

AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on 27.06.2023</i>	<i>Delivered on 14.12.2023</i>
--------------------------------------	---------------------------------------

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

AS.No.643/2008 & CRP.No.1962/2013

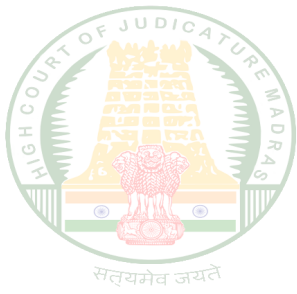
AS.No.643/2008:-

N.Dharmalingam

.. Appellant

Vs.

- 1.N.Ayyavoo [Died]
- 2.Mohanasundaram
- 3.Jayanthi
- 4.Shanthi
- 5.Kalaivani
- 6.Sampoornam
- 7.M.Murugesan
- 8.C.Indhirani
- 9.C.Bhuvaneshwari
- 10.M.Karthikeyan
- 11.V.Vijaya
- 12.E.Chandra [Died]
- 13.V.Sundari
- 14.M.Indira
- 15.B.Vimala



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

16.Akchiya
17.C.Ellappan
18.E.Murali
19.R.Mala

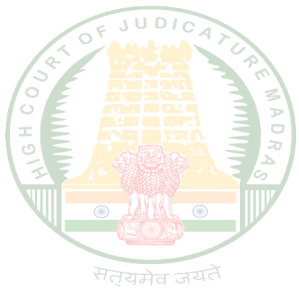
.. Respondents

****RR 13 to 16 brought on record as LRs
of deceased 1st respondent Ayyavoo, vide
order of Court dated 11.10.2022 made in
CMP.Nos.16618, 16620 & 16621/2022 in
AS.No.643/2008**

**RR 17 to 19 brought on record as LRs
of deceased 12th respondent E.Chandra, vide
order of Court dated 11.10.2022 made in
CMP.Nos.16623, 16627 & 16630/2022 in
AS.No.643/2008**

Prayer:- Appeal Suit filed under Section 96 of CPC against the judgment and decree dated 27.07.2007 made in OS.No.17/2006 on the file of the Additional District Court-cum-Fast Track Court No.1, Erode.

For Appellant	:	Mr.A.K.Sriram, Senior Counsel for Mr.D.Balachandran
For RR 6,13 to 16	:	Mr.G.Masilamani Senior Counsel for Mr.T.Sathiyamoorthy
RR 1, 7 & 12	:	Died [steps taken]
RR 4,5,8 to 11	:	No appearance
R18	:	Service Awaited



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY CRP.No.1962/2013:-

- 1.N.Ayyavoo [Died]
- 2.Sampoornam
- 3.V.Sundari
- 4.M.Indira
- 5.B.Vimala
- 6.Akchiya

.. Petitioners

****Petitioners 2 to 6 are impleaded
as LRs of deceased 1st petitioner
vide order dated 27.03.2023 in
CMP.Nos.7016, 7020 & 7023/2023
in CRP.No.1962/2013**

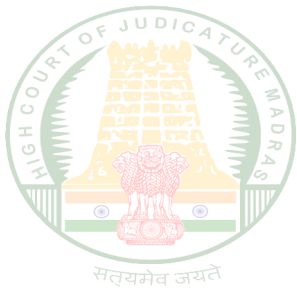
Versus

N.Dharmalingam

.. Respondent

Prayer:- Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings [Lease and Rent Control] Act, 1960 against the fair and decreetal order of the Rent Control Appellate Authority [I Additional Subordinate Judge] at Erode, dated 19.02.2013 in RCA.No.14/2012 reversing the fair and decreetal order of the Rent Controller [I Additional District Munsif] at Erode, dated 12.04.2011 in RCOP.No.4/2008.

For Petitioners	:	Mr.Mr.G.Masilamani Senior Counsel for Mr.T.Sathiyamoorthy
For Respondent	:	Mr.A.K.Sriram, Senior Counsel for Mr.D.Balachandran



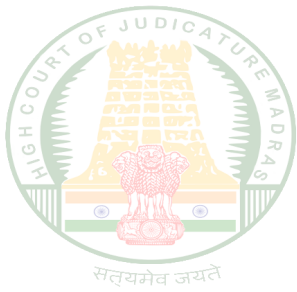
AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

COMMON JUDGMENT

S.S.SUNDAR, J.

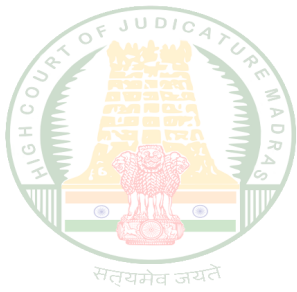
- (1) The plaintiff in the suit in OS.No.17/2006 on the file of Additional District Court-cum-Fast Track Court No.1, Erode, is the appellant in the above Appeal. The suit is for partition of plaintiff's 1/3rd share in all the suit properties which are described as Items No.1 to 14.
- (2) Respondents 1 to 12 are defendants 1 to 12 in the suit in OS.No.17/2006. The appellant and respondents, who are plaintiff and defendants, are close relatives. The appellant who is the plaintiff, is the son of one Thiru.Nanjappa Mudaliyar who died in the year 1952. The 1st defendant is none else than the brother of the appellant herein. The 6th defendant is the wife of 1st defendant. Thiru.Nanjappa Mudaliyar had two wives. Through the first wife Chinnammal, he had a son by name Nachimuthu, who died on 06.07.2000. Wife of Thiru.Nachimuthu, Mrs.Parvatham, died even earlier on 02.04.1993. Thiru.Nanjappa Mudaliyar had three more daughters through his first wife Smt.Chinnammal.



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

Admittedly, Chinnammal, the first wife died long back and after her life time, Thiru.Nanjappa Mudaliyar married second wife. The daughters of Thiru.Nanjappa Mudaliyar, through first wife had no right or claim in the properties of Thiru.Nanjappa Mudaliyar. Therefore, they were not impleaded as parties in the suit. The 2nd wife of Thiru.Nanjappa Mudaliyar is Smt.Seerangayammal died on 22.03.1991. Through the 2nd wife Thiru.Nanjappa Mudaliyar had three sons by name Tvl.Sadasivam, Iyyavu and Dharmalingam and two daughters by name Pappathi @ Sarojini and Chandra, who is the 12th defendant in the suit. Thiru.Sadasivam died on 04.12.1983 and he had one son by name Mohanasundaram and three daughters by name Jayanthi, Santhi and Kalaivani. The son and daughters of Thiru.Sadasivam are impleaded as defendants 2 to 5. The wife of Thiru.Iyyavu by name Smt.Sampoornam is the 6th defendant in the suit. The sister of plaintiff and 1st defendant by name Pappathi @ Sarojini died on 27.09.2003 even before filing of suit and therefore, her son by name Murugesan is impleaded as 7th defendant. The 7th defendant also died on 22.04.2010 during

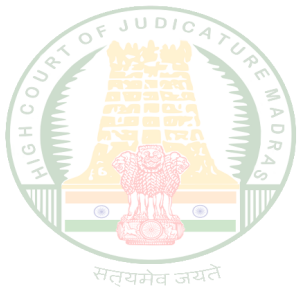


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

pendency of the proceedings and therefore, his heirs were impleaded as defendants 8 to 11.

- (3) The case of the plaintiff in the plaint is that his father Thiru.Nanjappa Mudaliyar purchased Item No.1 of the Suit Schedule properties out of his income from the business as he himself was a weaver. It is the further case of plaintiff that after the death of Thiru.Nanjappa Mudaliyar, his elder son Thiru.Nachimuthu [born through the 1st wife] took over the business and he was acting as a Manager of the joint family. From out of the joint family income Thiru.Nachimuthu started a business in textiles along with one Thambanna Mudaliyar and Nachimuthu. It is his case that Nachimuthu was carrying on the said business in his capacity as a joint family Manager. It is also stated that after the retirement of Thambanna Mudaliyar, the other partner in the business, Thiru.Nachimuthu, took over the entire business. It is the case of plaintiff that female members of the family were made as members of Erode Weavers Cooperative Society. Item No.2 in the suit schedule properties was allotted in the name of mother of

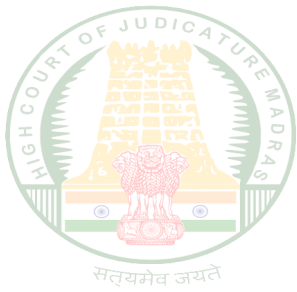


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

plaintiff and 1st defendant, namely, Seerangayammal and the property in Item No.3 was allotted in the name of Parvatham, wife of Thiru.Nachimuthu. Since Item Nos.2 and 3 though purchased in the names of female members of the family, the female members had no independent source of income to purchase the suit properties and therefore, it is contended that suit Item Nos.2 and 3 belonged to the joint family.

- (4) It is the further case of plaintiff that on 12.12.1963, Tmt.Seerangayammal and all the sons borrowed amount from the Cooperative Urban Bank, Erode, by mortgaging Item No.1 of suit properties for additional investment in business and all the male members of the family were looking after the family textile business. It is also contended that the joint family business in the name and style of 'Sri Raja Textiles' was started in the year 1967 where Thiru.Nachimuthu and 1st defendant were partners on behalf of the joint family. Though it is admitted in the plaint that the said Partnership was constituted along with several other persons who are strangers to the family, it is contended that

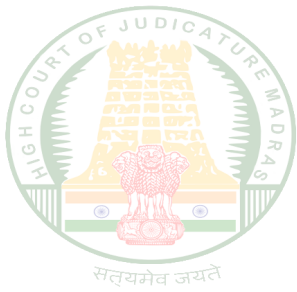


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

Nachimuthu and Iyyavu were partners on behalf of joint family. It is the case of plaintiff that the Firm 'Sri Raja Textiles' extended its business with another sister Concern 'Sri Ranga Lungi Company' and another Firm by name 'Sri Hariram and Company' in the subsequent years carrying on textiles business apart from money lending. It is stated that from out of joint family income from all the business, the joint family purchased vacant sites in the name of either female or male members of the family. It is the specific case of plaintiff that none of the individual members had any independent source of income to purchase the properties and therefore, all the properties are to be treated as joint family properties. Even though the plaintiff admitted that he was advised to have a separate mess due to quarrel between the women folks in the family, it is stated that the plaintiff continued to be a coparcener of the joint family and carrying on business of the joint family as a member of the family.

- (5) The plaintiff contended that from and out of income from Sri Raja Textiles, the properties described in Item Nos.7, 8 and 9 were

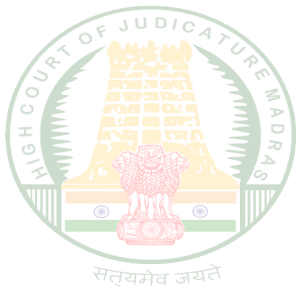


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

purchased either in the name of 'Sri Raja Textiles' or in the name of Nachimuthu or 1st defendant and the purchases were in the names of individuals for the benefit of family. Referring to the fact that the 1st defendant was given a sum of Rs.43,520/- and Thiru.Nachimuthu was given a sum of Rs.28,353/- on the dissolution of the Firm 'Sri Raja Textiles', it is also the case of plaintiff that the cash that was given to the members of the family, was again invested in the joint family business. Referring to a few Partnership Firms, it is contended by the plaintiff that properties purchased out of the income from the Partnership Firms are the properties of joint family. Therefore, the plaintiff admits that Item No.11 of the suit properties, though was allotted to the plaintiff on the dissolution of the Firm 'Sri Hariram and Co.', is the joint family property.

- (6) From the averments in the plaint, it is seen that the case of plaintiff is that all the income derived from the joint family business either run by Nachimuthu or any other brother along with any member of the family or an outsider or stranger was treated the income of joint

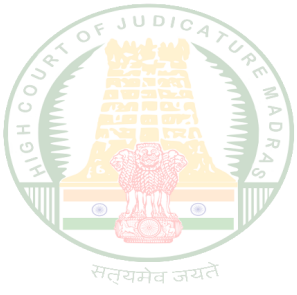


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

family and the properties purchased out of the income are the properties of joint family and the plaintiff is therefore entitled to 1/3rd share in all the properties.

- (7) The suit was resisted by defendants 1 and 6, who are the brother and brother's wife of the plaintiff, by filing a written statement. The property described in Item No.1 is admitted as ancestral property in the hands of all the four sons of Thiru.Nanjappa Mudaliyar. It is contended that all the properties were purchased independently in the name of individual partners including the property purchased in the name of plaintiff. It is their case that the family members were drawing independent income and has savings and that the properties allotted to family members by the Society and purchased by family members, are the separate properties of family members. With regard to the properties purchased in the name of 1st defendant or in the name of his wife, the 6th defendant, it is contended by the 1st defendant that the said properties are absolute properties of 1st defendant and his wife. As regards Item No.4, the property being purchased in the name of



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

plaintiff, the defendants did not claim any right and stated that Item No.4 is the separate property of plaintiff. Item Nos.6 and 7 were purchased in the name of 1st defendant. It is the case of 1st defendant that the said items were purchased for a total consideration of Rs.1,000/- from his own savings. The 1st defendant also pleaded that he studied upto SSLC and in the year 1956, the 1st defendant was working as a staff in a private Concern and he was also working in several Textile Firms by writing accounts and earning a substantial amount for his future investments in various Partnership Concerns. The 1st defendant admitted that Item Nos.7 and 10 were given to 1st defendant towards his share at the time of dissolution of Firm 'Sri Raja Textiles' and therefore, it is the absolute property of 1st defendant. To sum up, it is the specific case of defendants 1 and 6 that the properties purchased by the individual members in their name cannot be treated as joint family properties.

(8) The Trial Court framed the following issues:-

1, வாதி தாவாவில் கோரியுள்ள பாகப்பிரிவினை



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

மற்றும் தனிச் சுவாதீனம் பெற

அருகதையுள்ளதா ?

2, வாதி தாவாவில் கோரியுள்ளபடி நிரந்தர

உறுத்துக்கட்டளை பரிகாரம் பெற

அருகதையுள்ளதா ?

3, தேவையான தரப்பினர்களை

(கூட்டுபங்குதாரர்கள்) சேர்க்காததால் இந்த

வழக்கு பாதிக்கப்பட்டுள்ளதா ?

4, வாதி தாவா 2 முதல் 13 அட்டவணைச்

சொத்துக்களில் பாகப்பிரிவினை பரிகாரம்

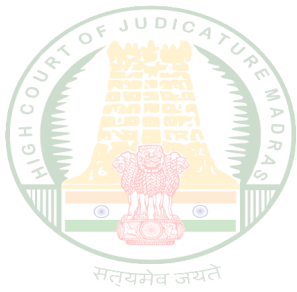
கேட்க உரிமையில்லையா ?

5, வேறு என்ன பரிகாரம்?

(9) The plaintiff examined himself as PW1 and filed Exs.A1 to A23.

On the side of defendants, the 1st defendant examined himself as DW1 and marked Exs.D1 to D64. Ex.C1 to C13 were marked as Court documents.

(10) The Trial Court on the analysis of documents, came to the conclusion that the plaintiff has not proved that the suit properties are purchased out of the income from the joint family. Though the plaintiff's share in some of the items, particularly, item Nos.1 to 3 is not disputed, the Trial Court held that the plaintiff is not entitled

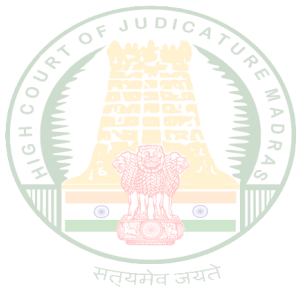


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

to any relief as the suit itself is liable to be dismissed on the ground that some of the legal heirs of 7th defendant, who died pending suit, were not brought on record. Since the documents of sale were obtained in the name of individual members of the family and there is no proof to show that the income from joint family properties was utilised for acquisition of such properties in the individual names, the Trial Court held that the plaintiff is not entitled to the relief of partition. The Trial Court rendered a specific finding that the suit itself is not maintainable without impleading the female heirs born through the first wife of Thiru.Nanjappa Mudaliyar. As against the judgment and decree of the Trial Court, dismissing the suit for partition, the above Appeal is preferred by the plaintiff.

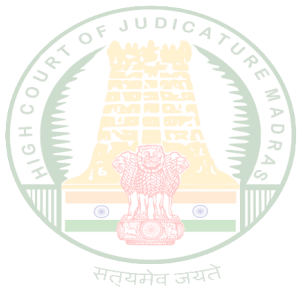
- (11) Mr.A.K.Sriram, learned Senior Counsel appearing for the appellant, referring to the documents and the evidence of DW1 in the course of cross examination, submitted that Thiru.Nanjappa Mudaliyar was doing business even before his death and that the business was extended and developed by the elder son Nachimuthu by borrowing loan from the Bank by mortgaging Item No.1 in the suit



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

schedule. Stating that the individual members of the family had no wherewithal to generate capital for any business on their own, the learned Senior Counsel submitted that the Trial Court ought to have seen that the presumption is in favour of plaintiff/appellant, especially when no document is filed by the defendants to show the independent source of income to enable any member of the family to acquire the property. Since Nachimuthu was acting as Kartha and continued the business after the death of their father Nanjappa Mudaliyar, learned Senior counsel submitted that the findings of the trial Court are perverse for the reason that admittedly, the family had borrowed amount from Erode Cooperative Urban Bank under Ex.A11 and Ex.A12 in the year 1963 and 1966 when the family expanded its business by constituting a few Firms with or without inducting strangers to the family as partners. Learned Senior counsel appearing for the plaintiff/appellant relied upon several precedents and then pointed out that in the absence of any pleadings or any specific findings, the Trial Court has erroneously held that the suit is bad for non joinder of daughters born through



AS.No.643/2008 & CRP.No.1962/2013

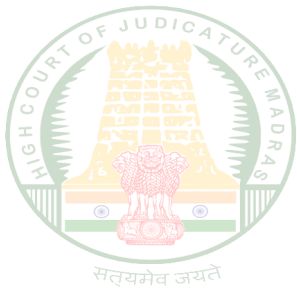
WEB COPY

the 1st wife of Thiru.Nanjappa Mudaliyar.

(12) ***Per contra***, Mr.G.Masilamani, learned Senior counsel appearing for respondents 6, 13 to 16 has elaborately made his submissions by taking us to the status of the family and their business dealings at the relevant point of time when the suit properties were purchased. Learned Senior counsel appearing for the defendants also relied upon the recitals of the Sale Deeds through which Item Nos.1 to 14 were purchased and submitted that all the suit properties from Item Nos.4 to 14 are separate properties of the individuals. Learned Senior counsel has no objection for granting a decree in respect of Items 1 to 4. Learned Senior counsel relied upon several judgments of Hon'ble Supreme Court laying down principles which are to be applied to decide the character of properties.

(13) Having regard to the arguments advanced by the learned Senior counsels appearing on either side, this Court is inclined to frame the following points for determination:-

A) Whether the suit is bad for non joinder of necessary parties?



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

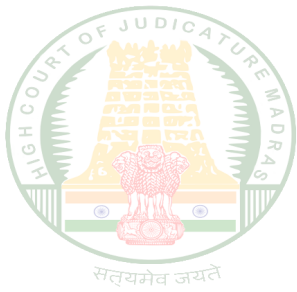
B) Whether the properties standing in the name of defendants 1 and 6 and purchased in their name, are their separate properties or joint family properties?

C) To what other relief, the appellant is entitled to?

(14) Having regard to the points framed and arguments advanced, this Court is inclined to consider the position relating to the properties particularly the character/status of properties acquired out of the income from the family business or partnership business either run by the Manager or one of the members of joint family with strangers to the family.

POINT [A]:-

(15) The Trial Court held that the suit is bad for non joinder of the daughter born through the 1st wife of Nanjappa. From the geneology tree, this Court finds that Nanjappa has two daughters by name Pappathi @ Sarojini and Chandra. Chandra is impleaded as 12th defendant. Husband of Pappathi @ Sarojini is impleaded as 7th defendant and the three daughters and son of Sarojini are impleaded as defendants 8 to 11. Though Nanjappa had three



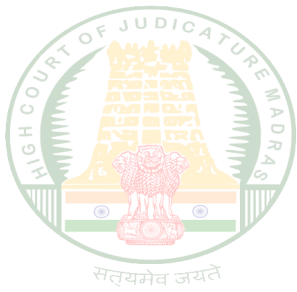
AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

daughters through the 1st wife, none of them is impleaded. However, 1st wife predeceased Nanjappa. Since Nanjappa died in the year 1952, the daughters are not entitled to any share. Step daughters are not daughters to have right of inheritance under Section 15 of the Act. Hence, the daughters of Nanjappa are not necessary or proper parties. **Hence, we hold that the suit is not bad for non joinder of necessary parties.**

POINT [B]:-

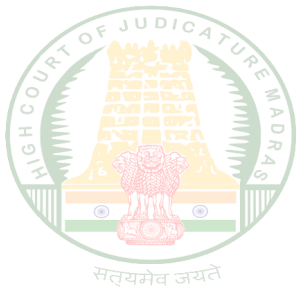
- (16) The following dates and events are relevant.
- (17) Sri.Nanjappa Mudaliyar, father of appellant and 1st respondent moved to Erode from his native and acquired the property namely Item No.1 for a sum of Rs.3,000/- on 04.03.1942. It is admitted that Smt.Seerangayammal, mother of appellant and 1st respondent was made as a member of Erode Weavers Finance and Sales Cooperative Society in the year 1951. Thiru.Nanjappa Mudaliyar died in the year 1952. From the evidence, it is admitted that after the death of Nanjappa Mudaliyar, the elder son Nachimuthu was acting as a joint family Manager and he was having control of the



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

business from then There is also evidence to show that Nachimuthu started a Partnership Firm with one Thambanna Mudaliyar in the name and style of 'M.Thambanna Mudaliyar and Co'. The business of the said Firm was later taken over by Thiru.Nachimuthu on behalf of joint family. Item No.2 of suit properties was allotted by the society in the name of Tmt.Seerangayammal. It is admitted that the instalments due for recovering the property was paid by Nachimuthu till 1979 and later, on the death of Seerangayammal, the allotment was obtained in the name of 1st defendant by getting the Sale Deed on 12.12.1963. Tmr.Seerangayammal and all the sons of Thiru.Nanjappa Mudaliyar borrowed a sum of Rs.5,000/- from the Cooperative Urban Bank, Erode, by mortgaging Item No.1 of the suit Schedule properties. The recitals of the Mortgage Deed shows that the loan was for the purpose of their joint business of the family. On 13.12.1965, a further loan was obtained by the members of the family by extending the mortgage in respect of Item No.1. The second mortgage also contains similar recitals indicating

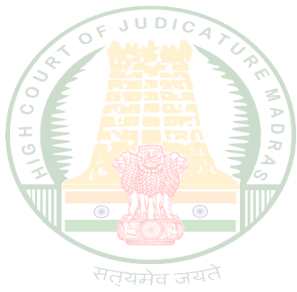


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

that the mortgage is for additional investment in the business of the family. On 13.07.1966, the mortgage was extended with similar recitals to cover additional loan. A Partnership business was started in the name of Sri Raja Textiles on 29.08.1966 along with four more partners who are strangers. Subsequently, another business in the name, Sri Ranga Lungi Company was also started in the same address where Sri Raja Textiles was running.

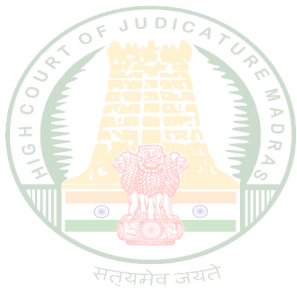
- (18) In the year 1967, a vacant plot was allotted in the name of Smt.Parvatham, wife of Nachimuthu by the Society and it is admitted that a row of residential houses were also constructed in the said Plot by Nachimuthu after 1975. A few more businesses were also started after 1972 by all the four brothers along with other partners who are strangers. On 21.06.1975, item 4 of plaint schedule was purchased in the name of appellant. Items No.5 and 6 were purchased in the name of 1st defendant. From 1975, the appellant/plaintiff was having separate Mess and it is stated that the appellant was advised to have separate mess by the joint family. Item No.7 was purchased in the name of Partnership Firm



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

‘Sri Raja Textiles’ represented by its partner C.Ramalingam on 31.01.1977. Even during the lifetime of Seerangayammal, the property that was allotted in the name of Seerangayammal, was allotted to 1st defendant on 03.07.1979. The Partnership Firm business Sri Raja Textiles was dissolved on 17.01.1986. As per the Dissolution Deed, Item No.7 was purchased in the name of Firm. Item No.10 and a sum of Rs.43,520/- were allotted to 1st defendant and a sum of Rs.28,353/- was allotted in the name of Nachimuthu. The other partners of Sri Raja Textiles took over the business of Sri Raja Textiles. On 27.01.1986 the Sale Deed in respect of Item No.2 was obtained in the name of 1st defendant. Item No.11 was allotted in the name of appellant pursuant to the dissolution of another partnership Firm Sri Hariram and Co on 31.01.1986. From 1986, the family members were independently took over the business. Item No.12 was purchased on 02.06.1988 in the name Sampoorname, wife of 1st defendant. Item No.14 was also purchased in the name of Sampoorname, the 6th defendant in the suit. Item No.13 was purchased in the name of daughter of 1st



AS.No.643/2008 & CRP.No.1962/2013

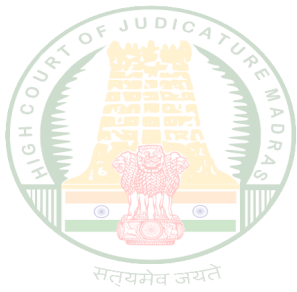
WEB COPY

defendant on 09.09.2002 and the daughter of 1st defendant executed a Settlement Deed in favour of 1st defendant on 12.03.2004. The suit was filed on 29.04.2005.

- (19) This Court has already seen that Item No.1 was purchased by the father Nanjappa Mudaliyar on 04.03.1942 for a sum of Rs.3,000/-. The sum of Rs.3,000/- in the year 1942 is a substantial amount and this Court cannot imagine the acquisition of a substantial property for a fabulous amount of rs.3,000/- by employing himself as a weaver. It is admitted that Nanjappa Mudaliyar was a weaver and when he died in the year 1952, he was doing a business in weaving by owning two looms.

LAW ON ACQUISITION OF PROPERTIES WITHOUT INVOLVING ANY BUSINESS:-

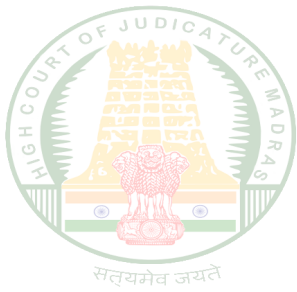
- (20) The principle of Hindu Law based on the original text of Yagnavalkiya is approved in several judicial precedents. The general doctrine of Hindu Law is that the property acquired by a Kartha or a co-parcener with the aid or assistance of joint family assets is impressed with the character of joint family property.



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

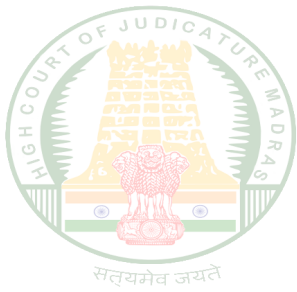
Therefore, it is an essential feature of self acquired property that it should be acquired without the assistance or aid of the joint family property. Even the self acquisition by Kartha or coparcener can be accepted only if the acquisition is without detriment to the ancestral estate. In other words, it must be shown that the acquisition was made without any aid or assistance from the ancestral or joint family property to claim that it is a self acquisition. However, anything acquired by an individual's labour without prejudice to the father's estate is a self acquisition. The law is settled that there is no presumption of a property being a joint family property only on account of existence of a joint Hindu family. The burden lies on the one to prove that the property is a joint family property. If the person so asserting proves that there was nucleus with which a property could be acquired, the burden now shifts on the other side who claims it to be self acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available. This position is reiterated by Hon'ble Supreme Court in several judgments.



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

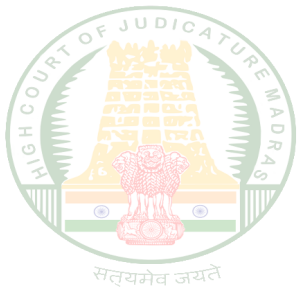
(21) The Hon'ble Supreme Court, in the case of ***D.S.Lakshmaiah and Another Vs. Balasubramanyam and Another*** reported in **2003 [10] SCC 310**, has reiterated the above principle following the law settled by the Hon'ble Supreme Court in various judgments. In ***Appalaswami Vs. Suryanarayanamurthi*** reported in **AIR 1947 PC 189**, the Privy council held that '*proof of existence of a joint family does not lead to presumption that the property held by any member of the family is joint and the burden always rests upon anyone asserting that any item of property is joint to establish the fact*'. It was further held that *if it is established that the family possess some joint family property which from its nature and relative value may have formed a nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self acquisition to establish affirmatively that the property was acquired without the aid of the joint family property*. The law is consistent and therefore, we need not multiply by citing several judgments except a few which will have some bearing in view of the facts of the present case.



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

- (22) In ***Bagwat Sharan Vs. Purushotam and Others*** reported in 2020 [6] SCC 387, the Hon'ble Supreme Court has, after referring to several earlier judgments of Hon'ble Supreme Court, held that burden is on the person who alleges existence of Hindu Undivided Family to prove the existence of joint family property. In other words, proof is required not only with respect to joint events of the family but also with respect of the fact that the property concerned belongs to joint family by showing the existence of nucleus. Unless there is material on record to show that the property came out of the nucleus of the joint family asset or that it was purchased through funds coming out of nucleus, it cannot be presumed that the property is a joint family property. The Hon'ble Supreme Court in the above judgment, held that merely because business was joint, it will not lead to a presumption that there was a joint family.
- (23) The position in respect of a property standing in the name of female member of joint family is considered by a Division Bench of this Court in ***Pattusami Padayachi Vs. Mullaiammal and Others*** reported in 1976 [2] MLJ 225 and paragraphs No.18 and 19 are

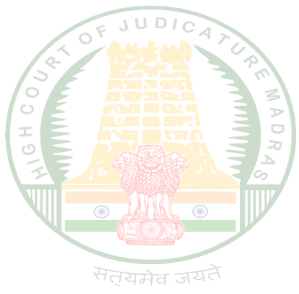


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

relevant and hence, they are extracted hereunder:-

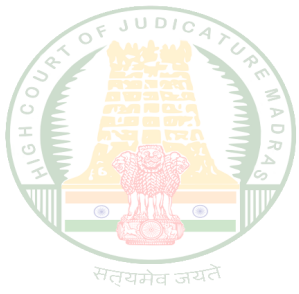
"18.The main contention of the learned Counsel for the appellant is that the properties in Tholuvur. which stood in the name of Pattayee Ammal are to be, having, regard to the affluence of the family, treated as joint family properties. The argument is attractive. No doubt, Muthusami Padayachi obtained about 18 acres of land in the partition effected as between himself and his brothers. Probably, the quantum of the share obtained by Muthusami Padayachi was greater. But that by itself does not lead to the presumption that such a corpus of joint family properties would yield surplus income. The plaintiff has not taken the precaution to prove that the family income from such properties obtained by Muthusami Padayachi was so abundant that it always resulted in a surplus which surplus could be utilised for further annexations to erstwhile joint family properties. It has now become almost axiomatic that properties purchased by one or the other of the members of a coparcenary or joint family when the family is joint cannot as a matter of course be treated as joint' family property. The coparcener who challenges such



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

title in the member and pleads that they should also be brought to the hotch-pot, ought to establish by cogent and mature evidence that there was enough surplus income which was available in the joint family and which positively could be the foundation for such annexures made by one or the other of the members of the joint family. In the absence of such nexus between the purchase price of the purchased properties and the available surplus of the joint family, the presumption that the properties in the names of the members of a coparcenary should automatically be treated as joint family properties would fail. In all cases definite proof is required that the further purchase in the names of joint family members ought to have been made and could not have been made otherwise than from the surplus income of the family. For a greater reason, the rule is more strict in the case of properties in the name of female members. From time immemorial it has become customary amongst Hindus at any rate for females to have properties of their own. Even our Sastras describe such property of a female as Stridhana property. Therefore, the concept that a

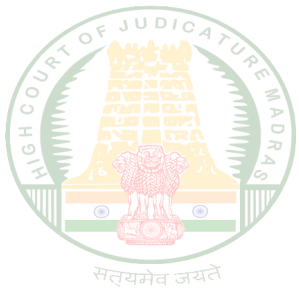


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

female could own properties of her own is an age-long concept. If this concept therefore has been an accepted one from ages, then the fact that a female member in a joint family has properties in her own name would not necessarily lead to the conclusion that the origin of such properties should be traced to the joint family or to the income from the joint family. This principle also is well established.

*19.In **Nagayasami Naidu v. Kochadai Naidu** MANU/TN/0212/1969 : AIR 1969 Mad 329, the Division Bench of this Court consisting of Ramamurti, J. and Alagiriswami, J., as he then was, upheld the wholesome principle and said it is for the parties who claim properties as joint family properties to specifically plead the particulars and details in the pleadings and establish the same by adducing necessary evidence. If there is no pleading and if on the side of the plaintiffs there is no evidence, there is no need for detailed scrutiny of the case of female members or persons claiming through them, as to the resources of the female members and as to how they acquired the properties in question. More stronger language is not necessary to reject the*



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

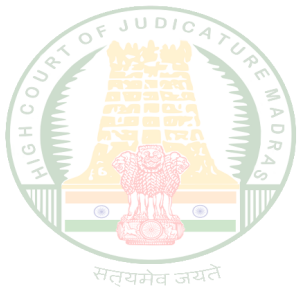
contention of the plaintiff in the instant case that the properties which stood in the name of Pattathammal are to be deemed and held as her own properties. Excepting for the bare ipse dixit of the plaintiff, there is no acceptable material for us to reject the real title of Pattathammal in the properties purchased her in Tholuvur village. There is also evidence in this case that : Pattathammals parents were rich and. that they provided the necessary funds to Pattathammal to purchase the properties. Incidentally the plaintiff's case is that such. properties were held by Pattathammal benami for the family. The theory of benami also depends on express pleadings followed up by clear proof. There is, of course, pleadings in this case but proof is completely absent. As argued by Mr. Ratnam there was no necessity also for Muthusami Padayachi to purchase these properties in the name of his wife. By then, he became a divided member and partitioned his share of the properties of "his ancestors. It is not suggested that Muthusami was indebted and that he wanted to screen the properties from his creditors. Such reason is normally present in a case where properties are



WEB COPY

taken by "A" in the name of "B". Either at is for the purpose of avoidance of creditors or for love and affection or for the purpose of accelerating title in his near and dear, the method of securing properties in fictitious names is resorted to. But in the instant case, the plaintiff has miserably failed to establish that there was any such occasion for Muthusami Padayachi to purchase these properties in the name of his wife. Taking all these circumstances into consideration, we are unable to accept the contention of Mr. Gopalaswami Iyengar that the properties in Tholuvur village in the name of Pattathammal should be deemed to be the properties held by her benami, but for the benefit of the family."

- (24) The principle reiterated by the Privy Council in ***Randhi Appalaswami Vs. Randhi Suryanarayanamurti and Others*** reported in ***AIR 1947 PC 189***, is based on at least two judgments of this Court in the case of ***Venkataramayyah Vs. Seshamma*** reported in ***ILR 1937 Mad 1012 : 45 LW 422*** and in the case of ***Vythianatha Vs. Varadaraja*** reported in ***ILR 1938 Mad 696 : 48 LW 628***.



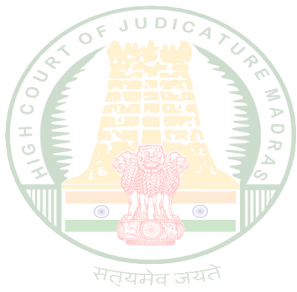
AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

(25) On facts, the Hon'ble Supreme Court in ***Shrinivas Krishnarao Kango Vs. Narayan Devji Kangos and Others*** reported in ***AIR 1954 SC 379***, after following the judgment of Privy Council in ***Appalaswami's case [cited supra]***, has held as follows:-

"12.Likewise, in the present case all the ancestral Watan lands are intact, and are available for partition, and the small income derived from them must have been utilised for the maintenance of the members of the family. Whether we hold, as did the learned Judges of the High Court, that the plaintiff had failed to discharge the burden which lay on him of establishing sufficient nucleus, or that the defendants had discharged the burden of establishing that the acquisitions were made without the aid of joint family funds, the result is the same. The contention of the appellant that the findings of the Courts below are based on a mistaken view as to the burden of proof and are in consequence erroneous, must fail."

(26) In ***Mallappa Girimallappa Betgeri and Others Vs. R.Yellappagouda Patil and Others*** reported in ***AIR 1959 SC 906***,



AS.No.643/2008 & CRP.No.1962/2013

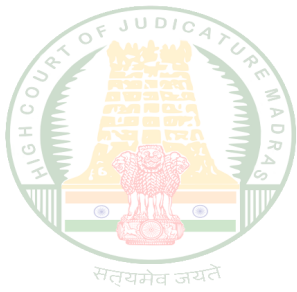
WEB COPY

the Hon'ble Supreme Court has again reiterated the same principle.

When existence of Joint family properties to provide sufficient nucleus is established, it is held that there is a presumption.

Following passage is relevant:-

"10. We then find that the appellant was a manager of a joint family and had acquired the "K" properties in his own name for a consideration. It was never disputed that the Belhode properties were joint family properties. The courts below held that the Belhode properties provided a sufficient nucleus of joint family property out of which the "K" properties might have been acquired. The sufficiency of the nucleus is again a question of fact and it is not for us to interfere with the findings of the courts below on that question. For reasons to be hereinafter stated, we think that apart from the Belhode properties the appellant had no other source of income. In those circumstances a presumption arises that the "K" properties were the properties of the joint family : see Srinivas Krishnarao Kango v. Narayan Devji Kango [(1955) 1 SCR 1] . Unless that presumption is rebutted it must prevail. It



AS.No.643/2008 & CRP.No.1962/2013

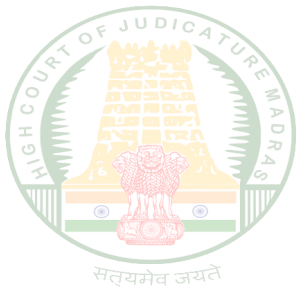
WEB COPY

is quite clear that the appellant has failed to displace that presumption. The only way in which he sought to do so was by proving that the transfer to him was by way of a gift. But he has failed. The presumption remains unrebutted."

- (27) In ***Achuthan Nair Vs. Chinnamu Amma and Others*** reported in ***AIR 1966 SC 411***, the Hon'ble Supreme Court reiterated the principle in the following lines:-

"Under Hindu law, when a property stands in the name of a member of a joint family, it is incumbent upon those asserting that it is a joint family property to establish it. When it is proved or admitted that a family possessed sufficient nucleus with the aid of which the member might have made the acquisition, the law raises a presumption that it is a joint family property and the onus is shifted to the individual member to establish that the property was acquired by him without the aid of the said nucleus. This is a well-settled proposition of law."

- (28) In ***Surendra Kumar vs. Phoolchand*** reported in ***AIR 1986 SC 79***, the Hon'ble Supreme Court has held as follows:-



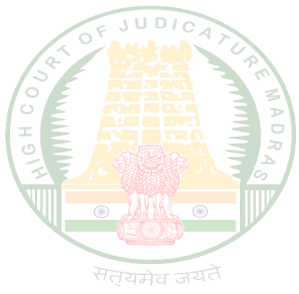
AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

"It is no doubt true that there is no presumption that a family because it is joint possessed joint property and therefore the person alleging the property to be joint has to establish that the family was possessed of some property with the income of which the property could have been acquired. But such a presumption is a presumption of fact which can be rebutted. But where it is established or admitted that the family which possessed joint property which from its nature and relative value may have formed sufficient nucleus from which the property in question may have been acquired, the presumption arises that it was the joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family."

- (29) Dealing with the facts in a similar situations, the Hon'ble Supreme Court in ***Appasaheb Peerappa Chamdgade Vs. Devendra Peerappa Chamdgade and Others*** reported in **2007 [1] SCC 521**, the Hon'ble Supreme Court has held as follows:-

"18.....As per the finding given by the trial court

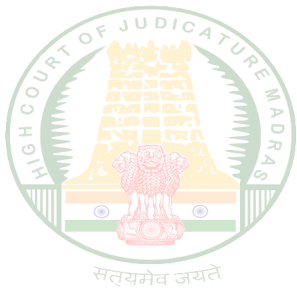


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

there are no two opinions that Peerappa was the main person who held various agricultural lands and out of that certain business started. But the case of Defendants 1 to 3 was that the properties acquired by them were out of their own earnings and not out of the joint family nucleus. The trial court has found that no evidence has been produced by the defendants to substantiate that Defendants 2 and 3 i.e. wife and son of Defendant 1 had individual source to purchase the aforesaid properties. Therefore, the learned trial Judge has held against them. But the High Court has reversed that finding. We fail to see any justifiable reason for the High Court to have taken a contrary view in the matter. The trial court in extensive manner dealt with each subject and came to the conclusion that the properties acquired by Defendants 1 to 3 were not self-acquired properties as neither Defendant 2 nor Defendant 3 i.e. the mother and son had any independent source of income for purchasing these properties."

(30) In ***Lakshmi Ammal Vs. Meenakshi Ammal and Others*** , reported in ***AIR 1974 Mad 294***, a Division Bench of this Court has



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

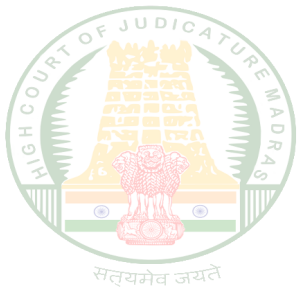
reiterated the same principle and held that there must be proof that the ancestral property was sufficient and productive enough and the income from the property was utilized for the purpose of the business and also held that the property acquired or the business acquired was ancestral property or business property.

CASES RELATING TO ACQUISITION OF PROPERTIES INVOLVING FAMILY BUSINESS:-

(31) In the case of ***K.L.S.V.E.Annamalai Chettiyar Vs. K.L.S.V.E.Subramania Chettiyar and Others*** reported in ***AIR 1929 PC 1***, it is held as follows:-

"A member of a Joint Undivided family can make separate acquisition of property for his own benefit, and unless it can be shown that the business grew from joint family property or that the earnings were blended with joint family estate, they remain free and separate."

(32) Similarly, the views expressed by the Privy Council in ***Annamalai Chettiyar's case [cited supra]*** was also reiterated in the judgment of Allahabad High Court in the case of ***Mriza Mal Bhagwan Das***



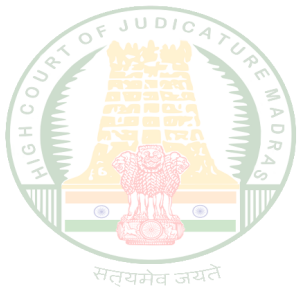
AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

Vs. Rameshar and Others reported in *AIR 1929 All 536*, by holding that there can be no presumption that a business carried on by a coparcener in partnership with strangers, is a family business.

(33) In the case of *V.P.L.R.M.Palaniappa Chetty Vs. Official Assignee of Madras* reported in *20 MLT 565*, this Court is unable to accept the view that there is a general presumption of Hindu Law that a business carried on by the head of a Hindu family although started by himself for the first time, is, without anything more being so, the joint business of the family. It is held in the said judgment that in order that a presumption may arise, it must be shown that the other members participating in the conduct of the business or its profits or by a long course of acquiescence, treated it as a business in which all the coparceners were interested.

(34) A Division Bench of this Court in the case of *Sundaram Vs. Rukmani Ammal* reported in *1974 [2] MLJ 354*, has hinted as to what should be the nature of such assistance which a member of a Hindu joint family should render so as to make him also the joint owner of the properties secured by such coordinated activity. The



AS.No.643/2008 & CRP.No.1962/2013

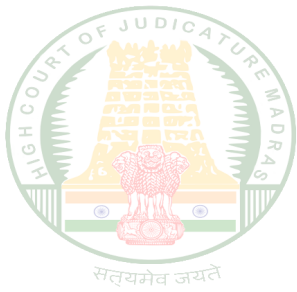
WEB COPY

Division Bench in the said judgment has held as follows:-

"Where a business was in its origin the exclusive business of the father, whether that business came to acquire a joint family character would depend on the nature of the help or assistance given by the son. It is not every act or work done as assistance given by a son to the father in the conduct of the business that will make the business a joint family business. If the work done or assistance given by the son is such as to lead to the inference that the father had intended to treat his exclusive business as a joint family business, then alone the presumption of joint business could be invoked. In invoking such a presumption the joint exertion by the son with his father should be such that the father could be said to have intended to treat the business as belonging to both, or to the joint family."

(35) In **Mayne's Hindu Law [9th Edition page 398]**, the general principle applied, reads as follows:-

"35. Where a managing member of a joint family



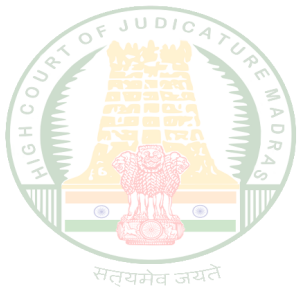
AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

enters into a partnership with a stranger, the other members of the family do not ipso facto become partners in the business so as to clothe them with all the rights and obligations of a partner as defined by the Indian Contract Act. In such a case the family as a unit does not become a partner, but only such of its members as in fact enter into a contractual relation with the stranger; the partnership will be governed by the Act."

(36) The Privy Council had occasion to consider the question whether a managing member of the joint family who enters into a partnership with strangers carried on his share of the partnership business, for the benefit of his family. The other partners of the Firm filed a suit for dissolution of the Firm and for accounts against the Manager of Joint Family and his brother's children. While sustaining the claim against Manager of Joint Family who was the partner, the claim against other members of the family of partner was negatived.

(37) In ***P.K.P.S.Pichhappa Cheittyar Vs. Chockalingam Pillai*** reported in ***1934 [36] Bom LR 979***, the Privy Council after referring to the text in ***Mayne's Hindu Law***, has held as follows:-

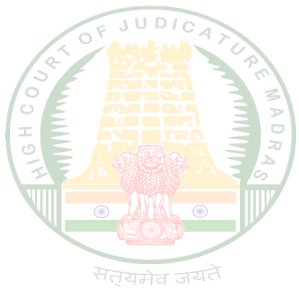


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

"37.Even assuming, therefore, that Virappa was the manager of his joint Hindu Family in 1908, his entering into partnership with the Chetties in that year would not ipso facto make the other members of his family partners, and there is no reliable evidence that Chokalingam, defendant No.2, ever agreed with the Chetties to become a partner, or that the Chetties on their side ever agreed to take him as a partner."

- (38) In the case of ***Lala Lachhman Das Vs. Commissioner of Income Tax***, reported in ***1948 [50] BOMLR 543***, the Privy Council has approved the view that there could be no legal objection to a valid Partnership existing between the Hindu Undivided Family and one of its members. Since the Privy Council has earlier accepted the view that a Hindu joint family through its Kartha can enter into a partnership with a stranger, the Privy Council has expanded this principle logically to recognize the existence of a partnership between a coparcener representing the Hindu Undivided Family and a coparcener in his individual capacity. While reversing the judgment of Lahore High Court, the Privy Council has discussed the issue in the following lines:-

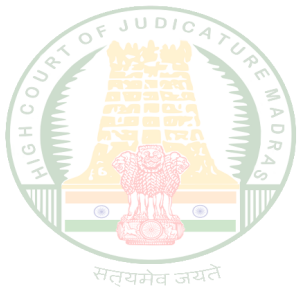


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

"14.The argument before their Lordships on behalf of the appellant is as follows:-

[1]It cannot be doubted that a coparcener in a joint and undivided Hindu family can enter into contractual relationships with the members of that family while remaining joint with them ; and [2] if so, partnership being in its nature a contractual relationship, there should be, on general principles of Hindu Law, no objection to the validity of such a transaction. This argument was reinforced by another that the rules of Hindu Law permit the formation of a partnership between the managing member of a Hindu Joint family on the one hand and a stranger on the other. In such a case, it is argued, the family as a unit does not become a partner and consequently the objections to the formation of such a partnership due to the fleeting and changeable nature of a joint Hindu family do not arise, such of its members as in fact enter into contractual relations with the stranger alone become partners and the partnership would be governed by the Indian Partnership Act.

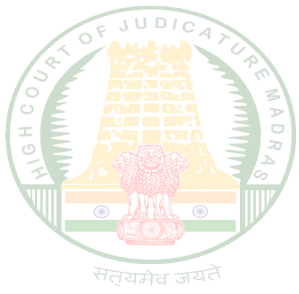


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

*Authority for this proposition, it would appear, was to be found in **Mayne's Hindu Law**, 9th edn., p.398, and in a decision of this Board **Pichhappa V. Chokalingam** where this passage from Mayne was approved and relied upon. The Tribunal relied upon Mayne's authority but the High Court distinguished it on the ground that Daulat Ram, though he might have made a contribution in his individual capacity from his separate funds, could not be regarded as a stranger so long as he continued his connection with his undivided family in the capacity of a coparcener. The term "stranger", the High Court said, implies an idea of being foreign or alien to the family, and this description cannot fit in with a co-parcener of the sme family "so long as he is a composite member thereof.*

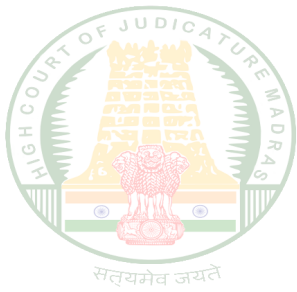
15.After careful consideration, their Lordships cannot accept this view, and on general principles they cannot find any sound reason to distinguish the case of a stranger from that of a co-parcener who puts into the partnership what is admittedly his separate property held in his individual capacity and unconnected with the family funds. Whatever the view



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

of a Hindu joint family and its property might have been at the early stages of its development, their Lordships think that it is now firmly established that an individual co-parcener, while remaining joint, can possess, enjoy and utilize, in any way he likes, property which was his individual property, not acquired with the aid of, or with any detriment to, the joint family property. It follows from this that to be able to utilize his property at his will, he must be accorded the freedom to enter into contractual relations with others, including his family, so long as it is represented in such transaction by a definite personality like its manager. In such a case he retains his share and interest in the property of the family, while he simultaneously enjoys the benefit of his separate property and the fruits of its investment. To be able to do this, it is not necessary for him to separate himself from his family. This must be dependent on other considerations, and the result of a separate act evincing a clear intention to break away from the family. The error of the income tax officer lay in his view that, before such a contractual relationship can validly come into existence, the



AS.No.643/2008 & CRP.No.1962/2013

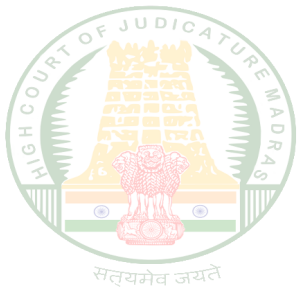
WEB COPY

“natural family relationship must be brought to an end.” This erroneous view appears to have coloured his and the subsequent decisions of the income tax authorities.

16. In this view of the Hindu law it is clear that if a stranger can enter into partnership, with reference to his own property with a joint Hindu family through its Karta, there is no sound reason in their Lordships' view to withhold such opportunity from a co-parcener in respect of his separate and individual property.”

- (39) The principle laid down by the Privy Council in the earlier judgment in ***Pichhappa Chettiyar's case*** has been followed in several judgments of Hon'ble Supreme Court including the judgment of ***Commissioner of Income Tax, West Bengal Vs. Kalu Babu Lal Chand*** reported in ***AIR 1959 SC 1289***, wherein it has been held as follows:-

"The contention that if a coparcener of a Hindu joint family takes any aid from his family funds in making an acquisition, however, slender that aid might be, the acquisition in question should be

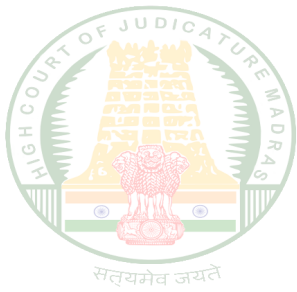


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

considered as a family acquisition, stands repelled by the decision of this Court in Piyare Lal Adishwary Lal's (3) case. Therein, one Sheel Chandra who was the karta of his HUF consisting of himself and his younger brother, furnished as security his family properties for being appointed the treasurer of a bank. He would not have been appointed treasurer of the bank but for the security given. In that case also, it was contended on behalf of C.I.T. that the salary earned by Sheel Chandra was a family income and is liable to be taxed as such. That contention was negatived by this Court. From that decision it follows that it is not any and every kind of aid received from family funds which taints an income as family income. Before an income earned by the exertions of a co-parcener can be considered as a family income, a direct and substantial nexus between the income in dispute and the family funds should be established."

- (40) In **Chandrakanth Manilal Shah Vs. The Commissioner of Income Tax** reported in **AIR 1992 SC 66**, the Hon'ble Supreme Court has followed the judgment in **Kalu Babu Lal Chand's case** and **Pichappa Chettiyyar's case** above referred to. While referring



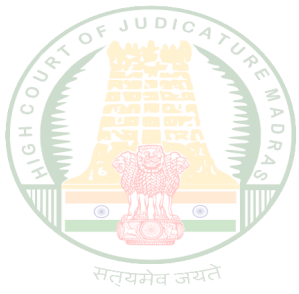
AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

to several judgments, the Hon'ble Supreme Court has considered all the principles elaborately in the following paragraphs:-

"9. The above principle has been applied by several High Courts to uphold the validity of a partnership between the karta of a HUF and an individual member of the family where the latter is taken in as a working partner. In I.P. Munavalli v. CIT [(1969) 74 ITR 529 (Mys)] it was held by the Mysore High Court, after referring to the decision of the Privy Council in the case of Lachhman Das [(1948) 16 ITR 35 : AIR 1948 PC 8 : 74 IA 277] and of this Court in the case of Bhagat Ram [(1956) 29 ITR 521 : AIR 1956 SC 374 : 1956 SCR 143] : (ITR p. 533)

"So it is clear that the Supreme Court did not dissent from the opinion expressed by the Privy Council that "in respect of their separate or divided property" the coparceners of a Hindu joint family, even though they had not become divided from one another and there had been no partition of the family properties, could become partners



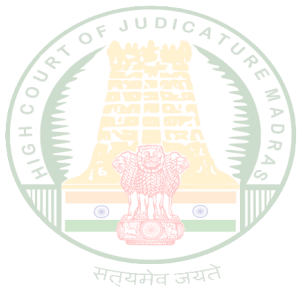
WEB COPY



AS.No.643/2008 & CRP.No.1962/2013

of a firm of which the joint Hindu family represented by its karta is itself a partner.

If a partner by putting into the partnership by way of his capital his separate property or the property which he obtained at a partition on division and thus can become a partner with the family represented by its karta, it is difficult to understand how such a partnership cannot come into being and why a coparcener who continues to remain a member of the coparcenary cannot become a working partner of a firm of which he and the family represented by its karta are the partners. In Lachhman Das case [(1948) 16 ITR 35 : AIR 1948 PC 8 : 74 IA 277] the coparcener placed at the disposal of the firm as his capital his separate property, and in the case of a working partner he contributes his skill or labour or both as the case may be. If the partnership is permissible in one case, it would be difficult to assign any reason for reaching the conclusion that it is not permissible in the other."

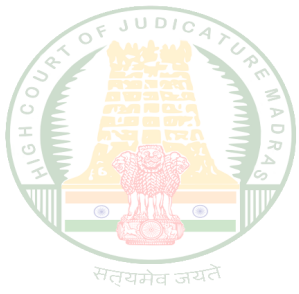


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

10. *In Ramchand Nawalrai v. CIT [(1981) 130 ITR 826 : 1981 Tax LR 448 : 1981 MPLJ 39]* it was held by the Madhya Pradesh High Court as hereunder: (ITR pp. 832-34)

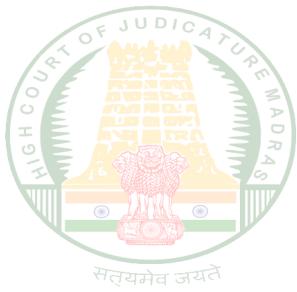
“It will be clear from the facts of the case of Firm Bhagat Ram Mohanlal [(1956) 29 ITR 521 : AIR 1956 SC 374 : 1956 SCR 143] that the question whether a coparcener can enter into a valid partnership with the karta of his family by contributing merely skill and labour did not arise for decision. The only question in the case was whether the individual members of a HUF can, without contributing anything, become members of a partnership constituted between the karta and strangers. This question had necessarily to be answered in the negative on the settled view that when a karta enters into a partnership with strangers it is the karta alone who becomes the partner. The observations of the Supreme Court that (ITR p. 526): ‘[I]f members of a coparcenary are to be regarded as having become partners in a firm with



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

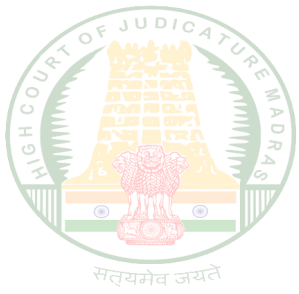
strangers, they would also become under the partnership law partners inter se, and it would cut at the very root of the notion of a joint undivided family to hold that with reference to coparcenary properties the members can at the same time be both coparceners and partners', as contained in the passage quoted above, must be limited to the facts on which Firm Bhagat Ram Mohanlal case [(1956) 29 ITR 521 : AIR 1956 SC 374 : 1956 SCR 143] was decided. The Supreme Court in the same passage referred to the decision of the Privy Council in Lachhman Das case [(1948) 16 ITR 35 : AIR 1948 PC 8 : 74 IA 277] and did not disapprove of it. If a coparcener by contributing his separate property can enter into a valid partnership with the karta of his family, as held by the Privy Council in Lachhman Das case [(1948) 16 ITR 35 : AIR 1948 PC 8 : 74 IA 277] there seems no valid reason why a coparcener cannot, by contributing merely his skill and labour,



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

enter into a partnership with the karta. If the former does not cut at the root of the notion of the joint Hindu family, the latter also does not. Even in the case of the former, the partnership property will consist of the contribution made by the karta from the coparcenary property and the contribution made by the coparcener of his individual property. Both taken together would become partnership property in which all the partners would have interest in proportion to their share in the joint venture of the business of partnership (Addanki Narayanappa v. Bhaskara Krishnappa [AIR 1966 SC 1300, 1304 : (1966) 3 SCR 400 : (1966) 2 MLJ (SC) 60]). If in such a situation the coparcener entering into the partnership can be a partner in relation to coparcenary property contributed for the partnership business, there can be no difficulty in holding that the same result would follow when the coparcener entering into a partnership only contributes his skill

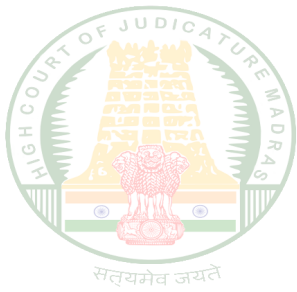


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

and labour. In the former case, as stated by the Privy Council in Lachhman Das case [(1948) 16 ITR 35 : AIR 1948 PC 8 : 74 IA 277] the coparcener entering into the partnership, retains his share and interest in the family property while simultaneously enjoying the benefit of his separate property and the fruits of its investment. In the same way, it can be said that in the latter case the coparcener retains his share and interest in the property of the family while simultaneously enjoying the benefits of his skill and labour which he contributes as consideration for formation of the partnership and for sharing profits.

Learned standing counsel for the department further submitted that as the profits earned by a partnership in which the contribution of capital is only of joint family funds from the side of the karta would enure to the benefit of the entire joint family being earned with the help of the joint family funds, a coparcener who only contributes his skill

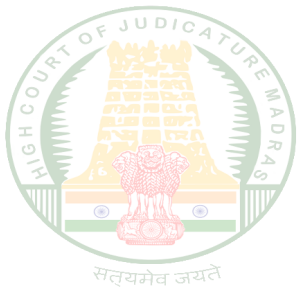


WEB COPY



AS.No.643/2008 & CRP.No.1962/2013

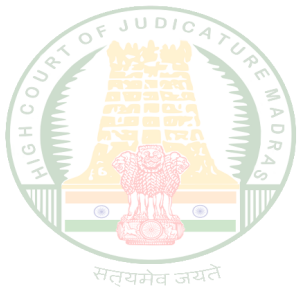
and labour for becoming a partner cannot claim any share in the profits as his separate property and, therefore, there cannot be any valid partnership. Learned counsel in this connection relied upon the case of V.D. Dhanwatey v. CIT [(1968) 68 ITR 365 : AIR 1968 SC 683 : (1968) 2 SCR 62] . Dhanwatey case has to be read along with the case of CIT v. D.C. Shah [(1969) 73 ITR 692 (SC)] . In Dhanwatey case [(1968) 68 ITR 365 : AIR 1968 SC 683 : (1968) 2 SCR 62] a karta of a HUF who entered into a partnership was paid a salary from the partnership and it was held that the salary income was the income of the HUF. The basis of the decision was that the salary was paid because of the investments of the assets of the family in the partnership business and there was a real and sufficient connection between the investments from the joint family funds and the remuneration paid to the karta. In Shah case [(1969) 73 ITR 692 (SC)] also the karta entered into a partnership and was paid remuneration. But



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

as the remuneration was paid for the specific acts of management done by the karta resting on his personal qualification and not because he represented the HUF, it was held that the remuneration was his individual income. Applying the same principle, if a coparcener becomes a working partner in a partnership with the karta and gets a share in profits in consideration of the skill and labour contributed by him, his share in the profits would be his separate property for the profits coming to his share would be directly related to his skill and labour and not to the investments of the joint family funds in the business. The question, however, whether a coparcener entering into a partnership with the karta does really contribute any labour or skill for the management of the partnership business in which he is given a share in profits is a question of fact which will have to be determined in the light of the circumstances of each case. In case, it is found that there is no real contribution of

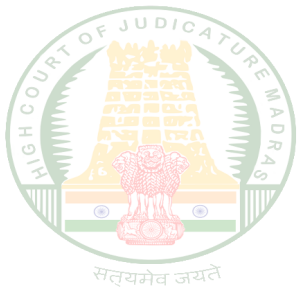


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

skill or labour by the coparcener for sharing the profits, the partnership will be held to be unreal and fictitious but that is an entirely different thing from saying that there cannot at all be a valid partnership between the karta and a coparcener when the latter only contributes his skill and labour and is merely a working partner. In our opinion, the argument that as the capital investment in the partnership is only of the funds of the undivided family, there cannot be any partnership, cannot be accepted. The conclusion reached by us is fully supported by a decision of the Mysore High Court in I.P. Munavalli v. CIT [(1969) 74 ITR 529 (Mys)] with which we respectfully agree. The Bombay, High Court in Shah Prabhudas Gulabchand v. CIT [(1970) 77 ITR 870 (Bom)] took a contrary view. With great respect and for the reasons given above, we are unable to agree with it.”

11. In CIT v. Gupta Brothers [(1981) 131 ITR 492 : 1980 Tax LR 1491 (All)] the Allahabad High Court



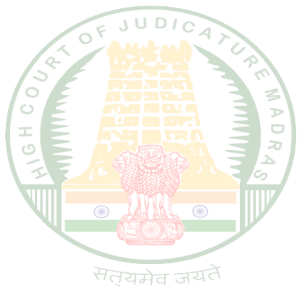
AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

took the same view when it said: (ITR p. 496)

“The observations of the Privy Council that a partnership can be formed with a junior member by the karta qua his separate property is by way of illustration of a particular eventuality when the separate property constitutes consideration for the induction of a junior member into the partnership. It cannot be read as being exhaustive of cases where consideration may take other forms. Now, as labour and skill would also be consideration as contemplated by the Contract Act, a valid partnership had come into existence, which ought to have been registered.”

12. Learned counsel for the respondent has laid considerable emphasis on two points. Firstly, it was urged that Hindu law does not recognise any contract among the coparceners inter se except in two cases, namely, where there is a partial partition and where a coparcener has separate property and brings in such separate property as capital towards consideration for becoming a partner. While elaborating the first point, it has been urged that if, even in a case where there is neither partial partition nor any separate property is brought in by the coparcener as consideration for the partnership it is held that a valid partnership can still come into



AS.No.643/2008 & CRP.No.1962/2013

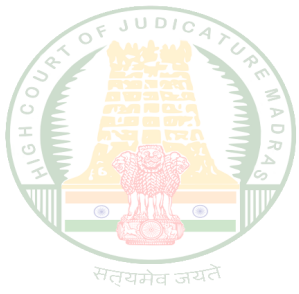
WEB COPY

existence, it would create an anomalous situation inasmuch as such coparcener would be having an interest in the coparcenary property both as a coparcener and partner. Reliance in this behalf has been placed on the following observations made in the case of Bhagat Ram Mohanlal [(1956) 29 ITR 521 : AIR 1956 SC 374 : 1956 SCR 143] : (ITR p. 526)

“If members of a coparcenary are to be regarded as having become partners in a firm with strangers, they would also become under the partnership law partners inter se, and it would cut at the very root of the notion of a joint undivided family to hold that with reference to coparcenary properties the members can at the same time be both coparceners and partners.”

13. The second point emphasised by learned counsel for the respondent is that skill and labour cannot be treated as property.

14. It must be confessed that the observations

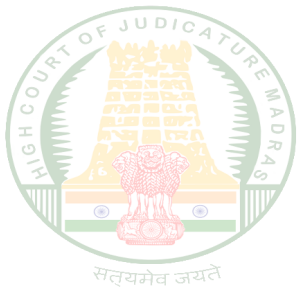


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

made in the case of Bhagat Ram Mohanlal [(1956) 29 ITR 521 : AIR 1956 SC 374 : 1956 SCR 143] relied upon do appear to support the contention of the Revenue. In the case of Firm Bhagat Ram Mohanlal v. CEPT [(1956) 29 ITR 521 : AIR 1956 SC 374 : 1956 SCR 143] a partnership had been entered into in 1940 between Mohanlal (M) and two outsiders (R and G), M admittedly representing a HUF consisting of himself and his two brothers Chotelal (C) and Bansilal (B). In 1944, the HUF got divided and, consequently, the firm was reconstituted with five partners viz. the two outsiders (R and G), M, C and B. This, according to the Revenue, had resulted in a “change in the persons carrying on the business” leading to certain consequences adverse to the assesseees in the context of the Excess Profits Tax Act. The firm attempted to get over the difficulty in two ways:

(a) It was contended that, even initially, in 1940, the firm must be considered as having been constituted with all the five persons, R, G, M, C and B, as partners; in other words when M entered into the partnership on behalf



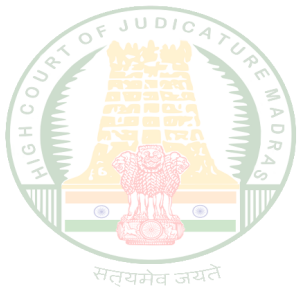
AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

of the HUF, the consequence was that not only he but his two undivided brothers B and C also became partners in the firm in their individual capacity; and

(b) It was suggested that when M entered into the partnership agreement in 1940, all the three coparceners M, C and B, could be regarded as having entered into the contract as karta of (i.e. representing) the HUF.

15. Both these contentions were negatived. So far as the first contention was concerned, the Court observed that it could be disposed of as being an afterthought opposed to the factual findings in the case. However, the Court proceeded to observe that it was difficult to visualise a situation, which the appellants contended for, of a HUF entering into a partnership with strangers through its karta and the junior members of the family also becoming its partners in their personal capacity. After referring to Lachhman Das [(1948) 16 ITR 35 : AIR 1948 PC 8 : 74 IA 277] and Sunder Singh Majithia v. CIT [(1942) 10 ITR 457 : AIR 1942 PC 57 : (1942) 2 MLJ 761] where divided members of a family were held competent to carry on the erstwhile



AS.No.643/2008 & CRP.No.1962/2013

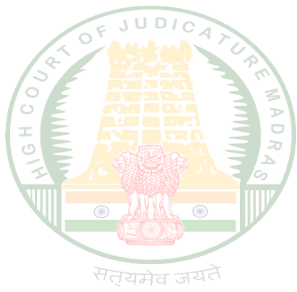
WEB COPY

joint family business in partnership, the Court pointed out: (ITR p. 526)

“But in the present case, the basis of the partnership agreement of 1940 is that the family was joint and that Mohanlal was its karta and that he entered into the partnership as karta on behalf of the joint family. It is difficult to reconcile this position with that of Chotelal and Bansilal being also partners in the firm in their individual capacity, which can only be in respect of their separate or divided property.”

(emphasis supplied)

16. This was followed by the observations on which Sri Manchanda, learned counsel for the Revenue has placed considerable reliance. Similarly, so far as Contention (b) was concerned, the Court observed that “even if such a contention could be raised consistently with the principles of Hindu law”, it was in the teeth of the pleadings in the case and so could not be allowed to be raised. These passages no doubt suggest that, in the Court's view, an undivided member of a HUF cannot be a partner along with the

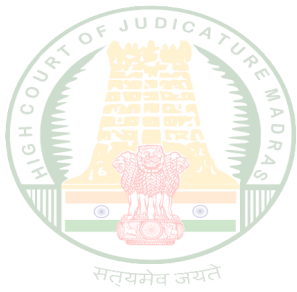


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

karta of the family, except where he furnishes capital in the form of property belonging to him in his individual right or obtained by him on a partition of the family and that the Court left open the question whether more than one member of a HUF can represent the family in a partnership with outsiders.

17. It will be apparent that this Court had rejected both contentions of the assessee as being an afterthought or contrary to the factual findings in the case. This was sufficient to dispose of the case. However, the further expressions of opinion, coming from such an eminent Judge as Venkatarama Ayyar, J., are entitled to the greatest weight and respect. We, however, think that the scope of these observations, made in the context of the special facts and circumstances of the case, has been magnified by the learned counsel for the Revenue. We may observe, at the outset, that his basic postulate that, under the Hindu law, there can be no contract inter se between the undivided members of the family is basically incorrect. This Court has recognised the validity of such contract in various situations. For instance, an undivided member of a HUF (including

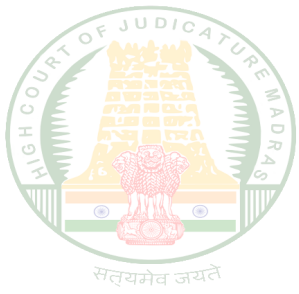


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

its karta) can be employed by the HUF for looking after the family business and paid a remuneration therefor: vide, Jitmal Bhuramal v. CIT [(1964) 44 ITR 887 (SC)] and Jugal Kishore Baldeo Sahai v. CIT [(1967) 63 ITR 238 : AIR 1967 SC 495 : (1967) 1 SCR 416] . Again on the second contention which was left open, subsequent decisions of this Court have held that it is open to more than one member of a HUF to represent the family in partnership with strangers. In CIT v. Sir Hukumchand Mannalal and Co. [(1970) 2 SCC 352 : (1970) 78 ITR 18] it was held by this Court: (SCC p. 354, para 5)

“The Indian Contract Act imposes no disability upon members of a Hindu undivided family in the matter of entering into a contract inter se or with a stranger. A member of a Hindu undivided family has the same liberty of contract as any other individual: it is restricted only in the manner and to the extent provided by the Indian Contract Act. Partnership is under Section 4 of the Partnership Act the relation between



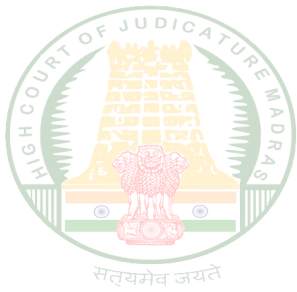
AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

persons who have agreed to share the profits of a business carried on by all or any of them acting for all: if such a relation exists, it will not be invalid merely because two or more of the persons who have so agreed are members of a Hindu undivided family.”

18. This position has also been recognised in Ratanchand Darbarilal v. CIT [(1985) 4 SCC 183 : 1985 SCC (Tax) 654 : (1985) 155 ITR 720] . In that case, there were two firms, one at Katni and one at Satna, constituted by two members of an undivided family with others. The question posed however was whether the Satna firm could be treated as an independent unit of assessment. This Court held that it was a question of fact on which the Tribunal's findings were conclusive. In this view, it left unanswered, as academic, the following question on which the Commissioner had sought a reference: (SCC p. 187, para 3)

“Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in directing that the firm owning the Satna business should be



WEB COPY



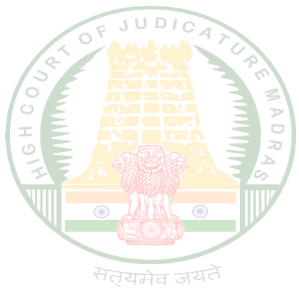
AS.No.643/2008 & CRP.No.1962/2013

registered in spite of the fact that the members of the two HUFs entered as partners inter se without their effecting in the first instance a severance of joint status by partitioning either partially or totally, the assets of the respective HUFs?”

However, in the course of its judgment, the Court observed: (SCC p. 189, para 7)

“The High Court obviously fell into an error in proceeding on the footing that without a partition or a partial partition some of the members belonging to the Hindu undivided family could not constitute themselves into a partnership firm. We do not think this view is correct in law. It is a well settled proposition applicable to Hindu law that members of the joint family and even coparceners can, without disturbing the status of a joint family or the coparcenary, acquire separate property or run independent business for themselves.”

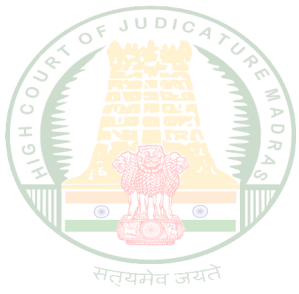
19. Turning now to the specific observations on



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

which reliance has been placed, we do not think that they should be read as permitting a partnership between the karta of a HUF and its individual member only when he brings in some capital but not otherwise. In the context in which they were made, it is seen that they were only limited to point out that there was no claim before the Court, as in Lachhman Das [(1948) 16 ITR 35 : AIR 1948 PC 8 : 74 IA 277] or Majithia [(1942) 10 ITR 457 : AIR 1942 PC 57 : (1942) 2 MLJ 761] that the other member had brought in any separate or divided property as capital. On the contrary, the claim was that the coparceners of the HUF other than the karta, who was the eo nomine partner, should be regarded as partners, though they had not entered into any such agreement and had placed neither capital nor services at the disposal of the firm. It was this claim that was held untenable. Much more significance cannot be read into these observations for, if construed too strictly and in the manner suggested, they will militate against the possibility of a valid partnership being formed in two classes of cases about which there can be no doubt. The first is where

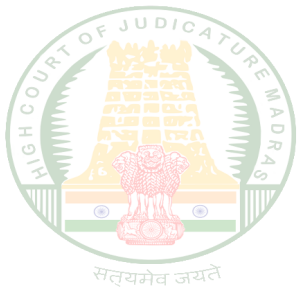


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

an undivided member seeks to become a partner by furnishing capital which has been held permissible in Lachhman Das [(1948) 16 ITR 35 : AIR 1948 PC 8 : 74 IA 277] and approved in Firm Bhagat Ram Mohanlal [(1956) 29 ITR 521 : AIR 1956 SC 374 : 1956 SCR 143] itself. The other is the case of a partnership firm on which more than one partner represents a HUF, the validity of which has been upheld in the cases referred to earlier. The

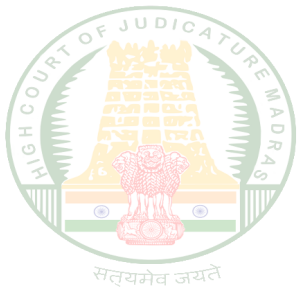
observations cannot, therefore, be read as precluding altogether a claim by an undivided member of a HUF that he has in fact agreed to become a partner along with the karta for genuine and valid reasons. In our view, the Allahabad, [(1981) 131 ITR 492 : 1980 Tax LR 1491 (All)] Madhya Pradesh [(1981) 130 ITR 826 : 1981 Tax LR 448 : 1981 MPLJ 39] and Mysore [(1969) 74 ITR 529 (Mys)] decisions rightly held that the observations in Firm Bhagat Ram Mohanlal [(1956) 29 ITR 521 : AIR 1956 SC 374 : 1956 SCR 143] do not militate against the formation of a valid partnership in such cases."



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

- (41) In *Agarwal and Another Vs. Commissioner of Income Tax, UP*, reported in *AIR 1970 SC 1343*, the Hon'ble Supreme Court once again recognised the distinction between the Kartha of a joint family representing the family as such and a member of the family or any other coparcener. When creditors of the Firm may be entitled to proceed against the joint family assets including the shares of non-partner coparcener for realization of their debts, the liability of the latter arise only by the reason of their status as coparceners and not by reason of any contract of partnership by them.
- (42) Where the Manager of the Hindu Joint family became a partner in the Firm with the help of joint family funds and as partner he was entrusted with the management of the Firm, the Hon'ble Supreme Court in the case of *Mathura Prasad Vs. Commissioner of Income Tax*, reported in *1966 ITR [60] 428*, has held that remuneration earned by a person from a partnership in which he is inducted because he brings into the partnership, his joint family funds could be regarded as separate income of such person and not



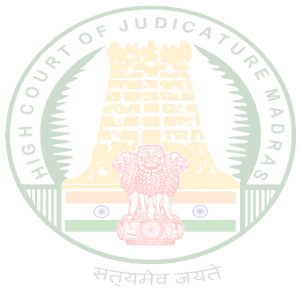
AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

as the income in the hands of Hindu Undivided Family, if he possesses some special aptitude for performing duties with which he is entrusted by the Partnership. The existence of partnership between a joint family and a coparcener of the same family is possible.

(43) It is well settled that there is no presumption under Hindu law that a business standing in the name of any member of the joint family is a joint family business even if that member is the Manager of the joint family. As held by Hon'ble Supreme Court in ***G.Narayanaraju Vs. G.Chamaraju*** reported in ***AIR 1968 SC 1276***, unless it could be shown that the business in the hands of the coparcener grew up with the assistance of the joint family property or joint family funds or that the earning of the business were blended with the joint family estate, the business remains free and separate.

(44) The Hon'ble Supreme Court in ***P.S.Sairam and Another Vs P.S.Rama Rao Pissey and Others*** reported in ***2004 [11] SCC 320*** though accepted the principle, held that there is a presumption that



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

the immovable property in the name of an individual member of the joint family is the property of joint family, held that there is no such presumption which can be applied to business. After referring to its earlier judgment in *G.Narayanaraju's case [cited supra]* reported in *AIR 1968 SC 1276*, which has reiterated the view of the Privy Council in *Annamalai Chettiar's case [cited supra]* the Hon'ble Supreme Court has in unequivocal terms held that the presumption which is normally applied in the case of immovable property cannot be extended and applied to business run by a member of Hindu joint family.

- (45) Quoting the judgment of the Privy Council in *Lachhman Das case [cited supra]* reported in *AIR 1948 PC 8*, a Division Bench of Anhra Pradesh High Court in *Ramakrishna Transports Vs. Commissioner of Income tax* reported in *AIR 1968 AP 34*, has held as follows:-

"13.In view of the above discussion two things may be aid down as well recognised general principles. The first is as stated by Mayne, where a

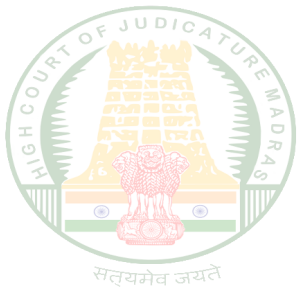


WEB COPY

managing member of a joint Hindu family enters into partnership with a stranger in relation to a business whose capital in whole or in part is derived from the property or funds of the joint family, the family as a unit or the entire body of the family members do not ipso facto become partners in that partnership business. The partnership will be confined to the strangers and such of the members of the family who have actually entered into partnership with them. Secondly the members of the family in their personal or individual capacity can quoad their separate property enter into partnership with the kartha of the joint family who represents the joint family."

(46) In ***Ratanchand Darbarilal Vs. Commissioner of Income Tax***, reported in ***1985 [4] SCC 183 : AIR 1985 SC 1572***, the Hon'ble Supreme Court reiterated the position that members of joint family and even the coparceners can, without disturbing the status of the joint family or the coparcenery, acquire separate property or run independent business for themselves.

(47) The learned Senior counsel appearing for the contesting respondents relied upon the judgment of ***G.Narayanaraju's case***

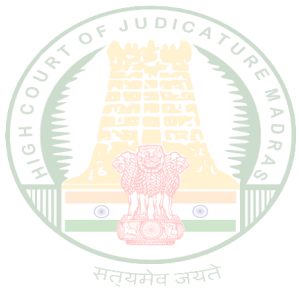


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

[*cited supra*] wherein the Hon'ble Supreme Court has held as follows:-

"3. The first question to be considered in this appeal is whether the business of Ambika Stores was really the business of the joint family and whether the plaintiff was entitled to a partition of his share in the assets of that business. It was contended on behalf of the appellant that the business of Ambika Stores grew out of a nucleus of the joint family funds or at least by the efforts of the members of the joint family including the appellant. The contention of the appellant has been negated by both the lower courts and there is a concurrent finding that the Ambika Stores was the separate business of Muniswami Raju and it was neither the joint family business nor treated as joint family business. It is well established that there is no presumption under Hindu law that a business standing in the name of any member of the joint family is a joint family business even if that member is the manager of the joint family. Unless it could be shown that the business in the hands of the coparcener grew up with the assistance of the joint family property or joint



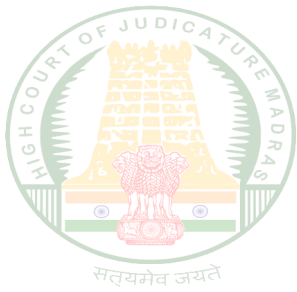
AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

family funds or that the earnings of the business were blended with the joint family estate, the business remains free and separate. The question therefore whether the business was begun or carried on with the assistance of joint family property or joint family funds or as a family business is a question of fact. (See the decisions of the Judicial Committee in Bhuru Mal v. Jagannath [AIR 1948 PC

40] and in Pearey Lal v. Nanak Chand [AIR 1948 PC 108] and of this Court in Chattanatha Karayalar v. Ramachandra Iyer [AIR 1955 SC 799] . In the present case there is a concurrent finding of both the lower courts that the business of Ambika Stores was a separate business of Muniswami Raju and it was neither a joint family business nor treated as joint family business. The concurrent finding of the lower courts on this issue is upon a finding of fact and following the usual practice of this Court, it is not now open to further scrutiny by this Court under Article 133 of the Constitution."

(48) From the several judgments quoted, we may summarise the

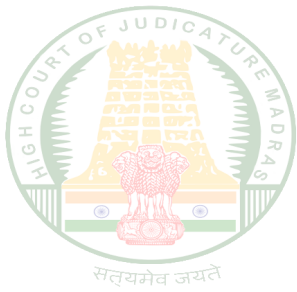


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

following points as the general principles acknowledged by Courts in relation to the Joint family business:

- (a) A male member of a Joint Undivided Family can on his own do business either individually or in partnership with strangers. Unless it is shown that the business was started with joint family funds and the earnings were blended with joint family estates, they remain the separate business of individual member.
- (b) There can be no presumption that a business carried on by a coparcener in partnership with stranger is a family business.
- (c) Substantial assistance and constitution of other members of family may lead to an inference that the business was treated as a family business.
- (d) Where a managing member of a joint family enters into a partnership with a stranger, the other members of the family do not become partners.
- (e) There can be a valid partnership exist between the Hindu



AS.No.643/2008 & CRP.No.1962/2013

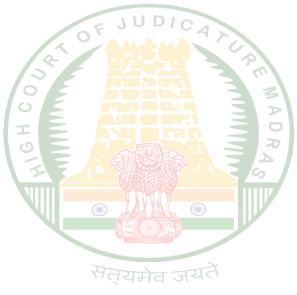
WEB COPY

Undivided Family and one of this members.

(f) The principles drawing presumption as to the character of properties of undivided Hindu Joint family cannot be applied to business.

(g) Members of Joint family, without disturbing the status of the joint family or the coparcenery may acquire separate property or independent business for themselves.

(49) When we apply the principles reiterated by the Hon'ble Supreme Court and this Court and the Privy Council in the judgments referred to above, to the facts of the present case, this Court is unable to hold that properties purchased by the 1st defendant out of the income from the Partnership which was started by first defendant who is a junior member of the family as partner as joint family properties. In this case, the father himself started the weaving business during his life time. The father and sons were living together till his life time. After the death of father in 1952, Nachimuthu, the son born through first wife took over the business as manager of joint family. Nachimuthu was doing the family



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

business and loans were obtained to do the family business. There is no difficulty in treating the properties purchased by Nanjappa, his wife or Nachimuthu as joint family properties. However, acquisition of properties in the name of individual members out of the income they derived from their partnership business cannot be treated as Joint Family property, in the absence of any evidence to show that the 1st defendant was made as a partner on behalf of family out of the funds provided by family. It is true that the learned Senior counsel appearing for the appellant relied upon the admission of DW1 which is in the following lines:-

"எங்கள் வீட்டிலேயே என் தகப்பனார்
இரண்டு கைதறிகள் போட்டு இருந்தார்.....

....என் அப்பா இறக்கும்வரை சந்தைக்கு
சென்று தான் வீட்டில் தறி மூலம் நெசவு
செய்த சரக்குகளை சந்தைக்கு கொண்டு
சென்று வியாபாரம் செய்து வந்தார்.....

,,,என் அப்பா வாங்கிய வீடு பெரிய
வீடாகும். அந்த வீட்டின் முன் பக்கத்தில்
எங்கள் குடும்பத்தினர் குடியிருந்துகொண்டு பின்
பகுதியை கொஞ்சகாலம் வாடகைக்கு



WEB COPY

விட்டிருந்தார்கள்.....ராமலிங்கம் என்பவர் அந்த வீட்டில் பின்பகுதியில் வாடகைக்கு இருந்தார். அவர் எங்கள் உறாராம் அண் கோ, ராஜா டெக்ஸ்டைல்ஸ் நிறுவனங்களில் பார்ட்னர் ஆக இருந்தார்.....

.....நான் குடியிருக்கும் வீட்டை நானும் என் சகோதரர்கள், என் தாயார் ஆகியோர் ஐந்து பேர்கள் சேர்ந்து ஈரோடு நகர கூட்டுறவு வங்கியில் வீட்டை அடமானம் வைத்து 12.12.1963ல் ரூ.5,000/= கடன் வாங்கினோம்.....13.07.1966ல் அதே வீட்டை ஈரோடு நகர கூட்டுறவு வங்கியில் தொடர் அடமானம் வைத்து ரூ.5,000/= கடன் வாங்கினோம் என்றால் சரியல்ல. ரூ.1,800/= மட்டும் கடன் வாங்கினோம்.....

.....என் தகப்பனார் இறந்தபிறகு நாங்கள் அனைவரும் படித்துக் கொண்டிருந்தோம். என் தாயார் சீரங்காயம்மாள், அண்ணன் நாச்சிமுத்துவை விட வயதில் இளையவர் ஆவார். என் அப்பா இறந்தபிறகு நானும் என் சகோதர சகோதரிகளுக்கு 1957 வரை நாங்கள் நாச்சிமுத்துவின் பாதுகாப்பிலிருந்தோம்...

....என் அண்ணன் நாச்சிமுத்து கார்டியனாக கையெழுத்து போட்டார்...



WEB COPY

....1975ம் வரை குடும்ப உறுப்பினர் அனைவருக்கும் ஒரே குடும்ப அட்டைதான். எனக்கு தனிப்பட்ட முறையில் நான் குடும்ப அட்டை வாங்கவில்லை....

....என் அம்மா 1991ல் இறந்துவிட்டார். அப்போது அவருக்கு வயது சுமார் 70. 1979ல் மேற்படி வீடு என் அம்மா உடல்நிலை சரியில்லாமல் இருந்ததால் என் குடும்பத்தின் சார்பாக அய்யா பெயருக்கு மாற்றப்பட்டது. அதற்கு பின்பு அய்யாவு அந்த தவணைத் தொகையை செலுத்தி வந்தார் என்றால், குடும்பத்தின் சார்பாக நாச்சிமுத்து அண்ணன் கட்டி வந்தார்....

...1975ம் வருட வாக்கில் தாவா 3வது அயிட்டத்தில் வீடு கட்டப்பட்டது என்றால் வீடு கட்டப்பட்டது. வருடம் நியாபகம் இல்லை. 1980க்கு முன்பு வீடு கட்டப்பட்டது. 5லைன் வீடுகள் கட்டப்பட்டன. அது எவ்வளவு செலவு செய்தார் என்று எனக்குத் தெரியாது. எனது அண்ணன் நாச்சிமுத்துதான் கட்டினார்...

.....1960ல் தம்பண்ண முதலியார் அந்தக்கூட்டு வியாபாரத்திலிருந்து விலகிவிட்டார் என்றால் சரிதான். நாச்சிமுத்து 1960லிருந்து தனியாக வியாபாரம் செய்து வந்தார். 1966ல்

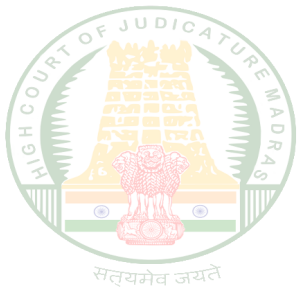


WEB COPY

நிறுத்திவிட்டார் என்றால் சரியல்ல.
நாச்சிமுத்து தான் இறந்த தேதியான
06.07.2000ம் தேதி வரை ஜவுளி வியாபாரம்
நடத்தி வந்தாரா என்றால் கடைசிகாலத்தில்
உடல்நலம் சரியில்லாமல் வரவில்லை.
தம்பண்ண முதலியார் அன்ட் கோ என்ற
விலாசத்தில் நாச்சிமுத்து முதலியார் தான்
இறப்பதற்கு ஒரு வருடம் நடத்தி வந்தாரா
என்றால் 1966 வரை நடத்தி வந்தார். 1966
வியாபாரத்தை நாச்சிமுத்து முதலியார்
நிறுத்தவில்லை நடத்தி வந்தார். 1963,
1966லும் நாச்சிமுத்து முதலியாரும் மற்ற
சகோதரர்களும் ஈரோடு கூட்டுறவு நகர
வங்கியில் கடன் வாங்கினார்களா என்றால்
குடும்ப ஜவுளி வியாபாரத்திற்காக
வாங்கினார்கள்....

.....ஸ்ரீ ரங்கா லுங்கி என்ற கம்பெனி
ஆரம்பிக்கப்பட்டது.. எப்போது என்று ஞாபகம்
இல்லை....ஸ்ரீ ரங்கா லுங்கி கம்பெனியில்
நாச்சிமுத்து, சம்பூர்ணம், ராமலிங்கம் மனைவி
பாக்கியம், முரகேசனின் மகன் சண்முகம்
ஆகியோர் பார்ட்னர்கள் ஆவார்கள். சம்பூர்ணம்
என் மனைவி ஆவார். அந்த இரண்டு
நிறுவனங்களும் ஒரே விலாசத்தில் நடந்தன....

(50) As pointed above, the admission of DW1 about the existence of

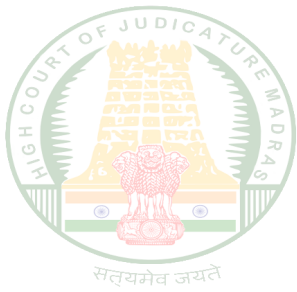


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

joint family business and the starting of partnership business by managing member of the family with strangers may not dislodge his specific case that the income he earned by starting a partnership business with strangers is his separate income.

- (51) Again after referring to the evidence of the plaintiff and 1st defendant in relation to a few partnership ventures under various names, learned Senior counsel appearing for the appellant submitted that members of the family are made as partners of different business concerns with or without inducting any strangers, and that the Trial Court ought to have held that all the business Concerns which were looked after by the male members of the family are joint family business. He also submitted that there was no oral or documentary evidence to prove that the 1st defendant was having any source of income to invest in the business but on the contrary, the appellant has let in evidence to prove that the business Concerns were started from and out of the income from the family. This argument may be appreciated only for Items 1 to 3. Absolutely, there is no evidence to show that 1st defendant was



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

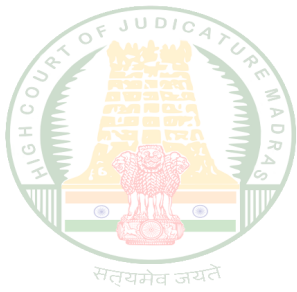
made as partner with the funds of family and that his income as partner was blended with the income of family.

(52) This Court has given the list of dates and events particularly with reference to the relevant events and facts in a chronological order.

Keeping in mind, the oral evidence and the acquisition of property at the relevant point of time, this Court is inclined to consider the character of each and every item in the suit schedule properties in the following order:-

(53) **ITEM No.1:-** Item No.1 of suit schedule was purchased by the father Thiru.Nanjappa Mudaliyar on 04.03.1942 for a fabulous consideration of Rs.3,000/-. There is no dispute with regard to the existence of this property and the right of the plaintiff/appellant to claim equal share along with 1st defendant and other heirs. This property is held to be the joint family property of plaintiff and defendants.

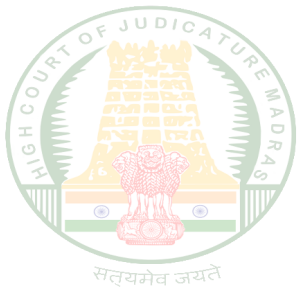
(54) **ITEM No.2:-** Item No.2 of the suit schedule properties, was admittedly allotted in favour of Smt.Seerangayammal, i.e, the 1st wife of Nanjappa Mudaliyar in the year 1963. The appellant



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

admitted in evidence that a sum of Rs.20/- was paid as monthly instalment. However, the mother of plaintiff and 1st defendant, transferred her membership and allotment in favour of 1st defendant. Since 1st defendant admitted that Nachimuthu, his brother, who was Manager of the family was paying the instalments till 1979, learned senior counsel for the appellant contended that this property is the joint family property and therefore, the plaintiff/appellant is entitled to a share in the property. The fact that the allotment was in favour of mother is admitted and the payment of monthly instalments in the name of mother by Nachimuthu is not disputed. Therefore, the acquisition of property in the name of mother, is the joint family property. However, the Sale Deed was obtained in the name of 1st defendant under Ex.B1 dated 22.08.1985 for a consideration of Rs.6,187.80p. From the admitted fact that this item of property was acquired with the aid of joint family and it was originally allotted in favour of mother of plaintiff and 1st defendant and later transferred in favour of 1st defendant, the Trial Court is right in

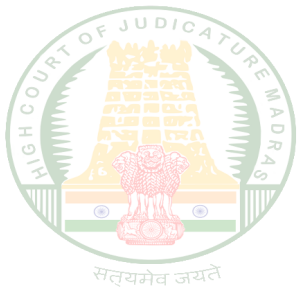


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

holding that Item No.2 of suit schedule property is a joint family property available for partition. The contention of the 1st defendant that it is the separate property of 1st defendant is not supported by any material or evidence.

- (55) **ITEMS No.3 and 8:-** Item No.3 was the property allotted in favour of Mrs.Parvatham, wife of Nachimuthu from Erode Weavers Cooperative Production and Sales Society on 19.05.1967. Item No.8 is a flat in Sampath Nagar purchased by Nachimuthu from the Tamil Nadu Housing Board in the year 1984. Admittedly, Nachimuthu died on 06.07.2000 and his wife died even before the death of her husband, i.e., on 02.04.1993. This Court has already seen that under Exs.A11 and A12, the joint family property was utilised by Nachimuthu in connection with the family business. There is no dispute with regard to the fact that Nachimuthu was the head of the family during his lifetime and he was running the business either with or without any other coparcener. From the evidence, it is seen that Nachimuthu was representing the family as a whole and absolutely, there is no evidence to show the acquisition



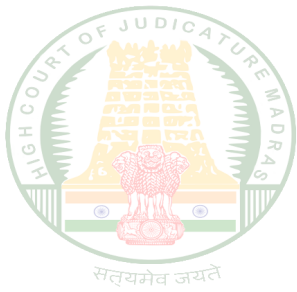
AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

of all properties by Nachimuthu as his individual property.

Learned Senior counsel appearing for the respondents submitted that the 1st defendant has no objection for granting a share to the plaintiff in Items No.3 and 8. Based on the admission of 1st defendant, it would be appropriate to hold that the property of Smt.Parvatham and Nachimuthu who died issueless, as the property of joint family consisting of male members. Therefore, the appellant/plaintiff is entitled to a share in Items No.3 and 8.

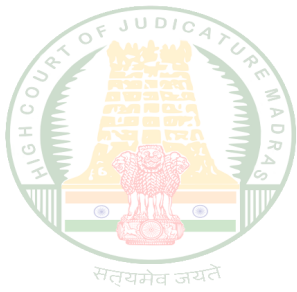
- (56) **ITEMS No.4 to 6:-** Item No.4 is a vacant plot measuring an extent of 1500 sq.ft. purchased by the appellant/plaintiff himself in the year 1975. On the very same day, the 1st defendant purchased plots which are described as Items No.5 and 6 in the suit schedule on 21.06.1975. It is not in dispute that on the date of purchase, plaintiff and 1st defendant were partners in different Firms referred to in the plaint. Though the plaintiff concede that Item No.4 is available for partition and claim share in Items No.5 and 6 on the same premise, the properties described in Items No.5 and 6 are claimed to be the separate properties of 1st defendant. Though the



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

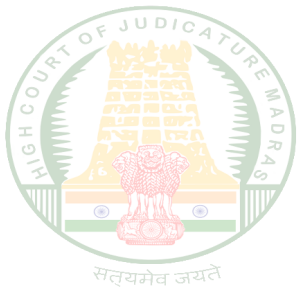
Sale Deeds are in the name of individual partners, there is no direct evidence to show how the sale consideration was paid. In the absence of any independent or clinching evidence to show the source of acquisition of these three items, this Court finds that there cannot be a presumption. It is suggested on behalf of the plaintiff that all these properties were purchased in the name of individual members of the family out of the income from the family business. It is not the case of plaintiff that money was given by Nachimuthu as Kartha of the family. Therefore, in the light of the judgments above referred to, this Court cannot presume that the property was acquired out of joint family nucleus as both were earning from the partnership business. It is pertinent to mention that the 1st defendant in the written statement has specifically spoken about the salary he was earning by writing accounts. It is admitted that the partnership business in the name and style of 'Sri Raja Textiles' was started only in the year 1966. The 1st defendant was married in 1962. Sri Raja Textiles was started in the year 1966. It was seven years after the marriage of Iyyavu, plaintiff got married in



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

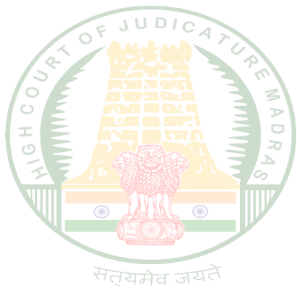
1969. Plaintiff himself admits that 1st defendant was enjoying the properties allotted to him on the dissolution of firms. First defendant completed his schooling in 1956 and got married in 1962. First defendant's investment was just Rs.1500/- when partnership business was started. In the absence of any evidence to show that this money came from joint family, we have no hesitation to hold that the partnership business in 1966 was the separate business of 1st defendant. In the absence of any presumption, as in the case of properties of Hindu Undivided Joint Family, this Court is unable to reject the contention of the learned Senior counsel appearing for the respondents that the 1st defendant contributed to the capital of the Firm out of his own funds. Even if the 1st defendant became partner of business along with the Kartha of the family, this Court cannot presume that the 1st defendant was inducted as a partner in his capacity as a coparcener in the absence of any direct evidence to show the flow of funds from the joint family for his capital. The distinction between the property of Hindu Undivided Family and the business assumes more



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

importance in this case. On the basis of several precedents on this issue, this Court is unable to countenance the submissions of the learned Senior counsel for the appellant for the proposition that every property acquired in the name of members of joint family out of the income from the Partnership Firm, which were constituted either among the members of the family or by inducting strangers to the family as partners, as the joint family properties of appellant and his brothers. This Court is unable to find any evidence that the properties were ever treated by members as properties of joint family. The plaintiff himself has admitted that he came out of the family to have a separate mess in view of the problem his wife had with other female members of the family. All the businesses excepting Sri Raja Textiles came to an end by 1986 and the brothers are carrying on business independently. From the sequence of events, this Court is unable to find reason to hold that the properties purchased in the name of individual members can be claimed by plaintiff to be the properties of joint family. On an overall analysis of the entire evidence, this Court hold that Items



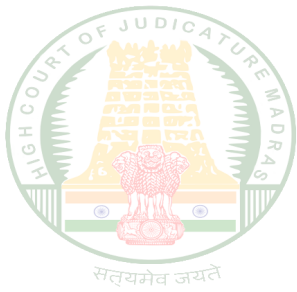
AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

No.4, 5 and 6 are not joint family properties but are the separate properties of individuals in whose name the properties were purchased.

(57) **ITEMS No.7, 10 and 11:-** Item No.7 is the property allotted to the share of 1st defendant on the dissolution of Sri Raja Textiles vide Resolution dated 17.01.1986 marked as Ex.A6. Item No.10 is an extent of 45 ½ cents of land allotted to the share of 1st defendant on dissolution of Sri Raja Textiles. At the time of dissolution of the Partnership Firm in the year 1986, another Partnership Firm by name Sri Hariram and Co., was also dissolved and Item No.11 was allotted to the share of appellant/plaintiff who was a partner. For the reasons stated for Items Nos.4, 5 and 6, this Court finds that these properties are also the separate properties of 1st defendant or the plaintiff. Accordingly, this Court holds that Items No.7 and 10 are the property of 1st defendant and item No.11 is the property of the plaintiff.

(58) **ITEM No.9:-** Item No.9 is a TNHB flat in Sampath Nagar, Erode, which was allotted to 1st defendant by TNHB on 22.01.1984. This

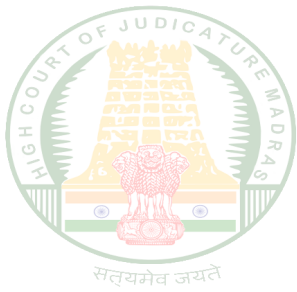


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

Court held that Item No.8 which was purchased by Nachimuthu from TNHB as a joint family property, despite the contention of 1st defendant, that the said property was the separate property of 1st defendant. Item No.8 was held to be acquired by joint family income. As far as item No.9 is concerned the acquisition was by 1st defendant in 1984. From the documents, it is seen that the business run by members of the family was promising and the partners were getting substantial income. When several other properties purchased by 1st defendant are held to be separate properties, this Court, for the same reasons, has to hold that Item No.9 is the separate property of 1st defendant.

- (59) **ITEMS No.12, 13 and 14:-** Item No.12 was purchased by the 6th defendant, wife of 1st defendant on 02.06.1988. Item No.13 is the property originally purchased by daughter of 1st defendant by name sundari and the same was later settled in favour of 1st defendant in the subsequent Settlement Deed on 12.03.2004. Item No.14 was purchased by the 6th defendant on 09.02.2001 after the dissolution of the Firm and this property is held to be purchased out



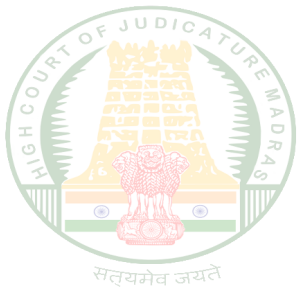
AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

of the income from the joint family business. These three items of properties were purchased by female members of the family long after the dissolution of the Firm Sri Raja Textiles in the year 1986. This Court has already seen that the 1st defendant was given substantial amount on dissolution of Sri Raja Textiles in 1986. As seen from catena of decisions, when properties are acquired in the name of female members that too when they have independent source, there cannot be a presumption. The property purchased in the name of wife of 1st defendant or daughter of first defendant cannot be presumed to be the property of the family. In such circumstances, for the same reasons, Item No.13 also cannot be treated as the joint family property. Further, the daughter of 1st defendant is not made as a party to this suit and hence, this Court holds that Items No.12 to 14 are separate properties.

TO WHAT RELIEF THE APPELLANT IS ENTITLED TO:-

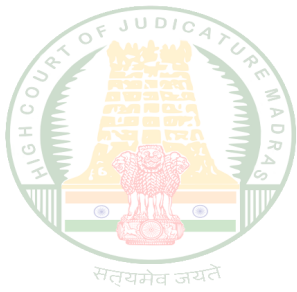
- (60) This Court, after analysing the general Principles of Law touching upon every issues that arise for consideration in this appeal, has decided as to the character of each and every property and the right



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

of plaintiff to seek partition. The Trial Court though held that the plaintiff is not entitled to any relief, this Court has already held that the suit Item No.1 is the property of joint family consisting of plaintiff and his three brothers. Since the father of plaintiff Thiru.Nanjappa Mudaliyar died in the year 1952, the mother of plaintiff Tmt.Seerangayammal who died on 22.03.1991, is also entitled to a share in the property by virtue of Hindu Women's Right to Property Act, 1937. After the Hindu Succession Act, 1956, the limited estate will become her absolute right by virtue of Section 14[1] of Hindu Succession Act, 1956. Therefore, Tmt.Seerangayammal was entitled to 1/5th share when she died. On her death on 22.03.1991, her 1/5th share will devolve on the heirs of Sadasivam, 1st defendant, heirs of Pappathi @ Sarojini and 7th defendant, plaintiff and 12th defendant. Since Sadasivam died, his 1/25th share will devolve on defendants 2 to 5. The 1st defendant is entitled to 1/5th share and another 1/25th share from his mother. Since 7th defendant also died on 22.4.2010, his heirs who were impleaded as defendants 8 to 11 are entitled to 1/25th



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

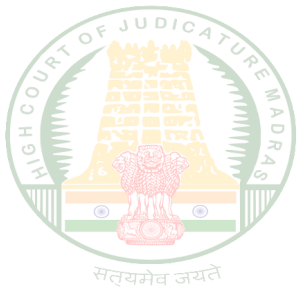
share. The appellant/plaintiff and 12th defendant are also entitled to 1/25th share each, as heirs of Smt.Seerangayammal. **Therefore appellant / plaintiff is entitled to 6/25th share in Item No.1 of the suit schedule properties.**

(61) Since Item No.2 is held to be the joint family property of plaintiff, Sathasivam and 1st defendant, the **plaintiff/appellant is entitled to 1/3rd share in Item No.2.**

(62) Items No.3 and 8 are also held to be joint family properties and hence, **appellant/plaintiff is entitled to 1/3rd share in each items.**

(63) Item No.4 is held to be the property of appellant/plaintiff. Items No.5 and 6 are held to be the properties of 1st defendant and therefore, appellant/plaintiff is not entitled to any share in Items No.5 and 6. **The Appeal Suit is liable to be dismissed in respect of Items No.4 to 6.**

(64) **Items No.7 and 10** are also held to be the properties allotted to 1st defendant on dissolution of Sri Raja Textiles in which he was a partner and hence, they are separate properties of 1st defendant and



AS.No.643/2008 & CRP.No.1962/2013

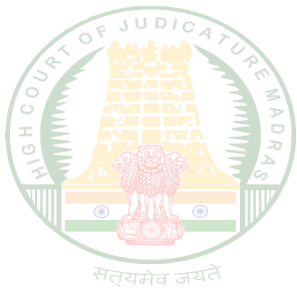
WEB COPY

the plaintiff is not entitled to any share in Items No.7 and 10. Item No.11 is the separate property of the plaintiff/appellant himself.

Therefore, the Appeal Suit is also liable to be dismissed in respect of Items No.7, 10 and 11.

(65) Items No.9, 12 to 14:- This Court has already held that the plaintiff/appellant is not entitled to any share in respect of Items No.9, 12, 13 and 14. **Therefore, the Appeal Suit is liable to be dismissed in respect of Items No.9, 12 to 14.**

(66) The Trial Court dismissed the suit in entirety on the ground of non joinder of necessary parties, namely, female heirs born through first and second wives of Nanjappa Mudaliyar. This Court has found that the female heirs through the 2nd wife are parties. Since the 1st wife predeceased Nanjappa, the **suit is maintainable without impleading the daughters of Nanjappa Mudaliyar born through his 1st wife.** Though the 7th defendant died and his legal heirs are impleaded as defendants 8 to 10, this Court has found that the plaintiff is entitled to 6/25 share in Item No.1 and 1/3rd share each in Items No.2, 3 and 8.



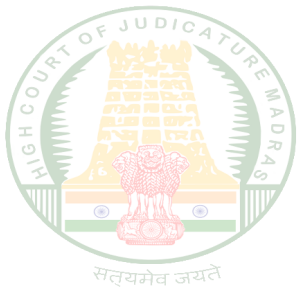
AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

(67) In view of the conclusions reached above, the Appeal Suit is **partly allowed and the judgment and decree of the Trial Court in OS.No.17/2006 is set aside and the suit in OS.No.17/2006 is decreed by declaring that the appellant/plaintiff is entitled to 6/25 share in Item No.1 and 1/3rd share each in Items No.2, 3 and 8.** Considering the relationship between the parties, there shall be no order as to cost.

CRP.No1962/2013:-

- (68) The 1st respondent in the appeal in AS.No.643/2008 is the revision petitioner. The revision petitioner filed a petition for eviction in respect of one of the properties which is the subject matter of OS.No.16/2006 namely, the suit schedule Item No.7.
- (69) The case of the revision petitioner is that the property is his separate property and the respondent in the eviction petition who is the plaintiff in the suit in OS.No.17/2006 and the appellant in AS.No.643/2008, took the property on lease for running his business and the tenancy was monthly. Complaining that the respondent in the Eviction Petition failed to pay rent from March



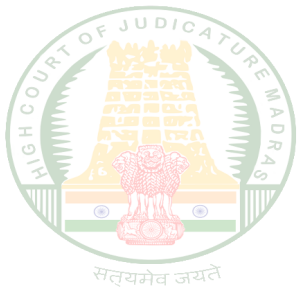
AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

1992 and on the basis of notice issued by the petitioner to the respondent terminating the tenancy by 31.12.2007, a petition for eviction was filed in RCOP.No.4/2008 on the file of the I Additional District Munsif, [Rent Controller] at Erode, on the ground of willful default and on the ground of denial of title of the petitioner.

(70) The respondent in the Eviction Petition, who is none else than the brother of the petitioner and the appellant in AS.No.643/2008 filed a counter affidavit denying the alleged tenancy. It is his specific case that the property is the joint family property of petitioner, respondent and other family members and that, the same is also the subject matter of suit for partition filed by the respondent in OS.No.17/2006. Since the respondent claimed 1/3rd share in all the suit properties including the building which is the subject matter of Eviction Petition, the respondent contested the eviction proceedings on merits and also on the ground that proceedings initiated under Rent Control Act is not maintainable.

(71) The I Additional District Munsif, Erode [Rent Controller] allowed the petition for eviction holding that the petitioner is the owner and

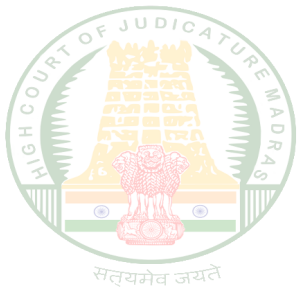


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

that the denial of title is not for *bona fide* reasons. It is to be noted that when the petition for eviction was filed, the suit in OS.No.17/2006 itself was dismissed and there is no wonder why the Rent Controller held title in favour of the revision petitioner herein.

- (72) Regarding the question of tenancy, the Rent Controller relied upon a document marked as Ex.P6 which is nothing but a Xerox copy of the IT Returns of the respondent / tenant. Even though an objection was raised regarding admissibility of the said document and the original was never marked or produced before the Court, the Rent Controller held that the tenancy is proved. It is to be noted that no evidence regarding payment of rent and this fact was also spoken to by the respondent. However, the Rent Controller held that the respondent himself has admitted that he has not paid any rent. Therefore, the petition for eviction has to be allowed on the ground of willful default. Aggrieved by the eviction order of the Rent Controller, the respondent preferred an appeal in RCA.No.14/2012 before the I Additional Sub Court, Erode.

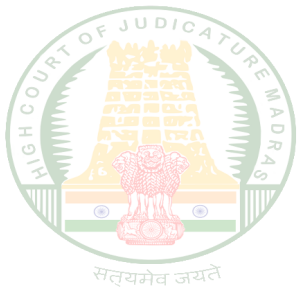


AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

(73) The Appellate Authority after framing necessary issues, held that the claim of the petitioner for eviction on the ground of willful default is unsustainable after considering the evidence of PW1, which would suggest that the partnership business namely Sri Raja Textiles, was started only out of the joint family funds. The Appellate Authority refused to rely upon the document-Ex.P6 and held that the same is not admissible. The Appellate Authority also rendered a finding that the petitioner had not proved the tenancy or payment of rent by the respondent. Therefore, the Appellate Authority has held that the petition for eviction is not sustainable. Aggrieved by the order of the Appellate Authority reversing the order of eviction by the Rent Controller, the above Revision is filed by the revision petitioner who is the 1st respondent in AS.No.643/2008 and the plaintiff in OS.No.17/2006.

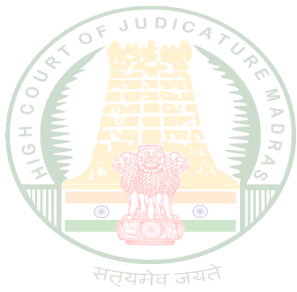
(74) At the time of arguing the Appeal Suit, no elaborate argument was advanced by the learned Senior counsel who is appearing for the 1st respondent in the appeal. Though the learned Senior counsel appearing for the plaintiff relied upon a portion of evidence of



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

revision petitioner in the eviction petition, this Court is not inclined to consider the same as the portion of evidence relied upon by the learned Senior Counsel was not marked as an additional document in the appeal. On the question of existence of tenancy, this Court is unable to find valid reason or ground or material to interfere with the findings of the Appellate Authority. The petitioner pleaded oral tenancy in the petition. However, the tenancy is disputed by the respondent in unequivocal terms. From the perusal of the petition, it is seen that the petitioner has not even pleaded as to the quantum of rent payable by the respondent. However, the petitioner during evidence, came forward with the case that the respondent took the property on lease about 21 years back prior to the eviction petition and was paying a sum of Rs.1350/- per annum. He further stated that the default was from March 1992. There was no notice from 1992 to 2007 when notice terminating tenancy was issued, according to the petitioner. As a matter of fact, the details of tenancy also is not available. Having regard to the nature of property which is located in a prime locality in Erode, the quantum



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY

of rent appears to be very low. The title to the property has now been decided in favour of the petitioner even in the appeal. Though the property is the exclusive property of the petitioner, this Court is unable to interfere with the findings of the Appellate Authority. When this is not a case of tenancy, this Court, as necessary corollary, holds that the petition before Rent Controller is not maintainable.

(75) Accordingly, the **Civil Revision Petition stands dismissed.** However, liberty is given to the revision petitioner to file a civil suit for recovery of possession in the manner known to law. No costs.

[SSSRJ] [CKJ]

14.12.2023

AP

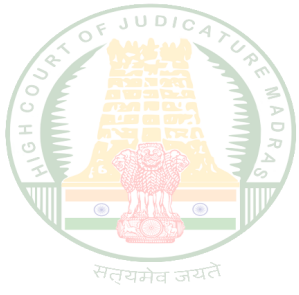
Internet : Yes

To

1.The Additional District Judge
-cum-Fast Track Court No.1, Erode.

2.The I Additional Subordinate Judge
Erode.

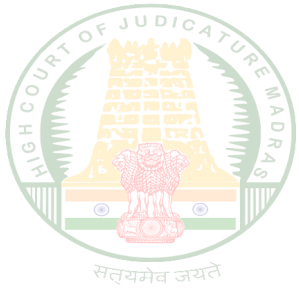
3.The Additional District Munsif,



AS.No.643/2008 & CRP.No.1962/2013

WEB COPY Erode.

4.The Section Officer
VR Section, High Court
Chennai.



WEB COPY



AS.No.643/2008 & CRP.No.1962/2013

S.S.SUNDAR, J.,
AND
C.KUMARAPPAN, J.

AP

Common Judgment
in AS.No.643/2008 &
CRP.No.1962/2013

14.12.2023