

S.A.(MD)No.414 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 03.12.2024

PRONOUNCED ON:07.03.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**S.A.(MD)No.414 of 2019
and
C.M.P.(MD)No.8171 of 2020**

1.T.Kamatchiammal
2.T.Dharmaraj : Appellants/Appellants/Plaintiffs
(The first appellant presently
mentally unfit and also physically
unfit and she is under the care and
custody of the second appellant –
her son and she is represented by
the second appellant as her guardian
and next friend)

Vs.

1.Vijaya
2.Aravind
3.Nithya
4.M.Sampathrajan
5.M.Selvamani : Respondents/Defendants/Defendants



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PRAYER:- Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 24.01.2018 in A.S.No. 28 of 2017, on the file of the Additional Subordinate Court, Dindigul, confirming the judgment and decree dated 21.02.2017 in O.S.No.28 of 2011, on the file of the Additional District Munsif Court, Dindigul.

For Appellants : Mr.H.Lakshmi Shankar

For Respondents :Mr.N.Sathish Babu
for R.1
:Mr.C.Jeya Prakash
for R.5
: No Appearance for R.2 to R.4

JUDGMENT

The Second Appeal is directed against the judgment and decree passed in A.S.No.28 of 2017, dated 24.01.2018, on the file of the Additional Subordinate Court, Dindigul confirming the judgment and decree made in O.S.No.28 of 2011, dated 21.02.2017, on the file of the Additional District Munsif Court, Dindigul.



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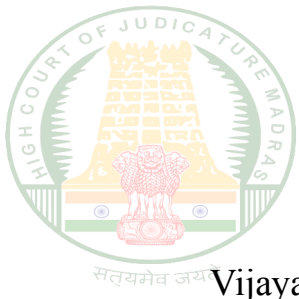
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2. The appellants as plaintiffs have filed a suit to declare that “A” and “B” suit schedule properties belonged to the second plaintiff and for permanent injunction restraining the respondents/defendants from interfering with the second plaintiff's possession and enjoyment of the suit properties.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in their original suit.

4. It is not in dispute that the first plaintiff is the mother of the second plaintiff, that the first plaintiff and her husband – Thangadurai had five children namely Vijayakandeepan – husband of the first defendant, Dharmaraj - 2nd plaintiff, Dhanabalan, Rajendran and Pushpa Gandhi and that the said Thangadurai had died in the year 1968.

5. The case of the plaintiffs is that the husband of the first plaintiff – Thangadurai started jaggery business and after his demise, his son Vijayakandeepan had continued the said business, that the second plaintiff due to their poverty discontinued his studies and worked in Thirupathy Venkatachalapathy Lorry office, that subsequently the said



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Vijayakandeepan was declared as insolvent, that the second plaintiff had then started jaggery business in 1972 and in that business, Vijayakandeepan worked as helper, that all the brothers remained as joint family till 2002, that the second plaintiff with his income has purchased “A” schedule properties, vide four sale deeds dated 02.05.1985, 03.09.1985 and 12.04.1991 in the name of his mother – first plaintiff for the benefit of himself and his brother Vijayakandeepan, that subsequently he purchased “B” schedule properties on 10.09.1985 in the name of the first defendant – wife of the said Vijayakandeepan for the benefit of the second plaintiff and the said Vijayakandeepan, that there arose disputes between the second plaintiff and his brother Vijayakandeepan in 2012 and both of them started living separately with their families, that they have entered into a family arrangement wherein the second plaintiff had agreed to pay Rs.25,00,000/- to the said Vijayakandeepan and the second plaintiff had to take both A and B schedule properties and believing the words of his mother – first plaintiff and his brother Vijayakandeepan, he has been doing agricultural operations in the said lands till filing of the suit, that the first plaintiff having affection with Vijayakandeepan, was residing with him and was retaining the original documents with regard to “A” and “B” schedule properties, that the first plaintiff had cataract



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surgery on 01.02.2006 and at that time, Vijayakandeepan had misrepresented the first plaintiff as if he is purchasing the properties in the name of the first plaintiff, got the signatures in some documents and created the settlement deeds, that the said Vijayakandeepan along with his wife and fifth defendant and by impleading the first plaintiff as one of the plaintiffs, had filed a suit in O.S.No.21 of 2007, on the file of the Additional District Munsif Court, Dindigul against the second plaintiff, that subsequently, the parties have entered into a compromise and on that basis, the said suit was dismissed, that on 20.05.2007, a panchayat was convened before the elders and wherein it was agreed that the suit properties have to be allotted to the second plaintiff, that a sum of Rs.5,00,000/- received from the Electricity Board as compensation has to be allotted to the first plaintiff and that a sum of Rs.25,00,000/- already given was allotted to the share of the said Vijayakandeepan, that the terms arrived at panchayat were reduced in writing on 23.05.2007 through a family arrangement deed, in which the elder members had attested the same, that the first defendant has then driven out the first plaintiff from their house and since then is with the second plaintiff, that the said Vijayakandeepan without registering any documents to the plaintiffs, died on 31.07.2007, that the first defendant without handing



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over the original documents, has entered into a sale agreement with the fifth defendant on 29.02.2008 , that the defendants are having no right, title or interest over the suit properties, that the second plaintiff had mortgaged the properties with the fourth defendant and that since the defendants 1 and 5 with their men had attempted to interfere with the second plaintiff's peaceful possession and enjoyment of the properties on 15.12.2010, the same was thwarted and that therefore, the second plaintiff was constrained to file the above suit seeking declaration and permanent injunction.

6. The defence of the defendants 1 and 5 is that the first plaintiff in her Will dated 23.05.2007 has specifically observed that the family arrangement deed dated 23.05.2007 is a fraudulent document, that the second plaintiff coerced the first plaintiff and obtained gift settlement deeds in his favour and subsequently cancelled the settlement deeds executed in favour of Vijayakandeepan and the same are legally invalid, that “A” schedule properties except items 10 to 13, were owned by Vijayakandeepan as per the settlement deeds, that “B” schedule properties are the self-acquired properties of the first defendant, that the said Vijayakandeepan without making any arrangement with regard to

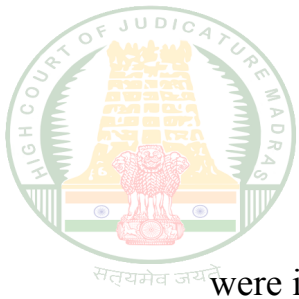


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items 1 to 9 of “A” schedule properties, died on 31.07.2007, that the defendants 1 and 5 have entered into a sale agreement on 29.02.2008 in respect of items 1 to 9 in “A” schedule and “B” schedule properties and subsequently the fifth defendant purchased the said properties on 23.09.2010 and is enjoying the properties and that the suit is false and frivolous and as such, the same is liable to be dismissed.

7. The defence of the fourth defendant is that there was a mortgage with regard to the suit properties vide mortgage deed dated 24.03.2009 for a sum of Rs.7,00,000/- executed by the second plaintiff in his favour, that the first plaintiff and the first defendant have stated no objection for affording loan to the second plaintiff and only on that basis, the fourth defendant lent a sum of Rs.7,00,000/- and mortgage deed came to be executed, that since the second defendant has not discharged the mortgage loan, the fourth defendant has threatened the second plaintiff and hence, the plaintiffs in collusion with the first defendant had created fabricated documents in favour of the fifth defendant and filed the above suit, the fourth defendant is an unnecessary party to the present suit, that all the suit properties were allotted to the second plaintiff and the same



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were in his possession and that therefore, the suit is liable to be dismissed with costs of the fourth defendant.

8. The learned trial Judge, upon considering the pleadings of both parties has framed the following issues:

(1) Whether the suit properties are owned by the second plaintiff?

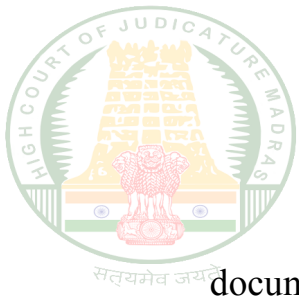
(2) Whether the second plaintiff is entitled to get the relief of declaration as claimed?

(3) Whether the second plaintiff is entitled to get the relief of permanent injunction as claimed?

(4) Whether the fourth defendant is unnecessary party to the suit?

(5) To what other reliefs, the plaintiffs are entitled to?

9. During trial, the second plaintiff has examined himself as P.W.1 and also examined the first plaintiff as P.W.2 and three other witnesses as P.W.3 to P.W.5 and exhibited 21 documents as Exs.A.1 to A.27. The first defendant has examined herself as D.W.1 and the fifth defendant has examined himself as D.W.2 and on the side of the defendants 1, 4 and 5, seven documents came to be exhibited as Exs.B.1 to B.7. The learned trial Judge, upon considering the pleadings and evidence both oral and



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documentary and on hearing the arguments of both sides, passed the judgment and decree dated 21.02.2017, dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiffs have preferred an appeal in A.S.No.28 of 2017 and the learned Additional Subordinate Judge, Dindigul upon considering the materials available on record and on hearing the arguments of both sides, has passed the impugned judgment and decree dated 24.01.2018, dismissing the appeal and thereby confirming the judgment and decree made by the trial Court. Challenging the dismissal of the appeal, the present Second Appeal came to be filed.

10. At the time of admission, the following Substantial Questions of Law came to be formulated:

“(A) Whether the Courts below are justified in rejecting exhibit A18 family arrangement, by ignoring the evidence of PW3 to PW5 (Panchayatdhars) who are admittedly in good terms with DW1 and regarding whom no motive was alleged by the defendants and also by ignoring the admitted fact that 1st plaintiff received compensation from the Electricity Board Department as per exhibit A18?



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(B) Are the conclusion of the Courts below in the suit based on minor discrepancies in the evidence of PW2 who is aged and infirm, sustainable in law, when the evidence read as a whole supports exhibits A18 and the claim of the second plaintiff?

(C) Whether the judgments of the Courts below in respect of various issues regarding the documents like exhibit B1, B2, A8 and A9 justifiable and sustainable in the light of the clinching admissions of the DW1 which proves that the second plaintiff and her husband are the joint owners of the properties?

(D) Whether the conclusion of the Courts below that defendant have got right over the properties as per the exhibits B1 and B2 and the other documents standing in the name of the first defendant, sustainable in law, when the Court have arrived at findings in earlier portion of the judgment that the properties are joint acquisition of the two brothers, based on the evidence of DW1?

(E) Whether the Courts below are justified in not drawing adverse inference against the defendants for not producing documents to disprove the signatures of Vijayakandeepan in exhibit A18?"

11. The learned Counsel for the appellants would submit that D.W.

1 and D.W.2 had given substantial admissions about the various aspects

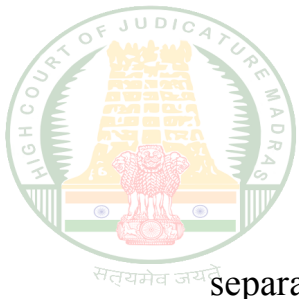


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and most importantly the receipt of compensation by the first plaintiff which proved Ex.A.18 partition arrangement document, that if Exs.B.1 and B.2 settlement deeds are true and there was no family arrangement under Ex.A.18, there is no explanation as to why the first plaintiff was permitted to receive the compensation from TNEB for the removal of coconut trees, that the defendants in the written statement have not denied the payment of Rs.25,00,000/- by the second plaintiff to his brother Vijayakandeepan, that despite the payment made in that regard, the Courts below have come to a finding that the second plaintiff has failed to prove the payment of Rs.25,00,000/- overlooking the legal position that the admitted facts need not be proved and that neither the trial Court nor the first appellate Court has framed any issue or point for determination with regard to the payment of Rs.25,00,000/-.

12. The learned Counsel would further submit that admittedly the second plaintiff and his brother Vijayakandeepan got separated in 2002, that the said Vijayakandeepan who was declared as insolvent, conducted business at Pollachi in somebodyelse name and his son ran a hotel and his daughter was married and all these could not have been possible without the receipt of Rs.25,00,000/- by him, as there was no source of

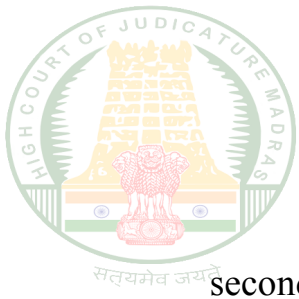


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separate income for Vijayakandeepan and that the second plaintiff stopped business after 2002 as admitted by D.W.1 would only probablise the case of 2002 family arrangement. He wold further submit that D.W.1 would admit categorically that “A” and “B” schedule properties were purchased by her husband Vijayakandeepan and the second plaintiff for their benefit and in the light of the admissions of D.W.1, the first plaintiff had no right over the properties and she was only holding fiduciary capacity for her sons and as such, she could not not have conveyed anything under Exs.B.1 and B.2 to her son Vijayakandeepan, that similarly the first defendant could not have conveyed anything to the fifth defendant and that the fifth defendant is not a bonafide purchaser for value without notice.

13. The learned Counsel would further submit that Ex.A.18 family arrangement document could not be registered as it is only a record of past transaction, that the evidence of P.W.3 to P.W.5 would prove Ex.A.18 family arrangement, but the Courts below without considering their evidence, rejected their evidence without any basis. He would further submit that the Courts below have come to a finding that the suit properties are joint acquisitions from the jaggery business run by the

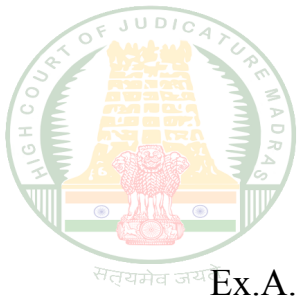


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second plaintiff and assisted by Vijayakandeepan for their benefit in the names of the first plaintiff and the first defendant and both the name lenders would admit that they did not claim any individual right, that since the source of funds being common to both brothers, as per Section 45 of the Transfer of Property Act, though it is purchased in the name of others, they are joint owners and they have made family arrangement which is subsequently recorded under Ex.A.18 and that therefore, the judgment of the Courts below are liable to be interfered with.

14. The learned Counsel appearing for the first defendant would submit that “B” schedule properties stand in the name of the first defendant being the rightful owner of the said properties and as such, she is the necessary party to the family arrangement deed under Ex.A.18, that the first plaintiff had executed two gift settlements in favour of the first defendant's husband Vijayakandeepan in respect of items 1 to 9 of “A” schedule properties, that as per Section 126 of the Transfer of Property Act, cancellation of gift settlement is not permissible and that therefore, subsequent execution of gift settlement deed in favour of the second plaintiff by the first plaintiff in Ex.A.8 and A.9 based on Ex.A.18 is unlawful, that Exs.A.8 and A.9 were executed as per the terms of



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Ex.A.18, that since the execution of Ex.A.18 is not proved, subsequent execution of Exs.A.8 and A.9 does not support the claim of the second plaintiff, that the mere evidence of witness of P.W.3 to P.W.5 are not sufficient enough to prove the execution of Ex.A.18, that the first plaintiff in his cross-examination would categorically admit that the possession of the suit properties are with the fifth defendant, that the second plaintiff's case is that the first plaintiff is only holding the properties in the fiduciary capacity for her sons and therefore, the execution of Exs.B.1 and B.2 is not acceptable and that since the execution of Exs.B.1 and B.2 is not acceptable, the execution of Exs.A.8 and A.9 are also not acceptable, that items 1 to 9 of "A" schedule properties stand in the name of Vijayakandeepan through the execution of two gift deeds and after the demise of Vijayakandeepan, the defendants 1 to 3 being the legal heirs, inherited the same and "B" schedule property stands in the name of the first defendant and therefore, being the lawful owner, she executed a sale deed in favour of the fifth defendant, which is legally admissible and that the execution of Ex.A.18 being the unregistered document and was also not proved by the plaintiffs and based on the same, the second plaintiff cannot claim any relief.



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15. The learned Counsel for the fifth respondent would submit that the second plaintiff has miserably failed to prove the execution of Ex.A.18, that the first plaintiff – mother of the second plaintiff is also one of the alleged executant of Ex.A.18 had specifically admitted in her cross-examination that the signatures contained in Ex.A.18 are not belonging to her and she had not signed in Ex.A.18, that P.W.2 in his evidence had admitted that the fifth respondent is in possession and enjoyment of the property purchased by her from the first defendant, that P.W.2 had also admitted that during the execution of Ex.A.18, the husband of the first defendant was also not present, that the witnesses P.W.3 to P.W.5 are close relatives of the second plaintiff and the said witnesses had admitted that they do not know about the particulars of the properties and that they had deposed only as per the words of the second plaintiff, that they have not received any summons from the Court and that the above would go to show that Ex.A.18 is a fabricated, that when the discrepancies found place in the evidence of P.W.2 cannot be taken as minor discrepancies and the same goes to the root cause of the case and that the first plaintiff was examined as P.W.2 on her own wish and had deposed contrary to Ex.A.18.



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16. The learned Counsel would further submit that in a suit for declaration, the burden of proof is on the plaintiff to prove their case that they are having right over the properties, that though the second plaintiff has pleaded that the properties stood in the name of the first plaintiff are purchased by the joint acquisition of two brothers, the said pleading itself is inconsistent with other pleadings which are contradictory to each other, that the property stood in the name of the first plaintiff has been transferred to the name of the first defendant's husband, that the property belonged to a Hindu family, that as per Section 14 of the Hindu Succession Act, the same should be treated as her separate property and as such, the execution of Exs.B.1 and B.2 is valid in the eye of law, that the revenue records under Exs.A.11 to A.17 will not confer any title to the second plaintiff, as the revenue records neither creates nor extinguishes title to the property and that the Courts below have rightly come to a decision that the second plaintiff is not entitled to get any of the relief claimed.

17. It is pertinent to note that in the plaint, the second plaintiff has raised a pleading that “A” schedule properties were purchased by him



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with his own money in the name of his mother – the first plaintiff for the benefit of himself and his brother Vijayakandeepan. The second plaintiff in the plaint has specifically stated that the properties were purchased in the name of the first plaintiff and the first defendant in trust and they were holding in fiduciary capacity.

18. The learned Counsel for the appellants would rely on the judgment of the Hon'ble Supreme Court in **C.Gangacharan Vs. C.Narayanan** reported in **2000 SAR (Civil) 144** and argued that since the properties are being hold in the name of the trustees, the prohibition under the Benami Transactions (Prohibition of the Right to Recover Property) Act 1988 cannot be made applicable and the relevant passage is extracted hereunder:

“3. It is now well settled that the executing court cannot go behind the decree of a court of competent jurisdiction except when the decree is void ab initio or without jurisdiction. In the present case, the High Court on 27th August, 1887, as is evident from the passage quoted hereinabove, had given a categorical finding to the effect that the respondent herein was only a trustee and the case was governed by [Section 82](#) of the Indian Trusts Act. [Section 4](#) which contains the prohibition to recover the property held benami expressly. provides in



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sub-section (3), clause (b) that the said Section is not to apply, inter alia. in a case where the property is held in the name of a trustee. In view of the finding of the High Court in its judgment of 27th August, 1987 that the. property was being held in the name of the respondent as a trustee, the question of the respondent invoking the provisions of the Benami Transactions Ordinance or the Act did not arise. The provisions of the Act did not prohibit a suit being filed against a trustee for the recovery of the trust property.”

19. Section 3(1) of the Benami Transactions (Prohibition) Act states that no person shall enter into any benami transaction, but at the same time, sub section 2(a) contemplates that the prohibition under sub section (1) shall not 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 or the unmarried daughter. To put it in short, Section 3(2)(a) permits a person to enter into a benami transaction to purchase a property in the name of his wife or unmarried daughter. At this juncture, it is also necessary to refer Section 4 of the said Act which is as follows:



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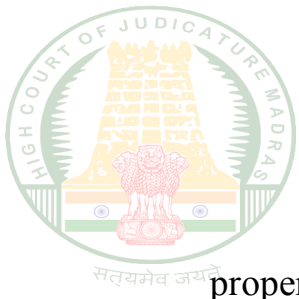
“4.Prohibition of the right to recover property held benami. -

—(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.”

20. Section 4 prohibits right to recover the property held benami.

It also states that no suit, claim or action can be entertained on the ground of benami transaction and similarly no defence based on any right in respect of any property held benami can be allowed in any suit, claim or action. Apart from the exemption given under Section 3(2), Section 4(3) also exempted two more transactions from the ambit of benami transactions. Two exemptions are (1)where the person in whose name the property is held is a coparcener in a Hindu undivided family and the



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property is held for the benefit of the coparceners in the family, and (2) 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.

21. It is pertinent to note that the second plaintiff has been attempting to bring the suit transactions within the ambit of Section 4(3) (b) of the said Act claiming that the first plaintiff and the first defendant were holding the property as trustees for the second plaintiff and his brother Vijayakandeepan.

22. At this juncture, it is necessary to refer the decision of the Delhi High Court in ***JM Kohli Vs. Madan Mohan Sanni and another*** passed in RFA No.287/2012, wherein the High Court has referred to the decision of the Hon'ble Supreme Court in ***C.Gangacharan's case*** above referred and the relevant passages are extracted hereunder:

“6. The consequences of the Benami Transactions (Prohibition) Act, 1988 were harsh as they brought to an end the ownership rights of an actual owner against the



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benami owner. Before passing of the Benami Act, a de jure owner could also file a suit against de facto owner and thereby claim ownership of the property on the ground that ostensible owner was only a benamidar. The legal provisions which helped the plaintiff in such a suit prior to passing of the Benami Act were inter-alia the provisions of Sections 81, 82 and 94 of the Indian Trusts Act, 1882 and as per which provisions a benami owner was actually a trustee for the real owner. Section 7 of the Benami Act specifically repeals the aforesaid sections of the Indian Trusts Act, 1882 and also Section 66 of the CPC which had similar substance.

7. *Section 4(3)(b) of the Benami Act, however, protected rights of a real owner where the person in whose name the property is held is a trustee or other person standing in the fiduciary capacity and the property is held for the benefit of other person, for whom the person in whose name the property is held is a trustee.*

8. *In a way, therefore, there may be some ostensible conflict between the provision of Section 4(3)(b) of the Benami Act and Section 7 of the same Act which repeals the provisions of the Indian Trusts Act, 1882, however, one has to read and interpret Section 4(3)(b) in a manner which is in accord with the legislative intention to bar claims against properties held as benami. The concept of trust was always inbuilt once a transaction was a benami transaction as the*



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benamidar was the trustee for the real owner. But in spite of the concept of trust being inbuilt in benami transactions, the [Benami Act](#) provided that no rights could be asserted in a benami property by the actual/de jure owner.

Putting it differently, once [Sections 81, 82 and 94](#) of the India Trusts Act, 1882 have been repealed, they cannot be brought in from the back door, so to say, by giving the same content contained in the repealed provisions of [Sections 81, 82 and 94](#) of the Indian Trusts Act, 1882 to [Section 4\(3\)\(b\)](#) of the Benami Act. If we give such an interpretation, the entire [Benami Act](#) will fall and it will be as if the same has not been enacted. Therefore, [Section 4\(3\)\(b\)](#) which provides that the property which is held as a trustee or in a fiduciary capacity must be interpreted in the sense that the trustee or a person who is holding the property in a fiduciary capacity has either committed a fraud and got the property title in his name or is in furtherance of law holding property in his name however in the capacity of a trustee or in fiduciary capacity, although the real owner is somebody else. Repealed Sections 81, 82 and 94 of the [Indian Trusts Act, 1882](#) read as under:-

"81. Where the owner of property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that the intend to dispose of the beneficial interest therein, the transferee or legatee must hold such



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property for the benefit of the owner or his legal representative.

82. Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Nothing in this session shall be deemed to affect [the Code of Civil Procedure](#), section 317, or Act No. XI of 1859 (to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency), [section 36](#).

94. In any case not coming within the scope of any of the proceeding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands."

9. Two of the examples where the Supreme Court has held the property to be held as a trustee in terms of [Section 4\(3\)\(b\)](#) of the Benami Act are the judgments in the cases of [C. Gangacharan V. C. Narayanan](#), 2000 (1) SCC 459 and [P.V. Sankara Kurup V. Leelavathy Nambiar](#), 1994(6) SCC 68.



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In the case of [C. Gangacharan](#) (supra), the Supreme Court has held that the property was held as a trustee as per [Section 4\(3\)\(b\)](#) of the Benami Act, and the person in whose name the property stood cannot take up a plea of the bar of [Benami Act](#), inasmuch as, actually the owner had given moneys for the property to be purchased under his name, however, the moneys were in fraud utilized to get the property purchased in the name of defendants in that suit. In the case of [P.V. Sankara Kurup](#)(supra) also the obvious fraud which was perpetrated was that the property was to be purchased in the name of the plaintiff by his attorney holder and which the defendants did not do and instead got the property purchased directly in their name. In the case of [P.V. Sankara Kurup](#)(supra), the Supreme Court was dealing with [Section 66](#) of CPC as it existed before its repeal by [Section 7](#) of the Benami Act and in the facts of the case as stated above it was held that the purchaser had acted in fiduciary capacity as an agent and consequently the bar of the [Benami Act](#) would not apply. In [the said judgment](#), the Supreme Court held that when the agent was employed to purchase the property on behalf of his principal, however does so in his own name, i.e. the agent"s name then upon conveyance or transfer of the property to the agent, he stands as a trustee for the principal.

10. Therefore, in certain cases where there is obvious breach of trust in purchasing the property in the name of a



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person, whereas it ought to have been purchased in the name of the principal or the real owner, Supreme Court has, to that limited extent, held that such actions are covered under [Section 4\(3\)\(b\)](#) of the Benami Act and such transactions are not hit by the [Benami Act](#).

11. If we see the facts of the present case, the only relationship of trust which is alleged has two salient features. The first is of the moneys having been paid by the appellant/plaintiff and therefore the property being actually of the appellant/plaintiff and the defendant No.1 being the trustee, and, the second feature is that the parties understood as per the case in the plaint that defendant No.1 will hold the property in faith/trust for the appellant/plaintiff. In order to appreciate the contents of the plaint in this regard, qua the averments with regard to trust, paras 27 to 29 of the plaint are relevant and the same read as under:-

"27. That all the payments of the installments of the value of the suit property was given by the plaintiff out of his self earned income and nothing was paid by the defendant no. 1 and only the name of the defendant no. 1 was in the records of the D.D.A. with respect to the said property and due to the abovesaid fiduciary relationship between the plaintiff and the defendants, the said arrangement was made, as stated above and it was understood that the plaintiff will be the owner of the suit property and the defendant no. 1 shall



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be a just for the name and he shall have no ownership or possessory right in the suit property.

28. That at present the defendant no. 3 is in possession of the suit property being a daughter, in fiduciary relationship with the plaintiff and she has no right, interest in the title and in possession of the said property and in fact she is illegal occupation of the same and therefore the plaintiff is entitled for the possession of the suit property.

29. That plaintiff has deposited the above said amounts towards the suit flat in the D.D.A. on faith and trust in the name of the defendant no. 1, being in fiduciary relationship with him and it was very well understood in the family that the plaintiff is the owner of the same and defendant no. 1 is only having his name in the record of the D.D.A."

12. In my opinion, the aforesaid averments are not the averments which can take the case out of the repealed [Sections 81, 82 and 94](#) of the Indian Trusts Act, 1882 and bring the same within [Section 4\(3\)\(b\)](#) of the Benami Act. As already stated above, in benami transaction obviously there is an implied trust, however, such trusts are not the trusts which are within the purview of [Section 4\(3\)\(b\)](#) of the Benami Act.

13. Learned Senior counsel for the appellant sought to place reliance upon the decision of learned Single Judge of this Court in the case of [S.M. Wahi v. Reeta Wahi](#), 2006 (90)



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DRJ 616 in which the learned Single Judge, in the facts of the said case, found that the nominee under the agreement to sell was the trustee for the purpose of [Section 4\(3\)\(b\)](#), inasmuch as, nominee herself admitted that the property was being held pursuant to the agreement to sell in trust for and on behalf of the plaintiff who was said to be the actual owner. I may also state that the attention of the learned Single Judge who decided the case of [S.M. Wahi](#) (supra) was not drawn to the two judgments of the Supreme Court in the cases of [C. Gangacharan](#) (supra) and [P.V. Sankara Kurup](#) (supra), which have been referred to by me above. The judgment, therefore, cited in the case of [S.M. Wahi](#) (supra) will have no application in the facts of the present case.

14. It is said that hard cases lay down bad law and therefore sympathy arising from facts cannot be allowed to negate the intention of the legislature in enacting the [Benami Act](#). It is not only the appellant but probably thousands/lakhs of persons like the appellant who have suffered the consequences of enactment of the [Benami Act](#), however, this Court has to act as per the laws as applicable, and considering the facts of this case I have no option but to affirm the finding of the trial Court that the suit was barred by [Benami Act](#).”



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23. This Court is in its entire agreement with the views and the decision arrived at by the learned Judge of the Delhi High Court. In the case on hand, it is not the case of the second plaintiff that the first plaintiff and the first defendant have committed some frauds in taking the sale deeds in their favour. It is the specific case of the second plaintiff that he alone has purchased “A” schedule properties in the name of his mother and himself and his brother had purchased “B” schedule properties in the name of brother's wife – first defendant. Hence, this Court has no hesitation to hold that the transactions alleged by the second plaintiff are clearly hit by the provisions of the Benami Transactions (Prohibition) Act and he is not entitled to make any claim to enforce any right in respect of the suit properties.

24. It is the specific case of the second plaintiff that his brother Vijayakandeepan had taken the first plaintiff – mother to the Registrar office under guise of purchasing the property in her name, had obtained signatures in some documents and fabricated the settlement deeds under Exs.B.1 and B.2 in his favour. According to the defendants 1 and 5, the first plaintiff had voluntarily executed gift settlement deeds in favour of his elder son Vijayakandeepan under Exs.B.1 and B.2. Admittedly



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neither the first plaintiff nor the second plaintiff has challenged the settlement deeds under Exs.B.1 and B.2 specifically. Even according to the second plaintiff, subsequent to the execution of Ex.A.18 family arrangement deed, the first plaintiff executed two settlement deeds under Exs.A.8 and A.9 in favour of the second plaintiff and thereafter cancelled the settlement deeds under Exs.B.1 and B.2 executed in favour of Vijayakandeepan. Since the second plaintiff has specifically admitted that the first plaintiff had cancelled the settlement deed under Exs.B.1 and B.2, it can easily be inferred that the first plaintiff herself had admitted the execution of Exs.B.1 and B.2. At this juncture, it is necessary to refer the recent judgment of the Hon'ble Supreme Court in ***N.Thajudeen Vs. Tamil Nadu Khadi and Village Industries Board*** reported in **2024 Live Law SC 839**, wherein the Hon'ble Apex Court has held as follows:

“15. In simpler words, ordinarily a gift deed cannot be revoked except for the three contingencies mentioned above. The first is where the donor and the donee agree for its revocation on the happening of any specified event. In the gift deed, there is no such indication that the donor and donee have agreed for the revocation of the gift deed for any



reason much less on the happening of any specified event. Therefore, the first exception permitting revocation of the gift deed is not attracted in the case at hand. Secondly, a gift deed would be void wholly or in part, if the parties agree that it shall be revocable wholly or in part at the mere will of the donor. In the present case, there is no agreement between the parties for the revocation of the gift deed wholly or in part or at the mere will of the donor. Therefore, the aforesaid condition permitting revocation or holding such a gift deed to be void does not apply. Thirdly, a gift is liable to be revoked in a case where it is in the nature of a contract which could be rescinded. The gift under consideration is not in the form of a contract and the contract, if any, is not liable to be rescinded. Thus, none of the exceptions permitting revocation of the gift deed stands attracted in the present case. Thus, leading to the only conclusion that the gift deed, which was validly made, could not have been revoked in any manner. Accordingly, revocation deed dated 17.08.1987 is void ab initio and is of no consequence which has to be ignored.”

25. In the case on hand also, the first plaintiff and Vijayakandeepan have not agreed for revocation of the settlement deed for any reason much less on the happening of any specified event. Moreover, there is no



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agreement between the parties for revocation of the settlement deeds wholly or in part or at the will of the settlor. Here also, the settlement deed under consideration is not in the form of contract and as such, the question of rescinding the contract does not arise.

26. It is pertinent to note that in Exs.B.1 and B.2 settlement deeds, the first plaintiff has specifically stated that she is not having any right to modify or cancel the settlement deed and as such, she has not retained any power to revoke the documents. As rightly contended by the learned Counsel for the defendants 1 and 5, after the settlement under Exs.B.1 and B.2, the first plaintiff was not having any rights over the properties covered under the settlement deeds and as such, she has absolutely no right or power to execute the settlement deeds again in favour of the second plaintiff and as such, the settlement deeds under Exs.A.8 and A.9 cannot legally be sustained.

27. The case of the second plaintiff is that in the year 2002, there arose dispute between himself and his brother Vijayakandeepan, that they have entered into a family arrangement wherein the second plaintiff had paid Rs.25,00,000/- to the said Vijayakandeepan and it was agreed that



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the second plaintiff had to take “A” and “B” schedule properties, that after coming to know about Exs.B.1 and B.2 settlement deeds, the panchayat was convened wherein it was agreed that the first plaintiff had to receive compensation from TNEB for the removal of trees, that the said Vijayakandeepan was to be allotted with Rs.25,00,000/-, which was already given to him and that the second plaintiff had to take “A” and “B” schedule properties and the same was reduced in writing on 23.05.2007 under Ex.A.18 and that therefore, the second plaintiff is entitled to get “A” and “B” schedule properties. The defendants 1 and 5 have specifically disputed the family arrangements alleged to have occurred in 2002 and 2007 and the execution of family arrangement deed under Ex.A.18 and the signatures of Vijayakandeepan found therein. The Courts below, considering the evidence available on record, have come to the factual decision that the second plaintiff has miserably failed to prove the payment of Rs.25,00,000/- to Vijayakandeepan and the execution of Ex.A.18 – family arrangement deed and that the signatures found in Ex.A.18 are that of Vijayakandeepan. As rightly contended by the learned Counsel for the defendants 1 and 5, when the second plaintiff has become entitled to the suit properties as per Ex.A.18, he has not offered any reason or explanation as to why he had taken Exs.A.8 and A.9

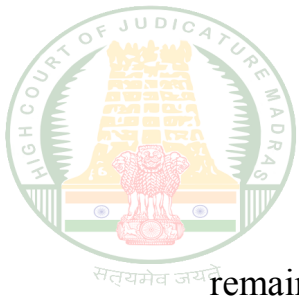


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settlement from the first plaintiff. Moreover, as rightly contended by the learned Counsel for the defendants 1 and 5, the second plaintiff has not offered any explanation as to why the compensation from TNEB was directed to be received by the first plaintiff when she is not having any right over the suit properties. Considering the above, there is absolutely nothing to interfere with the factual findings arrived at by the Courts below.

28. According to the second plaintiff, items 1 to 9 of “A” schedule properties are covered under Exs.B.1 and B.2, while the first plaintiff has not executed any settlement regarding items 10 to 13. Notably, the first plaintiff is still alive. In view of the bar under the Benami Transactions (Prohibition) Act, it can easily be inferred that “A” schedule properties are owned by the first plaintiff and “B” schedule properties are owned by the first defendant. The settlement deeds under Exs.B.1 and B.2 would establish that the defendants 1 to 3 are entitled to items 1 to 9 of “A” schedule properties. The defendants 1 to 5 claimed that the first defendant entered into a sale agreement and subsequently executed a sale deed in favour of the fifth defendant. Since the first plaintiff is alive and retains ownership of the remaining properties, it is clear that the



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remaining “A” schedule properties belong to the first plaintiff.

Consequently, the question of seeking a declaration and consequential relief does not arise.

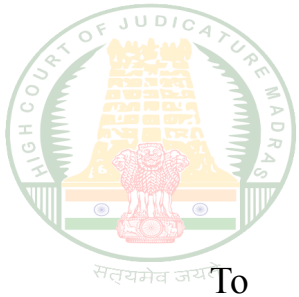
29. In the light of the above, this Court has no hesitation to hold that the plaintiffs are not entitled to get any of the reliefs claimed and as such, the Substantial Questions of Law are answered against the appellants/plaintiffs and in favour of the defendants. Consequently this Court concludes that the Second Appeal is liable to be dismissed. Considering the other facts and circumstances and the relationship between the parties, the parties are to be directed to bear their own costs.

30. In the result, the Second Appeal is dismissed. Consequently, the connected Civil Miscellaneous Petition is also dismissed. The parties are directed to bear their own costs.

07.03.2025

NCC : Yes:No
Index : Yes : No
Internet : Yes : No

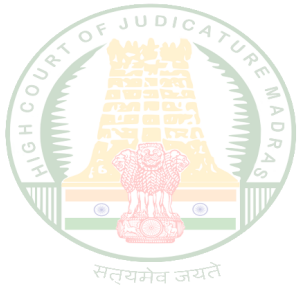
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- To
1. The Additional Subordinate Court, Dindigul.
 2. The Additional District Munsif Court, Dindigul.
 3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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