



A.S.Nos.481, 482, 516 & 517 of 2013

THE HIGH COURT OF JUDICATURE AT MADRAS

|                                  |                                   |
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| <b>Reserved on</b><br>21.07.2023 | <b>Delivered on</b><br>10.08.2023 |
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CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN  
AND  
THE HONOURABLE MRS JUSTICE R.KALAIMATHI

**A.S.Nos.481, 482, 516 & 517 of 2013**

**A.S.No.481 of 2013**

1.V.Selvarani (died)

2.R.Varadharaj

3.T.Rajarajeswari

4.R.Aparna

(A2 to A4 are brought on record as LR's of deceased

1<sup>st</sup> Appellant viz., V.Selvarani, vide order of Court

dated 20.03.2023 made in CMP.Nos.11760, 11761 &  
11762 of 2023 in A.S.No.481 of 2013)

...Appellants

Vs.

R.Balakrishnan

...Respondent

**Prayer:** First Appeal filed under Section 96 of C.P.C., r/w. Order 41 Rule 1 of C.P.C., against the judgment and decree passed in O.S.No.841 of 2007 dated 10.01.2013 on the file of the IV-Additional District and Sessions Judge, Coimbatore.



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**A.S.No.482 of 2013**

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1.R.Varadharaj

2.V.Selvarani (died)

3.T.Rajarajeswari

4.R.Aparna

(A1, A3 & A4 are brought on record as LR's of deceased

2<sup>nd</sup> Appellant viz., V.Selvarani, vide order of Court

dated 29.07.2022 made in CMP.No.11623 of 2022

in A.S.No.482 of 2013)

...Appellants

Vs.

1.R.Balakrishnan

2.G.Jayalakshmi

3.Sundaram @ Thangam

4.K.Saraswathi

5.N.Krishnaveni

6.P.Ragu

7.P.M.Santharam

8.Rangasamy

9.Sriram

10.Usha Rani

...Respondents

(Respondents 6 and 7 herein were exonerated before the Trial Court. Hence, given up in appeal from the judgment and decree passed in O.S.No.307 of 2004 on the file of IV-Additional District & Sessions Judge, Coimbatore dated 10.01.2013)

Prayer: First Appeal filed under Section 96 of C.P.C., r/w. Order 41 Rule 1 of C.P.C., against the judgment and decree passed in O.S.No.307 of 2004 dated 10.01.2013 on the file of the IV-Additional District and Sessions Judge, Coimbatore.



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**A.S.No.516 of 2013**

R.Balakrishnan

...Appellant

Vs.

- 1.G.Jayalakshmi
- 2.R.Varadharaj
- 3.Sundaram @ Thangam
- 4.K.Saraswathy
- 5.N.Krishnaveni
- 6.P.Ragu
- 7.P.M.Santharam
- 8.V.Selvarani (died)
- 9.T.Rajareswari
- 10.Rangasamy
- 11.Sriram
- 12.Usha Rani
- 13.Aparna

(R13 impleaded, R2 and R9 brought on record as LR's of the deceased 8<sup>th</sup> respondent (V.Selvarani) vide Court order dated 29.07.2022 made in CMP.NO.12224/2022 in A.S.No.516 of 2013)

...Respondents

Prayer: First Appeal filed under Section 96 of C.P.C., against the judgment and decree dated 10.01.2013 in O.S.No.307 of 2004 on the file of the IV-Additional District and Sessions Court, Coimbatore.



A.S.Nos.481, 482, 516 & 517 of 2013

**A.S.No.517 of 2013**

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R.Balakrishnan

...Appellant

Vs.

1.V.Selvarani (died)

2.R.Varadharaj

3.T.Rajarajeswari

4.R.Aparna

...Respondents

(R2 to R4 brought on record as LR's of the deceased

R1 (Selvarani) vide Court order dated 29.07.2022

made in CMP.No.122299 of 2022 in AS.No.517/2013)

Prayer: First Appeal filed under Section 96 of C.P.C., against the judgment and decree dated 10.01.2013 in O.S.No.841 of 2007 on the file of the IV-Additional District and Sessions Court, Coimbatore.

For Appellant : Mr.R.Krishnan in A.S.No.481 & 482 of 2013  
Mr.C.R.Prasannan in A.S.Nos.516 & 517 of 2013

For Respondents : Mr.R.Krishnan for R2, R9 & R13 in  
A.S.No.516 of 2013  
for R2 to R4 in A.S.No.517 of 2013  
Mr.C.R.Prasannan for sole respondent in  
A.S.No.481 of 2013  
for R1 in A.S.No.482 of 2013  
Mr.R.Subramanian for R2 to R5 & 8 to 10  
in A.S.No.482 of 2013  
R6 & R7 – Given up in A.S.No.481/2013  
R6 & R7- Person not found & R8 died in  
A.S.No.516 of 2013  
R1 died in A.S.No.517 of 2013



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## **COMMON JUDGMENT**

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The above four appeals arise out of two cross suits in O.S.No.307 of 2004 and O.S.No.841 of 2007 on the file of the IV-Additional District and Sessions Judge, Coimbatore.

2.The suit in O.S.No.307 of 2004 was laid for partition, separate possession and rendition of accounts in respect of six items of immovable properties described in Schedule 1 and eleven items of movable properties described as Schedule 2. The plaintiff, who is the son of T.S.Ramasamy Chettiar and Sowdammal, who died on 21.01.1968 and 12.12.2001 respectively claimed 9/24<sup>th</sup> share in the suit properties on the premise that all the suit properties belonged to the joint family, of which, T.S.Ramasamy Chettiar was Karta. Claiming that T.S.Ramasamy Chettiar died leaving behind two sons and five daughters, the plaintiff / R.Balakrishnan would seek a share as a Coparcener and a share out of the share of Ramasamy Chettiar as Clause-1 heir. The other son and daughters of Ramasamy Chettiar, who are six in number and certain alienees as well as the wife of



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the 2<sup>nd</sup> defendant were the original defendants. One of the daughters of Ramasamy Chettiar, R.Sarojini died and her husband, son and daughter were impleaded as defendants 11 to 13. Basis on which, the plaintiff sought for partition is as follows:-

2.1.Ramasamy Chettiar and his children constituted a joint Hindu family. Ramasamy Chettiar was doing cloth business at Coimbatore and earned huge income. He, as a head of the family purchased various immovable and movable properties in the name of his wife Sowdammal, his eldest son, R.Varadharaj / 2<sup>nd</sup> defendant as well as his daughter-in-law / V.Selvarani, wife of the 2<sup>nd</sup> defendant. It was claimed that after the death of Ramasamy Chettiar on 21.01.1968, his wife Sowdammal, plaintiff and defendants 1 to 6 succeeded to his estate and have continued to be joint in status as joint family members. It is also claimed that all the properties were enjoyed jointly. Sowdammal died on 12.12.2001 and even after her death, the family continued to be joint without any disruption in their status. It is therefore, claimed by the plaintiff that the properties being joint family properties and by virtue of the Hindu Succession (Amendment) Act, 2005, the plaintiff and defendants 1 to 6, being the children of Ramasamy Chettiar



would each be entitled to 1/7<sup>th</sup> share in the suit schedule properties. Though the original claim was to 9/24<sup>th</sup> share, the same was amended claiming 1/7<sup>th</sup> share.

3.The defendants 1 and 3 to 6 namely, daughters of Ramasamy Chettiar supported the case of the plaintiff. The 2<sup>nd</sup> defendant, who is the other son of Ramasamy Chettiar filed a separate written statement, contending that the suit Item No.4 is his self-acquisition and suit Item No.6 is the self-acquisition of his wife / 9<sup>th</sup> defendant. It was the further contention of the 2<sup>nd</sup> defendant that Item Nos. 1 to 3 were purchased by Sowdammal under sale deed dated 27.10.1948 out of the income earned by doing Dairy business. It is also contended that on 05.06.1995, while in sound disposing state of mind, Sowdammal had executed a Will, giving life estate to the 9<sup>th</sup> defendant and absolute interest to the daughter of the 2<sup>nd</sup> defendant and 9<sup>th</sup> defendant, who figures as 10<sup>th</sup> defendant in the suit. An additional written statement was also filed by the 2<sup>nd</sup> defendant. The defendants 7 & 8, who were tenants were exonerated from the suit. A reply statement was filed by the plaintiff in O.S.No.307 of 2004, contending that



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Sowdammal was bedridden and was not in the disposing state of mind during the year 1995 and the Will said to have been executed by her is not true and valid.

4. Even during the pendency of the above suit, the 9<sup>th</sup> defendant in A.S.No.307 of 2004 filed an independent suit in O.S.No.841 of 2007 seeking a declaration that the Will dated 05.06.1995 executed by her mother-in-law, Sowdammal is valid and binding and for a permanent injunction restraining the defendant from in any manner interfering with the enjoyment of the borewell by installing a motor pumpset. There was also a prayer for possession of the “B” schedule property and for damages at Rs.1,000/- per month. The averments in the written statement of the 2<sup>nd</sup> defendant in O.S.No.307 of 2004 were substantially the averments in the plaint in O.S.No.841 of 2007. Similarly, the defence to O.S.No.841 of 2007 was the plaint averments in O.S.No.307 of 2004, apart from denial of the Will said to have been executed by Sowdammal on 05.06.1995.



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5.On the basis of the pleadings, the following issues were framed

in O.S.No.307 of 2004:-

*“1.Whether the plaintiff is entitled for 1/7<sup>th</sup> share in the suit property?*

*2.Whether the plaintiff is entitled for accounts as prayed for ?*

*3. Whether the Will dated 05.06.1995 is genuine or not?*

*4.To what other relief?”*

6.In the Trial Court, the following issues were framed in O.S.No.841 of 2007:-

*“i) Whether the plaintiff is entitled for recovery of possession in respect of “B” schedule property ?*

*ii) Whether the Will dated 05.06.1995 is a fabricated one?*

*iii) Whether the above said Will is true, valid and whether the plaintiff is entitled for a decree of declaration as prayed for ?*

*iv) Whether the plaintiff is entitled for permanent*



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*injunction as prayed for ?*

*v) Whether the plaintiff is entitled for mesne profits  
at the rate of Rs.1,000/-?*

*vi) To what other relief? ”*

7.The Trial Court concluded that though suit items 1 to 3 have been purchased in the name of Sowdammal, the evidence on record would go to show that it was not intended to be for the benefit of Sowdammal only. The learned Judge held that the presumption under Section 3(2) of the Benami Transaction (Prohibition) Act as it stood prior to the 2016 amendment, stood rebutted. In view of the evidence that is available on record, the learned Trial Judge however, concluded that Items 4 and 6 which stood in the name of the 2<sup>nd</sup> defendant and the 9<sup>th</sup> defendant / wife of the 2<sup>nd</sup> defendant belonged to them absolutely and it was not shown those were properties purchased out of the income of the joint family.

8.As regards the movables, the learned Trial Judge held that except Item 1, which is about 30 Sovereigns of jewels, other items were not shown to be available. The learned Judge also upheld the genuineness of



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the Will, on the basis of the evidence of one of the attesting witnesses, who was examined as D.W.4 and the scribe, who was examined as D.W.5. On the above conclusions, the learned Trial Judge partly decreed the suit in O.S.No.841 of 2007, granting an injunction as prayed for and a declaration that the Will dated 05.06.1995 would be valid and binding only in respect of the 1/8<sup>th</sup> share of deceased Sowdammal, while dismissing the suit with respect to recovery of possession and damages.

9.In so far as the suit in O.S.No.307 of 2004 was concerned, the Trial Court granted a preliminary decree for partition in respect of Items 1 to 3 in Schedule 1 for 1/8<sup>th</sup> share in favour of the plaintiff on the conclusion that it was self-acquired properties of Ramasamy Chettiar and that deceased Sowdammal was also entitled to a share, which passed on to the 10<sup>th</sup> defendant in view of the Will. In so far as the Item-5 under the 1<sup>st</sup> schedule and Item-1 in the 2<sup>nd</sup> schedule, which were admitted to be joint family properties, the Trial Judge granted 1/7<sup>th</sup> share to the plaintiff. Aggrieved, the plaintiffs in O.S.No.841 of 2007 have come up with A.S.No.841 & 842 of 2013, while the plaintiff in O.S.No.307 of 2004 has come up with



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A.S.Nos.516 & 517 of 2013.

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10. We have heard Mr.R.Krishnan, learned counsel for the appellants in A.S.Nos.481 & 482 of 2013 and for respondents 2, 9 and 13 in A.S.No.516 of 2013 and respondents 2 to 4 in A.S.No.517 of 2013, Mr.C.R.Prasannan for the sole respondent in A.S.No.481 of 2013, for the 1<sup>st</sup> respondent in A.S.No.482 of 2013 and the appellant in A.S.Nos.516 & 517 of 2013, Mr.R.Subramanian, learned counsel for respondents 2 to 5 and 8 to 10 in A.S.No.482 of 2013 and Mr.R.Subramanian for G.Indira for the respondents 1, 3 to 5 and 10 to 12 in A.S.No.481 of 2013.

11. Mr.R.Krishnan, learned counsel appearing for the appellants in A.S.Nos. 481 & 482 of 2013 namely, the 1<sup>st</sup> son, his wife and daughter of Ramasamy chettiar would vehemently contend that the Trial Court grievously erred in coming to conclusion that Items 1 to 3 were purchased by Ramasamy Chettiar in the name of his wife, Sowdammal out of his own funds and the presumption under Section 3(2) of Benami Transaction (Prohibition), Act as it stood prior to the amendment, stood rebutted.



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12. Drawing our attention to Section 3 of the Benami Transaction (Prohibition) Act, the learned counsel would contend that though purchase of property by the husband in the name of the wife is permitted, the law presumes particularly, Sub-section 2 of Section 3 presumes that the purchase is for the benefit of the wife or the unmarried daughter and requires the person alleging otherwise to prove the contrary.

13. He would also draw our attention to the judgment of the Hon'ble Supreme Court in **Rajagopal Reddy and others Vs. Padmini Chandrasekhran (dead) by LRs and others** reported in **1995 (1) CTC 568** wherein, the Hon'ble Supreme Court had given limited retrospectivity to the provisions of Benami Transaction (Prohibition), Act and held that a plea that the properties are held Benami cannot be taken after the date on which, the Act came into force i.e., 19.05.1988.

14. The learned counsel would further argue that the evidence available is not sufficient to dislodge the presumption that is created under



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Section 3(2). As regards the purchase of properties by the 2<sup>nd</sup> defendant, the learned counsel would submit that Item No.4 was purchased by the 2<sup>nd</sup> defendant under a sale deed of the year 1967 marked as Ex.A4, on which date, the 2<sup>nd</sup> defendant was admittedly a junior member of the coparcenary. Even assuming such coparcenary had existed, he would also point out that the property, which was admitted to the ancestral property namely, Item 4 was a house property, which was incapable of yielding any income. The learned counsel would also argue that the requirements of law regarding purchase by a junior member of the coparcenary have not been satisfied by the plaintiff in O.S.No.307 of 2004.

15.The learned counsel would draw our attention to the following judgments of this Court to contend that the requirements namely availability of ancestral nucleus, the income there from and the fact that the said ancestral nucleus was capable of yielding income so as to leave enough surplus after defraying the expenses and the possibility of such surplus being employed in the purchase of property by a member have not at all been proved. In the absence of such proof, the properties cannot be said to



be joint family properties. The said judgments are :-

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15.1.The judgment of this Court in **P.M.Mani Vs.**

**P.S.Mohankumar and Others** reported in **2002 SCC Online 354** wherein, it was observed as follows:-

*“16.When a person claiming that a particular property was ancestral or it belonged to the joint family, the burden of proving the same lies on him. He must show initially that there was sufficient nucleus. A presumption that a property in the hands of an individual coparcener was joint family property can be drawn only if it is shown that there was a nucleus of the joint family property, from which it might fairly be said to have grown. If such nucleus is proved by sufficient evidence or admitted by the opposite party, only then, the onus of proving separate acquisition on the coparcener alleging the same would arise. In the instant case, a careful analysis of the evidence, both oral and documentary would reveal that the plaintiffs have not discharged the burden of proof, showing that the suit properties were ancestral properties.”*

15.2.The judgment of this Court in **Muniappa Naicker Vs.**



**Balakrishna Naicker** reported in **1998 (2) LW 259**, wherein it was held as

follows:-

*“On the basis of the law declared in the various Texts as well as case-laws, the following propositions emerge : (1) A Hindu Family is presumed to be joint. But at the same time, there is no presumption that the joint family is possessed of family properties. (2) The manager, if he is in possession of family properties and is in management thereof and acquires any other property, the law presumes that it is joint family property. (3) Even in such cases, presumption will arise only if it is shown that the family property had left surplus income out of which other properties could be acquired. If the nature and relative value of the property are such that there is no income, any fresh acquisition cannot be treated as a family property. It is well within the powers of the members of the family that they can acquire separate properties and can have their own avocations in life. There is no law which says that only if a member gets married or comes of a particular age, he can do business or earn income. There is also no presumption that any property acquired by a member is a family property.”*



15.3.The judgment of this Court in **D.S.Lakshmaiah v. L.**

**Balasubramanyam** reported in (2003) 10 SCC 310 wherein, it observed as

follows :-

*“17.In view of the aforesaid discussion, the respondents having failed to discharge the initial burden of establishing that there was any nucleus in the form of any income whatsoever from Item 2 property and no other nucleus was claimed, the burden remained on the respondents to establish that Item 1 property was joint family property. In this view, the fact that the first appellant has not led any evidence to establish his separate income is of no consequence insofar as the claim of the respondents is concerned. Under these circumstances, for failure to lead evidence, the respondents' claim of Item 1 to be joint family property would fail as rightly held by the first appellate court.*

*18.The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-*



*acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.”*

16.In so far as Item 6 of the 1<sup>st</sup> schedule is concerned, the learned counsel would point out that the said properties were purchased on 26.04.1990 and 10.08.1990 under Exs.A16 and A17, after coming into force of the Benami Act and as such the exceptions available under Section 4 will not be available for the said purchase. Adverting to the Will dated 05.06.1995, the learned counsel would contend that it is a registered Will, which has been executed in terms of Section 63 of the Indian Succession Act and the same has been proved in accordance with Section 68 of the Evidence Act by examining the attester to the said instrument. It is also pointed out that nothing has been brought about to discredit the evidence of the attester regarding the execution of the Will.

17.In so far as the disinheritance of the other heirs of the Sowdammal, the learned counsel would submit, the daughters have gone out of the family after marriage and the plaintiff in O.S.No.307 of 2004, who is



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the other son was not taking care of the mother, and it was the 2<sup>nd</sup> defendant who was looking after her. This impelled the mother to execute a will in favour of her daughter-in-law/wife of the 2<sup>nd</sup> defendant. The learned counsel would also rely upon the judgment in **Valsa Jose Vs. V.B.Chandran and Others** reported in **2019 (5) CTC 625** authored by one of us (R.Subramanian. J) to contend that there is no pleading that the ostensible owner namely, 9<sup>th</sup> defendant stood in a fiduciary capacity to the plaintiff or Ramasamy Chettiar and as such the property was purchased in her name could be treated as joint family property.

18.Contending contra, Mr.C.R.Prasannan, learned counsel for the plaintiff in O.S.No.307 of 2004 would submit that the evidence available on record namely, income tax returns of Ramasamy Chettiar filed as Ex.A8 to A15 would go to show that Ramasamy Chettiar treated Items 1 to 3 as his own property till his death and therefore, the presumption enacted under Sub-section 2 of Section 3 of the Benami Transaction (Prohibition), Act stood rebutted. The learned counsel would also further point out that the evidence of the 1<sup>st</sup> defendant, who was the eldest daughter, who was about



15 years old when the building in the Items 1 to 3 were put up, to the effect that it was Ramasamy Chettiar, who has spent his earning as Accountant in Pioneer Mills, Coimbatore for the said construction.

19.The learned counsel would further point out that the evidence on the side of the defendants in O.S.No.307 of 2004 was wholly insufficient to eface the effect of the documentary evidence namely, Income Tax returns. The learned counsel would also fault the Trial Court for concluding that the suit Items 4 and 6 are seperate properties of the 2<sup>nd</sup> and 9<sup>th</sup> defendant respectively. He would submit that once the existence of the joint family and existence of nucleous is admitted, in the absence of any evidence on the side of the defendants 2 and 9 to the effect that they had sufficient income to purchase the properties in their individual names, it shall be presumed that the properties belonged to the joint family.

20.The learned counsel would also fault the Trial Court for concluding that the Will is genuine, overlooking the fact that there is a ocean of difference in the signature of Sowdammal contained in the Will and the signature of her before the Registrar, admitting execution of the



Will. The learned counsel would point out that the signature made on the reverse of the first page of the Will admitting execution does not contain the Tamil letter 'L' and a cursory look at the other signatures in the Will would show that they have been written as if they are signatuers of Sowdammal by someone else. He would also point out that the attesting witness namely, D.W.4, Mohammed Haneefa had admitted that he had worked with the 2<sup>nd</sup> defendant for more than eight years.

21. According to Mr.C.R.Prasannan, the very fact that Sowdammal, who was the mother of atleast seven children had chosen to exclude all of them without assigning any reason and had preferred her daugher-in-law by itself would be a suspicious circumstance and no attempt has been made by the 9<sup>th</sup> defendant, the legatee to dispel the said suspicion except her own oral evidence that she had blamed the others for not caring for the mother. Mr.R.Subramanian, learned counsel for the other defendants / respondents adopts the arguments on the above contentions of Mr.C.R.Prasannan.



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22.On the above contentions of the learned counsel appearing for

the parties, the following points arises for consideration in the appeals:-

*i) Whether the Trial Court was right in concluding that Items 1 to 3 of suit properties were belonged to Ramasamy Chettiar, though the sale deeds dated 27.10.1948 stood in the name of Sowdammal?*

*ii) Whether the ancestral nucleus found to be in existence earned a sufficient income to leave a surplus to enable purchase of Items 4 and 6 of the 1<sup>st</sup> schedule in the name of the defendants 2 and 9 respectively ?*

*iii) Whether it is shown to the plaintiff in O.S.No.307 of 2004 to plead that Item 6 belonged to the joint family ?*

*iv) Whether the Will dated 05.06.1995 has been proved to be true and valid ?*

*v) To what relief the parties are entitled to?*

**Point No.1:-**

23.While it is the case of the plaintiffs that Items 1 to 3 were purchased under the sale deed dated 27.10.1948 in the name of the Sowdammal from and out of the funds belonging to Ramasamy Chettiar and



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as such, it is a joint family property, the defendants 2, 9 and 10 would contend that the purchase was out of the income of Sowdammal, who was doing Milk Vending business. It is also their claim that in view of Section 3(2) of the Benami Transaction (Prohibition) Act, there is a presumption that the property purchased by the husband in the name of the wife for her benefit until the contrary is proved.

24. According to the learned counsel for the appellants namely, defendants 2, 9 and 10, the evidence available is wholly insufficient to dislodge the presumption created under Section 3(2). This contention of the learned counsel for the appellants is countered by the learned counsel for the respondent contending that the document namely, the sale deed dated 27.10.1948, which has been marked as Ex.A2 contains intrinsic evidence in itself to show that the consideration was paid by Ramasamy Chettiar and the income tax returns namely, Exs.A8 to A15 filed between the years 1958-1959 and 1967-1968 would show that the Ramasamy Chettiar treated the property as his own property and which would show that it was not intended to be for the benefit of Sowdammal. He would also point out that



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Ramasamy Chettiar, who was the head of a joint family consisting of seven children would not have intended to benefit his wife alone particularly, in view of the fact that he was forced to sell away a property for the marriage of the 1<sup>st</sup> defendant, Jayalakshmi.

25.We have considered contents of Ex.A2, sale deed, which clearly shows that consideration for the said sale was paid by Ramasamy Chettiar on behalf of the Sowdammal. There is a specific endorsement to the effect made by the Sub-Registrar, which is an Official act done under Section 58 of the Registration Act therefore, we will have to examine only the evidence regarding the presumption, in order to see whether it would be sufficient to rebutt the statutory presumption created under Section 3(2) of the Benami Transaction (Prohibition) Act. The plaintiffs have produced the income tax returns of Ramasamy Chettiar for the period during 1958-1959, 1959-1960, 1967-1968, which would go to show that Items 1 to 3 of the 1<sup>st</sup> schedule were always shown to be the properties of Ramasamy Chettiar.

26.We find force in the contention of the learned counsel for the



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respondents in A.S.No.481 & 482 of 2013 to the effect that Ramasamy Chettiar, who was the head of the joint family having seven children would not have intended to benefit his wife alone. The fact that he was forced to sell away the property in 1961 to get the 1<sup>st</sup> defendant married is projected as a pointer. When we look at the totality of the circumstance and evidence of the D.W.1, the eldest daughter of Ramasamy Chettiar and Sowdammal, we find that we have to agree with the Trial Court in its conclusion that the property was purchased by Ramasamy Chettiar out of his own funds and he was intend benefit Sowdammal / his wife through the said purchase.

27.No doubt, there was some ancestral property but it is not shown that it had yielded necessary income for the purchase. Therefore, we should necessarily proceed on the finding that the property was self-acquisition of Ramasamy Chettiar. Once it is held that the property was a self-acquisition of Ramasamy Chettiar, the plaintiff and the defendants 1 to 6 along with Sowdammal would each be entitled to 1/8<sup>th</sup> share. The 1/8<sup>th</sup> share of Sowdammal would devolve, on her death, on her heirs depending on her intestacy or otherwise. In order to find out the devolution on the death of Sowdammal, we will have to necessarily examine point No.4 which



deals with the Will alleged to have been left by Sowdammal. Therefore, we will have to take up Point No.4 and revert to Points No.2 and 3 in the later part of this judgment.

**28. Point No.4:-**

This relates to the validity of the Will left by the Sowdammal. Once we have held that the property belongs to Ramasamy Chettiar, Sowdammal would be entitled to 1/8<sup>th</sup> share in the property as one of the heirs of the Ramasamy Chettiar. We have to necessarily test the validity of the Will to find out the devolution of atleast the 1/8<sup>th</sup> share. The Will is dated 05.06.1995 and it is a registered instrument. D.W.4 and D.W.5 namely, the attesor and its scribe have been examined. The evidence of the scribe cannot be given any weightage in as much as he is not an attesting witness. D.W.4 is the attesting witness. No doubt, D.W.4 has spoken about execution and attestation of the Will in his chief-examination but the said evidence would admit that he was working under the 2<sup>nd</sup> defendant, Varadharaj, husband and father of the legatees namely, 9<sup>th</sup> and 10<sup>th</sup> defendants for more than eight years. Apart from that there are atleast five signatures of Sowdammal in the Will, three of them alleged to have been



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made at the time of execution and two of them alleged to have been made before the Sub-Registrar.

29.As rightly pointed out by the learned counsel for the plaintiff in O.S.No.307 of 2004, the signatures made at the time of execution of the Will are vastly different from the signatures made before the Sub-Registrar. The attention of the witnesses namely, D.W.3, the 9<sup>th</sup> defendant and D.W.2, the 2<sup>nd</sup> defendant was drawn to the differences to the signatures and they would also admit the differences. They would however, assert, both of them were made only by Sowdammal. We are unable to persuade ourselves to agree with the contention of the learned counsel for the defendants 2, 9 and 10 in O.S.No.307 of 2004 regarding execution of the Will. Despite being a registered instrument, the Court is not precluded from examining the suspicious circumstances.

30.As rightly pointed out by the learned counsel for the plaintiff in O.S.No.307 of 2004, Sowdammal, who was the mother of atleast seven children would not have, but for very strong reason, executed a Will



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excluding six of her children from inheriting her property. We do not find any explanation either in the Will or in the evidence of D.W.2 and D.W.3.

31.Per contra, D.W.1, the eldest daughter has deposed that Sowdammal treated all her children equally. In the absence of any explanation, these circumstances would weigh down the Will. The differences in the signatures as admitted by the witnesses also lead us to believe that the Will emanates out of very suspicious circumstances and it will be dangerous to uphold the same.

32.As pointed out by the learned counsel for the plaintiff in O.S.No.307 of 2004, one Tamil letter 'L' is missing in the signatures made before the Registrar. There are some basic differences in each of the signatures found at the bottom of the each page of the Will. This creates a lot of doubt in the mind of the Court regarding the valid execution of the Will. No doubt, the Trial Court has upheld the execution of the Will but it had overlooked the fact that there is a vast difference in the signatuers found in the document. It is basic principle of law that the propounder of the Will



has to let in evidence, which will have the effect of putting the Will beyond suspicion. If there is a suspicious circumstance and there has been no attempt or very little evidence made available to dispell such suspicion, the Court will have to necessarily lean in favour of succession over to all the heirs.

33.As we have already pointed out that the disinheritence of atleast six of the heirs and preference to a daughter-in-law and married grand daughter by itself is a suspicious circumstance. We are unable to find any evidence that would justify such exclusion by Sowdammal. The above coupled with differences in signatures found in the document compel us to conclude that the Will has not been proved in accordance with law and the same cannot be said to be valid and binding on the other heirs. Once we reach a conclusion that the Will has not been proved, the share of Sowdammal in Items 1 to 3 namely,  $1/8^{\text{th}}$  will also devolve under Section 15 of the Hindu Succession Act under which her children will get an equal share. Therefore, the plaintiff in O.S.No.307 of 2004 will get  $1/7^{\text{th}}$  share in Items 1 to 3.



WEB COURT **34. Point No.2:-**

This relates to the purchase of Item 4 and the character of 5<sup>th</sup> item of Schedule 1 and 1<sup>st</sup> Item of Schedule 2. 4<sup>th</sup> Item of property has been purchased in the year 1967 under the Ex.A4. The sale deeds stand in the name of the 2<sup>nd</sup> defendant. It is the claim of the plaintiff in O.S.No.307 of 2004 that the purchase was made out of the joint family nucleus. The joint family nucleus that is shown to be available is Item No.5, is a house property in Aruppukottai, a small Town. It is not shown that so much income was derived from that property and there was a surplus after defraying the family expenses and said surplus was utilized for the purchase. More over, D.W.2 was the Junior member of the joint family in 1967. Since Ramasamy Chettiar was alive at that time, a purchase by a junior member of a joint family does not entail the same presumption as purchase in the name of the Karta. Therefore, person claiming the property to be joint family property will have to establish by cogent and convincing evidence that the purchase was made out of the funds from the joint family properties.



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35. We also find that the nucleus that was available was only a house property, which would not have generated so much of income to enable purchase of Item 4 in the name of the 2<sup>nd</sup> defendant. Apart from the above, the 2<sup>nd</sup> defendant has also produced evidence in the form of sales tax returns Ex.B15 and assessment orders under Exs.B18, 19, 20 and 21 to show he has been doing some business at that time. We are therefore, inclined to accept the finding of the Trial Court regarding the character of Item 4 of the suit schedule properties.

**36. Point No.3:-**

This relates to Item No.6, the 6<sup>th</sup> item of the suit schedule properties was purchased under two sale deeds dated 26.04.1990 and 10.08.1990 marked as Exs.A16 and A17. They stand in the name of the 9<sup>th</sup> defendant / wife of the 2<sup>nd</sup> defendant. The purchase is after 17.05.1988 i.e., coming into force of the Benami Transaction (Prohibition), Act. Therefore, the plaintiffs would have to show that the purchase was made out of the income from the joint family properties but they would also show that the 9<sup>th</sup>



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defendant stood in a fiduciary capacity. We can straight away point out that there is no such evidence available and the said sale being one after coming into force of the Benami Transaction (Prohibition), Act, the said sale would be straight away hit by Section 3. We therefore, conclude that Item 6 is the absolute property of the 9<sup>th</sup> defendant and the plaintiffs are not entitled to any share in the suit properties. The Trial Court has granted 1/7<sup>th</sup> share to the plaintiffs in O.S.No.307 of 2004 in Item No.5 of Schedule 1 and Item 1 of Schedule 2, which are admittedly joint family properties.

37.The learned counsel for the appellants in A.S.No.481 & 482 of 2007 namely, the defendants 2, 9 and 10 in O.S.No.307 of 2004 is unable to pick holes in the findings of the Trial Court with reference to those properties, since the character of those properties has been admitted. The Trial Court granted 1/7<sup>th</sup> share treating the children of Ramasamy Chettiar as coparceners in view of the advent of Hindu Succession (Amendment) Act 39 of 2005. We therefore, affirm the said findings of the Trial Court.

38.In fine, the appeals in A.S.Nos.481 & 482 of 2013 are



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dismissed. The appeals in A.S.Nos.516 & 517 of 2013 are allowed in part.

The suit in O.S.No.841 of 2007 will stand dismissed as a whole and the suit in O.S.No.307 of 2004 will stand decreed as follows:-

a) the plaintiff is declared entitled to 1/7<sup>th</sup> share in Item 1 to 3 and 5 of Schedule 1 and Item 1 of Schedule 2. There will be a preliminary decree for partition as above.

b) the parties will be entitled to move the Trial Court for determination of mense profits.

c)The Trial Court's decree stands confirmed in respect of Item No.5 of Schedule 1 and Item 1 of Schedule 2.

39.Considering the fact that the parties are close relatives and two of the appeals have been allowed in part, we refrain from passing any order as to costs in these appeals. Consequently, connected miscellaneous petitions, if any, are closed.

(R.S.M.,J.) (R.K.M.,J.)  
10.08.2023

kkn

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Internet: Yes

Index: Yes

Speaking

Neutral Citation : Yes

**R.SUBRAMANIAN, J.**  
**and**  
**R.KALAIMATHI, J.**

KKN

To:-

The VI-Additional District and Sessions Court,  
Coimbatore.

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**10.08.2023**