

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2016

RESERVED ON : 08.12.2015
DELIVERED ON : 05.01.2016

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

A.S No.785 of 1992

Mangathai Ammal (died)

- 1.Navaneetham
- 2.Arumugam (deceased)
- 3.Kesavan
- 4.Ganesan
- 5.Shankar

(Appellants 3 to 5 brought on record
as LRS of deceased 1st appellant
vide order of court dated 16.12.1999
made in CMP No.18884/1999)

- 6.A.Sivakumar
- 7.Davamani

(Appellants 6 & 7 brought on record
as LRS of deceased 2nd appellant
vide order of court dated 14.8.2015
made in CMP 78 & 79/2013)

... Appellants/Defendants
1 to 3

vs.

- 1.Rajeswari
- 2.Narayanasamy
- 3.N.Panneerselvam (deceased)
- 4.N.Subramani
- 5.Srinivasan
- 6.N.Rasasekaran
- 7.N.Ramamurthy
- 8.Kannammal
- 9.Santhi
- 10.Rani Ammal
- 11.Minor Lokanayaki

WEB COPY

12.Minor Ramesh

Minor Lokanayaki and Minor Ramesh
Rep. By Mother and Natural Guardian
Rani Ammal.

(R10 to R12 brought on record as LR
of deceased R3 vide order of court
dated 23.4.2010 made in CMP 773/08)

... Respondents/Plaintiffs 1 to 8/
9th Defendant

APPEAL filed under Section 96 of the Code of Civil
Procedure judgment and decree dated 5.8.1992 made in O.S.No.124
of 1990 on the file of Subordinate Judge, Arni

For Appellants : Mr.R.Thirugnanam

For Respondent : Mr.V.Raghavachari
for R4 to R8

J U D G M E N T

The above Appeal arises against the judgment and decree
passed in O.S.No.124 of 1990 on the file of Subordinate Court,
Arni

2. The defendants 1 to 3 are the appellants. The 1st
appellant had died during the pendency of the appeal and her
legal representative were brought on record as the appellants 3
to 5. Respondents 1 to 8 are the plaintiffs, 9th respondent
was the 4th defendant in the suit and the respondents 10 to 12
are the legal representatives of the deceased 3rd respondent.

3. The plaintiffs filed the suit in O.S.No.124 of 1990
for partition and separate possession.

4. The brief case of the plaintiffs are as follows:-

(i) The 1st defendant is the wife of one Narayanasamy
Mudaliyar. The said Narayanasamy Mudaliyar and the 1st defendant
had one son and three daughters. Their son Elumalai and their
daughter Ranganayaki Ammal had died. The 1st plaintiff is the
wife of Elumalai. The 2nd plaintiff and plaintiffs 3 to 8 are
the husband and children of the deceased Ranganayaki Ammal.
Elumalai and the 1st plaintiff did not have issue.

(ii) According to the plaintiffs, Narayanasamy Mudaliyar
sold the ancestral properties and purchased the suit property in
the name of the 1st defendant. Narayanasamy Mudaliyar and his

son Elumalai are entitled to half share in the ancestral properties. The said Narayanasamy Mudaliyar had died 20 years prior to the filing of the suit. His share in the properties were inherited by Elumalai, defendants 1 and 2, Nagabhushanam Ammal and Ranganayaki Ammal. Ranganayaki Ammal died about six years prior to the filing of the suit, therefore, her legal heirs, viz., plaintiffs 2 to 8 inherited her share in the properties. Nagabhushanam Ammal executed a release deed dated 24.04.1990 in favour of the 1st defendant.

(iii) According to the plaintiffs, the 1st plaintiff is entitled to 5/8th share, plaintiffs 2 to 8 are entitled to 1/8th share and the defendants are entitled to 1/4th share in the suit properties. Since the defendants tried to claim the suit properties, the plaintiffs have filed the suit.

5. The brief case of the 1st defendant is as follows:

(i) According to the 1st defendant, except item Nos. 1 and 3 of the suit properties, the other properties are the self acquired properties of the 1st defendant. The 1st item of the property was purchased out of the money provided by her in the her name. The 2nd plaintiff also admitted the said fact in the suit in O.S.No.923 of 1990 on the file of District Munsif court, Arni. Therefore, the plaintiffs and the other defendants have no right in the suit properties.

(ii) According to the 1st defendant, the suit properties are not the ancestral properties of Narayanasamy Mudaliyar. The averment that the suit properties were purchased by selling the ancestral properties is false. The said Narayanasamy Mudaliyar had right only in item Nos.1 and 3 of Schedule II. The properties were purchased by the 1st defendant out of the stridhana she received from her parent's house and by selling the gold jewellery. After purchasing the property from Thangavel Gounder and others, she constructed a house and is in possession and enjoyment of the property. The 1st defendant has been paying the tax in respect of the suit properties and enjoying the suit properties as her own. The plaintiffs are not entitled to the suit properties. The plaintiffs cannot prevent the 1st defendant from alienating the suit properties.

(iii) According to the 1st defendant, the deceased Narayanasami Mudaliyar was entitled to 47 cents in Survey No.218/1 and 8 cents in Survey No.218/3 and the deceased Renaganayaki Ammal is entitled to 1/5th share in the suit properties. Similarly, the 1st plaintiff's husband is also entitled to 1/5th share in which, the 1st defendant and the 1st plaintiff are entitled to half share in the suit properties.

The 1st defendant's daughter Naghabhushanam Ammal executed a release deed in respect of her own share.

(iv) According to the 1st defendant, she never acted as the Manager of the joint family. The 1st defendant executed a Will dated 11.2.1987 in favour of plaintiffs 1 and 2 and Naghabhushanam Ammal. Since the beneficiaries under the Will did not take care of the 1st defendant, she revoked the Will on 11.6.1990. The suit properties were never treated as joint family properties. The valuation of the suit made by the plaintiffs is not correct. In these circumstances, the 1st defendant prayed for dismissal of the suit.

6. The brief case of the defendants 2 and 3 are as follows:

(i) According to the defendants 2 and 3, the suit properties are not the ancestral properties of Narayanasamy Mudaliar. Except item Nos. 1 and 3, the other suit properties are the self acquired properties of the 1st defendant. The properties were not jointly enjoyed by the parties. The 1st defendant mortgaged the property with the 3rd defendant for a valuable consideration, which is also known to the plaintiffs. The 1st defendant has been paying the property tax and kist in respect of the suit properties. The defendants 2 and 3 also adopted the written statement filed by the 1st defendant. In these circumstances, defendants 2 and 3 prayed for dismissal of the suit.

7. Before the Trial Court, on the side the plaintiffs, 4 witnesses were examined and 3 documents Exs. A-1 to A-3 were marked and on the side of the defendants, 2 witnesses were examined and 19 documents Exs. B-1 to B-19 were marked.

8. The Trial Court, after taking into consideration, the oral and documentary evidences of both sides, passed a preliminary decree finding that the plaintiffs are entitled to 3/4th share in the suit properties.

9. Aggrieved over the judgment and decree passed by the Trial Court, the defendants have filed the above appeal.

10. Heard Mr.R.Thirugnanam learned counsel appearing for the appellants and Mr.V.Raghavachar learned counsel appearing for the respondents 4 to 8.

11. Mr.R.Thirugnanam, learned counsel appearing for the appellants submitted that the suit properties were purchased by the 1st defendant out of the stridhana property she received from her parents and by selling the gold jewellery, therefore,

the finding of the Trial Court that the properties were purchased by Narayanasamy Mudaliyar is erroneous. Further, the learned counsel submitted that since the sale deeds stands in the name of the 1st defendant, it should be construed as her self acquired properties and therefore, the Trial Court should not have passed a preliminary decree for partition. The learned counsel relied upon section 4 of the Benami Transaction (Prohibition) Act, 1988 and submitted that a property which was held as Benami cannot be recovered by a person claiming to be a real owner of the property. In support of his contention, the learned counsel relied upon the following judgments:-

(i) 1995 (1) CTC 568 [R.Rajagopal Reddy (dead) by LRs and others v. Padimini Chandrasekhran (dead) by LRs and others] wherein, the Hon'ble Supreme Court held that Benami Transaction (Prohibition) Act is not a declaratory enactment but only prohibitory in nature.

(ii) 2011(6) CTC 1 [R.Rathnappa and another v. V.Lakshmma] wherein this court held that no claim can be made to enforce any right in respect of any property held by Benami against person in whose name property is held.

(iii) 1995 (4) SCC 572 [Nand Kishore Mehra v. Sushila Mehra], wherein the the Hon'ble Supreme Court held as follows:-

"8. Coming to the facts of the case on hand, the plaintiff had filed the suit in the High Court seeking relief in respect of properties alleged to have been purchased benami in the name of the defendant - his wife. A learned Single Judge rejected the application filed by the defendant in that suit seeking rejection of the plaint on the ground that the suit was barred under Section 4 of the Act. The order of rejection of that application was appealed against by the defendant in a first appeal filed in the same court. A Division Bench of the High Court reversed the order of the learned Single Judge and granted the application of the defendant made in the suit seeking rejection of the plaint. It is that order which is now questioned by the plaintiff-husband in this appeal. Since the plaintiff is the husband who had the right to enter into a benami transaction in the matter of purchase of property in the name of his wife or unmarried daughter, as we have held earlier, he is entitled to enforce his rights in the properties concerned if he can succeed in showing that he had purchased them benami in the name of his wife. But in view of the statutory presumption incorporated in sub-section (2) of Section 3 of the Act, he can get relief sought in the suit only if he can prove that the properties concerned had not been

purchased for the benefit of the wife, even if he succeeds in showing that the consideration for the purchases of the properties had been paid by him."

(iv) 2010 (3) MLJ 1008 [Valliammai Ammal and another v. Palani Pillai] wherein this court held that the relevant consideration with regard to the question of Benami transaction is that if the property was purchased either in the name of his wife or unmarried daughter, there is a mandatory presumption that such a transaction is for the benefit of wife or unmarried daughter. The burden is on the person alleging benami transaction to rebut the presumption and to prove the transaction was not for the benefit of such person.

(v) 2012(1) MLJ 32 [Mahaveer Chand Surana v. Yashoda and others] wherein a Division Bench of this court held that the proposition of law regarding ownership of any property would be that the person in whose name the property has been purchased is presumed to be the real owner of the property and the burden of proving the transaction as benami is on the person who asserts that the property was purchased through the funds provided by him.

(vi) AIR 1969 Madras 329 [Nagayasami Naidu and others v. Kochadai Naidu and others] wherein a Division Bench of this court held that there is an essential distinction as to the scope of the presumption in the case of acquisitions in the names of male members of a joint family and the female members of a joint family. In the case of male members of a joint family, there is a presumption that if the joint family had sufficient ancestral nucleus, the properties standing or acquired in the name of junior members are jointly family properties unless the presumption is rebutted by showing that the properties are the separate properties of the particular member or members in whose names the properties stand or were acquired. There is no such presumption in the case of properties standing in the name of female members. In the latter case, it is for the party who claims properties as joint family properties to specifically plead the particulars and details, in the pleadings and establish the same by adducing necessary evidence.

12. Countering the submissions made by the learned counsel appearing for the petitioner, Mr.V.Raghavachari, learned counsel appearing for the respondents 4 to 8 submitted that the properties were purchased in the name of the 1st defendant by Narayanasamy Mudaliyar out of his own funds and therefore, under section 3(2)(a) of Benami Transaction (Prohibition) Act, the presumption is that the properties were purchased for the

benefit of the 1st defendant, who is the wife of the said Narayanasamy Mudaliyar. The learned counsel further submitted that the recitals in the documents would clearly establish that the funds for the purchase of the properties were provided by Narayanasamy Mudaliyar. The learned counsel also submitted that the judgments relied upon by the learned counsel for the appellant relates to the transaction between the third parties whereas, in the case on hand, the transaction was between the husband and the wife. Therefore, the provisions of section 4 of the Benami Transaction (Prohibition) Act, 1988 has no application to the case on hand.

13. On a careful consideration of the materials available on record and the submissions made by the learned counsel on either side, the following points arise for consideration in this appeal:-

- (i) Whether the plaintiffs are entitled to 3/4th share in the suit properties?
- (ii) Whether the 1st defendant is the absolute owner of the suit properties?
- (iii) Whether the suit properties were purchased by Narayanasamy Mudaliyar out of joint family nucleus?

14. The plaintiffs claim 3/4th share in the suit properties stating that the suit properties are the ancestral properties of Narayanasamy Mudaliyar and he purchased the suit properties in the name of his wife, viz., 1st defendant, out of the income from the ancestral properties. The 1st defendant contended that the properties are her self acquired properties which were purchased by her out of the stridhana funds and by selling gold jewellery. According to the 1st defendant, item No.2 of the suit property was purchased by her on 21.1.1942 under Ex.B3 sale deed and that she put up construction in the said land.

15. On a perusal of Ex.B3 sale deed, it could be seen that part of sale consideration of Rs.80/- was paid by her husband viz., Narayanasamy Mudaliyar to the vendor. This recital would establish that part of funds for the purchase of the property was provided by Narayanasamy Mudaliyar. Though Ex.B4 sale deed stands in the name of the 1st defendant Mangathammal, the stamp papers were purchased in the name of Narayanasamy Mudaliyar on 4.5.1945. The necessity for purchasing the stamp papers in the name of Narayanasamy Mudaliyar was not explained by the 1st defendant. If the property was really purchased by the 1st defendant out of her own funds, she would not have mentioned Narayanasamy Mudaliyar's name in the stamp papers. She would have purchased the stamp papers in her name. Ex.A1 release deed was executed by Naghabhushanam Ammal on 24.4.1990.

For releasing the property in favour of the 1st defendant, Rs.10,000/- was paid to the said Naghabhushanam Ammal. If the property belongs to the 1st defendant, necessity for paying a sum of Rs.10,000/- to the Naghabhushanam Ammal for releasing the property was not established by the 1st defendant. The execution of Ex.A1 release deed would establish that the said Naghabhushanam Ammal had a share in the property, therefore, the said document itself would disprove the case of the 1st defendant and it also proves that the said properties are the joint family properties of Narayanasamy Mudaliyar. Ex.A3 sale deed dated 17.11.1957 also establish that the suit properties are the joint family properties.

16. For the reasons stated above, it is clear that the 1st defendant is not the absolute owner of the suit properties and the properties are the jointly family properties of the family.

17. Since the judgments relied upon by the learned counsel for the appellant relates to the transaction between the third parties, the propositions laid own in those judgments are not applicable to the case on hand for the reason that in the case on hand, the transaction was between the husband and wife. Similarly, as rightly contended by the learned counsel for the respondents 4 to 8, the provisions of section 3(2)(a) of the Benami Act is applicable to the case on hand and the provisions of section 4 of the Benami Transaction (Prohibition) Act, 1988 is not applicable to the present case.

18. Since the plaintiffs have clearly established that the suit properties are ancestral properties of Narayanasamy Mudaliyar. they are entitled to 3/4th share in the suit properties.

19. The Trial Court taking into consideration the oral and documentary evidences of both the parties, rightly passed a preliminary decree for partition.

20. In these circumstances, I do not find any ground to interfere with the judgment and decree of the Trial Court. The appeal is liable to be dismissed. Accordingly, the appeal is dismissed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

Rj

To

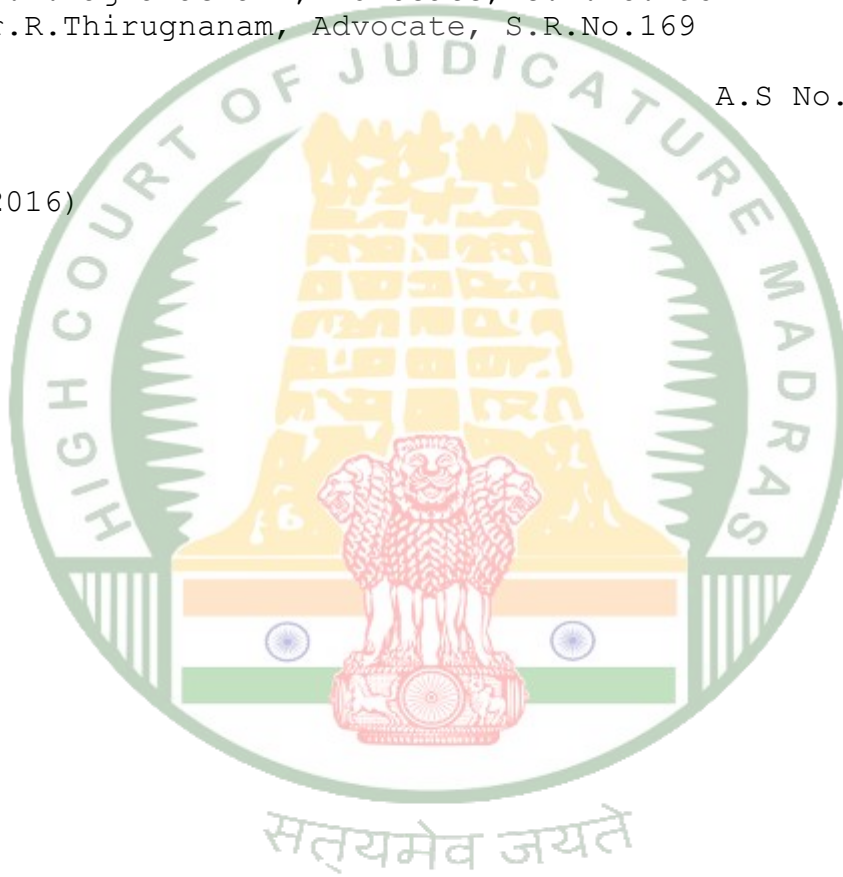
1.The Subordinate Judge,
Arni

2.The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.V.Raghavachari, Advocate, S.R.No.195
+lcc to Mr.R.Thirugnanam, Advocate, S.R.No.169

A.S No.785 of 1992

TEJ(CO)
CA(15/03/2016)



WEB COPY