

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 08.03.2022
PRONOUNCING ORDERS ON : 14.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Second Appeal No.261 of 2013
and M.P.No.1 of 2013

J.Thulasirama Reddy ..Plaintiff/1st Respondent/ Appellant

..Vs..

1.B.Shanmugam ..5th Defendant/2nd Appellant/1st Respondent

2.Yasodammal

3.M.Moorthy

4.Rajalakshmi

5.M.Anandan

6.M.Ethirajulu ..L.Rs.of 6th Defendant/Respondents 3 to 7/
Respondents 2 to 6

7.Sathyammal

8.Karthikeyan

9.Gajalakshmi

10.Sevanthi

11.Venkatesan ..LRs. of 4th Defendant/Appellants 8 to 12 /
Respondents 7 to 11

12.Vanajakshi Ammal ..3rd Defendant/2nd Respondent/
12th Respondent

13.P.S.Amarnath ..1st & 7th
Defendant/Respondents 3 & 4/
Respondents 13 & 14

14.Vidyasagar

15.Rama Devi ..9th Defendant/5th Respondent/
5th Respondent

Prayer: Second Appeal filed Under Section 100 of the Code of
Civil Procedure against the Judgment and Decree of the

learned Subordinate Judge, Vaniambadi dated 24.09.2012 made in A.S.No.4 of 2009 reversing that of the learned District Munsif, Ambur, dated 11.11.2005 made in O.S.No.24 of 1996.

For Appellant : Mr.Tranquebar Dorai Vasu

For Respondents : Mr.T.R.Rajagopalan
Senior Counsel
for M/s.P.Veena Suresh
for RR2 to 11

R 1- No appearance
RR12 to 14 Notice dispensed with
vide Court order dated 18.03.2019

JUDGMENT

The unsuccessful plaintiff is the appellant in this Second Appeal. The case of the plaintiff is that the suit property measuring an extent of 1.32 acres originally belonged to one Sriramalu Reddy. He owed a sum of Rs.750/- to the father of the 1st plaintiff under a promissory note dated 27.5.1927. In discharge of the said debt, the said Sriramulu Reddy offered to sell the suit property in favour of the father of the 1st plaintiff for a total sale consideration of Rs.1000/-. Out of the total sale consideration, the debt amount was agreed to be adjusted and the balance sum of Rs. 250/- was agreed to be paid by way of cash. Accordingly, a registered sale deed dated 26.6.1930 (Ex.A1) came to be executed by the said Sriramulu Reddy and the name of the purchaser was shown as P.Chinnamma Reddy, who is none other than the brother in law of the father of the 1st plaintiff. The name of the father of the 1st plaintiff is Jayarama Reddy. According to the plaintiff, there was a dispute between Jayarama Reddy and his brother Venkatarama Reddy during the relevant point of time and that is why the property was purchased in the name of Benami, P. Chinnamma Reddy.

2.It is stated that the father of the 1st plaintiff was in exclusive and uninterrupted possession and enjoyment of the suit property and he was cultivating the land and was also paying the kist in his own name. According to the plaintiff, this understanding was duly recognised and the said Chinnamma Reddy nowhere showed or exhibited that he is the owner of the suit property. Even the Municipal Councillor, Ambur proposed to purchase a portion of the suit property in the year 1956 and recognised the father of the 1st plaintiff as the owner and it was refused to be parted with through a letter dated 21.5.1957.

3.It is the further case of the plaintiff that the said Chinamma Reddy died in the year 1975 leaving behind the 1st and 2nd defendants as his sole legal heirs. The 1st defendant is the son and the 2nd defendant is his wife. The father of the 1st plaintiff, viz. Jayarama Reddy died in the year 1964 leaving behind the 1st plaintiff, the 2nd plaintiff wife and his daughter who is the 3rd defendant in the suit. It is stated that the 1st plaintiff was in absolute possession and enjoyment of the suit property and the kist receipts came to be issued in the name of the 1st plaintiff.

4. The grievance of the plaintiff is that the 1st and 2nd defendants attempted to sell the suit property in favour of third parties by taking advantage of the sale deed standing in the name of Chinamma Reddy. Immediately a notice was issued by the 1st plaintiff and a paper publication was also given. In spite of the same, the 1st and 2nd defendants were taking hasty steps to sell the suit property.

5.After the filing of the suit, the defendants 1, 2, 3, 7, 8 and 9 created sale deeds and gift deed, marked as Exhibits A-53, A-54 and A-58 and conveyed the property in favour of defendants 4 to 6. Left with no other option, the plaintiff filed the suit seeking for the relief of declaration of title and permanent injunction and alternatively for delivery of possession if in case the Court holds that the defendants are in possession of the suit property.

6.The written statements were filed by D4 to D6. They took a stand that the suit property was owned by Chinamma Reddy and he purchased the property for a valid consideration. They further stated that Jayarama Reddy who is the father of the 1st plaintiff, was never in possession and enjoyment of the suit property. They denied the fact that Chinamma Reddy was a Benamidar. It was further stated that the 1st defendant is the close relative of the 1st plaintiff and the 1st plaintiff who is an advocate by profession was conducting cases and hence the 1st defendant had handed over the original documents to the 1st plaintiff. The 1st plaintiff in turn is attempting to misuse the said documents and has come up with a false case.

7.They took a further stand that the properties were sold by defendants 1,2,7 and 8 who had the right and title over the property. Similarly the gift deed was also executed by the defendants who had the right and title over the suit property.

Accordingly, the defendants sought for the dismissal of the suit.

8.It can be safely concluded that only defendants 4 to 6 contested the case effectively and none of the other defendants filed any written statement. Respondents 7 to 11 are the legal representatives of the 4th defendant. Respondents 2 to 6 are the legal representatives of the 6th defendant and the 1st respondent in this Second Appeal is the 5th defendant. The 3rd defendant in the suit is the 12th respondent in the Second Appeal. The 13th and 14th respondents are the legal heirs of the 1st defendant and the 15th respondent is the 9th defendant in the suit.

9.The Trial Court passed a Judgment and Decree dated 11.11.2005 and decreed the suit as prayed for. Thereby, the plaintiff was declared to have absolute title in the suit property and the defendants were directed to deliver possession to the plaintiff within six months. Aggrieved by the same, the defendants filed A.S. No.4 of 2009 before the Sub Court, Vaniambadi and the Appeal was dismissed by Judgment and decree dated 4.3.2010 and thereby the Judgment and Decree of the Trial Court was confirmed.

10.The defendants aggrieved by the same, filed S.A. No. 495 of 2010 before this Court. The Second Appeal was finally heard on 06.06.2011 and it was allowed and the matter was remanded back to the First Appellate Court. The relevant portions in the judgment are extracted hereunder:

"The trial Court went off on a tangent and decided the lis, without referring to all the relevant precedents and the factual circumstances; and it simply prevented the defendants from contesting the matter on merits. There is the is no quick fix and also there are no two ways about it, in disposing the matter without adhering to the maxim "audi alteram partem - No man shall be condemned unheard." No doubt, I am fully aware of the fact that this is a long pending matter and in such a case if the matter is remitted back to the trial Court, it would take further time for the litigation to get concluded. The first appellate Court being the last Court of facts, on considering the facts and circumstances of the case could have given opportunity to cross examine the plaintiffs' witness and also could have given opportunity to the defendants concerned to adduce evidence, but it failed to do so. Hence, remanding the matter to the

first appellate Court which happened to be the last Court of facts would to some extent curtail further time of the litigation and with that intention I would like remand the matter back to the first appellate Court with the following direction:

The first appellate Court shall give due opportunity. to the appellants/defendants to cross examine P.W.1 and also give further opportunity to the plaintiffs to adduce additional evidence both oral and documentary, if any. The defendants also shall be given opportunity to adduce oral and documentary evidence. Endeavour shall be taken by the appellate Court to see that the entire process is completed on day to day basis and judgment delivered on merits within a period of two months from the date of receipt of the records.

21. Both parties shall appear before the first appellate Court on 27.06.2011.

22. Wherefore, the substantial question of law is answered to the effect that both the Courts below were not justified in preventing the appellants/defendants from participating in the proceedings and contesting the matter on merits and accordingly the Second Appeal is allowed setting aside the judgments and decrees of both the Courts below and the matter is remitted back to the first appellate Court as set out supra. No costs. Consequently, connected miscellaneous petition is closed".

11. On remand, the Appellate Court allowed the parties to let in additional evidence and thereby the plaintiff examined three additional witnesses viz., PW2 to PW4 and marked additional documents, Exhibits A-59 to A-67. PW1 was also recalled for further cross examination. Similarly, on the side of the defendants, DW1 to DW 3 were examined and B1 to B23 were marked. That apart, X1 to X3 which were the extracts from the cultivating tenants register, A Register and Town Survey Field Register were also marked through PW2 and PW3.

12. The Lower Appellate Court on re-appreciation of the entire oral and documentary evidence and after dealing with every issue that was framed by the Trial Court, passed a Judgment and decree dated 24.09.2012 allowing the appeal and thereby the Judgment and Decree of the Trial Court was set aside. Aggrieved by the same, the plaintiff has filed the Second Appeal.

13. When the Second Appeal was admitted, the following substantial questions of law were framed:

I. Whether the lower appellate Court was right in splitting up the various circumstances relied upon by the plaintiff to prove that the transaction covered by Ex.A1 Sale Deed dated 26.06.1930 is a benami transaction instead of looking into the cumulative effect of the various circumstances ?

II. Whether the lower appellate Court was right in concluding that the payment of kist by the plaintiff's father Jayarama Reddy and the plaintiff cannot be taken serious note of as the same is against the practice overlooking the fact that the very suit is one based on the claim that Ex.A1 Sale Deed dated 26.06.1930 is a benami transaction and the purchase therein namely, Chinamma Reddy was only a name lender ?

14. Thereafter, the following additional substantial questions of law were framed:

1. whether the First Appellate Court's judgment has to be set aside on the ground that it failed to formulate points for determination ?

2. whether the First Appellate Court's judgment has to be set aside on the ground that it failed to discuss the additional evidence adduced before it ?

15. The learned counsel for the Appellant made the following submissions:

- The plaintiff is claiming title on the ground that Chinamma Reddy was only a Benamidar and the actual owner of the property is his father Jayarama Reddy.
- In order to substantiate the claim of Benami, the plaintiff has satisfied all the ingredients viz. source of the transaction, relationship of the parties, possession over the suit property, motive for the benami transaction, custody of the original title deed and conduct of the parties.
- Insofar as the source from which the purchase money was paid, it has been clearly proved that Sriramulu Reddy borrowed money from the father of the Appellant through a pro-note and he offered to sell the suit property for a total sale consideration of Rs.1000/-. The debt of Rs.750/- was adjusted and the balance of

Rs.250/- was paid by the father of the Appellant by way of cash and Ex.A1 was executed in the name of the brother in law Chinamma Reddy who was the Benamidar.

- Insofar as possession is concerned, Exhibits A16 to A21 are the kist receipts in the name of Jayarama Reddy and Ex. A22 to A32 are the receipts in the name of the appellant. Similarly the letters issued by the Municipal commissioner to Jayarama Reddy requesting to sell a portion of the property were marked as Exhibits A34 and A35. That apart, Exhibits A36 to A41 were marked to show that the neighbours around the suit property always showed one of the boundary as the suit land belonging to Jayarama Reddy. The 6th defendant who claimed to be a cultivating tenant was also disproved through Ex.X1.
- Insofar as the relationship of the parties is concerned, Chinamma Reddy is the brother in law of Jayarama Reddy and he is the maternal uncle of the Appellant and the brother of the 2nd plaintiff. Considering the close relationship, Chinamma Reddy acted as the Benami of Jayarama Reddy.
- With regard to the motive for the Benami transaction, it was specifically pleaded in the plaint itself that there was a misunderstanding between Jayarama Reddy and his brother Venkatarama Reddy and therefore Jayarama Reddy thought it fit to purchase the suit property in the name of his brother- in -law.
- With respect to the custody of the original title deed, it was with Jayarama Reddy till he died in the year 1964 and thereafter it was always in the possession of the appellant.
- Insofar as the conduct of the parties is concerned, D1, D2, D7 and D8, in a hasty manner sold and gifted the suit property under Ex. A53, A54 and A58 in favour of D4 to D6 inspite of an order of interim injunction passed during the pendency of the suit. This was done inspite of the notices and the paper publication issued and published by the appellant marked as A42, A46 and A47. It was further submitted that Chinamma Reddy never showed or exhibited the suit property as if it belongs to him and the same is evident from the partition suit that was filed in O.S. No. 54 OF 1959 which does not contain the suit property in the schedule. That apart, even in the land ceiling declarations and land reform declaration form, the suit property was never mentioned. This is evident from Exhibits A10 to A15.
- The Lower Appellate Court did not even formulate the

points for consideration or discuss about the additional evidence that was adduced after the matter was remanded. The Lower Appellate Court did not even give the list of witnesses and list of exhibits in the judgment and that shows the hasty manner in which the judgment was passed.

16. Per contra, the learned Senior Counsel appearing on behalf of the contesting respondents, by pointing out to the pleadings and evidence of PW1, submitted that the appellant did not make out a case for declaration of title based on the so called Benami transaction. It was further submitted that the appellant was putting forward two mutually destructive grounds viz. title based on Benami and adverse possession and that by itself proves that the appellant was not sure about his right. The learned Senior Counsel further submitted that the appellant did not cooperate in the disposal of the appeal after it was remanded by fixing a time limit and the Lower Appellate Court had no other option except to proceed further to consider the appeal based on the oral and documentary evidence available on record. It was contended that the present suit was instituted in the year 1982 and the appellant has successfully dragged on the case for the last 40 years and the Appellate Court had no other option except to proceed further and decide the appeal since it is bound by the directions issued by this Court. The learned Senior Counsel further submitted that the Lower Appellate Court had considered each and every issue that was raised by the plaintiff and it had rendered the findings based on appreciation of evidence and there is no ground to interfere with those findings. The learned Senior Counsel concluded his arguments by submitting that the appellant misused his position as an advocate and the confidence that was reposed on him by the 1st and 2nd defendants and he took advantage of the original sale deed that was handed over to him while conducting the proceedings on behalf of the defendants and therefore this fact has to be taken into consideration by this Court and the appellant should not be permitted to grab the property which does not belong to him. Accordingly, the learned Senior Counsel sought for the dismissal of the Second Appeal.

17. This Court has carefully considered the submissions made on either side and the materials available on record and also the findings of the Lower Appellate Court.

18. The appellant/plaintiff while filing the suit, traced his title from his father Jayarama Reddy on the ground that he is the ostensible owner under the registered sale deed dated 26.6.1930 and Chinnamma Reddy was only a name lender. In short, the plaintiff took a stand that it was a benami transaction.

Curiously, the appellant also alternatively claimed title through adverse possession. Probably during the course of the proceedings, the appellant realised that both the pleas cannot go together and infact they are mutually destructive. That is the reason why at the time of cross examination, he makes a statement that he is not claiming any right or title on the plea of adverse possession. The plaintiff/appellant was able to understand that both the pleas will not go together since he is an advocate by profession. Therefore, there is no requirement for this Court to go into the issue of adverse possession and it is enough if the case is decided based on the plea of benami transaction.

19. Before taking up the plea of benami transaction, it is important to keep in mind the law that has been settled by the Hon'ble Supreme Court in Valliammal (D) by L.Rs. v. Subramaniam and others, reported in 2004 5 CTC 60 (SC). The relevant portions of the judgment are extracted hereunder:

"12. 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.

13. This Court in a number of Judgments has held that it is well established that burden of proving that a particular sale is benami lies on the person who alleges the transaction to be a benami. The essence of a benami transaction is the intention of the party or parties concerned and often, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. Refer to Jaydayal Poddar v. Bibi Hazra [(1974) 1 SCC 3] , Krishnanand Agnihotri v. State of M.P. [(1977) 1 SCC 816 : 1977 SCC (Cri) 190] , Thakur Bhim Singh v. Thakur Kan Singh [(1980) 3 SCC 72] , Pratap Singh v. Sarojini Devi [1994 Supp (1) SCC 734] and Heirs of Vrajlal J. Ganatra v. Heirs of Parshottam S. Shah [(1996) 4 SCC 490] . It has been held in the judgments referred to above that the question whether a particular sale is a benami or not, is largely

one of fact, and for determining the question no absolute formulas or acid test, uniformly applicable in all situations can be laid. After saying so, this Court spelt out the following six circumstances which can be taken as a guide to determine the nature of the transaction:

"(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."

20. The above judgment has been applied in all the subsequent cases whenever the Court deals with a case which involves benami transaction. Law always presumes that the name of the person which is found in the document is taken to be the owner of the property that is dealt with under the document. The plea of benami is an exception to this rule and hence heavy burden lies on the person who pleads that the recorded owner is a benami-holder. The Court cannot assume a benami transaction through mere conjectures or surmises and it can never be a substitute for the proof which rests on the shoulder of the person who asserts that the transaction is a benami transaction. The essence of a benami transaction is the intention of the parties concerned at the time of entering into the transaction. Such an intention cannot be spoken to by any other person who is not a party to the transaction.

21. In the present case, the sale had taken place on 26.6.1930. The so called ostensible owner viz. Jayarama Reddy during his lifetime never claimed or asserted that the sale was a benami transaction and that Chinamma Reddy was only a benami holder, in any proceedings before any authority or Court. He died in the year 1964. For the first time, the plaintiff who is the son of Jayarama Reddy asserted that Chinamma Reddy was a benami holder when the suit was filed in the year 1982. At the time when the plaintiff deposed as a witness in the year 2002, his age is recorded as 70 years. If this age is taken into consideration, the plaintiff would not even have born at the

time when the transaction took place. This plea was taken in the suit for the first time, after 52 years from the date of execution of the sale deed and after 18 years after the death of Jayarama Reddy. Even Chinamma Reddy in whose name the sale deed was executed in the year 1930 was not alive. Therefore, the persons who could have been the best evidence to speak about the transaction that took place in the year 1930, were not available when the evidence was taken in the suit. It is under these circumstances, the plaintiff who is the son of Jayarama Reddy has come forward with the plea of benami transaction. Therefore, there is a very heavy burden on the plaintiff to prove that the sale deed Ex.A1 was executed in the name of Chinamma Reddy who was only a benami holder and that the actual owner is his father Jayarama Reddy.

22.Initially, when the Trial Court took up the matter for final hearing, a summary judgment was passed without considering any of the issues on merit and the purchasers of the property were not allowed to defend the suit. The matter ultimately reached this Court by way of a Second Appeal and this Court found that the Trial Court went off on a tangent and decreed the suit without any discussion. Therefore, considering the fact that the matter was already pending for nearly 30 years even at the time when the Second Appeal was instituted, this Court thought it fit not to remand the case to the Trial Court and the case was only remanded to the First Appellate Court. The First Appellate Court being the last court of fact, was virtually made to decide the case like an original suit by recording further evidence and by letting in additional evidence from both sides.

23.The learned Counsel for the appellant was vehemently urging that the Lower Appellate Court did not even formulate the points for consideration. This issue raised by the appellant was also framed as an additional substantial question of law. A careful reading of the judgment of the Appellate Court shows that the Appellate Court had dealt with every issue that was framed by the Trial Court since the Trial Court did not discuss any of these. Hence, the Appellate Court not formulating the points for determination becomes irrelevant since the Appellate Court took pains to discuss every issue that was framed by the Trial Court. The first additional substantial question of law is answered accordingly.

24. The learned Counsel for the appellant also strenuously urged that the First Appellate Court failed to discuss the additional evidence. It was also pointed out that the list of documents and the list of witnesses were not even given at the end of the judgment and that shows that the First Appellate Court did not take into consideration the additional evidence.

The second additional substantial question of law was framed based on this plea.

25.It is true that the First Appellate Court should have given the list of documents and the list of witnesses relied upon at the end of the judgment. However, this Court has to take into consideration the circumstances under which the judgment was passed. When the matter was remanded to the file of the First Appellate Court, this Court directed the judgment to be delivered on merits within a period of two months. The judgment in the Second Appeal was passed on 06.06.2011. The judgment came to be delivered by the First Appellate Court only on 24.09.2012, which is well beyond the period fixed by this Court. At para 17 of the judgment, the Appellate Court records that the plaintiff was not cooperating to complete the proceedings on time and he was given repeated opportunities to make his submissions. Ultimately, the Appellate Court had no other

option except to deal with the appeal based on the available materials. This Court went through the original records and found that the Appellate Court had sufficiently taken note of the additional evidence and the additional documents apart from evidence that was already available on record. Therefore, the mere fact that the list of witnesses and the list of documents not having been shown at the end of the judgment, does not in any way cause prejudice to the appellant and it does not in any way tell upon the judgment of the First Appellate Court since the First Appellate Court had dealt with each and every issue based on the oral and documentary evidence and considering the facts and circumstances of the case. The second additional substantial question of law is answered accordingly.

26.The two substantial questions of law that were initially framed by this Court, touches upon the merits of the case and the manner in which the Appellate Court has appreciated the evidence before rendering its finding. Therefore while considering these two substantial questions of law, this Court has to carefully look into the finding of the Lower Appellate Court on each issue.

27. For proper appreciation, the issues and the additional issues that were framed by the Trial Court and taken up for consideration by the Lower Appellate Court are extracted hereunder:

- 1.Whether the Sriramulu Reddy owned a sum under a promissory note on 27.05.1927 and for discharge of the said debt he sold the suit property through the sale deed dt:26.06.1930 and delivered the possession is true?

2. Whether the 1st plaintiff's father had executed a sale deed dt:26.06.1930 in favour of the said Chinamma Reddy as benamidar is true?

3. Whether the 1st plaintiff's father was paying kist to the suit property and the patta stands in the name of the 1st plaintiff's father is correct?

4. Whether the suit property did not form part of the suit in O.S.No.54/1959 filed by Narayana Reddy, Chinamma Reddy and others for partition is true?

5. Chinamma Reddy was not in possession and enjoyment is the suit property and the plaintiffs father and his brother were in possession and enjoyment of the suit land is true?

6. Whether it is true that the Chinamma Reddy was purchased the suit property thorough sale deed and one Chinnappa Reddy was in possession of the suit land and cultivating the same?

7. Whether it is true that the documents relating to the suit property was handed over to the 1st plaintiff as advocate for conducting the case in O.S.No.54/1959?

8. Whether it is correct to say that the 1, 2, 7, 8th defendants sold out the property on 20.01.1982 an extent of 1.25 acre and on 22.01.1982 to the 4 and 5 defendants through sale deed?

9. Whether the suit is valid under Benami Transactions Prohibition Act 1988?

10. Whether it is valid that the 4 & 5 defendants had purchased the property an extent of 0.62 cents on 22.01.1982 and through the gift deed dt:22.01.1982?

11. Whether the plaintiff are entitled to declare the absolute title and be means of permanent injunction against the defendants?

12. To what relief is the plaintiffs entitled? And what about cost?

Additional Issues dated: 12.12.2001:

1. Whether the suit is maintainable under limitation?

2. Whether the plaintiff is not in possession of the suit property is true?

Additional Issues dated 21.03.2005 :

1. Whether it is true that the defendants 10 to 14 been in possession and enjoyment of the property after the death of 6th defendant?

28. The Lower Appellate Court while considering the 1st and 2nd issues which pertain to the sale deed dated 26.6.1930, first takes into consideration the motive for giving the transaction a benami colour. According to the appellant, his father did not buy the property in his name since he had a serious misunderstanding with his brother Venkatarama Reddy who was making a false claim on the properties of Jayarama Reddy. Therefore, Jayarama Reddy is said to have purchased the property under Ex.A1 in the name of his brother-in-law. To falsify this claim made by the appellant, reliance was placed upon the document that was marked as Ex.B10 wherein it was found that Jayarama Reddy and Venkatarama Reddy, together have sold a property in favour of one Munuswamy Muthaliar and it was further found in this document that they were in joint possession of this property. That apart, the Lower Appellate Court also took into consideration two more documents dated 25.6.1935 and 14.11.1935 wherein the father of the plaintiff had purchased properties in his own name. That apart, on 16.11.1940, he had also sold in his own name, a property in favour of one Krishnamachari. These were all contemporaneous documents which were taken into consideration by the Lower Appellate Court and it was found that the so called misunderstanding between Jayarama Reddy and his brother Venkatarama Reddy has been belied. This finding of the Lower Appellate Court has a lot of significance, since the motive/intention behind the benami transaction forms the foundation and as this foundation itself becomes weak, the structure that is attempted to be constructed by the appellant by pointing out to the other circumstances, is bound to crumble down like a pack of cards.

29. The Lower Appellate Court also took into consideration the fact that the plaintiff was brought up and living with his in laws and he had completed law and was practising as an advocate. The plaintiff denied the fact that he had appeared for the defendants in any proceedings. However, the Lower Appellate

Court on considering Ex.B14, found that the plaintiff had infact appeared for the 2nd, 3rd and 4th defendants in judicial proceedings. The defendants had stated that they had handed over the original documents to the plaintiff while conducting the case and that is sought to be misused by the plaintiff. The Lower Appellate Court therefore found that the availability of the original document viz. Ex. A1 in the hands of the plaintiff, by itself does not substantiate the stand taken by the plaintiff.

30.The Lower Appellate Court also took into consideration the recitals in Ex.A1 and it was found that it was only Chinamma Reddy who had paid the cash of Rs.250/- which runs contrary to the plea taken by the plaintiff as if Jayarama Reddy paid this amount.

31.The Lower Appellate Court also took into consideration the plea raised by the appellant as if the suit property was never shown as a property belonging to Chinamma Reddy in any of the proceedings. The Lower Appellate Court found that when the suit for partition was filed in O.S. No. 54/59, apart from the suit property, many of the other properties belonging to Chinamma Reddy was not shown in the suit. That apart, the proceedings had not come to an end at that point of time. Therefore, the Lower Appellate Court held that the suit property not forming part of the suit in O.S. No. 54/59 by itself does not establish that Chinamma Reddy was only a benami holder. The same yardstick was applied for the plea that the suit property was not shown in the land ceiling or land reform declarations and it was held that by itself does not improve the case of the plaintiff.

32.The Lower Appellate Court also took into consideration the plea taken as if all the adjacent property owners showed one of the boundary to be that of the property of Jayarama Reddy. The Lower Appellate Court found that none of those owners of the adjacent properties were examined and that apart, Jayarama Reddy also had other properties in Madras. Therefore, the Court held that this plea also does not support the case of the plaintiff.

33.The Lower Appellate Court also took into consideration the fact that the patta was standing in the name of Chinamma Reddy and therefore production of the kist receipts by itself does not in any way improve the case of the plaintiff.

34.After considering all these facts and discussing the same in the light of the evidence available on record, the Lower

Appellate Court found that there was no proof to come to a conclusion that the sale transaction that took place through Ex.A1 cannot be held to be a benami transaction.

35.The Lower Appellate Court thereafter independently considered issues 3 to 6. The plaintiff came forward with the suit initially seeking for the relief of permanent injunction. He was not granted the interim relief of injunction and it was confirmed upto this Court in the Civil Revision Petition. Thereafter the plaintiff amended his prayer and sought for possession. While considering this conduct of the plaintiff, the Lower Appellate Court also took up the additional issues and it was found that there was absolutely no pleading in the plaint as to when the possession was taken by the defendants. The Lower Appellate Court found that this pleading becomes very important since the issue of limitation had been raised by the defendants and unless the plaintiff comes up with a clear case as to when the possession was taken over by the defendants, the relief of delivery of possession cannot be granted. To substantiate this finding, the Lower Appellate Court also took into consideration the judgment of this Court in O.S. Venkataraman Vs. R.V.M.K. Prasad reported in 2007 6 MLJ 1018. Accordingly, the relief of possession was also held against the plaintiff.

36.The Lower Appellate Court also independently dealt with the plea of adverse possession raised by the plaintiff and held against the plaintiff. Since this plea was given up by the plaintiff, this Court has already held that there is no necessity to go into this issue.

37.It is clear from the judgment of the Lower Appellate Court that findings have been rendered based on appreciation of evidence and it was found that the plaintiff has not made out a case for benami transaction and the relief claimed by him was denied. When such factual findings are given by the Lower Appellate Court, it has to be seen how far this Court can interfere with the same in exercise of its jurisdiction under Section 100 of C.P.C. For this purpose, this Court wants to analyse the scope of power under Section 100 C.P.C.

38.Way back in Durga Chowdhurani v.Jawahir Singh [17 IA 122] the Privy Council had the occasion to observe: "There is no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact, however gross the error may seem to be".

39. However, the observations of the Privy Council did not deter the High Courts from entertaining second appeals as though they were first appeals. In *Deity Pattabhiramaswamy v. S. Hanymayya*, AIR 1959 SC 57, the Supreme Court noticed the aforesaid observations of the Privy Council and observed thus: "But, notwithstanding such clear and authoritative pronouncements on the scope of the provisions of Section 100 of the CPC, some learned Judges of the High Courts are disposing of second appeals as if they were first appeals. This introduces, apart from the fact that the High Court assumes and exercises a jurisdiction which it does not possess, a gambling element in the litigation and confusion in the mind of the litigant public. This case affords a typical illustration of such interference by a Judge of the High Court in excess of his jurisdiction under Section 100 of the CPC. We have, therefore, no alternative but to set aside the decree of the High Court on the simple ground that the learned Judge of the High Court had no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate Court based upon an appreciation of the relevant evidence. In the result, the decree of the High Court is set aside and the appeal is allowed with costs throughout."

40. Despite the aforesaid admonition of the Supreme Court matters did not improve. The Law Commission, in its 54th Report, took note of the grim picture observing that the High Courts in some states were automatically entertaining second appeals where the judgment under appeal had reversed the judgment of the trial court. Pursuant to the aforesaid recommendations of the Law Commission of India, the the Code of Civil Procedure (Amendment) Act, 1976 amended Section 100 of the Code and circumscribed the power of the High Court to entertain a second appeal on the existence of a substantial question of law. Within the narrow jurisdictional parameters of Section 100, an interference on facts was permissible only in cases where it was shown that the appreciation of facts by the Courts suffered from perversity.

41. In *S.R. Tewari v. Union of India*, (2013) 6 SCC 602, the Supreme Court formulated the following test of what constituted perversity under Section 100 of the Code: "The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is 'against the weight of evidence', or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be

interfered with."

42 However, in two later decisions, the Supreme Court formulated a safe working test for the Courts to apply. In *Damodar Lal v. Sohan Devi*, (2016) 3 SCC 78, the Court applied the test of a reasonable person's inference on facts. The Court observed as under:

"Even if the finding of fact is wrong, that by itself will not constitute a question of law. The wrong finding should stem out of a complete misreading of evidence or it should be based only on conjectures and surmises. Safest approach on perversity is the classic approach on the reasonable man's inference on the facts. To him, if the conclusion on the facts in evidence made by the court below is possible, there is no perversity. If not, the finding is perverse. Inadequacy of evidence or a different reading of evidence is not perversity."

43. In *Dagadabai v. Abbas*, (2017) 13 SCC 705, the Court clarified that the assessment ought to be done from the stand point of "an average judicial person". The Court went on to observe as under:

"First, when the trial court and the first appellate court concurrently decreed the plaintiff's suit by recording all the findings of facts against the defendant enumerated above, then, in our opinion, such findings of facts were binding on the High Court. It is also for additional reasons that the findings were neither against the pleadings nor evidence and nor against any provisions of law. They were also not perverse on facts to the extent that no average judicial person could ever record. In this view of the matter, we are of the opinion that the second appeal did not involve any question of law much less substantial question of law within the meaning of Section 100 of the Code to enable the High Court to admit the appeal on any such question much less answer it in favour of the defendant."

44. Thus, an interference on facts is a forbidden zone in a second appeal unless the appellant is able to make out a case that the appreciation of evidence suffers from any form of perversity. As a natural corollary, sans any perversity, merely because an alternative view is possible on a reading of the evidence, that, by itself, would not constitute a legally valid ground for interference under Section 100 of the Code.

45. In *Thiagarajan v. Venugopalaswamy B. Koil*, (2004) 5 SCC 762, the Supreme Court sounded the following note of caution:

"In the present case, the lower appellate court fairly appreciated the evidence and arrived at a conclusion that the appellants' suit was to be decreed and that the appellants are entitled to the relief as prayed for. Even assuming that another view is possible on a reappraisal of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on no material.

To say the least the approach of the High Court was not proper. It is the obligation of the courts of law to further the clear intendment of the legislature and not frustrate it by excluding the same. This Court in a catena of decisions held that where findings of fact by the lower appellate court are based on evidence, the High Court in second appeal cannot substitute its own findings on reappraisal of evidence merely on the ground that another view was possible."

46. In *Satya Gupta v. Brijesh Kumar*, (1998) 6 SCC 423, the Supreme Court had observed as under:

"At the outset, we would like to point out that the findings on facts by the lower appellate court as a final court of facts, are based on appreciation of evidence and the same cannot be treated as perverse or based on no evidence. That being the position, we are of the view that the High Court, after reappraising the evidence and without finding that the conclusions reached by the lower appellate court were not based on the evidence, reversed the conclusions on facts on the ground that the view taken by it was also a possible view on the facts. The High Court, it is well settled, while exercising jurisdiction under Section 100 CPC, cannot reverse the findings of the lower appellate court on facts merely on the ground that on the facts found by the lower appellate court another view was possible."

The aforesaid decision was recently followed by another two judge bench of the Supreme Court in *Rattan Singh v Nirmal Gill* (2020 SCC Online SC 936).

47. In view of the above narrative, this Court holds that the Lower Appellate Court took into consideration all the facts and circumstances cumulatively and found that Ex.A1 sale deed dated 26.6.1930 is not a benami transaction and such a plea taken by the plaintiff has not been proved. While rendering the findings, the Lower Appellate Court had taken into consideration the six circumstances which was given as a guide by the Hon'ble Supreme Court. The Lower Appellate Court has properly analysed the oral and documentary evidence and had rendered its findings and this Court does not find any perversity in those findings. Even assuming that another view is possible on re-appreciation of the same evidence, that cannot be a ground to interfere with the finding of the Lower Appellate Court in exercise of the power and jurisdiction conferred under Section 100 of C.P.C. The 1st and 2nd substantial questions of law are answered accordingly.

48. On a cumulative reading of the facts and circumstances of this case, it is clear that the plaintiff was brought up by his in-laws and was provided with education when he was staying with them and was given an opportunity to become an advocate to practice law. He was also permitted to represent the defendants in various proceedings. The plaintiff decided to make use of the situation and the availability of the original sale deed Ex.A1. The plaintiff has successfully dragged the defendants for a litigation which is pending for the last 40 years. Hopefully, the agony faced by the defendants will come to an end with the final judgment passed in this Second Appeal.

49. In the result, this Court does not find any merits in this Second Appeal and accordingly, this Second Appeal is dismissed with cost.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Subordinate Judge,
Vaniambadi.

2.The District Munsif,
Ambur.

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

+1 cc to Mr. Tranquebar Dorai Vasu, Advocate Sr.NO. 16869

+1 cc to M/s.P.Veena Suresh., Advocate Sr.NO. 16874

Second Appeal No.261 of 2013

EV(CO)

A.SK(21/04/2022)