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SA Nos. 763 & 764 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-08-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

**SA Nos. 763 and 764 of 2016 &
C.M.P.Nos.14535 of 2016 & 23396 of 2019**

S.A.No.763 of 2016

K.Sugumar
S/o Late Kuppusamy Naicker,
No.66 Pillaiyar Koil II Street,
Lakshmipuram,
Chennai 600 044

..Appellant(s)

Vs

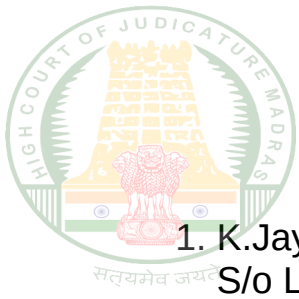
1. K.Jayavel
S/o Late Kuppusamy Naicker,
No.21 Pillaiyar Koil II Street,
Zamin Royapettah, Chromepet,
Chennai 600 044
2. K.Ravi
S/o Late Kuppusamy Naicker,
No.2/471, II Cross Street,
Bhavani Nagar, Pozhichalur,
Chennai 600 074
3. K.Venkatesan
S/o Late Kuppusammy Naicker, No.61
Ranganathapuram II Cross Street,
Chennai 600 045

..Respondent(s)

S.A.No.764 of 2016

K.Sugumar
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Chennai 600 044

..Appellant(s)



Vs

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Chennai 600 074

3. K.Venkatesan

S/o Late Kuppusammy Naicker,
No.61 Ranganathapuram II Cross Street,
Chennai 600 045

4. Jayalakshmi Ammal

W/o Late Kuppusammy Naicker, No.61
Ranganathapuram II Cross Street,
Chennai 600 045

5. Selvi

W/o Late Natarajan, Kamakshi Nagar,
Perungalathur, Chennai 63

6. Bhuvaneswari

W/o Jayaraman, No. 192, GST Road,
Otteri, Vandalur Post, Chennai -48

7. Vijayalakshmi

W/o Ravichandran, No.61,
Ranganthapuram, II Cross Street,
West Tambaram, Chennai

..Respondent(s)

Prayer in S.A.No.763 of 2016: Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree in A.S.No.5 of 2011 on the file of the Additional District and Sessions Court, Kancheepuram District at Chengalpattu dated 09.12.2015



modifying the Judgment and Decree in O.S.No.178 of 2005 on the file of the Additional Subordinate Court, Chengalpattu dated 17.09.2010

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Prayer in S.A.No.764 of 2016: Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree in A.S.No.16 of 2011 on the file of the Additional District and Sessions Court, Kancheepuram District at Chengalpattu dated 09.12.2015 confirming the Judgment and Decree in O.S.No.178 of 2005 on the file of the Additional Subordinate Court, Chengalpattu dated 17.09.2010

S.A.No.763 of 2016

For Appellant(s): Mr.C.Jagadish

For Respondent(s): Mr.K.Hariharan for R1

S.A.No.764 of 2016

For Appellant(s): Mr.C.Jagadish

For Respondent(s): Mr.K.Hariharan for R1 & R6

COMMON JUDGMENT

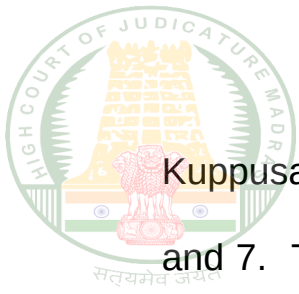
These Second Appeals have been preferred as against the Decrees and Common Judgment passed by the learned Additional District and Sessions Judge, Kanchipuram in A.S.Nos.5 and 16 of 2011 dated 09.12.2015. The appellant in both the Second Appeals is the 3rd defendant in O.S.No.178 of 2005, which was filed by the 1st respondent in both the appeals for the relief of partition and for future profits. The said suit was decreed by passing the preliminary decree to divide the



said property into 7 equal shares and to allot one such share to the plaintiff and dismissed the suit for future profits. Aggrieved by the said dismissal of future profits, the plaintiff has preferred an Appeal Suit in A.S.No.5 of 2011 and as against the preliminary decree, the 3rd defendant has preferred an Appeal Suit in A.S.No.16 of 2011 on the file of the learned Additional District & Sessions Judge, Kanchipuram as against the Judgment and Decree in O.S.No.178 of 2005. The First Appellate Court allowed the Appeal Suit No.5 of 2011 filed by the plaintiff in respect of future profits and the Appeal Suit No.16 of 2011 filed by the 3rd defendant is modified in respect of future profits and in respect of preliminary decree, the Appeal Suit was dismissed. Aggrieved by the said Decrees and Common Judgment, the present Second Appeals have been filed by the 3rd defendant.

2. Since both the Second Appeals are arising out of the Common Judgment, they are taken up together and a Common Judgment is being passed. For the sake of convenience and brevity, the parties herein are referred as plaintiff and defendants, as referred before the trial court.

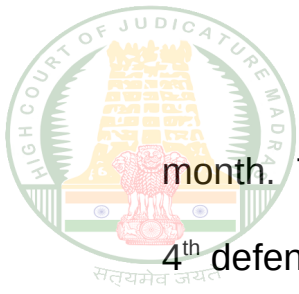
3. The case of the plaintiff before the trial court is that the property originally belonged to Kuppusamy Naicker, who was working in Port Trust, Madras as Gangmaistry. The 4th defendant is the wife of



Kuppusamy Naicker and mother of the plaintiff, and defendants 1, 2, 5, 6 and 7. The said Kuppusamy naicker died intestate on 13.07.1987. The

Item No.1 of the suit schedule property was purchased by Kuppusamy Naicker through sale deed in the year 1961. The Item Nos. 2 to 11 of the schedule of properties were purchased by Kuppusamy Naicker with his funds for his benefit Benami in the name of his wife Jayalakshmiammal, viz., 4th defendant.

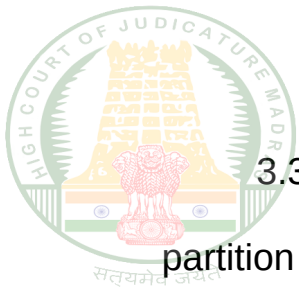
3.1. The said Jayalakshmiammal had no independent income to purchase the property, she was only a name lender for the purchase. The said Kuppusamy naicker was in possession and enjoyment of the property till his lifetime. Thereafter, the said Jayalakshmiammal along with her three sons are in possession and enjoyment of the property. The defendants 1 and 2 have been collecting the income on behalf of all the sharers. The house property is described as Item No.II in the Schedule of properties and the same was purchased by Kuppusamy Naicker and he constructed a house and he had lived therein along with his family. The sub-item 12 of Item No.I of the Schedule of properties also belonged to Kuppusamy Naicker. The defendants 1 and 2 have been collecting the income from the lands and the income has been Rs.50,000/- per year and there are seven tenants in the Item No.II of Schedule of properties and from properties fetching Rs.10,000/- per



month. The monthly pension of Kuppusamy Naicker is being paid to the 4th defendant.

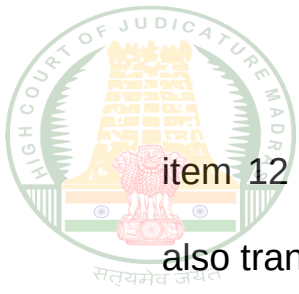
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3.2. Now, the defendants 1 and 2 attempted to sell agricultural lands and house to the 3rd defendant, taking advantage of the illiteracy, old age and incapacity of the mother, Jayalakshmiammal. Now, the plaintiff came to know that the defendants 1 and 2 in collusion with the 3rd defendant had created number of documents, as if Jayalakshmiammal owned the properties and she alone is the legal heir of Kuppusamy naicker. Further, on 05.05.2005, the said Jayalakshmiammal and 1st defendant sold the property to the 3rd defendant. The said Jayalakshmiammal executed settlement deed dated 24.09.2001 to the 2nd defendant. On 29.04.2002, Jayalakshmiammal executed a settlement deed in favour of the 1st defendant and a sale deed dated 05.05.2005 was executed by Jayalakshmiammal and 1st defendant to the 3rd defendant. The said documents created by defendants 1 to 3 are fictitious and the said Jayalakshmiammal had no independent means or income and all the properties were purchased from the income of Kuppusamy naicker and he was in enjoyment of the properties.



3.3. The plaintiff issued notice dated 29.05.2005 demanding partition over the suit properties. The defendants 1 to 3 received the said notice but not sent any reply. The plaintiff deemed to be in joint possession with the defendants 1 and 2 and 4 to 7. The plaintiff is entitled to partition and separate possession of 1/7th share in the suit properties and for future profits. Therefore, filed the suit.

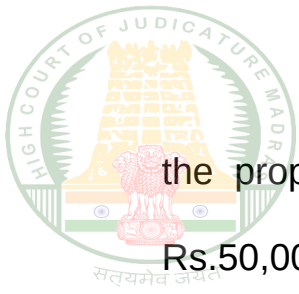
4. The case of the 3rd defendant before the trial court is that the suit is not maintainable and the same is liable to be dismissed. The defendant has negotiated to purchase the Sl.Nos.2 to 12 of Item I of Schedule of properties from Jayalakshmiammal / 4th defendant. The said Jayalakshmiammal, 1 and 2 defendants represented that sub-item 12 of Item I of schedule of properties was purchased by Kuppusamynaicker, husband of 4th defendant and father of 1 and 2 defendants and registered sale deeds dated 12.06.1975 and 07.1.1981 and other sub items 2 to 11 in Item I were purchased by the 4th defendant. The said Jayalakshmiammal purchased the properties through sale deeds dated 12.07.1973 and 16.03.1983 and they were her self acquired properties and she also mutated patta in her name and she settled sub items 2 to 11 of Item I and other properties in favour of her son, Ravi, 1st defendant, through settlement deed dated 29.04.2002 and executed settlement deed in favour of 1st defendant in respect of Sub-



item 12 of Item I and settlement deed dated 29.04.2002 and the patta also transferred in the name of 1st defendant.

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4.1. The 3rd defendant purchased sub-items 2 to 11 of Item I from the defendants 1 to 4 through registered sale deed dated 05.05.2005 and electricity service connection and patta also transferred in the name of 3rd defendant. The 3rd defendant has purchased sub-item 12 of Item I from the defendants 1 to 4 and 7 and a registered sale deed dated 05.05.2005. The 3rd defendant is bonafide purchaser for value. The defendants 1 to 4 and 7 represented that the plaintiff got appointment in Port trust on compassionate grounds in the place of his father, Kuppusamy Naicker and the plaintiff relinquished his interest in favour of the defendants 1 to 4 and 7 in respect of sub-item 12 of Item I, house and the defendants 5 and 6 got married in the year 1974 and 1983 respectively, hence they have no right over the Sub-Item 12 of Item-I of the property, therefore, believing words of the defendants, the 3rd defendant purchased sub-items 2 to 12 of Item I of schedule of properties. The plaintiff has deliberately omitted to include Survey No.226/1, to an extent of 0.41 cents in the suit. The allegations in respect of benami transactions are denied. In fact, the 4th defendant purchased the properties, Sub-items 2 to 11 in Item I and she has been in possession and enjoyment of the property and thereafter, she settled



the property in favour of the 1st defendant. The alleged income of Rs.50,000/-, mentioned in the plaint are denied. Therefore, the suit is liable to be dismissed.

5. The brief averments of the written statement filed by the 2nd defendant is as follows:-

5.1. The suit is not maintainable either in law or on facts. The Item II of the plaint schedule property was self acquired property of the 4th defendant, Jayalakshmiammal and she was doing milk vending business and was getting good income therefrom and she was in exclusive possession and enjoyment of the property. The said Jayalakshmiammal who is the mother of the 2nd defendant was very affectionate with the 2nd defendant, therefore she executed settlement deed dated 24.09.2001, thereby the 2nd defendant has been in exclusive possession and enjoyment Schedule No.II of Property and he is also paying taxes to the Government and revenue records also mutated in the name of the 2nd defendant. The plaintiff was aware of the settlement deed dated 24.09.2001, thereby he is estopped from questioning the same. This defendant is not in joint possession in schedule II of property with the other defendants and plaintiff, therefore, the suit is liable to be dismissed.



6. Based on the above said pleadings and after hearing both sides, the trial court has framed the following issues for trial:-

“1. Whether the suit schedule Item No.1, Sl.Nos.1 to 12 are the self acquired properties of the 4th defendant or whether they were purchased in her name as Binami for the benefit of the family?

2. Whether the settlement deed dated 24.09.2001 in respect of the suit Item No.II in favour of the 2nd defendant is not binding on the plaintiff?

3. Whether the plaintiff is entitled to partition and separate possession of 1/7 share over the suit properties?

4. To what reliefs is the plaintiff entitled?”

Before the trial court, on the side of the plaintiff, witnesses, P.W.1 and P.W.2 were examined and marked Exhibits A.1 to A.8. On the side of the defendants, witnesses, D.W.1 to D.W.3 were examined and Exhibits B.1 to B.36 were marked. After hearing both sides and perusing the records, the trial court decreed the suit in respect of allotment of partition and declined to grant relief of future profits.

7. Aggrieved by the said decree and judgment, the plaintiff has preferred Appeal Suit in A.S.No.5 of 2011 and the 3rd defendant / purchaser has preferred A.S.No.16 of 2011. The First Appellate Court framed the following points for determination:-



“1. Whether the contention of the trial court that the appellant / plaintiff is not entitled to future prospects is correct?

2. Whether the contention of the trial court that the 3rd defendant has to work out his share on the basis of equity in the final decree proceedings is correct?

3. Whether the Judgment and Decree dated 17.09.2010 passed in O.S.No.178 of 2005 is liable to be set aside?

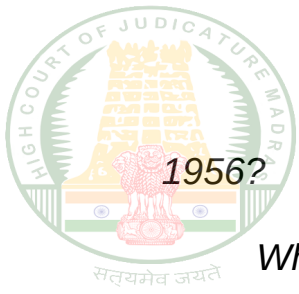
4. To what other relief the Appellant in A.S.No.5 of 2011 is entitled to?

5. To what other relief the Appellant in A.S.No.16 of 2011 is entitled to?”

After analysing the evidences adduced on both sides allowed the appeal filed by the plaintiff by granting future profits and dismissed the appeal filed by the 3rd defendant. Now, aggrieved by the said common Judgment and Decrees of the First Appellate Court, the 3rd defendant has preferred these two Second Appeals.

8. This Court while admitting the Second Appeals on 15.09.2016, has framed the following Substantial Questions of Law:-

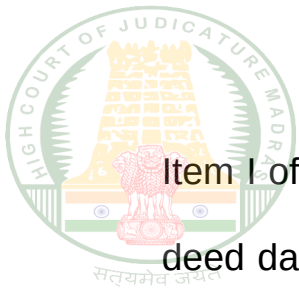
“ Whether the Courts below are right in law in granting a decree for partition in respect of the properties owned by a female Hindu contrary to the presumptions under Section 14 of the Hindu Succession Act,



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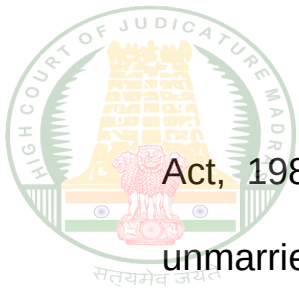
Whether the suit as framed is maintainable particularly when the plaintiff has not chosen to question the settlement deed dated 24.09.2001 and two settlement deeds dated 29.04.2002 registered as document numbers 980 and 981 of 2002 in the office of the Sub-Registrar, Thirukazhukundram marked as Exhibits B5, B-18 and B-19 in accordance with law?"

9. The learned counsel appearing for the appellant would submit that originally Sl.Nos.2 to 11 of Item I of the suit schedule properties belonged to 4th defendant, Jayalakshmiammal and she purchased the properties through sale deeds dated 12.07.1973 and 16.03.1983 respectively, after purchase of the property, she was in possession in respect of said properties and some other properties were also in enjoyment of the 4th defendant and she also mutated revenue records in her name and paid kists. The said properties are self acquired properties of Jayalakshmiammal, while so, due to love and affection, she executed a settlement deed in respect of the SL 2 to 11 of Item I properties to the 1st defendant on 29.04.2002 on the same day, the 4th defendant, Jayalakshmiammal also executed another settlement deed in favour of the 1st defendant in respect of sub-item 12 of Item I of the suit schedule property. The 3rd defendant purchased sub-items 2 to 11 of



Item I of the property from the defendants 1 to 4 through registered sale deed dated 05.05.2005 and he also got service connection and patta in his favour and also he purchased sub-item 12 of Item I of the suit schedule property from the defendants 1, 2, 4 and 7 through registered sale deed dated 05.05.2005. The electricity service connection, patta and house tax has been transferred in the name of the appellant / 3rd defendant and he is the bonafide purchaser, therefore, after execution of sale deed, at the instigation of other defendants, the plaintiff filed the suit for partition in respect of the self acquired properties of the 4th defendant, Jayalakshmiammal. Before the trial court, on the side of the plaintiff, witnesses, P.W.1 and P.W.2 were examined and marked Exhibits A.1 to A.8. On the side of the defendants, witnesses, D.W.1 to D.W.3 were examined and Exhibits B.1 to B.36 were marked, but the trial court without considering the evidences on the defendants' side, erroneously decreed the suit by holding that the property purchased in the name of Jayalakshmi ammal were purchased by Kuppusamy naicker as benami and thereby, those properties are also available for partition.

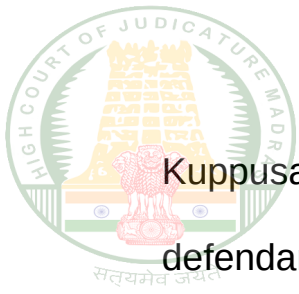
9.1. In fact, once the plaintiff taken a plea of benami transaction, he has to prove that the properties were purchased by the said Kuppusamy naicker, for the benefit of family and there is a statutory presumption under Section 3(2)(a) of Benami Transactions (Prohibition)



Act, 1988 that if properties purchased in the name of wife and the unmarried daughter, the said properties are purchased for their benefit.

The plaintiff, who pleaded about the Benami transaction has not proved and the said Kuppusamy naicker purchased the property in the name of Jayalakshmiammal and never questioned the property purchased by the 4th defendant and the plaintiff has no locustandi to question about the properties purchased by the defendants and thereby the courts below failed to consider the said aspect and the legal presumption and rendered perverse findings that the properties purchased by the 4th defendant are not self acquired properties and the properties are joint family properties available for partition, therefore, the above said decree and Judgment passed by the courts below are liable to be set aside. Further, after commencement of Hindu Succession Act, if any property acquired by the female, it is her absolute property and the above said preposition of Law also over looked by the courts below and thereby the Judgments and Decrees passed by the courts below are liable to be set aside.

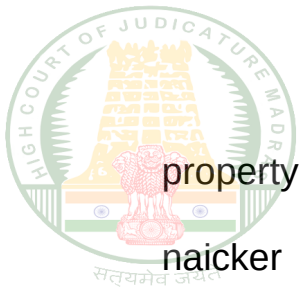
10. The learned counsel appearing for the respondents would submit that the sub-item 1 of the Item I of the suit property was purchased by Kuppusamy naicker in the year 1961 and Sub-Item nos.2 to 11 of Item I of the of the suit schedule properties were purchased by



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Kuppusamy naicker from his funds in the name of Jayalakshmiammal 4th defendant/ benami and the said Jayalakshmiammal has no independent income to purchase the property and she was only name lender for the purchase, thereafter, Kuppusamy naicker was in possession and enjoyment of the properties. The sub-item 12 of Item I of the property also belong to Kuppusamy naicker and he constructed house in that property. The Sub Item 2 of Item II of the schedule of property also belong to Kuppusamy naicker and the defendants 1 and 2 were collecting rents from the said property, while so, the defendants 1 and 2 purported to sell the agricultural lands to the appellant / 3rd defendant by taking advantage of illiteracy and old age of the 4th defendant. Thereafter, the plaintiff came to know that Jayalakshmiammal executed settlement deed in favour of the 1st defendant on 29.04.2002 also executed settlement deed in favour of 2nd defendant on 29.04.2001 and the said documents created by the defendants 1 to 3 are fictitious.

10.1. The said Jayalakshmiammal had no independent means or income and the properties were purchased in the name of Jayalakshmiammal as Benami by Kuppusamy naicker and the properties were treated as family properties and the said Jayalakshmiammal had no right created encumbrance over the suit



property, therefore, the plaintiff filed the suit as legal heir of Kuppusamy naicker claiming 1/7th share and the courts below have correctly decreed the suit holding that Jayalakshmiammal had no independent income in the various documents, she was referred as house wife, thereby she was depending upon income of her husband, Kuppusamy naicker, whereas the properties have been purchased by the said Kuppusamy naicker in the name of his wife Jayalakshmiammal, as benami therefore, the courts below have held concurrent findings based on the evidences and the 3rd defendant, who purchased the property after knowing very well about the properties belong to Kuppusamy naicker, therefore, he is not the bonafide purchaser, therefore, the Second Appeals are liable to be dismissed.

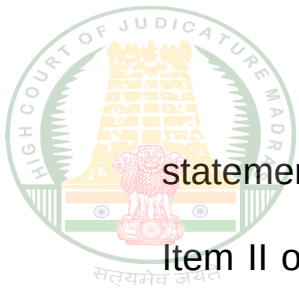
10.2. Moreover, the learned counsel appearing for the respondents vehemently argued that the defence Benami transaction is available to the plaintiff and 4th defendant has to prove her independent income to purchase the properties and the plaintiff proved that the said Jayalakshmiammal was not a real owner and the plaintiff discharged his duty and proved that the said Jayalakshmiammal had no independent income to purchase the properties, thereby the benami transaction has been proved and to support his contention, relied on the Judgments of



Hon'ble Supreme Court (I) Jaydayal Poddar (Deceased) through Legal heirs and Another Vs. MST.Bibi Hazra and Others reported in (1974) 1 Supreme Court Cases 3 (ii) Valliammal (D) by Lrs., Vs. Subramaniam and Others reported in (2004) 7 Supreme Court Cass 233 (iii) Eramma Vs. Veerupana and Others reported in AIR 1966 SC 1879 (iv) Jethu Ram Vs.Bhimu through her Lrs reported in AIR 2019 HP 104.

11. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents and perused the entire documents placed on record.

12. In this case, according to the plaintiff, all the suit properties are joint family properties and available for partition, the Item I of the suit schedule properties were purchased by the father of the plaintiff, Kuppusamy naicker through sale deed in the year 1961. The sub-items 2 to 11 of Item I suit schedule properties were purchased by Kuppusamy naicker in the name of his wife, 4th defendant as benami. The sub-item 12 of Item I of the suit schedule property belonged to Kuppusamy naicker and Item II of the property also belong to Kuppusamy naicker and he constructed a house in that place. The 2nd defendant filed written



statement denying the entitlement of kuppusamy naicker in respect of Item II of the suit property, originally the property stands in the name of 4th defendant and she settled the property in favour of the 2nd defendant through settlement deed dated 24.09.2001, therefore, the property exclusively belongs to the 2nd defendant.

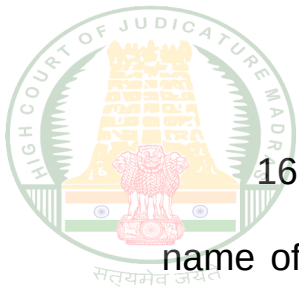
13. The 3rd defendant filed written statement stating that sub-items 2 to 11 of Item I of suit schedule properties are self acquired properties of Jayalakshmiammal and she purchased the properties through two sale deeds dated 12.07.1973 and 06.03.1983 respectively. In turn, the said Jayalakshmiammal executed settlement deed in respect of the Item Nos.2 to 11 of the properties in favour of 1st defendant through settlement deed dated 29.04.2002 and executed settlement deed in respect of Sub-item 12 of Item I of the suit schedule property on 29.04.2001. The 3rd defendant purchased the properties from 1,2 and 4 defendants in respect of sub Items 2 to 12 of Item I of suit schedule properties through two sale deeds dated 05.05.2005. Before the trial court, on the side of the plaintiff, witnesses, P.W.1 and P.W.2 were examined and marked Exhibits A.1 to A.8. On the side of the defendants, witnesses, D.W.1 to D.W.3 were examined and Exhibits B.1 to B.36 were marked.



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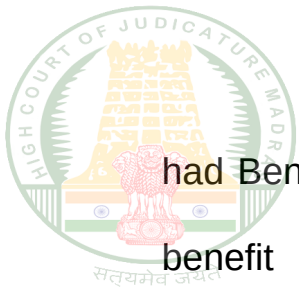
14. The trial court after hearing both sides and perusing the records, decreed the suit holding that the properties were purchased by Kuppusamy Naicker in the name of his wife Jayalakshmiammal, as his Benami and the said Jayalakshmiammal had no independent income over the property.

15. As far as the plea of Benami transaction is concerned, the plaintiff has to prove that the properties held in the name of Jayalakshmiammal, 4th defendant were purchased by Kuppusamy Naicker as Benami. The competent person to speak about the Benami transaction is Kuppusamy naicker and 4th defendant, Jayalakshmiammal. The said Kuppusamy naicker died and he never questioned the properties acquired in the name of Jayalakshmiammal during his life time and the said Jayalakshmiammal also alienated the properties through settlement deeds in favour of her two sons, defendants 1 and 2. Moreover, the said settlement deeds were not challenged by the plaintiff. Therefore, the above said conduct of the parties shows that Jayalakshmiammal had enjoyed the properties as her own properties.



16. It is well settled law that once the property purchased in the name of female, after commencement of Hindu Succession Act, 1956, the said properties are her absolute properties. Even according to the Benami Transactions (Prohibition) Act, if any properties purchased by father in the name of unmarried daughter and wife, the same has to be presumed that said property was purchased for their benefit, while so, it is duty of the plaintiff in this case, who asserts that the properties were purchased as Benami and the same was purchased for the benefit of the family of Kuppusamy naicker. There is no proper evidence adduced by the plaintiff to prove the same. In order to rebut the statutory presumption under Section 3(2)(a) of the Benami Transactions (Prohibition) Act, there is no proper evidence adduced by the plaintiff and the courts below came to a conclusion, only based on the recitals found in the sale deeds that Jayalakshmiammal was house wife depending upon the income of husband, thereby under the wrong impression that she had no income to purchase the properties.

17. The courts below failed to understand the legal position that once the properties were purchased in the name of the female person, the said properties are her absolute properties, Section 14(1) of the Hindu Succession Act and further, even assuming that the properties



had Benami transaction, the same has to be presumed that it is for the benefit of Jayalakshmiammal, therefore, the courts below failed to consider the above said legal aspects and fastened burden on the 4th defendant and she failed to prove her income and merely referring the status of the parties in the document, it is not sufficient to hold that the house wife had no means to purchase the property. Therefore, the above said findings of the courts below are perverse and thereby the Judgment and Decree passed by the courts below are liable to be set aside in respect of Sub-Items 2 to 11 of the Item I of the suit schedule properties.

18. On a careful perusal of the above said Judgments of the Hon'ble Supreme Court relied on by the learned counsel appearing for the respondents (I) *Jaydayal Poddar (Deceased) through Legal heirs and Another Vs. MST.Bibi Hazra and Others reported in (1974) 1 Supreme Court Cases 3* (ii) *Valliammal (D) by Lrs., Vs. Subramaniam and Others reported in (2004) 7 Supreme Court Cass 233* (iii) *Eramma Vs. Veerupana and Others reported in AIR 1966 SC 1879* (iv) *Jethu Ram Vs.Bhimu through her Lrs reported in AIR 2019 HP 104*, it is clear that the burden of proving that the particular sale is Benami, the apparent purchaser is not the real owner, always rests on the person



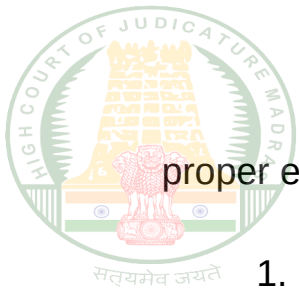
asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of Benami or establish circumstances unerringly and reasonably raising an inference of that fact and also clear that the intention of the person, who contributed the purchase money is determinative of the nature of the transaction and also it is clear that provisions of Section 14(1) of Hindu Succession Act, cannot be attracted in the case of Hindu female, who is in possession of the property of the last male holder on the date of commencement of the Act, when she is only a tress-passer without any right to property. Also it is clear that if the acquisition of the property attracts sub-section (1) of Section 14, sub-Section (2) does not come into play. If the acquisition is for the first time, without any vestige of pre-existing right under instrument, then, sub-Section (2) of Section 14 gets attracted, Sub Section (2) being in the nature of exception, it does not engulf and wipe out the operation of Sub-Section (1). Section (2) of Section 14 independently operates on its own sphere.

18.1. In the case on hand, the properties were purchased by Jayalakshmiammal through separate sale deeds in her name and thereby as per Section 14(1) if any property possessed by the female



Hindu whether acquired before or after commencement of the Act, shall be held by her as full owner thereof and not as a limited owner. As per explanation to Section 14(1), the property includes both movable and immovable property acquired by a female hindu by inheritance or device or at a partition, or in lieu of maintenance or array of maintenance, or by gift from any person, whether a relation or not, before act or after marriage, or by her own skill or exertion or by purchase, or by prerequisite or in any other manner, whatsoever and also any such property held by as Sridhana immediately before the commencement of the Act. In the case on hand, admitted fact that the sale deeds are in the name of 4th defendant and thereby 4th defendant acquired the property by purchase, therefore, the suit properties are her absolute properties and she is full owner to the properties. As far as benami transactions are concerned, there is no sufficient evidence adduced by the plaintiff and thereby the said case laws no way helpful to decide the case in favour of the respondents.

18.2. On the other hand, the learned counsel appearing for the appellant would argue that the burden of proving the transaction as benami lies on the person alleging it to be so but the plaintiff who had taken a plea of benami transaction failed to prove the same through the



proper evidence and also relied upon the following Judgments :-

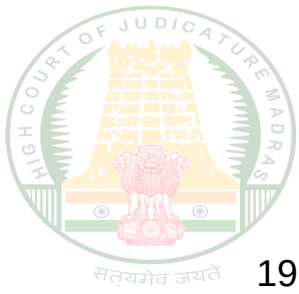
1. Mangathai Ammal (Died) through Legal representatives and Others Vs. Rajeswari and Others reported in (2020) 17 Supreme Court cases 496.

2. Kanakarathanammal Vs. V.S. Loganatha Mudaliar and Another reported in AIR 1965 SC 271.

3. Om Prakash Sharma Alias O.P.Joshi Vs. Rajendra Prasad Sewda and Others 2015 15 SCC 556.

On a careful perusal of the above said Judgments, it is clear that the Hon'ble Supreme Court has framed certain guidelines to determine this issue of Benami transactions:-

- “1. the source from which the purchase money came,**
- 2. the nature and possession of the property, after the purchase,**
- 3. motive, if any for giving transaction a the benami colour,**
- 4. the position of the parties and the relationship, if any, between the claimant and the alleged benamidar,**
- 5. the custody of the title deeds after the sale; and**
- 6. the conduct of the parties concerned in dealing with the properties after the sale”**



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19. Also it is clear that while determining the Benami transaction, the nature of sale, purchase, transaction of immovable property by husband in the name of the wife along with other facts and circumstances, which has to be taken into account in determining what essential is, question of fact, namely, whether the property has been purchased in the name of Benami. The mere non action to take part in the management of the property would not materially affect the right of the person, who purchased the property.

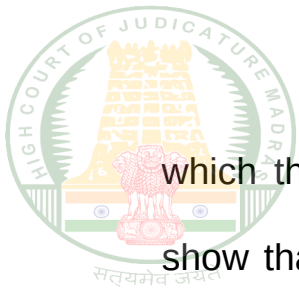
20. In the case on hand, the properties are in the name of Jayalakshmiammal and there is no evidence that the money was paid by Kuppusamy naicker, father of the plaintiff. Moreover the 4th defendant Jayalakshmiammal dealt the said properties as her absolute properties and mutated the revenue records in her name and also settled the said properties to her sons.

21. That apart, in the case on hand, the properties are purchased in the name of Jayalakshmiammal and there is no evidence that the purchase money was paid by Kuppusamy naicker, father of the plaintiff. Mere recitals found in the deed in respect of the status of the purchaser



as 'Purusha Jeevanam' is not a proof for non-payment of money by the purchaser, therefore, the plaintiff failed to prove the Benami transaction and once the property was purchased through sale deeds, there is a presumption and thereby the courts below failed to consider the said legal aspects. Therefore, the Decree and Judgment passed by the courts below are perverse and liable to be set aside.

22. As far as Substantial Questions of Law are concerned, the courts below failed to consider that the properties are self acquired properties of Jayalakshmiammal and commencement of Hindu Succession Act, Section 14(1) the said properties are her absolute properties and thereby the courts below are not right in law in granting decree for partition in respect of the properties owned by 4th defendant, Jayalakshmiammal contrary to the provisions of Section 14 of Hindu Succession Act, 1956. Moreover, the plaintiff has not questioned the settlement deeds executed by Jayalakshmiammal dated 24.09.2001 and 24.09.2002 in favour of 1st and 2nd defendants through Ex.B.5 and Ex.B.18 and Ex.B.19, once the settlement deeds were executed by the original owner in whose name the properties were stood without setting aside those settlement deeds, the suit is not maintainable. The above said aspects were not considered by the courts below. The manner in



which the properties were dealt by the said Jayalakshmiammal would show that she exercised her rights over the properties as her absolute properties and she has been in possession and enjoyment of the property and thereby she settled the properties, as the properties are her self acquired properties. The plaintiff has no right over the properties of the said Jayalakshmiammal, as the said properties are her self acquired properties and thereby the Judgment and Decree passed by the courts below in respect of Sub-Items 2 to 11 of Schedule I of suit properties are liable to be set aside. Thus the Substantial Questions of Law are answered in favour of the appellant.

In view of the above said discussions and the answers to the Substantial Questions of Law, this Court is of the opinion that the plaintiff is not entitled to partition over the Sl.Nos.2 to 11 in 1st Item of the suit properties, the decree and Judgment passed by the courts below are liable to be set aside in respect of these properties. Consequently, the plaintiff is not entitled to the relief of future profits. The trial court dismissed the suit by holding that the plaintiff is not entitled to future profits. Further, the First Appellate Court allowed the Appeal that the plaintiff is entitled for relief of future profits, since the properties are not available for partition, the plaintiff is not entitled for future profits. In the



result,

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(i) **The Second Appeal No.763 of 2016 is allowed,** the Decree and Common Judgment passed by the learned Additional District Judge in A.S.No.5 of 2011 dated 09.12.2015 are set aside and the decree and the Judgment passed by the learned Additional Subordinate Judge in O.S.No.178 of 2005 dated 17.09.2010 in respect of future profits are restored.

(ii) **The Second Appeal No.764 of 2016 is partly allowed.** The Common Judgment and Decree in A.S.No.16 of 2011 dated 09.12.2015 as against the Decree and Judgment in O.S.No.178 of 2005 are modified in respect of Sub-Items 2 to 11 of Item I of the suit schedule property. The Judgment and Decree passed by the trial court in O.S.No.178 of 2005 dated 17.09.2010 are modified to the effect that the plaintiff is not entitled to any relief in sub-items 2 to 11 in Item I of schedule of properties, in other aspects, the Judgment and Decree passed by the trial Court in O.S.No.178 of 2005 are confirmed.

(iii) Consequently, connected miscellaneous petitions are closed.

No costs.

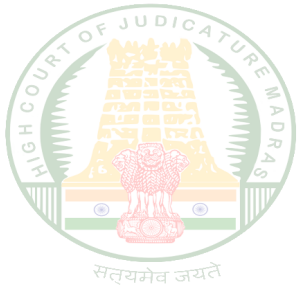
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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

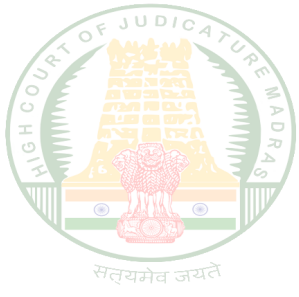
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To

1. The Additional District & Sessions Judge,
Kancheepuram District
2. The Additional Subordinate Judge,
Chengalpattu



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SA Nos. 763 & 764 of 2



P.DHANABAL, J.

ssd

SA No. 764 of 2016

06-08-2026