

**A.F.R.**

Judgment reserved on. 06.02.2026

Judgment delivered on. 10.02.2026

Neutral Citation No. - 2026:AHC:29002

**Court No. - 38**

**Case :-** FIRST APPEAL No: - 978 of 2025

**Appellant :-** Sunil Kumar Dublish

**Respondent :-** Sri Ramesh Chandra Dublish (Since Dead) And 3 Others

**Counsel for Appellant :-** Durgesh Kumar Singh, Sudhir Kumar Malviya

**Counsel for Respondent :-** Shiv Sagar Singh

**Hon'ble Sandeep Jain, J.**

1. The instant first appeal has been filed by the plaintiff under Section 96 of the CPC against the impugned judgment and decree dated 30.8.2025 passed by the court of Civil Judge(Senior Division) Meerut in O.S. No. 782 of 2006 Sunil Kumar Dublish vs. Ramesh Chand Dublish(deceased through LR) and others, whereby the defendant's application 89-C under Order 7 Rule 11 CPC has been allowed and consequently, the plaint has been rejected on the ground that the suit is barred under Section 4(1) of the Benami Transactions(Prohibition) Act, 1988, hereinafter referred to as the 'Act of 1988'.

2. Factual matrix is that the plaintiff- appellant Sunil Kumar Dublish filed O.S. No. 782 of 2006 with the averments that that the plaintiff and defendant no.1 Ramesh Chand Dublish and defendant no.2 Smt. Sarla Dublish belong to the same family, the defendant no.1 is the father of the plaintiff and defendant no.2 is the mother of the plaintiff. It was averred that the predecessors of the plaintiff and above defendants Late Shanti Saran Dublish was the owner in possession of certain agricultural property, which was described in para 3 of the plaint situated in village Mawana Kalan, Pargana Hastinapur, Tehsil Mawana, District-Meerut, the khasra number of which was changed in consolidation proceedings, which is presently recorded in the name of defendant no.1. It was further averred that Late Shanti Saran Dublish died in the year 1953, who was the grandfather of the plaintiff, had four sons namely Ramesh Chand Dublish(defendant no.1), Suresh Chand,Naresh Chand and Umesh Chand.

3. It was further averred by the plaintiff that after the death of Shanti Saran Dublish a family partition took place on 24.2.1953 between the

four sons of the deceased and the property was divided into four shares and the defendant no.1 became the owner in possession of land inherited in family partition. It was further averred by the plaintiff that he being the grandson of Shanti Saran Dublish, is the owner of half share of the above property and the remaining half share of the above property belongs to defendant no.1. It was further averred that the defendant no.1, being the father of the plaintiff, was looking after the management of the above property, as the family was Hindu Undivided Family.

4. It was further averred by the plaintiff that his father/defendant no.1 transferred a major portion of the above property to various persons on the assumption that he was the sole owner of the above property without informing and seeking any permission from the plaintiff and the amount received after transferring the property as consideration, also remained with the defendant no.1, as the family was undivided.

5. It was further averred that from the income of the partnership firm Messers Sunil Packaging Industries, in which his father was a sleeping partner, and from the cash credit Bank limit availed by him, certain immovable properties were purchased in the year 1989 and 1990, the description of which was given in the plaint, in the name of his mother, Smt. Sarla Dublish (defendant no.2), on which a house was constructed by him from the funds obtained by selling agricultural property and as such, after the death of his mother on 24.2.2015, he has become the sole owner of this property bearing no. 342/1 Harnamdass Road, Civil Lines, Meerut.

6. It was further averred that his mother, Smt. Sarla Dublish was only a Benami owner of the above property and after her death, her legal heir 2/1 Rajeev Kumar Dublish has not acquired any right, title or interest in the disputed property.

7. It was further averred that on 4.1.1972 the plaintiffs father created/manipulated a family settlement to grab his property and at that time he was studying in B.Sc. This family settlement was never acted upon as such, was not in his knowledge, which also does not bear his signature. It was averred that the plaintiff became aware of the above alleged family settlement from the proceedings of case pending in the court of SDO, Mawana, Meerut. It was further averred that his father started interference into the rights title and possession of the disputed property, which came to his share and therefore, the plaintiff had to file a suit on 5.11.2001 in the court of SDO, Mawana for the declaration of ownership of half share of the property inherited from his grandfather Shanti Saran Dublish, which came into his share in the family partition that took place between the four sons of Shanti Saran Dublish.

8. It was further averred that the plaintiff requested his father/defendant no.1 to render the accounts of the amount of consideration received from transferring the property to various persons and also to render the accounts of income received from the property managed by him for a long time, but his father denied. It was further submitted that the defendant no. 1 and 2 have also denied the partition of the residential house to the extent of his half share in the land underneath the house. It was averred that the superstructure on the land was the exclusive property of the plaintiff whereas, the land beneath it, was the joint property of the plaintiff and defendant no.1. It was averred that the defendant no.2 has no share in the residential property no.342/1,Harnamdass Road,Civil Lines, Meerut.

9. It was further averred that his mother Smt.Sarla Dublish had no right in the disputed property as such, she could not have executed the registered Will on 15.10.2005 in favour of defendant no.3 Smt.Nupur Dublish. It was alleged that the above Will was a forged document, which was not binding upon the plaintiff. It was further averred that after the death of the plaintiffs mother, Rajeev Kumar Dublish was substituted as her legal heir,but at that time, the existence of the above Will was never disclosed to the plaintiff which itself proves that, the alleged Will was a forged and fabricated document, which confers no right on the defendant no.3, insofar as the disputed property is concerned.

10. The plaintiffs has claimed the following reliefs:-

- (i) That by decree of Court, the plaintiff be declared as absolute and sole owner of house no. 342/1, Harnamdass Road, Civil Lines, Meerut.
- (ii) That the cost of the suit be also awarded to the plaintiff against the defendant's.
- (iii) That any other relief which the court deems fit and proper also be awarded to the plaintiff against the defendants.

11. The defendants moved an application 89-C in the trial court with the averments that after the partition, the property became the self acquired property of plaintiffs father Ramesh Chand Dublish, in terms of the provision of the UPZA & LR Act. The plaintiff has averred that his father dishonestly transferred a major portion of the property to some persons by executing sale deeds etc. without the knowledge and information of the plaintiff ,but no details of such transfer and receipt of the sale consideration have been mentioned in the plaint. It was further averred that the plaintiff alleges that the disputed property was purchased from the income of his business, which was a Benami property, as such, the suit was barred by the provisions of the Benami Transactions(Prohibition) Act,1988. It was

further averred that the plaintiff was challenging the alleged family settlement dated 4.1.1972 after a period of more than 33 years, in the year 2006, as manipulated and fabricated and not binding upon him, which allegedly came into the knowledge of the plaintiff in the year 2001, but the suit was filed after the prescribed period of limitation of three years, which was grossly barred by limitation. It was further averred that the plaintiff has alleged his mother/defendant no. 2 to be the Benami owner of the disputed property, as such the suit was barred by the Act of 1988. With these averments, it was prayed that the plaint be rejected under Order 7 Rule 11(d) CPC.

12. The plaintiff- appellant opposed the above application of the defendant's on the ground that it was not legally maintainable because the defendants have already filed written statement and plaintiff has also filed his evidence and he has also been partly cross-examined, therefore, the application could not have been moved at this stage. It was averred that the defendants want to delay the disposal of the suit on one pretext or the other. It was further averred that when Shanti Saran Dublish died, plaintiff was young/minor at that time and mere mutation of name of plaintiffs father Ramesh Chand Dublish over the inherited property has no adverse affect upon the right, title and interest of the plaintiff in the disputed property. It was further submitted that the plaintiff has claimed declaration that he is the owner of two thirds share of the land of the disputed property and the sole owner of the superstructure standing on 342/1, Harnamdass Road, Civil Lines, Meerut, on which the provisions of UPZA & LR Act are not applicable. It was further averred that plaintiff was minor and member of Hindu Undivided Family(HUF), plaintiffs father being the Karta of the HUF, who was looking after the entire affairs of the property inherited by the plaintiff from his grandfather Shanti Saran Dublish. It was further averred that the provisions of the Act of 1988 are not applicable and the family settlement dated 4.1.1972 was not the subject matter of this case, because a separate case regarding that family settlement was pending in the Additional Civil Judge(Senior Division)court no.4, Meerut in which the defendants have already stated that since the village has been notified for consolidation operation as such, the court has no jurisdiction. With these submissions it was prayed that the defendant's application be rejected.

13. The trial court by impugned order dated 30.8.2025 has concluded that since plaintiff has asserted that his mother Sarla Dublish was the benami owner of the disputed property, as such, the suit is barred by Section 4(1) of the Act of 1988. The trial court has rejected the contention of the plaintiff that the provisions of Section 4(3) of the Act of 1988, were attracted in the facts and circumstances of the case, because the disputed property was purchased from the funds of the

Hindu Undivided Family (HUF). It was further concluded by the trial court that the mother does not fall within the category of coparcener in the HUF. With the above reasoning, the trial court has allowed the defendants application 89-C under Order 7 Rule 11 CPC and has consequently rejected the plaint, aggrieved against which, the plaintiff has filed the instant appeal under Section 96 CPC.

14. Shri Durgesh Kumar Singh, learned Senior Counsel for the plaintiff-appellant submitted that at the stage of deciding Order 7 Rule 11 CPC application, only the plaint averments and the documents submitted with the plaint are to be examined, the written statement or the documents submitted by the defendants are not to be looked into, at this stage by the court. It was further submitted that the case of the plaintiff was also not required to be examined on merits and whatever the plaintiff has alleged, it is to be treated as true, for deciding the application. It was further submitted that the plaintiff has clearly alleged that there was a Hindu Undivided Family(HUF) consisting of himself and his father Ramesh Chand Dublish, who was also the Karta, who used to keep and maintain the accounts of the income of the HUF. Learned counsel submitted that the disputed property was purchased in the name of plaintiffs mother Sarla Dublish, from the funds obtained by illegally selling the immovable property of the HUF and the income of the partnership firm Messers Sunil Packaging Industries. It was further submitted that there was a fiduciary relationship between the plaintiff and his mother as such, the disputed property was purchased in the name of his mother, who was not having any independent income to purchase the disputed property and thereafter, construct house on it. It was further submitted that the disputed property fell in the exception enumerated in Section 4(3) of the Act of 1988, as such the suit was not barred by Section 4(1) of the Act of 1988. With these submissions, it was prayed that the appeal be allowed and the original suit be restored on the file of the trial court with the direction to decide it on merits.

15. Per contra, learned counsel for the defendant- respondents Shri Shivsagar Singh submitted that the plaintiff has alleged the disputed property to be benami, in the name of his mother Sarla Dublish, hence the provisions of Section 4(1) of the Act of 1988 were attracted in the facts and circumstances of the case. It was further submitted that the trial court has not committed any error in rejecting the plaint. With these submissions it was prayed that the appeal is meritless and be dismissed at the admission stage.

I have heard the learned counsel of both the sides, perused the impugned order and the documents submitted with the appeal.

16. Appeal is admitted.

17. The Apex Court in the case of ***Vinod Infra Developers Ltd. versus Mahaveer Lunia and others 2025 INSC 772*** has held that at the preliminary stage of deciding Order 7 Rule 11 CPC application, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims. If any triable issues arise from the pleadings, the suit cannot be summarily rejected.

18. The Apex Court in the case of ***Keshav Sood versus Kirti Pradeep Sood and others 2023 SCC OnLine SC 2459*** has held that the scope of Rule 11 of Order 7 of CPC is concerned, the law is well settled. The court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of defendant and documents relied upon by him cannot be looked into while deciding such application.

19. It is apparent from the above law laid down by the Apex Court in the case of ***Vinod Infra Developers Ltd.*** (supra) and ***Keshav Sood*** (supra) that at the time of deciding Order 7 Rule 11 CPC application, the court has to look into only the averments made in the plaint and the documents submitted by the plaintiff. The court has not to examine the written statement of the defendant or the documents submitted by it. Further, the court has also not to examine the plaintiffs case on merit to determine whether he is going to succeed or not ? It is also apparent that if any triable issue arises out of the pleadings of the plaintiff, then the plaint cannot be summarily rejected.

20. For appreciating the controversy in correct perspective, it will be appropriate to examine the relevant provisions of ***The Benami Transactions (Prohibition) Act, 1988***. Section 2(a), 2(c), 3 and 4 of the Act reads as under:-

***“2.Definitions.-In this Act, unless the context otherwise, requires,—***

***(a) “benami transaction” means any transaction in which property is transferred to one person for a consideration paid or provided by another person;***

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***(c) “property” means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.***

***3. Prohibition of benami transactions.-***

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

***(2) Nothing in sub-section (1) shall apply to-***

***(a) 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;*

*(b) \*\*\*\*\**

*Explanation ----\*\*\*\*\**

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

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

***4. Prohibition of the right to recover property held benami.-(1)***

*No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.*

*(2)No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.*

*(3) Nothing in this section shall apply,—*

*(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or*

*(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.”*

21. The Apex Court in the case of ***Pushpalata versus Vijay Kumar(Dead) through LR's and others 2022 SCC OnLine SC 1152***, while discussing the circumstances which can be taken as a guide to determine the nature of the transaction, held as under:-

*“22. The court's approach in cases, where the claim is that a property or set of properties, are benami, was outlined, after considering previous precedents, in Binapani Paul v. Pratima Ghosh (2007) 6 SCC 100, where this court cited with approval extracts from Valliammal v. Subramaniam (2004) 7 SCC 233:*

*“47. Burden of proof as regards the benami nature of transaction was also on the respondent. This aspect of the matter has been considered by this Court in Valliammal (D) By LRS. v. Subramaniam (Supra) wherein a Division Bench of this Court held:*

*“13. This Court in a number of judgments has held that it is well established that burden of proving that a particular sale is benami lies on the person who alleges the transaction to be a benami. The essence of a benami transaction is the intention of the party or parties concerned and often, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. Ref to Refer to Jaydayal Poddar v. Bibi Hazra [(1974) 1 SCC 3], Krishnanand Agnihotri v. State of M.P. [(1977) 1 SCC 816 : 1977 SCC (Cri) 190], Thakur Bhim Singh v. Thakur Kan Singh [(1980) 3 SCC 72], Pratap Singh v. Sarojini Devi [1994 Supp (1) SCC 734] and Heirs of Vrajlal J. Ganatra v. Heirs of Parshottam S. Shah [(1996) 4 SCC 490]. It has been held in the judgments referred to above that the question whether a particular sale is a benami or not, is largely one of fact, and for determining the question no absolute formulas or acid test, uniformly applicable in all situations can be laid. After saying so, this Court spelt out the following six circumstances which can be taken as a guide to determine the nature of the transaction:*

- (1) the source from which the purchase money came;*
- (2) the nature and possession of the property, after the purchase;*
- (3) motive, if any, for giving the transaction a benami colour;*
- (4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;*
- (5) the custody of the title deeds after the sale; and*
- (6) the conduct of the parties concerned in dealing with the property after the sale. (Jaydayal Poddar v. Bibi Hazra [(1974) 1 SCC 3], SCC p. 7, para 6)*

*14. The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless, the*



*source from where the purchase money came and the motive why the property was purchased benami are by far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another. We would examine the present transaction on the touchstone of the above two indicia.*

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*18. It is well settled that intention of the parties is the essence of the benami transaction and the money must have been provided by the party invoking the doctrine of benami. The evidence shows clearly that the original plaintiff did not have any justification for purchasing the property in the name of Ramayee Ammal. The reason given by him is not at all acceptable. The source of money is not at all traceable to the plaintiff. No person named in the plaint or anyone else was examined as a witness. The failure of the plaintiff to examine the relevant witnesses completely demolishes his case.””*

*23. As a matter of law, the principle that one who alleges that a property is benami and is held, nominally, on behalf of the real owner - in cases which form the exception, under Section 4 (3) - has to displace the initial burden of proving that fact. Such proof can be through evidence, or cumulatively through circumstances. This fact was brought home, by this court, in Marcel Martins v. M. Printer (2012) 5 SCC 342. In that case, the issue was whether the transfer of rights in favour of one of the siblings, in the absence of a will, by the person having interest (as a tenant in the property), after her death, operated to exclude the other heirs. The court held that the transfer was made to fulfil a municipality's requirement, and the property was held by the one in whose name it was mutated, in a fiduciary capacity, under Section 4(3)(a) of the Act, on behalf of the siblings:*

*“22. It is manifest that while the expression “fiduciary capacity” may not be capable of a precise definition, it implies a relationship that is analogous to the relationship between a trustee and the beneficiaries of the trust. The expression is in fact wider in its import for it extends to all such situations as place the parties in positions that are founded on confidence and trust on the one part and good faith on the other.*

*23. In determining whether a relationship is based on trust or confidence, relevant to determining whether they stand in a fiduciary capacity, the Court shall have to take into consideration the factual context in which the question arises*

*for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case. Having said that, let us turn to the facts of the present case once more to determine whether the appellant stood in a fiduciary capacity vis-à-vis the plaintiffs-respondents.*

*24. The first and foremost of the circumstance relevant to the question at hand is the fact that the property in question was tenanted by Smt. Stella Martins-mother of the parties before us. It is common ground that at the time of her demise she had not left behind any Will nor is there any other material to suggest that she intended that the tenancy right held by her in the suit property should be transferred to the appellant to the exclusion of her husband, C.F. Martins or her daughters, respondents in this appeal, or both. In the ordinary course, upon the demise of the tenant, the tenancy rights should have as a matter of course devolved upon her legal heirs that would include the husband of the deceased and her children (parties to this appeal). Even so, the reason why the property was transferred in the name of the appellant was the fact that the Corporation desired such transfer to be made in the name of one individual rather than several individuals who may have succeeded to the tenancy rights. A specific averment to that effect was made by plaintiffs-respondents in para 7 of the plaint which was not disputed by the appellant in the written statement filed by him. It is, therefore, reasonable to assume that transfer of rights in favour of the appellant was not because the others had abandoned their rights but because the Corporation required the transfer to be in favour of individual presumably to avoid procedural complications in enforcing rights and duties qua in property at a later stage. It is on that touchstone equally reasonable to assume that the other legal representatives of the deceased-tenant neither gave up their tenancy rights in the property nor did they give up the benefits that would flow to them as legal heirs of the deceased tenant consequent upon the decision of the Corporation to sell the property to the occupants. That conclusion gets strengthened by the fact that the parties had made contributions towards the sale consideration paid for the acquisition of the suit property which they would not have done if the intention was to concede the property in favour of the appellant. Superadded to the above is the fact that the parties were closely related to each other which too lends considerable support to the case of*

*the plaintiffs that the defendant-appellant held the tenancy rights and the ostensible title to the suit property in a fiduciary capacity vis-à-vis his siblings who had by reason of their contribution and the contribution made by their father continued to evince interest in the property and its ownership. Reposing confidence and faith in the appellant was in the facts and circumstances of the case not unusual or unnatural especially when possession over the suit property continued to be enjoyed by the plaintiffs who would in law and on a parity of reasoning be deemed to be holding the same for the benefit of the appellant as much as the appellant was holding the title to the property for the benefit of the plaintiffs.*

*25. The cumulative effect of the above circumstances when seen in the light of the substantial amount paid by late Shri C.F. Martins, the father of the parties, thus puts the appellant in a fiduciary capacity vis-à-vis the said four persons. Such being the case the transaction is completely saved from the mischief of Section 4 of the Act by reason of the same falling under Sub-section 3(b) of Section 4. The suit filed by the respondents was not, therefore, barred by the Act as contended by the learned counsel for the appellant.”*

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*27. In the light of these factors, and the law declared by this court which has elaborated the circumstances under which a claim against a benami owner can be said to be proved, under Section 4(3)(a) of the Act, the conclusions drawn by the trial court and first appellate court, are plainly erroneous, given the evidence on record. The High Court, in the opinion of this court, fell into error in not noticing the correct position in law.*

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*30. In the opinion of this court, the High Court fell into error, in ignoring that the circumstances of this case, where the first plaintiff had proved that the properties had been purchased, with his funds, and the sons were minors, with no source of income. The second defendant's position-throughout all the proceedings, was that the properties were that of the first plaintiff; in other words, he admitted to the suit averments. The plaintiff also proved that he had possession of the property, by adducing positive evidence of tenants, who paid rent to him. In these circumstances, the elements necessary to establish benami ownership within the meaning of Section 4 (3) (a) of the Act, in terms of the judgments in Binapani Paul and Valliammal (supra) have been satisfied by the first*

*plaintiff. ”*

22. The Apex Court in the case of ***Marcel Martins versus M.Printer and others (2012)5 SCC 342*** , while discussing Section 4 of the Benami Transactions(Prohibition) Act,1988 held as under:-

*“26. Section 4 of the Act, upon which heavy reliance was placed by Mr Chaudhary, may be extracted in extenso:*

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

*(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.*

*(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.*

*(3) Nothing in this section shall apply—*

*(a) where the person in whose name the property is held is a coparcener in a Hindu Undivided Family and the property is held for the benefit of the coparceners in the family; or*

*(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.”*

*A plain reading of the above will show that no suit, claim or action to enforce a right in respect of any property held benami shall lie against the person in whose name the property is held or against any other person at the instance of a person claiming to be the real owner of such property.*

*27. It is common ground that although the sale deed by which the property was transferred in the name of the appellant had been executed before the enactment of above legislation yet the suit out of which this appeal arises had been filed after the year 1988. The prohibition contained in Section 4 would, therefore, apply to such a suit, subject to the satisfaction of other conditions stipulated therein. In other words unless the conditions contained in Sections 4(1) and (2) are held to be inapplicable by reason of anything contained in sub-section (3) thereof the suit filed by the plaintiff-respondents herein would fall within the mischief of Section 4.*

*28. The critical question then is whether sub-section (3) of Section 4 saves a transaction like the one with which we are*

concerned.

29. Sub-section (3) to Section 4 extracted above is in two distinct parts. The first part comprises clause (a) to Section 4(3) which deals with acquisitions by and in the name of a coparcener in a Hindu Undivided Family for the benefit of such coparceners in the family. There is no dispute that the said provision has no application in the instant case nor was any reliance placed upon the same by the learned counsel for the respondent-plaintiffs.

30. What was invoked by Mr Naveen R. Nath, learned counsel appearing for the respondents was Section 4(3)(b) of the Act which too is in two parts viz. one that deals with the trustees and the beneficiaries thereof and the other that deals with the persons standing in a fiduciary capacity and those towards whom he stands in such capacity. It was argued by Mr Nath that the circumstances in which the purchase in question was made in the name of the appellant assumes great importance while determining whether the appellant in whose name the property was acquired stood in a fiduciary capacity towards the respondent-plaintiffs.

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37. We may at this stage refer to a recent decision of this Court in *CBSE v. Aditya Bandopadhyay* [(2011) 8 SCC 497], wherein Raveendran, J. speaking for the Court in that case explained the terms “fiduciary” and “fiduciary relationship” in the following words : (SCC pp. 524-25, para 39)

“39. The term ‘fiduciary’ refers to a person having a duty to act for the benefit of another, showing good faith and candour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term ‘fiduciary relationship’ is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction(s). The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third party.”

It is manifest that while the expression “fiduciary capacity” may not be capable of a precise definition, it implies a relationship that is analogous to the relationship between a

*trustee and the beneficiaries of the trust. The expression is in fact wider in its import for it extends to all such situations as place the parties in positions that are founded on confidence and trust on the one part and good faith on the other.*

*38. In determining whether a relationship is based on trust or confidence, relevant to determining whether they stand in a fiduciary capacity, the court shall have to take into consideration the factual context in which the question arises for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case. Having said that, let us turn to the facts of the present case once more to determine whether the appellant stood in a fiduciary capacity vis-à-vis the respondent-plaintiffs.*

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*44. The cumulative effect of the above circumstances when seen in the light of the substantial amount paid by late Shri C.F. Martins, the father of the parties, thus puts the appellant in a fiduciary capacity vis-à-vis the said four persons. Such being the case the transaction is completely saved from the mischief of Section 4 of the Act by reason of the same falling under sub-section (3)(b) of Section 4. The suit filed by the respondents was not, therefore, barred by the Act as contended by the learned counsel for the appellant. The view taken by the High Court to that effect is affirmed though for slightly different reasons. ”*

23. The Apex Court in the case of ***Shaifali Gupta versus Vidya Devi Gupta and others*** 2025 SCC OnLine SC 1181 held as under:-

*“23. Section 4 of the Benami Act bars the suit, claim or action in respect of a property held benami by person at the behest of the person claiming to be its true owner. It reads as under:*

*“4(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.”*

*24. The above provision bars an action in respect of ‘property held benami’. However, whether the property in respect of which the suit, claim or action has been brought about is a benami property or not, is the issue of prime consideration.*

25. The *plaint allegations all through describe the suit properties as the Joint Hindu Family properties and that they have been purchased either from the nucleus of the Joint Hindu Family property or the income derived from the joint family business. The properties are not described as benami in the name of any member of the family. Therefore, from the plaint reading, the suit properties cannot ex-facie be held to be benami properties in respect whereof the suit may not be maintainable in view of Section 4 of the Benami Act.*

26. The Benami Act further defines ‘benami property’ and ‘benami transaction’ under Sections 2(8) and 2(9) of the said Act. Benami property is the property which is the subject matter of benami transaction whereas benami transaction is a property held by a person in respect whereof consideration has been provided by some other person but would not include certain categories of properties such as where a person is holding a property in a fiduciary capacity for the benefit of another person.

27. In such circumstances, whether a property is a benami, has to be considered not in the light of Section 4 of the Benami Act alone but also in connection with Sections 2 (8) and 2 (9) of the said Act i.e. whether the property is benami falls in the exception. It is only where the property is benami and does not fall within the exception contained in Sub-Section (9) of Section 2 that a suit may be said to be barred. However, the issue whether the property is benami and is not covered by the exception, is again an issue to be decided on the basis of evidence and not simply on mere averments contained in the plaint. The defendants have to adduce evidence to prove the property to be benami.

28. In *Pawan Kumar v. Babu Lal* (2019) 4 SCC 367, a similar issue arose before this Court in a matter concerning rejection of plaint under Order 7 Rule 11 (d) CPC. This Court held that for rejecting a plaint, the test is whether from the statement made in the plaint it appears without doubt or dispute that the suit is barred by any statutory provision. Where a plea is taken that the suit is saved by the exception to the benami transaction, it becomes the disputed question of fact which has to be adjudicated on the basis of the evidence. Therefore, the plaint cannot be

*rejected at the stage of consideration of application under Order 7 Rule 11 CPC.*

*29. The ratio of the above case squarely applies to the facts of the case at hand. Accordingly, in our opinion, the courts below have not committed any error of law in rejecting the application under Order 7 Rule 11 CPC on the above score.”*

24. From the above law laid down by the Apex Court in the above mentioned cases, dealing with the Benami Transactions (Prohibition) Act, 1988 before its amendment in the year 2016, and after its amendment, it is apparent that where it is alleged that the suit properties are joint Hindu family property and they have been purchased either from the nucleus of the joint Hindu family property or the income derived from the joint family business and the relief claimed in the suit is purely in respect of the said property, then such suit does not stand prohibited by the Benami Act. It is apparent that a person can purchase property, whether movable or immovable, 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. It is also clear that the bar enacted by Section 4(1) of the Act, is not applicable where the property is held by a person who is the coparcener in Hindu undivided family and the property is held for the benefit of the coparcener in the family. It is also not applicable when the person in whose name property is held is a trustee or stands in a fiduciary capacity for the benefit of the person towards whom he stands in such capacity.

25. It is also apparent that the husband can file a suit claiming himself to be the true owner of the property by alleging that his wife is only the benami owner. The husband can prove the above fact by leading evidence or cumulatively through circumstances. It is also clear that the burden of proof lies upon the husband to prove that the property is benami. Of course, the wife can rebut the above presumption, by proving that the alleged property was not benami and she purchased it from her own funds.

26. It is also apparent that whether the matter comes within the purview of exception under Section 4(3) of the Act of 1988 or not, is an aspect which is to be gone into on the strength of the evidence on record. Only on the basis of the plaint averments, it cannot be decided that the plaintiff's suit is barred under Section 4(1) of the Act.

27. The Apex Court in the case of ***Pawan Kumar versus Babulal (deceased) through LR's (2019) 4 SCC 367*** has held that the plea of



benami cannot be decided at the stage when the application under Order 7 Rule 11 CPC is taken up for consideration because the matter required fuller and final consideration after the evidence was led by the parties. It was held that where a plea is taken that the suit is saved by the exception to the benami transaction, it becomes the disputed question of fact, which has to be adjudicated on the basis of the evidence. Therefore, the plaint cannot be rejected at the stage of consideration of application under Order 7 Rule 11 CPC.

28. It is evident from the plaint averments that the disputed property belonged to plaintiffs grandfather Shanti Saran Dublish, who died in the year 1953, after which a family partition took place between the legal heirs of Shanti Saran Dublish, in which the property devolved upon the plaintiffs father Ramesh Chand Dublish, with whom the plaintiff was having a HUF. It was alleged in the plaint that the disputed property was purchased from the consideration obtained by selling the immovable property of the Hindu Undivided Family(HUF) of the plaintiff and his late father Ramesh Chand Dublish in the year 1989 and 1990, when the plaintiffs father was alive, who has died subsequently on 2.11.2006, during the pendency of the suit. It was also alleged by the plaintiff that he was also having a partnership firm with his father in the name and style of Messers Sunil Packaging Industries, in which his father was a sleeping partner, and from the income of this firm and cash credit limit obtained from a bank, house was constructed on the disputed land, which is the disputed property no.342/1, Harnamdass Road, Civil Lines, Meerut.

29. It is true that the plaintiffs mother was not a coparcener in the alleged HUF but certainly, there was a fiduciary relationship between the plaintiff and his mother Sarla Dublish, which lies within the exception enumerated in Section 4(3)(b) of the Act of 1988. The disputed property could have been purchased in the name of plaintiffs mother Sarla Dublish because she was in fiduciary capacity vis-a-vis the plaintiff, who was also the wife of plaintiffs father Ramesh Chand Dublish. Even the plaintiffs father could have purchased the property in the name of his wife. In both the above situations, the bar of Section 4(1) of the Act of 1988 is not attracted. If the plaintiff succeeds in proving that his mother was not having the financial capacity to purchase the disputed land of the property, as well as, to construct a house thereon, and the funds were provided by the plaintiff from the income of his firm or were obtained by selling the immovable property of the HUF, then certainly, the plaintiff's suit was not barred under Section 4(1) of the Act of 1988. The bar of Section 4(1) is only attracted where the disputed property does not fall within the exceptions enumerated in Section 4(3) of the Act of 1988. It is also well settled that whether the disputed property is Benami or not, is a disputed question of fact, which cannot be decided at the stage of

considering an application under Order 7 Rule 11 CPC, and the plaintiff's suit cannot be rejected on this ground at the threshold.

30. From the above discussion, it is apparent that the trial court has committed material illegality in allowing the defendant's application under Order 7 Rule 11(d) of CPC. The impugned order is perverse and is liable to be set aside. Consequently, the appeal has merit and is liable to be allowed.

31. **Accordingly, this appeal is hereby allowed.** The impugned judgment and decree dated 30.8.2025 of the trial court in O.S. no.782 of 2006 is set aside. The defendant's application 89-C under Order 7 Rule 11 CPC stands dismissed. The O.S. no. 782 of 2006 is restored to its original number.

32. The trial court is directed to decide the suit **within six months**, from the date of receipt of certified copy of this order, without granting unnecessary adjournment to any party.

33. It is further made clear that the trial court is not bound by the observations made by this Court in this order and is free to form its opinion, in accordance with law, on the basis of pleadings of the parties and evidence adduced by them during trial.

34. However in the facts and circumstances of the case, the parties shall bear their respective costs. Office is directed to prepare the decree accordingly.

**Order Date:- 10.02.2026**

Jitendra/Himanshu/Mayank

**(Sandeep Jain, J.)**