REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4078 OF 2022

PUSHPALATA **...APPELLANT(S)**

VERSUS

VIJAY KUMAR (DEAD) THR. LRS. & ORS. **...RESPONDENT(S)**

J U D G M E N T

S. RAVINDRA BHAT, J.

1. With the consent of the parties, this matter is heard finally. The present appeal challenges a judgment of the Madhya Pradesh High Court at Jabalpur, dismissing the petitioners' second appeal[1] and affirming the order and decree passed by the trial court[2].

Facts and contentions:

2. The original first plaintiff – Laxmi Prasad, was the *karta* of a Hindu Undivided Family (HUF) consisting of his wife, Janki Bai (second plaintiff), two daughters - Sarita and Pushpalata (second and third plaintiffs), and two sons – Vijay Kumar and Rajendra Kumar (the first two defendants). The parties are hereafter referred by name, or as 'plaintiffs' and 'defendants'.

1 Second Appeal No. 1738/2005, judgment dated 04.04.2013 passed by the Madhya Pradesh High Court at Jabalpur.
2 Civil Suit No. 47A/94, judgment dated 29.09.2004 passed by the Second Civil Judge, Class-I, Mandla (MP).

3. Laxmi Prasad purchased a property measuring 1.6 acres at Khasra No. 44/2 (in Bandobast No. 102, Patwari Halka No. 65 in Lalipur Ward) by agreement dated 15.02.1960 (hereafter "first property"). This first property was purchased in the name of Vijay Kumar (i.e., his son and first defendant). Another piece of property measuring 2332 sq. ft (Plot No. 1/1 in Nazul Street No. 22B; hereafter "second property") was purchased by Laxmi Prasad on 21/2.05.1966 in the names of his two sons - Vijay Kumar and Rajendra Kumar. It was alleged that Laxmi Prasad later constructed a two-storied building, with his earnings. Similarly, Laxmi Prasad purchased two more properties admeasuring 150 sq. ft. on 18.12.1972 and 453 sq. ft. on 25.05.1973, again in the names of Vijay Kumar and Rajendra Kumar. According to Laxmi Prasad, these properties were bought by him for the proper maintenance and education of his children; he was involved in the construction business.

4. On 03.05.1994, Vijay Kumar sold 0.047 hectares out of the land admeasuring 1.6 acres at Khasra No. 44/2 (first property) – which forms the subject of this suit (hereafter "suit property") – to the third defendant (hereafter "purchaser"). He allegedly further sold 0.019 hectares on 21.06.1995 and 0.049 hectares on 27.08.1996 in favour of the third defendant (despite an interim injunction).

5. Laxmi Prasad filed a suit on behalf of himself, his wife (who passed away in 1996) and two daughters, on 30.09.1994, against his two sons (first and second defendants) and the purchasers of the property (third and fourth defendants) seeking setting aside of the sale deed dated 03.05.1994 and the relief of declaration of title. The plaintiffs urged that they and the first and second defendants, were members of a HUF, and that original first defendant (Vijay Kumar) was a *benami* owner who could not have alienated the suit property. It was alleged that the properties were paid for or purchased by the first plaintiff- Laxmi Prasad and that the first two defendants, *minors*, had no source of income. Rajendra Kumar filed written statement dated 16.02.1995,

and Vijay Kumar and the third defendant (subsequent purchaser) filed their respective written statements on 07.12.1999. In the meanwhile, in 1996, the trial court had restrained the defendants from alienating the suit properties, and later in 2002 from constructing over the suit property.

6. The trial court framed 14 issues; but was predominantly faced with the issue of whether the first plaintiff was the sole owner, in possession of the properties purchased, and consequently, whether the first defendant was not entitled to sell the disputed land. The trial court by judgment dated 29.09.2004 dismissed the suit on the ground that the original plaintiff had failed to prove by cogent evidence that the suit property was purchased for the welfare of the co-parceners of the HUF and declared that the first defendant had the right to sell the disputed properties in his name.

7. The appellate court declined the plaintiffs' appeal[3] holding that the first plaintiff himself intended for the first defendant to be the absolute owner, and it was not a *benami* transaction. It was further held that even in *arguendo*, if he was a benami owner (given that the first plaintiff had paid for the property), that the suit was not maintainable, in view of the provisions of the Benami Transaction (Prohibition) Act, 1988 (hereafter 'Act'), since the plaintiffs had failed to prove that the property was purchased for the benefit of it the coparceners. The High Court by impugned judgment dated 04.04.2013 dismissed the second appeal, with costs. The High Court reiterated that the plaintiffs had failed to prove that the property was purchased for the benefit of the coparceners, and hence the suit was rightly rejected as not maintainable. Aggrieved, the plaintiffs sought special leave.

8. For the sake of completeness, it may be noted that Mamata Bai (third defendant, a subsequent purchaser) filed a contempt petition which was disposed by this court[4], as unmerited. Further, during the proceedings, Laxmi

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3 By order dated 26.04.2005 passed by the District Judge, Mandla (MP) in Civil Suit No. 19-A/2004.
4 Order dated 16.05.2018 in Contempt Petition (C) No. 509/2015.

Prasad was deleted[5] from the list of petitioners, and additionally, legal representatives substituted[6] the original first defendant-Vijay Kumar. The original third plaintiff - Smt. Sarita (Laxmi Prasad's first daughter), died during pendency of appeal before High Court and no legal representatives were brought on record. Therefore, the parties as they now stand are: the sole petitioner - Ms. Pushpalata (d/o Laxmi Prasad); Respondent Nos. 1.1-1.5 (legal representatives of Vijay Kumar, deceased s/o Laxmi Prasad), Respondent No. 2 – Rajendra Kumar (s/o Laxmi Prasad and original second defendant), Respondent No. 3 and 4 (subsequent buyers), among other contesting respondents.

9. Counsel appearing on behalf of the petitioners, contended that the defendants, i.e., the two sons, were minors with no independent source of income. They neither had the capacity to purchase the said properties, nor alienate them. It was urged that the plaintiffs were joint owners of the property, and being coparceners, out of love and affection, the properties were registered in the names of the defendant sons. Instances in the written statements filed by the defendants, were pointed out in support of these averments – that the defendants were minors at the time, by their own admission. Furthermore, the second defendant- Rajendra Kumar had in fact, admitted the petitioner's claim in the civil suit.

10. The petitioner-plaintiffs urged that the facts of this case, and the pleadings, established that the property was purchased long ago, by the father, i.e., the late Laxmi Prasad for the benefit of the HUF could not be treated as that of the sons. Reliance was placed on Section 4 (3) (a) of the Act in this regard, to say that the ostensible owner could not, under the Act, be treated as the owner, because the ownership was on behalf of the HUF. Reliance was placed on this court's judgment in *Valliammal v. Subramaniam*[7] to urge that it is not only the

5 Order dated 27.08.2018, IA No. 91588/2018 allowed.
6 Order dated 11.05.2022, IA No. 85600/2021 allowed.
7 2004 Supp (1) SCR 966

documentary evidence, but the surrounding circumstances, such as who funded the transaction, relationship of the parties, nature of possession after the sale, etc., that had to be considered. It was urged that the material on record, such as the pleadings and evidence, established the plaintiffs' claim. Counsel stressed on the fact that the first plaintiff's deposition about having paid for the property, and that the first two defendants were his sons, went unrebutted. Furthermore, the first defendant did not produce any material to support that he had the funds, or the means of livelihood to purchase the properties. Likewise, the second defendant supported the plaintiffs, and admitted to the suit averments; he also deposed in favour of the plaintiffs. Counsel urged that in these circumstances, the findings of the two courts below were contrary to evidence. The High Court, in declining to hold that the questions of law were to be answered in favour of the plaintiffs, erred in law.

11. Counsel on behalf of the respondents defended the impugned judgment and insisted that the High Court had correctly appreciated the matter by dismissing the suit as being barred by Section 4 (1) of the Act. It was further urged that the first appellate court was virtually the last arbiter on facts and evidence, and that it ought not to be interfered with, given the absence of any substantial question of law.

12. It was further submitted that this court rarely – if ever interferes with concurrent findings. Absent any manifest error of law, or unreasonable findings of fact, the discretion under Article 136 of the Constitution, should not be invoked to upset findings of the courts below.

Analysis and conclusions

13. In light of the contentions raised, it is necessary to consider the relevant provisions of the Act. Section 2 defines 'benami transaction' as as *any transaction in which property is transferred to one person, for consideration paid or provided by another person*. Section 3[8], prohibits entering such

8 *"3. Prohibition of benami transactions-*

transactions, barring for the benefit of wife or unmarried daughter. Section 4 reads as follows:

> "*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*"

The courts, by concurrent finding, have concluded that the suit is barred by Section 4(1) of the Act, whereas the petitioner-plaintiffs urge that the exception in Section 4(3), applies to the present case.

14. The written statement filed by the first defendant - Vijay Kumar (now deceased), contains an explicit admission that the suit property was purchased when he was a minor. He does not however, mention *how* he purchased the same. It is simply claimed that the numerous properties in question, were bought *by* him, in his name, and his younger brother's name.

15. However, Vijay's younger brother - Rajendra Kumar (second defendant) in his written statement filed in the suit proceedings, categorically states in relation to the suit property that "*the defendant No. 1 knowing this fact very well that the plaintiff no. 1 had purchased aforementioned property for the welfare of his family, which is joint property, has sold the land deliberately by deriving*

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(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."

undue advantage of this land being benami, whereas the actual owner of the property is plaintiff No. 1". In other words, he corroborated his father's position in the proceedings, as well as that of the sisters and admitted the plaint averments. In his examination-in-chief, he reiterated that the properties were purchased from their father's personal income for the welfare, education, maintenance, and necessary arrangements for his children.

16. Laxmi Prasad, in his examination-in-chief, deposed that the suit property had been purchased in 1960 for the benefit of the HUF, in the name of his first son - Vijay Kumar who was 13-14 years old at the time. Similarly, with regards to the second property it was contended that Vijay Kumar was 17-18 years old, and Rajendra Kumar was 6-7 years old. Though facially inconsistent (with respect to the ages of the two sons, given that the two transactions are 6 years apart), the fact remained that clearly both the sons were *minors,* at the stage when the properties were purchased. It is put to Laxmi Prasad in the cross-examination, whether his in-laws (i.e., maternal grandparents of Vijay Kumar) had lent Vijay the money to purchase the property – which he denied. It is pertinent to note however, that no such plea (of funding by his grandparents), was averred to in Vijay Kumar's own written pleadings.

17. As far as the defendants are concerned, clearly the second defendant, i.e., Rajendra Kumar, admitted to the claim, in the written statement, unambiguously stating that the plaintiff was the owner of the property, and the first defendant was seeking to derive undue advantage of his being named as the ostensible owner of the property.

18. There is nothing on the record, to support the plea of first defendant (Vijay Kumar) that he was the real and true owner of the property. The trial and first appellate court have not relied on any material to show that Vijay Kumar had any source of income, or was living away from his father, or was not dependant on him. The faint suggestion that Vijay's maternal grandparents had

lent the money, was denied by the plaintiff; no defence witness in support of that suggestion appears to have been examined.

19. With this factual background, the petitioner's reliance on Section 4(3)(a) of the Act and the exception it offers to the prohibition of benami transactions under the Act, requires reconsideration.

20. The High Court's consideration of the matter in second appeal, is limited to substantial questions of law, as per Section 100 of the Civil Procedure Code. That the High Court cannot reappreciate evidence or matters of *fact*, has been reiterated in numerous decisions of this court. The High Court identified two substantial questions of law – *firstly*, whether the lower appellate court had erred in confirming the trial court's findings and decree; and *secondly*, whether there was an error of law in holding that the suit filed by the plaintiffs, is barred under Section 4 of the Act. Relying on this court's decision in *Rajgopal Reddy v. Padmini Chandrashekhar*[9] the High Court held that the suit was barred by Section 4 of the Act because it applied the provisions of the Act to the facts confirmed by the first appellate court – i.e., that the suit property was *not* purchased for the benefit of the members of HUF.

21. 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*[10], 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 and Others [(2004) 7 SCC 233] wherein a Division Bench of this Court held:*
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> *"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.*

9 (1995) 2 SCC 630
10 (2007) 6 SCC 100

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."”

22. 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*[11]. 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.*
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> *23. In determining whether a relationship is based on trust or confidence, relevant to determining whether they stand in a fiduciary capacity, the Court shall have to take into consideration the factual context in which the question arises for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case. Having said that, let us turn to the facts of the present case once more to determine whether the appellant stood in a fiduciary capacity vis-à-vis the plaintiffs-respondents.*
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> *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*

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11 (2012) 5 SCC 342

> *of the appellant was the fact that the Corporation desired such transfer to be made in the name of one individual rather than several individuals who may have succeeded to the tenancy rights. A specific averment to that effect was made by plaintiffs-respondents in para 7 of the plaint which was not disputed by the appellant in the written statement filed by him. It is, therefore, reasonable to assume that transfer of rights in favour of the appellant was not because the others had abandoned their rights but because the Corporation required the transfer to be in favour of individual presumably to avoid procedural complications in enforcing rights and duties qua in property at a later stage. It is on that touchstone equally reasonable to assume that the other legal representatives of the deceased-tenant neither gave up their tenancy rights in the property nor did they give up the benefits that would flow to them as legal heirs of the deceased tenant consequent upon the decision of the Corporation to sell the property to the occupants. That conclusion gets strengthened by the fact that the parties had made contributions towards the sale consideration paid for the acquisition of the suit property which they would not have done if the intention was to concede the property in favour of the appellant. Superadded to the above is the fact that the parties were closely related to each other which too lends considerable support to the case of the plaintiffs that the defendant- appellant held the tenancy rights and the ostensible title to the suit property in a fiduciary capacity vis-à-vis his siblings who had by reason of their contribution and the contribution made by their father continued to evince interest in the property and its ownership. Reposing confidence and faith in the appellant was in the facts and circumstances of the case not unusual or unnatural especially when possession over the suit property continued to be enjoyed by the plaintiffs who would in law and on a parity of reasoning be deemed to be holding the same for the benefit of the appellant as much as the appellant was holding the title to the property for the benefit of the plaintiffs.*
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> *25. The cumulative effect of the above circumstances when seen in the light of the substantial amount paid by late Shri C.F. Martins, the father of the parties, thus puts the appellant in a fiduciary capacity vis-à-vis the said four persons. Such being the case the transaction is completely saved from the mischief of Section 4 of the Act by reason of the same falling under Sub-section 3(b) of Section 4. The suit filed by the respondents was not, therefore, barred by the Act as contended by the learned counsel for the appellant."*

23. In the present case, the analysis of evidence and pleadings, on the record would show that the first plaintiff, Laxmi Prasad, had averred that the properties were purchased for the maintenance and education of his children; that he had constructed a two storied building at a cost of ₹7,00,000/- from his earnings as a contractor, and that he was in possession of the property. He also positively averred that the two sons (i.e., ostensible owners) were minors, with no source

of income at the time of purchase. The first defendant (Vijay Kumar) no doubt generally denied these allegations. However, he did not deny that he was a minor at the time of purchase of the properties; he set up no additional plea of any source of income, or that someone had lent the money to fund the purchase of the property. The second defendant (Rajendra Kumar), admitted to plaint allegations, and even deposed in favour of his father. He alleged that the first defendant was unemployed and had assaulted his father.

24. The plaintiff Laxman Prasad examined himself and deposed to having bought the property in the name of his sons, and that he remained in possession throughout. He also said that the suit property was let out by him - which was supported by an independent witness, who remained unshaken during cross-examination, and said that he took the property on rent of ₹40 per month, in 1972 and that the rent was paid to Laxman Prasad.

25. The first defendant, and those claiming through him, as subsequent purchasers, did not lead any evidence to show that the first defendant had the *means* or any source of income, to purchase the property, quite apart from the fact that he was a dependent of Laxmi Prasad, and minor at the time of acquisition of the properties. Furthermore, the first defendant also made inconsistent pleas- apart from asserting that he was owner of the property he alleged to have perfected title, through adverse possession, a plea which he did not support during the evidence. This was fatal to his case: further, the written statement was bereft of any details as regards the date from when he claimed hostile possession, against his father.

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

27. As far as the discretionary nature of this court's jurisdiction, under Article 136 goes, the respondents are correct in highlighting that the court would rarely interfere with concurrent findings. However, the jurisdiction, it has been reiterated is wide, and in exceptional cases, interference is called for. In *Collector Singh v. L.M.L. Ltd*[12] it was held that:

> *"9. Jurisdiction under Article 136 of the Constitution is extraordinary and interference with the concurrent findings of fact recorded by the courts below is permissible only in exceptional cases and not as a matter of course. Where the appreciation of evidence is found to be wholly unsatisfactory or the conclusion drawn from the same is perverse in nature, in exercise of the jurisdiction under Article 136 of the Constitution, this Court may interfere with the concurrent findings for doing complete justice in the case. In the facts and circumstances of the case, in our view, it is a fit case to exercise the jurisdiction under Article 136 of the Constitution to interfere with the conclusion of the Labour Court upholding the punishment of dismissal as affirmed by the High Court."*

28. Likewise, in *Nizam v. State of Rajasthan*[13] the court held that:

> *"20. Normally, this Court will not interfere in the exercise of its powers under Article 136 of the Constitution of India with the concurrent findings recorded by the courts below. But where material aspects have not been taken into consideration and where the findings of the Court are unsupportable from the evidence on record resulting in miscarriage of justice, this Court will certainly interfere."*

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

12 (2015) 2 SCC 410
13 (2016) 1 SCC 550

judgments in *Binapani Paul* and *Valliammal (supra)* have been satisfied by the first plaintiff.

30. For the foregoing reasons, the appeal is allowed. The suit is consequently decreed fully. In the circumstances there shall be no order on costs.

.....J
[UDAY UMESH LALIT]

.....J
[S. RAVINDRA BHAT]

.....J
[SUDHANSHU DHULIA]

New Delhi,
September 5 , 2022.