



A.S.No.664 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.03.2024	Pronounced on: 06.06.2024
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CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.No.664 of 2016
and
C.M.P.No.20200 of 2016

1.Jayalakshmi

2.M.Rajarajan

3.M.Thirunavukkarasu

.. Appellants

Vs.

M.Jamuna Rani

.. Respondent

Prayer: This First Appeal is filed under Section 96 read with Order XLI Rule 1 of Civil Procedure Code against the judgment and decree dated 08.06.2016 in O.S.No.18 of 2012 on the file of the III Additional District Court, Vellore at Tirupattur.

For Appellants : Mr.T.M.Hariharan

For Respondent : Mr.N.Ramesh



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JUDGMENT

WEB COPY This First Appeal is filed against the judgment and decree dated 08.06.2016 in O.S.No.18 of 2012 on the file of the III Additional District Court, Vellore at Tirupattur.

2.The defeated defendants are appellants herein. The respondent herein filed the suit in O.S.No.18 of 2012 for partition and separate possession claiming 1/4th share in the suit property and for permanent injunction restraining the defendants from alienating or encumbering the suit property.

3.After contest, the suit was decreed and hence, this appeal was filed by the defendants.

4.The admitted factual matrix of the case are as under:

4(i).The 1st defendant is the wife of one Masilamani. The plaintiff and one Saradha Devi are the daughters of the 1st defendant and Masilamani. The defendants 2 and 3 are the sons of the 1st defendant and Masilamani. The said



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Masilamani served in the Army and subsequently he was employed in Chennai Fort. The said Masilamani died intestate. The Saradha Devi, the younger daughter of the 1st defendant and Masilamani also died. At that time of death of Masilamani the plaintiff, defendants and Saradha Devi were his legal heirs.

4(ii).The case of the plaintiff is that the suit property was originally purchased by Masilamani in the name of his wife the 1st defendant out of his income derived from Government department. The said Masilamani was employed and he was earning. The 1st defendant was a house wife and had no earning at any time. So the 1st defendant is only name lender. The said Masilamani also removed the huts in the suit property and constructed 11 portions of R.C.C. molding houses of his income alone. So the suit property belonged to Masilamani alone and not to the 1st defendant.

4(iii).The defendants in the written statement specifically stated that the 1st defendant Jayalakshmi is the absolute owner of the suit property and it is a separate property of her. She further stated that the suit property was the



separate property of the 1st defendant. The Masilamani was serving in the Army. The 1st defendant lived alone at Tirupattur. She was doing agricultural cooli work and earning. She obtained Rs.2,500/- from her brother Velayudham and also obtained Rs.2,500/- loan on 05.03.1975 from Kesavamurthy by executing a Mortgage deed and borrowed the suit property. The 1st defendant out of the income she derived from the 11 thatched houses in the suit property repaid the loan. The 1st defendant in the year 1981 by mortgaging the suit property in Tirupattur Town co-operative society obtained loan and constructed the R.C.C buildings in the suit property. So the suit property was the absolute and separate property of 1st defendant alone.

5.The Trial Court has formulated the following issues:

The following issues were framed for trial:

- (i).Whether the suit property was the self acquired property of the 1st defendant?
- (ii).Whether the 1st defendant given away the suit property to the 3rd defendant by way of gift?



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(iii).Whether the suit properties are the joint family properties of the plaintiff and defendants?

(iv).Whether the plaintiff is entitled for the relief of partition as prayed for?

(v).To what other relief?

6.On the side of the plaintiff, the plaintiff Jamuna Rani and one Alamelu and Sampooranam were examined as P.W.1 to P.W.3 and Ex.A1 to Ex.A5 were marked. On the side of defendants 1st defendant Jayalakshmi and one Lakshmi were examined as D.W.1 and D.W.2 respectively and Ex.B1 to Ex.B15 were marked. Ex.X1 and X2 were also marked.

7.Based upon the oral and documentary evidence, the Trial Court come to the conclusion that Masilamani had purchased the property for the benefit of the family in the name of his wife Jayalakshmi / 1st defendant (1st appellant herein) and on his death, the plaintiff daughter is entitled for 1/4th share. Hence, the suit.



8.Heard the learned counsel for the appellants and the learned counsel for the respondent.

9.Learned counsel appearing for the appellants would contend that even the factual findings rendered by the Trial Court is justifiable on the point of presumption, as per Section 3(1)(1) of the Benami Transactions (Prohibition) Act, 1988, the presumption is in favour of the beneficiary namely Jayalakshmi, who is the wife of Masilamani and therefore even assuming that Masilamani has funded the purchase of property and paid amount. Subsequently, to develop the property that will be only presumed for the benefit of his wife (1st defendant) and hence, the question of benami does not arise. Further would contend that once the property has been purchased in the name of the wife by Masilamani, he can alone take plea of benami and not the daughter.

10.In support of his contention, the learned counsel for the appellants relied upon the following judgments:

(i)Nand Kishore Mehra Vs. Susila Mehra reported in **1995 (II) CTC 356;**



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(ii) ***U.Bhaskaran Vs. Bank of India and others*** reported in **2004 (1) CTC 488**;

(iii) ***Valliammal (died) By LRS Vs. Subramaniam and others*** reported in **(2004) 7 SCC 233**;

(iv) ***Minor Balamurugan Vs. T.Selvaraj and others*** reported in **2014 (2) MWN (Civil) 738** and

(v) ***V.Selvarani (died) and others Vs. R.Balakrishnan*** reported in **2024 (1) CTC 561**.

11.Per contra, the learned counsel appearing for the respondent / plaintiff would contend that the Trial Court has rightly come to the conclusion that the said Masilamani purchased the property from and out of his income derived from his Military service and purchased the suit property in the name of his wife Jayalakshmi. Therefore, it has to be construed as for the benefit of the family and not for the benefit of his wife Jayalakshmi (1st defendant) alone.

12.The following points arises for determination in this appeal are as



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follows:

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(i)Whether the respondent / plaintiff is entitled to raise the plea of benami?

(ii)Whether the suit filed by the plaintiffs is maintainable?

(iii)Whether the suit property is self acquired property of the 1st appellant / 1st defendant?

(iv)Whether the suit property is a joint family property as pleaded by the plaintiffs?

(v)Whether the respondent / plaintiff is entitled for partition as prayed for?

(vi)Whether the order of the Trial Court is sustainable in law or not?

13.After hearing the rival submissions and perusal of the documents, both oral and documentary evidence, Ex.B1 is the original sale deed stands in the name of the 1st defendant dated 05.03.1975. Ex.A1 is the copy of the sale



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deed in favour of the 1st defendant and Ex.B2 is copy of the sale deed stands in the name of the 1st defendant. Exs.B3 to B10 are the original mortgage deed executed by the 1st defendant (mother) in favour of the Tirupattur Cooperative Bank. Ex.B11 is the letter of approval by the Tirupattur Municipality for the construction and the plan approval is Ex.B12. Certified copy of the pension book stands in the name of the 1st defendant is Ex.B14. Through B.W.2, Ex.X1 and Ex.X2 are marked that are discussed infra.

14.On perusal of the above said documents, I find that Ex.B1 was executed in the year 1975 and so also in the very same year, the respondent / plaintiff M.Jamuna Rani (daughter) was born and the property was purchased in the year 1975 and the father of the plaintiff and the husband of the 1st defendant retired from service. Thereafter, he lived for three years and died after 15 years. After the death of her father, now the daughter appears to have filed the suit in O.S.No.18 of 2012 for partition by raising the plea of benami.

15.On perusal of Ex.B1, original sale deed dated 05.03.1975, which stands in the name of the 1st defendant (mother) (now 1st appellant),



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admittedly the daughter plaintiff is not a party to the document nor the person alleged to have paid the amount for payment towards sale consideration under Ex.B1 sale deed. Only in the year 1975 namely, very same year of purchase, the plaintiff who takes the plea of benami appears to have been born. In the decision reported in *Minor Balamurugan Vs. T.Selvaraj and others* reported in **2014 (2) MWN (Civil) 738**, wherein it was observed that when any other person claims absolute right, he has to establish that the persons name in the document is not the real owner and he is only a benamidar.

16.Here, in the instant case, the daughter alleges that her father Masilamani funded for the property purchased in the name of her mother Jayalakshmi and hence, Jayalakshmi is only a benami and is not the separate property of Jayalakshmi and hence, on the death of the father, the property is available for partition. In the cross examination of P.W.1, a specific stand is put to D.W.1, mother who answered in narration the question that since the mother has proposed the marriage of her brother Murugan, he bears the enmity with the 1st defendant. In short, P.W.3 has rejected the marriage proposal prompted by 1st defendant brother Murugan, that lead to the present



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litigation.

WEB COPY 17. Before going to the evidence, let us consider the law on this point.

18. Burden of proving that a sale is benami lies on person, who alleges transaction to be a benami. Six circumstances pointed as a guide to determine nature of transaction. They are: source of money to purchase, nature and possession of property after purchase, motive for giving benami colour, relationship between parties, custody of Title Deeds after sale and conduct of parties after sale.

19. When the husband claims that the wife is only a benamidar and he is the owner, the burden is on him to prove the same relying upon the Judgment of a Division Bench of the Hon"ble Supreme Court in **Valliammal (D) by L.Rs. v. Subramaniam and others, 2004 (5) CTC 60 (SC) : 2004 (7) SCC 233**, in support of his contention.

20. In the Judgment **U. Bhaskaran v. Bank of India and others, 2004 (1) CTC 488 (DB)**, the Hon"ble Division Bench relied upon the Judgment of



the Supreme Court in **Nand Kishore Mehra v. Sushila Mehra, 1995 (2)**

CTC 356 (SC), and held that when the properties are purchased in the name of wife or unmarried daughter a presumption can be raised that the properties are purchased for the benefit of wife or unmarried daughter as the case may be and such presumption is rebuttable and when any other person claims absolute right, he has to establish that the persons name in the documents is not the real owner he is only a benamidar.

21.On the other hand PW3 the brother of Dhanabakkiam gave evidence and his evidence was not at all shattered in cross-examination, Further when the properties are purchased in the name of wife and the husband claims that his wife is only a benamidar and he is the real owner of the property, then the onus lies on the husband to prove the same. This has been laid down by the Hon"ble Supreme Court in **Valliammal (D) by L.Rs. v. Subramaniam and others, 2004 (5) CTC 60 (SC) : 2004 (7) SCC 233**. In that Judgment the Hon"ble Supreme Court held as follows:

"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



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successfully pleading and providing 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 providing 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; Thakur Bhim Singh v. Thakur Kan Singh, 1980 (3) SCC 72; Pratap Singh v. Sarojini Devi, 1994 Supp (1) SCC 734; 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:*



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- (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."*

22. Section 4 of the Act which imposes prohibition in the matter of filing of suits or taking of defences in respect of property held benami i.e., covered by benami transaction reads, thus :

"4. Prohibition of the right to recover property held benami.--

(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the



property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) Nothing in this section shall apply-

(a) Where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held is a coparcener in Hindu undivided family and the proerty is held for the benefit of the coparceners in the family; or

(b) Where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capcity."

23.Since the provisions in Sections 3 and 5 could be of assistance in a proper appreciation of the said arguments of learned counsel, they are excerpted:

Section-3 "3. Prohibition of benami transactions.--

(1) No person shall enter into any benami transaction.

(2) Nothing in sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the



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contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter.

(3) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under this section shall be non-cognizable and bailable.

Section-5 "5. Property held benami liable to acquisition.--

(1) All properties held benami shall be subject to acquisition by such authority, in such manner and after following such procedure, as may be prescribed.

(2) For the removal of doubts, it is hereby declared that no amount shall be payable for the acquisition of any property under sub-section (1)."

24.In short, burden of proving that the property was not purchased for the benefit of wife or unmarried daughter lies on husband or father.

25.In *Valliammal (died) By LRS Vs. Subramaniam and others* reported in (2004) 7 SCC 233, the Hon'ble Supreme Court held as follows:

"law presumes the purchaser to be the owner of the



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property purchased – onus to prove that he is not the real owner but a benami holder lies on the person pleading. Two of such tests viz., the source of purchase money and the motive for benami purchase being by far the most important tests, applied – In the present case, plaintiff claiming to have purchased the suit property benami in the name of his wife.

Out of the six indicia to determine the question whether a particular sale is benamei or not, as mentioned in Jaydayal Poddar case, (1974) 1 SCC 3, the source from where the purchase money came and the motive why the property was purchased benami are by far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another.

It is well settled that intention of the parties is the essence of the benami transaction and the money must have been provided by the party invoking the doctrine of benami. The evidence shows clearly that the original plaintiff did not have any jurisdiction for purchasing the property in the name of R. The reason given by him is not at all acceptable. The source of money is not at all traceable to the plaintiff.”

26.Ex.B1 is the sale deed in favour of the 1st defendant dated 05.03.1975. The suit was filed for partition by raising the plea of benami is filed on 25.07.2011. After 37 years. P.W.1 is the daughter, who is seeking the



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relief of partition by raising the plea of benami alleging that purchase of property in the name of 1st defendant, mother as benami. On the date of sale deed in favour of 1st defendant/1st appellant, the plaintiff is a just born baby.

27.The 1st defendant is the mother. Defendants 2 to 3 are the sons of 1st defendant and brother of plaintiff. In the written submission, the 3rd defendant has raised that there was a settlement deed in his favour and however, the same is not marked before the Court. On close perusal of the chief and cross examination of D.W.1 / mother in whose name Ex.B1 / sale deed stands regarding to the suit property, this Court finds that the Trial Court has committed an error in relying upon the portion of the evidence without considering the entirety of the evidence of D.W.1 in whole.

28.On close perusal of evidence of D.W.1, it is clear that she does not know to read or write Tamil. She further deposed that her husband has not provided any financial assistance. It is the specific case of the respondent / plaintiff both in pleadings as well as in P.W.1, that the suit property was purchased by Masilamani (father) with his own funds in the year 1975 when



he was employed in the Chennai Fort as Officer and further that the Masilamani has damaged the hut and constructed the RCC huts. At this juncture, the documentary evidence of Exs.B3 to B16 appears to have been lost site by the Trial Court.

29.In other words, without looking into the certified copy of the mortgage deed executed by the plaintiff in favour of the vendor namely Kesavamurthy – Ex.B4 and various original mortgage deed executed by the 1st defendant through the Tirupattur Cooperative Bank and Ex.B5 in the year 1975, Ex.B6 in the year 1978, Ex.B7 in the year 1999, Ex.B8 in the year 1991, Ex.B9 in the year 1994, Ex.B10 in the year 1997, shows that by mortgaging the property with Tirupattur Cooperative Bank, the defendants have raised funds for construction of RCC construction and she had also obtained building approval plan and it can be seen from Ex.B11 & Ex.B12. It remains to be taken when the 1st defendant has taken a plea and administer that she is absolute owner of the property and her husband Masilamani has not made any financial assistance or charges for the site or for the construction.



30. In the decisions referred above, the High Court has specifically stated that the burden of proving benami lies on the person claiming it. At the outset, it is stated that it is not the case that the husband or father pleaded benami when the property was standing in the name of wife of unmarried daughter as the case may be. Here in the instant case, the plaintiff's daughter who was born in the very same year of Ex.B1 / sale deed and filed suit after 37 years and raised the plea of benami raising the plea that the property was purchased by the father and however purchased in the name of the mother and claims partition after 15 years after the death of the father.

31. The burden to prove lies upon the shoulder of the plaintiff. P.W.2 examined by the respondent / plaintiff deposed that she is in her own debts takes for suit property. It remains that Ex.B8 to B10 of original mortgage deed executed by the 1st defendant Jayalakshmi in favour of the Cooperative Bank as decided by Masilamani. While things being so, the Trial Court has committed a grave error by treating the property as if the property of Masilamani.



32.The Trial Court appears to have placed heavy reliance on Ex.A1 – alleged sale deed. On perusal of Exs.X1 & X2, it is seen that the Trial Court failed to see that Ex.X1 and Ex.X2 clearly disprove the case of the respondent that Masilamani was well employed and was affluent and had enough earnings to purchase Ex.B1 property and to make improvements in the same; Exs.X1 and X2 reveal that Masilamani was in very deep financial crisis and in fact was facing abject poverty during the relevant time. The further reasoning that Ex.X1 would establish that Masilamani had taken Ex.B5 loan from the Cooperative bank is wholly unsustainable; apart from the fact that this finding is contrary to the plaint case, there is absolutely no basis to connect the reference in Ex.X1 to loan under Ex.B5.

33.Per contra, the evidence of Ex.B3 to B10 original mortgage deed shows borrowing over the suit property by none other than 1st defendant.

33(a).It remains to be stated that admittedly when the property stands in the name of the wife, the purchase even assuming to be made by the husband in the name of the wife, deemed to be for the benefit of the wife as



per the Benami (Prohibition) Transaction Act. This point appears to have been lost by the III Additional District Judge, Vellore @ Tirupattur. When the purchase is made by the husband Masilamani in the name of the wife, the same is only for the benefit of his wife and had no stretch of litigation. It could be stated that it is for the benefit of the family. The original sale deed is produced by the appellants / defendants. The 1st appellant / 1st defendant as owner of the property has mortgaged the property as could be seen from Ex.B series, as stated supra. The finding rendered by the Trial Court based upon Ex.X1 and X2 fails. Furthermore, the husband had attested the mortgage deed by the 2nd wife also assures significance.

34.Yet another point is that the Trial Court has made adverse comment upon the stamp papers that were purchased in the name of the husband at Tirupattur. No drafting charges and no registration charges were paid by her husband and plea of benami cannot inferred by operation of law it has to persuade that it is for the benefit of the defendants. When the burden of proof lies on the plaintiff, it remains to be stated that Ex.B1 / sale deed is of the year 1975. Admittedly, the name of the purchaser of stamp paper, it is



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Masilamani. Ex.B1 / sale deed belongs to the period 37 years ago (viz.,) prior to amendment of Stamp Act, prescribing the name of parties to transaction has to purchase the stamp paper in either (or) one of the parties. Hence, no adverse inference can be drawn.

35.After perusing the evidence of D.W.1 and Exs.B3 to B12, I find that the 1st defendant repaid the loan obtained by her through rental income derived from the 11 thatched houses in the suit property. In this case, the original mortgage deed executed by the 1st defendant in favour of the Tirupattur Town Co-oprative Bank dated 25.08.1975 is marked as Ex.B5. The original continuing subsidy mortgage deed executed by the 1st defendant dated 16.03.1978 in favour of the Tirupattur Town Co-operative bank marked as Ex.B7. In both of them, 1st defendant husband Masilamani also signed as witness goes to show and lent support the defendants case that it is for the benefit of wife individually and not to family as collectively as per provisions of under Section 3(2) of the Act. Further, Ex.B9 to Ex.B10 respectively dated 06.06.1991, 25.04.1994, 16.04.1997 are the original continuing mortgage deeds executed by the 1st defendant in favour of the Tirupattur Town Co-



operative Bank. The said Ex.B8 to Ex.B10 are subsequent the death of the 1st defendant's husband Masilamani. It is evident from Ex.B11 permission letter given by Tirupattur Municipality for further construction of R.C.C.Building in the suit property and Ex.B12 the approval plan that the alleged construction of R.C.C buildings were done every during the lifetime of deceased Masilamani. Un-disputedly till the lifetime of Masilamani there is no dispute between him and his wife (1st defendant) with regard to the title and possession of the suit property assures significance and lends support to appellants / defendants case.

36. Therefore, I find that Exs.X1 & X2 which were mainly relied upon by the Trial Court lacks credibility under the Indian Evidence Act. The said Ex.X1 and Ex.X2 will pave way to encumbrance in view of the registered document Exs.B4 to B11. Hence, I find that Trial Court has committed an error in giving preference to unregistered documents between two parties as against the registered document namely mortgage deed in favour of the Cooperative Bank. Hence, the finding rendered by the Trial Court on the basis of the above are held to be unsustainable in law.



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36(a).Admittedly, the plaintiff has to prove the plea of benami.

37.In view of the position in the preceding paragraph, this Court finds that the plaintiff has not at all lend any positive evidence and has no evidence to show that her father has funded amount for the purchase of the property. When she failed to discharge the said burden, she has to fall.

37(a).In the instant case, the 1st defendant mother has successfully defended and also let in documentary evidence to show that she has raised funds for the purpose of purchase of Ex.B1 – sale deed in her favour and how she have generated funds by mortgaging the documents to the Cooperative Bank and hence, I find that the plaintiff has miserably failed to discharge that the alleged funding by the father for the purpose of purchase of the property, whereas, the 1st defendant mother has successfully discharged the case of the defendant as discussed supra. Hence, all the findings rendered by the Trial Court are held to be unsustainable in law and with the ratio laid down by the Hon'ble Supreme Court and Division Bench of this Court, extracted supra are liable to be vacated.



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38.The plaintiff has no *locus standi* to raise such a plea of benami and to raise relief of partition after 37 years of the death of her father and hence, all the points raised are answered against the plaintiff.

39.In the result, A.S.No.664 of 2016 is allowed and the judgment and decree dated 08.06.2016 in O.S.No.18 of 2012 on the file of the III Additional District Court, Vellore at Tirupattur is set aside. The suit in O.S.No.18 of 2012 is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

06.06.2024

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To

The III Additional District Judge,
III Additional District Court,
Vellore at
Tirupattur.

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