IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 23.02.2017

Judgment Pronounced on: 02.03.2017

Coram:

The Hon'ble Mr.Justice N.SATHISHKUMAR

Civil Sit No.221 of 2011

K.Madhangopal .. .. Plaintiff

Versus

1. Mrs. Sowmiya Madhangopal
2. Mrs. Ramya .. .. Defendants

The suit has been filed under Order IV Rule 1 of Original Side Rules of the High Court of Judicature at Madras read with Order VII Rule 1 of Code of Civil Procedure for a partition declaring that the plaintiff is entitled to a undivided 1/3 share in the plaint schedule properties, for a separate possession and for costs.

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For Plaintiff .. Mr.G.Nagarajan

For Defendants .. Mr.K.Harishankar

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**JUDGMENT**

The suit is filed for partition of the suit schedule properties and to allot undivided 1/3 share to the plaintiff and for separate possession.

2. Brief facts of the case are as follows:- The plaintiff initially joined the Army in the year 1961 and had voluntarily retired from Army service in 1967. After his retirement from Army, the plaintiff got married with the first defendant and thereafter, he joined the India Cement Limited at Chennai in the year 1967. Thereafter, he had completed MBA in 1972 and joined the Shaw Wallace & Co at Chennai as Regional Sales Executive. Even during his service at Shaw Wallace, he had separately started printing press in 1972 in Chennai and his father was in total administration and incharge of the printing press. Out of his earnings and savings, the plaintiff had purchased the House and ground bearing Plot No.31, Door No.43/23, Karpagam Avenue, R.A.Puram, Chennai-28, comprised in R.S.No.4300, 4295 (part) measuring an extent of 1 Ground 1200 sq. feet, described as item-1 in the plaint schedule in the name of his wife, in the year 1974. He had also purchased a vacant land bearing Plot No.3, Cholamandal Artist Village, Injambakkam, Chennai-41 and comprised in S.No.4/2 measuring an extent of 2 Grounds, described as item-2 in the plaint schedule in the name of his wife vide sale deed dated 15.12.1983.

3. In the year 1985, the plaintiff wanted to put up construction,

the plaintiff stood as Co-Applicant, applied for Housing Loan in HDFC, Madras and after considering the regular earnings of the plaintiff, the HDFC, Madras granted Housing loan. The monthly instalment of the Housing Loan was repaid by the plaintiff regularly and after the entire loan amount was repaid by the plaintiff by 2004, the title deeds relating to the property was returned to the first defendant. After put up construction in the plaint first schedule property, the plaintiff and the defendants 1 and 2 shifted their residence to the said property. The first defendant had neither independent income nor she was employed elsewhere. Even though the plaintiff is the absolute owner of the suit schedule properties, with good intention to make provision for his wife and his only daughter i.e. the 1st and 2nd defendants, had issued a legal notice dated 24.06.2008 calling upon them to agree for the sale of the plaint schedule properties and divide the sale consideration into 3 equal share or in the alternative to effect partition of the aforesaid plaint schedule properties and given separate possession of the plaintiff's 1/3 share. The defendant sent a reply dated 17.07.2008 making some false allegations. Hence, the present suit.

4. The case of the first defendants is as follows:-There is no

dispute with regard to the relationship between the plaintiff and the defendants namely first defendant is the wife and the second defendant is the daughter of the plaintiff. It is false to state that the plaintiff was well earning and was having sufficient funds. The plaintiff had retired from the Indian Army, after a very short service period of five years between 1962 and 1967, which was prior to the marriage between the plaintiff and the first defendant. Subsequent to their marriage, the plaintiff was a student at PSG Coimbatore from 1971 to 1973, during which period he had no income.

5. The property described as suit schedule item-1 was purchased by the father of the first defendant in the name of the first defendant in the year 1974. The first defendant is an artist and out of her carrier as an artist, she had derived income and put up construction on the suit property out of her savings and contributions from her father. It is not correct to state that the property described as suit schedule item-1 was purchased by the plaintiff out of his savings in the name of the first defendant in 1974. It is false to state that the property described as suit schedule item-2 was also purchased by the plaintiff out of his own earnings and savings. In fact the said property was purchased by the first defendant out of her own savings and income derived from

the partnership firm under the name and style of "M/s. Rohas Printers" in which she was one of the partners along with her parents namely Mr.R.Ranganathan and Mrs.Rajeswari Ranganathan since 1982. The first defendant is not the name lender as alleged by the plaintiff. On the other hand, she is the absolute owner of the properties described in the schedule to the plaint by purchasing the same in her name out of her own exertion.

6. It is incorrect to state that the first defendant was not granted loan as she had no independent income and only after considering the regular earnings of the plaintiff, the Bank granted the loan. Of course the plaintiff was the co-applicant for obtaining loan from the HDFC Bank, for construction of the building in the land described as suit schedule item-1. In fact the plaintiff was out of his employment even at the time of granting loan and at the time of currency of loan repayment. Whereas the first defendant had incomes and earnings as an artiste and a musician and she alone repaid the loan promptly and without any default. Hence, the allegations in the plaint that the Housing loan was repaid regularly by the plaintiff is denied as baseless and unsustainable. The title deed of the property described as suit schedule item-1 was also returned to the first defendant since she has

repaid the entire amount without any due to the bank.

7. It is incorrect to state that there was some misunderstanding between the plaintiff and the first defendant which lead to the filing of a divorce petition by the plaintiff against the first defendant. In fact the plaintiff was persuading the first defendant that he would file a petition for divorce if she does not transfer all her properties to the name of the plaintiff. When the first defendant refused to transfer the properties, it was the plaintiff who filed O.P.No.898 of 1992 for divorce. The family was managed by the first defendant and the education of the second defendant was also taken care of out of the income derived from the business of printing press and out of her carrier. The family was never managed at the earnings of the plaintiff. The suit filed by the plaintiff against the defendants in O.S.No.3157 of 1992 before the City Civil Court, Madras for a permanent injunction was also dismissed.

8. The second defendant states that she adopts the written statement of the first defendant and craves leave of this court to refer to the written statement of the first defendant as part and parcel of the written statement of the second defendant. It is further stated that recently the properties described in suit schedule were the absolute

properties of the first defendant and they have now been settled in favour of the second defendant under registered documents dated 26.08.2011 and 29.08.211 and as such the second defendant is the absolute owner of the suit properties.

9. On the basis of the pleadings, the following issues were framed for consideration in the Civil Suit:-

1. Whether the plaintiff is entitled to a decree of partition?
2. Whether the plaint schedule properties 1 and 2 were purchased in the name of the first defendant by the plaintiff and as to whether she is only a name lender?
3. Relief and cost?

10. Issues 1 to 3:- On the side of the plaintiff, the plaintiff examined himself as P.W.1 and also examined one E.Devaraj as P.W.2 and marked Exhibits P1 to P8. Ex.P1 is the certified copy of the sale deed dated 24.06.1974. Ex.P2 is the certified copy of sale deed dated 15.12.1983. Ex.P3 is the promissory note dated 19.04.1985. Ex.P4 is the legal notice dated 24.06.2008, issued by the plaintiff to the first defendant. Ex.P5 is the reply dated 17.07.2008 given by the defendant. Exs.P6 dated 26.08.2011 and P7 dated 29.08.2011 are

settlement deeds executed by the first defendant in favour of the second defendant in respect of the suit properties. Ex.P8 dated 10.03.2015 is the certificate issued by Shaw Wallace & Co at Chennai, stating that the plaintiff was working with the Shaw Wallace & Co at Chennai.

11. On the side of the Defendants, first defendant examined herself as D.W.1 and also examined her daughter Ramya, as D.W.2 and marked 20 documents as Exs. D1 to D20. Ex.D1 is the certified copy of plaint in O.S.No.3157 of 1992. Ex.D2 is the certified copy of judgment and decree in O.S.No.3157 of 1992. Ex.D3 is the letter dated 31.10.1967, issued by the Director, of the India Cements Limited to the plaintiff. Ex.D4 dated 02.11.1967, is the Memo from India Cements to the plaintiff. Ex.D5 is the letter dated 31.05.1973 sent by the Plaintiff to M/s. Shaw Wallace & Co. Ltd. Ex.D6 is the letter dated 23.08.1973 sent by M/s. Shaw Wallace & Co. to the plaintiff. Ex.D7 is the photo copy of the sale deed dated 24.06.1974. Ex.D8 is the letter sent by Mr.Jayaraman and the first defendant to the Chief Metropolitan Magistrate, Egmore, Chennai. Ex.D9 is the consent letter dated 17.01.19769, given by Mr.Jayaraman to Chief Metropolitan Magistrate, Egmore, Chennai. Ex.D10 series are the statement of

Accounts and letter communication between the first defendant and Sri Ram Company. Ex.D11 series are the letters dated 25.07.1985 sent by Ranjitmull Chordia Financiers to the first defendant. Ex.D12 series are the payment voucher and letters sent by Girija Chander to second defendant. Ex. D13 is the letter dated 06.11.1982 sent by the first defendant to Canara Bank. Ex.D14 is the cancelled letter of guarantee dated 12.12.1984 sent by Rajeshwari Ranganathan. Ex.D15 is the promissory note dated 07.10.1985 executed by first defendant to Mr.Ranganathan. Ex.D16 series are the loan agreement from HDFC and cancelled promissory note for Rs.90,000/-. Exs.D17 and 18 are the passbooks of the defendants issued by Bank of Baroda. Ex.D19 is the acknowledgment letter dated 22.02.2000. Ex.D20 is the letter dated 03.03.2000, confirming the repayment of loan by the first defendant to HDFC.

12.Learned counsel appearing for the plaintiff submitted that the suit schedule properties have been purchased by him in the name of his wife out of his earnings and savings. The plaintiff was initially worked in the Indian Army and after his retirement from Indian Army in the year 1967, he has also started a printing press business in the year 1972. Out of his earnings, he has purchased a vacant land in

House and ground bearing Plot No.31, Door No.43/23, Karpagam Avenue, R.A.Puram, Chennai-28, comprised in R.S.No.4300, 4295 (part) measuring an extent of 1 Ground 1200 sq. feet, in the name of his wife in the year 1974 described as plaint schedule item-1 and thereafter he has also purchased a vacant land bearing Plot No.3, Cholamandal Artist Village, Injambakkam, Chennai-41 and comprised in S.No.4/2 measuring an extent of 2 Grounds, described as plaint schedule item No.2, in the name of his wife and also stood as co-applicant for obtaining loan from the HDFC for putting up construction of house in the item-2 of the property. Hence, it is the contention of the learned counsel for the plaintiff that the plaintiff is entitled to 1/3 share in the suit property.

13. On the other hand it is the contention of the learned counsel for the defendants that the plaintiff claims to have worked in the Indian Army and he retired from service in the year 1967 itself, and subsequently the plaintiff was pursuing his education from 1971 to 1973, he had no source of income at all to purchase the properties in the name of the first defendant. Whereas, the first item of the suit property was purchased by the first defendant out of her earnings and also contribution from her father and the second item of the suit

property was purchased by her out of her own earnings and savings. Hence it is submitted that the plaintiff cannot claim share in the suit property. Hence, the learned counsel for the defendants prays for dismissal of the suit. In support of his contention the learned counsel for the defendants relied upon a judgment of this Court reported in ***MNU/TN/3061/2014 (S. Balakrishnan vs. S.Ayyammal)***.

14. Issues 1 to 3:- In the light of the above submissions, this Court has to analyse the issues framed for determination. It is the case of the plaintiff that he was serving in Indian Army from 1961 to 1967 and thereafter, he joined the India Cements Limited, Chennai in 1967 and thereafter, he pursued his education from 1971 to 1973 and obtained MBA in the year 1973 and thereafter, he joined the Shaw Wallace Company Limited at Chennai. Even during his service in Shaw Wallace Company at Chennai, he started printing press in Chennai and he was earning substantial amount and out of his earnings, he has purchased item No.1 of the suit property in the name of his wife in the year 1974. Similarly, he has purchased item No.2 of the property in the year 1983 in the name of his wife and also stood as Co-Applicant for obtaining loan from HDFC in the year 1985 for putting up construction and thereafter, he alone repaid the entire loan amount. Therefore, it is the contention of the plaintiff that he is entitled for

partition and separate possession of 1/3 share in the suit properties.

15. The plaintiff himself in the chief examination has reiterated what was stated in the plaint and marked Exs.P1 to P8. Ex.P1 is the certified copy of the sale deed dated 24.06.1974 in respect of item-1 of the suit property. The same clearly shows that the property was purchased by the first defendant-wife of the plaintiff for a total consideration of Rs.21,000/-. Ex.P2 is the certified copy of sale deed dated 15.12.1983 in respect of item-2 of the suit property. The same would clearly indicate that the first defendant has purchased the item-2 of the property for a total consideration of Rs.14,000/-. Ex.P3 is the promissory note jointly said to have been executed by the plaintiff and the first defendant on 19.04.1985 in favour of Housing Development Finance Corporation Limited for a sum of Rs.90,000/- to show that he has also availed loan for construction of building. Ex.P4 is the legal notice dated 24.06.2008, issued by the plaintiff to the first defendant, wherein he has stated that the suit properties are purchased by him out of his own funds in the name of the first defendant. Ex.P5 is the reply dated 17.07.2008, given by the defendant. Exs.P6 and P7 are settlement deeds dated 26.08.2011 and 29.08.2011, executed by the first defendant in favour of the second defendant in respect of the suit properties. Ex.P8 is the certificate issued by the General Manager HRD

of Saf Yeast Co. Pvt. Ltd., Mumbai, stating that the plaintiff was working with M/s. Shaw Wallace & Co. during the years 1972 to 1981 as Regional Sales Executive, at Bombay, Delhi and Madras and also employed during the period March 1981 to March 1986. Since the author of the certificate has not been examined to prove its relevancy, the same cannot be looked into.

16. It is the contention of the defendants that the first defendant purchased item No.1 of the property out of her own earnings and contribution from her father. The second item of the property was also purchased by here out of her own earnings. Ex.D1 has been filed by her to show that the plaintiff has already filed a suit in O.S.No.3157 of 1992 for permanent injunction restraining the defendant from disposing of the suit property, claiming that he has purchased the property in the name of his wife. The above suit was dismissed as withdrawn as could be seen from Exs.D1 and Ex.D2 dated 31.10.1967. Exs.D3, dated 31.10.1967 has been filed by the defendants to show that in the year 1967 the plaintiff was appointed by the India Cement Limited, as Apprentice on a consolidated allowance of Rs.300/- per month. Ex.D4 dated 2.11.1967 also clearly shows that the plaintiff was appointed as Apprenticeship from 31.10.1967 for a period of one year.

This document clearly indicate that the plaintiff was paid consolidated amount of Rs.300/- per month in the year 1967. Ex.D5 is the letter dated 30.09.1973 addressed by the plaintiff to the All India Marketing Manager, requesting them to grant study leave. This letter is of the year 1973. Ex.D6 is the letter dated 23.08.1973 said to have been addressed to one Muthuswami, to show that the plaintiff was given appointment as Regional Sales Executive in the Madras Office on a monthly salary of Rs.1300/- per month. Ex.D7 is the photo copy of the sale deed dated 24.06.1974 executed in favour of the first defendant for a sale consideration of Rs.21,000/-. Ex.D8 is the letter dated 17.01.1979, signed by the first defendant and her father, addressed to the Chief Metropolitan Magistrate indicating that they are starting printing press in the name of M/s. Rohas Printers. Immediately another letter dated 17.01.1979 was also sent under Ex.D9 to the Chief Metropolitan Magistrate and Ex.D10 series clearly show that the first defendant has independent income and she was lending money to one Sri Ram and Company. These are the letters of the year 1978. These facts clearly indicate that the first defendant in fact was earning independent income of her own in the year 1978. Ex.D11 series receipts also prove the same. Ex.D12 series also show that in the year 1983 first defendant had independent income of her own. Ex.D13 is the letter dated 06.11.1982 sent by the first defendant to the Manager, Canara Bank, on behalf of the Managing Director of the Rohas Printers, regarding the change of partnership of the firm. Ex.D14 is the letter of cancellation of guarantee of Rajeshwari Ranganathan dated 12.12.1984. The same would clearly show that the loan borrowed by the plaintiff and first defendant from the HDFC Bank was cleared by the first defendant. Ex.P15 dated 07.10.1985 is a pro-note executed by the first defendant to R.Ranganathan, to show that she has borrowed sum amount to discharge the amount borrowed from him. Ex.D16 is a document to show that the first defendant borrowed loan for a sum of Rs.90,000/-from the HDFC Bank in the year 1984. Exs. 17 and 18 are Bank passbooks of the first defendant to show that she had adequate funds in her account. Ex.D19 is a letter dated 22.02.2000 issued by HDFC Bank, which would clearly show that she has paid the loan availed by her. Ex.D20 dated 3.3.2000 also prove that the first defendant has cleared the loan availed by her.

17. From the above documents particularly filed on the side of the defendants it is very clear that after 1979 the first defendant had own income and registered partnership and doing business and dealt with finance independently. These facts clearly indicate that the first

defendant has purchased the the first item of property in the year 1974 out of contribution made by her father and the second item of property in the year 1983 out of her own funds. It is not disputed by the plaintiff that he has retired from Indian Army in the year 1967 and thereafter he was pursuing his education and completed MBA in the year 1972. Thereafter, he was joined in Shaw Wallace & Co at Chennai. Whereas the evidence adduced on the side of the defendants clearly indicate that the plaintiff was originally appointed as apprentice in India Cement in a consolidated pay of Rs.300/- per month and thereafter he was appointed as apprentice in Shaw Wallace and Co. Chennai for a sum of Rs.1300/- per month. These facts clearly indicate that the plaintiff would not have sufficient money to purchase the suit properties in the name of his wife at the relevant point of time. The onus shifts on the person who assertS the transaction Is benami to prove the same. The Courts are normally guided by the following circumstances to find whether a transaction is benami or not i.e. source of income, custody of title deeds, nature of possession and control over it, motive for purchase, conduct of dealing the properties. Admittedly, in this case except oral evidence of the plaintiff, there is no plausible evidence to establish any income mobilized funds for the purchase of the properties in the name of his wife in the year 1974.

Similarly, title deeds are also not with the plaintiff to show that the first defendant was only the name lender. He has also not established the nature of the possession of the property to control over it. Similarly, motive for purchase of the properties in the name of his wife also has not been established. Similarly, the conduct of the plaintiff in dealing with the property also not been established to infer that the transaction is only benami in the name of the first defendant. It is to be noted that Section 3(2) (a) of the Prohibition of Benami Property Transactions Act, 1988 reads as follows:-

> "**3.** (*1*)............................
>
> (2) Nothing in sub-section (1) shall apply to-
>
> (a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter......"

18. From the above reading of the above section it is very clear that there shall be presumption that property purchased by the husband in the name of the wife or unmarried daughter is made only for the benefit of the wife of unmarried daughter. Therefore, burden lies on the plaintiff to establish that the above purchase is not for the benefit of the wife or unmarried daughter. The onus is entirely rests on

the plaintiff to show that the property although purchased in the name of his wife or unmarried daughter the same has not been purchased for the benefit of wife namely first defendant herself. Unless the onus is discharged it is a statutory presumption goes in favour of the wife. It has to be presumed that the purchase of the property by the person in the name of his wife is only for her benefit.

19. Merely because the plaintiff stood as co-applicant while borrowing loan from the HDFC itself is not determinative factor to admit that the plaintiff only contributed money for the purchase of the properties in the name of the first defendant. From the documents it is very clear that first defendant only cleared the loan amount and also she had substantial amount in her account and she was dealing with the financial matters independently.

20. The entire reading of the plaintiff's evidence and documents this Court unable to find any material to show that the plaintiff has discharged his initial burden to show that the purchase was not for the benefit of the wife. Similarly source of income is also not been established by the plaintiff and the motive and title deeds and other circumstances as discussed above has not been proved by the plaintiff

to infer that the transaction is a benami in name. In para 10 of the plaint it is pleaded by the plaintiff that even he is absolute owner of the schedule mentioned property with good intention. But he had issued a legal notice dated 24.06.2008 directing the first and second defendants to agree for the sale of the plaint schedule property and divide sale consideration to three equal share or in the alternative effect partition of the aforesaid plaint schedule properties and give to the plaintiff 1/3 share. The very pleading of the plaintiff in para 10 of the plaint with regard to making provision for his wife and daughter clearly indicate that even assuming he has contributed amount for the purchase of item-1 of property he has done only for the benefit only for his wife. Coupled with the above pleading when the evidence of the plaintiff in the cross-examinationn analyzed, he has admitted in the cross-examination dated 30.11.2005 that only out of love and affection he purchased the entire property in the name of his wife. This fact itself clearly indicate that the plaintiff had purchased the suit properties in the name of his wife only for her benefit.

21. Though the plaintiff has not established the source of income by reliable evidence before the Court, even assuming his contention is proved the specific evidence of the plaintiff himself in the cross-

examination and also pleading in para 10 of the plaint to make provision to his wife and unmarried daughter clearly indicate the fact that in fact the purchase in the name of his wife in the year 1974 has been done only for their benefit. Therefore, the plaintiff cannot succeed in seeking partition. Having pleaded that entire suit properties have been purchased out of his own income, it is strange to note that he has claimed partition for only undivided 1/3 share in the properties. Such pleading itself clearly show that the plaintiff has not come to the Court with clean hands and in fact in the previous suit filed by the plaintiff in City Civil Court also clearly show that the relationship between the husband and wife were strained. Allegations and counter allegations of both sides also clearly show that there were matrimonial dispute between the husband and wife.

22. The cross-examination of the plaintiff also clearly show that he has also filed Original Petition before the Family Court for a decree of divorce against the first defendant and the above petition also subsequently dismissed. His cross-examination also indicate that he has already made allegations of adultery as against his wife with one Dhanakoti. All these facts clearly indicate that the suit is nothing but due to frustration in the matrimonial life. The plaintiff has not

established the plea of benami transaction. In this regard the judgment of this Court reported in **MANU/TN/0939/2015 (Shanthi and others vs. M.Masanam)**, wherein this Court has held as follows:-

> " 9. In view of the forgoing discussions, this Court hereby holds that the Courts below did not rely on Exs. A13, A15, A17 and A18 for the purpose of making a decision as to whether the funds for the purchase of the suit property under Ex.B1 was provided by the respondent/plaintiff, that on the other hand, the Courts below relied on Ex.A14 alone for the above said purpose and that the reliance made on Ex.A14 is not erroneous in law. The first substantial question of law is answered accordingly."

23. Similarly in **MANU/TN/0939/2015 (Shanthi and others vs. M.Masanam)**, this Court even coming to the conclusion that the source of income has been proved by the husband. i.e. in para 24 this Court has held as follows:-

> " 24. Even though this court holds that on the legal issue regarding the interpretation of sections 3 and 4 of the Benami Transaction (Prohibition) Act, 1988, the

submissions made on behalf of the appellants/surviving defendants is bound to be discountenanced, the other contention made on behalf of the appellants/surviving defendants is in consonance with the observations made by the Supreme Court in the judgment of Nand Kishore Mehra's case discussed supra. According to the submissions made by the learned counsel for the appellants/surviving defendants, the respondent/plaintiff himself made a clear and categorical admission and rather an assertion that he purchased the property in the name of his wife out of pure love and affection towards her and for her benefit. In paragraph 6 of the plaint it has been averred as follows:

" The plaintiff states that the suit schedule property was purchased only out of the plaintiffs own funds and it was out of the pure love and affection and in respect a security to his wife and his minor son."

In the proof affidavit of the respondent/plaintiff, who figured as P.W.1, also he has clearly stated that the purchase of the suit property was made in the name of his wife, namely the first appellant/first defendant out of love and affection meaning that the same was purchased for her benefit. In the light of the above said admission and also the presumption contemplated under Section 3(2) of the Benami Transaction (Prohibition) Act, 1988 the purchase made under Ex.B1 - Sale deed has to be construed as a purchase made for the benefit of the first appellant/first defendant. If we apply the ratio decidendi of Nand Kishore Mehra's case to a purchase made by the husband in the name of his wife for the benefit of his wife, then he cannot succeed. We have to come to a conclusion that he cannot succeed in his suit or plea of defence against this wife in whose name the purchase has been made. In the above said case, the Supreme Court has declared that for a person to succeed in a suit or defence on the basis of the benami transaction in the name of his wife or unmarried daughter, he should plead and prove that the purchase was not made for the benefit of the wife or the unmarried daughter as the case may be."

24. Having regard to the above judgment and also specific evidence of P.W.1 in the cross-examination that the property was purchased only out of the love and affection in the name of the first defendant and also categorically pleaded in para 10 of the plaint that in order to make some provision to the wife he restricted his claim to 1/3 share. All the facts cumulatively prove that the plaintiff has not established his case for claiming partition. In the earlier suit filed by him he sought for injunction against his wife-first defendant herein not to dispose of the property on the ground that he wants to make some provision to his only daughter the second defendant herein. Admittedly, the suit property has been handed over to the second defendant by way of settlement deeds Exs. P6 and P7 exhibited by the defendants. Accordingly, these issues are answered.

25. In the result, the suit is dismissed. However, considering the relationship between the parties, no costs.

02.03.2017

Index: Yes/No
Internet: Yes/No
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**N.SATHISHKUMAR, J**

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JUDGMENT IN
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