IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	21.03.2023
Pronounced On	21.06.2023

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

S.A.No.59 of 2016
and Cross Objection No.26 of 2017

S.A.No.59 of 2016

1.Kannaian Naidu (Died)
2.Arulprabhakar
3.Balaji ... Appellants/Plaintiffs

Versus

1.Kamsala Ammal @ Banumathi
2.P.Sethuraman
3.The State Bank of India,Chidambaram
Rep. by Manager
4.Vijayalakshmi Santhanam
... Respondents/Defendants

Cross.Obj.No.26 of 2017

Kamsala Ammal @ Banumathi ... Cross Objector

Verus

Kannaian Naidu (Died)

1.P.Sethuraman
2.The State Bank of India,Chidambaram
Rep. by Manager
3.Arulprabhakar
4.Balaji
5.Vijayalakshmi Santhanam ... Respondents

Prayer in S.A.No.59 of 2016: Second Appeal filed under Section 100 of C.P.C., against the judgement and decree dated 28.09.2015 passed in A.S.No.1 of 2007 on the file of the II Additional District and Sessions Court, Chidambaram in modifying the judgement and decree dated 15.09.2005 passed in O.S.No.28 of 2002 on the file of the Sub Court, Chidambaram.

Prayer in Cross.Obj.No.26 of 2017: Cross Objection filed under Order XLI Rule 22 of C.P.C., praying to set aside the judgment and decree dated 28.09.2015 made in A.S.No.1 of 2007 on the file of the II Additional District and Sessions Court, Chidambaram in so far as it relates to partly reversing the judgment and decree made in O.S.No.28 of 2002 on the file of the Subordinate Judge, Chidambaram.

For Appellants in SA
and R3 & R4 in Cross-Obj. : Mr.S.Parthasarathy

Senior Counsel
for Mr.K.S.Navin Balaji

For R1in SA
and Cross-Objector : Ms.V.Anusha
For R2 in SA
and R1 in Cross-Obj : Mr.N.Nithianandam
For R3 in SA
and R2 in Cross-Obj : Mr.K.Chandrasekaran
For R4 in SA
and R5 in Cross-Obj : Ms.S.R.Sumathy
Amicus Curiae : M/s. T.Jayalakshmi

COMMON JUDGMENT

Second Appeal has been filed by the against the judgment and decree dated 28.09.2015 made in A.S.No.1 of 2007 on the file of the II Additional District and Sessions Court, Chidambaram in modifying the judgment and decree dated 15.09.2005 passed in O.S.No.28 of 2002 on the file of the Sub Court, Chidambaram.

Cross Objection filed under Order XLI Rule 22 of C.P.C., praying to set aside the judgment and decree dated 28.09.2015 made in A.S.No.1 of 2007 on the file of the II Additional District and Sessions Court, Chidambaram in so far as it relates to partly reversing the judgment and decree made in O.S.No.28 of 2002 on the file of the Subordinate Judge, Chidambaram.

2. The appellants in Second Appeal are the legal heirs of the

plaintiff and 1st respondent/defendant in O.S. No. 28 of 2002. On the death of the plaintiff, his legal heirs were impleaded in A.S.No.1 of 2007. The Cross objector is the 1st defendant in the suit. For the sake of convenience, parties are referred to as per their ranking before the Trial Court.

3.The case of the plaintiff is as follows:

3.1. The plaintiff and the 1st defendant are husband and wife, married in the year 1965 and were living in Neyveli. The plaintiff was working in Neyveli Lignite Corporation till December, 1982. Since the plaintiff got a job in a Steel Company in Saudi Arabia, he started earning a lot of money. After the plaintiff left for Saudi Arabia, the 1st defendant continued to live in Neyveli children and she was entrusted with the funds of the plaintiff which had swollen to huge proportions. During his visit to India between 1983 and 1994, he brought various articles of value, jewellery and cash. The 1st defendant had no income of her own. She was only managing and administering the affairs of the plaintiff prudently and operating the accounts and thus was acting in effect as the agent in a fiduciary capacity. While managing the affairs of the plaintiff, she purchased items 1 to 4 properties on behalf of the plaintiff utilizing the funds

of the plaintiff. The 1st item in the suit schedule properties is situate at Vadalur and it belonged to one V.K.Marcose, friend of the plaintiff and the sale deed was executed on 07.08.1983. The 2nd item in the suit schedule properties is a house situate at Chidambaram. The 1st defendant acting on behalf of the plaintiff, purchased and got a sale deed on 25.04.1984. The entire sale consideration and incidental expenses in all the transactions were concluded by the 1st defendant on behalf of the plaintiff in view of his absence with the exclusive funds of the plaintiff. The items 3 and 4 were also purchased in the similar fashion. The 1st defendant had no means or resources to purchase these properties by her. The plaintiff on his return to India, in December 1994, he took over the domain of the suit properties. He found to his utter shock and dismay that the 1st defendant had led a wayward life and developed an affair with the 2nd defendant. The 1st defendant went to the extent of constituting the 2nd defendant as power of attorney to sell the 1st item in the suit schedule properties. The 1st defendant stashed away gold jewels and other costly articles which were entrusted to her by the plaintiff, which were not gifted to her. The 1st defendant is an educated woman but she is crafty and wily. Finding that she can no longer

dissipate the funds of the plaintiff, she began to give out with the assistance of the 2nd defendant to alienate the suit properties. Hence, the plaintiff filed the present suit in O.S.No.479 of 1995 before the District Munsif Court at Chidambaram for permanent injunction against the defendants herein.

3.2. The plaintiff is the owner of the jewels and other valuables in the locker of the 3rd defendant bank. In the suit, the 1st defendant pleaded that the suit properties belong to her and she purchased them with her funds by selling her jewels and other assets, which is false. The 1st defendant did not have any funds, jewels or assets to acquire the suit properties. The marriage of their daughter and one of the sons took place on 09.10.1987 and 20.01.1995 respectively. The 1st defendant made a false claim that she spent for the marriage and presented jewels to the children. She had no funds to meet the expenses. She had also taken the plea that the suit for injunction is not maintainable.

3.3. The Benami Transaction (Prohibition) Act does not apply to the facts of this case. The trial Court decreed the suit in favour of the

plaintiff stating that all the suit properties i.e items 1 to 4 and **5** belongs to the 1st plaintiff and he is the true owner and entitled to his title to the suit properties. Whereas, the lower appellate Court partly allowed the appeal and thereby the judgement and decree of the trial Court dated 15.09.2005 has been set aside with regard to items 3,4 and 5 of the suit properties and confirmed in respect of remain properties. Hence he prayers to set aside the the lower appellate Courts judgement and upheld the trial Courts judgement and decree.

4. The case of the 1st defendant is as follows:

4.1. The 1st defendant admits the relationship between her and the 1st plaintiff. She also admits that the plaintiff was working in Neyveli Lignite Corporation and he got a job in abroad. She denies that she had no income of her own; that the suit properties 1 to 4 were purchased by the plaintiff; that consideration for the properties was provided by the plaintiff; that the plaintiff was regularly sending money to his NRI account; that she regularly used to withdraw money from that account and deposited in her account; that she was corresponding with the plaintiff and admitting the

amount sent by the plaintiff; she also denies that though the properties are in her name they were intended to be purchased only for the benefit of the plaintiff. She also denies that she is a benamidaar and she was leading a way ward life squandering the plaintiff's money; that she stashed gold jewels in the locker; that the articles kept in the locker belong to the plaintiff; she also denies that she has an affair with the 2nd defendant; that the plaintiff asked her to mend her ways and hand over the properties.

4.2.Further case of the 1st defendant is that she got a site measuring about two acres and 11 cents of land at Kullanchavadi village from her father. The plaintiff sold one acre of land in the year 1972 and promised to purchase properties in her name later. In 1982, when the plaintiff got the job abroad, he had no money for his journey. So at his request, the 1st defendant sold 4.5 cents of land out of 11 cents and gave the amount to him. As a dutiful wife, she has complied with all the reasonable requests and demands of the plaintiff. That apart, she knows tailoring and used to earn money through that. The plaintiff sent money to his account from abroad only for leading the family. On 29.10.1987, the 1st defendant

celebrated the marriage of her daughter and incurred expenditure of Rs.3,00,000/- and presented 400 grams of gold. The 1st plaintiff was not intent to spend such huge amount for the marriage. But against the desire of her husband, the 1st defendant performed the marriage keeping the welfare of her daughter in mind. She presented 80 grams of gold to her grandsons. In January 1995, she performed the marriage of her son Arulprabakar. She spent Rs.1,00,000/- and presented 80 grams of gold to the bride. The 2nd son has completed his BE course at Annamalai University. She spent Rs.1,00,000/- for his education. The 1st defendant spent the money in a useful manner. The 1st defendant purchased a site at 16-A Viswanatha pillai lane in the name of the plaintiff and built a palatial three storeyed house. She has also constructed an outhouse. According to her, the 1st plaintiff is living in that house leading a sophisticated life. The value of that property is now more than Rs.12,00,000/- and apart from that, he owns 1.20 acres of punja lands at Kullanjavadi village, he also has a cash amount of Rs.10,00,000/-, stock and gold worth Rs.5,00,000/-. The items 1 to 4 of the suit properties are the self-acquired properties of the 1st defendant. She purchased these properties by selling her jewels and income derived from her lands.

4.3.Even if, for the sake of an argument, the plaintiff has purchased the properties, the 1st defendant has got the full right and title over the suit properties under Benami Transactions (Prohibition) Act and the appellants herein have no rights in the suit properties. The 1st defendant is the real owner of the suit properties and she is living in the 2nd item of the suit properties. The plaintiff was never willing to purchase immovable properties. In the 1st week of February 1996, when he returned to India, the plaintiff insisted that the 1st defendant should dispose of all the suit properties and hand over the sale proceeds for starting a business. The 1st defendant was not willing to sell the properties. So the aggrieved plaintiff, ill-treated the 1st defendant with cruelty and drove her out of the house. At that time, the 1st defendant had no money and began to live in the 2nd item. Since she starved and left penniless, she had to execute a power of attorney in favour of the 2nd defendant to sell the plots at Vadalur. The 2nd defendant is a close relation of her. She confirms that he is of same age as her son. The 1st plaintiff wantonly accused the 1st defendant of having an affair with the 2nd defendant only in order to sling mud. When she came to know of these

allegations made by the 1st plaintiff, she cancelled the power of attorney in favour of the 2nd defendant. The 1st defendant has a locker in the bank, which is in her name and in it, she kept 160 grams of jewels and kissan vikas bonds worth Rs. 10,000/- and 3 silk saris. On 15.06.1995, the plaintiff took away the original sale deeds from her at Kurinjipadi bus stand and she has lodged a police complaint. On 05.05.1995, her son Arulprabakar took away the locker key from the 1st defendant.

4.4.The plaintiff filed a suit in O.S.No.477 of 1995 before the Court of District Munsif, Chidambaram, for the relief of permanent injunction in respect of very same properties in O.S.No.28 of 2022. The plaintiff ought to have asked for the relief of declaration in the earlier suit. However, he prayed only for a relief of bare injunction. He ought to have included all the reliefs to which, he is entitled to in that suit. But, he omitted to include the relief of declaration and so he cannot sue for such relief as Order 2 Rule 2 of CPC bars such claims. Therefore, the suit is liable to be dismissed on this score. As far as Section 4 of Benami Transactions (Prohibition) Act is concerned, it prohibits the plaintiff from instituting a suit

on the ground that the properties were purchased by him in the name of his wife. The plaintiff may contend that this section is not applicable in view of the Section 3(2) of the said Act. But the presumption under Section 3 of that Act is not an exception to Section 4. Section 4 is the enforceable and section 3 is only general in nature. Hence, this suit is barred under Section 4 of Benami Transaction (Prohibition) Act.

4.5. Further, the plaintiff filed a revision before the Hon'ble High Court, Madras in CRP 880/2004 and the High Court has set aside the order passed in I.A.1080/2003 and directed the trial Court to try both the suits together and that Court admitted that further evidence could be recorded in O.S.143/2003 and the evidence can be treated as evidence in O.S.28/2002.

5.Before the trial Court, on behalf of the plaintiffs, P.Ws.1 to 4 were examined and Exs.A1 to A52 were marked. On behalf of the defendants, the 1st defendant were examined as D.W.1 and marked Exs.B1

to B8.

6.The trial Court after considering both side arguments, documents which were filed and admissions made by the 1st defendant and plaintiff, has come to the conclusion that she had no income of her own. All the properties were purchased by the 1st defendant using the money which was earned by the plaintiff on behalf of him and not for the benefit of 1st defendant. She also had not produced anyother tangible evidence to show that the properties were acquired with her funds. The presumption under section 3 of the Act cannot be drawn in this case and the suit is not barred by section 4 of the Act. The apprehension of the plaintiff is that the 1st defendant and 2nd defendant try to interfere with the plaintiff's possession which is not justifiable. Hence, the 1st defendant is only a trustee in a fiduciary capacity for all the suit properties 1 to 4 and the articles in the 5th item which in turn they belong to the plaintiff and held that he is the true owner and is entitled to declaration of his title to the suit properties. The suit is decreed as prayed for.

7.Before the Lower appellate Court, on behalf of the appellant/1st defendants, additional documents were marked as Exs.B9 to B21. The Commissioner's Report was marked as Court documents as Exs.C1.

8.Aggrieved over the said judgment and decree dated 15.09.2005, the defendants preferred the appeal in A.S.No.1 of 2007 in II Additional District and Sessions Court, Chidambaram passed by trial Court, the lower appellate Court partly allowed on evaluation of evidence on record and on consideration of the contentions of both the parties and held that the suit properties, viz., item 1 and 2 were purchased by the 1st defendant only by the funds provided by the plaintiff for his own benefit and also that purchases of properties were made only on behalf of the plaintiff in a fiduciary capacity as a wife. With reagrd to item no.3 to 5 of the suit properties, the suit filed by the plaintiff is liable to be dismissed. The presumption under section 3 of the Act can be drawn in this case, as the plaintiff has failed to prove that item 3 and 4 of the suit properties was not bought for the benefit of the 1st defendant. Hence, item no. 1 and 2 belongs to the plaintiff and item no. 3 and 4 and the articles in item no. 5 of the suit

properties absolutely belong to the 1st defendant. Therefore, the 1st appeal has been partly allowed and hence modified the judgement and decree passed by the trial Court.

9. Aggrieved over the said judgment and decree passed by the lower appellate Court with respect to rejection of Item Nos.3, 4 and 5 properties the appellant/plaintiff has filed the present Second Appeal before this Court and this Court admitted the Second Appeal on 05.02.2016 and framed the following substantial questions of law.

> *1. Whether the lower appellate court erred in law in holding that the 3rd item of the suit properties was purchased by the 1st defendant by pledging her jewels and that she is the owner of the said property on mere surmises and conjectures without properly considering and appreciating Ex.A14 and Ex. A15 letters admittedly sent by the 1st defendant to the plaintiff in proper perspective?*
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> *2. Whether the lower appellate court erred in law and misdirected itself in holding that the 4th item of the suit properties belong to the 1st defendant merely because the sale deed stands in her name, without considering the admitted fact that the plaintiff was working abroad and sending money to the 1st defendant*

from 1983 – 1994, that the suit properties, items 1 to 4 were purchased in the name of the 1st defendant benami out of the money sent by the plaintiff while he was in abroad and that the plaintiff took possession and managed the said properties as his own properties after returning from abroad and particularly when the 1st defendant failed to prove that she had sufficient funds of her own to purchase the 4th item of the suit properties.

3. Whether the lower appellate court erred in law in holding that the jewels in the 5th item locker were purchased by the plaintiff for the benefit of the 1st defendant and that the plaintiff is not entitled to the same without there being any such pleading or evidence by the 1st defendant particularly when the 1 st defendant claimed the same as of her own and when the relationship of husband and wife between the plaintiff and the 1st defendant came to an end by dissolution of the marriage?

10. Further, this Court admitted the Cross Objection on 29.11.2022 and the following substantial questions of law were framed:

4.Whether the Trial Court and the Lower Appellate Court erred in overlooking the evidence of the deceased Kannaiah, that the individual property of the appellant herein received in the partition deed dated 05.03.1968 Exhibit B8 was sold to generate the funds for the overseas employment of the deceased Kannaiah?.

5.Whether the Lower Appellate Court erred in law and overlooked the fact that it was the liability and onus of the deceased Kannaiah, to disprove the presumption under the Benami Act that the property purchased in the name of the appellant was not intended for her benefit, ought to have inferred that the suit schedule mentioned properties (1) & (2) were intended for the benefit of the appellant acknowledging the money borrowed from the appellant from and out of the sale proceeds to her share of the ancestral property?"

11. Subsequently, on 04.01.2023 the following additional substantial questions of law were framed:

"6. Whether the contribution made by the 1st defendant/wife towards acquisition of family assets (Item Nos.I & II to the schedule property) by performing their domestic chores, looking after home and family/caring for the family, taking care of the children etc, thereby releasing her husband for gainful employment would be a factor in determining the rights in acquiring the property, was considered by the courts below in proper perspective?

7. Whether Item Nos.I & II of the schedule properties were purchased through the joint effort of the plaintiff/husband and 1 st defendant/wife as the same would be a factor in

determining the parties right in the schedule mentioned property?"

12. Mr.S.Parthasarathy, learned Senior Counsel appearing for the plaintiff would submit that the plaintiff and the 1st defendant are husband and wife. They got married in the year 1965 and they were blessed with two sons and one daughter. The plaintiff was working in Neyveli Lignite Corporation till December, 1982. During January 1983, the plaintiff got employment in Saudi Iron and Steel Company, Hadeed located in Kingdom of Saudi Arabia and he was working there till December, 1994, thereafter, he retuned to India. The plaintiff used to send all the monies to his wife what he had earned in Saudi Arabia and instructed her to buy properties in trust for the benefit of the plaintiff. Thereby, the 1st defendant recevied the monies from the plaintiff and purchased Item Nos.1 and 2 of the schedule mentioned properties and the movables like jewels, saree and other articles and those movables are kept in the 3rd defendant's Bank locker.

13. He would further submit that the Trial Court has well

appreciated the contentions of the plaintiff and decreed the suit in favour of the plaintiff with respect to the Item Nos.1 to 5 of the schedule mentioned properties. The Trial Court has held that these properties have not been purchased for the benefit of the 1st defendant and she had no source of income on her own. The 1st defendant acquired the title over the suit properties as ostensible owner in fiduciary capacity and therefore Section 4 of the Benami Transactions (Prohibition) Act is not applicable and the same was reiterated by the learned Senior Counsel. Since the plaintiff was working in abroad, he was not in a position to come to India to execute the sale deeds in his name therefore, he requested his 1st defendant/wife to purchase the immovable properties i.e., Item Nos.1 to 4 of the schedule mentioned properties in her name and accordingly, the 1st defendant purchased the said properties on behalf of the plaintiff in fiduciary capacity.

14. In support of his contentions, he relied on Exs.A1 to A52. He read some of the exhibits and contended that the monies sent by the plaintiff to the 1st defendant was admitted through the correspondences between the plaintiff and the 1st defendant. Further, the 1st defendant also admitted that

she received the monies and only out of the said monies, she purchased Item Nos. 1 and 2 of the scheduled mentioned properties. In fact, it is the admitted fact that the entire sale consideration for purchasing Item No.1 of the Schedule mentioned properties was paid at Saudi Arabia by the plaintiff. When the 1st defendant herself admitted the same, she cannot claim that the Item No.1 of the Schedule mentioned property was puchased in her name for her own benefit. Further, he would submit that the 1st defendant also cannot take a stand that these properties were purchased in her name by the plaintiff in lieu of the sale of the 1st defendant's ancestral properties to an extent of 1 acre and 4.5 cents to meet out the plaintiff's travel and visa expenses to go abroad for his employment.

15. Further, as far as Item No. 3 of the schedule mentioned properties are concerned, there is sufficient evidence to establish that though the property was purchased out of the amount received by pledging 1st defendant's jewels, but later, the same were redeemed out of the monies received by the 1st defendant from the plaintiff. Therefore, he would contend that Item No.3 of the Schedule mentioned properties was also purchased

from and out of the monies of the plaintiff in the name of the 1st defendant in trust for the benefit of the plaintiff. He would also contend that without appreciating these facts, the First Appellate Court has reversed the judgment and decree passed by the Trial Court. Hence, he prayed to set aside the judgment and decree of the First Appellate Court to an extent of declaring Item No.3 of the schedule mentioned property belongs to the 1st defendant.

16. As far as Item No.4 of the schedule mentioned properties are concerned, he would contend that though the First Appellate Court reversed the judgment of the Trial Court, it has not discussed about any material evidences, proving that the said property was purchased by the 1st defendant either from and out of her own money or out of the monies obtained from sale proceeds of her ancestral property. In the absence of any material evidences, the First Appellate Court has reversed the judgment and decree and therefore, the findings of the First Appellate Court that the Item No.4 of the schedule mentioned properties belongs to the 1st defendant is liable to be set aside.

17. Learned Senior Counsel would further contend that as far as

Item No. 5 of the schedule mentioned properties are concerned, these are movable properties in the form of jewels, gold bars, sarees, Kissan Vikas Bond, Promissory notes and other articles kept in 3rd respondent's bank locker. The Trial Court has come to the conclusion that these are all the items purchased by the plaintiff and the same had been kept in the locker which is opened in the name of the 1st defendant. So the 1st defendant cannot claim right over the movables kept in the 3rd respondent's bank locker when all the movables were purchased from and out of the monies of the plaintiff. The Trial Court has well considered this aspect. However, the First Appellate Court without appreciating and without providing any cogent reasons, has wrongly came to the conclusion that these are all the properties presented to the 1st defendant by the plaintiff out of love and affection and therefore, these properties belong to the 1st defendant. The conclusion arrived at by the First Appellate Court negativing the judgment and decree rendered by the Trial Court is not in accordance with the material evidences available on record. Therefore, he would contend that the said judgment and decree pertaining to Item No.5 of the schedule mentioned properties is also liable to be set aside.

18. In support of his submissions, the learned Senior counsel referred to the following judgments rendered by the Hon'ble Supreme Court and the High Court as regards applicability of the Benami Transactions (Prohibition) Act, 1988, which would not attract in the present case.

1. ***"Nand Kishore Mehra vs. Sushila Mehra"*** reported in 1989 (2) SCC 95, 1995 (2) CTC 356.

2. ***"Vathsala Manickavasagam vs. N.Ganesan and another"*** reported in (2013) (9) SCC 152.

3. ***"Union of India vs Moksh Builders"*** reported in AIR 1977 SC 409.

4. ***"Chandra Sundararaj vs. C.M.Dinakaran"*** reported in 2019 (6) CTC 517.

19. On the other hand, Mrs.Anusha, learned counsel appearing for the 1st defendant would submit that the Trial Court has committed grave error while decreeing the suit in favour of the plaintiff. Against which, the 1st defendant preferred an appeal before the First Appellate Court and the

Appellate Court has set aside the judgment and decree passed by the Trial Court to an extent of Item Nos.3 to 5 of the schedule mentioned properties and held that Item Nos.3 to 5 belong to the 1st defendant. Now, the Cross Appeal has been preferred against the judgment of the First Appellate Court upholding the judgment and decree passed by the Trial Court in respect of Item Nos.1 and 2 of the schedule mentioned properties.

20. Learned counsel appearing for the 1st defendant fairly agreed that the Item Nos.1 and 2 of the schedule mentioned properties were purchased from and out of the monies sent by the plaintiff. However, she would submit that the said properties were purchased in the name of the 1st defendant for her benefit since the 1st defendant sold her ancestral property to an extent of 1 acre and 4.5 cents, which was obtained from her father by way of partition and utlised the said money for the plaintiff's foreign trip. At the time of selling the 1st defendant's ancestral property to meet out the expenses towards the plaintiff's foreign trip, the plaintiff promised the 1st defendant that he will acquire the lands in her name to compensate the sale of ancestral property for the plaintiff's foreign travel and these are all

admitted facts. Under these circumstances only, Item Nos.1 and 2 of the schedule mentioned properties were purchased in the name of the 1st defendant. Therefore, she would contend that the 1st defendant is not an ostensible owner holding the property in fiduciary capacity for the benefit of the plaintiff.

21. Further, she would contend that at any cost, the plaintiff cannot claim absolute ownership over Item Nos.1 and 2 of the schedule mentioned properties. It is not that the plaintiff alone has contributed for purchase of the Item Nos.1 to 4 of the schedule mentioned properties. Though the promise made by the plaintiff to purchase the property in the name of the 1st defendant, in order to compensate the sale of her ancestral property to an extent of 1 acre 4.5 cents, the 1st defendant also contributed in purchasing all these properties indirectly in her name.

22. She would contend that the 1st defendant also earned money through tailoring and taking tuitions to the students. That apart, she would contend that it was a mutual understanding between them and on request of

the plaintiff, the 1st defendant who stayed at home took care of the children and maintained the family. Otherwise, the 1st defendant would have gone for employment and she would have earned money on her own. But she stayed at home and maintained three children. The plaintiff also had equal responsibility in bringing up their children. If the 1st defendant had not stayed at home and gone for employment, she would have earned more money, in which case the plaintiff was supposed to have spent time to take care of the children and to maintain the family affairs. Even if any maid was appointed, it is doubtful whether the said maid will take care of the family for 24 hours and towards these contributions made by the 1st defendant towards the family, obviously there should be equal consideration. In the event if the 1st defendant was not available at home, what would be the contribution made towards maintaining the family for 24 hours by the plaintiff and to that extent the 1st defendant saved the money and therefore, she had virtually got share in the monies sent by the plaintiff for the purpose of purchasing the properties. Therefore, she would contend that since the 1st defendant has equally contributed as a home maker without any remuneration but this is the way the house wife contributed and helped the

husband to save the monies by virtue of her contribution to the family, so it will have value and thereby, she would certainly claim the share in the schedule properties. Since these properties were purchased out of her indirect contribution and as well as with regard to the contribution of the husband, which he was supposed to fulfill his promise. Therefore, she would contend that item Nos.1 and 2 of the schedule mentioned properties are concerned, these are absolute properties of the 1st defendant, however, both the Courts below failed to consider all these aspects. Therefore, she requested this Court to set aside the judgment and decree of the First Appellate Court to an extent of decreeing the Item Nos.1 and 2 in favour of plaintiff alone.

23. As far as Item No.3 of the scheduled mentioned property is concerned, the First Appellate Court by relying upon Exs.A14 and A15 has held that this property was purchased with the money received by pledging 1st defendant's gold jewels and Exs.A14 and A15 would reveal the same. Ex.A14 is relating to the details of amount received by way of pleadging of the gold and out of the said money, Item No.3 of the scheduled mentioned

property was purchased. Ex.A15 is redemption of gold and this exhibit would ultimately prove that Item No.3 has been purchased out of the money received by way of pleading the gold by 1st defendant. The First Appellate Court has rightly reversed the judgment and decree passed by the Trial Court.

24. As far as Item No.4 of the schedule mentioned property is concerned, the Trial Court came to the conclusion that though the property was purchased in the name of the 1st defendant, the property was leased out in the name of the plaintiff. Therefore, it has to be construed that the property was purchased in the name of the 1st defendant by the plaintiff and the plaintiff was holding in trust for the benefit of the plaintiff. However, the First Appellate Court reversed the judgment of the Trial Court stating that Exs.17 to 19/lease deed and kist receipts would not substantiate the claim of the plaintiff when the title deed is in the name of the 1st defendant.

25. As far as Item No.5 of the schedule mentioned property is concerned, the Trial Court has come to the conclusion that these properties

were purchased by the 1st defendant from and out of the monies sent by the plaintiff and the same were kept in the Bank locker of the 1st defendant. However, the First Appellate Court has rightly come to the conclusion by holding that these are all the properties presented by the plaintiff to the 1st defendant. Once the presentation was made, the plaintiff lost the right over the said properties and all these properties were kept in the locker of 3rd defendant bank. Hence, the First Appellate Court has rightly held that these properties belong to the 1st defendant and to that extent the First Appellate Court reversed the judgment and decree of the Trial Court. Therefore, she would submit that Item Nos.1 to 5 properties belong to the 1st defendant and the plaintiff has no right over the said properties. Hence, she pleaded to dismiss the S.A.No.59 of 2016 and to allow the Cross-objection No.26 of 2017 as prayed for.

26. Learned counsel appearing for the 2nd defendant would submit that he is only a formal party and he has nothing to contend as regards the substantial questions of law and thus, no relief could be granted in his favour. Therefore, he has denied the allegation made against him linking the

1st defendant with the 2nd defendant. Apart from that, he pointed out that no relief has been granted in his favour by the Trial Court or the First Appellate Court.

27. Learned counsel appearing for the 4th defendant would submit that the 4th defendant is the daughter of the 1st defendant and he would adopt the arguments of the learned Senior Counsel appearing for the appellant, supporting the second appeal and opposing the cross appeal.

28. Heard the learned Senior counsel appearing for the plaintiff and the learned counsel appearing for the defendants and perused the entire materials available on record.

29. Having heard the counsel on record and on appreciation of their arguments, at the out set, it would be appropriate first to deal with the Substantial Questions of law, viz., 2, 4, 5, 6 and 7 which pertain to Item Nos. 1, 2 and 4 of the suit schedule properties.

Substantial Questions of law Nos.2, 4, 5, 6 and 7 :

2. Whether the lower appellate court erred in law and misdirected itself in holding that the 4th item of the suit properties belong to the 1st defendant merely because the sale deed stands in her name, without considering the admitted fact that the plaintiff was working abroad and sending money to the 1st defendant from 1983 – 1994, that the suit properties, items 1 to 4 were purchased in the name of the 1st defendant benami out of the money sent by the plaintiff while he was in abroad and that the plaintiff took possession and managed the said properties as his own properties after returning from abroad and particularly when the 1st defendant failed to prove that she had sufficient funds of her own to purchase the 4th item of the suit properties.

4. Whether the Trial Court and the Lower Appellate Court erred in overlooking the evidence of the deceased Kannaiah, that the individual property of the appellant herein received in the partition deed dated 05.03.1968 Exhibit B8 was sold to generate the funds for the

overseas employment of the deceased Kannaiah?.

5.Whether the Lower Appellate Court erred in law and overlooked the fact that it was the liability and onus of the deceased Kannaiah, to disprove the presumption under the Benami Act that the property purchased in the name of the appellant was not intended for her benefit, ought to have inferred that the suit schedule mentioned properties (1) & (2) were intended for the benefit of the appellant acknowledging the money borrowed from the appellant from and out of the sale proceeds to her share of the ancestral property?

6.Whether the contribution made by the 1st defendant/wife towards acquisition of family assets (Item Nos.I & II to the schedule property) by performing their domestic chores, looking after home and family/caring for the family, taking care of the children etc, thereby releasing her husband for gainful employment would be a factor in determining the rights in

acquiring the property, was considered by the courts below in proper perspective?

7.Whether Item Nos.I & II of the schedule properties were purchased through the joint effort of the plaintiff/husband and 1 st defendant/wife as the same would be a factor in determining the parties right in the schedule mentioned property?.

30. The original plaintiff, Late Kannaian Naidu and the 1st defendant, Kamsala @ Banumathi are husband and wife and they were blessed with three children. Since the plaintiff passed away, the appellants 1 and 2 in the present appeal, are impleaded in the place of their father and the 4th respondent is their daughter who is also supporting the case of the plaintiff. After the death of the plaintiff, the children are against the 1st defendant widow mother and filed the present Second Appeal. While so, the 1st defendant mother also filed cross-objection against the judgment and decree passed by the First Appellate Court to the extent of holding that Item Nos. 1 and 2 of the scheduled mentioned properties in favour of their three

children.

31. The admitted facts are that the 1st defendant obtained her share of the property by virtue of partition from her father to an extent of 2.11 acres out of which, 1 acre was sold by the plaintiff long back and it was the contention of the 1st defendant that she was requested to sell this property by her husband under the promise that he would purchase the property in her name in future. Further, out of 11 cents, 4.5 cents of land was sold in the year 1982 and she gave this money to the plaintiff for his travel, visa and other expenses. It is also the admitted fact that the plaintiff had been sending monies out of his savings periodically from abroad in the name of the 1st defendant.

32. It is also admitted fact that the 1st defendant took care of the family and three children when the plaintiff left India during the year 1983 till December 1994. When the plaintiff left India for his employment, all the three children were minor children. It is also admitted fact that the plaintiff was an Office Bearer of a political party and she was also involved in the

political activities and further she was also doing tailoring and also by conducting tuitions, she used to earn money and contribute the same to the family.

33. The various correspondences took place between the plaintiff and the 1st defendant, which was filed by the plaintiff, were marked as Exs.A1 to A11. The averments in the exhibits are admitted by the plaintiff as well as the 1st defendant. A perusal of these exhibits would show that these exhibits are nothing but letters written by the 1st defendant to the plaintiff, who was working at Saudi Arabia. These exhibits would reveal that the pain and sufferings undergone by the 1st defendant while maintaining the family affairs and their three children. Further, these letters would also reveal that in order to provide comfort for her husband to earn peacefully for the family, she had been maintaing the family inspite of so much pain and thereby contributed her part and reduced the financial burden of the plaintiff, by which, her contribution to the savings of the plaintiff is equal or more. Further, she has also expressed that it was the mutual understanding between them and so as to allow the plaintiff to work peacefully in abroad,

she stayed at home and took care of their children. Otherwise she would have gone for an employment as a Teacher and earned equally.

34. Further, the averments contained in Exhibits A1 to A11 would reveal that the 1st defendant stayed at home by obliging the words of her husband, by which, one way she had lost her income and in other way, merely by staying at home, it cannot be said that the wife was not contributing anything towards the savings of her husband**.** For taking care of the children and family, it is nothing like 8 hours job, what the husband was doing abroad but it is 24 hours job. The 1st defendant, being a wife, had physically contributed to the family for 24 hours. However, the husband, out of his 8 hours job at abroad, had financially contributed to the family and sent the money out of his savings, from which they had purchased the property. The said savings were done because of the 24 hours efforts put by the 1st defendant/wife for the family, whereby she had made her husband to save money without contributing much towards the house maid etc., and for payment of money towards other jobs.

35. In fact, the 1st defendant being a home maker, though she did not make any direct financial contribution, she played a vital role in managing the household chores by looking after the children, cooking, cleaning and managing day-to-day affairs of the family without giving any inconvenience to the plaintiff abroad and moreover, she sacrificed her dreams and spent her entire life towards the family and children. In these circumstances, whether the 1st defendant/wife can be excluded from claiming any share over the properties, viz., Item 1, 2 and 4?

36. In generaility of marriages, the wife bears and rears children and minds the home. She thereby frees her husband for his economic activities. Since it is her performance of her function which enables the husband to perform his, she is in justice, entitled to share in its fruits.

37. A wife, being a home maker peforms multi tasks, viz., as a Manager with managerial skills-planning, organizing, budgeting, running errands, etc.; as a Chef with cullinary skills-preparing food items, designing

menus and managing kitchen inventory; as a Home Doctor with health care skills-taking precautions and giving home made medicines to the members of the family; as a Home Economist with financial skills- planning home budget, spending and saving, etc. Therefore, by performing these skills, a wife, makes the home as a comfortable environment and her contribution towards the family, and certainly it is not a valueless job, but it is a job doing for 24 hours without holidays, which cannot be less equated with that of the job of an earning husband who works only for 8 hours.

38. The contribution which wives make towards acquisition of the family assets by performing their domestic chores, thereby releasing their husbands for gainful employment, would be a factor which, this Court would specifically take into account while deciding the right in the properties either the title stand in the name of the husband or wife and certainly, the spouse who looks after the home and cares for family for decades, entitled to a share in the property.

39. If, on marriage, she gives up her paid work in order to devote

herself to caring for her husband and children, it is an unwarantable hardship when in consequence she finds herself in the end with nothing she can call her own.

40. When the husband and wife are treated as two wheels of a family cart, then the contribution made either by the husband by earning or the wife by serving and looking after the family and children, would be for the welfare of the family and both are entitled equally to whatever they earned by their joint effort. The proper presumption is that the beneficial interest belongs to them jointly. The property may be purchased either in the name of husband or wife alone, but nevertheless, it is purchased with the monies saved by their joint efforts.

41. In the present case, if the 1st defendant/wife is not there, certainly, the plaintiff would not have gone to abroad and earned all the money. The 1st defendant rendered her continuous services for 24 hours to the family by maintaining the children, preparing food, taking them to school, looking after their needs and taking care of their health, household

chores etc., which cannot be weighed lower than earning money by the plaintiff/husband in abroad. Therefore, the common intention of the couple, viz., the plaintiff/husband and 1st defendant/wife was to co-ordinate each other and to strive hard for the benefit of family and even if any properties purchased in the name of husband or wife alone, ultimately, it can be held that both are entitled to equal share as far as in the present facts of the case keeping in mind the earning of the husband since the same were purchased by both of their contributions, one by earning money and another by serving/looking after the family as stated above. Without contribution of the 1st defendant/wife to the family, the plaintiff would have engaged maid servants, that also for three shifts at 8 hours each per day and might have spent huge money from his earnings for maid servants in which case, the plaintiff would have certainly saved less money, which would not have been sufficient to purchase the properties or not saved anything.

42. To recognise the contribution made by the wife either directly or indirectly, so far, no legislation has been enacted. However, in the present case, this Court can very well recognise the contribution made by the 1st

defendant/wife towards the purchase of the properties by her husband either directly or indirectly not only in money or in money's worth, but also the contribution made by looking after the home and taking care of the family. No law prevents the Judges from recognizing the contributions made by a wife facilitating her husband to purchase the property. In my view, if the acquisition of assets is made by joint contribution (directly or indirectly) of both the spouses for the welfare of the family, certainly, both are entitled to equal share.

43. In the present case, the properties purchased particularly, Item Nos.1 and 2 of the schedule mentioned properties are concerned, when the plaintiff was in abroad, he used to send monies from time to time to the 1st defendant/wife,who in turn, out of the said monies, purchased the Item Nos.1 and 2. Though the properties were purchased from and out of the monies sent by the plaintiff, it cannot be ignored that the contributions made by the 1st defendant/wife as discussed above, without which, certainly, the plaintiff could not have saved money and acquired those said properties. These are all the aspects, though proved by documentary evidence, Ex.A1 to

Ex.A11 both the Courts below have not dealt with it in a proper perspective and erroneously held that only the plaintiff has the absolute right over Item Nos.1 and 2 of the schedule mentioned properties.

44. It is pertinent to note that Section 103 CPC provides that if the evidence on record is sufficient, the High Court is empowered to determine the issue of fact in Second Appeal which has not been determined or wrongly determined by the Courts below. It reads as under,

> *"103. Power of High Court to determine issue of fact.--In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal,--*
> *(a) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or*
> *(b) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in section 100.*

In the present case, by virtue of documentary evidence, viz Exs. A1 to A11 this Court can very well determine the issue which has not been determined by the Courts below as regards the contribution directly or indirectly made

by the 1st defendant/wife facilitating her husband/plaintiff for acquistion of assets, viz, Item No. 1, 2 and 4.

45. In the light above discussion, this Court is of the considered view that the 1st defendant/wife has also contributed equally, though not directly but indirectly by way of looking after the home and taking care of the family for more than a decade and managing the household chores, thereby releasing the husband for gainful employment and made his stay comfortable in abroad and also to reduce the expenses and save the money for future benefit of the family including for purchasing of the assets.

46. Though the properties purchased in the name of the 1st defendant, she alone cannot claim exclusive right over the properties merely because the title deed is in her name since the documentary evidence would establish that the 1st defendant/wife purchased the properties out of the direct financial contribution of the plaintiff also. Likewise, the plaintiff also cannot claim absolute right merely on the basis that he had sent the money to purchase the properties and the 1st defendant is only holding the property

in trust as ostensible title over the properties in fiduciary capacity, as already discussed based on Ex.A1 to Ex.A11, this Court arrives at the conclusion that since Item Nos.1 and 2 have been purchased from and out joint contribution of spouses, viz., the plaintiff by earning and the 1st defendant indirectly by way of her invaluable services as home maker, whereby reducing the expenses of her husband which lead her husband to save more and this way the wife had contributed indirectly to purchase the property item Nos.1 and 2, which aspect cannot be ignored as the same could be decided based on Ex.A1 to Ex.A11. These aspects were not considered by the first appellate Court. Accordingly, this Court has no hesitation to hold both the plaintiff and the 1st defendant are entitled to equal shares in the present facts of the case over the Item Nos.1 and 2 of the schedule mentioned properties and to that extent the judgment and decree of the First Appellate Court are set aside.

47. As far as Item No.4 of the schedule mentioned properties is concerned, the First Appellate Court held that there is no documentary evidences to show that this property was purchased from and out of the

monies sent by the plaintiff and further on the basis of the Exs Nos.A17 to A19, sale deed and kist receipts, it cannot be held that the plaintiff has absolute right over item No.4 of the property. Admittedly, the property stood in the name of the 1st defendant and therefore, it can be held that 1st defendant has right over the property. However, the 1st defendant also failed to produce any documentary proof to show that this property was purchased by selling her ancestral property. In the absence of the documentary evidences on the part of the 1st defendant, a presumption can be drawn by this Court to the effect that this property was purchased from and out of the monies earned by the plaintiff and by the indirect contribution made by the first respondent and further as stated above, both the spouses, have directly or indirectly contributed in acquiring the properties, likewise, the item No.4 also. Accordingly, this Court holds that both the plaintiff and the 1st defendant are entitled to equal share over the item No.4 of the schedule mentioned properties and to that extent the judgment and decree of the First Appellate Court is set aside.

48. A contention was also raised with regard to the Benami

Transactions and both the Courts below have categorically held that the benami transaction would not attract in respect of the properties purchased for the benefit of the husband and the 1st defendant is only holding the property in trust for the benefit of her husband. Though they have taken a stand that the Benami Transactions would not be applicable, this Court already arrived at the conclusion that the suit properties have been purchased by the joint contribution made by the plaintiff and the 1st defendant equally, Section 3, 4 or 5 of the Benami Transaction Act would not attract in the present case.

49. In the light of the above discussion, this Court is of the view that Item Nos. 1, 2 and 4 of the schedule mentioned properties were purchased from and out of the joint contribution made by both the plaintiff and the 1st defendant and they are entitled to equal shares over the item Nos.1, 2 and 4 of the schedule mentioned properties. Accordingly, the Substantial Questions of Law Nos.2, 4, 5, 6 and 7 are answered.

<u>Substantial Question of law No.1</u>:

1.Whether the lower appellate court erred in

law in holding that the 3rd item of the suit properties was purchased by the 1st defendant by pledging her jewels and that she is the owner of the said property on mere surmises and conjectures without properly considering and appreciating Ex.A14 and Ex. A15 letters admittedly sent by the 1st defendant to the plaintiff in proper perspective?

50. Item No.3 of the schedule mentioned property pertains to the immovable property purchased in the name of the 1st defendant. From a perusal of Exs.A14 and A15, it is very much clear that this property was purchased by the 1st defendant by pledging her jewels. Further, Ex.A15 would show that the jewels were redeemed from the monies received from the plaintiff. There is no dispute that the jewels belong to the 1st defendant which was gifted as stridhana by her father at the time of her marriage. In this regard, it is worthwhile to refer Section 14(1) of the Hindu Succession Act, 1956, which reads as under:

*"14. **Property of a female Hindu to be her absolute property-**(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of*

this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act."

51. When this property was purchased in the name of the 1st defendant by pledging her jewels, it should be considered that the 1st defendant alone is the full owner of the property and not a limited owner. Merely the plaintiff/husband helped her for redeeming the jewels, would no way, create a right in his favour over the property. Only Ex.A15 shows that the jewels were redeemed out of the monies received from the plaintiff. ExA14 is the document, which establishes that the money had been received by pledging the 1st defendant/wife's jewels for the purchase of Item No.3 of

the schedule mentioned properties. Therefore, I do not find any error in the judgement of the First Appellate Court in holding that the Item No.3 of the schedule mentioned properties belongs to the 1st defendant only. Accordingly, the substantial question law No.1 is answered in favour of the 1st defendant.

Substantial Question of Law No.3:

3. Whether the lower appellate court erred in law in holding that the jewels in the 5th item locker were purchased by the plaintiff for the benefit of the 1st defendant and that the plaintiff is not entitled to the same without there being any such pleading or evidence by the 1st defendant particularly when the 1 st defendant claimed the same as of her own and when the relationship of husband and wife between the plaintiff and the 1st defendant came to an end by dissolution of the marriage?

52. Item No.5 of the schedule mentioned properties pertaining to the movable properties viz., Gold biscuits, Sarees etc., kept in 3rd defendant bank's locker in the name of the 1st defendant/wife. A perusal of Exs.A1 to A11 would show that the 1st defendant requested the plaintiff for

presentation of jewels, sarees etc., as gifts to her while he was in abroad. The correspondences took place between the 1st defendant and the plaintiff, clearly reveals that the plaintiff had not bought the same on his own volition, but only on requests made by the 1st defendant persistently to gift her jewels, the plaintiff in order to fullfill her wishes, bought the jewels, sarees, etc., and presented her. Therefore, once he presented the gifts, he is not entitled to claim it back though he purchased out of his own earnings. Therefore, this Court is of the view that the Item No.5 of the schedule mentioned properties belongs to the 1st defendant. Thus, I do not find any error in the judgment and decree of the First Appellate Court on thsi aspect of Item No.5. Accordingly, the substantial question of law No.3 is answered in favour of the 1st defendant.

53. In fine, this Court holds as regards Item Nos. 1, 2 and 4 of the schedule mentioned properties, that both the plaintiff and the 1st defendant are entitled to half share each and as far as Item No.3 and 5 of the schedule mentioned property are concerned, the 1st defendant is the absolute owner of

the same.

54. In the result, the Second Appeal and the Cross Objection are partly allowed and accordingly, the judgment and decree dated 28.09.2015 in A.S.No.1 of 2007 passed by the first appellate Court, is modified to the extent stated above. The parties shall bear their own costs throughout.

21**.06.2023**

rst/suk
Index: Yes/No
Internet: Yes/No
To
1. Sub Court, Chidambaram,
2. II Additional District and Sessions Court, Chidambaram

KRISHNAN RAMASAMY, J.

rst/suk

S.A.No.59 of 2016 and
Cross Objection No.26 of 2017

21.06.2023