



C.S.No.233 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21.02.2023

Judgment Pronounced on : 23.03.2023

CORAM : JUSTICE N.SESHASAYEE

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S.Bhanumathi Bai

.... Plaintiff

Vs

1.Kamala

2.Ramesh

3.Rajtilak

4.P.K.Iswarya

5.R.Kiran Kumar (Minor)

Rep by his father and natural guardian Ramesh,
the second defendant herein

6.P.L.Krishnamoorthy Rao

.... Defendants

[5th defendant herein is declared as major and the
second defendant is discharged from the guardianship
as per order dated 01.08.2014 in Appl.No.3479/2014]

Prayer : Civil Suit filed under Section Order IV Rule 1 of O.S. Rules read with
Order VII Rule 1 and 2 CPC., praying for a decree against the defendants :

(a) to grant a decree for the preliminary decree by declaring 1/3rd share
of the plaintiff's shares on the plaint 'A' and 'B' and 'C' schedule
properties described hereunder;



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- (b) to grant final decree by appointing an Advocate Commissioner to divide the suit properties by metes and bounds and allot 1/3 share on the suit 'A' 'B' and 'C' properties granting decree for mesne profits;
- (c) to declare that the alleged settlement deed dated 04.07.2005 registered as document No.5430 of 2005 created in respect of the suit 'A' schedule property hereunder is null and void and not binding on the plaintiff's 1/3 share on the suit 'A' schedule property;
- (d) to declare that the alleged settlement deed dated 25.10.2007, registered as Document No.4314 of 2007 created in respect of 'B' schedule suit property, morefully described in the schedule hereunder as null and void and not binding on the 1/3 share of the plaintiff;
- (e) to award costs of the suit and
- (f) to pass further or other orders as this Court may deem fit and proper in the circumstances of the case.

For Plaintiff : Mr.R.Parthasarathy
Mr.S.Annamalai
for Mr.G.Jeremiah

For Defendants : Ms.S.Meenakshi [D1 to D6]

JUDGMENT

The suit is laid for partition of three items of properties which are described in Schedules A to C in the plaint. Alongside the prayer for partition, the plaintiff also seeks a declaration that the two settlement deeds that her mother had



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executed pertaining to Schedule A and Schedule B items of properties are null and void.

The Pleadings:

2. The case of the Plaintiff:

- A certain Bapanna Rao and Rajeswari Bai had three children: (i) Bhanumathi Bai, the plaintiff (ii) Kamala, the 1st defendant and (iii) Ramesh, the 2nd defendant. Kamala has two children of whom Ishwarya is arrayed as the 4th defendant. Ramesh, the 2nd defendant has two children and they are defendants 3 and 5. The 6th defendant is the husband of the first defendant. During the pendency of the suit, the 3rd defendant had married the 4th defendant.
- 'A' schedule property is a vacant site and 'B' schedule property is a site plus a residential building. On 26.06.1965 and 20.10.1966, Bapanna Rao had purchased both the properties in A and B schedules respectively, in the name of his wife Rajeswari Bai, the mother of the plaintiff and defendants 1 and 2 respectively, but without any intent to benefit her exclusively. This is the foundation for the cause of action for the suit.



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- The C schedule item of property was allotted to Bapanna Rao in a partition that took place on 14.07.1997. While so, Bapanna Rao had died on 17.02.2005, and her mother Rajeswari Bai died on 27.12.2008. Upon their demise, the right over the property devolved equally on all the three children of Bapanna Rao and Rajeswari Bai. Accordingly, the plaintiff is entitled to 1/3rd share in each of the three items of properties.
- On 30.05.2003, the 2nd defendant had met with an accident about two years since he had lost his wife Sasikala. The 2nd defendant is alleged to have suffered massive injuries and he was largely incapacitated physically. The 2nd defendant and his two children, namely, defendants 3 and 5 are also under the care of the 1st defendant.
- On 04.07.2005, Rajeswari Bai had executed a settlement deed pertaining to A schedule property favour of the 1st defendant, her daughter, and also defendants 3 and 5, her grand children born to the first defendant and also her son, the second defendant.
- The second settlement deed pertains to B schedule property and this is dated 25.10.2007. This document is in favour of aforesaid



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grandchildren of Rajeswari Bai, namely defendants 3 and 5.

- Both these settlement deeds are invalid and void and the reasons are:
 - Inasmuch as A and B Schedules of properties were purchased by Bapanna Rao in the name of his wife Rajeswari Bai, but with no intent to benefit the purchaser exclusively, and hence they have to be treated as part of the estate of Bapanna Rao, with her mother holding these properties either as *benami* for her husband, or at least as a constructive trustee for him. On the demise of Bapanna Rao, she had no more than $\frac{1}{4}$ share in his estate along with her children. Therefore, Rajeswari Bai did not have any right to execute the settlement deeds far and in excess of her $\frac{1}{4}$ th share in the properties.
 - Alternatively, even if A and B schedules of properties were to be treated as Rajeswari Bai's properties, still, the two settlement deeds that she had executed stand vitiated. Rajeswari Bai was in physical care and control of the 1st defendant, that inasmuch as she stood in a relationship of absolute confidence vis-a-vis her mother Rajeswari Bai, the latter had reposed active confidence on the former, and as a consequence, the first defendant had unduly



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influenced Rajeswari Bai into executing these settlement deeds.

- After the execution of the first of the two settlement deeds, the plaintiff had issued the suit notice dated 07.10.2005 to her mother and two of her siblings, namely, the 1st and 2nd defendants, claiming partition, and this notice was received only by the 1st defendant and there was no reply immediately. After the second settlement deed dated 25.10.2007, the plaintiff again issued another suit notice dated 25.02.2008 and this evoked response to both the suit notices which the plaintiff had issued. Both the reply notices were even dated 10.03.2008, and they substantially contain the same line of contention that the allegations in the notices are untenable.

It is in these circumstances the plaintiff had laid the suit for the prayers already outlined earlier.

3. The case of the Defendants:

- A and B schedules of properties were purchased by Rajeswari Bai and they are her exclusive properties. The contention that it was purchased by Bapanna Rao in her favour with no intent to benefit her



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exclusively is false and untenable.

- Rajeswari Bai has been under the care of the 1st defendant and her family. In between, the 2nd defendant, the brother of the 1st defendant had suffered a major road accident. He had already lost his wife. It is the 1st defendant and her family, who cared the 2nd defendant and his two minor children right through. It is in these circumstances, in expression of her love and affection towards the 1st defendant, Rajeswari Bai, out of her own volition executed the two settlement deeds dated 04.07.2005 and 25.10.2007 as concerning A and B Schedules of properties.
- At no point of time, the plaintiff had met any of the medical expenses of her mother or her brother, and at no point of time did she offer to care her mother. The allegation challenging the two settlement deeds is motivated and unsustainable.
- So far as C schedule property is concerned, it is true that this property was allotted to Bapanna Rao in a partition dated 14.07.1997.

4. On the above pleadings, the following issues were framed:

i. Whether the father of the plaintiff, out of his earnings had



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purchased A and B schedule properties in the name of his wife viz., Rajeswari Bai by means of registered sale deeds bearing Document No.2429 of 1965, dated 26.06.1965 and Document No.3206 of 1996 dated 20.10.1996?

- ii. Whether the father of the plaintiff has got 'C' schedule property by virtue of family partition dated 14.07.1997?*
- iii. Whether the deed of registered settlement bearing Document No.4314 of 2007 dated 25.10.2007, executed by the mother of the plaintiff in favour of defendants 3 and 5, if valid?*
- iv. Whether the plaintiff is entitled to a preliminary decree for partition and separate possession of 1/3rd share in A, B and C scheduled properties?*
- v. Whether the plaintiff is entitled to get a declaration that the registered settlement deed bearing document No.5430 of 2005 dated 04.07.2005 is null and void and not binding in the share in A schedule property?*
- vi. Whether the plaintiff is entitled to get a declaration that the registered settlement deed bearing Document No.4314 of 2007 dated 25.10.2007 is to be declared as null and*



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void and not binding with regard to his share?

The following additional issue was also framed:

"Whether the claim of the 1st defendant that the properties were purchased from and out of the common funds of their mother Rajeswari is contrary to the provisions of Section 3(1) of Benami Transaction Prohibition Act, 1988?"

5. The suit went for trial. During trial, the plaintiff's son was examined as P.W.1 and through him, Exs.P1 to P20 were marked. Of them, Exs.P1, P2 and P20 were respectively the title deeds pertaining to A, B and C schedule of properties. Exts.P3 and P8 are the two settlement deeds respectively as regards A and B schedules of properties that Rajeswari Bai had executed. The suit notices were marked as Exs.P4 and P9 and the reply notices are Exs.P10 and P11. For the defendants, the 3rd defendant was examined as D.W.1. He, to remind, is the son of the 2nd defendant and husband of the 4th defendant and son-in-law of the 1st and the 6th defendants. Through him, the defendants produced Exs.D1 to D5, of them, Exs.D1 and D2 are same as Ex.P17 and P18.

6. There is no dispute as regards the C Schedule item of property. And, since Rajeswari Bai had now passed away, there is no difficulty in declaring the 1/3



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share of the plaintiff. Issue No:2 is decided accordingly.

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7. Focussing his argument on the sustainability of the cause for action as concerning A and B Schedule items of properties, Mr.R. Parthasarathy, the learned counsel for the plaintiff, argued that, while it is not in dispute that these two items of properties were purchased in the name of Rajeswari Bai under Ext.P17 and Ext. P18 sale deeds, the point is who actually financed these purchases? According to the plaintiff, Rajeswari Bai was only a home maker and did not have any independent source of income. He argued that:

- ♦ Bapanna Rao, the father of the plaintiff, admittedly, was working in the Commercial Tax Department, and was a DCTO when he superannuated, and it was his income that sustained the family. While the defendants assert that Rajeswari Bai had *sthridhana* property etc., to support her, the evidence on record indicates that there is no proof of any such *sthridhana* property had ever existed. Reliance was placed on the ratio in ***P. Leelavathi Vs V.Shankaranarayana Rao*** [2019 SCC Online SC 489] and ***Mangathai Ammal & Others Vs Rajeswari & Others*** [2019 SCC Online SC 717].



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- ◆ Secondly, in neither of her settlement deeds in Exs.P3 and P8, Rajeswari Bai had chosen to recite that the purchases under Ext.P17 and Ext. P.18 were made by utilising her *sthridhana* property. Indeed, the plaintiff had issued Ex.P4 legal notice, dated 07.10.2007, wherein she had claimed 1/3rd share in the suit properties based on her assertion that A and B schedule of properties belonged exclusively to her father Bapanna Rao. This evoked no response for the next six months, and in the first of the replies given by the 1st defendant vide Ex.P10 dated 10.03.2008, she opted to remain silent vis-a-vis the source of money for the purchase of A schedule property, and she confined her theory of *sthridhana* property of Rajeswari Bai to the funding of the purchase of B Schedule property alone.
- ◆ So far as A and B schedules of properties are concerned, they are not affected by The Benami Transaction Prohibition Act, 1988. This Act had underwent a major amendments to it Vide Central Act 43/2016, which included even a change to the name of the Act, and it is now called the Prohibition of Benami Property Transactions Act, 1988. In its original avatar, under Sec.4 there was a statutory bar to plead *benami* either in the plaint or in written statement. And Sec.3(1) imposed a total bar on



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benami transactions. But Sec.3(2) of the Act however, carved out an exception and provided for a presumption of doctrine of advancement in favour of wife and unmarried daughters, and saved the purchases made in their names from the operative purview of the Act. In other words, Sec.3(2) of the Act operated as an exception to Sec.4 and hence *benami* can be pleaded provided the transactions fell within Sec.3(2) of the Act. Reliance was placed on *Nand Kishore Mehra V. Sushila Mehra* [(1995) 4 SCC 572], *Mangathai Ammal & Others Vs Rajeswari & Others* [2019 SCC Online SC 717]. When this Act was amended in 2016, Sec.3(2) as it originally stood was omitted, and the benami purchase in favour of wife and unmarried daughters are kept outside the definition of benami transaction and was saved vide Sec.2(a)(A)(b)(iii) of the Amended Act in its 2016 version. Besides, in *Mangathai Ammal* case, the Hon'ble Supreme Court has held that the Act cannot have retrospective effect which in the context would mean that the amended Act cannot affect pending suits. This would imply that neither the earlier version of the Benami Transaction Prohibition Act, or the current version of the Act made in 2016, bars the plaintiff from pleading *benami*.



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- ◆ Bapanna Rao died on 17.02.2005. D.W.1 admits that at the time when Bapanna Rao died, Rajeswari Bai was down with paralysis. This implies that on the date of death of Bapanna Rao and subsequently, Rajeswari Bai was not in the best of health, and hardly, within five months after Bapanna Rao died, Rajeswari Bai executed Ext.P3, the first of the settlement deeds as pertaining to A schedule property, and the second settlement deed (Ext.P.8) came into existence within about a fortnight after the issuance of Ext.P.4, the first suit notice, dated 07.10.2005 by the plaintiff. It is self evident that this aged and paralytic mother was entirely dependent on the 1st defendant, and the situation has created an right circumstance for her to repose active confidence in the 1st defendant, and therefore, Rajeswari Bai was not in an ideal position to exercise her independent will when she executed the settlement deeds. In other words, Rajeswari Bai did not have and could not have executed Exts.P3 and P8 settlement deeds with her free will.
- ◆ Secondly, it is significant to note that in Ext.P3 settlement deed, the 6th defendant Krishnamoorthy Rao, the husband of the 1st defendant and father of the 4th defendant, was an attesting witness. It may be relevant to state that during the pendency of the suit, on 03.09.2017, the 3rd



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defendant/D.W.1 was given in marriage to the 4th defendant. This now completes the circle. In short, the 1st defendant had made the best use of her paralytic mother under her custody, control and care, and took advantage of the situation, as she knew that A and B schedules of properties are standing in her mother's name, and obtained Exts.P.3 and P.8 settlement deeds. And to top it all, she ensured that one of the settlees in Ext.P3 is her own daughter, and saw that the substantial portion of the properties is settled within her own branch.

- ◆ Given the fact that the first defendant was in a position to manipulate the will of her mother, the burden is entirely on her to discharge that Rajeswari Bai had executed the settlement deeds with her free will. However, the 1st defendant has chosen not to step into the box to discharge this burden. Though D.W.1 is a competent witness to speak to the facts which are within his knowledge, yet, at the time when Ex.P3 was executed, he was a minor, and when Ex.P8 was executed, he had barely attained majority. Therefore, those facts, which are within the personal knowledge of the 1st defendant, more particularly the mental status of Rajeswari Bai at the time when she executed Exts.P.3 and P.8 settlement deeds, have not come before the Court. Necessarily adverse



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inference must be made against her conduct.

8. In response, the learned counsel for the defendants made the following submissions :

- In a suit where the plaintiff seeks declaration that Ext.P.3 and Ext.P.8 are invalid, she herself has not opted to examine herself, but instead examined only her son on her behalf. Necessarily, adverse inference may have to be drawn against the plaintiff. Reliance was placed on ***Kanagambaram Ammal v. Kakammal and others*** [AIR 2005 Mad 142] and ***P.D.P.Chinadurai v. T.Lakshmanan & others*** [2020-5-L.W.264]. Her non-examination is significant in the context of the fact that she asserts that Ext.D1=Ext.P17 and Ext.D2 =Ext.P18, sale deeds respectively relating to 'A' and 'B' schedules of properties were purchased *benami* by Bapanna Rao, and the burden of establishing that Rajeswari Bai did not have any resources of her own, is on her, which burden she has not discharged.
- Alternatively, even if it is found that Bapanna had paid the entire sale consideration, yet it must be presumed that it was intended for the



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benefit of his wife Rajeswari Bai. At any rate, mere payment of sale consideration is not the sole criterion for holding that a particular purchase is a *benami* purchase. Reliance was placed on ***Bhim Singh (dead) by L.Rs. and another v. Kan Singh*** [AIR 1980 SC 727]; ***Nand Kishore Mehra v. Sushila Mehra*** [(1995) 4 SCC 572] and ***Mangathai Ammal (Died) thru. L.R.s and others v. Rajeswari and others*** [2020 (2) CTC 217].

- When once it is established that 'A' and 'B' schedule properties are not Benami properties, then Rajeswari Bai had every right to execute Ext.P3 and Ext.P8 settlement deeds, and that she had executed these settlement deeds out of her own volition and presented them before the appropriate registering authority. The plaintiff however, impugns that these settlement deeds were not executed by Rajeswari Bai with her free will, but the burden is on the plaintiff to establish such facts as might be necessary to tilt the probability in favour of her case. However, she opted not to examine herself and forfeited her opportunity to tilt the scale in her favour. Adverse inference necessarily has to be drawn against her conduct.



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- The execution of Ext.P3 and Ext.P8 settlement deeds must be understood in the following context: The second defendant is the only son of Bapanna Rao and Rajeswari Bai. He lost his wife even before he lost his father. His two minor children are defendants 3 and 5, and they were under the care of their grandparents. Indeed, they were minor kids aged about 15 years and 10 years, when they lost their mother, and the misfortune struck the family again when the second defendant also was paralysed in an accident in which he had lost his mobility but not his senses and orientation. The second defendant and his children were under the care of Rajeswari Bai, but the latter too was under the care of the first defendant. D.W.1, the third defendant speaks to these facts. Therefore, it is only natural that Rajeswari Bai had executed the settlement deed in favour of the first defendant who was caring her and also her son (the second defendant), besides the children of her motherless grandchildren. It may be that Rajeswari Bai might have described the first defendant as guardian of defendants 3 and 5, even though their father, the second defendant was alive, yet it would not render these documents void, since the second defendant was a paralytic at that relevant time, and



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the gift needs to be accepted on behalf of the minors as per law. Indeed, there is no conflict of interest between the first defendant and defendants 3 to 5 as to disqualify her from acting as their guardian in the settlement deeds, and that she had only acted for the benefit of the children and not otherwise.

- So far as the health condition of the second defendant is concerned, the medical report shows that he can manage his affairs reasonably well now.
- A schedule property produced under Ext.D1=Ext.P17 is a vacant site, in which a house was built by utilising the terminal benefits of second defendant, plus the contributions from first and sixth defendant. The defendants have produced a letter dated 30.10.2006 (marked as Ext.D3) in which the plaintiff discloses her knowledge about the construction of the house in 'A' schedule property and demands 'B' schedule property to her share. This letter is disputed by the plaintiff, but since she did not examine herself as a witness, the defendants did not have an opportunity to confront her with Ext.D3.
- D.W.1 through his oral testimony speaks to the fact that the second defendant takes care of his affairs, but with the assistance of the first



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defendant and that he manages A and B schedules of properties.

- Ever since the acquisition of title under Ext.P3 settlement deed, the first and sixth defendant are residing there, whereas defendants 3 and 5 began to reside in 'B' schedule property as of their right. Since, these defendants are in exclusive possession of the property on their right, the suit ought to have been valued under Section 37(1) of the Court Fees and Suits Valuation Act, 1955.

Of Discussion & Decision:

9. The broad case of the plaintiff is that her father had purchased the two items of immovable properties involved in this case vide Exts.D-1=Ext.P-17 and Ext.D-2=Ext.P-18 sale deeds in the name of her mother, that her mother was only a *benami* for her father, and that she did not have any right in her to execute Exts.P3 and P8 settlement deeds. If she succeeds in her effort, then she will have to confront and has to negotiate the bar to plead *benami* in terms of the Benami Transaction Prohibition Act, 1988, as it was originally enacted, and in its 2016 version.



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10. Here, the plaintiff comes up with a Plan B strategy to sustain her case: She attacks Ext.P-3 and Ext.P-8 settlement deeds which her mother had executed as a product of coercion and undue influence. This implies that in the eventuality of this court finding that the purchase of two items of immovable properties under Exts.D-1= Ext.P-17 and Ext.D2=Ext.P-18 are either not *benami* purchases, or, even if they are benami purchases but still if they found to be falling outside the purview of the Benami Transaction (Prohibition) Act, 1988, or its current version, as they case may be, she can still reach ashore safely if she could prove that these settlement deeds are void.

Issue 1 and the Additional Issue:

11. It is not in dispute that Exts.D-1= Ext.P-17 and Ext.D2=Ext.P-18 stands in the name of Rajewarai Bai. The point is whether Rajewarai Bai was merely an ostensible owner without any intent to hold the properties purchased in her name for her own benefit? While the plaintiff contends that Rajeswari Bai was a home maker with no source of income and that Bapanna Rao alone provided the funds for the purchase as he was working in the Commercial Tax Department, the first defendant would plead that Rajeswari Bai hailed from an



affluent family to suggest that she had wherewithal to purchase A and B schedules of properties. But neither of them opted to examine themselves. While the plaintiff examined her son as P.W.1, the defendants examined D.W.1, the 3rd defendant, who is the son of the 2nd defendant and the son-in-law of the first defendant (he having married his paternal aunt's daughter, the 4th defendant).

12. The plaintiff examined her son as P.W.1. He categorically admits that he has not produced any documentary evidence to establish that Bapanna Rao had provided any resources for the purchase made under Ext.P-17 and Ext.P-18. The sale consideration passed under these documents are Rs.1,920/- and Rs.1,750/- respectively. With the plaintiff opting not to examine herself, the best evidence that she could have produced on the point was denied to the court, and consequently, it cannot be concluded that Rajeswari Bai did not have her own finances to provide consideration for Exts.D.1 and D2. Therefore, in the absence of any evidence, it will be perilous to entertain a speculation at this distant point of time that Bapanna Rao might have provided the resources for the sale consideration passed under Exts.P-17 and P-18. This apart, Bapanna Rao had lived for another 40 years since the purchases of Schedules A and B



properties, and no evidence is produced to indicate that Bapanna Rao had ever attempted to assert any right over or in relation to these properties. In ***Valliammal Vs Subramaniam*** [(2004)7 SCC 233], the Hon'ble Supreme Court has formulated certain parameters for identifying a benami purchase.

They are:

- (1) The source from which the purchase money came;*
- (2) The nature if any, for giving the transaction a benami colour;*
- (3) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;*
- (4) the custody of the title deeds after the sale;*
- (5) the cone and possession of the property, after the purchase;*
- (6) motive, conduct of the parties concerned in dealing with the property after the sale."*

It is not required that all these criteria must be present simultaneously in every case, but in this case, the evidence on record does not even enable an inference in aid of the existence of anyone of these criteria. Here, the plaintiff contends that the stamp papers utilised in Ext.P-8 settlement deed were purchased in the name of Bapanna Rao as indicative of his intent to purchase of B schedule property *benami* in the name of his wife Rajeswari Bai. The person in whose name stamp papers were purchased, more so when they are spouses, can never be considered as a strong piece of evidence to compel an inference conclusively



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the intent behind a purchase. This Court considers that it is far too inadequate to prove *benami*.

13. The evidence as has been made available does not preponderate a possibility that the properties purchased under Ext. D-1= Ext.P.17 and Ext.D-2 = Ext.P.18 in the name of Rajeswari Bai are not held *benami* by her for her husband Bapanna Rao, but on the contrary they suggest that they are the personal properties of Rajeswari Bai. Issue No:1 is therefore, decided against the plaintiff. Consequently, there is no need to consider the Additional Issue on the tenability of pleading *benami* in the face of statutory bar under the Benami Transaction (Prohibition) Act, 1988 or its current version.

Issues 3, 5 and 6:

14. This Court has found that the properties described in A and B schedules to the plaint belonged to Rajeswari Bai. Therefore, it cannot be said that she does not have any right to settle her properties. But the point is did she execute Exts.P-3 and P-8 with her free consent? Here few indisputable points needs to be listed:



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- Rajeswarai Bai was aged and was down with paralysis when she executed Ext.P-3 and P-8 settlement deeds, and was under the care and control of the first defendant. There is no case for either side that the plaintiff had had access to her mother during this phase, or that she met her.
- After the execution of Ext.P-3 settlement deed dated 04.07.2005, the plaintiff is said to have written a letter dated 30.06.2006 to her mother demanding partition. This letter was not pleaded by the plaintiff but D.W.1 admits to his knowledge about it. Rejeswari Bai did not respond.
- And, this is followed by Ext.P-4, legal notice, dated 07.10.2007, from the plaintiff to her mother, the first defendant, and also her brother, the second defendant, alleging that the A and B Schedules of properties purchased under Exts.D1 and D2 were held *benami* by her mother for Bapanna Rao, and demanded partition. Not one, more particularly the first defendant, had chosen to respond to it.
- Within about a fortnight of issuance of Ext.P.4 notice, Ext.P.8 settlement deed was executed. Thereafter, the first defendant sent her Ext.P- 10 reply, and Rajewarai Bai her Ext. P-11 reply notices, both dated 10.03.2008.



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- The originals of Exts.P.3 and P.8 settlement deeds were not produced.
- The first defendant did not examine herself. The second defendant, the father of D.W.1, had suffered an accident, and D.W.1's testimony as to his capacity to tender evidence is ambivalent. He says that he only needs support for his mobility, but in another place he would depose that he needs care. And, at the end of the day he was not examined. In other words there were two competent witnesses in the defendants' camp, and neither of them were examined. D.W.1 was a minor at the relevant time when Ext.P-3 was executed, and had barely attained majority when P-8 was executed, and he does not claim any direct knowledge about the circumstances attending the execution of Exts.P-3 and P.8 settlement deeds.

It is now required to be ascertained where these facts, if arranged in a logical order, as in solving a jig-saw puzzle, will lead a reasonable man of law to.

15. Rajeswari Bai was down with paralysis. There are no medical reports available on record about her mental faculty at the relevant time when she had executed Exts.P.3 and P.8 settlement deeds. Nor is there any independent evidence about it. If the letter of the plaintiff to her mother dated 30.10.2006 is



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taken as the starting point, then it indicates that the demand for partition has commenced about a year after Ext.P-3 settlement deed had come into existence. There is no case for the defendants that at any time before or after the execution of Ext.P.3 the plaintiff had access to her mother, who to emphasis, was under the care of the first defendant. Then comes Ext.P-4 legal notice from the plaintiff, and it was issued to Rajeswari Bai, the first defendant, and also to the second defendant, but not one replied it. Given the context where the Court is keen to ascertain if Rajeswari Bai had executed the settlement deeds in question with her free will, her failure to reply weighs more, for she was under a duty to speak. But was she in the right state of health to speak? Did she at least know that a notice such as Ext.P-4 had been issued? What then happens is the execution of Ext.P-8 settlement deed. This was executed barely a fortnight after Ext.P-4 notice was issued. The plaintiff would now issue her second legal notice vide Ext.P.9, dated 25.02.2008, again to her mother, and the first and second defendants. This was replied to by Rajeswari Bai vide Ext.P.11, along with the replies of the first defendant, both dated 10.03.2008. And, the same counsel issued the reply notice for all the three. How to believe that Ext.P.11 notice was issued on the instructions of Rajeswarai Bai, something which D.W.1, in his testimony would require this Court to believe?



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16. The very fact that the executant of Exts.P.3 and P.8 was under the care of the first defendant, and with the capacity of the second defendant extremely doubtful and the efforts at make-believe to project him as competent to handle his affairs notwithstanding, the burden is squarely on the first defendant to explain to the court about the mental status of an aged, paralytic patient in her care, custody and control. But she chose not to do it, and appears to be hiding information from forensic scrutiny. And, if the second defendant is competent to speak, then his non examination only aggravates the peril that stares on the defendants. And, D.W.1 is plainly incompetent to speak about it because he dugs any question material to ascertain the point under scrutiny with a stereotyped answer that he was a boy at the relevant time. The strategy of the defendants in not producing the best evidence before the Court through their most competent witness is grave enough for this Court to draw adverse inference over their conduct.

17. With the minimum facts, indisputable in that, that Rajeswari Bai was aged, paralytic, and not known to be a woman of letters (though according to D.W.1 she can write in Tamil) and dependent on the first defendant entirely for her



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support, and not known to hold any particular prejudice against her other daughter, the plaintiff, and yet settling all the valuable properties in the names of 1st and 3 to 5 defendants, raises strong suspicion about the mental faculty and fitness of Rajeswari Bai to execute Exts.P.3 and P.8 settlement deeds. To this must be added the failure of the defendants to produce the original of Exts.P-3 and P-8, which would have at least given this Court an opportunity to see how she had signed these documents. And, the fact the first defendant organised the marriage of her daughter, the 4th defendant, with the 3rd defendant, the son of her not too agile second defendant, with both being the beneficiaries of Exts.P.3 and P.8 settlement deeds, also suggests that the first defendant's well designed strategy to garner the larger part of the properties that stood in the name of her mother for the benefit of her family members.

18.It is true that the plaintiff too has not examined herself. But non-examination of the first defendant is critical since she alone could provide the facts pertaining to the mental status of Rajeswari Bai at the time of Exts.P.3 and P.8, more so when the mental state of the 2nd defendant is suspect. They at least could have examined any physician who had treated Rajeswari Bai with supporting medical records but that was ignored.



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19. This Court now has little option than to hold that Rajeswari Bai would not have been in sound mental state sufficient enough to understand what she was doing and that Exts.P.3 and P.8 are not the product of her free will. Issues 3, 5 and 6 are decided accordingly.

20. It may have to be stated that the basic theory which the defendants plead for justifying the execution of settlement deeds is not without any merit. After all, the first defendant has been caring both her ailing mother and brother besides caring her nephews, and given the circumstances, it would be only natural for Rajeswari Bai to execute the settlement deeds in their favour, but the point is not about the availability of circumstances for justifying the exclusion of plaintiff and her branch from the settlement deeds, but it is about her mental capacity to execute them. Here the defendants are seen wanting in their efforts when they chose to withhold the first defendant from being examined as a witness.

21. It has come on record that in the 'A' schedule property, the defendants have put up a substantial structure at considerable expenses. Therefore, they must



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have a fair chance of retaining the same by adjusting the equities vis-a-vis their shares in other two schedules of properties. However, they may have to wait for another day when final decree is passed.

Issue 4 – The Result :

22. The writing is on the wall for the defendants, as this Court now decrees the suit with costs as below:

- (a) Ext.P3 settlement deed dated 04.07.2005 and Ext.P8 settlement deed dated 25.10.2007 executed by Rajeswari Bai are set aside as null and void; and
- (b) Plaintiff's 1/3 share in all the schedules of suit properties are hereby declared.

Consequently, connected miscellaneous petitions if any, stands closed.

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Index : Yes / No
Speaking order / Non-speaking order
ds



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APPENDIX

I. Witnesses :

<i>Plaintiffs :</i>	
P.W.1	S.Sundar Subbu Rao
<i>Defendants :</i>	
D.W.1	R.Rajtilak (3rd defendant)

II. Exhibits :

<i>Plaintiffs :</i>		
Ex.P1	17.03.2017	Letter of Authorisation given by S.Bhanumathi Bai (plaintiff herein) in favour of S.Sundar Subbu Rao to depose on her behalf.
Ex.P2	02.02.2009	Death Certificate of V.Bapanna Rao, who died on 17.02.2005
Ex.P3	04.07.2005	Settlement Deed executed by Mrs.B.Rajeswari, W/o. V.Bapanna Rao in favour of defendants 1, 3 to 5
Ex.P4	07.10.2007	Legal notice issued by the plaintiff's counsel to B.Rajeswari Bai and defendants 1 and 2
Ex.P5	09.10.2007	Acknowledgement card signed by the first defendant on behalf of B.Rajeswari Bai towards receipt of notice
Ex.P6	09.10.2007	Acknowledgement card signed by the first defendant on behalf of second defendant towards receipt of notice
Ex.P7	10.10.2007	Encumbrance Certificate
Ex.P8	25.10.2007	Settlement Deed executed by B.Rajeswari in favour of defendants 3 and 5
Ex.P9	25.02.2008	Legal notice issued by the plaintiff's counsel to the defendants 1 to 5 and Mrs.B.Rajeswari Bai
Ex.P10	10.03.2008	Reply notice to the legal notice dated 07.10.2007
Ex.P11	10.03.2008	Reply notice sent by the Advocate of Mrs.B.Rajeswari



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		Bai to the plaintiff's counsel in reply to notice dated 25.02.2008
Ex.P12	08.05.2008	Legal notice issued by the plaintiff's counsel to the defendants' counsel in reply to legal notice dated 10.03.2008
Ex.P13	09.05.2008	Postal Acknowledgement card
Ex.P14	09.01.2009	Death Certificate of Mrs.B.Rajeswari, who died on 27.12.2008
Ex.P15		12th day death ceremony card of B.Rajeswari Bai (to be held on 08.01.2009)
Ex.P16	03.03.2009	Encumbrance Certificate
Ex.P17	26.06.1965	Sale Deed executed by a certain G.Dorai Gramani in favour of B.Rajeswari (pertaining to A schedule)
Ex.P18	20.10.1966	Deed of sale executed in favour of B.Rajeswari pertaining to 'B' schedule
Ex.P19	02.07.2003	In-patient Discharge summary of the second defendant
Ex.P20	14.07.1997	Partition Deed in respect of 'C' schedule property
Defendants :		
Ex.D1	26.06.1965	Sale Deed executed by a certain G.Dorai Gramani in favour of B.Rajeswari (pertaining to A schedule)
Ex.D2	20.10.1966	Deed of sale executed in favour of B.Rajeswari pertaining to 'B' schedule
Ex.D3	30.10.2006	Letter sent by the plaintiff to Mrs.Rajeswari Bai
Ex.D4	15.02.2021	Order for name transfer issued by the Revenue Officer, Corporation of Chennai.

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N.SESHASAYEE.J.,

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