



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 13.11.2025

Order pronounced on : 21.11.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

A.S.No.427 of 2024& CMP.No.12948 of 2024

Thanjai P.N.Chezian

... Appellant

Vs.

1.T.Srinivasan
2.V.Vijayakumar
3.S.Madhavan
4.R.Sukumar
5.Shanthi @ Shanthi Chezian

G.Jagadeesan (Deceased)

6.Roja Marudham
7.J.Akila
8.J.Ravishankar

... Respondents

Prayer: Appeal Suit filed under Section 96 r/w Order XLI of CPC, 1908, to set aside the order and decretal order dated 26.03.2024 in I.A.No.3 of 2019 in O.S.No.6549 of 2019 passed by the V Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.G.Vasudevan



For Respondents : Mr.R.Vijayaraghavan for RR1 to 4
No appearance for RR5 to 8

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JUDGMENT

The plaintiff is the appellant, aggrieved by the order of the trial Court, rejecting the plaint, allowing the application filed by the defendants on the ground that the suit is barred by the provisions of the Benami Transactions (Prohibition) Act, 1988 (herein after called as Act).

2.I have heard Mr.G.Vasudevan, learned counsel for the appellant and Mr.R.Vijayaraghavan, learned counsel for the respondent 1 to 4. There is no appearance on the side of the respondents 5 to 8.

3.Mr.G.Vasudevan, learned counsel for the appellant would contend that the plaintiff and the 1st defendant are husband and wife and during the happier times, the plaintiff had purchased the suit property in favour of his wife and father-in-law. It is the case of the plaintiff that the entire sale consideration was met only by the plaintiff and there was no intention to benefit his wife and further, the plaintiff is entitled to establish that it was a benami purchase. The suit has been filed on the strength of these averments



to declare that the plaintiff is the sole and absolute owner of the suit properties and for various other reliefs. Pending the suit, the property had been sold and the purchasers, defendants 2, 4 to 6 have taken out I.A.No.3 of 2019, seeking rejection of the plaint on the ground that the suit is barred by the provisions of the Act.

4.The learned counsel for the appellant would further submit that though the Act underwent an amendment by Act 43 of 2016, the amended provisions came into force only on 01.11.2016 and therefore, he would contend that to decide the suit, relevant provisions that would apply are only the unamended provisions of the Act. He would further state that the allegations in the plaint have to be tested only at trial and when there is an exemption for purchase of the property by the husband in the name of his wife, then it is not a case for a summary rejection of the plaint. He would also rely on the decision of the Hon'ble Supreme Court in *Pawan Kumar Vs. Babulal, since deceased through LR's and others*, reported in (2019) 4 SCC 367, where the Hon'ble Supreme Court in a similar circumstance, where the plaint was sought to be rejected on the ground that it was barred by the provisions of the Benami Transactions (Prohibition) Act, 1988, held that



when the plaintiff makes out a controversy, then suit is saved by Section 4(3) of the Act and disputed questions of fact would have to be adjudicated only on the basis of evidence and plaintiff was not liable to be rejected under Order VII Rule 11 of CPC. He would therefore pray for the appeal being allowed.

5.Per contra, Mr.R.Vijayaraghavan, learned counsel for the respondents 1 to 4, who are purchasers of the suit property from the father-in-law of the plaintiff, would contend that the respondents 1 to 4 are bonafide purchasers for value. The property was admittedly standing in the name of the wife of the appellant and she had settled the property in favour of her father, who in turn had sold the property in favour of these respondents, who have purchased the property for value and therefore, the respondents rightly moved an application for rejection of the plaint, as they should not be compelled to undergo the agony of trial, when the provisions of the Act clearly prohibit the plaintiff from claiming that the property was purchased benami, in the name of his wife.

6.Referring to the plaint averments, the learned counsel for the respondents 1 to 4 would submit that it is a clear case where the plaintiff



admits that it was a benami transaction and therefore, the provisions of the Act would clearly be applicable to the facts of the case and the relief sought for in the suit cannot be available to the plaintiff. He would also rely on the decision of the Hon'ble Supreme Court in *Mithilesh Kumari and another Vs. Prem Behari Khare* in *Civil Appeal No.2311 of 1978* dated 14.02.1989, where the Hon'ble Supreme Court held that the Act nullifies all defence available to the real owner, in requiring the benami property from the benamidar and the law must apply irrespective of the time of the benami transaction. He would therefore pray for dismissal of the appeal.

7.I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the order impugned in the appeal.

8.The only point that arises for consideration is whether the trial Court was right in rejecting the plaint on the ground that it was barred by the provisions of the Act.



9. It is not in dispute that the plaintiff and the 1st defendant are husband and wife and that the suit property is standing in the name of the wife. The husband has approached the Court, claiming that the purchase in the name of his wife, was by way of only benami and that he is the real owner of the property. He challenges subsequent alienations that have been made by the wife in favour of her father and the encumbrances created by his father-in-law in favour of the respondents 1 to 4 herein.

10. In order to appreciate the real question in controversy in this appeal, it would be appropriate for me to extract Section 3 and Section 4 of the Act which read as follows:

“Section 3 of the Act prohibits transaction by providing:

(1) No person shall enter into any benami transaction.

(2) Nothing in sub-section (1) shall apply to 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 of the unmarried daughter.

(3) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.



(4) Notwithstanding contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under this section shall be noncognizable and bailable.

Section 4 prohibits the right to recover property held benami by providing:

(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.”

11.No doubt, from a reading of Section 4, it is clear that no suit can be filed or instituted, to enforce any right in respect of a property held benami, against the person in whose name, the property is held. It is relying on this provision that the application for rejection of the plaint has been filed.

12.However, Section 3 of the Act, as can be seen from the above extract, carves out an exemption under subsection 2 which states that a purchase of property by any person in the name of his wife or unmarried



daughter shall be presumed to be for the benefit of the wife or the unmarried daughter as the case may be, “*unless the contrary is proved*”. In the decision relied on by Mr.R.Vijayaraghavan, that was a case where the Hon'ble Supreme Court found that Section 3(2) would not apply in the facts of those case and the question was whether the coming into force of the provisions of the Act, pending an appeal, could be enforced against the plaintiff. In such circumstances, the Hon'ble Supreme Court held that appeal was only a re-hearing and therefore, the Appellate Court was entitled to take into account, facts and events that have come into existence, after the passing of the decree appealed against and under such circumstances, the Hon'ble Supreme Court declined to grant relief to the plaintiff who came to Court with a case that the transaction was a benami transaction and he was the real owner.

13.In *Pawan Kumar's case*, the Hon'ble Supreme Court held that when the plaint averments were brought under Section 4(3) of the Act, then without parties leading evidence, the plaint cannot be rejected, invoking Order VII Rule 11(d) of CPC.



14. In fact, though the Hon'ble Supreme Court in *Mithilesh Kumari's* case, held that the Act would apply prospectively, the Hon'ble Supreme Court subsequently in *R. Rajagopal Reddy Vs. Padmini Chandrasekharan*, reported in (1994) 2 SCC 630, held that the provisions of the Act would apply only prospectively and even cases pending on the date of commencement of the Act would remain unaffected by the coming into force of the Act.

15. The view taken in *Mithilesh Kumari's case* is no longer good law. In the present case, even from a reading of Section 3(2), which would apply to the facts of the present case, since the plaintiff and the 1st defendant are husband and wife and the property is claimed to have been purchased by the husband in the name of his wife, the employment of the words “***unless the contrary is proved***”, would alone be sufficient to come to a conclusion that without evidence being let in, the claim of the husband cannot be decided.

16. The plaintiff has pleaded that he has purchased the property out of his own money and his wife is only a benamidar and that the property was not her benefit. It is contended by Mr. R. Vijayaraghavan that there is



absolutely nothing to substantiate in the plaint as to how the consideration was met by the plaintiff and other particulars and there is no purpose in directing the plaintiff to prove the same in the absence of documents, the plaintiff can always substantiate his case during trial and is always open to the parties to seek introduction of additional documents also.

17. Even on an independent reading of the plaint, I find that the suit is not barred by the provisions of the Act. Consequently, Order VII Rule 11(d) of CPC is not attracted to enable the defendants to seek rejection of the plaint. The issues will have to be necessarily decided upon facts to be proved at trial, on the basis of oral and documentary evidence to be adduced. Therefore, when disputed questions of fact are present, then adjudication has to be only on the basis of evidence and plaint cannot be rejected at the threshold by applying Order VII Rule 11 of CPC.

18. The trial Court has clearly fallen in error in not considering the phrase *“unless the contrary is proved”* and the findings arrived by the trial Court that the plaint is liable to be rejected are therefore clearly perverse and improper, warranting interference in appeal. The point is answered in favour of the appellant.



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19. In fine, the Appeal Suit is allowed. The order dated 26.03.2024 in I.A.No.3 of 2019 in O.S.No.6549 of 2019 on the file of the learned V Additional Judge, City Civil Court, Chennai, is set aside. Considering that the suit was originally filed before this Court in C.S.No.578 of 2013, I direct the learned V Additional Judge, City Civil Court, Chennai, to dispose of the suit on merits and in accordance with law, within a period of nine months from the date of receipt of a copy of this order. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

21.11.2025

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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To
The V Additional Judge, City Civil Court, Chennai.



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P.B. BALAJI,J.

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Pre-delivery order made in

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