) Act, 1988. Simply because section 4 of the said Act attaches a disability on a person claiming to be the real owner from claiming the property or making a defence on the said basis against the person in whose name the property has been purchased, the State does not lose its power of punishing the person entering into the benami transaction and acquire the property under section 5 of the said Act."

21. At the outset, the above said contentions seem to be logically sound and sustainable, but for the decision of a three Judge Bench of the Supreme Court in Nand Kishore Mehra vs. Sushila Mehra reported in AIR 1995 SUPREME COURT 2145. In the said judgment, the Supreme Court observed that Section 3(1) of the Benami Transaction (Prohibition) Act, 1988 prohibits a person from entering into any benami transaction; that sub section (3) of Section 3 makes a person who enters into a benami transaction liable for punishment; that Section 5 makes the properties held benami liable for acquisition without payment of compensation; that however, sub section 2 of section 3 permits a person to entered into

a benami transaction of purchase of property in the name of his wife or unmarried daughter by declaring that the prohibition contained against a person in entering into a benami transaction in sub section (1) of Section (3) does not apply to him and that in such cases, the question of punishing the person under Section 3(3) or acquiring the property under Section 5 of the Benami Transaction (Prohibition) Act, 1988 can never arise, since, according to the perception of the Supreme Court, the exception granted under Section 3(2) would otherwise become redundant. It was further observed in the said judgment by the Supreme Court that the property concerned in Sub section (2) of section 3 in relation to non-applicability of section 3(3) and section 5 shall equally hold good for non-applicability of the provisions of sub sections 1 and 2 of section 4 in the matter of filing a suit or taking up a defence. The reason assigned by the Supreme Court is that it shall be difficult to hold a person permitted to purchase a property in the name of his wife or unmarried daughter under sub-section (2) of section 3 notwithstanding the prohibition to enter into a benami transaction contained in sub-section (1) of section 3, cannot enforce his rights arising therefrom.

22. In this context, though the learned counsel for the appellants/surviving defendants would contended that the Supreme Court in Nand Kishore Mehra's case did not deal with the presumption contemplated under Section 3(2) of the Benami Transaction (Prohibition) Act, 1988 which has also been made a rebuttable one and the consequences of the presumption being drawn or the presumption being rebutted. It is his further contention that if proper interpretation of the said clause is adopted it shall have the following effects:

"(i) the purchase made by a person in the name of his wife or unmarried daughter shall be presumed, unless otherwise rebutted, to be a purchase made for the benefit of the wife or unmarried daughter, as the case may be, thereby making the wife or unmarried daughter in whose name the property purchased to be the real owners with the consequence that the property thus purchased shall not be construed to be a property held benami by such wife or unmarried daughter for the husband or the father, as the case may be. The resultant position shall be that the wife or the daughter, as the case may be, shall be the absolute owner and the husband cannot claim title as against the wife or the unmarried daughter, as the case may be.

(ii) In case of rebuttal of the presumption contemplated under sub-section (2) of Section 3, the transaction will become a benami transaction prohibited under sub-section (1) of Section 3 inviting the penal consequence contemplated under sub-section (3) of Section 3 and also the civil consequences of the property becoming liable to be acquired by the Government without payment of compensation under Section 5. As a necessary corollary, the husband or father, as the case may be, shall be barred from making any claim over the property on the premise that he is the real purchaser and hence the real owner of the property."

for the appellants/surviving defendants also seems to be logically sustainable, but for the observation made by the Supreme Court in Nand Kishore Mehra's case itself. What is canvassed by the learned counsel for the appellants/surviving defendants is totally contrary to what has been discussed by the Supreme Court in the above cited case. Regarding the right of the person, who purchased the property in the name of the wife or unmarried daughter, as the case may be, to claim that he is the real owner of the property and seek recovery of possession, the Supreme Court made the following observations:

"But, it has to be made clear that when a suit is filed or defence is taken in respect of such benami transaction involving purchase of property by any person in the name of his wife or unmarried daughter, he cannot succeed in such suit on defence unless he proves that the property although purchased in the name of his wife or unmarried daughter, the same had not been purchased for the benefit of either the wife or the unmarried daughter, as the case may be, because of the statutory presumption contained in sub-section (2) of Section 3 that unless a contrary is proved that the purchase of property by the person in the name of his wife or his unmarried daughter, as the case may be, was for her benefit.

Therefore, our answer to the question under consideration is that neither the filing of a suit nor taking of a defence in respect of either the present or past benami transaction involving the purchase of property by a person in the name of his wife or unmarried daughter is prohibited under sub-sections (1) and (2) of Section 4 of the Act."

24. Though an attempt was made by the learned counsel for the appellants/surviving defendants to contend that if such an interpretation is adopted, the very object of the Act itself shall stand defeated, this court is unable to accept such a contention, because the law as declared by the Supreme Court is the Law of the land and is binding on all other courts and Authorities in India. So long as the said judgment holds the filed, we are bound to follow the interpretation given by the Supreme Court. Therefore, the above said contention of the learned counsel for the appellants/surviving defendants cannot be sustained, as the same is contrary to the law declared by the Apex Court by way of interpretation of Sections 3 and 4 of the Benami Transaction (Prohibition) Act, 1988.

25. Even though this court holds that on the legal issue regarding the interpretation of sections 3 and 4 of the Benami Transaction (Prohibition) Act, 1988, the submissions made on behalf of the appellants/surviving defendants is bound to be discountenanced, the other contention made on behalf of the appellants/surviving defendants is in consonance with the

observations made by the Supreme Court in the judgment of Nand Kishore Mehra's case discussed supra. According to the submissions made by the learned counsel for the appellants/surviving defendants, the respondent/plaintiff himself made a clear and categorical admission and rather an assertion that he purchased the property in the name of his wife out of pure love and affection towards her and for her benefit. In paragraph 6 of the plaint it has been averred as follows:

"The plaintiff stats that the suit schedule property was purchased only out of the plaintiff's own funds and it was out of the pure love and affection and in respect a security to his wife and his minor son."

In the proof affidavit of the respondent/plaintiff, who figured as PW1, also he has clearly stated that the purchase of the suit property was made in the name of his wife, namely the first appellant/first defendant out of love and affection meaning that the same was purchased for her benefit. In the light of the above said admission and also the presumption contemplated under Section 3(2) of the Benami Transaction (Prohibition) Act, 1988 the purchase made under Ex.B1-Sale deed has to be construed as a purchase made for the benefit of the first appellant/first defendant. If we apply the ratio decidendi of Nand Kishore Mehra's case to a purchase made by the husband in the name of his wife for the benefit of his wife, then he cannot succeed. We have to come to a conclusion that he cannot succeed in his suit or plea of defence against this wife in whose name the purchase has been made. In the above said case, the Supreme court has declared that for a person to succeed in a suit or defence on the basis of the benami transaction in the name of his wife or unmarried daughter, he should plead and prove that the purchase was not made for the benefit of the wife or the unmarried daughter as the case may be.

26. In the case on hand, it is clearly admitted that the purchase was made for the benefit of the first appellant/first defendant. If we apply the ratio of Nand Kishore Mehra's case to the case on hand, the necessary conclusion that can be arrived at shall be that the respondent/plaintiff cannot succeed in the suit in respect of the property which is said to be held benami in the name of his wife. Both the courts below have chosen to hold that the respondent herein/plaintiff was entitled to succeed in the suit filed by him on the basis of his contention that the suit property had been purchased by him with his own funds in the name of his wife for her benefit and that still he was entitled to the declaration of his title in respect of the suit property as well as recovery of possession of the same from the appellants/surviving defendants. The said conclusion arrived at by the courts below seems to have been made without adverting to the dictum laid down in Nand Kishore Mehra's case to the effect that a person to succeed in a suit for establishment of his title in respect of a property purchased by him with his own funds in the name of his wife or unmarried daughter, he should prove that the purchase was not made for the benefit of the wife or unmarried daughter, as the

case may be, on the other hand, it was purchased for his own benefits.

27. In the case on hand there is no pleading and no evidence to show that the purchase made under Ex.B1 was not for the benefit of the first appellant/first defendant and on the other hand it was for the benefit of the respondent/plaintiff. On the other hand, there is a clear and categorical admission made by the respondent/plaintiff both in his pleadings and evidence that the purchase was made for the benefit of his wife and also his son in the name of his wife, namely the first appellant/first defendant. The judgment of the Supreme Court referred above makes it clear that a person, who comes with such an admission, cannot succeed in his suit or defence against the person in whose name the purchase was made. The courts below have committed an error in holding that the respondent herein/plaintiff was entitled to succeed in the suit filed by him on the basis of his contention that the suit property had been purchased by him with his own funds in the name of his wife for her benefit and that still he was entitled to the declaration of his title in respect of the suit property as well as for the recovery of possession of the same from the appellants/surviving defendants. The third substantial question of law, accordingly decided in favour of the appellants/surviving defendants holding that the first appellant/first defendant shall be entitled to the suit property purchased in her name.

28. In view of the foregoing discussions, especially the answer given to the third substantial question of law, the appellants are bound to succeed in the second appeal and the decree passed by the lower appellate court confirming the decree passed by the trial court is liable to be set aside, with the result that the suit itself is liable to be dismissed. However, taking into consideration the facts and circumstances of the case, this court is of the view that the parties shall be directed to bear their respective cost in all the three courts.

In the result, the Second Appeal is allowed. The decree passed by the lower appellate court confirming the decree passed by the trial court is set aside. O.S.No.8475/1995 on the file of the II Assistant Judge, City Civil Court, Chennai, shall stand dismissed. The parties shall bear their respective costs in all the courts. Consequently, the connected miscellaneous petition is closed.

Sd/-

Deputy Registrar

True Copy

Sub Assistant Registrar

To

1.The III Additional Judge, City Civil Court, Chennai

2.The II Assistant Judge, City Civil Court, Chennai

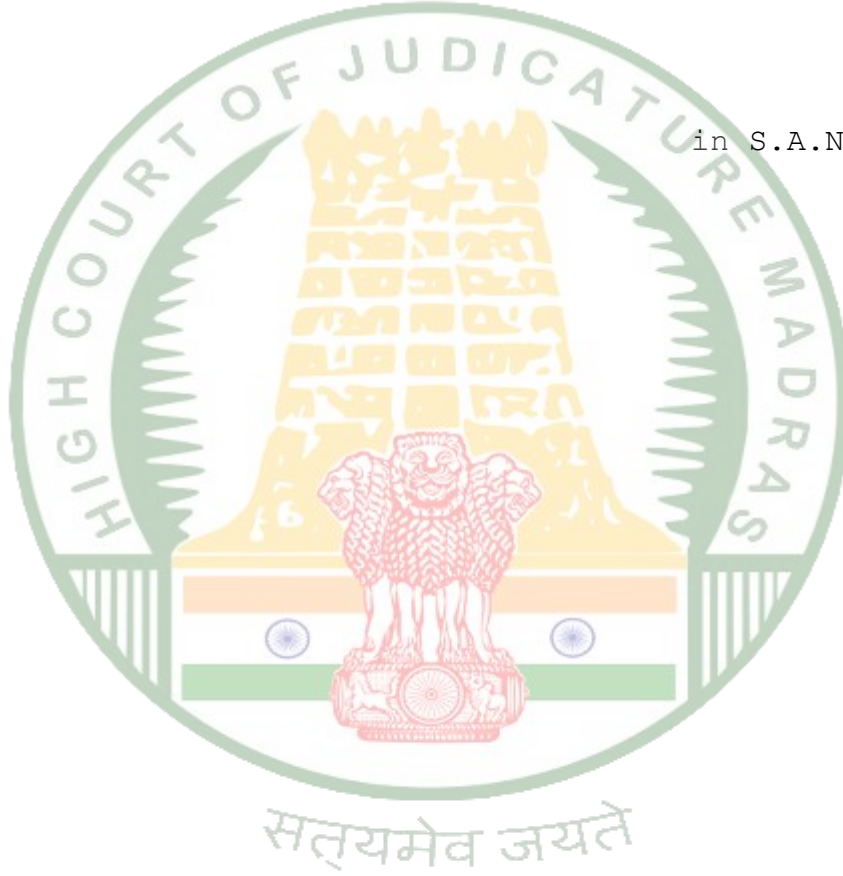
3.The Section Officer,
V.R.section, High Court, Madras.

+1 cc to Mr.P.Jayaprakasam, Advocate,SR.15081

+1 cc to Mr.M.Ravi, Advocate,SR.15030.

Tej (co)
krd 11/6

Judgment
in S.A.No.1260 of 2006



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