



A.S.No.123 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated:19.03.2025

Coram:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.123 of 2025

and

C.M.P.No.2729 of 2025

Mr.B.Mahendran,
S/o D. Bakthavachalam,
No.118/2, KandhaswamyKovil Street,
Kosapet, Chennai 600 012.

.. Appellant/Plaintiff

/versus/

B.Poompavai(died)

1.B.Babu,
S/o D.Bakthavachalam,
Old No.88, New No.173,
Strahans Road, Otteri,
Purasaiwakkam, Chennai 600 012.

2.B.Prem Kumar,
S/o D.Bakthavachalam,

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Old No.88, New No.173,
Strahans Road, Otteri,
Purasaiwakkam, Chennai 600 012.

3.N.Eswari,
W/o T.K.Nagaraj,
D/o D.Bakthavachalam,
No.4/10, Samaiyapuram Main Road,
Karambakkam, Porur, Chennai 600 116.

4.The Sub Registrar,
Purasaiwakkam Sub Registrar Office,
No.93/1, Bricklin Road, Chennai 600 012.

..Respondents/Defendants

(cause title accepted, vide order of Court
Dated 21.01.2025 made in C.M.P.No.
832/2025 in AS.SR.No.160956 of 2024(TVTSJ))

Appeal Suit has been filed under Section 96 of the Civil Procedure Code, praying to set aside the judgment and decree dated 30.08.2024 passed in O.S.No.4364 of 2021 on the file of the learned VII Additional Judge, City Civil Court, Chennai and remand back for fresh consideration.

For Appellant :Mr.D.Manimaran
For Respondents :Mr.K.Raja for R1 to R3
Mrs.R.Anitha, Spl.G.P. for R4



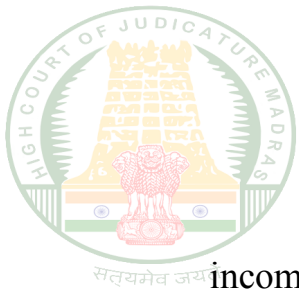
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JUDGMENT

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Challenge is made to the decree and judgment of the trial Court dismissing the suit. The plaintiff is the son of the first defendant and brother of defendants 2 to 4.

2. It is the case of the plaintiff that, the father of the plaintiff was a gold smith and he performed marriage of all his children and he had purchased the property in the name of the first defendant. Apart from that purchase, he has also purchased two more the properties in which one is in the name of the plaintiff and the same was disposed during the life time of D.Bakthavatchalam. The another property situated at Permbur had been purchased in the name of the defendants 1 and 4, wherein the fourth defendant is in use and occupation of the same. According to the plaintiff, the property has been purchased from the earning of the plaintiff's father. The mother of the plaintiff is the house wife and she has no independent



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income to purchase any property. Only for the family convenience, the property has been purchased in the name of the first defendant and she is only a name lender. Therefore, the plaintiff prayed to pass a preliminary decree dividing the suit property into five equal shares and allot 1/5 shares each to the plaintiff and the defendants 1 to 4.

3. The first and the third defendants filed a written statement denying the contention of the plaintiff. According to them, the suit property has been purchased from and out of the self earned income of the first defendant as she was vending milk in and around her residence. She already executed a Will dated 10.01.2019 in favour of defendants 2 and 3. It is further contended that the property already settled in favour of the plaintiff, in which all the defendants have equal rights. Hence, he opposed the suit.

4. Based on the above pleadings, the following Issues were framed for consideration:-

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(i) Whether the suit property was purchased in the name of the 1st defendant by the father of the plaintiff?

(ii) Whether the plaintiff and the defendants are jointly entitled to the suit property?

(iii) Whether the plaintiff is entitled to 1/5 share in the suit property?

(iv) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

(v) Whether the plaintiff is entitled to any other relief as prayed for?

(vi) To what other relief, if any, the plaintiff is entitled to?

5. On the side of the plaintiff, the plaintiff himself was examined as PW-1 and Ex.A1 to Ex.A6 were marked. On the side of the defendants, the third defendant was examined as DW-1 and Exs.B1 and B2 were marked.

6. The trial Court, after analyzing the entire evidence and materials, dismissed the suit. Challenging the judgment and decree of the trial Court, the present Appeal Suit has been filed on the ground that the property is the ancestral property. Therefore, the property should be divided equally among

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all the co-owners. Further, the property being the benami property ought to have shared equally among the legal heirs of his father.

7. The learned counsel appearing for the appellant mainly contended that the mother has not entered into the witness box. Therefore, adverse interference has to be drawn against her. According to him, the mother had no income of her own. Therefore, it has to be inferred that the property was purchased as benami in the name of his wife. According to him, the learned trial Court has not considered these aspects.

8. Per contra, the learned counsel appearing for the respondents would submit that the property was the individual property of their mother. She has executed a Will dated 10.01.2019 in favour of the defendants 2 and 3. That apart, the father has purchased some property in Kosapet in the name of the plaintiff, which has been dealt with by the plaintiff long back.



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Therefore, in the absence of any witness to show that there was a joint family property and purchased from the income derived from the joint family business, the contention of the plaintiff that the property is the ancestral property cannot be countenanced. Hence, opposed to allow the appeal.

9. In the light of the above, the following points arise for consideration:-

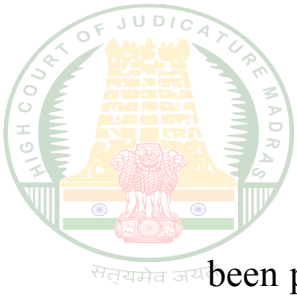
(i) Whether the property was purchased by the father of the plaintiff in the name of his mother?

(ii) Whether there was any joint family property?

(iii) Whether the joint family fund has been used to purchase the property?

Points:

10. The very pleadings of the plaintiff indicates that the property has



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been purchased by the father in the name of the plaintiff's mother. Whereas the contention of the defendants that the property has been purchased out of self earning of the first defendant namely, the mother. It is seen from the entire materials that there is no evidence to show the existence of joint family business or income whatsoever. The evidence of PW-1 itself indicates that at the time of purchase of the property in the name of his mother, the plaintiff was only just two years old. Therefore, the plaintiff was of tender age. When he was not in a position to say, what is the nature of the family business or joint family income, now it cannot be contended by the plaintiff that the property is purchased from his father's fund. Even assuming that the father had purchased the property in the name of his mother, such purchase shall be presumed to be for the benefit of the wife, as per the provision of the Benami Prohibition Act, 1988.

11. Therefore, as long as there was no evidence adduced in this regard



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to show that the kartha of the joint family has purchased the property in the name of his wife from the joint family income, merely on the basis of the pleadings, the contention of the plaintiff cannot be countenanced. The very pleadings of the plaintiff clearly indicates that his father has already purchased the property in his name. That apart, under Ex.B1-settlement deed, some properties have been settled in favour of the plaintiff. The recitals in the settlement deed Ex.B1 make it very clear that since the settler paid amounts to other legal heirs, he settled the property in favour of the plaintiff. The father, infact, has made distribution by way of settlement in favour of the plaintiff. Therefore, if really the father has purchased the property in the name of his wife, the same should have been reflected in Ex.B1. Therefore, the contention of the plaintiff in this regard cannot be countenanced. It is also relevant to note that some property also purchased in the name of the plaintiff. According to the plaintiff the said property sold during his life time of his father. The plaintiff has conveniently not indicated

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the nature of the property stood in his name. That apart, Ex.B1 property is not included in the suit property. Therefore, the plaintiff is trying to take undue advantage. Hence, merely because the first defendant is not entered into the witness box, the adverse interference cannot be drawn. There is no evidence that the property has been purchased from the joint family income or the father's income. Hence, these points are answered accordingly.

12. In the result, **this Appeal Suit is dismissed.** The judgment and decree passed by the learned VII Additional Judge, City Civil Court, Chennai, in O.S.No.4364 of 2021 dated 30.08.2024 is hereby confirmed. Consequently, connected Miscellaneous petition is closed. No costs.

19.03.2025

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Index:yes/no

Neutral citation:yes/no

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To

VII Additional City Civil Court, Chennai.



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N.SATHISH KUMAR, J.

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