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A.S.(MD)No.213 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2026

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MRS.JUSTICE R.KALAIMATHI

A.S.(MD)No.213 of 2015

1. D.Ramanan (died)

2. R.Mehala

(2nd Appellant is brought on record as LR of the deceased sole appellant vide common order dated 09.06.2025 made in C.M.P.(MD)No.18392, 18393 & 18396 of 2024)

... Appellants

Vs.

1. D.Amsavalli

2. A.Nirmala

3. D.Aruna Kasirajan

4. S.Abithagujalambal

5. E.Valarmathy

... Respondents / Defendants

Prayer: Appeal suit filed under Section 96 of CPC., to set aside the judgment and decretal order dated 29.06.2015 passed in O.S.No. 69 of 2012 by the II Additional District and Sessions Judge, Thanjavur and allow the first appeal.

For Appellant : Mr.G.Karnan

For Respondents : No appearance.

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JUDGMENT

The unsuccessful plaintiff is the appellant in this writ appeal filed this appeal under Section 96 CPC. The appeal arises out of the suit for partition.

2. The case of the appellant is that during the pendency of the appeal, the appellant passed away and his wife has come on record. The case of the appellant is that the suit schedule properties belonged to his father Dhanraj and that his father died intestate in the year 2006 and that therefore, he is entitled to 1/5th share in all the suit items.

3. The first defendant was none other than the mother of the plaintiff. The defendants 2 and 4 are the plaintiff's sisters. The third defendant is the plaintiff's brother and the fifth defendant is the wife of the third defendant. It is not in dispute that under Ex.A1 dated 11.08.1975, the suit items 1 and 2 were purchased in the name of the first defendant Amsavalli. Subsequently, Amsavalli sold item 2 of the



suit property in favour of the fifth defendant under Ex.A2 dated 10.02.2011.

4. The case of the appellant as set out in the plaint was controverted by the first defendant by filing written statement. Based on the rival pleadings, the trial Court framed necessary issues. The plaintiff examined himself as P.W.1. To support the plaintiff's claim that his mother was without any independent means, P.W.2 was examined. Ex.A1 to Ex.A7 were marked. The plaintiff's sister second defendant was examined as DW1. No documentary evidence was produced on the side of the defendants. After considering the evidence on record, the trial Court passed the preliminary decree on 29.06.2015 granting relief only in respect of suit third item alone and that too was subject to availability of documentary proof. Aggrieved by the dismissal as regards suit items 1 and 2, this appeal has been filed.

5. Though the respondents had been served and they had engaged counsel also, there is no appearance on their behalf.



6. The learned counsel appearing for the appellant reiterated all the contentions set out in the grounds of appeal and called upon this Court to grant relief as prayed for.

7. The point that calls for consideration is that whether the preliminary decree can be granted in respect of suit items 1 and 2.

8. It is not in dispute that the suit items 1 and 2 were purchased in the name of the first defendant Amsavalli under Ex.A1 dated 11.08.1975. The plaintiff's father Dhanraj was employed and Amsavalli appears to be a home maker. But this by itself would not have entitled the plaintiff to claim the relief of partition. This is because, it was open to Dhanraj, father of the plaintiff to purchase the suit items 1 and 2 in the name of his wife for her benefit. To purchase a property for the benefit of one's wife is legally permitted. The burden lay entirely on the plaintiff to prove that the property was purchased for the benefit of the members of the joint family. The statutory presumption is to the effect that the property had been purchased for the benefit of the wife and it was for the plaintiff to rebut the same. Section 3(1) of the Prohibition of Benami Property



Transactions Act, 1988 reads as follows:-

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“1. Nothing in sub-section (1) shall apply to the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter.”

The plaintiff had not adduced any evidence to rebut the presumption. This burden was not discharged and that is why, the trial Court chose to deny the relief of partition sought for by the plaintiff in respect of the said items. The trial Court rightly declined to grant relief. Interference is not warranted. This appeal suit stands dismissed. No costs.

(G.R.SWAMINATHAN, J.) & (R.KALAIMATHI, J.)
03rd January 2026

NCC : Yes / No
Index : Yes / No
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G.R.SWAMINATHAN, J.

AND

R.KALAIMATHI, J.

PMU

To:

1. The II Additional District and Sessions Judge,
Thanjavur.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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