Allahabad High Court

Dr. Ila Gupta vs Om Prkaash Gupta And Another on 12 September, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R. Judgment reserved on: 21.08.2025 Judgment delivered on: 12.09.2025 Neutral Citation No. - 2025:AHC:161835 Court No. - 35 Case :- FIRST APPEAL No. - 368 of 2013 Appellant :- Dr. Ila Gupta Respondent :- Om Prkaash Gupta And Another Counsel for Appellant :- Rohan Gupta Counsel for Respondent :- Dinesh Singh,Jawahir Yadav, Rajeshwar Yadav,Anil Kumar Pandey, Awadhesh Kumar Malviya Hon'ble Sandeep Jain,J.

1. The instant first appeal under section 96 C.P.C. has been preferred by the plaintiff against judgment and decree dated 06.4.2013 passed by the Additional Civil Judge(Senior Division) Court no.4, Ghaziabad in Original Suit No. 1485 of 2006 Dr.Ila Gupta vs. Om Prakash Gupta and another, whereby the plaintiff 's suit for the main relief of declaration, permanent injunction and possession, regarding the flat no. 2C/322, Sector 2C, Vasundhara Scheme, Ghaziabad, has been dismissed.

Plaint case

2. The plaintiff- appellant filed a suit in the trial court with the averments that the defendant no.1 Omprakash Gupta was her paternal uncle, she regarded him immensely and had full faith in him. The defendant no.1 contacted her in the month of January, 2005 and informed her that the defendant No.2 Uttar Pradesh Awas Evam Vikas Parishad had constructed in Vasundhara Scheme, Ghaziabad duplex houses of high income category(HIG), which were semi-finished, which were available for allotment and if, she desired, then she can apply for allotment for a house in the above scheme. Since, she was busy in her medical profession and was unable to spare time to move an application for allotment in the above scheme, as such, she requested the defendant no.1 to move an application for allotment of house in the above scheme on her behalf, which was accepted by the defendant no.1. Since she trusted defendant no.1 immensely, she accepted the proposal of defendant no.1 and as such, consented that defendant no.1 may make an application for allotment of house in the above scheme on her behalf, in his own name. It is also the case of the plaintiff that being her real paternal uncle, the defendant no.1 was in a fiduciary capacity. Thereafter, the defendant no.1, for the benefit of plaintiff, moved an application number 1348 on 23.1.2009 for

allotment of HIG, semi-finished duplex house in the above scheme, by making an application in the office of defendant no.2, accompanied by registration amount of ₹ 85,000/- paid by draft no. 035788 dated 23.1.2005, drawn on Canara Bank, Vivek Vihar, New Delhi. The amount of ₹ 85,000/- and the commission of demand draft of ₹ 192/- was paid from the bank account no. 26547 of the plaintiff.

3. It is the case of the plaintiff that, the defendant no.2 vide letter no. 1323 dated 23.2.2005 intimated defendant no.1 that, he had been allotted the above house, having estimated cost of ₹ 16.90 lakhs and 50% of that cost amounting to ₹ 7.60 lakhs was to be deposited by 30.4.2005. Thereafter, the plaintiff got issued a demand draft no. 8077363 of ₹ 7.60 lakh dated 2.4.2005 drawn on Canara Bank, Vivek Vihar, Delhi, in favour of defendant no.2. The demand draft was issued from the savings bank account no. 26547 of the plaintiff and the commission of rupees 1,673/- was also debited from the above bank account. The bank draft of ₹ 7.60 lakhs was given to the defendant no.1, who deposited it on 28.4.2005 in the Ghaziabad office of the defendant no.2. Thereafter, on 17.11.2005 the office of the defendant no.2 informed vide letter no. 11203, that house

number 2C/322, Sector 2C, Vasundhara, Ghaziabad had been allotted.

4. It is the case of the plaintiff that the above house, was purchased for her benefit, by defendant no.1, who was in a fiduciary capacity vis-a-vis the plaintiff, the registration amount and 50% of the cost of the house was also borne by the plaintiff, the real owner and beneficiary of the house was the plaintiff, the defendant no.1 was a mere benami holder of the above house, who had no concern with the ownership of the house.

5. It is the case of the plaintiff that subsequently, after the allotment of the disputed house in favour of defendant no.1, the intention of defendant no.1 turned malafide and in order to have illegal gain, he began to show that he was the owner of the disputed house and denied plaintiffs ownership, whereas, the plaintiff was the real beneficiary and owner, as such, she was entitled to get the sale deed of the disputed house executed in her favour from defendant no.2. It is the specific case of the plaintiff, that the defendant no.1 had no right, title and interest in the disputed house.

6. It has been further averred by the plaintiff that she was not informed about the subsequent instalments of the house to be

paid to defendant no.2, by the defendant no.1 intentionally and later on, she became aware that without her consent and knowledge, the defendant no.1 had deposited instalments with defendant no.2. When the intention of the defendant no.1 became apparent to plaintiff, then she gave a legal notice on 15.6.2006 to the defendant no.1 and 2, which was also under section 88 of the Uttar Pradesh Awas Evam Vikas Parishad Act, a copy of which was also sent to the Commissioner and Additional Commissioner of defendant no.2, which were served on the defendant's on 19.6.2006.

7. The plaintiff filed the suit for the following reliefs:-

> *(i) by a decree of declaration, the plaintiff be declared the real allottee of house no. 2C/322, Sector 2C, Vasundhara Scheme, Ghaziabad, allotted by defendant no.2 and was also entitled to get the sale deed executed and registered in her favour.*

> *(ii) by decree of declaration it be declared that the lease agreement dated 19.8.2006 executed by defendant no.2 regarding the disputed house, was null and void and the possession of the disputed house handed to defendant no.1 was also illegal and void.*

> *(iii) If the relief claimed above, was granted by the court, then the defendant no.2 be directed to register the name of the plaintiff, as allottee of the disputed house, in its record and after receiving the*

> *balance consideration from the plaintiff, the sale deed be also executed and registered in favour of the plaintiff.*

> *(iv) If the relief claimed in clause 1 and 2 was not granted to the plaintiff, then the alternate relief of refund of money of ₹ 8,46,865/-, which was paid by the plaintiff for purchasing the disputed house, along with interest @12% per annum w.e.f. 23.1.2005 till the date of actual refund, be granted to the plaintiff against the defendant no.1.*

> *(v) by decree of permanent injunction granted in favour of the plaintiff against the defendant no.1, the defendant no.1 be restrained from selling, alienating or transferring the possession of the disputed house.*

> *(vi) by decree of the court the actual possession of the disputed house be also given to the plaintiff from defendant no.1*

> *(vii) the plaintiff be also awarded mesne profit at the rate of ₹ 10,000/- per month of the disputed house from the defendant no.1 during the pendency of the suit, till it's actual possession was not received by the plaintiff, the court fees on it will be paid at the time of execution.*

> *(viii) The costs of the suit be also awarded to the plaintiff against the defendant's.*

Defendant no.1's case

8. The defendant no.1 Omprakash Gupta filed his written statement in the trial court in which he denied the plaint case. He submitted that the plaintiff informed him that the defendant

no.2 is constructing HIG semi-finished houses, which are also reserved for retired Central government employees and as such, he should apply for allotment in the above scheme. The defendant further submitted that he believed the information provided by the plaintiff and as such, applied for allotment of house in the above scheme of the defendant no.2. He further submitted that since he retired from the post of civil engineer in CPWD, after service of 36 years, he was well aware that the property was expensive. He further submitted that initially he resided alone, but after the recent marriage of his son, the house had insufficient accommodation, as such, he was in need of a large house for accommodating his family and keeping in view the needs of his family, he had applied for allotment of house in the housing scheme of defendant no.2. He further submitted that there was no necessity of getting house allotted through the plaintiff, because she was a 45 year old woman. He further submitted that he has not committed any fraud upon the plaintiff. The plaintiff had no requirement of the disputed property as such, why he would have applied for house in the name of plaintiff. He specifically averred that since he was in need of a large house as such, he had applied for allotment of that house. He further submitted that the plaintiff had assured

him of her financial support, for acquiring the disputed house, if required by him.

9. The defendant admitted that since he was busy in the marriage of his son from January 2005 to April 2005, and was unable to pay ₹ 7.60 lakhs as such, he had taken a short-term loan from the plaintiff of that amount and had deposited it with defendant no.2. He admitted that the defendant no.2 had informed vide letter no. 11203 dated 17.11.2005 that house number 2C322 in Vasundhara has been allotted to him. He further averred that the plaintiff was no need of a house because she was having a two storeyed building no. B-4, Chandranagar, Ghaziabad, built in an area of 650 square yard, having a market value of ₹ 3 crores, the first floor of which was lying vacant. Besides this, the plaintiff was having an HIG flat no.3, Highway Apartment, in Ghazipur, which was in the name of her husband Ashok Gupta. The plaintiff wanted to usurp the disputed house illegally. The plaintiff was not the owner of the disputed house because it was allotted to him and the consideration of the disputed house was also paid by him. He further averred that half amount of consideration amounting to ₹ 1,354,560/- was paid by him to the defendant no.2 and as such, a lease agreement had been executed by defendant no.2

in his favour on 19.8.2006, on the basis of which he was entitled to the possession of the disputed house. The plaintiff was neither the allottee nor was in possession of the disputed house as such, the suit was barred by section 34 and 41 of the Specific Relief Act. The plaintiff filed the suit to harass him because he was an old and ill person. The plaintiff had got no cause of action to file the suit and was not entitled to get any relief from the court.

10. The defendant no.1 filed additional written statement in which, it was averred that after completing all the formalities regarding the disputed house and after depositing half amount of consideration of ₹ 13,54,560/- with defendant no.2, after paying stamp duty of rupees 2.71 lakhs, the defendant no.2 had executed a lease agreement on 19.8.2006 in his favour, on the basis of which he had obtained the physical possession of the disputed house on 7.12.2006, which was prior to the filing of the suit. It was further averred that after paying the whole consideration, the defendant no.2 had executed a sale deed on 31.3.2008 in his favour and in view of these facts and circumstances, the plaintiff was not entitled to any relief.

Written Statement of defendant no.2

11. The defendant No. 2 Uttar Pradesh Awas Evam Vikas Parishad filed its written statement in which it was admitted that the consideration had been deposited by defendant no.1. It was further disclosed that vide its letter no. 1323 dated 23.2.2005 the defendant no.1 was informed to deposit 7.60 lakhs till 30.5.2025, which was deposited by defendant no.1 within time. The above amount was paid by defendant no.1 by a demand draft no. 807363 drawn on Canara Bank, Vivek Vihar, New Delhi. The challan of deposit was signed by Ashok Kumar. It was further averred that house no. 2C322, Vasundhara, Ghaziabad was allotted on 17.11.2005 by it, to defendant no.1. It was admitted that the plaintiff had sent notice dated 15.6.2006 to it. It was further averred that on 19.8.2006 the defendant no.1 arrived at the office of defendant no.2 and had got executed an agreement of the disputed house. It was further disclosed that as per its record, defendant no.1 had applied for the registration of the disputed house, which was allotted to defendant no.1 and also on 19.8.2006 a lease agreement was executed by defendant no.2, in favour of defendant no.1. It was specifically averred that in the records, the disputed house had not been allotted to the plaintiff as such, no amount can be deposited by the plaintiff, with it. With these submissions, it was averred that the plaintiff

had no right to file the suit, which was liable to be dismissed with special costs.

12. The trial court on the basis of the pleadings of the parties, framed the following issues, which read as under:-

> *(i) Whether the plaintiff was the allottee of house number 2C/322, sector 2C, Vasundhara scheme, Ghaziabad and was entitled to get the sale deed of this property executed and registered in her favour from defendant no.2?*

> *(ii) Whether the defendant no.1 was the benami holder of disputed house? If yes, it's effect?*

> *(iii) Whether the suit was barred by section 34 and 41 of the Specific Relief Act?*

> *(iv) Whether any cause of action had arisen?*

> *(v) Whether the suit was undervalued?*

> *(vi) Whether the court fees paid was insufficient?*

> *(vii) Whether the suit was barred by section 3 and 4 of the Benami Transactions(Prohibition) Act, 1988?*

> *(viii) Whether the plaintiff was entitled to get any other relief?*

> *(ix)Whether on the basis of plaint averments, the plaintiff was entitled to get the possession of the disputed property?*

13. During trial, the plaintiff Dr Ila Gupta examined herself as PW-1 and defendant no.1 Omprakash Gupta examined himself as DW-1.

14. The trial court vide impugned judgment and decree dated 6.4.2013 dismissed the plaintiffs suit.

15. The trial court while deciding issue no.1 and 9 concluded that only a partial amount of ₹ 7.60 lakhs and ₹ 85,000 had been paid by plaintiff towards consideration of the disputed house, which was admitted by defendant no.1, the disputed house was allotted to the defendant no.1 and the plaintiff had failed to prove, that the disputed house was allotted for her benefit. The trial court concluded that since the lease agreement was executed by defendant no.2 in favour of defendant no.1 as such, the defendant no.1 will be deemed to be the owner of the disputed house, but the plaintiff was entitled to receive ₹ 7.60 lakhs and 85,000/- with interest from defendant no.1. Accordingly, issue no.1 and 9 were decided.

16. The trial court while disposing issue No.2 and 7 concluded that in section 3(2)(a) of the Benami Transactions (Prohibition) Act 1988, only the wife and unmarried daughter are covered within the definition of benami transaction, the plaintiff does

not fall within that definition, as such, in the facts of the case, section 3 and 4 of the Act were held in-applicable. Issue No.2 and 7 were decided in the negative.

17. The trial court concluded that the defendant failed to prove that the suit was barred under section 34 and 41 of the Specific Relief Act, as such, issue no.3 was decided against the defendants.

18. The trial court, concluded that the plaintiff had cause of action to file the suit because she had paid ₹ 7.60 lakh and 85,000/- towards the allotment of the disputed house, which she was entitled to get back. On this reasoning, the trial court decided issue no.4 in favour of the plaintiff. Issues no.5 and 6, regarding valuation of the suit and sufficiency of court fees paid, were decided by the trial court on 18.4.2009. Issue no.8 was partly decided in favour of the plaintiff by concluding that since she had paid an amount of ₹ 8,46,865/- to the defendant no.1 regarding the disputed house, as such she was entitled to this amount along with pendente-lite and future interest @ 6% per annum, in accordance with section 34 C.P.C. Regarding other reliefs, the suit was dismissed, aggrieved against which, the plaintiff filed the instant First Appeal under section 96 CPC.

19. Learned counsel for the plaintiff appellant submitted that the defendant no.1 was in fiduciary capacity vis-a-vis the plaintiff, being the real paternal uncle of plaintiff, the plaintiff trusted the defendant and acting on the advice of the defendant, had consented to apply for the disputed house in the name of the defendant, because there was a 10 % quota for senior citizens in the Vasundhara scheme, as such, there was an understanding that the defendant will apply for the house on behalf of the plaintiff, the plaintiff being the real owner, the funding for the house will be done by the plaintiff and the defendant will hold the house, for the benefit of the plaintiff but, after allotment of the house to the defendant, his intention became malafide and thereafter, to usurp the house illegally, the defendant began to exert his ownership rights in the house, which was illegal. Learned counsel submitted that the defendant no.1 was the benami owner of the disputed house. Since, the defendant was in a fiduciary capacity vis-a-vis the plaintiff, the bar of Benami Transactions (Prohibition) Act,1988 was not attracted in this case. Learned counsel further submitted that the trial court erred in dismissing the plaintiff's suit. With these submissions, it was prayed that the instant appeal be allowed and the suit be decreed. In support of his submissions learned

counsel has relied upon the case law Marcel Martins vs. M.Printer and others(2012)5 SCC 342 and Pushpalata vs. Vijay Kumar (Dead) through LRs and others 2022 SCC OnLine SC 1152.

20. Per contra, learned counsel for the defendant respondent no.1 submitted that the defendant was the real owner of the disputed house because a substantial part of the consideration was paid by the defendant. A loan was taken from the plaintiff initially for making an application before the defendant no.2, for applying the house, which was repaid by the defendant. Learned counsel submitted that the suit was barred by the provisions of Benami Transactions (Prohibition) Act,1988. Learned counsel further submitted that the allotment was in favour of the defendant and possession of the disputed house was also with the defendant and further, the sale deed was also executed in favour of the defendant, as such, it cannot be said that the defendant was the benami holder of the disputed house. Learned counsel further submitted that the plaintiff and defendant never trusted each other, only because some financial transactions took place between them, it cannot be presumed that the defendant was in a fiduciary capacity vis-a-vis the plaintiff. Learned counsel further submitted that defendant was not financially dependent on plaintiff, was having his own

income from pension and interest and had also invested his savings and also arranged funds from friends, relatives and family members, for purchasing the house. With these submissions, it was prayed that the instant appeal be dismissed.

21. On the basis of the arguments of the learned counsel of the parties, the following issues arise for determination, in this appeal:-

> *(1) Whether the disputed house was purchased by defendant no.1, for the benefit of plaintiff ?*

> *(2) Whether the defendant no.1 was the benami owner of the disputed house, the real owner being the plaintiff ?*

> *(3) Whether defendant no.1 was in a fiduciary capacity vis-a-vis the plaintiff ?*

> *(4)Whether the suit of the plaintiff was barred by section 4(1) of the Benami Transactions (Prohibition) Act, 1988 ?*

22. The plaintiff Dr.Ila Gupta examined herself as PW-1 in the trial court. In the examination- in- chief, she proved the pleadings of the plaint and reiterated her plaint case. She stated that defendant no.1, being her real paternal uncle was in a fiduciary capacity with her. She deposed that an amount of ₹ 7.60 lakhs and 85,000/- were paid by her towards the

consideration of the disputed house to the defendant no.2 through demand draft, for which rupees192/- and 1,673/-were paid towards demand draft charges, in total, an amount of rupees 8,46,865/- was paid by her. She further deposed that the disputed house was purchased for her benefit, the defendant no.1 was only a benami owner of the disputed house, who had got no concern with the disputed house. She denied that the above consideration deposited by her with defendant no.2, was a loan provided by her to the defendant no.1. She further deposed that the disputed house was not reserved for retired Central government employees, but it was reserved, only for serving employees. She further deposed that the defendant no.1 was not having any requirement of a larger house because, the defendant no.1's son Sajal was working in a foreign country as such, the house, presently in which the defendant no.1 was residing, was sufficient for his requirements because the defendant no.1 had let out a room of that house, which proved that the defendant no.1 was not having any requirement of a larger house. She further deposed that house no. B-4,Chandra Nagar belonged to her father-in-law K.L. Gupta.

23. The plaintiff in her cross-examination admitted that she's the joint owner of a shop with her husband, situated in Palika Bazar,

GT road, Ghaziabad, which was purchased in the year 1986 or 1987, from her own funds. She admitted that when the registration form of the disputed house was filled, at that time, she was residing at B-4, Chandranagar, Ghaziabad, which was at a distance of about 3-4 km from Vivek Vihar. She disclosed that Vasundhara was at a distance of about 5 km from her house. She admitted that the defendant no.1's house was at a distance of about 30 km from her house. She admitted that the sale deed of the disputed house had been executed in favour of defendant no.1. She denied that the part consideration of the disputed house was paid by her as loan, to the defendant no.1. She also admitted that the defendant no.1 had paid the remaining consideration to the defendant no.2 and had thereafter, got executed the sale deed in his favour from defendant no.2. She also admitted that the possession of the disputed house had been given by defendant no. 2 to defendant no.1. She admitted that there were financial transactions between her and defendant no.1 and his wife.

24. The defendant no.1 Omprakash Gupta examined himself as DW-1 in the trial court. In his examination-in-chief he reiterated the submissions made by him in his written statement. He deposed that since he was ill, as such, the plaintiff had assured

him that regarding the purchase of the disputed house, she will help in completing all the formalities. He further deposed that since he worked as a civil engineer for 36 years in CPWD, as such, he was fully aware that the disputed house was very expensive. He was residing at that time in a LIG house of DDA, which was very small, keeping in view his requirements, as such, on the assurance of the plaintiff, that she will provide the necessary loan, had applied for allotment of house reserved for retired Central government employees on 23.1.2005, after taking loan of ₹ 85,000/- from the plaintiff. He further deposed that since he was ill at that time, as such, the allotment form was filled and deposited by the plaintiffs husband, with defendant no.2. He further deposed that he had obtained ₹ 7.60 lakhs on loan from plaintiff, which was deposited through demand draft by plaintiffs husband, with defendant no.2 on 29.4.2005. He further deposed that previously also there were financial transactions between him and the plaintiff, the plaintiff had given a loan of ₹ 59,000/- to his daughter Ruchi Gupta for purchasing Shivalik Apartment in Patparganj on 18.8.2002, which were subsequently returned by his daughter, by cheque to the plaintiff. He further deposed that half of the total consideration of ₹ 27,02,120/-, which amounts to ₹ 13,54,560/-,

along with stamp paper of rupees 2.71 lakhs were deposited by him with defendant no.2 for executing lease agreement, which was executed on 19.8.2006 by defendant no.2 in his favour and also on 11.12.2006 the possession of the disputed house was also given to him by defendant no.2. He further deposed that after payment of the whole consideration, on 31.3.2008, the sale deed of the disputed house was executed by defendant no.2 in his favour. He further deposed that about ₹ 25 lakhs was paid by him towards the consideration of the disputed house. The plaintiff had no concern with the disputed house.

25. DW-1 deposed in cross-examination that the marriage of his son was solemnised on 28.4.2005, and after that, his son could not have resided with him, because his house was inadequate for accommodating all of them. He further deposed that he had no affection for the plaintiff, who never trusted him. He also never trusted the plaintiff. He admitted after reading paper no. 9 C that there was no reservation for retired Central government employees in the allotment of house. He deposed that the above fact of reservation of house was disclosed to him by the plaintiff. The house was reserved for senior citizens, plaintiff was not a senior citizen. He disclosed that when he had applied for allotment of the disputed house, at that time he was retired

person, who was having income from pension and interest. He also disclosed that he had deposited money in the MIS scheme of Post Office, as well as bank. He also disclosed that he was paying income tax but could not disclose, when for the last time, he had filed his income tax return. He disclosed that his chartered accountant used to file income tax returns on his behalf, a copy of which was given to him. He disclosed that at that time, his son was employed as software engineer in Bangalore, who was getting annual salary in excess of ₹ 6 lakhs. He disclosed that the remaining consideration was paid by him, after obtaining money from his son, daughter-in-law and daughter Ruchi Gupta and some amount was also given by his wife. He had also obtained some money from his son-in-law and his friends. He disclosed that at present his son was living in the United Kingdom. He further disclosed that the disputed house was a duplex house, which was semi-finished.

26. The Apex Court in the case of Marcel Martins vs. M.Printer and others (2012) 5 SCC 342, while discussing the term fiduciary capacity mentioned in section 4(3)(b) of the Benami Transactions (Prohibition)Act,1988, held as under:-

> *31. The expression fiduciary capacity has not been defined in the 1988 Act or any other statute for that matter. And yet there is no*

gainsaying that the same is an expression of known legal significance, the import whereof may be briefly examined at this stage.

32. The term fiduciary has been explained by Corpus Juris Secundum as under:

A general definition of the word which is sufficiently comprehensive to embrace all cases cannot well be given. The term is derived from the civil or Roman law. It connotes the idea of trust or confidence, contemplates good faith, rather than legal obligation, as the basis of the transaction, refers to the integrity, the fidelity, of the party trusted, rather than his credit or ability, and has been held to apply to all persons who occupy a position of peculiar confidence toward others, and to include those informal relations which exist whenever one party trusts and relies on another, as well as technical fiduciary relations.

The word fiduciary, as a noun, means one who holds a thing in trust for another, a trustee, a person holding the character of a trustee, or a character analogous to that of a trustee with respect to the trust and confidence involved in it and the scrupulous good faith and condor which it requires; a person having the duty, created by his undertaking, to act primarily for another's benefit in matters connected with such undertaking. Also more specifically, in a statute, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person, trust or estate.

33.Words and Phrases, Permanent Edn. (Vol. 16-A, p. 41) defines fiducial relation as under:

There is a technical distinction between a fiducial relation which is more correctly applicable to legal relationships between parties, such as guardian and ward, administrator and heirs, and other similar relationships, and confidential relation which includes the legal relationships, and also every other relationship wherein confidence is rightly reposed and is exercised.

Generally, the term fiduciary applies to any person who occupies a position of peculiar confidence towards another. It refers to integrity and fidelity. It contemplates fair dealing and good faith, rather than legal obligation, as the basis of the transaction. The term includes those informal relations which exist whenever one party trusts and relies upon another, as well as technical fiduciary relations.

34.Black's Law Dictionary (7th Edn., p. 640) defines fiduciary relationship thus:

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 relationship. Fiduciary relationshipssuch as trustee-beneficiary, guardian-ward, agent-principal, and attorney-clientrequire the highest duty of care. Fiduciary relationships usually arise in one of 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.

35.Stroud's Judicial Dictionary explains the expression fiduciary capacity as under:

Fiduciary capacity.An administrator who [had] received money under letters of administration and who is ordered to pay it over in a suit for the recall of the grant, holds it in a fiduciary capacity within the Debtors Act, 1869 so, of the debt due from an executor who is indebted to his testator's estate which he is able to pay but will not, so of moneys in the hands of a receiver, or agent, or manager, or moneys due on an account from the London agent of a country solicitor, or proceeds of sale in the hands of an auctioneer, or moneys which in the compromise of an action have been ordered to be held on certain trusts or partnership moneys received by a partner.

36.Bouvier's Law Dictionary defines fiduciary capacity as under:

What constitutes a fiduciary relationship is often a subject of controversy. It has been held to apply to all persons who occupy a position of peculiar confidence towards others, such as a trustee, executor, or administrator, director of a corporation or society, medical or religious adviser, husband and wife, an agent who appropriates money put into his hands for a specific purpose of investment, collector of city taxes who retains money officially collected, one who receives a note or other security for collection. In the following cases debt has been held to be not a fiduciary one : a factor who retains the money of his principal, an agent under an agreement to account and pay over monthly, one with whom a general deposit of money is made.

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--vis the respondent-plaintiffs.

27. The Apex Court in the case of Mangathai Ammal(Died) Through Lrs. and others vs. Rajeswari and others(2020)17 SCC 496, discussing the law governing benami transactions, held as under:-

> *7.1. In Jaydayal Poddar [Jaydayal Poddar v. Bibi Hazra, (1974) 1 SCC 3] it is specifically observed and held by this Court that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be sold. It is further observed that this burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of the benami transaction or establish circumstances unerringly and reasonably raising an interference of that fact. In para 6 of the aforesaid decision, this Court has observed and held as under : (SCC pp. 6-7)*

6. It is well settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of a benami is the intention of the party or parties concerned; and not unoften, 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. The reason is that a deed is a solemn document prepared and executed after considerable deliberation, and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question whether a particular sale is benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid tests, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the courts are usually guided by these circumstances : (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.

7.2. In Bhim Singh [Bhim Singh v. Kan Singh, (1980) 3 SCC 72] this Court in para 18 observed and held as under : (SCC p. 84)

18. The principle governing the determination of the question whether a transfer is a benami transaction or not may be summed up thus : (1) the burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction; (2) it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is prima facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary; (3) the true character of the transaction is governed by the intention of the person who has contributed the purchase money; and (4) the question as to what his intention was has to be decided on the basis of the surrounding circumstances, the relationship of the parties, the motives governing their action in bringing about the transaction and their subsequent conduct, etc. 7.3. In P. Leelavathi [P. Leelavathi v. V. Shankarnarayana Rao, (2020) 19 SCC 816] this Court held as under : (SCC OnLine SC para 26)

26. In Binapani Paul case [Binapani Paul v. Pratima Ghosh, (2007) 6 SCC 100] , this Court again had an occasion to consider the nature of benami transactions. After considering a catena of decisions of this Court on the point, this Court in that judgment observed and held that the source of money had never been the sole consideration. It is merely one of the relevant considerations but not determinative in character. This Court ultimately concluded after considering its earlier judgment in Valliammal v. Subramaniam [Valliammal v. Subramaniam, (2004) 7 SCC 233] that while considering whether a particular transaction is benami in nature, the following six circumstances can be taken as a guide:

(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 , SCC p. 7, para 6.) 7.4. After considering the aforesaid decision in the recent decision of this Court in P. Leelavathi , this Court has again reiterated that to hold that a particular transaction is benami in nature, the aforesaid six circumstances can be taken as a guide.*

28. The Apex Court in the case of Pushpalata vs. Vijay Kumar(Dead) through LRS and others 2022 SCC OnLine SC 1152, where the claim was that the property is benami, elucidated the law 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, where this court cited with approval extracts from Valliammal v. Subramaniam (supra):*
>
> *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 [(2004) 7 SCC 233] 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. 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--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--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--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 Subsection 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.

29. From the law laid down by the Apex Court in the case of Mangathai Ammal(supra) and Pushpalata(supra) it is clear that six circumstances- the source of the purchase money, possession of the property after purchase, motive of giving the transaction a benami colour, the position and relationship between the parties, custody of the title deeds after the sale and the conduct of the parties in dealing with the property after the sale, can be taken as

> *a guide for determining whether the transaction was benami or not. It has been further held that 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 was benami or not. The Apex Court in the case of Marcel Martins(supra) has defined what is the meaning of fiduciary capacity.*

> *30. It is apparent that the cost of the disputed house was about 30 lakhs, but only an amount of ₹ 8.45 lakhs has been paid by the plaintiff, which according to the defendant no.1 was the loan, which he had taken from the plaintiff, for purchasing the disputed house. It is also apparent that the allotment of the house was in favour of defendant no.1, who had also got executed the sale deed in his favour, after paying the whole consideration of the disputed house from defendant no.2. The possession of the disputed house was also handed to defendant no.1, in pursuance of the lease agreement executed by defendant no.2 in his favour on 11.12.2006.*

> *31. Section 2(a), 3(1), 3(2)(a) and 4 of the Benami Transactions (Prohibition) Act, 1988, (hereinafter referred to as 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;*

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 of the unmarried daughter.

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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.

32. It is evident that as per section 4(1) of the above Act, a suit claiming any right in respect of any property held benami against the person in whose name the property is held, is not maintainable by a person claiming to be the real owner of such property, but this is not applicable, where the property is held as a coparcener in a Hindu undivided family(HUF) and where the property is held for the benefit of the coparceners of such family. It is also not applicable, 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 trustee or towards whom he stands in such capacity.

33. It is admitted to both the parties that the plaintiff is not a coparcener of the Hindu undivided family(HUF) of defendant

no.1 as such, the exemption available under section 4(3)(a) of the Act, is not applicable, in the facts and circumstances of this case.

34. Learned counsel for the plaintiff- appellant vehemently submitted that the plaintiff trusted defendant no.1, who is her real paterenal uncle, who was in a fiduciary capacity vis-a-vis the plaintiff and as such, the disputed property was purchased by defendant no.1 for the benefit of plaintiff and part consideration for purchasing the property, was also provided by the plaintiff. Learned counsel submitted that in view of this, the suit is not barred by the provisions of section 4(1) of the Act.

35. From the evidence on record, it is proved that plaintiff and defendant no.1 were not residing together, the defendant was not dependent on plaintiff, the defendant was retired central government pensioner, who was having sufficient income from pension and interest to sustain his livelihood, who was living in his own house, who was ill but was not mentally impaired, there was no Hindu undivided family(HUF) of which plaintiff and defendant were coparceners, the plaintiff was married having her own family, who was neither a lineal descendant of defendant nor the property of defendant would have devolved

on plaintiff upon his death, because the defendant was having his own family, as such, in these circumstances, it is not proved that the defendant no.1 was in a fiduciary capacity vis-a-vis the plaintiff. Although, defendant no.1 has admitted that there were financial transactions between him and the plaintiff and his daughter had taken money from the plaintiff, which was returned subsequently, but only on the basis of these financial transactions, it is not proved that defendant no.1 was in fiduciary capacity vis-a-vis the plaintiff.

36. It is also apparent that the plaintiff has only provided a part consideration of ₹ 8.45 lakhs for purchasing the disputed house, whereas the defendant no.1 has paid the remaining consideration of about ₹ 25 lakhs to the defendant no.2 for purchasing the disputed house. Since, in this case the whole consideration of the disputed house has not been paid by the plaintiff, she cannot be treated as the real owner of the house. It is not a case where the disputed house was purchased by the defendant jointly with the plaintiff, or the defendant no.1 was minor at the time of purchase of house, or was not having the financial capacity to purchase the disputed house. The defendant no.1 denied that he was having any love and affection for plaintiff and has also admitted that, there was no

mutual trust between them. It is also apparent that, there is no written contract between the plaintiff and defendant no.1 as such, the whole burden was on the plaintiff to prove that she's the real owner of the disputed house, which she has utterly failed to prove.

37. In view of the above facts and as per the law laid down by the Apex Court in the case of Marcel Martins(supra), the plaintiff failed to prove that defendant no.1 was in a fiduciary capacity vis-a-vis the plaintiff, as such, the instant case does not fall within the exceptions mentioned in section 4(3) of the Act.

38. It is also proved that the plaintiff has only paid about 25% of the amount of consideration(Rs. 8.45 lakhs), the defendant no.1 is in possession of the disputed house, a sale deed has also been executed by the defendant no.2 in favour of defendant no.1 regarding the disputed house, there was no motive for purchasing the property benami, the plaintiff and the defendant no.1 resided separately and the defendant was not dependent on plaintiff for his livelihood, the defendant had sufficient financial means for purchasing the disputed house and the deficit, if any, was made good by borrowing the money from his friends, relatives and family members. It is also proved that the

sale deed of the disputed house is in possession of the defendant no.1. It is also proved that the defendant no.1 neither expressly admitted nor acquiesced by his conduct, that the disputed house belonged to the plaintiff. When the above evidence is analysed in accordance with the law laid down by Apex Court in the case of Mangathai Ammal(supra) and Pushpalata(supra) then it is apparent that the plaintiff failed to prove that the alleged transaction was benami, and she was the real owner of the disputed house.

39. From the above analysis, it is proved that the defendant no.1 is the real owner in possession of the disputed house and the disputed house is not a benami property of plaintiff. Since, the plaintiff 's suit, does not fall within the exceptions specified in section 4(3) of the Benami Transactions (Prohibition) Act,1988, the plaintiff 's suit is barred by section 4(1) of the Act. The trial court has not committed any illegality in dismissing the plaintiff 's suit for the relief of possession of the disputed house and for declaration that the sale deed of the disputed house be executed by defendant no.2 in her favour. The trial court has rightly decreed the plaintiffs suit partially against defendant no.1, for an amount of ₹ 8,46,865/- with interest @ 6% per annum from the date when this amount was given to the

defendant no.1, till the actual date of realisation. Accordingly, this appeal is meritless and is liable to be dismissed.

40. Accordingly, this appeal is dismissed. Consequently, the impugned judgment and decree dated 06.04.2013 passed by the trial court in O.S. No. 1485 of 2006, is affirmed.

41. All pending applications, if any, stand disposed of.

42. Interim order, if any, stands vacated.

43. However, in the facts and circumstances of the case, the parties shall bear their respective costs.

44. Office is directed to prepare the decree, accordingly.

Order Date:- 12.09.2025 Jitendra/Himanshu/Mayank (Sandeep Jain, J.)