A SRI MARCEL MARTINS

v.

M. PRINTER & ORS.

(Civil Appeal No. 6645 of 2003)

APRIL 27, 2012

B

[T.S. THAKUR AND GYAN SUDHA MISRA, JJ.]

Benami Transactions (Prohibition) Act, 1988 - s.4(3)(b) - Transaction saved from prohibition u/s.4 - Municipal C *Corporation decided to sell residential property originally owned by it to its tenant 'S' - However, in the meanwhile S' passed away - Husband of deceased 'S' and her daughters-respondents consented to the transfer of the property in the name the of appellant, the only son of 'S' - Property purchased* D *in name of appellant though sale consideration for the purchase contributed by appellant as well as S's husband and daughters-respondents - Dispute relating to the property - S's husband and daughters-respondents filed civil suit praying for declaration that they were co-owners in the property to the* E *extent of their contribution and praying for an injunction against the defendant-appellant - Trial Court dismissed the suit - High Court repelled the plea of appellant that the suit was hit by the provisions of the 1988 Act and decreed it - Held: Transfer of rights in favour of appellant was not because the* F *other legal heirs of 'S' had abandoned their rights but because the Corporation required the transfer to be in favour of an individual presumably to avoid procedural complications in enforcing rights and duties qua the property at a later stage - Appellant held ostensible title to the property in a fiduciary capacity vis-à-vis his siblings (i.e. respondents) who had by* G *reason of their contribution towards the sale consideration paid for acquisition of the property and the contribution made by their father (i.e. S's husband) continued to evince interest in the property and its ownership - Especially when respondents*

H

continued to enjoy possession over the property, they who would in law and on a parity of reasoning be deemed to be holding the same for the benefit of appellant and vice versa - Consequently, sale transaction in favour of appellant was completely saved from the mischief of s.4 of the 1988 Act by reason of the same falling under sub-section 3(b) of s.4 - Suit in question not, therefore, barred by the 1988 Act as contended by the appellant.

Words and Phrases - Expression "fiduciary capacity" - Meaning of.

The Municipal Corporation of the city of Bangalore took decision to sell residential property originally owned by it to its tenant 'S'. However, in the meanwhile 'S' passed away. Inasmuch as the Municipal Corporation desired the transfer to be in the name of one individual legal representative rather than several individuals, the husband of deceased 'S' and her daughters-respondents consented to transfer of the property in the name of appellant, the only son of 'S'. The property was consequently purchased in the name of the appellant though the sale consideration for the purchase was contributed by the appellant as well as S's husband and daughters-respondents. A dispute relating to the property having arisen, S's husband and daughters-respondents filed civil suit praying for a declaration to the effect that they were co-owners in the property to the extent of their contribution and praying for an injunction against the defendant-appellant. The trial Court dismissed the suit. On appeal, the High Court reversed the findings recorded by the trial court and decreed the suit. The contention raised by the defendant-appellant that the suit was hit by the provisions of the Benami Transactions (Prohibition) Act, 1988, was repelled by the High Court. The High Court held that if a part of the consideration paid for the property in dispute had been provided by the appellant

A in whose name the property was purchased, the transaction could not be said to be a benami transaction. The High Court was of the view that since the appellant had raised the contention that the entire sale consideration had been provided by him, he was B estopped from contending that the transaction was a benami transaction hit by the provisions of Section 4 of the 1988 Act.

In the instant appeal, the primary question which arose for consideration was whether the sale transaction C in favour of the appellant was saved from prohibition under Section 4 of the 1988 Act by reason of the same falling under sub-section (3)(b) of Section 4.

Dismissing the appeal, the Court

D

HELD: 1.1. A plain reading of Section 4 of the Benami Transactions (Prohibition) Act, 1988 shows that no suit, claim or action to enforce a right in respect of any property held benami shall lie against the person in E whose name the property is held or against any other person at the instance of a person claiming to be the real owner of such property. It is common ground that although the sale deed by which the property was transferred in the name of the appellant had been executed before the enactment of above legislation yet F the suit out of which this appeal arises had been filed after the year 1988. The prohibition contained in Section 4 would, therefore, apply to such a suit, subject to the satisfaction of other conditions stipulated therein. In other words unless the conditions contained in Section G 4(1) and (2) are held to be inapplicable by reason of anything contained in sub-section (3) thereof the suit filed by plaintiffs-respondents would fall within the mischief of Section 4. [Paras 11, 12 and 13] [494-C-D; F-G; 495-D]

H 1.2. Sub-section (3) to Section 4 of the 1988 Act is in

two distinct parts. The first part comprises clause (a) to Section 4(3) which deals with acquisitions by and in the name of a coparcener in a Hindu undivided family for the benefit of such coparceners in the family. The said provision has no application in the instant case nor was any reliance placed upon the same by the plaintiffs-respondents. What was invoked by the respondents was Section 4(3)(b) of the 1988 Act which too is in two parts viz. one that deals with trustees and the beneficiaries thereof and the other that deals with persons standing in a fiduciary capacity and those towards whom he stands in such capacity. [Para 14] [495-G-H; 496-A-B]

2. 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. 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 that place the parties in positions that are founded on confidence and trust on the one part and good faith on the other. 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. [Paras 15, 22, 23] [496-D; 499-G-H; 500-A-B]

Central Board of Secondary Education and Anr. v. Adiya Bandopadhyay and Ors. (2011) 8 SCC 497: 2011 (11) SCR 1028 - referred to.

Corpus Juris Secundum; Words and Phrases,

A **Permanent Edition (Vol. 16-A p. 41);** *Black's Law Dictionary (7th Edn. Page 640); Stroud's Judicial Dictionary and Bouvier's Law Dictionary* **- referred to.**

3. The first and foremost of the circumstances relevant to the case at hand is that the property in
B **question was tenanted by 'S'. 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**
C **exclusion of S's husband, 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**
D **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**
E **tenancy rights. A specific averment to that effect was made by plaintiffs-respondents in 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**
F **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**
G **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**
H **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. [Para 24] [500-C-H; 501-A-E]

4. The cumulative effect of the circumstances of the case when seen in the light of the substantial amount paid by 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 1988 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 1988 Act as contended by the appellant. The view taken by the High Court to that effect is affirmed though for slightly different reasons. [Para 25] [501-F-G]

5. This Court is not impressed by the contentions urged on behalf of the appellant that the plea of a fiduciary relationship existing between the parties and saving the suit from the mischief of Section 4 of the 1988

A **Act, was not available to the respondents, as the same had not been raised before the Courts below. The question whether the suit was hit by Section 4 of the 1988 Act was argued before the High Court and found against the appellant. The plea was not, therefore, new nor did**
B **it spring a surprise upon the appellant, especially when it was the appellant who was relying upon Section 4 of the 1988 Act and the respondents were simply defending the maintainability of their suit. That apart no question of fact beyond what has been found by the High Court**
C **was or is essential for answering the plea raised by the appellant nor is there any failure of justice to call for interference at this stage. [Para 26] [501-H; 502-A-C]**

Case Law Reference:

D **2011 (11) SCR 1028 referred to Para 21**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6645 of 2003.

From the Judgment & Order dated 26.03.2001 of the High
E Court of Karnataka at Bangalore in Regular First Appeal No. 402 of 1995.

Anoop G. Chaudhary, S. Udaya Kumar Sagar, Bina Madhavan, Gaurav Mitra, Vinita (for M/s. Lawyer's nit & Co.)
F for the Appellant.

Naveen R. Nath, Lalit Mohini Bhat, Amrita Sharma for the Respondents.

The Judgment of the Court was delivered by

G **T.S. THAKUR, J.** 1. This appeal by special leave arises out of a judgment and order passed by the High Court of Karnataka at Bangalore whereby OS No.3119/90 filed by the respondents for a declaration to the effect that they are co-

H

owners of the suit property and for an injunction restraining the defendant-appellant from interfering with their possession has been decreed. The factual backdrop in which the suit is filed may be summarised as under:

The suit property comprises a residential house bearing Municipal No.33, A and B Block, Austin Town, Bangalore-47 which was originally owned by the Corporation of the city of Bangalore. The said property was leased by the Corporation to late Smt. Stella Martins-mother of the parties before us. In the year 1978 the Corporation took a decision to sell the said property and presumably similar other properties to those in occupation of the same. The State Government also approved the said proposal with a note of caution that care should be taken to correctly identify the occupants of the property being sold. Before a sale could be effected in her favour, Stella Martins passed away in November, 1982 leaving behind her husband Sri C.F. Martins, their daughters (respondents in this appeal) and the appellant who happens to be the only son of his parents. The case of the plaintiffs-respondents is that the Corporation desired that transfer of the tenancy rights held by Smt. Stella Martins should be made to only one individual out of the several legal representatives left behind by the deceased. It was for that reason that the husband of the deceased-tenant and the daughters-respondents herein all consented to the transfer of the tenancy rights in favour of the appellant.

In due course the Corporation raised a demand for a sum of Rs.48,636/- towards consideration for the sale of the suit property to the appellant who held the tenancy rights. The case of the plaintiffs-respondents before us is that in order to satisfy the said demand Sri C.F. Martins-father of the parties in this appeal, transferred a sum of Rs.35,636/- to an account jointly held by respondent no.1 and her husband for purchasing a bank draft in order to satisfy the Corporation's demand referred to above. A demand draft for a sum of Rs.48,636/- was eventually purchased on 13th November, 1986 by debit to the saving

A account of respondent no.1 and her husband and paid to the Corporation on the 14th November, 1986. A sale deed was on payment of the sale consideration, executed in favour of the appellant on 26th June, 1987. The plaintiffs-respondents further case was that Sri C.F. Martins-plaintiff no.1 executed a B registered will on 16th August, 1989 whereby he bequeathed his entire estate including the suit schedule property equally to all his children. An affidavit setting out the circumstances in which the suit schedule property was transferred in favour of the appellant was also sworn by the father of the parties on 15th C November, 1989.

A dispute relating to the suit schedule property having arisen between the parties including Sri C.F. Martins, their father, the latter filed a criminal complaint in December 1989 followed by OS No.3119 of 1990 in the Court of VI Additional D City Civil Judge, Bangalore, praying for a declaration to the effect that the plaintiffs were co-owners in the schedule property to the extent of their contribution and praying for an injunction restraining the defendant-appellant herein from interfering with the possession of plaintiff nos.1 and 2 over the same.

E In the written statement filed by the defendant-appellant, it was, inter alia, alleged that the entire sale consideration towards purchase of the schedule premises was provided by him, which made him the absolute owner of the suit property. F On the pleadings of the parties, the Trial Court framed the following issues for determination:

1. Whether the plaintiffs prove that plaintiffs and defendant contributed the purchase money of suit site?

G

2. Whether the plaintiffs prove that plaintiffs and defendant are having a right in the schedule premises as co-owners?

3. Do the plaintiffs prove that they are in lawful H possession of the suit property?

4. Do the plaintiffs prove that defendant threatened to throw away them from the suit property? A

5. Whether defendant proves that the entire sale consideration towards purchase of suit schedule property was contributed by him? B

6. What relief or order?

Addl. Issues:

7. Whether the plaintiffs are entitled for a decree of permanent injunction restraining the defendant from forcibly dispossessing the plaintiffs other than by due process of law? C

The parties led oral and documentary evidence in support of their respective cases eventually culminating in the judgment and order dated 29th March, 1995 passed by the Trial Court dismissing the suit filed by the plaintiffs. D

Aggrieved by the above judgment and decree the plaintiffs-respondents filed Regular First Appeal No.402 of 1995 before the High Court which was allowed by the High Court by its judgment and order dated 26th March, 2001 impugned before us. The High Court reversed the findings recorded by the Trial Court and decreed the suit filed by the plaintiffs-respondents, as already noticed above. E

The High Court on a re-appraisal of the evidence took the view that the appellant had not succeeded in proving that he had paid the entire amount of consideration for the purchase of the suit property. The High Court held that the deposition of the Bank Manager had clearly established that the joint account held by the appellant and his father Sri C.F. Martins had never been operated by the appellant. The High Court further held that the appellant's case that he had withdrawn a sum of Rs.23,000/- towards the sale consideration from the post office savings account was not borne out by the record of the Post Office the withdrawals having been made in the year 1982 F G H

A whereas the sales consideration was deposited five years later in 1987. The High Court further held that the deposition of plaintiff no.1 Sri C.F. Martins to the effect that his children had contributed equally towards the sale consideration had remained unassailed in cross-examination. The contention
B urged on behalf of the defendant-appellant herein that the suit was hit by The Benami Transactions (Prohibition) Act, 1988, was also repelled by the High Court.

2. Appearing for the appellants Mr. Anoop G. Chaudhary strenuously argued that the findings recorded by the High Court
C were contrary to the weight of evidence on record hence legally unsustainable. Mr. Chaudhary took pains to refer to us the depositions of the witnesses and the documents on record in an attempt to persuade us to reverse the findings of fact recorded by the High Court. Mr. Naveen R. Nath, learned
D counsel appearing for the respondents, on the other hand, argued that the High Court being the last Court of facts, in the absence of any perversity in the approach adopted by the High Court causing miscarriage of justice, there was no room for a reappraisal of the evidence and reversal of the findings
E recorded by the High Court on facts. He contended that the findings recorded by the High Court were even otherwise fully justified in the light of the overwhelming evidence on record.

3. The High Court had, on the basis of the rival
F submissions made before it, formulated two distinct questions that fell for its consideration. The first was whether the entire sale consideration required for the purchase of the suit property was provided by the defendant or contributions in that regard were made even by the plaintiffs. The second question which
G the High Court formulated was whether the plaintiffs and the defendant were co-owners of the suit property and whether the sale transaction in favour of the appellant was a benami transaction so as to be hit by the provisions of the Benami Transactions (Prohibition) Act, 1988.

H 4. While answering the first question, the High Court

referred to the evidence on record including the deposition of witnesses especially Respondent No.1 (PW-2) who had played a dominant role in obtaining the sale deed from the Corporation. This witness had stated that each one of the children had contributed Rs.5000/- whereas the rest of the amount was paid by their father Sri. C.F. Martins to make a total of Rs.48,636/- demanded by the Corporation towards the sale consideration for the premises. She also stated that the said amount was paid by a demand draft obtained from her and her husband's joint account which fact was certified even by the bank in terms of Ex.P.2, a letter stating that the bank draft in question had been issued by debit to the account jointly held by her and her husband. The original sale deed was also in possession of the said witness as was the possession of the suit property. She had further stated that the amount of Rs.35,636/- transferred to her account in November, 1986 had been paid by their father alone and not jointly by the defendant-appellant and their father as alleged by the former.

5. The High Court also relied upon the deposition of respondent No.2 (PW-3) who similarly supported the plaintiffs' version regarding contribution of Rs.5000/- for the purchase of the suit schedule property and PW-4-the Bank Manager who was examined to speak about Savings Account No.902 standing in the name of the first plaintiff and the appellant herein. The Manager had deposed that plaintiff no.1, Sri C.F. Martins, used to get cheques in pound sterling from the Crown Agents, London and the bank used to purchase the cheques convert the same into rupees and credit the amount to the account every month. It was also stated that although the defendant-appellant was a joint holder of the account, he had never operated the said account. The High Court upon a careful reappraisal of the evidence concluded as under:

> "From the aforesaid evidence on record what emerges is Rs.48,636.00 is the consideration amount paid to the Corporation for purchase of the schedule property. The

A same amount was paid by way of a demand draft. The said demand draft was obtained from the Savings bank Account no. 339 of the second plaintiff on 13.11.1986. These facts are not in dispute. Now it is also not in dispute a sum of Rs. 35,636.00 was paid to the second B plaintiff by the first plaintiff from his Savings Bank Account which amount was utilized by the second plaintiff to purchase the demand draft towards sale consideration after making good the balance amount. The defendant contends in one breath that he sent a cheque for Rs. C 48,636.00 from Bombay where he was working to the plaintiff for the purpose of sale consideration. The evidence on record clearly falsified this part of the case of the defendant and the falsity of the said stand taken by the defendant. The next version given by the defendant is this D cheque for Rs. 35,636.00 issued from Savings Bank Account No.901 as per Ex.D.5 is a cheque issued by him to the second plaintiff towards the sale consideration. The evidence of the manager of the bank discloses that the defendant never operated the bank account. On the contrary, the evidence of P.W.1 and the other material on E record discloses that it is a cheque issued by P.W.1 in favour of PW.2 which again exposes the falsity of the case of the defendant."

6. The High Court noticed the reasons given by the Trial F Court in support of its findings and found the same to be untenable. The High Court observed:

"Therefore, in view of my discussion as aforesaid, I am of the opinion that the defendant has miserably failed to G establish that the entire sale consideration of Rs.48,636.00 was paid by him. On the contrary the plaintiffs have established their case that plaintiffs 2, 3 and 4 and defendant have contributed Rs. 5000.00 towards the sale consideration and the balance amount has been contributed by the first plaintiff. As such it cannot be said H

that the defendant is the absolute owner of the suit schedule property." A

7. We do not find any error much less any perversity in the view taken by the High Court nor do we see any miscarriage of justice to warrant interference with the finding that the sale consideration for the purchase of the suit property was contributed by the plaintiffs and the defendant and not provided by the defendant alone as claimed by him. We have, therefore, no hesitation in upholding the said findings which is at any rate a pure finding of fact. B C

8. On the second question the High Court relied upon the principles underlying Section 45 of the Transfer of Property Act, 1882, apart from holding that the purchase of the suit property in the name of the appellant by contributions made by the remaining legal representatives and the original owner did not amount to a benami transaction. The High Court held that if a part of the consideration paid for the property in dispute had been provided by the appellant in whose name the property was purchased, the transaction could not be said to be a benami transaction. The High Court was of the view that since the appellant had raised the contention that the entire sale consideration had been provided by him, he was according to the High Court estopped from contending that the transaction was a benami transaction hit by the provisions of Section 4 of Benami Transactions (Prohibition) Act, 1988. D E F

9. Mr. Chaudhary, learned counsel for the appellant submitted that the High Court was in error in holding that the Benami Transactions (Prohibition) Act, 1988 was not applicable. The transaction in question argued the learned counsel was benami to the extent the title to the property was transferred in the name of the appellant while consideration for such transfer was provided by the plaintiffs. He submitted that Section 3 prohibited any benami transaction while Section 4 prohibited recovery of property held benami from a person in whose name the same is held. He contended that the suit filed G H

A by the respondents fell within the mischief of Section 4 and was, therefore, liable to be dismissed.

10. Mr. Nath, learned counsel for the respondents, on the other hand, submitted that not only on the principle of estoppel which the High Court had invoked but even in the light of the B provisions of Section 5 of the Act the appellant was not entitled to plead the prohibition under Section 4 of the Act. He further argued that sub-section (3) (b) of Section 4 specifically saved a transaction where the property is held by the person who stands in a fiduciary capacity for the benefit of the person C towards whom he stands in such capacity.

11. Section 2 of the Benami Transactions (Prohibition) Act, 1988 defines a benami transaction as under:

D "Section 2 (a) "benami transaction" means any transaction in which property is transferred to one person for a consideration paid or provided by another person;"

12. Section 3 forbids benami transaction while sub-section (2) thereof excludes such a transaction enumerated therein from E the said provision. Section 4 of the Act, upon which heavy reliance was placed by Mr. Chaudhary, may be extracted in extenso:

Section 4. Prohibition of the right to recover property F **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.

G (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.

H

(3) Nothing in this section shall apply,-- A

(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

(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." C

13. A plain reading of the above will show that no suit, claim or action to enforce a right in respect of any property held benami shall lie against the person in whose name the property is held or against any other person at the instance of a person D claiming to be the real owner of such property. It is common ground that although the sale deed by which the property was transferred in the name of the appellant had been executed before the enactment of above legislation yet the suit out of which this appeal arises had been filed after the year 1988. The E prohibition contained in Section 4 would, therefore, apply to such a suit, subject to the satisfaction of other conditions stipulated therein. In other words unless the conditions contained in Section 4(1) and (2) are held to be inapplicable by reason of anything contained in sub-section (3) thereof the F suit filed by plaintiffs-respondents herein would fall within the mischief of Section 4.

14. The critical question then is whether sub-section (3) of Section 4 saves a transaction like the one with which we are concerned. Sub-section (3) to Section 4 extracted above is in G two distinct parts. The first part comprises clause (a) to Section 4(3) which deals with acquisitions by and in the name of a coparcener in a Hindu undivided family for the benefit of such coparceners in the family. There is no dispute that the said provision has no application in the instant case nor was any H

A reliance placed upon the same by learned counsel for the plaintiffs-respondents. What was invoked by Mr. Naveen R. Nath, learned counsel appearing for the respondents was Section 4(3)(b) of the Act which too is in two parts viz. one that deals with trustees and the beneficiaries thereof and the other
B that deals with persons standing in a fiduciary capacity and those towards whom he stands in such capacity. It was argued by Mr. Nath that the circumstances in which the purchase in question was made in the name of the appellant assumes great importance while determining whether the appellant in whose
C name the property was acquired stood in a fiduciary capacity towards the plaintiffs-respondents.

15. 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
D known legal significance, the import whereof may be briefly examined at this stage.

16. The term "Fiduciary" has been explained by Corpus Juris Secundum as under:

E

"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
F 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
G 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
H 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." A B

17. **Words and Phrases,** Permanent Edition (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. C D

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, a well as technical fiduciary relations." E

18. *Black's Law Dictionary* (7th Edn. Page 640) defines "fiduciary relationship" thus: F

"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 relationships- such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client - require the highest duty of care. Fiduciary relationship 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 G H

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

19. *Stroud's Judicial Dictionary* explains the expression "fiduciary capacity" as under:

C "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 Debtors Act 1869 so, of the debt due from an executor who is indebted to his testator's D 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 to 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 E been ordered to be held on certain trusts or partnership moneys received by a partner."

20. *Bouvier's Law Dictionary defines* "fiduciary capacity" as under:

F "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 of society. Medical or religious adviser, G 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 not H 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." A

21. We may at this stage refer to a recent decision of this Court in *Central Board of Secondary Education and Anr. v. Adiya Bandopadhyay and Ors.* (2011) 8 SCC 497, where Ravindeeran, J. speaking for the Court in that case explained the term 'fiduciary' and 'fiduciary relationship' in the following words: B

"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." C D E F

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. G H

A 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 B 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.

C 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 D 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 E 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 F 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 G 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 H 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.

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. The view taken by the High Court to that effect is affirmed though for slightly different reasons.

26. We may while parting say that we have not been impressed by the contentions urged on behalf of the appellant that the plea of a fiduciary relationship existing between the

A parties and saving the suit from the mischief of Section 4 of the Act, was not available to the respondents, as the same had not been raised before the Courts below. The question whether the suit was hit by Section 4 of the Act was argued before the High Court and found against the appellant. The plea was not, B therefore, new nor did it spring a surprise upon the appellant, especially when it was the appellant who was relying upon Section 4 of the Act and the respondents were simply defending the maintainability of their suit. That apart no question of fact beyond what has been found by the High Court C was or is essential for answering the plea raised by the appellant nor is there any failure of justice to call for our interference at this stage.

27. In the result, this appeal fails and is hereby dismissed but in the circumstances without any orders as to costs.

D

B.B.B. Appeal dismissed.