

(1994) 06 BOM CK 0034
In the Bombay High Court
Case No : First Appeal No. 20 of 1980

Smt. Meeradevi alias Sheela Gajanan Jagtap	APPELLANT
Vs	
Chandramohan Dattajirao Jadhav	RESPONDENT

Date of Decision : 29-06-1994

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 2, 4(1)
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12(1)

Citation : AIR 1995 Bom 47 : (1995) 1 BomCR 1 : (1994) 96 BOMLR 73 :
(1995) 2 MhLj 218

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : D.K. Ghaisas, for the Appellant; Vineet B. Naik, for the Respondent

Judgement

1. This appeal is preferred by the Original Defendant against decree dated 31st August, 1979 passed by the Court of Joint Civil Judge, Senior Division, Pune, in Special Civil Suit No. 66 of 1978. By the said decree, the trial Court declared that the plaintiff was the title holder of the suit flat bearing No. 196 in Building No. 11 on the 1st floor of Meera Co-operative Housing Society, Poona-9. By the said decree, the trial Court directed the defendant to hand over vacant possession of the suit flat to the plaintiff forthwith. By the said decree, the trial Court also directed that the mesne profit be determined as contemplated under O. XX, R. 12(1)(c) of the Code of Civil Procedure. By the said order the trial Court further directed the defendant to pay the costs of the suit to the plaintiff.

2. This is an unfortunate litigation between two members of the same family. The defendant is younger married sister of the plaintiff residing in U. S. A. The plaintiff is the brother of the defendant. The parties to his appeal are hereinafter referred to as "the Plaintiff and defendant" for the sake of convenience. The relevant facts are summarised in the latter part of the judgment.

3. On or about 24th February 1978, the plaintiff filed Special Civil Suit No. 66 of 1978 against the defendant for declaration of his title in respect of the suit flat

and for eviction of the defendant therefrom etc. The plaintiff also sought an order for determination of mesne profits payable by the defendant to the plaintiff for the period commencing from the date of the filing of the suit till vacant possession of the suit flat was handed over by the defendant to the plaintiff. The suit flat consists of 3 rooms and kitchen with attached hall, bathroom, etc. admeasuring 800 sq. ft. forming part of the building No. 11 bearing No. 196 on 1st floor in Meera Co-operative Housing Society, Poona. Prior to 12th September, 1974, the suit flat was held by Mr. N. D. Khosla and Mrs. Leela N. Khosla in their capacity as members of the Meera Cooperative Housing Society, hereinafter referred to as the "Society" on the basis which is popularly known as "ownership basis". By an agreement dated 12th September, 1974, the plaintiff purchased the suit flat along with the shares concerned of the said Society from Mr. N. D. Khosla and Mrs. Leela N. Khosla for an aggregate consideration of Rs. 50,000/-. Prior to purchase of the said flat, the plaintiff was residing in rented flat in building No. 8 belonging to the same society. It is the plaintiff's case that the plaintiff paid the sum of Rs. 50,000/- to the vendors as indicated below :

i) Rs. 24,427.58 ps. by cheque dated 12th September, 1974 drawn by the plaintiff on Bank of Maharashtra bearing No. 348972.

ii) Rs. 25,572.42 ps. paid to Mira Sahakari Griha Rachna Sanstha Maryadit by cheque No. 348971 dated 12th September, 1974 issued on Bank of Maharashtra, Pune at the instance of the vendors.

4. It is the plaintiff's case that the said flat, shares and membership of the society concerning the said flat was duly transferred by the said Society in favour of the Plaintiff soon thereafter. It is the plaintiff's case that the plaintiff paid the entire sum of Rs. 50,000/- to the vendors and the said society from his own resources. Prior to December, 1974, the plaintiff's mother Smt. Shalinibai Dattajirao Jadhav used to reside with the plaintiff's sister by name Smt. Meeradevi alias Sheela Gajanan Jagtap. Some time in December, 1974, the plaintiff's mother Smt. Shalinibai D. Jadhav returned to Pune. It is the plaintiff's case in the plaint that at all material times, the plaintiff was intending to purchase two flats in one or the other building of the same Society. It is the plaintiff's case that according to the understanding of the plaintiff, no member could be allowed to hold two flats as member of the same society. It is the plaintiffs case that in this situation, the plaintiff agreed to transfer the suit flat in favour of his mother on the clear understanding that the plaintiff shall continue to be the owner of the said flat and the defendant shall have no right, title and interest therein. It is the plaintiff's case that the suit flat was nominally transferred in favour of the defendant without any consideration and without any intention to make a gift of the said flat to his mother Smt. Shalinibai Dattajirao Jadhav. It is the plaintiff's case that the understanding on which the suit flat was got transferred to the name of Smt. Shalinibai D. Jadhav is duly reflected in a writing signed by Smt. Shalinibai Dattajirao Jadhav on 10th March, 1975 in Exh. "80". The said writing was duly attested by a witness known as Mr. Nimbalkar on

10th March, 1975. The said writing was admittedly signed by the mother of the plaintiff. Smt. Shalinibai D. Jadhav expressly acknowledged that the plaintiff shall have to be continued as owner of the suit flat and the defendant did not have any right, title and interest therein. It was also stated in the said writing that the defendant will nominate the plaintiff as her nominee in respect of the said flat and the right, title and interest of the plaintiff in the said flat was not affected by transfer of the flat in favour of the plaintiff's mother Smt. Shalinibai D. Jadhav in any manner whatsoever. It emerges from the record of the suit that the plaintiff and Smt. Shalinibai Dattajirao Jadhav were residing in the suit flat for some time. The rented flat being Flat No. 8 in building No. 134 was kept lock. On 1st December, 1977, Smt. Shalinibai Dattajirao Jadhav died. It is the plaintiff's case that some time in the month of December 1977 or nearabout, the plaintiff learnt that Smt. Shalinibai Dattajirao Jadhav had made a Will being Will dated 4th July 1977 purporting to bequeath the said flat in favour of the defendant. The plaintiff averred in the plaint having regard to the fact that Smt. Shalinibai Dattajirao Jadhav had no right, title and interest in the suit flat, the said alleged bequest was void. The plaintiff contended that Smt. Shalinibai had no right to bequeath the flat in favour of the defendant or any one else as said flat did not belong to the defendant.

5. The defendant executed the Power of Attorney in favour of one Sunetra Udaysingh Shinde. The defendant has not placed her signature on the Written Statement. The said Constituted Attorney of the defendant filed the written statement in the suit for and on behalf and in the name of the defendant. The said Smt. Sunetra Udaysingh Shinde appears to have no knowledge about relevant facts having bearing on the subject matter of the suit. The verification clause appended at the foot of the written statement is most unsatisfactory. In para (5) of the said written statement, the defendant contended that the suit flat was not purchased, out of monies belonging to the plaintiff but was purchased by Smt. Shalinibai Dattajirao Jadhav, out of her own monies. In the said written statement, the defendant further contended that Smt. Shalinibai D. Jadhav raised money by selling her other properties at Kolhapur and the said monies were utilised for purchase of the suit flat. The defendant denied that the transfer of the suit flat in favour of Smt. Shalinibai D. Jadhav in the month of March 1975, was a nominal transfer. The defendant contended that since inception i.e. 12th September, 1974, the suit flat belonged to Smt. Shalinibai D. Jadhav and the plaintiff caused the name of Smt. Shalinibai D. Jadhav to be entered in the record of the Society as and by way of "correction" of the said record. The defendant also relied on Will dated 4th July 1977 in support of her case to the effect that the defendant was the owner of the suit flat.

6. At the trial of the suit, the learned trial Court framed issues which are set out in para (4) of its judgment. The basic issue raised at the trial was as to whether the defendant proves that it was the deceased Shalinibai D. Jadhav who had purchased the suit flat from her own resources from inception, and as to whether the suit flat was merely purchased by Shalinibai D. Jadhav in the name of the

plaintiff? The other important issue framed at the trial was as to whether the plaintiff proved that he had got the name of his mother Smt. Shalinibai D. Jadhav entered in the record of the Society as owner of the said flat nominally and merely for the sake of convenience. The several other issues were also framed by the trial Court. The basic question requires to be considered by the trial Court as well as by this court is as to whether the plaintiff has requisite title to the suit property or as to whether the defendant has requisite title thereto.

7. At the trial of the suit, the parties to the suit led oral as well as documentary evidence. The plaintiff examined himself in support of his case as P. W. 1. One Vashi Mohanlal Sindhavani, an Estate Agent, was examined as P.W. 2 for on behalf of the plaintiff. The defendant did not choose to depose in favour of the defence case. The defendant could have come to Pune and led the necessary evidence at the trial of the suit. The defendant could have been examined even on commission if the Court was satisfied that the case was made out for issue of commission. One Sunetra Udaysing Shinde, the Constituted Attorney of the defendant was examined as D. W. 1 on behalf of the defendant. One Sau. Bhanumati Marutirao Sawant, another sister of the plaintiff was examined as D. W. 2. Dr. Ravindra Vyankatrao Lagad was examined as a defence witness to prove the Will as he was one of the attesting witnesses.

8. The documentary evidence led at the trial mainly consisted of following documents.

(a) Agreement dated 12th September, 1974 executed by Mr. N. D. Khosla and Mrs. Leela N. Khosla in favour of the plaintiff (Exhibit "63").

(b) Receipt dated 14th September, 1974 issued by the said Society i.e. Sahakari Griha Rachna Sanstha Maryadit in favour of the plaintiff acknowledging the receipt of Rs. 25,572.42 ps. from the plaintiff by cheque No. 348971 dated 12th September, 1974 issued on Bank of Maharashtra, Pune (Exhibit "64").

(c) Letter dated 30th December, 1974 addressed by the plaintiff to the Chairman by the said Society requesting to transfer the flat No. 11/196 and the share certificate No. 894 in favour of his mother Smt. Shalinibai Dattajirao Jadhav. (Exhibit "65").

(d) Letter dated 26th March, 1975 addressed by the said Society to the plaintiff informing the plaintiff that the managing committee of the Society had approved the proposal for transfer of the fiat in the name of Smt. Shalinibai D. Jadhav, the mother of the plaintiff (Exhibit "66").

(e) Letter dated 2nd December, 1977 addressed by the Advocate for the plaintiff to the Chairman of the said Society i.e. soon after the death of Smt. Shalinibai D. Jadhav stating therein that the plaintiff continued to be the owner of the said flat at all time and the alleged Will sought to be relied on the defendant was not valid. (Exhibit "67").

(f) Letter dated 23rd December, 1977 addressed by the Advocate for the plaintiff

to the Chairman of the said Society. (Exhibit "68").

(g) Letter dated 3rd March, 1978 (Exhibit "70") addressed by the Society to the Advocate for the plaintiff stating therein that the said flat was transferred in the name of the defendant in view of the defendant having been nominated as nominee by the mother of the plaintiff i.e. Smt. Shalinibai as permissible under Maharashtra Co-operative Society's Act, 1960.

(h) The cheque book containing counterfoils of all cheques issued by the plaintiff during the relevant period on Bank of Maharashtra (Exhibit "72").

(i) Letter dated 1st March, 1978 issued by Atlas Copco (India) Employees' Co-operative Credit Society Limited certifying that the plaintiff had taken a loan of Rs. 3,000/- from the said Society on 27th November, 1973 (Exhibit "73").

(j) Certificate dated 1st March, 1978 issued by the said Co-operative Society in respect of the loan of Rs. 2,400/- taken by the plaintiff from the said Society some time in the year 1975 (Exhibit "74").

(k) Letter dated 18th March 1974 addressed by Atlas Copco (India) Limited Employees' Provident Fund certifying that the plaintiff had taken loan of Rs. 5,000/- from his Provident Fund Account as stated therein. (Exhibit "75").

(l) Sale Deed dated 12th December, 1974 in respect of Kolhapur property executed by Shalinibai D. Jadhav, mother of the plaintiff stating therein that Shalinibai D. Jadhav had received a sum of Rs. 45,000/- from the purchaser in presence of the Sub-Registrar at the time when the document was presented for registration i.e. on 12th December, 1974. (Exhibit "76").

(m) Letter dated 20th November, 1977 addressed by the plaintiff to the defendant. (Exhibit "77").

(n) Will dated 4th July, 1977 made by Smt. Shalinibai Dattajirao Jadhav (Exhibit "78").

(o) Hand-writing dated 10th March, 1975 duly executed by the plaintiff's mother Smt. Shalinibai D. Jadhav acknowledging that the plaintiff continued to be the owner of the said flat (Exhibit "80").

9. The Learned trial Court accepted the case of the Plaintiff. The Learned trial Court held that the plaintiff had purchased the suit flat in his own name with his own resources and the plaintiff was actual and real owner of the suit flat with effect from 12th September, 1974. The trial Court held that the suit flat was transferred by the plaintiff in favour of the defendant nominally on the understanding reflected in writing dated 10th March, 1975 (Exhibit "80"). The trial Court held that Smt. Shalinibai D. Jadhav had no title whatsoever in respect of the suit flat. The trial Court held that the Will dated 4th July, 1977 was void in so far as it pertained to the suit flat as Smt. Shalinibai D. Jadhav had no right, title or interest in the suit flat and the said flat could not be made subject matter of bequest b.y her as purported to be done.

10. In the result, the trial Court passed a decree dated 31st August, 1970.

11. I have gone through the entire oral as well as documentary evidence on record with the help of the learned counsel for both the parties.

12. The learned counsel for the appellant has submitted that the onus was on the plaintiff to prove that the plaintiff had purchased the suit flat for a sum of Rs. 50,000/- from his own resources and with his own monies. The learned counsel for the appellant has submitted that the evidence led on behalf of the plaintiff on this aspect of this case is inadequate. The learned counsel for the appellant has submitted that this Court should, therefore, reverse the finding of the trial Court, and hold that the plaintiff had purchased the suit flat from the monies provided by the defendant and right from 12th September, 1974 the suit flat belonged to the defendant. I am not at all convinced with the submissions made by the learned counsel for the appellant. The plaintiff was serving with Atlas Copco (India) Employees' Co-operative Credit Society Limited, Dapodi, Poona. The plaintiff used to work with the said Company as Production and Technical Assistant. The salary of the plaintiff at the material time was about Rs. 1,400/- per month. During the course of his testimony, the plaintiff stated that the plaintiff had taken a loan of Rs. 5,000/- from his Provident Fund Account, and a loan of Rs. 3,000/- from Credit Society of his Company. The plaintiff had a sum of Rs. 7,000/- available with him from his savings. The plaintiff has stated that the sum of Rs. 10,000/- was gifted to him by his father-in-law, and Rs. 10,000/- was realised from the sale of his wife's Jewellery. The plaintiff deposed to the effect that the plaintiff had obtained a sum of Rs. 7,000/- from his friend one Shri Dhairshil Ingale of Kolhapur, Rs. 5,000/- from his cousin sister Smt. Meeradevi of Gargoti, and a sum of Rs. 5,000/- from Mrs. Sofi Nirmal of Poona. Nothing could be brought out in the cross-examination of the plaintiff so as to shaken his testimony. The plaintiff produced all counterfoils from the cheque book issued by the Bank of Maharashtra during the relevant period (Exhibit "72"). The plaintiff had made the payment towards sale of price of the flat to the vendors and to the Society by cheques. There is no material on record whatsoever to show that the defendant had provided funds to the plaintiff for depositing the amount in the said Bank account with the Bank of Maharashtra. The positive case of the defendant in the written Statement is that the suit flat was purchased from the sale proceeds of the sale of Kolhapur property which was sold by Smt. Shalinibai D. Jadhav under Sale Deed Exhibit "76". This case of the defendant is found to be false. The said Sale Deed dated 12th December, 1974 in terms provides that Smt. Shalinibai D. Jadhav had received a sum of Rs. 45,000/- from the purchase of Kolhapur property in presence of Sub-Registrar on the day and at the time when the said Sale Deed was lodged for registration. Necessary cheques were issued by the plaintiff in favour of the vendors and in favour of the Society dated 12th September, 1974. The said cheques were duly encashed. The Society issued a receipt in favour of the plaintiff acknowledging the receipt of the said amount being receipt dated 14th September, 1974 (Exh. 64) The vendors have already issued a certificate in favour of the plaintiff

certifying that the vendors had received the necessary amount by cheque in September, 1974 (Exhibit "79").

13. Having regard to the above evidence, it is not possible to hold that the suit flat was purchased by Smt. Shalinibai in the name of the plaintiff with monies provided by Smt. Shalinibai. The Plaintiff had undoubtedly purchased the suit flat from his own resources. It is possible that his mother was a rich person and the plaintiff was a mere employee drawing salary of Rs. 1,400/- or nearabout per month. Merely from these facts, it cannot be inferred that the plaintiff did not arrange for the payment of the above referred amount of Rs. 50,000/- as deposed to by him. After appreciating and reappreciating oral as well as documentary evidence led at the trial, I confirm the finding of the trial Court and held that the trial Court was right in recording its finding on Issue No. 5.

14. I may now deal with the next contention raised by the learned counsel for the appellant. The question required to be decided by this Court is as to whether the transfer of the suit flat by the plaintiff in favour of his mother Smt. Shalinibai D. Jadhav in pursuance of the application made to the Society on 30th December, 1974 was merely a nominal transfer. It is common ground that the said transfer was without consideration. It is not the case of the defendant that Smt. Shalinibai D. Jadhav had paid any amount to the plaintiff while obtaining the transfer of the flat in her name as aforesaid. It is not the case of the defendant that the plaintiff had made gift in respect of the said flat in favour of Smt. Shalinibai D. Jadhav. The plaintiff's case on this aspect is supported not merely by his oral testimony but also by writing Exhibit "80". There is no material whatsoever on record to doubt the correctness of the contents appearing in writing Exhibit "80". The plaintiff was asked the question during the course of his cross-examination as to what was the occasion for the plaintiff to obtain the writing (exhibit PO) from his own mother Smt. Shalinibai D. Jadhav. The plaintiff is an educated person. During the course of testimony, the plaintiff stated that since the matter was a property matter, it was thought proper to obtain such a writing from his mother and his mother voluntarily executed the said writing in favour of the plaintiff. The Plaintiff is the only brother of several sisters. There is nothing peculiar about this conduct of the plaintiff. In view of reasons set out in the judgment under appeal and also in view of reasons set out by me hereinabove, I have no hesitation in holding that the plaintiff had caused the suit flat to be transferred in favour of the defendant with a clear understanding that the defendant shall have no right, title or interest in respect of the said flat and that the plaintiff shall continue to be the owner of the said flat. In other words, the said transaction of transfer of the flat was a nominal transaction. Such transactions are not unknown to law particularly between the relatives.

15. If so, the question to be asked by the Court is as to whether the impugned Will dated 4th July, 1977 is valid. It was competent for the Civil Court while determining the dispute of the title to examine the issue as to whether the testator had requisite title in respect of the said flat or not. I agree with the

reasoning and conclusion of the trial as all the aspects of the case.

16. Having regard to the above referred findings, it must be held that the trial Court was right in holding that the said Will was void in so far as said flat was sought to be bequeathed in favour of the defendant inasmuch as the testator was not the owner of the said flat at any time. Merely because Smt. Shalinibai Dattajirao Jadhav had intimated the name of the defendant to the said Society as her nominee. Instead of the name of the plaintiff as nominee, the title of the plaintiff in respect of the suit flat is not affected.

17. I accept the testimony of the plaintiff and hold that there is merit in the appeal. The defence case as laid in the written statement is found to be false in so far as it was alleged that the suit flat was purchased by the plaintiff from Mr. & Mrs. Khosla from the funds provided by Smt. Shalinibai D. Jadhav, the plaintiff's mother. It is not the defendant's case that Smt. Shalinibai D. Jadhav reimbursed the plaintiff in respect of the said sum of Rs. 50,000/- later on i.e. on and after sale of Kolhapur property. The defence witnesses i.e. D.W. 1 & D.W. 2 had no personal knowledge whatsoever in respect of the material facts having bearing on the subject matter of the suit claimed. The Will is duly proved. The Will is, however, found to be invalid in so far as Smt. Shalinibai D. Jadhav purported to dispose of the suit flat on the assumption that the suit flat belongs to Smt. Shalinibai D. Jadhav. The suit flat did not belong to Smt. Shalinibai at point of time. The defendant did not enter the witness box. The defendant did not decline the written statement. It appears to me that the relations between the plaintiff and Smt. Shalinibai deteriorated in later years and Shalinibai was under the influence of the defendant at time of execution of the above referred Will. Letter Exhibit 77 dt. 20th November, 1977 throws light on this aspect of the matter.

18. The learned counsel for the appellant has submitted that in any event, the appeal should be allowed in view of retrospective operation of the provisions of the Benami Transactions (Prohibition) Act, 1988. The learned counsel, for the appellant submitted that the plaintiff was not entitled to urge the plea that the transfer of the suit flat in favour of Shalinibai D. Jadhav was nominal in view of the provisions contained in Section 4(1) of Act No. 45 of 1988. The learned counsel for the appellant relied upon the judgment of the Supreme Court in the case of Mithilesh Kumar and Another Vs. Prem Behari Khare, . The learned counsel for the respondent relied upon several authorities during course of his argument to which reference would be made by the Court little latter.

19. The Section 2(a) of the said Act defines the expression "Benami transaction" as under :

"2. (a) "Benami transaction" means any transaction in which property is transferred to one person for a consideration paid or provided by another person."

20. The Section 4(1) of the said Act defines as under;

"4.(1) No suit, claim or action to enforce any right in respect of any property held

Benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property."

The Section 4(2) of the said Act are as under :

"4(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."

Section 4(3) of the said Act are as under:

"4(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 coparceners in the family; or

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

21. Having regard to the facts proved in this case, it is not possible to hold that Smt. Shalinibai had provided consideration for purchase of the suit flat on or prior to 12th September, 1974 or at any other time. The plaintiff paid entire sum of Rs. 50,000/- to Mr. & Mrs. Khosla as consideration for purchase of the said flat by his resources. The transaction for purchase of the suit flat by the plaintiff from Mr. and Mrs. Khosla under agreement dated 12th September, 1974 cannot be, therefore, considered as a Benami transaction. Section 4(2) of the said Act precludes the defendant from raising a defence to the effect that the suit property was purchased by Smt. Shalinibai D. Jadhav as Benami in favour of the Plaintiff. It is not necessary to pursue discussion on this aspect of the matter as I have held it as a fact that the defendant had not provided any consideration for purchase of the suit flat under agreement dated 12th September, 1974 as alleged or otherwise. The trial Court has held that the plaintiff purchased the suit flat with this own funds and from his own resources. This Court as the First Appellate Court has reached the same conclusion.

22. The learned counsel for the appellant submits that the transaction pertaining to transfer of the suit flat by the plaintiff in favour of Smt. Shalinibai in December, 1974 or nearabout is liable to be considered as Benami transaction. The learned counsel submits that the plaintiff is precluded in law from contending that the plaintiff continued to be the owner of the suit flat notwithstanding the transfer the suit flat in favour of the defendant in record of the Society. There is no merit in this contention of the learned counsel for the appellant.

23. In view of definition of expression "Benami transaction" as set out in the said

Section 2(a), it cannot be held that the transfer of the property without consideration are covered by Act No. 45 of 1988. In the case of Bathula Anasuya and Another Vs. Bathula Rayudu and Others, , the High Court of Andhra Pradesh held that the nominal transaction was not covered by the Ordinance No. 2 of 1988 which was replaced by Act No. 45 of 1988. In this case, the High Court held that it was clearly established that the Deed of relinquishment was nominally executed. In view of this finding, the Court held that the plaintiff was entitled to a decree for partition and the plaintiff was not precluded from obtaining necessary relief from the Court by virtue of provisions contained in Ordinance No. 2 of 1988 referred to hereinabove.

24. The learned counsel for the respondent has rightly relied upon the judgment of the High Court of Kerala in the case of Ouseph Chacko and Another Vs. Raman Nair Raghavan Nair, . In this case, the High Court of Kerala referred to relevant case law on the subject and specifically referred to the judgment of the Supreme Court in case of Mithilesh Kumar and Another Vs. Prem Behari Khare, as well as earlier judgment of the Supreme Court in the case of Bhimsingh v. Kansingh reported in AIR 1980 SC 272. It appears that the Act No. 45 of 1988 is applicable only in respect of transaction for consideration where consideration is paid or provided by another person although the property is transferred in favour of one person. The Act No. 45 of 1988 is not at all applicable to the transfers consideration of nominal or sham transfers. The definition of "Benami" as set out in Section 2(a) of the Act is exhaustive and self contained. The said definition cannot be enlarged or expanded by the Court. I respectfully agree with the view taken by the High Court of Kerala and High Court of Andhra Pradesh in the above referred cases.

25. In this case, the Court has found that Smt. Shalinibai Dattajirao Jadhav had not provided any consideration to the plaintiff for purchase of the suit flat and the plaintiff had purchased the suit flat from his own resources. I confirm the findings of the trial Court on each of the issue. I hold that there is no merit in the plea of the appellant based on the provisions of law contained in Act No. 45 of 1988 as discussed above.

26. In the result, the appeal fails. The appeal is dismissed with costs.

27. The learned counsel for the appellant applies for time to vacate the suit premises. The application made by the appellant appears to be frivolous. The defendant is not residing in the suit flat. The defendant has not resided in the suit flat even for a day. Having regard to the concurrent finding of the trial as well as this Court, I have reached the conclusion that there is no justice whatsoever in the case of the appellant. In this view of the matter, the application for stay is refused.

28. The trial Court shall held the necessary inquiry under Order 20, Rule 12(1)(c) of the CPC expeditiously and shall pass the decree for mesne profits as quantified by the trial Court along with interest payable thereon if the trial Court so deems

fit to exercise of its discretion. The trial Court must try to dispose of this aspect of the matter inquiry and pass consequential money decree for mesne profits as determined after giving an opportunity of both parties to lead necessary evidence within six months from today.

29. The decree for possession shall be executable forthwith.

30. The Registrar, High Court, Appellate Side is directed to forward the writ of this Court to the trial Court expeditiously and latest within two weeks as far as possible. The relevant record shall also return to the trial Court along with an ordinary copy of the order delivered today in this appeal duly authenticated by the Shirastedar of this Court latest within one month from today.

31. Appeal dismissed.