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A.S.(MD)No.49 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.07.2024

PRONOUNCED ON : 09.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S.(MD)No.49 of 2013

and

M.P.(MD)No.1 of 2013

S.Sameer Sulthana

...Appellant

Vs.

1. Z.Najima Begum
2. S.Razia Begum
3. J.Mahaboob Begum
4. M.Nargis Begum
5. S.Saira Nayeem
6. S.Taj Begum

...Respondents

PRAYER: This Appeal Suit filed under Order 41 Rule 1 and 2 read with Section 96 of C.P.C., against the judgment and decree passed by the Additional District Judge (Fast Track Court No.1), Madurai, dated 27.03.2012, in O.S.No.117 of 2008.

For Appellant	: Mr.J.Barathan
For R1, R2, R5 & R6	: Mr.C.Godwin
For R3	: No appearance
For R4	: Mr.A.Arumugam for M/s.Ajmal Associates



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JUDGMENT

The Appeal Suit is preferred by the 1st defendant against the judgment and decree dated 27.03.2012 passed in O.S.No.117 of 2008 by the Additional District Judge (Fast Track Court No.1), Madurai.

2. The plaintiff in the suit is the 1st respondent herein, the defendants 2 to 6 in the suit are the respondents 2 to 6 herein and the 1st defendant in the suit is the appellant herein. For the sake of convenience, the parties are referred as plaintiff and defendants as per the ranking in the suit.

3. The plaintiff Najima Begum had filed the suit to pass preliminary decree directing the 1st defendant to hand over the possession of the properties to the shares of 1/6th share of movable assets and to submit accounts of the estate of Late.Piyari Begum for partition dividing the suit properties into equal parts between the daughters 1/6th share to the plaintiff both movable and immovable properties stated in the schedule of properties and permanent injunction restraining the 1st defendant from encumbering in anyway by sale, mortgage, lease or alienate the suit property till the plaintiff take her 1/6th share out of 2/3rd left by the plaintiff's father, for rendition of accounts and cost of the suit.



4. The brief facts as stated in the plaint is that the 1st item in the suit schedule property is a factory in the ground floor, 1st floor is residence cum office and the 2nd item is a factory. The plaintiff and the defendants 2 to 6 are the daughters of Late.K.Sulthan and Late.Piyari Begum (1st wife of Late.K.Sulthan) and are blessed with six daughters. The 1st defendant is the 3rd wife of the Late.K.Sulthan. The said Late.Piyari Begum has purchased the suit mentioned properties in her name out of her savings and invested in the jewel work machineries and jewel making dies and she looked after the business through the aid of her husband Late.K.Sulthan and she died on 06.04.1997 leaving behind 6 daughters. All the daughters are married and living separately. After the demise of Piyari Begum, as per Mohammedan Law, the properties devolve on the husband and 6 daughters. All the daughters other than the 4th defendant allowed their father K.Sulthan to run the factory and manage the said properties and accumulate the profit from the estate of Late.Piyari Begum. No partition took place, since it is in the form of machineries and buildings. Thereafter, the father at the age of 62 married one Rakithul Kathri on 26.08.2000 as his second wife and divorced on 16.11.2000, according to Muslim customs. After the said divorce, again, the father married the 1st defendant Sameer Sulthana on 14.01.2001 as his 3rd wife at the age of 63 and they have no issues and the said K.Sulthan died on 28.05.2008. As per Mohammedan Law, the share in the estate of Late.Piyari Begum devolved in her



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husband K.Sulthan. After his death, it devolves on the children and the present 3rd wife / 1st defendant has no right and share over the estate of the Late.Piyari Begum. The accumulated profit and wealth also belong to the children only. The plaintiff and the defendants 1 to 6 hold common possession and enjoyment of the suit properties. The plaintiff came to know that her father had gifted the suit properties to the 1st defendant through registered gift deed dated 12.12.2005 without any information or knowledge and also had stated in the deed to hold and enjoy the schedule mentioned properties after his demise. As per Mohammedan Law, execution of Will is not allowed, hence, the said gift deed is null and void. Further, the plaintiff had never executed any release deed in favour of the father K.Sulthan and she personally opposed on various occasion over the issue regarding the properties before the father. Thereafter, the plaintiff came to know that in August, 2008, the 1st defendant was taking steps to alienate all the properties to the 3rd parties claiming absolute ownership over the suit properties. The 1st defendant has no right over the estate of Late. Piyari Begum and the accumulated profit for the past 11 years. The 1st defendant is holding the possession unlawfully and claiming income therefrom. The plaintiff and the defendants 2 to 6 wanted to have separate possession of the suit properties against the 1st defendant, hence, the suit for preliminary decree to divide the properties and allot 1/6th share was filed.



5. The 1st defendant has filed written statement and additional written statement wherein it is admitted the Late.Piyari Begum was the 1st wife of K.Sulthan, then died on 06.04.1997 and submitted that she is the 2nd wife and not the 3rd wife. It is wrong to allege that that the said K.Sulthan married 2nd wife and got divorced within 3 months. The 1st defendant denied that the Late.Pirayi Begum had purchased the suit property out of her savings and invested in the jewel work machinery and the said claim is false and fraudulent. The 1st defendant submitted the suit properties namely the building in Pappankinatra Lane, the building in Ezhuthanikara Street, the pattarai (factory) and machineries absolutely belongs to K.Sulthan and he alone was engaged in business activity. His wife Late.Pirayi Begum was a house wife and she did not conduct any jewel manufacturing factory, she did not do any business and she did not have any income and hence it is false to allege the Late.Pirayi Begum purchased the suit properties. Hence, the suit property did not belong to her and it was not in possession and enjoyment of Late.Pirayi Begum. The Late.K.Sulthan alone was carrying on the business of pressing, cutting and moulding of gold pieces, he obtained service connection in his own name, the Madurai Corporation issued D and O license for the said business and collected license fee from him. His business is recognized as small scale industry by Tamil Nadu Government and the property tax was paid in his name. The said Sulthan was running the factory on



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his own. Late.K.Sulthan considered his wife's name as lucky charm so wherever he purchased property with his income, he obtained sale deed in the name of Pirayi Begum. Hence, he had purchased the property with his own funds benami in the name of his wife. The possession of the property was always with Sulthan and the title deeds were also in his custody. He was running Pattarai in the said building. Pirayi Begum was not having any means to purchase the properties. Further, the Late.K.Sulthan purchased the properties in the name of his deceased wife but he did not intent to give the properties to her. On the other hand, he purchased the properties only for his own benefit. The 1st defendant further stated that previously, the Late. K.Sulthan purchased a row of houses (compound) in R.C. Street Palanganatham, Madurai, in the name of 1st wife and he got a gift deed executed by his wife in favour of 4th defendant and the 4th defendant is in possession of the property which is worth about Rs.15,00,000/-. The house in Jarikaikara Street has already been sold away jointly by K.Sulthan and his daughters. The sale proceeds were given to the plaintiff and the 5th defendant. The suit items 1 and 2 were in possession and enjoyment of K.Sulthan and nobody else has any right over the suit properties. The Piyari Begum had 30 sovereigns of gold jewels, some house hold articles and some silk sarees and after her demise, the 6 daughters divided it among themselves. Further, the item mentioned as “sundry receivables bank balance Rs.75,000/-” does not exist. Item No.3 mentioned as



factory in the plaint is a building bearing Door No.18 in Ezhuthanikara Street and the same property is mentioned at item 2. The valuation is wrong and exaggerated for the movable properties. The plaintiff has not enumerated and given description of the items of gold jewellerys and other house hold articles which would indicate that the plaintiff is not knowing anything and has no knowledge about anything and she has given imaginary value. Late.Pirayi Begum did not leave any property except the house hold article and jewellerys which the daughters had divided among themselves. Late.K.Sulthan was living alone without any assistance so he married the 1st defendant on 14.11.2001. While the said KSulthan was alive, he was in a sound dispossessing state of mind had executed registered settlement deed dated 12.12.2005, in favour of the 1st defendant / 2nd wife. From that time onwards, the 1st defendant was in possession and enjoyment of the suit properties as absolute owner and her husband was living with her till his death. The 1st defendant is living in the suit property and she is continuing her husband's business. But there is no profit and the income is almost sufficient to meet the salary of the employees, electricity charges, house tax and other business expenses. The 1st defendant was assessed property tax. The plaintiff's as well as defendants 2 to 6 are living separately in various places. In fact, Late.K.Sulthan obtained the consent of his daughters before executing the gift settlement deed. It is false to allege that the plaintiff did not execute any release deed in favour of



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K.Sulthan. In fact, the document styled as release deed was executed on 24.05.2000 and was signed by all the daughters, except Nargis Begum and it is only based on their consent, the said K.Sulthan had bequeathed the property in favour of the 1st defendant. Further, the suit is not maintainable since the plaintiff's sister Nargis Begum shown as 4th defendant has earlier filed a suit for partition claiming 1/9th share in O.S.No.30 of 1997. Thereafter, it was transferred to Fast Track Court No.1 and re-numbered as O.S.No.153 of 2004 and the same is still pending. Hence, the present plaintiff Najima Begum ought to agitate in the said suit filed by Nargis Begum and a second suit for the same relief of partition filed by Najima Begum is not maintainable and prayed to dismiss the suit.

6. The 1st defendant has filed additional written statement wherein it is stated that the present plaintiff Najima Begum remained exparte in the suit filed by Nargis Begum in O.S.No.153 of 2004. The said suit was filed against the father K.Sulthan wherein he was arrayed as 1st defendant. Pending suit, the father K.Sulthan died. The plaintiff Nargis Begum has not taken any steps to implead the legal heirs, hence, the partition suit in O.S.No.153 of 2004 was dismissed as against 1st defendant K.Sulthan. The present plaintiff has suppressed the earlier suit filed by Nargis Begum and the present suit is barred by the principles of *res judicata*. Further, Item No.3 in Door Nos.19 and 20 was already sold to one Syed



Umar Sha Munshi by sale deed dated 16.01.2000 by the father himself. When the said property was sold even prior to filing of suit which is in possession of the 3rd party, the said 3rd party ought to have been impleaded in the suit, otherwise the judgment passed in suit will not bind on the purchaser. The said sale was executed and effected by Late.K.Sulthan along with his daughters, i.e., the defendants 2, 3, 5, 6 and the plaintiff, except Nargis Begum. The said sale was well known to Nargis Begum also and she was fighting against the father for the said sale. All the daughters were willing parties in the said sale of properties and the distribution of sale proceed, hence the 3rd item is not available for partition. Therefore, the suit is bad for non-joinder of a necessary party namely Syed Umar Sha Munshi. Hence, the 1st defendant prayed to dismiss the suit.

7. The 4th defendant Nargis Begum has filed a written statement admitting that she had already filed a suit for partition in O.S.No.30 of 1997 and it was renumbered as O.S.No.153 of 2004. The 4th defendant has elaborately narrated the facts in the plaint of O.S.No.153 of 2004 and the same may be treated as part and parcel of the written statement filed by the 4th defendant in the present case. Further stated she had no objections for granting partition of 1/6th share to all the daughters.



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8. Based on the pleading the Trial Court had formulated the following issues on 20.08.2009 and additional issues on 30.08.2010 and 24.01.2012 and they are extracted hereunder:

20.08.2009:

- i. Whether the plaintiff is entitled to 1/6th share and entitled to possession of the suit property?
- ii. Whether the 1st defendant is in lawful possession?
- iii. Whether the 1st defendant is the absolute owner of the properties?
- iv. Whether the 4th defendant is entitled to 1/6th share of the properties?
- v. To what relief other reliefs the plaintiff is entitled to?

30.08.2010:

- i. Whether the earlier partition suit in O.S.No.153 of 2004 is res-judicata and bar the institution of this suit.
- ii. Whether the suit is bad for non-joinder of 3rd party purchaser Syed Umar Sha Munshi?
- iii. Whether item 3 can be added for partition?
- iv. To what relief the parties are entitled to?

24.01.2012:

- i. Whether D1 is estopped from raising the benami in view of the section 4 of Benami Transaction Prohibition Act?

9. After considering the pleadings, Ex.A1 to 10 and deposition of PW1 and



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2 and Ex.B1 to 40 and DW1 and DW2 the Trial Court had allowed the suit granting 5/36th share in items 1,2 and 4 for the plaintiff, 5/36th share in items 1,2,3 and 4 to the 4th defendant, suit is dismissed as far as item 5 is concerned and also suit is dismissed for the prayer of permanent injunction and rendition of accounts. Aggrieved over the same the 1st defendant / 2nd wife had filed the present appeal.

10. The points for consideration in the present First Appeal are as under:

- i. Whether the property belongs to the K.Sultan or it belongs to the 1st wife Piyari Begum?
- ii. Whether the purchase by the husband in the name of the wife is protected under section 3 of the Benami Transaction Act?
- iii. To what share the parties are entitled to?

11. The Trial Court had held that the 1st wife Piyari Begum was not running the gold pattarai business and she had no means to purchase the properties and it is only the said K.Sultan had run the business and he had purchased the properties out of the income from the said gold pattarai business. The plaintiff and the defendants 2 to 6 had not filed any appeal against the said finding. Therefore this Court confirms that the properties are purchased by K.Sultan only through his own income from the jewel pattarai business.



12. Now this Court proceeds to analyze whether the said property was purchased for the benefits of the 1st wife Piyari Begum or it was purchased by K.Sultan for the himself and the Piyari Begum is only name lender.

13. The contention of the plaintiff is that the father K.Sultan had purchased the property in the name of their mother Piyari Begum and she is the owner of the property. But the contention of the 1st defendant is that the property is purchased in the name of the first wife Piyari Begum and she was only a name lender. The Trial Court had held that the properties were purchased in the name of the wife and under section 4 of the Benami Transactions (Prohibition) Act, 1988 it ought to be taken the property was purchased for the benefit of the wife and hence the same belongs to the wife Piyari Begum and not the said K.Sultan. Further the said K.Sultan ought to prove the property was purchased for his own benefit and not for the benefit of the 1st wife. Since the K.Sultan dies, hence after his demise, the 1st defendant / 2nd wife ought to prove the same. Also, the Trial Court had held that the said K.Sultan had not enjoyed the property by mortgaging or leasing the property, not paid property tax in his name during the lifetime of Piyari Begum but had paid the property tax after the lifetime of Piyari Begum and so the property was not belonging to the K.Sultan. Furthermore, held that the plaintiff and defendants 2 to 6 had not paid tax after the demise of the Piyari Begum, but



the same cannot be taken as a reason to declare the case of the 2nd wife as proved and the 2nd wife ought to prove her case independently.

14. The question whether the sale is benami or not was considered by the Hon'ble Supreme Court in the case of ***Valliammal (d) by LRs Vs. Subramaniyam and others*** reported in **2004 (5) CTC 60** had held that,

“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. Referred to Jaydayal 13oddar Vs. Bibi Hazra, 1974 (1) SCC 3; Krishnanand Vs. State of Madhya Pradesh, 1977 (1) SCC 816; Thakur Bhim Singh Vs. Thakur Kan Singh, 1980 (3) SCC 72; His Highness Maharaja Pratap Singh Vs. Her Highness Maharani Sarojini Devi & others, 1994 (Supp. (1) SCC 734; and Heirs of Vrajilal J. Ganatra Vs. Heirs of Parshottam S. Shah, 1996 (4) SCC 490. It has been held that 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 following six circumstances which can be taken as a guide to determine the nature of the transaction.

a. Source of purchase money

b. Nature and possession of property after purchase



c. Motive for benami

d. The relationship of parties

e. Custody of title deeds after purchase

f. Conduct of parties in dealing with property after purchase

The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless, 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. We would examine the present transaction on the touchstone of the above two indicia.”

15. As held in the judgment cited supra the person who is ascertaining ought to prove the benami, hence the plaintiff ought to prove that the same is hit by benami transaction. Now in the present case the aforesaid circumstances may be applied.

(i). **Source of money:** The Trial Court had held that the property is purchased by the husband K.Sultan through his own income and the 1st wife Piyari Begum is not having any source of income and against the said finding there is no appeal by the plaintiff, hence the first factor of source of money is in favour of K.Sultan.

(ii) **Nature and possession:** The husband K.Sultan was in possession



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of the property since he was residing in the properties and also carrying on his business. But the Trial Court had held that the said Piyari Begum was residing in the said premises and hence it cannot be stated that K.Sultan was the owner of the property. This Court is of the considered opinion since both of them are husband and wife and were residing in the same premises, the second factor ‘possession of property after purchase’ would not prove the case of both the K.Sultan and Piyari Begum. When both were in possession of the property, the finding of the Trial Court that since the Piyari Begum is residing in the said premises, she is the owner of the property is erroneous. As far as the ‘nature of the property’ is the property is residential and business center. When the K.Sultan was running the business in the said premises and he is not paying rent to the said Piyari Begum to run the business, then in such circumstances the said K.Sultan is the owner of the property. It is pertinent to note that all the properties were purchased in the name of the Piyari Begum only and not a single property was purchased in the name of the said K.Sultan. Hence the plea that the said Piyari Begum was only lucky charm is believable. Therefore, this Court is of the considered opinion even though both K.Sultan and Piyari Begum was residing in the said premises, by running the business in the same premises by K.Sultan the factor “nature and possession of premises” is in favour of the K.Sultan.

(iii) **Motive for benami:** The contention of the 1st defendant is that since the said K.Sultan and Piyari Begum are husband and wife, the husband had purchased the properties in the name of the 1st wife



Piyari Begum's name since the name of the 1st wife was considered as lucky charm to the husband, hence the said properties were purchased as benami and the said purchase is protected under section 3 of the Benami Transaction (Prohibition) Act. This Court had held supra the plea of lucky charm is believable, therefore the purchase in the name of wife is protected under section 3 of the Act.

(iv) The relationship of parties and custody of title deeds after purchase: The relationship of the parties is husband and wife. The plaintiff had not proved that the documents are in exclusively possession of Piyari Begum. After the demise of the said Piyari Begum, the said K.Sultan was in custody of the properties. Since the plaintiff had not proved that the said Piyari Begum was in exclusive possession of the property, then it has to be concluded that the said K.Sultan is having custody of documents.

(v) Conduct of parties in dealing with property after purchase: As far as the conduct of the parties are concerned the husband K.Sultan was an Income Tax assessee and he has stated that the properties are purchased through his income from Jewel Pattarai business. The said K.Sultan had filed written statement in the earlier suit filed by M.Nargis Begum in O.S.No.30 of 1998 and renumbered as O.S.No. 153 of 2004 wherein the said K.Sultan had stated that the said property was purchased as benami in the name of his wife and she is his lucky charm. Further he had asserted in the written statement that the property was never ever was in exclusively possession of the said Piyari Begum. Hence in the conduct of parties also it is proved that



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the said K.Sultan is the owner of the property and the properties are purchased in the name of the wife since she is his lucky charm.

16. The Hon'ble Supreme Court further held that the list of relevant factors to be considered in not exhaustive and the most important test are source of purchase money and motive. In the present case, the source of purchase is with the K.Sultan and not with Piyari Begum. The motive to purchase as benami in the name of 1st wife Piyari Begum is only lucky charm / sentiment. It is pertinent to state that all the properties are purchased in the name of the first wife. If the intention of the said K.Sultan is to purchase for the benefits of the 1st wife, he would have purchased any one or two properties in the name of his wife and rest of the properties would have been purchased in the name of himself. When the said K.Sultan had purchased all the properties in the name of the 1st wife, then the claim of the said K.Sultan that his wife name is lucky charm is believable. The motive of the said K.Sultan is to use the property for his own purpose that is to reside in the house, use the place to install the gold pattarai machinery and pattarai unit to manufacture gold mould for his business purpose. It is pertinent to state the said pattarai was continuously running until K.Sultan lifetime and the same is continuing after his demise. Now the 2nd wife / 1st defendant is managing and maintaining the said business. Therefore all the six circumstances would prove that the plaintiff had not proved that the properties belongs to her mother Piyari



Begum and hence the 1st point for consideration is held against the plaintiff and defendants 2 to 6 and held in favour of the K.Sultan and 1st defendant.

17. Further, it is seen that the K.Sultan had filed written statement in the earlier suit in O.S.No.30 of 1998 and renumbered as O.S.No.153 of 2004 and the said written statement ought to be treated as K.Sultan's deposition. If not deposition, at least the Trial Court ought to have considered the contents of the written statement to know the intention of the said K.Sultan. Unfortunately the Trial Court had held that the said K.Sultan cannot state anything against the contents of the sale deeds. This Court is of the considered opinion that the Trial Court had erred in stating so, since the contents of the sale deed is not the determining factor. The determining factor is the conduct of the parties and other factors as stated in the case of Valliammal cited supra.

18. Further, the said K.Sultan had obtained release deed from all the daughters except M.Nargis Begum, since she had refused to sign the same. And the said M.Nargis Begum did not cooperate to sell the item 3 of the property. The said M.Nargis Begum was fighting with the father and demanded partition during his life time, but the father refused partition and had explicitly stated the properties belong to him. From this it is evident that the father never intended to



purchase the properties for the benefit of Piyari Begum but had purchased for himself. Hence the conduct of the father after purchase of properties is to treat the properties as his own and not belonging to the said Piyari Begum. The Trial Court had taken this fact and held that the said K.Sultan is aware that the property belongs to Piyari Begum, hence he had obtained release deed. But the Trial Court failed to note the “intention of the father is to deal with the property as his own property”. The further fact of execution of settlement deed in favour of 2nd wife would clearly indicate the intention of the father to deal with the property as his own. Therefore this Court is of the considered opinion that the execution of release deed and settlement deed would clearly indicate the intention of the said K.Sultan to treat the property as his own and to settle the properties in favour of the his 2nd wife. Further it is clear that the said K.Sultan in order to avoid complication, had obtained release deed from the daughters and then executed settlement deed in favour of the 2nd wife.

19. But the Trial Court had misread the true intention of the father K.Sultan and failed to consider the aforesaid facts in its proper perspective. In the judgment of Valliammal case, the Hon’ble Supreme Court had listed the relevant factors, one such is the intention of the purchaser ought to be taken into account. In the present case, the Trial Court had relied only on the name stated in the sale deed



and the tax receipts, but failed to take the intention of K.Sultan. As stated supra the said K.Sultan with an intention to deal with the property had purchased all the properties in the name of the wife, after the demise of the 1st wife, by obtaining release deed from daughters, he was cautious that daughter should not ask for any share in the properties had obtained release deed and thereafter his intention was to settle in the name of his 2nd wife / 1st defendant.

20. Further, the 1st defendant had examined the writer of the document as DW4 and he had deposed that the property was purchased by the said K.Sultan. The Trial Court had held that the said deposition of DW4 is not convincing and had failed to state any reasons why is not convincing. Therefore, this Court is of the considered opinion that the Trial Court had concluded based on the mere presumptions and assumptions. As held supra the Hon'ble Supreme had held that the motive of benami transactions is evident, then the same is acceptable. When the motive is clearly proved by the said K.Sultan, the reasoning stated by the Trial Court the deposition of the document DW4 is not convincing and the plea of lucky charm is not believable are all erroneous and perverse.

21. In the earlier suit in O.S.No.153 of 2004 filed by one of the daughters M.Nagris Begum had left the suit for default. The contention of the 1st defendant



is that the same was not prosecuted after the demise of the father K.Sultan and the present suit would amount to res judicata. The Trial Court after considering this contention had rightly held that the said suit is dismissed for default and not dismissed as abated, therefore the said suit cannot be considered as res judicata. At the same time the Trial Court failed to take into consideration the stage of the suit and certain facts. The father along with two daughters namely Rasia Begum and Mahaboob Begum, the 2nd and 3rd defendants herein, had filed the written statement wherein the 2nd and 3rd defendants had admitted that the properties belong to the father and the father was in absolute and exclusive possession and enjoyment of the properties.

22. Interestingly the sisters of Piyari Begum namely Bibijan, Shakila Begum and Shamim Begum were arrayed as 8, 9 and 10 defendants in the earlier suit and the said Shakila Begum had filed a written statement wherein it is stated that the said Piyari Begum had never earned any income and the properties belongs to the K.Sultan, the husband of Piyari Begum and the sisters are unnecessarily added as parties. The contention of the daughters is that if it is stated that the property belongs to Piyari Begum, then the sisters of Piyari Begum would get a share as per Muslim law. But the sisters of Piyari Begum had denied the properties belong to Piyari Begum. If the said Piyari Begum was having



source of income by way of jewels from her parents, then the said sisters too would have source of income from their parents and the same would have been narrated by the sisters. When the sisters had not stated so, then it can be safely concluded that the said Piyari Begum was not having any source of income at all and the properties are not belonging to the said Piyari Begum.

23. The Trial Court had held that the 1st defendant ought to prove the release deed and settlement deed. It is pertinent to note, that the daughters are aware of execution of released deed but had not filed any suit to set aside the same within the period of three years. The release deed was executed in the year 2000 and the present suit is filed in the year 2008, hence the claim is barred by limitation.

24. When the said K.Sultan and his two daughters had filed written statement against the said Nargis Begum, when the sisters of Piyari Begum had filed written statement against the said Nargis Begum, the said Nargis Begum is very well aware that the suit cannot be proved, therefore she had left the suit for dismissal. The Trial Court ought to have considered the written statements which are marked as Ex.A2 and A3 while considering the present suit, but failed to do so.



25. Infact the plaintiff and the other defendants had not denied the fact that the father had already settled certain properties in the name of the daughters and given sale proceeds to the daughters. The said K.Sultan had purchased row houses in R.C.Street, Palanganatham, Madurai in the name of the Piyari Begum and the husband K.Sultan had got a gift deed executed by his wife in favour of 4th defendant M.Nagirs Begum alone. Likewise, the house in Jarikaikara Street was jointly sold by K.Sultan and plaintiff Z.Najima Begum, defendants 2,3,5 and 6 S.Razia Begum, J.Mahaboob Begum, S.Saira Begum and M.Jaj Begum and the sale proceeds were given to S.Saira Begum and Z.Najima Begum. The said M.Naris Begum was already granted the house in Palaganatham, hence she may not be entitled to the share. Further a house was under Othi and later on it was purchased by K.Sultan and was gifted to M.Taj Begum. The facts were not denied by the plaintiff and other defendants. These facts would indicate that the property was dealt with by the said K.Sultan as his own properties and not as Piyari Begum's properties.

26. The Trial Court had held since the gift deed is executed by the Piyari Begum in favour of M.Nagis Begum, hence the property belongs to the Piyari Begum. Also, held that the property tax stands in the name of the Piyari Begum. Let us take if the property is gifted by K.Sultan, then technically the same cannot



be executed and registered since the same stands in the name of the Piyari Begum and the Sub Registrar of Registration Department would have objected to register the document. Likewise, the Local Body would have objected to issue property tax in the name of K.Sultan. As held supra, the criteria for considering the sale as benami the circumstances stated in Valliammal's case are applicable and not the criteria stated in the judgment of Trial Court. Therefore, this Court is of the considered opinion the Trial Court had clearly misdirected itself.

27. Based on the discussion stated supra this Court is of the considered opinion that it is conclusively proved the properties belongs to K.Sultan alone who had purchased the properties as benami in the name of his first wife to Piyari Begum and the said properties were purchased for K.Sultan's own benefits. All the points for consideration are held in favour of K.Sultan and S.Shameer Sultana (1st defendant / appellant). Since this Court had held that the property belongs to the said K.Sultan, then the sale of the 3rd item of the suit property is valid. Hence the said property is not available for partition. Further the question of Lis-pendens does not arise and the question of non-joinder of necessary parties also does not arise.

28. For the reasons stated supra, the 1st defendant as the 2nd wife of the



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Late.K.Sultan is also entitled to the share in the property as per Muslim law.

However, the 1st defendant submitted that if the property is partitioned the property cannot be divided since the properties are incapable to divide in meters and bounds. Further filed an undertaking that she would live in the property until her life time and after her demise the six daughters may divide the properties in 1/6th share. The defendants are objecting to accept the affidavit. But this Court is of the considered opinion that such objection is not valid. Accepting the undertaking affidavit, this Court is directing the 1st defendant to reside in the suit premises until her lifetime. After her demise the plaintiff and the defendants 2 to 6 are entitled to 1/6th share each in the suit properties in items 1 and 2 alone. The item 3 is not available for partition, since the same was sold by the father during his lifetime. The sale proceeds are given to Saira Begum and Najima Begum. The item 4 and item 2 are one and the same.

29. In the result, the first appeal is allowed in the terms stated supra.

Consequently, connected miscellaneous petition is closed. No costs.

09.10.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

Tmg



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To:

1. Additional District Judge
(Fast Track Court No.1), Madurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.,

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