

## Nand Kishore Mehra vs Sushila Mehra on 2 July, 1995

**Equivalent citations:** 1995 AIR 2145, 1995 SCC (4) 572, AIR 1995 SUPREME COURT 2145, 1995 (4) SCC 572, 1995 AIR SCW 3306, (1995) 1 SCJ 607, (1995) 3 PUN LR 382, (1996) 1 BLJ 385, (1996) 1 LANDLR 156, (1995) 2 MAH LJ 639, (1996) 1 CURLJ(CCR) 85, (1995) 2 CIVILCOURTC 483, (1995) 2 LS 16, (1996) 1 MAD LW 107, (1996) 1 APLJ 1, 1996 HRR 172, (1995) 215 ITR 218, (1995) 2 RENTLR 222, (1995) 26 ALL LR 440, (1995) 2 MAD LJ 84, (1995) 3 CIVLJ 274, (1995) 128 CURTAXREP 54, (1995) 59 DLT 497, (1995) 2 ANDH LT 59, 1996 BLJR 1 3, (1995) 5 JT 130 (SC), 1995 (2) KLT SN 66 (SC)

**Author:** N Venkatachala

**Bench:** N Venkatachala, Kuldip Singh

PETITIONER:

NAND KISHORE MEHRA

Vs.

RESPONDENT:

SUSHILA MEHRA

DATE OF JUDGMENT 02/07/1995

BENCH:

VENKATACHALA N. (J)

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VENKATACHALA N. (J)

KULDIP SINGH (J)

AHMAD SAGHIR S. (J)

CITATION:

1995 AIR 2145

1995 SCC (4) 572

JT 1995 (5) 130

1995 SCALE (4) 254

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T VENKATACHALA. J.

Whether the prohibition to file a suit or to take up a defence in respect of a benami transaction imposed by Section 4 of the Benami Transactions (Prohibition) Act, 1988- 'the Act' applies to a benami transaction of purchase of property by a person in the name of his wife or unmarried daughter, is the question requiring our answer in deciding this appeal by special leave filed by the plaintiff in a suit against an order of the Division Bench of the High Court of Delhi allowing an appeal filed by the defendant against an order in the suit made by a learned single judge of the same court, refusing to reject the plaint under Order

- Rule 11 of the Code of Civil Procedure, 1908 - 'the Code' as that barred by Section 4 of the Act.

A three judge Bench of this Court presided over by one of us (Kuldip Singh, J.) which dealt with the prohibition to file a suit or to take up a defence in respect of a benami transaction imposed by Section 4 of the Act in the case of R. Rajagopal Reddy V. F. Chandrasekharan reported in 1995 (1) SCALE 692, has expressed its view that that prohibition imposed by sub-sections (1) and (2) of Section 4 applies only to suits to be filed or defences to be taken, in respect of property held benami, i.e., benami transactions, after the coming into force of the Act and not to those suits filed and defences taken in respect of such benami transactions and pending final decision at the time of coming into force of the Act as had been held earlier by a Division Bench of this Court in Mithilesh Kumari & Anr. V. Prem Behari Khare, 1989 (1) S.C.R. 621.

Section 4 of the Act which imposes prohibition in the matter of filing of suits or taking of defences in respect of property held benami i.e., covered by benami transactions reads, thus :

"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 by a coparcener in 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."

It was undisputed that a suit could be filed or a defence could be taken up in respect of properties held benami, i.e., covered by benami transactions if the properties are held by persons covered by clauses (a) and

(b) of sub-section (3) of Section 4 since that sub-section makes the provisions by sub-sections (1) and (2) thereof inapplicable. But, the question is, a property if held benami by a wife for her husband or by an unmarried daughter for her father envisaged by sub-section (2) of Section 3 of the Act even though is not the property covered by clauses

(a) or (b) of sub-section (3) of Section 4 could it be that respecting which no suit can be filed or no defence can be taken under sub-sections (1) and (2) of Section 4 of the Act. It is true that the benami transaction as defined in clause (a) of Section 2 of the Act since means -- any transaction in which property is transferred to one person for a consideration paid or provided by another person, any purchase of property made by a person in the name of his wife or unmarried daughter envisaged in sub-section (2) of Section 3 of the Act, would be a "benami transaction". It is also true that the same cannot be a benami transaction envisaged by clauses (a) and (b) of sub-section (3) of Section 4 of the Act falling outside the purview of sub-sections (1) and (2) of Section 4 thereof. But, what was argued before us by Shri Harish Salve for the plaintiff- husband was, that the benami transaction by which a property is purchased by a person in the name of his wife or unmarried daughter by reason of the provision in sub-section (2) of Section 3 of the Act not being a benami transaction into which such person could not have entered under sub-section (1) of Section 3 it must be regarded as that respecting which prohibition imposed by sub-sections (1) and (2) of Section 4 in the matter of filing of a suit thereto or taking up a defence thereto would become inapplicable. It was also argued by him that sub-sections (1) and (2) of Section 5, if are inapplicable to benami transaction covered by sub-section (2) of Section 3 of the Act, there could be no good reason to make applicable the prohibition in sub-sections (1) and (2) of Section 4 to a transaction taken place before the coming into force of the Act. On the other hand, it was vehemently argued for the defendant-wife that non-applicability of sub-section (1) to the benami transactions covered by sub-section (2) of Section 3 being intended merely to save the person purchasing the property in the name of his wife or unmarried daughter from liability for punishment under sub-section (3) of Section 3 and acquisition of such property under Section 5 of the Act by prescribed authority without payment of any amount, the non- application of the prohibition in Section 4, cannot be implied.

Since the provisions in Sections 3 and 5 could be of assistance in a proper appreciation of the said arguments of learned counsel, they are excerpted:

Section-3 "3. Prohibition of benami transactions.--(1) No person shall enter into any benami transaction.

(2) Nothing in sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter.

(3) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both. (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under this section shall be non-cognizable and bailable. Section-5 "5. Property held benami liable to acquisition.--(1) All properties held benami shall be subject to acquisition by such authority, in such manner and after following such procedure, as may be prescribed. (2) For the removal of doubts, it is hereby declared that no amount shall be payable for the acquisition of any property under sub-section (1)."

Sub-section (1) of Section 3, as seen, prohibits a person from entering into any benami transaction. Sub-section (3) of Section 3, as seen, makes a person who enters into a benami transaction liable for punishment. Section 5 makes properties held benami liable for acquisition without payment of any amount. But, when sub-section (2) of Section 3 permits a person to enter into a benami transaction of purchase of property in the name of his wife or unmarried daughter by declaring that the prohibition contained against a person in entering into a benami transaction in sub-section (1) of Section 3, does not apply to him, question of punishing the person concerned in the transaction under sub-section (3) thereof or the question of acquiring the property concerned in the transaction under Section 5, can never arise, as otherwise the exemption granted under Section 3(2) would become redundant. What we have said of the person and the property concerned in sub-section (2) of Section 3 in relation to non-applicability of the provisions of sub-sections (1) and (2) of Section 4 in the matter of filing of the suit or taking up the defence for the self same reason. Further, we find it difficult to hold that a person permitted to purchase a property in the name of his wife or unmarried daughter under sub-section (2) of Section 3 notwithstanding the prohibition to enter into a benami transaction contained in sub-section (1) of Section 3 cannot enforce his rights arising therefrom, for to hold so would amount to holding that the Statute which allows creation of rights by a benami transaction also prohibits the enforcement of such rights, a contradiction which can never be attributed to a Statute. If that be so, there can be no valid reason to deny to a person, enforcement of his rights validly acquired even in the case of purchase of property in the name of his wife or unmarried daughter, by making applicable the prohibition contained in respect of filing of suits or taking up of defences imposed in respect of benami transactions in general by sub-sections (1) and (2) of Section 4 of the Act. But, it has to be made clear that when a suit is filed or defence is taken in respect of such benami transaction involving purchase of property by any person in the name of his wife or unmarried daughter, he cannot succeed in such suit or defence unless he proves that the property although purchased in the name of his wife or unmarried daughter, the same had not been purchased for the benefit of either the wife or the unmarried daughter, as the case may be, because of the statutory presumption contained in sub-section (2) of Section 3 that unless a contrary is proved that the purchase of property by the person in the name of his wife or his unmarried daughter, as the case may be, was for her benefit.

Therefore, our answer to the question under consideration is that neither the filing of a suit nor taking of a defence in respect of either the present or past benami transaction involving the purchase of property by a person in the name of his wife or unmarried daughter is prohibited under sub-sections (1) and (2) of Section 4 of the Act.

Coming to the facts of the case on hand, the plaintiff had filed the suit in the High Court seeking relief in respect of properties alleged to have been purchased benami in the name of the defendant-his wife. 4 learned single Judge rejected the application filed by the defendant in that suit seeking rejection of the plaint on the ground that the suit was barred under Section 4 of the Act. The order of rejection of that application was appealed against by the defendant in a First Appeal filed in the same court. A Division Bench of the High Court reversed the order of the learned Single Judge and granted the application of the defendant made in the suit seeking rejection of the plaint. It is that order which is now questioned by the plaintiff- husband in this appeal. Since the plaintiff is the husband who had the right to enter into a benami transaction in the matter of purchase of property in the name of his wife or unmarried daughter, as we have held earlier, he is entitled to enforce his rights in the properties concerned if he can succeed in showing that he had purchased them benami in the name of his wife. But in view of the statutory presumption incorporated in sub-section (2) of section 3 of the Act, he can get relief sought in the suit only if he can prove that the properties concerned had not been purchased for the benefit of the wife, even if he succeeds in showing that the consideration for the purchases of the properties had been paid by him.

In the result, we allow this appeal, set aside the order of the Division Bench of the High Court. Uphold the order of the learned Single Judge rejecting the application of the defendant-wife for rejection of the plaint, and remit the suit to Delhi High Court for disposal according to law and in the light of this judgment.