



AS No.680 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2024

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

AS No.680 of 2017

K.B.Ramkumar : Appellant

versus

1.K.B.Geetha

2.K.B.Balakumar

3.N.S.Gayathri : Respondents

Prayer: Appeal filed against the Judgment and Decree dated 23.08.2017 in OS No.10 of 2014 on the file of the Principal District Judge, Cuddalore.

For the Appellant : Mr.R.Gururaj

For the Respondents : Ms.Hema Sampath,
Senior Counsel,
for Ms.R.Meenal

JUDGMENT



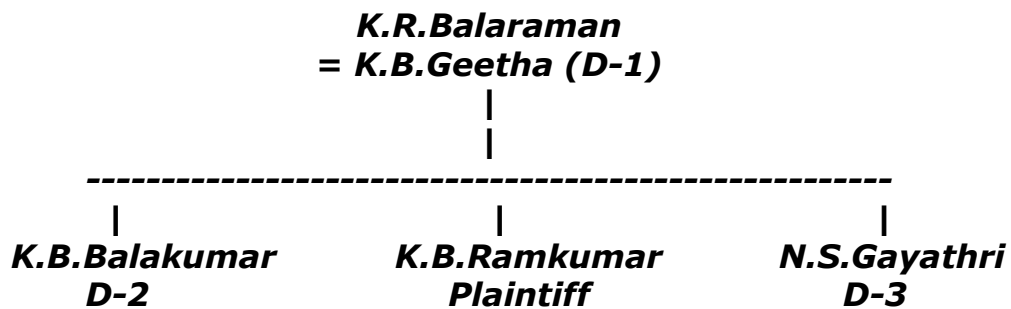
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(Made by R.SUBRAMANIAN, J.)

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Partially unsuccessful plaintiff, who sought for partition and separate possession of his 1/4th share in the suit 'B' Schedule property is on appeal, since the Trial Court rejected his claim and granted him 1/8th share.

2. The genealogy, as projected by the plaintiff, is as follows:



3. While the plaintiff and second defendant are the sons of one K.R.Balaraman, the first defendant is the wife and the third defendant is the daughter. The said K.R.Balaraman was working as Manager in Industrial Training Institute at various places and finally served at the Industrial Training Institute at Cuddalore, and retired. Even during his lifetime, K.R.Balaraman had acquired a plot of land in Coimbatore in the year 1985. According to the plaintiff, his father sold it sometime



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in 1990 and he wanted to purchase a property in Cuddalore from and out of the sale consideration. He, however, spent the money for family needs. The two plots of land, which are described as Items 1 and 2 in 'B' schedule to the suit, came up for sale, and since the father had spent the monies he had obtained out of the sale transaction, he could not contribute anything. The first defendant, who is a house wife, was also not in a position to contribute any money. The second defendant had just then joined service in the Tamil Nadu Transport Corporation and therefore, he was also unable to contribute. The plaintiff, who has been doing electrical work ever since 1987, had saved all his earnings and he had contributed the sale consideration for purchase of the two housing plots. According to the plaintiff, the sites were purchased under two sale deeds dated 04.11.1991 in the name of his parents, out of the respect he had for the elders. He would assert that the first defendant, in whose name the sale deeds were taken, did not contribute any amount towards the purchase of the property and the purchases were made by the plaintiff and his father. In the year 1993, a house was constructed in the second item of the 'B' schedule, and for the said construction also, it was the plaintiff and his father who contributed funds. The entire family started living there. Defendants 2 and 3, the elder son



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and daughter, got married on the same day in the year 2001 and the daughter went to live with her husband in Chennai. The plaintiff, the first defendant, and the family of the second defendant were living in the second item of the 'B' schedule property. The plaintiff would further claim that the second defendant did not contribute any amount towards the expenses of the family and the family was run with the aid of the plaintiff's income. He would also blame his parents for not arranging his marriage as they were living on his income. He would however claim that his mother required him to put-up construction in the First Item of the suit 'B' schedule property during the year 2009 and promised that the First item of the suit property would be given to him. In the fond hope of putting-up a house, the plaintiff, who was aged about 37 years in the year 2009, started construction of a big house in the suit First item and even after he commenced construction which was almost completed, the first defendant-mother did not take any steps for his marriage. Therefore, the plaintiff's friends arranged for his marriage, and the marriage was solemnized on 04.05.2012 at a temple in Tiruvannamalai on a very simple scale. A reception was held on 06.05.2012 at Cuddalore. The first defendant did not approve the marriage, being an inter-caste marriage and the other defendants also did not attend it. After

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marriage, the plaintiff was living away from the house in a rented accommodation. He would claim that he had spent about Rs.30 lakhs towards the construction of the house in First Item of the suit 'B' schedule property. He would contend that he is entitled to be compensated for the expenditure incurred by him in the same proportion as the parties are entitled to a share in the property. He would therefore seek for a prayer for partition, to allot the suit first item, in equity, to him and also for a direction to the defendants to reimburse the amount spent by the plaintiff for purchase of the 'B' schedule properties.

4. The first defendant filed a written statement which is adopted by defendants 2 and 3. The sum and substance of the contentions in the written statement is as follows:

(a) The plaintiff's father was a native of Madurai and he was working as Manager in Industrial Training Institute at various places. When he was transferred to Coimbatore, he purchased a housing plot at Coimbatore, for which the first defendant sold her jewels and contributed monies. When the second defendant secured a job in the Tamil Nadu Transport Corporation at



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Cuddalore, the family shifted to Cuddalore and property situate in Coimbatore was sold on 19.09.1991. From and out of the proceeds of such sale, the plaintiff's father purchased two plots in Cuddalore on 04.11.1991. Since the first defendant had contributed for purchase of the property at Coimbatore, the father of the plaintiff, viz., Mr.K.R.Balaraman, took the sale deed for the plots at Cuddalore both in his name and in the name of the first defendant, his wife.

(b) It was her further contention that the house in suit item No.2 was constructed in 1994 even during the life time of her husband Mr.K.R.Balaraman, and the plaintiff who was aged about 22 years at that time had nothing to do with the construction. He never contributed any money since he remained unemployed at the relevant point of time. According to the first defendant, the plaintiff started working as an assistant to an electrician and started earning some monies only when he completed 25 years of age. He was contributing a sum of Rs.1,000/- for the household expenses and nothing more. After his marriage, the plaintiff has been living separately. He also



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purchased a plot of land on 10.12.2008 on his own and had put up an incomplete construction thereon.

(c) It is claimed by the first defendant that she started construction in Item 1 and the construction remained incomplete due to the conduct and attitude of the plaintiff. It is claimed that the plaintiff has not been helping the family. Mr.K.R.Balaraman died on 24.03.2006. From then onwards, it was the second defendant who was taking care of the first defendant. Therefore, out of love and affection, the first defendant settled her half share in both the plots of land in favour of the second defendant, her son and daughter. She would however concede that the plaintiff is entitled to $\frac{1}{4}^{\text{th}}$ of half share of his father i.e. $\frac{1}{8}^{\text{th}}$ in both the plots of land. She would also claim that the construction was not put up by the plaintiff.

5. Defendants 2 and 3 adopted the written statement of the first defendant.

6. On the above pleadings, eight issues were framed and the



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learned Trial Judge re-casted the issues at the time the judgment was delivered. The re-casted issues read as follows:

“1. Whether suit properties are Hindu undivided joint family properties of the plaintiff and the defendants?

2. Whether the properties have been purchased in the name of 1st defendant and her husband through joint family income?

3. Whether the settlement deeds in favour of the 2nd defendant and the 3rd defendant in respect of 'B' schedule properties are valid?”

7. At trial, the plaintiff examined himself as P.W.1. Apart from examining himself as P.W.1, he had also examined P.Ws.2 to 5 in support of his case. The first defendant was examined as D.W.1. While Exs.A-1 to A-8 were marked on the side of plaintiff, Exs.B-1 to B-12 were marked on the side of the defendants.

8. Learned Trial Judge upon consideration of the evidence on record concluded that the plaintiff has not established his case that



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he had contributed for the purchase of the land, as well as the construction of the house in suit second item in the year 1994. The learned Trial Judge further concluded that the plaintiff has not proved that he had spent monies for construction of the house in the Suit First Item between 2009 and 2011. The learned Trial Judge also found that the contention of the plaintiff that the property was purchased out of the monies contributed by him in the name of his parents has not been supported by proper evidence. It was found that the statutory presumption under Section 3 of the Benami Transactions (Prohibition) Act, as it stood prior to its amendment in the year 2016, was also not rebutted. On the above findings, the learned Trial Judge concluded that the plaintiff was not entitled to 1/4th share as claimed by him. He, however, decreed the suit in respect of the 1/8th share which is admitted by the first defendant. During the course of the judgment, the learned Trial Judge has treated the properties as joint family properties and has made certain observations about the validity of the settlement deeds executed by the first defendant in favour of defendants 2 and 3.

9. Aggrieved by the grant of a lesser share and the rejection of his claim that he had spent more than Rs.30 lakh for construction of



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the house in First item of suit 'B' schedule, the plaintiff is on appeal.

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10. We have heard Mr.R.Gururajan, learned counsel for the appellant and Ms.Hema Sampath, learned Senior Counsel, instructed by Ms.R.Meenal, learned counsel for the respondents.

11. Mr.Gururajan, learned counsel for the appellant, would vehemently contend that once the first defendant has raised a plea that she had sold her jewels and given money for purchase of the property at Coimbatore and it was the sale proceeds of the Coimbatore property that formed the consideration for the purchase of the properties at Cuddalore, the burden of proving that was upon her and in the absence of such proof, it should be presumed that the entire property belonged to the father. Therefore, settlement of her half share by her in favour of defendants 2 and 3 cannot be valid. Learned counsel would further contend that D.W.1 in her evidence has admitted that it was the plaintiff who carried out the construction in suit First Item of the property and had claimed that she had paid monies to the plaintiff for the construction. There is no proof in support of this claim and therefore, the Court has to presume that it was the plaintiff who spent all the monies and constructed the house,

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which is now situate in First Item of the suit 'B' schedule property.

Relying heavily upon Exs.A-6 to A-8, learned counsel would submit that these documents would show that it was the plaintiff who had spent for the construction. Learned counsel would also draw support from the admission of D.W.1 that the plaintiff had purchased another property and put up a house there and sold it, to buttress his submission that the plaintiff had lot of income and it was that income which was utilised for construction of the building in the First Item of the Suit 'B' schedule. Therefore, learned counsel for the appellant would implore us to assume everything in favour of the plaintiff since the defendants have not proved their case.

12. Contending contra, Ms.Hema Sampath, learned Senior Counsel appearing for the respondents, would submit that there is no proof of any contribution by the plaintiff for purchase of the property in the year 1991. The plaintiff was admittedly born in 1972 and he was aged about 19 years old in the year 1991. According to the first defendant, he had not even started working at that time. Therefore, the claim that the plaintiff contributed for the purchase of properties in the year 1991 under Exs.B-2 and B-3 is a white lie. She would also



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further point out that the construction was started in the year 2009 and the defendants have produced Exs.B-6 to B-12, bank accounts and the accounts of the post office savings bank as well as other bank account to show that they had the wherewithal to contribute for the construction. She would fault the plaintiff for not producing even a scrap of paper to show that he had sufficient income and he had contributed monies towards the construction. Exs.A-6 to A-8, according to the learned counsel, would not prove that payments were made by the plaintiff out of his own funds. She would further contend that in the absence of any evidence to show that the plaintiff had so much of income and that income was spent on the construction of the house, the learned Trial Judge was right in concluding that the plaintiff has not established his pleadings. Therefore, he is not entitled to the reliefs sought for in the suit.

13. For the sake of convenience, in this appeal, the parties are referred to as per their rank before the trial court.

14. On the above rival contentions, the following points emerge for determination in this appeal:

“(i) Whether the plaintiff has established



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his case as projected by him in the plaint to the effect that he had contributed monies for purchase of the land and he had spent monies for the construction of the houses in the year 1994 and in the year 2009 and 2011;

(ii) Whether the plaintiff had discharged the statutory presumption created by Section 3(2) of the Benami Transaction (Prohibition) Act, 1988, as it stood prior to the amendment in the year 2016;

(iii) Whether the plaintiff has established his claim that he had sufficient income to spend for the construction of the house in the Suit First Item in the year 2011."

Point No.1:

15. The suit properties were purchased under Exs.B-2 and B-3 on 04.11.1991. The property at Coimbatore was sold on 19.09.1991. The sale and purchase are in very close proximity. The plaintiff claims that he was working as an electrician and earning a lot of money and that he had contributed for the purchase of the property. He was aged just about 19 years at the time of the purchase of the property. Mr.K.R.Balaraman, father of the plaintiff, was not an unemployed person. He was employed as Manager in Industrial Training Institute,



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earning a very decent salary of Rs.6,000/- even in the year 1991, as per the evidence on record. Therefore, the claim of the plaintiff that father had no money with him and therefore he had contributed for purchase of the property is quite unbelievable. Except the evidence of PW1 as plaintiff, there is no believable evidence to lead us to conclude that the plaintiff had contributed monies for purchase of the property. So, the natural conclusion is that the properties were purchased under Exs.B-2 and B-3 from and out of the sale proceeds of the property at Coimbatore. No doubt Mr.R.Gururajan, learned counsel for the appellant, would contend that since the defendants have failed to prove their plea that the first defendant had sold her jewels and given money to the father for purchase of the property at Coimbatore, it should be presumed that the plaintiff had contributed money or that the entire property belongs to the father. It is for the plaintiff who claims contribution, to prove the same. He cannot rely upon the weakness of the defence and require us to assume that the plaintiff had contributed for the purchase of the properties. We find that the plaintiff has singularly failed to prove any such contribution. The fact that the plaintiff was aged only about 19 years at that time is also a relevant fact which we have to bear in mind while considering the tall claim made by the plaintiff. We, therefore,

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conclude that the plaintiff has not established that he had contributed for the purchase of the property in the year 1991.

Point No.2:

16. The sale deeds stand in the name of parents of the plaintiff. On the date of two sale deeds viz., on 04.11.1991, the Benami Transaction (Prohibition) Act, 1988 had come into force. While Section 3 of the Act prohibits any person from purchasing property in the name of another person, Section 3(2) exempts purchases made in the name of wife or unmarried daughter from the penal consequences. It, however, creates a presumption that the property has been purchased for the benefit of the wife or the unmarried daughter, as the case may be. It will be useful to extract the statutory provision itself for better appreciation.

"3. Prohibition of benami transactions

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

(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



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unmarried daughter.”

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17. The statutory requirement is that the Court must presume that the purchase in the name of the wife or unmarried daughter made by an individual after the commencement of the Benami Transaction (Prohibition) Act, i.e. on and from 05.09.1988, that purchase is made for the benefit of the wife or unmarried daughter, as the case may be. It is for the person contending otherwise to prove the contrary.

18. In the case on hand, the property has been purchased on 04.11.1991 by the father in the name of the mother. This is on the assumption that the mother had not contributed for the purchase. The property does not however become the property of the father unless the statutory presumption is rebutted. If we are to look for evidence in that regard, we find none. It is not the case of the plaintiff that the property was purchased for the benefit of the family in the name of the mother or that it was not the intention of the father to benefit his wife. There is neither a pleading nor evidence in that regard. We have to therefore necessarily conclude that the presumption created by

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Section 3(2) of the Act as it stood prior to the amendment in the year 2016 stands un-rebutted. We therefore have to conclude that the father intended the purchase to be for the benefit of the mother and therefore, the mother would be the owner of the entire half share which stands in her name and she has absolute power of disposition over the said property. Therefore, the settlement deeds executed by the mother in favour of defendants 2 and 3 will be necessarily valid.

19. At this juncture, we will have to point out that the trial Court had treated the properties as joint family properties and has doubted the validity of the settlement deeds. It has however rejected the claim of the plaintiff on the ground that the plaintiff had not sought for setting aside of those documents. This observation of the Trial Court we find misdirected as it was not the case of any of the parties that there was any joint family or there was any joint family property and there was sufficient nucleus which contributed for the purchase of the properties in the name of the mother.

20. It is a plain and simple case that the father had purchased property at Coimbatore. He sold it in the year 1991 and spent monies on the family and the property at Cuddalore which were purchased on



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04.11.1991 under Exs.B-2 and B-3. The Trial Court therefore need not have gone into the discussion regarding existence or otherwise of the joint family and those findings, we deem, as unnecessary for the purpose of deciding the case on hand.

Point No.3

21. The other claim is that the plaintiff had spent monies for construction of the house in the First Item of suit property between 2009 and 2011. Of course, the plaintiff has produced certain documents to show that he had supervised the construction. The defendants have denied the wherewithal of the plaintiff to spend those monies. The plaintiff has not chosen to place any evidence worthy of consideration in that regard. There is no evidence of income of the plaintiff. Even in his proof affidavit, he has not stated that he was earning so much money per annum and he had spent those monies. All that he would say was that he was successful in his profession as a contractor and out of the monies he received from that profession, he had put up the construction. Of course, P.Ws. 2 and 5 have been examined in support of his evidence and we do not find their evidence credit worthy as they have conceded in their cross-examination that they were not aware of any of the affairs of

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the family.

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22. May be, the plaintiff had supervised the construction, being an electrician and contractor, doing construction work. That will not lead to an inference that he had spent monies for construction.

23. Mr.Gururajan, learned counsel for the appellant, would however attempt to impress upon us to presume that since the defendants have not produced any evidence of their spending monies for construction, it is the plaintiff who had spent monies for construction.

24. Any expenditure incurred cannot be a matter of presumption. There must be some evidence. We find total lack of evidence in that regard on the side of the plaintiff. No doubt Exs.A-6 to A-8 have been produced to show that the plaintiff had something to do with the construction. That by itself would not lead to the presumption that the plaintiff had spent monies. On the other hand, we find that the defendants have produced Exs.B-6 to B-12 which are bank statements which show that there are monetary transactions running at least to a few lakh of rupees at the relevant point of time

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i.e. between 2009 and 2011. This would at least show that defendants were possessed of monies and there are also withdrawals of huge amount of cash during the period of construction. This would at least disprove the claim of the plaintiff which is otherwise not supported by any evidence. We therefore conclude that the plaintiff has not proved that he had spent monies for the construction of houses.

25. Thus, all the three points that arose for determination in the appeal are answered against the plaintiff.

26. In fine, the appeal fails and it is accordingly dismissed. However, considering the relationship between the parties, we direct the parties to bear their own costs. Consequently, CMP No.21658 of 2017 is closed.

(R.S.M., J.) (R.S.V., J.)
10.06.2024

Index : Yes/No
Neutral Citation : Yes/No
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To

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The Principal District Judge, Cuddalore.



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R.SUBRAMANIAN, J.
AND

R.SAKTHIVEL, J.

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