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S.A.No.184 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 18 / 09 / 2024

JUDGMENT PRONOUNCED ON : 18 / 12 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.NO.184 OF 2018

AND

CMP NO.4698 OF 2018

1.Ashim Sahib (Died)

2.Shariff

3.Babu

4.Abdul Razak

5.Mariyambi

6.Shabina

(A1 Died, A5 and 6 are brought
on record as LRs' of the deceased
A1 vide Order dated 15.02.2024
made in CMP No.1186 of 2024 in
S.A.No.184 of 2018)

... Appellant /
Respondent /
Defendants

Versus

1.Kamalbi (Died)

2.John Basha

3.Rasululla

4.Aziz

5.Abdul Samath

6.Abdul Salam



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(R1 Died, R2 to R6 who were already on record, are recorded as LR's of the deceased R1, vide Order dated 15.02.2024 made in CMP No.1186 of 2024 in S.A.No.184 of 2018)

... Respondent /
Appellants /
Plaintiffs 2 to 7

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated September 14, 2017 passed in A.S.No.3 of 2016 on the file of the learned Principal Subordinate Judge, Tindivanam reversing the Judgment and Decree dated December 3, 2015 passed in O.S.No.156 of 2008 on the file of the learned Additional District Munsif, Tindivanam.

For Appellants	:	Mr.S.Rajaraman
For Respondent-1	:	Died – Steps taken
For Respondents 2 to 6	:	Ms.T.Jayalakshmi for M/s.Paul & Paul & Mr.J.Hudson Samuel Partners

J U D G M E N T

This Second Appeal is directed by the defendants in the Original Suit. Challenging the Judgment and Decree dated September 14, 2017 passed in A.S.No.3 of 2016 on the file of 'Principal Subordinate Court, Tindivanam' ['First Appellate Court' for short], whereby the Judgment and Decree dated December 3, 2015 passed in O.S.No.156 of 2008 on the file of 'Additional District Munsif Court, Tindivanam' ['Trial



Court' for short] was reversed.

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2. During the pendency of the Original Suit, the first plaintiff-Khadar Basha passed away on March 8, 2011. Hence, his legal heirs were impleaded as Plaintiff Nos.2 to 7 vide Trial Court's Order dated November 14, 2011 in I.A.No.1903 of 2011 in the Original Suit. Hereinafter, for the sake of convenience, the parties will be denoted as per their array in the Original Suit.

PLAINTIFF'S CASE IN BRIEF:

3. In the plaint, it is averred that the Suit Property originally belonged to one Johny Basha as his separate property. He acquired it through the income derived from his mat weaving business. Patta No.886 was issued in his name. Then, on February 14, 2008, Johny Basha sold the Suit Property to the first plaintiff for a valid consideration of Rs.92,000/-. Since then the first plaintiff has been in possession and enjoyment of the same.

3.1. The Defendant Nos.1, 3 and 4 are brothers of Johny Basha and second defendant is first defendant's son. Johny Basha and his



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brothers are all divided and living their life separately. While so, one week after the first plaintiff purchased the Suit Property *i.e.*, on February 20, 2008, the defendants caused a notice stating that the Suit Property is their joint family property and that they have right in it. They attempted to interfere with the first plaintiff's peaceful possession and enjoyment of the Suit Property. Hence the Suit for declaration and permanent injunction.

DEFENDANTS' CASE IN BRIEF:

4. The defendants filed a written statement, denying the plaint averments except those specifically admitted. Sum and substance of the written statement is that the Suit Property was not separate property of Johny Basha. It belonged to the joint family consisting of Johny Basha and defendants 1, 3 and 4, who are all sons of Nane Sahib, as their joint family property.

4.1. The Suit Property is 1 Acre 68 Cents, out of which, 68 Cents originally belonged to Nane Sahib and the remaining 1 Acre was purchased in the name of Johny Basha, as he was the eldest son, using the joint exertions of brothers. Though the brothers are engaged in businesses separately, the properties have been held in common. While the other



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brothers are living outside, the first defendant living in the Suit village is in possession and enjoyment of the Suit Property on behalf of the joint family, paying Kist in his name. When joint family properties were sold before, all the brothers joined together and executed Sale Deed.

4.2. Further, first defendant sought to obtain an agricultural loan from Nallathur Primary Agricultural Co-operative Credit Society on the security of Suit Property and at that time, Johny Basha wrote a consent letter in front of *panchayatdhars* stating that the first defendant has share in the Suit Property. Further, the first defendant along with second defendant had executed Mortgage Deed dated June 26, 2006 in respect of Suit Property, factum of which is known to the plaintiff. This Suit has been filed by the plaintiff in collusion with Johny Basha.

4.3. It is further averred that the 3rd and 4th defendants along with their sisters entered into a Sale Agreement to sell their 4/6th share in Suit Property to first defendant. The said Sale Agreement was registered on December 14, 2007 *i.e.*, before Johny Basha allegedly executed Sale Deed in favour of plaintiff on February 14, 2008. Further, the defendants 1, 3 and 4 issued a notice dated February 20, 2008 to plaintiff and Johny



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Basha asking them not to execute any Sale Deed in respect of Suit Property. The Sale Deed executed by Johny Basha will not bind the defendants. Further the Suit is bad for non-joinder of necessary party viz., Johny Basha. Accordingly, they sought to dismiss the Suit.

TRIAL COURT:

5. At trial, on the side of plaintiffs, the second plaintiff examined herself as P.W.1, one Madhavan was examined as P.W.2 and Ex-A.1 to Ex-A.6 were marked. On the side of defendants, the first defendant was examined as D.W.1, second defendant was examined as D.W.2, one Sathya, wife of Madhavan (P.W.2) was examined as D.W.3 and Ex-B.1 to Ex-B.25 were marked. Upon hearing both sides and considering the oral and documentary evidence, the Trial Court concluded that the plaintiffs failed to prove their case and that Suit Property is joint family property and accordingly, dismissed the Suit.

FIRST APPELLATE COURT:

6. Aggrieved by the dismissal, the plaintiffs approached the First Appellate Court by way of an appeal under Section 96 of the Code of



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Civil Procedure, 1908. The First Appellate Court upon hearing both sides and analysing the oral and documentary evidence, concluded that the parties belong to Islam religion and hence, Muslim Law is the applicable law in this case, to which, classification of properties as joint family properties and separate properties is unknown. The Suit Property was absolute property of Johny Basha. Hence, Ex-A.1 – Sale Deed executed by Johny Basha in favour of first plaintiff is valid. Accordingly, it allowed the appeal, set aside the Judgment and Decree of the Trial Court and decreed the Suit.

SECOND APPEAL

7. Aggrieved by the Judgment and Decree of the First Appellate Court, the defendants have preferred this Second Appeal and the same was admitted on March 4, 2024 on the following Substantial Question of Law:

“Whether the First Appellate Court has ignored the material evidence available on record and also misread Ex.A1 sale deed in favour of the deceased 1st plaintiff to be valid and in the process failed to consider Ex.B1 to ExB.25 which have



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been marked on the side of the defendants”

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ARGUMENTS:

8. Mr.S.Rajaraman, learned Counsel for the appellants / defendants had filed written arguments. He would argue that the First Appellate Court allowed the appeal under the wrong notion that there is no concept of joint family properties in Muslim law. The Appellate Court failed to consider the Judgment in *Aminaddin Munshi vs Tajaddin*, reported in *AIR 1932 Cal 538*.

8.1. He would further argue that the First Appellate Court failed to consider Ex-B.7 to Ex-B.9 – Sale Deeds, which were executed jointly by the brothers, though the properties covered thereunder stood in the name of Johny Basha. This shows that Johny Basha and his brothers purchased properties by using their joint exertions in the name of the eldest brother, Johny Basha. Further, the defendants 1 and 2 are in possession and enjoyment of the Suit Property, on behalf of the joint family consisting of Johny Basha, defendants 1, 3 & 4 as well as their sisters. Thus, Johny Basha was entitled to only 1/6th in the Suit Property and Ex-A.1 – Sale Deed executed in respect of the entirety of Suit



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Property is not valid and binding *qua* his brothers and sisters' 5/6th share

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8.2. Further he would argue that, Johny Basha is a necessary party to the Suit. He was not examined. The plaintiffs are adjacent land owners and therefore, they are well aware of the fact that the Suit Property is joint family property. Ex-A.1 – Sale Deed and the Suit are outcomes of the collusion between plaintiff and Johny Basha. The Trial Court rightly appreciated the evidence and dismissed the Suit. The First Appellate Court erroneously allowed the appeal and decreed the Suit. Accordingly, he would pray to allow the Second Appeal, set aside the Judgment and Decree of First Appellate Court and confirm the Judgment and Decree of Trial Court.

9. Ms.T.Jayalakshmi for M/s Paul & Paul – Mr.J.Hudson Samuel Partners, learned Counsel for the respondents / plaintiffs reiterating the plaint averments would argue that the Suit Property is separate property of Johny Basha which he acquired out of the income from his mat weaving business.

9.1. He would further argue that Johny Basha filed the earlier



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Suit in O.S.No.121 of 2008 on the file of Trial Court against the defendants 1 & 2 herein and one Muniyandi, seeking declaration of title and permanent injunction in respect of properties in Survey No.69/8 (old Survey No.103/6) of an extent of 0.06.0 Hectare and in Survey No.67/7B (old Survey No.106/8) of an extent of 0.14.5 Hectare and in Survey No.64/9 (old Survey No.106/9) of an extent of 0.18.0 Hectare. In the said Suit, he also sought for declaration that the alleged Gift Settlement Deed dated December 24, 2007 and alleged Sale Deed dated January 30, 2008 are invalid. The said Suit was decreed. The said Suit was decreed in favour of Johny Basha and the appeal preferred by the defendants 1 and 2 herein (as defendants 1 and 2 therein) was also dismissed. Defendants 1 and 2 took the same stand viz., joint family properties in the said Suit also, and the same was negatived. Hence, the findings of the Suit has reached finality and the defendants are estopped from contending otherwise. The Suit is hit by the principle of *res judicata*. The Trial Court was not right in dismissing the Suit. The First Appellate Court appreciated the evidence in the right perspective, allowed the appeal and decreed the Suit. There is no reason to interfere with the same. Accordingly, he would pray to dismiss the Second Appeal, and confirm the Judgment and Decree of First



Appellate Court.

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DISCUSSION:

10. This Court has heard on either side and perused the materials available on record in light of the Substantial Question of Law.

11. One Pachi Bibi Ammal, wife of Tipu Sahib executed Ex-B.1 - Sale Deed in favour of her son - Nane Sahib on July 29, 1947 in respect of an extent of 20 Cents in Survey No.82/1, and some more properties. On the same day, said Pachi Bibi Ammal executed Ex-B.2 – Sale Deed in respect of another 20 Cents in Survey No.82/1 and some more properties in favour of her another son – Koodumiyan Sahib. To be noted, said Nane Sahib is the father of Johny Basha and defendants 1, 3 and 4, and the properties covered under Ex-A.1 – Sale Deed also includes Survey No.82/1.

12. On September 16, 1959, Johny Basha purchased an extent of 31 Cents in Survey No.82/1 from Koodumiyan Sahib under Ex-B.4. Further on January 27, 1962, Johny Basha purchased an extent of 66 Cents in Survey No.82/3 vide Ex-B.3 – Sale Deed from one Immam Sahib.



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13. Under Ex-B.7, on September 21, 1989, Johny Basha and his brothers jointly executed a Sale Deed in respect of an extent of 52 Cents in Survey No.82/2 (new Survey No.62/2) in favour of one Ananda Pillai.

14. On June 6, 1990, Johny Basha and his brothers executed Ex-B.8 - Sale Deed in respect of an extent of 35 ½ Cents in Survey No.73/2 (new Survey No.51/4). Recitals thereof show that the Sale was made for the purpose of meeting family expenses.

15. On May 15, 2006, under Ex-B.9 – Sale Deed, Johny Basha and his brothers sold in favour of one N.Sampath the following properties:

<i>Extent</i>	<i>Old Survey No.</i>	<i>New Survey No.</i>	<i>Remarks</i>
94 Cents	69/5	48/2	Purchased by Mahabu Bibi vide Sale Deed dated June 9, 1955
67 Cents	69/1	49/7	Purchased by Johny Basha from Koodumiyan Sahib vide Sale Deed dated September 15, 1972
30 Cents	68/2	47/11	Purchased by Mahabu Bibi vide Sale Deed dated June 9, 1955
57 Cents	68/1	47/11	Purchased by Mahabu Bibi vide Sale Deed dated June 9, 1955
32 Cents	73/2	51/4	Purchased by Mahabu Bibi vide Sale Deed dated June 9, 1955



15.1. Recitals of the said Sale Deed shows that a portion of the properties tabulated above were originally purchased by Mahabu Bibi vide Sale Deed dated June 9, 1955 and another portion was purchased by Johny Basha from Koodumiyan Sahib vide Sale Deed September 15, 1972.

15.2. In other words, said properties that belonged to Mahabu Bibi vide Sale Deed dated June 9, 1955 were inherited by Johny Basha and the defendants 1, 3 and 4 as her sons / legal heirs after her demise. Accordingly, the said properties fell into the hands of the brothers. Along with that, the properties that were purchased in the name of Johny Basha were jointly sold by the brothers. This shows that the said properties purchased in the name of Johny Basha vide Sale Deed September 15, 1972 were purchased as joint family properties. Moreover, it has to be noted that the consideration under Ex-B.9 has been received jointly and not proportionately, which also makes it plausible that the properties were joint family properties. Furthermore, in Ex-B.7 to Ex-B.9, the address of the four brothers were described as the Suit village. This also shows that though they might be engaged in different businesses at different locations, they have been holding the properties as joint Mahomedan



family properties.

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15.3. Similarly, Ex-B.7 and Ex-B.8 would also show that though the properties covered thereunder stand in the name of Johny Basha, the properties were purchased through joint contributions and exertions of the brothers viz., Johny Basha and defendants 1, 3 and 4. Thus, they also support the existence of common properties and the same is held commonly by the other members of the family. Though the Johny Basha and his brothers subsequently were residing in different places, Suit Properties and properties covered under Ex-B.7 to Ex-B.9 held commonly by Johny Basha and his brothers.

16. Mulla, 'Principles of Mahomedan Law' at 50 (Iqbal Ali Khan ed, 21st ed. 2023 LexisNexis) it has been stated after referring this Court judgment in Sahul Hamid Vs. Sulthan reported in AIR 1947 Mad 287, as follows:

*'In Sahul Hamid v. Sulthan it was held by Rajmannar J.
(as he then was):*

“The Mahomedan Law does not recognise a joint family as a legal entity. In fact according to the rules of Mahomedan Law of Succession, heirship



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does not necessarily go with membership of the family. There are several males and females who have no interest in the heritage but may be members of the family. On the other hand there are several heirs like, for example, married daughters of a deceased male owner who taken an interest in the estate but are not part of the family.”

However, if a custom of the family establishing joint holding as is common among Hindus is proved, it will be given effect. Additions to the joint estate by the managing member of a Mahomedan family will be presumed to have been made from the joint estate and will be for the benefit of all the members. But acquisition of property not attributable to the family assets will not be for the family.

But, if all the members of the family live in commensality and are in joint possession of the family properties, it will be for the person claiming property as his own to show that the source of the property was his own.

The personal law of Muslim does not recognise a system of joint holding as is common amongst Hindus. There may be cases, however, where a custom may be set up in the matter of the holding of such properties by some of the members of a Muslim family, whereby it could be established that such possession and title in some of the members is customarily to be interpreted and understood as possession on behalf of all the members.



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Acquisition of property independently by a member cannot automatically be said to be for the benefit of the family. If there is conclusive evidence that a member of the Muslim family, who acquired such properties gained an advantage to himself and caused prejudice to others and if such acquisition is traceable to surplus family assets or funds from and out of which the property could have been purchased, then matters would be different. Again it is also necessary to prove that the members were living jointly and enjoying the property jointly and in common. ”

17. In *Aminaddin Munshi’s Case* (cited *supra*), a Division Bench of Hon’ble High Court of Calcutta has held thus:

*“... The true position with regard to the existence of any presumptions or otherwise regarding acquisitions by members of a joint Mahomedan family has been stated in numerous cases as follows: that where members of a Mahomedan family live in commensality, they do not form a joint family in the sense that expression is used with regard to Hindus and under the Mahomedan law there is not as under the Hindu law any presumption that acquisitions of the several members are made for the benefit of the joint family. Reference in this connection may be made to some of the cases which have been referred to at the bar and to other cases. The cases of *Hakim Khan v. Gool Khan*[(1882) I.L.R. 8 Calc. 826.], *Suddurtonnessa v. Majada Khatoon*[(1878) I.L.R. 3 Calc. 694.] and *Abdool Adood v. Mahomed Makmil* [(1884) I.L.R. 10 Calc. 562.],*



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were cases which were referred in the course of the argument before us. The other cases supporting the same view with reference to acquisitions of members of a joint Mahomedan family may also be referred to, as for instance, *Abdul Kadar vs .Bapubhai* [(1898) I.L.R. 23 Bom. 188.], *Mohamad Amin v. Hasan* [(1906) I.L.R. 31 Bom. 143.] and *Mohideen Bee v. Meer Sahib* [(1915) I.L.R. 38 Mad. 1099.] . The question, however, is different, when it is shown, as is disclosed by the evidence in this case (and it is common ground), that all the members now surviving of the family of Tamijaddin, Najamaddin and Kalar ma were possessing the disputed properties jointly. It is not a question merely of the messing together of certain members of a Mahomedan family. They were possessing these properties in common and in jointness, and the question arises whether the rule can apply to the present case, where, as has been shown by clear evidence on which the Subordinate Judge relied and which we have no reason for discrediting, that the defendant No. 1 was the managing member of such a family. Under those circumstances, it seems to us that the burden of proof would lie on the defendant No. 1 for establishing that the properties which were acquired during the jointness of the family and which are shown to stand in the name of defendant No. 1 do not really belong to the joint family. The defendant No. 1, on the evidence, occupies the position of a managing member, he is in the relationship of a fiduciary character to the other members of his family and has certain obligations to discharge with reference to the other members of the family. Under these



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circumstances, it seems to us that the Subordinate Judge has not gone wrong, with reference to some of these plots, where the properties are said to stand in the name of defendant No. 1, in finding that it is likely to presume that it was for the managing member to show that the property was not the property of the joint family. After making these general observations, we proceed to deal with the specific objections raised with regard to the eight plots now in controversy.”

17.1. From the above it is clear that (i) joint family properties are not unknown to Muslim Law, (ii) joint family properties in Muslim Law are not akin to Hindu joint family properties and (iii) in cases of similar factual matrix, the burden is upon the person who contends that Suit Properties are not joint family properties to prove the same.

18. In this case, Johny Basha was the eldest son. The plaintiff purchased the Suit Property from him and hence, the plaintiff steps into his shoes. The burden is upon the plaintiff to prove his assertion that the Suit Property is separate property of Johny Basha and not joint family property/common property.

19. Ex-A.1 – Sale Deed has no recital as to how the Suit Property came to the hands of Johny Basha. However, as stated *supra*, 20 Cents in Survey No.82/1 were purchased by Nana Sahib, and after his



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demise (Nana Sahib passed away on July 14, 1963 *vide* Ex-B.5 Death

Certificate) it was inherited by the four brothers. The remaining extent

were purchased under Ex-B.3 and Ex-B.4 in the name of Johny Basha.

Though Patta No.886 stands in the name of Johny Basha, the defendants

have filed Ex-B.13 to Ex-B.16 which are Kist receipts for the Suit

Property for the years between 1986 and 2001 standing in the name of first

defendant. They have also filed Ex-B.19 – No Due Certificate issued by

Nallathur Primary Agricultural Co-operative Credit Society in favour of

first defendant, from where he secured loan with the Suit Property as

security. Further, Ex-B.20 - Mortgage Deed executed by first and second

defendants in favour of D.W.2 in respect of Suit Property. These

documents coupled with the written statement averments on the face of it

prove the first defendant's possession and enjoyment of the Suit Property.

It is worthwhile to refer to the evidence of P.W.1 in this regard, wherein he

has admitted the first defendant's possession and enjoyment of the Suit

Property. Relevant extract is hereunder:

' . . . ஜானிபாஷா இந்த சொத்தை யாரிடம்
கிரயம் வாங்கினார் என்றால் தெரியாது. வழக்கு
சொத்து எங்குள்ளது என்றால் எங்கள் நிலத்திற்கு



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மேல்பாதியில் உள்ளது. தாவா சொத்து ஜானிபாஷா சொத்திற்கு கீழ்பக்கம் உள்ளது. நீங்கள் வாங்கிய சொத்து பூராவும் ஒரே சதுரமாக உள்ளதா என்றால் ஆமாம். உங்களுக்கு கிரயம் செய்யும் போது ஜானிபாஷா எங்கிருந்தார் என்றால் கடலூரில் இருந்தார். நீங்கள் வாங்கிய கிரயபத்திரத்தை படித்து காண்பித்தாரா என்றால் இல்லை. அந்த கிரயப்பத்திரத்தில் சொத்து எப்படி சொந்தம் என்று உள்ளது என்றால் தெரியாது. வாதியும் பிரதிவாதியும் அனைவரும் ஒன்றாக சம்பாதித்து ஜானிபாஷா முத்தவர் என்பதால் அவர் பெயரில் கிரயம் வாங்கப்பட்டது என்றால் சரியல்ல. ஜானிபாஷா கிரயம் வாங்கியதற்கு பத்திரம் காண்பித்தாரா என்றால் தெரியாது. இந்த தாவா சொத்து தவிர நன்னாசாகிப் குடும்பத்தில் சொத்து உள்ளது என்றால் சரியல்ல. நன்னாசாகிப் எந்த சொத்தும் வாங்கவில்லை என்றால் சரியல்ல. ஜானிபாஷா கடலூர் சென்ற பிறகு சொத்தை யார் பார்த்துக்கொண்டது என்றால் ஆசிம் சாயபு பார்த்து வந்தார். அவர் மட்டும் தான் ஊரில் இருந்தார். அதனால் அவர் பயிர் செய்து வந்தார். மற்றவர்கள் வெளியூரில் இருந்தனர். ஆசிம் சாயபு நேரடியாக பயிர் செய்தாரா குத்தகைக்கு பயிர் செய்தாரா என்றால் அவர் நேரடியாக தான் பயிர் செய்தார். தற்போது கூட ஜானிபாஷா பெயரிலுள்ள சொத்தை ஆசிம் சாயபு தான் பயிர் செய்கிறார் என்றால் சரிதான். இந்த சொத்தை கிரயம் வாங்கும் போது வில்லங்கம் எடுத்து பார்த்தீரா என்றால்



என் கணவருக்கு தான் தெரியும். இந்த சொத்தை நீங்கள் வாங்கியது தவறு என்று பிரதிவாதிகள் உங்களுக்கு அறிவிப்பு கொடுத்தார்களா என்றால் நாங்கள் வாங்கிய 10 நாள் கழித்து கொடுத்தனர். தாவா சொத்திற்கு பட்டா யார் பெயரில் உள்ளது என்றால் தெரியாது. பிரதிவாதிகள் கொடுத்த அறிவிப்பில் என்ன விவரம் இருந்தது என்றால் தெரியாது. அந்த அறிவிப்பை நீதிமன்றத்தில் தாக்கல் செய்துள்ளீரா என்றால் தெரியாது. . . . '

20. As regards Ex-A.6 – Judgment, the properties covered thereunder were purchased by Johny Basha on March 20, 1973 and on June 5, 1974 as his separate properties. It does not include the Suit Property herein. Further, Johny Basha has established his title and exclusive possession over the properties covered thereunder by examining P.W.1 to P.W.5 and marking Ex-A.1 to Ex-A.25. But that is not the case in the present Suit. Hence, Ex-A.6 will not bind the present Suit and the principle of *res judicata* would not come into picture in this case. Moreover, the plaintiffs whose case is that the Suit is barred by the principle of *res judicata*, ought to have pleaded and filed the pleadings, issues, Judgment and Decree of the earlier Suit. Except Ex-A.6 - Judgment, no other such documents, even the Decree, were filed by the



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plaintiffs. In these circumstances, this Court is of the view that the plaintiffs failed to satisfactorily establish their case. On the other hand, as narrated above, the defendants have *prima facie* established their case.

21. The question as regards whether sisters of Johny Basha and defendants 1, 3 and 4 are entitled to share in the Suit Property is left it open as they are not parties to the Suit.

22. In view of the foregoing narrative, this Court is of the view that Ex-A.1-Sale Deed would not bind the defendants and hence, the plaintiffs are not entitled to declaration of title in respect of the entire Suit Property. Though the reasons assigned by the Trial Court are not sufficient, its final decision is correct. The finding of the First Appellate Court that joint family properties are unknown to Muslim Law is not sustainable. It is true that in Muslim Law there is no concept of joint family akin to Hindu Law. But in view of the *Aminaddin Munshi's Case* (cited *supra*), it is permissible for members of a joint Muslim family to purchase properties out of joint exertions and hold them jointly. In such cases, each member would be entitled to equal share. Accordingly, the Suit



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is liable to be dismissed. Substantial Questions of Law is answered accordingly in favour of defendants.

CONCLUSION:

23. Resultantly, the Second Appeal is allowed. The Judgment and Decree of the First Appellate Court is hereby set aside. The Judgment and Decree of the Trial Court is hereby confirmed. Considering the nature of the case and the relationship between the parties, there shall be no order as to costs. Consequently, connected Civil Miscellaneous petition is closed.

18 / 12 / 2024

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
TK

To

1.The Principal Subordinate Judge
Tindivanam.

2.The Additional District Munsif
Tindivanam.



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R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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