MANGATHAI AMMAL (DIED) THROUGH LRS AND OTHERS

v.

RAJESWARI & OTHERS

(Civil Appeal No. 4805 of 2019)

MAY 09, 2019

[L. NAGESWARA RAO AND M. R. SHAH, JJ.]

Benami transactions: Transactions, whether benami or not – Determination of – Held: Payment of part sale consideration cannot be the sole criteria to hold the sale/transaction as benami – Intention of the person who contributed the purchase money is determinative of the nature of transaction – Intention has to be decided on the basis of the surrounding circumstances; relationship of the parties; motives governing their action in bringing about the transaction and their subsequent conduct – On facts, courts below erred in decreeing the suit for partition of the properties by original plaintiffs-daughter-in-law and son-in-law, claiming 3/4th share in the suit properties since the father-in-law had purchased the suit properties in the name of his wife-defendant no.1 by selling the ancestral properties – Courts below erred in holding that the transactions/ sale deeds were benami transactions – It erred in shifting the burden on the defendants to prove that the sale transactions were not benami transactions – Merely because of payment of part sale consideration and stamp duty at the time of the execution of the sale deed by the father-in-law, it cannot be said that the sale deed in favour of defendant no.1 was benami transaction – Furthermore, from the facts and circumstances, it cannot be said that the suit properties were purchased in the name of defendant no.1 by the husband from the funds received by selling of the ancestral properties – Thus, the order passed by High Court and trial court holding that the plaintiffs have 3/4th share in the suit properties (except Item Nos. 1 and 3 of the suit properties) set aside – Benami Transaction (Prohibition) Act, 1988.

Partly allowing the appeal, the Court

HELD: 1.1 Both, the trial court and the High Court have erred in shifting the burden on the defendants to prove that the sale transactions were not benami transactions. In fact when the

plaintiffs' claim, though not specifically pleaded in the plaint, that the Sale Deeds in respect of suit properties, which are in the name of defendant no.1, were benami transactions, the plaintiffs have failed to prove, by adducing cogent evidence, the intention of the NM-father to purchase the suit properties in the name of defendant no.1-his wife. Even the reasoning and the findings recorded by the trial court confirmed by the High Court while holding the Sale Deeds/transactions in favour of defendant no.1 as benami cannot be said to be germane and or fulfilling the circumstances as are carved out by this Court. [Para 8.4, 9] [633-F-H; 634-A]

1.2 The first reason given by the trial court while holding the suit properties as benami transactions is that part sale consideration was paid by NM at the time of the purchase of the property vide Sale Deed. The payment of part sale consideration cannot be the sole criteria to hold the sale/transaction as benami. While considering a particular transaction as benami, the intention of the person who contributed the purchase money is determinative of the nature of transaction. The intention of the person, who contributed the purchase money, has to be decided on the basis of the surrounding circumstances; the relationship of the parties; the motives governing their action in bringing about the transaction and their subsequent conduct etc. NM, who contributed part sale consideration by purchasing property might have contributed being the husband and therefore by mere contributing the part sale consideration, it cannot be inferred that Sale Deed in favour of the defendant no.1-wife was benami transaction and for and at behalf of the joint family. Therefore, the trial court as well as the High Court erred in holding the suit properties as benami transactions/ancestral properties on the basis of the document-Sale deed. [Para 9.1] [634-B-F]

1.3 Merely because of the stamp duty at the time of the execution of the Sale Deed was purchased by NM, by that itself it cannot be said that the Sale Deed in favour of defendant no.1 was benami transaction. Except the said two documentary evidences no other documentary evidence/transaction/Sale Deed in favour of defendant no.1 have been considered by the trial court and even by the High Court. [Para 9.2] [634-F-G]

1.4 On considering the Release Deed executed by N in favour of defendant no. 1 on payment of Rs.10,000/-, the inference drawn by the trial court and the High Court that therefore even the defendant no.1 also considered the share of the daughter and considered the suit properties as joint family properties and therefore plaintiffs have also share in the suit properties is concerned, is just a mis-reading and mis-interpretation of the evidence on record. In her deposition, defendant no.1 explained the payment of Rs.10,000/- to N, daughter and the Release Deed executed by her. It is specifically stated by her that though she had no share in the suit properties, with a view to avoid any further litigation in future and to be on safer side, Rs.10,000/- is paid and the Release Deed was got executed by N in favour of defendant no.1. Even in the Release Deed, it is so specifically stated. Therefore, merely because to avoid any further litigation in future and though N had no share in the suit properties, Rs.10,000/- was paid and the Release Deed was got executed in favour of defendant no.1, by that itself, it cannot be said that defendant no.1 treated the suit properties as ancestral properties and/or Joint Family Properties. [Para 9.3] [634-H; 635-A-D]

1.5 Even considering the Will executed by defendant no.1 and the subsequent revocation of the Will is suggestive of the fact that defendant no.1 all throughout treated the suit property as her self-acquired property which according to her were purchased from the Stridhana and selling of the jewellery. [Para 9.4] [635-D-E]

1.6 In the plaint the plaintiffs came out with the case that the suit properties purchased in the name of defendant no.1 by NM from the funds raised by selling the ancestral properties received by him. It was never the case on behalf of the plaintiffs that the suit properties were purchased by NM in the name of defendant no.1 out of the income received from the ancestral properties. However, considering the date of transactions with respect to the suit properties and the ancestral properties sold by NM, it can be seen that all the suit properties purchased in the name of defendant no.1 were much prior to the sale of the ancestral properties by NM. The ancestral property was sold by the NM on 11.11.1951. However, the Sale Deeds in favour of

defendant no.1 were much prior to the sale of the property. Therefore, also it cannot be said that the suit properties were purchased in the name of defendant no.1 by NM from the funds received by selling of the ancestral properties. It can be said that NM might have purchased the properties in the name of defendant no.1 in order to provide his wife with a secured life in the event of his death. It was the specific case on behalf of the defendant no.1 that the suit properties were purchased by her from the Stridhana and on selling of the jewellery. [Para 10, 11] [635-E-H; 636-A-B]

1.7 The benami transaction came to be amended in the year 2016. As per Section 3 of the Benami Transaction (Prohibition) Act 1988, there was a presumption that the transaction made in the name of the wife and children is for their benefit. By Benami Amendment Act, 2016, Section 3 (2) of the Benami Transaction Act, 1988 the statutory presumption, which was rebuttable, has been omitted. The submission that in view of omission of Section 3(2) of the Benami Transaction Act, the plea of statutory presumption that the purchase made in the name of wife or children is for their benefit would not be available, cannot be accepted. The Benami Transaction (Prohibition) Act would not be applicable retrospectively. Even otherwise, the plaintiff has miserably failed to discharge his onus to prove that the Sale Deeds executed in favour of defendant no.1 were benami transactions and the same properties were purchased in the name of defendant no.1 by NM from the amount received by him from the sale of other ancestral properties. [Para 12] [636-C-F]

1.8 Once it is held that the Sale Deeds in favour of defendant no.1 were not benami transactions, in that case, suit properties, except property nos. 1 and 3, which were purchased in her name and the same can be said to be her self-acquired properties and therefore cannot be said to be Joint Family Properties, the plaintiffs cannot be said to have any share in the suit properties (except property nos. 1 and 3). The impugned judgment and order passed by the High Court as well as the trial court holding that the plaintiffs have 3/4th share in the suit properties (except Item Nos. 1 and 3 of the suit properties) is quashed and set aside. [Para 12.1, 13] [636-F-G; 637-A-B]

P. Leelavathi v. V. Shankarnarayana Rao **(2019) 6 SCALE 112 ;** *Jaydayal Poddar v. Bibi Hazra (Mst.)* **(1974) 1 SCC 3 : [1974] 1 SCR 70 ;** *Thakur Bhim Singh v. Thakur Kan Singh* **(1980) 3 SCC 72 – relied on.**

Om Prakash Sharma v. Rajendra Prasad Shewda **(2015) 15 SCC 556 : [2015] 10 SCR 574 ;** *Binapani Paul v. Pratima Ghosh* **(2007) 6 SCC 100 : [2007] 5 SCR 946 ;** *Valliammal v. Subramaniam* **(2004) 7 SCC 233 : [2004] 3 Suppl. SCR 966 – referred to.**

Case Law Reference

[2015] 10 SCR 574	**referred to**	**Para 5.6**
[2007] 5 SCR 946	**referred to**	**Para 5.7**
[2004] 3 Suppl. SCR 966	**referred to**	**Para 5.7**
(2019) 6 SCALE 112	**relied on.**	**Para 8.4**
[1974] 1 SCR 70	**relied on.**	**Para 8.4**
(1980) 3 SCC 72	**relied on.**	**Para 8.4**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4805 of 2019.

From the Judgment and Order dated 05.01.2016 of the High Court of Judicature at Madras in A.S. No. 785 of 1992.

V. Prabhakar, Ms. Jyoti Parasher, N. J. Ramchandar, S. Rajappa, Advs. for the Appellants.

G. Balaji, Adv. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J. 1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned Judgment and Order passed by the High Court of Judicature at Madras dated 05.01.2016 passed in AS No.785 of 1992 dismissing the same and affirming the Judgment and Decree dated 05.08.1992 passed by the learned Subordinate Judge, Arni in O.S. No.124 of 1990 decreeing the suit for partition by original plaintiff, the original defendant nos. 1 to 3 have preferred the present appeal.

A 3. The facts leading to the present appeal in nutshell are as under :

That, one Rajeswari and Others-original plaintiffs instituted a suit bearing O.S. No.124 of 1990 for partition of the suit properties and separate possession. It was the case on behalf of the plaintiffs that the B first defendant is the wife of one Narayanasamy Mudaliar. That, the said Narayanasamy Mudaliar and original defendant no.1 had one son and three daughters namely Elumalai (son), Ranganayaki (daughter), Nagabushanam (daughter) and Navaneetham (daughter). That, the son Elumalai and daughter Ranganayaki had died. The first plaintiff is the wife of Elumalai, the second plaintiff and plaintiff nos. 3 to 8 are the C husband and children of the deceased Ranganayaki. That, Elumalai and the first plaintiff did not have issue. According to the original plaintiffs, Narayanasamy Mudaliar sold the ancestral properties and purchased the suit property in the name of first defendant - Mangathai Ammal (wife of Narayanasamy Mudaliar). Therefore, it was the case on behalf D of the plaintiffs that Narayanasamy Mudaliar and his son Elumalai are entitled to half share of the ancestral properties. That, it was the case on behalf of the plaintiffs that the same Narayanasamy Mudaliar had died twenty years back to the filing of the suit. His share in the properties was inherited by Elumalai, defendant nos. 1 and 2 viz Nagabushanam Ammal and Ranganayaki Ammal. That, the Ranganayaki died about six E years before filing of suit, therefore, her legal representatives viz original plaintiff nos.2 to 8 inherited her share in the properties. That, the Nagabushanam executed the Release Deed dated 24.04.1990 in favour of the first defendant. According to the plaintiffs, the first plaintiff is entitled to 5/8th share, plaintiff nos. 2 to 8 are entitled to 1/8th share and F the defendants are entitled to 1/4th share in the suit properties. According to the plaintiffs, since the defendant tried to claim the suit properties, the plaintiffs filed the present suit for partition.

3.1 The suit was resisted by the defendants. As per the case of the first defendant, except item nos. 1 and 3 of the suit properties, the G other properties are self-acquired properties of the first defendant. According to the first defendant, the first item of the suit property was purchased out of the money provided by her in her name. According to the first defendant, the suit properties are not the ancestral properties of Narayanasamy Mudaliar. It was denied that the suit properties were purchased by selling the ancestral properties. It was the case on behalf H

of the defendant no.1 that except properties in item nos. 1 and 3 of Schedule II, the properties were purchased by the defendant no.1 out of the stridhana she received from her parents' house and by selling the gold jewellery. It was also the case on behalf of defendant no.1 that after purchasing the property from Thangavel Gounder and others; she constructed a house and is in possession and enjoyment of the said property. According to the defendant no.1, the deceased Narayanasamy Mudaliar was entitled to 47 cents in Survey No. 218/1 and 8 cents in Survey No. 218/3 and the deceased Ranganayaki Ammal is entitled to 1/5th share in the suit properties. It was also the case on behalf of the first defendant that, similarly, the first plaintiff's husband is also entitled to 1/5th share, in which, first defendant and first plaintiff are entitled to half share in the suit properties. According to the first defendant, the first defendant's daughter Nagabhushanam executed a Release Deed in respect of her own share. It was also the case on behalf of the first defendant that she never acted as a manager of the joint family. According to her, she executed a Will dated 11.02.1987 in favour of plaintiff nos. 1 and 2 and Nagabhushanam Ammal. However, since the beneficiaries of the Will did not take care of the first defendant, she revoked the Will on 11.06.1990.

3.2 Defendant nos. 2 and 3 supported defendant no.1. According to defendant nos. 2 and 3, defendant no.1 mortgaged the property with defendant no. 3 for a valuable consideration, which was also known to the plaintiffs. Defendant nos. 2 and 3 also adopted the written statement filed by defendant no.1.

3.3 That the learned Trial Court framed the following issues:

"1) Whether the suit schedule properties are ancestral properties of husband of the 1st plaintiff namely Elumalai and the deceased Narayansamy?

2) Whether it is true that the 1st defendant had managed the suit schedule properties being the Manager of the Family?

3) Whether it is true that the Suit Schedule properties are jointly enjoyed by all the family members as Joint Family Property?

4) Whether the plaintiffs are entitled to claim partition in view of the Release Deed dated 24.04.90 executed by Nagabooshanam Ammal?

A 5) Whether it is true that the 1st defendant had executed a Will on 11.2.87 to and in favour of plaintiffs in respect of suit schedule property and revoked the said Will on 11.6.90?

6) Whether it is true that the plaintiffs are in joint possession of the suit schedule properties?

B 7) Whether the plaintiffs are entitled to get 3/4th share over the suit schedule properties?

8) Whether the present suit is not valued properly?

9) To what relief the plaintiffs are entitled?

C 3.4 Before the Trial Court, on the side of the plaintiffs, four witnesses were examined and three documents Exh. A1 to A3 were marked. On the side of the defendants, two witnesses were examined and 19 documents Exh. B1 to B19 were marked. That, the learned Trial Court, after taking into consideration the oral and documentary evidences of both the sides, passed a preliminary decree finding that the plaintiffs D are entitled to 3/4th share in the suit properties. Feeling aggrieved and dissatisfied with the Judgment and Decree passed by the Trial Court, the original defendant nos. 1 to 3 preferred appeal before the High Court. That, by impugned Judgment and Order, the High Court has dismissed the said appeal and has confirmed the Judgment and Decree passed by E the Trial Court. Feeling aggrieved and dissatisfied with the impugned Judgment and Order passed by the High Court dismissing the appeal and confirming the Judgment and Decree passed by the learned Trial Court, original defendant nos.1 to 3 have preferred the present appeal.

4. Shri V. Prabhakar, learned Counsel has appeared on behalf of F the appellants-original defendants and Shri G. Balaji, learned Counsel has appeared on behalf of the respondents-original plaintiffs.

5. Shri V. Prabhakar, learned Counsel appearing on behalf of the original defendant nos.1 to 3 has vehemently submitted that in the facts and circumstances of the case, both, the learned Trial Court as well as G the High Court have committed a grave error in decreeing the suit and holding that the original plaintiffs have 3/4th share in the suit properties.

5.1 It is further submitted by Shri V. Prabhakar, learned Counsel appearing on behalf of the appellants-original defendant nos.1 to 3 that the suit properties were purchased by defendant no.1 out of the stridhana H she received from her parents and by selling the gold jewellery. It is

submitted that, admittedly, the suit properties were purchased in the name of original defendant no.1 and was in possession of defendant no.1. It is submitted therefore, the finding that the properties were purchased by Narayanasamy Mudaliar is erroneous.

5.2 It is further submitted by Shri V. Prabhakar, learned Counsel appearing on behalf of the appellants-original defendant nos.1 to 3 that if it was the case on behalf of the original plaintiffs that the properties purchased in the name of defendant no.1 were the benami transactions, in that case, the onus is/was upon the plaintiffs to prove by leading cogent evidence that the transactions were benami transactions. It is submitted that in the present case, the plaintiffs have failed to discharge the onus to prove that the transactions were benami transactions. It is submitted that, both, the Trial Court as well as the High Court had erroneously shifted the burden upon the defendants to prove that the transactions/ Sale Deeds in favour of defendant no.1 were not benami transactions. It is submitted that the aforesaid is contrary to the settled proposition of law laid down by this Court.

5.3 It is further submitted by Shri V. Prabhakar, learned Counsel appearing on behalf of the appellants-original defendant nos.1 to 3 that in the present case, solely on considering two documents, namely, Exh. B3, Sale Deed in respect of one of the properties and Exh. B4, the Sale Deed with respect of two properties, the Courts below have considered the entire suit properties as ancestral properties and/or the same properties purchased from the funds raised by selling the ancestral properties.

5.4 It is further submitted by Shri V. Prabhakar, learned Counsel appearing on behalf of the appellants-original defendant nos.1 to 3 that merely because some consideration or part consideration was paid by the husband at the time of purchase of property at Exh. B3-Sale Deed and/or merely purchasing the stamp papers while purchasing the property at Exh. B4-Sale Deed, it cannot be said that the same properties as such were purchased from the funds raised by selling the ancestral properties and/or the same were purchased for and on behalf of joint family.

5.5 It is further submitted by Shri V. Prabhakar, learned Counsel appearing on behalf of the appellants-original defendant nos.1 to 3 that both the Courts below have materially erred in misinterpreting the Release Deed at Exh. A1. It is submitted that both the Courts below have materially erred in holding the suit properties as joint family properties of

A Narayanasamy Mudaliar on the ground that execution of Release Deed at Exh. A1 by Nagabhushanam on payment of Rs.10,000/- to Nagabhushanam and on such payment Nagabhushanam released her share in the property, was good to hold that the properties are the joint family properties of Narayanasamy Mudaliar.

B 5.6 It is further submitted by Shri V. Prabhakar, learned Counsel appearing on behalf of the appellants-original defendant nos.1 to 3 that even considering the documentary evidences on record, more particularly, Exh. B3 to B7, it can be seen that the suit properties were purchased in the name of defendant no.1 were purchased much prior to the sale of some of the ancestral properties of Narayanasamy Mudaliar. It is C submitted that, therefore, the case on behalf of the plaintiffs that the suit properties were purchased in the name of defendant no.1 out of the funds raised on selling the ancestral properties of Narayanasamy Mudaliar, cannot be accepted. Relying upon paragraph 10 of the decision of this Court in the case of *Om Prakash Sharma v. Rajendra Prasad* D Shewda, (2015) 15 SCC 556, it is submitted by Shri V. Prabhakar, learned Counsel appearing on behalf of the appellants that as the transactions/ Sale Deeds in favour of defendant no.1 were prior to the enactment of the Hindu Succession Act and the amendments made thereto from time to time, even it can be said that the intention of the Narayanasamy Mudaliar to purchase the properties in the name of defendant no.1-his E wife was in order to provide the wife with a secured life in the event of his death.

5.7 Shri V. Prabhakar, learned Counsel appearing on behalf of the appellants-original defendant nos.1 to 3 submitted that even otherwise, the plaintiffs have failed to prove by leading cogent evidence that the F transactions of sale in favour of defendant no.1 were benami transactions. It is submitted by Shri V. Prabhakar that even in the plaint also there were no specific pleadings that the sale transactions of the suit properties in favour of defendant no.1 were benami transactions. It is submitted that even the learned Trial Court also did not frame any specific issue G with respect to benami transactions. It is submitted that even otherwise on merits also and on considering the recent decision of this Court in the case of *P. Leelavathi v. V. Shankarnarayana Rao* (2019) 6 SCALE 112, in which after considering the earlier decisions of this Court in the case of *Jaydayal Poddar v. Bibi Hazra (Mst.)* (1974) 1 SCC 3; *Thakur Bhim Singh v. Thakur Kan Singh* (1980) 3 SCC 72; *Binapani Paul v.* H

Pratima Ghosh (2007) 6 SCC 100 and *Valliammal v. Subramaniam* (2004) 7 SCC 233, it cannot be said that the Sale Deeds executed in favour of defendant no.1 were benami transactions.

5.8 Making above submissions and relying upon above decisions it is prayed to allow the present appeal.

6. Present appeal is vehemently opposed by Shri G. Balaji, learned Counsel appearing on behalf of the respondents-original plaintiffs.

6.1 Shri G. Balaji, learned Counsel appearing on behalf of the respondents-original plaintiffs has vehemently submitted that on appreciation of entire evidence on record, both, learned Trial Court as well as the High Court, have rightly held that the transactions of sale in favour of defendant no.1 were benami transactions as the said properties were purchased by Narayanasamy Mudaliar in the name of defendant no.1 out of the funds received from selling the ancestral properties. It is submitted that on considering the documentary evidences Exh. B3, B4 and even Exh. A1, the High Court has rightly observed and held that the transactions/Sale Deeds in favour of defendant no.1 were benami transactions and therefore the plaintiffs are entitled to 3/4th share in the suit properties which were purchased in the name of defendant no.1 but purchased out of the funds received from selling the ancestral properties by Narayanasamy Mudaliar.

6.2 It is further submitted by Shri G. Balaji, learned Counsel appearing on behalf of the respondents-original plaintiffs that in the present case, all the conditions to prove the transactions as benami transactions as laid down by this Court in the case of *P. Leelavathi* (Supra) have been satisfied.

6.3 It is vehemently submitted by Shri G. Balaji, learned Counsel appearing on behalf of the respondents-original plaintiffs that in the present case, even from the intention and conduct of the parties it is proved that though the properties were in the name of defendant no.1, they were purchased and enjoyed as Joint Family Properties. It is submitted that otherwise the Nagabhushanam would not have released her share in favour of defendant no.1, if the daughter Nagabhushanam had no share. It is submitted that execution of the Release Deed by Nagabhushanam in favour of defendant no.1 suggests that defendant no.1 also considered the share of the daughter Nagabhushanam by treating the suit properties as Joint Family Properties.

A 6.4 It is further submitted by Shri G. Balaji, learned Counsel appearing on behalf of the respondents-original plaintiffs that the Will dated 11.02.1987, executed by defendant no.1, also included even the properties exclusively belonging to Narayanasamy Mudaliar. It is submitted, therefore, the intention can be gathered from Exh. B8 and Exh. B9 that the suit properties are Joint Family Properties and therefore
B liable for partition and not exclusive properties of defendant no.1.

6.5 It is further submitted by Shri G. Balaji, learned Counsel appearing on behalf of the respondents-original plaintiffs that the suit properties were purchased in the name of defendant no.1 during the lifetime of Narayanasamy Mudaliar. It is submitted that original defendant
C no.1 had no independent income. It is submitted that Narayanasamy Mudaliar had ancestral properties/agricultural lands which were generating income and he purchased all the properties in the name of his wife-defendant no.1 from the income generated from the ancestral properties and by selling some of the ancestral properties.

D 6.6 It is further submitted by Shri G. Balaji, learned Counsel appearing on behalf of the respondents-original plaintiffs that even the statutory presumption which was rebuttable under Section 3 (2) of the Benami Transaction Act, 1988 has been omitted by Benami Amendment Act of 2016. It is submitted that therefore as on date, there is no such
E statutory presumption that the purchase made in the name of wife or children is for their benefit.

6.7 Making above submissions and relying upon above decisions it is prayed to dismiss the present appeal.

7. Heard the learned Counsel appearing on behalf of the respective
F parties at length. We have gone through and considered in detail the findings recorded by the learned Trial Court as well as the High Court. We have also considered in detail the evidences on record both oral as well as documentary.

7.1 At the outset, it is required to be noted that the original plaintiffs
G instituted the suit before the learned Trial Court for partition of the suit properties and claiming 3/4th share with the pleadings that the suit properties were ancestral properties and that the Narayanasamy Mudaliar has purchased the suit properties in the name of his wife-defendant no.1 out of the funds derived through selling his share of the property acquired
H through ancestral nucleus to some other person and that the suit properties

were in absolute possession and enjoyment of the Joint Family Property since the date of purchase. From the pleadings, it appears that it was not specifically pleaded by the plaintiffs that the Sale Deeds/transactions in favour of defendant no.1 were benami transactions. It was also not pleaded that the suit properties were purchased in the name of defendant no.1 by Narayanasamy Mudaliar from the income derived out of the ancestral properties. Even the learned Trial Court did not specifically frame the issue that whether the transactions/Sale Deeds in favour of defendant no.1 are benami transactions or not? Despite the above, learned Trial Court and the High Court have held that the transactions/Sale Deeds in favour of defendant no.1 were benami transactions. The aforesaid findings recorded by the Trial Court confirmed by the High Court and the consequent relief of partition granted in favour of the plaintiffs is the subject matter of the present appeal.

8. While considering the issue involved in the present appeal viz. whether the transactions/Sale Deeds in favour of defendant no.1 can be said to be benami transactions or not, the law on the benami transactions is required to be considered and few decisions of this Court on the aforesaid are required to be referred to.

8.1 In the case of *Jaydayal Poddar* (Supra) it is specifically observed and held by this Court that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be sold. It is further observed that this burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of the benami transaction or establish circumstances unerringly and reasonably raising an interference of that fact. In paragraph 6 of the aforesaid decision, this Court has observed and held as under :

> "6. "It is well-settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of a benami is the intention of the party or parties concerned; and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the

A transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation, and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the B apparent state of affairs is the real state of affairs. Though the question whether a particular sale is benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid tests, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant C indicia, the courts are usually guided by these circumstances:(1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour; (4) the position of the parties and the relationship if any, between the claimant and the alleged benamidar; (5) the custody of the title deeds after the D sale and (6) the conduct of the parties concerned in dealing with the property after the sale.

In the case of *Thakur Bhim Singh* (Supra) this Court in paragraph 18 observed and held as under :

E "18. The principle governing the determination of the question whether a transfer is a benami transaction or not may be summed up thus: (1) the burden of showing that a transfer is a benami transaction lies on the person who asserts that it is such a transaction; (2) it is proved that the purchase money came from a person other than the person in whose favour the property is F transferred, the purchase is prima facie assumed to be for the benefit of the person who supplied the purchase money, unless there is evidence to the contrary; (3) the true character of the transaction is governed by the intention of the person who has contributed the purchase money and (4) the question as to what his intention was has to be decided on the basis of the surrounding G circumstances, the relationship of the parties, the motives governing their action in bringing about the transaction and their subsequent conduct, etc."

8.2 In the case of *P. Leelavathi* (Supra) this Court held as under : H

"9.2 In *Binapani Paul* case (Supra), this Court again had an occasion to consider the nature of benami transactions. After considering a catena of decisions of this Court on the point, this Court in that judgment observed and held that the source of money had never been the sole consideration. It is merely one of the relevant considerations but not determinative in character. This Court ultimately concluded after considering its earlier judgment in the case of ***Valliammal v. Subramaniam*** (2004) 7 SCC 233 that while considering whether a particular transaction is benami in nature, the following six circumstances can be taken as a guide:

"(1) the source from which the purchase money came;

(2) the nature and possession of the property, after the purchase;

(3) motive, if any, for giving the transaction a benami colour;

(4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;

(5) the custody of the title deeds after the sale; and

(6) the conduct of the parties concerned in dealing with the property after the sale. (*Jaydayal Poddar v. Bibi Hazra* (supra), SCC p. 7, para6)"

8.3 After considering the aforesaid decision in the recent decision of this Court in the case of *P. Leelavathi* (Supra), this Court has again reiterated that to hold that a particular transaction is benami in nature the aforesaid six circumstances can be taken as a guide.

8.4 Applying law laid down by this Court in the aforesaid decisions to the facts of the case on hand and the reasoning given by the Trial Court confirmed by the High Court, it appears that both, the learned Trial Court and the High Court have erred in shifting the burden on the defendants to prove that the sale transactions were not benami transactions. As held hereinabove in fact when the plaintiffs' claim, though not specifically pleaded in the plaint, that the Sale Deeds in respect of suit properties, which are in the name of defendant no.1, were benami transactions, the plaintiffs have failed to prove, by adducing cogent evidence, the intention of the Narayanasamy Mudaliar to purchase the suit properties in the name of defendant no.1 – his wife.

A 9. Even the reasoning and the findings recorded by the Trial Court confirmed by the High Court while holding the Sale Deeds/transactions in favour of defendant no.1 as benami cannot be said to be germane and or fulfilling the circumstances as carved out by this Court in the aforesaid decisions.

B 9.1 The first reason which is given by the learned Trial Court while holding the suit properties as benami transactions is that part sale consideration was paid by Narayanasamy Mudaliar at the time of the purchase of the property vide Sale Deed Exh. B3. As held by this Court in catena of decisions referred to hereinabove, the payment of part sale consideration cannot be the sole criteria to hold the sale/transaction as C benami. While considering a particular transaction as benami, the intention of the person who contributed the purchase money is determinative of the nature of transaction. The intention of the person, who contributed the purchase money, has to be decided on the basis of the surrounding circumstances; the relationship of the parties; the motives governing D their action in bringing about the transaction and their subsequent conduct etc. It is required to be noted that Narayanasamy Mudaliar, who contributed part sale consideration by purchasing property at Exh. B3, might have contributed being the husband and therefore by mere contributing the part sale consideration, it cannot be inferred that Sale Deed in favour of the defendant no.1-wife was benami transaction and E for and at behalf of the joint family. Therefore, the Trial Court as well as the High Court have committed a grave error in holding the suit properties as benami transactions/ancestral properties on the basis of the document at Exh. B3.

F 9.2 Similarly, merely because of the stamp duty at the time of the execution of the Sale Deed at Exh. B4 was purchased by Narayanasamy Mudaliar, by that itself it cannot be said that the Sale Deed at Exh. B4 in favour of defendant no.1 was benami transaction. It is required to be noted that except the aforesaid two documentary evidences at Exh. B3 and B4, no other documentary evidence/transaction/Sale Deed in favour G of defendant no.1 have been considered by the learned Trial Court and even by the High Court.

9.3 Now, so far as the findings recorded by the Trial Court and the High Court on considering the Release Deed at Exh. A1 viz. the Release Deed executed by Nagabushanam in favour of defendant no. 1 H on payment of Rs.10,000/- and therefore inference drawn by the learned

Trial Court and the High Court that therefore even the defendant no.1 also considered the share of the daughter and considered the suit properties as joint family properties and therefore plaintiffs have also share in the suit properties is concerned, the said finding is just a mis-reading and mis-interpretation of the evidence on record. In her deposition, defendant no.1 has explained the payment of Rs.10,000/- to Nagabushanam, daughter and the Release Deed executed by her. It is specifically stated by her that though she had no share in the suit properties, with a view to avoid any further litigation in future and to be on safer side, Rs.10,000/- is paid and the Release Deed was got executed by Nagabushanam in favour of defendant no.1. Even in the Release Deed at Exh. A1, it is so specifically stated. Therefore, merely because to avoid any further litigation in future and though Nagabushanam had no share in the suit properties, Rs.10,000/- was paid and the Release Deed was got executed in favour of defendant no.1, by that itself, it cannot be said that defendant no.1 treated the suit properties as ancestral properties and/or Joint Family Properties.

9.4 Even considering the Will executed by defendant no.1 dated 11.02.1987 and the subsequent revocation of the Will is suggestive of the fact that defendant no.1 all throughout treated the suit property as her self-acquired property which according to her were purchased from the Stridhana and selling of the jewellery.

10. It is required to be noted that in the plaint the plaintiffs came out with the case that the suit properties purchased in the name of defendant no.1 by Narayanasamy Mudaliar from the funds raised by selling the ancestral properties received by him. It was never the case on behalf of the plaintiffs that the suit properties were purchased by Narayanasamy Mudaliar in the name of defendant no.1 out of the income received from the ancestral properties. However, considering the date of transactions with respect to the suit properties and the ancestral properties sold by Narayanasamy Mudaliar, it can be seen that all the suit properties purchased in the name of defendant no.1 were much prior to the sale of the ancestral properties by Narayanasamy Mudaliar. The ancestral property was sold by the Narayanasamy Mudaliar (Exh. A3) on 11.11.1951. However, the Sale Deeds at Exh. B3, B4, B5, B6 and B7 which are in favour of defendant no.1 were much prior to the sale of the property at Exh. A3. Therefore, also it cannot be said that the suit properties were purchased in the name of defendant no.1 by

A Narayanasamy Mudaliar from the funds received by selling of the ancestral properties.

11. Even considering the observations made by this Court in paragraph 10 in the case of Om Prakash Sharma (Supra) it can be said that Narayanasamy Mudaliar might have purchased the properties in
B the name of defendant no.1 in order to provide his wife with a secured life in the event of his death. It is required to be noted that it was the specific case on behalf of the defendant no.1 that the suit properties were purchased by her from the Stridhana and on selling of the jewellery.

12. It is required to be noted that the benami transaction came to
C be amended in the year 2016. As per Section 3 of the Benami Transaction (Prohibition) Act 1988, there was a presumption that the transaction made in the name of the wife and children is for their benefit. By Benami Amendment Act, 2016, Section 3 (2) of the Benami Transaction Act, 1988 the statutory presumption, which was rebuttable, has been omitted.
D It is the case on behalf of the respondents that therefore in view of omission of Section 3(2) of the Benami Transaction Act, the plea of statutory presumption that the purchase made in the name of wife or children is for their benefit would not be available in the present case. Aforesaid cannot be accepted. As held by this Court in the case of *Binapani Paul* (Supra) the Benami Transaction (Prohibition) Act would
E not be applicable retrospectively. Even otherwise and as observed hereinabove, the plaintiff has miserably failed to discharge his onus to prove that the Sale Deeds executed in favour of defendant no.1 were benami transactions and the same properties were purchased in the name of defendant no.1 by Narayanasamy Mudaliar from the amount received by him from the sale of other ancestral properties.

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12.1 Once it is held that the Sale Deeds in favour of defendant no.1 were not benami transactions, in that case, suit properties, except property nos. 1 and 3, which were purchased in her name and the same can be said to be her self-acquired properties and therefore cannot be said to be Joint Family Properties, the plaintiffs cannot be said to have
G any share in the suit properties (except property nos. 1 and 3). At this stage, it is required to be noted that the learned Counsel appearing on behalf of defendant no.1 has specifically stated and admitted that the suit property Item nos. 1 and 3 can be said to be the ancestral properties and according to him even before the High Court also it was the case on

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behalf of the defendant no.1 that item nos. 1 and 3 of the suit properties are ancestral properties. A

13. In view of the above and for the reasons stated above, the present appeal is partly allowed. The impugned judgement and order passed by the High Court as well as the Trial Court holding that the plaintiffs have 3/4th share in the suit properties (Except Item Nos. 1 and 3 of the suit properties) are hereby quashed and set aside. It is observed and held that except Item Nos. 1 and 3 of the suit properties, the plaintiffs have no share in other suit properties. Preliminary Decree directed to be drawn by the learned Trial Court, confirmed by the High Court, is hereby directed to be modified accordingly. The present appeal is partly allowed to the aforesaid extent. No costs. B C

Nidhi Jain Appeal partly allowed.