rIN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO. 2959 OF 2024.

M/s. Anil Electrical
through Proprietor
Shri Anil Ramchandra Ghadge
Age 49 years, Occ. Business and Agriculture,
R/o. Ghorpadwadi, Taluka Rahuri,
District Ahmednagar. .. Appellant.

Versus

1. Subhash Ramchandra Ghadge
Age 60 yeaars, Occ. Business & Agri.
R/o. Ghorpadwadi, Tq. Rahuri,
District Ahmednagar.

2. Mandakini Subhash Ghadge,
Age 51 years, Occ. Agri.
R/o. Ghorpadwadi, Tq. Rahuri,
Dist. Ahmednagar.

.. Respondents.

Mrs. C.S. Deshmukh, Advocate for appellant.
Mr. A.K. Gawali, Advocate for respondent Nos. 1 and 2.

CORAM :S.G. CHAPALGAONKAR, J.
RESERVED ON : 28.02.2025.
PRONOUNCED ON : 08.05.2025.

JUDGMENT :-

1. Heard Mrs. Charuta Deshmukh learned advocate for appellant and Mr. A.K. Gawali, learned advocate for respondent nos. 1 and 2.

2. Present appeal takes exception to the order dated 21.9.2024 passed by Civil Judge (S.D.), Amhednagar below Exh.17 in Special Civil Suit No. 99 of 2024, by which the plaint has been rejected in exercise of

powers under Order 7 Rule 11 (d) of CPC. For sake of convenience, parties are referred as per their original status.

3. The appellant/plaintiff instituted suit seeking declaration that suit property has been purchased and developed by him. As such, he is lawful owner of the property. Similarly, sought relief of perpetual against defendants, in the alternative, plaintiff prayed for a decree for recovery of amount of Rs. 1,14,40610/- against defendants towards expenditure incurred for development of suit property.

4. It is contention of plaintiffs that under sale deed, which are executed in name of defendants suit property has been purchased. Consideration amount is paid by him. It is further contended that he is in possession the suit property and made huge expenditure for its development. The defendants are now obstructing his possession and likely to deal with the property on the basis of mutation entries in their name.

5. The defendants caused their appearance in the suit and filed application under Order 7 Rule 11 of C.P.C. seeking rejection of plaint on the ground that suit is barred in view of Section 4(1) of the Benami Transactions (Prohibition) Act, 1988. The trial court accepted the plea of defendants and rejected the plaint.

6. Smt. C.S. Deshmukh, Learned advocate for the appellant submits that plaintiff and defendant No.1 are real brothers. In view of fiduciary relationship between them, plaintiffs purchased property in the name of defendant No.1. Such a transaction would not be hit by Section 4 of Benami Transactions Prohibition Act, 1988. In view of sub clause

(b) of clause (iii) of Section 4, such transaction is protected. She would further urge that plaintiff has made alternative prayer for recovery of amount towards the expenditure incurred on the suit land. Therefore, merely relying upon bar under Section 4 of the Benami Act, plaint could not have been rejected. In support of her contention, she relies upon the observations of the Supreme Court in the matter of Pawan Kumar Vs. Babulal reported in AIR online 2019 SC 461. She would further submit that partial rejection of plaint would not be permissible if one relief can not be granted under law and alternative relief can be considered, then, rejection of plaint would not be proper. She would further rely upon judgment of this Court in case of ***Sopan Sukhdeo Sabale vs, Assistant Commissioner AIR 2004 SC 1801.***

7. Per contra, Mr. Gawali, learned advocate for respondents submits that Section 4 of the Benami Transactions (Prohibition) Act prescribes no suit or claim or action to enforce rights in respect of properties held Benami against the person, in whose name property is held or any other person shall lie by or on behalf of a person claiming to be the real owner of such property. The prayer of declaration of ownership made by plaintiff is on the basis of Benami transaction and, therefore, the suit is barred under Section 4 of the Act. Hence, plaint is rightly rejected.

8. Having considered submissions advanced, it can be observed that the plaintiff and defendant No.1 are real brothers. Plaintiff asserts that he purchased the suit property in the name of defendant and elaborates the details of finances made by him. He further states that he spent huge amount towards development of the land and raised

infrastructure for irrigation and cultivation of land. Section 4 of the Benami Transactions Act, 1988 reads thus :-

> *"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.*

9. A bare reading of aforesaid provision stipulates that there are two exceptions as indicated in sub-clause (iii) (b) of Section 4. Sub-clause (b) protects when property is held by a person as a trustee or other person standing in fiduciary capacity. The term "Fiduciary capacity" has been widely interpreted by Corpus Juris Secondum, as under :-

> "32. The term "fiduciary" has been explained by Corpus Juris Secundum as under: "A general definition of the word which is sufficiently comprehensive to embrace all cases cannot well be given. The term is derived from the civil or Roman law. It connotes the idea of trust or confidence, contemplates good faith, rather than legal obligation, as the basis of the transaction, refers to the integrity, the fidelity, of the party

> trusted, rather than his credit or ability, and has been held to apply to all persons who occupy a position of peculiar confidence toward others, and to include those informal relations which exist whenever one party trusts and relies on another, as well as technical fiduciary relations. The word 'fiduciary', as a noun, means one who holds a thing in trust for another, a trustee, a person holding the character of a trustee, or a character analogous to that of a trustee with respect to the trust and confidence involved in it and the scrupulous good faith and condor which it requires; a person having the duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. Also more specifically, in a statute, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person, trust or estate."

10. Generally the term fiduciary applies to any person who occupies the position of peculiar confidence towards another. Taking note of aforesaid defence, the Supreme Court in case of ***Rajgopal Reddi Vs. Padmni Chandrashekharan (1999)2 SCC 630,*** observed as under :-

> "Where the matter comes within the purview of Section 4(3) of the Act, an aspect which must be gone into on the strength of evidence on record. Going by the averments in plaint, the question whether the plea raised by the appellant is barred under Section 4 of the Act or not could not have been the subject matter of assessment at the stage when application under Order 7 Rule 11 CPC was taken up for consideration. The matter required fuller and final consideration after the evidence was led by the parties. It cannot be said that plea of the appellant as raised on the face of it, was barred under the Act."

The Supreme Court of India, relying upon the observations recorded in the case of ***R. Rajgopal Reddi vs. Pandmini***

Chandrashekharan, set aside the order of rejection of plaint in case of ***Pawan Kumar (supra)***.

11. Apart from aforesaid aspect of the matter, in the present case, the plaintiff has claimed alternative relief of recovery of amount, being amount of investment made by him in the suit property. In the light of such alternative relief, even assuming that the plaintiff is not entitled to raise claim as to declaration of ownership, owing to bar of Section 4 of the Benami Transactions act, the trial is required to render decision of alternative prayer. Therefore, the threshold rejection of plaint in exercise of power under Order 7 Rule 11 of CPC cannot be countenanced. The trial court nowhere deals with the alternative prayer incorporated in the plaint while entertaining application under Order 7 Rule 11 of CPC and merely referring to bar under section 4 of the Benami Transactions Act, 1988 rejected the plaint.

12. in the result, the appeal deserves to be allowed. Hence, following order :-

O R D E R

[a] The impugned order dated 21.9.2924 is quashed and set aside;

[b] Special Civil Suit No. 99 of 2024 is restored to its original position before the Civil Judge (S.D.), Ahmednagar.

[c] Parties to appear before the said court on 16th June, 2025.

[d] Appeal stands disposed of accordingly.

[S.G. CHAPALGAONKAR, J]

grt/-