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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 04-11-2026	Delivered on: 12-11-2026

CORAM

THE HON'BLE MR JUSTICE N.ANAND VENKATESH

Civil Revision Petition No.1879 of 2024
& CMP.No.9864 of 2024

CNR:{HCMA010723522024}

Case QR

Zenath
W/o.Ismail Abubakkar,
65, K.P.R.Nagar,
Kachirayapalayam Road,
Kallakurichi, Kallakurichi
District.

...Petitioner

Vs

1. Ismail Abubakkar
   S/o.Sheik Ismail,
   65, K.P.R. Nagar,
   Kachirayapalayam Road,
   Kallakurichi, Kallkurichi
   District.

2. Guljarbi
   W/o.Mamooth, 28/55,
   K.Mamandhal Road,
   Kallakurichi, Kallakurichi
   District.

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3. Sabeera
W/o.Mohammed Ismail,
55, K.Mamandhal Road,
Kallkurichi, Kallakurichi
District.

4. The District Registrar
O/o the District Registrar,
Kallakurichi, Kallakurichi
District.

...Respondents

PETITION under Article 227 of The Constitution of India against the fair and decretal order dated 04.3.2024 made in I.A.No. 308 of 2023 in O.S.No.38 of 2021 on the file of the Additional District Court, Kallakurichi.

For Petitioner: Mr.N.Manoharan

For Respondents: Mr.Siddarth Sridhar for
Mr.R.Bharathkumar for R1
R2 & R3: Not ready in Notice
Mrs.D.Chitra Maragatham, GA
for R4

ORDER

This civil revision petition has been filed under Article 227 of The Constitution of India against the fair and decretal order dated 04.3.2024 made in I.A.No.308 of 2023 in O.S.No.38 of 2021 on the

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file of the Additional District Court, Kallakurichi (for short, the Court below) wherein the application filed by the petitioner/D1 under Order VII Rule 11 of the Civil Procedure Code (CPC) seeking for rejection of plaint, came to be dismissed.

2. Though the revision has been filed under Article 227 of The Constitution of India, it is converted into one under Section 115 of the CPC.

3. Heard the learned counsel on either side.

4. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned order.

5. The first respondent/plaintiff filed the said suit against the petitioner/D1, respondents 2 and 3/D2 & D3 and the fourth respondent/D4.

6. The cause of action given for filing the said suit was that the first respondent/plaintiff was working abroad and was sending

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money to the petitioner/D1, who was his second wife; that utilizing this money, all the three items of the suit properties were purchased in the name of the petitioner/D1, which were benami transactions not intended for her benefit; and that taking advantage of the same, item Nos.1 and 2 of the suit properties were settled by the petitioner/D1 in favour of respondents 2 and 3/D2 & D3 vide gift settlement deed dated 14.10.2019. Therefore, the first respondent/ plaintiff sought for declaration of his title in respect of the suit properties, for permanent injunction and to declare the said gift settlement deed dated 14.10.2019 executed by the petitioner/ D1 in favour of respondents 2 & 3/D2 & D3 in respect of item Nos.1 and 2 of the suit properties as null and void.

7. In the said suit, the petitioner/D1 filed the said application seeking to reject the plaint mainly on the ground that the plaint averments were hit by Section 3(1) read with Section 4(1) of the Benami Transactions (Prohibition) Act, 1988 (for short, the Act).

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8. However, by the impugned order, the Court below, while dealing with the grounds raised by the petitioner/D1, came to the conclusion that the issue raised by her would require consideration of evidence and that the same could not be decided in the said application filed for rejection of the plaint. Aggrieved by that, the above revision has been filed before this Court.

9. Learned counsel for the petitioner/D1 submitted that in the plaint, a specific averment has been made by the first respondent/ plaintiff to the effect that money was sent by him to the petitioner/ D1 out of love and affection; that with that money, the petitioner/ D1 purchased the suit properties in her name; that there was absolutely no indication in the plaint that the suit properties purchased in the name of the petitioner/D1 were not intended for her benefit; and that in view of the same, the exception provided under Section 3(2) of the Act would not apply since the first respondent/plaintiff had not pleaded that the suit properties were not purchased for the benefit of the petitioner/D1.

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10. In other words, it was contended on the side of the petitioner that if an immovable property was bought in the name of the wife for her benefit, the husband would not be entitled to recover the property held by his wife.

11. In order to substantiate his submissions, the learned counsel for the petitioner/D1 relied upon the following judgments :

(a) of a learned Single Judge of this Court in ***Shanthi (a) Shanthi Sathya Vs. M.Masanam [reported in 2015 (3) CTC 316]***;

(b) of the Hon'ble Apex Court in ***Nand Kishore Mehra Vs. Sushila Mehra [reported in 1995 (4) SCC 572];*** and

(c) of the Hon'ble Apex Court in ***Mangathai Ammal (died) through legal representatives Vs. Rajeswari [reported in 2020 (17) SCC 496].***

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12. Per contra, the learned counsel for the first respondent/ plaintiff submitted that the portions of the plaint could not be read to interpret as if the money was sent to the petitioner/D1 out of love and affection and that it had to be read as a whole, which would clearly show that the suit properties were purchased only for the benefit of the first respondent/plaintiff and not for the benefit of the petitioner/D1.

13. In order to substantiate his submissions, the learned counsel for the first respondent/plaintiff relied upon the judgment in ***Shaifali Gupta Vs. Vidya Devi Gupta [S.L.P.(Civil) No.4673 of 2023 dated 20.5.2025]***.

14. The issue as to whether the transaction in question was or was not for the benefit of the petitioner/D1 is a question of fact, which can be decided only after a full-fledged trial. Therefore, the only consideration for this Court is to see if a reading of the averments made in the plaint brings this case within the provisions of Section 3(1) read with Section 4(1) of the Act.

15. The first respondent/plaintiff pleaded in paragraph 3 as

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follows:

“3.....

thjpapd; 2k; kidtpahd 1k; gpujpthjpf;F mtuJ ngw;Nwhh;fs; tPl;by; vt;tpj nrhj;Jf;fSk; fpilahJ. kw;Wk; Nkw;fz;l 1k; gpujpthjpf;nfd vt;tpj jdpg;gl;l tUthAk; fpilahJ. thjp 1k; gpujpthjpia 2k; jpUkzk; nra;J nfhz;ljd; mbg;gilapy; 1k; gpujpthjpapd; ngahpy; itj;jpUe;j md;gpdhYk;> ghrj;jpdhYk;> ek;gpf;if - apdhYk; thjp ntspehl;by; jhd; f~;lg;gl;L cioj;J rk;ghjpj;j tUtha; KOtijAk; thjp 1k; gpujpthjpf;F Nkw;fz;l 1k;-gpujpthjpapd; tq;fp fzf;fpw;F gzk; mDg;gpAs;shh;. mJ jtpu thjp Vw;fdNt jdf;F ghj;jpakha; mtuJ nrhe;j Cuhd rq;fuhGuk; tl;lk;> Nky;rpWt@h; fpuhkk; kw;Wk; mjd; mz;il fpuhkq;fspy; mth; jd; Ra tUthiaf; nfhz;L> rk;ghjpj;J fpiuak; ngw;wpUe;j kjpg;Gkpf;f nrhj;Jf;fis ntsp egh;fSf;F tpw;W mjd;%yk; fpilj;j

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njhifiaAk; jdJ 2tJ kidtpahd 1k; gpujpthjpaplk; nfhLj;J itj;jpUe;jhh;.”

16. At paragraph 4 of the plaint, it was pleaded as follows:

“4. mt;tifapy; thjp jdJ fLikahd ciog;gpdhy; fpilj;j tUtha; KOtijAk; jdJ 2tJ kidtpahd 1k; gpujpthjp ngahpy; itj;jpUe;j md;gpdhYk;> ghrj;jpdhYk;> ek;gpf;ifapdhYk; jhth nrhj;Jf;fis 1k; gpujpthjp ngahpy; fpiuak; thq;fp itj;jhh;.”

17. At paragraphs 6 to 9 of the plaint, it was pleaded as follows:

“6. gpd;dpl;L jhth 1tJ mapl;l nrhj;ij thjpf;fhf 1k; gpujpthjp thjpapd; nrhe;j ciog;gpd; %yk; ntspehl;by; ,Ue;J tq;fp %yk; mDg;gpa gzj;ij itj;J> jhth 1tJ mapl;l nrhj;ij i~ jdJ cld;gpwe;j rNfhjhpahd 2k; gpujpthjpaplk; ,Ue;J thjpAila eyDf;fhf thjpapd; vjph;fhyj;jpw;fhf thjpapd; rk;kjj;Jld; thjpapd; ,uz;lhk; kidtpahd 1k; gpujpthjp ngahpy; mehkNjakhf

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(benami transaction vd;w mbg;gilapy;) fle;j 10.12.2010y; xU gjpT nra;ag;gl;l fpiuag; gj;jpuj;jpd;gb Mtz vz;.5424/10 d; %yk; fpiuak; ngwg;gl;lJ. mt;tifapy; i~ jhth 1tJ mapl;l nrhj;ij thjp jdJ ,uz;lhtJ kidtpahd 1k; gpujpthjp ngahpy; benami transaction vd;w mbg;gilapy; fpiuak; ngw;Ws;shh;. i~ fpiuaj;jpw;F gpd;dpl;L jhth 1tJ mapl;l nrhj;jpy; thjp jdJ ,uz;lhtJ kidtpahd 1k; gpujpthjpf;F mDg;gpa ngUe;njhifiaf; nfhz;L 1k; gpujpthjp gy ,yl;rq;fs; nryT nra;J nkj;ij tPL fl;bAs;shh;. i~ nkj;ij tPL fl;Ltjw;Fk; cz;lhd midj;J nryTfSf;fhd njhif KOtJk; thjpahy; 1k; gpujpthjpf;F nfhLf;fg;gl;ljhFk;. Mf jhth 1tJ mapl;l nrhj;J vt;tifapYk; thjpapd; ,uz;lhtJ kidtpahd 1k; gpujpthjpf;F rl;lg;gb jdpg;gl;l Kiwapy; fpiua ghj;jpag;gl;l nrhj;J MfhJ.

7. gpd;dpl;L jhth 2tJ mapl;l nrhj;J Mjpapy; fs;sf;Fwpr;rp tpshe;jhq;fiy Nrh;e;j gukrptf;fTz;lh; tifawhtpw;F

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ghj;jpag;gl;L Nkw;gbahhplkpUe;J fs;sf;Fwpr;rp f.khkdee;jiy Nrh;e;j n[auhkd; vd;gtUf;F fle;j 22.3.2000 y; xU gjpT nra;ag;gl;l fpiuag;gj;jpuk; Mtz vz;. 483/2000-d; %yk; fpiuak; nfhLj;Js;shh;. mjd; gpd;dpl;L i~ n[auhkdplkpUe;J ghz;Luq;fd; vd;gth; fle;j 12.3.2007-y; xU gjpT nra;ag;gl;l fpiuag;gj;jpuk; Mtz vz;.670/2007d; %yk; fpiuak; ngw;Ws;shh;. gpd;dpl;L i~ ghz;Luq;fd; N~f;nkha;jpd; tifawhtpw;F fle;j 28.10.2009-y; xU gjpT nra;ag;gl;l fpiuag; gj;jpug;gb Mtz vz;.4180/2009-d; %yk; fpiuak; nfhLj;Js;shh;. mjd; gpd;dpl;L jhth 2tJ mapl;l nrhj;jpy; i~ N~f;nkha;jpd; tifawh xU RCC nkj;ij tPL fl;b mDgtpj;J te;J> gpd;dpl;L mthplkpUe;J thjpapd; ,uz;lhtJ kidtpahd 1k; gpujpthjp fle;j 30.8.2011-y; xU gjpT nra;ag;gl;l fpiuag;gj;jpuk; %yk; Mtz vz;.3195/2011d; gb thjpapd; nrhe;j ciog;gpd; %yk; ntspehl;by; ,Ue;J tq;fp

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%yk; mDg;gpa gzj;ijf;nfhz;L thjpapd; ,uz;lhtJ kidtpahd 1k; gpujpthjp jdJ ngahpy; jhth 2tJ mapl;l nrhj;ij mehkNja khw;wk; (benami transaction) vd;w mbg;gilapy; fpiuak; ngw;Ws;shh;. Mdhy; i~ 2tJ mapl;l nrhj;Jk; ehsJ tiu thjpapd; mDgtj;jpy; jhd; ,Ue;JtUfpwJ.

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8. mNjNghy; jhth 3tJ mapl;l nrhj;jhdJ Mjpapy; fhjh; rhaG kidtp mkpjhgp vd;gtUf;F 23.3.2011-y; mtuJ kfd;fs; kw;Wk; kfs;fs; vOjpf;nfhLj;Js;s jhdnrl;by;nkz;l; gj;jpug;gb ghj;jpag;gl;L Nkw;gbahhplkpUe;J thjp jdJ nrhe;j ciog;gpd; %yk; ntspehl;by; ,Ue;J mtuJ ,uz;lhtJ kidtpahd 1k; gpujpthjpf;F tq;fp %yk; mDg;gpa gzj;ijf;nfhz;Lk;> thjp jdJ Vw;fdNt ghj;jpag;gl;l jdJ nrhe;j fpuhkj;jpypUe;j nrhj;Jf;fis tpw;W mjd; %yk; fpilj;j njhifiaf; nfhz;Lk; 1k; gpujpthjpapd; ngahpNyNa fle;j 28.2.2012-y; xU gjpT nra;ag;gl;l fpiuag; gj;jpuj;jpd;gb Mtz vz;.351/2012-d; %yk; fpiuak; ngwg;gl;lJ. i~ jhth 3tJ mapl;l nrhj;Jk; fpiuak; ngwg;gl;lJk; mehkNja khw;wk; (benami transaction) vd;w mbg;gilapy; fpiuak; ngwg;gl;ljhFk;.

9. Mf jhth 1 Kjy; 3 mapl;l nrhj;Jf;fs; ahTk; mehkNja khw;wk; (benami transaction) vd;w mbg;gilapy; 1k;

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gpujpthjp ngahpy; fpiuak; ngwg;gl;L ,Ue;jhYk; Nkw;fz;l nrhj;Jf;fs; midj;Jk; thjpf;Nf rh;t Rje;jpu ghj;jpaKk;> mDgtkhdjhFk;.”

18. The learned counsel for the petitioner/D1 heavily relied upon the term ‘love and affection’ pleaded in the plaint and submitted that if the money has been sent to her out of love and affection and if the properties have been purchased by the petitioner/D1 out of that money, obviously it would be only for the benefit of the petitioner/D1 and not otherwise.

19. It is true that the first respondent/plaintiff used the term ‘love and affection’ at paragraphs 3 and 4 of the plaint and stated that the first respondent/plaintiff had sent the money earned by him to the petitioner/D1 out of love and affection and that the petitioner/ D1 purchased the suit properties in her name. However, it had also been pleaded that the suit properties were purchased for the benefit of the first respondent/plaintiff and it was meant for the absolute possession and enjoyment of the first respondent/plaintiff.

20. The judgments that have been relied upon by the learned

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counsel for the petitioner/D1 were all cases where the concerned Court had the benefit of appreciating the evidence and had come to the conclusion that the properties involved therein were purchased for the benefit of the wife and that therefore, the husband would not be able to claim title over the same by relying upon the exception. In other words, the scope of Section 3 of the Act was made applicable to the facts and the evidence collected in those cases and a finding was rendered. The law, as enunciated in those judgments, can be understood and applied in the present case only to the extent of seeing if the reading of the averments made in the plaint would show that the suit properties were purchased in the name of the petitioner/D1 for her benefit. If the Court below is not able to come to such a conclusive decision, the parties will have to necessarily go for trial.

21. The learned counsel for the petitioner/D1 also relied upon the judgment of a learned Single Judge of this Court in ***G.S.Balasubramaniam Vs. Rathinam @ Rathinammal (Died) [A.S.No.726 of 2023 dated 19.9.2025]*** and submitted that the moment the money was sent out of love and affection and the suit properties were purchased by the petitioner/D1, the bar

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under the Act will start operating.

22. Once again, the said judgment dated 19.9.2025 was also based on the facts of that case and on appreciation of the evidence and the same cannot be, straight away, applied to the present case since this Court has a very limited scope while deciding the application for rejection of the plaint. The Court below properly appreciated the averments made in the plaint and concluded that the matter would require recording of evidence to decide as to whether the claim made by the first respondent/plaintiff is barred by the provisions of the Act. The issue as to whether the properties involved are benami transactions or they fall under the exception is an issue, which can be decided only based on the evidence and not simply based on the averments contained in the plaint.

23. The Court below also relied upon some of the judgments to support its reasoning. The finding of the Trial Court does suffer from any perversity warranting the interference of this Court.

24. Hence, the above civil revision petition is dismissed and the impugned order dated 04.3.2024 made in I.A.No.308 of 2023 in

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O.S.No.38 of 2021 on the file of the Additional District Court, Kallakurichi is sustained. It is left open to the Court below to decide the issue on its own merits and in accordance with law after recording the evidence let in by both sides. The prima facie findings rendered while passing the impugned order in the said application as well as the observations made in this order will not have any bearing when the Court below deals with the merits of the suit. There shall be a direction to the Additional District Court, Kallakurichi to dispose of the suit within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, the connected CMP is also dismissed.

12-11-2026

Index: Yes
Speaking order
Neutral Citation: Yes

To
The Additional District Court,
Kallakurichi.

RS

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