

RESERVED ON : 27.06.2017
DELIVERED ON : 31.07.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

A.S.No.955 OF 2010

S.Thirugnana Johnson ... Appellant/Plaintiff

Vs.

1. J.Princy Linnet Dorathy
2. S.Julian

.. Respondents/defendants

Prayer:- This Appeal suit has been filed under Section 96 (1) read with Order 41 Rule (1) (2) of C.P.C. against the judgment and decree of the II Additional City Civil Court, Chennai, dated 09.02.2010 and made in O.S.No.2783 of 2007.

For Appellant : Mr.N.Jayabalan

For Respondents: Ms. Sudha Ramalingam

J U D G M E N T

The unsuccessful plaintiff in O.S.No.2783 of 2007, on the file of the learned II Additional District Judge, City Civil Court, Chennai, is the appellant herein.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. The plaintiff filed a suit in O.S.No.2783 of 2010, before the learned II Additional City Civil Court, Chennai, for declaration declaring that the plaintiff is entitled to equal, joint and absolute right and title over the suit property more fully described in the plaint and also for permanent injunction restraining the defendants from alienating the suit property and from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

4. After contest, the suit was dismissed.

5. The brief facts of the case of the plaintiff are as follows:

(i) According to the plaintiff, the suit property was purchased by him and the 1st defendant, during the subsistence of their marriage, without doubting or anticipating that marital

relationship would come to an end so quick. The marriage between the plaintiff and the 1st defendant was solemnized on 14.2.1994 at Madurai. The said marriage was dissolved on 20.9.2005. It is contended that the idea of purchasing a property was mooted by the plaintiff. The plaintiff was working as an Assistant Engineer in P.W.D Chennai during the relevant period. The plaintiff, who negotiated with the promoters, fixed the price as well as terms and condition of the agreement. The plaintiff paid the advance amount and subsequent payments to the vendor and the builder towards price of land and cost of construction. The sale deed dated 23.03.2000 executed by vendors R.Elumalai and R. Chandran through their Power Agent D.C. Sargunam relating to the undivided share in the land. The first contractor with whom the building agreement was entered into had abandoned the cost of construction at skeleton level, which necessitated to engage labourers and to complete the flat and as a result, the cost of the flat had ended in escalation.

(ii) According to the plaintiff, he paid the major portion of consideration at the time of execution and registration of sale deed in respect of undivided share in the property. It is stated that he also paid the cost of construction to the builder and labourers. All the moneys were spent by the plaintiff for miscellaneous expenses, such as redesigning, flooring and interior decoration. Final cost of the flat was worked at Rs.13,00,000/-. Further, the plaintiff was the author of internal designing. The wood work and other valuable work in the property were done by the plaintiff. Almost all the cost were paid by the plaintiff by raising loan from provident funds and from friends and other sources. The payments were made through individual account of the plaintiff and joint account with the 1st defendant herein and NRI Account of the 1st defendant. A home loan was raised from Can Fin Homes Limited in the name of the 1st defendant, in which the plaintiff stood as Co-applicant. The EMI's were paid by the plaintiff through his personal account, Joint account and from NRI account of 1st Defendant. Now the 1st defendant had preclosed the loan account and collected the documents from the Bank on 26.3.2007 without getting consent and No Objection Certificate from the plaintiff.

(iii) It is contended that the plaintiff alone is in possession and enjoyment of the suit property. The suit property was let out to various tenants and they have been paying rents to the plaintiff through his friend. During some period, the plaintiff's friends were in occupation without paying any rent. After divorce, the 1st defendant is enemically disposed off towards the plaintiff. The urgent manner in which the defendant preclosed the loan account and collected the title deeds through the 2nd defendant, without informing the plaintiff, indicates some ulterior motive on the part of the defendants to grab the property some how or other. Hence, the plaintiff has filed the present suit for declaration and permanent injunction.

(i) While admitting the allegations that the flat was purchased during the subsistence of marriage between the plaintiff and the 1st defendant, it is the contention of the defendants that the plaintiff did not contribute major portion nor any amount for purchase or improvement of the land or flat thereon as alleged. The 1st defendant is the sole lawful owner of the suit property ever since the purchase, as the same was purchased out of her own self acquired funds. Taking advantage of the marital status, the plaintiff took advantage to enrich himself by taking advance and letting out the flat to some persons of his choice with the help of his local friend and is enjoying the rent and advance despite her objections and claim for vacant possession and mesne profits.

(ii) It is the further contention of the defendants that only the 1st defendant was gainfully employed in the United Kingdom. Whereas the plaintiff who was employed in the PWD office had availed long leave and lived with the 1st defendant in the United Kingdom as her dependent. Hence, he had no money, but he had the time to come to India and do the negotiations and helped her in the purchase of the suit property out of her self acquired funds. As the plaintiff was her husband, he was entrusted with access to all her bank accounts. Thus, whenever he was in India he did the needful towards the purchase and building of the flat i.e. the suit property.

(iii) But the 2nd defendant, the father of the 1st defendant, being a permanent resident of India, who, in fact, took care of her interests in the purchase and construction throughout, as the 1st defendant was in India only for some time. But the plaintiff taking advantage of the fact that he was the son-in-law and as the 2nd defendant was a little old and living in Trichy arranged to let out the flat to a tenant through his friend named Ashok Kumar. He also clandestinely made arrangements to get the rents deposited in his personal bank account and due to the matrimonial relationship between her and the plaintiff, she did not take it seriously.

(iv) The 1st defendant had availed loan from Canfin homes ltd., for the purchase of the suit property. The plaintiff's name was added as a co-applicant for the said loan by way of abundant caution as he alone could travel up and down to India from United Kingdom, because he was unemployed and had the time to travel. He neither paid a single pie towards repayment of the loan nor under any other account for purchase or construction of the suit property. Hence, the 1st defendant is the sole owner of the suit property. When the plaintiff has let out the property, he had clandestinely given his personal bank account number for deposit of rents. Due to the spousal relationship shared, she did not object to the same. After divorce, the 1st defendant had requested the plaintiff, the tenant, who is occupying the flat and Ashok Kumar, who is locally administering the property as plaintiff's friend, to hand over the rents and also to attorn the tenancy in her favour. Her request was not heeded to. Hence,

she issued legal notices but till date the plaintiff has not handed over the flat and is enjoying the rent even as she was contemplating to take legal action, the plaintiff has filed the suit. Hence, the defendants prayed for dismissal of the suit.

7. Based on the above pleadings, the trial Court has framed the following issues:-

1. Whether the suit property was jointly purchased by the plaintiff and the 1st defendant and whether they are entitled to equal share in the property?
2. Whether the suit property was purchased in the name of the 1st defendant due to marital relationship?
3. Whether the plaintiff is entitled to declaration as sought for?
4. To what relief the plaintiff is entitled to?

8. On the side of the plaintiff, the plaintiff himself was examined as PW1 and Exs.P1 to P14 were marked. On the side of the defendants, the 1st defendant herself was examined as D.W.1 and the 2nd defendant was examined as D.W.2 and Exs. B1 to B13 were marked.

9. Based on the oral and documentary evidence adduced on either side, the trial Court has dismissed the suit. Aggrieved over the same, the present appeal came to be filed.

10. Learned counsel appearing for the appellant/plaintiff submitted that major portion of the amount was spent by the plaintiff for purchase of the suit property, but due to marital relationship, the property was purchased in the name of his wife, the 1st defendant herein. In fact, it is not for the benefit of his wife. The learned counsel further submitted that consideration paid by the plaintiff has also been established. Therefore, according to the learned counsel, the plaintiff/husband is, certainly entitled for declaration as prayed for.

11. The learned counsel for the plaintiff also submitted that Exs. A3 to A9 clearly established the factum of payment made by the plaintiff/husband and the same has not been denied by the 1st defendant/wife. It is submitted by the learned counsel that the plaintiff is in possession of the suit property and he let out the same to various tenants and collecting rent from them. Ex.P10 would also prove the same. It is further submitted that merely because the documents are in the custody of the 1st defendant/wife, the same cannot be a ground to disbelieve the plaintiff's case, as the said documents were collected from the bank by preclosing the loan amount just one day prior to the filing of the suit. The evidence of the plaintiff with regard to the payment of money towards purchase and construction has also not been denied by the 1st defendant in entirety. In fact, at the time of purchase of the property, the 1st defendant was in London and, therefore, the possibility of spending money to purchase the suit property is highly improbable. Hence, it is submitted

by the learned counsel that the learned Trial Judge has not analysed the oral evidence and documentary materials in entirety and had simply dismissed the suit. Hence, the learned counsel prays for allowing the appeal. In support of his arguments, the learned counsel has placed reliance relied on the judgment in NAND KISHORE MEHRA V. SUSHILA MEHRA (1995 AIR SCW 3306).

12. On the contrary, it is the contention of the learned counsel for the respondents/defendants that at the time of marriage, the 1st defendant/wife was working as a lecturer and was drawing a salary of Rs.12,000/- per month and that the plaintiff/husband was drawing sum of Rs.10,000/- only. It is submitted by the learned counsel that the plaintiff/husband was looking after his family even after the marriage and he has not paid any single pie to the 1st defendant. There was no savings on the plaintiff's side. After marriage, the 1st defendant went to Aachen University, Germany on University Exchange Program for three months and thereby earned substantial amount of Rs.1,25,000/-. Subsequently, she left for England to pursue her P.hd program in Kings College, London, on scholarship, for which she was paid a monthly stipend of Rs.84,000/-. Besides, she was also employed at UK and was drawing a salary of Rs.1,75,000/-p.m. At the time of joining, she was also paid a sum of Rs.6,00,000/- towards a relocation assistance. The evidence of D.W.1 in this aspect has not been challenged by the plaintiff. In fact, at the relevant time, the plaintiff availed leave on loss of pay and was staying with the 1st defendant at UK. It is submitted that the plaintiff was acting as agent of the 1st defendant and he was staying in London without salary. Therefore, the case of the plaintiff/husband that he paid major portion of the amount towards sale consideration is highly improbable.

13. It is the vehement contention of the learned counsel that though there was a joint account in the name of 1st defendant/wife and his husband, the plaintiff herein, the 1st defendant's salary was regularly credited in the said joint account whereas the plaintiff's salary was never credited to the said account. All these aspects clearly indicate that the plaintiff/husband, taking advantage of strained relationship between himself and the 1st defendant, is trying to grab the property of the 1st defendant/wife after the divorce proceedings. It is the further contention of the learned counsel that merely because the plaintiff, being her husband, is letting out the properties through his friend and receiving rent from the tenants, the same cannot be a ground to hold that he is the owner of the property. The burden on the side of the plaintiff to establish the payment of sale consideration has not been discharged. The Trial Court, has properly analysed the entire evidence and had come to the right conclusion in dismissing the suit and hence, the same does not warrant any interference. In support of his arguments, the learned counsel has placed reliance on the judgments in MAHAVEER CHAND SURANA v. YASHODA AND OTHERS (AIR 2001 Madras 328 and VALLIAMMAL (D) BY LRS v. SUBRAMANIAM AND OTHERS [(2004) 7 SCC 233].

14. In the light of the above submission, the points that arise for consideration in this appeal are:

1. Whether the suit property was purchased out of the consideration paid by both the plaintiff and the 1st defendant and if so, whether the suit property was not purchased for the benefit of wife?

2. To what relief?

Issue Nos.1 and 2:

15. It is the case of the plaintiff/husband that the suit property, namely, the flat, was purchased in the name of his wife during subsistence of their marriage and he has contributed major portion of the cost for the purchase of the same. Therefore, he sought a declaration of equal right in the suit property. In nutshell, it is the contention of the plaintiff that the property was registered in the name of his wife as benami but he alone has contributed major portion of the amount.

16. Before going in to the factual aspects, it would be appropriate to consider the legal issues relating to the issue in question.

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

18. Though there is a prohibition of benami transaction under Section 4 of the Benami Transactions (Prohibition) Act, 1988, section (2) of Section 3 of the Act, does not bar a suit filed by the plaintiff/husband as against the wife claiming benami transaction. However, to succeed in a suit of this nature, it has to be proved that the property has not been purchased for the benefit of his wife because sub Section (2) of Section 3 of the Act provides that unless a contrary is proved, there is a presumption that the property was purchased for the benefit of the person, in whose name the property was purchased.

19. The aforesaid aspect has been dealt with by the Apex Court in Nand Kishore Mehra v. Sushila Mehra (1995 AIR SCW 3306). In paragraphs 7 and 8 of the said judgment, the Apex Court has held as follows:

" 7. Therefore, our answer to the question under consideration is that neither the filing of a suit nor taking of a defence in respect of either the present or past benami transaction involving the purchase of property by a person in the name of his wife or unmarried daughter is prohibited under

sub-sections (1) and (2) of Section 4 of the Act.

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. 4 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."

20. There is no dispute with regard to the above said aspect. But in the given case, it is not the case of the plaintiff/husband that the property was purchased in the name of his wife and that the entire consideration was paid by him. Whereas his main claim is that since major portion of the amount was spent by him for purchase of the suit property, he has equal right in the property. But, it is the specific case of the 1st defendant that the entire property was purchased by her out of her own source.

21. In the above background when the facts of this case is analysed, it is not in dispute that the plaintiff and the 1st defendant got married in the year 1994 and thereafter, due to strained relationship, the marriage was dissolved on 20.9.2005. It is also the admitted fact that the 1st defendant has entered into an agreement dated 24.2.1999 for purchase of the suit property. The sale deed has also been registered in the name of the the 1st defendant on 23.3.2000. This fact is also not in dispute. The aforesaid agreement was marked as Ex.B5 and the sale deed was marked as Ex.B6. The aforesaid agreement as well as the sale deed are not disputed by the plaintiff/husband. It is the case of the plaintiff/husband that he has contributed major portion of the amount for purchase of the property in the name of his wife.

22. It is to be noted that the onus is heavy on the husband/plaintiff, who claimed benami transaction, not only to establish the source of money and also motive for purchase of

the property. These are the important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another. The other circumstances that can be taken as a guide to determine the nature of the transaction are:

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, if 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."

The source of money, motive and the reasons why the property was purchased in the name of his wife as benami has to be established. The onus is on the person who pleads benami to prove the circumstances to dislodge the presumption. Therefore, it is for the plaintiff/husband to establish that the property was not purchased for the benefit of his wife, as per Section 3 (2) of the Act.

23. In the above background when the pleadings of the plaint is carefully analysed, it is seen that except stating that he has provided a major portion of consideration for purchase of flat, i.e., the suit property, nowhere it is pleaded that what was the actual amount spent by him. It is the duty of the plaintiff/husband not only to plead but also to prove the material particulars, more particularly, with regard to the nature of the payment allegedly made by him. But on a reading of plaint, it is seen that except stating that the idea was mooted by him to purchase the property by availing loan, no details, whatsoever pleaded in the entire plaint as to the nature of payment and what was the exact amount contributed by him to purchase the flat, i.e. the suit property, in the name of his wife. Further, in the chief examination, he has stated that he was employed as Assistant Engineer in Public Works Department, Government of Tamil Nadu at Chennai and that the 1st defendant was her last lap of Ph.d curriculum during the relevant period at U.K and since she has decided to settle at U.K, it was collectively decided by both of them to purchase the property in the name of his wife. It is also stated by him that because the cost of construction worked at Rs.13,00,000/- he reconciled a sum of Rs.6,89,000/- towards the cost of the property. This part of evidence is without any pleadings. In the entire pleadings, there is no whisper about the alleged payment of Rs.6,89,000/-.

24. It is further stated by him that he has also availed a loan of sum of Rs.4,85,000/- from Canfin Home Limited. In this regard, the documents filed by him in Exs. A1 to A14 are carefully seen, it appears that Ex.A1 is a original pass book stood in the name of the 1st defendant alone. Subsequently, the same has been converted as joint account of the plaintiff and the 1st defendant. Ex.A2 is the continuation of Ex.A1 pass book. This fact is not disputed. Ex.A3 is the receipt said to have been given by one D.C.Sargunam, for a sum of Rs.25,000/- to the

plaintiff. Similarly, Ex.A4 is the State Bank pass book of the plaintiff along with receipt to show as if a cheque for Rs.75,000/- was received by one Sargunam. But the said Sargunam has not been examined. Hence, Ex.A3 and A4 cannot be given any credence. Further, in Ex.A4 date of payment is shown as 25.07.2001. Though the entry made in Ex.A4, pass book shows the cheque bearing No. 664474 and proved the withdrawal of amount of the cheque, the same alone cannot be a ground to presume that the plaintiff has paid a sum of Rs.6,89,000/-.

25. Similarly, Ex.A5 also filed to show that a sum of Rs.30,000/- was paid through the cheque. But the said Ex.A5, receipt, shows that the said amount has been received by one Sargunam from the 1st defendant and not from the plaintiff. Similarly, A6 was filed to show that loan amount has been paid by him. Ex.A6, in fact, clearly shows that loan has been paid in the monthly instalment only by the 1st defendant and not by the plaintiff. It is also admitted fact that the loan was preclosed by the 1st defendant and title deeds were also received by her from the Bank. Ex.A7 is the receipt said to have been given by the builder for a sum of Rs.15,000/-. An attempt has also been made by the plaintiff to show that he has received GPF amount and utilised the said amount towards the cost of construction. Ex.A8 has been filed to substantiate the same. But the entries made in Ex.A8 shows that a sum of Rs.62,000/- was withdrawn in the year 1998, which proves the fact that the same has not been taken after the agreement or at the time of entering into the agreement. Similarly, in the year 2001, he has withdrawn a sum of Rs.1,00,500/- but there is no corresponding evidence available on record to show that this amount has been paid towards the cost of construction of the building.

26. Likewise, the plaintiff has produced Ex.A9, voucher and the bills received towards cost of construction but same does not show that who has paid the amount. When Ex.A10 is carefully perused, it is the self declared statement by the plaintiff and the same cannot be given credence. Though it shows that he has paid the amount to the bank loan account, his own evidence shows that all the amount has been paid from joint account. Exs.A11 to A13 are the income tax returns and the same are no way helpful to the case of the plaintiff as regard the payment of consideration. Ex.A14 is only the resignation sent by the 1st defendant to the Registrar, Anna University. None of the documents except Ex.A4, would prove that the alleged contribution was made by the plaintiff. Though Ex.A4 shows withdrawal of Rs.75,000/- by way of cheque bearing No.664474, as discussed above, the entry made in Ex.A4, pass book does not show that the cheque was issued to the builder. Further, though the receipt has been produced to show as if the same has been paid to the builder, the said builder has not been examined. Therefore, in the absence of any specific evidence to the effect that the said cheque has been encashed by the builder concerned, merely on the basis of the debit entry found in A4, pass book, it cannot be stated that only the plaintiff has actually paid

the amount towards sale consideration.

27. In the light of the above oral evidence and documentary materials, now the cross examination of P.W.1 is carefully seen, the plaintiff has admitted that he has individual savings account in the State Bank of India from 1980 and till now he is maintaining the same individually. He has also admitted that the 1st defendant has also individual savings account in the State Bank of India and after marriage, the above saving account of the 1st defendant has been converted into joint account. He has further admitted that even after conversion of joint account, the 1st defendant's salary was credited in the said joint account and as a husband he was maintaining the same also. The plaintiff also admitted in the cross examination that his income has never been credited into the said joint account. Further, the plaintiff, in his evidence, has stated that since the 1st defendant was selected for pursuing her higher studies with scholarship at London, she left to London in the month of April 1996 and thereafter, he also went to London in a dependent visa by availing leave on Loss of Pay for more than one year on condition that he will not undertake any employment in London. So, it is clear that the plaintiff was with the 1st defendant from December 1996 to December 1997. Thereafter, he came back to India only in the month of December 1997. After four months, again he went to London on dependent Visa and also availed Leave on Loss of Pay. Only during that time, an agreement to purchase land was entered into between the 1st defendant and the builder. It is also admitted that as per the agreement a sum of Rs.7,64,300/- was fixed towards the sale consideration as well as cost of construction for the entire flat and sale deed in respect of undivided share was also executed on 23.3.2000.

28. From the aforesaid admitted evidence of P.W.1, it is clear that during the period 1996-1997 and 1998-1999, he availed leave on Loss of Pay and he was totally dependent on the 1st defendant and living in UK. Further, Exs.A1 and A2, joint Account pass book, clearly shows that except salary of the 1st defendant, the salary and other amount from the plaintiff has never been credited in the said account. Therefore, the contention of the plaintiff that he has contributed the amount at the relevant time towards purchase of the property is highly doubtful. His evidence also clearly shows that from 1987 till his marriage, he was spending his salary and other amount towards the welfare of parents and family. Therefore, the possibility of having money in his hand at the relevant time has been ruled out. His evidence also clearly shows that from the year 2001, the 1st defendant is working at London as a research engineer. Further, the plaintiff has also admitted that only one cheque from his bank account has been given towards the loan availed by them from the Can Fin Homes Limited. In fact, the 1st defendant has availed the said loan, in which the plaintiff stood as co-applicant only. This fact is also not disputed.

29. Admittedly, the plaintiff was working in Government Service at the relevant time. It is the normal practice for the financial institution to get security from the persons, who are

employed in Government. In such a way, the plaintiff stood as a co-applicant. Therefore, merely because, the husband stood as co-applicant, it cannot be stated that he has availed the loan and repaid the amount.

30. More so, Exs. B7, statement of Accounts from Canara Bank and Ex.B8 statement particulars would clearly show that the monthly instalments have been paid from the joint account, which was previously owned by the 1st defendant. As stated supra, entries in Exs.A1 and A2, joint account, would go to show that only the salary of the 1st defendant alone was credited in the joint account. Therefore, merely because the cheques were paid from the joint account, it cannot be said that the plaintiff also contributed amount for purchase of flat.

31. Admittedly, there is no evidence to show that the plaintiff's money has been credited into the joint Account. It is also admitted by the plaintiff himself that the 1st defendant was getting some scholarship, while he was pursuing higher education. Further Exs.B2 to B4 have also been filed in that aspect. Therefore, merely because some GPF amount has been withdrawn by him in the year 2001, it cannot be said that he has spent the said amount for the purchase of the suit property. Absolutely, there is no evidence even to substantiate the plaintiff's evidence that he has paid a sum of Rs.6,00,000/-. Whereas, his own evidence would clearly show that the loan amount has been regularly repaid from the joint account account. As already stated, in the joint account, the 1st defendant's salary alone has been credited. In fact, the plaintiff's salary was credited to his individual account.

32. All these facts clearly show that the contention of the plaintiff that he has spent major portion towards the purchase of the property cannot be countenanced. Even assuming that the plaintiff/husband has spent some small amount from his own packet at the time of construction of flats, that itself cannot be a ground to presume that the same has been done not for the benefit of the 1st defendant/wife. It must be established by him that the flat was purchased not for the benefit of his wife. Further, motive to purchase the property in the name of his wife and the reason for such purchase also to be established by the plaintiff. But the plaintiff has not established these aspects.

33. At the risk of repetition, this Court once again points out that unless it is proved by the plaintiff/husband that the purchase was made not for the benefit of his wife and the same was for his benefit, there is a presumption that the property was purchased only for the benefit of his wife.

34. It is pertinent to point out that it is not the case of the plaintiff/husband that the entire amount has been paid by him and that the property was purchased by him in his name. Whereas it is the case of the plaintiff that he has paid considerable amount for purchase of the property. But, as already pointed out, there is no details whatsoever in the pleadings about the exact amount actually spent by him.

Whereas, for the first time, the plaintiff, in his evidence, has stated that he spent more than a sum of Rs.6,00,000/- towards purchase of the suit property. Therefore, in the absence of any clinching evidence to prove the same, the plaintiff cannot succeed.

35. It is worthy to mention that the agreement and the sale deeds stand in the name of his wife, the 1st defendant and the 1st defendant was employed not only in India but also at London and that the statement of accounts also shows that her salary was credited in the joint account regularly and that the loan amount was paid by her regularly. Therefore, it is clear that the property, in fact, was purchased by the 1st defendant alone and only after getting divorce, the suit came to be filed. The possibility of filing such a suit in view of the strained relationship cannot be ruled out.

36. Yet another contention of the learned counsel for the plaintiff is that the property is in the custody of the plaintiff and he has only let out the same to various tenants. It is normal for any husband to arrange tenants, while her wife was away from the place. That is the normal conduct. When that being so, merely because the plaintiff has arranged for letting out the property and supervising the same, that itself cannot be a ground to hold that the entire property was enjoyed by him for his own benefit. Therefore, the contention of the plaintiff on that ground has no legs to stand.

37. In this context, it is useful to refer the judgment of the Hon'ble Apex Court in VALLIAMMAL V. SUBRAMANIAM AND OTHERS (2004 7 SCC 233), wherein the Hon'ble Apex Court has held as follows:

" 17. The plaintiff did not provide any money for the purchase of the land in the name of his wife. Neither in the plaint nor in his deposition the plaintiff explained satisfactorily when the money was provided by a third person. Neither the person who alleged to have paid the money nor anyone else on his behalf has examined as a witness. Therefore, it cannot be held that Pattayakkaarar or anyone else paid the consideration on behalf of the plaintiff. It is not even averred by the plaintiff that Pattayakkaarar provided money on his behalf or that he repaid the money to him later.

18. It is well settled that intention of the parties is essence of the benami transaction and the money must have been provided by the party invoking the doctrine of benami. The evidence shows clearly that the original plaintiff did not have any justification for purchasing the property in the name of Ramayee Ammal. The reason given by him is not at all acceptable. The source of money is not at all traceable to the plaintiff. No person named in the plaint or anyone else was examined as a witness. The failure of the plaintiff to examine the relevant witnesses completely demolishes his case.

38. From the above judgment, it is clear that even assuming that the plaintiff establishes the fact that consideration has been paid by him for the purchase of the property, still he has

not been relieved from the burden of proving the fact that the property has not been purchased for the benefit of his wife.

39. On a careful scrutiny of the entire pleadings in the plaint, it is seen that there is no whisper to the effect that the property has not been purchased for the benefit of his wife. Further, motive for purchasing the property in the name of his wife has also not been established. There is no reason except stating that due to marital relationship the property was purchased. That cannot be a motive for purchase of the property in the name of his wife. Therefore, on a careful analysis of the entire evidence adduced by the both sides, this Court is of the view that the plaintiff has failed to establish the factum of consideration, motive as well as source of money. Therefore, the plaintiff cannot claim declaratory relief in respect of the suit property which stands in the name of the 1st defendant. Accordingly, these points are answered.

40. The learned Trial Judge, after considering all these aspects, has rightly dismissed the suit and hence, this Court does not find any infirmity or illegality in the judgment of the learned trial Judge for interference.

41. In the result, the appeal is dismissed confirming the judgment and decree of the trial Court. However, considering the relationship between the parties, there shall be no order as to costs. Connected MP is closed.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

ga

To

II Additional Judge,
City Civil Court,
Chennai.

copy to

The Section Officer
VR Section, High Court, Madras.

+2 Ccs to Ms. Sudha Ramalingam, Advocate sr 54248.

+1 Cc to Mr.N. Jayabalan, Advocate sr 54775.

A.S.No.955 of 2010