

OSA.Nos.178 and 198 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 03.04.2025

PRONOUNCED ON : 28.07.2025

CORAM

THE HONOURABLE Dr.JUSTICE ANITA SUMANTH
and
THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

Original Side Appeal Nos.178 and 198 of 2004
and
CMP.No.12619 of 2004

OSA.No.178/2004

R.Janakiammal (died)

2. Hameed Ayisha

3. Thahseen Sathak

4. Minor Mariam Sharafiya

5. Minor Savarina Sathak

(Sole appellant died.

Respondents 5 to 8 transposed as appellants 2 to 5
vide order dated 07.04.2025 made in
CMP.No.8917 of 2025)

... Appellants

-Versus-

1. R.Srinivasan

2. R.Swaminathan

3. R.V.Raman

4. R.Venugopal

... Respondents



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1. Hameed Ayisha
 2. Ms.Thahseen Sathak
 4. Minor Mariam Sharafiya
 5. Minor Savarina Sathak
- (Appellants 3 & 4 declared as Major
and the guardian (Hameed Aysha) discharged
from guardianship vide order dated 11.08.2009
made in CMP.Nos.983 & 984 of 2009)

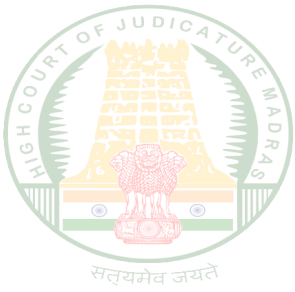
... Appellants

-Versus-

1. R.Srinivasan
 2. Mrs.R.Janakiammal [deceased]
 3. R.Swaminathan [died]
 4. R.V.Raman
 5. R.Venugopal
 6. Rajalkshmi
 7. Girija
 8. Vanaja
 9. Lakshmi
 - 10.Ganesh
- (R6 to R10 brought on record as
LRs of deceased 3rd respondent vide order
dated 14.09.2009 made in CMP.Nos.980 to 982/2009)
[R1, R4 & R5 were recorded as LR of the
deceased 2nd respondent vide order dated 27.07.2011]

... Respondents

Common Prayer:- Original Side Appeals filed under Order XXXVI Rule 1 of the Original Side Rules read with Clause 15 of the Letters Patent Act, praying to set aside the judgement and decree dated 11.02.2004 passed in C.S.No.1910 of 1995.



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For Appellants

in both OSAs : Ms.Chitra Sampath
Senior Counsel
for Mr.I.Abrar Md. Abdullah

For Respondents

in OSA.178/2004 : Mr.S.Parthasarathy
Senior Counsel
for Mr.Ravi for R1
R2 to R8 - No Appearance

For Respondents

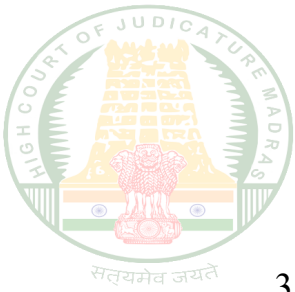
in OSA.198/2004 : Mr.S.Parthasarathy
Senior Counsel
for Mr.Ravi for R1
R2 & R3 - Died
R4 & R5 - No Appearance
Mr.K.Ravi Anantha Padmanabhan
for R6 to R10

COMMON JUDGMENT

*(Judgment of the Court was delivered by **C.KUMARAPPAN, J.**)*

Both the OSAs are arising against the judgment and decree passed in
C.S.No.1910 of 1995 dated 11.02.2004.

2. OSA No.178 of 2004 was originally filed by the first defendant
Janakiammal. After her demise, the defendants 6 to 9 were transposed as
appellants 2 to 5.



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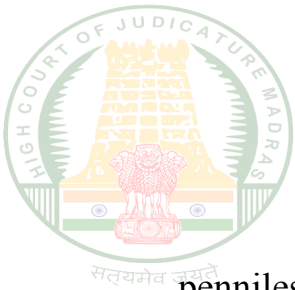
3. The other OSA No.198 of 2004 was filed by the defendants 6 to 9 by themselves. Since both the OSAs are arising against the same judgment and decree, and the parties are also one and the same, we deem it appropriate to dispose of both the OSAs jointly.

4. For the sake of convenience, the parties will be referred to according to their litigative status before the learned Single Judge.

5. The brief facts which give rise to the instant OSAs are as follows:-

(a). The present appellants/defendants 6 to 9 in both the OSAs are the subsequent purchasers of the suit property from the first defendant Janakiammal. The plaintiff and the defendants 2 to 4 are the children of the first defendant R.Janakiammal. The defendants 5 to 9 are the subsequent purchasers. The first defendant's husband Rajaram passed away in the year 1949 leaving behind his wife Janakiammal, his 4 sons and 3 daughters. Among them, his 3rd son Srinivasan is the plaintiff, and the other 3 sons viz., R.Swaminathan, R.V.Raman and R.Venugopal are arrayed as defendants 2 to 4 respectively.

(b). It is the specific submission of the plaintiff that his father died

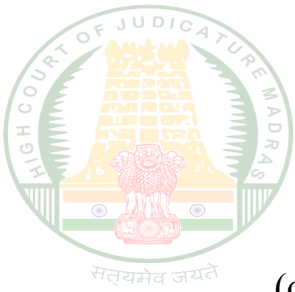


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penniless leaving behind no movable or immovable properties. After a period of 12 years of the death of his father, the plaintiff and the defendants 2 to 4 pooled their resources and started a Company under the name and style of M/s.Premier Surgical Company. The plaintiff and the defendants have been employed in private concern, as well as in the Government establishments. According to the plaintiff, the 2nd defendant's contribution to the business is meagre, while comparing with the defendants 3 and 4 and the plaintiff. From and out of the profits of the above firm and also from the funds provided by the defendants 2 to 4 the suit property was purchased in the name of the first defendant qua R.Janakiammal on 28.03.1966 by virtue of a registered sale deed under Document No.919 of 1966.

(c). Though the sale deed was executed in the name of the first defendant, the plaintiff and the defendants 2 to 4 never intended to treat the property as that of their mother absolutely, and she was only a mere name lender. It is his further submission that even the first defendant never treated the property as her absolute property. This plaintiff further submits that, the defendants 3, 4 and the plaintiff have contributed a specific sum of money to the first defendant for her livelihood as well as to defray the expenses relating to maintenance of the building.



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(d). This plaintiff submits that taking advantage of the fact that the 2nd defendant is residing along with the first defendant, by exerting undue influence over the first defendant, attempted to grab the suit property. After coming to know about the evil designs of the 2nd defendant, the plaintiff issued a letter dated 10.05.1994 demanding partition of the suit property. In response to the said letter, the defendants 3 and 4 issued reply by conceding his demand, whereas, the defendants 1 and 2 did not respond to the said letter. It is the case of the plaintiff that the conciliatory efforts taken by close relatives and friends have also proved futile. Therefore, the plaintiff has come forward with a suit for partition.

6. Though the defendants 3 and 4 filed a written statement, they have conceded the plaintiff's claim and also have not seriously disputed the plaintiff's averments.

7. However, the defendants 1 and 2 filed written statement disputing the plaintiff's claim. The **first defendant** resisted the claim of the plaintiff by contending that the suit is barred by Section 4(1) of the Benami Transactions (Prohibition) Act, 1988. It is his further submission that the suit property is



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the absolute property of the first defendant and that the suit property was purchased from and out of the sale proceeds of the first defendant's gold jewels, silver vessels and also from her savings, which she made in the course of running the family. The payment of sale consideration by the first defendant and discharge of mortgage is apparent, from the recitals of the sale deed. The first defendant submits that though she struggled in her life to bring up the plaintiff and other defendants, no one, except the 2nd defendant took care of her. Hence, the first defendant prayed to dismiss the suit.

8. In line with the first defendant's statement, the **2nd defendant** has also disputed the plaintiff's claim. According to him, the firm M/s.Premier Surgical Company was initially started by him as the sole proprietor concern, later, the 3rd defendant was inducted as a junior partner and his contribution was only Rs.2,000/-, which is less than his contribution of Rs.3,000/-. This defendant also contended that the suit property was purchased out of the sale proceeds of the gold jewels of the first defendant and savings from the amount provided by the 2nd defendant. As such, according to the 2nd defendant, the suit property is the absolute property of the first defendant.



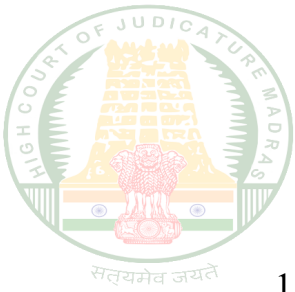
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9. The subsequent purchaser **6th defendant** has also filed written statement supporting the defendants 1 and 2. It is his submission that the defendants 5 and 6 have purchased undivided half share each vide sale deed dated 27.11.1995 and 05.12.1995 respectively from the first defendant. As such, from the date of sale, they became the absolute owner of the suit property. He would further submit that the suit is not maintainable, as no declaratory relief sought for by the plaintiff. He also questioned the valuation of the suit. Thus, he prayed to dismiss the suit.

10. After having considered the pleadings of either side and upon the facts and law, which was accepted by one side and disputed by the other side, the learned Single Judge framed the following issues:-

- i) *Whether the plaintiff is entitled to preliminary decree for partition in respect of $\frac{1}{4}$ share upon the plaint schedule property?*
- ii) *Whether the suit is not maintainable in view of Section 4(1) of Benami Transactions (Prohibition) Act, 1988?*
- iii) *Whether the plaint schedule property is exclusive and separate property of the first defendant?*
- iv) *Whether defendants 5 and 6 are bona fide purchasers for valuable consideration?*
- v) *Whether defendants 3 and 4 are also entitled to get their respective $\frac{1}{4}$ share as claimed in their separate written statements?*
- vi) *To what relief the plaintiff is entitled?*

(Extracted as it is)



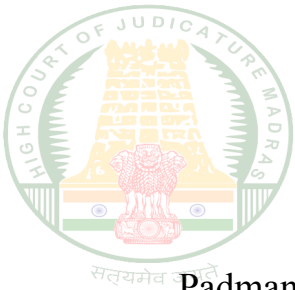
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11. In order to prove the plaintiff's claim, the plaintiff himself was examined as PW1. On behalf of the defendants, the defendants 1 and 2 were examined as DW1 and DW2. To support the plaintiff's claim, he marked 6 documents as Exs.P1 to P6. However, on behalf of the defendants, no documents were marked.

12. The Trial Court, after having considered the oral and documentary evidence, has ultimately concluded that, since the mother of the plaintiff qua the first defendant was holding the property in a fiduciary capacity for and on behalf of the plaintiff and the defendants 2 to 4 granted a decree for partition. Aggrieved with the same, the defendants 5 to 9 preferred separate appeal in OSA.No.198 of 2004, and the first defendant Janakiammal preferred another appeal in OSA.No.178 of 2004. After the demise of Janakiammal, the appellants in OSA.No.198 of 2004, who are the defendants in the suit were ordered to be transposed as appellants even in OSA.No.198 of 2004.

13. We have heard Ms.Chitra Sampath, learned Senior Counsel appearing on behalf of Mr.I.Abrar Md. Abdullah, learned counsel for the appellants, Mr.S.Parthasarathy, learned Senior Counsel appearing on behalf of Mr.Ravi, learned counsel for the first respondent, and Mr.K.Ravi Anantha



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Padmanabhan, learned counsel appearing for the respondents 6 to 10 in
OSA.No.198 of 2004.

14. The learned counsel for the appellants/defendants 6 to 9, who are the subsequent purchasers would vehemently contend that the way in which the plaint drafted would unequivocally manifest apparent Benami Transactions, which is prohibited by Section 4(1) of the Benami Transactions (Prohibition) Act, 1988. The learned Senior Counsel would further contend that the burden of proof rests upon the plaintiff to prove the factum of providing funds for the purchase of the suit property, whereas in the case in hand, even according to the admission of the plaintiff, there are no proof available to show his contribution. The learned Senior Counsel would further contend that, according to the recitals of Ex.A1-Sale Deed, the entire sale consideration was paid by the first defendant. Hence, it is her submission that the suit property is the absolute property of the first defendant. She would further contend that even for argument sake, if we presume without admitting that the suit property was purchased through the income derived by the plaintiff and the defendants 2 to 4, then the suit is virtually hit by Section 4(1) of the Benami Transactions (Prohibition) Act.

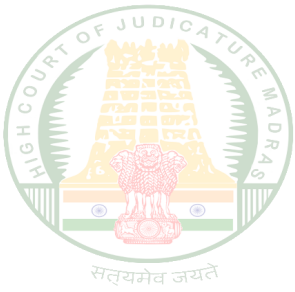


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The learned Senior Counsel would also contend that in order to bring the suit within the exception to Section 4(1) of the Benami Transactions (Prohibition) Act, there are no pleadings or evidence in the suit. The learned Senior Counsel would also contend that the appellants being the *bona fide* purchasers for valuable consideration, their purchase has to be protected. Hence, prayed to allow these appeals. In support of her contentions, the learned Senior Counsel relied upon the following judgments:-

1. ***Kumaraswami Chettiar Vs. Veliburammal*** reported in **1998-2-LW-766**.
2. Unreported judgment in ***Duraisamy Vs. N.Ethirajulu*** [A.S.Nos.737 of 1986 & 369 of 2002].
3. ***Central Board of Secondary Education and another Vs. Aditya Bandopadhyay and others*** reported in (2011) 8 SCC 497.
4. ***Marcel Martins Vs. M.Printer and others*** reported in (2012) 5 SCC 342.
5. ***J.M.Kohli Vs. Madan Mohan Sahni and another*** reported in 2012 SCC OnLine Del 2620.
6. ***Sh.Amar N.Gugnani Vs. Naresh Kumar Gugnani (through Legal Heirs)*** reported in 2015 SCC OnLine Del 11248.
7. ***Anil Bhasin Vs. Vijay Kumar Bhasin and others*** reported in 2002 SCC OnLine Del 907.
8. ***Kona Varonica Swarnamukhi Vs. Devika Rani*** reported in MANU/TN/2679/2019.
9. ***V.Selvarani (died) and others Vs. R.Balakrishnan*** reported in 2024 (1) CTC 561.



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10. Union of India and another Vs. Ganpati Dealcom Pvt. Ltd., reported in **2022 SCC OnLine SC 1064.**

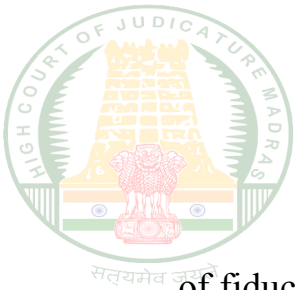
11. Mahesh Karwal Vs. Satya Devi reported in **2018 SCC OnLine Del 12090.**

12. Iswar Bhai C. Patel Alias Bachu Bhai Patel Vs. Harihar Behera and another reported in **(1999) 3 SCC 457.**

13. Vidhyadhar Vs. Manikrao and another reported in **(1999) 3 SCC 573.**

14. Bachhaj Nahar Vs. Nilima Mandal and another reported in **(2008) 17 SCC 491.**

15. Per contra, the learned Senior Counsel appearing on behalf of the plaintiff/first respondent would contend that, even according to the admission of the first defendant, the suit property was purchased out of the earnings of the plaintiff and the defendants 2 to 4. He would further contend that admittedly the first defendant, being a homemaker, has no other resources except the income of the plaintiff and the defendants 2 to 4, to purchase a suit property. The learned Senior Counsel would also contend that only under the undue influence of the 2nd defendant, the first defendant had filed a written statement as if the suit property is her absolute property. He would also contend that the 2nd defendant is the ultimate beneficiary from the sale of the suit property to the appellants herein. He would also contend that a reading of the entire plaint averments would demonstrate the existence



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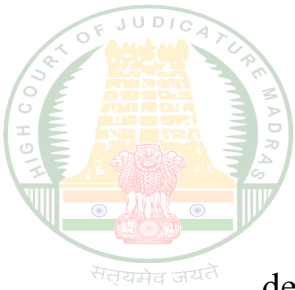
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of fiduciary relationship to bring the suit within the exception to Section 4(1) of the Act. The learned Senior Counsel would also contend that the appellants are not the *bona fide* purchasers for valuable consideration, as they have purchased the property while the order of injunction was in force in O.A.No.1275 of 1995 dated 28.11.1995. Thus, it was contended that the judgment and decree passed by the learned Single Judge is well merited, and does not require any interference, as a sequitur, prayed to dismiss the appeals. To buttress his contention, the learned Senior Counsel relied upon the Division Bench judgment of this Court in ***Chandra Sundararaj (died) and another Vs. C.M.Dhinakaran @ Suresh and others*** reported in 2019 (6) CTC 517.

16. We have given our anxious consideration to either side submissions.

17. While considering the submissions of either side, the following points arise for our determination:-

- (i). Whether the suit property is the absolute property of the first defendant?
- (ii). Whether the suit is hit by Section 4(1) of the Benami Transactions (Prohibition) Act, 1988?
- (iii). Whether the plaintiff is entitled for a preliminary



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decree for partition as prayed for?

(iv). Whether the defendants 5 and 6 are the *bona fide* purchasers for valuable consideration?

(v). Whether the defendants 3 and 4 are entitled to get their respective $\frac{1}{4}$ share as prayed in the written statement?

Point Nos.(i) to (iii) & (v):-

18. The main contention put forth by the plaintiff is, the entire sale consideration of the Sale Deed dated 28.03.1966 was borne out by the plaintiff and the defendants 2 to 4. But, according to the defendants 1 and 2, the suit property is the absolute property of the first defendant and that the sale consideration was paid by the first defendant from and out of her sale proceeds of the gold jewels and silver vessels and also from the amount saved by her while running the family.

19. Let us now consider the contention put forth by the plaintiff. According to him, he and the defendants 2 to 4 have contributed for the purchase of the property. But the learned counsel for the defendants 6 to 9 invited the attention of this Court about the admission of the plaintiff in his cross examination. As rightly contended by the learned Senior Counsel, the plaintiff had categorically admitted that there are no records to show his



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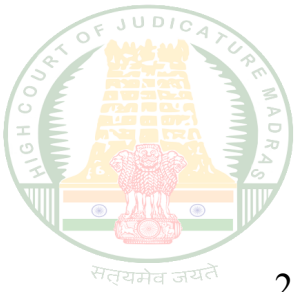
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contribution for the purchase of the suit property. He would further admit that their mother had paid all the amounts. But during re-examination, it was clarified by the plaintiff that, though mother has paid the sale consideration, it was out of the money provided by all the sons. Therefore, apparently except the *ipse dixit* of the plaintiff, he did not file any documents to show the contribution made by him for the purchase of the suit property.

20. At this juncture, the learned Senior Counsel appearing for the plaintiff would invite the attention of this Court about the admission made by the first defendant during her cross examination. For ready reference, the same is extracted below:-

“All my sons used to give their earning to me and I used to keep them at a place and give them whenever they want. If there was any balance left I used to take.”

From the reading of the above admission, it is clear that the savings of the first defendant was only from the amount paid by her sons. Except her sons' income, virtually the first defendant has no other income. Therefore, it is obvious that her savings could have become possible only from the money provided by the plaintiff and the defendants 2 to 4, from their earnings.



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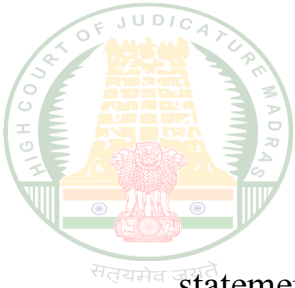
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21. At this juncture, the learned Senior Counsel for the plaintiff invited the attention of this Court in respect of the reply notice [Ex.P6] sent by the 2nd defendant to the plaintiff. At the bottom of Ex.P6-reply notice, the following statement was made by the 2nd defendant:-

*“The business mentioned in your letter belongs to me and our brother Raman and **the property exclusively to me and purchased in the name of our mother, and developed from out of funds exclusively earned and provided by me.** Likewise, our brother Raman, acquired the properties from out of his share income, in the names of his wife and himself. You are fully aware of these facts. But yet have come forwards with this false claim.”*

[Emphasis supplied by this Court]

22. According to the above statement, the suit property was purchased exclusively from the funds provided by the 2nd defendant. But, there is no pleadings in this regard. But, it is the defence of the 2nd defendant that the first defendant purchased the suit property from her sale proceeds and from the amount provided by the 2nd defendant. However, according to the first defendant, apart from the above amount, he also used her savings for the purchase. But, contrary to the above specific stand, the letter of the 2nd defendant [Ex.P6] set up new case of providing entire contribution of the sale consideration for the purchase of the suit property. Curiously, the above



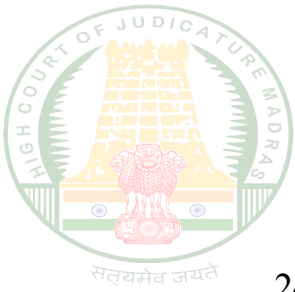
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statement was accepted by the first defendant by subscribing her signature with following endorsement in Tamil:-

“மேற்கண்ட விரங்களை படிக்கக் கேட்டு சரி என்பதை உறுதி செய்கிறேன்.”

23. Therefore, though the first defendant had contended that the suit property is her absolute property, and was purchased from the sale proceeds of her jewels and savings, in Ex.P6 she took different stand and accepted that the suit property is the absolute property of the 2nd defendant and was purchased only from his contribution. Therefore, as rightly observed by the learned Single Judge, the first defendant was not independent, but was under the clutches of the 2nd defendant. Such finding of the learned Single Judge, could be further vindicated from the admission made by the first defendant during her cross examination that, while she sold the suit property to the defendants 5 and 6, the entire sale proceeds was received by the 2nd defendant. During cross examination, she admits as follows:-

“The suit property has been sold (Josier Street) the suit property. I do not know the consideration for which it was sold. The consideration was received by Mr.Swaminathan.”

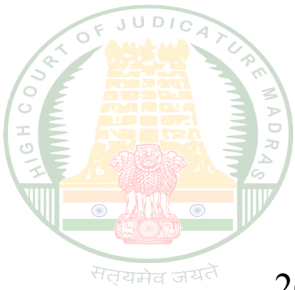


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24. As already discussed, from the reading of the first defendant's evidence, it is amply clear that the family was run by the first defendant from the income derived by the plaintiff and the defendants 2 to 4. No doubt the unremunerative economic value of a homemaker certainly have contributed effective savings for the family. Such contribution of the first defendant cannot be lightly dealt, and we would like to discuss this aspect separately *infra*. Though the plaintiff did not submit any records to show his contribution for the purchase of the suit property, he had proved the same from the admission of the first defendant.

25. In this regard, the learned Senior Counsel for the appellants would invite the attention of the judgment of the learned Single Judge of this Court in *Kumaraswami Chettiar's* case [cited *supra*], wherein it was held that, when there is no proof for contribution, question seeking partition does not arise. But, in the case in hand, money received from the first defendant's sons was accepted, though the first defendant denied that the payment of sale consideration from the above money.

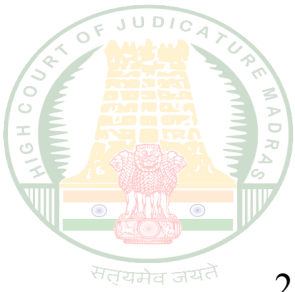


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26. The learned Senior Counsel for the appellants has also relied upon the Division Bench judgment of this Court in **Duraisamy's** case [cited supra] and would contend that the recital in Ex.P1-Sale deed, that it was the first defendant who paid the sale consideration, has to be accepted, in the absence of any contra evidence. But, in the case in hand, though there is a reference in Ex.P1-Sale Deed that the sale consideration was paid by the first defendant, the issue is whose money was paid. Here, according to the admission of the first defendant, she do not have any money except the income generated by her sons.

27. Though the first and 2nd defendant plead that the first defendant has used her resources by selling her gold jewels and silver vessels, such statement become highly doubtful, due to the prevaricating stand of the 1st defendant in Ex.P6-letter. Accordingly, the contention put forth by the plaintiff that the sale consideration was paid from the earnings of the plaintiff and the defendants 2 to 4 is liable to be accepted. As a concomitant, the purchase in the name of the first defendant will make the transaction becomes Benami.



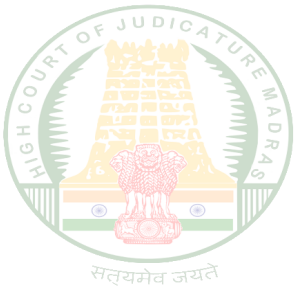
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28. But according to the plaintiffs, though the transaction is Benami, it comes within the exception to the prohibition. Now let us consider the above defence. According to the plaintiff, since the first defendant being a mother, the sale deed was registered in her name, as a mark of respect and sentimental attachment, and it was further contended that though the sale deed stands in the name of the first defendant, the plaintiff and the defendants 2 to 4 never intended to treat it as first defendant's property. Based upon this pleading, the learned Senior Counsel appearing for the appellants would contend that the entire transaction is hit by Section 4(1) of Benami Transactions (Prohibition) Act. For Ready reference Section 4 of Benami Transactions (Prohibition) Act is extracted hereunder:-

“4. Prohibition of the right to recover property held benami- (1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.



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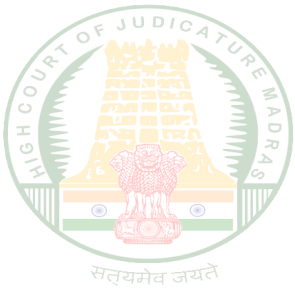
(3) Nothing in this section shall apply,--

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.”

29. The learned Senior Counsel for the appellants relied upon so many judgments to bring home the point that this suit is hit by Benami Prohibition Act, and that between mother and son, there cannot be any fiduciary capacity like that of trustee and beneficiary. To understand the word fiduciary relationship, it is appropriate to refer the celebrated and oft quoted judgment of **Aditya Bandopadhyay**'s case [cited supra]. Wherein the Hon'ble Supreme Court after analysing from various law dictionaries, has ultimately explained the term fiduciary relationship. The relevant paragraphs are extracted hereunder:-

“38. The terms “fiduciary” and “fiduciary relationship” refer to different capacities and relationship, involving a common duty or obligation.



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38.1. *Black's Law Dictionary (7th Edn., p. 640) defines “fiduciary relationship” thus:*

*“Fiduciary relationship.—A relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. Fiduciary relationships—such as trustee-beneficiary, guardian-ward, agent-principal, and attorney-client—require the highest duty of care. Fiduciary relationships usually arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) **when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or** (4) when there is a specific relationship that has traditionally been recognised as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.”*

38.2.

38.3.

38.4.

38.5.

39. *The term “fiduciary” refers to a person having a duty to act for the benefit of another, showing good faith and candour, where such other person reposes trust and special confidence in the person*



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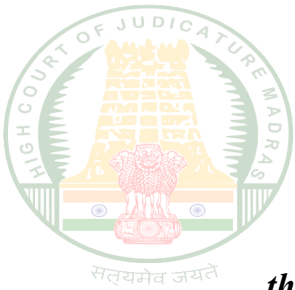
owing or discharging the duty. ***The term “fiduciary relationship” is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction(s). The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third party.”***

(Emphasis supplied by this Court)

From the above ratio, it is clear that the term “fiduciary relationship” not only confined with the Trust, but it also exists between the relationship where one person has duty to advise another.

30. In a subsequent judgment of the Hon'ble Supreme Court in ***Marcel Martins's*** case [cited supra], after referring paragraph 39 of ***Aditya Bandopadhyay's*** case [cited supra] explained the word “fiduciary capacity” as follows:-

“It is manifest that while the expression “fiduciary capacity” may not be capable of a precise definition, it implies a relationship



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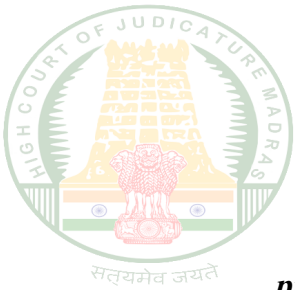
that is analogous to the relationship between a trustee and the beneficiaries of the trust. The expression is in fact wider in its import for it extends to all such situations as place the parties in positions that are founded on confidence and trust on the one part and good faith on the other.”

(Emphasis supplied by this Court)

According to the above explanation, the word “fiduciary capacity” is **analogous** to the relationship of trustee and beneficiary. To put it with more precision, the word “fiduciary capacity” cannot be restricted only in Trust matters, but it is possible even among the family members.

31. Coming back to the defence of exception to Benami Prohibition Act, the learned Senior Counsel for the plaintiff would rely upon the judgment of this Court in ***Chandra Sundararaj (died) and another Vs. C.M.Dhinakaran @ Suresh and others*** reported in **2019 (6) CTC 517**. The relevant paragraph is extracted hereunder:-

*“(v) As already seen Section 2(9)(A)(b)(i), exempts a transaction between persons who stand in a **fiduciary capacity** towards the other from being termed as a Benami Transaction. **Here, the transaction is between the mother and the son. Therefore, the fact that the mother had contributed funds for the purchase of the property in the name of her son having been***



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proved, I do not think that the claim of the first plaintiff with reference to 'A' property could be said to be barred by the provisions of the Prohibition of Benami Properties Transaction Act, 1988. Hence, Issue No. 10 is answered in favour of the plaintiff and against the first defendant."

32. Even in the case in hand, it is an admitted fact that sons have given their earnings to their mother qua the first defendant, and that in the usual course of running the family, she saved some amount from the above earnings. Therefore, the contention of the plaintiff that they had given their earnings to their mother only upon the faith that she would safeguard the money for their betterment cannot be held to be far fetched as it is not unusual or unnatural for a son to repose faith upon their mother. In such a background of this case, the savings made by the first defendant could only be construed as for the benefit of her sons.

33. If that being the case, as held by the Hon'ble Supreme Court in **Aditya Bandopadhyay's** case [cited supra] and **Marcel Martin's** case [cited supra], the first defendant's stand would come within the contours of the word "fiduciary capacity". Therefore, as rightly observed by the learned Single Judge, though there is a Benami transaction, the bar provided under



the Benami Prohibition Act, is exempted by Section 4(3) (b) of the Act.

34. The learned Senior counsel for the appellants has also relied upon the four judgments of the learned Single Judge of Delhi High Court on the point of ostensible conflict between the provisions of Section 4(3)(b), and Section 7 of the Benami Transactions (Prohibition) Act. According to them, by way of amendment in Benami Transactions Act, Sections, 81, 82 and 94 of the Indian Trusts Act, 1882 were repealed, however, these aspects were not dealt in *Marcel Martin's* case [cited supra]. Since there exist a provision for exemption from the Benami Transactions (Prohibition) Act under Section 4(3)(b), we do not want to go into the nitigrities of the above submissions. Furthermore, Section 4(3)(b) of the Benami Transactions (Prohibition) Act has been explained *in extenso* in *Marcel Martins's* case [cited supra]. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court in *State of Gujarat v. R.A. Mehta* reported in (2013) 3 SCC 1, wherein the Hon'ble Supreme Court has occasion to held that, even if a particular issue has not been agitated earlier or a particular argument advanced but was not considered in the judgment, the same does not affect its binding effect. Therefore, the reliance of the Delhi High Court's judgement, which

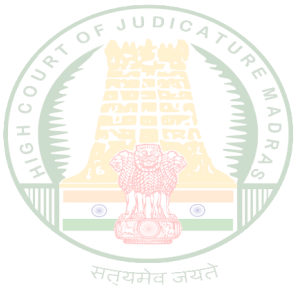


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distinguish the Supreme Court judgment, has no relevance to decide these appeals.

35. The learned Senior Counsel for the appellants also relied upon the **V.Selvarani's** case [cited supra] to invoke Section 3 of the Benami Transactions (Prohibition) Act, which forbids Binami transaction. But, according to the recitals of the sale deed referred to in the above reported judgment, there is specific clause, that such purchase was made for the benefit of his wife. Only in that context, Section 3 was employed. But in the case in hand, the fact is not similar.

36. The learned Senior Counsel for the appellants has also relied upon the following judgments in (i) **Iswar Bhai C.Patel's** case [cited supra], upon the ratio to draw adverse inference, (ii) **Vidhyadhar's** case [cited supra] on the the point of non examination of witnesses, and (iii) **Bachhaj Nahar's** case [cited supra] on the point of no pleading, no evidence. The above judgments are well settled proposition of law and this Court has no grievance in the above ratios. But, the issue here is, no necessity arises for this Court to use the above precedents, to the present facts of the case.

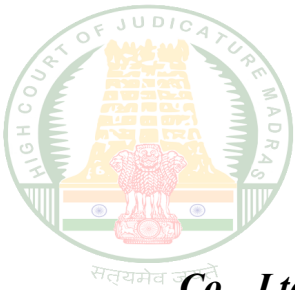


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37. In view of the above detailed discussion, it is amply clear that though the sale deed stands in the name of the first defendant as Benami transaction, since she stood in the fiduciary capacity, such transaction is saved by Section 4(3) (b) of the Benami Transactions (Prohibition) Act. If that being the case, the first defendant cannot have any absolute right over the suit property, and the plaintiff and the defendants 2 to 4 are entitled to have a share in the suit property.

38. Let us now see, what is the extent of share the plaintiff and the defendants 2 to 4 are entitled to have. At this juncture, this Court would like to refer the economical contribution made by the first defendant for the betterment of the family. While considering the pleadings, the plaintiff had prayed to divide the property into 4 equal shares and thereby, unfortunately ignored the economical contribution made by the first defendant. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court in ***Kirti and Ors. Vs. Oriental Insurance Co. Ltd.***, reported in (2021) 2 SCC 166, where the Hon'ble Supreme Court after referring ***Arun Kumar Agrawal v. National Insurance Co. Ltd.***, reported in (2010) 9 SCC 218, which referred our High Court Division Bench judgment in ***National Insurance***

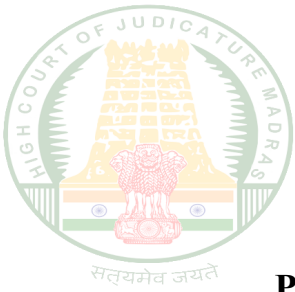


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Co. Ltd. v. Deepika, reported in **2009-4-LW-223**, has considered the economical value of a woman in doing the unremunerative domestic activity.

39. In the case in hand, at the time of purchase of the property, the plaintiff and the defendants were unmarried, and it was the first defendant who burned her midnight oil to up bring them by providing food, shelter, and care. Such unremunerative domestic activity would definitely have direct impact upon the quantum of savings which she made. Had she not done such domestic work, the possibility of savings become doubtful, as her sons have to shell out substantial earnings for their food, shelter and other requirements. Therefore, such indirect economical contribution of the first defendant would definitely have accumulated their quantum of savings. Therefore, the unremunerated domestic work undertaken by the plaintiff's mother has to be definitely taken into consideration in terms of it's economic value, as a contribution, along with her son. Hence, we are of the indubitable opinion that the first defendant is also entitled to have a equal share along with the plaintiff and the defendants 2 to 4. Hence, the suit property has to be divided into 5 equal shares, and the plaintiff and the defendants 1 to 4 are equally entitled to have 1/5th share each.



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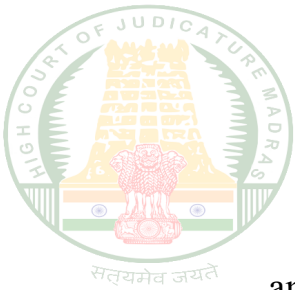
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Point No.(iv)

40. The learned Senior counsel for the first defendant would contend that even on the date of the Sale Deed [Ex.P1], there was an injunction not to alienate the suit property. But, there are no proof as to whether these appellants were aware about such an order. As we discussed hereinabove, according to the first defendant's admission, the 2nd defendant had received the sale consideration from the defendants 5 and 6. But, in the Written Statement, they would state that they have paid the sale consideration to the first defendant, which is contrary to the first defendant's evidence. Furthermore, the narration of the appellants pleadings would only support the 2nd defendant's stand, which are contrary to the factual position. Therefore, as rightly held by the learned Single Judge, these appellants are not the *bona fide* purchasers for valuable consideration. At the same time, they are entitled to work out their remedy by way of equity against the share of the defendants 1 and 2, and in the final decree, the share of the defendants 1 and 2 has to be allotted to these appellants.

41. Before we conclude, we would like to recapitulate our findings:-

a. From the admission of the first defendant, it is amply clear that there were savings while running the family, from the



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amount earned by the plaintiff and the defendants 2 to 4.

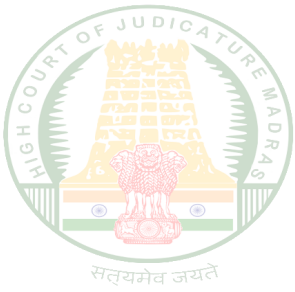
b. Though the first defendant pleads that she had generated resources for the purchase of the suit property from the sale of her jewels and silver vessels, the same found to be unbelievable as she herself admits in Ex.P6 that the suit property was purchased out of the funds provided by the 2nd defendant.

c. The transaction as a whole appears as a Benami Transaction. However, the first defendant hold the property for the benefit of the plaintiff and the defendants 2 to 4 in a fiduciary capacity. Therefore, such transaction is saved by Section 4(3)(b) of the Benami Transactions (Prohibition) Act.

d. As a result, the defence of the first defendant that the property absolutely belongs to her has to be negated.

e. Since the first defendant had also accumulated savings by way of her unremunerative domestic work, she also becomes the joint owner of the suit property along with the plaintiff and the defendants 2 to 4. As a result, she is also entitled to have 1/5th shares.

f. In view of the above discussions, the plaintiff and the defendants 1 to 4 are entitled to have 1/5th shares each.



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g. Since the appellants purchased the property from the first defendant and has paid the sale consideration to the 2nd defendant, they are entitled to have the 2/5th shares belongs to the first and 2nd defendants, by way of equity.

42. In view of the above detailed discussions, these OSAs are partly allowed as indicated above. There shall be no order as to costs. Consequently, connected CMPs, if any are also closed.

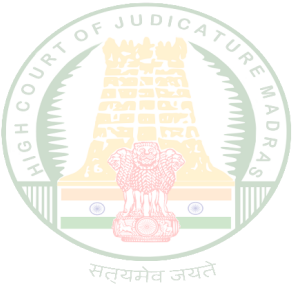
(Dr.ANITA SUMANTH, J.) (C.KUMARAPPAN, J.)
28.07.2025

Index : Yes

Neutral Citation : Yes

Speaking order
kmi

To
The Sub Assistant Registrar,
Original Side,
High Court of Madras.



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and
C.KUMARAPPAN, J.

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