IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.06.2026
PRONOUNCED ON : 25.06.2026

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

A. No. 1108 of 2026
in
C.S. No. 74 of 2025

Mr. S.Muruga Bharati,
S/o. Late S.Subramanian,
39, Bazullah Road, T.Nagar,
Chennai-17
Residing at No. 19A, Eldams Road,
Teynampet,
Chennai-18.

..Applicant(s)

Vs

Mrs. S.Vathsala,
W/o. Mr. Sankarkrishnan and
D/o. Late S.Subramanianan,
296-A, Second Main Road, 9th Avenue,
Seashore Town, Panaiyur, Sholinganallur,
Chennai-119.

..Respondent(s)

PRAYER: To reject the Plaint in C.S. No. 74 of 2025 as barred by law.

For Applicant(s): Mrs.V.Chitra Sampath,
Senior Counsel
for Mr. V.G.Suresh Kumar

For Respondent(s): Mr.K.V.Babu
for Ms. B.A.Nalini

ORDER

The Application has been filed by the sole defendant in suit C.S. No.74 of 2025, seeking rejection of the plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908.

2. The brief contents of the affidavit filed in support of the application are as follows: The suit has been filed by the respondent/plaintiff, who is the applicant's/defendant's sister, seeking partition and separate possession of the suit properties, which are held exclusively in the applicant's name. The suit properties are the applicant's absolute property.

3. Even assuming, without admitting, that all the averments in the plaint are true, the suit is not maintainable in law because the claim, as pleaded in the plaint, is barred by the Prohibition of Benami Property Transactions Act, 1988.

4. The plaint averments admit that there was no joint family property belonging to the father, Mr Subramanian, and the applicant. Nor does the plaint disclose the existence of any joint family nucleus or coparcenary property. The plaintiff's specific case is that her father purchased the suit properties from his own earnings, in the applicant's name. Such a plea, in

substance, amounts to an assertion that the properties were purchased benami in the applicant's name.

5. In light of the averments, the suit claim is barred under the Prohibition of Benami Property Transactions Act, 1988. The plaint, therefore, does not disclose a legally enforceable right in favour of the plaintiff and is liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure.

6. The brief contents of the counter-affidavit are as follows: The applicant's contention that the suit for partition is not maintainable merely because the suit properties stand in his name is wholly misconceived and is therefore denied.

7. In this respondent/plaintiff's case, the applicant was entirely dependent on his father and had no independent source of income at the time of purchase of the suit properties. The suit properties were acquired using funds provided by the parties' father.

8. It is not the case that the suit properties were purchased in a benami transaction prohibited under the Prohibition of Benami Property Transactions Act, 1988, for the respondent/plaintiff. Therefore, the provisions of the said

Act do not apply to the facts of the present case. On the contrary, the transaction pleaded in the plaint falls within the exception contemplated under Section 2(9)(A)(iii) of the Act.

9. The applicant has misconstrued and distorted the averments in the plaint and has attempted to introduce a theory of benami transaction, which the respondent neither pleaded nor relied upon. The plaint, read as a whole, discloses a clear cause of action and raises several triable issues that can be adjudicated only upon a full-fledged trial.

10. The suit properties are claimed to be family properties, and the respondent/plaintiff asserts a lawful share. The questions relating to the source of funds, the nature of the acquisition, and the parties' entitlement are matters requiring evidence. They cannot be decided in an application under Order VII Rule 11 CPC.

11. Hence, the application is devoid of merit and liable to dismissal.

12. Heard both sides and perused the records. Learned counsel for the defendant submitted that the plaintiff, the defendant's sister, has filed the suit, alleging that the properties in the defendant's name were acquired with funds

provided by their father and that the defendant had no means to purchase them. Learned counsel further submitted that the plaintiff's case is not that the suit properties are joint family properties or that they were acquired from any ancestral nucleus. On the contrary, the pleaded case is that the father earned the money and purchased the properties in his son's name.

13. Learned counsel therefore submitted that the claim is hit by the provisions of the Benami Transactions (Prohibition) Act, 1988, as amended in 2016, and that, on the averments contained in the plaint itself, the suit is barred under the said Act. Learned counsel further drew attention to the counter-affidavit filed by the plaintiff and submitted that, in paragraph 5 thereof, the plaintiff claims the benefit of the exception under Section 2(9)(A) of the Act, while in paragraph 8 it is admitted that no plea of joint family has been raised. According to the learned counsel, the entire case of the plaintiff is that the properties were purchased from the father's resources, since the defendant had no capacity to pay such a huge consideration. It was further submitted that the salary documents relied upon stand in the name of the defendant himself and that he was a major at the relevant point in time. Learned counsel contended that, even if the plaintiff's case is accepted in its entirety, the claim is liable to be rejected.

14. Referring to Section 2(9), learned counsel submitted that a benami transaction is one in which property is transferred to or held by one person, the consideration is provided by another, and the property is held for the immediate or future benefit of the person who provided the consideration, except where specifically exempted. Learned counsel further submitted that the statutory exceptions include property held in the name of a spouse or minor child, and property held in the name of a brother, sister, or lineal ascendant or descendant, provided that such persons appear as joint owners in the document.

15. According to the learned counsel, the expression "child" in the relevant exception means a person under 18 years of age, and, insofar as a major son or daughter is concerned, the case would fall only under the other exception, which requires joint ownership. In the present case, it was submitted that all the documents stand solely in the name of the defendant, who was a major, and not jointly. Learned counsel also relied on a judgment of the Delhi High Court **in Naveen Nishok Kumar v. Harish Kumar (CS(OS) No.359 of 2022, decided on 18 December 2024),** particularly from paragraph 54 onwards, to contend that the exceptions must be construed strictly and that a major child would fall only within the clause requiring joint ownership.

16. Since the defendant was a major when the all suit scheduled properties were purchased, and the properties were not held jointly, learned counsel submitted that the claim is barred and that the plaintiff cannot seek recovery of the property.

17. It was contended on the respondent/plaintiff side that the questions of who actually provided the funds for the purchases and whether the defendant had the means to acquire the properties are matters for evidence and trial, and cannot be decided at this stage. Learned counsel submitted that the plaintiff's case is that the properties are family property, purchased by the father in the son's name, and are therefore liable to be partitioned with her, as a member of the family, along with the defendant.

18. Learned counsel further submitted that the plea is not primarily a benami plea, but that, even if it were so construed, the exception would apply because the father had funded the purchases. On that basis, it was contended that the issues raised require adjudication in a full-fledged trial and that the plaint cannot be rejected at the threshold.

19. Point for consideration:

Whether the plaint, while asserting that the suit properties were purchased by the father in the name of the defendant-son from his own funds and simultaneously claiming a share therein without pleading any joint family nucleus or independent right, discloses a valid cause of action, or is liable to be rejected under Order VII Rule 11 CPC as being manifestly vexatious and meritless?

20. The applicant contended that the averments in the plaint disclose that the transactions relating to the suit properties are benami transactions, and therefore, the provisions of the Prohibition of Benami Property Transactions Act, 1988, bar the suit.

21. In paragraph 4 of the plaint, it is stated as follows:

> "*The plaintiff submits that the plaintiff's father, namely Mr S. Subramanian, was originally the Chairman of Royapettah Benefit Fund Ltd. In the course of his business, he purchased various properties in his own name as well as in the names of the plaintiff and the defendant. The entire consideration for the purchase of the various properties standing in his name and in the names of the plaintiff and the defendant was provided by Late S. Subramanian. Thus, all such properties were treated as family*

properties and are now available for inheritance by the plaintiff and the defendant in equal shares."

22. Based on the above averments, the applicant contended that the transactions pleaded in the plaint are benami transactions and, therefore, the suit is barred under Section 4 of the Prohibition of Benami Property Transactions Act, 1988.

23. The expression "benami transaction" is defined under Section 2(9)(A) of the Act as follows:

> *"Where a property is transferred to, or is held by, a person, and the consideration for such property has been provided or paid by another person."*

24. According to the respondent/plaintiff, the suit properties were purchased in the defendant's name, while their father, the late S. Subramanian, paid the consideration for those purchases. Prima facie, the ingredients of a benami transaction appear to be satisfied.

25. However, the Act also provides certain exceptions. According to the respondent/plaintiff, the exception set out in Section 2(9)(A)(iii), which reads as follows, applies to the present case:

"(iii) any person, being an individual, in the name of his spouse or in the name of any child of such individual, and the consideration for such property has been provided or paid out of the known sources of the individual."

26. According to the respondent/plaintiff, the father purchased the suit properties in the name of his son, the defendant, and paid the consideration from his known sources of income. Accordingly, the transaction falls within the statutory exception and does not constitute a benami transaction.

27. On the other hand, the applicant/defendant contended that the aforesaid exception does not apply to the facts of the present case. According to him, the exception applies only when the property is purchased in the name of a "child" and not in the name of a son or daughter who has attained majority. Since the defendant was not a minor at the relevant point in time, the exception is said to be inapplicable, and the transaction would therefore fall within the ambit of a benami transaction.

28. The word "child" has not been defined under the Prohibition of Benami Property Transactions Act, 1988. It was argued that the exception is confined to properties purchased in the names of minor children and does not extend to properties purchased in the names of children who have attained majority.

29. This argument appears unduly narrow and cannot be accepted. No explanation is offered for construing “child” to mean a minor child. The term "child" is defined differently across various enactments, including the Factories Act, 1948, the Child Labour (Prohibition and Regulation) Act, 1986, and the Minimum Wages Act, 1948. In the absence of any statutory indication in the Benami Act, it would not be proper to borrow a definition from any other enactment and apply it mechanically.

30. It is a settled principle of statutory interpretation that, where a term is not defined in a statute, it must ordinarily be understood in its natural, popular and ordinary sense unless the context requires otherwise.

31. The Oxford English Dictionary defines the word “Child” as: “A son or daughter of any age; a human being in relation to his or her parents.” Thus, in ordinary English usage, "child" does not necessarily mean a minor. A person remains the child of his or her parents throughout life. Black's Law Dictionary (11th Edition) defines "child" as: “A son or daughter; a person, whether young or old, in relation to his or her parents.” It further notes that, depending on the statutory context, the word may sometimes refer to a minor, but unless the statute indicates such an intention, 'child' ordinarily includes an

adult son or daughter as well. Two features of the language put this beyond doubt. First, the Legislature has used the single relational word "child", and not the enumeration "son and daughter". The word denotes a relationship — a person's offspring — and not an age, and it takes in a son or a daughter, of any age. Secondly, the Legislature has not used the expression "minor child"; its deliberate omission of that qualification here must be given effect.

32. Therefore, applying the ordinary dictionary meaning: Child is equal to son or daughter, irrespective of age, unless the statute expressly restricts it to a minor. If Parliament intended to confine the exception only to minor children, it could have used expressions such as "minor child", as it has done in several other enactments. Section 2(9)(A)(b) uses the expression: "property held by an individual in the name of his spouse or any child..." The legislature has not qualified the word "child" by the adjective "minor" though it said "minor child" would be to supply a word which the Legislature, in its wisdom, chose to leave out, and would be to legislate and not to interpret. Hence, on the basis of the ordinary dictionary meaning, "child" includes both a minor and an adult son or daughter, subject to the statutory requirement that the consideration must have been paid from the known sources of the individual. Thus, the exception is not confined only to minor children.

33. If the applicant's interpretation is accepted, a parent's purchase of property in a minor child's name would be exempt from the operation of the Act. By contrast, a purchase in a major child's name would be subject to the Act. Such an interpretation would defeat the object and purpose of the statutory exception and could not have been intended by Parliament. Moreover, the exception is a provision that relieves the citizen from the rigour of a penal statute, and where two views are possible, the one favourable to the person sought to be subjected to the Act, namely the individual who provides the consideration, is to be preferred. The narrower construction would, in addition, yield an arbitrary result, the very same transaction being innocent if the property is purchased in the name of a child shortly before the attainment of majority but offending if purchased shortly after, a distinction bearing no rational nexus to the object of the Act, which is to prohibit benami holdings used to conceal the true ownership of property.

34. The decision of the High Court of Delhi in **Naveen Nishok Kumar v. Harish Kumar (CS(OS) No.359 of 2022, decided on 18 December 2024),** on which the applicant placed reliance, takes a contrary view. The learned Single Judge there held (in paragraphs 56 to 64) that, the Act being a penal

statute, the exceptions in Section 2(9)(A)(b)(iii) and (iv) must be construed strictly and harmoniously, and that, so read, the word "child" in exception (iii) is confined to a minor, while a child who has attained majority falls within exception (iv), which exempts the transaction only where the individual who provides the consideration also appears as a joint owner of the property. With great respect, this Court is unable to adopt that view, for the reasons already recorded and for the further reasons that follow.

35. First, the decision is that of a learned Single Judge of another High Court; while it is entitled to respect, it has only persuasive value and does not bind this Court.

36. Secondly, giving the word "child" its natural meaning does not render exception (iv) redundant. Exception (iv) operates upon a wider class of persons, namely a brother, sister, lineal ascendant or lineal descendant, and therefore continues to govern transactions in favour of brothers, sisters, parents, grandparents and remoter descendants such as grandchildren, none of whom is a "child" within exception (iii). That a son or daughter happens also to answer the description of a lineal descendant produces only a degree of overlap; but overlap between two provisions is not the same thing as redundancy, and it affords no warrant for cutting down the plain meaning of

the word "child". It is necessary to confront directly the canon of construction upon which the contrary view rests. The reading that confines "child" to a minor perhaps draws its support from the presumption against surplusage, namely that the Legislature does not legislate in vain and that, so far as possible, every word must be given a distinct field of operation. Since a son or daughter is, in the strict sense, not only a "child" but also a lineal descendant, it is urged that, unless "child" in exception (iii) is confined to a minor, exception (iv) would be rendered redundant in its application to one's own son or daughter. The argument is a serious one and must be met rather than brushed aside, but on examination, the supposed redundancy does not exist, and the canon therefore does not bear the weight placed upon it. Exception (iv) has a large and independent field of operation untouched by exception (iii): it governs transactions in favour of a brother, a sister and a lineal ascendant, none of whom is a "child"; and it governs transactions in favour of remoter lineal descendants, such as a grandchild or great-grandchild, who are equally not "children" within exception (iii). Exception (iv) is thus indispensable however the word "child" is read, and cannot be said to be otiose. Even in the single case of one's own son or daughter the two exceptions occupy different ground, for they are distinguished not by the age of the child but by the structure of ownership of the property. Exception (iv), by its own terms, applies only where the individual who provides the consideration appears as a joint owner along with the relation; it can therefore have no application where the property stands in the sole name of the child. That situation — property in the sole name of a son or daughter, the consideration having been provided by the parent — falls within exception (iii) alone. On the natural reading, therefore, nothing is left redundant: the sole-name case belongs to exception (iii), the joint-ownership case to exception (iv), and the wider relations and remoter descendants to exception (iv) alone. The presumption, if at all, against surplusage is, in any event, subordinate to the plain meaning of the words used; it is an aid to construction and not a warrant for adding to the statute. The narrower reading secures non-redundancy only by importing into exception (iii) the word "minor", which the Legislature did not use and which, where it has so intended, it has elsewhere employed in terms. As between a construction that keeps faith with the plain words while leaving no provision redundant, and a construction that achieves non-redundancy only by adding a word of limitation, the former must be preferred. That preference is reinforced, not weakened, by the rule that a penal enactment is to be construed strictly: the Court may neither stretch nor cut down the natural meaning of an expression in order to widen the mischief of the Act, and where two reasonable constructions are open, that which relieves the subject from the penal and confiscatory consequences of the statute is to be preferred. To confine the word "child" to a minor would narrow the exception and, to that extent, enlarge the operation of a penal statute to the prejudice of the subject — a result which the rule of strict construction forbids rather than commands.

37. Finally, it is material that the decision in Naveen Nishok Kumar was rendered in an application under Order XII Rule 6 of the Code of Civil Procedure, in which the Court may grant relief property by property upon admissions, and not in an application under Order VII Rule 11, which is concerned with the rejection of the plaint as a whole**.** This distinction is one of substance and not merely of form, for it goes to the very nature of the two provisions. An application under Order VII Rule 11 is determined upon a meaningful reading of the plaint and of the documents filed with it, accepting the averments in the plaint as correct; it does not permit the trial of disputed questions of fact, and it operates upon the plaint as an indivisible whole. It is for this reason that it is well settled that a plaint may be rejected as a whole or not at all, and that there is no power to reject a plaint in part, whether as against some of the defendants or in respect of some of the suit properties; if the plaint discloses a cause of action upon any part of the claim, Order VII

Rule 11 is not attracted and the suit must proceed to trial. An application under Order XII Rule 6 stands on an entirely different footing. It is founded upon admissions, it is discretionary, and it empowers the Court to make such order, or to pass such judgment, as the admissions may warrant, whether upon the application of a party or of its own motion; relief may accordingly be granted in respect of one property, or one relief, while the remainder of the suit goes to trial. The High Court of Delhi in Naveen Nishok Kumar was exercising precisely that power, moulding relief property by property upon the admissions before it, dismissing the claim in respect of certain properties while passing a preliminary decree in respect of another. That course is not open to this Court in the present proceeding, which is one under Order VII Rule 11. The observations in Naveen Nishok Kumar upon the construction of the exceptions to the Benami Act must therefore be read in their own procedural setting, and they do not govern the distinct question that arises under Order VII Rule 11, namely whether the plaint, read as a whole and taken at its highest, discloses any cause of action at all. In this case, as would be seen further, for the reasons recorded, no item of the suit schedule survives that test, so that the rejection of the plaint in the present case is a rejection of the plaint as a whole, and not a partial rejection, which the law would not countenance.

38. For these reasons, this Court, with respect, differs from the said decision and adheres to the construction set out above.

39. In the circumstances above, this Court holds that the word "child" in Section 2(9)(A)(iii) of the Prohibition of Benami Property Transactions Act, 1988 includes the son or daughter of an individual, irrespective of age. Accordingly, the transaction pleaded in the plaint falls within the statutory exception under the Act.

40. Consequently, it is held that the transaction is not a benami transaction within the meaning of the Act and, therefore, the suit is not barred by the provisions of the Prohibition of Benami Property Transactions Act, 1988.

41. The next point for consideration is whether the suit is maintainable on the basis of the averments in the plaint.

42. The respondent/plaintiff has specifically pleaded that her father, the late S. Subramanian, purchased various properties in his own name and in the names of the plaintiff and the defendant, out of his own earnings. There is no averment in the plaint that the suit properties were acquired from any ancestral property or from any joint family nucleus. The plaint does not

disclose the existence of any joint family property or coparcenary estate. On the contrary, the plaintiff's case is categorical that her father paid the consideration for the purchase of the suit properties from his self-acquired funds.

43. The submission by the respondent/plaintiff that, because the father paid the consideration, the properties purchased in the defendant's name automatically became family properties available for partition cannot be accepted. The law does not recognise any such presumption. The mere fact that the purchase money came from the father does not, by itself, impart the character of joint family or family property to the property.

44. The plaint itself proceeds on the basis that Late S. Subramanian acquired the suit properties entirely from his own earnings. There is no pleading whatsoever that the acquisitions were made out of ancestral property, joint family funds, or with the aid of any joint family nucleus. Equally absent is any plea that the father intended to constitute the properties as joint family property or to create any trust or legal obligation in favour of all his children. Thus, the entire foundation of the suit rests solely on the assertion that the father paid the consideration, while the properties were purchased in the defendant's name.

45. Once the respondent herself invokes the statutory exception in Section 2(9)(A)(b)(iii) of the Prohibition of Benami Property Transactions Act, she necessarily accepts that the transaction is recognised and protected by law. The effect of that exception is only to exclude the transaction from the mischief of a benami transaction. The provision does not further declare that the property continues to belong to the parent or that it becomes joint family property. On the contrary, the legal consequence of a purchase falling within the exception is that the acquisition in the child's name is treated as a genuine and valid acquisition in favour of that child.

46. In law, therefore, if a father purchases property from his own funds in the name of his son or daughter and the transaction falls within the statutory exception, the property belongs to the child in whose favour the acquisition is made, unless an independent legal right is pleaded and established. The source of consideration alone cannot confer any proprietary interest upon the other children. To hold otherwise would be to introduce into the statute a concept which the Legislature has consciously omitted.

47. The respondent's case consequently suffers from an inherent legal contradiction. If the transaction is protected by the statutory exception, as

contended by the respondent, the defendant becomes the lawful owner of the property in his name, and no property remains available for partition. Conversely, if the respondent disowns the statutory exception, the transaction would fall within the definition of a benami transaction and attract the prohibition contained in the Act. Having expressly abandoned any plea of joint family property or joint family nucleus, the respondent cannot simultaneously contend that the properties standing exclusively in the defendant's name nevertheless constitute family properties liable for partition. Such mutually destructive pleas do not disclose any enforceable legal right.

48. It is also significant that the respondent herself pleads that the father purchased certain properties in her own name, providing the entire consideration. Yet she has neither offered to treat those properties as common family assets nor included them in the hotchpot for partition. She selectively seeks partition only of the properties standing in the defendant's name. This inconsistent approach further demonstrates that the respondent's claim is not founded on any recognised principle of property law, but only on the circumstance that the father provided the consideration. Such a circumstance, by itself, is insufficient in law to create a right of partition.

49. The Hon'ble Supreme Court, in its decision in **T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467,** held that if, on a meaningful, not merely formal, reading of the plaint, it is found to be manifestly meritless and devoid of a clear right to sue, the Court should exercise its powers under Order VII Rule 11 CPC and nip such litigation in the bud.

50. Applying the above principle to the facts of the present case, this Court finds that, even if all the averments in the plaint are accepted as true, the plaint does not disclose any legally enforceable right in favour of the plaintiff to seek partition of the suit properties. The suit is therefore manifestly meritless and does not disclose a cause of action recognised by law. Consequently, the plaint is liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure. Accordingly, the plaint in C.S.No.74 of 2025 is rejected; this application is, therefore, allowed. No costs. Consequently, the connected applications, if any, stand closed.

25-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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DR.A.D.MARIA CLETE, J.

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