

AS.(MD)No.44 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Dated : 18.02.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HON'BLE MR.JUSTICE M.JOTHIRAMAN**

**AS.(MD)No.44 of 2016
and
C.M.P.(MD)No.2584 of 2018**

P.Kumaresan

... Appellant

Vs.

1.Sethalakshmi

2.Palanikumar

... Respondents

PRAYER : First Appeal filed under Order 41 Rule 1 & 2 r/w Section 96 of the Code of Civil Procedure against the judgement and decree passed in O.S.No.78 of 2012 dated 16.04.2015 by III Additional District Judge, Tirunelveli.

For Appellant : Mr.B.Prahalad Ravi

For R1 & R2 : Mr.T.Selvan



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JUDGMENT

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(Judgment of this Court was delivered by G.R.SWAMINATHAN J.)

This first appeal arises out of a suit for partition.

2.The appellant herein filed O.S No.78 of 2012 on the file of III Additional District Court, Tirunelveli claiming 1/3rd share in the suit schedule items 1, 2, 3 & 4 and ½ share in the 5th suit schedule property.

3.The appellant examined himself as P.W.1 and marked Ex.A1 to Ex.A15. The defendants were none other than the appellant's mother and brother. The appellant's mother did not enter the witness box. The brother alone examined himself as DW.1. Ex.B1 to Ex.B4 were marked on the side of the defendants. After considering the evidence on record, the trial Court passed preliminary decree on 16.04.2015. It granted 1/3rd share in favour of the plaintiff / appellant herein in respect of suit schedule items 1, 3 & 4. It granted ½ share in the fifth schedule property. The suit was dismissed as regards suit second schedule. Aggrieved by the same, this appeal has been filed.



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4.The learned counsel appearing for the appellant submitted that the suit second schedule property was purchased by his father Balasubramanian Achari in the name of his wife (D1) as his benami. The first defendant had no source of income as of her own. Suit second schedule property should be considered as the benami property of the late Balasubramanian Achari and hence, it is also amenable to partition. He pointed out that though the defendants pleaded that the suit second schedule items are the exclusive properties of the first defendant, this plea was not established. The first defendant avoided the witness box. He called upon this Court to interfere with the impugned judgment and decree insofar as the dismissal of the suit second schedule is concerned and allow this appeal as prayed for.

5.Per contra, the learned counsel appearing for the respondents submitted that interference is not warranted.

6.We carefully considered the contentions on either side and went through the evidence on record and also the rival pleadings.

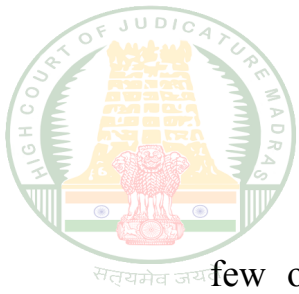


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7.The only point for consideration is whether the appellant has established that the suit second schedule items are the benami properties of his late father and that he has pre-existing right and interest therein.

8.It is true that DW.1 in his testimony deposed that the suit second schedule items were purchased by pledging the first defendant's jewellery. Such a plea was not taken in the written statement. It is only the first defendant who could have spoken about the nature of transactions with regard to the purchase of the suit second schedule items. She, for reasons best known to her, did not enter the witness box. But then, the plaintiff/appellant cannot take advantage of the weakness in the evidence on the side of the defendants. It is the appellant who filed partition suit. Though in a partition suit, all the parties are in the same position, burden lay only on the appellant to show that the suit second schedule property is a benami property and amenable to partition even though they stand in the name of the first defendant. She had purchased the suit second schedule items vide Ex.A7 dated 02.11.1988 and on 10.05.1973 vide Ex.A8. The Benami Transactions (Prohibition) Act, 1988 came into force on 05.09.1988. The statute was amended on quite a

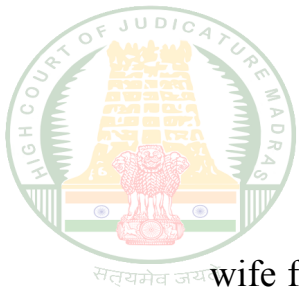


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few occasions. Even though there is a prohibition against benami transactions, sub-section (2) of Section 3, before the 2016 Amendment was to the effect that the prohibition will not apply to the purchase of property by any person in the name of his wife and that it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife. Ex.A7 was executed in favour of the first defendant after the statute came into force. Ex.A8 was executed in favour of the first defendant earlier. But the aforesaid mandatory presumption can be applied in favour of Ex.A7 also.

9.It has been held that there is a normal and general presumption enuring in favour of a wife even when it is shown that the consideration really proceeded from the husband of such purchaser and that no inference can be drawn from the said factor alone that the wife was only a benamidhar, having regard to the nature of relationship between the parties and the normal tendency of a husband to benefit his wife either by payment of money or by making the purchase of the property in her name and for her benefit. The general presumption should be that the husband thought fit to purchase some of the items of properties in the name of his



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wife for her benefit and welfare. Such presumption would be strong in a case where the very case of the plaintiff is that all properties belonging to the father were self acquired. In such cases, it is obligatory on the part of such person to prove that the acquisition was not meant to be for the benefit or welfare of the person in whose name it was acquired (vide **(1997) 2 L.W 908 (Parvathi Ammal vs. Solai Ammal)**).

10.The best person who could have spoken about the true character of the said items was the late Balasubramanian Achari, the father of the plaintiff and the second defendant and the husband of the first defendant. During his lifetime, he never questioned the title of his wife over the said items. Hence, heavy burden lay on the plaintiff to prove that the said items are benami properties amenable to partition. We carefully went through the testimony of the plaintiff. Except a bald single line statement that his father had purchased properties in the name of the first defendant as benami, there is no evidence to dislodge the statutory presumption in favour of the first defendant. Section 3(2) of the Act (unamended) mandates that the court should presume that the purchase was for the benefit of the wife. Since such a presumption has to



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be necessarily raised in favour of the first defendant, the onus lay on the plaintiff to rebut the same. This onus has not at all been discharged in this case. The first defendant has not suffered any disadvantage for not having entered the witness box. Since the statutory presumption was not rebutted, we have to hold that the suit second schedule items are the absolute properties of the first defendant. The point for determination is answered accordingly.

11.In the result, this first appeal is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) & (M.J.R., J.)
18.02.2025

NCC : Yes / No
Index : Yes / No
gns/skm

To

III Additional District Judge, Tirunelveli.



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and
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