IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STAE OF ANDHRA PRADESH

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CIVIL MISCELLANEOUS APPEAL Nos.362 AND 400 OF 2015

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Between:

Kilari Munaswamy Naidu .. Appellant

AND

Kilari Malleswari & 4 others .. Respondents

ORDER PRONOUNCED ON : 13-10-2015.

HON'BLE SRI JUSTICE R. SUBHASH REDDY ________________________

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA ____________________

1. Whether Reporters of Local newpapers

may be allowed to see the Judgments?

2. Whether the copies of judgment may be

Marked to Law Reporters/Journals.

3. Whether Their ladyship/Lordship wish

to see the fair copy of the Judgment?

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL Nos. 362 AND 400 OF 2015

COMMON JUDGMENT: (Per Hon'ble Sri Justice A. Shankar Narayana)

Since subject matter of both these appeals is one and the same and the parties are of a family *inter se,* they are being disposed of by this common judgment.

2. Both the Civil Miscellaneous Appeals are preferred under Order - XLIII Rule - 1 of the Code of Civil Procedure, 1908 (for short 'CPC').

3. Former appeal is preferred by the petitioner - plaintiff in I.A. No.96 of 2014 in O.S. No.93 of 2014 on the file of the learned X Additional District Judge, Tirupati, aggrieved by the refusal to grant temporary injunction against the respondents - defendants from interfering with his possession and enjoyment of the petition schedule

properties.

4 . Latter appeal is preferred by respondent Nos.1 and 3 - defendant Nos.1 and 3 (wife and daughter, respectively, of the petitioner - plaintiff), in I.A. No.97 of 2014 in the very same suit, aggrieved by the order, dated 23-04-2015, granting injunction against them from alienating the petition schedule properties.

5. Both the interlocutory applications are filed by the plaintiff in the suit against his wife, son, daughter, son-in-law and State Bank of Hyderabad, respectively, by arraying them as respondent Nos.1 to 5 (defendant Nos.1 to 5) respectively.

6 . For the sake of convenience, the parties are hereinafter referred to as they arrayed in the suit i.e., O.S. No.93 of 2014.

7. Except to the extent of distinct reliefs claimed in I.A. Nos.96 and 97 of 2014, the pleas put forth by the respective parties are identical, and, therefore, it would be suffice, if pleas put forth by the parties in I.A. No.96 of 2014 are referred to for the purpose of disposal of these CMAs.

8. Initially, the plaintiff refers to partition among himself and his brothers of their joint family properties, dated 28-05-1976, and the exchange deed, dated 04-04-1977, stating that he has been managing the said properties and thereby looking after welfare of the family concerning himself and defendant Nos.1 to 3. His case is that in the first instance, defendant No.2 was sent to Newzealand for higher studies and he supported him in all respects. Having finished his studies, defendant No.2 started granite business with the help of one Rama Rao, a granite mine owner at Ongole. Since the business

was lucrative and it generated lot of money, intending to settle down in India, acquired plaint schedule item Nos.1 and 2, which are agricultural lands, under two registered sale deeds, dated 27-01-2012, but they were taken in the name of defendant No.1. Even item No.3 of the plaint schedule which is a flat was also purchased with the efforts of himself and defendant No.2 under a registered sale deed, dated 30-11-2012, but the sale deed was taken in the name of defendant No.1.

9. Likewise, even item No.4 of the plaint schedule which is a residential building at Nethaji Road, was purchased under a registered sale deed, dated 10-03-2011, but the same was taken in the name of defendant No.1. According to the plaintiff, defendant No.1 has no source of income to acquire items 1 to 4 of the plaint schedule properties and out of trust and confidence, she being his wife and mother of defendant No.2 and that she would cooperate and protect the properties in their business, as they were at Newzealand, they are acquired for the benefit of himself and defendant No.2 constituting coparcenery. Concerning custody of the title deeds, plaintiff states that they were kept in the locker in his name hired from defendant No.5 on 08-11-2010. He later, for convenience sake, got added defendant No.1's name also for joint operation. He makes an allegation that in his absence, defendant No.1 has opened the locker and taken away valuables and records, on which, he lodged a complaint, dated 12-03-2013, with defendant No.5 raising protest, due to which, the locker is now under the custody of defendant No.5 and he intends to take steps to get open the locker under an inventory in accordance with law.

10. Plaintiff refers to a civil suit in O.S. No.162 of 2013 pending before the very same Court i.e., the Court below, which was instituted by defendant No.2 against defendant Nos.1 and 3 for enforcement of an agreement for conveying the properties mentioned therein. Thus, the plaintiff claims that defendant No.1 is ostensible owner and he is real owner and for his convenience, defendant No.1 lent her name.

11. He states that defendant No.1, at the instance of defendant Nos.3 and 4, anticipating his claim over the suit properties, stealthily executed a registered settlement, dated 25-04-2013, concerning item No.4 in favour of defendant No.3 projecting that the same is her personal property taking advantage of the sale deed standing in her name, though, she is not the real owner.

12. He states that he has lent the ground floor to one G. Janardhan Naidu and the first floor to K. Naveen Kumar and kept other portions vacant and they were paying rents at the rate of Rs.14,500/- and Rs.13,000/- respectively, and in his absence they used to tender rents to defendant No.1 also, but two months prior to institution of the suit, they started evading payment of rents on one pretext or the other. With respect to item Nos.1 and 2, which are agricultural lands, he nourished Mango Garden and Teakwood trees, but defendant Nos.1, 3 and 4 are intending to deprive him of both the items. Alleging that defendant Nos.1, 3 and 4 along with their followers, attempted to unjustly interfere with his possession
on 12-04-2014, which he could successfully resist with his men and since they proclaimed that they would dispossess him per force and occupy the plaint schedule properties, he filed the suit and both the applications for grant of injunctions to restrain defendant Nos.1, 3 and 4 from interfering with his possession, and from alienating the plaint schedule properties, respectively.

13. Defendant No.1 filed counter resisting the request in both the applications. While denying various allegations made in the petition affidavit and plaint, she states that at her marriage, her parents gave some properties as she being the only daughter to them and presented hundred (100) sovereigns of gold to her. According to her, she sold some of her gold ornaments and invested the sale proceeds for changing the Huller Unit of Rice Mill run by the petitioner to

a Modern Rice Mill with Sheller.

14. She states that herself and defendant No.3 invested $NZ 1,20,000-00 in the granite business started by defendant Nos.2 and 3 in the Newzealand in 2007-08 and defendant No.2 has not invested any amount. He was only working director by receiving salary and the plaintiff is nothing to do with the said business. While the said business was flourishing, defendant No.2 used to send profits to her share of profit to her account through the account of the plaintiff.

15. Concerning plaint schedule properties, she states that she purchased item Nos.1 and 2 on 27-01-2012 under two different registered sale deeds by paying consideration out of her own money and she purchased item No.3 on 30-11-2012 by paying her own money and item No.4 on 30-11-2012 with her own funds and, thus, all the petition schedule properties are her self-acquisitions and she has been in possession and enjoyment thereof as absolute owner. According to her, she has been managing item No.4 by leasing the portions to third parties by entering into written lease agreements and personally supervising the affairs of the said building till 25-04-2013 and she bequeathed the same in favour of defendant No.3. She even states that apart from the suit properties, she has purchased some properties in the name of the plaintiff nominally, but not for the benefit of the petition and states that she reserves her right to recover them by filing a separate suit.

16. Concerning the Will, dated 17-12-2012, executed by her in favour of defendant No.2 and his unborn children in respect of the plaint schedule properties, she states that the plaintiff and defendant No.2 conspired together in order to prevent her from bequeathing the property in favour of defendant No.3 and got it registered. She levels allegations that at the time of registering the said Will, defendant No.2

obtained her signatures on some blank papers and on some stamp papers under the guise of taking loans from financial institutions for business purpose.

17. She states that defendant No.2 failed to account for the amounts towards the investment of defendant No.3 in the granite business and postponing the same on one pretext or the other. Due to which, misunderstandings cropped up among the family and since the plaintiff and defendant No.2 are not willing to account for the amounts in the said business, she decided to make good the loss caused to defendant No.3 in the said business and bequeathed item No.4 of the plaint schedule property in her favour. She alleges that defendant No.2 with active collusion and connivance of the plaintiff, fabricated an agreement in O.S. No.162 of 2013 to knock away the properties standing on her name. She alleges that the plaintiff and defendant No.2 have secreted the profits and assets of the company by diverting them into some other companies to make wrongful gain for themselves. Having learnt the same, she went to Newzealand and detected the fraud played by them and initiated legal action against them as per the laws of the country.

18. Concerning item No.3, she states that in her absence, the plaintiff forcibly trespassed into the flat on 28-12-2013 at about 2-00 p.m. and taken away valuables, electronic goods and even stolen some of the documents in the said house.

19. Concerning item No.4, she states that she has been in absolute possession thereof and leased out the portions by entering into a written lease, dated 27-02-2012, and thereafter pursuant to the registered deed executed by her in favour of defendant No.3, a fresh agreement was entered into by G. Janardhan Naidu with her and tendering rents in the account of defendant No.3 by way of deposit.

Likewise, the other lessors also have been paying the rents to defendant No.3. Thus, defendant No.3 is in absolute possession of item No.4 of the suit schedule property since 25-04-2013.

20. She also states that after returning from Newzealand, in the month of March, 2014, she sold away item Nos.1 to 3 in favour of defendant No.3 under two (2) registered sale deeds, dated 28-03-2014, and since then, defendant No.3 has been in possession of item Nos.1 to 3 of the plaint schedule properties. Thus, according to her, plaintiff is neither owner nor possessor of the plaint schedule properties and since claim of the plaintiff is not *bona fide* and has approached the Court with unclean hands, sought to dismiss both the petitions.

21. Defendant No.3 is the daughter of the plaintiff and defendant No.1. While traversing the averments made in the affidavit filed by the plaintiff, defendant No.3 supports her mother's (defendant No.1) stand in bringing the gold and money from her parents' house at her marriage with the plaintiff, besides stating that the immovable properties i.e., an extent of Ac.0-98 cents given to defendant No.1 situated at Puttur is worth Rs.3.00 crores and the plaint schedule properties are self-acquisitions of defendant No.1. She also supports her mother's case stating that herself, her mother, defendant No.2, who is her brother, decided to start business in granite in Newzealand in 2007-08 under the name and style of Universal Stones (Granite) Limited by entering into a written agreement and for the said business herself and defendant No.1 have invested $NZ 1,20,000-00, in which, defendant No.2 has not invested any amount, but was only working as director by receiving salary and the plaintiff has nothing to do with the said business and he visited Newzealand as a dependant only.

She also states that when the business was flourishing, defendant No.2 was sending the profits to her account (defendant No.1) through the account of the plaintiff. Thus, she states that defendant No.1 was having enough money to acquire item Nos.1 to 4 of the plaint schedule and has been in possession of item No.4 till 25-04-2013, on which day, defendant No.1 bequeathed the same in her favour. Concerning execution of registered Will by defendant No.1 in favour of defendant No.2, she sails with defendant No.1 stating that it was executed out of force and pressure from the plaintiff and defendant No.2 besides obtaining the signatures of defendant No.1 on some stamp papers. She has also referred to O.S. No.162 of 2013 filed by defendant No.2 based on an agreement purported to have been executed by defendant No.1 only with a view to knock away the properties by fabricating the said agreement of sale. She too referred to the registration of crime against defendant No.1 and defendant No.4 under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and she also raised identical defence raised by defendant No.1, and sought to dismiss both the applications.

22. During enquiry, plaintiff exhibited Exs.P-1 to P-98 in I.A. No.96 of 2014 from which C.M.A. No.362 of 2015 arises, whereas, the contesting defendants marked Exs.R-1 to R-4 to substantiate their respective cases. The trial Court, on appraisal of documentary evidence, observing that Ex.R-1, the agreement between defendant Nos.1 to 3, would show investment made by defendant Nos.1 and 3 in the granite business at Newzealand, but none of the parties have filed income tax returns reflecting the enormous investments made in Newzealand nor did they show any returns or accounts of money flown into the business from Newzealand and also observing that even if the stand of the plaintiff is taken as true, defendant No.1 stands as a benami for defendant No.2, but not for the plaintiff and even if the plaintiff establishes that he was managing the schedule properties, the ultimate source of funds were not from the plaintiff, he fails to establish that he was original owner of the schedule property and thereby recorded finding that the plaintiff failed to establish *prima facie* case in his favour and the mere fact that the original title deeds are not filed by defendant No.1 not is sufficient to hold that defendant No.1 is not the title holder,

since even according to the admitted case of the parties, the locker, in which, title deeds are kept was jointly operated by both of them and since the plaintiff and defendant No.1 are husband and wife, the inconvenience caused by denying the injunction will be less than the inconvenience that would cause to the defendant in granting injunction and thereby dismissed the application in I.A. No.96 of 2014.

23. So far as I.A. No.97 of 2014 is concerned, in which, the plaintiff sought for grant of temporary injunction restraining the defendants from alienating the suit schedule properties, the trial Court having formulated the relevant point for consideration, referring to the business run by defendant Nos.1 to 3 at Newzealand and the incidental observations as recorded in the order in I.A. No.96 of 2014, however, observing that the title of the properties is disputed, but since the title holders are the family members and if alienations are made and third parties are impleaded into the *lis*, it would lead to multifariousness and would not be in the interest of the family, and, thereby, directed the defendants not to alienate the suit schedule properties pending disposal of the suit in the interest of justice.

24. The aforesaid orders are under challenge in the instant appeals.

25. In CMA No.362 of 2015, the plaintiff states that the learned trial Court's finding as to 'possession' is neither here nor there and somehow, overlooked the fact that defendant No.1 is only a name lender and such transactions are permissible under the Benami Transactions Prohibition Act. It is stated that when benami is pleaded, custody of the documents should come from the hands of the person pleading so and in the instant case, custody is not with defendant No.1 and she even does not know where exactly the documents have been located. It is stated that the trial Court never considered as to how the plaintiff's bank accounts were kept on being credited by the monies contributed by respondent No.2 to the plaintiff as well as

the contributions made by himself (plaintiff). It is stated that the trial Court recorded a wrong finding that the possession is not with the plaintiff. It is also stated that as many as hundred (100) documents are filed by the plaintiff, but they were not even considered. The trial Court having heard the matter on 23-04-2015, passed the order under challenge on the same day. It is stated that none of the parameters of Order XXXIX Rules 1 and 2 of CPC were considered and thus, the order suffers from several legal infirmities.

26. It is stated that Ex.R-1 agreement between defendant Nos.1 to 3 is a fabricated and forged photostat copy attested by a notary and despite notice given by the plaintiff to defendant No.1's advocate to cause production of the original of Ex.R-1, the same was not produced, which fact was ignored by the trial Court. It is stated that the trial Court went wrong in ignoring the fact that in view of the alienations made by defendant No.1 through Exs.P-10, P-46 and P-47 in favour of defendant No.3, she lost her alleged title and possession and in view of the fact that defendant No.3 also filed a suit in O.S. No.23 of 2014 seeking partition and allotment of 1/4th share in the plaint schedule properties including some other properties as
a member of the joint family, which, thus, would show that defendant No.3 has not acquired any alleged title and possession under the said registered sale deeds.

27. It is also stated that the Court below has not considered the effect of Exs.R-1, R-37 and R-38, since he is not a party to the said documents and the alleged company was liquidated under heavy loss and there is no iota of evidence to show that defendant No.1 got flow of money from the said company to purchase the plaint schedule properties. It is stated that the bank accounts under Exs.R-25 and
R-26 came into existence subsequent to his (plaintiff's) accounts under Exs.P-15, P-16 and P-17 and the money available in defendant No.1's account was owing to the fact that the said money

was transferred from the plaintiff's account to defendant No.1's account and prior thereto, there was no money in defendant No.1's account, which the Court below did not notice. Therefore, the plaintiff, contending that the order under challenge is unsustainable in law, sought to set aside the same.

28. Defendant Nos.1 and 3, who are appellants in CMA No.400 of 2015, in the grounds of appeal would state that the Court below ought to have seen that the plaintiff failed to prove his *prima facie* case and balance of convenience *sine qua non* for grant of injunction. It is stated that the Court below ignored the fact that the plaintiff petitioner has filed the suit for declaration to declare the sale deeds, dated 27-01-2012, 10-03-2011 and 30-11-2012, standing in the name of defendant No.1 in respect of item Nos.1 to 4 of the plaint schedule property as null and void, but failed to place cogent evidence. It is stated that the Court below ought to have noticed that the plaintiff executed Ex.P-6 Will Deed, dated 17-12-2012, whereunder, he bequeathed his properties described as ABCD in the Will and the plaint schedule properties are not shown therein. It is stated that the Court below ought to have seen that defendant No.2 filed O.S. No.162 of 2013 for specific performance on the file of the very same Court on the basis of an agreement/contract, dated 10-07-2013, said to have been executed by defendant Nos.1 and 3, marked as Ex.R-24, to which the plaintiff stood as one of the attesters and that circumstance would show that defendant No.1 is the real title holder of items 1 to 3 of the plaint schedule properties.

29. It is stated that the Court below ought to have seen that Ex.R-24 manifests that the plaint schedule properties in O.S. No.93 of 2014 are self-acquired properties of defendant No.2 and got them registered in the name of defendant No.1. It is stated that in the plaint, basing on which Crime No.176 of 2013 was registered, the

complainant, who is the plaintiff, has mentioned that his son, defendant No.2, sent money from Newzealand to purchase the properties in his name, whereas his wife, defendant No.1 deceitfully purchased the properties in her name and, therefore, the plaintiff cannot contend that he funded the amount to purchase the plaint schedule properties in the name of defendant No.1. It is stated that the Court below ignored Ex.R-1's effect through which defendant Nos.1 and 3 invested $NZ 1,20,000-00 each to the granite company. It is stated that pursuant to Ex.P-30, P-46 and P-47, defendant No.3 has been in possession and enjoyment of the plaint schedule properties and even the rental agreements are filed to show her possession, but the Court below overlooked the same. It is stated that the plaintiff did not seek the relief of declaration to set aside the sale deeds under Exs.P-46 and P-47. It is also stated that through Ex.R-11, defendant No.3 proved deposit of rents by the tenants into her bank accounts concerning item No.4 of the plaint schedule properties, which the Court below has ignored.

30. Heard Sri P. Venugopal, learned counsel appearing for the plaintiff, and Sri M.V.S. Suresh Kumar, learned counsel for defendant Nos.1 and 3, and perused the material on record.

31. Learned counsel for the plaintiff (CMA No.362 of 2015) would submit that, though, several documents are filed and marked to show that plaint schedule properties are in possession of the plaintiff, they were not at all considered by the Court below. His further submission is that the provisions of the Benami Act have no application in case of purchase of property by any person in the name of his wife or unmarried daughter. It is his submission that the Court below, somehow, did not examine the evidentiary value of the documents filed by the plaintiff which would positively prove possession of the plaintiff establishing the indispensable ingredients of *prima facie* case, balance of convenience and the irreparable loss that would occasion to the plaintiff, in case the injunction is refused. The learned counsel also placed reliance on a decision of the

Hon'ble Supreme Court in **Binapani Paul v. Pratima Ghosh and others** as to on whom the burden of proof lies when plea of benami is put forth and the circumstances which can be taken as guide to determine the nature of the transaction in assessing as to whether it is a benami or otherwise. He has also placed reliance on yet another decision of the Hon'ble Supreme Court in **V. Shankaranarayana Rao (died) by L.Rs. and others v. Leelavathy (died) by L.Rs. and others** as to the factors to be considered in assessing whether the transaction is
a benami one or not.

32. On the other hand, learned counsel for defendant Nos.1 and 2 would submit that the transactions in the instant case are not benami and even construed as benami for arguments sake, the very fact that the documents are in the name of defendant No.1, wife of the plaintiff, presumption arises that the properties are purchased for her benefit unless contrary is proved. The learned counsel also would submit that the source of money is not relevant for the purpose of adjudicating upon the instant controversy. It is also according to the learned counsel that item Nos.1 to 3 of the plaint schedule property are further transferred under Exs.P-46 and P-47 and despite the same no amendment is sought by the plaintiff and item No.4 is also covered by the settlement deed and, therefore, the suit itself is not maintainable, in which case, the relief sought for by the plaintiff for an injunction in any form cannot be acceded to. The learned counsel also would submit, placing reliance on the Amendment Act 2005 to Section '6' of the Hindu Succession Act, that defendant No.3 has to be construed as a coparcener, in which case, plaintiff is not entitled to any injunction and, therefore, sought to set aside the injunction granted in I.A. No.97 of 2014 while requesting to maintain the order passed in I.A. No.96 of 2014.

33. At the outset, we would like to observe that it is a typical case where the family *inter se* is quarrelling for property rights and number of transactions transpiring within a short span of two to three years.

As seen from the stand of the plaintiff, while narrating the averments made in the affidavit in the interlocutory applications, the sale deeds marked as Exs.P-1, P-2, P-3 and P-4 that relate to item Nos.1 to 4 of the plaint schedule respectively, were obtained in the name of defendant No.1 though, consideration was passed from the plaintiff to purchase the said items and for convenience sake as the plaintiff and his son, defendant No.2 were residing at Newzealand intending that defendant No.1 would protect and take care of the properties and the plaintiff has been in possession and enjoyment thereof even on the date of filing the suit and the documents executed by defendant No.1 making alienations in favour of defendant No.4 concerning item Nos.1 to 3 and the alleged settlement deed executed by defendant No.1 in favour of defendant No.3 would not have any effect and, therefore, sought to set aside the order and grant interim injunction restraining the defendants from interfering with his possession and enjoyment of the petition schedule properties.

34. On the other hand, the case of the contesting defendants is that the family of defendant No.1 is affluent enough and gave adequate money, gold and property at her marriage with the plaintiff and, thus, she had enough money to pay consideration for purchasing item Nos.1 to 4 and ever since her purchase, the petition schedule properties were in her possession, till she alienated item Nos.1 to 3 in favour of defendant No.4 and item No.4 by way of settlement in favour of defendant No.3, and subsequent thereto defendant Nos.3 and 4 have been in possession and enjoyment of the petition schedule properties and the plea of benami put forth by the plaintiff is untrue and that the plaintiff was never in possession of the plaint schedule properties. It is, therefore, their contention in CMA No.400 of 2015 that the Court below was not right in granting injunction against them not to alienate item Nos.1 to 4 of the plaint schedule properties.

35. During the course of arguments, both the learned counsel

attacked the order under challenge contending that the effect of none of the documents and the evidentiary value thereof was not at all considered by the Court below though, obligated with the duty to analyze the documents filed by both sides being the Court of first instance, and, therefore, both learned counsel, in fact, sought to remit the matter to the Court below for consideration afresh and disposal.

36. But, a careful consideration of the orders under challenge in both the appeals at least the order in I.A. No.96 of 2014, would show that the Court below has referred to the bank accounts, the incidents of possession, enquiry report of the revenue authorities, pattadar passbook, electricity bills, receipts, property tax receipts and Ex.R-1 though, not elaborately dealt with, but having analyzed the documents filed by both sides passed the orders under challenge.

37. Now the point that arises for consideration is whether the orders under challenge cannot be sustained?

38. Number of issues are involved in adjudicating upon the real controversy between the parties. The question is, whether such a controversy can be resolved in the interlocutory applications without there being proof of the contents of documents and the circumstances under which the parties have either executed or got the documents in their favour on which the respective parties are relying to substantiate their respective stands. In the first instance, we would like to advert to the stand taken by both sides on Exs.P-1 to P-4, which are the registered sale deeds concerning item Nos.1 to 4 respectively. Item Nos.1 and 2 were purchased on one and the same day, that was on 27-01-2012, just two years next before institution of the suit. Item No.3 was purchased on 30-11-2012 under Ex.P-3 and item No.4 was purchased on 10-03-2011 under Ex.P-4. It is not in dispute that the name of defendant No.1 is figuring as the vendee under Exs.P-1 to

P-4. The real controversy is whether the consideration was passed from the plaintiff or met by defendant No.1 as contended by them, respectively. Thus, so far as plaintiff is concerned, he is ostensible (real) owner and defendant No.1 lent her name and thus, the transactions are 'benami' in nature which is strongly resisted to by the defendant No.1 claiming that she had paid the consideration, and, therefore, the properties are her self-acquisitions. For resolution of the same, certainly, the intention of the parties has to be gathered which can be done only after full-fledged trial takes place, more particularly, when the primary requisite being the source of money for meeting the consideration covered by Exs.P-1 to P-4; in which direction, in case the plaintiff succeeds in discharging his burden, in establishing that the transactions under Exs.P-1 to P-4 are benami in nature, onus shifts to defendant No.1 to repel the same by showing that she had adequate funds in acquiring the plaint schedule items under Exs.P-1 to P-4. In the said context, learned counsel for the plaintiff in CMA No.362 of 2015 placed reliance on the decision in **Shankaranarayana Rao's Case** (Supra 2)**,** in which, the Hon'ble Supreme Court in paragraph No.11 extracted the expression of its earlier decision contained in paragraph No.18 in **Thakur Bhim Singh (Dead) by LRs and another v. Thakur Kan Singh** [(1980) 3 SCC 72]. We would like to extract the same, which is thus:

> "18. The principle governing the determination of the question whether a transfer is a benami transaction or not may be summed up thus: (1) the burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction; (2) it is proved that the purchase money came from a person other than the person in whose favour the property is transferred, the purchase is prima facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary; (3) the true character of the transaction is governed by the intention of the person who has contributed the purchase money and (4) the question as to what his intention was has to be decided on the basis of the surrounding circumstances, the relationship of the

> parties, the motives governing their action in bringing about the transaction and their subsequent conduct, etc."

39. In the same context in **Binapani Paul's Case** (Supra 1)**,** the Hon'ble Supreme Court referred to its earlier decision in **Jayadayal Poddar (died) through L.Rs. and another v. Mst. Bibi Hazira and others** [(1974) 1 SCC 3], wherein it was held, thus:

> "_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. Though the question, whether a particular sale is benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid test, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the Courts are usually guided by these circumstances: (1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4) the position of the parties and the relationship, it any, between the claimant and the alleged benamidar; (5) the custody of the title-deeds after the sale and (6) the conduct of the parties concerned in dealing with the property after the sale."

In **Binapani Paul's Case** (Supra 1), the Hon'ble Supreme Court also referred to its earlier decision in **Valliammal (died) by LRs v. V. Subramaniam and others** [(2004) 7 SCC 233], wherein the very same circumstances were reiterated as to the relevant indicia in determining whether a transaction is benami in nature.

40. Turning to the present appeals, we are dealing with the orders

passed in interlocutory applications, where the documentary evidence alone is filed and marked as exhibits. Unless the oral evidence is let in, it is difficult to weigh the probabilities and to gather the relevant indicia by applying the above guiding factors formulated by the Hon'ble Supreme Court in the decisions referred to supra in determining the benami nature of a transaction.

41. In the instant case, number of registered deeds are finding place including Exs.P-1 to P-4. The said documents are registered sale deeds and settlement deed said to have executed by defendant No.1 in favour of defendant Nos.3 and 4 concerning item No.4. Second, the registered sale deed executed by defendant No.4 in favour of defendant No.3 on 28-03-2014 concerning item No.3. Third, the registered sale deed executed by defendant No.1 in favour of defendant No.3, dated 28-03-2014, concerning item Nos.1 and 2 of the plaint schedule. Fourth, the Will, dated 17-12-2012, executed by defendant No.1 in favour of defendant No.2 and his unborn child in regard to which defendant No.1 claims that under force and pressure, plaintiff and defendant No.2 got executed through her besides obtaining her signatures on blank stamp papers. Even excluding the Will above referred to, the effect and binding nature of the sale deeds and settlement deed executed by defendant No.1 on the plaintiff and defendant No.2 have to be examined, more particularly, in the light of the plea of benami put forth by the plaintiff.

42. Further, in our view, the claim made by defendant No.2 in O.S. No.162 of 2013 which concerns with item Nos.1 to 3 herein, shown as plaint schedule properties therein, against defendant Nos.1 and 3, basing on the agreement of sale which is sought to be enforced requires consideration in resolving the controversy herein. This apart, the claim of defendant No.3 in O.S. No.23of 014 on the file of the very same Court, also will have bearing in resolving the controversy herein for the reason that one of the submissions of the learned counsel for

the contesting defendants, as referred to above, is that defendant No.3 attains the status of 'coparcener' by virtue of the Amendment Act, by which Section 6 of Hindu Succession Act is amended. Thus, resolution of these multiple issues is of vital significance in adjudicating upon the main controversy in the suit from which the orders under challenge arise from interlocutory applications.

43. In the aforesaid circumstances, we are of the considered view, that the order passed in I.A.No.97 of 2014 injuncting the defendants from alienating item Nos.1 to 4 of the plaint schedule cannot be disturbed as in case, further alienations are made by the contesting defendants, the same would result in multiplicity of proceedings which can be arrested, till disposal of the main suit. Concerning the order under challenge in I.A. No.96 of 2014 refusing to grant injunction, we are of the view, that the reasons assigned by the Court below in arriving at such conclusion cannot be faulted as they do not suffer from any legal infirmity warranting interference. Hence, confirming the orders under challenge, we dismiss both the appeals. There shall be no order as to costs.

44. It is also clear from the above that the other suits in O.S. No.162 of 2014 filed by defendant No.2 to enforce the agreement of sale said to have executed by defendant No.1, O.S. No.23 of 2014 filed by defendant No.3 for partition and allotment of her share in the plaint schedule items and other items belonging to their family also are pending on the file of very same Court. Since the parties in all these suits are inter se family and the properties are one and the same except the properties shown in the partition suit, it is desirable to direct the Court below to take up joint trial of all the suits to avoid conflicting findings being recorded in arriving at just conclusion. It is also desirable to give directions to the Court below to dispose of all the matters as expeditiously as possible, further directing the parties to cooperate with the Court to enable it to

dispose of the same.

45. As a sequel thereto, Miscellaneous Applications, if any, pending in these appeals stand closed.

R. SUBHASH REDDY, J

A. SHANKAR NARAYANA, J

October 13, 2015.

PV