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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MRS. JUSTICE PREETA A.K.

WEDNESDAY, THE 22ND DAY OF JULY 2026/31ST ASHADHA, 1948

MAT.APPEAL NO.391 OF 2025

AGAINST THE JUDGMENT DATED 30.05.2024 IN O.P.NO.224 OF 2021
OF FAMILY COURT, MUVATTUPUZHA

APPELLANT(S)/RESPONDENT:

BY ADV.SRI.BALRAM S.A.
BY ADV.SRI.M.S.AJITH
BY ADV.SRI.HRITHWIK D. NAMBOOTHIRI
BY ADV.SMT.SWATHY S.A
BY ADV.SMT.POOJA P.O.

RESPONDENT(S)/PETITIONER AND 2ND RESPONDENT:

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BY ADV.SRI.ALIAS M.CHERIAN
BY ADV.SMT.GIGI PETER
BY ADV.SRI.BRISTO S PARIYARAM
BY ADV.SMT.MINNU DARWIN

CNR : KLHC010384242025

Mat. Appeal No.391/2025

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BY ADV.SMT.RESHMA RAJESH

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
16.07.2026, THE COURT ON 22.07.2026 DELIVERED THE FOLLOWING:



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"C.R."**J U D G M E N T****Dr. A.K. Jayasankaran Nambiar, J.**

This Mat. Appeal is preferred by the 1st respondent/wife in O.P.No.224 of 2021 that was filed by her husband before the Family Court, Muvattupuzha.

2. The brief facts necessary for disposal of this Mat. Appeal are as follows:

The marriage between the appellant and the 1st respondent was contracted on 03.02.2011 as per Mohammedan Personal law. It was the case of the 1st respondent herein that the appellant/wife hailed from a very poor family and he was meeting all the expenses during their married life. It was his case that he was a driver by profession and he had travelled to the Gulf countries in search of employment and used to visit his family in India once in a year. In the year 2017, he had entered into a sale agreement with one Muhammed Shah for purchase of 2.02 Ares of property and building therein in Sy. No.566/4A/2/11/11 of Pallarimangalam Village for a total consideration of Rs.13,25,000/-. After paying the advance sale consideration of Rs.75,000/-, the property was purchased on 01.01.2018 as per Sale deed No.03/2018 of Pothanicaad



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SRO. The balance sale consideration of Rs.12,50,000/- was paid by him to the vendor of the property after receiving the said amount from his father. It was stated that although the entire sale consideration for the property was paid by him, he had purchased the property in the joint name of himself and his wife, the appellant herein. It was his case that the appellant's name was included in the sale deed as a 'trustee' and in fiduciary capacity, since she had not contributed any money towards the sale consideration.

3. The 1st respondent/husband went on to aver that the appellant herein was living in adultery with the 2nd respondent herein and she had virtually deserted the 1st respondent, and the matrimonial tie between them had permanently come to an end. At that stage, when he approached the appellant with a request to re-convey the property purchased by him in their joint names, to him, she refused to comply. It was under those circumstances that he was constrained to prefer the original petition seeking a declaration of title and recovery of possession of the said property.

4. The appellant filed detailed objection to the original petition filed by the 1st respondent/husband. While she admitted the marriage as also the factum of the sale deed having been executed on 01.01.2018 in the joint names of her and her husband, the 1st respondent herein, she



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denied the averment that she belonged to a poor family and that the 1st respondent was meeting all the expenses of herself and her children. It was also her contention that the entire sale consideration for the property was not met by the 1st respondent/husband, but that she had also contributed substantially to the purchase of the said property by using cash and gold ornaments that were given to her by her family at the time of marriage. It was also her case that her father had given an amount of Rs.10,00,000/- to the 1st respondent, which he had spent entirely for his personal needs. Her averment that she had a legitimate claim over the property in question was based on her contention that she had also contributed substantially towards the purchase price of the said property.

5. Before the court below, the 1st respondent/husband led evidence through PW1, PW2 and PW3. Exts.A1 to A10 were also marked on his side. The appellant gave evidence as RW1 and Ext.X1 was also marked.

6. The court below, after perusing the evidence on record, found that the 1st respondent/husband had proved that the entire purchase price in respect of the property had been borne by him and disbelieved the version of the appellant herein that she had also contributed substantially towards the purchase price, by finding that she had not



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substantiated the said contention by adducing any evidence with regard to the same. Thereafter, based solely on the fact that the 1st respondent/husband had proved that he had paid the entire purchase price in respect of the property, and that the appellant herein had not proved that she had utilised her savings for purchase of property and construction of the house, the 1st respondent/husband was held entitled to a declaration that he is the real owner of the property and the building. The original petition was accordingly decreed by declaring that the 1st respondent/husband was the absolute owner of the property in question, and that he was entitled to get recovery of possession of the said property from the appellant herein. The 1st respondent/husband was also held entitled to get a prohibitory injunction against the appellant after the recovery of possession of the property from her.

7. In the appeal before us, it is the case of the appellant/wife that the finding of the court below in favour of the 1st respondent/husband is based entirely on the evidence on record that reveals that the entirety of the purchase price for the property was borne by the 1st respondent/husband. It is her case that where the registered sale deed clearly indicates that the property in question was purchased jointly in the names of the appellant/wife and the 1st respondent/husband, and there was no difference of opinion between the couple for many years thereafter, it was not open to the court to disregard the transfer of half



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share in the property in her name and declare the title of the entire property in the name of her husband merely because he had paid the entire purchase price. In particular, it is pointed out that, in the absence of any evidence adduced by the 1st respondent/husband to show that she was holding the property in trust for him, the presumption of title over one half of the property that enured in her favour, could not be said to have been rebutted in any manner by the 1st respondent/husband, on whom the burden of proof in that regard lay.

8. Per contra, it is the submission of the learned counsel for the 1st respondent/husband, relying on the judgments in **Muhammed Basheer v. Jameela P.S. - [2012 (4) KHC 920]**, **Belcita Vincent Gomez v. Vincent Gomez and Others - [2013 (4) KHC 748]**, **Sunila v. Ashok Kumar - [2024 KHC 1093]**, **Marcel Martins v. M. Printer and Others - [2012 KHC 4242]** and **Pushpy @ Kochuthressia and Others v. Antony and Others - [2019 (1) KHC 85 (DB)]** that when there is evidence adduced by a husband that the property was purchased and constructed utilizing his money, and there was a failure on the part of the wife to prove that she had utilised her own savings for the purchase of property, the husband was entitled to a declaration that he was the real owner of the property. It is his further contention that whenever property is purchased in the joint names of the husband and wife, the intention of the parties at the time of purchase is a key factor in



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determining the nature of the transaction, and the said intention can be gathered from the relationship between the parties, their conduct previous and subsequent to the transaction, source of money for purchase, possession of the property, possession of title documents, repayment of loan etc. On the facts of the instant case, it is his contention that since the 1st respondent/husband had proved that the entire purchase price was paid by him and the appellant/wife was not able to prove her contention regarding the contributions allegedly made by her towards the purchase price, the fiduciary relationship of husband and wife that existed between them was found to be sufficient for the court below to recognize the title in the property in the 1st respondent/husband.

9. We have heard the learned counsel for the appellant as also the learned counsel for the respondents.

10. On a consideration of rival submissions, we are of the view that, on the basis of the pleadings and evidence on record, this Mat. Appeal must necessarily succeed. As already noticed, the finding of the trial court that the 1st respondent/husband is entitled to the declaration that he is the absolute owner of the property in question and a consequential injunction in his favour, is based entirely on the evidence adduced by him to prove that he had paid the entire purchase price for



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the property. Although it is a fact that the appellant/wife had contended that she had also contributed towards the purchase price of the property by using her own funds, and that, it was therefore that the sale deed was executed in favour of both the appellant and the 1st respondent/husband, merely because she was not able to prove the said fact, the court below could not have ignored the presumption that flowed from the execution of the sale deed in relation to the property in the joint names of the appellant and the 1st respondent. It is trite that when a sale deed executed in relation to a property shows the transfer of title over the property in the joint names of two persons, the initial presumption is that there is a separate transfer of parts of the title in relation to the property to each of the persons shown as transferees. Further, in the absence of any specification in the sale deed regarding the respective shares of each of the parties in the property, the parties are to be seen as co-owners in equal shares. Accordingly, in the present case, the sale deed having been executed in the joint names of the appellant and the 1st respondent without their respective shares in the property being indicated, the appellant and the 1st respondent had to be seen as co-owners of the property in equal shares.

11. There is yet another aspect of the matter. But for the exception envisaged for transactions among spouses under the Prohibition of Benami Property Transactions Act, 1988, the 1st



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respondent/husband would have been barred from enforcing any right in respect of the property allegedly held benami and on trust for him by the appellant/wife. However, merely because of the said exception of such transactions from the definition of '*benami* transaction' under Section 2(9) of the said Act, it does not follow that the 1st respondent/husband is absolved of the requirement of proving that the property was being held benami or on trust for him. As has been held in **Jaydayal Poddar v. Bibi Hazra - [(1974) 1 SCC 3]** and quoted with approval in **Binapani Paul v. Pratima Ghosh and Others - [(2007) 6 SCC 100]**:

“The essence of a *benami* is the intention of the party or parties concerned; and not unoften such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be *benami* of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. The reason is that a deed is a solemn document prepared and executed after considerable deliberation and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs. Though the question, whether a particular sale is *benami* or not, is largely one of fact, and for determining this question, no absolute formulae or acid tests, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the courts are usually guided by 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* color; (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.”

12. It is significant to note that in the original petition filed by the 1st respondent/husband, other than making a bland averment that the name of the appellant/wife in the sale deed was mentioned only in a



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fiduciary capacity, which averment was stoutly denied by the appellant before the court below, there is absolutely no material or evidence adduced by the 1st respondent/husband to show that the appellant/wife obtained and held her share of the property on trust for the 1st respondent/husband. As has already been noticed in the decisions referred above, the intention of the parties at the time of execution of the sale deed in relation to the property, has to be gathered from an overall consideration of the surrounding circumstances, including the relationship between parties, their conduct previous and subsequent to the transaction, source of money for purchase, possession of the property, possession of title documents etc.

13. In the instant case, the fact that the property was conveyed through a sale deed is *prima facie* evidence of the fact that there was an intention to convey title over a share of the property to the appellant/wife separate from the share of the property conveyed to the 1st respondent/husband. It is also not in dispute that the appellant is residing in the said property. In the absence of any clause in the sale deed that suggests that the appellant/wife's name was shown in the sale deed as a trustee for the husband, or any other evidence adduced to establish the existence of a trust relationship, the vesting of the title over one half of the property in the appellant/wife has to be seen as absolute. Although the money for purchase of the property came entirely from the



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1st respondent/husband, that by itself would not be sufficient to prove that the appellant/wife was holding her share of the property on trust for the husband. Payment of the entire purchase price by the husband may be one of the relevant considerations, but cannot be seen as determinative of the benami character of the transaction between the spouses. Other facts such as that the 1st respondent/husband had entered into the purchase transaction in relation to the property with open eyes and with full knowledge of, and consent to, the appellant/wife being shown as a co-owner of the property, the possibility that it was in recognition of the wife's contributions to the matrimonial relationship that she was made a co-owner of the property and that the 1st respondent/husband had done nothing to alter the said position through seeking a correction of the sale deed or approaching a civil court for a declaration of title for many years after the purchase of the property must, in the absence of any agreement, either express or implied to the contrary, lead to the presumption that the intention of the parties was indeed to confer ownership over one half of the property on the appellant/wife. Merely because there has been a rupture of the matrimonial relationship between the parties at a later point in time, it does not follow that the appellant/wife must stand divested of her ownership over half share in the property solely because at the time of purchase of the property, the 1st respondent/husband had paid the entire purchase consideration. The decisions relied upon by the learned



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counsel for the 1st respondent/husband are all clearly distinguishable on facts since, unlike in the present case, there was evidence adduced in those cases to suggest either that the property was held on trust or that the property was fraudulently purchased in the name of one spouse.

We are therefore of the view that the impugned judgment of the court below cannot be legally sustained. This Mat. Appeal is therefore allowed, by setting aside the impugned judgment and decree of the court below, and declaring that the appellant herein is the absolute owner and title holder of one half of the petition schedule property covered by Ext.A2 title document.

**Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE**

**Sd/-
PREETA A.K.
JUDGE**

prp/