



S.A.No.736 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

S.A.No.736 of 2022

Sellappa Gounder (Died)

1. Palaniyappan
2. Shanthi
3. Aravind
4. Ranjith

... Appellants

Vs.

1. Arukkani
  2. Vijay
  3. Velusamy
- Respondents

...

Prayer: Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 12.08.2021 passed in A.S.No.12/2021, on the file of the Sub Court, Paramathy upholding the decree and judgment dated 10.02.2015 passed in O.S.No.12/2009, on the file of the District Munsif cum Judicial Magistrate, Paramathy.

For Appellants : Mr.T.L.Thirumalaisamy  
For Respondents : No appearance



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## **JUDGMENT**

The unsuccessful plaintiffs before both the Courts below have filed the present second appeal.

2. The first plaintiff Sellappa Gounder (since deceased) filed the suit in O.S.No.12/2009 before the Sub Court, Paramathy, for a declaration that the Sale deed, dated 06.09.1995 (Ex.A1) was jointly purchased by him and his wife Arukkani, the first defendant. He also prayed for a permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

4. The case of the plaintiffs in a nutshell is as follows :



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The first plaintiff, Sellappa Gounder was the husband of the first defendant. The second plaintiff is one of their sons. The plaintiffs 3 to 4 are the children of late Mani, another son of the first plaintiff and the first defendant. The first plaintiff purchased the suit property in the name of his wife on 06.09.1995 through a registered Sale deed (Ex.A1). The second plaintiff, Palanisamy (eldest son of the first plaintiff) had obtained loans from various persons and had also executed several promissory notes. Therefore, in order to safeguard the first defendant, he got the sale deed executed in favour of his wife, Arukkani through Ex.A1. The third defendant Velusamy who is the second son of the first plaintiff, Sellappa Gounder (deceased) and the first defendant, Arukkani, fraudulently got a registered settlement deed executed in the name of his son, Vijay (second defendant) on 06.08.2008 (Ex.A2) by the first defendant. The settlement deed is not valid in the eye of law.

5. During the pendency of the suit, Sellappa Gounder died and his legal heirs were impleaded in the suit.

6. The suit was resisted by the defendants on the following



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grounds:

- i. the first defendant is residing with her son Velusamy (third defendant) in the suit property for the past 20 years. The first defendant in fact purchased the suit property from her own income and by selling her jewels gifted to her by her parents at the time of her marriage. Hence the suit property is the self acquired property of the first defendant.
- ii. the third defendant, Velusamy was taking care of his mother, Arukkani, the first defendant and therefore out of love and affection, Arukkani executed the settlement deed (Ex.A2) in favour of her grandson.
- iii. Therefore, the suit filed by the plaintiffs should be dismissed.

7. The trial Court after framing necessary issues posted the case for trial.

8. In the trial Court, the second plaintiff, Palaniappan examined himself and three other witnesses and marked Ex.A1 to Ex.A10. The first defendant examined herself and one another witness



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and marked Ex.B1 to Ex.B36.

9. After full contest, the learned District Munsif cum Judicial Magistrate, Paramathy, vide his decree and judgment dated 10.02.2015, dismissed the suit filed by the plaintiffs on the following grounds:- :

- i. when the plaintiffs contend that the suit property was purchased in the name of the first defendant, wife of Sellappa Gounder, the plaintiffs have to establish their contention that it was not purchased for the benefit of Sellappa Gounder's wife, the first defendant as per Section 3(2) of the Benami Transactions (Prohibition) Act, 1988.
- ii. 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.
- iii. Sellappa Gounder also did not prove that he alone purchased the suit property and was enjoying the same.
- iv. The defendants in the written statement had averred that Sellappa Gounder and his son Palaniyappan were not taking care of the



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family and both of them were not residing with the first defendant.

**10.** Aggrieved over the decree and judgment passed by the trial court, the plaintiffs filed an appeal in A.S.No.12/2021 before the Sub Court, Paramathy. The learned Subordinate Judge, after analysing the oral and documentary evidence adduced on both sides, upheld the findings recorded by the trial court vide his decree and judgment dated 12.08.2021, as against which the present second appeal is filed.

**11.** The second appeal was admitted by this Court on 29.09.2022 on the following substantial questions of law:

- i. Whether the Courts below are correct in law in non-suited the appellants when the nature of transaction for the purchase of suit property under Ex.A1-Sale Deed, dated 06.09.1995 by Sellappa Gounder in the name of his wife Arukkani is proved as benami transaction through both oral and documentary evidences?*
- ii. Whether the Courts below are correct in law in discarding the admission of D.W.1-Arukkani in her evidence that at the*



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*time of her marriage, her husband Sellappa Gounder had sufficient income and her father had no sufficient means when the same prove that the sale consideration under Ex.A1-Sale Deed, dated 06.09.1995 is paid by Sellappa Gounder?*

*iii. When all the ingredients to prove that the first respondent Arukani is only a benami of her husband Sellappa Gounder has been met out by the appellant, whether the Courts below are correct in law in non-suited the appellants by misconstruing the same?*

**12.** Heard Mr.T.L.Thirumalaisamy, learned counsel for the appellants.

**13.** Though notice was served on the respondents and their names are also printed in the cause list, there is no representation on their behalf.



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**14.** Mr.T.L.Thirumalaisamy, learned counsel for the appellants contended that the first defendant in her cross examination had admitted that the suit property was purchased by her husband in her name and her son Velusamy is not taking care of her. She had also deposed that she did not know the contents of the written statement filed on her behalf. When the first defendant herein had admitted that the suit property was purchased by her husband in her name, both the Courts below had committed an error in dismissing the suit filed by Sellappa Gounder. The first defendant had not adduced any evidence to show that she purchased the suit property from and out of her own income. Hence, the learned counsel for the appellants prayed for allowing the appeal.

**15.** The suit is filed by the plaintiffs for a declaration that the suit property which stands in the name of the first defendant Arukkani through a registered Sale deed, dated 06.09.1995 (Ex.A1) was actually purchased by Sellappa Gounder. However, in the plaint, it was also averred by Sellappa Gounder that his eldest son, Palaniyappan had



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obtained loans from various persons and also executed promissory notes.

Therefore, in order to safeguard his wife's interest, he was constrained to buy the suit property in the name of his wife, Arukkani through a registered Sale deed, dated 06.09.1995 (Ex.A1). Thus the first plaintiff himself has admitted that the suit property was purchased for the welfare of his wife. The first defendant in her written statement had stated that he sold her jewels given by her parents at the time of her marriage and also from and out of her own income earned by rearing milching animals and by selling milk.

16. As per the provisions of Section 3(2) of the Benami Transactions (Prohibition) Act, 1988, the husband is entitled to purchase the property in the name of his wife and unmarried daughter. It is relevant to extract Section 3 of the Benami Transactions (Prohibition) Act, 1988 which reads thus:

"3. Prohibition of benami transactions.

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

*(2) Nothing in sub-section (1) apply to*



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*(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter."*

**17.** It is true that the first defendant in her evidence had stated that the property was purchased by her husband in her name. This is totally in contradiction to her pleadings in the written statement. In any event, the plaintiffs who had filed the suit should establish their case independently and they cannot take advantage of the weakness of the case of the defendants. As already observed the first plaintiff, Sellappa Gounder had admitted in the plaint that he purchased the property for the welfare of his wife through the registered sale deed, dated 06.09.1995 (Ex.A1). In the circumstances, both the Courts below are correct in concluding that the plaintiffs cannot sustain the suit. Moreover, it is settled law that the burden of proof that a particular sale is benami, lies on the person who alleges the transaction to be benami.



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**18.** A perusal of the revenue records including patta (Ex.B23) filed on the side of the defendants shows that the second defendant is in possession and enjoyment of the suit property from the date of the settlement deed, dated 06.08.2008 (Ex.A2). Therefore, the substantial questions of law 1 and 2 are answered against the appellants.

**19.** In the result,

- i. The Second Appeal is dismissed. No costs.
- ii. The decree and judgment dated 12.08.2021 passed in A.S. No.12/2021, on the file of the Sub Court, Paramathy and the decree and judgment dated 10.02.2015 passed in O.S.No.12/2009, on the file of the District Munsif cum Judicial Magistrate, Paramathy, are upheld.

**22.11.2024**

Index: Yes/No  
Internet: Yes/No  
Speaking/Non-Speaking order  
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**R. HEMALATHA, J.**

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To

1. The Sub Court, Paramathy.
2. The District Munsif cum Judicial Magistrate, Paramathy.
3. The Section Officer, VR Section,  
Madras High Court, Chennai.

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