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The plaintiffs are the daughters of 1st defendant and their next friend Lankapothu Sarojini. The marriage between the 1st defendant and Lankapothu Sarojini was performed about 3½ years prior to filing of the suit and they lived happily for some time, and during their wedlock, they were blessed with two children, i.e., plaintiffs 1 and 2. They are the members of joint hindu undivided family by virtue of the A.P.Amendment to Section 29-A of the Hindu Succession Act. 4. Item Nos.1 to 6 and 8 of plaint-A schedule and plaint-E schedule fell to the share of 1st defendant in the partition of the joint family property along with his brothers Padmanabha Reddy and Satyanarayana Reddy alias Gopala Krishna Reddy, whereas item No.7 of the plaint-A schedule was purchased by the 1st defendant with the aid of joint family nucleus. Therefore, item No.7 is also form part of joint family estate. 5. It is alleged that at the time of marriage, father and brothers of said Sarojini promised to present Ac.2-00 of land and also presented Rs.10,000/- in cash and the same was handed over to the 1st defendant for improvement, but the same was not repaid. As father of Sarojini did not execute a gift deed as promised, the 1st defendant started harassing Sarojini and at the instigation of the 1st defendant, the said Sarojini sold the property to Kondamadugula Kaniki Reddy and handed over the amount to the 1st defendant for improvement, but there was no improvement in the marital relationship between the 1st defendant and Sarojini. Subsequently, the 1st defendant deserted Sarojini, despite mediation by the elders, the family ties were not restored. However, Sarojini remained at the house of her parents with a hope that the 1st defendant restores the family ties. While the matter stood thus, the 1st defendant with a view to defeat the legitimate right of the children, i.e., plaintiffs 1 and 2, started to discrete the property creating benami documents in favour of his kith and kin and to defraud the plaintiffs. In the said process, the 1st defendant executed a sale deed in favour of his brother, i.e., 2nd defendant, for part of item No.5 of the plaint-A schedule property on 08.04.1987 (Ex.A.2). He also executed another sale deed dated 20.03.1987 in favour of his sister, i.e., 3rd defendant conveying item No.3 of the plaint-A schedule property (Ex.A.3). Both sales are sham, nominal and collusive and not intended to act upon and created only with a malafide intention to deprive the plaintiffs’ legitimate share in the joint family property, and, thereby, those sales are not binding on the plaintiffs. The 1st defendant had no necessity to sell any items of the joint family property. However, he started acting adverse to the interest of the plaintiffs. 6. The 1st defendant also possessed Rs.60,000/- and not indebted to any one. The 1st defendant married one Kurra Subhashini, daughter of Appi Reddy of Chunduru and totally severed marital ties with Sarojini. 7. The agricultural land is fertile land, fit for raising betel garden and dry crops, yields income not less than Rs.10,000/- per year. The wetland yields 30 bags of paddy per crop and 5 to 6 bags of black gram worth Rs.5,000/- to Rs.6,000/- per acre. However, the amount realized from both wet and dry lands is being retained by the 1st defendant himself. As the 1st defendant acting adverse to the interest of the plaintiffs, they sought for a preliminary decree for partition of schedule property into three equal shares and to allot one share to plaintiffs 1 and 2 each. 8. Later, the plaint was amended and included B, C and D schedule property alleging that originally, the plaintiffs own some other property and being enjoyed by the 1st defendant and the members of the other joint family i.e., coparceners including the sister and that there was no partition deed though it is pleaded in paragraph No.4 of the plaint. Hence, all the items of plaint-A and E schedules are liable to be partitioned and prayed for passing preliminary decree. 9. The 1st defendant filed written statement admitting relationship between the plaintiffs and defendants and partition of the property among the brothers of the 1st defendant. While denying possessing plaint-A and E schedule property, the 1st defendant specifically contended that the joint family own and possessed Ac.4-00 of wetland, besides a residential house. At the time of partition of the joint family property, among the brothers of 1st defendant, their mother was also allotted Ac.1-25 cents in Sy.No.122/2 situated in Dandamudi village with absolute rights. The remaining property of the joint family was divided among the brothers and the youngest brother 1st defendant was given an extent of Ac.1-00 and the other property, i.e., residential house was divided into three shares and allotted a portion of the joint family house to the share of the 1st defendant. Except the above property, the joint family did not possess any property described in the schedules annexed to the plaint. 10. The 1st defendant denied payment of cash of Rs.10,000/- gifting Ac.2-00 of land, entrusting the amount of Rs.10,000/- to the 1st defendant by Sarojini and sale of Ac.2-00 of land and entrusting the said amount to 1st defendant by Sarojini, while, contending that the consideration realized from the sale of Ac.2-00 was deposited in the name of the brother of Sarojini in the bank and therefore, the 1st defendant has nothing to do with the amount paid towards Pasupu-Kunkuma to Sarojini and realized by Sarojini by sale of agricultural land. 11. The 1st defendant denied the alienations by entering into benami transactions to defeat the legitimate right of the plaintiffs. 12. The 1st defendant further asserted that he was allotted only Ac.1-00 of land and a portion of ancestral residential house along with other brothers in the partition. The 1st defendant acquired other property by gifts from his mother and grand-mother and thereby the other items of schedule is absolute property of the 1st defendant and not hindu undivided joint family property. 13. Item Nos.1 and 2 of plaint-A schedule do not relate to the 1st defendant, he is not in possession of the same. In item No.3 of the plaint-A schedule, the three brothers had only 50½ cents and the 1st defendant was allotted Ac.0-14 cents out of 50½ cents, which is in his possession. Item No.4 of plaint-A schedule property does not relate to the joint family of three brothers. Item No.5 of the plaint-A schedule does not also belong to the family of three brothers and it was purchased by the 1st defendant in the year 1975 and subsequently it was sold away to the 3rd defendant in 1987 and he is not in possession of the said item. Similarly item No.6 of the plaint-A schedule property, no doubt, belongs to the family of the three brothers and the 1st defendant had only Ac.0-26 cents and that portion was sold away in the year 1980 itself to the 2nd defendant and he is in possession of the same. Item No.7 of the plaint-A schedule property was not allotted to him in the partition and it was purchased by the 1st defendant in the year 1985 and its extent is Ac.1-31 cents. Similarly, item No.8 of the plaint-A schedule property is the family house of the 1st defendant and in the partition, a portion of the house in an extent of Ac.0-02½ cents was allotted to the share of this defendant and this defendant did not process any property shown in the plaint-B to E schedules. 14. It is contended that the 1st defendant had no necessity to create benami transactions, but he was in the habit of purchasing small extents of property by borrowing amount and later he used to sell the small items of property. The said sale of small items cannot be said to be a benami collusive or sham transactions. As such, the sale is in favour of defendant Nos.2 and 3 are valid and genuine, legally executed and they became the owners of the property covered by Exs.A.2 and A.3. The said transactions are not pertaining to share of property allotted to the 1st defendant in the partition of ancestral property. Therefore, the property covered by Exs.A.2 and A.3 is not the ancestral property or the property acquired with the aid of joint family nucleus. 15. The 1st defendant was allotted only Ac.1-00 of land and he was cultivating personally. However, on account of bad weather prevailing and indulging purchase of small extents of land and due to increase of expenses, nothing could be saved by him and acquired any property with the aid of joint family nucleus. The 1st defendant also incurred debts in the sale transactions shown in the annexures attached to the written statement. 16. The 1st defendant admitted about personal cultivation of the land allotted to him raising commercial crops investing huge amount. However, due to the seasonal conditions, he sustained huge loss some times even without realizing investment. Finally, it is contended that the plaintiffs are not entitled to the benefit of A.P.Amendment Act of 13 of 1986 of Section 29A of the Hindu Succession Act and that the plaintiffs are not entitled to claim even mesne profits and prayed to dismiss the suit. 17. The 2nd defendant filed written statement, almost reiterating the contentions raised by the 1st defendant with regard to allotment of property, Ac.1-00 of land and portion of residential ancestral house to the 1st defendant while contending that the 1st defendant had no occasion to enter into any benami transactions and the transactions with the 1st defendant are neither collusive nor sham or nominal, they are valid and binding on the plaintiffs and the 1st defendant sold the property comprised in Sy.No.186/1 situated in Dandamudi village of an extent of Ac.0-51½ cents of wetland for proper and valuable consideration and the plaintiffs are not entitled to question the same. The 1st defendant also sold an extent of Rs.0-26 cents in Sy.No.90 situated in Dandamudi village for Rs.3,640/- under contract of sale, delivered possession of the

same, since then the 2nd defendant is in exclusive possession and enjoyment of the same. The plaintiffs are not entitled to take advantage of failure of the 1st defendant to execute registered sale deed and prayed to dismiss the suit. 18. The 3rd defendant also filed written statement independently contending that the 1st defendant had two other brothers along with their father, while living jointly, the 1st defendant happened to purchase an extent of Ac.0-27 cents comprised in Sy.No.100/1A situated in Dandamudi village in the year 1975 and it is not part of ancestral property. Subsequently, in the year 1980, he sold the same to this defendant to purchase half an acre from Smt. Ganapa Seethamahalaxmi, and accordingly, he executed a registered sale deed. Since then, she is in possession and enjoyment of the property. This transaction is neither collusive, nominal nor benami and that it is legally executed document, binding on the plaintiffs. Therefore, no relief can be granted against this defendant for the property purchased by her and prayed to dismiss the suit against the 3rd defendant. 19. Based on the above pleadings, the trial Court framed the following issues: "1. Whether the plaintiffs are entitled to partition and separate possession as prayed for? 2. To what relief?" 20. During the course of trial, on behalf of the plaintiffs, P.Ws.1 to 4 were examined and marked Exs.A.1 to A.22; and on behalf of the defendants, D.Ws.1 to 3 were examined and no documents were marked. 21. Upon hearing both the counsel and considering oral and documentary evidence, the trial Court passed a preliminary decree for partition of Ac.0-51 cents in Sy.No.186/1, Ac.1-99 cents in Sy.No.185/1B, Ac.0-27 cents in Sy.No.100/1A, Ac.0-27 cents in Sy.No.90 and Ac.1-31 cents in Sy.Nos.166/2, 166/3 and 166/4 and for partition of residential house described as item No.8 of the plaint-A schedule with future mesne profits, while rejecting partition of the other property described in the schedule. 22. Aggrieved by the decree and judgment of the trial Court, all the three defendants filed the present appeal jointly on various grounds. The main contentions of the defendants (appellants) are that the trial Court erroneously passed a preliminary decree for partition without recording any finding that the partition is for the benefit of minors and that the trial Court also committed an error in passing a preliminary decree based on Ex.A.19 cultivation account. 23. It is further contended that the property in Sy.Nos.166/2, 166/3 and 166/4 under Ex.A.1 was not the ancestral property, but purchased by sale of Ac.0-27 cents in Sy.No.100/A under Ex.A.2 and 0-51½ cents in 180/1 under Ex.A.3, but the trial Court passed a decree for partition of the property covered by Exs.A.2 and A.3. Therefore, the property covered by Ex.A.1 was not purchased with the aid of joint family funds, but the trial Court did not consider this specific plea and erroneously passed a preliminary decree. 24. It is also contended that Ac.0-27 cents in Sy.No.90 was purchased by the mother of the 1st defendant under Ex.A.11 by sale of her gifted property. Similarly, a part of Ac.3-22 cents in Sy.No.185 was acquired by the Government for drainage and the remaining extent is Ac.2-95 cents, out of which, 0-32 cents under Ex.A.15, Ac.0-90 cents under Ex.A.13 were purchased by the mother of defendants in their favour and Ac.1-00 was gifted by paternal grand-father in favour of the defendants. As such, those items are the separate property of the 1st defendant and his brothers and it is not a part of joint hindu undivided family property, but the trial Court committed an error, and therefore, prays to dismiss the suit by setting aside the decree and judgment passed by the trial Court. 25. During the course of argument, the learned counsel for the defendants (appellants herein) almost reiterated the specific contentions about the source of purchase of property of Ac.3-22 cents under Exs.A.1 to A.3 by his mother in the names of the 1st defendant and his brothers. Strangely, the trial Court believed that the transactions covered by Exs.A.2 and A.3 are benami transactions, created for the purpose of defeating the rights of the plaintiffs without any basis. The pleadings and evidence is almost inconsistent to establish the nature of transactions covered by Exs.A.2 and A.3, but the trial Court on erroneous appreciation of evidence concluded that they are benami transactions. If really the evidence is appreciated with reference to the pleadings, the trial Court would not have come to such conclusion. When the plaintiffs asserting that the property was acquired with the aid of joint family nucleus, it is for the plaintiffs to establish that there is sufficient joint family nucleus to acquire the property, but the plaintiffs miserably failed to establish that the joint family possessed sufficient nucleus to acquire the property. Therefore, the question of discharging burden by the defendants to prove that the property covered by Exs.A.1 to A.3 is separate property of the 1st defendant does not arise. The trial Court on erroneous appreciation of fact and law, passed a preliminary decree in favour of the plaintiffs and committed an error and finally prayed to set aside the decree and judgment passed by the trial Court. 26. Per contra, the learned counsel for the respondents/plaintiffs while supporting the decree and judgment passed by the trial Court in all respects, while contending that the sale of property under Exs.A.2 and A.3 is only intended to defeat the legitimate claim of the plaintiffs in the property not otherwise. The conclusion arrived by the trial Court based on pleas and evidence available on record and the same does not call for interference after reappraisal with reference to the law and prayed to dismiss the appeal confirming the decree and judgment passed by the trial Court. 27. Considering rival contentions and perusing the oral and documentary evidence including the judgment and decree under challenge, the points that arise for consideration are as follows: "1. Whether the transactions covered by Exs.A.2 and A.3 are benami transactions or sham and nominal, intended to defeat the rights of the plaintiffs? If so, are the plaintiffs entitled to claim share each in the property covered by Exs.A.2 and A.3 ? 2. Whether the 1st defendant acquired the property covered by Exs.A.1 to A.3 with the aid of joint family nucleus? If so, is the property covered by Exs.A.1 to A.3 liable for partition into three shares and for allotment of one such share to the plaintiffs? 3. Whether the plaintiffs are entitled to claim 1/3rd share in an extent of Ac.0-51½ cents in Sy.No.186/1, Ac.1-99 cents in Sy.No.185/1B, Ac.0-27 cents in Sy.No.100/1A, Ac.0-27 cents in Sy.No.90 and Ac.1-31 cents in Sy.Nos.166/2, 166/3 and 166/4 and in the residential house which is described as item No.8 of plaint-A schedule property? If not, are the decree and judgment of the trial Court be sustained?" Point No.1: 28. It is the specific contention of the plaintiffs from the beginning that the 1st defendant and his brothers being the members of the hindu undivided joint family property own and possess several items of property and in the partition, plaint-A to E schedule property was allotted to the share of 1st defendant. In fact, there is lot of inconsistency in the pleadings. At one stage, the plaintiffs contended that there was partition among the brothers of 1st defendant. But at different stage, the plaintiffs pleaded that the property was not partitioned in paragraph No.8 of the plaint. In view of the inconsistency in the pleadings about the partition, it is for the plaintiffs to prove whether the joint family property was partitioned among the brothers of the 1st defendant or not, if partition was effected, what were the properties allotted to the share of the 1st defendant in the said partition. 29. In paragraph No.4 of the plaint, it is pleaded by the plaintiffs that item Nos.1 to 6 and 8 of the plaint-A schedule and plaint-E schedule properties were allotted to the share of the 1st defendant in the partition among the brothers of the 1st defendant. However, item No.7 of the plaint schedule was purchased by the 1st defendant with the aid of joint family nucleus. In paragraph No.8A of the plaint, it is averred that the plaint-B schedule was ancestral property purchased by grand-father and his predecessor and plaint-B schedule property is in possession of the joint family, by amending the plaint. It is further averred in the same paragraph that all the items of the property shown in the plaint-B schedule are being enjoyed by the 1st defendant and other joint family members jointly. Therefore, there is any amount of inconsistency in the pleadings. However, the trial Court believed that the joint family property of 1st defendant and his brothers was partitioned. This finding was not challenged by the defendants in this appeal raising any specific ground and even the plaintiffs having failed to obtain a decree in respect of other items did not prefer any appeal or cross-objections separately challenging the adverse findings recorded by the trial Court against the plaintiffs. Therefore, I myself refrain to decide the appeal before me with regard to the partition various extents of property with different survey numbers referred to above. 30. According to the plaintiffs, the 1st defendant sold plaint-D schedule property in Sy.No.186/5 of an extent of Ac.0-53 cents and Ac.1-01 cents of plaint-D schedule in Sy.No.186/5 under Ex.A.17 dated 01.04.1988, likewise, the brother of the defendant Nos.1 and 2 by name L.Satyanarayana Reddy alias Gopala Krishna Reddy purchased item No.2 of the plaint-D schedule under the original of Ex.A.18 on 18.09.1986, i.e., subsequent to the partition, as pleaded by the plaintiffs. Therefore, the items described in the plaint-D schedule property are not the joint family property available for partition. Ex.A.19 is the Village Revenue Account, i.e., No.3 Adangal, and, at best, it is useful to prove that L.Satyanarayana Reddy alias Gopala Krishna Reddy, brother of 1st and 2nd defendants, is enjoying Ac.0-96 cents in item No.1 of plaint-A schedule. Whereas, the 2nd defendant is enjoying the property covered by Sy.No.186/3, i.e., item No.2 of the plaint-A schedule. Defendant Nos.1 and 2 are also enjoying Ac.1-02 cents in Sy.No.186/1 and Ac.0-27 cents of Ac.2-99 cents in Sy.No.185/1B. Likewise, different persons are enjoying various items of the property. 31. The present dispute is only with regard to Exs.A.2 and A.3 sale deeds. Since the plaintiffs contended that the transaction covered by Exs.A.2 and A.3 are sham and nominal or benami transactions and the trial Court came to conclusion in paragraph No.11 of the judgment that the transactions covered by Exs.A.2 and A.3 came into existence subsequent to the dispute between the 1st defendant and his wife. Therefore, it can be said that those documents are executed nominally and they are not binding on the plaintiffs. The ultimate finding of the trial Court is that those transactions were nominal, not benami. In paragraph No.8 of the plaint, the specific plea of the plaintiffs is as follows: "Subsequently, the next friend of the plaintiff's mother came to know that the 1st defendant developed an intention to desert her and the plaintiffs and is trying to concoct benami documents in favour of his kith and kin in order to defraud the plaintiffs' legitimate share in the joint family property. the 1st defendant executed a benami sale deed in favour of his brother, i.e., second defendant relating to a portion of Item No.3 of the plaint ‘A’ schedule property dt.8-4-87. So also the 1st defendant executed another benami sale deed in favour of his sister, i.e., the third defendant dt.20-3-87 regarding item No.5 of plaint ‘A’ schedule. Both the above sale deeds are sham, nominal and collusive and are not intended to act upon and are created only with a malafide intention of depriving the plaintiffs’ legitimate share in the joint family properties and to reduce their share. The above said benami transactions are not binding on the plaintiffs………" 32. Thus, the pleas of the plaintiffs are totally inconsistent with one another for the reason that benami, nominal and sham transactions are distinct from one another. When adverting to the evidence of P.W.1, mother of the plaintiffs, in last three lines at page No.2, she testified as follows: "Thereafter we came to know that defendant alienated some land in favour of D2 and D3 without any consideration. D1 has no debts and on other hand he is having money with him. D1 alienated some land to D2 and D3 in order to diminish and defraud the shares that fall to my children. In spite of alienation those lands are in possession of D1. Thereafter D1 got second marriage with Subhashini the daughter of Bulli Appireddi of Chunduru village on 15-11-1987." 33. The pleadings in the plaint, though inconsistent and such pleadings have to be considered broadly and the Court cannot expect accuracy in the pleadings in the Mofusil Courts, and such pleadings have to be construed liberally and total pleadings have to be considered. 34. Though there is some inconsistency with regard to nature of transactions covered by Exs.A.2 and A.3, it is the obligation of the Courts to decide what meaning the pleading conveys about the transactions covered by Exs.A.2 and A.3. The word “benami transaction” is defined under Section 2(a) of the Benami Transactions (Prohibition) Act, 1988, as follows: "(a) “benami transaction” means any transaction in which property is transferred to one person for a consideration paid or provided by another person." 35. If the exact definition of “benami transaction” under Section 2(a) of the Benami Transactions (Prohibition Act, 1988 is applied to the present facts of the case, the transactions covered by Exs.A.2 and A.3 would not amount to “benami transaction” under any circumstances. To establish that a particular transaction is “benami transaction”, the Court has to take into consideration of several factors. The relationship between the parties, the motive for transaction, the source of the purchase price or consideration, as the case may be, the conduct of the parties and the surrounding circumstances. 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. The onus of proof of a benami transaction lies on the person who asserts the same. Here, it is not the case of the plaintiffs that the 1st defendant purchased the property paying sale consideration under Exs.A.2 and A.3 in the name of defendant Nos.2 and 3, the transaction covered by Exs.A.2 and A.3 cannot be said to be a “benami transaction” within the definition of Section 2(a) of the Benami Transactions (Prohibition) Act, 1988. Time and again, the Courts laid down certain guidelines to decide a particular transaction as benami transaction. 36. In Ramaiah Vs. Singaraiah, this Court held as follows: "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." In Lachu Reddy Vs. Venkamma, this Court held as follows: "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." In Ramarao Vs. Srikrishna Murthi, 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. Custody of the sale deed and connected vouchers. Passing of consideration; and Possession of the property." In Jaydayal Poddar (deceased) Vs. Mst. Bibi Hazra and others, 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 un-often 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." 37. 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. 38. If the tests laid down in the above judgments are applied to the present facts, the transaction covered by Exs.A.2 and A.3 cannot be construed as “benami transaction”. Even the trial Court did not arrive at such a conclusion that the transactions covered by Exs.A.2 and A.3 are benami transactions, it concluded that the transactions are only nominal transactions. The nominal transaction is totally a different concept. Even in case of nominal transactions, the burden is upon the person who is pleading that a transaction is nominal. The Apex Court in Meenakshi Mills Madurai vs. The Commissioner of Income Tax, Madras, pointed out the difference between benami and nominal transactions and ruled as follows: "The word “benami” is used to denote two classes of transactions which is differ from each other in their legal character and incidents. In one sense, it signifies a transaction which is real, as for example when A sells properties to B but the sale deed mentions X as the purchaser. Here the sale itself is genuine, but the real purchaser is B, X being his benamidar. That is the class of transactions which is usually termed as “benami”. But the word “benami” is also occasionally used, perhaps not quite accurately, to refer to a sham transaction as for example when A purports to sell his property to B without intending that his title should cease or pass to B. The fundamental difference between these two classes of transactions is that whereas in the former there is an operative transfer resulting in the vesting of title in the transferee, in the latter there is none such, the transferor continuing to retain the title notwithstanding the execution of the transfer deed. It is only in the former class of cases that it would be necessary, when a dispute arises as to whether the person named in the deed is the real transferee or B, to enquire into the question as to who paid the consideration for the transfer, X or B. But in the latter class of cases, when the question is whether the transfer is genuine or sham, the point for decision would be, not who paid the consideration but whether any consideration was paid." 39. While deciding whether the transaction is sham or nominal, in addition to the test as to whether any consideration was paid at all, the motive behind entering into such transaction, whether possession of property was delivered to the transferee and also the custody of the document, may be considered as relevant, as held by this Court in Pullayya vs. Guravayya. 40. In the present case, the intention of the 1st defendant is to reduce the share of the plaintiffs who are the children born to the 1st defendant and the next friend of the plaintiffs. It is manifest from the pleadings and evidence that the transactions covered by Exs.A.2 and A.3 were entered into with defendant Nos.1 and 2 only with a view to reduce the share of plaintiffs in the property. However, the trial Court did not draw any definition of benami transaction, sham transaction or nominal transaction, and without recording any finding that the transactions covered by Exs.A.2 and A.3 are not the benami transactions or even without recording any reasons to arrive at a conclusion that the transactions covered by Exs.A.2 and A.3 are the nominal transactions, recorded a finding that those two transactions are nominal and the reason for such conclusion is that those transactions were entered into after the disputes arose between the 1st defendant and the plaintiffs’ mother, who is the next friend of the plaintiffs. But that is not the real test to determine the nature of transaction as held by the Apex Court in Meenakshi Mills Madurai‘s case (5th supra). Even according to the judgment of our High Court in Pullayya’s case (6th supra), the real test is whether any consideration was passed or not under Exs.A.2 and A.3 is alone the consideration to determine whether the transaction is covered by Exs.A.2 and A.3 is nominal or sham. On a close analysis of the entire pleadings in the plaint, there is no specific pleading that no consideration was passed under Exs.A.2 and A.3 from the defendant Nos.2 and 3. However, in the examination in chief of P.W.1, she specifically asserted in the last three lines of page No.2 that no consideration was paid under Exs.A.2 and A.3 by defendant Nos.2 and 3 to defendant No.1. In the cross-examination, except suggesting that the transactions covered by Exs.A.2 and A.3 in favour of the defendant Nos.2 and 3 are genuine, nothing was suggested that the defendant Nos.2 and 3 paid consideration under Exs.A.2 and A.3. However, the defendant Nos.2 and 3 asserted that they are the purchasers for valuable consideration under Exs.A.2 and A.3. In the absence of any suggestion that Exs.A.2 and A.3 are supported by valuable consideration, it is difficult to vary or set aside the finding recorded by the trial Court with regard to nature of transaction covered by Exs.A.2 and A.3. 41. Yet another startling piece of evidence on record is that Ex.A.19, the adangal copy. As per Ex.A.19, the 1st defendant is in enjoyment of certain items of the property, more particularly, the property covered by Exs. A.2 and A.3. If really, the 1st defendant is not in enjoyment of the property and the transactions covered by the documents Exs.A.2 and A.3 are not nominal, the name of the purchasers, i.e., defendant Nos.2 and 3, would have been mentioned in the columns provided as enjoyer and owner. When their names were not mutated in the revenue records, it is a strong circumstance to believe that Exs.A.2 and A.3 are nominal and sham documents. 42. The main endeavour of the learned counsel for the plaintiffs is that the purchase of the property by the 1st defendant covered by Ex.A.1 was with the income derived from the property covered by Exs.A.2 and A.3. But refuting this contention, the learned counsel for the defendants would contend that the transactions covered by Exs.A.2 and A.3 were entered long prior to obtaining of Ex.A.1 and with the sale proceeds of the property covered by Exs.A.2 and A.3, the property covered by Ex.A.1 was purchased and drawn the attention of this Court to the recitals of the documents marked Exs.A.2 and A.3. No doubt, there was reference about prior agreement of sale for conveying the property. Strangely, no date and other details of prior agreement were mentioned in both Exs.A.2 and A.3. If really, there was prior agreement in writing, there must be some evidence on record to establish that there was an agreement of sale between defendant Nos.1 and 2 for sale of property covered by Ex.A.2 and the sale of property covered by Ex.A.1 is preceding to the date of obtaining Ex.A.3. In the absence of any material to establish that there was prior agreement, it is difficult to accept the contention that the property covered by Ex.A.1 was purchased with the sale proceeds of Exs.A.2 and A.3, since there is every possibility to create such document after starting litigation between the parties. Considering the totality of circumstances, more particularly, possession and enjoyment of the property, as evidenced under Ex.A.19 and failure to produce any material about prior agreement for sale of the property covered by Exs.A.2 and A.3, it can safely be concluded that the transactions covered by Exs.A.2 and A.3, i.e., conveying an extent of Ac.0-27 cents and Ac.0-51½ cents are only nominal. Added to that, if the property was sold under Exs.A.2 and A.3 to the defendant Nos.2 and 3, they would have paid land revenue to the Revenue Department for the land atleast from the date of purchase of the property after mutating both number-2 and number-3 adangals, failure to produce any iota of evidence to establish that they paid land revenue to the Government for the property covered by Exs.A.2 and A.3, is another strong circumstance to believe that the transactions covered by Exs.A.2 and A.3 are nominal and sham. 43. In view of my discussion and the circumstances mentioned above, the transactions covered by Exs.A.2 and A.3 are sham and nominal and not binding on the plaintiffs. The trial Court, of course, discussed about the nominal nature of the documents Exs.A.2 and A.3 but not assigning any legal reasoning. When I re-appreciated the proved facts with reference to the evidence and law laid down by the Courts, it is clear that the transactions covered by Exs.A.2 and A.3 are only nominal and sham transactions, and consequently, they are not binding on the plaintiffs. Accordingly, this point is answered in favour of the plaintiffs (respondents herein) and against the defendants (appellants herein). Point No.2: 44. The major contention of the plaintiffs is that the property covered by Exs.A.1 to A.3 was purchased with the joint family nucleus, but the defendants, while denying the same, would contend that with the sale proceeds paid under Exs.A.2 and A.3, the property covered by Ex.A.1 was purchased. To substantiate their contentions, both parties adduced evidence and even according to the material available on record, Ex.A.1 was obtained on 23.01.1985, whereas Exs.A.2 and A.3 were executed by the 1st defendant in favour of defendant Nos.2 and 3 respectively on 20.03.1987 and 08.04.1987. If the property under Ex.A.1 was purchased with the sale proceeds of Exs.A.2 and A.3, certainly, the transactions covered by Exs.A.2 and A.3 would have taken place prior to Ex.A.1, but there is a gap of more than two years between Ex.A.1 and Exs.A.2 & A.3. In such case, it is difficult to hold that the property covered by Ex.A.1 was purchased with the aid of sale proceeds covered by Exs.A.2 and A.3 and no satisfactory evidence was produced before this Court to establish that there was a prior agreement to Exs.A.2 and A.3 for sale of the property and payment of any consideration. The defendants, though raised several contentions with regard to source of income to acquire the property under Exs.A.1 to A.3, did not produce any scrap of paper to substantiate their contentions. 45. P.W.1, who is the next friend and mother of the plaintiffs, testified about the source of income to acquire the property covered by Ex.A.1. In the marathon cross-examination of P.W.1 by the learned counsel for the defendants, the learned counsel for the defendants could elicit nothing to prove that the property covered by Ex.A.1 was purchased with the aid of the sale proceeds covered by Exs.A.2 and A.3 except suggesting that the property covered by Ex.A.1 was purchased with the aid of sale proceeds Exs.A.2 and A.3 and getting denial of it. In fact, in the second line of cross-examination of P.W.1, she admitted that she had gone through the contents of Exs.A.4 to A.18 and they do not disclose that they were purchased with the income of joint family or with the aid of joint family nucleus. On this admission, the trial Court declined to grant share in the other items of the property. However, this was not challenged before the Court by filing cross-objections. Similarly, a suggestion was put to P.W.1 that the property covered by Ex.A.16 was purchased by the 1st defendant with the income derived from self-acquired property and got denial of it. 46. When the plaintiffs asserted that the joint family of the plaintiffs and 1st defendant possessed property and with the aid of joint family nucleus, the property covered by Exs.A.1 and A.16 was acquired, it is for them to establish that the joint family possessed sufficient nucleus to acquire the property covered by Exs.A.1 and A.16 as per the law. After discharging their initial onus of proof, it will shift on to the defendants to establish that there was no sufficient nucleus. In the present facts, the evidence of P.W.1 established that the joint family possessed sufficient nucleus and the 1st defendant also admitted about the allotment of property covered by Exs.A.2 and A.3 to his share in the partition besides other items of the property. On an overall consideration of material on record, more particularly, the recitals of Exs.A.2 and A.3, the trial Court concluded that the transaction covered by Exs.A.2 and A.3 are only nominal and sham transactions, but the property covered by Exs.A.1 and A.16 was acquired with the joint family nucleus. 47. The learned counsel for the defendants made an attempt to demonstrate that the joint family did not possess sufficient nucleus to acquire the property covered by Exs.A.1 and A.16 as the property covered by Exs.A.2 and A.3 is only small extent of Ac.0-27 cents and Ac.0-51½ cents. No doubt, the property allotted to the share of the 1st defendant is Ac.0-51½ cents covered by Ex.A.2 and Ac.0-27 cents covered by Ex.A.3, and at the same time, it is contended that the 1st defendant discharged some debts due to the bank. If really, the 1st defendant was indebted to bank and to discharge the said loan due to bank, he sold the property covered by Exs.A.2 and A.3, the question of self-acquisition of any property does not arise. On this count also, the case of the defendants cannot be accepted. 48. The 2nd defendant was examined as D.W.2, who is purchaser of the property covered by Ex.A.2. He admitted that the 1st defendant was allotted one acre of land and his other brother was allotted Ac.0-96 cents of land but purchased Ac.0-50 cents covered by a registered sale deed marked as Ex.A.2. Strangely, he made an admission that as the 1st defendant purchased the land, he sold the land to D.W.2. So the purchase of the land by the 1st defendant is anterior to sale of land under Ex.A.2 to the 2nd defendant. Even if this fact is taken into consideration, purchase of the land covered by Ex.A.1 is prior to the sale of land to the 2nd defendant. He further testified that the 3rd defendant also purchased Ac.0-27 cents in Ex.A.3 from the 1st defendant. In the cross-examination, D.W.2 admitted that the property covered by Exs.A.5, A.8, A.9 and A.16 are the ancestral properties, but the property covered by Exs.A.4 and A.6 is not ancestral property. In further cross-examination, D.W.2 admitted that the 1st defendant purchased Ac.1-50 cents. D.W.3 is an independent witness, from whom, mother of the 1st defendant purchased the property. On consideration of the evidence on record, it is clear that certain agricultural land was allotted to the share of the 1st defendant. According to the admissions of D.Ws.1 and 2, the 1st defendant had no independent source of income to acquire any property except the property that was allotted to his share in the partition among his brothers. The gift of any property by the mother is only a small extent and with the income from the gifted property, it is difficult for any ordinary prudent man to acquire such an extent of land. Thus, the defendants miserably failed to establish that the 1st defendant possessed independent source of income to acquire the property covered by Exs.A.1 and A.16 and whereas the property covered by Exs.A.5, A.6, A.8, A.9 is only ancestral property. Thus, the evidentiary admissions of D.Ws.1 and 2 are sufficient to believe that the joint family consisting of plaintiffs and 1st defendant possessed sufficient joint family nucleus to acquire the property covered by Exs.A.1 and A.16. 49. When the plaintiffs discharged initial onus of proof shifted the onus to the defendants that the joint family did not possess sufficient nucleus and when they failed to establish the same by producing cogent and satisfactory evidence, the trial Court has no option except to conclude that the property purchased by the 1st defendant is only with the aid of joint family nucleus in the absence of proof of possessing any independent source of income in the partition. Hence, the trial Court rightly believed the plea of the plaintiffs while disbelieving the plea set up by the defendants, even after discerning the entire material on record appreciating the evidence afresh with reference to the law laid down by this Court, I am of the view that the trial Court did commit no error in arriving at such conclusion. 50. Viewed from any angle, I find sufficient evidence on record to believe the plea of the plaintiffs that the property covered by Exs.A.1 and A.16 was acquired with the aid of joint family nucleus, and, therefore, there is no legal infirmity in the finding recorded by the trial Court warranting interference of this Court. Hence, I hold that the defendants acquired property with the aid of joint family nucleus and thereby, it forms part of joint family property. Accordingly, this point is held in favour of the plaintiffs (respondents herein) and against the defendants (appellants herein). Point No.3: 51. One of the main contentions of the plaintiffs is that though they are female children, they are coparceners by virtue of the A.P.Amendment to the Hindu Succession Act, 1956, by incorporating Section 29A of the Hindu Succession Act, and that too, the plaintiffs are unmarried minor daughters, they are entitled to claim share as coparceners. In view of my finding on point No.2 that an extent of Ac.0-51½ cents in Sy.No.186/1, Ac.1-99 cents in Sy.No.185/1B, Ac.0-27 cents in Sy.No.100/1A, Ac.0-27 cents in Sy.No.90 and Ac.1-31 cents in Sy.Nos.166/2, 166/3 and 166/4 and the residential house, which is described as item No.8 of plaint ‘A’ schedule property, are the joint family property and acquired with the aid of joint family nucleus. Therefore, the plaintiffs being the coparceners, in view of the A.P.Amendment Act to Hindu Succession Act, are entitled to the relief of partition being the coparceners. The trial Court rightly accepted the contention of the plaintiffs while rejecting the contention of the defendants. Hence, no legal infirmity was found in the finding of the trial Court warranting interference of this Court. Hence, I hold that the plaintiffs are entitled to equal shares along with the 1st defendant in the items referred above. Accordingly, this point is answered in favour of the plaintiffs (respondents herein) and against the defendants (appellants herein). 52. One of the contentions raised by the defendants is that the defendants were never in possession and enjoyment of the property and the learned counsel for the defendants drawn the attention of this Court to the recitals of Ex.A.19 adangal. No doubt, the plaintiffs claimed mesne profits as part of the reliefs, though the plaintiffs asserted that they are in joint possession of the property along with the 1st defendant. Claim of mesne profits itself indicates that the 1st defendant is in unlawful possession, and that apart, the 1st defendant executed Exs.A.2 and A.3 conveying Ac.0-51½ cents under Ex.A.2 and Ac.0-27 cents under Ex.A.3 to the defendant Nos.2 and 3. When the property was allegedly sold by executing registered document, there is a transfer of title to the purchaser, i.e., defendant Nos.2 and 3 by the 1st defendant. Even otherwise, the "mesne profits" can be claimed against a person, who is in wrongful possession of the property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession. When the plaintiffs claimed mesne profits, the defendant Nos.1 to 3 are deemed to be in wrongful possession of immovable property, and, consequently, the Court fee payable on the plaint is under Section 34(1) and not under Section 34(2) of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956. As per Section 11(3) of the said Act, the Court of Appeal, under this clause, can exercise even if the appeal relates only to a part of the subject-matter of the suit and if the Court of Appeal decides that the fee paid in the lower Court is not sufficient, the Court shall require the party liable to pay the deficit fee within such time as may be fixed by it. 53. By exercising power under Section 11 of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956, I find that it is a fit case to direct the plaintiffs to pay ad volerem Court fee under Section 34(1) of the said Act. Therefore, the plaintiffs (respondents herein) are directed to pay Court fee under Section 34(1) of the Act, within 30 days from the date of judgment before the trial Court. The defendants being the appellants are also liable to pay same Court Fee to the credit of the appeal in this Court, on ad volerem basis under Section 34 (1) of A.P.C.F & S.V.Act, within one month. 54. In the result, the appeal is dismissed confirming the decree and judgment dated 16.07.1996 passed by the trial Court in O.S.No.10 of 1988. The plaintiffs (respondents herein) and defendants (appellants herein) are directed to pay ad volerem Court fee under Section 34(1) of the Andhra Pradesh Court Fees and Suits Valuation Act, 1956 within one month from the date of this Judgment. There shall be no order as to costs. 55. As a sequel thereto, miscellaneous petitions, if any pending in these appeals, shall stand closed. ______________________________ M.SATYANARAYANA MURTHY, J. Date: 01-06-2015 siva Copy to: The District Collector (for recovery of C.F., if not paid to the credit of suit and appeal as directed, to proceed under Revenue Recovery Act.) 1973 (2) APLJ 10 (SN) 1956 An.W.R.943 AIR 1962 AP 226 AIR 1974 SC 171 AIR 1957 SC 49 1969(1) An.W.R. 209 PAGE PAGE 30

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