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A.S.No.407 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2026

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

A.S.No.407 of 2023

and

C.M.P.No.2800 of 2026

Dr.R.Rathna Devi

... Appellant

Vs.

R.Sathish

... Respondent

Prayer : Appeal filed under Section 96 r/w. Order 41 Rule 1 of the Code of Civil Procedure against the judgment and decree dated 07.01.2023 passed in O.S.No.328 of 2019 on the file of the III Additional Principal Family Court, Chennai.

For Appellant : Mr.K.V.Sajeev Kumar
for Mr.Vikram Ramakrishnan

For Respondent : Mr.V.Sekar



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J U D G M E N T

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(Judgment was delivered by **N. SATHISH KUMAR, J.**)

Aggrieved over the judgment and decree passed by the learned III Additional Principal Judge, Family Court, Chennai, in O.S.No.328 of 2019, dated 07.01.2023, granting a preliminary decree declaring the plaintiff's half share in the suit property, the present appeal has been filed by the defendant in the suit.

2.For the sake of convenience, the parties will be referred to as per their rank before the trial Court. The plaintiff is the husband and the defendant is his wife.

3.The plaintiff's case, in brief, is as follows :

The marriage between the plaintiff and defendant was solemnised on 28.05.1990. Out of the wedlock, a son namely S.Prithviraj was born to them, who was aged about 23 years at the time of disposal of the suit and was pursuing his medical course. The couple also adopted a daughter namely S.Tejaswani, who was aged about 18 years at the time of disposal of



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the suit. Initially, the marital life was cordial and both husband and wife jointly purchased the suit property by registered sale deed dated 08.06.2000 bearing Doc.No.1135 of 2000 on the file of the Sub-Registrar's Office, Periamet, for a total consideration of Rs.16,00,000/-. It is the case of the plaintiff that, both the husband and wife contributed equally for the purchase of the suit property. After the purchase, both were in possession of the property. When the matter stood thus, recently, the matrimonial relationship between the plaintiff and the defendant became strained, as the defendant assumed hostile attitude towards the plaintiff and started threatening the plaintiff to hand over his half share in the suit property. Besides, she has lodged false complaint under Protection of Women from Domestic Violence Act, 2005, on 09.09.2019. It is the contention of the plaintiff that, taking advantage of the strained relationship, the defendant is trying to grab the property. Hence, the plaintiff has filed the present suit for partition claiming his half share in the suit property.

4.The defendant, in her written statement, admitting the marriage, contended that she is a Doctor by profession and practising in Apollo Hospital, Chennai. It is her contention that, though, at the time of marriage,



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it was informed that the plaintiff was a B.E. Graduate in Mechanical Engineering, later, she found that to be false. The plaintiff was working in a private concern for a meagre salary at the time of marriage. According to the defendant, only her father has spent huge money towards marriage expenses and also gave sridhana. Besides, the plaintiff was addicted to liquor. It is her contention that she was subjected to cruelty and torture by the plaintiff. According to the defendant, her father Dr.N.Ramadas died on 08.10.2000. After his death, her mother Anuradha has paid the money for purchasing the suit property. As the plaintiff pressurized the defendant, at the request made to the defendant's mother, the suit property was purchased in the name of the plaintiff and the defendant. That apart, the defendant has also availed loan from HSBC Bank for purchasing the property. The loan was fully repaid by the defendant out of her professional income. The total consideration of the property was Rs.16,00,000/- and an amount of Rs.6,50,000/- was paid by the defendant from her Andhra Bank Savings Account and the balance of Rs.9,50,000/- was paid through housing loan availed from HSBC Bank, Chennai and the entire amount was repaid by the defendant. Hence, the defendant disputed the claim of the plaintiff. Though other allegations have also been raised in the written statement with regard



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to the matrimonial discord, the same are not germane to the present *lis*.

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5. Based on the pleadings of the parties, the trial Court has framed the following issues :

1. *Whether the plaintiff has contributed the fund equally to purchase the suit property on 08.06.2000 ?*
2. *Whether the plaintiff is entitled for partition and separate possession of 50% of share in the suit property ?*
3. *To what relief ?*

6. On the side of the plaintiff, P.W.1 was examined and Exs.A1 to A21 were marked. On the side of the defendant, D.W.1 and D.W.2 were examined and Exs.B1 to B3 were marked.

7. The trial Court, after appreciating the evidence and materials on record, by its judgment and decree dated 07.01.2023, granted a preliminary decree declaring that the plaintiff is entitled to get half share in the suit property by metes and bounds.



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8. Aggrieved over the judgment and the decree of the trial Court, the unsuccessful defendant has filed the above Appeal.

9. During pendency of the Appeal, a petition in C.M.P.No.2800 of 2026 has been filed by the appellant/defendant under Order 41 Rule 27 CPC for filing (i) the copy of the decree and judgment of the III Additional Family Court, Chennai, in H.M.O.P.No.1455 of 2020, granting divorce in favour of the appellant and (ii) the protection order passed by the Additional Mahila Court at Egmore, Chennai, in D.V.C.No.147 of 2019 directing the respondent/plaintiff to pay a sum of Rs.26,21,500/- to the appellant/defendant, as additional evidence in this Appeal.

10. Though the said petition has been filed to receive those documents as additional evidence, we are of the view that those documents, particularly, the decree and judgment of the Family Court granting divorce on the ground of cruelty is no way relevant to decide this Appeal. Similarly, the order passed under Domestic Violence Act, can be enforced separately and that also will not have any impact in deciding this Appeal. Therefore, we are of



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the view that the documents sought to be filed as additional evidence by the appellant are not required, since the suit is for partition and the same can be decided based on the pleadings of both sides. **Therefore, the petition in C.M.P.No.2800 of 2026 is dismissed.**

11.Learned counsel for the appellant/defendant would mainly submit that, though the suit property has been purchased in the name of the husband and wife, according to the appellant, the entire contribution is made by her and the plaintiff has not made any contribution. Therefore, the plaintiff is not entitled to any share in the suit property. The learned counsel would place much emphasis on Exs.A15 and A16 (Statements of accounts of the plaintiff) which clearly show that, every month, the defendant has sent amounts to the plaintiff to clear the loan. This itself clearly shows that the loan was also availed by the defendant and she has cleared it in entirety. Therefore, it is his contention that, merely because the property has been purchased in the name of both husband and wife, it cannot be held to be a joint property.



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12. Whereas, the learned counsel for the respondent/plaintiff would submit that, both the husband and wife are professionals and the evidence, particularly, Exs.A8 and A9 – Income Tax Returns filed by the plaintiff and Exs.B2 and B3 – Income Tax Returns filed by the defendant clearly show that, each of them has shown their entitlement to the property. In fact, each of them has declared their right only in respect of half share in the property. Having declared only half share in the Income Tax Returns, for the purpose of the civil case, a different stand is taken by the appellant. It is his further contention that the appellant has not produced any document to show that she has paid the entire amount. Therefore, the learned counsel would submit that the trial Court has rightly granted a decree in favour of the plaintiff, which requires no interference.

13. In the light of the above submissions, the points that arise for consideration in this Appeal are as follows :

- 1. Whether the plea of benami is permissible to contend that the suit property is purchased absolutely by the appellant/defendant ?*
- 2. Whether the contention of the defendant that she has*



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contributed the entire amount towards purchase of the suit property is true and proved?

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Point No.(2) :

14. On careful perusal of the evidence adduced by both sides, particularly Ex.A1 (sale deed), it is seen that the suit property was purchased jointly by the plaintiff and the defendant on 08.06.2000. It is contended by the appellant/defendant that she is a Doctor by profession and after the death of her father, her mother has paid the entire sale consideration, besides, she has also availed a loan of Rs.6,50,000/- and has cleared the loan in full, and therefore, she is absolutely the owner of the property. However, the fact remains that, both the plaintiff and the defendant have filed Income Tax Returns and the same have been marked as Exs.A8 and A9 on the side of the plaintiff and Exs.B2 and B3 on the side of the defendant. On a careful perusal of the said documents, it is clear that, both of them have declared their entitlement in the suit property. In fact, exactly, both have declared their half share in the suit property while filing their Income Tax Returns. Though the defendant contends that she has contributed the entire amount for purchase of the property, absolutely, there is no document, whatsoever, filed to prove the same. Whereas, in Exs.B2 and B3 – Income Tax Returns

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filed by the defendant, the declaration of her half share in the residential house and the housing loan availed from the HSBC Bank also finds place. Therefore, the contention that the defendant has contributed the entire amount has no legs to stand.

15.The statements Exs.A15 and A16, filed by the plaintiff, clearly show that, every month, the plaintiff has regularly paid the monthly installments at the rate of Rs.6,700/-. Though it is the contention of the appellant that the said amounts have been regularly transferred by the appellant, there is no material, whatsoever, placed in that regard. Therefore, the very contention of the appellant/defendant that she has contributed the entire amount, has not been established. ***Accordingly, Point No.(2) is answered against the appellant/defendant.***

Point No.(1) :

16.It is relevant to note that, virtually, the defence set up by the defendant is a plea of benami. Such plea is also barred under Section 4 of the Benami Transactions (Prohibition) Act, 1988. Though Section 3 of the Benami Transactions (Prohibition) Act, 1988, permits purchase of the



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property by any person in the name of his wife or unmarried daughter, purchase in the name of any other person is totally prohibited. Sub-Clause (2) of Section 4 of the said Act bars any defence based on any right in respect of any property held in the name of the benami. Such defence itself, claiming right as a benami property, is barred under Section 4 *ibid.*,. To show that the bar is not applicable to the plaintiff's case, atleast the defendant should have pleaded that the plaintiff stood as a trustee and he was standing in fiduciary capacity and holding the property only for the benefit of his wife. In the entire written statement, no such plea, whatsoever, made. Therefore, when the law prohibits such transaction, the plea of benami also does not hold good. ***Accordingly, Point No.(1) is also answered against the appellant/defendant.***

17.Hence, we do not find any merit in this Appeal. Accordingly, this Appeal is dismissed. No costs.

(N.S.K., J.) (R.S.V., J.)
04.02.2026

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Internet : Yes

Index : Yes / No

Speaking Order / Nonspeaking order

Neutral Citation : Yes

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To

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1.The III Additional Principal Judge,
Family Court,
Chennai.

2.The Section Officer,
VR Section,
High Court, Madras.



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and
R. SAKTHIVEL, J.

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