

**IN THE COURT OF THE II ADDITIONAL DISTRICT & SESSIONS JUDGE,
THANJAVUR.**

**Present :Tmt. A. Malarvizhi, M.L.,
II Additional District & Sessions Judge,
Thanjavur.**

**Friday the 13th day of October 2023
(Thiruvalluvar Aandu 2054- Purattasi Matham 26th day)**

I.A No.48/2022 in E.I.O.P No.122/2022

- (1) Bagyalakshmi
- (2) Kalaiselvi
- (3) Prakash
- (4) Gopal
- (5) Gopalasamy
- (6) Kathirvel
- (7) Karupasamy
- (8) Suhadev
- (9) Senthilkumar
- (10) Babu
- (11) Vishwanathan
- (12) Tamilselvi
- (13) Maheswari
- (14) Kanakaraj

.....Petitioners/Respondents 6 to 19

/Vs/

- (1) J. Baby
- (2) P. Bharathi
- (3) H. Janarthanan.

.....Respondents 1 to 3 /Petitioners

- (4) B. Sathishkumar
- (5) Arthi
- (6) Sundarasamy
- (7) Karunakaran
- (8) Sivasamy

....Respondents 4 to 8 /Respondents 1 to 5

- (9) The Sub Registrar, Budalur, Thanjavur District
- (10) The District Registrar, Registration Department, Thanjavur
- (11) The Deputy Inspector General of Registration,
Registration Department, Thanjavur
- (12) The District Collector, Thanjavur

.....Respondents 9 to 12 /Respondents 20 to 23

This petition having come up for final hearing before me on 3.10.2023 in the presence of **Tmt.Sharon Esther**, Advocate for the petitioners and of **Thiru.S.Manickavelpandian**, Advocate for the respondents 1 to 3 and of Thiru. **P. Vadivel**, Advocate for the respondents 4 and 5 and of Thiru. **S. Sathishkumar**, advocate for the respondents 6 to 8 and of Thiru. **R. Shanmugasundaram**, Government Pleader for the respondents 9 to 12 and upon hearing the arguments of both sides, upon perusal of the entire material records pertaining to the case and the matter having stood over for consideration till this date, this court delivered the following

ORDER

(1) The petitioners/Respondents 6 to 19 filed this petition u/o.7.Rule 11 of C.P.C to reject the E.I.O.P No.122/2022.

The Gist of the affidavit filed by the petitioners along with the petition can be stated as follows:

(2) The respondents 1 to 3 filed a petition u/s.5 and 6 of Tamilnadu

Prohibition of Charging Exorbitant Interest Act 2003. Originally the property belonged to the 4th respondent , his brother Ashok Kumar, mother Lakshmi and father Balusamy. In order to get loan by the respondents 1 and 2 , their brother the 4th respondent and Ashok kumar, Lakshmi transferred their property in favour of the respondents 1 and 2. The respondents 1 and 2 have availed loan by mortgaging the properties with Ravichandran, Palanisamy and Nallasivam under registered Memorandum of deposit of title deeds dated 9.12.2015 in document No.2514/2015. Thereafter, the respondents cleared the loan under registered discharge receipt dated 4.7.2016 in document No.1129/2016. Thereafter, the respondents 1 and 2 re-conveyed the properties in the name of their brother the 4th respondent under registered settlement deed dated 4.7.2016 in document No.1131/2016. Thereafter, the 4th respondent settled the properties in favour of his wife the respondent under registered settlement deed dated 18.7.2016 in document No.1729/2016. So, the 5th respondent becomes absolute owner of the properties at Sengipatti. The petitioners purchased those properties from the 5th respondent under registered sale deed dated 24.8.2017 in document No.1331/2017. The respondents cannot label the settlement deed executed by the 4th respondent in favour of the 5th respondent as sham and nominal. The 5th respondent sold the properties to the petitioners for sale consideration of Rs.85,00,000/-. When there is a sale consideration passed, the respondents 1 to 3 cannot termed the sale deed executed by the 5th

respondent is sham and nominal. Though the respondents 1 to 3 averred in the petition that the 4th respondent executed the settlement deed in favour of the 5th respondent without their knowledge, no complaint had been lodged against them. These revealed that ulterior motive of the respondents 1 to 3. The respondents 1 to 3 filed a complaint against the respondents 6 to 8 before the E2 Peelamedu Police Station. The FIR lodged against the respondents 5 to 8 u/s.4 of Prohibition of Charging Exorbitant Interest Act 2003 and other Sections under I.P.C. The respondents 1 to 3 alleged that the petitioners are the benami of the respondents 6 to 9. In view of Section 4 of the Prohibition of Benami Property Transaction Act 1988 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 be by or on behalf of a person claiming to be the real owner of such property. Therefore, the E.I.OP petition itself hit by Section 4 (1) of the Prohibition of Benami Property Transaction Act. The respondents 1 to 3 invoked the provision under Section 5 of Tamilnadu Prohibition of Charging Exorbitant Interest Act 2003. They should deposit the money in respect of loan with interest. Without adhering to the mandatory direction found to deposit the amount received by them together with interest. This petition has to be rejected under the said provision of law. The Hon'ble Madurai Bench of Madras High Court, directed the respondents to invoke section 5(1) and (2) of Tamilnadu Prohibition of Charging Exorbitant Interest Act 2003. The petitioner

did not adhere the order of the Hon'ble Madurai Bench of Madras High Court, the E.I.O.P by filing petition without depositing the admitted amount with interest. As per the contentions of the respondents 1 to 3 the sale deed executed in favour of the petitioners are sham and nominal and only for the security purpose . So, the respondents 1 to 3 cannot invoke the Section 6 of Tamilnadu Prohibition of Charging Exorbitant Interest Act 2003. Since the Section 6 of the act is clear that if the possession of the property was forcibly taken by any person towards repayment of the loan advance or interest then the debtor can invoke the section. In the present case the document in favour of the petitioners is registered document. Therefore, the respondents have to approach the competent civil court . Therefore, the E.IO.P petition is to be rejected.

The Gist of the counter filed by the 1st Respondent and adopted by the 2nd respondent can be stated as follows:

(3) This petition under Order VII Rule 11 of C.P.C is not sustainable and maintainable in a Special Act and Self contained Act i.e The Tamilnadu Prohibition of Charging Exorbitant Interest Act 2003. The respondents 1 to 3 availed a loan for the purpose of development of business from Ravichandran, Palanisamy and Nallasivam on 9.12.2015 by Memorandum of deposit of title deeds. The respondents 1 to 3 further required funds. So, they requested K.C.Gunasekaran a financier for raising INR two crores as loan on security of 45.12 Acres agricultural land at Sengipatti Village, Budalur Taluk,

Thanjavur District. Thereafter, the existing loan was discharged on 4.7.21016. The respondents 1 to 3 was paid by Gunasekaran a cash loan of 97,50,000/- only on 4.7.2016 for which Gunasekaran intimated to execute a sham settlement deed in favour of his son -in-law the 4th respondent . That settlement deed document No.1331/2017 was executed as security and he ought not to misuse the same in any manner and interest of Rs.2,50,000/- (2.5%) was paid into SB account of K.C. Gunasekaran and in cash in few instances for the entire period of 13 months. Even after one year, K.C. Gunasekaran did not raise full amount which let huge financial crunch for the respondents 1 to 3. So, they require some more funds to run and raise their business . So, they were introduced the respondents 6 to 8 who are in the business of money lending. The respondents 6 to 8 have mentioned that it is their trade practice that instead of getting any mortgage or any document as security , they adopted a method of execution of sale deed in their favour and upon the money being repaid, the sale deeds will be cancelled. The respondents 6 to 8 insisted that without execution of sale deed no loan could be advanced. So, the respondents 1 to 3 approached K.C.Gunasekaran and 4th respondent, and then only they came to know and understand that the 4th respondent has registered a document No.1729/2016 dated 7.10.2016 in favour of his wife 5th respondent which is sham and nominal and was not given effect and acted upon. Though the respondents 1 to 3 demanded for cancellation of the said settlement deed, the respondents 6 to 8 urged that

the sale deed can be executed by the 5th respondent itself. For the purpose of executing the sham and nominal sale deed by 5th respondent, the respondents 3 to 5 were identified 14 persons who were strangers to the petitioners 1 to 3. The petitioners who are well known and appeared to be the benami/partners of the said money lenders, respondents 6 to 8 and registered the same deed in document No.1331/2017 dated 24.8.2017 was executed in favour of the petitioners and registered at Budalur SRO of that sale deed was only for the purpose of security and not for any other purpose. It is pertinent to point out that the stamp duty for the said sham sale deed itself was paid by two demand drafts No.227717 and 227718 for INR 675500 and 500500 from the cash credit account of the 3rd respondent. No sale consideration passed by the petitioners. Subsequently, the respondents 6 to 8 paid the balance cash after deducting one month interest and incidental expenses. Thereafter, the 3rd respondent was paid interest 2.5% regularly by cash to the financiers till March 2019. Then the respondents 6 to 8 forcefully threatened the 3rd respondent and made him to execute a power of attorney on 3rd respondent, of a prime land at Singanallur, Coimbatore in document No.4143/12 of 2019 dated 23.4.2019. While that being the case, several disputes arose on account of the exorbitant interest charged by the money lenders, the respondents, the money lenders admitted misappropriate the properties by conveying the same to several third parties without the knowledge of the respondents 1 to 3. The 3rd respondent was physically and

brutally assaulted by the said money lenders, the respondents 6 to 8. So, the criminal case was registered in FIR No.653/2022 dated 13.7.2022 at the E2 Peelamedu Police Station, Coimbatore under the provisions of the Tamilnadu Prohibition of Charging Exorbitant Interest Act 2003 and other IPC offences. Due to this fraudulent act of the petitioners and respondents 6 to 8, the respondents 1 to 3 made a representation dated 26.7.2022 to the Sub-Registrar, Budalur and the Inspector General of Registration, Chennai and filed a writ petition in W.P.(MD) No.17901/2022 and the Hon'ble Madurai Bench of Madras High Court directed the respondents 3 to 5 to file appropriate petition before the jurisdictional court. The respondents 1 to 3 undertake to pay and deposit the balance Rs.1.47 crore to the petitioners and the respondents 6 to 8. So, the petitioners and respondents 6 to 8 are liable to cancel all the documents dated 4.7.2016, 7.10.2017 and 24.8.2017. This petition is devoid of any merits. This petition is filed by violating the directions of the Hon'ble High Court and misleading this court. So, this petition may be dismissed with exemplary costs.

(4) **Point for consideration**

Whether the E.I.O.P No.122/2022 can be rejected under

Order.VII rule 7 of C.P.C ?

Discussion:

(5) Heard both sides. Records perused. The petitioners' counsel argued that The petitioners/respondents 6 to 19 filed this petition u/o.7.Rule

11 of C.P.C to reject the E.I.O.P.No.122/2022. The petitioners' counsel argued that the respondents 1 to 3 filed a petition u/s.5 and 6 of Tamilnadu Prohibition of Charging Exorbitant Interest Act 2003. Originally the property belonged to the 4th respondent , his brother Ashok Kumar, mother Lakshmi and father Balusamy. In order to get loan by the respondents 1 and 2 , their brother the 4th respondent and Ashok kumar, Lakshmi transferred their property in favour of the respondents 1 and 2. The respondents 1 and 2 have availed loan by mortgaging the properties with Ravichandran, Palanisamy and Nallasivam under registered Memorandum of deposit of title deeds dated 9.12.2015 in document No.2514/2015. Thereafter, the respondents cleared the loan under registered discharge receipt dated 4.7.2016 in document No.1129/2016. Thereafter, the respondents 1 and 2 re-conveyed the properties in the name of their brother the 4th respondent under registered settlement deed dated 4.7.2016 in document No.1131/2016. Thereafter, the 4th respondent settled the properties in favour of his wife th respondent under registered settlement deed dated 18.7.2016 in document No.1729/2016. So, the 5th respondent becomes absolute owner of the properties at Sengipatti. The petitioners purchased those properties from the 5th respondent under registered sale deed dated 24.8.2017 in document No.1331/2017. The respondents cannot label the settlement deed executed by the 4th respondent in favour of the 5th respondent as sham and nominal. The 5th respondent sold the properties to the petitioners for sale consideration of Rs.85,00,000/-.

When there is a sale consideration passed, the respondents 1 to 3 cannot termed the sale deed executed by the 5th respondent is sham and nominal. Though the respondents 1 to 3 averred in the petition that the 4th respondent executed the settlement deed in favour of the 5th respondent without their knowledge, no complaint had been lodged against them. These revealed that ulterior motive of the respondents 1 to 3. The respondents 1 to 3 filed a complaint against the respondents 6 to 8 before the E2 Peelamedu Police Station. The FIR lodged against the respondents 5 to 8 u/s.4 of The Tamilnadu Prohibition of Charging Exorbitant Interest Act 2003 and other Sections under I.P.C. The respondents 1 to 3 alleged that the petitioners are the benami of the respondents 2 to 6. In view of Section 4 of the Prohibition of Benami Property Transaction Act 1988 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 he by or on behalf of a person claiming to be the real owner of such property. Therefore, the E.I.OP petition itself hit by Section 4 (1) of Prohibition of Benami Property Transaction Act. The respondents 1 to 3 invoked the provision under Section 5 of Tamilnadu Prohibition of Charging Exorbitant Interest Act 2003 .They should have deposited the money in respect of loan with interest without adhering to the mandatory direction found to deposit the amount received by them together with interest. This petition has to be rejected under the said provision of law. The Hon'ble Madurai Bench of Madras High Court, directed

the respondents to invoke section 5(1) and (2) of Tamilnadu Prohibition of Charging Exorbitant Interest Act 2003. The petitioner did not adhere the order of the Hon'ble Madurai Bench of Madras High Court, the E.I.O.P petition without depositing the admitted amount with interest. As per the contentions of the respondents 1 to 3 the sale deed executed in favour of the petitioners are sham and nominal and only for the security purpose . The sale deed was executed in favour of the petitioner. So, the respondents 1 to 3 cannot invoke the Section 6 of Tamilnadu Prohibition of Charging Exorbitant Interest Act 2003 since the Section 6 of the act clear that if the possession of the property was forcibly taken by any person towards repayment of the loan advance or interest then the debtor can invoke the section. In the present case the document in favour of the petitioners is registered document. Therefore, the respondents have to approach the competent civil court . Therefore, the E.I.O.P petition is to be rejected.

(6) The counsel for the respondents 1 to 3 argued that

The respondents 1 to 3 have filed E.I.O.P.No.122/2022 as per the directions of the Hon'ble Madurai Bench of Madras High Court in W.P.(MD) No.17901/202. The Hon'ble High Court did not direct the writ petitioners/respondents 1 to 3 herein to deposit the amount. Section 5(1) of Tamilnadu Prohibition of Charging Exorbitant Interest Act itself deals that debtor may deposit the money due in respect of loan together with interest at the rate fixed by the Government. So, the deposit of money due with interest

is not mandatory. The petitioners have no locus standi to question about the deposit of loan dues with interest since the petitioners/ alleged purchasers denies the sale deed was not executed for the loan transaction. The question of loan transaction whether consideration was passed are all question of facts . Therefore, order 7 Rule 11 of C.P.C. cannot be invoked. The respondents 1 to 3 did not claim under Benami Transaction Act. So, the claim in main E.I.O.P was not barred by the Prohibition of Benami Property Transaction Act and any other law. So this petition filed under Order VII Rule 11 of C.P.C is not sustainable and maintainable in a Special Act and Self contained Act i.e The Tamilnadu Prohibition of Charging Exorbitant Interest Act 2003. This petition is to be dismissed.

(7) Both side arguments and records considered. This petition was filed by the petitioners/respondents 6 to 19 to reject the main E.I.O.P under Order.7 Rule 11 of C.P.C. The petitioners and respondents averred in the petition and counter about the mere transaction of loan transactions and execution of deeds like settlement deeds and sale deeds. The respondents 1 to 3 alleged that the settlement executed by the respondents 1 to 3 in favour of the 4th respondent, the settlement deed executed by the 4th respondent in favour of 5th respondent and sale deed in favour of the petitioners executed by the 5th respondent are all sham and nominal. Whether these deeds of transaction are sham and nominal are questions can be decided only after the trial. This petitioner did not admit that the sale deeds executed by the 5th

respondent in favour of the petitioners as benami transaction. The respondents 1 to 3 also did not clearly say that it is a benami transaction. In counter they said that the petitioners are benami/ partners to the respondents 6 to 8 and the respondents 1 to 3 denied the passing of consideration for the alleged sale deed in favour of the petitioners. In these circumstances, section 2(9)(A) of the Prohibition of Benami Property Transaction Act deals that

“benami transaction” means,

(A) a transaction or an arrangement-

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person, and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration.

Except when the property is held by

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family.

Since the respondents 1 to 3 counsel argued that no consideration was passed for the sale deed in favour of the petitioners and stamp duty for the

sham sale deeds was paid by 2 demand drafts No.227717 and 221718 from the cash credit account of 3rd respondent this court views that, as per the respondents 1 to 3/ E.I.O.P petitioners, the alleged sale deeds are sham and nominal documents. They have not claimed it as a benami transaction. Therefore, if the consideration is passed for the sale consideration by somebody, then only it can be treated as benami transaction . In such case only, the Prohibition of Benami Property Transaction Act will apply and the suit or claim action is barred under Section 4 of the Act. Therefore, Section 4 of The Prohibition of Benami Property Transaction Act will not applicable to the facts stated in the petition. Hence, this court views that the main E.I.O.P was not barred by The Prohibition of Benami Property Transaction Act . Therefore, the petitioners' argument in this point is rejected.

(8) The petitioners' counsel further argued that Section 5(1) of Prohibition of Benami Property Transaction Act deals that

5. Deposit of money and presentation of petition to Court and procedure thereof :- (1) A debtor may deposit the money due in respect of loan received by him from any person together with interest at the rate fixed to the Government under Section 7 of the Money-lenders Act into the Court, having jurisdiction, along with a petition to record that the amount deposited is in full or part, satisfaction of the loan including the interest therefor, as the case may be.

The respondents 1 to 3 who are the petitioners in E.I.O.P.No.122/2022 did not deposit the loan amount due with interest . So, they have not complete the mandatory condition for filing petition under the Prohibition of Benami

Property Transaction Act and on this amount also this petition is to be rejected. The Hon'ble Madurai Bench of Madras High Court ordered in W.M.P (MD) Nos.13054 and 13056 of 2022 that " A purposive reading of the aforesaid provisions lead me to the conclusion that the relief now sought for can be sought by way of interim relief by the Court concerned. The petitioners are therefore granted liberty to move the jurisdictional Court. As and when such a petition under Section 5 of the Act is filed, the same shall be numbered and disposed of on merits and in accordance with law as expeditiously as possible" The petitioner was not directed to deposit the loan dues with interest in that order. The word "may" used in Section 5(1) of the Prohibition of Benami Property Transaction Act. So, the argument of the petitioners is not acceptable with respect of deposit of money is mandatory and the respondents did not deposit the money.

(9) The petitioner did not say anything that they were in possession of the properties after the alleged sale deed in their favour. The prayer in main E.I.O.P an order in favour of petitioners to record the balance amount to be deposited by the petitioners is in full satisfaction of loan to respondents 3 to 19 and direct the respondents to cancel the registered settlement deed dated 4.7.2016 (Doc. No.1131/2016 SRO, Budalur), the registered Settlement deed dated 18.7.2016 (Doc.No.1729/2016, SRO Budalur) and the registered sale deed dated 24.8.2016 (Doc.No.1331/201, SRO Budalur) and for costs of the petition. Section 6 of The Prohibition of Benami Property Transaction Act

deals that

Restoration of possession of property:- The Court may, on filing a petition by the debtor, order the restoration of possession of property whether movable or immovable, if any, forcibly taken by any person towards repayment of the loan advanced or interest therefor.

In this petition, the respondents 1 to 3 did not say anything about the dispossession of the property and did not pray for restoration of property. Mere mentioning Section 6 of The Tamilnadu Prohibition of Charging Exorbitant Interest Act is not sufficient to support the argument of the petitioner. Therefore, the argument of the petitioner in this aspect is also rejected.

(10) Order 7 Rule 11 of C.P.C deals that

Rejection of Plaint: -The plaint shall be rejected in the following cases:-

- (a) Where it does not disclose a cause of action;
- (b) Where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) Where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) Where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9

(provided that the time fixed by the Court for the correction of the valuation of supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.)

From the above discussion this court views that , the conditions stated in Order 7 Rule 11 of C.P.C s not applicable to the facts stated in the main E.I.O.P. Therefore, this court finds no valid reason to invoke Order 7 Rule 11 of C.P.C in E.I.O.P.No.122/2022. Hence, this court decides that this petition is liable to be dismissed.

(11) In the result, this petition is dismissed with the costs of Rs.1000/- each to the respondents 1 to 3.

Dictated to the Steno-Typist, typed by her in computer, corrected and pronounced by me in open court, this the **13th day of October 2023.**

**II Additional District & Sessions Judge,
Thanjavur.**

Petitioners and Respondents side
Exhibits and witnesses: Nil

**II Additional District & Sessions Judge,
Thanjavur.**

ORDER
I.A No.48/2022 in
E.I.O.P. No.122/2022
Dated: 13.10.2023.