THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

A.S.No. 1969 OF 1996

JUDGMENT:

The unsuccessful plaintiff in O.S.No. 139 of 1983 on the file of the Court of Subordinate Judge, Kovvur (for short, 'the trial Court'), preferred this appeal against the decree and judgment of the trial Court dated 26-04-1993, whereby and whereunder the relief of partition was negated.

2. The appellant was the plaintiff and the 1st respondent was the sole defendant before the trial Court. During pendency of the appeal, the 1st respondent died and respondent Nos. 2 to 6, subsequent purchasers, were brought on record *vide* orders in A.S.M.P.No. 2093 of 2006 dated 01-02-2010. Subsequently, the 5th respondent, who was impleaded, also died and his sole legal-heir is brought on record as the 7th respondent *vide* orders in A.S.M.P.No. 2395 of 2011 dated 20-12-2011.

3. The appellant filed suit against the 1st respondent, for partition of schedule property and for delivery of vacant possession of his share of property on partition, alleging that the appellant is natural son of Sri Lakamsani Venkatachalam. Lakamsani Venkatachalam and Uppuluri Veeranna were natural brothers. The said Lakamsani Venkatachalam went in adoption to Lakamsani family. The 1st respondent is wife of Uppuluri Veeranna. As the 1st respondent and Uppuluri Veeranna were not blessed with any child, they adopted the appellant on 31-07-1957 and registered adoption deed was executed on 11-10-1957 acknowledging adoption of the appellant. On 29-01-1959, Ac. 8.53 cents of land was purchased by Lakamsani Venkatachalam, natural father of the appellant, under an agreement of sale but sale deed was obtained on 17-02-1959 in the name of natural brothers of the appellant and Uppuluri Veeranna. Uppuluri Veeranna

executed settlement deed dated 21-02-1959 in favour of the appellant settling the said property. The appellant was also admitted in a school by Uppuluri Veeranna being adoptive father. Schedule land belongs to joint family of the appellant and Uppuluri Veeranna. Item No. 6 *i.e.* house property was purchased by Uppuluri Veeranna in the name of his wife *i.e.* the 1st respondent herein.

Uppuluri Veeranna died intestate on 22-07-1982 leaving behind the 1st respondent and the appellant to succeed his estate. The mother of Uppuluri Veeranna pre-deceased him.

As the appellant demanded the 1st respondent for partition of schedule property orally and as no purpose was served, the appellant got issued notice to the 1st respondent and the same was replied by the 1st respondent. In the said reply, the 1st respondent contended that there was already partition between the appellant and Uppuluri Veeranna on 28-07-1974; in the said partition, item Nos. 1 to 5 of schedule property were allotted to the share of Uppuluri Veeranna; during his lifetime, Uppuluri Veeranna, in sound and disposing state of mind, executed registered will dated 04-07-1979 bequeathing his share of property in favour of the 1st respondent and died on 22-07-1982 and, as such, the 1st respondent alone became entitled to claim entire estate of the deceased Uppuluri Veeranna as legatee under the will. Thereby, the 1st respondent denied right of the appellant to claim share while pleading partition of property between the appellant and Uppuluri Veeranna during his lifetime. Hence, the suit.

4. The 1st respondent filed written statement admitting the relationship between her, Lakamsani Venkatachalam, Uppuluri Veeranna and the appellant while denying other material allegations of the plaint *inter alia* contending that in the year 1958, Lakamsani Venkatachalam and Uppuluri

Veeranna purchased a house in insolvency proceedings and sale deed was obtained in the name of Venkatachalam. Uppuluri Veeranna used to live in the said house. The 1st respondent was given two acres of land by her parents towards Pasupu Kunkuma. By sale of the property given to the 1st respondent as Pasupu Kunkuma, she purchased land in the year 1968.

The appellant demanded for partition of the property but item Nos. 1 to 5 of schedule property were allotted to the share of Uppuluri Veeranna and 1/3rd of Ac. 8.53 cents equivalent to Ac. 2.84 cents of land was allotted to the share of the appellant and the house property was given to the appellant. After partition, Uppuluri Veeranna shifted to item No. 6 of schedule property, lived during his lifetime along with the 1st respondent and, after the death of Uppuluri Veeranna, the 1st respondent alone is continuing in possession and enjoyment of the same. Thus, the partition dated 28-07-1974 is binding on the appellant and, thereby, the suit is not maintainable.

Uppuluri Veeranna during his lifetime, in sound and disposing state of mind, executed will dated 04-07-1979 bequeathing his entire estate to the 1st respondent and died on 22-07-1982. By virtue of will, the 1st respondent succeeded the entire estate of Veeranna as legatee under testamentary disposition. Thus, the 1st respondent alone is the owner of item Nos. 1 to 5 of schedule property as legatee under the will and item No. 6 of schedule property is her separate property. Therefore, the appellant has no right to seek any share in the property and prayed to dismiss the suit.

6. Basing on the above pleadings, the trial Court framed the following issues:

Issues:

1. *Whether the plaintiff is entitled for partition of the plaint schedule property and separate possession of $3/4^{th}$ share in the plaint schedule property?*

2. *Whether item No. 6 of the plaint schedule property was purchased by late Veeranna in the name of his wife defendant-benami for the benefit of the family?*

3. *Whether there was partition between the plaintiff and late Veeranna on 28-07-1974 and if so, whether it is void and does not bind the plaintiff and so the suit is not maintainable?*

4. *Whether late Veeranna executed a registered will dated 04-07-1979 bequeathing the property to the defendant?*

5. *Whether the plaintiff was born on 15-01-1957 and was a minor by July, 1974 or whether he was aged about six years by the date of his adoption in July, 1957?*

6. *Whether late Veeranna had debts? And whether the defendant, discharged the debt due to Andhra Bank?*

7. *Whether the defendant incurred Rs.4,000/- towards the obsequies of late Veeranna and about Rs.10,000/- towards medical expenses for Veeranna?*

8. *Whether the plaintiff had omitted to show the house and other landed property in his possession as items for partition and if so, whether the suit for partial partition is maintainable?*

9. *To what relief?*
(extracted)

7. During the course of trial, on behalf of the appellant, P.Ws.1 to 3 were examined and got marked Exs.A1 to A9 and Exs.X1 and X2. On behalf of the 1st respondent, D.Ws.1 to 6 were examined and got marked Exs.B1 to B26.

8. Upon hearing argument of both counsel and considering oral and documentary evidence, the trial Court, answering all the issues in favour of the 1st respondent and against the plaintiff, dismissed the suit.

9. Aggrieved by the decree and judgment, the appellant, being

unsuccessful before the trial Court, preferred the present appeal raising general grounds about failure of the trial Court to appreciate evidence and concentrated mostly on admissibility Ex.B26 so also its binding nature on the plaintiff on account of his legal disability to execute the same.

10. During the course of argument, learned counsel for the appellant, reiterating the grounds raised in the grounds of appeal, mainly contended that by the date of execution of Ex.B26, the appellant was minor and not competent to execute such document either accepting partition or relinquishing his share in the property. On this ground alone, Ex.B26 cannot be accepted and the claim of the appellant cannot be dismissed. If Ex.B26 is ignored from consideration, there is nothing to establish that there was partition between Uppuluri Veeranna and the appellant in 1974. Further, the other documents produced by the 1st respondent would at best show that Veeranna paid property tax to the authorities concerned but those documents are of no assistance to the 1st respondent to prove the partition pleaded by the 1st respondent. Finally, it is contended that the will allegedly executed by Veeranna in favour of the 1st respondent was not proved as mandated under Section 68 of the Indian Evidence Act, 1872 (for short, 'the Act of 1872'). If Ex.B5 will is disbelieved, the appellant is entitled to 3/4th share in the property by way of succession being coparcener but the trial Court did not appreciate the evidence regarding proof of Exs.B5 and B26 and committed an error. It is, therefore, requested to reappraise the entire evidence to come to an independent conclusion and pass a decree in favour of the appellant for partition of schedule property.

11. After impleading respondents 2 to 7, who are subsequent purchasers, notice was served on them but none put-up appearance on their behalf. Thus, no argument is advanced on their behalf in this appeal.

12. Considering the contentions of learned counsel for the appellant and perusing decree and judgment under challenge including oral and documentary evidence on record, the points that arise for consideration are as follows:

1. *Whether Ex.B26 is admissible in evidence, if so, whether the appellant relinquished his right in joint family property taking Ac. 2.84 cents of land?*

2. *Whether the will executed by Veeranna in favour of the 1st respondent is true, valid and genuine?*

3. *Whether item No. 6 of schedule property is separate property of the 1st respondent, if not, is the plaintiff entitled to claim share in item No. 6 of schedule property along with other items?*

13. **In Re. Point No. 1:**

The undisputed facts are that the 1st respondent is wife of Uppuluri Veeranna, Uppuluri Veeranna is natural brother of Lakamsani Venkatachalam and the appellant, natural son of Lakamsani Venkatachalam, was taken in adoption by Uppuluri Veeranna and the 1st respondent during their lifetime. Hindu undivided coparcenary possessed certain property including item Nos. 1 to 5 of schedule property and agricultural land in an extent of Ac. 2.84 cents and the dispute is with regard to item No. 6 of schedule property as it was allegedly acquired by the 1st respondent with the aid of Stridhana property whereas the appellant contended that item No. 6 of schedule property was purchased by Uppuluri Veeranna with the aid of joint family nucleus. Therefore, that would also form part of coparcenary property. The 1st respondent specifically disputed the claim of the appellant on the ground that there was partition between the appellant and Uppuluri Veeranna on 27-07-1974 and the same was reduced into writing on 28-07-1974. Therefore, the appellant ceased to be member of Hindu undivided coparcenary. It is further contended that during the lifetime of Uppuluri

Veeranna, due to disputes between the appellant and Uppuluri Veeranna, Uppuluri Veeranna executed Ex.B5 will bequeathing his share of property in favour of the 1st respondent. Thus, the 1st respondent became absolute owner of item Nos. 1 to 5 of schedule property. In view of the undisputed facts, the only question to be decided by this Court is separation of the appellant from Uppuluri Veeranna on 27-07-1974. The trial Court framed an issue with regard to partition pleaded by the 1st respondent *i.e.* issue No. 3 and answered the same in favour of the 1st respondent. The said finding is now under challenge on the ground that Ex.B26 is inadmissible in evidence and it is invalid due to the legal incapacity of the plaintiff to execute the same. Ex.B26 is memorandum of partition-cum-relinquishment deed executed on stamp worth of Rs.5/- on 28-07-1974 but the nomenclature of the document is mentioned as relinquishment deed and the recitals in the first page of Ex.B26 show that the appellant and Uppuluri Veeranna divided their properties earlier to execution of Ex.B26 but, due to intervention of well-wishers and elders, the same was reduced into writing and, according to the understanding, A schedule property, consisting of 5 items, was allotted to the share of Uppuluri Veeranna while allotting Ac. 2.84 cents to the appellant. Thereby, the appellant relinquished all his rights in the entire Hindu coparcenary property. Thus, from the recitals, it is clear that there was oral partition earlier to execution of Ex.B26 and the same was reduced into writing while accepting to relinquish all rights in the coparcenary, if any, by the appellant. The recitals clearly show that the appellant relinquished his right while receiving Ac. 2.84 cents of land towards his share in view of the earlier partition. Therefore, Ex.B26 is only a relinquishment deed while recording earlier partition.

14. Learned counsel for the appellant challenged the admissibility of Ex.B26 in evidence. If, for any reason, Ex.B26 is treated as memorandum of

partition recording earlier oral partition, it is not required to be registered or stamp duty is not required to be paid. If Ex.B26 is treated as release deed or relinquishment deed, it is not required to be registered but stamp duty is required to be paid under Article 46 to Schedule I-A (A.P. amendment) of the Indian Stamp Act, 1899 (for brevity, 'the Act of 1899'). Article 46 was introduced by amendment to Schedule I-A of the Act of 1899 by G.O.Ms.No. 2045 (Reg. I) dated 28-11-2005 with effect from 01-12-2005. Clause (A) to Article 46 was introduced by G.O.Ms.No. 1129, Rev. (Regn. I) Dept., dated 13-06-2005 but withdrawn by G.O.Ms.No. 1169, Rev. (Regn. I) Dept., dated 15-09-2010 to restore the original stamp duty of 3%. However, these two amendments to Schedule I-A of the Act of 1899, by introducing Article 46, have no application to the present facts of the case for the reason that Ex.B26 was executed long prior to these amendments. Even otherwise, when once the document is admitted in evidence under the provisions of the Act of 1899, the same cannot be questioned at any subsequent stage in view of bar under Section 36 of the Act of 1899. Therefore, question of inadmissibility of Ex.B26 in evidence on account of non-registration and non-payment of stamp duty does not arise.

15. One of the contentions of learned counsel for the appellant is that by the date of execution of Ex.B26 dated 28-07-1974, the appellant was minor and not competent to execute Ex.B26. As per the allegations made in the plaint, the appellant was born on 15-01-1957 and, by the date of execution of Ex.B26, he was minor. To substantiate his contention, the appellant himself was examined as P.W.1 and asserted that he was born on 15-01-1957. P.W.1 also got examined P.W.3 to prove that his date of birth, as per school register, was 15-01-1957 and got marked Exs.X1 and X2. Ex.X1 is relevant entry *i.e.* entry No. 1578 in school admission register. Ex.X2 is true copy of admission register from 1964 to 1967. P.W.3 A.Venkatarama Rao, Junior Assistant, Government High School, Kovvur, since 1956, produced

Ex.X2 showing that date of birth of Lakamsani Sambasiva Someswara Rao is 01-06-1955. The 1st defendant also got examined D.W.2 Oggu Asservadam, teacher in Subrahmanyeswara Hindu Aided Elementary School, Kovvur, since 1964, who testified about entry No. 1578 in Ex.X1. Even according to it, the appellant was born on 20-04-1955. In cross-examination, noting was elicited to prove that the appellant was born on 15-01-1957 whereas the evidence of P.W.3 coupled with Ex.X2 disclosed that Lakamsani Sambasiva Someswara Rao was born on 01-06-1955. Ex.A1 is registration extract of adoption deed dated 11-10-1957 but there was no reference of date of birth of the appellant. From the date of adoption, the appellant's surname is changed into Uppuluri. The entire evidence on record, more particularly the evidence of P.W.3 and D.W.2, is not in consonance with the plea of the appellant that he was born on 15-01-1957 and that too the name of the person, who was born on 01-06-1955, as per the evidence of P.W.3 is different from the name of the appellant. The appellant herein is Uppuluri Atchyuta Rama Rao but Sambasiva Someswara Rao is totally a different person. In the absence of proof that the appellant was born on 15-01-1957 as contended by the appellant, the evidence of D.W.2 coupled with Ex.X1 is to be accepted as Ex.X1 is maintained in ordinary course of its business by school and, in the absence of any evidence rebutting the entry in Ex.X1, this Court has no option except to believe that the appellant was born on 20-04-1955.

16. When the 1st respondent proved that the appellant was born on 20-04-1955 by examining D.W.2 and producing Ex.X1, by the date of execution of Ex.B26 dated 28-07-1974, the appellant attained the age of majority. Therefore, the legal disability pleaded by the appellant is incorrect. On this ground, Ex.B26 cannot be invalidated.

17. The appellant also got examined his natural father Lakamsani

Venkatachalam as P.W.2 to prove that there was partition but his evidence is of no assistance to establish the contention of the appellant since he is an interested witness as his son is going to get benefit out of the litigation. Hence, P.W.2 is not a credible witness and, on the strength of such evidence, it is difficult to disbelieve Ex.B26.

18. To substantiate her contention, the 1st respondent herself was examined as D.W.1 and supported her case in all respects including execution of Ex.B26. In the entire cross-examination, learned counsel for the appellant could elicit nothing to discredit or impeach the testimony of D.W.1 except suggesting the entire plea of the appellant in the plaint. Therefore, in the absence of eliciting anything, it is difficult to throw the evidence of D.W.1 overboard.

19. Besides her examining as D.W.1, the 1st respondent also got examined D.W.5 I.Subbarao to establish execution of Ex.B26. D.W.5 is native of Kovvur who had acquaintance with both the parties to the suit. The testimony of D.W.5 is consistent about execution of Ex.B26 in his presence and he signed as one of the attesters besides others. In cross-examination, learned counsel for the appellant could elicit that, in 1974, D.W.5 sold his land at Kovvur but expressed his inability about location of the land of Uppuluri Veeranna and details of the property. Under Ex.B26, Ac. 3.00 cents of land was given to the appellant by Veeranna but D.W.5 does not know anything contained in the said document. Taking advantage of the testimony of D.W.5, it is contended that D.W.5 was not the attester of the document. No doubt there is some inconsistency in the evidence about details of the property of Veeranna but undisputedly he was native of Kovvur, presently residing at some other place, and had acquaintance with all the parties to the suit. Attestation is nothing but witnessing signing on a document by executant or acknowledging signature of executant in the presence of

attester. Therefore, attester is not supposed to know contents of document and mere witnessing signing on document by executant itself is suffice to accept his presence and attestation of document. Hence, the facts whatever elicited in the cross-examination of D.W.5 are of no avail and they did not destroy the defence set up by the 1st respondent or improve the case of the appellant in any respect.

20. The appellant and the 1st respondent marked several documents before the trial Court and payment of land revenue to Government by individuals of joint family after the alleged partition is the strongest circumstance to believe that there was partition amongst the members of Hindu undivided coparcenary. Except producing registration extracts of the documents, the appellant produced no other document to prove their joint enjoyment. Moreover, the 1st respondent produced house tax receipts and property tax demand notices to establish that the residential house is being enjoyed by her in her own right from the beginning. If really the property is not the separate property of the 1st respondent, question of her payment of tax in her own name does not arise. The cumulative effect of both oral and documentary evidence is that the appellant got separated from Hindu undivided coparcenary and executed Ex.B26.

21. In view of my foregoing discussion, Ex.B26 is only a relinquishment or release deed-cum-memorandum of partition; even if it is treated as memorandum of partition, it is admissible in evidence and, apart from that, the appellant has no legal disability to execute Ex.B26 but the appellant challenged the validity of Ex.B26 only on the above grounds. However, those contentions would not stand to any legal scrutiny and the same are devoid of merits. Consequently, the finding of the trial Court is hereby confirmed holding that there was partition between Uppuluri Veeranna and the appellant and the appellant relinquished all his rights in Hindu undivided

coparcenary by executing Ex.B26. Accordingly, the point is answered in favour of the 1st respondent and against the appellant.

22. **In Re. Point No. 2:**

One of the major contentions of the 1st respondent is that during the lifetime of Veeranna in sound disposing state of mind executed Ex.B5 will in favour of the 1st respondent bequeathing his entire property allotted to his share in the partition. When Ex.B5 will is set up by the 1st respondent, the initial onus of proof is on the 1st respondent to establish execution of Ex.B5 will in sound disposing state of mind by Veeranna and dispel all the suspicious circumstances shrouded in execution of Ex.B5.

23. To substantiate her contention, the 1st respondent herself was examined as D.W.1 and testified in clear terms about sound state of mind of her husband Veeranna as on the date of execution of Ex.B5. Nothing has been elicited to rebut the testimony of D.W.1 or no suspicious circumstances in execution of Ex.B5 were put to the witness during cross-examination to disbelieve execution of Ex.B5. If any such suggestions were put to D.W.1 in cross-examination, she would have explained under what circumstances Uppuluri Veeranna executed Ex.B5 will. Curiously, the trial Court relied on postcard addressed by the appellant to Veeranna during his lifetime and concluded that addressing postcard, developing enmity with Veeranna, prompted Veeranna to execute Ex.B5 in favour of the 1st respondent. Ex.B4 is postcard addressed to Veeranna duly signed by the appellant. In the said postcard, the appellant stated that he would not come to Veeranna and demanded to execute document for the land purchased in the name of Veeranna by making serious allegations against him while demanding to vacate house *etc*.,. In evidence, Ex.B4 was confronted to P.W.1 but he denied the same. However, the trial Court believed Ex.B4 and, placing

reliance on it, accepted the reason for execution of Ex.B5. In cross-examination of D.W.1, no specific suggestion was put to her that Ex.B4 was not addressed to Veeranna during his lifetime. In the absence of eliciting anything to disprove Ex.B4, the trial Court rightly accepted addressing Ex.B4 to Veeranna. When the contents of Ex.B4 are glanced, any prudent man will come to a conclusion that there was bitter enmity between the appellant and Uppuluri Veeranna on account of purchase of property by the natural father of the appellant allegedly in the name of Uppuluri Veeranna. When the enmity went to the extent of demanding Veeranna to vacate house, justification to disinherit the appellant to the estate of Veeranna conferring benefit on the 1st respondent by Veeranna is acceptable. Thereby, there is strong reason for execution of Ex.B5 in favour of the 1st respondent by Uppuluri Veeranna. Ex.B5 will is required to be proved as mandated under Section 68 of the Act of 1872 by examining any one of the attesters since it is compulsorily attestable document.

24. The 1st respondent got examined D.W.3, scribe of Ex.B5, who was working as sanitary maistry in Kovvur Municipality by the date of his examination and who was a document writer before his employment. In examination in chief, D.W.3 clearly testified that he scribed Ex.B5 at Sub-Registrar's Office, it was presented for registration on the same day, Veeramma signed in his presence and Mukku Venkata Ramana and Maddipatla Koteswara Rao signed as attesters on Ex.B5. In cross-examination of D.W.3, except eliciting that D.W.3 does not know age of the person who instructed him to draft Ex.B5 and D.W.3 does not know whether Uppuluri Veeranna gave instructions to scribe Ex.B5 but they are of no use for the reason that he was only a document writer at Registrar's Office, he is not supposed to identify each and every person who approached him for scribing any document and even not supposed to know age of the person

who gave instructions. Curiously, D.W.3 admitted in the last sentence of his cross-examination that the attesters did not attest Ex.B5 in his presence. Taking advantage of this admission, it is contended that Ex.B5 is not duly attested by attesters and it is not valid. Attestation can be done at anywhere and it need not be in the presence of scribe. Mere acknowledgement of signature of the executant on Ex.B5 in the presence of the attesters and signing on the document as attesters are sufficient to constitute valid attestation under Section 3 of the Transfer of Property Act, 1882 (for brevity, 'the Act of 1882'). Therefore, mere failure to sign on Ex.B5 by the attesters in the presence of D.W.3 is inconsequential. On this ground, the document Ex.B5 cannot be disbelieved.

25. The evidence of D.W.4, one of the attesters of Ex.B5, is consistent about execution of Ex.B5 by Uppuluri Veeranna and attestation of Ex.B5 by D.W.4. In cross-examination, learned counsel for the appellant; could elicit particulars of both parties to the suit and acquisition of property from different sources; mostly concentrated on source of acquisition of property. The facts elicited in the cross-examination further proved previous partition-cum-release or relinquishment under Ex.B26 and shifting of Veeranna to his house after execution of Ex.B26. In the cross-examination itself, learned counsel for the appellant could elicit that Ex.B5 was drafted at Sub-Registrar's Office; his father Veeranna, D.W.1 and himself were present at the time of scribing Ex.B5; and, after registration, Veeranna was taken to Rajahmundry for medical aid. At best, this fact may prove that Veeranna was not in sound health condition and required medical treatment but mental condition of Veeranna was not questioned in the entire cross-examination of D.W.4 to reject Ex.B5. When Ex.B5 will is set up, the propounder is required to prove sound mental condition of the testator but not health condition. That apart, in view of bitter enmity between the appellant and Uppuluri Veeranna, possibility of bequeath in favour of his wife-R1 cannot be ruled out and

bequeath in favour of the 1st respondent is quite probable and natural to the circumstances of the case. Thereby, the 1st respondent proved execution of Ex.B5 will by Veeranna in sound disposing state of mind. The 1st respondent, being legatee under Ex.B5, succeeded the estate of the deceased Veeranna *i.e.* items 1 to 5 of schedule property which were allotted to him under Ex.B26. Therefore, the 1st respondent became owner of the property being legatee under testamentary disposition.

26. In view of my foregoing discussion, I find that Ex.B5 will was executed by Veeranna and, therefore, the 1st respondent became owner of items 1 to 5 of schedule property. Accordingly, the point is answered in favour of the 1st respondent and against the appellant.

27. **<u>In Re. Point 3:</u>**

The appellant claimed that item No. 6 of schedule property is acquired with the aid of joint family nucleus whereas the 1st respondent contended that it was acquired with the aid of her Stridhana property. Admittedly, item No. 6 of schedule property was registered in the name of the 1st respondent and the 1st respondent enjoying the property in her own right by paying property tax under Exs.B6 to B23 whereas the appellant's contention is that husband of the 1st respondent Uppuluri Veeranna himself purchased the property but obtained document in favour of the 1st respondent and it is a benami transaction. In fact, no plea of benami transaction was pleaded specifically in the plaint and no evidence is adduced to prove the requirements of a benami transaction. The trial Court framed an issue regarding benami transaction and disbelieved the plea of benami transaction pertaining to item No. 6 of schedule property. When the appellant is claiming that purchase of item No. 6 of schedule property is benami transaction, it is for him to prove the same by producing cogent and satisfactory evidence.

28. In ***Nand Kishore Mehra Vs. Sushila Mehra***[1]**,** the Apex Court held that

"When Section 3 (2) permits a person to enter into a benami transaction of purchase of property in the name of his wife or unmarried daughter, the question of punishing him under Section 3 (3) or the question of acquiring the property concerned under Section 5 can never arise. The same reason shall equally hold good for non-applicability of the provisions of sub-sections (1) and (2) of Section 4 in the matter of filing of the suit or taking up the defence. Further it cannot be held that such a person cannot enforce his rights in the property, the purchase whereof was permitted by Section 3 (2). Therefore, there is no valid reason to deny to a person, enforcement of his rights validly acquired even in the past by purchase of property in the name of his wife or unmarried daughter, by making applicable the prohibition contained in respect of filing of suits or taking up of defences imposed in respect of benami transactions in general by sub-sections (1) and (2) of Section 4 of the Act. But, it is clarified that a person cannot succeed in such suit or defence unless he proves that the property although purchased in the name of his wife or unmarried daughter, the same had not been purchased for the benefit of either the wife or the unmarried daughter, as the case may be, because of the statutory presumption contained in sub-section (2) of Section 3."

In view of the law declared by the Apex Court in the above judgment, plea of benami is available to claim right or defence. However, burden is upon such person, who is claiming such right, to prove that '***purchase in the name of wife or unmarried daughter is not intended to confer any benefit on the person in whose name document was obtained***'. In the present case, item No. 6 of schedule property was purchased much prior to the commencement of the Benami Transactions (Prohibition) Act, 1988 ('the Act of 1988' for brevity). Therefore, the provisions of the Act of 1988 have no application to the transactions covered by Exs.B16 to B19.

29. Learned counsel for the 1st respondent further contended that initial onus of proof is on the person who is asserting that the transaction is benami and, unless the appellant discharges his initial onus of proof, it will not shift to the 1st respondent to prove contra. Certain tests are laid down to determine

whether a transaction is benami transaction or not and, unless those tests are satisfied, purchase of item No. 6 of schedule property by Uppuluri Veeranna in the name of the 1st respondent cannot be treated as benami transactions and placed reliance on ***Valliammal (d) by L.Rs. Vs. Subramaniam and others***[2]. In the above judgment, the Supreme Court ruled that

> *"There is a presumption in law that the person who purchases the property is the owner of the same. This presumption can be displaced by successfully pleading and proving that the document was taken benami in the name of another person for some reason, and the person whose name appears in the document is not the real owner, but only a benami. Heavy burden lies on the person who pleads that the recorded owner is a benami-holder."*

The source from where the purchase money came and the motive why the property was purchased benami are by-far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another. It is well settled that intention of the parties is the essence of the benami transaction and the money must have been provided by the party invoking the doctrine of benami.

30. In ***Ramaiah Vs. Singaraiah***[3], this Court held that

> *"Each factor by itself may be decisive, but the cumulative effect or the totality of all the relevant and material factors should be the safe guide for determining the benami nature or otherwise of a transaction."*

31. In ***Lachu Reddy Vs. Venkamma***[4], this Court held that

> *"In a benami transaction, the intention of the parties is the essence of the transaction and the source of the sale price also plays a large part in the determination of the nature of the transaction."*

32. In ***Ramarao Vs. Srikrishna Murthi***[5], this Court laid down four tests to determine the nature of a transaction, they are as follows:

> *"1. Motive for taking the sale deed in the name of another.*
>
> *2. Custody of the sale deed and connected vouchers.*
>
> *3. Passing of consideration; and*

4. Possession of the property."

33. In ***Jaydayal Poddar (deceased) Vs. Mst. Bibi Hazra and others***[6], the Apex Court laid down certain tests to decide the nature of a transaction and ruled as follows:

> *"It is well settled that the burden of proving that a particular sale is benami and 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. The essence of a benami is the intention of the party or parties concerned; and not unoften such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs."*

In view of the law laid down by the Apex Court and this Court, while determining that the nature of a transaction is benami transaction, the Court has to apply the tests laid down in the above judgments. In the present facts of the case, the appellant though raised plea of benami, none of the tests laid down by this Court are proved by the appellant to accept his contention.

34. The 1st respondent contended that it was acquired with the aid of her Stridhana property. In her evidence, the 1st respondent specifically testified that she acquired the property with the aid of her Stridhana and produced documentary evidence. Ex.A6 is registration extract of sale deed in favour of the 1st respondent produced by the appellant himself. Source for payment of consideration under the original of Ex.A6 is Stridhana. In the entire cross-examination of D.W.1, nothing was elicited to disprove the source of income to acquire the property under the original of Ex.A6. Even otherwise, the

property was purchased by her husband Uppuluri Veeranna with intent to confer benefit on the 1st respondent and, therefore, it cannot be treated as benami transaction. In the entire evidence of P.W.1, nothing was stated that Ex.A6 is not intended to confer any benefit on the 1st respondent by Uppuluri Veeranna though it was allegedly purchased with the income of late Veeranna. Thereby, the appellant failed to prove that item No. 6 of schedule property was acquired with the aid of joint family nucleus or not intended to confer any benefit on the 1st respondent and, therefore, I find no evidence to disbelieve the contention of the 1st respondent that item No. 6 of schedule property is her Stridhana property. Hence, the finding of the trial Court is hereby confirmed. Accordingly, the point is held in favour of the 1st respondent and against the appellant.

35. In view of my foregoing discussion, I find that the appellant was severed from joint family and he was allotted Ac. 2.84 cents of land under Ex.B26. That apart, Uppuluri Veeranna, adoptive father of the appellant, executed Ex.B5 will bequeathing the property allotted to his share and other property to the 1st respondent and the 1st respondent later sold some of the items of the property to respondent Nos. 2 to 7, who came on record during pendency of the appeal, and, thereby, respondent Nos. 2 to 7 are *bona fide* purchasers for valuable consideration. Consequently, the appellant is not entitled to claim any share in the property and the trial Court rightly dismissed the suit. Even after reappraisal of entire material on record with reference to law, I find no ground warranting interference of this Court with the decree and judgment of the trial Court.

36. In view of my finding on point Nos. 1 to 3, I find no merits in the appeal and the appeal deserves to be dismissed.

37. In the result, the appeal is dismissed confirming the decree and judgment dated 26-04-1993 passed in O.S.No. 139 of 1983 on the file of the

Court of Subordinate Judge, Kovvur. Pending miscellaneous petitions, if any, in this appeal shall stand dismissed in consequence. No order as to costs.

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M.SATYANARAYANA MURTHY, J.

Date: 02nd September, 2015.

JSK

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[1] (1995) 4 SCC 572

[2] (2004) 7 SCC 233

[3] 1973 (2) APLJ 10 (SN)

[4] 1956 An.W.R.943

[5] AIR 1962 AP 226

[6] AIR 1974 SC 171