

A.S.No.130 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2026

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CORAM :

The Hon'ble Mr.Justice N.SATHISH KUMAR
and
The Hon'ble Mr.Justice M.JOTHIRAMAN

A.S.No.130 of 2019
and
C.M.P.Nos.5315 and 5316 of 2019 and 13053 of 2024

T.A.H.Jaffer Ali

.. Appellant

Vs.

1.T.A.H.Niazi Basha
2.Hayath Bi
3.Bibi John
4.Rihana Begum
5.Powshiya Begum

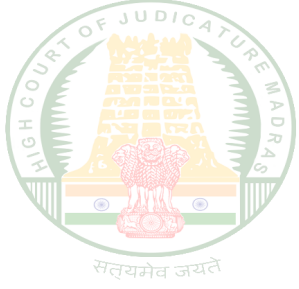
.. Respondents

This appeal suit has been filed under section 96 read with Order XLI Rule 1 of CPC seeking to set aside the judgment and decree dated 24.07.2018 made in O.S.No.7 of 2016 (which was earlier numbered as O.S.No.76 of 2014) on the file of the District Court, Villupuram) on the file of the court of the II Additional District and Sessions Judge, Tindivanam by allowing the first appeal and thus render justice.

For Appellant : Mr.T.Dhanasekaran

For Respondents : Mr.S.N.Ravikumar for R-1
No appearance for RR2 to 5

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JUDGMENT

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(The judgment of the court was made by N.SATHISH KUMAR, J.)

Challenging the preliminary decree and judgment of the trial court, namely, the II Additional District and Sessions Court, Tindivanam made in O.S.No.7 of 2016, dated 24.07.2018, granting plaintiff 2/8th share in the suit property, the present appeal suit is preferred by the first defendant.

2.The parties in the present appeal suit are hereinafter referred to as per their rankings before the trial court.

3.The brief facts which are necessary for disposal of the appeal suit are as follows:

3.1.The plaintiff and defendant no.1 are brothers. The other defendants, namely defendants 3 to 5 are sisters of plaintiff and first defendant. The second defendant is the mother of the plaintiff and defendant nos.1, 3 to 5. The suit properties are separate properties of the father of the plaintiff and the first defendant, namely Abdul Hameed by virtue of his purchase under sale deeds dated 23.08.2000 and 10.09.2001 and a registered settlement deed dated 26.05.1970. The said Abdul



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Hameed died intestate in the year 2011. Therefore, the plaintiff and the first defendant being sons of said Abdul Hameed are each entitled to 2/8th share in the suit properties and defendants 2 to 5 each are entitled to 1/8th share in the said suit properties. Therefore, the plaintiff has filed a suit seeking for preliminary decree for dividing his 2/8th share in the suit property.

3.2. According to the first defendant, there is no dispute with regard to the relationship between the parties. It is the averment of the first defendant that the plaintiff by suppressing the material facts has filed the suit. According to him, the first defendant has purchased the suit property in the name of his father through the earnings of the first defendant. His father had no financial source to purchase the suit properties. The suit properties were purchased in the earnings made by the first defendant in abroad. After the completion of the working period in the abroad in the year 2011, his father had executed a settlement deed dated 18.05.2011 in favour of the first defendant and put him in possession and enjoyment of the suit properties. The first defendant had also accepted the settlement deed and he has been in possession and enjoyment of the suit properties. Therefore, according to the first defendant, the suit properties are absolute properties of the first defendant. The suit properties never



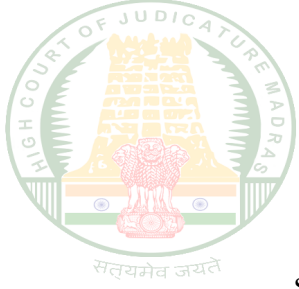
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belonged to joint family. The plaintiff did not even pay single penny to the joint family. The said Abdul Hameed, during his life time, never recognised the suit properties as his family properties. The first defendant has paid the taxes in respect of the suit properties. Hence, he has opposed the suit filed by the plaintiff.

3.3.In the reply statement, the plaintiff denied the alleged settlement deed said to have been executed by the father on 18.05.2011 in favour of the first defendant. The said settlement deed is an unregistered one and cannot be acted upon. Their father had never executed any settlement deed during his life time in favour of the first defendant.

3.4.In the additional statement, the first defendant has submitted that his father had no independent income. The first defendant has possessed the sale deeds of the suit properties. The first defendant is in possession and enjoyment of the suit properties with the knowledge of the plaintiff and other defendants and they have never claimed any right over the suit properties while their father was alive or after his death and the first defendant is only paying the taxes in respect of the suit properties and hence, he has disputed the claim of the plaintiff.

4.On the basis of the pleadings, the trial court has framed the following issues:



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i)Whether Abdul Ameer was the absolute owner of the suit properties, as claimed by the plaintiff?

ii)Whether the suit properties were purchased by D1's money, as claimed by the Defendant?

iii)Whether in 2011, D1 was put in possession and enjoyment of the suit properties?

iv)Whether the suit is barred by limitation?

v)Whether the plaintiff is entitled to 2/8th share in the suit properties?

vi)To what other relief the plaintiff is entitled to?

5.On the side of the plaintiff, one Thaharunissa was examined as P.W.1 and Exs.A.1 to A.6 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Exs.B.1 to B.13 documents were marked.

6.Based on the evidence and materials available on record, the trial court had granted preliminary decree in favour of the plaintiff by granting 2/8th share in the suit properties. Challenging the same, the first defendant has filed the present appeal.

7.The first defendant has also filed two petitions under Order XLI

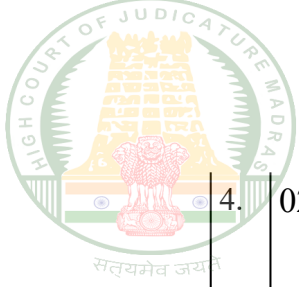


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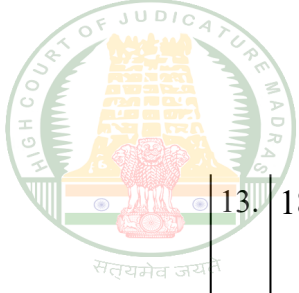
Rule 27 of the Civil Procedure Code, 1908, namely C.M.P.Nos.5316 of 2019 and 13053 of 2024 in order to receive some of the documents as additional documents in the appeal. It is the contention of the counsel appearing for the first defendant that the trial court has not granted the relief in favour of the first defendant / appellant on the ground that the settlement deed dated 18.05.2011 has not been produced during the course of evidence. Therefore, it is just and necessary that the first defendant may be permitted to file the documents, in particular settlement deed dated 18.05.2011. It is further stated that after the execution of the settlement deed, the father of the first defendant had also handed over the other documents relating to the suit properties and therefore, it is stated that those documents are also relevant to prove his case. Hence, he has sought to file the following documents as additional documents:

Sl.	Date	Doc.No.	Description of Documents	Nature of Documents
1.	22.08.1969	1181/1969	Sale Deed executed by Samikannu Maistry in favour of Sundara Maistry	Photocopy
2.	26.05.1970	620/1970	Hibba alias Gift Settlement Deed executed by Abdul Hameed in favour of Khader Bee W/o.Abdul Majid	Photocopy
3.	22.09.1975	1534/1975	Sale Deed executed by 1) Kalappa Chetty, 2)Perumal Chetty & 3)Vazhmuni Chetty in favour of Neelavathi W/o.Sundara Maistry	Photocopy



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4.	02.11.1982	1836/1982	Sale Deed executed by Samikannu Maistry in favour of Manicka Chettiar	Photocopy
5.	01.04.1993		Kist Receipt No.556307 issued to T.A.Abdul Hameed for fasli 1402	Photocopy
6.	29.01.1994		Kist Receipt No.580125 issued to T.A.Abdul Hameed for fasli 1403	Photocopy
7.			Enquiry Notice issued by Spl. Tahsildar (Natham Land Tax Scheme), Tindivanam for Survey No.246/1C to Adbul Sameed S/o.Abdul Majid	Photocopy
8.	31.07.1996		Thoraya Patta issued by Spl. Tahsildar (Natham Land Tax Scheme), Tindivanam for Survey No.246/1C to Abdul Sameed S/o.Abdul Majid	Photocopy
9.	23.08.2000	1338/2000	Sale Deed executed by 1)Neelavathi Ammal W/o Sundara Maistry, 2)Raghu S/o. Sundara Maistry for himself and for his Minor sons 1)R.Senthil Murugan, 2)Gurumoorthy, 3)Vinayagan & 4)Aiyappan in favour of T.A.Abdul Hameed	Photocopy
10.	10.09.2001	1438/2001	Sale Deed executed by Manicka Chettiar in favour of T.A.Abdul Hameed	Photocopy
11.			Patta No.13 issued to Abdul Hameed S/o.Abdul Majid	Photocopy
12.	23.12.2001	R.T.R./ 302/2001-2	Proceedings of the Scheme Zonal Officer, Patta Pass Book Scheme, Tindivanam – Zone 5 for change of Patta in the name of Abdul Hameed for <u>Survey No.</u> <u>Extent in Hectares</u> 150/10 0.29.5 150/14 0.27.0 150/15 0.28.0	Photocopy



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13.	18.05.2011	18.05.2011	Settlement Deed executed by T.A.Abdul Hameed in favour of the Petitioner T.A.H.Jaffar Ali	Photocopy
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8.In the counter affidavits filed in the said applications, it was submitted that these documents were very much available and kept in the father's house and the same were taken by the appellant / first defendant without the consent of the others. The settlement deed was a created one. It is submitted that a criminal case has already been filed against the first defendant and is pending in Crime No.469 of 2022 for creating forged no objection certification in the name of the Taluk Tahsildar and hence, the applications are opposed.

9.The learned counsel for the appellant / first defendant mainly would submit that the trial court has non suited the defendants mainly on the ground that the settlement deed dated 18.05.2011 was not produced. According to the appellant, the entire suit properties were purchased in the name of the father out of the income of the first defendant. Therefore, the father of the first defendant has executed the settlement deed and therefore, he was in possession and enjoyment of the suit properties. It was further contended that the first defendant has paid the necessary taxes in respect of the suit properties. Therefore, if the additional documents are allowed to file and if the same are marked and an



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opportunity is given to the parties, the first defendant can establish his case. The learned counsel would further submit that as per the Mohammedan Law, when the gift was accepted and the possession has also been taken, it is considered that he is in occupation of the suit properties and therefore, the trial court is not right in decreeing the suit in favour of the plaintiff.

10.The learned counsel for the plaintiff/first respondent herein would submit that the so-called additional documents now sought to be filed are only photocopies. The alleged settlement deed dated 18.05.2011 though pleaded in the written statement, in the chief examination, the first defendant had never stated anything about the same. It was contended that only the photocopies were filed by the first defendant and that the originals have not seen the light of the day. That apart, merely because some kist receipts were filed that the kist has been paid by one of the co-owners, the same is not the determinant factor to prove the alleged gift. It is further contended by the learned counsel for the plaintiff that if really these documents were in possession of the first defendant, the same should have been filed at the time of trial itself. The first defendant, had in fact, admitted that all those documents were in his possession and if so, there was no reason as to why the first defendant has not filed those



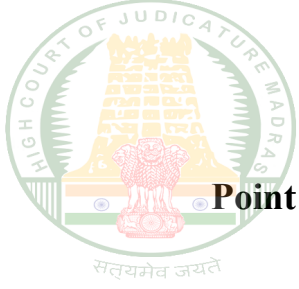
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documents during trial. Therefore, as a matter of right, those documents cannot be received as additional documents at the appellate stage. It is further contended that the suit properties are absolute properties of their father. The specific stand taken by the first defendant / appellant was that he has purchased the property in the name of his father and therefore, he has elected the plea of benami. Once he has elected the plea of benami before the trial court, now the first defendant cannot rely upon the inconsistent plea and cannot seek for permission to receive those documents as additional documents. Hence, the learned counsel for the plaintiff / first respondent opposed those two applications and prayed for dismissal of the same.

11. In the light of the submissions made, the points that arise for consideration in this appeal are as follows:

- (i) Whether additional documents now sought to be filed are admissible and relevant for disposal of the case on hand?
- (ii) Whether the parties are entitled to respective shares in the suit properties left by the father?
- (iii) To what other relief the parties are entitled to?

**Point No.(i):**

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12.The appellant is the first defendant in the suit. The suit has been originally laid by his brother seeking for partition of suit properties held by their father one Abdul Hameed. The relationship between the parties in the suit is not in dispute. It is the case of the plaintiff that the father Abdul Hameed died intestate leaving behind the plaintiff and defendants as his legal heirs. Therefore, the plaintiff is entitled to 2/8th share. The first defendant has taken a defence to the effect that the entire property was purchased in the name of his father out of the income derived by the first defendant from the job in the foreign country and therefore, the plea of benami was taken. That apart, another plea was also taken that his father had executed a settlement deed dated 18.05.2011. Therefore, he took possession of the property and he is paying the taxes in respect of the properties.

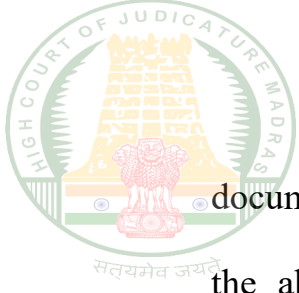
13.Having taken such inconsistent plea in the written statement, in the evidence, he has proceeded as if the first item of the property was gifted in the name of the father by his mother and other items of properties were purchased by Abdul Hameed out of the consideration paid by the first defendant. In nutshell, it is the stand of the first defendant that the suit properties were purchased in the name of his father



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as benami. Further, D.W.1 has also stated that the father himself has partitioned the suit properties in the year 1999 and the shares of the plaintiff and other defendants were given. Though in the written statement, the inconsistent plea of unregistered settlement deed dated 18.05.2011 has been pleaded, in the chief examination, he has never whispered anything about the so-called unregistered document of settlement deed dated 18.05.2011. In the cross examination, he has taken a stand that though his father died on 29.10.2011, he has settled the property in his favour, but he has never whispered about the so-called settlement deed dated 18.05.2011. Therefore, having elected the plea of benami and previous partition, he has not projected the settlement deed dated 18.05.2011 during his evidence in the chief and also in the cross examination.

14.That being the position, now the settlement deed dated 18.05.2011, i.e., the so-called unregistered settlement deed said to have been left by the father was sought to be projected in the appeal at the appellate stage. It is relevant to note that though the first defendant / appellant has taken an inconsistent plea about the existing settlement deed dated 18.05.2011, there was no reason as to why has he has not filed those documents before the trial court during trial when the so-called



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documents are very much available with the first defendant. Therefore, in the absence of explanation explaining the exercise of due diligence during trial and despite such exercise of due diligence, such documents were not within his knowledge or could not be produced after the exercise of due diligence at the time of trial, as a matter of right, those documents cannot be filed in the appellate stage. According to the first defendant / appellant, those documents were given by the father after the execution of the settlement deed. Such being the position, nothing has prevented the first defendant to produce those documents before the trial court. It is not the case of the appellant / first defendant that those documents were not within his knowledge or could not be produced after due diligence before the trial court. Therefore, without establishing due diligence aspect and further the aspect that documents were not within his knowledge and therefore, he could not produce the same before the trial court after exercising due diligence, as a matter of right, at the appellate stage, such additional documents cannot be received.

15.Further, it is to be noted that the court may admit additional documents if the court requires any document which enables the court to pronounce the judgment and for any other substantial cause, the court may allow such documents. But on perusal of those documents which are



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sought to be filed as additional documents, it is seen that they are photocopies of the documents. The documents are sale deeds, gift settlement deeds, kist receipts, etc., The loss of originals were never accounted for. If the originals are available, there was no reason as to why he has not filed the same before this court. Therefore, the very filing of photocopies without accounting for loss of original cannot be admitted. In any event, it is not the case of the appellants that these documents were not in his possession and that he had no knowledge about those documents and despite due diligence and search, he was not able to produce those documents at the time of trial and that those documents came into his possession at a later point of time. Such being the position, as a matter of right, these documents cannot be used. Further, even assuming that the originals are available, these documents sought to be filed are in no way relevant to prove the case of the first defendant for the simple reason that having taken two different pleas, one benami transaction and another settlement deed, in the evidence he has given up the plea of settlement, whereas he has projected the case as if the entire property was purchased by him in the name of his father. Having elected one plea, the first defendant cannot be allowed to take up inconsistent plea in the appellate stage. For that reason also, we are of the

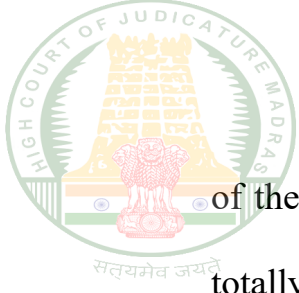


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view that the additional documents filed at this stage and that too photocopies of the documents cannot be permitted to file as additional documents. Hence, the applications filed in this regard, namely C.M.P.Nos.5316 of 2019 and 13053 of 2024 stand dismissed.

Point Nos.(ii) and (iii):

16.As stated above, the relationship between the parties are not in dispute and the suit properties are admittedly in the name of the father Abdul Hameed and he died intestate in the year 2011 has also been admitted by first defendant himself. It is the contention that except the first item, the other item of properties were purchased by the father out of the income of the first defendant. It is relevant to note that the plea of benami cannot be pressed into service because it is clearly prohibited as per section 3 of the Prohibition of Benami Property Transactions Act, 1988. Before the amendment of the said Prohibition of Benami Property Transactions Act, 1988, the provision says, no person shall enter into any benami transaction, though sub clause (2) of section 3 permits 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. Therefore, the purchase of the property in the name



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of the father and other members, except wife and unmarried daughter, is totally prohibited under section 3 of the Benami Transactions (Prohibition) Act, 1988. Section 4 of the Act prohibits any claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property. Similarly, no defence based on any right in respect of any property held benami is also permissible under sub clause (2) of section 4 of the Act. Therefore, the plea of Benami set up by the first defendant / appellant has no legs to stand and the plea of first defendant has to fail with regard to his claim of absolute right over the suit properties.

17. In the chief examination also, he has never pleaded about the so-called settlement and he has relied on the kist receipts for fasli year 1421 Ex.B.10 and Ex.B.12 for the year 2014-2015. It is relevant to note that these documents were obtained after the death of his father. Further, when the cross examination of D.W.1 is perused, it is seen that he has taken a stand that the property has been sold to him by his father. This inconsistent stand of the first defendant militate against his own plea in the written statement. Further, the so-called unregistered settlement deed was also not spoken either in the chief examination or in the cross



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examination, particularly with regard to the date of settlement. Such being the position, having elected the plea of benami and failed, the first defendant cannot be permitted to rely on the other inconsistent plea at the appellate stage. The cross examination of D.W.1 shows that the plaintiff and defendants 3 to 5 also used to reside in the suit properties and his definite stand in the cross examination was that he has asserted his right only based on the sale executed by his father which is also contrary to the pleadings and further, he has also admitted that his mother has a share in his father's property. Therefore, from the above, it is clear that the property stood in the name of the father and the father died intestate and the so-called settlement deed has not been established and the inconsistent plea of benami was taken which has also failed and therefore, as the legal heirs of said Abdul Hameed, the plaintiff and defendants are certainly entitled to share as per the Mohammedan Law. The plaintiff and the first defendant being the sons, they are each entitled to 2/8th share and the other defendants are each entitled to 1/8th share in the suit properties. Therefore, point nos.(ii) and (iii) are answered.

18.In view of the above, we do not find any merit in the appeal filed by the first defendant / appellant. The appeal suit fails and the same is dismissed. The judgment and decree passed by the trial court granting



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preliminary decree of 2/8th share in favour of the plaintiff is confirmed. It is open to the first defendant / appellant and other defendants in the suit to pay necessary court fee in respect of their respective shares during the allotment of shares in the final decree proceedings. No costs. Consequently, the connected CMP No.5315 of 2019 is closed.

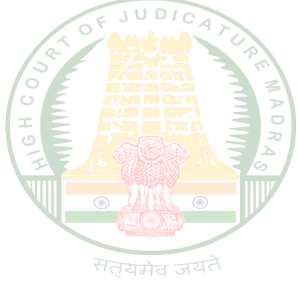
(N.S.K., J.) (M.J.R., J.)
15.07.2026

Index : Yes / No
Speaking Order /Non speaking order
Neutral Citation : Yes / No
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To

1.II Additional District and Sessions Court,
Tindivanam.

2.Section Officer,
VR Section,
Madras High Court,
Chennai.



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