

CASE NO.:
Appeal (civil) 5142 of 1998

PETITIONER:
Valliammal (D) by Lrs.

RESPONDENT:
Subramaniam & Ors.

DATE OF JUDGMENT: 31/08/2004

BENCH:
Ashok Bhan & S.H. Kapadia

JUDGMENT:
J U D G M E N T

BHAN, J.

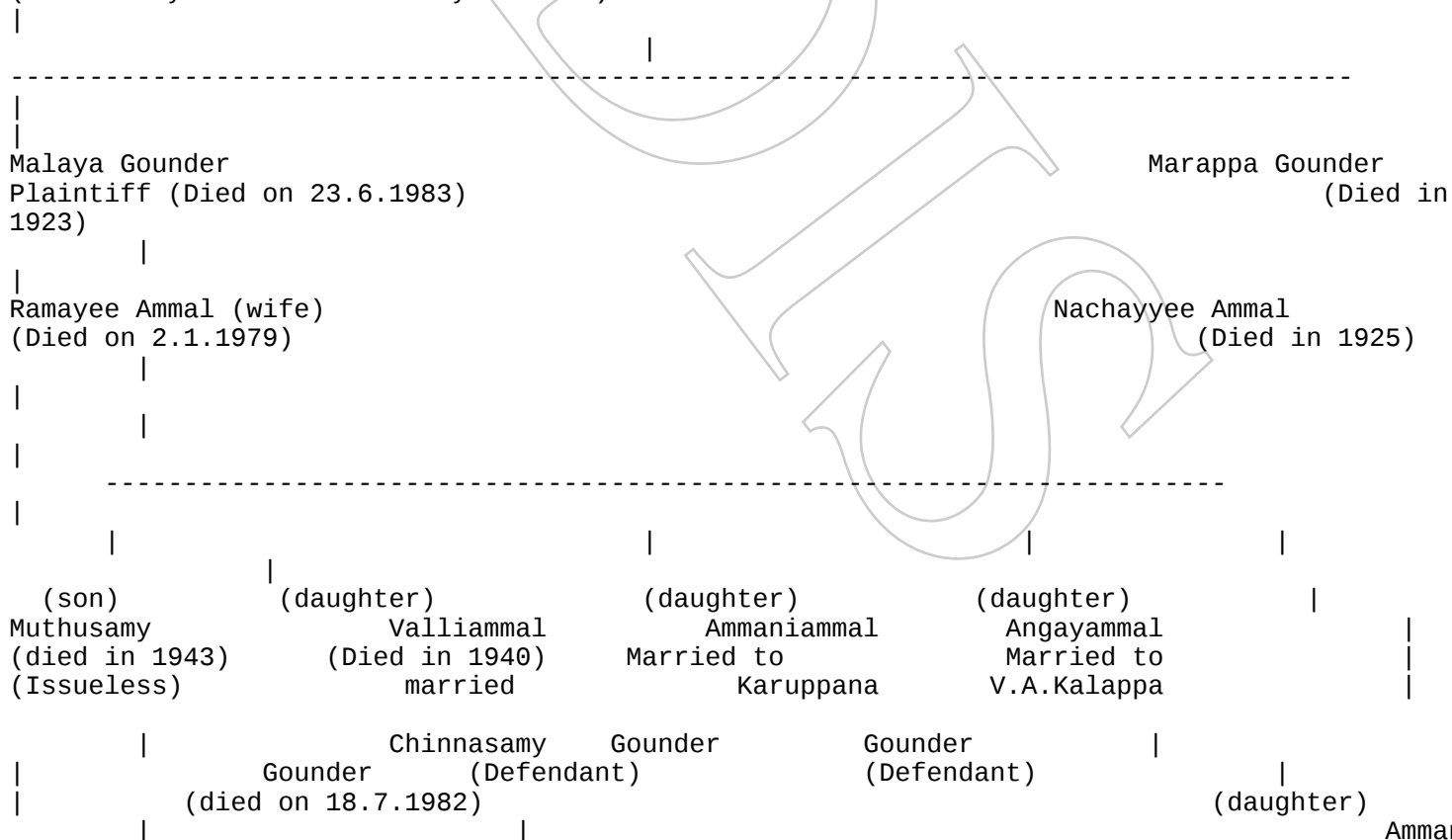
Aggrieved against the judgment and decree passed by the High Court of Judicature at Madras in Second Appeal No. 1324 of 1983 wherein the High Court while reversing and setting aside the concurrent judgments of the two courts below has dismissed the suit which had been decreed by the courts below, the plaintiff/appellants have filed the present appeal (now represented through L.Rs.).

Since the dispute is between the members of the family it would be useful to refer to genealogy of the family, which is as under:

ANGAPPA GOUNDER

DIED 1904

(When Malaya Gounder was 10 years old)



iammal			
Valliammal, wife			(died on 2
2.11.2001)			
(Appellant)			Married to
(died on 10.8.2001)			Chinnamalai Gounder

(Appellant)			
			(now decease
d -			
Subramanian	Samiathal		through Lrs.)
(Defendant)	(Defendant)		
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	Ponnammal	P.C.Palanisamy	P.C.Kandasamy
	(Appellant)	(Appellant)	(Appellant)

Original plaintiff Malaya Gounder died after the disposal of the first appeal. Respondents who filed the appeal in the High Court impleaded Ammaniammal daughter of the brother of the original plaintiff and Valliammal, daughter-in-law, wife of the pre-deceased son Muthusamy as the legal representatives of Malaya Gounder on the basis of an alleged will executed by him in their favour. Valliammal died intestate without any issue during the pendency of the appeal in this Court on 10.8.2001 and after her death her share has devolved on the defendants/respondents being the nearest collateral. Ammaniammal also died on 22.11.2001 and is now represented through her children.

The land measuring 10.37 \0261/2 acres (suit land) belonged to Malaya Gounder, plaintiff and his younger brother, Marappa Gounder. Marappa Gounder stood guarantee for his Uncle Chinnamalai Gounder in a loan transaction advance by one Samasundaram Chettiar who was a money-lender for a sum of Rs. 200/-. Samasundaram Chettiar filed a suit being OS No. 338 of 1925 against Chinnamalai Gounder as well as the guarantor. Marappa Gounder died in the year 1923 and was succeeded to by his brother Malaya Gounder, as the legal representative of Marappa Gounder. Suit was decreed against the debtor as well as the guarantor. They were made jointly liable. Suit land was sold on 1.8.1927 in the auction to satisfy the decree passed in OS No. 338 of 1925. Land was purchased by one Chockalingam Chettiar. Chockalingam Chettiar could not get physical possession of the land, however, he was given the symbolical possession.

The suit land was purchased by Ramayee Ammal wife of Malaya Gounder, original Plaintiff, for a consideration of Rs. 500/- on 5.12.1933. Ramayee Ammal executed a registered will in favour of her daughters the defendants/respondents herein. Ramayee Ammal died on 2.1.1979.

Malaya Gounder, after the death of his wife filed the present suit for declaration and permanent injunction against his daughters with the averments that long after the auction sale the plaintiff Malaya Gounder approached Pattayakkaarar, who was kind enough to pay a sum of Rs. 500/- to Chockalingam Chettiar in full and final settlement of the decreetal debt in O.S. No. 388 of 1925. Chockalingam Chettiar in turn sold the suit land which he had purchased in court auction in favour of Ramayee Ammal, wife of the

plaintiff on 5.12.1933. The sale consideration for the same was paid through Ramiah Pillai, the Secretary of Pattayakkaarar. It was alleged that he got the sale deed executed in favour of his wife as a benami as he thought it would not be safe for him to get the sale deed executed in his name as some creditors of Marappa Gounder may not create a problem in future. It was further averred that the property was all along in his possession and that he continued to encumber the property as its owner. He mortgaged the same to co-operative society. He treated the property to be ancestral. Even a partition had taken place between the plaintiff and his co-sharers. In these documents, the suit land was treated as an ancestral property and his wife neither objected to the partition nor claimed any share in it. That his wife knew that she was only a name-lender, and did not claim the property to be hers. Original Plaintiff Malaya Gounder's son Muthusamy died issueless and his wife Valliammal was also residing with him. After the death of Ramayee Ammal on 2.1.1979 the daughters started claiming right over the property and tried to trespass into the same. Plaintiff resisted their action and neighbours intervened and supported his claim. Suit was filed to establish his title over the suit land and to get an injunction restraining the defendants from disturbing his peaceful possession.

In the written statement filed by the defendants/respondents the claim of the original plaintiff over the suit land was disputed. According to them, plaintiff was not the owner of the suit land. After the court sale, Ramayee Ammal being the vendee from auction purchase became the absolute owner. She executed a will and bequeathed the suit land in their favour. The case put forth by the plaintiff that the property was purchased in the name of Ramayee Ammal as benami on his behalf to safeguard the same from some other creditors of Marappa Gounder was denied. According to them, the brothers of Ramayee Ammal who were well to do provided money and helped her in acquiring the suit land. Regarding the mortgage and the partition effected by the plaintiff it was averred that the same were fraudulent transactions without the knowledge of the real owner. If Ramayee Ammal was not the real owner, she would not have executed the registered will in their favour on 28.1.1974. Accordingly, it was prayed that the suit be dismissed.

Trial Court after taking into consideration evidence both oral and documentary into consideration decreed the suit and held that Ramayee Ammal was holding the property benami on behalf of the Malaya Gounder, the original plaintiff. It was also held that the property continued to be in possession of the Malaya Gounder in spite of court sale and he alone was dealing with the same as the owner. Trial Court held that the plaintiff had purchased the property in the name of his wife Ramayee Ammal apprehending that other creditors of Marappa Gounder might move against the plaintiff as he was the legal representative of his brothers. Judgment and decree of the trial Court was confirmed in the appeal by the first Appellate Court.

After the decision of the first Appellate Court original plaintiff Malaya Gounder died and the defendants/respondents filed the appeal in the High Court impleading Ammaniammal (brother's daughter) and Valliammal (daughter-in-law) as his legal representatives on the basis of the alleged will executed by him in their favour. Substantial question of law framed in the second appeal was:

"Whether the courts below have wrongly cast the onus of proving the benami nature of the sale on the defendants and further more whether they have failed to apply the various

tests laid down by the Supreme Court for determination of the question whether the sale in favour of Ramayee was a benami transaction?"

The High Court set aside the findings recorded by the courts below and held that the plaintiff had failed to prove that he had purchased the property in the name of his wife as a benami. He failed to prove that he had provided the money for the purchase of the suit land in the name of his wife. He had also failed to prove that Pattayakkaarar provided the money for the purchase of the suit land in the name of his wife on his behalf or that he had repaid the money later to Pattayakkaarar. Considering all these circumstances, the High Court came to the conclusion that the trial court and the first Appellate Court misconceived and misconstrued the evidence and committed grave error in decreeing the suit. The findings recorded by the courts below were set aside being perverse and not sustainable in law.

Counsel of the parties have been heard at length.

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 from 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.

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. Referred to Jaydayal Poddar Vs. Bibi Hazra, 1974 (1) SCC 3; Krishnanand Vs. State of Madhya Pradesh, 1977 (1) SCC 816; Thakur Bhim Singh Vs. Thakur Kan Singh, 1980 (3) SCC 72; His Highness Maharaja Pratap Singh Vs. Her Highness Maharani Sarojini Devi & Ors., 1994 (Supp. (1) SCC 734; and Heirs of Vrajlal J. Ganatra Vs. Heirs of Parshottam S. Shah, 1996 (4) SCC 490. It has been held that in the judgments referred to above that the question whether a particular sale is a benami or not, is largely one of fact, and for determining the question no absolute formulas or acid test, uniformly applicable in all situations can be laid. After saying so, this Court spelt out following six circumstances which can be taken as a guide to determine the nature of the transaction:

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."

The above indicia are not exhaustive and their efficacy

varies according to the facts of each case. Nevertheless, the source from where the purchase money came and the motive why the property was purchased benami are by far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another. We would examine the present transaction on the touchstone of the above two indicia.

Plaintiff's case was that he had purchased the suit land in the name of his wife in order to screen the property from the creditors of his brother. The names of the creditors were not given in the plaint. The plaintiff averred that one Pattayakkarar paid consideration for the purchase of the suit land. The relevant passage from the plaint as follows:

"Thereafter the plaintiff approached the Pattakkarar again and he was kind enough to pay Rs. 500.00 to Chokkalingam Chettiar in full settlement of the claim. The payment was made through Ramiah Pillai, the Secretary of Pattakkarar. In pursuance of the Settlement, Chokkalingam Chettiar executed a sale deed on 05.12.1933 with regard to the entire suit properties reciting therein that he had received the sale consideration from Ramaiah Pillai. When taking the sale deed, plaintiff thought that it will not be safe to have the sale deed executed in his favour, as some other creditors of Marappa Gounder might again give trouble and therefore the sale deed was taken benami in the name of his wife Ramayee Ammal."

In law title to the property vests in the person in whose favour the sale deed has been executed. Therefore Ramayee Ammal was the absolute owner of the property. By a registered will dated 28.1.1974 she bequeathed the suit land to her daughters defendants/respondents. The presumption in favour of Ramayee Ammal could be displaced only if her husband Malaya Gounder, the original plaintiff, was able to prove that there were circumstances which warranted the purchase of the property benami in the name of his wife. The plaintiff, in order to prove that he was the real owner of the property was required to show that there were valid reasons for purchase of the property in the name of his wife and that he had paid the money for the purchase of the land. Plaintiff in his evidence as PW1 admitted that neither his brother nor he himself had any creditors in the year 1933 when the land was purchased by his wife Ramayee Ammal. Therefore, the reason given by him for the purchase of the land in the name of his wife is not plausible. It also appears from his deposition that he had some other pieces of land in another village which were recorded in his name. Names of prospective creditors have not been disclosed. If there were any unsatisfied creditors then they would have proceeded against the plaintiff for the recovery of their money by attachment or sale of the land held by him in other village. Action took place in 1927. Land was purchased by Ramayee Ammal in the year 1933. During these six years no other creditors had come forward to claim any money against him or his uncle for whom the guarantee was given by his brother. Debt, if any, would have become time barred. Even after 1933 no creditor came forward with any claim. Marappa Gounder, brother of the plaintiff died in 1923. The property was sold in execution of the decree in the year 1927 and the sale deed in favour of Ramayee Ammal, the wife of the plaintiff was executed in the year 1933. Apprehension of the plaintiff that some other creditors of Marappa Gounder might proceed against the plaintiff is totally

unjustified. The case put up by the plaintiff that he purchased the land in the name of his wife benami does not seem to be plausible.

The plaintiff did not provide any money for the purchase of the land in the name of his wife. Neither in the plaint nor in his deposition the plaintiff explained satisfactorily when the money was provided by a third person. Neither the person who alleged to have paid the money nor anyone else on his behalf has examined as a witness. Therefore, it cannot be held that Pattayakkaarar or anyone else paid the consideration on behalf of the plaintiff. It is not even averred by the plaintiff that Pattayakkaarar provided money on his behalf or that he repaid the money to him later.

It is well settled that intention of the parties is essence of the benami transaction and the money must have been provided by the party invoking the doctrine of benami. The evidence shows clearly that the original plaintiff did not have any justification for purchasing the property in the name of Ramayee Ammal. The reason given by him is not at all acceptable. The source of money is not at all traceable to the plaintiff. No person named in the plaint or anyone else was examined as a witness. The failure of the plaintiff to examine the relevant witnesses completely demolishes his case.

Since the original plaintiff failed to prove that he had provided the money for the purchase of the land and the reasons why he purchased the property benami in the name of his wife, the High Court has come to the right conclusion that Ramayee Ammal did not hold the property as benami on behalf of her husband Malaya Gounder.

For the reasons stated above, we do not find any merit in this appeal and dismiss the same with no order as to costs.