BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 07.03.2025

Pronounced On : 04.04.2025

CORAM

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

A.S.(MD)No.73 of 2017
and
C.M.P.(MD)No.4972 of 2017

1.C.Thangaraj

2.C.Raman

3.C.Murugan

4.C.Durairaj ... Appellants

Vs.

1.C.Chandran

2.Rajendran

3.Ponnusamy

4.Seethammal (Died) ... Respondents
(Memo dated 11.11.2024 filed on 20.11.2024 in USR.No.42860 is recorded as R4 died and appellants & R1 to R3, who are already on record, are recorded as Lrs. Of the deceased R4 vide Court order dated 03.12.2024 made in AS.(MD)No.73 of 2017)

PRAYER : First Appeal filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree dated 22.11.2016 passed in O.S.No.142 of 2010 on the file of VI Additional District Judge, Madurai.

For Appellant	: Mr.Anand Chandrasekar for Mr.S.Pon Senthil Kumaran
For R1	: Mr.M.Saravanan
For R2 & R3	: No Appearance

JUDGMENT

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

The defendants 2, 4 to 6 have preferred the present first appeal before this Court. The trial Court by its judgement and decree dated 22.11.2016 decreed the suit in-part by granting the relief sought for partition of 1/6th share in items 1 to 23 of the suit properties and 1/8th in items 24 to 26 of the suit properties and permanent injunction. The relief of partition sought for with respect to the items 15 to 23 of the suit properties was declined. Aggrieved by the decreeing the suit with respect to the items 1 to 14 and 24 to 26 of the suit properties, the defendants 2 & 4 to 6 have preferred the present appeal. The plaintiff has not preferred any appeal with respect to the rejection of his claim regarding items 15 to 23 of the suit properties. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

2.Brief case of the plaintiff is as follows:-

The plaintiff and defendants 1 to 6 are brother. The plaintiffs and defendants 1 to 6 are sons of one Chinnakaruppa Thevan @ Chinna Thevar and the 7th defendant. The plaintiff is working as Postmaster and his wife is working as a Teacher. The plaintiff and the defendants 1 to 6 were doing snacks business jointly at Andhrapradesh. During the said period they purchased immovable properties, which is shown as Items 1 to 14 and 23. From 23.08.1993 to 24.03.1997, they have purchased items 1 to 14 and they are in joint possession and enjoyment of the same. When the plaintiff was living joint family, the defendants purchased suit schedule properties items 15 to 23. Item 26 is the ancestral property of the plaintiff's father and his father purchased item 24 and 25 on 14.02.1994. The said Chinnakaruppa Thevar died on 14.02.1998. The second defendant lodged a complaint during May 2007 and September

208 against the plaintiff. It was agreed that the allocation of shares in the suit properties will be made in the presence of the village elders. The plaintiff executed a registered gift deed dated 29.04.2009 in favour of the defendants 2, 4 to 6 with respect to an extent of 33 cents in S.No. 118/7. The defendants received a sum of Rs.5,11,000/- from the plaintiff as settlement amount. The fourth defendant on 29.04.2009 executed a settlement deed in favour of the plaintiff with respect to a house site and on the same day the defendants 2, 4 to 6 executed declaration deed to the plaintiff promising to vacate the ground floor of the house. The defendants trespassed into the house of the plaintiff and threatened the plaintiff. On 16.11.2009,he lodged a complaint and on 29.05.2010 the plaintiff's wife lodged a complaint against the defendants 2, 4 to 6. On 23.10.2008 and 25.05.2009, the defendants 2, 5 and 6 sent legal notices to the plaintiff for which the plaintiff sent a reply notice dated 23.07.2009. Hence, the suit.

3.Brief case of the third defendant is as follows:-

The plaintiff and the defendants went to Andrapradesh during 1987 for manufacturing and selling Murukku. Their father led the family and spent from joint family income. Father required the presence of the plaintiff and hence, the plaintiff returned to Tamilnadu during 1995. the plaintiff and defendants remained as joint family and the third defendant has also contributed their self earnings to purchase properties.

4.Brief case of the fifth defendant is as follows:-

The defendants 2, 4 to 6 doing snacks and murukku business in Andrapradesh. Out of the income derived from the business, they wanted to purchase properties in and around their native village. As the defendants were not in a position to come to their native place, they decided to sent amount to the plaintiff through his bank account and decided to purchase properties in the name of all. The plaintiff was earning only meager income as salary and he had no sufficient income to purchase the properties on his own. The defendants 2, 4 to 6 sent huge amount of money to the plaintiff from 1992 to 2005. Out of which, the plaintiff purchased the properties in his name, in the defendants name and in the name of the father's name jointly. The settlement deed dated 29.04.2009 is a fabricated one by the plaintiff. The defendants did not trespass into the post office as alleged by the plaintiff.

5.Written statement filed by the sixth defendant is adopted by the fourth defendant and their brief case is as follows:-

The plaintiff was never engaged in doing snacks business with the defendants at Andhrapradesh. The plaintiff was employed in postal department and wife was employed as a Teacher. After marriage, they were living separately. There was no joint family or joint business. The plaintiff trespassed into the house of the second defendant's house and stole the property documents and hence, the second defendant gave a Police complaint and FIR has been registered.

6.The defendant 1 and 7 were set exparte before the trial Court. Based on the above pleadings, the trial Court has framed the following issues:-

i)Whether items 1 to 14 of plaint mentioned properties are absolutely belonging to the defendants 2, 4 and 5 and item Nos.20 & 21 belonging to the second defendant and item Nos.22 & 23 belonging to second and fifth defendants?

ii)Whether the gift deed dated 29.04.2009 is a forged document and 4th defendant has no right to execute the gift settlement deed dated 29.04.2009?

iii)Whether all properties are included for partition or suit liable for dismissed for partial partition?

iv)Whether suit is valued properly and proper court fee paid?

v)Whether the description of the property in the plaint is wrong and four boundaries are incorrect?

vi)Whether the plaintiff is entitled to 1/6th share in item Nos. 1 to 23 and 1/8th share in item Nos.24 to 26 of the plaint?

vii)Whether the plaintiff is entitled for order of permanent injunction against the defendants from alienating the suit properties?

vii)To what further relief the plaintiff is entitled to?

On the side of the plaintiff, the plaintiff himself examined as P.W.1 and one Muthukaruppathevar was examined as P.W.2 and Ex.A1 to Ex.A30 were marked. On the side of the defendants, the fifth defendant examined himself as D.W.1, the second defendant examined himself as D.W.2 and witnesses were examined as D.W.3 and D.W.4 and Ex.B1 to Ex.B12 were marked.

<u>7.Findings of the trial Court:-</u>

The plaintiff has not established that there was surplus income from the joint family property after meeting out expenses for purchase of properties in the names of the defendants 2, 4, 5. Hence, it cannot be presumed that item Nos.15 to 23 were purchased out of joint family funds. When the name of the plaintiff is found in documents relating to the item Nos.1 to 14, either it has been purchased for his welfare or he has contributed his share amount. Out of income derived from the ancestral property that the suit item No.26, his father Chinnakaruppa Thevar would have purchased item Nos.24 & 25. Hence, the plaintiff is entitled to get 1/8th share in item Nos.24 to 26. The plaintiff is not in joint possession of the item Nos.15 to 23 and also is not entitled to share in item Nos.15 to 23. The plaintiff is entitled to got share in item Nos.1 to 14 and 24 to 26.

<u>8.Point for determination in this appeal is that:-</u>

i)Whether the plaintiff is entitled to 1/6th share in item Nos.1 to 23 and 1/8th share in item Nos.24 to 26?

9.The learned counsel appearing for the appellants / defendants 2, 4 to 6 would submit that the plaintiff has not stated that he contributed his personal funds for purchasing any of the suit properties. The appellants / defendants were doing business in Andrapradesh and money was sent to the plaintiff to purchase properties and that the plaintiff did not have sufficient income to purchase properties. The trial Court in its judgement has held that it cannot be construed that the business in Andrapradesh is a joint family business and properties were purchased out of joint family income. Having held so, the trial Court going beyond the pleadings has held that the plaintiff and defendants 2 to 6 pooling their individual income have purchased item Nos.1 to 14. He would submit that the suit item Nos.1 to 14 were purchased during the period from 23.08.1993 to 24.03.1997. As per Ex.B5 Bank pass book of the plaintiff with respect to his salary account in State Bank of India shows that from 1991-1999, a sum of Rs.17,21,000/- has been deposited in the account by way of transfer and demand draft. The plaintiff in his cross examination has categorically admitted the above said facts. The plaintiff joined service in postal department only during 1992 and according to him his monthly income was only Rs.2,000/-. When there is no plea that he contributed individually for purchase of properties and when there is no evidence to substantiate that the plaintiff had surplus income to contribute for purchase of properties, then, the presumption drawn in favour of the defendants 2 to 6, but erred in drawing a presumption in favour of the plaintiff. As per Ex.A21 notice wherein it has been stated that the plaintiff administered the properties only in the status as a trustee. The plaintiff has not sent any reply to the said notice. The plaintiff was vested with a fiduciary status and in that status has purchased item Nos.1 to 14 of the suit by including his name as a co-owner. To strengthen his contention, he has relied upon the decision of the Hon'ble Supreme Court reported in ***AIR 2009 SC 1103*** in a case of ***Bachraj Nahar Vs. Nilima Mandal*** and others to show that the object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial.

10.The learned counsel appearing for the first respondent / plaintiff would submit that the plaintiff and defendants 1 to 6 were doing snacks business jointly at Andrapradesh and out of income derived from the business, they have jointly purchased the suit schedule properties item Nos.1 to 14.

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

12.The defendants have admitted that with respect to the purchase of the suit items 1 to 14 plaintiff's name has been included in the sale deeds. The third defendant in his written statement, stated that the plaintiff and the defendants went to Andrapradesh during 1987 for manufacturing and selling murukku. Father led the family and spent from joint family income. The father required the presence of the plaintiff to look after the properties and family members and hence, the plaintiff returned to Tamilnadu during the year 1995. The plaintiff and defendants remained as joint family and they have also contributed their self earning to purchase the properties.

13.Per contra, the defendants 2, 4 to 6 have pleaded that they were doing snacks business at Andrapradesh. Out of income derived from the said business, they wanted to purchase properties. As the defendants were not in position to come to their native place regularly, the plaintiff, who is working as Postmaster in native village, they decided to sent amount to the plaintiff through his bank account and decided to purchase properties in the name of all. During 1992 to 1997, out of this amount, the plaintiff purchased properties in his name and the defendants' name jointly and in the name of father. Therefore, the properties are absolute properties of the defendants 2, 4 to 6.

14.Admittedly, the suit item Nos.1 to 14 were purchased during the period from 23.08.1993 to 24.03.1997. As per Ex.B5 bank statement of the plaintiff, for the period from 1991 to 1999, a sum of Rs. 17,21,000/- has been deposited. As per Ex.B6, for the period from February 2004 to June 2005, a sum of Rs.11,95,000/- has bee deposited and similarly, as per Ex.B7, for the period from July 2005 to January 2007, a sum of Rs.2,50,000/- has been deposited. P.W.1 in his cross-examination admits the receipt of money from the defendants. P.W.1 joined service in postal department on 09.09.1992. He deposed that from 1987 to 1992, he was with the defendants in Andrapradesh for doing business. The fifth defendant (D.W.1) C.Murugan in his cross examination admits that he went to Andrapradesh in the year 1985, before that the plaintiff, D4-C.Raman, D6-C.Durairaj already gone to Andrapradesh. He admits that they have invested the amount individually to start the business at Andrapradesh. He admits that the suit item Nos.1 to 14 are purchased jointly only upon their request. He admits that he has not taken any legal action against the plaintiff as to the plaintiff purchased some of the properties in his own name. The initial burden lies on the plaintiff was discharged by establishing that the plaintiff and the defendants 2 to 6 have jointly purchased properties item Nos.1 to 14 and they are in joint possession and enjoyment of the same as co-owners. Now the burden shifts on the defendants 2 to 6 to show that whether the plaintiff is a trustee, or a benami holder or a name lender. At this juncture, the Hon'ble Supreme Court of India, in a judgment reported in ***2004 (7) SC 233*** in a case of ***Valliammal (Dead) by Lrs. Vs. Subramanian***, it has been 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 circumstances which can be taken as a guide to determine the nature of the transaction:-

i)the source from which the purchase money came;

ii)the nature and possession of the property, after the purchase;

iii)motive, if any, for giving the transaction a benami colour;

iv)the position of the parties and the relationship, if any, between the claimant and the alleged bemamidar;

v)the custody of the title deeds after the sale; and

vi)the conduct of the parties concerned in dealing with the property after the sale.

The evidence of D.W.1 to D.W.4 have not spelt out relating to purchase of suit items 1 to 14, to satisfy the nature of transactions ie., source, nature of possession, motive, custody of title deeds and conduct of plaintiff and defendants. The suit was filed in the year 2010. The suit item Nos.1 to 14 were purchased between 23.08.1993 to 24.03.1997. If the defendants aggrieved over the act of the plaintiff as to whether the plaintiff has not given proper account for the money they have sent or he has purchased properties including his name without consent of the defendants, the defendants ought to have initiate legal proceedings as against the plaintiff. From the evidence of P.W.1 and D.W.1 to D.W.4, would show that the properties are held by the plaintiff as a member of the Hindu Undivided Family for the benefit of the Hindu Undivided Family and the consideration was paid from the known source of income of such Hindu Undivided Family, cannot be treated as benami transactions.

15.It can be presumed that Chinnakaruppathevar, the father of the plaintiff would have purchased the suit item 24 and 25, out of the income derived from item No.26, ie., ancestral property. However, the defendants have not pleaded the said properties have been purchased as benami. It is not in dispute that the plaintiff has purchased some of the properties in his name and the defendants have also purchased some properties in Andrapradesh. The evidence of P.W.1 and D.W.1 would reveal that only with the knowledge of the defendants, suit item Nos.1 to 14 have been jointly purchased in the name of the plaintiff. When the name of the plaintiff is found in the document relating to suit item Nos.1 to 14, either it has been purchased for his welfare or he has contributed his share amount. The defendants have failed to establish their case that without their consent, the suit item Nos.1 to 14 were purchased jointly or by playing fraud the plaintiff included his name in the sale deeds. We are of the view that there is no reason to interfere with the judgement and decree passed by the trial Court. The point is answered accordingly.

16.In the result, this first appeal is dismissed and the Judgment and Decree dated 22.11.2016 passed in O.S.No.142 of 2010 on the file of VI Additional District Judge, Madurai is hereby confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) & (M.J.R., J.)
04.04.2025

NCC : Yes / No
Index : Yes / No
gns

To

The VI Additional District Judge, Madurai

G.R.SWAMINATHAN,J.
and
M.JOTHIRAMAN, J.

gns

Pre-Delivery Judgement made in
A.S.(MD)No.73 of 2017

04.04.2025