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KEDAR NATH MOTANI AND OTHERS

v.

PRAHLAD RAI AND OTHERS

(S. R. DAS, C.J., M. HIDAYATULLAH and K. C. DAS GUPTA, JJ.)

Fraud and illegality—Benami transaction—Fraud intended but not effected—Person to be defrauded aware of the fraud but elects not to cancel transaction—Illegality committed in the course of transaction—Cause of action not based on illegality—" Exturpi causa non oritur actio "*—Exception to the rule.*

In 1922 the Manager of the Court of Wards granted a lease of a village to R for a term of years. By cl. 4 of the lease the lessee undertook not to make any settlement of land with a raiyat or other tenant without the consent of the Manager, and disclose the fact to the Manager if it was proposed to make a settlement with a relative or servant of the lessee. Under cl. 16 ryoti lands taken in the names of the lessee or his relatives or his servants were liable to be resumed by the Court of Wards after the termination of the lease.

Between the years 1920 to 1925 R acquired the lands in question but they were settled benami in the names of P, G and N by the Court of Wards at the instance of R. After the death of R in 1934 disputes arose as to the title to the lands, and his legal representatives, the appellants, instituted a suit against P and the legal representatives of G and N, the respondents, for a declaration of their title to the lands and for possession, on the footing that the respondents were in possession of the suit lands as benamidars. It was found (1) that the consideration for the acquisition of these lands had proceeded from R who had them settled in the names of his relatives, but did not inform the Court of Wards that they were his relatives, in order to avoid the operation of cls. 4 and 16 of the lease, (2) that the application forms for the settlement of the lands were not signed by P, G and N, but that their names had been written by some one else, and (3) that before the expiry of the period of the lease R informed the Court of Wards the benami nature of the transaction, but the Court of Wards did not enforce cl. 16. The respondents contended *inter alia* (1) that as on the appellants' own showing the lands had been settled benami to effectuate a fraud upon the Court of Wards the appellants were not entitled to a judgment, and (2) that the acquisition of these lands having been achieved by means of forging the signatures of P, G and N, the appellants were not, in any case, entitled to succeed, on the application of the maxim, *ex turpi causa non oritur actio*.

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Held: (1) that on the facts of the case, fraud, though it might have been intended, was not perpetrated, because it could only be effected at the end of the term of the lease and the *locus poenitentiae* which the lessee possessed was duly used long before the expiry of the lease. The appellants were not, therefore, disentitled to recover the lands from the respondents who were found to be only benamidars;

(2) that the correct position in law is that what one has to see is whether the illegality goes so much to the root of the matter that the plaintiff cannot bring his action without relying upon the illegal transaction into which he had entered. If the illegality be trivial or venial and the plaintiff is not required to rest his case upon that illegality, then, public policy demands that the defendant should not be allowed to take advantage of the position. A strict view, of course, must be taken of the plaintiff's conduct, and he should not be allowed to circumvent the illegality by resorting to some subterfuge or by mis-stating the facts If, however, the matter is clear and the illegality is not required to be pleaded or proved as part of the cause of action and the plaintiff recanted before the illegal purpose was achieved, then, unless it be of such a gross nature as to outrage the conscience of the Court, the plea of the defendant should not prevail.

In the present case the illegality was of a trivial character, inasmuch as the signatures of P and others were made on the faith of the appellants' close friendship and relationship and under the assumption that no objection from them would proceed to the making of the application on their behalf and to the signing of the forms in their names. The appellants were not required to prove this fact as part of their cause of action and indeed, if the respondents were to be believed, they asserted that the signatures were not forged but were their own. Accordingly, the appellants were entitled to sue and get a decree in their favour.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 151 of 1955.

Appeal from the judgment and decree dated March 6, 1952, of the Patna High Court, in Appeal from Original decree No. 273 of 1946, arising out of the judgment and decree dated March 29, 1946, of the Additional Sub-Judge, Motihari, in Title Suit No. 42/12 of 1944/45.

N. C. Chatterjee and *R. C. Prasad*, for the appellants.

A. V. Viswanatha Sastri and *B. P. Maheshwari*, for the respondents.

1959. September 25. The Judgment of the Court was delivered by

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HIDAYATULLAH J.—This appeal with a certificate granted by the High Court of Patna has been filed against its judgment and decree dated March 6, 1952. By that judgment, the High Court reversed the decree of the Subordinate Judge of Motihari dated March 29, 1946.

The suit was filed by the present appellants for a declaration of their title to 136 odd bighas of *Ryoti-kasht* lands and for possession thereof either exclusively or jointly with the defendants. A claim for mesne profits and interest was also made. The suit was decreed by the Subordinate Judge, Motihari, on the ground that the defendants were in possession of the suit lands as benamidars. The trial Judge found that the consideration for the acquisition of these lands had proceeded from the predecessor of the plaintiffs, who had acquired them in the *farzi* names of Prahlad Rai, Gulraj Rai and Nawrang Rai. He also held that the benamidars were related to Radhumal by marriage, and that Radhumal found it convenient to use their names. These findings were accepted by the present respondents in the High Court. They, however, raised before the High Court certain contentions found against them by the trial Judge. In the plaint, the appellants had given their reasons for acquiring the property benami in the names of Prahlad Rai, Gulraj Rai and Nawrang Rai. They had stated that, according to the terms of the lease, ryoti lands taken in the names of the lessee or his relatives and servants were liable to be resumed by the Bettiah Raj after the termination of the lease, and that the benami transaction was entered into to avoid this contingency. The answering respondents, therefore, contended in the Court of First Instance that the predecessor of the appellants had caused these lands to be settled by the Bettiah Raj benami in their names to effectuate a fraud upon the Bettiah Raj, and the fraud having succeeded, the plaintiffs-appellants were not entitled to a judgment. They also contended that after the termination of the lease of the appellants with the Bettiah Raj these

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lands were settled or deemed to be settled with them. Both these grounds were accepted by the High Court. In this Court, the respondents have taken the same stand, and have also contended that the acquisition of these lands having been achieved by means of forging the signatures of Prahlad Rai, Gulraj Rai and Nawrang Rai, the present appellants are not entitled to a judgment on the application of the maxim, *ex turpi causa non oritur actio.* They, however, contend that if it be the view of the Court that both the parties had conspired to deceive the Bettiah Raj or were guilty of illegality, even then, *potior est conditio defendantis.*

By the decisions of the two Courts below and the concession of the respondents, all questions of fact must be taken to be finally decided. The question as to whether the acquisition was benami or not cannot any longer be-reopened, and the case has therefore to be considered only with regard to the principles contained in the maxims above referred to and the fact whether there was any fraud intended on the Bettiah Raj and, if so, whether it was effected and who was responsible for it.

Though the decision of the case may appear to lie within a very narrow compass, it is necessary to recount rather voluminous facts bearing upon the history of these acquisitions. On April 1, 1922, the manager of the Court of Wards, Bettiah Raj, granted a lease of village Bijbania for 10 years (Asin 1327 to Bhado 1336, *vide* Ex. 7, to Radhumal, who was the *karta* of the joint family now represented by the plaintiffs and Mahadeo, respondent 6. On June 26, 1931, the lease was renewed for a further period of 10 years (1337 to 1346). Two of the conditions of this lease will have to be referred to in the sequel, and may conveniently be quoted here for easy reference :

> "4. Not to make any settlement of land with a raiyat or other tenant without the consent of the manager, and in any application for such consent to any settlement of land recorded as zirat or bakasht in the record of rights to state the reason of the lessee for wishing to make such settlement, and the area or zirat or bakasht land which would

remain in the demised property after such settlement if it were made, and when it is proposed to make any settlement with a relative or servant of the lessee to state that fact; and it is hereby declared that the manager shall be entitled as a condition of giving consent to any such settlement to require that an amount to be assessed by him shall be charged as a salami on any such settlement.

16. Not to retain possession after the expiry of lease of any raiyati holdings or other interest in the leased property, acquired during the term of the lease whether by private purchase, purchase at auction sale, mortgage, sub-lease, surrender or otherwise, and any such holding or interest thus acquired will pass to the lessor, provided that the lessee will be entitled to receive from the lessor a sum equivalent to any loss he may have suffered by purchasing holdings at auction sales for arrears of rent, the loss to be calculated by setting against the purchase price the profits made by the lessee from the land since the date of purchase subject to any general instructions which may be issued by the Board of Revenue, the Manager will determine the amount to be received by the lessee under this clause, and his decisions will be final."

Between the years 1920 to 1925 Radhumal acquired 136 odd bighas of lands, now the subject of dispute, in various ways. 94 odd bighas were purchased at Court sale, 7 odd bighas by private sales and 6 odd bighas were acquired by abandonment of tenancies by the previous tenants. These 136 odd bighas also included 27 odd bighas of lands, which are described as *Ghair Mazrua, Patti Kadim* and *Kabil Lagon.* These lands were settled with Prahlad Rai, Gulraj Rai and Nawrang Rai by the Bettiah Raj. The answering respondents are Prahlad Rai and the legal representatives of the other two. In settling these lands with these persons, Radhumal himself as lessee recommended them to the Bettiah Raj, and it is now proved and admitted in the case that he had also caused the signatures of these persons to be made upon the documents filed in the Bettiah Raj by others than the

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apparent signatories. As has been pointed out already, this device was resorted to, to avoid the operation of cl. 16 of the lease quoted above. It was also used to reduce the salami payable to the Bettiah Raj under cl. 4 which in the case of a stranger was lower than in the case of the lessee, his relatives and servants. The respondents had denied all these pleas, and had stated that the lands were settled with them by the Bettiah Raj, and that they were not the benamidars of Radhumal. They now rely upon the facts pleaded by the appellants in regard to the device resorted to, to save the lands from the operation of cls. 16 and 4 and further plead the illegal conduct of Radhumal in causing the signatures of Prahlad Rai, Gulraj Rai and Nawrang Rai to be forged on the documents filed with the Bettiah Raj.

Radhumal died on February 28, 1934. After his death, Bala Prasad, appellant No. 3, was adopted, and the adoption was also recognised by the Bettiah Raj. The lease was also transferred to the name of Bala Prasad. In 1935, it is alleged the widow denied, at the instigation of Mahadeo, respondent 6, this adoption, and Mahadeo, in his turn, started to disclaim all interest in the property. The other respondents also began asserting their title against the heirs and representatives of Radhumal. It was also alleged that Mahadeo had removed all the *kabalas* and some of the receipts and had given them to Prahlad Rai, which were used by the answering respondents in all subsequent proceedings. In 1936, proceedings under s. 144 of the Code of Criminal Procedure were commenced, which terminated in favour of Prahlad Rai's party by an order of the Sub-Divisional Officer on June 4, 1936. The order of the Sub-Divisional Officer was, however, reversed by the District Magistrate, Champaran, and on revision to the High Court, the finding of the District Magistrate was reversed in its turn, though the rule itself was dicharged. The High Court recommended the commencement of proceedings under s. 145 of the Code of Criminal Procedure, if there was any apprehension of breach of peace. These proceedings were commenced and finally terminated on May 18, 1942, by an

order against the appellants, who were therefore compelled to bring this suit inasmuch as, according to them, the decision in the criminal courts cast a cloud upon their title.

The main issue around which the controversy in the present case has revolved in the trial Court is the fifth, framed by the Subordinate Judge. It reads as follows:

"Are the defendants *farzidars* of the plaintiffs in respect of the suit lands?"

As we have already stated above, this issue has now been finally decided in favour of the appellants. The High Court has held that they are not entitled to a judgment in spite of this finding, on the ground that they had perpetrated a fraud upon the Bettiah Raj, and this fraud disentitles them to a judgment. The High Court has also stated that after the termination of the lease, the answering respondents must be deemed to be ryoti tenants of the Bettiah Raj, because rent was accepted from them and not from the lessee. One of the learned Judges of the High Court decided the case mainly on this ground, but the learned Chief Justice gave reasons on both the points. The learned Chief Justice also adverted to the fact that there were certain illegalities committed by Radhumal, which made the condition of the respondents stronger.

We begin with the point about the creation of a new tenancy by the Bettiah Raj after the expiry of the lease granted to Radhumal. We may point out that this aspect of the case was not pleaded by the answering respondents, and it is difficult to accept this case, which requires fresh evidence and material for a finding. The case of the respondents was that they had taken settlement of these lands from the Bettiah Raj in the very beginning. There was no occasion, therefore, for a fresh settlement with them, and the plea that after the expiry of the lease there was, in fact, or there must be deemed in law, a fresh settlement with them, is not open to them. There is evidence in the case to show that B. H. forms were not issued once again after the expiry of the lease given to Radhumal. R. N. Prasad (P. W. 3) stated that a certified copy of

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the B. H. form under which land was settled with a ryoti tenant was issued to the settlee for his information, and no such fresh B.H. forms have been produced by the respondents. In view of these two facts, we must say, with respect, that the High Court was in error in constructing a new case for the respondents. It is not open to a Court in appeal to consider *media concludendi* not pleaded by a party and to give judgment on their basis.

This leaves over for consideration the two maxims and the question of fraud perpetrated upon the Bettiah Raj. The maxim, *in pari delicto* etc., can hardly be made applicable in this context. Neither the appellants nor the respondents at any time pleaded that Prahlad Rai, Gulraj Rai and Nawrang Rai conspired to effect a fraud upon the Bettiah Raj. In this respect, the cases of the appellants and the respondents are poles apart. While the appellants claim that Radhumal did not even consider it necessary to obtain the consent of these three persons and even did not obtain their signatures, the respondents claim that Radhumal had nothing whatever to do with the acquisition of these lands and had merely recommended them to the Bettiah Raj in his capacity as the lessee. Where both parties do not show that there was any conspiracy to defraud a third person or to commit any other illegal act, the maxim, *in pari delicto* etc., can hardly be made applicable. The appellants and the answering respondents were not *in pari delicto*. The respondents claimed to be innocent parties, who had acquired the lands themselves, and the appellants, on the other hand, stated that the respondents knew nothing about the matter and were not even consulted. In our opinion, the application of the maxim was erroneous.

This leaves over for consideration firstly whether a fraud was effected upon the Bettiah Raj, and whether it was successful. The appellants contend that the Bettiah Raj was in full possession of the information that this was a benami transaction and salami was obtained to the tune of Rs. 1,680 and was waived only in respect of lands considered not worthy of demanding a salami. It is stated by the appellants in the

evidence that the Bettiah Raj was informed about the benami nature of the transaction and Rai Bahadur Motilal Basu, the Assistant Manager of the Bettiah Raj, which was under the Court of Wards, was informed about this. R. H. Prasad (P.W. 3) stated that Rai Bahadur Moti Lal Basu was Assistant Manager of the Estate, and that he was an experienced officer. Narain Lall, (P.W. 17), deposed that in his presence Radhumal had told Moti Lal Basu that he was taking the settlements in the *farzi* names of his relations. It is also clear that in 1936 when the dispute went to the District Magistrate, Champaran, all these facts were set out in the rival cases of the parties—both under ss. 144 and 145 of the Code of Criminal Procedure. The District Magistrate was an officer of the Court of Wards, and he knew by 1936 that the tenancies were taken benami by Radhumal. After the expiry of the lease, the Court of Wards did not enforce cl. 16 in spite of this knowledge, and it therefore appears that the fraud was not effected, because the person or authority said to be defrauded knew all the facts, and elected not to take any action. There is nothing in the record beyond the statement of the appellants in the plaint to show that the salami was unduly low. On the other hand, the answering respondents claimed to have paid proper salami from their own funds. It has been held, however, that Radhumal paid the salami, a fact not now questioned. The rival admissions cancel each other and leave the matter at large. The matter was never put in issue except as to who paid the salami and the sufficiency or otherwise of the salami was never tried. In view of the fact that fraud cannot be said to have been effected, we do not think that the appellants who have clearly established the benami nature of the transactions can be deprived of their judgment. The authorities do not go to that length, because public policy demands that where fraud might have been contemplated but was not perpetrated, the defendants should not be allowed to perpetrate a new fraud.

Coming now to the question whether the appellants' suit was rightly dismissed by the High Court on the application of the maxim, *ex turpi causa* etc., we have

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first to see what are the specific facts on which this contention is based. The case of the appellants was that the property was taken benami in the names of Prahlad Rai and others to avoid the implication of cl. 16. In making the application to the Bettiah Raj the signatures of Prahlad Rai and others were made by Radhumal or some one under his instructions, because the relationship between Radhumal, Prahlad Rai and others was so intimate that it was considered unnecessary to trouble them. Inasmuch, as the matter was brought to the notice of the Assistant Manager of the Court of Wards, all these facts were capable of being investigated, including the making of the signatures by Radhumal. No doubt, the making of the signatures of another person without his consent, express or implied, is an offence under the ordinary law, but the intention was not so much to forge the signatures but to present the application in the names of those persons. However it be, we proceed on the assumption that there was some illegality committed by Radhumal in approaching the Bettiah Raj and also in the execution of the B. H. forms, which were also signed with the names of these persons. The question is whether this illegality is sufficient to non-suit the plaintiffs on the application of the maxim.

The law was stated as far back as 1775 by Lord Mansfield in *Holman* v. *Johnson*(1) in the following words:

> "The principle of public policy is this; *ex dolo malo non oritur actio.* No Court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own stating or otherwise, the cause of action appears to arise *ex turpi causa,* or the transgression of a positive law of this country, there the Court says he has no right to be assisted. It is upon that ground the Court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff. So if the plaintiff and defendant were to change sides, and the defendant was to bring his action against the plaintiff, the latter would then

(1) (1775) 1 Cowp. 341, 343; 98 E.R. 1120, 1121.

have the advantage of it; for where both are equally in fault, *potior est conditio defendentis.*"

There are, however, some exceptions or "supposed exceptions" to the rule of *turpi causa.* In Salmond and William on Contracts, four such exceptions have been mentioned, and the fourth of these exceptions is based on the right of *restitutio in integrum*, where the relationship of trustee and beneficiary is involved. Salmond stated the law in these words at p. 352 of his Book (2nd Edn.):

> "So if A employs B to commit a robbery, A cannot sue B for the proceeds. And the position would be the same if A were to vest property in B upon trust to carry out some fraudulent scheme: A could not sue B for an account of the profits. But if B, who is A's agent or trustee, receives on A's account money paid by C pursuant to an illegal contract between A and C the position is otherwise and A can recover the property from B, although he could not have claimed it from C. In such cases public policy requires that the rule of *turpis causa* shall be excluded by the more important and imperative rule that agents and trustees must faithfully perform the duties of their office."

Williston in his Book on Contracts (revised edition), Vol. VI, has discussed this matter at p. 5069, para. 1785 and in paras. 1771 to 1774, he has noted certain exceptional cases, and has observed as follows:

> "If recovery is to be allowed by either partner or principal in any case, it must be where the illegality is of so light or venial a character that it is deemed more opposed to public policy to allow the defendant to violate his fiduciary relation with the plaintiff than to allow the plaintiff to gain the benefit of an illegal transaction."

Even in India, certain exceptions to the rule of *turpi causa* have been accepted. Examples of those cases are found in *Palaniyappa Chettiar* v. *Chockalingam Chettiar* (1) and *Bhola Nath* v. *Mul Chand* (2).

(1) (1920) I.L.R. 44 Mad. 334. (2) (1903) I.L.R. 25 All. 639.

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The respondents rely upon *Farmers' Mart Limited* v. *Milne* (1), *Alexander* v. *Rayson* (2) and *Berg* v. *Sadler & Moore* (3) to show that this case falls within the rule accepted and applied in those cases. The application of the rule is, however, conditioned by one thing, namely, that a plaintiff who is not allowed to succeed must be unable to sustain an action except upon the plea of the illegality committed by him. In Lord Dunedin's speech in *Farmers' Mart Limited* v. *Milne* (1), reference has been made to three cases, *Simpson* v. *Bloss* (4), *Fivaz* v. *Nicholls* (5) and *Taylor* v. *Chester* (6). In the first case, it was laid down that the test was whether a demand connected with an illegal transaction was capable of being enforced in law, and whether the plaintiff required any aid from the illegal transaction to establish his case. Tindal, C. J., in the second case observed as follows:

> "I think that this case may be determined on the short ground that the plaintiff is unable to establish his claim as stated upon the record, without relying upon the illegal agreement originally entered into between himself and the defendant."

In the last case, Mellor, J., observed that the true test was by considering "whether the plaintiff could make out his case otherwise than through the medium and by the aid of the illegal transaction to which he was himself a party". In *Alexander* v. *Rayson* (2), it was held by the Court of Appeal that there was a *locus poenitentiae* but that the repentance must be before the fraud or illegality had been carried out.

Recently, the Court of Appeal in *Bowmakers Ltd.* v. *Barnet Instruments, Ld.* (7) reviewed the law on the subject, and laid down that every illegality did not entitle the Court to refuse a judgment to a plaintiff. Du Parcq, L. J., observed as follows:

> "In our opinion, a man's right to possess his own chattels will as a general rule be enforced against

(1) [1915] A.C. 106.
(2) [1936] 1 K.B. 169.
(3) [1937] 2 K.B. 158.
(4) (1816) 7 Taunt. 246; 129 E.R. 99.
(5) (1846) 2 C.B. 501; 135 E.R. 1042.
(6) (1869) L.R. 4 Q.B. 309.
(7) [1945] 1 K.B. 65.

one who, without any claim of right, is detaining them, or has converted them to his own use, even though it may appear either from the pleadings, or in the course of the trial, that the chattels in question came into the defendant's possession by reason of an illegal contract between himself and the plaintiff, provided that the plaintiff does not seek, and is not forced, either to found his claim on the illegal contract or to plead its illegality in order to support his claim."

We are aware that Prof. Hamson has criticised this case in (1949) 10 Cambridge Law Journal, 249, and has forborne its application, except in the clearest possible circumstances. The law has been also considered by Pritchard, J., in *Bigos* v. *Bousted*(1), where all the authorities are referred to.

The correct position in law, in our opinion, is that what one has to see is whether the illegality goes so much to the root of the matter that the plaintiff cannot bring his action without relying upon the illegal transaction into which he had entered. If the illegality be trivial or venial, as stated by Williston and the plaintiff is not required to rest his case upon that illegality, then public policy demands that the defendant should not be allowed to take advantage of the position. A strict view, of course, must be taken of the plaintiff's conduct, and he should not be allowed to circumvent the illegality by resorting to some subterfuge or by mis-stating the facts. If, however, the matter is clear and the illegality is not required to be pleaded or proved as part of the cause of action and the plaintiff recanted before the illegal purpose was achieved, then, unless it be of such a gross nature as to outrage the conscience of the Court, the plea of the defendant should not prevail.

We must remember that benami transactions are common in India, and have always been recognised. They are entered into for a variety of reasons, and the benamidar holds the property in trust for his principal. In the present case, the object of the benami transaction was merely to keep the property

(1) [1951] 1 All. E.R. 92.

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from being resumed by the Bettiah Raj on the expiry of the lease in favour of Radhumal, which undoubtedly the Bettiah Raj could have done, if it had been so minded. The information about the benami transaction was, however, not withheld from the Bettiah Raj, and even with that knowledge, the Bettiah Raj took no action against Radhumal or the benamidars. The plaintiffs recanted inasmuch as they asserted their true title and true facts before the occasion for the Raj to act arose. Thus, the fraud, though intended, was not perpetrated, because the fraud could only be effected at the end of the lease term, and the *locus poenitentiae* which the lesseee possessed was duly used long before the expiry of the lease. The illegality was also of a trivial character, inasmuch as the signatures of Prahlad Rai and others were made on the relative documents on the faith of their close friendship and relationship and under the assumption that no objection from them would proceed to the making of the application on their behalf and to the signing of the B. H. forms in their names. The appellants were not required to prove this fact as part of their cause of action, and indeed, if the answering respondents are to be believed, they asserted as vehemently that the signatures were not forged but were their very own.

In establishing the benami nature of a transaction, the cardinal point to be proved is the source of money and this was done, and it was also established that Prahlad Rai and others were merely *farzidars*. To prove these things, it did not require the proof of the signatures, and we do not think that the plaintiffs could not make out a case of the benami nature of the transaction, without having to rely upon the additional fact that the signatures of Prahlad Rai and others were made upon the application and the forms without their knowledge.

We think that in the present case there is no room for the application of the maxim, *ex turpi causa non oritur actio* in all its rigour, and the exceptional case, to which we have referred, applied. We are accordingly of the view that the appellants having proved

their case of benami acquisition of these properties—a case which is not now questioned—the fact that the signatures of Prahlad Rai and others on some relative documents were not their own, cannot disentitle the plaintiffs-appellants to a decree. The exceptions to the rule contained in the maxim were not considered by the High Court, which proceeded entirely upon the supposition that every illegality or fraud disentitled a plaintiff to a judgment. That, however, is not the law. We accordingly hold that the appellants were entitled to a decree in their favour, and with respect, it was wrongly disallowed by the High Court.

We set aside the judgment and decree of the High Court of Patna, and restore those of the Subordinate Judge, Motihari. In the circumstances of this case, we think that we should make no order about costs of this appeal.

Appeal allowed.

SITARAM RAMCHARAN ETC.

v.

M. N. NAGARSHANA & OTHERS

(B. P. SINHA, P. B. GAJENDRAGADKAR and K. N. WANCHOO, JJ.)

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Payment of Wages—Application claiming overtime wages—Bar of limitation—Condonation of delay—Applicant, if must show sufficient cause for delay till presentation—Payment of Wages Act, 1936, (4 of 1936), s. 15(2), second proviso.

The appellants, who were employees in the Watch and Ward Department of various textile Mills of Ahmedabad, applied for overtime wages under s. 15(2) of the Payment of Wages, 1936. The applications were presented to the authority under that Act between July 22, 1953, to October 6, 1953, claiming overtime wages for the period between January 1951, to December, 1951, beyond the period of six months prescribed by the first proviso to that sub-section. Their case as made in the applications for condonation of delay under the second proviso, in substance, was that they were unaware of their rights under s. 70 of the Bombay Shops and Establishments Act, 1948, until that section was for