



S.A.No.1735 of 2000

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.12.2021

PRONOUNCED ON : 07.06.2022

CORAM

THE HONOURABLE Mrs.JUSTICE J.NISHA BANU

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- 1.Munian
- 2.V.Venkataraj (died)
- 3.V.Lakshmi
- 4.V.Lavanya
- 5.V.Priyanka

..

Defendants/
cross appellants/Appellants

(Appellants 3 to 5 were impleaded vide order
of this Court dated 10.07.2017 in CMP Nos.
7117 & 7118/2017)

v.

- 1.Bhavani
- 2.Jayalakshmi
- 3.Arulanandarajan
- 4.Anand
- 5.Durairajan
- 6.Dhanalakshmi

..

Plaintiffs/Appellants/Respondents

(Respondents 2 to 6 were declared as major and
respondent No.1, who is the guardian is discharged
vide Court order dated 07.08.2019 made in CMP
Nos.10733, 10736, 10739, 10861, 10863 and 10865/2019)



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Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 08.08.2000 passed in A.S.No.33 of 2000 on the file of the Principal District Judge, Nagapattinam, reversing the Judgment and Decree dated 13.07.1999 passed in O.S.No.32 of 1996 on the file of the Principal Subordinate Judge, Nagapattinam.

For Appellants : Mr.M.Balasubramanian

For Respondents : Mr.S.K.Mariappan
(No appearance)

JUDGMENT

Challenge in this second appeal is to the Judgment and Decree dated 08.08.2000 passed in A.S.No.33 of 2000 on the file of the Principal District Judge, Nagapattinam, reversing the Judgment and Decree dated 13.07.1999 passed in O.S.No.32 of 1996 on the file of the Principal Subordinate Judge, Nagapattinam.

2.For the sake of convenience, the parties are referred to as per the trial Court. The defendants are the appellants herein.

3. The suit has been filed for declaration and injunction. (i) to declare the title of the schedule of properties in the name of Late N.Jayarajan @ Shanmugam belonging to his estate and now vested on the plaintiffs.(ii) pass a



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decree by way of consequential injunction restraining the 2nd defendant, their agents, servants or assigns from interfering in anyway or in any manner with the peaceful enjoyment and possession of the plaintiffs or otherwise disturbing their enjoyment or right to possession or do any acts affecting or otherwise tampering with plaintiffs' title in any manner whatever.

4.The case of the plaintiffs, in brief, is as follows:-

(a) One Jeyarajan @ Shanmugam (deceased), who is the husband of the 1st plaintiff and father of the plaintiffs 2 to 6, acquired properties in and around his house. He becomes affluent in course of time out to his Ceylon contacts and by his other activities. He began acquiring properties for his own benefit and with his funds, the properties mentioned in the schedule were so acquired title vested on him. Since most of them surrounded his residence, one after the other, he acquired the schedule mentioned properties and was in exclusive possession and he had paid kist ever since the date of their purchases, enjoyed as the owner.

(b) The first defendant-Muniyan was the employee under the deceased Shanmugam for long years from his childhood. He served faithfully and was Jayarajan's close confident employee. 1st defendant is an illiterate person and



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he showed loyalty to his master Shanmugam. On account of the same, the deceased Shanmugam constructed a house opposite to his residence, where the 1st defendant was made to stay. Jayarajan @ Shanmugam purchased those properties and registered the sale deeds in the name of the 1st defendant, nominally but for his own benefit with his own funds and the properties were exclusively belonging to him. All the funds were paid by Shanmugam to his vendors. The title was vested on Jayarajan @ Shanmugam and remained in physical enjoyment making improvements, digging wells, planting trees and in exclusive possession till his death and thereafter with the plaintiffs who are his legal heirs.

(c) It is stated that since Jayarajan @ Shanmugam brought those properties out of funds from his trade of Ceylon merchandise, he anticipated trouble and retained the title with him. The original sale deeds were with him and are filed herewith. Kist also paid by him and that is also filed by the plaintiffs. In 1992, for the sake of appearance, patta had been changed in the name of the 1st defendant. The plaintiffs state that the 1st defendant was not even aware of the identity and location of the properties.

(d) In the properties, for better enjoyment, several types of trees were



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planted, four wells were dug up for irrigation.

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(e) The plaintiffs case is that Jayarajan @ Shanmugam died under mysterious circumstances while in police custody on 20.07.1991 at Vedaraniyam. After his death, the plaintiffs have succeed to his estate and incidentally to the suit properties as well. The plaintiffs remain in absolute possession and enjoyment. The first defendant voluntarily and willingly executed a Muchalika on 14.10.1991 admitting the title of his employer and his non possession. So the title holder of the suit mentioned properties were only Jayarajan @ Shanmugam and 1st defendant had no claim whatsoever on all aspects.

(f) It is also the case of the plaintiffs that the 1st defendant committed theft in the first week of December 95 in the house of plaintiffs. Even though 1st plaintiff was not inclined to file any police complaint against the 1st defendant, the family accountant appeared to have lodged a complaint and articles were recovered and thereafter, 1st defendant did not come for employment.

(g) The 2nd defendant is a resident of another village and who was aware



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of the suit items standing in the name of the 1st defendant, colluding together with a view to make unlawful gain suspected to have entered into a transaction which may affect the title of the property. Since there is likelihood of a cloud being cast on the title, the plaintiffs were constrained to file a suit for declaration and to preserve their possession, sought consequential injunction. Since steps were taken by the 2nd defendant to change patta, the 1st plaintiff was directed to attend an enquiry on 19.02.1996 and only thereafter, plaintiffs taken emergent steps to preserve their title and maintain their possession and hence, filed the suit.

(h) It is the case of the plaintiffs that late N.Jayarajan @ Shanmugam who acquired title to the suit schedule properties, on his death, it had devolved on the plaintiffs. The 1st defendant had no title whatever to the lands at any point of time. The 2nd defendant was well aware that Late Jayarajan @ Shamugam being the owner remaining in absolute possession and his attempt now to tamper with the title is ill advised and with malafide besides unsustainable if not speculative.

(i) The 1st defendant has no conveyable interest or title and he was



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legally estopped by his disclaimer of interest. The fact remains that the transaction in favour of the 1st defendant were sham and nominal. The sales were effected by owners to Jayarajan @ Shanmugam directly for the latter's benefit with title vested on him with funds provided by him lone with possession and enjoyment asserting title by him. By conduct, the 1st defendant had held that the plaintiffs as owners and hence barred to claim any interest.

5. In the written statement filed by the 1st defendant, it is stated that the 1st defendant was in absolute possession of the suit schedule properties, patta stands in his name and he paid kist for the properties. The plaintiffs are not in possession and they have no title for the property. The 1st defendant by registered sale deed, sold the entire suit properties to the 2nd defendant. The 1st defendant admitted that he served as an employee under Jayarajan @ Shanmugam. But he purchased the suit properties and constructed house out of his salary. The entire sale amount has been paid by the 1st defendant. The averments in the plaint that the sale transaction is sham and nominal is not correct. The 1st defendant denied the averment of Plaintiffs that he written Muchalika giving up his possession in the suit properties. The said Muchalika is a forged document. The averments regarding theft committed by him during



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December 1997 and complaint given in the Police are utter false.

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6. In the written statement filed by the 2nd defendant, it is stated that the claim of the plaintiffs is mutually contradictory as it is said on the one hand that the sales are sham and nominal and on the other hand, the title is vested with Shanmugam. There is no cause of action for the suit. The alleged Muchalika stated to have been executed by the 1st defendant is nothing, but a forged document concocted for the purpose of the case. The various allegations were made against the 1st and 2nd defendants are with a view to make unlawful gain. The 2nd defendant is stated to be a bonafide purchaser for value. The 1st defendant was in possession and enjoyment of the suit properties with patta in his name. When the arrangements for the sale of the suit properties were made, on satisfied with the title and possession of the suit properties, 1st defendant said that the original documents were with the husband of the 1st plaintiff for safe custody. The 2nd defendant entered into an agreement for the sale of item No.1 of suit schedule property on 15.12.1995 and in pursuance of the same, he got the registered sale deed on 23.09.1996 paying the entire consideration to the 1st defendant. Subsequently, purchased items 2 to 7 of the suit properties under a registered sale deed dated 15.12.1995 from the 1st defendant for full



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consideration. In pursuance of the sales, the 2nd defendant is in actual and physical possession of all the suit properties. The first defendant sold his own properties alone to the second defendant, which is valid. For all these reasons, the suit is sought to be dismissed.

7. Based on the above pleadings, the trial court framed appropriate issues. In order to prove the case, on the side of the plaintiffs, PW.1 to P.W.10 were examined and Exs.A1 to A13 were marked. On the side of the defendants, the first defendant himself has been examined as D.W.1 and Exs.B1 to B7 were marked.

8. (a) On consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court dismissed the suit answering in favour of the defendants to the effect that the plaintiffs have no right over the properties belonging to the first defendant. The trial court found that since the plaintiffs plead that Jayarajan @ Shanmugam purchased the property and paid the sale consideration amount but per contra, it is the contention of the 2nd defendant that he purchased the property from the 1st defendant on whose name the property stands, it is the bounden duty of the



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plaintiffs to prove that the properties are purchased in the name of Jayarajan @ Shanmugam. However, Exhibits A.1 to A.5 stands in the name of the 1st defendant. Those documents were in the custody of the plaintiffs and on their side, these exhibits have been marked. The 1st defendant also admitted that he is the employee under Jayarajan @ Shanmugam. Though the plaintiffs contend that the 1st defendant given the release deed and the same was marked as Ex.A.6, the said document is an unregistered document. The fact is that P.Ws.9 and 10 given evidence that it was 1st defendant who had signed the release deed. The trial court thus given a finding that as per the evidence of P.Ws.9 and 10, Ex.P.6 is written and signed by 1st defendant. The plaintiffs have not given any reasons to substantiate their contention that Exhibits A.1 to A.6 are purchased by Jayarajan @ Shanmugam but those properties were acquired in the name of 1st defendant. The trial court further observed that just because the documents are in the custody of plaintiffs, it cannot be held that the properties are acquired by Jayarajan @ Shanmugam. The documents Exs.A.1 to A.5 would clearly go to show that the properties are acquired in the name of 1st defendant.

8. (b) The trial court accepted the contentions of the defendants that as per the Prohibition of Benami Transactions Act, the properties which are



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standing in the name of 1st defendant cannot be said to be the properties actually purchased by Jayarajan @ Shanmugam and therefore, the plaintiffs are entitled to the said properties. Further, it is not the case of the plaintiffs that the properties were purchased by Jayarajan @ Shanmugam in the name of 1st defendant as Benami. The trial court concluded that the property transaction is hit by Prohibition of Benami Transaction Act. By registered sale deeds, the 2nd defendant purchased the suit properties from the 1st defendant and therefore, 2nd defendant is the bonafide purchaser of the suit property. Further the trial court pointed out that upto the date of filing of the suit, kist receipts have not been produced by the plaintiffs, except for Exhibits A.10 to A.12 which are related to earlier period. The trial court further given a finding that based on evidence of P.W.s 2 to 5, it was clearly seen that plaintiffs are in possession of the suit property. Even though Exhibits D.5 to D.7 have been produced by the defendants, the trial court did not accept the contention of possession by the defendants.

9. The trial court, based on the pleadings, evidence taken the view that defendants are the rightful owners of the suit properties and the plaintiffs have no right whatsoever to the title of the property. The trial court, thus dismissed the prayer for declaration and injunction sought for by the plaintiffs against the



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defendants.

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10. Aggrieved by the above said findings of the trial court, the plaintiffs have preferred the first appeal. The first appellate Court, on a consideration of the materials placed and the submissions made, was pleased to answer in favour of the plaintiffs thereby setting aside the judgment and decree of the trial Court to the effect that without valid documents and without identifying the properties, the first defendant sold the properties to the second defendant and the first defendant has means to buy the properties and constructed the compound wall worth about Rs.1 lakh have not been proved through valid evidence and accordingly allowed the appeal in favour of the plaintiffs.

11. Challenging the reversal of the trial court judgment, the present second appeal has been preferred by the defendants.

12. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

“(1).Has not the first appellate Court committed an error of law in misconstruing and misapplying the salient provisions of Sections 3



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and 4 of the Benami Transactions Act adverse to the interest of the lawful owners of the suit properties, namely, the defendants 1 and 2 ? and

(2).Has not the first appellate Court committed an error of law in simply accepting the version of the plaintiffs and granting a decree for both declaration and injunction in disregard of the overwhelming documentary and oral evidence including the vital admissions of P.W.1 into the box?”

13. The grounds raised by the learned counsel for the appellants/plaintiffs have been reiterated in his arguments and it is as follows:-

(a) The judgment and decree of the First Appellate court in reversing the well considered and well merited judgment of the trial are contrary to law and case. There is a prohibition under Sections 3 and 4 of the Benami Transaction Act to institute the above suit. ExA.1 to Ex.A.5 sale deeds in the name of the 1st defendant coupled with transfer of patta in his favour and payment of kist for the suit property would clearly show that suit is maintainable, but the First Appellate court failed to look into these documents and held that the suit is not maintainable in law. The first appellate court failed to consider the aspect that the prayer for declaration that Ex.A.1 to Ex.A.5 as sham and nominal will not



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lie as long as the plaintiffs are not the vendors and the plaintiffs are not competent to plead as if the said sale deeds as sham and nominal or acted upon.

(b) The case of the plaintiffs is that the plaintiffs father Shanmugam purchased the suit properties in the name of the 1st defendant. If the case is true, the plaintiffs should have filed a suit for declaration declaring that the first defendant is holding the suit properties in benami to the said deceased Shanmugam. Consequently, the First Appellate Court should have held that only to avoid Benami Transactions Act, the plaintiffs filed the present suit for declaration that the sale deeds executed by some third parties in favour of the 1st defendant. The First Appellate Court erred in reversing the well merited judgment of the trial court and decreeing the suit as prayed for.

(c) The important admission of the 1st plaintiff as P.W.1 before the trial court is that she admitted that Exhibits A.1 to A.5 documents are in the name of 1st defendant; all the documents show that the 1st defendant paid money for the transaction; those documents also reflect that the properties are in possession of the 1st defendant; in those documents, her husband's signature is



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not found; it is not written in those documents that the plaintiff's husband paid amounts for buying those properties. She also admitted that her husband carried on illegal profession; her husband was arrested and remanded in police custody in connection with Rajiv Gandhi assassination and died while in police custody. The documents in Ex.A.1 to A.5 are not benami transaction in the name of 1st defendant.

(d) The First Appellate court simply accepted the version of the plaintiff that the deceased Shanmugam received goods from Sri Lanka and out of the sale thereof he acquired lot of money and he purchased the suit properties in the name of the 1st defendant. Whereas P.W.1 categorically admitted that her deceased husband purchased landed town and house sites in her name and also in the name of her children. While so the First Appellate Court should have seen that no tenable reason was assigned by the plaintiffs as to why the deceased allegedly purchased the suit properties in the name of the 1st defendant/1st appellant herein.

(e) The first appellate court being the final court sitting on facts, failed to consider the important admission by P.W.1 to the effect that her husband



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purchased lot of properties in her name and also in the name of her children, but her husband was not maintaining any bank account. She further deposed to the effect that her husband has not executed any Will. She further deposed that there was no problem in purchasing properties in the name of her husband and further she also admitted her husband was doing illegal business and also died in the Police custody while he was arrested in connection with Rajiv Gandhi Assassination case.

(f) The first appellate court failed to advert to the important fact that the suit properties are situated very near to the plaintiff's house and the 1st defendant/1st appellant herein who served under the deceased, handed over the original documents to the 1st plaintiff's husband and taking advantage of the custody of the documents, they have filed the present suit after six years of the death of Shanmugam.

(g) The Court below erred in accepting the execution of Ex.A.6 by the 1st defendant in favour of the plaintiffs, however, though the trial court rightly rejected the document holding that the document is inadmissible for want of sufficient stamp. But the First Appellate court, besides accepting the findings



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of the trial court on the aspect of execution, erred in going further to the extent of relying on the said Ex.A.6 while reversing the judgment of the trial court, which is clearly contrary to the evidence of 1st plaintiff as P.W.1. In this context, the First Appellate Court grossly erred in failing to note the very importance of P.W.1 in categorical terms that Ex.A.6 was prepared by their Accountant in their house and the persons who signed as witnesses therein used to stay only in the house of the plaintiffs. The sole admission alone will suffice to turn down the entire case of the plaintiffs to non-suit them.

(h) The first appellate court also lost sight of the further admission of the 1st plaintiff that she had directed her accountant to purchase stamp paper from Vedaranyam to prepare Ex.A.6 and if the said admission is weighed in proper perspective, the entire story of the plaintiffs as to the execution of Ex.A.6 should have been thrown overboard.

(i) The courts below erred in disbelieving the version of the 1st defendant stating that he had not executed any such document as Ex.A.6 without looking into the other circumstantial evidence-available on record.

The First Appellate Court ought to have appreciated and upheld the correct



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finding of the trial court that Ex.A.1 to A.5 are not sham and nominal, and the suit was laid only with a view to overcome the embargo under the Benami Transactions Act.

(j) The First Appellate court also erred in not appreciating that the trial court refused to grant an injunction decree since injunction cannot be granted against lawful owners, namely defendants in these proceedings.

(k) The First Appellate Court failed to consider that patta and kist receipts stand in the name of the 1st defendant and thereafter he sold the suit property to the 2nd defendant/2nd appellant herein and who in turn obtained patta in his name, and that mere custody of original documents will not give any right to the plaintiffs over the suit properties.

(l) The First Appellate Court failed to advert to the important fact that the vendors who executed the sale deeds had not chosen to file any suit claiming that Ex.A.1 to 5 are sham and nominal and third parties like the plaintiffs have no locus standi to maintain such a suit.



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(m) The trial court rightly gave a finding in the issue relating to prohibition under the Benami Transaction whereas, the First appellate court, without considering the legal aspect, simply accepted and supported the case of the plaintiffs while allowing the appeal and decreeing the suit as prayed for.

(n) The First appellate court failed to consider that the 1st defendant herein sold the suit properties in favour of the 2nd appellant herein under Ex.B.2 and Ex.B.3 who also obtained patta in his name and is paying kist to the Government and hence ought to have held that without praying for proper relief the suit as framed is not sustainable in law.

(o) The reasons assigned by the First Appellate Court while reversing the well considered and well merited judgment of the trial court, are erroneous and unsustainable in law and liable to be set aside.

14. The learned counsel for the appellants would submit that as per the provisions of Prohibition of Prohibition of Benami Property Transactions Act, 1988. The first appellate court totally erred in stating that the deceased N.Jayarajan @ Shanmugam purchased the properties in the name of servant



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namely 1st defendant in a “Fiduciary Capacity” by ignoring the prohibition enshrined under the Benami Transactions Act, 1988. The lower appellate court totally erred in stating that Ex.A.6 an unregistered fabricated document as release deed. Ex.A.6 is not a registered instrument. The oral evidence of P.W.1 with regard to Ex.A.6 would clearly establish that Ex.A.6 is not a genuine and valid document. The first appellate court totally erred in describing the unregistered and fabricated document as a “Release deed” without perusing the evidence of P.W.1 and dismissed the cross appeal also.

15. The learned counsel for the appellants in support of his submissions relied on the following decisions:-

(1) Mithilesh Kumari & another Vs. Prem Behari Khare [1989 (2) SCC 95.

(2) Valsa Jose Vs. V.B.Chandran and others [2019 (5) CTC 625.

The learned counsel submits that as per Section 4 of the Benami Transactions (Prohibition) Act, 1988, there is a prohibition of right to recover property held benami and the same is applicable to suit, claim or action pending on the date of commencement of the Act. It is further contended that there is a bar against ostensible owner and the fiduciary relationship. The plea of Benami cannot be taken in suit of defense after 19.05.1988. In the absence of plea of Fiduciary



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relationship, suit with plea that property is held benami is barred under Section 4 of the Act. The learned counsel would strenuously contend that the suit has been filed on 20.06.1996 and hence, the same is hit by Benami Transaction Act.

16. Heard the learned counsel for the appellants. There is no appearance for the respondents/plaintiffs. I have carefully perused the judgment of the courts below and the entire typed set of papers.

17. Before the trial court, it is not the case of the plaintiffs that the properties were purchased by Jayarajan @ Shanmugam in the name of 1st defendant as Benami. The 1st plaintiff as P.W.1, in her evidence before the trial court, admitted that Exhibits A.1 to A.5 documents are in the name of 1st defendant. All the documents show that the 1st defendant paid money for the transaction. Those documents also reflect that the properties are in possession of the 1st defendant. In those documents, her husband's signature is not found. It is not written in those documents that the plaintiff's husband paid amounts for buying those properties. On the other hand, the documents in Ex.A.1 to A.5 are not benami transaction in the name of 1st defendant. **After going through**



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evidence and facts, the trial court concluded that the property transaction is hit by Prohibition of Benami Transaction Act. By registered sale deeds, the 2nd defendant purchased the suit properties from the 1st defendant and therefore, 2nd defendant is the bonafide purchaser of the suit property.

18. However, in the appeal by the plaintiffs, the First Appellate court simply accepted the version of the plaintiff that the deceased Shanmugam received goods from Sri Lanka and out of the sale thereof he acquired lot of money and he purchased the suit properties in the name of the 1st defendant. Whereas P.W.1 categorically admitted that her deceased husband purchased land and house sites in her name and also in the name of her children. While so the First Appellate Court should have seen that no tenable reason was assigned by the plaintiffs as to why the deceased allegedly purchased the suit properties in the name of the 1st defendant/1st appellant herein.

19. Sections 4 and 6 of the Prohibition of Benami Property Transactions Act, 1988 reads as under:-

“4. Prohibition of the right to recover property held benami.—



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(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.

6. Prohibition on re-transfer of property by benamidar.—

(1) No person, being a benamidar shall re-transfer the benami property held by him to the beneficial owner or any other person acting on his behalf.

(2) Where any property is re-transferred in contravention of the provisions of sub-section (1), the transaction of such property shall be deemed to be null and void. (3) The provisions of sub-sections (1) and (2) shall not apply to a transfer made in accordance with the provisions of section 190 of the Finance Act, 2016 (28 of 2016).] “

20. As rightly contended by the learned counsel for the appellants/defendants, as per Section 4 of the Benami Transactions (Prohibition) Act, 1988, there is a prohibition of right to recover property held benami and the same is applicable to suit, claim or action pending on



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the date of commencement of the Act. There is a bar against ostensible owner and the fiduciary relationship. In such view of the matter, the trial court rightly rejected the document Ex.A.6, holding that the document is inadmissible for want of sufficient stamp. But the First Appellate court, besides accepting the findings of the trial court on the aspect of execution, erred in going further to the extent of relying on the said Ex.A.6 while reversing the judgment of the trial court, which is clearly contrary to the evidence of 1st plaintiff as P.W.1. The sole admission alone will suffice to turn down the entire case of the plaintiffs to non-suit them.

21. Under the circumstances, the substantial questions of law are answered in favour of the appellants holding that **there is a prohibition of right to recover property held benami. The Second Appeal is allowed, reversing the judgment of the First Appellate Court and upholding the judgment of the trial court. No costs.**

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Index : Yes / No
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To

- 1.The Principal District Judge, Nagapattinam
- 2.The Principal Subordinate Judge, Nagapattinam
- 3.The Section Officer, V.R.Section, High Court, Madras.



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J.NISHA BANU, J.

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Judgment made

in S.A.No.1735 of 2000

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