

AS.(MD)No.59 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 19.02.2025

Pronounced On : 14.03.2025

CORAM

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

A.S.(MD)No.59 of 2015
and
M.P.(MD)No.1 of 2015

1.I.Dheivanai

2.A.Thilagavathi (Died)

3.S.Malarchelvi

4.A.Muthuvel

5.A.Devi Komathy

... Appellants

(Appellants 3 to 5 are brought on record as Lrs of the deceased 2nd appellant vide order dated 13.10.2022 made in CMP.(MD)Nos.4131 to 4133 of 2021 in AS.(MD)No.59 of 2015)

Vs.

1.I.Parisekaran

2.I.Ilavarasu (Died)

3.I.Chandrasekaran



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4.Muthulakshmi
5.I.Prabhu

6.I.Renuka Devi

... Respondents

(Respondents R4 to R6 are brought on record as Lrs of the deceased 2nd respondent vide order dated 30.08.2024 made in CMP.(MD)Nos.11138 to 11140 of 2022 in AS.(MD)No.59 of 2015)

PRAYER : First Appeal filed under Section 96 of Code of Civil Procedure, 1908, against the judgment and decree dated 10.10.2014 made in O.S.No.28 of 2012 on the file of the Principal District Court, Tuticorin.

For Appellants : Mr.T.Lajapathi Roy,
Senior Counsel,
for Mr.S.Rajasekar.

For R1 : Mr.T.Antony Arulraj

For R3 : Mr.S.Senthil Sankaran Nathakumar

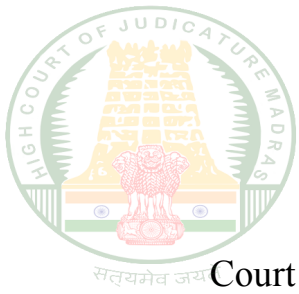
For R4 to R6 : Mr.B.Rajesh Saravanan

JUDGMENT

(Judgment of this Court was delivered by **M.JOTHIRAMAN J.**)

The unsuccessful defendants have preferred this First Appeal.

The suit has been filed for seeking partition and for declaration. The trial



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Court decreed the suit that the parties to the suit are entitled to get 1/5 share each. It is declared that the settlement deed executed by the first defendant as null and void. The relief of permanent injunction granted against the defendants.

2.For the sake of convenience, the parties are referred as per their rank before the trial Court.

3.Brief case of the plaintiffs is as follows:-

The plaintiffs, 2nd and 3rd defendants are siblings, born to the first defendant and her husband Mr.P.Irungovel. The suit schedule properties were purchased by Late.Mr.P.Irungovel in his wife name. The first suit schedule property was purchased on 30.04.1962 vide document No.1271/1962 in the name of first defendant. The suit second schedule property was purchased on 12.07.1965 by the said Mr.Iranguvel in the name of the first defendant. The properties were purchased for the benefit of his family members. The first suit schedule property is in join possession of the family members. In the year 1975, the said Mr.P.Iranguvel left the family and the first plaintiff had maintained the



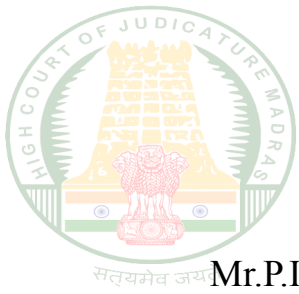
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entire family. He constructed a house in suit second schedule property on his own money and got electricity connection and drinking water connection. The second suit schedule property consists three portions. The said Mr.P.Irangovel died on 29.07.2006. Both suit schedule properties are in joint possession plaintiffs and the defendants. The plaintiffs made paper publication in Dinamalar on 05.03.2012 stating that the suit schedule properties are joint family properties. The first defendant on 12.03.2012 gave a reply paper publication. The plaintiffs came to know that on 25.04.2012, the first defendant has registered a settlement deed in favour of the second defendant in respect of the first suit schedule property. The first and second defendants try to take shelter under the umbrella of customs and usage of Nankudi Vellalah Community. The title deeds of the first suit schedule property is in the hands of the first plaintiff. The first defendant has no right to execute gift settlement deed. Hence, the suit.

4.Brief case of the defendants is as follows:-

The second defendant filed written statement and the same was adopted by the first defendant. The first defendant married



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Mr.P.Irangovel in the year 1952 and thereafter, he left the first defendant.

He got second marriage with one Muthammal on 24.04.1977. The first defendant sold her sreethana properties and solemnized the marriage of the second defendant. The first defendant had executed settlement deed in favour of the second defendant. The said Irangovel left the house since the first defendant had settled her sreethana properties in favour of the second defendant. After 1977, the said Irangovel has not returned to their home. The suit schedule properties are self acquired properties of the first defendant and the same is in possession of the first defendant. After execution of settlement deed, the suit schedule properties are in possession of the second defendant. The plaintiffs and the third defendant have no right in the suit schedule properties and prayed for dismissal of the suit.

5. Based on the above pleadings, the trial Court has framed the following issues:-

1. Whether the plaintiffs are entitled for partition as prayed for?
2. Whether the plaintiffs are entitled to get a relief of declaration declaring the settlement deed dated 25.04.2012 as null and void?



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3. Whether the plaintiffs is entitled for permanent injunction?

4. Whether the suit schedule properties were purchased by the Late. Irangovel in the name of his wife for the benefit of the their family?

5. Whether the first defendant is the name lender in the sale deed dated 30.04.1962 and 12.07.1965?

6. What other reliefs the plaintiffs are entitled?

On the side of the plaintiffs, the first plaintiff was examined as P.W.1 and the second plaintiff was examined as P.W.2 and Ex.A1 to Ex.A14 were marked. On the side of the defendants, the first defendant was examined as D.W.1, the second defendant was examined as D.W.2 and the third defendant was examined as D.W.3 and Ex.B1 to Ex.B21 were marked.

6. Findings of the trial Court:-

(i) Ex.A1 sale deed, there is a recital found that the said Irangovel has paid sale consideration for a sum of Rs.1000/-.

(ii) There is no recital found in the sale deed establishing that the sale consideration for a sum of Rs.1,500/- was paid by the first defendant herself.

(iii) The suit second schedule property was purchased as vacant



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land and thereafter, building was constructed by him. Through Ex.A8, Ex.A10 and Ex.A11, providing electricity connection, were stands in the name of the said Irangovel.

(iv)The original sale deed is in the hands of the plaintiff and came to a conclusion that the said Irangovel has purchased the suit schedule properties in the name of the first defendant by paying sale consideration for the welfare of the family.

(v)The settlement deed executed by the first defendant dated 25.04.2012 in favour of the second defendant will bind only on the share of the first defendant alone and not binding other legal heirs.

7.Points for determination arises in this appeal are as follows:-

1.Whether the first defendant is name lender in the sale deed dated 30.04.1962 and 12.07.1965?

2.Whether the plea of benami father earned money and purchased suit properties in the name of his wife can be raised by their son?

8.Mr.T.Lajapathi Roy, learned Senior Counsel appearing for the defendants 1 and 2 would submit that after 1977, the first defendant



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alone by selling her sreeethana properties including jewels, maintained the entire family. He would submit that the father of the plaintiff is not a man means and he was unable to maintain his own wife. As per regulations of Nankudi Vellalar community, the first defendant had given the suit properties to the second defendant as sreeethana properties through valid title deeds. The tax receipts for both suit schedule properties are stands in the name of the first defendant alone. The plaintiffs and the third defendant did not raise their objections to change the name in the tax receipts. Further, he would submit that the plaintiffs and the third defendant had waived their right by being idle from 1987 to 2012 and they must be established as the suit property comes within the purview as sreeethana properties, which is considered as self acquired property of a woman. He would also submit that with regard to the defence taken by the benami transaction interfering purchase of property in the name of the first defendant as prescribed under Section 4(1)(2) of the Benami Transfer Act. He would submit that in view of the statute presumption incorporated in sub Section (2) of 3 of the Act, the plaintiff can get the relief of partition only, if they can prove that the properties concerned had not been purchased for the benefit of the first defendant



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even if they successes, in showing that consideration for the purchase of the properties had been paid by their father. To strengthen his contention, he has relied upon the following judgments of the Hon'ble Supreme Court:-

1.R.Rajagopal Reddy (dead) and Ors Vs. Padmini Chandrasekharan (dead) reported in 1995 2 SCC 630 to show that Section 4 creates substantive rights in favour of benamidars and destroys substantive rights of real owners, who are parties to such transactions and for whom new liabilities are created by the Act.

2.Nanda Kishore Mehra Vs. Sushila Mehra reported in 1995 4 SCC 572 to show that, if he can prove that the properties concerned has not been purchased for the benefit of wife, even if he succeeds in showing that the consideration for the purchase of the properties had been paid by him.

9.The learned counsel appearing for the first respondent would submit that the first defendant has no source of income to purchase the suit schedule properties and her husband alone purchased the suit schedule properties under two sale deeds in the name of the first



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defendant for the welfare of the family. The sale consideration paid by the father of the plaintiffs, ie., Thiru.P.Irangovel, which has been clearly found in the sale deeds. The trial Court after considering all the surrounding circumstances of the case, came to a conclusion that the suit schedule properties were purchased by the father of the plaintiffs in the name of the first defendant as a name lender for the welfare of the family. To strengthen his contention, he has relied upon the judgment reported in 2006 5 SCC 353 in Prem Singh and Ors Vs. Birbal & Ors, to show that there is a presumption that a registered document is validly executed. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. He would further submit that the prayer for setting aside will arise only when a person suing to invalidate the document is party to the instrument. To strengthen his contention, he has relied upon the judgment of this Court in S.A.No.69 of 2014 dated 16.09.2019, to show that if the person suing is not a party to the instrument, then such person need not seek to set aside or cancel the instrument before seeking partition. Further, he would submit that the defendant has to prove that the suit properties were purchased in the name of the first defendant for her interest and not for the beneficial



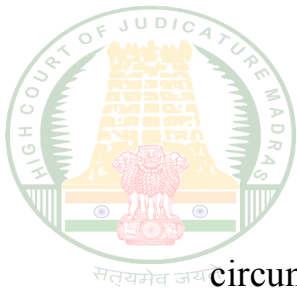
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interest of the family. To strengthen his contention, he has relied upon the judgment reported in 2023 SCC Online Mad 409, G.Felshia Vasanthi Vs. R.Sekar to show that the statutory presumption can be rebutted either by adducing independent evidence or by showing inherent improbabilities in the case of the person who is claiming benefit of presumption.

10.We have considered the submissions made on either side and perused the materials on record.

11.It is seen from the records that Ex.A1 is the original sale deed stands in the name of the first defendant dated 30.04.1962. Ex.A2 is the copy of the sale deed stands in the name of the first defendant dated 12.03.1965. Ex.A1 is pertaining to the suit 'A' schedule property and Ex.A2 is pertaining to the suit 'B' schedule property. The Hon'ble Supreme Court in catena judgment held that 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. The Hon'ble Supreme Court spelt out the following six



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circumstances which can be taken as a guide to determine the nature of the transaction:-

- 1.the source from which the purchase money came;
- 2.the nature and possession of the property, after the purchase;
- 3.motive, if any, for giving the transaction a benami colour;
- 4.the position of the parties and the relationship, if any, between the claimant and the alleged bemamidar;
- 5.the custody of the title deeds after the sale; and
- 6.the conduct of the parties concerned in dealing with the property after the sale.

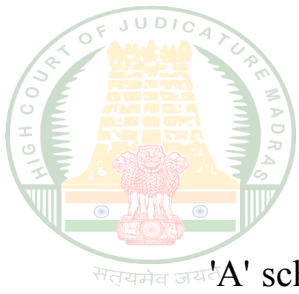
12.As pointed out by the learned Senior Counsel appearing for the defendants, in *Nanda Kishore Mehra* case, as stated supra, in view of the statutory presumptions incorporated in sub Section (2) of 3 of the Act, the plaintiffs can get the relief sought in the suit, only if they can prove that the properties concerned had not been purchased for the benefit of the wife.



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13.A perusal of Ex.A1 sale deed wherein it has been stated that the said Irangovel has paid a sum of Rs.1,000/- on behalf of the first defendant to one Francis Fernando and the same has been attested by the Sub Registrar. The said Irangovel also has signed as a witness in the deed. However, there is no recital about the source of income provided by him. The plaintiffs contended that he had paid by cash on hand since he was working as Teacher. Per contra, the defendants denied that the said Irangovel was drawn meager salary alone and the first defendant alone paid the money. Further, DW.1 contended that the said Rs.1,000/- was handed over by D.W.1 and the same has been paid by her husband. There is no recitals found in Ex.A1 to substantiate the contention of the first defendant. It is pertinent to state that no oral evidence can be adduced, as against the documentary evidence. With regard to Ex.A2, sale deed wherein recitals shows that the vendor has received a sum of Rs.1,500/- in cash from the purchaser, ie, first defendant. There is no recitals that the said amount was paid in the presence of the Sub-Registrar, wherein it has been stated that the agent of the vendor had known the transactions. The second condition with regard to the nature and possession of the property after the purchase with regard to the suit

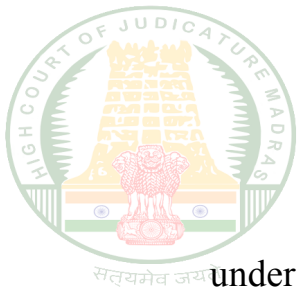


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'A' schedule property as a vacant land, with regard to the third condition motive if any for giving the transaction a benami colour, since the recitals found in Ex.A1 sale deed itself would go to show that the property has been purchased for the welfare of the family. Admittedly, the said Irgangovel was working in a Government Department. The original sale deed Ex.A1 is also in the hands of the plaintiffs.

14.It is the case of the defendants 1 and 2 that the suit A and B schedule properties are self acquired properties of the first defendant and she had been purchased the same with valuable consideration. Admittedly, the first defendant did not file written statement and the written statement filed by the second defendant is adopted by the first defendant. The marriage was solemnized between the first defendant and the said Irangovel in the year 1952 and till 1977, they were led the marriage life. Only after 1977, the said Irangovel had illicit relationship with one Muthammal and left home. The sale deeds of the year 1962 and 1965 and therefore, within 10 to 15 years, the suit schedule properties were purchased. After purchase of the suit 'B' schedule property, the house was built and electricity connection was granted



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under Ex.A8 dated 10.05.1969. Ex.A9 is the payment of electricity bills dated 21.05.1969, 15.09.1973 and 13.05.1978. Ex.A10 is the letter dated 15.06.1973 addressed from the office of the Electricity Board to the Irangovel. Ex.A11 is the electricity bill payment receipts stands in the name of the Irangovel till 1981.

15.Ex.B1 is the house tax receipts, numbering seven, stands in the name of the first defendant from the year 1966 to 2011 with regard to the suit 'A' schedule property. Ex.B2 is the water tax receipts pertaining to the suit 'B' schedule property between 1968 to 2012 stands in the name of the first and second defendants. Ex.B3 is the water tax receipts, numbering 45, pertaining to the suit 'B' schedule properties between 1968 to 2012 stands in the name of first and second defendants. From the above documents reveals that the first and second defendants have paid the property tax and other taxes pertaining to the suit properties. In the year 1984, the said Irangovel retired from service and he was residing at 10/43, Mariyamman Kovil Street, Mudiviathanenthal and died on 29.07.2006. The death certificate is also marked under Ex.A6. The legal heir certificate issued under Ex.A7, wherein the address was mentioned



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as Old No.21, New No.93, 3rd street, Opposite to the Spinning Mill, Ganesh Nagar, Thoothukudi and issued to the first defendant. The plaintiffs admitted that after retirement, the first defendant alone look after the said Irangovel. The plaintiffs also admitted that after death of the said Irangovel, retirement benefits were received by the first defendant. Ex.B5 is the copy of the order passed in Maintenance Case in MC.No.318 of 1977 on the file of the Sub Divisional Judicial Magistrate, Thoothukudi, dated 07.03.1978 wherein it has been mentioned by the deceased Irangovel that he had only 21 cents of waste land.

16.It is the specific case of the first defendant that the suit schedule properties are self acquired properties of her and the same has been purchased by selling her sreethana properties and her jewels. A perusal of recitals mentioned in Ex.B10 to Ex.B12, settlement deeds, wherein it has been mentioned that if the second defendant not begotten any children, then, properties will go to the plaintiffs and the third defendant. Ex.B14, Ex.B15, Ex.B17 and Ex.B18 are the electricity receipts, water tax receipts and property tax receipts stands in the name of the second defendant. It is pertinent to mention that the late.Irangovel



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deserted the first defendant and was living separately with one Muthammal. Even during 1977 itself, the first defendant alone maintained the entire family. It is not in dispute that the marriage of the second defendant was solemnized in the year 1974. The marriage of the second plaintiff was solemnized in the year 1989. The said Irangovel had admitted in the maintenance case in Ex.B5 that he was not having sufficient means to maintain his wife. Ex.B5 would go to show that Irangovel could not have purchased any property by himself. It is an admitted fact that as per regulations of Nankudi Vellalah Community, the mother have to give sreethana properties to her daughter. Be that as it may, as per the regulations of Nankudi Vellalah Community, the first defendant had given suit properties to the second defendant as sreethana property through three settlement deeds. The plaintiffs and the third defendant have not objected with regard to the change of name in the tax receipts and other receipts. The contention of the plaintiffs is that they did not know about the change of name in the tax receipts at that point of time and recently, they came to know about the same, is not acceptable one. P.W.1 in his cross-examination deposed that he has stated in the plaint that his father had left from the home in the year 1975. His father

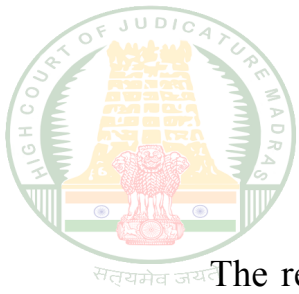


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did not turn up for P.W.1's marriage and his brother marriage. P.W.1 and his brother attended the marriage of the second defendant's daughter one Malarselvi, which was held in the year 1995. He did not know directly about the settlement deeds executed by his mother in the year 1987 in favour of his sister and he came to know the same, through legal notice issued by his sister. He admits that he has published general notice in a daily newspaper, wherein, it has been sought for partition in respect of suit 'A' schedule property alone, not stated anything about suit 'B' schedule property and the same has been issued by him and two brother jointly. He admits that as per custom, the mother have to give sreethana properties to her daughter. His mother had acquired one house and 30 sovereigns Gold jewels as sreethana properties. P.W.2 and D.W.3 in their cross-examination categorically admits that they have issued general notice in a daily news paper with regard to suit 'A' schedule properties alone and not stated anything about the suit 'B' schedule properties.

17.From the evidence of P.W.1, P.W.2 and D.W.3 reveals that they had waived their right by being idle from 1987 to 2012. Therefore, they must be estopped from claiming right over the suit 'B' suit properties.



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The recitals found in Ex.A1 that the sale consideration was paid by the late.Irangovel and the first defendant was a name lender alone, whereas, in Ex.A2, there is no specific recital about the sale consideration paid by the late.Irangovel. From the recitals found in Ex.A1, would go to show that the property has been purchased in the name of the first defendant in the welfare of the joint family. The property purchased under Ex.A2 by the first defendant is the self acquired property. The trial Court has failed to give much importance to Ex.B2 wherein it reveals that property tax receipts, with regard to the suit 'B' schedule properties were stands in the name of the first and second defendants between 1968 to 2012.

18.During the course of arguments, it is brought to the notice of this Court that the first appellant I.Dheivanai died and the legal heirs of the said Dheivanai are already on record. It is pertinent to mention that during the course of arguments, a memo has been filed by the appellants before this Court stating that they are the legal heirs of the deceased Thilagavathi, ie., second defendant in the suit. They have stated that they are agreed to give up their share in the suit first schedule property. The findings of the trial Court that the sale deed stands in the name of the first defendant under Ex.A1 and Ex.A2 as a name lender is unsustainable



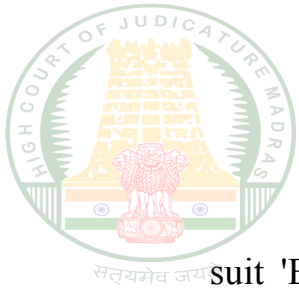
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in law. The trial Court has failed to consider the evidence on both oral and documentary evidence by not giving importance to Ex.B1, which is unsustainable.

19.We are of the view that the plaintiffs and the third defendant, who are all sons of the first defendant, are entitled to get 1/3 share each in the suit 'A' schedule property alone and they are not entitled to claim share in the suit 'B' schedule property. The suit 'B' schedule property is the self acquired property of the first defendant and the appellants, ie, legal heirs of the second defendant alone are entitled.

20.In the result, this First Appeal is allowed-in-part. The decree and judgement passed by the trial Court is modified to the effect that the first plaintiff, third defendant and the legal heirs of the second plaintiff, namely, I.Parisekaran, I.Chandrasekaran, Muthulakshmi, I.Prabhu, I.Renuka Devi are entitled to get 1/3 share each in suit 'A' schedule properties and they are not entitled to get any share in suit 'B' schedule properties. The appellants, ie., legal heirs of the second defendant, namely, S.Malarchelvi, A.Muthuvel, A.Devi Komathy are entitled to get



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suit 'B' schedule properties alone and they are not entitled to get any share in suit 'A' schedule properties. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) & (M.J.R., J.)
14.03.2025

NCC : Yes / No
Index : Yes / No
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To

The Principal District Court, Tuticorin.



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and
M.JOTHIRAMAN, J.

gns

Pre-Delivery Judgement made in
A.S.(MD)No.59 of 2015

14.03.2025