

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on	Judgment Pronounced on
06.04.2022	06.05.2022

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A(MD)No.353 of 2022

and

C.M.P(MD)No.3217 of 2022

1.S.V.Shanthi

2.A.T.M.V.Subramani

`... Appellants/Respondents 1 & 2/
Defendants 1 & 2

Vs.

1.S.Venkat Prabhu

... 1st Respondent/1st Respondent/Plaintiff

2.The District Collector,
Collectorate,
Madurai Road,
Theni.

3.The Sub-Registrar,
Office Near Bus Stand,
Theni.

... 2nd & 3rd Respondents/Respondents 3 & 4/
Defendants 3 and 4

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1(r) of the Civil Procedure Code, against the fair and decretal order, dated 22.03.2022 made in I.A.No.4 of 2021 in O.S.No.83 of 2021 on the file of the learned Additional District Judge, Theni.

For Appellants : Mr.P.Jegadeesan

For Respondent No.1 : Mr.M.Vallinayagam
Senior Counsel
for Mr.K.Appadurai

For Respondent Nos.2 &3 : Mr.M.Sarangan
Additional Government Pleader

JUDGMENT

The defendants 1 & 2 in the suit are the appellants herein.

2.Mr.M.Vallinayagam, learned Senior Counsel for Mr.K.Appadurai takes notice for the caveator/R1 and Mr.M.Sarangan, learned Additional Government Pleader takes notice for the respondents 2 &3.

<https://hcservices.ecourts.gov.in/hcservices/>



3. After hearing both the parties and with the consent of both parties, this appeal is taken up for final disposal at the admission stage itself and disposed of by this judgment.

4. The 1st appellant/1st defendant is the wife of the 1st respondent/plaintiff.

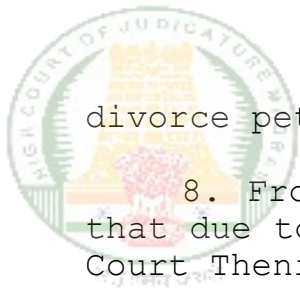
5. The 1st respondent/plaintiff/husband filed O.S.No.83 of 2021 seeking the relief of declaration of title to the suit property and for permanent injunction on the file of the learned District Sessions Judge, Theni. Pending suit, he has also filed I.A.No.4 of 2021 on the file of the learned Additional District Judge, Fast Track Court, Theni, seeking interim injunction restraining the defendants and their men from interfering the peaceful possession and enjoyment of the suit property by the plaintiff. The suit property is a hospital and the 1st respondent/husband is a Doctor and the first appellant is the wife of the 1st respondent and the husband/1st respondent has been running the hospital situated in the suit property.

6. The plaint proceeds on the basis that the marriage between the plaintiff and 1st defendant was solemnised on 07.06.1998 at Salem and due to wedlock, they have a male child namely, Sriadhithyaraj, born on 28.05.2001 and now he is studying in Philipines Medical College. The matrimonial disparity arising between the parties and allegations and counter allegations between each other as could be seen from the affidavit and counter affidavit filed before the trial Court.

6(a). The subject matter of the suit property is land and building wherein there is a hospital in the name and style of Sri Sairam Hospital at Theni. The plaint further proceeds on the basis that the plaintiff/husband purchases the suit property in the name of the 1st defendant/wife on 10.07.2002 vide sale deed No.2886/2002 dated 10.07.2002 from one Ayyadurai and his sons namely, Suresh, Ramesh and Saravanan and the same was registered in the Sub Registrar office, Theni.

6(b). According to the plaintiff, it is not a Benami transaction and it is exempted under Section 3(2) of the Benami Transaction and Prohibition Act, 1988. He is running a hospital there and he want to protect his alleged possession and he filed the suit as well as the interim application.

7. As per the written statement and counter filed in the suit, various allegations has been made as to the extra-marital affairs said to have been carried on by the plaintiff Dr.S.Venkat Prabhu with one Sangeetha and also alleged that he had fathered a baby girl through her and the matrimonial disparity resulted in filing of



divorce petition before the Family Court, Theni.

8. From the submissions made by the respective counsel, I find that due to the more sensitivity of the case filed before the Family Court Theni is transferred to Family Court, Karur.

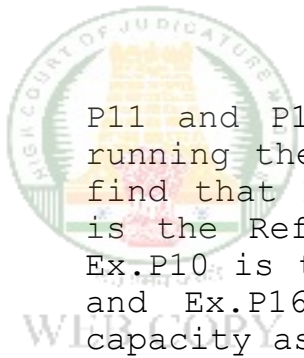
9. As per Ex.P4-sale deed, the schedule property stands in the name of the 1st appellant/wife.

10. Mr. P. Jegadeesan, learned counsel appearing for the appellants/1st defendant wife would contend that the Family Court alone having jurisdiction to entertain the suit, especially, when the divorce petition filed by the first respondent/husband against the first appellant in the Family Court, Theni, which has been transferred to the Family Court, Karur and pending in H.M.O.P.No.102 of 2021 and would further contend that the appellants have categorically proved that the building was constructed by the appellants and the 1st appellant is in enjoyment and possession of the same. The 1st respondent/plaintiff has not contributed anything for the purchase of the land or for construction of the building. He also relied upon the admission made by the 1st respondent/plaintiff in the proceedings before the Revenue Divisional Officer, Periyakulam that he is not in possession of the suit property and prayed for restoration of physical possession of the suit property. The first appellant is actually living in the 1st floor of the suit property along with the parents of the 1st respondent/plaintiff.

11. Learned Senior Counsel Mr. M. Vallinayagam appearing for the 1st respondent/plaintiff could contend that the husband alone purchased the property in the name of the wife and the same is protected under Section 3(2) of the Benami Transaction Prohibition Act, 1988.

12. It remains to be stated that as per Section 14 of the Hindu Succession Act, the property stands in the name of the woman is the exclusive property of her. Since the suit is pending, I am not expressing any opinion as to the said contention. The trial Court has granted *ad interim* injunction against the wife, who is admittedly owner of the land and building.

13. The plea that it was Benami purchase can be gone into only at the time of the trial. Ex.R1 is the sale deed. Exs.R2, R3, R4 and R5 are the property tax extracts standing in the name of the 1st defendant/1st appellant/wife. Ex.R6 is the drainage demand notice. Ex.R7-Electricity bill is also claimed in the name of the 1st defendant/1st appellant. From the year 2013-2020 income tax return forms for all the financial year have been filed as Ex.R8 to Ex.R15 to demonstrate that the 1st appellant/wife is running the hospital and filed necessary income tax returns therefor. It appears that the learned Additional District Judge has relied upon Ex.P6, P9, P10,



P11 and P16 to render the finding that the plaintiff/husband has running the hospital. Typeset of papers has been produced wherein I find that Ex.P6 is nothing but Generator purchase bill while Ex.P8 is the Refrigerator Bill while Ex.P9 is the Pulse Oximeter Bill, Ex.P10 is the BPL Pulse Oximeter Bill, Ex.P11 is the Telephone Bill and Ex.P16 is the professional tax paid by the doctor in his capacity as the plaintiff's husband.

14. I find that the reasoning given by the learned Additional District Judge to come to the conclusion that the 1st respondent/plaintiff/husband is in possession of the movable documents which is to inform to confer that he is in possession and hence such a finding of the learned Additional District Judge is hereby vacated.

15. On the contrary, as discussed supra, the property tax receipt Ex.R2 to Ex.R5 and income tax returns for the various assessment years from Ex.R8 to Ex.R15 and electricity bill receipt Ex.R7 goes to show that the 1st respondent/1st appellant/wife is in possession and control of the hospital. Though certain other documents is also filed in the typeset, namely Town Survey Land Register, affidavit and petition filed before the Sub Collector in M.C.No.14 of 2021, 145 proceedings and HMOP filed before the Family Court, Karur, are not marked before the trial Court, I am imposing self-restriction in commenting upon the same.

16. As per Ex.R20 and copy of the FIR, All Women Police Station, Theni and Ex.R21 petition filed by the 1st respondent/plaintiff/husband before the Sub Collector, Periyakulam clearly demonstrate that the husband/1st respondent is not in possession of the suit property besides the 1st appellant/1st defendant/wife is the true owner and there cannot be any injunction against the true owner in the absence of any authority, document or positive evidence. As stated supra, it appears that the learned Additional District Judge has misdirected himself into the documents mentioned above namely, Exs.P6, P9, P10, P11 and P13, which in no way will lead to entrench that the 1st respondent/husband is in possession of the property and hence in view of the positive evidence available on record in favour of the 1st appellant/wife, in the absence of any positive evidence in favour of the 1st respondent/husband, I find that the finding rendered by the trial Court is erroneous and liable to be vacated and the injunction petition in I.A.No.4 of 2021 in O.S.No.83 of 2021 filed by the plaintiff shall stand dismissed.

17. In the result, this Civil Miscellaneous Appeal stands allowed and the fair and decreetal order dated 22.03.2022, passed in I.A.No.4 of 2021 in O.S.No.83 of 2021, on the file of the learned Additional District Judge(FTC), Theni, shall stand dismissed. The respondents 2 and 3 shall give protection to the 1st defendant/1st



appellant to her peaceful possession and enjoyment of the suit property. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

PJL

To

1. The Additional District Judge (FTC), Theni.

+1 CC to M/s.P. JEGADESAN, Advocate (SR-23554[F] dated 06/05/2022)

+1 CC to M/s.K. APPADURAI, Advocate (SR-23600[F] dated 10/05/2022)

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