

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 29.01.2026

Judgment pronounced on : 10.04.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.No.712 of 2023
& CMP.No.24838 of 2023

S.H.Salma

.. Appellant

Vs.

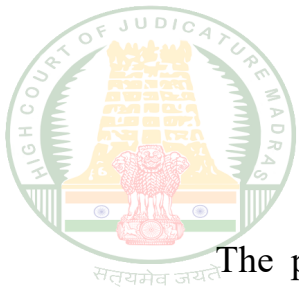
1.R.Aleik John
2.Nazreen Hussain
3.Sanofer Hussain
4.V.Premalatha

.. Respondents

Prayer: Appeal Suit filed under Order XLI Rule 1 and Section 96 of CPC, to set aside the judgment and decree dated 05.04.2023 made in O.S.No.282 of 2019 by the learned Additional District Court, Krishnagiri.

For Appellant : Mrs.Chitra Sampath
Senior Counsel for Mr.T.S.Baskaran

For Respondents : Mrs.Mehek Asrani for RR1 to 3
Dr.G.Babu for R4



JUDGMENT

The plaintiff in a suit for partition and separate possession, aggrieved by the dismissal of the suit in O.S.No.282 of 2019, is the appellant.

2.Pleadings:

The plaint in brief:

(a) The 1st defendant is the plaintiff's mother. The defendants 2 and 3 are also children of the 1st defendant. The plaintiff's father and 1st defendant's husband is one Syed Hussain, who was working in Indian Air Force for 10 years and thereafter in Telephone Exchange for another 10 years. Subsequently, he worked in Saudi Arabia for 4 years and for 10 years in Kuwait. Out of his hard earned money, he purchased a plot, which is a house site at Kattiganapalli Village. However, the same was purchased in the name of his wife, the 1st defendant, as benami, but, Syed Hussain alone was in possession and enjoyment of the same, until his lifetime. He also constructed a building thereon.

(b) Syed Hussain also purchased two house sites of an extent of 1800 sq.ft and 3600 sq.ft in his name by way of two registered sale deeds dated 23.10.2013. After about six months from the date of the said purchase of the two plots, Syed Hussain lost his mental faculty. Defendants 1 to 3, taking advantage of the same, created a gift settlement



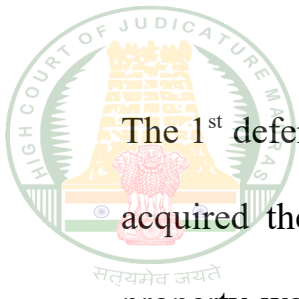
deed dated 10.07.2014, as if the gift was given by Syed Hussain to the 2nd defendant and thereafter, created another gift deed dated 09.03.2015, in favour of the 1st defendant. The plaintiff came to know about these documents only in the first week of October 2019.

Syed Hussain died on 05.10.2019 and was buried on 07.10.2019. Even before his funeral obsequies, the defendants colluded together and created a gift settlement dated 11.10.2019, in and by which, the 1st defendant gifted the house property to the defendants 2 and 3. The suit properties were absolute properties of deceased Syed Hussain and the plaintiff and defendants 1 to 3 succeed to the same in terms of succession under Mohammedan Law. The sale deed in favour of the 4th defendant is neither valid nor binding on the plaintiff. The plaintiff also challenges the settlement deed dated 10.07.2019, the settlement deed dated 11.10.2019 and the sale deed dated 15.07.2015, as being null void and consequently for partition of the suit properties. The plaintiff issued a lawyer's notice on 31.10.2019, which was received by the 4th defendant alone. As there was no reply forthcoming, the suit has been filed.

3. Written statement filed by the 1st defendant and adopted by the defendants 2 and

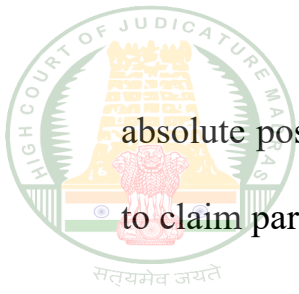
3 in brief:

(a) The relationship between the parties is admitted. The employment of Syed Hussain is also not disputed. However, it is denied that Syed Hussain purchased house site in Survey No.100/2 (item 1 of Schedule Property) in the name of the 1st defendant.



The 1st defendant was a Teacher in a Government Higher Secondary School and acquired the property out of her own earnings. It is denied that the 1st item of suit property was purchased from and out of the funds provided by Syed Hussain. The 1st defendant availed of a housing loan and constructed a house and paid EMI to Co-operative Bank, only from and out of the income from her salary as Teacher. The entire construction was put up from and out of monies from the 1st defendant alone and not by Syed Hussain as claimed in the plaint.

(b) It is also denied that Syed Hussain fell ill and lost his mental faculty in the year 2014. Syed Hussain was in sound state of mind till his demise on 05.10.2019. The factum of purchase of two plots measuring 1800 and 3600 sq.fts is admitted. However, it is denied that the 2nd defendant obtained gift settlement deed taking advantage of Syed Hussain being mentally ill. On 10.07.2014, Syed Hussain executed a registered gift deed in favour of the 2nd defendant, out of his own volition and when he was in good state of mind. The husband of the plaintiff himself is an attester to the said document. Insofar as item 2, Syed Hussain was the absolute owner and he had every right to deal with the property and therefore, the settlement executed by him during his lifetime is valid and binding on the plaintiff. All the subsequent documents are also valid and cannot be questioned by the plaintiff. The 4th defendant is a bonafide purchaser for value and is in



absolute possession and enjoyment of the property purchased. The plaintiff has no right to claim partition. The suit is liable to be dismissed.

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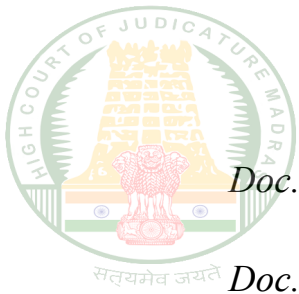
4. Written statement of the 4th defendant:

The 4th defendant has filed a written statement, stating that he has conducted due title verification and also perused the encumbrance certificates before purchasing the property and the 4th defendant is in possession and enjoyment of the same right from the date of his purchase in July 2015. He has also effected mutation of revenue records in her name. Even in the sale deed in favour of the 4th defendant, the plaintiff's husband has signed as one of the witnesses. The plaintiff's father himself was present and he has also signed in the sale deed. The allegation that Syed Hussain lost his mental balance is stoutly denied. The plaintiff has come to Court with a false case and there is no cause of action for filing the suit.

5. Issues framed by the trial Court:

Based on the pleadings, oral and documentary evidence, the trial Court has framed the following issues:

- 1. Whether the 1st item of the suit property is the self acquired property of 1st defendant is true?*
- 2. Whether it is true that the 2nd item of suit schedule property was gifted by Syed Hussain in favour of 2nd defendant while he was in sound state of mind?*



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3. Whether the gift settlement deed dated 10.07.2014 bearing Doc.No.2120/2014 in favour of 2nd defendant is genuine one?

4. Whether the gift settlement deed dated 09.03.2015 bearing Doc.No.860/2015 in favour of 1st defendant is genuine one?

5. Whether the sale deed dated 15.07.2015 bearing Doc.No.2281/2015 executed by the 1st defendant in favour of 4th defendant is genuine?

6. Whether the gift settlement deed dated 11.10.2019 in favour of the 2nd and 3rd defendants are genuine one?

7. Whether the plaintiff is entitled to the declaration relief regarding the gift settlement deed dated 10.07.2014 bearing Doc.No.2120/2014?

8. Whether the plaintiff is entitled to the declaration relief regarding the gift settlement deed dated 09.03.2015 bearing Doc.No.860/2015

9. Whether the plaintiff is entitled to the declaration relief regarding the sale deed dated 15.07.2015 bearing Doc.No.2281/2015?

10. Whether the plaintiff is entitled to the declaration relief regarding the Gift settlement deed dated 11.10.2019?

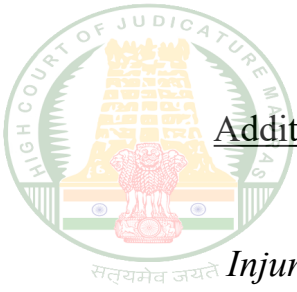
11. Whether the defendants 2 and 3 are the absolute owners of Item No.1 of suit schedule property as per the registered gift deed dated 11.10.2019 executed by the 1st defendant in favour of them?

12. Whether the 1st defendant is an absolute owner of the Item 2 of schedule property as per the registered gift settlement deed dated 09.03.2015 executed by the 2nd defendant in favour of her?

13. Whether the plaintiff is entitled to the relief of preliminary decree for partition in respect of 7/24 share in the suit property?

14. Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?

15. To what other relief the plaintiff is entitled to?



Additional issues framed by the trial Court:

1. Whether the plaintiff is entitled to the relief of Permanent Injunction as against the 4th defendant as prayed for?

2. Whether the Plaintiff is entitled to the relief of Mandatory Injunction as against the 4th defendant as prayed for?

6.Trial:

On the side of the plaintiff, the 1st plaintiff examined herself as P.W.1 and marked Ex.A1 to Ex.A12. Though one, Deivanai was examined as P.W.2, by order dated 11.07.2023, the evidence of P.W.2 was eschewed. On the side of the defendants, D.W.1 and D.W.2 were examined and Ex.B1 to Ex.B10 were marked.

7.Decision of the trial Court:

The trial Court came to the conclusion that the plaintiff has no right in the suit property and she is not entitled to any of the reliefs of declaration or injunction and ultimately, dismissed the suit without costs.

8.Present Appeal:

Aggrieved by the dismissal of the suit, the plaintiff has preferred the present Appeal Suit.



9.I have heard Mrs.Chitra Sampath, Senior Counsel for Mr.T.S.Baskaran, counsel for the appellant and Mrs.Mehek Asrani, learned counsel for the respondents 1 to 3 and Dr.G.Babu, learned counsel for the 4th respondent.

10.Arguments of the learned counsel for the appellant:

(a) Mrs.Chitra Sampath, learned Senior Counsel appearing for the appellant would state that the factum of Syed Hussain having been gainfully employed in several countries and spending monies to the family is in fact admitted. It is the specific contention of the plaintiff, according to the learned Senior Counsel that the defendants have managed to bring about the settlement deed taking advantage of the mental illness of Syed Hussain.

(b) With regard to the property purchased in the name of the wife, the 1st defendant, the learned Senior Counsel would contend that the property was purchased benami in the name of the 1st defendant, from and out of the funds fully provided by Syed Hussain alone. The learned Senior Counsel would further state that the mother was a Teacher only from 1974 onwards and there was absolutely no possibility for her to meet the entire sale consideration of Rs.15,000/- in the year 1982 and there is absolutely no evidence adduced on the side of the 1st defendant to show her financial capacity to have met the entire sale consideration and also for having put up the construction



thereafter. In this regard, the learned Senior Counsel has invited my attention to cross examination of D.W.1, where D.W.1 admits that she was employed as a Secondary Grade Teacher. Also drawing my specific attention to Ex.A7, learned Senior Counsel would state that there is clear admission that the husband has also contributed monies for acquiring the property.

(c) As far as the claim of benami, learned Senior Counsel would state that the plaintiff was admittedly a minor at the time of acquisition of the property and the evidence of the mother, D.W.1 alone was available and when the 1st defendant had clearly admitted that her husband was employed and financially well off and has also acknowledged the contribution of her husband in Ex.A7, the learned Senior Counsel would therefore state that in the absence of D.W.1 establishing that the purchase was for her benefit, the trial Court ought to have held that the property was purchased benami in the name of the 1st defendant by late Syed Hussain.

(d) As regards the other two items of the property which have been purchased in the name of late Syed Hussain, the learned Senior Counsel would state that though Mohammedan law recognizes an oral gift, preconditions have to be necessarily satisfied for establishing the same and the same would also equally apply to dispositions under Section 123 of the Transfer of Property Act. She would also point out that the 2nd



defendant, daughter did not file any independent written statement, but only adopted the stand of the mother and she has not accepted the gift in her favour. Mainly, it is the contention that when the execution of the documents has been denied, the defendants ought to have examined the attesting witnesses to prove the settlement deeds and in the absence of the same, the documents cannot be held to be valid or binding, much less on the plaintiff. The learned Senior Counsel has relied on the following decisions:

1.M.E.Mohamed Haneefa Vs. Sheik Abdul Khader, reported in 2012 (1) MWN (Civil) 594.

2.G.Felshia Vasanthi Vs. R.Sekar, reported in 2023 SCC Online Mad 409.

3.Hafeeza Bibi and others Vs. Shaikh Farid (Dead) by LR's and others, reported in 2011 SCC Online SC 733.

11.Arguments of the learned counsel for the respondents:

(a) Per contra, Mrs.Mehek Asrani, learned counsel appearing for the respondents 1 to 3 would state that the burden was very heavily on the plaintiff's shoulder to establish that the item 1 property was purchased benami by late Syed Hussain in the name of his wife, 1st defendant and that the purchase was not intended to benefit his wife in any manner. She would state that the plaintiff was therefore clearly estopped from claiming that the property was purchased benami, especially after coming into force of the Benami Prohibition Act, 1988. The learned counsel would also invite my attention to the admission of P.W.1 in cross examination that her own husband has attested the settlement deed and also the sale deed in favour of the 4th defendant and in such



circumstances, the plaintiff ought to have examined her husband to establish her case and having failed to do so, it is not open to the plaintiff to contend that the defendants are to be non-suited and non-examination of the attesting witnesses would be fatal.

(b) The learned counsel for the respondents 1 to 3 would also point out to the fact that the suit was not filed within a period of three years from the date of purchase and there is also no declaration sought for that the property was purchased benami way back in the year 1982. She would therefore state that the suit reliefs are hopelessly barred by limitation and there is no explanation on the side of the plaintiff with regard to the long silence from 1982 to 2019, when the suit was instituted. The learned counsel would also state that there is absolutely no evidence adduced on the plaintiff that the property was purchased benami and she would state that it was for the plaintiff to prove the same and the plaintiff cannot pass on the buck to the defendant, contending that the plaintiff was a minor. She would also point out to the conduct of the husband, Syed Hussain, who himself did not choose to question the purchase in the name of the 1st defendant during his lifetime. She would therefore state that the purchase, even if there was any contribution from the husband, Syed Hussain, was only to benefit his wife, the 1st defendant and therefore, there is no occasion for the purchase to be brought under the category of “benami”.



(c) As regards the settlement deeds executed by Syed Hussain in respect of his individual plots, the learned counsel for the respondents 1 to 3 states that the allegation that Syed Hussain had lost his mental imbalance has not been established by any evidence whatsoever except the *ipse dixit*, evidence of P.W.1. The learned counsel would further state that when P.W.1's husband himself has attested the documents, it is totally unbelievable to contend that the said Syed Hussain was not of sound mind and taking advantage of the same, the defendants have brought about the documents in their favour. The learned counsel would further state that the defendants are not claiming any oral gift for the various conditions to be satisfied, but only under registered settlement deeds, which have been voluntarily executed by Syed Hussain and have also been acted upon thereafter, including alienation by way of sale in favour of the 4th defendant. In support of her arguments, the learned counsel has relied on the following decisions:

1. *Mangathai Ammal Vs. Rajeswari*, reported in (2020) 17 SCC 496.
2. *Sekhar Kumar Roy Vs. Lila Roy*, reported in 2023 SCC Online Cal 1399.
3. *Kannan Nambiar Vs. Narayani Ammal*, reported in 1984 SCC Online Ker 174.
4. *G.K.Senniappan Vs. Rathinam*, reported in 2025 SCC Online Mad 6802.
5. *State of Gujarat Vs. Kothari and Associates*, reported in (2016) 14 SCC 761.
6. *Binapani Paul Vs. Pratima Ghosh*, reported in (2007) 6 SCC 100.
7. *Govindbhai Chhotabhai Patel Vs. Patel Ramabhai Mathurbhai*, reported in (2020) 16 SCC 255.



12. Arguments of the learned counsel for the 4th respondent:

Dr.G.Babu, learned counsel appearing for the 4th respondent, purchaser would confine his arguments to schedule 2, being a third party purchaser in respect of the properties which were admittedly purchased by Syed Hussain in his name. Referring to Section 68 of the Indian Evidence Act, the learned counsel would state that the said Section is not applicable to Mohammedan law. He would state that as regards the allegation that Syed Hussain was not suffering from mental illness, he would point out that Syed Hussain died only due to cardiac arrest in 2019 and there is not a scrap of paper to show that on the date of execution of the settlement deeds, Syed Hussain was suffering from mental illness. He would therefore state that the plaintiff has miserably failed to establish her case and in any event, he would state that the period of limitation to question the document is only three years and the suit has been filed belatedly. He further contends that there has been no complaint lodged even by the father of the plaintiff, Syed Hussain during his lifetime that he has been duped into settling the properties in favour of the defendants. The learned counsel would state that the suit is hopelessly barred by limitation and the trial Court rightly dismissed the suit. In support of his contention, the learned counsel has relied on the following decisions:

1.Vasanthiri and others Vs. Govindan and others, reported in 2021 (6) CTC 808.

2.Narendra Kumar Johar Vs. A.Shahjahan, reported in 2022 (1) CTC 311.



13. I have carefully considered the submissions advanced by the learned Senior Counsel for the appellant and learned counsel for the respondents. I have gone through the records.

14. Points for consideration:

Upon consideration of the arguments of the learned counsel for the parties, I frame the following points for consideration in this appeal:-

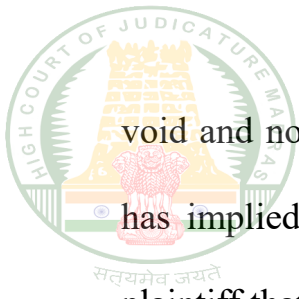
1. Whether the settlement deeds which are under challenge in the suit are required to be proved as mandated under Section 68 of the Indian Evidence Act and whether the settlement deeds and subsequent sale deed in favour of the 4th respondent are valid and binding on the plaintiff, and if not, whether the plaintiff is entitled to the relief of partition?

2. Whether the item 1 property was purchased benami by late Syed Hussain in the name of the 1st defendant and whether the 1st defendant can exercise any rights, as if it were her independent property?

3. Whether the suit is barred by limitation?

15. Points 1 and 3:

In the plaint, the plaintiff has stated that her father has executed a gift settlement deed on 10.07.2014 in favour of the 2nd defendant and another settlement deed on 09.03.2015 in favour of the 1st defendant and yet another settlement deed in favour of the 2nd defendant on 11.10.2019. These documents are sought to be declared as null and



void and not binding on the plaintiff. Therefore, it presupposes the fact that the plaintiff has impliedly admitted to the execution of the documents. It is only the case of the plaintiff that the settlement deeds executed by her father were by taking advantage of his mental illness by defendants 1 to 3. Scanning the oral and documentary evidence available on record, I am unable to see that the plaintiff has let in any material evidence to establish his claim that the settlement deeds were brought about by undue influence or coercion.

16. Surprisingly, the husband of the plaintiff is admittedly an attesting witness. Though a feeble attempt has been made to feign ignorance on the side of the plaintiff about the attestation of the settlement deeds, as well as the sale deed by her husband, I do not see any convincing evidence on the side of the plaintiff. In fact, the easiest course open to the plaintiff would have been to examine her husband and state that either he had not attested the document or that Syed Hussain was not of sound mind when the said documents were executed. The plaintiff has failed to take recourse to such an avenue which was certainly open to her, by examining her husband. Therefore, in the absence of any such convincing evidence, I am unable to see how the settlement deeds can be attacked on the ground that the settlor, namely Syed Hussain was not of sound mind at the relevant dates of execution of the said documents.



17. Even the sale deed in favour of the 4th defendant subsequently has also been witnessed by the plaintiff's husband. Assuming for a moment without admitting that the father of the plaintiff, Syed Hussain was mentally ill, then the plaintiff who was well aware of the execution of the documents, especially with her husband being one of the attesting witnesses, ought to have questioned the documents immediately without any loss of time. Therefore, the only presumption that can be drawn is that Syed Hussain was very much in sound mind on the date of execution of the settlement deeds and neither he, nor the plaintiff having not questioned the said settlement deed within a period of three years, the suit was certainly out of time and barred by law of limitation.

18. Now, let me deal with the argument of Dr.G.Babu, learned counsel for the 4th respondent regarding applicability of Section 68 of the Indian Evidence Act. The same is extracted hereunder for easy reference.

“68. Proof of execution of document required by law to be attested.

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence : [Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (XVI of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.] [Inserted by Act 31 of 1926, Section 2.]”



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19. Firstly, on going through the plaint, I do not see the execution of the documents per se being specifically denied, which alone would require the defendants to examine an attesting witness to prove due execution. It is firstly contended by both the learned counsel for the respondents that since the execution is admitted and the case of the plaintiff is that taking advantage of the mental illness, the documents have been brought about the burden is only on the plaintiff. Additionally, it is contended by Dr.G.Babu that Section 68 is not applicable to Mohammedans. In this regard, he has relied on the decision of this Court in *Narendra Kumar Johar's case*, referred herein supra, where this Court held that Section 123 of Transfer of Property Act requires gift of immovable property to be effected by registered instrument, signed by or on behalf of the donor and attested by at least two witnesses. However, 129 of the Transfer of Property Act further states that nothing in Chapter 7 of the Transfer of Property Act shall be deemed to affect any rule of Mohammedan law which recognizes a gift to be made even orally. This Court, taking note of the opening phrase in Section 68 that “if a document is required by law to be attested”, held that when a Mohammedan gift is not required to be attested, then Section 68 of the Evidence Act will not apply to Mohamedan gifts and even when the gift deed was by way of registered document as in the present case, the presumption of validity under Section 60 of the Registration Act would come into play and there was no necessity for proof of the registered gift deed.

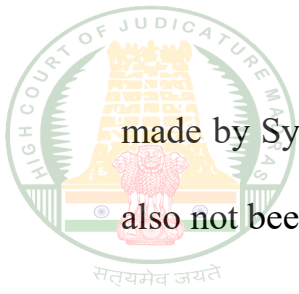


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20. Following the ratio laid down by this Court, I do not even see that there was any requirement for the defendants to comply with the mandate of Section 68. In any event, in view of the primary reason as already discussed above, when the execution of the document is admitted and the plaintiff's husband himself has attested the said document, plaintiff averments and allegations cannot be construed, as if the execution is specifically denied, thereby requiring the defendants to examine one of the attesting witnesses to prove the settlement deeds. Therefore, for all the above reasons, I am unable to accept the submissions on behalf of the appellants with regard to proof of documents and limitation as well. In fact, the plaintiff's husband having attested the document, the plaintiff cannot even contend that she was not aware of the settlement deeds and subsequent sale deed which also has been attested by the plaintiff's husband, especially when the case set up in the plaint is that these documents were brought about only by undue influence and coercion exercised on Syed Hussain taking advantage of his mental illness. Even the factum of mental illness has not been established. In fact, if Syed Hussain was actually mentally ill, then the plaintiff's husband, a man of reasonable prudence would not have even ventured to attest the Settlement Deed and Sale Deed in the first place. In such circumstances, the suit is not only not maintainable, but also hopelessly barred by limitation. Points 1 and 3 are answered accordingly.



Coming to the plea of benami, it is the contention of the learned Senior Counsel that the 1st defendant, who was the only competent witness to speak about the nature of acquisition has admitted to the fact that her husband was gainfully employed abroad and he had been sending monies for the family. Reliance is placed on Ex.A7, where the 1st defendant herself has acknowledged the contributions made by her husband. I have already held that in the absence of any evidence that Syed Hussain was not of sound mind it can only be safely presumed that Syed Hussain was of sound mind and he was knowing all his actions and the consequences thereof, having purchased the property and even assuming that he has contributed for the entire purchase of the land and also put up construction, he has never objected at any point of time that the purchase was not for the benefit of his wife, the 1st defendant. The tests laid down for establishing plea of benami with regard to custody of documents, management and control of the property have also not been established by letting in any acceptable or material evidence. Syed Hussain himself did not take the plea of benami until his demise. The property was purchased way back in the year 1982 and therefore, after coming into force of the Benami Prohibition Act, 1988 as well, the plaintiff cannot contend that her father purchased the property benami in the name of her mother. As rightly pointed out by the learned counsel for the respondents, there should have been a relief for declaring that the purchase was



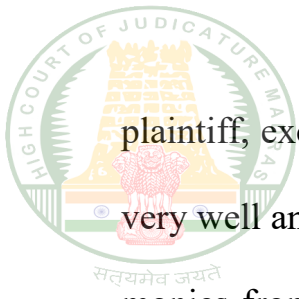
made by Syed Hussain benami in the name of his wife/1st defendant. The said receipt has also not been sought for.

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22.This Court, in *G.K.Senniappan's case*, referred herein supra, has held that the burden of proving benami is on the person who alleges the transaction to be benami and in the absence of proof, plea of benami cannot be accepted.

23.The Hon'ble Supreme Court in *Binapani Paul's case*, referred herein supra, also laid down relevant factors for benami to apply in the case of pre Benami Act, 1988. None of these factors have also been established by the plaintiff.

24.Even the Hon'ble Supreme Court in *Mangathai Ammal's case*, referred herein supra, has held that the burden of proving that a transaction is benami lies on the person alleging it and the burden cannot be shifted on the defendants to prove otherwise. The Hon'ble Supreme Court also summarized the determinative factors and governing principles, namely source from which purchase money came, the nature and possession of property after purchase, motive, if any, for giving the transaction of a benami colour, position of the parties and their relationship, if any between the claimant and alleged benamidar, custody of title deed after sale and conduct of parties concerned in dealing with the property after sale. None of these relevant factors have been established by the



plaintiff, excepting for contending that Syed Hussain was employed abroad and earning very well and he was also sending monies. The mere fact that Syed Hussain was sending monies from abroad to his wife cannot give rise to any presumption that such monies were utilized for the purchase of the property. Even otherwise, the 1st defendant has adduced evidence to show that she was earning independently, working as a Teacher and also availed of a loan which has also been repaid by her. Therefore, in the absence of any evidence to the contrary and the acceptable and satisfactory evidence regarding sufficiency of funds for the 1st defendant to purchase the property and put up construction, I am unable to accept the plea of benami purchase.

25. The Division Bench of the Calcutta High Court in *Sekhar Kumar Roy's case*, referred herein supra, held that mere fact that the person who claims the transaction to be benami, provided money would not be sufficient for declaring the transaction itself as a benami purchase. This ratio will apply with regard to Ex.A7, where the 1st defendant admits that there has been contribution from her husband for purchase of the property. Therefore, the mere fact that a portion of the funds sent by the late Syed Hussain to the 1st defendant has been used for purchase of the property putting up construction would alone, not suffice to hold the purchase to be a benami.



26. In *Kannan Nambiar's case*, referred herein supra, the Division Bench

Kerala High Court held that when the defendants have no case that no document was executed by A and that their case was only that the document was valid because it was executed under the circumstances which would render the document valid and there is no specific denial or execution of the document, then there is no defect in not calling an attesting witness to prove the document. The ratio laid down by the Division Bench would squarely apply to the facts of the present case.

27. With regard to the decisions that have been relied on by the learned Senior Counsel appearing for the appellant, the Hon'ble Supreme Court in *Hafeeza Bibi's case*, referred herein supra, held that for a valid gift or hiba, three essentials of a valid gift under Mohammedan law are (1) declaration of gift by the donor; (2) acceptance of gift by the donee and (3) delivery of possession. Relying on the said decision, the learned Senior Counsel has contended that the 2nd defendant has not even filed a written statement stating that the gift has been accepted by her. However, I find from the evidence and also oral and documentary evidence that the gift has certainly been accepted and acted upon as well, since there has been mutation of revenue records in the name of the 4th respondent and he has been put in possession and he has also filed documentary evidence to establish vide Ex.B7 to Ex.B10 that he has been put in possession of the property as well. He has purchased the property and taken possession



only from the settlor and therefore it is evident that the settlement deed was certainly acted upon. Therefore, I am unable to see how this decision would to the facts of the present case.

28. In *M.E. Mohamed Haneefa's case*, referred herein supra, this Court held that even when the parties are Mohammedans, the requirement under Section 68 of the Indian Evidence Act cannot be dispensed with. However, that was a case where the plaintiff approached the Court claiming right under a registered settlement deed executed by her father. The execution of the settlement deed was specifically denied by the defendant in that case, which is not so in the present case. Therefore, the said decision will also not come to the aid of the appellant.

29. Even insofar as item 1 of the property as well, as already discussed herein above, the plaintiff's father himself did not treat the purchase as benami in the name of his wife and chose to claim any right during his lifetime and even thereafter the plaintiff has not chosen to stake a claim in the property until 2019. The suit relief in respect of item 1 is also hopelessly barred by limitation, as already held. For all the above reasons, point No.2 is answered against the appellant and in favour of the respondents.



30.Result:

In fine, the Appeal Suit is dismissed with costs. Connected Civil Miscellaneous
Petition is closed.

10.04.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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To

The Additional District Court, Krishnagiri.



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P.B.BALAJI.J.

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Pre-delivery Judgment made in
A.S.No.712 of 2023
& CMP.No.24838 of 2023

10.04.2026