



A.S.(MD)No.45 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 07.09.2023

PRONOUNCED ON:29.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

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Mala : Appellant/Plaintiff

Vs.

1.Tamilarasi
2.Kavitha
3.Devi
4.Usha
5.Karthick
6.S.Rathinavel
7.V.Chandrasekaran : Respondents / Defendants

PRAYER:- Appeal Suit filed under Order 41 Rule 1 r/w Section 96 of the Code of Civil Procedure against the Judgment and Decree, dated 30.06.2015, made in O.S.No.3 of 2011, on the file of II Additional District Court, Trichirappalli.



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For Appellant : Mr.V.R.Shanmuganathan

For Respondents :Mr.R.Sundar Srinivasan
for R.1 to R.6
: No Appearance for R.7

JUDGMENT

The Appeal Suit is directed against the judgment and decree passed in O.S.No.3 of 2011, dated 30.06.2015, on the file of II Additional District Court, Trichirappalli.

2. The suit is for partition.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking in the original suit.

4. Admittedly, the first defendant and the second defendant are the husband and wife and that the plaintiff and the defendants 3 to 5 are their daughters and the sixth defendant is their son. The plaintiff, by alleging that the suit properties are the Hindu undivided joint family properties, has laid the above suit for partition claiming 1/6th share in the suit



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properties invoking the Hindu Succession Amendment Act 2005. The defendants 1 and 2 have taken a defence that “B” schedule property is the separate property of the second defendant, that items 11 and 12 in “A” schedule properties were purchased by the first defendant in the name of the second defendant for the benefit of the second defendant and that items 1 to 10 in “A” schedule properties were obtained by the first defendant through partition effected on 09.02.1996.

5. Upon perusing the pleadings, the trial Court has framed the following issues:

(i) Whether the plaintiff is entitled to 1/6th share in the suit property?

(ii) To what relief?

6. During trial, the plaintiff has examined herself as P.W.1 and exhibited 3 documents as Exs.A.1 to A.3. The defendants have examined the second defendant as D.W.1 and three other witnesses as D.W.2 to D.W.4 respectively and exhibited 14 documents as Exs.B.1 to B.14. The trial Court, upon considering the evidence, both orally and documentary and on hearing both sides, has decreed the suit partly granting



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preliminary decree for partition of 1/6 shares in the items 1 to 10 of “A” schedule properties and dismissed the suit with respect of items 11 and 12 of “A” schedule properties and “B” schedule property. Aggrieved by the dismissal of the suit with regard to items 11 and 12 of “A” schedule properties and “B” schedule property, the plaintiff has come forward with the present appeal.

7. It is pertinent to note that the plaintiff herself has specifically admitted in her evidence that “B” schedule property was owned by her maternal grandfather – Vannimuthu Muthuraja, that he had executed a Will in favour of his wife – Kunjammal, that after the death of Vannimuthu Muthuraja, Kunjammal had executed a Will in favour of her daughter – second defendant herein and that after the death of the said Kunjammal, “B” schedule property came to be owned by the second defendant.

8. Considering the above admission of the plaintiff and also taking note of the fact that the plaintiff has failed to produce any evidence to show that “B” schedule property was purchased by the first defendant in the name of the second defendant with the help of the joint family



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nucleus, the trial Court has come to a decision that “B” schedule property is the separate property of the second defendant and on that basis, dismissed the suit with respect to “B” schedule property.

9. When the appeal is taken up for hearing, the learned Counsel for the appellant would fairly concede that the appellant is not having any case with respect to “B” schedule property and that they are restricting their appeal with regard to the items 11 and 12 of “A” schedule properties.

10. The learned Counsel for the appellant would submit that the defendants 1 and 2 in their written statement have specifically stated that items 11 and 12 of the “A” schedule properties were purchased by the first defendant with the help of the income received by the first defendant from his job in Civil Aviation department and from the savings and the loan obtained and constructed houses therein, that the second defendant in her evidence would say that she has not furnished any particulars with regard to the jewels received from her mother, that she has not produced any document to show the availability of money for purchasing the said properties, that a combined reading of the written statement averments



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and the evidence of D.W.1 makes it clear that items 11 and 12 of “A” schedule properties were purchased by the first defendant out of his earnings in the name of the second defendant and that therefore, they are the separate properties of the first defendant and that since the first defendant had died intestate during the pendency of the suit, the plaintiff, being one of his legal heirs, is certainly entitled to get 1/6th share in the said properties.

11. The learned Counsel would further submit that since the said properties were purchased out of the funds of the first defendant in the name of his wife – second defendant, the transaction cannot be termed as Benami transaction and as such, the Benami Transactions (Prohibition) Act, 1988, has no application to the case on hand and that therefore, the appeal deserves to be allowed in respect of items 11 and 12 of “A” schedule properties.

12. The learned Counsel for the respondents would submit that in the written statement filed by the defendants 1 and 2, the first defendant has specifically stated that out of his love and affection towards his wife – second defendant, the said properties came to be purchased in her



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name, that the intention of the first defendant in purchasing the items 11 and 12 of “A” schedule properties was to the benefit of his wife and he did not make any claim of title over the said properties during his life time and that therefore, the plaintiff is not entitled to make any claim for any share in the said items of the properties. He would further submit that as per the provisions of the Benami Transactions (Prohibition) Act, the presumption would be that the properties purchased in the name of wife or unmarried daughter, the same would be their absolute property, that the plaintiff has taken a new plea in the appeal, which has not been backed up by any pleadings or evidence that the first defendant was the real owner and that therefore, the appeal is liable to be dismissed.

13. The points for consideration are

(1) Whether the trial Court erred in giving a finding that the items 11 and 12 of “A” schedule properties are the separate properties of the second defendant, despite showing the specific stand taken by the first defendant himself that he has purchased the said properties from his own income and the loan obtained by him and that the second defendant has not produced any evidence to show that she had means to purchase the



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properties and also the fact that the Benami Transactions (Prohibition) Act, 1988 has no application to the case on hand?

(2) Whether the judgment and decree of the trial Court with regard to the items 11 and 12 of “A” schedule properties is liable to be interfered with?

(3) To what other reliefs, the parties are entitled?

Points 1 to 3:

14. It is the specific case of the plaintiff in the plaint that “A” schedule properties are the Hindu undivided joint family properties and that since she got married in 1997, she is entitled to get 1/6th share in “A” schedule properties as per the Hindu Succession Amendment Act 2005. But in the appeal, as already pointed out, the plaintiff has taken a new stand that items 11 and 12 of “A” schedule properties are the separate and absolute properties of his father – first defendant and that since he had died intestate during the pendency of the suit, being the Class-I heir, she is entitled to get 1/6th share in the said properties, along with her mother, brother and sisters.



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15. It is fundamental that any amount of pleadings without evidence and any amount of evidence without pleadings are of no use. As rightly contended by the learned Counsel for the respondents, the plaintiff has nowhere canvassed a stand before the trial Court that items 11 and 12 of “A” schedule properties are the separate properties of his father – first defendant. On the other hand, she has taken a stand that the said two items of proper were also their joint family properties. Considering the above, as rightly contended by the learned Counsel for the respondents, the plaintiff cannot canvass such a new plea which is contrary to her earlier plea raised and rejected by the trial Court. Even assuming for arguments sake that the plaintiff is entitled to take such a stand before the appellate Court, it has to be seen whether the items 11 and 12 of “A” schedule properties are the separate properties of the first defendant.

16. Admittedly, items 11 and 12 of the suit properties stand in the name of the second defendant. It is also not in dispute that those two properties were purchased by the first defendant in the name of the second defendant. It is also not the case of the second defendant that she had only supplied funds for the purchase of the suit properties. In the



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joint written statement filed by the defendants 1 and 2, in paragraph No.15, they have specifically stated that the first defendant was working in Civil Aviation department of the Central Government for 18 years and with the help of the income derived from his job, savings and the loan obtained by him, he purchased the said two items of the properties and made constructions therein. It is necessary to refer paragraph No.17 of their written statement hereunder for better appreciation:

“1ம் பிரதிவாதி 36 வருடங்களாக மத்திய அரசு பணித்துறையில் பணியில் அமர்ந்து படிப்படியாக பதவி உயர்வு பெற்று தனக்கு கிடைத்த சம்பளத்தைக் கொண்டு குடும்பம் நடத்தி ஸமிப்பு செய்து அதன் அடிப்படையில் 2ம் பிரதிவாதி பெயரில் ஸ்கான்டிகப்பட்டியில் ஒரு வீடும் திருச்சிராப்பள்ளியில் ஒரு காலி மனையும் கிரயம் பெற்றுள்ளார். திருச்சிராப்பள்ளியில் கிரயம் பெற்ற காலிமனையில் வீடு கட்டுவதற்கு தன்னுடைய ஸமிப்பைக் கொண்டும் 1ம் எதிர்வாதி தான் பணிபுரிந்த அரசுத்துறையில் கடன் பெற்றும் ஸம்பாடி வீட்டினை தனது மனைவியின் பெயரில் உள்ள அன்பினாலும் பாசத்தினாலும் கட்டிக் கொடுத்துள்ளார். எனவ தாவா A 11-வது அடிட்ட சோத்தான திருச்சிராப்பள்ளி சோத்திற்கா தாவா A அட்டவணை 12 வது அடிட்ட ஸ்கான்டிகப்பட்டி வீட்டிற்கு 1ம் பிரதிவாதிக்கு பூர்விக வருமானம் ஏதும் கிடையாது.”



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17. The first defendant has specifically stated that out of love and affection, he had constructed the houses in the properties purchased by him in the name of his wife – second defendant. Considering the above, it is very much clear that the first defendant has specifically stated that he had purchased two items of properties and made constructions therein for the benefit of his wife-second defendant. It is necessary to refer Section 3 of the Benami Transactions (Prohibition) Act, 1988:

“3. Prohibition of benami transactions:

1. No person shall enter into benami transaction.

2. Nothing in sub-section (1), shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter.”

18. No doubt, sub-section 2 has been substituted by Act 22 of 1996 with effect from 20.09.1995. Subsequently, the said sub-section has been omitted by Act 43 of 2016 with effect from 01.11.2016. In the case on hand, items 11 and 12 of “A” schedule properties were purchased on 30.10.2011 and 18.05.2000 respectively.



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19. The learned Counsel for the respondents has relied on the following decisions to stress his point that sub-section (1) of section 3 of the Benami Transactions (Prohibition) Act, 1988, shall not apply to the purchase of property by any person in the name of his wife or unmarried daughter, if the same had been purchased for the benefit of the wife or the unmarried daughter:

(i) **1997(2) MLJ 46 (Parvathiammal Vs. Solaiammal and another):**

“Para 14.

The general presumption should be that the husband thought fit to purchase some of the items of the properties in the name of his wife for her benefit and welfare. Such presumption would be in our view be strong in a case where the very case of the plaintiff is that all properties belonging to the father are his self-acquisition and not that they were purchased from out of any ancestral nucleus or nucleus coming tout of the joint family or coparcenary property or funds. In such cases, Courts have been insisting upon very strong and specific claim at the instance of the defendants who project the claim of benami, making it also obligatory on the part of such person to prove the same that the acquisition was not meant to be for the benefit or welfare of



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the person in whose name it was acquired but it was for the family only and that the ostensible owner was merely a name-lender. In this case, there is no such plea or assertion and the evidence is also slender and practically nil from the side of the plaintiff who failed to make any specific plea as above and produce any independent evidence except examine herself on the plaintiff's side.”

(ii) T.K.Krishnan Vs. Kalavathi and another (A.S.No.162 of 2017, dated 16.02.2023)

“12. Though it appeared that the property had been purchased by the plaintiff in the name of the 1st defendant, the law presumes that it had been purchased in the name of the 1st defendant for her benefit. As per Clause 3(2)(a) of the Benami Transactions (Prohibition) Act, 1988, the Court shall presume unless the contrary is proved that the property has been purchased for the benefit of the wife or unmarried daughter. The suit property has been purchased in the name of the wife, the husband and wife lived together in the suit property Item No.2 till dispute arose between them. Thus, the legal presumption is in favour of the 1st defendant. Though the deposition of PW1 and DW1 reveals that several disputes arose between them



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regarding their matrimonial issues, admittedly, the suit schedule property stands in the name of the 1st defendant and that being the factum established, the Trial A.S.No. 162 of 2017 Court made a finding that even if the property was purchased from and out of the funds of the plaintiff, it was purchased for the benefit of the 1st defendant / wife.

15. The suit was instituted for declaration and permanent injunction. Though the plaintiff was in possession of the Suit property the Trial Court A.S.No.162 of 2017 found that the plaintiff purchased the property for the benefit of the 1st defendant, who is none other than his wife and from out of their relationship two sons were born and at a later point of time there was a dispute between the plaintiff and the 1st defendant and subsequently, the 1st defendant lived separately.

16. Admittedly, the suit property was purchased in the name of the 1st defendant and the sale deed was marked as Ex.A1 and Patta was marked as Ex.A2, which also stand in the name of the 1st defendant. The transaction and execution of sale deed in favour of the 1st defendant has not been hit by the provision of the Benami Transactions (Prohibition) Act, since the plaintiff is the husband of the 1st defendant.”

20. The above decisions are squarely applicable to the case on



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hand. Section 3(1) of the Benami Transactions (Prohibition) Act mandates that no person shall enter into any benami transaction and sub-section 2 contemplates that sub-section (1) shall not apply, when the purchase of the property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter. As per the provisions of the Benami Transactions (Prohibition) Act, even though the husband has purchased the properties in the name of his wife or unmarried daughter, there is a presumption that it is for the benefit of the wife or unmarried daughter, unless the contrary is proved. If a husband takes a plea that the property in question was purchased in the name of his wife, not for the benefit of his wife, but for the benefit of the family, then it is for the husband to plead and prove that he had no intention to benefit his wife by the said purchase.

21. It is settled law that the burden of showing that a transfer is a benami transaction always lies on the person who asserts it. In our Society, if a husband provides money for purchasing the property in the name of his wife, the transaction does not necessarily imply benami



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transaction and as per the provisions of the Benami Transactions (Prohibition) Act, 1988, the Court has to presume that the purchase was made only for the benefit of his wife or unmarried daughter.

22. In the case on hand, the plaintiff – one of the daughter of the defendants 1 and 2, has claimed that though the properties are standing in the name of his mother – second defendant, the same are separate and absolute properties of his father-first defendant. As already pointed out, it is pertinent to note that the first defendant has not claimed any right or ownership over the items 11 and 12 of “A” schedule properties from the second defendant. But on the other hand, the first defendant has specifically admitted that the said properties were purchased and the buildings were constructed therein in the name of his wife – second defendant and the same was made out of his love and affection towards the second defendant. Since the first defendant himself has stated that items 11 and 12 of “A” schedule properties were purchased for the benefit of the second defendant, the plaintiff has absolutely no *locus standi* to question the same and claim that the properties are the separate properties of his father.



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23. Considering the above, the finding of the learned trial Judge that items 11 and 12 of “A” schedule properties are the properties of the second defendant and as such, the plaintiff is not entitled to claim any share in the properties cannot be found fault with. Hence, this Court concludes that the above Appeal Suit is devoid of merits and the same is liable to be dismissed. Considering the other facts and circumstances and the relationship between the parties, the parties are to be directed to bear their own costs and the above points are answered accordingly.

24. In the result, the Appeal Suit is dismissed. The parties are directed to bear their own costs.

29.09.2023

NCC : Yes : No
Index : Yes : No
Internet : Yes : No

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To

1. The II Additional District Court, Trichirappalli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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