



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SAO No.29 of 2024(O&M)
Reserved on:15.05.2025
Date of Order:27.05.2025

Smt. Phoola Rani @ Santosh Rani (since deceased) through
Smt. Kiran Raj and another

.Appellants

Versus

Kapil Puri and others

..Respondents

SAO No.39 of 2024(O&M)

Kapil Puri

.Appellants

Versus

Smt. Phoola Rani @ Santosh Puri (since deceased) through LRs and
another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Abhay Chauhan, Advocate
for the appellant(s) in SAO-29 of 2024 and
for the respondent in SAO-39 of 2024

Mr. Saransh Sabharwal, Advocate
for the appellant(s) in SAO-39 of 2024
for respondent no.1 in SAO-29 of 2024.

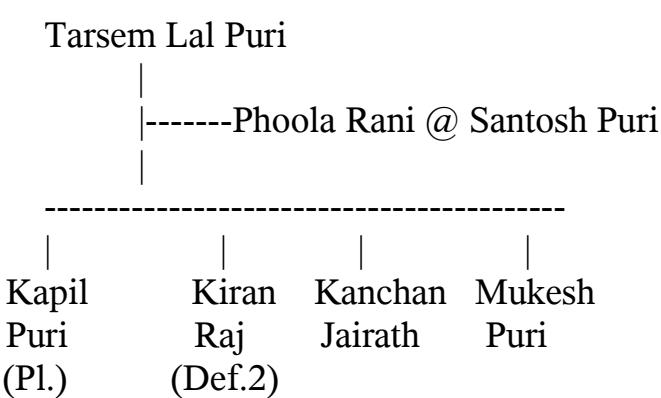
ANIL KSHETARPAL, JUDGE (Oral)

- With the consent of the learned counsel representing the parties, two connected Second Appeals filed against First Appellate Court's order remitting the matter back to the lower court for fresh decision shall stand disposed of by this common order.



2. The substantial question of law which has arisen for consideration is “Whether prohibition of the benami law will apply, if the property is purchased in the name of the mother?”

3. The following genealogy will illustrate the relationship between the parties in dispute:-



4. Mr. Kapil Puri filed suit for declaration claiming to be exclusive owner of Plot No.135 (10 Marlas), Sector-6, Mansa Devi Complex, Panchkula, with consequential relief of mandatory and permanent injunction.

5. In para 2 of the trial court's judgment, the following pleadings of the plaintiff, in extenso, have been noticed which reads as under:-

“2. Brief facts of the case of the plaintiff as pleaded in the plaint are that defendant no.1 is mother of plaintiff and defendants No.2 to 4. Plaintiff and defendants no.2 to 4 are the only children of late Sh. Tarsem Lal Puri and defendant no.1. Defendants no. 2 and 3 are daughters of defendant no.1 and sisters of plaintiff and defendant no.4. Plaintiff as well as defendants No.1 & 2 alongwith Sh. Tarsem Lal Puri were earlier residing together in H.No.98, Sector-10, Panchkula, which was a rented accommodation. However, during the stay of plaintiff, defendants no. 1 and 2 and Sh. Tarsem Lal Puri in the abovesaid accommodation, defendants No. 2 was got



married to Sh. Rajendra Kumar Verma. The plaintiff, defendant no. 1 and Sh. Tarsem Lal Puri subsequently shifted to House No.838 Sector -4, Panchkula and thereafter, to House No. 2536 Sector -15, Panchkula. Defendant no.2 was married to Sh. Rajendra Kumar Verma in the year 1990 and thereafter, the defendant No. 2 and her husband resided together (but separately from plaintiff and other family members) at Panchkula and subsequently, shifted to Gurgaon about 7-8 years ago. Since then, the defendant No. 2 is residing with her husband at Gurgaon. Since the year 1997, the defendant no. 4 is residing separately from the plaintiff and defendants no. 1 to 3 and having his separate business and residence. The plaintiff and defendants no. 2 to 4 are the children of defendant No. 1 and as such the plaintiff and defendants no. 1 and 4 are in fiduciary relationship with each other. Plaintiff was earlier doing the business of sale of Dairy products and owner of a Road Roller and the plaintiff was earning handsome income. Plaintiff was firstly married to Smt. Neeru Puri on 22.09.1998, but said marriage was dissolved with mutual consent vide judgment and decree dated 20.02.2003. In order to save themselves from the abovesaid matrimonial dispute of plaintiff, the defendant no.1 and her husband Sh. Tarsem Lal Puri disowned the plaintiff from their movable and immovable properties publishing in the newspaper. Plaintiff again got married to Smt. Poonam Puri on 28.05.2006 at Panchkula. Unfortunately, after a few days of said marriage the disputes started rising in the matrimonial life of plaintiff. In the year 2006, Poonam Rani, wife of plaintiff, filed a petition u/s 125 Cr.P.C. against the plaintiff at Jhansi (Uttar Pradesh), which is being pursued by the plaintiff. Due to the completely failed and destructive matrimonial life of the plaintiff, the



plaintiff could not concentrate on his business. During the stay of plaintiff, defendant No.1 and Sh. Tarsem Puri together in H.No.2536, Sector-15, Panchkula, plaintiff applied for allotment of a residential plot measuring 10 marlas in Mansa Devi Complex, Sector-5, Panchkula, with defendants No.5 & 6 vide application no.42851. Plaintiff also deposited a sum of Rs.94,991/- out of his own income, as earnest money equivalent to 10% of the total tentative cost of the plot in question. Since the plaintiff, defendant no.1 and Sh. Tarsem Lal Puri, were residing together and as such, due to fiduciary relationship with his mother i.e. the defendant no.1, the plaintiff applied for the plots in question in the name of defendant no.1. Earlier also, plaintiff used to apply for plots in the name of his mother i.e. defendant no.1 being in fiduciary relationship with her. The amount of earnest money alongwith the pay order amounting to Rs.95,110/- debited to the aforesaid account being maintained by plaintiff with defendant no.1. Thereafter, defendants No.5 & 6 allotted the plot No.145, Sector-6, MDC, Panchkula, in the name of defendant no.1 vide allotment letter dated 27.01.2006 with a direction to deposit 15% amount of the total tentative cost of the plot in question within a period of 30 days from the date of issuance of the allotment letter. On receipt of the allotment letter, plaintiff deposited a sum of Rs.1,42,485/- being 10% amount of the total tentative cost of the plot, MDC, Panchkula, through pay order no.005007 of Rs.1,42,485/- from Union Bank of India, Mani Majra and the aforesaid pay order charges were debited in the account of the plaintiff maintained by him with Union Bank of India, Mani Majra. Thereafter, first installment of Rs.1,18,738/- was deposited by the plaintiff through pay order no.006223 dated 16.01.2007 of Union Bank of India, Mani Majra.



Plaintiff was also maintaining joint account no.381 alongwith his mother i.e. defendant no.1 in Haryana State Cooperative Apex Bank Limited (HARCO Bank), Sector-11, Branch, Panchkula. On 19.3.2006, there was a credit balance of Rs.1,98,371.10/- in said joint account. Plaintiff deposited a sum of Rs.45,000/- in cash on 20.3.2006 in his abovesaid account. Thereafter, plaintiff got issued a pay order no.106950, dated 21.03.2006 amounting to Rs.1,07,640/- from his aforesaid account for applying for a HUDA Plot in Sector 27-28, Panchkula. The said plot was again applied by plaintiff in the name of his mother i.e. defendant no.1. The plaintiff could not be successful in allotment of the abovesaid plot in Sector 27-28, Panchkula, and the earnest money of Rs.1,07,640/- was refunded by the HUDA authority through Cheque no.84302 in the name of defendant no.1. Plaintiff deposited the aforesaid cheque in the saving account of defendant no.1 and thereafter, plaintiff got issued a pay order bearing no.0065223 dated 16.01.2007 amounting to Rs.1,18,738/- in favour of Estate Officer HUDA. Thereafter, HUDA demanded a sum of Rs.46,300/- as first installment of enhanced compensation vide letter no.163, dated 04.02.2008 and the said amount was deposited by plaintiff in cash on 28.04.2008 with Indian Bank, Estate Office, HUDA, Sector-6, Panchkula, vide receipt dated 28.04.2008. Second installment of Rs. 1,18,738/- was deposited by the plaintiff through pay order no. 007315 dated 24.01.2008 of union Bank of India Mani Majra in favour of the Estate Officer, HUDA, Panchkula. Said pay order was got issued by the plaintiff from Savings Bank of India, Mani Majra. On 23.01.2008 there was a credit balance of Rs 67,240/- in the abovesaid account of defendant no. 1. The plaintiff, in order to make



arrangements for the payment of second installment, issued a cheque no. 239642, dated 9.7.2007 amounting to Rs. 65,000/- in favour of defendant no. 1 from his Savings Bank account no. 20797 with Canara Bank, Mani Majra. Said cheque was deposited by the plaintiff in account no. 1354 of defendant no. 1 with Union Bank of India, Mani Majra, which was duly encashed in the abovesaid account of defendant no.1. Thereafter, the plaintiff withdrew a sum of Rs 55,000/- through his father from his saving bank account no. 05322010050340 with Oriental Bank of Commerce, Sector-11, Panchkula on 23.1.2008 and deposited the said amount of Rs 55,000/- in the SB account no.1354 of defendant no. 1 with Union Bank of India, Mani Majra on 23.1.2008/24.1.2008. In that manner, the plaintiff firstly deposited a sum of Rs 1,20,000/- in SBI account no. 1354 of defendant no. 1 with Union Bank of India, Mani Majra and thereafter, got issued a pay order bearing no. 007315, dated 24 .1.2008 from the above said account of defendant no. 1 with Union Bank of India, Mani Majra favouring the Estate Officer, HUDA , Panchkula. In this manner, the amount of second installment of plot in question was also paid by the plaintiff out of his own funds. Thereafter, the amount of third installment of Rs. 1,18,737/- was deposited by the plaintiff through pay order no. 223409 dated 27.1.2009. It is also pertinent to mention here that the plaintiff, prior to the issuance of aforesaid purchase order, deposited a sum of Rs. 50,000/-and Rs 49,500/- in cash on 27.01.2009 in the Savings Bank account no. 05322010050340 of his father namely Sh. Tarsem Lal Puri maintained with Oriental Bank of Commerce, Sector-11, Panchkula and thereafter, got issued the abovesaid pay order from the account of his father, which was deposited by the plaintiff with defendants No.



5 and 6 being third installment of the plot in question. The amount of fourth installment of Rs.1,18,740/- was deposited by the plaintiff on 27.01.2010 through pay order no. 008790, dated 27.01.2010. Prior to the issuance of above said purchase order from the account of defendant no.1 , the plaintiff deposited a sum of Rs. 45,000/-in cash on 22.01.2010, Rs 45,000/- in cash on 23.01.2010 and Rs.25,000/-in cash on 27.01.2010 in the savings bank account of defendant no. 1 with Union Bank of India, Mani Majra. In this manner, the plaintiff firstly deposited the amount of fourth installment of the plot in the savings bank account no. 1354 of defendant no. 1 with Union Bank of India, Mani Majra and thereafter, got issued a pay order No. 008790 dated 27.01.2010 for Rs.1,18,740/- from abovesaid savings bank account of defendant No. 1 with Union Bank of India , Mani Majra favour of the Estate Officer, HUDA ,Panchkula. Out of the abovesaid deposited amount, a sum of Rs 60,000/- was withdrawn by the plaintiff in cash on 23.01.2010 from his joint account maintained by him alongwith with his mother, defendant No.1, in Oriental Bank of Commerce, sector-11, Panchkula. Thereafter, the HUDA authorities issued a letter bearing memo no. 2306, dated 24.02.2010, in the name of defendant no. 1 thereby informing that due to provision of 100 Mtrs wide strip for Mela parking in Sector-6, MDC, Panchkula, plot no. 145 allotted in the name of defendant no.1 stands affected as per revised demarcation plan approved by competent authority. Under the aforesaid circumstances, an alternate plot no.135 (10 Marlas) measuring 209 sq. meters, Sector -6, MDC, Panchkula, was allotted to the plaintiff. During this period, the husband of defendant no. 1 and father of plaintiff and defendants no. 2 to 4 namely Sh. Tarsem Lal Puri expired on 21.07.2009. After the



death of Sh. Tarsem Lal Puri, his savings bank account no. 909010035742374 with AXIS Bank, Sector-10, Panchkula, was transferred in the joint names of plaintiff and defendant No.1. After the closing of abovesaid account, Bank Authorities transferred the entire amount of the aforesaid account of Sh. Tarsem Lal Puri in a new account opened by the bank authority in the name of the plaintiff and defendant no. 1. Thereafter, the fifth installment in respect of the plot in question to the tune of Rs.1,77,000/-was deposited by the plaintiff through pay order No. 029330 dated 23.4.2010 of Rs. 1,77,000/- favouring the Estate Officer, HUDA, Panchkula. The above said pay order was got issued by the plaintiff from the above said joint account of plaintiff and defendant No.1, which was opened by AXIS Bank authorities after the death of Sh. Tarsem Lal Puri by transferring the amount lying in the previous bank account of Sh. Tarsem Lal Puri with Axis Bank, Sector-10, Panchkula. The application form for allotment of a plot, all the deposit receipts/vouchers of Indian Bank, Estate Office, HUDA, Sector-6, Panchkula Branch, were filled by the plaintiff in his own handwriting, while depositing the initial amount as well as the subsequent installments and also the installments of enhanced compensation in respect of the plot in question. Since the day of marriage, the defendant no.1 remained housewife throughout her life and as such, defendant no.1 was not having any source of income, nor she was having any money for its onward payment to the HUDA against the price of plot in question. Furthermore, the defendant no.1 and Sh. Tarsem Lal Puri were drawing old age pension to the tune of Rs.500/- per month as per the scheme of Government of Haryana. Defendant no.1 was suffering from various disease and she was operated and her uterus was removed on



01.07.2010. After the discharge of defendant no.1 from hospital on 05.07.2010, the defendant no.1 was brought back to H.No.1470, Sector-26, Panchkula, where the plaintiff was residing at that time alongwith the defendant no.1. Since the plaintiff is residing alone at Panchkula, therefore, defendant no.2 took the defendant no.1 with her at Gurgaon on 07.07.2010, to which the plaintiff never objected. The defendant no.2 and her husband started instigating and poisoning the defendant no.1 against the plaintiff and in preplanned conspiracy brought the defendant no.1 to Panchkula and got registered a false and frivolous DDR No.12 dated 14.02.2011, registered with police Station, Sector-14, Panchkula, regarding misplacing of all the original documents pertaining to Plot no.135, Sector-6, MDC, Panchkula. However, the plaintiff is still in possession of all the original documents. The defendants No.1 and 2 as well as husband of defendant no.2, after verifying the dues in respect of plot in question, deposited a sum of Rs.2,68,344/- with HUDA on 15.02.2011/16.02.2011 through four purchase orders of different amounts. The defendant no.1 and 2 also submitted a letter regarding change of address of defendant no.1 with HUDA. The defendant no.1 also applied with the HUDA for issuance of duplicate papers with regard to the plot in question and defendant no.1 even submitted a false affidavit with the HUDA regarding misplacing of all the original documents pertaining to plot in question. The defendants no.1 and 2 also applied to the HUDA for transfer of plot in question in favour of defendant no.1 on 01.03.2011, upon which permission to transfer was granted by the defendant no.6 vide letter no.3372, dated 14.03.2011. On the basis of transfer letter, the re-allotment letter was issued by HUDA in favour of defendant no.2 vide letter



dated 04.04.2011. The plaintiff requested the defendants no.1 and 2 several times to admit the right of the plaintiff in respect of the plot in question and to get cancelled the allotment letter no.203, dated 27.01.2006 as well as allotment letter no.4304, dated 04.04.2011, but the defendants no.1 and 2 postponed the matter on one pretext or the other and thereafter, flatly refused to do so. Hence, the present suit."

6. The defendants are, the plaintiff's mother, two sister and another brother apart from the agency which allotted the property.

7. Defendant no.1(Smt. Phoola Rani) and 2 (Smt. Kiran Raj) contested the suit by filing separate written statement. Defendant no.1, claims that she and her husband severed all relationship with the plaintiff because of his hostile attitude and bad habits. She claimed that she individually applied for the allotment of plot and all installments were paid by her from her personal savings and from the savings of her daughter-defendant no.2. Similarly, defendant no.2, also contested the suit.

8. From the pleadings of the parties, the following issues were framed by the trial court:-

1. *Whether the plaintiff is entitled to a decree for declaration to the effect that, plaintiff is sole and absolute owner of ten marla plot no.135, measuring 206 sq. meter situated in Sector-6, Mansa Devi Complex, Panchkula?OPP.*
2. *Whether the plaintiff is entitled to a decree for declaration, to the effect that, transfer of ten marla plot no. 135, measuring 206 sq. meters situated in Sector-6, Mansa Devi Complex, Panchkula, by defendant no.1 in favour of defendant no.2 vide re-allotment letter no.4304, dated 4.4.2011 is illegal, null and void and liable to be*



set aside?OPP.

3. *If issues No.1 and 2 proved, then whether the plaintiff is entitled to a decree for mandatory injunction directing the defendant no.5 and 6 to transfer the plot in question in the name of plaintiff?OPP.*
4. *If issues No.1 to 3 are proved, then whether the plaintiff is entitled to a decree for permanent injunction, as prayed for? OPP.*
5. *Whether the suit of plaintiff is not maintainable in the present form?OPD.*
6. *Whether the plaintiff has no locus standi to file and maintain the present suit?OPD.*
7. *Whether the plaintiff is estopped by his own act and conduct from filing the present suit?OPD.*
8. *Whether the plaintiff has no cause of action to file and maintain the present suit?OPD.*
9. *Whether the suit is not properly valued for the purpose of court fee?OPD.*
10. *Whether the suit of plaintiff is barred under section 4 of the Benami (Prohibition) Transaction Act, 1988?OPD.*
11. *Whether the plaintiff has suppressed the true and material facts from the court ?OPD.*
12. *Relief.”*

9. Primarily the suit has been dismissed by the trial court in view of Section 3 of The Benami Transactions(Prohibition) Act, 1988 (hereinafter referred to as 'the 1988 Act'). The plaintiff filed first appeal, which has been remitted back to the lower court for fresh decision on the following two reasons:-

- (i). The suit is maintainable in view of Section 4(3) of the 1988 Act;
- (ii) Defendant no.1 has taken a contradictory stand as on the



one hand she asserted her exclusive ownership, whereas on the other hand, she has taken the stand that the suit is barred under Section 4 of the 1988 Act.

10. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

11. It may be noted here that two young counsels have rendered articulate and passionate assistance to the Court.

12. The impugned order passed by the First Appellate Court is not sustainable for the following reasons:-

(i) The suit filed by the plaintiff is not maintainable in view of a prohibition contained in Section 3 of the 1988 Act and Section 4(3) does not come to the rescue of the plaintiff.

13. Sections 3 and 4 of the 1988 Act read as under:-

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 of 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, 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.”

14. As per sub-section 1 of Section 3, there is total prohibition of entering into any benami transactions, however, sub-section(2) of Section 3 excludes if any person purchases the property in the name of his wife or unmarried daughter. The only exemption from applicability of Section 3 is if the property is purchased by a married man in the name of his wife or unmarried daughter.

15. On careful reading of sub-section(1) of Section 4 of the 1988 Act, it becomes evident that there is total prohibition to claim property held



benami against the person.

16. At the outset, it may be noticed that Sub-Section 3 of Section 4 of the 1988 Act has been omitted with effect from 10.08.2016, by The Benami Transactions (Prohibition) Amendment Act, 2016, however, in this case, the property was alleged to have been purchased in the year 2001, whereas the suit was filed on 23.05.2013. Hence, un-amended provisions shall apply. Section 4(3) is in two parts. In the facts of the case, part(a) shall not be applicable, whereas Clause (b) of Section 4(3) provides that the individual named as owner should stand in its fiduciary capacity over the actual owner. This is no longer res-integra in view of the judgments passed by two separate Division Benches of Delhi High Court in **Anil Bhasin vs. Vijay Kumar Bhasin, (2003) 102 DLT 932** and **Savita Anand vs. Krishna Sain and others, 2021(276) DLT 468**, wherein it has been held that a parent would be in a fiduciary relationship with an offspring only when the child lacks legal capacity due to minority or disability and the relationship discloses an absolute dependency on the parents for decision making. Moreover, in **CBSE vs. Aditya Bandopadhyay, (2011) 8 SCC 497**, the court in paras 39 to 41, explained the term 'fiduciary' in the following manner:-

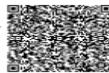
*"30. What constitutes fiduciary relationship has not been defined in the statutes. Recourse has been taken by the courts to the meanings given in dictionaries to deal with specific fact situations. The Supreme Court had occasion to discuss what constituted fiduciary relationship in **CBSE vs Aditya Bandopadhyay, (2011) 8 SCC 497** while considering the relationship of the examining bodies and students. After considering the definitions of "fiduciary relationship" in Black's Law Dictionary, the American Restatements (Trust and*



*Agency), the Corpus Juris Secundum, Words and Phrases, and considering the decisions in **Bristol and West Building Society vs. Mothew [1998 Ch. 1] In Wolf vs. Superior Court [2003 (107) California Appeals, 4th 25]**, the Supreme Court concluded:*

"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.

40. There are also certain relationships where both the parties have to act in a fiduciary capacity treating the other as the beneficiary. Examples of these are: a partner vis-à-vis another partner and an employer vis-à-vis employee. An employee who comes into possession of business or trade secrets or confidential information relating to the employer in the course of his employment, is



expected to act as a fiduciary and cannot disclose it to others. Similarly, if on the request of the employer or official superior or the head of a department, an employee furnishes his personal details and information, to be retained in confidence, the employer, the official superior or departmental head is expected to hold such personal information in confidence as a fiduciary, to be made use of or disclosed only if the employee's conduct or acts are found to be prejudicial to the employer.

41. In a philosophical and very wide sense, examining bodies can be said to act in a fiduciary capacity, with reference to the students who participate in an examination, as a Government does while governing its citizens or as the present generation does with reference to the future generation while preserving the environment. But the words "information available to a person in his fiduciary relationship" are used in [Section 8\(1\)\(e\)](#) of the RTI Act in its normal and well-recognised sense, that is, to refer to persons who act in a fiduciary capacity, with reference to a specific beneficiary or beneficiaries who are to be expected to be protected or benefited by the actions of the fiduciary--a trustee with reference to the beneficiary of the trust, a guardian with reference to a minor/physically infirm/mentally challenged, a parent with reference to a child, a lawyer or a chartered accountant with reference to a client, a doctor or nurse with reference to a patient, an agent with reference to a principal, a partner with reference to another partner, a Director of a company with reference to



a shareholder, an executor with reference to a legatee, a Receiver with reference to the parties to a lis, an employer with reference to the confidential information relating to the employee, and an employee with reference to business dealings/transaction of the employer. We do not find that kind of fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer books, that come into the custody of the examining body."

31. *Though the Supreme Court was in RBI vs Jayantilal N Mistry & Others, (2016) 3 SCC 525 considering the question of disclosure by the Reserve Bank of India of information received by it from other banks about clients/loan defaulters, etc., under the Right to Information Act, 2005, it is apposite to refer to its observations on what constitutes fiduciary relationship and capacity, as it would help in determining whether D1 stood in such a capacity to the appellant in the present case. It had followed its earlier decision in CBSE vs Aditya Bandopadhyay (supra). It also referred to the definition of fiduciary relationship given by The Advanced Law Lexicon 3rd Edition 2005 and also set down the scope of fiduciary relationship in paras 57 & 58, which are reproduced for convenience:*

"57. The Advanced Law Lexicon, 3rd Edn., 2005, defines "fiduciary relationship" as:

"Fiduciary relationship.--A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the [fiduciary] relationship....Fiduciary relationship usually arises in one of the four situations: (1) when one person places trust in the faithful integrity of another, who as a result



gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognised as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer."

58. *The scope of fiduciary relationship consists of the following rules:*

"(i) No conflict rule -- A fiduciary must not place himself in a position where his own interests conflict with that of his customer or the beneficiary. There must be 'real sensible possibility of conflict'.

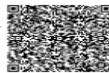
(ii) No profit rule -- A fiduciary must not profit from his position at the expense of his customer, the beneficiary.

(iii) Undivided loyalty rule -- A fiduciary owes undivided loyalty to the beneficiary, not to place himself in a position where his duty towards one person conflicts with a duty that he owes to another customer. A consequence of this duty is that a fiduciary must make available to a customer all the information that is relevant to the customer's affairs.

(iv) Duty of confidentiality -- A fiduciary must only use information obtained in confidence and must not use it for his own advantage, or for the benefit of another person."

17. In this case, the plaintiff does not claim that his mother was standing in fiduciary capacity with reference to him.

18. The First Appellate Court has relied upon the judgment passed by the Supreme Court in **Sri Marcel Martins vs. M.Printer and others**



(2012) 5 SCC 342. In *Sri Marcel Martins's case (supra)*, the suit property was in the tenancy of Stella Martins which was owned by the Corporation. A decision was taken to sell the tenanted premises to the occupants by the Corporation. Hence, Smt. Stella Martins became entitled to ownership rights in the property subject to her paying certain amount to the Corporation. However, before the property could be transferred, she died. Therefore, the right to own the property by payment of consideration devolved upon her legal heirs, including her husband and children but when all the heirs went to the Corporation for getting the property transferred in their joint name, Corporation as per its policy desired that the property will not be transferred in the name of all heirs of Smt. Stella Martins but will only be transferred in the name of one person. Consequently, though the amount of consideration of the property was paid to the Corporation essentially by her husband but the title documents of the property were executed by the corporation in the name of Sri Marcel Martins. In those facts, the Court held that the filing of suit is not prohibited under the Benami Law. The facts of this case are wholly distinguishable.

19. It may be noted here that a Single Bench of this Court in *Gurinder Singh and others vs. Jagdish Varinder Singh Sadhu and another, 2019 (1) R.C.R.(Civil) 750*, also came to the same conclusion while relying upon *Anil Bhasin's case (supra)*.

20. The First Appellate Court has erred in relying upon caption note drafted by a publisher without reading the complete judgment. Before applying ratio decidendi of a judgment, thorough reading of the judgment is required in order to cull out its ratio decidendi.



21. Consequently, it is declared that the suit of the plaintiff is not maintainable in view of prohibition of the 1988 Act. Mere payment of a part of the sale consideration would not entitle the plaintiff to claim declaration that he is exclusive owner of the property. He may be entitled to recover the amount contributed by him.

22. The First Appellate Court has also erred in assuming that the trial court decided only issue no.10. On careful reading of a judgment of the trial court, it is evident that the entire suit was decided, though, primarily the trial court proceeded to discuss maintainability of the suit. In this case, the entire evidence had been led by the parties. Hence, it was correct on the part of the First Appellate Court to remit the matter back to the lower court.

23. Moreover, the First Appellate Court has also erred while concluding that defendant no.1 has taken a contradictory stand inasmuch as on the one hand she claimed that the payment was made by her towards the price of the plot, whereas on the other hand, she objected to the maintainability of the suit under Section 4 of the 1988 Act. In fact, it was an alternative defence of the defendant which is permissible, hence, the court erred in failing to comprehend the contentions properly.

24. This court has also examined the judgment passed by the Supreme Court in ***Pawan Kumar vs. Babu Lal, (2019) 4 SCC 367***, which is on the aspect of rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908. It has been held that rejection of the plaint under Order VII Rule 11 shall not be appropriate. However, in the present case, not only the issues were framed but the parties were permitted to lead their evidence in support of their respective stand and thereafter, the trial court



decided the suit after hearing arguments in the main suit.

25. Since, the suit as filed by the plaintiff is not maintainable in view of prohibition of the 1988 Act, hence, it is not found appropriate to remit the matter back to the First Appellate Court to decide on remaining issues.

26. Consequently, SAO No.29 of 2024, filed by defendant no.1, is allowed, whereas SAO No.39 of 2024, filed by the plaintiff, is dismissed.

27. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

27th May, 2025

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No