



A.S.No.399 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.02.2026

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CORAM :

The Hon'ble Mr.Justice N.SATHISH KUMAR
and
The Hon'ble Mr.Justice R.SAKTHIVEL

A.S.No.399 of 2022
and
C.M.P.No.14288 of 2022

G.Narayanan

.. Appellant

Vs.

1.K.M.Ganapathy
2.G.Mahadevan

.. Respondents

This appeal suit has been filed under Section 96 read with Order XLI Rule 1 of the Civil Procedure Code, 1908 seeking to set aside the judgment and decree dated 28.03.2022 made in O.S.No.2729 of 2019 (C.S.No.678 of 2016) on the file of I Additional City Civil Judge, Chennai and pass a decree as prayed for in O.S.No.2729 of 2019 (C.S.No.678 of 2016) and thus render justice.

For Appellant : Dr.C.Ravichandran

For Respondents : Mr.V.Giri Shankar

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JUDGMENT

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(Judgment of the court was made by N.SATHISH KUMAR, J.)

Aggrieved over the judgment and decree of the trial court dismissing the suit for declaration and for partition and granting only permanent injunction restraining the defendants except by due process of law, the unsuccessful plaintiff has filed the present first appeal. The parties herein are referred to by their respective ranks before the trial court.

2.The brief facts of the plaintiff's case is as follows:

(a)The plaintiff is the son of the first defendant and second defendant is the brother of the plaintiff. An extent of 3600 square feet in Plot No.5 in Survey Nos.12/4, 12/5 and 12/6 in No.106, Koyambedu village was originally purchased by one Mr.K.G.Mahadevan, the father of the first defendant and grand father of the plaintiff and the second defendant. After the purchase, he threw the property into hotchpot of the joint family. The joint family consisted of the said Mr.K.G.Mahadevan, his two sons, namely the first defendant Mr.K.M.Ganapathy and his brother Mr.K.M.Subramanian. The said Mr.K.G.Mahadevan has put up the construction after the purchase out of the joint family nucleus and



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also the amount contributed by his wife Mrs.Annapoorni. The said

Mr.K.G.Mahadevan and his two sons were living together as joint family along with their respective families. After the life time of Mr.K.G.Mahadevan, the first defendant and his brother Mr.K.M.Subramanian lived with their mother and their families as joint family and treated the larger extent of the property as joint family property by putting the same into the hotchpot of the joint family. After the death of Mr.K.G.Mahadevan, the first defendant and his brother Mr.K.M.Subramanian entered into a partition deed dated 04.03.1987, in which the suit property measuring 1800 square feet was allotted to the first defendant. After the said partition, the suit property was treated as joint family property of the plaintiff and defendants by putting the same into the hotchpot of the joint family property. The plaintiff and the second defendant were living in the suit property as joint family and the ration card was also issued including all their names.

(b)It is further averred that to raise funds to put up a new superstructure over the suit property land after demolishing the existing old superstructure, the defendants and the plaintiff decided to sell the property in plot no.17, Sri Kamatchiamman nagar, No.42, Mangadu village measuring 2100 square feet belonged to the mother of the plaintiff



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and second defendant. The first defendant sold the entire property and received a sum of Rs.38,00,000/-. After the sale of the property, the first defendant had appointed one M/s.Bakkiyam Builders as a contractor for construction of the new superstructure. After putting up the construction, the plaintiff and his family are residing in the ground floor of the suit property as co-owner and the second defendant was residing with his family in the first floor and the first defendant was also residing in the first floor of the suit property. Hence, according to the plaintiff, the suit property is only a joint family property. When the plaintiff went to the USA on official trip during January 2015 to February 2015 and during March to May 2015 and when the plaintiff's wife decided to go for a job during January 2015, the plaintiff requested his parents-in-law residing in Coimbatore to come and stay with the plaintiff's family for the purpose of taking care of the two tender aged children and only for that purpose, the in-laws of the plaintiff had shifted their residence from Coimbatore to Chennai. The first defendant used to visit the plaintiff's house and had maintained a cordial relationship with the plaintiff and his family members till the in-laws of the plaintiff came to Chennai. Only after the parents-in-law of the plaintiff came to his house, a dispute arose. Later, a legal notice was received on 06.06.2016 from the first defendant wherein



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the first defendant made all sorts of allegations. The plaintiff came to know that a settlement deed dated 10.02.2016 was executed by the first defendant in favour of the second defendant in respect of the suit property without the consent and knowledge of the plaintiff. Hence, it is averred by the plaintiff in the plaint that the settlement deed is not valid in the eye of law. The second defendant by exercise of his dominant position over the first defendant who is under the control and custody of the second defendant and his family and taking advantage of his old age, obtained the settlement deed. The first defendant was brainwashed by the wife of second defendant. Therefore, it is stated that the settlement deed is not valid since the property is a joint family property. Hence the plaintiff has sought for partition of the suit property into three equal parts and to allot 1/3rd share to the plaintiff and also sought for declaration that the settlement deed dated 10.02.2016 is invalid and also sought for permanent injunction.

3.The first defendant has averred in his written statement that they all belonged to a Hindu Brahmin family and they had a decent living. The first defendant has purchased a property in the name of his father. The first defendant joined as Field Assistant (Technical) in the Highway Research Station on 27.12.1965. After the death of the father of the first



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defendant, the marriage of his brother was performed by the first defendant. Only at the wish of his mother, the property was partitioned between himself and his brother, though the property has been purchased by first defendant in the name of his father. Besides, the first defendant also purchased a house site in the name of his wife. As the building in which they were residing developed cracks and required reconstruction, the first defendant planned to demolish the same and to reconstruct the building. Therefore, he decided to sell the property purchased in the name of his wife at Mangadu. At the time of purchasing the Mangadu property, the second defendant was aged 12 years and the plaintiff was only 8 years old and they were school going children. The allegation that there was joint family contribution made by others are denied by the first defendant. The Mangadu property was purchased in his wife's name from the earnings of the first defendant and therefore, it is a self acquired property of the first defendant. The plaintiff and the second defendant gave money for reconstruction of the building was denied by the first defendant. It is averred by the first defendant that there was an attempt to murder with criminal intimidation by the plaintiff's wife and his parents-in-law and therefore, the first defendant gave a police complaint. Therefore, the first defendant denies that the suit property is a joint family property or that it



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was treated so. The second defendant in his separate written statement has stated that there has been no joint family existence at any point of time and the property was purchased even before the plaintiff was born and in respect of the property purchased in Mangadu, the first defendant has purchased the same in the name of his wife. The second defendant has reiterated the most of the contentions of the first defendant in the written statement.

4. Based on the pleadings, the following issues were framed:

(i) Whether the suit property bearing New No.2, Old No.8, 17th Street, Jai Nagar, Arumbakkam, Chennai 600 106 is a joint family property or acquired property?

(ii) Whether the first defendant had necessary right, title and interest to execute the settlement deed in favour of the second defendant?

(iii) Whether the joint family nucleus was used to purchase the joint family property, particularly from the mother of the plaintiff?

(iv) If the settlement deed is declared to be null and void, whether the property is available for partition?



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(v) Whether the settlement deed dated 10.02.2016 was executed out of free will and consent of first defendant in favour of the second defendant?

(vi) If the property is partitioned, what is the share of the plaintiff?

(vii) Whether the plaintiff is entitled to undivided share of one-third in the suit property?

(viii) Whether the plaintiff is entitled to order of injunction with respect to suit property?

(ix) To what other reliefs, the parties are entitled to?

5. On the side of the plaintiff, the plaintiff was examined as P.W.1 and Exs.P.1 to P.14 were marked. On the side of the defendants, D.W.1 to D.W.3 were examined and Exs.D.1 to D.7 were marked.

6. Based on the evidence and materials, the trial court has dismissed the suit in respect of declaration and for partition. However, it had granted the limited relief of permanent injunction not to evict the plaintiff except by due process of law. Aggrieved over the judgment and decree, the plaintiff has filed the present appeal before this Court.

7. It is the contention of the learned counsel for the appellant



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Dr.C.Ravichandran that the suit property is a joint family property which has been purchased by his grand father and was treated as a joint family along with his two sons, namely first defendant and his brother Mr.Subramanian and out of the joint family nucleus, the construction was put up by his grand father. Therefore, it is contended that the suit property is the joint family property. It is the further contention that even after the death of his grand father, though there was a partition deed between the first defendant and his brother and the suit property was allotted to the first defendant, namely, his father, he has thrown the suit property to the common hotchpot of the joint family property and treated the property as joint family property. Hence, it is contended that the entire property is the joint family property. There was additional construction made in the suit property by utilizing the sale proceeds of the plaintiff's mother's property. According to the appellant, the property belonged to the mother of the plaintiff was also sold by the first defendant and the entire sale consideration was utilized for the purpose of construction of the building. Therefore, according to him, the suit property is the joint family property. It is the further contention that the ration card also stood in the name of all family members.

8.In support of his contentions, the learned counsel placed reliance



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on various case laws and the details of relevant case laws are as follows:

WEB COPY (i) ***Jaspal Kaur Cheema and Another vs Industrial Trade***

Links and others reported in ***(2017) 8 SCC 592***. This case has been relied on to state that in terms of Order VIII and Rule 3 of the Civil Code procedure, 1908, a defendant is required to deny or dispute the statements made in the plaint categorically, as evasive denial would amount to an admission of the allegation made in the plaint in terms of Order VIII Rule 5 of the Code.

(ii) ***Adivappa and others vs. Bhimappa and anr.*** reported in ***(2017) 9 SCC 586*** for the legal presumption that every Hindu family is joint in food, worship and estate and in the absence of any proof of division, such legal presumption continues to operate in the family. The burden lies upon the member who after admitting the existence of jointness in the family properties asserts his claim that some properties out of entire lot of ancestral properties are his self-acquired properties.

(iii) ***Rajeshari Ammal vs. Arunachalam*** reported in ***(2009) 8 MLJ 337*** has been relied on to say that under Section 92 of the Indian Evidence Act, a party to a document who admits



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the same cannot give evidence contrary to the same. Further,
an admission made by the party is the best form of evidence.

(iv) ***Kirpal Kaur vs. Jitender Pal Singh and ors.*** reported in ***(2015) 9 SCC 356*** has been cited. In that case, the first defendant, his sons and daughters have an ancestral property, that was not divided among them and the first defendant used to get income from the said agricultural land and it was utilized to construct schedule property. Therefore, this amounts to putting the said property in the hotchpot of joint family property. Hence, it is contended that the suit property constituted joint family property.

(v) ***Ramakrishnan and others Vs. Gurusamy (died)*** reported in ***2017-4-L.W.605*** for the purpose that throwing self acquired property in to the common hotchpotch of the family property is possible between two brothers of the Hindu joint family and the documents relied on in the said case proved the factum that two brothers have treated the suit property as joint family property.

(vi) In ***Shanthi vs K. Senthil Kumar*** reported in ***2023 (4) CTC 9***, the Hon'ble Division Bench of this Court held that



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merely because the father paid consideration for purchase of property in the name of mother, we cannot come to a conclusion that father is the real owner because there is a statutory presumption that property was purchased in the name of mother for her benefit.

(vii)*Sk. Golam Lalchand Vs. Nandu Lal Shaw @ Nand Lal Keshri @ Nandu Lal Bayes and others* reported in **(2024) 5 MLJ 385 (SC)** has been relied on to say that the suit property which is undivided is left with the co-owners to proceed in accordance with law to get their shares determined and demarcated before making a transfer.

(viii)*Vineeta Sharma Vs. Rakesh Sharma and others* reported in **(2020) 9 SCC 1** case law has been cited for the purpose that a joint Hindu family is a larger body than a Hindu coparcenary. A joint Hindu family consists of all persons lineally descended from a common ancestor and include their wives and unmarried daughters. A joint Hindu family is one in worship and holds joint assets. After separation of assets, the family ceases to be joint. Mere severance in food and worship is not treated as a separation,



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as observed in Raghunadha Anunga Bhima Deo Kesari Vs.

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9.The learned counsel for the respondents Mr.V.Giri Shankar would submit that admittedly, the property was purchased by the plaintiff's grand father in the year 1966. The plaintiff's grand father was also a government servant and was working in the Southern Railway as Store keeper. Ex.P.1 clearly shows that the plaintiff's grand father had purchased the property. Absolutely there is no evidence to show that Mr.K.G.Mahadevan had any other joint family income or nucleus to purchase the property. Therefore, once the property has been purchased and was the self acquired property of the grand father, merely because the sons also lived with his grand father, the concept of joint family property does not arise at all and the question of blending the individual property to other joint family property does not arise at all. To take the plea of blending, it must be shown that the family had other joint family property, so that one co-owner can throw his individual property into the common hotchpot. Therefore, the contention of the appellant that his grand father threw the suit property into the common hotchpot cannot be accepted. Further, in the absence of the joint family nucleus or joint



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family business, the family of the first defendant cannot be termed as joint family. The plaintiff has not produced any evidence to show that his mother was having independent income to purchase the property in Mangadu and further, he did not raise any objection at the time of utilizing the sale proceeds of the Mangadu property for the construction of the suit property. It is further contended by the learned counsel for the respondents that since the suit property is the self acquired property of the first defendant, the first defendant has every right to execute the settlement deed in favour of the second defendant.

10.This Court heard the submissions made by both the learned counsel appearing for the parties, perused the materials available on record and the case laws submitted by the learned counsel for the appellant.

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

(i)Whether the suit property is a joint family property purchased out of the joint family nucleus?

(ii)Whether the suit property though purchased by the grand father of the plaintiff, was all along treated as joint family property?



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(iii)Whether the settlement deed executed by the first

defendant in favour of the second defendant is true and valid?

(iv)To what other relief, the plaintiff is entitled to?

Points I to IV :

12.The grand father of the plaintiff, one Mr.K.G.Mahadevan, had purchased the property from one Pattammal under Ex.P.1, dated 05.05.1966. That property has been individually purchased by the said Mr.K.G.Mahadevan. He was working in the Southern Railway as Store Keeper. Admittedly, the evidence of P.W.1 itself clearly indicates that he was born only on 01.02.1979. The suit property was purchased in the year 1966. Therefore, it is the contention of the defendants that the property has been purchased by the grand father out of joint family nucleus is highly improbable.

13.Much emphasis was also made during the argument that the first defendant was maintaining the bank accounts of his sons. It is relevant to note that the first defendant has admitted in his evidence that till they lived together, he had maintained the accounts of both sons being the elder member of the family. Merely because he was maintaining the accounts of both sons, it cannot be said that the property was originally



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purchased by his grand father only out of joint family nucleus.

Admittedly, the property was purchased in the year 1966 even before the plaintiff was born.

14.Now, in the case on hand, what has to be analysed is, after purchase of the property by the grand father, whether the property has been treated as joint family property by all of them or not and was there any intention of parties to constitute a joint family was to be assessed from the pleadings and from the conduct of the parties. Admittedly, the parties are residing together from the very inception. It is contended by the respondents / defendants that though the property was purchased in the name of Mr.K.G.Mahadevan, the sale price has been paid only by the first defendant. This court is of the view that the plea of Benami cannot be taken by the first defendant. The contention that the property has been purchased out of the income of the first defendant in the name of his father cannot be countenanced. The property was originally purchased by Mr.K.G.Mahadevan through Ex.P.1 sale deed from one Pattammal. That apart, Ex.P.3, partition deed itself clearly reiterated that the property has been purchased by the father of the first defendant. Therefore, the plea of Benami cannot be maintainable to contend that the property has been purchased only by the first defendant.



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15. Now it has to be seen as to how the property has been treated.

Whether there was any joint family? No doubt, after the death of the father of the first defendant, the property has been divided between the first defendant and his brother. In the absence of any joint family, the normal course would be that the property would devolve as per section 8 of the Hindu Succession Act, 1956. Admittedly, the first defendant and his brother had partitioned the property and an extent of 1800 square feet was allotted to the first defendant. This fact is not in dispute. It is the contention of the first defendant that he has put up the house out of his own income and constructed around 572 square feet house in the said property.

16. It is the specific case of the plaintiff that there was a joint family and though the property was in the name of his father, there was joint family between the father and two sons. When Ex.P.3 partition deed is looked into carefully, it is clearly seen that the property was originally purchased by Mr.K.G.Mahadevan and he had put up the construction during the life time. Therefore, the partition deed clearly shows that originally, the construction has been put up by Mr.K.G.Mahadevan. Therefore, now the contention of the first defendant that he had put up the construction in 572 square feet in the suit property cannot be



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countenanced when he himself was a party to the document and it has been clearly stated in the document to the effect that his father has put up the construction, therefore, the contention of the first defendant that he has put up the construction out of his own income cannot be countenanced.

17.The further evidence of parties clearly shows that the parties are living together as one family till the dispute arise. Though it can be stated that the property was originally purchased by Mr.K.G.Mahadevan and it devolved as per section 8 of the Hindu Succession Act, 1956 and will be a separate property in the name of his son, now it has to be seen whether the property has been treated as joint family property by the first defendant along with his two sons.

18.It is relevant to note that though the suit property passed in the hands of the first defendant is only in the character of the individual property and devolved under section 8 of the Hindu Succession Act, now it has to be seen whether the first defendant has treated this property as individual property or treated as joint family property along with his sons. In the case of plea of blending, it must be established that there exists the joint family or coparcenary property to blend the individual property. However, when the joint family had no property, the same will not



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prevent any elder member of the family from declaring the self acquired property as joint family property or treating the property as joint family property. Therefore, a person treating his separate property as joint family property and allowing the other members to exercise their right is also not alien to the Hindu law. In view of the above said principle, now it has to be seen whether the first defendant has treated the property as joint family property.

19.The evidence of the first defendant and his pleadings clearly indicates that they all together decided to construct the house by demolishing the existing building for which the entire sale consideration of the wife's property has been utilized. Though the power of attorney under Ex.P.4 was given by all of them being co-owners, the fact remains that the sale consideration of Rs.38,00,000/- towards the property situated in Mangadu in the name of the wife of the first defendant, namely the mother of the plaintiff has been utilized for construction of the house. It is clearly pleaded by the defendants in the written statement and it is further stated that out of Rs.38,00,000/-, Rs.35,75,000/- was paid to Bakkiyam Builders on various dates between 28.07.2012 and 08.11.2013. The above makes it clear that the share of the first defendant was also completely used for the construction of the suit property. It is contended by the first



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defendant that though the property stood in the name of his wife, he only had purchased the same. It is relevant to note that unless the contrary is proved, the property purchased in the name of the wife by any male Hindu member, it shall be presumed that such purchase was made only for the benefit of the wife, as per section 3 of the Benami Transactions (Prohibition) Act, 1988. In such view of the matter, in the absence of any contra evidence, it has to be necessarily held that the property has been purchased only for the benefit of the wife, namely the wife of the first defendant under Ex.P.2 and after her death, the plaintiff and defendants each are entitled to 1/3rd share in the property.

20. Admittedly, the suit property has been purchased only by the grand father. Another contention was raised by the learned counsel appearing for the appellant that the mother's property purchased under Ex.P.2 was sold, the sale consideration was utilized for construction of the suit property. According to the plaintiff, his father has utilized the entire sale consideration for construction of the house. It is relevant to note that after the death of the plaintiff's mother, a General Power of Attorney under Ex.P.4 has been given by the defendants and the plaintiff to one R.Mangaleswari and based on the same, the property has been sold. The very recital in the general power of attorney clearly shows that



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the sale of the property was made by appointing the power agent. The entire sale consideration appears to have been used for the construction of the building in the suit property.

21.No doubt, the suit property has come to the first defendant from his father. The conduct of the parties assumes significance to assess as to whether the first defendant has treated the property as his individual property or as joint family property along with his sons. The evidence of the parties clearly indicate that the parties are residing together from the birth. The evidence of D.W.1 clearly shows that there was only one kitchen in the family and they are all living in the same house. Further his evidence also clearly indicates that he was maintaining the bank accounts of his two sons. It is his further clear case that since the old house developed cracks, he decided to construct a new house by demolishing the existing old house and therefore, he sold the property purchased in the name of his wife at Mangadu. It is the specific contention of the first defendant that the property purchased under Ex.P.2 in the name of his wife is also his absolute property. According to him, he had only purchased the property. It is relevant to note that as already stated above, though the law does not prohibit purchase the property in the name of the wife or unmarried daughter, unless the contrary is proved, the property



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purchased in the name of the wife shall be presumed that such purchase was made only for the benefit of the wife as per Section 3 of the Benami Transactions (Prohibition) Act, 1988. Therefore, even assuming that the first defendant has purchased the property in his wife's name, unless the contrary has been shown, i.e., what is the motive for him to purchase the property in his wife's name and without any evidence in this regard, it has to be held that the property was purchased for the benefit of the wife. Therefore, in the absence of any contra evidence to show that the property has not been purchased for the benefit of the wife, it has to be held that it is the absolute property of the wife of the first defendant. Therefore, the plea of Benami also cannot hold water.

22.Further, D.W.1 in his written statement admitted that as the property has developed cracks, he wanted to demolish the existing construction which was admittedly put up by his father and to construct the house with modern amenities. Therefore, all of them had sold the property purchased in the name of the first defendant's wife under Ex.P.2. Further, it is to be noted that the very contention of the first defendant that he purchased the property in the name of his wife is contrary to the registered document. Ex.P.2 sale deed clearly shows that the sale consideration of Rs.9333/- was paid by Bhagirathi Ammal, who was the



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purchaser of the property. That apart, while selling the property, the plaintiff and defendants jointly executed the power of attorney which was also marked as Ex.P.4. A careful perusal of the said power of attorney clearly shows that it has been clearly averred by the parties that the said Bhagirathi Ammal had purchased the property out of her own income. It has also been averred in the power of attorney that she was in enjoyment of the property as absolute owner and after her death, the plaintiff and defendants being her legal heirs are entitled to deal with the property. When the parties have admitted the character of the property and as to how the property has been purchased by the original owner, now they cannot go beyond the terms of the written documents which are registered documents. Having averred in the power of attorney that his wife has purchased the property out of her own income, the contrary plea taken by the first defendant in the written statement and the evidence that he only purchased the property in her name cannot be countenanced. Further, the property stood in the name of the wife shall be presumed to be for her benefit even assuming that any sale consideration was paid by the first defendant. Be that as it may. According to the first defendant, the property of his wife was sold for a sum of Rs.38,00,000/- and out of Rs.38,00,000/-, he has paid Rs.35,75,000/- to Bakkiyam Builders on



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various dates between 28.07.2012 and 08.11.2013 for construction of the entire house and a new house has been constructed with modern amenities.

23.It is not the case of the first defendant that the plaintiff's share amount has been paid to him at any point of time. According to the first defendant, the entire sale consideration has been utilized for the construction of the building. Therefore, though the property was originally in the name of the an individual and stood as a separate property, utilizing the funds of other sons and developing the property and constructing the house with modern amenities clearly show that in fact, the parties intended to treat the property as joint family property. From the birth itself, the plaintiff and second defendant are residing with the first defendant. When the property has not been treated as joint family property, no person would normally allow his share of sale consideration to be utilized for the construction of other's property. This fact clearly shows that indeed, the first defendant had treated the property as joint family property along with his sons. The evidence of parties clearly shows that they are all residing in one roof and there was only one kitchen in the house and the even after both sons have got married, they



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are residing in the same house. Therefore, utilizing the funds and contributing the funds from the mother's property and developing the property all would clearly indicate that the parties have in fact treated the property as joint family property. The evidence of D.W.1 clearly shows that he was maintaining the bank accounts of both his sons. In fact, whether the property is treated as joint family property has to be seen in the context of the conduct of parties as well as the evidence adduced in this regard. From the evidence of the parties, it is seen that utilizing the shares of the sale proceeds of the separate property of a female member of the family, namely the mother of the plaintiff and the second defendant and the wife of the first defendant, would clearly show that the parties intended to treat the property as joint family property and that the joint family constituted among them. If the property has not been treated as joint family, no prudent man would allow his entire share to be utilized for the development of the separate property of others. This aspect also cannot be ignored altogether. Therefore, using the major share of the sons for the demolition of the existing building and construction of the house with modern amenities clearly indicate that the first defendant had clear intention to waive his absolute right and his conduct of using the money belonging to others to develop the property itself clearly shows that he



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has treated the property as joint family property.

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24. The learned trial judge has placed the burden on the plaintiff to prove the sale consideration received after the sale of the property and has also erroneously held that the plaintiff has not examined anyone from the builders to show that a sum of Rs.35,75,000/- was paid on various dates. The learned trial judge has not understood the fundamentals in appreciation of evidence. When the Manager of the family, who is the kartha himself, has admitted that his wife's property was sold for Rs.38,00,000/- and out of the said sale consideration, he has paid Rs.35,75,000/- for the construction of the house, still placing the burden on the plaintiff to prove the facts clearly indicate that the trial court has not understood the fundamentals. Further, the trial court has also held that there was no evidence on record to show that the plaintiff's mother was having independent income to purchase the Mangadu property. It is relevant to note that as already stated, the trial court has ignored the law on this aspect. It is for the person who set the plea for Benami has to establish that the property was not purchased for the benefit of his wife. In the absence of any foundational facts pleaded and proved, it has to be held that the property purchased in the name of the wife was purchased only for the benefit of the wife. That apart, as adverted to earlier, in the



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power of attorney executed by the first defendant along with sons, he has clearly averred that the property was purchased by his wife out of her own income. In fact, the trial court's finding clearly indicates that it has not gone through the documents meticulously, but has mechanically accepted the defendants' case.

25. Therefore, in the light of the above, it is clear that though the property was originally an individual's property, the conduct of the parties clearly shows that the first defendant has treated the property as joint family property along with his two sons and has also utilized the shares of his two sons out of the sale proceeds, for the construction of the house. This fact clearly establishes that there is joint family existing between the parties. Therefore, the plaintiff is certainly entitled to 1/3rd share in the suit property. Accordingly, the points in respect of joint family property are answered.

26. Insofar as the settlement is concerned, the consequent settlement deed in respect of the joint family property and ancestral property cannot be valid. In the case on hand, the first defendant has executed the settlement deed in favour of the second defendant. In view



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of the fact that this court now holds that the suit property is a joint family property and that the plaintiff is entitled to 1/3rd share in the same, the subsequent execution of the settlement deed in favour of the second defendant without the consent and knowledge of the plaintiff is not binding on the plaintiff's 1/3rd share and at the most, such settlement will bind only the remaining 2/3rd share of the suit property. In the light of the above, the second defendant cannot take possession of the entire property based on the settlement deed executed by the first defendant. This court is of the view that since the settlement deed has already been executed, the entire settlement deed need not be set aside and it is held that the settlement deed will not bind on plaintiff's 1/3rd share in the suit property. The parties have to work out their shares only in the final decree proceedings. Accordingly, this point is answered by holding that the settlement deed dated 10.02.2016 executed by the first defendant is not valid in respect of 1/3rd share of the plaintiff.

27. In the result, this appeal suit is allowed and the judgment and decree of the trial court dated 28.03.2022 made in O.S.No.2729 of 2019 is set aside and the suit is decreed. A preliminary decree is passed for dividing the suit property into three equal shares and the plaintiff is



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allotted to 1/3rd share in the suit property. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

(N.S.K., J.) (R.S.V., J.)
16.02.2026

Index : Yes / No
Speaking Order /Non speaking order
Neutral Citation : Yes
vvk

To

- 1.The I Additional Judge,
City Civil Court,
Chennai.
- 2.The Section Officer,
VR Section,
Madras High Court,
Chennai.



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N.SATHISH KUMAR, J.
and
R.SAKTHIVEL, J.

vvk

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16.02.2026