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Sharada Bai Vs. Jamuna Bai and Others

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Court : Andhra Pradesh

Decided On : Jun-08-2001

Reported in : 2001(4)ALT234

Judge : Bilal Nazki and ;V. Eswaraiah, JJ.

Acts : Registration Act - Sections 17; Indian Stamp Act

Appeal No. : LPA Nos. 166 of 1998 and 226 of 1999

Appellant : Sharada Bai

Respondent : Jamuna Bai and Others

Advocate for Def. : Mr. R.N. Hemendranath Reddy, Adv.

Advocate for Pet/Ap. : Mrs. A. Chaya Devi, ;Mr. M.R.K. Choudhary for ;Mr. M. Srinivasa Rao and ;Mr. M. Sudhir Kumar, Advs.

Judgement :
ORDER

Bilal Nazki, J.

1. These two appeals have been filed against the judgment and decree passed by learned single Judge in CCCA No.1 of 1992 on 24th June, 1998. The plaintiff has filed LPA No.166 of 1998 and two of the defendants who were defendants 1 and 2

in the suit have filed LPA No.226 of 1999. Other defendants have not chosen to file any appeal. Both the appeals were heard together and are being decided by this common judgment.

2. The plaintiff filed suit fordeclaration of title and for recovery of possession of plaint 'A' schedule property. She also sought eviction of defendants from the 'A' schedule property. The plaintiff also sought permanent injunction restraining the defendants from interfering with the possession and enjoyment of the plaintiff over the plaint 'B' schedule property. Shealso sought recovery of Rs.6,000/- towards the part arrears of damages for use and illegal occupation of plaint 'A' schedule portion, and she also claimed future damages at the rate of Rs.2,000/- per month for use and occupation of plaint 'A' schedule property. The plaintiff's case briefly was that, she was the absolute owner of the house bearing M.No.21-2-131/7 to 9, Charkaman, Hyderabad. According to the plaintiff, one Sharbati Bai had purchased the same with her own funds through a registered sale deed dated 2-9-1960 from Smt. Gilli Bai. After purchase, she had demolished the old house and constructed mulgies on ground floor and residential portion on the first floor and one room on the second floor. Smt. Sharbati Bai entered into an agreement with the plaintiff on 10-2-I978 thereby agreeing to sell the entire double storeyed building for a total consideration of Rs.30,000/-. Rs.10,000/-was acknowledged in the agreement itself. Smt. Sharbati Bai also executed another agreement on 20th March, 1979 agreeing to sell the said building in two portions separately in favour of the plaintiff. It was agreed that the plaintiff would purchase the said building in two portions one portion being eastern portion consisting of three mulgies in the ground floor, three rooms in the first floor and one room in the second floor. Consideration for this purpose was agreed at Rs.12,000/-. It was also agreed that the western portion of the building would be sold for consideration of Rs.18,000/-. Accordingly the plaintiff purchased the first portion under the sale deed dated 5-12-1980 by paying the agreed sale consideration of Rs.12,000/-. The plaintiff also obtained the possession of the property. Subsequent thereto the plaintiff purchased the remaining western portion by sale deed dated 4-6-1981 by paying the consideration of Rs.18,000/-. Possession was delivered to the plaintiff. Thereafter the plaintiff became the absolute owner and possessor of the entire house consisting of suit 'A' and 'B' scheduleproperties. The defendants 1 and 2 are

close relatives of the plaintiff and they in collusion and connivance with defendants 3 to 5 trespassed into the 'A' schedule portion on 1-7-1981 and occupied the same. The defendants while denying the title of the plaintiff refused to vacate the same when the plaintiff asked them to vacate. According to the plaintiff the defendants have no right over the suit 'A' and 'B' schedule properties and therefore they are liable to be vacated from the plaint 'A' schedule portion. The defendants were also liable to pay damages for the use and illegal occupation of the 'A' schedule portion. The defendants 1 and 2 filed their written statements. They claimed that one Jai Dayal was the brother of Sharbathi Bai. Gilli Bai was the wife of Jai Dayal. Sharbathi Bai was married to Ganesh Lal who was a wealthy person. Ganesh Lal and Sharbathi Bai had four sons namely Brij Mohan, Shambu Dayal Gupta, Jagdish Pershad and Omprakash Gupta. Ganesh Lal died on 27-2-1973 leaving his widow and sons with joint and undivided properties. Sharbathi Bai had no personal property or estates when her husband died. Brij Mohan married D1 Jamuna Bai. Brij Mohani had died in 1961. Gilli Bai wife of Jai Dayal was owner of a site with an old building standing thereon in Charkaman locality of Hyderabad. She sold the said property in the name of her husband's sister Sharbati Bai under a registered sale deed dated 2-9-1960. The consideration for the sale had actually been paid by Ganesh Lal but the sale deed was obtained benami for him in the name of his wife. Subsequent to the said purchase the old house standing thereon was dismantled and with the permission of Municipal Corporation of Hyderabad in the year 1974 a three storeyed building was constructed which is now covered by the plaint 'A' and 'B' schedule property. It was further contended that, as a matter of fact ground floor was constructed by Ganesh Lal during his life time, first and second floors were completed with thejoint family funds after the death of Ganesh Lal. The sale deeds dated 5-12-1980 and 4-6-1981 were termed as bogus and sham. Sharbathi Bai was not entitled to legal rights in respect of joint family property. Omprakash, one of the sons of Ganesh Lal who is husband of the plaintiff got Sharbathi Bai under his control and made his mother to bring into existence the bogus agreement and sale deeds. The family had jewellery business under the name and style of Brij Mohan Jewellers located in two muglies bearing Nos.21-2-167 and 21-2-168 in Charkaman being run jointly by Omprakash and his brother Jagdish Pershad. On 23-3-1978 Jagdish Pershad through his advocate issued a notice to all the members of the family including the plaintiff stating therein that fraud had been committed by Omprakash in the joint business, he demanded partition and separate possession of his share. This notice was followed by a suit being OS No.939/78 on the file of III Assistant Judge, City Civil Court, Hyderabad. This suit was instituted by Brij Mohan seeking permanent injunction against Jagdish Pershad and others. There was another suit OS No.1380 of 1978 on the file of III Assistant Judge, City Civil Court, Hyderabad filed by Jagdish Pershad and Anil Kumar Gupta against Omprakash Gupta and his mother Sharbathi Bai. There were also criminal cases between the parties. The litigation in OS Nos.939 of 1978 and 1380 of 1978 came to an end through a compromise and both suits were dismissed on 20th August, 1980 as withdrawn. As per the terms of the compromise one mulgi in Charkaman was allotted to the share of the Jagdish Pershad along with exclusive rights to run his business. Omprakash was given another mulgi. A life estate was created in the suit house jointly in favour of Sharbathi Bai and Jamuna Bai and after their lifetime this interest in the property had to devolve upon would be wife of defendant No.2, and in any case by that time D2 had not married he would be entitledto absolute rights of the property. This compromise was recorded by the Court on 20th August, 1980. The registered sale deeds in favour of the plaintiff who is the wife of Omprakash executed by Suit. Sharbathi Bai were executed after the compromise dated 20th August, 1980. Sharbathi Bai had agreed in the compromise that she had only life interest in the property. The compromise was binding on her, therefore she could not convey it to the plaintiff as she had no right in the suit property. The plaintiff's husband was party to the compromise and had the knowledge of the same much before the sale deeds. It is staled that the compromise in OS No.1380 of 1978 has not been challenged. Thereafter, rejoinder 'was also filed by the plaintiff claiming that the purchase by Sharbathi Bai from Gilli Bai was not a benami transaction. It was admitted that the original house was demolished by Sharbathi Bai and she constructed new building of her own. It was denied that she constructed the building with any joint family funds. The family had no funds. The defendants 3 to 5 remained ex parts in the suit.

3. On the basis of the pleadings following issues were framed by the trial Court :

1. Whether the sale deeds dated 5-12-1980 and 4-6-1981 are true, valid and binding?

2. Whether the defendants trespassed into the suit building on 1-7-1981 and whether the plaintiffs entitled to receive the costs?

3. Whether the plaintiff is entitled to declaration of title, permanent injunction and damages as claimed?

4. Whether the suit is not maintainable without relief to avoid the compromise in OS No.1380 of 1978 on the file ofthe III Asst. Judge, City Civil Court, Hyderabad?

Plaintiff examined three witnesses and exhibited Exs.A1 to A47. Defendants examined two witnesses and exhibited Exs.B1 to B4, XI, C1 to C7. The trial Court decided issue No.1 in favour of the plaintiff and held that sale deed dated 5-12-1980 and 4-6-1981 were true, valid and binding. The second issue was decided against the plaintiff and it was held that defendants were enjoying the property by permissive possession. Issue No.3 was decided in favour of the plaintiff. Issue No.4 was also decided in favour of the plaintiff. Ultimately the suit was partly decreed declaring the plaintiff's title to the plaint 'A' and 'B' schedules of the suit property. Decree for recovery of possession of 'A' Schedule property by evicting the defendants therefrom was also passed. Decree of permanent injunction was also passed. The suit was dismissed with respect to the damages.

4. Thereafter, the defendants 1 and 2 filed an appeal. The learned single Judge framed four points for consideration :

1. Whether the agreement of sale Ex.A2 and sale deeds Exs.A3 and A4 are valid or sham or nominal?

2. Whether the suit property is the joint family property of Ganesh Lal and his sons or the self-acquired property of Smt. Sharbathi Bai?

3. Whether Sharbathi Bai could convey valid title under Exs.A3 and A4 in favour of the plaintiff?

4. Whether the compromise entered into in OS No.1380 of 1978 is hit by Section 17 of the Registration Act and the provisions of the Indian Stamp Act and is not binding upon Sharbathi Bai?

The learned single Judge decided point No.1 in favour of the plaintiff. On points 2 and 3 the learned single Judge was of the opinion that suit property was joint family property and not self acquired property of Sharbathi Bai. These points were decided in favour of the defendants. The compromise entered into in OS No.1380 of 1978 was held to be hit by Section 17 of the Registration Act and the provisions of Indian Stamp Act and therefore was held not binding on Sharbathi Bai and was decided accordingly in favour of the plaintiff. Now, the two EPAs have been filed. The appeal filed by the plaintiff is challenging the dismissal of the suit by the learned single Judge on the basis of findings on point Nos.2 and 3 and the EPA filed by the defendants is challenging the findings of the learned single Judge on points 1 and 4.

5. We have heard the learned Counsel for the parties at length. The fate of the suit depends upon the question as to whether Sharbathi Bai had conveyable title or not. If this Court comes to the conclusion that Sharbathi Bai had a conveyable title on the day when she executed the sale deeds, the plaintiff deserves to succeed. It is true that the defendants have also filed appeal challenging the finding of the learned single Judge and the trial Court with respect to the sale deeds Exs.A3 and A4. There is no doubt that Ex.A3 and A4 were in fact exhibited, but were they enforceable and valid or sham or nominal could only depend on answer to the question that, whether Sharbati Bai had conveyable title on the date of execution of those sale deeds. The plaintiff claims that Sharbati Bai was the absolute owner of the suit property whereas the defendants case was that it was a joint family property of Ganesh Lal and his sons and title deeds in favour of Sharbati Bai with respect to the suit property were in the nature of benami. Now, in the light of the evidence recorded, this Courtwould go into the question as to whether the suit property was exclusive property of Sharbati Bai or it was a joint family property of Ganesh Lal and his sons. If it was self acquired property of Smt. Sharbati Bai then the plaintiff has to succeed and on the other hand if this Court comes to the conclusion that it was a joint family property of Ganesh Lai and his sons, then the

plaintiff is bound to fait. In order to appreciate the contentions of the learned Counsel for the parties one will have to go through the evidence,

6. PW1 is the first witness of the plaintiff and is her husband. He exhibited Ex. A1 which is a certified copy of the receipt for Rs. 10,000/- received by Sharbati Bai on 10-2-1978. He also exhibited certified copies of sale agreement dated 20th March, 1978 as Ex.A2. The originals of Bx.A1 and A2 had been filed in OS No.2247 of 1981. Under Ex.A2 Sharbati Bai had agreed to sell the house in portions. Ex.A3 dated 5-12-1980 was exhibited by him with respect to the eastern portion of the suit property. According to the witness the possession of this property was delivered to the plaintiff on 5-12-1980. He also exhibited Ex.A4 which is the sale deed dated 4-6-1981 for the western portion. He also stated that Sharbati Bai delivered the possession to the plaintiff who became absolute owner of the property thereafter. Ex.AS and A6 were exhibited as letters of attornment. Ex.A7 is a rent deed executed by Chandrakant on 22nd February, 1981 in favour of the plaintiff in respect of the portion of plaint 'B' schedule property. Ex.A8 was another rent deed executed by Chandrakant and Navratan in favour of the plaintiff. Ex.A9 was the Income Tax notice dated 30th December,1980. Ex.A10 was the Income tax assessment order dated 30th December, 1980. Ex.A11 was the certified copy of the order in IA No.3128 of 1981 in OS No.2447 of1981. Ex.A12 was paper publication in Hindu dated 21st May, 1980. Ex.A13 was reply tothe publication issued on behalf of D2. Ex.A14 was certified copy of the judgment in MA No.3l/82. Ex.A15 was registration extract of the sale deed dated 19-3-1981 executed by D1 and D2 in favour of third parties. The witness stated that the plaintiff is his wife, she was an income tax assessee from 1975-76. Subsequent to 1976 she had not filed income tax returns. The plaintiff was a partner to Dl in the Sandeep Saree center which was started in 1975, it was a registered firm and it was dissolved by 30-6-1976. His wife invested Rs.20,000/-in the firm. His wife had no property apart from the suit property. He denied the suggestion that plaintiff had no cash prior to 1977. She had no bank account but was keeping her cash in the locker at her residence. He knew Gilli Bai who was his mother's brother's wife. Jai Dayal was Gilli Bai's husband. Prior to 1960 his mother had no property but she had cash. Ganesh Lal was his father and had a rice mill in Shamsheer Gunj. He denied that his father was doing the business of jewellery under the name of Brij Mohan

Jewellery. His father died on 27th February, 1973. All his sisters were married before his father died. He did not know whether his father was an income tax payee. The suit house was over a piece of land measuring 200 Sq.yards. He denied that the suit house had been purchased in the name of his mother with the money of his father. He denied the suggestion that in their community the properties were purchased in the name of female members. The new construction at the suit premises was started in 1964 and completed in 1973. Permission of Municipal Corporation was obtained. Ex.Bl was notice issued by Jagdish Pershad, After receipt of this notice he filed suit OS No.939 of 1978. Dl and D2 were not parties to the suit. Jagdish Pershad and D2 filed OS 1380 of 1978 against the witness and his mother for permanent injunction seeking a decree restraining them with their possession of shop and the portion of the suit house intheir possession. He has filed criminal complaint against Shambhu Dayal and Jagdish Pershad. In OS No.1380 of 1978 he and his mother had appeared through separate advocates and filed written statements. He denied the suggestion that he had engaged the Counsel for his mother and got the written statement filed on behalf of his mother also. His mother had given instructions to her advocate. He had signed the compromise petition along with his mother on 18- 8-1980.

7. PW2 was a tenant. He stated that he was a tenant of shop No.21-2-131/7 & 8. Originally it belonged to Smt. Sharbathi Bat. He had taken the shop No.7 in the year 1973 on monthly rent. He took lease of shop No.8 in the year 1978 and executed rental deed for both the shops 7 & 8. He received a notice from Sharbathi Bai that she sold away the property to plaintiff. On receipt of Ex.A5 i.e., notice, he came to Sharbathi Bai who confirmed that she had sold the shops and Sharbati Bai directed him to pay the rents to Sharada Bai. He thereafter executed two lease deeds Ex.A7 and A8 in favour of the plaintiff in respect of shop No.7 & 8. The witness identified his signatures on Ex.A7 and AS. After execution of Ex.A7 and A8 he started paying rents to the plaintiff and obtained the receipts. In cross-examination he stated that he was paying rents to Sharbati Bai and not to Ganesh Lal. He had seen Sharbati Bai in 1973. Sharbati Bai filed a suit of eviction against him and the matter was compromised in 1978. Sharbati Bai withdrew the suit as rent was enhanced. Ex.A7 and A8 were executed on the same day.

8. PW3 is running a tea stall and is brother of the plaintiff. He knew Sharbati Bai who was mother in law of his sister. On 10-2-1978 the plaintiff had gone to him and told him that Sharbati Bai was selling her house to her. He along with his sisterSharada Bai (plaintiff) went to the house of Sharbati Bai. At that time Sharbati Bai and Dr. Lalitha Pershad were present at the house. On enquiry Sharbati Bai said that she was selling the house to the plaintiff for Rs.30,000/-. The plaintiff paid Rs. 10,000/-to Sharbati Bai in his presence. Sharbati Bai executed a receipt for that amount. She put her thumb impression on the receipt in his presence. He and Lalitha Pershad attested the receipt. The receipt was exhibited by the witness as Ex.A19. The witness identified the thumb impression of Sharbati Bai and his own signature. On 20th March, 1978 again plaintiff called him to the house of Sharbati Bai. He, Lalitha Pershad and Sharbati Bai were present. Sharbati Bai said that she was selling the house in two portions and that she was executing the agreement of sale. The agreement was ready, it was read over and explained by Lalitha Pershad to Sharbati Bai who put her thumb impressions on each page of Ex.A20. Again the witness was called on 4-6-1981 by his sister, then he, plaintiff and Sharbati Bai went to Sub-Registrar's office at Mozamjahi market and the document was presented before the Sub-Registrar for registration. The witness further states that Onprakash, PW1 came to Sub-Registrar's Office, the sale deed was ready, Sharbati Bai put her thumb impression on each page of sale deed, the witness and PW1 signed as witnesses in the presence of Sub-Registrar. At the time of registration the plaintiff paid Rs.18,000/- to Sharbathi Bai before the Sub-Registrar. The document was registered. He identified his own signatures and also identified thumb impressions of Sharbati Bai on the document. In cross-examination he stated that he had studied upto 6th class. He was running a Tea Stall at Charkaman. PW1 had a jewellery shop. He and his father used to run a sweet meet shop at Bidar prior to coming to Hyderabad 7 or 8 years back. The plaintiff had no house or land in 1977. Plaintiff had got jewellery. He did not know whether plaintiff had jewellery onthe date of the recording the statement. He knew Ganesh Lal, father of PW1 but he did not know whether Ganesh Lal was running a jewellery shop. He did not know whether Ganesh Lal had a rice mill. He did not know whether at the time of marriage of plaintiff Ganesh Lal was managing a joint family. He also did not know whether sons of late Gamsh Lal were living jointly at

the time of plaintiff's marriage. PW1 was running a gold shop. He could not say whether the shop belongs to him or his parents. He did not know whether PW1 had personal property at the time of marriage. Ganesh Lal used to reside in ground floor of suit house during his life time. Ganesh Lal died in February, 1973. He did not know whether Ganesh Lal constructed ground floor of the suit house. Ganesh Lal had four sons. Three sons are living.

9. DW1 is Jagadish Pershad. PW1 is his younger brother. He stated that his father had a rice mill by name Saraswathi Rice Mill at Shamsheergunj. It had been started in 1950. His father had got agricultural land at Chippalapalli of Ibrahimpatnam taluq of R.R. District. He was also having a house in the village Chippalapalli and also in Dhoolpet. His mother had no property of her own. In 1960 his mother had no jewellery or cash. In the year 1960 he was aged 19 years and was doing business of jewellery assisting his father. In 1960 his father was living in rented house at Gulzar house. Mother was living with him. They all lived together with common mess. In 1960 elder brothers Brij Mohan and Shambu Dayal got married. In 1961 Brij Mohan died. Till the death of Brij Mohan he was living with the family. He has seen the suit house. Jaya Dayal purchased the site on which suit property was situated in an action. 400 Sq.yards were auctioned, Jaya Dayal purchased 200 Sq.yards, his paternal uncle purchased 200 Sq.yards. Jaya Dayal is brother of his mother. Jaya Dayal purchased it in thename of his wife Gilli Bai. He sold the property to his wife and his father purchased it in the name of his mother Sharbati Bai. At the time of purchase Sharbati Bai had no business or any property in her name. She had no Bank account. His fafher negotiated the sale and purchased in benami in the name of his wife and generally in their community the properties were purchased in the name of wives. His father had purchased the suit property for Rs.4,000/-. His father paid Rs.2000/- at the time of agreement of sale and Rs.2000/- balance at the time of registration. His father had sold away his house at Dhoolpet and with the sale proceeds he had purchased the suit house. His mother was not in a position financially to purchase the suit house at that time. Jaya Dayal gave possession of the suit house to his father. After 3 or 4 years of purchase his father demolished the old house and constructed ground floor. He constructed the ground floor with his own funds. His father spent about Rs.20,000/- for construction of the ground floor. His mother was

not in a position financially to construct ground floor. His mother was illiterate person, she could not read or write. His father died in 1973. His father died when he was member of joint family. At the time of death he was engaged in gold business. The business was a joint family business. The witness and PW1 continued the business after his father's death till October, 1977. The suit property consist of ground floor, first floor and second floor. His father had started construction of the first floor in January, 1973. After the death of his father he and PW1 completed it from the joint family business funds. Total Rs.30,000/- to 35,000/- were spent for first and second floor. His mother was not in a position to complete the first and second floors. In October, 1977 they separated and had their own business and separate mess. After the death of his father he came to know that PW1 was trying to show all property as his property. Due to that they separated. Till 1977 Sharbati Bai used toreside in the ground floor of the suit house with other family members. He was residing in the first floor and the ground floor. He was residing in three rooms in first floor and five rooms in ground floor. He had given a statement before Central Excise Superintendent on 14-10-1971. The original document was with him and he had signed it along with PW1. It is Ex.X 1. The licence to carry on business was issued in the name of witness and PW1. He had issued a notice to his mother and other members of the family. Notice is Ex.B1. In Ex.B1 he had claimed that suit property was undivided property. No reply was given either by PW1 or by his mother. PW1 was married in 1965. Plaintiff was wife of PW1. In cross-examination he stated that the partition had taken place in December, 1977. He did not remember the date. There was a partition deed in writing. He had not produced the partition deed in the suit. He denied the suggestion that partition had been effected in 1977 but partition had taken place in 1964. He stated that the partition in 1977 had taken place in presence of elders namely Chimmanlal and Jaya Dayal. All the brothers were present at the time of partition and four brothers got shares. The house at Shamsheergunj went to the share of Shambu Dayal. Towards his share and the share of defendant No.2 shop No.21-2-168 of Charkaman was allotted. Half of the shop No.21-2-167 of Charkaman was allotted to the share of PW1. There were other properties which were not partitioned and it was agreed that these properties shall be kept as joint property but it was not written in the partnership deed written at that time. Properties which were left without partition are agricultural land and a residential house. He cannot give the particulars of agricultural land. Except these items all other items were partitioned. He also denied that there was partition in 1964. He denied the suggestion that Shambu Dayal his elder brother had separated before 1964. He also denied the suggestion that in 1964 he, PW1,D2 and his father got separate shares after a partition. He also denied that in 1964 lands in survey Nos.208, 209, 213 of Chippalpally of Ibrahimpatnam taluq and Shamsheer Gunj No.19-3-982 to 984 were allotted to the share of defendant No.2. He also denied the suggestion that he got share in Dhoolpet house and cash but thereafter he stated that Dhoolpet house had been sold long ago and proceeds of the house were given to him in 1964. He denied that a house at Chippalpally and Sy.Nos.193, 194 and 243 fell to his share. He also denied that Saraswathi Rice Mill was given to his elder brother Shambu Dayal. He stated that he was kartha of his family although his elder brother was alive. His elder brother was looking after Rice mill by name Saraswathi Rice Mill.

10. DW2 is the defendant No1 and mother of defendant No.2 in the suit. She stated that, when she was married 25 years back her husband was living with his father in a joint family. Her husband died three years after the marriage. On the date of death of her husband he was living in joint family in the suit house. The land on which the house was constructed originally belongs to Jaya Dayal brother of her mother-in-law. The land had been purchased by Ganesh Lal. The original house was demolished and a new house was constructed. Sharbati Bat had no money on the date of purchase but she had some land at her village. Her father-in-law had a jewellery business. Her father-in-law had agricultural lands measuring 150 acres at Chippalpalli and there was also a house at Chippalpalli. He was also having one house at Dhoolpet. The house at Dhoolpet had been sold before purchasing the suit property. Her mother-in-law had not spent any money for the construction of the house. She was illiterate and she could not sign. Since the date of death of her husband her father-in-law was taking care of her. Her father-in-law died 12 or 13 years back. On the date of deathof her father-in-law he was living jointly with his sons. On the dale of his death the jewellery business was running. After his death, his sons namely Jagadish Pershad and Om prakash continued the business. She knew plaintiff who was wife of PWl. She also knew Chandulal,

father of the plaintiff. Plaintiffs father had a sweet meet shop at Bidar, later he shifted to Charkaman. Plaintiff had no cash or jewellery to purchase lands or houses. She admitted that PWl, DW1 and Shambhu Dayal were brothers of her husband. Shambu Dayal had separated from family 6 or 7 years back. Shambu Dayal was given Mill at Shamsheergunj. She did not know whether any documents were executed in that regard. Shambu Dayal was residing separately and had separated from the family prior to 1964. She did not know whether all the family members had separated in the year 1964 and were living separately. However, she denied that all the members were not living jointly on the date of death of her father-in-law. On the date of her marriage Shamsheergunj mill was in existence. Rice Mill at Shamsheergunj was also in the name of her mother-in-law. She did not know whether at the time of registration Sharbathi Bai paid money herself. She also did not know Sharbathi Bai had any income from village. She denied that Sharbati Bai had constructed the house with her own funds. Both the floors of the house were constructed by her father-in-law. She denied that the Dhoolpet house fell to the share of Jagdish Pershad and he took the sale consideration. But, she admitted that she and defendant No.2 had sold S.Nos.208, 209 and 213 admeasuring 22 acres 20 guntas by Ex.A15 on 19-3-1981. These lands were sold as they fell to the share of her son. She did not know whether her father-in-law executed gift deed on 15-4-1964 in favour of her son defendant No.2 in respect of Shamsheergunj house bearing No.19-3-982 to 984. She did not know that the plaintiff had published Ex.A12 before filing the suit. She also didnot know that her son had published reply in Ex.A13.

11. Now, let us examine the exhibits which were exhibited during the trial to show that the property in fact was self acquired property of Sharbathi Bai. The first and foremost are the agreements of sale Exs.A2 and A3 and then the sale deed by Sharbathi Bai in favour of the plaintiff i.e., Ex.A4. Ex.A17 is application moved by Sharbathi Bai under Section 27 of the Urban Land Ceiling and Regulation Act for transfer of the property. These documents and the evidence of the plaintiff's witnesses and defendants witnesses show conclusively that the property was self acquired properly of the Sharbathi Bai. It is also stated by defendant No.2 that Sharbati Bai had landed properties in some village. There are other documents showing that there was Rice Mill in the name of Sharbathi Bai. Those documents

are contained in Ex.A29 and A30. Although they are in the name of Saraswathi Bai w/o Ganesh Lal but it has come in evidence that Sharbathi Bai was known as Saraswathi Bai also. Therefore, there are strong grounds to believe that the properly in question was self acquired property of Sharbathi Bai. On the other hand the defendants case was that it was a joint property but the evidence even from defendants suggest that the joint family had collapsed much earlier. The defendants have not brought any documents on record but there is statement of DW2 who is defendant and who is wife of one of the sons of Ganesh Lal. She in her statement accepted that certain properties were given to other brothers. She also stated that she along with another son of Ganesh Lal sold properties which belonged to the joint family. Therefore, one does not find that a nucleus of a joint family continued till 1981 when the sale deeds were executed. One could also not construe that the house which was purchased by Sharbathi Bai was purchased by her from the wife of her brother was infact a benami transaction. There has been evidence that the original house purchased by Sharbathi Bai was demolished and a new house was constructed. It might be true that the new house was constructed but there is no evidence to suggest that the new house was constructed from the funds of joint family. Even if, for the sake of argument, it is accepted that this house was constructed as the joint family property those were not the only properties belonging to so called joint family. The father of the parties had huge properties. He had land in many areas to which a reference has been made. He had also many houses. Those lands have been sold by sons including the defendants and houses are occupied by sons including the defendants. Is the suit property only house which was the joint property. No evidence had been led by the defendants to show as to how they came into possession of the properties which were sold by them. Even the learned single Judge did not held that the sale deed was sham. Therefore the appeal has been filed by the defendants. The sale deeds in respect of suit property could have not been declared sham. This is also in evidence that the execution of the sale deed was known to the defendants, yet they chose not to challenge the sale deed. Suit for partition was not even filed although the father of the parties died in the year 1973. The only argument that was made on behalf of the defendants was that a compromise had been arrived at between the parties. This compromise has rightly been rejected by the trial Court as well as by the learned single Judge. This compromise was arrived at during the proceedings in a suit. The suit had been dismissed. So, the compromise did not become a decree and also this compromise was neither registered nor stamp duty was paid. There was no evidence led by the defendants to show that the suit property was joint property. At best they were able to show that at the time of purchase of the house by Sharbathi Bai the family was joint. That would not mean thatproperty held by Sharbathi Bai was a joint family property. The onus was on the defendants to prove that the property purchased in the name of Sharbathi Bai was property of joint family. It was suggested by the learned Counsel for the respondents that basically it was a benami transaction and Ganesh Lal had purchased the property in the name of his wife. The Counsel for the plaintiff submits that this argument was not accepted even by the learned single Judge and the sale deeds were not held to be sham. He relies on judgment of Orissa High Court in Santanu Kumar Das v. Bairagi Charan Das, AIR 1995 Ori. 300. In this judgment it was held that, in case of property purchased in the name of female member of Hindu family there is no presumption that it is a joint family property. He submits that the burden of proving that a particular sale was benami and that the purchaser was not a real owner always rests on the person asserting it to be so and there is no evidence led by the defendants to show that the consideration of sale deed executed in favour of Sharbathi Bai had come from her husband. He also relies on a judgment of Supreme Court in Jayadayal Poddar v. Bibi Hazra, : [1974]2SCR90 . In this judgment the Supreme Court laid down the tests for examining whether a particular transaction was benami, or not as under :

'It is well settled that the burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of a benami is the intention of the party or parties concerned; and not unoften such intention is shrouded in a thick veil whichcannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation, and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question whether a particular sale is benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid test, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the Courts are usually guided by these circumstances:

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

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

(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'.

Although the Supreme Court laid down tests yet it cautioned that examples given would not be exhaustive and the question as to whether a particular sale deed was benami or not would be essentially a question of fact and would have to be tested in each case.

12, In another judgment being Vidyadhar v. Usman Gani, : AIR 1974 SC658 , the Supreme Court held that, for arriving at a conclusion that a transaction was benami or not the real test would be asto what was the source from which the consideration came but when it was not possible to establish conclusively as to where from the consideration came the case must be dealt with on reasonable probabilities and legal inferences.

13. Applying the tests of weighing the probabilities and for gathering the relevant indicia and seeing the source from which the purchase money came and also the nature and possession of the property after the purchase, we believe that the

purchase was not benami. We have already indicated that Sharbathi Bat had lands and even a Rice Mill was in her name. Even the subsequent events show that the property was not a benami transaction and Sharbathi Bai was dealing with the property. Ex.A33 is the permission granted to her by the Municipal Corporation of Hyderabad for making additions and alterations and the rent deeds Ex.A23 and A24 were also in her name. Ex.A45 is the Tax receipt issued by Municipal Corporation in her favour. Ex.A46 is the notice to Sharbathi Bai for payment of the tax.

14. There are many other judgments on which reliance has been placed by the learned Counsel for the appellant. The learned Counsel for the respondents produced one judgment of Calcutta High Court in Radha Gobindha Roy v. Durga Rani Dassi, but in view of the clear judgment of the Supreme Court referred to above it may not be necessary to go into those judgments.

15. For these reasons, we hold that the learned single Judge was right in deciding that the sale deeds were not sham. We further hold that the property was self acquired property of Sharbathi Bai and therefore the plaintiff was entitled to the decree. The trial Court has found that the defendants were in the permissive possession, therefore decree for damages was notgiven by the trial Court. We decide the question accordingly, set aside the judgment of the learned single Judge and restore the judgment and decree of the trial Court.

16. The appeals are accordingly disposed of.

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