



SA No.790 of 1999

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserved	26/03/2025
Date of Pronounced	30/04/2025

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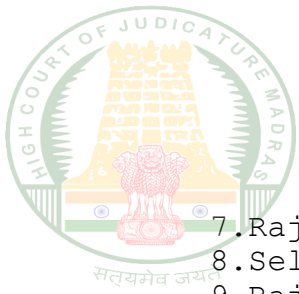
The Hon'ble Mr.Justice **G.ILANGOVAN**

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- 1.Veerammal
- 2.Vaidyalingam (Died)
- 3.Sundararajan (Died)
- 4.Venkittu
- 5.Tamilzharasan
- 6.Selvarani
- 7.Jaya : Appellants 1 to 6/
Respondents 2 to 8/
Plaintiffs
- 8.Ammalu
- 9.Nepolian
- 10.Jaihind : Appellants 8 to 10/
(R8 to R10 are brought on LR.s of the deceased A2
record as LR.s of the deceased
second appellant, vide court
order, dated 03/02/2022 made
in CMP(MD)No.11168 of 2021 in
SA No.790 of 1999)
- 11.Jayakodi
- 12.Karthikeyan
- 13.Siva : Appellants 11 to 13/
LR.s of the deceased A3
(A11 to A13 are brought on record
as LR.s of the deceased 3rd appellant
vide Court order, dated 03/02/2022
made in CMP(MD)No.11170 of 2021 in
SA No.790 of 1999)

Vs.

- 1.Thangavel
- 2.Muthukrishnan (Died)
- 3.Alagappan (Died)
- 4.Palaniappan (Died)
- 5.Chinnaswamy (Died)
- 6.N.S.A.Rowther
By his Power Agent Ramasamy



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- 7.Rajammal (Died)
8.Selvaraj
9.Rajeswari
10.Pushpavalli
11.Sulakshana
12.Saradam
13.Minor Muthukumar
14.Minor Kanimozhi
(Minor respondents 13 & 14
represented by their mother
and guardian 12th respondent
Saradam

- 15.Gandhimathi
(R15 is brought on record as
LR of the deceased 2nd respondent
vide Court order, dated 03/02/2022
made in CMP(MD)Nos.11173, 11176 and
11178 of 2021 in SA No.790 of 1999)
16.Gnanasekaran
17.Anbarasu
18.Murugarasu
19.Sivasamy
(R19 is brought on record as LR of
the deceased 4th respondent, vide
Court order, dated 03/02/2022 made
in CMP(MD)Nos.11183, 11185 and 11186
of 2021 in SA No.790 of 1999)
20.Palanivelu
(R20 is brought on record as LR
of the deceased 5th respondent,
vide court order, dated 04.08.2023
made in CMP(MD)Nos.11187 to 11189
of 2021 in SA No.790 of 1999)

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 25/07/1997 made in AS No.72 of 1995 on the file of the Court of Subordinate Judge of Pudukkottai, reversing the judgment and decree, dated 21/10/1994 made in OS No.42 of 1985 on the file of the Court of District Munsif, Aranthangi.



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For Appellants : Mr.J.Barathan
for M/s.Muthu Kamatchi

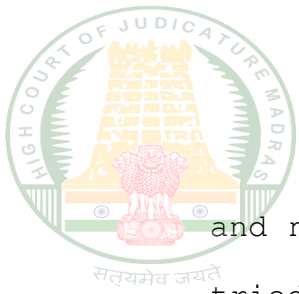
For R6, R8 to R10
and R20 : Mr.N.Balakrishnan
for Mr.K.C.Maniyarasu

For R1, R11, R12
R16,R17, R18 & R19 : No appearance

J U D G M E N T

This second appeal is filed against the judgment and decree, dated 25/07/1997 passed in AS No.72 of 1995 by the Sub Judge, Pudukottai, reversing the judgment and decree, dated 21/10/1994 passed in OS No.42 of 1985 by the District Munsif, Aranthangi.

2. The plaint averments:-The suit property belongs to the plaintiffs ancestrally. They were granted patta by the Settlement Officer on 30/01/1963 through the settlement proceedings. In survey No.83/8, the plaintiffs had grown trees, having building in a portion, cultivating the lands. Originally survey No.83/8 was having 15 cents in total. Later, it was sub-divided as Survey No.83/8-A measuring about 4 cents. Patta was issued in favour of one Nathan. For the remaining 11 cents, patta was issued in his favour. He was in possession and enjoyment. Neither the defendants, nor villagers of Lakshminarasimapuram are having any right in the property. But the 8th defendant on the basis of a sham



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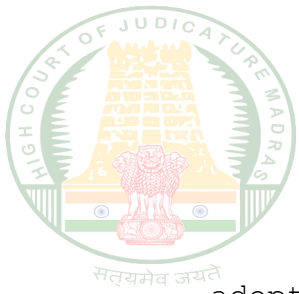
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and nominal document claims right over the properties and tried to disturb his peacefully possession. 8th defendant without knowledge of the first plaintiff obtained patta for 8 cents. It was taken upto revision. Now the village people of Lakshminarasimapuram with the connivance of the 8th defendant try to encroach upon the suit property. In fact, an attempt was made, on 11/02/1985, but it was prevented. So, the suit is laid for declaration and for consequential injunction or in the alternative relief of possession, costs.

3.**Statement**:-The property measuring about 8 1/3 cents was purchased by the mother of the 8th defendant, on 02/01/1956 from the first plaintiff and she was in possession and enjoyment. She constructed a house and residing there. She expired 15 years ago. After her death, the property devolved upon the 8th defendant as her legal heir. It is denied that the sale deed executed in favour of his mother is a sham and nominal document.

4.The 8th defendant permitted some vendors to put up temporary shed for vending vegetables. The plaintiffs have no right or title over the properties.



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5.The statement filed by the second defendant was adopted by the rest of the defendants, except the 8th defendant. No steps were taken by the plaintiffs to implead the legal heirs of the first and fourth defendants. These defendants are unnecessary parties. The suit was not properly framed.

6.On the basis of the pleadings of the parties, the following issues were framed by the trial court:-

(1)Whether the suit property is the absolute property of the plaintiff?

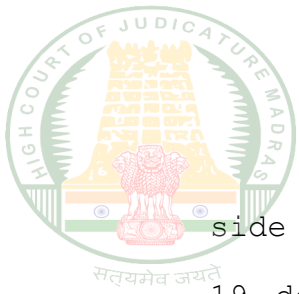
(2)Whether the plaintiff is entitled to get the relief as prayed for?

(3)Whether the 8th defendant purchased 8 1/3 cents from the 1st plaintiff is true?

(4)To what other reliefs, the plaintiff is entitled to?

7.The Additional Issue:-Whether the plaintiff is entitled to get alternative relief of possession?

8.During trial, on the side of the plaintiff, one witness was examined and 38 documents were marked. On the



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side of the defendants, two witnesses were examined and 19 documents marked. The Commissioner's report and plan were marked as Exs.C1 and C2.

9.After full trial, the trial court decreed the suit and alternative relief of recovery of possession was granted directing the defendants to hand over the possession within 3 months and in respect of mesne profit, separate proceedings were recommended.

10.Against which, the 8th defendant and others filed AS No.72 of 1995 before the Sub Court, Pudukottai. The appellate court reversed the findings recorded by the trial court and dismissed the suit filed by the plaintiffs.

11.Against which, this second appeal is preferred.

12.At the time of admission, the following substantial question of law was framed:-

1.Whether the appellate court is legally right in holding that D-1 is not a sham and nominal document?

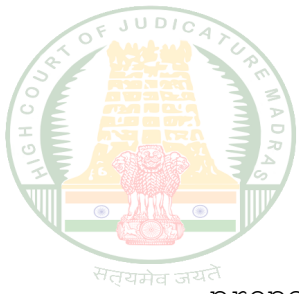


13.Heard both sides.

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14.Originally Karuppanna Thevar filed the suit. During the pendency of the suit, he expired. So, his legal heirs were brought on record as plaintiffs 2 to 8. Now they are contesting. The 8th defendant is the main contestant, who is the son of Jameela Beevi, who purchased the property from the deceased first plaintiff, on 02/01/1956. Now Jameela Beevi is no more even on the date of the plaint. Only the 8th defendant was brought on record and he was represented by his Power of Attorney.

15.The suit property which is comprised in Survey No.83/88 measuring about 11 cents originally belonged to the deceased first plaintiff. Now, according to the plaintiffs, the sale deed, dated 02/01/1956 in favour of the deceased Jameela Beevi was not intended to be acted upon as the sale deed. It was sham and nominal document. According to the plaintiffs, it was executed in favour of Jameela Beevi in order to avoid or overcome the issue raised by his brother-in-law. Possession was not handed over to Jameela Beevi. There was no passing of consideration.



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16. When the first plaintiff bases his title over the property on the basis of the sham and nominal document, it is the duty of the plaintiffs to aver basic ingredients in the plaint and prove the same. Here, as mentioned above, the first plaintiff was not available or living when the trial was taken up. Only the plaint pleadings has to be taken into account.

17. Now we will go to the plaint pleadings in this regard.

18. Reading of the plaint does not even remotely indicate that the sale deed was executed in favour of the deceased Jameela Beevi as sham and nominal document to overcome the trouble created by his own brother. But on the contrary, it is simply stated that taking advantage of the sham and nominal document in favour of the mother of the 8th defendant, the other defendants are instigating the 8th defendant to put-forth a naval claim for a portion of the suit property.

19. Whether it satisfies the requirement of law is the point to be considered in the light of the judgment of this court reported in ***S. Krishna Gounder (Died) and another Vs. Janakiammal (Died) and 7 others (1997-2-L.W.***



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358). Wherein a share distinction was made by this court between the document of benami and document of sham and nominal nature. The relevant portion can be extracted for better appreciation of the issue. Para 10, 11 and 14 are relevant for consideration.

"10.The other questions of law could be considered together. Even though I have found Question No.1 in favour of appellants, it does not follow that he is entitled to the relief sought for. It is his case that the property continues to be under his ownership and the sale deeds executed by him in favour of 1st defendant, I.e., Exs.A.3 and A.4 are sham and nominal. When he admits that he has executed a deed, it is for him to show that those documents did not come into effect and the same were intended to be sham. Before going into the sham nature of the transaction, we have to see what is meant by 'sham'.

11.In one of the earliest decisions of our High Court reported in **A.I.R.1925 Madras 1005 (Rangappa Nayakar V. Rangasami Nayakar & Others)**, the difference between benami transaction and sham transaction was considered. Their Lordships held thus:-



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"The essence of a sham transaction is that though a registered deed is brought into existence no title of any kind, either legal or beneficial, is intended to be passed thereby to any person whatsoever, I.e., the deed of transfer is not intended to effect any transfer of property. The difference between sham transactions and benami transactions is one of intention. If the deed of transfer is made with the intention of placing the property in the name of a third person, the intention clearly amounts to a transfer of the legal title, and such a transaction can scarcely be called a sham transaction, but comes directly within the meaning of benami transactions properly so called.

If a sale deed is got up to fight certain third parties, the intention to be drawn from the transaction is irresistible that the legal title at any rate was intended to be passed by the transaction from the transferor to the transferee, otherwise the very object of the transfer fails."

*Similar was the case in the decision reported in **A.I.R.1932 Patna 129 (Biseswar V. Karbai Singh)**.*



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14. In the Full Bench decision of the Kerala High. Court referred to supra, it was held thus:

Before the Benami Act (1988), and even before the promulgation, of the Ordinance, courts in India have, by and large, recognised two distinct classes of transactions as Benami. The first type or class of Benami transaction was called the real benami transaction. A typical instance of it is when 'A' sells a property to 'B', but the sale-deed mentions 'C' as the purchaser. Here the real purchaser is 'B' and 'C' is only the benamidar. Such a transaction (in which 3 persons are involved) is described as the real benami transaction (or may be called as tripartite benami transaction). The second class or category of benami transaction is the sham transaction (or bipartite benami transaction since two persons are involved) in which one person purports to transfer his property to another without intending to pass the title to the transferee. This second type of transaction was 'loosely' called benami transaction. The fundamental difference between the two categories of transactions is this : In the former, there is an operative transfer resulting in vesting of title in the transferee, whereas in the latter, there is no



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operative transfer and the transferor continues to retain title of the property notwithstanding execution of the document. The latter transaction is known as 'sham transaction'.

20. After making the above said observations, this court went further to discuss about the basic ingredients of intention. Para 15 and 17 can be extracted for better understanding:-

"15. In view of the above legal principle, the question to be considered is, whether plaintiff is successful in leading evidence that the document did not come into effect, and the same was nominal.

17. So far as Item No. 2 is concerned, para 6 of the plaint contains the relevant pleading. The property originally belonged to the family. Plaintiff's father and his elder brother were in insolvent circumstances, and the property belonging to the family was sold or had gone out of the family before 1930. Plaintiff was then a younger junior member. It is his case that he apprehended that his elder brother Arunachalam and his sons are likely to put forward a claim and,



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therefore, he executed a sale deed under Ex. A-2 in favour of first defendant. He purchased the same under Ex. A-1, i.e., dated 26.6.1939. If it is his case that he was a junior member and the family had also lost all the properties, there could not have been any fear of any possible claim either by Arunachalam or his sons over the same. Nobody has a case that the plaintiff was managing the properties. Having purchased the property in his name, merely by transferring in the name of the first defendant, Arunachalam or his sons will not lose their right, if in fact they had a valid claim for them. If the sale deed had been taken in the name of the first defendant, probably there will be some basis for such an argument. From 1939 till 1943, plaintiff continued to be the owner. If during that time, Arunachalam and his sons did not have any claim, there was no necessity for plaintiff to transfer it in the name of first defendant so as to avoid a claim. In fact, even after Ex. A-2, neither Arunachalam nor his sons put forward a claim over the said items. The so-called intention on the part of the plaintiff that he wanted to shield the properties from his elder brother, according to me, is a story, which can never be believed."



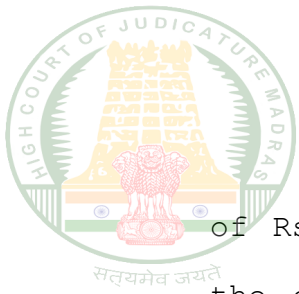
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21.Keeping in mind the above said basic principles,
now let us go to the evidence available on record in the
form of oral evidence, since the plaint pleadings lack
the ingredients as stated above.

22.The certified copy of the disputed document is
marked as Ex.B1. The original document is not available
before this court. But since, it is admitted by the
plaintiff himself that the sale deed was executed, then
non-production of the original document may not assume
any importance. But this point was raised by the
plaintiff to set up the plea of sham and nominal nature
of the document stating that if really, there was no
intention on the part of the first plaintiff to execute
the sale deed in favour of Jameela Beevi, the original
document ought to have been available in the custody of
the Jameela Beevi. But here, the 8th defendant was not
able to say the reason for the non-production of the
original document. It is, according to the plaintiffs,
demonstrated their case stating that it is only a sham
and nominal document. This issue will be taken up in the
later portion of the judgment.

23.Coming to the recitals, it is stated that it was
mutually agreed between the parties for a purchase price



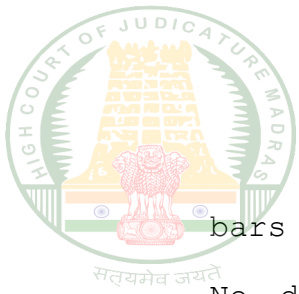
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of Rs.100/-. The consideration was already passed before the date of execution of the document. From the date of the execution of the document, the title transfers to Jameela Beevi and possession was also handed over. (The learned counsel appearing for the appellants would submit that in the document, there was no recital for handing over the possession, but reading of the document does indicate that there is specific recital regarding handing over of the possession to Jameela Beevi. So, this argument is not correct on record. This is also one of the arguments raised by the learned counsel appearing for the appellants to support their case that it is only a sham and nominal document. If really, there was intention on the part of the first plaintiff to transfer the title, possession would have also been granted).

24. So, the document does indicate the basis recital or basic ingredient for transfer of the ownership, so also the possession are available. Against this written document, now it has been stated by the plaintiffs that those recitals were not reflecting the actual facts on the date of the document.

25. Now it is the duty of the plaintiffs to establish these facts. Section 92 of the Indian Evidence (Old Act)



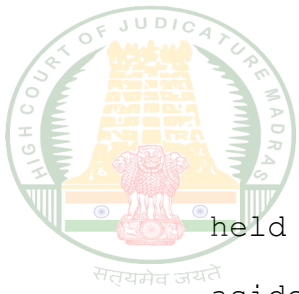
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bars the parties to the document to dispute the contents.

No doubt that the plaintiff is entitled to plead and prove the facts, which will invalidate the document. On that account only, it appears that the plaintiffs put up a case of sham and nominal nature of the document.

26.Now we will go to the evidence of PW1. He would say that the first plaintiff informed him that the sale deed in favour of Jeemeela Beevi is not real, since Nachatha Thevar was making trouble. Considering the closeness of the family friendship, the first plaintiff executed the sale deed nominally in favour of Jameela Beevi. Later, they gave 4 cents to Nachatha Thaver. Trouble created by Nachatha Thevar, continued till 1980.

27.PW1 was not present during the execution of the sale deed. But on the contrary on the side of the 8th defendant, one of the attestors to the document was examined as DW3. He would say that he was present, when the document was executed. He only received the sale consideration for Jeemeela Beevi and in-turn gave it to the first plaintiff. Now the trial court found fault with this evidence regarding the passing of the consideration. On that account, it disbelieved the evidence of DW3 regarding the passing of consideration and ultimately,



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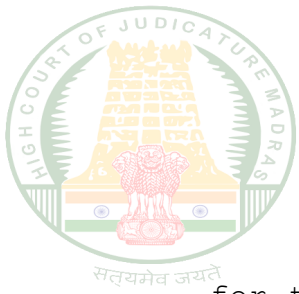
held that the document was not proved. But this was set aside by the appellate court.

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28.Now the question, which arises for consideration is when the plaintiffs was not able to produce the positive evidence to show that there was no real intention on the part of the first plaintiff to execute the sale deed in favour of Jeemeela Beevi, the evidence of DW3 can be discarded or disbelieved regarding the passing of consideration.

29.But I am of the considered view that this contradiction in the evidence of DW3 will not outweigh duty of the plaintiffs to prove that Ex.B1 was executed as a sham and nominal document. When there is no positive evidence on the side of the plaintiffs to prove the real intention on the part of the plaintiffs, naturally the document has to be taken into account as a valid one.

30.Now we will go to the non-availability of the original document. PW1 says that the original document was received by Abdul Rahim the brother-in-law of Jameela Beevi. Now we will go further as to find out whether the reason assigned by the plaintiffs is believable.



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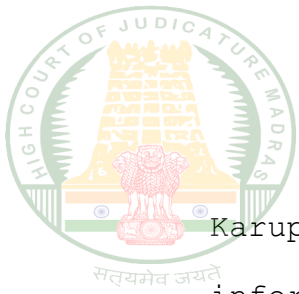


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31. In this context, the learned counsel appearing for the respondents would submit that if really Ex.B1 was executed to over-come the trouble created by the brother-in-law, after the threat was over, the deceased first plaintiff would have taken steps for recovery or for getting the return sale deed. But no such attempt was made by deceased first plaintiff till his death. This argument on the side of the respondents appears to be reasonable and acceptable one. More-over, there is no clear evidence on record to show that because of the close family friendship, Ex.B1 was executed in favour of Jeemeela Beevi. So, this also goes against the case of the plaintiffs.

32. **Now the benefit of settlement patta:-** It is the case of the plaintiffs that in view of the order passed by the Settlement Officer, Thanjavur, in revision No. 3/TKT/62, Ryotwari patta was granted in favour of the first plaintiff by virtue of power conferred upon the authority under section 18(4) of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948.

33. Per contra, the learned counsel appearing for the respondents would submit that no notice was issued to Jameela Beevi regarding the settlement proceedings. Even



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Karuppanna Thevar namely the first plaintiff did not inform the Settlement Officer about the sale deed in favour of Jameela Beevi. So, she did not participate in the proceedings. If Jameela Beevi did not participate in the proceedings, as per section 64 of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 will enure to the benefit of Jameela Beevi. For that purpose, let me extract section 64 of the of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948, which reads as under:-

"64.Rights of owner or occupier not to be affected by temporary discontinuance of possession or occupation.- Where a person-

(a)is entitled to the ownership or to the possession or occupation of any land or building immediately before the notified date: but has transferred his right to the possession or occupation thereof or has been temporarily dispossessed or deprived of his right to the occupation thereof; and

(b)has not on that date lost his right to recover the possession or occupation of such land or building;



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he shall, for the purposes of this Act, and subject to the provisions thereof be deemed to be the owner, or to be in possession or occupation, of such land or building:

Provided that any lawful transferee of the right to the possession or occupation of such land or building shall, save as otherwise expressly provided in this Act, continue to have the same rights against his transferor, as he had immediately before the notified date:

Provided further that any lawful transferee of the title to such land or building shall be entitled to all the rights under this Act of his transferor."

34. Reading of the above section makes the position very clear that the transferee is also entitled to very same benefit, which accrued to the transferor.

35. In this context, the learned counsel appearing for the appellants would submit that unless Jameela Beevi was able to satisfy the requirement of law as provided under section 2(b) of the Act, Jameela Beevi was not entitled to the benefit. According to him, the possession is the preliminary point upon the Ryotwari Patta can be granted or could have been granted. Jameela Beevi after

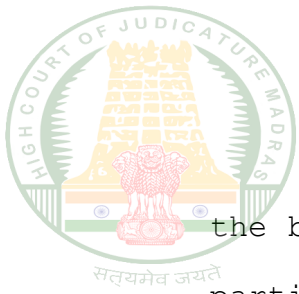


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Ex.B1 did not take possession of the property did not pay kist continuously. Per contra, in pursuance of the order passed by the Settlement Officer under Ex.B1 from that date onwards mutation of revenue records were made in the name of the first plaintiff. Continuously, he was paying kist keeping the property under possession. So, according to him, the plea raised by Jameela Beevi namely the 8th defendant herein under section 64 of the Act will not lie.

36. But I am unable to agree with the line of argument. It is the case of the plaintiffs that when the primary ingredients of prove is sham and nominal character of Ex.B1 was not established by the plaintiffs, the weakness of the defendants case cannot be taken advantage. It appears that the first plaintiff is taking advantage of the Ryotwari patta in his favour, even after the sale deed executed by him in favour of Jameela Beevi wants to set up the plea of shame and nominal character of the document. This appears to be the dubious method adopted by the first plaintiff to claim the right over the property even after selling the same. Probably, we can also reasonably infer because of the issue patta, such a dubious claim is made by the first plaintiff. Whatever it may be, the revenue records will not enure to

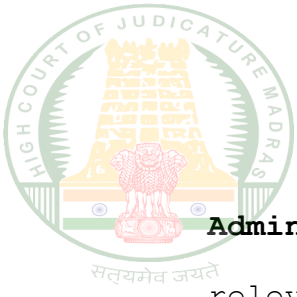


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the benefit of any one. Much argument was advanced by the parties based upon the change of patta, etc., facts, which I am not going to discuss in detail because the revenue records will not create or distinguish right in favour any one. Whether the revenue authorities are competent to issue patta overriding the issue of patta issued under the provisions of Tamil Nadu Estates (Abolition and Conversation into Ryotwari) Act may not assume any importance at all. As mentioned above, the first plaintiff appears not to be a genuine person having sold the property in 1956, he set up the claim by filing the suit in 1985 after a lapse of almost 30 years. This attempt on the part of the first plaintiff appears to be totally unreasonable and un- acceptable and illegal.

37.The judgment cited by the appellants in the famous case of **Ramalinga Samigal Madam (1985)4 SCC 10)** has no relevancy at all. It deals about the preexisting right of a ryot or the person in the property. Here, there is no issue with regard to the preexisting right or title of the first plaintiff over the property. Whether the sale is a sham and nominal is the only point to be decided or issue herein. On the same point, the judgment cited by the appellant in **Palaniappa Pandaram and 10 others Vs. The Special Commissioner & Commissioner Land**



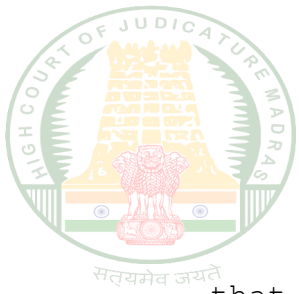
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Administration & 3 others (1996(1) CTC 217) has no relevancy.

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38.The competency of the power of attorney to give the evidence on behalf of the principal is highlighted by the Hon'ble Supreme court in the judgment reported in ***Janki Vashdeo Bhotwani and others Vs. Indusind Bank Ltd and others [(2005(2) SCC 217]*** and this judgment is cited by the appellants on the point that DW1 was not aware of the facts and the realities, which existed on the date of Ex.B1. So, he is not competent to speak anything touching the recitals under Ex.B1.

39.But this will not also enure the benefit of the plaintiff. He being the plaintiff, the burden is entirely upon him to prove that it is not valid one. But he failed. So, the non-examination of the power of attorney for the 8th defendant or non examination of the 8th defendant himself will not improve the case of the appellants. On the point of benami transaction, judgments were cited on both sides, it is not relevant to test the validity of Ex.B1. I am not touching or discuss the cases cited by the parties on that point.



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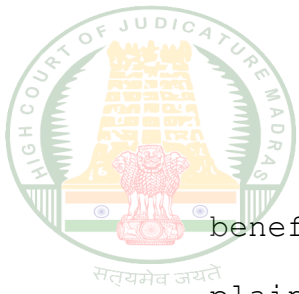
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40. Reading of the judgment of the trial court shows that it misdirected itself picked holes and defects in the case of the defendants. It found that the case of the plaintiff is proved. It is totally improper approach which is correctly set right by the appellate court.

41. The framing of issues by the trial court also does indicate the non-application of mind to the facts in issue.

42. As rightly pointed by the respondents, the third issue is wrongly framed. At-least, at that time of judgment, the trial court ought to have recasted the issue in a proper manner. But it failed. So, this itself shows that the non application of the mind to the facts in issue by the trial court.

43. In this context, the learned counsel appearing for the appellants would comment upon the judgment of the appellate court stating that the appellate court has not satisfactorily discharged its duty in arriving at the finding of facts, on which the trial court failed. In short, according to him, the appellate court did not address the point upon which the trial court based its judgment. But these technics will not enure to the



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benefit of the appellants. As mentioned above, the first plaintiff is not a genuine person. Having sold the property in 1956, he set up a claim in 1985. This is a clear abuse of process of court. But the appellate court rightly interfered into the judgment of the trial court and dismissed the suit.

44.I find absolutely no reason to interfere into the judgment of dismissal passed by the appellate court. So, the substantial question of law is answered accordingly.

45.In the result, this second appeal fails and the same is **dismissed** with costs throughout, confirming the judgment and decree of the appellate court.

30/04/2025

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Subordinate Judge,
Pudukkottai.
- 2.The District Munsif,
Arantangi.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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