

(1995) 08 MAD CK 0011
In the Madras High Court

R. Rajagopal Reddy (died) and Others	APPELLANT
Vs	
Padmini Chandrasekaran (died) and Others	RESPONDENT

Date of Decision : 16-08-1995

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 4(1)

Citation : (1995) 2 LW 659 : (1995) 2 MLJ 603

Hon'ble Judges : Ar. Lakshmanan, J

Bench : Division Bench

Judgement

AR. Lakshmanan, J.—This appeal is directed by the 1st defendant in C.S. No. 110 of 1971 on the file of the Original Side of this Court,

against the judgment and decree of the learned Single Judge dated 19.2.1979.

2. The appellant/1st defendant died pending this appeal and his legal representatives were brought on record as appellants 2 to 10. The 1st

respondent/plaintiff died during the pendency of this appeal and one of the executors viz., R. Krishnamurthi was brought on record as 8th

respondent as the legal representative of the 1st respondent. The 2nd defendant Venugopal Reddy died pending the suit and his legal

representatives were brought on record as defendants 4 to 8, who are respondents 3 to 7 in this appeal. The 3rd defendant/Gandhi Nagar Co-

operative House Construction Society Limited is the 2nd respondent in this appeal.

3. The 1st respondent/plaintiff filed the suit C.S. No. 110 of 1971 for a declaration that she is the sole and exclusive owner and is in possession of

the house and ground bearing Door No. 40, Fourth Main Road, Gandhi Nagar, Adyar, Madras 20, in her own right and for a permanent

injunction restraining the 1st defendant/appellant, his agents, servants etc., from interfering with her possession of the property and proceeding with any proceeding for eviction of the plaintiff from the property in question and for costs.

4. The plaintiff's case could be broadly stated as follows:

In 1950, the 2nd defendant, who died pending the suit, entered into a hire purchase agreement with the predecessor-in-interest of the 3rd

defendant- society under which the 2nd defendant, agreed to purchase a building to be designed and built in the suit plot. In 1952, the plaintiff

became a tenant of the suit property under the 2nd defendant. But, subsequently, the 2nd defendant orally agreed to sell the suit property to the

plaintiff. Acting on the said oral agreement, the plaintiff from time to time effected valuable improvements to the suit property. Ultimately, there was

a written agreement between the plaintiff and the 2nd defendant agreed to nominate the plaintiff authorising her to get the sale deed from the 3rd

defendant society. This agreement was fulfilled and the 3rd defendant society executed a registered sale deed in respect of the suit property in

favour of the plaintiff on 25.8.1967. Pursuant to the sale deed, the plaintiff is in exclusive possession of the suit property as an absolute owner

thereof. The 1st defendant denied the title and ownership of the plaintiff and would put forth a title in himself projecting a partition amongst himself,

the 2nd defendant, one Srinivasalu Reddy examined as D.W.2, and other parties. The 1st defendant claimed title to the suit property on the basis

of the said partition saying that the suit property was allotted to his branch.

5. The 1st defendant alone filed the written statement and contested the title claimed by the plaintiff. The substance of the contest by the 1st

defendant is, Srinivasalu Reddy (D.W.2), the 2nd defendant and the 1st defendant and their respective branches constituted, what is known in the

Hindu Law, as a composite family recognised as valid among the Reddi Community. Though the membership with the 3rd defendant Society stood

in the name of the 2nd defendant, it was only the composite family that was entitled to a right over the suit property and not the 2nd defendant in

his individual capacity. Therefore, the suit property was considered as an item available for division amongst the members of the family. According

to the 1st defendant, the 2nd defendant is only a benamidar for a composite

family and the suit property was conveyed by the 3rd defendant society through a sale deed at the instance of the 2nd defendant. Though the membership with the 3rd defendant society stood in the name of the 2nd defendant, it was only the composite family which was entitled to the suit property and not the 2nd defendant in his individual capacity. On 29.9.1955, a registered partition was entered into amongst the members of the composite family and in the said partition, the suit property was allotted to the branch of Srinivasalu Reddy, D.W.2 and the 1st defendant. Subsequently, there was a partition in the branch of the 1st defendant and Srinivasalu Reddy D.W.2 and in that partition, the suit property was allotted to the share of the 1st defendant's branch on 16.5.1966. The rights under the hire purchase agreement were held by the family as such and as per the partitions, they had come to the 1st defendant. The 2nd defendant was only a trustee for the other members of the family who are allotted the suit property in the family partition. Even if the 2nd defendant had obtained a sale deed from the 3rd defendant society in his own name, he will have to hold it for the benefit of the 1st defendant, who had been allotted the property in the family partition to which the 2nd defendant was a party. Similarly, the nominee of the 2nd defendant, viz., the plaintiff, should also hold it only in trust for the 1st defendant. The plaintiff could not claim any title on the strength of the sale deed and she is not a bona fide purchaser for value.

6. The 3rd defendant society filed a separate written statement. According to it, the 2nd defendant applied to the then Madras Co-operative House Construction Society Limited to allot a site and build a house thereon for him after becoming a member of the said society and that the 3rd defendant allotted a plot on 16.2.1949 with a "B" design construction thereon. He took possession of the plot with the house thereon and subsequently executed a hire purchase agreement with the said society on 30.8.1950. The predecessor society viz., the Madras Co-operative House Construction Society Limited was divided into eight separate societies on 10.8.1962 and the affairs of the Gandhi Nagar area were transferred to the Gandhi Nagar Co-operative House Construction Society Limited, which is the 3rd defendant. The entire amount due from the 2nd defendant to the 3rd defendant was paid on 10.3.1966 and in accordance

with the terms of the said hire purchase agreement, the 3rd defendant shall execute a registered deed of conveyance with the usual form and containing the usual covenants, conveying to the member or his nominee, as the case may be, the property originally allotted to the member viz., the 2nd defendant. The 2nd defendant in his letter dated 20.2.1967 addressed to the 3rd defendant society has irrevocably nominated the plaintiff as his nominee and authorised the society to execute the deed of conveyance regarding the property viz., 40, Fourth Main Road, Gandhinagar, in her name. Accordingly, on 25.8.1967, the 3rd defendant society executed a deed of conveyance in favour of the plaintiff as the nominee of the aforesaid member, the 2nd defendant. The 1st defendant had also written to the 3rd defendant society that the suit property may be conveyed to the 2nd defendant and the same may be communicated to him. According to the 3rd defendant society, it acted in accordance with the rules and regulations of the society and has accordingly executed the sale deed in favour of the plaintiff after getting the specific approval and nomination of the member of the society viz., the 2nd defendant herein.

7. On the basis of the pleadings put forth by the parties, the following issues were framed by this Court for trial:

1. Whether the 1st defendant, 2nd defendant, Srinivasalu Reddy and others are members of a composite Hindu family; whether the suit property belongs to such a composite Hindu family and whether the hire purchase agreement has been taken in the name of the 2nd defendant benami for the benefit of the composite Hindu family?
2. Whether the partition deeds are true or void or sham and nominal?
3. Whether the plaintiff was a tenant of the suit property under the composite Hindu family?
4. Whether Srinivasalu Reddy was collecting the rents from the plaintiff for himself and on behalf of the 2nd defendant?
5. Whether the plaintiff had not accepted Srinivasalu Reddy as the landlord?
6. Whether the attainment of tenancy with respect to the suit property to the 1st defendant was under a mistake of fact as alleged by the plaintiff?
7. Whether the plaintiff had by conduct accepted title in favour of the 1st defendant? Is she estopped from denying title of the 1st defendant?
8. Whether the alleged agreement of sale between the plaintiff and the 2nd

defendant is true?

9. Whether the sale of suit property by the 3rd defendant to the plaintiff is true and supported by consideration?

10. Whether the sale of the suit property by the 3rd defendant to the plaintiff was with notice of partition in the composite family and whether the plaintiff is not a bona fide purchaser for value with notice?

11. Whether the plaintiff is entitled to the injunction as prayed for?

12. Whether the plaintiff is entitled to the declaration of title to the suit property?

13. Whether the 3rd defendant is a necessary or proper party to the suit?

14. To what relief or reliefs are the parties entitled?

8. On a consideration of the materials placed before him, S. Padmanabhan, J., rendered findings on the issues set down for trial as under:

On Issue No. 1, the learned Judge held that the 2nd defendant became a member of the society in his own individual capacity and not on behalf of

any alleged composite family and that the 1st defendant has failed to establish that the 2nd defendant was only a benamidar in relation to the

predecessor- in-interest of the 3rd defendant for and on behalf of the alleged composite family and that the 1st defendant, 2nd defendant,

Srinivasalu Reddy D.W.2 and others were not members of any composite family as alleged and that the hire purchase agreement was not taken in

the name of the 2nd defendant benami for the benefit of any such composite family but in his individual name only and that the composite family had

no manner of right over the suit property.

Issue No. 2 relates to the question whether the partition deeds are true or void, sham and nominal. The learned Judge proceeded to consider this

issue keeping in view his finding that on the date of Ex. D-9, the three families did not constitute a joint Hindu family as they were not bound by any

common ties which gave rights to one family over the properties of the other. On behalf of the plaintiff it was argued that Ex. D-9 suffers from

material alteration and there/ore it should, not be relied on since, according to the learned Counsel for the plaintiff, it did not contain the

endorsement of the Sub Registrar on the reverse. The learned Judge, after pointing out the discrepancies between Ex. D-9 and the document as

found in the registration book, held that the partition has no legal effect and that

it could not be considered to be a valid partition deed.

On Issue Nos. 3 and 4, the learned Judge held that the plaintiff became a tenant only with the 2nd defendant and not either with the alleged

composite family or Srinivasalu Reddy D.W.2.

On Issue No. 5 and 6, the learned Judge held that there was no proof at all to show that at any point of time, the plaintiff accepted Srinivasalu

Reddy D.W.2 as the landlord.

On Issue No. 7, the learned Judge held that the payment of rent made by the plaintiff to the 1st defendant was by mistake and the plaintiff is not

estopped from disputing the title of the 1st defendant. On Issue Nos. 8 and 9, the learned Judge found that the agreement between the plaintiff and

the 2nd defendant is true and the sale of the suit property between the 3rd defendant society and the plaintiff is equally true and supported by

consideration.

On Issue No. 10, the learned Judge held that this issue does not arise for consideration in view of the other finding that the 2nd defendant became

a member of the predecessor- in-interest of the 3rd defendant society in his individual capacity and not on behalf of any composite family and that

there was no composite family as claimed by the 1st defendant.

On Issue Nos. 11, 12 and 13, the findings of the learned Judge are that the plaintiff is entitled to an injunction as prayed for by her and that she is

entitled to a declaration of title to the suit property as prayed for and that the 3rd defendant is a necessary party to the suit.

In the result, the learned Single Judge decreed the suit of the plaintiff as prayed for with costs of the 1st defendant.

9. Aggrieved by the judgment and decree, the 1st defendant preferred O.S.A. No. 27 of 1980 which came before a Division Bench of this Court

consisting of S. Nainar Sundaram J., as he then was, and Bellie, J., who by their judgment dated 7.11.1989 decided the legal point raised by the

learned Counsel (or the plaintiff based on the Benami Transactions (Prohibition) Act 45 of 1988. After referring to the geneology of the alleged

composite family, the learned Judges considered the specific case of the 1st defendant with regard to the acquisition of the suit property as found in

paragraph 4 of the written statement viz., though the property stood in the name of Venugopala Roddy, it was in his name only as a member of the

composite joint family, and the said composite family being entitled to an interest therein and therefore this property was considered as an item available for division amongst the members of the family. After considering the provisions of the Benami Transactions (Prohibition) Act 45 of 1988, the Bench held that the decision has been rendered in this case anterior to the coming into force of the Act. The Bench further held that the concept of a composite family certainly cannot be equated to the concept of a co-parcenary, which is purely a creature of law and it cannot be created by act of parties. In regard to the issue relating to illatom adoption of Peta Venkataraghava Reddy into the family as advanced by the learned Counsel for the legal representatives of the 1st defendant, the Bench held that the same was not set forth in the pleadings at all and that no plea was put forth by the 1st defendant that Peta Venkataraghava Reddy was taken in illatom adoption into the family. The Bench also held that the plea that the partition could operate as transfer was not advanced before the learned single Judge and no such plea was put forth by the 1st defendant in his written statement. Ultimately, the Bench held that the plaintiff had to succeed on the title claimed by her and the decree granted in her favour by the learned single Judge has got to be maintained. In the result, the Bench dismissed the appeal filed by the 1st defendant with costs of the plaintiff/1st respondent herein.

10. Against the judgment of the Division Bench in O.S.A. No. 27 of 1980 dated 7.11.1989, the unsuccessful 1st defendant preferred an S.L.P., before the Supreme Court of India. The Supreme Court decided the civil appeal filed by the 1st defendant along with certain other matters. The question for consideration before the Supreme Court was, whether Section 4(1) of the Benami Transactions (Prohibition) Act, 1988, can be applied to suit, claim or action to enforce any right in property held benami against person in whose name such property is held or any other person, if such proceeding's initiated by or on behalf of a person claiming to be real owner thereof, prior to the coming into force of Section 4(1) of the said Act. Three Judges Bench of the Supreme Court held that the earlier Division Bench of the Supreme Court in *Mithilesh Kumar and Another Vs. Prem Behari Khare*, , erred in taking the view that Section 4(1) of the said Act could be pressed into service in connection with suits

filed prior to coming into operation of that section. Similarly, the view that u/s 4(2) of the said Act in all suits filed by persons in whose names

properties are held, no defence can be allowed at any future stage of the proceedings that the properties are held benami, cannot be sustained. The

three Judges Bench of the Supreme Court held that Section 4(2) of the Act will have a limited operation even in cases of pending suits after

Section 4(2) came into force if such defences are not already allowed earlier. It was, therefore, held that the decision of the Supreme Court in

Mithilesh Kumar and Another Vs. Prem Behari Khare, does not lay down the correct law so far as the applicability of Sections 4(1) and 4(2) to

the extent indicated in the judgment to pending proceedings when these sections came into force is concerned. Accordingly, the Supreme Court

answered the question for consideration in the negative.

11. Thereupon, the Supreme Court registry was directed to place all the matters before an appropriate Division Bench for disposing them of on

merit in the light of the answer given by the three Judges Bench. Thereafter, the matter was placed before the three learned Judges of the Supreme

Court on 7.3.1995. The learned Counsel for the parties have agreed that the impugned order of the Division Bench of this Court reported in R.

Rajagopal Reddy v. Padmini Chandrasekaran (1990) 1 M.L.J. 234 has to be set aside in view of the law laid down by the Supreme court in R.

Rajagopal Reddy v. Padmini Chandrasekaran (1995) 1 L.W. 428 : (1995)1 Scale. 652 and the case is to be remanded back to this Court for

fresh decision in accordance with the reasoning and conclusion reached by the Supreme Court. After remand, the matter is again listed us for fresh

hearing.

12. We have perused the evidence, both oral and documentary, filed in this case and also the judgment of the learned single Judge. We have also

perused the pleadings.

13. Mr. Mohan Parasaran, learned Counsel for the appellant contended that Ex.C-1/Ex.D-9 is not a sham and nominal document as contended by

the 1st respondent and that Ex.D-9 did not suffer from any material alteration and that the existence of the composite family or other considerations

such Illatom adoption, are not all germane for deciding the rights of the 1st respondent, as according to him, the deed of partition admittedly came

into effect only between the members of the three families which had alone right, title and interest in all the properties including the suit property. He

also submitted that the 1955 partition deed was acted upon and could not, therefore, be set aside on the basis of the contention of the 1st

respondent that it was not a composite family. In support of his contention, Mr. Mohan Parasaran, learned Counsel for the appellant, took us

through the pleadings, documents and the oral evidence.

14. Mr. G. Subramaniam, learned Senior Counsel appearing for the contesting 8th respondent contended that the existence of the composite

family not having been proved by any independent document other than the partition deed, no right, title or interest will pass under the partition

deed to the appellant. Mr. N.S. Varadhachari, supporting the contention of Mr. G. Subramaniam, also contended that in the absence of any

positive proof of the existence of Illatom Adoption, one of the considerations of existence of composite family, the appellant cannot claim any right,

title or interest basing their claim under the partition deed. Mr. N.S. Varadhachari further contended that the suit property being the subject-matter

of hire purchase agreement of the year 1955, cannot be conveyed, transferred or assigned in a partition deed when no right had vested in the

property in favour of the 2nd respondent in the year 1955. In other words, he contended, that the property cannot be conveyed or transferred in a

partition deed when the property had not yet become fully owned by the 2nd respondent in 1955. The learned Counsel for the contesting 8th

respondent also contended that Ex.D-9 cannot at all be looked into since there is material alteration. He further pointed out the discussion and the

finding arrived at by the learned Judge on the question in regard to the material alteration.

15. During trial this Court summoned the Registration Book from the Sub Registrar's office and the same was produced into Court on 31.1.1979.

As the document was in Telugu, an Advocate Commissioner by name Ms. Venkatasubbamma was requested to compare Ex.D-9 with the

document as registered in the book and the certified copy filed by the 1st respondent. At that stage, the learned Counsel for the 1st defendant

wanted permission to file two documents into court said to contain B and D schedules to Ex.D-9. He also wanted the Court to receive in evidence

another document already filed by him into Court containing the C schedule in Ex.D-9. The Advocate Commissioner filed a memo noting certain

discrepancies between Ex.D-9 and the registration copy. Since the certified copy as well as the registration book were admittedly identical, the

Court marked the certified copy filed by the 1st respondent here in as Ex.C-1 and directed the original registration book to be returned to the Sub

Registrar's office. The memo filed by the Advocate Commissioner was taken on file. However, that memo is not made available to us for our

perusal in spite of the diligent search made by the office. We, therefore, directed the interpreters section to provide an English translation of the

registration copy of the partition deed which is in Telugu, marked as Exs.C-1 and D-9 dated 29.9.1955. Accordingly, the office has provided an

English translation of both the documents. We have perused the original of Exs.C-1 and D-9 and the translated version of the said two documents.

16. The case of the 1st respondent is, that the suit property was purchased through a hire purchase agreement from the 3rd defendant-society by

the 2nd defendant and in terms of the hire purchase agreement, the 2nd defendant had no powers to assign or part with possession of the property

except with the prior permission of the society. The 1st respondent's husband became a tenant in the year 1952 under the 2nd defendant and

continued to be so till 1962 when the 1st respondent/plaintiff became a tenant in the place of her husband. According to her, one Srinivasalu

Reddy used to collect rent throughout and he used to pay the instalments due to the 3rd defendant- society and the balance would be paid as rent.

The 1st respondent would submit that the 2nd defendant alone is the absolute owner of the property. However, based on the request made by

Srinivasalu Reddy under Ex.P-7 dated 16.5.1966, she paid the rents for the months of June and July, 1966, to the appellant since it was pointed in

Ex.P-7 that the property was allotted in a subsequent partition between Srinivasalu Reddy and the appellant to the appellant, subsequently at the

request of the 2nd defendant, she stopped paying rents to the appellant. Thereafter, she obtained receipts and paid rent from August, 1966 to

February, 1967. The 2nd defendant approached her for the sale of the suit property and the 3rd defendant conveyed the property to her after the

receipt of the entire amount due from him to the society and executed the sale deed in her favour. The 1st respondent also pleaded that appellants

have no right to initiate rent control proceedings for eviction (which were filed prior to the execution of the sale deed) and that the 2nd defendant

had absolutely no right to assign the suit property in any partition and therefore, the entire transaction was sham and nominal.

17. The appellant resisted the suit mainly on the ground that the suit property was purchased for and on behalf of the composite Hindu family

comprising three families viz., Peta Vekati, Eswara Vaka and Peta, that the appellant/1st defendant, who represents Peta family and the 2nd

defendant who belongs to Eswara Vaka family, entered into a partition deed in September, 1955, and that the 2nd defendant, who was a party to

the partition, cannot, therefore, question the partition at this stage since he has no right to question the same. The appellant further denied the

improvements said to have been made by the 1st respondent and also contended that the 1st respondent cannot maintain an action for injunction

and that the 2nd defendant was only in the position of a trustee in respect of the suit property. He also connected that the agreement of sale and the

sale transaction of the 1st respondent are highly questionable and the payment of consideration, as alleged by the 1st respondent, was clearly false.

18. As already seen, the 1st respondent's case is that the partition which took place in September, 1955, was sham and nominal. The 2nd

defendant, who was also a party to the partition, never disputed the existence of the partition and recording of the same. The various circumstances

of the case pointed out by the learned Counsel for the appellant would, in our view go to show that all the three families had acted on the basis of

the composite family. In this connection, our attention was drawn to the application dated 9.4.1947 to the 3rd defendant- society where the 2nd

defendant has described the 1st defendant/appellant as close relative in Column 12(c). The said application has been marked as Ex.D-70. This

application was made by the 2nd defendant for membership to the predecessor-in-interest of the 3rd defendant viz., Madras Co-op. House

Construction Society Limited, also enclosing a cheque for Rs. 1,500 being the 25% of the estimated value of "A" Class house at Mylapore.

19. It is seen from the judgment of the learned Judge that Ex.C-1 was the true copy of the original copy of the partition. Several statements have

been made in Ex.C-1 in regard to the existence of the composite family and the purchase of some properties in the names of some of the family

members, payment of kist therefor, etc. It is clearly mentioned in Ex.C-1 that all such properties form part of the composite family and belong to all the members of the family. A reference is made to the division of the properties about seven years ago and in pursuance of such division, the parties have been enjoying as such for the past seven years and with a view to confirm and affirm such partition, they executed a registered deed of partition on 29.9.1955.

20. The 2nd defendant was also a party to the partition deed. As rightly pointed out by Mr. Mohan Parasaran, the 2nd defendant has not chosen to attack the status of the composite family or to dispute the existence of the composite family. This apart, all the three families have common address at No. 10, Kandappa Mudali Street, Madras-10. Exs.D-9 to D-16 are the sale deeds in the names of individual members of the composite family which were purchased prior to the partition and allotted in the partition to other members. Ex.P-44 is the reply notice dated 17.10.1966 by the counsel for the 2nd defendant to the counsel for the appellant. The 2nd defendant also does not dispute the status and the existence of the composite family in the said reply though he denies the partition of the year 1955. In our opinion, there is no dispute inter se among the members of the family about the existence of the composite family. There is also no dispute between them about the existence of 1955 partition to which the 2nd defendant was admittedly, a party.

21. The question for our consideration is, whether this 1955 partition deed could be set aside at this point of time on the ground of it being vitiated by fraud or misrepresentation or ignored on the ground that it is sham and nominal. We have perused the plaint. The plaintiff has only prayed for a decree for declaration declaring that she is the sole and exclusive owner and for possession in her own right of the house, ground and premises bearing Door No. 40, Fourth Main Road, Gandhi Nagar, Madras and for a permanent injunction restraining the appellant/1st defendant or his agents, etc., from interfering with possession of the property. Though there is reference to the partition deed dated 29.9.1955, in which the suit property was stated to have been allotted to the appellant, the 1st respondent has not prayed for any declaratory relief for setting aside the 1955 partition. There is no pleading made and no relief sought for in the suit for a

declaration that the 1955 partition is void or illegal or non-est in the eye" of law. In any event, that issue was relevant for determining the rights of parties. Further, a prayer to set aside the partition or for declaration that it is sham and nominal is necessary in this case because the 1st respondent claims only under the 2nd defendant. Under such circumstances, in our view, the said relief could be sought for only in the presence of all the interested parties who were parties to the partition and not behind their back. However, the 1st respondent has chosen to file this suit only for a declaratory relief as already stated. The 1st respondent's predecessor-in-title had never treated the partition as sham and nominal but in fact, acted upon the said deed.

22. Much argument was advanced by Mr. G. Subramaniam and Mr. N.S. Varadhachari in regard to the existence of the composite family and the truth and validity of the Illatom Adoption. In our opinion, the existence of the composite family and the proof of Illatom Adoption are neither germane nor relevant for deciding the rights of the parties in this lis. It is not in dispute that the partition deed came into effect in the year 1955 amongst the members of the three families which alone had right, title and interest in all the properties. Various items of properties purchased in the names of different individuals of the family were put into the common pool and divided amongst the members of the composite family. All the three families alone had the right, title and interest in all the properties. They have acted upon by adjusting their rights mutually in terms of the deed by taking their respective shares in the various properties. In our view, the partition, which was acted upon by the parties to the same, cannot be set aside on the contention of the learned Counsel for the 1st respondent that it was not a composite family.

23. The 2nd defendant never disputed the existence of the composite family nor the existence and execution of Ex.C-1. In his reply notice, the 2nd defendant disputes the partition deed only in respect of one item of properties viz., the suit property, as vitiated by fraud and misrepresentation. Nowhere it has been pleaded that the partition deed was sham and nominal. The plea of the 2nd defendant on this score has to be rejected on the singular ground that even the predecessors-in-title of the 1st respondent did not take up this plea of fraud or mistake or misrepresentation. When

admittedly Ex.C-1 was acted upon in respect of several properties, the said document, in our opinion cannot be treated as sham and nominal in

respect of one item of property or that it was vitiated by fraud or misrepresentation in respect of one item only.

24. There cannot be any ulterior motive or extraneous consideration for the parties to enter into such partition in the year 1955, nor has any

acceptable reason been given by the 1st respondent in the suit. When a solemn document evidencing a particular transaction comes into being,

wherein various facts have been said, and the same having remained unquestioned over a long period of time by any of the parties to the deed, it

does not, in our opinion, lie on a third party like the 1st respondent to impeach the nature of transactions recorded in the said document. This

apart, the evidence adduced in this case would sufficiently indicate the presence of the composite family and the conduct of the various parties

having accepted and acted upon it as if they all being to one composite family. In any event, the question as to whether composite family existed or

not is extraneous to the determination of the rights of the 1st respondent for these reasons. Therefore, we accept the contention of the learned

Counsel for the appellant and hold that Ex.C-1 is not a sham and nominal document.

25. Now we take up the question of material alteration of Ex.D-9, which was raised by the learned Counsel for the 1st respondent at the time of

argument before the learned single Judge and also before us. It is seen from the judgment of the learned single Judge that during the course of the

argument, counsel for the 1st respondent/plaintiff raised a technical objection that Ex.D-9 had been materially altered as it did not compare well

with the certified copy of Ex.C-1 obtained from the Sub Registrar's office. Mr. N.S. Varadhachari's main objection was that Ex.D-9 contained a

number of pages called main schedules which were absent in the certified copy Ex.C-1. In view of the objection of the learned Counsel for the 1st

respondent, the registration book was summoned by the court and the same was produced on 31.1.1979 before the learned single Judge.

Relevant extracts from the registration books, which was in Telugu was translated by an Advocate Commissioner and the court had taken on file

the same as Ex.C-1. A perusal of Ex.C-1 would go to show that it contained four schedules A, B, C and D and the various terms as originally

contained in the partition deed of the year 1955. On a comparison of Ex.C-1 with Ex.D-9, we see that Ex.D-9 contained only C Schedule other

than the main schedule. Thereupon, counsel for the appellant sought permission from the learned single Judge to file two additional documents

containing B and D schedules to the original partition. The learned single Judge, on a comparison of the documents, concluded that the original

document of partition of the year 1955 had been separated into different parts and some crucial pages numbering 20 had been added to each of

those separate parts. According to the learned Judge, the said act of separation into four parts and addition of 20 sheets amounted to material

alteration thereby rendering the whole document including Ex.D-9 void.

26. As rightly pointed out by the learned Counsel for the appellant, the question relating to material alteration was raised for the first time only at

the time of arguments by the counsel for the 1st respondent. Under such circumstances, the court should have summoned the party or parties who

had played a part in separating the original partition document containing 20 sheets as main schedule and examined them. The learned single Judge,

in our opinion, has failed to adopt such a course. If such a procedure had been adopted then, the appellant would have got an opportunity to

explain under what circumstances the alteration had taken place. In fact, at the time of hearing, the learned Counsel for the appellant suggested to

the learned single Judge a plausible reason for the separation of the partition deed into four parts and the necessity for adding the main schedule

containing all the properties mentioned in A, B, C and D schedules. The splitting of the sheets into four parts does not make the document void. A

scrutiny of the sheets stitched to Ex.D-9 would show that the said sheets are nothing but detailed list of the properties showing the properties

belonging to the family and their allocation to various units and they do not in any way affect either the character of the document or the effect of

the document. There is no discrepancy of difference between the schedules and the list of properties attached to the document. No alteration,

addition or deletion has been made by any one. Neither the recitals nor the description of the properties have been altered or changed. All the

original sheets are intact and have not been tampered with. In any event, the learned Judge, after giving an opportunity to the appellant to explain as

to show to mistake has happened, should have given a finding. Since the learned Judge has rendered a finding without giving an opportunity to the appellant, the said finding of the learned single Judge that the appellant/1st defendant had failed to prove that the material alteration was made without the consent and privity of the 2nd defendant, is erroneous since the learned Judge has decided the said issue even without any trial on that issue. As already observed by us, a comparison of Ex.D-9 with the relevant portions in Ex.C-1 has failed to disclose any difference and the contents of both are identical in terms except for the fact that Ex.D-9 contained additional sheets of paper called main schedule. Even assuming that Ex.D-9 produced by the appellant was rendered void by virtue of any material alteration as found by the learned single Judge, still the transaction evidenced by the said document will not be affected as the transaction stood proved beyond doubt on the production of Ex.C-1 from the Registration Department. The learned Judge has also held while considering Issue No. 2 that the certified copy Ex.C-1 as well as the registration book are admittedly identical. Only on satisfying himself that both are admittedly identical, the learned Judge directed the original registration book to be returned to the Sub Registrar's office after marking the certified copy as Ex.C-1.

27. The learned single Judge decided the second issue against the appellant mainly on the ground that the partition deed was void and non-est having been materially altered. He also relied on the finding on the first issue that no composite family ever existed comprising of three individual families. While coming to the above finding, the learned Judge recorded the arguments of the learned Counsel for the 1st defendant/appellant that it was wholly unnecessary for the court to go into the question whether composite family existed or not. Further, after recording the contentions of the learned Counsel for the 1st defendant/appellant, the learned Judge relied on the finding on the issue of composite family and went on to state that Ex.D-9 cannot be accepted as partition deed in the eyes of law. The learned Judge, in our view, has failed to appreciate certain crucial facts, which, if considered, would have led to a different conclusion in favour of the appellant and in favour of the genuineness and validity of the partition deed. As already been, it is indisputable and various properties had been sought to be put together in a common pool by the members of three

different families. It is also beyond doubt that the said properties have been divided amongst the members of the three families. There was mutual

adjustment of the right, title and interest of the parties to the deed of the properties mentioned in the schedule and subsequent to such adjustment,

the parties had actually acted upon the deed and had even sold various properties that were allotted to their respective shares. We are of the view

that learned Judge has erred in holding that Ex.D-9 is invalid and has no legal effect. The learned Judge has only misread Ex.D-9.

28. We are unable to accept that contention of the learned Counsel for the contesting respondent that in the absence of there being a composite

family, no right, title or interest will pass under the partition deed. Our reasons for rejecting the said contention are as follows:

The scope of the present suit is limited. It relates only to one item of property and the question whether the property belonged to the composite

family arises only incidentally. Admittedly, the other members of the three families are not parties and all the family properties, which are the subject

matter of the partition of the year 1955, are not the subject matter of the suit. It is not in dispute that the other members of the family have

recognised and admitted under Ex.D-9 that such a composite family existed and that all the properties covered by Ex.D-9, though purchased

under the names of individuals, belong to all the members of the composite family. The properties standing in the names of the individual members

including those in the name of the appellant had been treated as the properties belonging to the composite family and were divided among the

members of the family and the members had acted on that basis. The 2nd defendant admittedly is a party to the said partition and therefore, he is

bound by the recitals contained in the partition deed.

29. As rightly contended by the learned Counsel for the appellant, the 2nd defendant cannot blow hot and cold. He cannot accept one part of the

deed and repudiate the other part. It is not open to him to question the existence of the composite family. The suit property belonged to the

composite family and that under Ex.D-9 it was allotted to the Peta family. We are unable to appreciate the finding of the learned Judge in regard to

the non-examination of the other members of the family who have not questioned the transaction. Therefore, it was unnecessary for the appellant to

examine the members of the other two branches. If the 1st respondent wanted to prove the said fact, it was for her examine the other members

and lead contra evidence. The 1st respondent has miserably failed to do so. As rightly pointed out by the learned Counsel for the appellant, the

learned Judge has failed to give due weight to Exs.D-10 to D-16, which are the sale deeds. A perusal of Ex.D-10 would show that consideration

for the purchase in favour of the 2nd defendant was the debt due to the appellant. The lands of an extent of 47.55 acres purchased under Ex.D-10

in the name of the 2nd defendant, have been allotted to all the families under Ex.D-9. Likewise, the properties under Exs.D-11 to D-15 in the

name of the appellant have been to Vakkatti's branch. Similarly, the properties in Venadu that stood in the name of D.W.2. have been allotted to

the 2nd defendant's branch. It is also not in dispute that subsequent to Ex.D-9, the members of Peta family had partitioned their properties that fell

to their share under Exs.D-27 and D-29 and two of the executors of the documents Exs.D-27 and D-29, have spoken to the said partition.

Likewise, some of the properties allotted to the 2nd defendant branch under Ex.D-9 have been sold by them under Ex.D-16. The above fact

would go to show that the parties have accepted the partition and acted upon.

30. Anyhow, the question as to the existence of a composite family or the existence of the practice of Illatom Adoption in the family of the parties

to this action is extraneous to the determination of the rights of the parties for the reasons stated supra.

31. It is contended by Mr. N.S. Varadhachari, learned Counsel for the contesting respondent that the 1st respondent/plaintiff is a bona fide

purchaser for value. The learned Judge has failed to see that Ex.P-1 sale deed dated 25.8.1967 came into existence during the pendency of the

eviction petition against the 1st respondent. Even though she had notice of the rights of the parties in the partitions, she did not make any enquiry

and did not obtain any encumbrance certificate to satisfy that there was no partition. The 1st respondent, knowing fully well, has not only

purchased the property but also the litigation.

32. An argument was advanced in regard to the passing of sale consideration. We are of the view that a finding on that point is not necessary in

view of our findings on the other related issues.

33. The conduct of the parties to this action can also be relevantly, considered in order to appreciate the case of the appellant as true and correct.

It is an admitted fact that the parties have entered into a partition in the year 1955. It is only after the partition that Srinivasalu Reddy started

collecting the rent as evident from Ex.D-17, dated 6.7.1956, a receipt issued by the society. Two other receipts were also issued in the name of

Srinivasalu Reddy, viz., Exs.D-18 and D-19. The 1st respondent's husband wrote a letter on 24.2.1961 to Srinivasalu Reddy calling him to

Madras during the first week of March, 1961 without fail to discuss about the transfer of the suit property, Ex.P-4 is the letter dated 21.12.1965

by the 1st respondent's advocate in which Srinivasalu Reddy is described as the allottee of the property. It is stated therein that the property is

allotted in the name of the 1st appellant. Ex.P-5 is the reply dated 21.1.1966 by Srinivasalu Reddy to the 1st respondent pointing out that the 2nd

defendant has no interest in the suit property in view of 1955 partition. It is stated therein that under the partition between Srinivasalu Reddy family

and that of Venugopala Reddy in 1955, the suit property had been allotted to the branch of Srinivasalu Reddy family and that he had been directed

to pay the monthly instalments due to the society and take the sale deed and that he has been paying the instalments due to the society from 1955

though the receipts are taken in the name of Venugopala Reddiar as till the entire amount is paid off, the society cannot execute the sale deed in his

name. There is also no express denial about partition by the 2nd defendant in his letter Ex.D-6 dated 9.2.1966.

34. It is significant to point out that it was Srinivasalu Reddy who paid the balance to the society under Ex.D-25, dated 8.3.1966 and requested

the 1st respondent by his letter Ex.D-3 to send rents directly to him. Ex.D-2 which was addressed to Peta Srinivasalu Reddy to his Tada address

on 24.2.1961 indicates that the plaintiff/1st respondent was aware that Srinivasalu Reddy alone had the right to deal with the property and

requested for stamped receipt for the amounts paid to Srinivasalu Reddy and signed by Srinivasalu Reddy. Ex.D-5 also shows that the plaintiff

wanted receipt only from Srinivasalu Reddy. However, the 1st respondent/plaintiff in her pleadings pleaded ignorance of the partition in spite of

having received Srinivasalu Reddy's letter dated 21.1.1966. Ex.P-43 dated 18.4.1966 was sent by Venugopala Reddy to the 3rd

defendant/society wherein the 2nd defendant has stated that he has shifted his residence to Tada for the past three years and asked him not to give

any document to any one and that all communications should be sent to his address only. A copy of the said letter was also marked to the 1st

respondent herein. Srinivasalu Reddy has also pointed out to the 1st respondent by Ex.P-7 dated 16.5.1966 that the property in question has been

allotted to the appellant in the revised partition and that he is the present owner of the property as father and manager of his branch. He, therefore,

requested the 1st respondent to attorn her tenancy of the suit property to Rajagopalu Reddy and pay future rent to him and terminate the tenancy

to him.

35. The appellant/1st defendant again under Ex.Dr 43 dated 25.8.1966 pointed out that defendants 1 and 2 lived as members of the composite

family and also referred to the partition which took place on 29.9.1955. As already seen, the appellant/1st defendant on 31.8.1966 filed H.R.C.

No. 4118 of 1966 for eviction. It was only after the filing of the eviction proceedings, the appellant sent legal notice to the 2nd defendant to the

effect that the sale deed should be expedited and the society should be permitted to execute the sale deed in the name of the appellant in the light

of the partition. The 2nd defendant, however, comes into the scene for the first time on 17.10.1966 taking the stand that the property was not

purchased on behalf of the composite family and that the said item was included in the partition by mistake of fact and law. This notice is marked

as Ex.P-44. In Ex.P-44, the 2nd defendant has taken all inconsistent defences and thereupon requested the 1st respondent/plaintiff to pay the rent

to him directly.

36. Counsel appearing for the appellants and the contesting respondent have cited some decisions in support of their respective contentions. We

feel it is unnecessary to refer to those decisions since we have decided the case on the merits of the rival claims with reference to the pleadings and

the evidence on record, both oral and documentary.

37. For all the reasons aforesaid, we allow the appeal, set aside the judgment and decree of the learned single Judge dated 19.2.1979 and dismiss

the suit. However, there will be no order as to costs.