

**IN THE COURT OF THE III ADDITIONAL DISTRICT JUDGE, SALEM.
Present : Thiru.G. SRI RAMA JEYAM, B.L.,
III Additional District Judge,
Salem.**

Tuesday, the 21st day of November, 2023

ORIGINAL SUIT No.418/2018
CNR.No. TNSA010016372018

S.Valarmathy

... Plaintiff

-Versus-

R.Sathiya Kumar

... Defendant

This Original Suit came up before this Court on 22.09.2023 for final hearing in the presence of Tr.Ka.Rajasekaran, Counsel for the Plaintiff and Tmt.V.B.Gayathri, Counsel for Defendant and upon hearing the arguments of the Learned Counsel appearing for the Plaintiff and the Learned Counsel appearing for Defendant and upon perusing the records, including the Written argument submitted on the side of the Defendant, and having stood over for consideration till this day, this Court delivers the following

JUDGMENT

Suit for Partition and for Permanent Injunction.

The material averments contained in the Plaint are as follows;

2) Defendant is the Husband of the Plaintiff and their marriage was solemnized on 17.11.1996. Out of the said wed-lock, the Plaintiff gave birth to two Children

namely Gowtham and Mohanadevi and they were born on 05.04.1998 and 30.11.1999 respectively.

3) The Plaintiff was working as a Cluster Organizer of Women Self Help Group at Kondalampatti area from 2007 to 2012. Making use of her position in the said Women Self Help Group, she had borrowed huge money from various persons and purchased the Suit property, on 17.03.2010, by paying Sale consideration of Rs.7,00,000/-, though the Sale price is quoted as Rs.4,80,000/- in the Sale Deed.

4) In the said Sale Deed, apart from the name of the Plaintiff, Defendant's name was also included as a Purchaser only at his request and he did not contribute any amount for the purchase of the said property.

5) At that time of purchase, an Old tiled House was comprised in the said property and the same was demolished and a three storey RCC Terraced House was constructed in the Suit property by the Plaintiff with the help of the amount that was borrowed by her from several persons and also by pledging her Jewels with the Nationalized Banks. The Plaintiff had borrowed an amount of Rs.20,00,000/- for the construction of the above building.

6) The Construction work was commenced in the month of January 2012 and the same was completed during October 2012 and the House Warming Ceremony had taken place on 28.10.2012.

7) The Plaintiff was forced to pay interest for the amounts borrowed by her from various persons and the Defendant did not co-operate with the Plaintiff either for payment of interest nor he made any attempt to discharge the Loan amounts and

that resulted in misunderstanding between the spouses. Thereupon, the Defendant started avoiding relationship with the Plaintiff and he also started harassing the Plaintiff Physically and Mentally. He has also prevented the Plaintiff from going for her Job doubting her character.

8) Moreover, after construction of the aforesaid House, the Defendant compelled the Plaintiff and mortgaged the Suit property with Salem Co-operative Housing Society Limited and borrowed Rs.4,00,000/- on 09.03.2013. The entire amount borrowed was taken away by the Defendant and he did not discharge any Loan amount that were borrowed from the individuals.

9) The Plaintiff, by pledging and selling her Gold ornaments presented to her by her Parents and purchased by her and out of the said amount derived, paid the monthly installments of Rs.6,500/- each from the month of May 2013 to May 2014 to the aforesaid Housing Society.

10) Thereupon, neither the Plaintiff nor the Defendant have paid any amount towards the discharge of the amounts borrowed from Salem Co-operative Housing Society Limited and the Money Lenders. The Plaintiff, for the purchase of the property and for construction of a new house therein, had borrowed Loan amount of Rs.30,00,000/- from various persons and also from the Banks.

11) The Plaintiff was ill treated by the Defendant and she was also driven out from the matrimonial house out of force and now, she has been living at her Parental home at the mercy of her Parents.

12) The Defendant is working as a Clerk in Sri Vasavi Higher Secondary

School, Shevapet, Salem and also working as Collection Agent for various Traders having Shops at Shevapet and thereby, he is earning more than Rs.40,000/- per month and however, he is refusing to pay maintenance to the Plaintiff.

13) The Plaintiff being the co-owner of the Suit property is in joint possession and enjoyment over the Suit property and in law she is deemed to be in joint possession and enjoyment. The Plaintiff is having undivided half share in the Suit property and all the Revenue Records stand jointly in the names of the Plaintiff and the Defendant. EB Service connection stands exclusively in the name of the Plaintiff.

14) The Defendant has filed a Divorce Petition in F.C.O.P.No.559/2018, on the file of the Family Court, Salem against the Plaintiff and as such, there is no possibility for re-union. Now, the Defendant has started proclaiming that he will sell the entire Suit property and defeat the Plaintiff's Lawful claim over the same.

15) Several requests made by the Plaintiff to the Defendant seeking to divide the Suit Property and to allot her half share did not yield any fruitful result and hence, she has been forced to file the present Suit seeking the relieves of Partition and Permanent Injunction and therefore, the Suit may be decreed.

The gist of the Written Statement is as follows;

16) The Suit is false, frivolous, Vexatious and unsustainable in law and on facts.

17) It is true that the Defendant married the Plaintiff on 17.11.1996 and out of the said wed-lock, they gave birth to two Children namely Gowtham and Mohanadevi. At that time of marriage, the Plaintiff was given 7 Sovereigns of Gold Jewels and some utensils as Sridhana by her Parents.

18) The Defendant was so affectionate towards the Plaintiff and therefore, he had purchased 38 Sovereigns of Jewels little by little for the Plaintiff. The Defendant is doing all kinds of Brokerage in Timber Business, Export Business and he was an LIC Agent. The Defendant had saved money and purchased the Suit property, on 17.03.2010, in his name as well as in the name of the Plaintiff.

19) Name of the Plaintiff was included in the Sale Deed out of love and affection and it is true that the Sale price was Rs.7,00,000/-, though it is mentioned only as Rs.4,80,000/- in the Sale Deed. The entire Sale consideration was paid by the Defendant and the Defendant did not contribute any amount for the purchase of the said property.

20) Thereupon, the Plaintiff, out of his earnings and borrowed money from his relatives and friends, mobilized funds around Rs.20,00,000/- and using the said fund, he had demolished the old building that was comprised in the Suit property and constructed a three storey building therein, in the year 2012. For the construction of the said building also, the Plaintiff did not contribute anything.

21) In order to repay the small Debts borrowed by the Defendant from the individuals, at the time of construction of the aforesaid building, he mortgaged the Suit property with Salem Co-operative Housing Society Ltd., on 09.03.2013, and borrowed Rs.4,00,000/- and the Defendant was repaying the installments towards the aforesaid Loan to the said Society.

22) It is false to allege that the Plaintiff has contributed amounts for the repayment of the installments. Thus, the Suit property absolutely belongs to the

Defendant and the Plaintiff is not entitled to have any share over the same.

23) The Plaintiff is working as an Organiser in a Women Self Health Group and is earning Rs.40,000/- per month. However, the Plaintiff did not contribute any amount for the family. After joining the said Group, the Plaintiff started wandering to many places and used to come home very late in night and started spending her earnings lavishly.

24) The Plaintiff herself had inducted a person namely Anbuselvam as a Lessor in the Suit Property in the year 2013 without receiving any advance amount (Bokkiyam) from him. Later, it came to light that the Plaintiff is having adulterous relationship with the said person and for their convenient illegal relationship, the Plaintiff had put that person as a tenant in the said building.

25) In fact, that on 11.05.2014, the Defendant had witnessed the illegal relationship between the Plaintiff and Anbuselvam. After the said incident, on 21.05.2014, the Plaintiff had voluntarily left the matrimonial home and went to her Parental home and started living there.

26) While leaving, the Plaintiff had taken away the 45 Sovereigns of Gold Jewels and all house hold articles with her illegally without informing the Defendant. Thus, the Plaintiff is not in possession and enjoyment over the Suit property. Since, the Plaintiff is leading an adulterous life, the Defendant has filed a Divorce Petition in F.C.O.P.No.559/2018 against the Plaintiff and the same is pending before the Family Court, Salem.

27) It is utter false to allege that the Plaintiff borrowed amounts from various

persons and purchased the Suit property and the name of the Defendant was also included in the Sale Deed only at his request and he did not contribute any amount for the purchase of the Suit property and for the construction of the terraced building therein.

28) It is false to allege that the Plaintiff had borrowed around Rs.20,00,000/- as Loan amounts from various persons for the purpose of construction of a House in the Suit property.

29) It is false to allege that the Plaintiff had harassed and ill treated the Plaintiff and he had driven out the Plaintiff from the matrimonial house, by force, by entertaining a doubt about her character.

30) It is false to allege that the Defendant has not paid the monthly installments towards the repayment of the Loan borrowed from Salem Co-operative Housing Society Ltd. and that resulted in the Plaintiff discharges the said Loan amount by raising funds through pledging and selling her jewels.

31) It is absolutely false to allege that the Plaintiff had borrowed money from the Banks and individuals and she is in joint possession and enjoyment over the Suit property. The Plaintiff is not entitled to have any share over the Suit property and thus, She is not entitled to any relief.

32) There is no cause of action for the Suit and the alleged one is absolutely imaginary. The Suit has not been properly valued and correct Court fee has not been paid. Thus, the Suit is not maintainable and the same is liable to be dismissed.

33) On the above pleadings, that on 01.12.2021, this Court has framed the following Issues;

1. Whether it is true that the Plaintiff is entitled to half undivided share in the Suit property?
2. Whether it is true that the Plaintiff has not contributed any amount towards the purchase of the Suit property?
3. Whether the Plaintiff is entitled to the relief of Preliminary Decree for Partition as prayed for?
4. Whether the Plaintiff is entitled to the relief of Permanent Injunction as prayed for?
5. To what other relief, the Plaintiff is entitled to ?

34) In order to establish her Case, the Plaintiff has entered in to the witness box as PW1 and she has tendered as many as 7 documents. Two more witnesses were examined as PW2 and PW3, on her side. However, those witnesses did not turn up for subjecting them for cross examination.

35) On the other hand, the Defendant examined himself as DW1 and no documents have been marked on his side.

Issue Nos.1 to 5 :

36) Since, all the aforesaid Issues are interconnected, they are clubbed together for joint discussion.

37) Heard the Learned Counsel appearing for the Plaintiff as well as the

Learned Counsel appearing for the Defendant and this Court has also perused the materials available on record including the Written submissions filed on the side of the Defendant.

38) The Suit property is comprised in old T.S.No.389 and present T.S.No.80 (part) at Ward-H, Block-7 at S.Aandipatti Village, present Salem Town, with an extent of 638 sq.ft (59.28 sq.meter) within specified for boundaries, which comprises a three storey terraced building. There is no dispute between the parties with respect to the lie, location and identity regarding the Suit property.

39) The relationship between the parties is not in dispute. It is an admitted fact that the marriage between the Plaintiff and the Defendant was solemnized on 17.11.1996 and out of the said wed-lock, a Son by name Gowtham was born on 05.04.1998 and a Daughter by name S.Mohanadevi was born on 30.11.1999.

40) It is an admitted fact that the Suit property was purchased by means of a registered Sale Deed dated 17.03.2010 (Certified copy is marked as Ex.A1) jointly in the names of the Plaintiff and the Defendant. It is also not in dispute that the Sale price for the said purchase was Rs.7,00,000/-, though it is stated in the Sale Deed that the Sale price was only Rs.4,80,000/-.

41) It is not in dispute that at the time of purchasing the Suit property, an old tiled house was comprised therein and during the year 2012, the said old tiled house was demolished and thereupon, a three storey terraced building has been constructed therein by spending around Rs.20,00,000/-.

42) It is an admitted fact that due to the misunderstanding between the spouses,

from the year 2014, they got separated and the Plaintiff has been residing in her Parental home.

43) It is the case of the Plaintiff that in between 2007 and 2012, she was working as a Cluster Organizer of Kondalampatti Area in Women Self Help Group and making use of her position as an organiser, she borrowed huge sum from various persons and through the said amounts, she had purchased the Suit property, on 17.03.2010; that the Defendant had contributed nothing for the purchase of the Suit property and even then, his name was included in the above Sale Deed only at his request; that at the time of purchase, only an old tiled house was comprised in the Suit property; that subsequently, the Defendant had borrowed Loans from her Friends and also from Banks totally around Rs.30,00,000/- and by making use of the said funds, she had constructed a three storey RCC terraced Building in the Suit property after demolishing the old tiled house in the year 2012 and for the purpose of construction of the new house also, the Defendant had contributed nothing; that she is entitled to half undivided share in the Suit property and therefore, she is entitled to the relieves as prayed for in the Suit.

44) Per contra, it is the Defence put forth by the Defendant that the Suit property was purchased on 17.03.2010 through his savings and it is false to allege that the Suit property was purchased by the Plaintiff as narrated in the Plaint; that only out of love and affection towards the Plaintiff, her name was also incorporated in the Sale Deed as though she is a joint purchaser; that the Defendant, out of his earnings and borrowing money from his relatives and friends, had constructed a three

storey building in the Suit property after demolishing the old tiled house and for the construction of new building also, there was no contribution from the side of the Plaintiff; that it is absolutely false to allege that the new construction was carried out by using the funds that were mobilized by the Plaintiff as set out in the Plaint ; that since, the Plaintiff has contributed nothing for the purchase of the Suit property and also for the purpose for putting up construction over the same, she is not entitled to have any share over the Suit property as she is only a name lender and therefore, the Defendant shall be considered as the sole title holder of the Suit property and as such, the Plaintiff is not entitled to anyone of the relief sought for in the Suit.

45) If the pleadings and evidence adduced by both sides are closely scrutinized, it is very clear that both the parties have contended that only from and out of their own money, the Suit property was purchased and the new construction was put up therein after demolishing the old tiled house and for that purchase and putting up of a new construction, the other party did not contribute anything.

46) Though, the Plaintiff would allege that the Defendant/ Husband has not contributed anything towards the purchase of the Suit property and for putting up construction over the same, she claims only half undivided share in the Suit property whereas on the other hand, the Defendant/ Husband has contended that since, the Suit property was purchased in the name of the Plaintiff also only out of love and affection and the entire new construction was put up by him only through the funds mobilised by him, the Plaintiff shall be considered only as a name lender and he is the absolute title holder of the Suit property and therefore, the Plaintiff is not entitled to

have half undivided share and thus, the Suit is liable to be dismissed in its entirety.

47) In the considered view of this Court, the pleadings and evidence let in by the Defendant would show that he has raised the '**Plea of Benami**' as according to him, the Plaintiff is only a Benami / name lender in respect of the Suit property and therefore, she is not entitled to have any share over the same.

48) Before entering in to the merits and demerits regarding the contention of both parties, it would be useful to refer here some of the provisions contained in the **Benami Transactions Prohibition Act, 1988** and several precedents.

49) The **definition** contained in **Sec.2(a)** of the aforesaid Act would define that a Benami transaction means any transaction in which property is transferred to one person for a consideration paid or provided by another person.

50) While **Sec.3(1)** mandates that no person shall enter in to any Benami transaction, the Proviso contained in Sec.3(2) would state that nothing in Sec.3(1) shall apply to the purchase of property by any person in the name of his Wife or unmarried Daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the Wife or the unmarried Daughter.

51) The Hon'ble Apex Court in the Case ***Nand Kishore Mehra vs. Sushila Mehra [AIR 1995 Supreme Court 2145 = 1995 MLJ (Supreme Court) 284]*** was pleased to hold as follows;

“ 8. Coming to the facts of the case on hand, the plaintiff had filed the suit in the High Court seeking relief in respect of properties alleged to

have been purchased benami in the name of the defendant — his wife. A learned Single Judge rejected the application filed by the defendant in that suit seeking rejection of the plaint on the ground that the suit was barred under Section 4 of the Act. The order of rejection of that application was appealed against by the defendant in a first appeal filed in the same court. A Division Bench of the High Court reversed the order of the learned Single Judge and granted the application of the defendant made in the suit seeking rejection of the plaint. It is that order which is now questioned by the plaintiff-husband in this appeal. Since the plaintiff is the husband who had the right to enter into a benami transaction in the matter of purchase of property in the name of his wife or unmarried daughter, as we have held earlier, he is entitled to enforce his rights in the properties concerned if he can succeed in showing that he had purchased them benami in the name of his wife. But in view of the statutory presumption incorporated in sub-section (2) of Section 3 of the Act, he can get relief sought in the suit only if he can prove that the properties concerned had not been purchased for the benefit of the wife, even if he succeeds in showing that the consideration for the purchases of the properties had been paid by him”.

52) Furthermore, our Hon'ble High Court in the Case **Parvathi Ammal Versus Solai Ammal and another** (CDJ 1997 Madras High Court 888) was pleased to hold as follows;

“ 12. Reliance was also placed by the learned counsel for the appellant on the decision reported in *Jadayal (dead) v. Bibi Manghar*, A.I.R. 1974 S.C. 171: (1974)2 S.C.R. 90 and it was contended that though the question, whether a particular sale is benami or not, is largely one of fact, and for determining this question, no absolute formula or acid tests

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 the following 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 sale; and*
- (6) the conduct of the parties in dealing with the property after the sale,*
and that those circumstances stated supra according to the learned counsel for the appellant stood satisfied in this case sufficiently to warrant that the properties have been purchased by the husband in the name of his wife, benami.

13. This question as to whether a particular sale or purchase is benami has different shades or characteristics taking colour from the facts and circumstances present in each of the case before court, the parties who asserts such claim, the manner in which it is asserted and the mode of proof adopted. The essence of benami has been held to lie mainly in the intention of the party or parties concerned and have always been considered to be shrouded in a duck veil which cannot be easily pierced through. But such difficulties were held equally not sufficient to relieve the person asserting the transaction to be benami of the onerous burden cast upon him to prove the object or intention in acquiring such properties

by anyone in the name of another, particularly as in a case wherein the purchase had been by husband in the name of his wife. The reports are replete with decisions in this regard and ultimately it is only the peculiar facts and circumstances of the case bundled together tilt the scales one

side or the other. Viewed in the light of these broad principles laid down in catena of decisions, one of us (Raju, J.) had an occasion to deal with the case law on the subject elaborately after noticing not only the decisions relied upon before us in this appeal but also several other decisions of Division Benches of this Court in S.A.No.524 of 1983 delivered on 11.3.1996 and it was held therein as follows:

“The learned Judge of the first appellate Court also failed to keep into consideration the well settled principles of law repeatedly laid down and reiterated by Courts concerning also the normal and general presumption enuring in favour of a wife even when it is shown that the consideration really proceeded from the husband of such purchaser and that no inference can be drawn from the said factor alone that the wife was only a benamidar, having regard to the nature of the relationship between the parties and the normal tendency of the husband to benefit his wife either by payment of money or by making the purchase of the property in her name and for her benefit.”

53) The Hon'ble Calcutta High Court in the Case **Sri Sekhar Kumar Roy vs.**

Smt.Lila Roy and another (F.A.109/2018) was pleased to hold as follows;

“18. The question relating to burden of proof has been set at rest in the judgment of Jaydayal Poddar (Deceased) thr. Lrs. –vs. Mst. Bibi Hazra reported in AIR 1974 SC 171 in which the Hon'ble Apex Court ruled as follows:

“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 or 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 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; (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.

.....

22. At the cost of reiteration, it may be stated that a Court is required to bear in mind the well-settled principles to the effect that the burden of showing that a transfer is a benami transaction always lies on the person who asserts it. In the Indian society, if a husband supplies the consideration money for acquiring property in the name of his wife, such

fact does not necessarily imply benami transaction. Source of money is, no doubt, an important factor but not a decisive one. The intention of the supplier of the consideration money is the vital fact to be proved by the party who asserts benami. In other words, even if it is proved that Sailendra paid the consideration money, the plaintiff must further prove that Sailendra really intended to enjoy the full benefit of the title in him alone.”

54) From the above precedents, the following Legal Principles would emerge:

- i) *Though, the Benami Transaction Prohibition Act states that no person shall enter in to any Benami transaction, a Husband has the right to enter in to a Benami transaction in the matter of the purchase of the Property in the name of his Wife and he is entitled to enforce his rights in the said property if he can succeed in showing that he had purchased that property Benami in the name of his Wife.*
- ii) *However, in view of the statutory presumption incorporated in Sec.3 of the said Act, the Husband can get relief only if he can prove that the property concerned had not been purchased for the benefit of the Wife, even if he succeeds in showing that the consideration for the purchase of the Property had been paid by him.*
- iii) *The burden of showing that the transfer is a Benami transaction always lies on the person who asserts it.*
- iv) *In Indian Society, if a Husband supplies the consideration money for acquiring property in the name of his Wife, such fact does not necessarily imply Benami transaction. Source of money is, no doubt, an*

important fact but not a decisive one and the intention of the supplier of the consideration money is the vital fact to be proved by the party who asserts Benami. In other words, even if it is proved that the consideration money was paid by the Husband, it must be further proved that the Husband had really intended to enjoy the full benefit of the title of the said property in him alone.

55) Bearing in mind the aforesaid Legal Principles, let us analyse the facts of this Case.

56) As held in the aforesaid Judgment, the burden of proof that the transaction was Benami in nature always lies on the person who asserts it. In this Case, both parties would allege that the entire Sale consideration money was mobilised and paid by them and the other party has contributed nothing towards payment of the Sale consideration and for the purpose of putting up construction.

57) As we have already seen, though, the Plaintiff would allege that she has contributed the entire money for the purchase of the Suit property and for putting up construction over the same, she has not claimed that she would be entitled to the entire Suit property and on the other hand, she claims only half undivided share.

58) But, according to the Defendant/ Husband, since, the entire money that has been paid for the Sale consideration and the amount spent for putting up construction was borne /mobilised by him, he should be considered as the absolute owner of the Suit property and the Plaintiff is not entitled to any share muchless half undivided share.

59) So, in the considered opinion of this Court, the burden lies upon both namely the Plaintiff/ Wife and the Defendant/ Husband to prove that the entire money spent for purchasing the Suit property and putting up construction were borne/ mobilised by them exclusively.

60) In the Plaint, the Plaintiff has pleaded that in the year 2007, she had started working as a Cluster Organizer of Kondalampatti Area Women Self Help Group and until 2012, she worked as such and during that time, making use of the said position, she had borrowed huge sum from various persons and purchased the Suit property on 17.03.2010. She would further plead that subsequently, out of the borrowed Loan amounts of Rs.20,00,000/-, she had constructed a new building in the Suit property and in para No.7 of the Plaint she has specifically pleaded that she had borrowed around Rs.30,00,000/- from two Banks and eight individuals for purchasing of Suit property and for putting up construction over the same.

61) Though, PW1 has adduced evidence in her Chief Proof Affidavit in line with the aforesaid pleadings, she has not produced any documents to show that she had infact borrowed Loan amounts to the tune of Rs.30,00,000/- from two Nationalized Banks namely Indian Bank and Vijaya Bank and from eight individuals.

62) Had it been true that the Plaintiff had actually borrowed Personal Loan or Housing Loan from the aforesaid Nationalized Banks either for the purpose of purchasing the Suit Property or for the purpose of constructing building over the same, by summoning those documents from the banks or by producing the records available with her, she would have proved the said borrowing. However, the same

was not done.

63) Though, the Plaintiff had examined two witnesses namely Senthamil @ Senthamilselvi and Bharathi, in order to prove the fact that she had borrowed money from them, those witnesses did not turn up for subjecting them to cross examination and therefore, their cross examination was closed. Since, PW2 and PW3 did not turn up for subjecting them to cross examination, their evidences in Chief, in the considered opinion of this Court, could not be considered in favour of the Plaintiff's Case.

64) Admittedly, both the Plaintiff and the Defendant had joined together and mortgaged the Suit property with Salem Co-operative Housing Society Ltd., and borrowed Rs.4,00,000/- on 09.03.2013. Ex.A4, the Bank Pass Book issued by the said Bank would show that several installments were paid right from 08.04.2013 to 08.09.2016.

65) Ex.A6 would show that the Plaintiff has paid several installments towards the repayment of the aforesaid mortgage. However, the aforesaid Loan and payment of installments towards the aforesaid Loan are subsequent to the construction of a new building in the Suit property.

66) Thus, it is very clear that the Plaintiff had failed to prove the fact that she had borrowed amounts to the tune of Rs.30,00,000/- from Nationalized Banks and private individuals for the purpose of purchasing the Suit property and for the purpose of the putting up a new construction over the same. However, it seems that the Plaintiff would have contributed something for purchasing the Suit property and

for putting up construction over the same in view of the reasons that will be recorded hereunder.

67) According to the case of the Defendant, he had savings in his hand and using the said amount, the Suit property was purchased jointly in the name of the Plaintiff and himself. He would further allege that he had mobilised funds from his relatives and friends to the tune of Rs.20,00,000/- and using the said amount, he had constructed a new building over the Suit property.

68) However, the Defendant has not pleaded the names of his relatives and friends from whom he had borrowed money to the tune of Rs.20,00,000/-. He has also not pleaded specifically on which particular dates, the Loan amounts were borrowed and in evidence thereof, what were the documents executed by him. No evidence has been let in by the Defendant in respect of those particular facts.

69) Except his ipsi dixit, no other evidence is available on record to show that the Defendant had mobilised funds to the tune of Rs.20,00,000/- for the purpose of putting up construction over the Suit property. Had it been true that the Defendant borrowed amounts from his relatives and friends, he would have examined them as witnesses before this Court and established the factum of borrowal for the purpose of putting up new construction. That was not done.

70) Moreover, the following evidence has been elicited during the cross examination of DW1;

" நான் சேலம் செவ்வாய்பேட்டையில் உள்ள வாசவி மேல்நிலைப்பள்ளி

என்ற தனியார் பள்ளியில் எழுத்தராக பணிபுரிந்து வருகிறேன். 2011-ம் வருடம் 9-

வது மாதத்தில் இருந்து அந்த வேலை செய்கிறேன். நான் ஆரம்பத்தில் அந்த பணியில் சேர்ந்தபொழுது எனது மாத ஊதியம் ரூ.5,000/-. 2017 ஆண்டு வாக்கில் எனது ஊதியம் ரூ.7,000/-. தற்போது எனது மாத ஊதியம் ரூ.12,000/-. 2019-ம் ஆண்டில் எனது மாத ஊதியம் ரூ.7,000/-. நான் எப்போதும் வருமான வரி கணக்கு தாக்கல் செய்ததில்லை..... சிறிது சிறிதாக 38 சவரன் நகை நான் சேர்த்து வைத்திருந்ததாக எனது முதன்மை சாட்சியத்தில் சொல்லியிருப்பதற்கு ஆதரவாக நான் ஆவணங்கள் எதுவும் தாக்கல் செய்யவில்லை என்றால் சரிதான். எந்தெந்த ஆண்டுகளில் எவ்வளவு சவரன் நகைகளை எந்த கடையில் வாங்கினேன் என்று எனது முதன்மை சாட்சியத்திலும், எதிர் வழக்குரையிலும் நான் சொல்லவில்லை என்றால் சரிதான். நான் LIC முகவராக 5, 6 வருடங்களாக இருந்தேன். 2008 முதல் 2012 வரை எல்ஐசி முகவராக பணிபுரிந்தேன். நான் எல்ஐசி முகவராக பணிபுரிந்ததன்மூலம் எவ்வளவு வருமானம் ஈட்டினேன் என்று எனது முதன்மை சாட்சியத்திலும், எதிர் வழக்குரையிலும் நான் சொல்லவில்லை என்றால் சரிதான். 2008 முதல் 2010 வரை ஒவ்வொரு வருடமும் நான் எவ்வளவு பணம் சம்பாதித்தேன் என்று எனது முதன்மை சாட்சியத்திலும், எதிர் வழக்குரையிலும் நான் சொல்லவில்லை என்றால் சரிதான்..... LIC முகவராக தொழில் செய்யும் நபர்களுக்கு கொடுக்கப்படும் கமிஷனானது வருடத்திற்கு ஒருமுறை வங்கிக்கணக்கில் தான் வரவு வைக்கப்படும் என்றாலும், எனவே, சிறுக சிறுக எனக்கு பணம் கிடைத்ததாகவும் அதன் கணக்கு விவரம் தெரியவில்லை என்று நான் சொல்வது உண்மைக்கு புறம்பானது என்றாலும் சரியல்ல..... டிம்பர் வியாபாரத்தில் நான் ஏற்றுமதி முகவராக தொழில் புரிந்து வந்தேன் என்று காட்டக்கூடிய வகையில் ஆவணங்கள் எதுவும் தாக்கல் செய்யவில்லை என்றால் சரிதான். வாதி 2007 முதல் 2012 வரை கொண்டலாம்பட்டி பகுதியில் மகளிர் சுய

உதவிக்குழுக்களை நடத்துகின்ற ஒருங்கிணைப்பாளராக இருந்து வந்தார் என்றால் சரிதான். தாவா சொத்தினைப் பொறுத்த கிரய உடன்படிக்கையானது முதலில் வாதி பெயரில் ஏற்படுத்தப்பட்டது என்றால் சரிதான்..... தாவா சொத்தை கிரயம் வாங்குவதற்கும் அதில் கட்டிடம் கட்டுவதற்கும் எனது உறவினர்கள் மற்றும் நண்பர்களிடம் ரூ.20,00,000/- பெற்றேன் என்று நான் சொல்வதை நிரூபணம் செய்யக்கூடிய வகையில் ஆவணங்கள் எதுவும் தாக்கல் செய்யவில்லை என்றால் சரிதான். யார் யாரிடமிருந்து எவ்வளவு தொகை பெற்றேன் என்று எனது முதன்மை சாட்சியத்திலும், எதிர் வழக்குரையிலும் நான் சொல்லவில்லை என்றால் சரிதான்..... தாவா சொத்து குறித்த பட்டா, வீட்டுவரி ரசீதுகள், குடிநீர் கட்டண ரசீது ஆகியவை என் பெயரிலும், வாதி பெயரிலும் இருக்கிறது என்றால் சரிதான். வீட்டிற்குண்டான மின்சார இணைப்பு வாதி பெயரில் மட்டும் தான் இருக்கிறது என்றால் சரிதான்..... சேலம் கஸ்தூரி வீடுகட்டும் கூட்டுறவு சங்கத்தில் தாவா வீட்டை அடமானம் வைத்து கடன் வாங்கியிருக்கிறேன் என்றால் சரிதான். 09.03.2011 அன்று நானும் எனது மனைவியும் சேர்ந்துதான் அந்தக் கடனை வாங்கினோம். அந்த கடன் சம்மந்தமாக இந்த தாவா தாக்கல் செய்யப்பட்ட தினத்தன்று பாக்கித் தொகையாக ரூ.4,82,621/- இருந்தது என்றால் சரிதான். நான் அந்த கடன் சம்மந்தப்பட்ட மாத தவணை தொகைகளை செலுத்தியதாக சொல்லுதைக் காட்டக்கூடிய ஆவணங்கள் எதுவும் தாக்கல் செய்யவில்லை என்றால் சரிதான்....."

71) The above evidence would show that the Defendant is working as a Clerk in a Private School namely Sri Vasavi Higher Secondary School at Shevapet, Salem and he has been working as such from September 2011 and his present monthly

Salary is Rs.12,000/- and when he joined in the said Job, during 2011, his monthly salary was Rs.5,000/-.

72) Though, the Defendant would allege that he was doing Brokerage in Timber Business, Export Business and he was an LIC Agent, no proof has been filed to prove those allegations. If really the Defendant was working as an LIC Agent, by producing the necessary documents, the said fact could have been proved. The Defendant has not done so.

73) Likewise, to prove his allegations that he was doing Brokerage in Timber Business and Export Business, by producing documents or by examining witnesses, he could have proved the said fact. That was also not done.

74) The very fact that during September 2011, he joined in a Private School as a Clerk, for the monthly Salary amount of Rs.5,000/-, itself would go to show that all his contentions that he was working as a LIC Agent and he was doing Brokerage in Timber Business and Export Business are false. Since because, his income during the relevant point of time was lower than Rs.5,000/-, he would have joined the Post of Clerk in a Private School for the monthly Salary amount of Rs.5,000/-.

75) Now, the points that arise for serious consideration are that Whether a Person, who was earning about Rs.5,000/- per month by working as a Clerk in a Private School, could have purchased Gold ornaments about 38 Sovereigns for his Wife and could he had purchased the Suit property for the Sale consideration of Rs.7,00,000/- and could he had put up construction by spending around Rs.20,00,000/-.

76) In the considered opinion of this Court, the Defendant could not have purchased the Suit property for the Sale consideration of Rs.7,00,000/- and he could not have individually put up construction by spending around Rs.20,00,000/-.

77) Furthermore, in the Written Statement, it is admitted by the Defendant that the Income of the Plaintiff is Rs.40,000/- per month as she is working as an Organiser of Women Self Help Group. In his cross examination, the Defendant / DW1 has also admitted that between 2007 and 2012, the Plaintiff was working as an Organiser of Women Self Help Groups of Kondalampatti Region.

78) Ex.A7 is the copy of the Divorce Petition filed by the Defendant/ Husband in F.C.O.P.No.559/2018, on the file of the Family Court, Salem against the Plaintiff/ Wife seeking the relief of Divorce. In the said Petition also, the Defendant has admitted that the Plaintiff was working as an Organiser of Women Self Help Group and is earning more than Rs.40,000/- per month.

79) Interestingly, in the said Petition, the Defendant has pleaded that he is working as a daily coolie and he has to go for his Job everyday so that he could eke out his livelihood (.....வெளியில் வேலைக்கு தினசரி சென்றால் தான் சாப்பாடு என்பதால் குடும்பத்தினர் உறுப்பினர் பசியைப் போக்க எல்லா கஷ்டங்களுடன் உடல் உழைப்பு செய்த மனுதாரர்.....).

80) The aforesaid admissions of the Defendant that the Plaintiff was working as an Organiser of Women Self Help Group and she was earning about Rs.40,000/- per month; that the monthly Salary of the Defendant during the year 2011 was Rs.5,000/- only; that the Defendant has to go for work everyday so that he can eke

out his livelihood, coupled with the fact that Ex.A4 and Ex.A6 show that the Plaintiff had paid some installments towards the repayment of the Mortgage Loan that was borrowed from the Salem Co-operative Housing Society Limited would show that the Plaintiff would have contributed some amount for the purchase of the Suit property as well as for putting up construction over the same and that is the reason why the Suit property might have been purchased jointly in the names of the Plaintiff and the Defendant.

81) Generally, when a property was purchased by two or more persons jointly, Law presumes that all those persons would have contributed for the payment of the purchase money, unless the contrary is proved. Since, the Defendant has failed to prove that the entire amount that was spent for the purchase of the Suit property and for putting up of construction therein was contributed by him solely and the Plaintiff could not have contributed anything towards the same, this Court holds that the Plaintiff is entitled to half undivided share in the Suit property as the Defendant has failed to prove the fact that the Plaintiff is just a name lender/ Benami as far as the Suit property is concerned.

82) Furthermore, as we have already seen, in the light of Sec.3 (2) of the Benami Transactions Prohibition Act, 1988, when a Husband purchases Property in the name of his Wife or unmarried Daughter, it is to be presumed that it has been purchased for the benefit/welfare of the Wife or unmarried Daughter, as the case may be, unless the contrary is proved.

83) In this Case, in the Written Statement, the Defendant has only pleaded that

out of love and affection towards the Plaintiff, her name was incorporated in the Sale Deed dated 17.03.2010 as though she is also a joint purchaser even then she has not contributed anything towards the purchase money. No other reason has been pleaded in the Written Statement as to why the Property was purchased in the name of the Plaintiff also particularly when it is alleged that the entire Sale consideration was paid by the Defendant/ Husband.

84) However, in the Chief Proof Affidavit of DW1, no reason has been stated as to why the property was purchased in the name of the Plaintiff also. It is not even stated in the said Chief proof Affidavit that out of love and affection that the Defendant was having over the Plaintiff, her name was also incorporated in the Sale Deed even when nothing was contributed by the Plaintiff for payment of the purchase money. Therefore, no evidence is available on record as to why the Suit property was purchased in the name of the Plaintiff also.

85) As we have already seen, the statutory presumption is to the effect that unless the contrary is proved, if the Husband purchases a property in the name of his Wife or in the name of his unmarried Daughter, he has done so for the welfare/benefit of his Wife or unmarried Daughter as the Case may be.

86) In this Case, it is the pleading of the Defendant that only out of love and affection that he was having towards the Plaintiff, her name was also incorporated in the Sale Deed as though she is a joint purchaser, which would go to show that considering the welfare of the Plaintiff, her name was also included in the Sale Deed as though she is also a joint purchaser.

87) The Defendant has not let in any evidence as to why the property was purchased in the name of Plaintiff also. Therefore, in the considered view of this Court, the Defendant has not proved that for some other purpose, the Suit property was purchased in her name also and that was not for her welfare/benefit.

88) Thus, the statutory presumption that the Defendant has purchased the property in the name of the Plaintiff also, for the purpose of the welfare of the Plaintiff stands not rebutted and therefore, the contention of the Plaintiff that she is entitled to half undivided share in the Suit property needs to be accepted.

89) Furthermore, the intention of the Defendant/ Husband has to be considered as laid down by the Hon'ble Calcutta High Court in the Case ***Sri Sekhar Kumar Roy vs. Smt.Lila Roy and another (F.A.109/2018)*** as to whether the Defendant had really intended to enjoy the full benefit of the title in him alone.

90) It is the admitted case of both sides that all the Revenue Records relating to the Suit Property stand jointly in the names of the Plaintiff and the Defendant and the name of the Plaintiff has not been excluded from the Revenue Records. Furthermore, the Electricity service connection that has been obtained for the Suit house stands exclusively in the name of the Plaintiff and it has not been provided in the name of the Defendant.

91) Moreover, it is the evidence of the Defendant that the Plaintiff had inducted one Anbuselvan, as a Lessee, in to the Suit property. So, it is very clear that by inducting one Anbuselvan, as a Lessee, in to the Suit Property, the Plaintiff was permitted to exercise her right of title over the Suit property.

92) It is important to point out here that there seems to be a Sale agreement that preceeds the Sale Deed under Ex.A1, for purchasing the Suit property, and the said agreement was entered in the name of the Plaintiff alone as seen from the cross examination of the Defendant/ DW1. This aspect also would show that the Plaintiff is not a mere name lender / Benami in respect of the Suit property.

93) All these facts would cumulatively show that the Defendant has not intended to enjoy the full benefit of the title in him alone.

94) In the light of the aforesaid discussions and findings, this Court holds that the contention of the Defendant that the Plaintiff is only a name lender/ Benami in respect of the Suit property and therefore, she has got no share muchless half undivided share in the Suit property needs to be rejected and the case of the Plaintiff that she has got half undivided share over the Suit property and therefore, she is entitled to a Preliminary decree for Partition needs to be accepted.

95) It is the contention of the Defendant that since, the Plaintiff is not in possession over the Suit property and the same is under the exclusive possession and enjoyment of the Defendant, the valuation of the Suit **u/s.37(2) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955** is incorrect and the Plaintiff ought to have valued the relief of Partition **u/s.37 (1)** of the said Act.

96) In the considered view of this Court, the said contention cannot be accepted for the simple reason that Law presumes that all the co-owners of the property are in deemed possession over the same and the absence of physical possession would not mandate a Plaintiff to value the Suit **u/s.37(1)** of the said Act.

97) Moreover, valuation of the Suit and payment of Court Fee is between the Court and the Plaintiff and the Defendant need not worry about the same particularly when the said aspect does not cause any prejudice to him. Thus, the aforesaid contention is rejected.

98) The Learned Counsel appearing for the Defendant has relied upon the following two Judgments in support of his contention;

1) Controller of Estate Duty, Lucknow vs. Alope Mitra (Hon'ble Supreme Court of India - Civil Appeal No.1712/1973)

2) Kona Varonica Swarnamukhi vs.Devika Rani (Hon'ble High Court of Madras - Original Side Appeal No.209/2008)

99) The above two Judgments are not applicable to the facts and circumstances of the present Case.

100) It is settled Law that a Co-owner can alienate his share, pending Suit, to some 3rd party. However, while doing so, a particular portion of the property within specified four boundaries should not be sold unless and until a Partition by metes and bounds has taken place.

101) The Suit property is a house property and therefore, the Defendant is at liberty to sell his half undivided share pending Suit. However, the said alienation should not be in respect of any particular portion of the Suit property within specified four boundaries. Therefore, to that extent, the Plaintiff is entitled to the relief of Permanent Injunction as prayed for.

102) All the above Issues are answered accordingly.

103) *In the Case Kattukandi Edathil Krishnan and Another vs. Kattukandi Edathil Valsan and others – Civil Appeal Nos. 6406 - 6407/2010*, the Hon'ble Supreme Court was pleased to hold that a Suit for Partition may not be adjourned sine die for passing Final Decree and suitable Orders may be passed so as to enable the Plaintiff to get a Final Decree in the Suit.

104) In the aforesaid Judgment, the Hon'ble Supreme Court has held as follows ;

“ 33. We are of the view that once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same Suit, the Court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the Suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, suo motu and without requiring initiation of any separate proceedings.”

In result,

- (i) A Preliminary decree is passed declaring that the Plaintiff is entitled to 1/2 undivided share in the Suit property.
- (ii) Advocate **Tr. M.Chandran (M/S.No.540/2005)** is appointed as the Advocate/ Commissioner in this Suit and the Learned Advocate Commissioner is hereby directed to visit the Suit property, after issuance of notice to both parties, with the help of a qualified Engineer/Surveyor, measure the same and to file his Report suggesting the mode of division of the Suit property along with rough plan.
- (iii) His remuneration is fixed as Rs.7,000/- to be paid by the Plaintiff and the remuneration of the Advocate Commissioner shall be deposited in to the Court within a period of one month from today. The Advocate Commissioner would be entitled to receive the said remuneration after completing his work. Office is directed to issue warrant after the depositing of the Commissioner's fees.
- (iv) For filing Advocate Commissioner's Report and Plan, Call on 16.02.2024.
- (v) The Defendant is hereby restrained by means of a Permanent Injunction from selling any particular portion of the Suit property till a final decree is passed in the above Suit. However, it is made clear that he is at liberty sell his half undivided share as per law.

(vi) Considering the facts, circumstances and relationship between the parties, they are directed to bear their respective cost.

Dictated to the Steno-Typist, directly typed by her in the Computer, corrected and pronounced by me in open court, this the 21st day of November, 2023.

III Additional District Judge,
Salem.

Plaintiff's side witnesses:

P.W.1 Tmt.Valarmathy (Plaintiff)
P.W.2 Tmt.Senthamil @ Senthamilselvi (Not turned up for Cross examination)
P.W.3 Tmt.Bharathi (Not turned up for Cross examination)

Plaintiff's side documents:

Ex.A1	17.03.2010	Certified copy of Sale Deed (Doc.No.1844/2010)
Ex.A2	07.05.2011	Property Tax Receipt(Original)
Ex.A3	---	Electricity reading Card stands in the name of Plaintiff regarding in SC.No.403-009-1169 (Original)
Ex.A4	----	Loan Pass Book issued by Salem Co-operative Housing Society Ltd. (Original)
Ex.A5	22.09.2017	Certificate issued by Salem Co-operative Housing Society Ltd. (Original)
Ex.A6	---	Receipts issued by Salem Co-operative Housing Society Ltd.(Originals – 8 in Number)
Ex.A7	---	Petition in F.C.O.P.No.559/2018, on the file of the Family Court, Salem.

Defendant's side witness:

D.W.1 Tr.R.Sathiyakumar (Defendant)

Defendant's side documents: NIL**Witness side documents:**

Ex.X1 --- Aadhaar card of PW2 Senthamilselvi (Xerox copy)

Ex.X2 --- Aadhaar card of PW3 Bharathi (Xerox copy)

III Additional District Judge,
Salem.