

PUNNASSERI  
NAMB  
v.  
COMMISSIONERS,  
H.R.E.  
BOARD.  
—  
WALLACE J.

decision of the Board and, of course, to dismiss the application. If the section had meant that the Court was an appellate authority with all the normal powers of an appellate Court, we should expect that to have been stated. The District Court's order is therefore without jurisdiction and we must set it aside and direct that it pass a proper order in accordance with its powers under the section. Each party will bear his own costs.

A.S.V.

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### APPELLATE CIVIL.

*Before Sir V. Ramesam, Kt., Officiating Chief Justice  
and Mr. Justice Cornish.*

GORANTLA PARVATAMMA (THIRD DEFENDANT),  
APPELLANT,

v.

VEERAGANDHAM SUBBAYYA AND FOUR OTHERS  
(PLAINTIFF AND FIRST, SECOND AND FOURTH DEFENDANTS AND  
NIL), RESPONDENTS\*

*Benami purchase—Plaintiff putting forward a case of—Failure of plaintiff to discharge burden—Defendant's case—Unnecessary to examine.*

If a plaintiff, who puts forward a case that a land standing in the name of a female member of a family was really purchased *benami* in her name for some ulterior purpose, does not discharge the burden that is cast upon him, it is unnecessary to examine the defendant's case.

*Pratap v. Sarat*, (1920) 33 C.L.J. 201, followed.

APPEAL against the decree of the Court of the Subordinate Judge of Bapatla in Original Suit No. 96 of 1923.

*T. V. Ramanatha Ayyar* for appellant.

*B. Somayya* for first respondent.

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\* Appeal No. 453 of 1925.

The JUDGMENT of the Court was delivered by RAMESAM OFFG. C.J.—This appeal by the third defendant arises out of a suit for partition filed on behalf of the plaintiff, a minor at the time of the suit, by his next friend, his maternal uncle, against the first defendant, his uncle, the second defendant, his father, and the third defendant, daughter of the first defendant. After the suit was filed, the fourth defendant was born, with the result that the plaintiff's share was reduced from one-fourth to one-sixth. The plaintiff got a decree in the Court below. The third defendant files this appeal in respect of two items of immovable property, (1) two and half cents in item 40 of schedule A, and (2) two acres of dry land in item 51 of schedule A ; and an item of debt. The third defendant claimed in her written statement that the two former items did not belong to the joint family but belonged to herself. The Subordinate Judge found this point against her and gave a decree for the plaintiff in respect of these two items also. Hence she appeals.

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[His Lordship discussed the evidence as regards the first item, held that the plaintiff had not proved his case as regards the same and proceeded as follows :—]

Coming to the second item, the consideration for this item is as much as Rs. 500. Third defendant's case is that her husband got it from the lands which he obtained on division with his brothers. In a case of this sort the burden of proof is upon the plaintiff and we are not to scrutinize and examine the defendant's case in the first instance ; vide *Pratap v. Sarat* (1). The plaintiff must prove that a land standing in the name of a female member of the family was really purchased *benami* in her name for some ulterior purpose such as depriving him of his rights, and if that burden is not

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discharged it is unnecessary to examine the defendant's case.

RAMESAM  
OFFG. C.J.

[His Lordship discussed the evidence as regards the second item and proceeded as follows:—]

We think the plaintiff has not made out a *prima facie* case in respect of this item and it is unnecessary to examine the evidence adduced by the defendant as to the source of the purchase-money.

There is a third item claimed by the third defendant in this appeal. That is a debt due to the family in respect of which the plaintiff claimed a share. This item is No. 6 of schedule III, part II (b). The debt was due from P.W. 6. P.W. 6 himself says that the note was executed in favour of the first defendant. The first defendant in his evidence says that the note was transferred to somebody because he was in need of money. But all this evidence does not help the third defendant. It does not show that she is entitled to item 7 of schedule III, part II (b). If there is any other debt due by this debtor to the third defendant, this judgment will not affect her in respect of it, but certainly her claim to item 6 must be disallowed, because she has established no right to it. This portion of the appeal fails, but the appeal in respect of the other two items succeeds. The plaintiff's suit in respect of the two items of immovable property will be dismissed. As the parties have succeeded equally and lost equally, there will be no order as to costs between the plaintiff and the third defendant.

G.R.