



IN THE HIGH COURT OF ANDHRA PRADESH

A.S.No.1858 of 1994

Between:

- #1. Tayi Hemalatamma
W/o. Late Srirama Murthy,
R/o. Opp: II Town Police Station,
Main Road, Rajahmundry and others.

... APPELLANTS

AND

- \$ 1. Tayi Venkata Ramana (died) per LRs.
2. Tayi Krishna Rao S/o. late Srirama Murthy,
Assistant Divisional Engineer, A.P.S.E.B.,
Vidyut Soudha, Hyderabad.
3. Tai Subba Rao S/o. Late Srirama Murthy,
Assistant Engineer, Vijayawada Thermal
Power Station, A.P.S.E.B., Ibrahimpatnam.
4. Tayi Rama Mani W/o. Venkataramana, Inam, Hyderabad.
5. Tayi Sriram S/o. Venkata Rmana, student, Hyderabad.
6. Tayi Hema D/o. Venkata Ramana, student, Hyderabad.
7. Tayi Sri Lakshmi, student, Hyderabad.

(Respondents 6 and 7 are being minors represented by their
Mother and guardian 4th respondent)

... RESPONDENTS

Date of Judgment pronounced on : 24.10.2019

HON'BLE SRI JUSTICE M. VENKATA RAMANA

1. Whether Reporters of Local newspapers :
Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked :
Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy :
Yes/No
Of the Judgment?



***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

***HONOURABLE SRI JUSTICE M. VENKATA RAMANA**

+ A.S.No.1858 of 1994

% Dated:24.10.2019

Between:

#1. Tayi Hemalatamma
W/o. Late Srirama Murthy,
R/o. Opp: II Town Police Station,
Main Road, Rajahmundry and others.

... APPELLANTS

AND

\$ 1. Tayi Venkata Ramana (died) per LRs.
2. Tayi Krishna Rao S/o. late Srirama Murthy,
Assistant Divisional Engineer, A.P.S.E.B.,
Vidyut Soudha, Hyderabad.
3. Tai Subba Rao S/o. Late Srirama Murthy,
Assistant Engineer, Vijayawada Thermal
Power Station, A.P.S.E.B., Ibrahimpatnam.
4. Tayi Rama Mani W/o. Venkataramana, Inam, Hyderabad.
5. Tayi Sriram S/o. Venkata Rmana, student, Hyderabad.
6. Tayi Hema D/o. Venkata Ramana, student, Hyderabad.
7. Tayi Sri Lakshmi, student, Hyderabad.

(Respondents 6 and 7 are being minors represented by their
Mother and guardian 4th respondent)

... RESPONDENTS

! Counsel for appellants : Mr. Ch. Dhanamjaya

^Counsel for Respondents : Mr. P. Durga Prasad

<GIST:

>HEAD NOTE:

? Cases referred:

1. AIR 1965 SC 271
2. (1974) 1 SCC 3
3. (2007) 6 SCC 100
4. (2015) 15 SCC 556
5. AIR 2019 SC 2918
6. (1980) 3 SCC 72
7. (2004) 7 SCC 233
8. (2008) 7 SCC 716
9. 2001 (4) ALD 641
10. 1993 (3) ALT 51
11. AIR 1995 SC 2145
12. (2005) 6 SCC 441



HONOURABLE SRI JUSTICE M. VENKATA RAMANA

A.S.No.1858 of 1994

JUDGMENT:

This appeal is preferred against the decree and judgment in O.S.No.36 of 1984 dated 01.08.1994 on the file of the Court of learned Subordinate Judge, Narsapur, West Godavari District.

2. The defendants are the appellants.

3. Respondents 1 to 3 laid the suit for partition of the plaint schedule properties directing their division into seven shares, to allot two shares to everyone of them and for allotting one such share to the appellants together. The plaint schedule properties, which shall be referred to hereinafter as the 'suit lands' are described in the plaint schedule as under:

District	: West Godavari
Taluk	: Narsapur
Village	: Thunduru
1. R.S.No.631 Full Extent	: Ac.9.68 cents
2. R.S.No.635 Full Extent	: Ac.4.65 cents
3. R.S.No.636/1,2,3 Full Extent	: Ac.6.53 cents
4. R.S.No.637/3 Full Extent	: Ac.2.00 cents
5. R.S.No.836/1,2 Full extent	: Ac.3.32 cents.

Total Extent	Ac.26.18 cents

4. The suit is decreed in favour of the respondents as prayed for, directing division of the suit lands and also directing an enquiry into mesne profits.

5. The parties to this appeal are closely related. The 1st appellant was the wife of Sri late Thayi Sreerama Murthy. Respondents 1 to 3 are their sons, and appellants 2 to 4 are their



daughters. Appellant No.5 is stated to be an intending purchaser of the suit lands from appellants 1 to 4.

6. During the pendency of the suit, the 1st respondent died. His wife and children being respondents 4 to 7 were brought on record in the trial Court.

7. During pendency of this appeal, appellants 1, 2, 4 and 5 died. L.Rs. of the 2nd appellant are appellants 12 to 14. LRs of 4th appellant are appellants 15 to 18. LRs of 5th appellant are appellants 6 to 8. The 5th appellant remained *ex parte* in the trial Court and did not choose to contest the suit.

8. The case of the respondents, as seen from the plaint, in brief, is as under:

i) Sri late Thayi Sreerama Murthy was a practising advocate at Rajahmundry who later on, shifted his practice to Narsapur. He died on 17.02.1972. In order to avoid any dispute with his brothers, Sri late Thayi Sreerama Murthy, acquired the suit lands, spending his money, in the name of the 1st appellant benami for his benefit and enjoyment. He continued to be in possession and enjoyment of these lands paying land revenue etc. during his lifetime. The 1st appellant had never enjoyed these lands on her own nor paid any land revenue.

ii) After the death of Sri late Thayi Sreerama Murthy, the 1st respondent managed the suit lands, leasing out to Sri Bushi Raja Rao of Thunduruu village till the year 1980. However, the 1st respondent, with active connivance of her son-in-law Dr. M.Gangayya, husband of the 4th appellant, took possession of the suit lands by force, dispossessing the tenant in or about the year 1980. The 1st appellant



was attached and was affectionate towards her daughters and intended to give away the suit lands to them. The appellants had also offered to sell these lands and 5th appellant wanted to purchase a part of the same from them.

iii) Respondents 1 to 3 got issued a legal notice on 06.06.1983 to the appellants 1 to 4 demanding partition and division of the suit lands, as well as for profits since the year 1980. The appellants 1 to 4 got issued a reply dated 12.07.1983 to this legal notice with false and baseless allegations. The claim of appellants 1 to 4 that the suit lands were purchased by the 1st appellant out of funds made available by her father as 'stridhana' is false.

iv) However, the first appellant had executed a registered settlement deed dated 30.09.1959 in respect of Ac.14.83 cents out of the suit lands (item Nos.1 and 2) in favour of appellants 2 to 4. Similarly, she executed another settlement deed for remaining extent out of the suit lands on 13.06.1975. This settlement deed dated 13.06.1975 was not to the knowledge of respondents 1 to 3. Both the settlement deeds were never acted upon, nor the 1st appellant had any right to execute them, which were brought into existence collusively and fraudulently, to defeat the claims and rights of respondents 1 to 3 to the suit lands.

9. The 1st appellant filed a written statement resisting the claim of respondents 1 to 3. It was adopted by appellants 2 to 4.

10. The case of the 1st appellant in brief in her written statement is, as under:

i) Sri late Madhavareddy Purushotham Naidu was the father of the 1st appellant. He was a leading advocate at Rajahmundry and was



affluent. Sri late Madhavareddy Purushotham Naidu gifted the house at Rajahmundry and gave considerable cash to the 1st appellant towards 'pasupukumkuma'. Out of such funds available as 'stridhana' given by her father, the 1st appellant purchased the suit land at Thunduru village and continued to be in their possession and enjoyment as her 'stridhana' properties. Her husband Sri late Thayi Sreerama Murthy, during his lifetime had never claimed these properties nor enjoyed.

ii) All the members of the family of Sri late Thayi Sreerama Murthy treated the suit lands as 'stridhana' of the 1st appellant. During the life time of Sri late Thayi Sreerama Murthy, she executed a registered settlement deed dated 30.09.1959 in favour of appellants 2 to 4 in respect of items 1 and 2 of the suit lands conferring absolute rights, which they continued to enjoy ever since. Neither Sri late Thayi Sreerama Murthy, nor the respondents 1 to 3 raised any objection in respect thereto.

iii) During his lifetime, Sri late Thayi Sreerama Murthy, executed an unregistered Will bequeathing all his properties to the respondents 1 and 3 and there is no reference as to the suit lands in the said Will. Respondents 1 to 3 did not disclose the suit lands as a part of estate of Sri late Thayi Sreerama Murthy for assessment of estate duty. They did not declare these properties as a part of their land holding, in the declarations furnished under Land Ceiling Act.

iv) Since the 1st appellant was looked after by her daughters, she executed a registered settlement deed dated 13.06.1975 in their favour giving away other items of the suit lands in an extent of Ac.11.85 cents reserving life estate to her with vested remainder to



them. Appellants 1 to 4 paid land revenue for these lands and also disclosed the suit lands as part of their land holding in the declarations under Land Ceiling Act.

v) Neither Sri late Thayi Sreerama Murthy, nor respondents 1 to 3 ever enjoyed the suit lands nor paid land revenue. Sri Bushi Raja Rao, was the farm servant of the 1st respondent, who had never cultivated the suit lands. Appellants 1 to 4 were getting the suit lands cultivated personally under the supervision of one Sri Mallula Venkata Narayana, through Sri Adabala Appa Rao till he died. Respondents 1 to 3 did not take care of the 1st appellant, who deserted her, and she had no other go than to be looked after by her daughters.

vi) When a legal notice was issued by respondents 1 to 3, a suitable reply was issued on their behalf denying their claim. The suit itself is a mischievous attempt and the question of respondents 1 to 3 being co-owners along with the appellants in respect of the suit lands did not arise nor were they ever in possession of these lands. Thus, they could not file a suit for partition, as such.

11. Basing on the above pleadings, the trial Court settled the following issues for trial:

1. Whether the plaint schedule properties were purchased by Late Sri Thayi Sreerama Murthy benami in the name of 1st defendant?
2. Whether D1 has no title in the plaint schedule properties?
3. Whether the settlement deed dated 30.08.1959 executed by D1 in favour of D2 to D4 was never meant to be acted upon?
4. Whether the settlement deed dated 13.06.1975 executed by D1 in favour of D2 to D4 is not valid?
5. Whether the plaintiffs are entitled to any share in the suit properties? If so to what share?
6. Whether the defendants 1 to 4 are liable to render an account to the plaintiffs?
7. Whether the suit properties are not properly valued?
8. Whether D1, D2 and D4 are entitled to compensatory costs under Section 35(A) C.P.C.?



9. To what relief?

12. At the trial, the third respondent examined himself as P.W.1 and the respondents relied on Exs.A.1 to A.63 in support of their claim, whereas the 4th appellant examined herself as D.W.1, the 1st appellant as D.W.2 and D.W.3 being the husband of the 4th appellant. The appellants relied on Ex.B.1 to Ex.B.33 in support of their claim.

13. Upon consideration of pleadings and evidence let-in by the parties as well as their contentions, learned trial Judge held issues 1 to 7 in favour of respondents 1 to 3. However, with reference to issue No.8, it was held that the respondents 1 to 3 were not entitled for compensatory costs. Ultimately, a preliminary decree was passed in favour of respondents and against the appellants for partition, directing that the suit lands be divided into seven equal shares and to allot two such shares to everyone of the respondents 1 to 3 or their legal heirs and remaining one share to be allotted to appellants 1 to 4. An enquiry into mesne profits was also directed.

14. Sri Ch. Dhanamjaya, learned counsel for the appellants assailing the findings recorded in the judgment under appeal, strenuously contended that the trial Court failed to appreciate that burden is very heavy on those who set up a plea of benami and that the respondents miserably failed in discharging their burden. Referring to evidence on record, it is contended further on behalf of the appellants that there is ample proof that the suit lands were purchased by the 1st appellant, out of the funds made available by her father, who was a leading advocate at Rajahmundry and a wealthy individual. It is also pointed out that husband of the 1st



appellant Sri late Thayi Sreerama Murthy, during his lifetime had never set up any claim to the suit lands and during his lifetime Ex.B.1-settlement deed dated 30.09.1959 was executed by the 1st appellant in favour of her daughters covering items 1 and 2 of the suit lands.

15. It is contended for the appellants that conduct of Sri late Thayi Sreerama Murthy, who was an advocate, in the circumstances should be taken into consideration, who had never chosen to question such transaction.

16. It is further contended for the appellants that respondents 1 to 3 were given away the properties by Sri late Thayi Sreerama Murthy, under a Will, which is an admitted fact and during his lifetime even these respondents did not question about the suit lands, which the 1st appellant was enjoying as of her own and through her daughters.

17. Referring to the declarations filed under Land Ceiling Act of their respective extents, it is contended that in the presence of such material and strong evidence supporting the version of the 1st appellant at the trial, recording such findings by the learned trial Judge, more particularly when respondents 1 to 3 had set up their claim to the suit lands as self-acquired property of Sri late Thayi Sreerama Murthy, treating them as joint family properties by the learned trial Judge, is totally uncalled for.

18. Thus, mainly pointing out that the judgment under appeal cannot stand, it is sought to allow the appeal.

19. Sri P. Durga Prasad, learned counsel for the contesting respondents supporting the judgment under appeal, mainly



contended that the sale deeds marked Ex.A.2, Ex.A.3, Ex.A.6, and Ex.A.10 to Ex.A.14 at the trial relating to the suit lands, clearly make out that the consideration there under was paid by Sri late Thayi Sreerama Murthy and in view of pending litigation among himself and his brothers, he had to take such caution to avoid any further trouble by the brothers.

20. It is pointed out by Sri P. Durga Prasad, learned counsel for the contesting respondents that there is enough evidence on record in the nature of Ex.A.2, Ex.A.3, Ex.A.6 and Ex.A.10 to Ex.A.14 apart from Ex.A.35 to Ex.A.56, Ex.A.62 and Ex.A.63 demonstrating the financial strength of Sri late Thayi Sreerama Murthy to acquire these lands, who was enjoying the same, as is made out by payment of land revenue as per Ex.A.15 to Ex.A.30, which after his lifetime, the respondents 1 to 3 were enjoying, as established by Ex.A.57 to Ex.A.61.

21. It is also contended for the respondents that there is no proof laid by the appellants to support their version that the suit lands were purchased by the 1st appellant or in respect of the alleged 'stridhana', she had received from her father or in respect of her exclusive possession and enjoyment of the suit lands.

22. Assailing Ex.B.1 and Ex.B.2-the registered settlement deeds in favour of respondents 2 to 4 executed by the 1st appellant, it is contended that no proof was offered at the trial by examining any of the attestors or the scribe in respect thereof nor alleged possession and enjoyment of the suit lands by them pursuant thereto.



23. Thus contending that there is no necessity calling for interference with the findings recorded by the trial Court, it is sought for dismissal of this appeal.

24. On behalf of the appellants, two petitions under Order XLI Rule 27 CPC to permit to adduce additional evidence have been filed in A.S.M.P.No.1136 of 2005 and C.M.P.No.2183 of 2002. These two petitions are being considered infra in this appeal at appropriate stages of discussion.

25. Now, the following points arise for determination in this appeal:

1. Whether the suit lands were acquired by the deceased 1st appellant out of her 'stridhana' or by Sri late Thayi Sreerama Murthy, out of his own funds in the name of the 1st appellant?
2. Whether Ex.B.1 and B.2 registered settlement deeds conferred right, title and interest to the suit lands upon appellants 2 to 4, and if they were acted upon?
3. Whether respondents 1 to 3 could claim relief of partition of the suit lands against the appellants 1 to 4?
4. Whether the trial Court is justified in decreeing the suit as prayed and if the reasons assigned in the impugned judgment are just and proper?
5. To what relief?

Point No.1:-

26. The relationship among the parties is admitted as well as of Sri Late Thayi Sreerama Murthy.

27. Sri Thayi Sreerama Murthy was an Advocate. He was enrolled as an Advocate in the year 1935. Sri Madhavareddy



Purushotham Naidu was a leading Advocate at Rajahmundry as well as a wealthy individual owning extensive properties. The 1st appellant was his daughter, by his first wife-Smt. Adishesamma. Smt. Adishesamma died when the 1st appellant was an infant. Thereupon, Sri Madhavareddy Purushotham Naidu married his second wife, viz., Smt. Ranganayakamma. Smt. Adishesamma had a son, who died during infancy and during her lifetime.

28. Smt. Ranganayakamma had a son Sri Nageswara Rao and daughters Smt. Adishesamma and Smt. Annapurnamma by Sri Madhavareddy Purushotham Naidu. Smt. Annapurnamma died issueless. Sri Nageswara Rao died unmarried.

29. Sri late Thayi Sreerama Murthy joined the chambers of Sri Madhavareddy Purushotham Naidu and practised with him at Rajahmundry for about two years. Thereafter, he migrated to Narsapur, where he began practice as an advocate as a member of Narsapur Bar, in the year 1945.

30. PW.1, who is their son, deposed in this context and also that Sri late Thayi Sreerama Murthy practised up to the year 1971 at Narsapur. But it remained a disputed fact. According to the appellants Sri late Thayi Sreerama Murthy became stone-deaf in the year 1952 and therefore he stopped attending the Court at Narsapur. It is also an admitted fact that Sri late Thayi Sreerama Murthy was residing at Mogalthur and from where, as per the material on record, he was attending the Court at Narsapur.

31. Evidence of PW.1 is to the effect that his father was earning Rs.600/- per month as an Advocate and this professional income of Sri late Thayi Sreerama Murthy is not vouched by any



documentary proof. According to PW.1, his father informed him in the year 1950, of his monthly income from profession. PW.1 was born in the year 1941. By the year 1950, he would have been nine years old. Therefore, as rightly contended for the appellants, it is hard to believe his version relating to professional income of his father.

32. However, professional income of Sri late Thayi Sreerama Murthy alone cannot be taken in this case as an indicator or criteria as to his financial strength.

33. His father Sri late Thayi Subba Rao Naidu Garu was a Tahsildar. He owned extensive properties at Mogalthur and stated to be an extent of Ac.200.00. Siblings of Sri late Thayi Sreerama Murthy were all well placed and were highly educated.

34. There was a suit in O.S.No.39 of 1956 on the file of then Sub-Court, Narsapur for partition among Sri late Thayi Sreerama Murthy and his brothers with reference to the properties left behind by their father. It is not in dispute that prior to the year 1956, Sri late Thayi Sreerama Murthy was managing the joint family properties belonging to himself and his brothers, for about a period of six years. According to PW.1 till filing O.S.No.39 of 1956, his father did not take any income from joint family properties and allowed to swell.

35. It is also seen from the evidence of PW.1 that Sri late Thayi Sreerama Murthy had Ac.15.00 of land at Thunduru and PW.1 stated that it was his self acquired property. In the partition among the brothers of Sri late Thayi Sreerama Murthy, he was allotted an extent of Ac.30.00 which properties were at Thunduru as well as Mogalthur. Evidence of PW.1 is also to the effect that his father had raised a cattle shed, as well as for his stay in one of the lands, at



Thunduru. This fact is also confirmed from the deposition of the 1st appellant, who was examined as DW.1 in the suit.

36. The respondents 1 to 3 in the suit had also acquired the properties left behind by Sri late Thayi Sreerama Murthy, which he had left behind either of ancestral nucleus or his self acquisitions.

37. It is also not in dispute that Sri late Thayi Sreerama Murthy had created a bequest under a Will, in favour of the respondents 1 to 3 specifically allotting his properties, dated 5.11.1971. It was PW.1, who had presented this Will for registration in the office of Joint Sub-Registrar, Kakinada and the same was registered on 07.03.1975. It is in his custody. He had also made use of this Will for his purpose, when he filed a suit for O.S.No.5 of 1995 on the file of the Court of Subordinate Judge at Bhimavaram.

38. The extent of properties that was subject matter of this Will have been referred to in Ex.A.33 dated 12.07.1983 (copy of it is Ex.B.33) reply notice got issued by the appellants to legal notice issued on behalf of the respondents 1 to 3 on 06.06.1983 under Ex.A.32 dated 06.06.1983 (copy of it is Ex.B.32). An extent of Ac.29.47 cents of wetland, Ac.9.60 cents of dry land, Ac.2.77 cents of Mango garden, Ac.10.60 cents of wetland at Mogalthur and Ac.4.80 cents of waste land were the subject matter of this Will.

39. Certified copy of this Will is sought to be produced by the appellants under Order XLI Rule 27 C.P.C in additional evidence, filing a petition in A.S.M.P.No.1136 of 2005. This certified copy of the Will, as per the supporting affidavit of deceased 1st appellant in this petition was obtained from O.S.No.5 of 1995 on the file of the Subordinate Court, Narsapur. It was a suit instituted by PW.1.



Execution of this Will by Sri late Thayi Sreerama Murthy is not a disputed fact in this case. PW.1 was specifically cross-examined on behalf of the appellants with reference to it and he did admit it. Therefore, when it is the document of the respondents, there cannot be any objection for its consideration in this appeal. On behalf of the respondents Sri P. Durga Prasad, learned counsel in the course of hearing did not oppose its reception. Therefore, in these circumstances, certified copy of this Will dated 05.11.1971 (registered on 07.03.1975) executed by Sri late Thayi Sreerama Murthy is exhibited and it shall be Ex.B.34 in this case. In given admitted fact situation, it is not necessary that specific proof of this Will shall be called for. DW.1 (4th appellant) also specifically deposed at the trial that she and her sisters have not been claiming any properties given to their brothers by their father.

40. The respondents also relied on Ex.A.35 to Ex.A.53 and Ex.A.62, which are in the nature of passbooks or the statements of Bank accounts in the name of Sri late Thayi Sreerama Murthy, in support of their contention that he had sufficient financial strength in between years 1951 and 1954 to purchase the suit lands. As seen from the material on record, the appellants did not seriously contest such version. In fact, extent of property owned and held by him during his lifetime, did indicate his financial capacity.

41. The contention of the appellants is that the suit lands are exclusive properties belonging to the 1st appellant. Their further contention is that on account of cash, gold jewellery and houses given to her as 'stridhana' by her father Sri Madhavareddy Purushotham Naidu, the suit lands were purchased. Funds for such



purchase, according to the appellants, had flown either upon sale of such property or from the rents realised therefrom. It is the version of the appellants through DW.1 and DW.2 that the deceased 1st appellant was receiving a sum of Rs.1000/- per month during such period when these suit lands were purchased by way of rents. It is their version that the 1st appellant received a lot of gold jewellery belonging to her mother and funds were supplemented by her father.

42. The respondents seriously questioned this version of the appellants on the ground that absolutely there is no material, much less, documentary proof in this context and mere oral evidence from DW.1 and DW.2 is not sufficient.

43. In order to establish that houses near One Town Police station Rajahmundry were given away to the deceased 1st appellant, they relied on Exs.B-3 to Ex.B.15. They relate to property tax paid for Assessment No.14057 referring to D.No.17/148A Rajahmundry. They bear the names of Sri Madhavareddy Purushotham Naidu and the 1st appellant.

44. In respect of another house D.No.17/146 (8-24-18) with Assessment No.14053, Ex.B.16 to Ex.B.20 were produced by DW.1. They bear reference to the 1st appellant apart from others. Ex.B.21 to Ex.B.27 relate to the house bearing D.No.8-24-125 with Assessment No.15141 referring to the name of the deceased 1st appellant.

45. Ex.B.31 dated 01.02.1957 is a copy of proceedings of the Commissioner, Rajahmundry Municipality, regarding transfer of houses. It includes house bearing No.7/148A (9553), recording its transfer in favour of the 1st appellant. It also refers to transfer of house bearing D.No.17/148 (Assessment No.9552) in favour of Smt.



Koka Adishesamma and Koka Annapurna Subbaraoji being minor represented by their mother Smt. Koka Adishesamma. The transfer was so carried out pursuant to a sale notice received from Sub-Registrar office dated 06.06.1956, as per its contents.

46. The property tax receipts referred to above pertain to the period long after purchase of the suit lands. They range from the year 1971 to 1989. According to the 1st appellant (DW.2), all these properties were sold long ago. By the date of the suit, none of them was retained by the 1st appellant. Learned trial Judge also rejected these documents on such score.

47. Nonetheless, Ex.B.31 makes out a circumstance that there was a house at Rajahmundry in the name of the deceased 1st appellant. It offers a circumstance of proof as to existence and availability of such property for the 1st appellant to rely on.

48. Ex.A.1 is the registration extract of sale deed dated 17.07.1956, whereunder, an open site in municipal No.7-21 in TS.No.235 was sold by the 1st appellant for Rs.2750/- along with Sri Bhaskar Rao, in favour of Sri Maddipati Durga Rao S/o. Sri Venkata Ratnam, a resident of Annadevarapeta of Kovvuru Taluk, West Godavari District.

49. Though it is the contention of the respondents that sale of this site at Rajahmundry was after purchase of the suit lands, this sale transaction is indicative of the fact of the property held by the 1st appellant at Rajahmundry. In fact, it feeds the appellants to present their version of holding such immovable property by 1st appellant. The contention of the respondent that this sale transaction cannot in any manner be deemed or concerned to the acquisition of the suit



lands by the 1st appellant. Yet, it did offer a circumstance of significance to support the version of the appellants, as to the properties held by her, which she acquired from her parents.

50. The suit lands were purchased under Ex.A.2, Ex.A.6 and Ex.A.10 to Ex.A.14. All these documents are reflecting that these sale transactions are in the name of the 1st appellant. Ex.A.2, Ex.A.3 and Ex.A.6, which are original sale deeds, bear the signature of Sri late Thayi Sreerama Murthy at the relevant endorsements recorded by the registering authorities. PW.1 has deposed in this respect, whereas DW.1, viz., the 3rd defendant, gave a different version, as if she was not in a position to identify these signatures attributed to her father at the trial.

51. However, it is a fact remained established, particularly from the evidence of deceased 1st appellant as DW.2, that her husband, viz., Sri Late Thayi Sreerama Murthy attended to all these transactions, including obtaining the sale deeds. However, she asserted that the sale consideration to acquire these lands was given by her. She admitted that her husband paid sale consideration. But such statement of DW.2 is qualified by her assertion that the sale consideration paid under these transactions belonged to her.

52. Thus, the contents of these sale documents of the suit lands, reflecting that they were acquired by the 1st appellant, lend any amount of support to the version of the appellants in this case. It is one of strong circumstances of reckonance in their favour.

53. The background and set up of this family should be considered in this context. Sri late Thayi Sreerama Murthy passed away on 17.02.1972. It is an admitted fact that the deceased 1st



appellant and he, were living together. In spite of their affluent background, they were happy to live together even, making use of a part of cattle shed raised in one of their agriculture fields, using brick walls with thatched roof. It can be culled out from the evidence of PW.1, DW.1 and DW.2. In such circumstances, when both of them were living together sharing happiness, travails and turbulences in the family, it cannot be deemed unusual for Sri late Thayi Sreerama Murthy, attending to the affairs of the 1st appellant.

54. Having regard to this background, when these transactions occurred way-back in between the years 1951 and 1954 the statements elicited from the 1st appellant (DW.2) in cross-examination for the respondents cannot lead to any other inference than explaining the affinity between this couple. Further, the respondents 1 to 3 as well as the appellants 1 to 4 were all got educated by this couple. All of them were highly qualified and by early 1960s, they had completed their studies. The respondents 1 to 3, were qualified engineers, the 2nd appellant was a lecturer in Economics at Hyderabad, the 3rd appellant was a Reader in Kakatiya University at Warangal and the 4th appellant (DW.1) completed BDS from Hyderabad. In this context, the statement of PW.1 in examination in chief itself points out how this family was being managed, realising and making use of income, including from the suit lands. He stated that the income from the suit lands was being enjoyed by his father and members of the family, viz., PW.1, brothers, sisters and their mother.

55. Therefore, when the circumstances of this family presented such scenario, even if Sri late Thayi Sreerama Murthy was



attending to agriculture and maintenance of the suit lands paying land revenue therefor, it cannot assume any significance. Nor it is open for the respondents to contend that Sri late Thayi Sreerama Murthy was exclusively enjoying the suit lands and against the interest of his wife.

56. Therefore, importance need not be attached to Ex.A.15 to Ex.A.31 and Ex.B.57 to Ex.B.67 land revenue receipts. A careful examination of these land revenue receipts make out that land revenue was paid in the name of the 1st appellant during life time of Sri late Thayi Sreerama Murthy. These lands were never mutated in his name. It is also an important circumstance to bear in mind in evaluating the claim of the respondents.

57. Explaining this situation in the family and circumstances then prevailing, on behalf of the appellants, reliance is placed in **Kanakarathanammal v. V.S. Loganatha Mudaliar and Ors.**¹. In this ruling, in some what similar circumstances, as to actual management of property in ordinary Hindu families when the property belonged to one of the family members, who is a female exclusively, basing on the facts, it was observed in paragraph-8 as under:-

"8. It is true that the actual management of the property was done by the appellant's father; but that would inevitably be so having regard to the fact that in ordinary Hindu families, the property belonging exclusively to a female member would also be normally managed by the Manager of the family; so that the fact that appellant's mother did not take actual part in the management of the property would not materially affect the appellant's case that the property belonged to her mother. The rent was paid by the tenants

¹ Air 1965 SC 271



and accepted by the appellant's father; but that, again, would be consistent with what ordinarily happens in such matters in an undivided Hindu family. If the property belongs to the wife and the husband manages the property on her behalf, it would be idle to contend that the management by the husband of the properties is inconsistent with the title of his wife to the said properties. What we have said about the management of the properties would be equally true about the actual possession of the properties, because even if the wife was the owner of the properties, possession may continue with the husband as a matter of convenience. We are satisfied that the High Court did not correctly appreciate the effect of the several admissions made by the appellant's father in respect of the title of his wife to the property in question. Therefore, we hold that the property had been purchased by the appellant's mother in her own name though the consideration which was paid by her for the said transaction had been received by her from her husband."

58. Reliance placed on this ruling and reference to this passage on behalf of the appellants, is quite apt and fits in, having regard to the circumstances of the present case.

59. Therefore, on the material, the inference and conclusion to be drawn is that association of Sri late Thayi Sreerama Murthy with the affairs in acquiring the suit lands and their management, did not imbibe a character of their exclusive acquisition, possession and enjoyment by him against the interests of the 1st appellant.

60. Contention of the respondents that Sri late Thayi Sreerama Murthy acquired the suit lands in the name of his wife to avoid troubles from his brothers and litigation, in the background of the circumstances discussed supra, cannot be appreciated. O.S.No.39 of 1956 was filed for partition of the join family properties, which originally belonged to the father of Sri late Thayi Sreerama Murthy. Reference to this suit is also made in Ex.B.34-Will.



61. In this context it is to be noted that Sri late Thayi Sreerama Murthy had acquired lands on his own when the above suit was pending. Statement of PW.1 elicited in the cross-examination is to this effect. It is to the effect that his father had about Ac.15.00 of land at Thunduru and it was a self acquired property. By the date of the above suit, the evidence of PW.1 also makes out that brothers of Sri late Thayi Sreerama Murthy had acquired the properties on their own and that they had independent earnings of their own, besides income from joint family property. PW.1 further deposed that his father and his brothers acquired some properties with their separate earnings.

62. When it was so, the reason set out by the respondents that Sri late Thayi Sreerama Murthy purchased the suit lands to screen himself from possible trouble from his brothers on account of such acquisition, cannot stand to reason. Further, the manner by which he went on treating these properties, without meddling with them in any manner either to get them mutated in his name or in favour of other male members of the family, is a pointer to hold that he indeed treated them, as exclusive properties of his wife.

63. Further, the way he had chosen to execute the original of Ex.B.34-Will in completely remaining silent without making any reference to the suit lands or recording a statement therein that the suit lands were purchased by him out of his funds nominally in the name of his wife to avoid disputes from his brothers is a strong indicator, making out as to how he treated the suit lands. Original of Ex.B.34-Will was to the knowledge of everyone in the family. When it



came to light after death of Sri late Thayi Sreerama Murthy DW.1 and her sisters or DW.2 did not question it.

64. Sri late Thayi Sreerama Murthy was a lawyer, in good old days. It shall not to be overlooked. He had chosen to set apart the suit lands consciously being aware of their nature and since these properties were acquired by the deceased 1st appellant out of her 'stridhana', he thought it fit to keep them separately, with an intention to preserve and maintain their character as well as nature. He did not choose to bring them into common hatch pot of the family. Tenor of the recitals in Ex.B.34-Will make out that he claimed the properties covered by it, though acquired from his father, as self acquired properties.

65. These are all the tell tale circumstances, consequence of which, cannot be overlooked.

66. Added to it, the manner by which items 1 and 2 of the suit lands were given away under Ex.B.1-settlement deed, during his lifetime by the deceased 1st appellant, in the year 1959 itself is an added circumstance in this respect.

67. Recitals in Ex.B.1 are to the effect that an extent of Ac.14.33 cents at Thunduru village was acquired by the deceased 1st appellant out of her 'stridhana' property. They are items 1 and 2 of the suit lands. These recitals in Ex.B.1 have to be given due importance. It is not as though PW.1 and his two brothers were not aware of settlement of these lands under Ex.B.1 in favour of D.2 to D.4. They were all majors by then and pursuing their studies. Further, Sri late Thayi Sreerama Murthy was very much alive by then.



68. Evidence of DW.2 makes out that it was Sri late Thayi Sreerama Murthy himself got executed Ex.B.1 in favour of her daughters. Though she stated that it was so done to get over the effect of impending Land Reforms Legislation, in the nature of an Ordinance, corroborating the claim of PW.1 and his brothers, the circumstances in this case surrounding this transaction need to be considered.

69. Conduct of Sri late Thayi Sreerama Murthy in respect of Ex.B.1, after its execution during his lifetime is another determinative factor to make out how these lands they were treated and dealt with by him vis-à-vis his wife and daughters. There is no dispute in respect of execution of Ex.B.1 by deceased 1st appellant in favour of her daughters.

70. Sri late Thayi Sreerama Murthy did not act in any manner during his life time to ward off the effect of Ex.B.1. Even after threat of impending land ceiling ordinance, was subdued or did not continue, he did not take any steps to include these lands as of his own. The fact that he did not refer the suit lands in Ex.B.34-Will itself is definite indicator in this direction. DW.1 in cross-examination stated that possession of lands covered by Ex.B.1 was not delivered to her and her sisters. She further claimed that they were students when it was executed and therefore, question of delivery of these lands in their favour physically thereunder, did not arise.

71. Basing on the statements of DW.1, contention of the respondents is that it is proved that Ex.B.1 was never acted upon. Circumstances then prevailing in this family as a closely knit and coherent unit, need to be considered in this context. Management of



these properties by their father enures in this respect. Therefore, the contention so advanced on behalf of the respondents, on this score assailing Ex.B.1 cannot stand.

72. Another circumstance in this context to consider is, the manner by which estate duty was paid by PW.1 and his brothers. As pointed out for the appellants, in cross-examination PW.1 stated that estate duty returns were submitted after the death of their father. PW.1 further stated that such return was submitted by the deceased 1st respondent (1st plaintiff), expressing ignorance whether the suit lands were shown in this return. Obviously, PW.1 intended to shut away information relating to estate duty returns and thus has suppressed the material fact. The estate duty return would have been produced at the trial if there was a reference to the suit lands in it. Since there was no mention of the suit lands as self acquired property of their father, in the estate duty returns, it is manifest that PW.1 attempted to feign ignorance, in this respect.

73. It is also contended for the appellants that in declarations filed under Land Ceiling Act, the suit lands were not shown by PW.1 and his brothers. Learned trial Judge also considered this factor. It is the version of DW.1 to that effect. However, PW.1 did not state so in his deposition. But DW.1 was not cross-examined in that respect on behalf of the respondents when she clearly stated that in Land Ceiling declarations submitted by the plaintiffs, the suit lands were not shown as their properties. The statement so made by DW.1 has not been contradicted or challenged suggesting that it is a false statement on behalf of the respondents, at the trial.



74. In this appeal, on behalf of the appellants C.M.P.No.2183 of 2002 under Order XLI Rule 27 C.P.C., has been filed requesting to permit them to produce the records relating to land ceiling declaration filed by the deceased 1st appellant and order passed by the Land Reforms Tribunal dated 07.04.1975. Reception of this document has not been opposed on behalf of contesting respondents. In this declaration, the deceased 1st appellant had shown Items 3 to 5 of the suit lands, apart from other extents including the one at Mogaltur. This declaration recorded that the deceased 1st appellant is their owner. Possession of these lands is recorded in the name of Sri late Thayi Sreerama Murthy.

75. On behalf of respondents, it is contended that this copy of declaration confirms their contention that it was Sri late Thayi Sreerama Murthy, who was in possession of these lands. Such entry in the land ceiling declaration cannot alter the situation in any manner and in view of the findings recorded supra that it was Sri late Thayi Sreerama Murthy who was managing the affairs of the deceased 1st appellant including the suit lands. The certified copy of land ceiling declaration along with the order thereon as well as connected records in bunch, now stand marked Ex.B.35.

76. On behalf of the appellants, referring to all these circumstances, it is contended that material on record is sufficient to hold that the suit lands belonged to deceased 1st appellant and emphasis is laid on the conduct of the deceased Sri late Thayi Sreerama Murthy, as to how he treated them, during his lifetime.

77. It is further contended for the appellants that when the respondents have specifically set up a plea of benami, in respect of



the suit lands that stood in the name of deceased 1st appellant, the burden is heavy on the propounder of such plea, viz., respondents herein. In support of this contention a well known judgment of the Hon'ble Supreme Court in **Jayadal Poddar (deceased) through LRs and anr. v. Mst. Bibi Hazra and ors.**², is relied on. In this ruling, in the context of proof to establish benami nature of transaction and discharge of burden, in paragraphs 6 and 7 it is observed:-

"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 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 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 test, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant 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;

² (1974) 1 SCC 3



(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.

7. The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless No. 1 viz. the source, whence the purchase money came, is by far the most important test for determining whether the sale standing in the name of one person, is in reality for the benefit of another." (emphasis is supplied for contextual reference).

78. This ruling was followed in later judgments of Hon'ble Supreme Court including in **Binapani Paul v. Pratima Ghosh & Ors.**³; **Om Prakash Sharma Alias O.P. Joshi v. Rajendra Prasad Shewda and ors.**⁴; and very recent judgment of Hon'ble Supreme court in **Mangathai Ammal (died) through L.Rs. and ors. v. Rajeswari and Ors.**⁵.

79. In **Thakur Bhim Singh (dead) by Lrs. And ors. v. Thakur Kan Singh**⁶ in the same context in paragraph-14 it is observed:-

"Two kinds of benami transactions are generally recognized in India. Where a person buys a property with his own money but in the name of another person without any intention to benefit such other person, the transaction is called benami. In that case, the transferee holds the property for the benefit of the person who has contributed the purchase money, and he is the real owner. The second case which is loosely termed as a benami transaction is a case where a person who is the owner of the property executes a conveyance in favour of another without the

³(2007) 6 SCC 100

⁴(2015) 15 SCC 556

⁵AIR 2019 SC 2918

⁶(1980) 3 SCC 72



intention of transferring the title to the property thereunder. In this case, the transferor continues to be the real owner. The difference between the two kinds of benami transactions referred to above lies in the fact that whereas in the former case, there is an operative transfer from the transferor to the transferee though the transferee holds the property for the benefit of the person who has contributed the purchase money, in the latter case, there is no operative transfer at all and the title rests with the transferor notwithstanding the execution of the conveyance. One common feature, however, in both these cases is that the real title is divorced from the ostensible title and they are vested in different persons. The question whether a transaction is a benami transaction or not mainly depends upon the intention of the person who has contributed the purchase money in the former case and upon the intention of the person who has executed the conveyance in the latter case. The principle underlying the former case is also statutorily recognized in Section 82 of the Indian Trusts Act, 1882 which provides that where property is transferred to one person for a consideration paid or provided by another person and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.”

80. In **Valliammal (died) per LRs v. Subramanian**⁷ with reference to application of Section 41 of Transfer of Property Act and proof of Benami transaction in paragraphs 12 and 13 it is observed:-

12. There is a presumption in law that the person who purchases the property is the owner of the same. This presumption can be displaced by successfully pleading and proving that the document was taken *benami* in the name of another person for some reason, and the person whose name appears in the document is not the real owner, but only a *benami*. Heavy burden lies on the person who pleads that the recorded owner is a benami-holder.

⁷ (2004) 7 SCC 233



13. This Court in a number of judgments has held that it is well established that burden of proving that a particular sale is *benami* lies on the person who alleges the transaction to be a *benami*. The essence of a *benami* transaction is the intention of the party or parties concerned and often, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the 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.”

81. In this ruling also *Jayadayaal Poddar* case is referred to and with approval.

82. **Sitaram Agarwal and anr., v. Subarata Chandra @ Ramkrishna Dhara and ors.**⁸, is also relied on for the appellants in this respect. In paragraph 22 of this ruling in the backdrop of facts, it is observed:-

“22. As noticed herein before that in this case, no evidence has been adduced to show as to whether the income of the said property was substantially intended to be used for the purpose of charity or for the personal benefit of Amar Chandra Dhara. The positive case of the appellants only was that the name of Sri Sri Durgamata Thakurani was written in the deed of sale by mistake. The onus was on them to prove the same. A finding of fact was arrived at by the court of first appeal that the deity was in existence. The plea of the appellants that the deity was not in existence was clearly negated. The appellants did not examine the said Amar Chandra Dhara. If the appellants raised a contention that the transaction was “benami” in character, it was for them to prove the same.”

83. In *Jayadayaal Poddar* case referring to above, solemn nature of the document is declared calling for raising a presumption

⁸ (2008) 7 SCC 716



in favour of the transferee as the real owner. In *Valliammal* case referred to supra, there is clear statement of law that the person in whose name the property is purchased is the owner and this presumption should be displaced by necessary pleadings and proved to raise question of benami. When Ex.A.2, Ex.A.3, Ex.A.6, Ex.A.10 to Ex.A.14 are considered in this context, as already stated, they stand in the name of the 1st appellant as the owner and purchaser. Reasons are assigned supra, which clearly demonstrate that Sri late Thayi Sreerama Murthy during his life time, had never considered or made any attempts to treat the suit lands as a part of his acquisitions. Risking repetition, reference is made now, to Ex.B.34, Ex.B.1, Estate duty returns of the respondents 1 to 3, and their land reform declarations. They form sure and certain indicators that the suit lands were always considered and held being the exclusive property of the deceased 1st appellant by Sri late Thayi Sreerama Murthy.

84. Ex.A.63-sale agreement stood in favour of Sri late Thayi Sreerama Murthy by which, as per its recitals, he paid sale consideration to purchase a part of Item No.5 i.e., Ac.0.25 cents of the suit lands. It is concerned to Ex.A.13-sale deed. Learned Trial Judge laid emphasis on Ex.A.63, holding that it clinches the issue in favour of the respondents. But, as contended for the appellants, Ex.A.63 cannot be considered in isolation, de hors Ex.A.1-sale deed, and from its recitals. This circumstance, in fact, a definite indicator reflecting intention of Sri late Thayi Sreerama Murthy, who had chosen to have the sale deed, as the 1st appellant, being the purchaser. Therefore, the observation and finding of the trial Court



basing on Ex.A.63, have to be differed. It is a slender circumstance, with no impact, on the nature of these sale instances.

85. In such circumstances, when his stance or conduct alone bear a major and significant effect in this respect, contentions advanced on behalf of the respondents that the appellants failed to make out as to the source of funds to acquire them by the 1st appellant satisfactorily and that the material on record makes out that Sri late Thayi Sreerama Murthy alone had purchased them in the name of his wife benami for him, cannot stand.

86. Strenuous efforts put forth by the respondents referring to deposition of DW.1 and DW.2 in this regard, cannot have any impact. Contention that there is variance as to the property attributed to deceased 1st appellant and its extent either in written statement or in reply notice under Ex.A.33, or at the trial, as propounded by DW.1 and Dw.2, can have no bearing.

87. Even the conduct of the respondents in respect of the suit lands needs attention. Particularly upon demise of Sri Thayi Sreerama Murthy, they did not choose to claim them as the exclusive property of their late father and as a part of their joint family property. Question of treating this suit land as joint family property is not the case of the respondents at the trial either as seen from their pleadings or from the deposition of PW.1. In fact, PW.1 is candid to state that these suit lands have been self acquired properties of his father. But the learned trial Judge in the judgment held that these properties have been the joint family properties of the family. Thus, this finding is contra to the material on record.



88. Respondents also cannot contend that the suit lands are not mutated in the name of their sisters pursuant to Ex.B.1. This contention is not open for them to raise, particularly having regard to the manner in which their father had treated them, for the reasons stated supra and even having regard to their conduct in relation thereto.

90. Thus, they are estopped by their conduct. Till issuance of legal notice under Ex.A.32/Ex.B.32 dated 06.06.1983, they did not raise these questions, nearly for ten years after their father died. Nor is there any material to hold that they questioned these transactions during life time of their father or immediately after his death or when Ex.B.34-Will was known in the family, whereby bequest was limited to certain properties or when estate duty returns or land ceiling declarations were given. They did not explain all these circumstances at the trial, either by filing a rejoinder when the written statement of the 1st appellant raised these questions nor lead evidence. From the material on record, it is manifest that Sri late Thayi Sreerama Murthy, intended that the properties belonging to him and that of his wife be equitably distributed amongst their children. Hence, he remained silent in respect of the suit lands.

91. A number of contentions are advanced on behalf of the respondents relating to possession of the suit lands and as an incidence to indicate failure of the 1st appellant and her daughters to assert their right title and interest to the suit lands.

92. This contention has to be considered, as to how these properties came to be enjoyed after the death of Thayi Sreerama Murthy. According to the respondents, the suit lands were leased to



Sri Bushi Raja Rao, a resident of Thunduru and that, through him, the deceased 1st respondent (1st plaintiff) was managing them. However, the version of PW.1 as elicited in cross-examination, is categorical in this context that this person Sri Bushi Raja Rao had never cultivated any lands, of himself or his brothers as a tenant at any time. He also stated that they did not propose to examine him as their witness. However, there is an averment in the plaint to that effect, as if Sri Bushi Raja Rao of Thunduru was tenant of the suit lands, through whom they got these lands cultivated. Averments in the plaint to that effect are admitted by PW.1 in cross-examination.

93. When this instance is considered, possession of the lands up to the year 1980, as claimed in the plaint by respondents 1 to 3, is rendered doubtful. Attempt of the respondents to contend, basing on Ex.A.62-LR receipt that it was paid by the deceased 1st respondent (1st plaintiff), in the presence of such admission of PW.1, cannot stand.

94. There is also no proof as to the allegation in the plaint that the suit lands were highhandedly grabbed by DW.3 and deceased 1st appellant and her daughters, when their tenant Sri Bushi Raja Rao was in possession of these lands. In the presence of statement of PW.1 referred to above, even this allegation in the plaint has to be discounted.

95. On behalf of the respondents reliance is placed in **Sharada Bai v. Jamuna Bai**⁹; **Mohd. Yousuf Ali v. Ghousia Begum alias Anwar Pasha**¹⁰; **Nanda Kishore Mehra v. Sushila**

⁹ 2001 (4) ALD 641,

¹⁰ 1993 (3) ALT 51



Mehra¹¹; and **G. Mahalingappa v. G. M. Savitha¹²**, contending that the property purchased by the husband in the name of his wife cannot amount to benami transaction.

96. The respondents went to trial setting up a plea of benami as to sales by which the suit lands were purchased, attributing to their father. They also invited findings of the trial Court in this respect and the trial Court also accepted such contention. In the presence of such stand of the respondents, they cannot now contend in this appeal, against their plea of benami.

97. It is also contended for the respondents that sisters of DW.1 did not enter the witness box, requiring an adverse inference to be drawn against their claim. On the other hand, it is contended for the appellants that PW.1 was a boy of 10 years old when the purchase transactions relating to the suit lands took place and therefore, he cannot be expected to have any knowledge in respect thereof. It is further contended for the appellants that it was the deceased 1st respondent, who had known these transactions and failure to examine him as a witness in the suit, has serious consequences, including drawing an adverse inference against the respondents.

98. Thus, it is characterised on behalf of the appellants that whatever deposed by PW.1 is hearsay and cannot be treated as substantive evidence. Want of the evidence from sisters of DW.1 cannot in any manner make out that it was DW.1 and her husband, viz., DW.3 manipulated in this affair influencing the deceased 1st appellant. When the deposition of DW.1 is considered, she asserted

¹¹ AIR 1995 SC 2145

¹² (2005) 6 SCC 441



more than once, that she was deposing not only on her behalf but also on behalf of her sisters. The best evidence possible on their behalf was brought out from DW.2, viz., their mother. In view of it, the contention sought to be advanced by the respondents, holds no ground.

99. At the same time, it would have been more appropriate for the respondents, had the 1st respondent been examined at the trial on their behalf. Particularly in the context of supporting their plea of possession and enjoyment as well as the nature of acquisition of suit lands during the life time of their father, his testimony would have thrown certain light and also in respect of the affairs then prevailing in the family. Therefore, absence of his testimony in this case has certain effect on the claim of the respondents.

100. The contention on behalf of the appellants that none connected to the sale documents of the suit lands has been examined at the trial, viz., either the attestors or scribe. Attention of this Court is invited to statements elicited in the cross-examination of PW.1 in this context. In view of the findings recorded supra, basing on the testimony of DW.2 that these sales were all actively attended to by Sri late Thayi Sreerama Murthy, this contention cannot bear any importance.

101. Therefore, on careful consideration of the entire material and submissions made on behalf of the parties, the conclusion to be drawn is that suit lands were purchased by the 1st appellant and they were not acquisitions in 'benami', out of the funds of Sri late Thayi Sreerama Murthy. Thus, this point is answered in favour of the appellants and against the respondents.

**Point No.2:**

102. Reasons are assigned while answering point No.1 holding that Ex.B.1 is a valid settlement deed by which items 1 and 2 of the suit lands were conferred upon DW.1 and her two sisters, by their mother.

103. With reference to Ex.B.2-settlement deed, despite serious contentions advanced on behalf of the respondents assailing it and to the effect that it did not confer any right, title or interest to DW.1 and her sisters, they cannot stand. The reason is that when these items are held to be acquisitions of deceased 1st appellant, she has every right to confer them on her daughters.

104. Contention of the respondents that it was brought out by DW.1 and DW.3 in collusion, prevailing upon DW.2 making her to execute on 13.06.1975 covering an extent of Ac.11.85 cents and that it was never acted upon also cannot be accepted for the same reason. The position of DW.3, as an attesor to Ex.B.2, did not make any difference. He deposed that he attested Ex.B.2 when executed by deceased 1st appellant. Learned trial Judge did not rely on the evidence of DW.3 on the premise that he did not know about the affairs in the family prior to his marriage, which was in or about the year 1962.

105. Therefore, for the reasons stated above, Ex.B.1 and Ex.B.2 executed by the deceased 1st appellant in favour of her daughters did confer right, title and interest to the suit lands on them and that they were acted upon. Thus, this point is answered in faovur of the appellants and against the respondents.

**Point No.3:**

106. One of the contentions on behalf of the appellants is that the suit as laid for partition is not proper and that a declaration as to the nature of the properties should have been sought. In the presence of Ex.B.1 and Ex.B.2 and the manner by which their father Sri Late Thayi Sreerama Murthy had treated the suit lands during his lifetime, it would have been more appropriate, had the respondents 1 to 3 framed the suit for relief of declaration as well as for partition. However, the respondents 1 to 3 cannot claim relief of partition in respect of the suit lands, in view of the findings recorded on points 1 and 2 supra. Hence the suit as laid by them is not proper. They are not entitled for the relief sought, in the suit. Thus this point is answered in favour of the appellants and against the respondents.

Point No.4:

107. The findings recorded by the learned trial Judge, granting relief to the respondents, in the light of the discussion as well as the reasons stated above, shall be set aside.

108. In view of the findings on points 1 to 3, the impugned judgment needs interference holding that the respondents are not entitled for the reliefs sought, in the suit. Thus, this point is answered in favour of the appellants and against the respondents.

Point No.5:

109. In view of the findings on Points 1 to 4, this appeal has to be allowed setting aside the decree and judgment of the learned trial Judge in the suit.

110. In the result, this appeal is allowed. Consequently, the decree and judgment in O.S.No.36 of 1984, dated 01.08.1994 on the



file of the Court of learned Subordinate Judge, (now, Senior Civil Judge) Narsapur, West Godavari District, are set aside. Consequently, O.S.No.36 of 1984 on the file of the above Court is dismissed. In the circumstances of this case, having regard to close relationship among the parties, they shall bear their own costs through out.

111. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

M. VENKATA RAMANA, J

24th October, 2019
Rns/Js

LIST OF DOCUMENTS MARKED

Ex.B.34 : Will executed by Sri Late } marked as per reasons
Dt.05-11-1971 Thayi Sreerama Murthy } recorded allowing
} ASMP.No.1136/2005
} in this judgment

Ex.B.35 : Certified copies of the } marked as per
Land ceiling order and } reasons recorded
copy of ceiling declaration } allowing
filed by Thayi Hemalathamma } CMP.No.2183/2002
in LCC 297/NSP, Dt.30-04-1976 } in this judgment
issued by Revenue Divisional }
Officer, Narsapur. }

M. VENKATA RAMANA, J

24th October, 2019
Js.



HONOURABLE SRI JUSTICE M. VENKATA RAMANA

A.S.No.1858 of 1994

24th October, 2019

Js.