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A.S.Nos.875 of 2018 & 287 of 2



THE HIGH COURT OF JUD ICATURE AT MADRAS

Reserved on 20.12.2023	Delivered on 12.01.2024
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

A.S.Nos.875 of 2018 & 287 of 2021
and
C.M.P.Nos.23048 of 2018 & 8060 of 2021

A.S.No.875 of 2018

1.A.Bhadra Chetty @ A.B.S.Kumar

2.B.T.Shashi Kala

...Appellants

Vs.

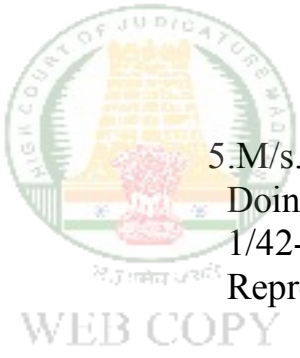
1.Shanmugam

B.Arunagiri (Died)

2.A.Jagannathan

3.Life Insurance Corporation of India Hosur Branch,
Represented by its Branch Manager,
23-C, Weavers Street, Hosur.

4.Oriental Insurance Company Ltd.,
Hosur Branch having their Office at
23-C, Weavers Street, Hosur,
Represented by its Branch Manager



5.M/s.Lakshmi Offset Printers,
Doing business at
1/42-C, Weaver's Street, Hosur,
Represented by its Partner, R.V.Rangarajan

6.L.C.Sampath

7.N.Ramanathan

8.R.Kumar

9.S.Rama Krishnan

10.V.C.Gopala Iyer

11.V.Sattanathan

12.S.Uma devi (Died)

13.S.Hamsa Veni

14.A.Deviyani

15.R.Marakathamba

16.A.Suguna

17.K.Narayana

18.G.Prabhakar Reddy

19.The Principal
ICFAI College,
182/23, Arunagiri Complex,
Hosur - 635 109.

20.J.R.Nagaraju

21.Balaji Babu



22.C.Shanmugam
23.C.Nirupama
24.Swetha Siddesh
25.P.J.Harish Kumar
26.P.J.Deepak
27.Somasundaram
28.K.Kandhakumar
29.S.Murugan
30.S.Shivakumar
31.S.Jayanthi
32.S.Rajeshwari

...Respondents

(R27 to R32 brought on record LR's of the deceased
12th respondent viz. Smt.Uma Devi vide Court order
dated 30.03.2022 made in CMP.No.4921 of 2022 in
A.S.No.875 of 2018 (MKKSJ and VSGJ)

Prayer: First Appeal filed under Section 96 of C.P.C., r/w. Order 41 Rule 1 of the Code of Civil Procedure, 1908, against the judgment and decree in O.S.No.73 of 2004 dated 19.07.2018 on the file of the Additional District Judge, Hosur.

For Appellants : Mr.V.Raghavachari, Senior Counsel
assisted by Ms.Mitra Nesha

For Respondents : Mr.S.S.Swaminathan for R1
Ms.A.L.Ganthimathi, Senior Counsel
assisted by Ms.S.A.Kanmani for R27 to R32
Mr.V.Karthikeyan for Mr.V.Nicholas for R2
R3 to R10, 17 to 22, 26-Given up
R11, R23 to R25 - No appearance
R12 - Died



A.S.No.287 of 2021

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1.Uma Devi (Died)

2.S.Hamsaveni

3.A.Deviyani

4.R.Marakathamba

5.A.Suguna

...Appellants

Vs.

1.A.Shanmugam

B.Arunagiri (died)

2.A.Bhadrha Chetty @ A.B.S.Kumar

3.A.Jagannathan

4.Life Insurance Corporation of India,
Hosur Branch, No.23-C, Weavers Street,
Hosur rep. by its Branch Manager

5.Oriental Insurance Company Ltd.,
Hosur Branch having their Office
At No.23-C, Weaves Street,
Hosur Rep. by its Branch Manager,

6.M/s.Lakshmi Offset Printers,
1/42-C, Weaver's Street, Hosur,
Rep. by its partner RV.Rangarajan



7.L.C.Sampath

8.N.Ramanathan

9.R.Kumar

10.S.Rama Krishnan

11.V.C.Gopala Iyer

12.V.Sattanathan

13.B.T.Shashi Kala

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16.The Principal,

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18.Balaji Babu

19.C.Shanmugam

20.C.Nirupama

21.Swetha Siddesh

22.P.J.Harish Kumar

23.P.J.Deepak

...Respondents

Prayer:- First Appeal filed under Section 96 of the Code of Civil Procedure, against the judgment and decree dated 19.07.2018 in OS.No.73 of 2004 on the file of the Additional District Judge, Hosur.



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A.S.Nos.875 of 2018 & 287 of 2



For Appellants : Ms.A.L.Ganthimathi, Senior Counsel
assisted by Ms.S.A.Kanmani
For Respondents : Mr.S.S.Swaminathan for R1
Mr.V.Raghavachari, Senior Counsel for
Ms.Mitra Nesha for R2 & R13
Mr.V.Karthikeyan for Mr.V.Nicholas for R3
R4, 5, 14, 15, 19 to 23 - No appearance
R6 to R10, 12, 16 to 18 - Left
R11 - Died

COMMON JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

The defendants 2 and 13 in O.S.No.73 of 2004, a suit for partition are on appeal. They are aggrieved by a decree for partition granted by the Trial Court, declaring that the plaintiff would be entitled to 9/32 shares in the suit Items 1 to 7, 1/8th share in suit Items 8 to 11, except the items covered by sale deeds dated 06.09.2007, 16.04.2008, 07.02.2007, 15.11.2006 and 28.04.2004, which are marked as Exs.A39 to A44 in the suit.

2.The plaintiff sued for partition contending that the suit properties belonged to the joint family consisting of the 1st defendant, B.Arunagiri, the plaintiff and defendants 2 and 3, who are the sons of Arunagiri and the

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daughters of the 1st defendant, who were impleaded as defendants 14 to 18.

The other defendants are tenants of the properties in question.

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3.It was the contention of the plaintiff that the 1st defendant belongs to a trading family. The 1st defendant and his brothers, B.Pallappa Chetty, B.Subbaraya Chetty, B.Velayudha Chetty and B.Viswanathaiah constituted a Hindu Joint Family and they had divided the joint family properties amongst themselves under a document of partition dated 25.09.1961. In the said partition, Items 1 to 7 of the suit properties were allotted to the 1st defendant. Therefore, according to the plaintiff, the properties described as Items 1 to 7 in the suit schedule are ancestral joint family properties, in which, he would be entitled to 9/32 share as a coparcener. It was also claimed that the 1st defendant and his brothers were jointly doing yarn business, silk weaving, twisting factory business and flour mill business. It was contended that after partition, the 1st defendant continued the said businesses with the help of the machineries which were allotted to him at the partition and the other properties were acquired from and out of the income from the said businesses.



4.It was also the case of the plaintiff that the 1st defendant and his brothers, after the partition started a partnership business in 1964 in the name of B.Viswanathaiah & Co., at Bangalore which was in trading silk. It was claimed that joint capital of the said business was contributed by the brothers from and out of the income earned by the joint family properties. The 1st defendant became a partner in the said partnership as a Kartha of the joint family consisting of himself and his sons. The capital for the business flew from the income from the joint family properties, which was allotted to the 1st defendant in the 1961 partition. It was also claimed that various buildings that were standing in the name of the 1st defendant were constructed out of the income from the joint family business. It was contended that the 1st defendant ventured into Automobile business wherein, also he was successful. It was also claimed that the certain properties that was purchased in the name of the mother of the 1st defendant were enjoyed as joint family properties and after the death of the mother in the year 1955, the other brothers of the 1st defendant had alienated their shares. However, the share of the 1st defendant remained.



5.It was claimed that huge income was received by the 1st defendant from the joint family properties. Therefore, on the contention that all the properties were joint family properties, the plaintiff sought for 9/32 share in the suit items and for 1/4 share in the income from the Kalyana Mandapam. A prayer for declaration that several sale deeds executed by the 1st and 13th defendants are null and void was also sought for.

6.The 1st defendant died pending suit. The defendants 2, 3 and 13 filed a common written statement and resisted the suit. It was contended that the prayer for division of the suit properties is untenable. It was claimed that there was no joint family business in existence as alleged. It was also alleged that there was no yarn business, since 1984. The flour mill business exclusively belonged to Subbaraya Chetty, one of the brothers of the 1st defendant and therefore, neither the 1st defendant nor his other brothers did not have any right over the same. The silk yarn business was conducted by B.Viswanathaiah, the younger brother of the 1st defendant in which the 1st defendant was the one of the partners along with others. It was claimed that the said partnership was dissolved way back in 1984.



7. It was also claimed that the plaintiff has launched the suit at the instance of Mr.B.Viswanathaiah, who had not settled the share of the 1st defendant in the said business till the date of filing of the written statement.

It was claimed that the partition deed dated 25.09.1961 does not relate to any joint family property. There was no joint family property and the properties that were divided under the partition deed dated 25.09.1961 where all the acquisitions of the brothers from and out of the income from the joint business that was carried on by them. Whatever property that was acquired by the father of the 1st defendant namely, A.Bhadhra Chetty (Senior) namely, an extent of 1 acre 89 cents, which was acquired in the year 1929, was kept in common and reserved for the purposes of performance of certain rituals at the Dhandayuthapani Swami Temple at Palani therefore, none of the properties that were allotted to the 1st defendant under the partition deed dated 25.09.1961 or the properties that were acquired by the 1st defendant after the said partition could be characterized as joint family properties so as to enable the plaintiff to claim a right by birth.

8.It is the contention of the defendants that the properties where acquisitions through the joint exertions of the brothers, who are the sons of



A.Bhadhra Chetty. This would be evident from the fact that the eldest son of

A.Bhadhra Chetty namely, Desi Chetty was not made a party to the partition

deed dated 25.09.1961 and out of the respect the brothers had for the elder

brother they had reserved or allotted a certain portion of the property to be

held by him for life and thereafter, it would revert to the brothers. This

would by itself, according to the defendants, demonstrate that there was no

joint family. The business that was carried on was a joint business and not a

joint family business. Therefore, according to the defendants, all the

properties are self-acquisitions of the 1st defendant and the plaintiff cannot

stake a claim terming them as a coparcenary properties.

9.The 18th defendant filed a written statement, which was adopted by

defendants 14 to 17, the daughters of the 1st defendant. They had

supported the case of the plaintiff. After the death of the 1st defendant on

25.10.2007, the 3rd defendant filed a separate written statement claiming

that the Will dated 30.08.2007 projected by the defendants 2 and 13 is not

true and valid. Subsequently, he took a stand that there was a Hindu Joint

family and the properties belonged to family thereby, shifting his loyalty and

aligning with the plaintiff. The defendants 2, 3 and 13 had filed an



additional written statement setting up a Will and contending that the some properties were allotted to some of the heirs under the Will.

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10.On the above contentions, the learned Trial Judge framed the following issues:-

- 1) வாதிக்கு செக்குபந்தி சொத்தில் 1/4 பாகம் கிடைக்கத்தக்கதா?
- 2) வாடகை சொத்தின் வருமானம், கல்யாண மண்டப வாடகை வருமான கணக்கை வாதி கோர முடியுமா? அதில் 1/4 பாகம் அவருக்கு கிடைக்கத்தக்கதா?
- 3) வாதிக்கு கிடைக்கக் கூடிய பரிகாரம் என்ன?

Additional issues framed on 24.11.2015 as follows:-

- 1) வாதிக்கு தாவா சொத்தில் 4ல் 1 பங்கு பாகம் கிடைக்கத்தக்கதா?
- 2) 28.04.2004 தேதியிட்ட கிரயப் பத்திரம் செல்லத்தக்கதல்ல என்பது சரியா?
- 3) எல்லா தரப்பினர்களையும் இவ்வழக்கில் சேர்க்காததால் வழக்கு பாதிக்கப்பட்டுள்ளதா?
- 4) வேறு என்ன பரிகாரம்?

Additional issues framed on 24.11.2015 as follows:-

- 1) 30.08.2007ந் தேதியில் உயில் உண்மையான செல்லத்தக்க ஆவணமா?
- 2) தாவா சொத்துக்களில் 3ம் பிரதிவாதிக்கு 9/32 பாகம் கிடைக்கக் கூடியதா?



3) தாவா சொத்துக்களில் 14 முதல் 18 பிரதிவாதிகளுக்கு
தலா 1/8 பாகம் கிடைக்கக் கூடியதா?

Issues were recast as follows on 19.07.2018:-

1) வாதிக்கு செக்குபந்தி சொத்தில் 1/4 பாகம்
கிடைக்கத்தக்கதா?

2) வாடகை சொத்தின் வருமானம், கல்யாண மண்டப
வாடகை வருமான கணக்கை வாதி கோர முடியுமா? அதில்
1/4 பாகம் அவருக்கு கிடைக்கத்தக்கதா?

3) 28.04.2004 தேதியிட்ட கிரயப் பத்திரம்
செல்லத்தக்கதல்ல என்பது சரியா?

4) எல்லா தரப்பினர்களையும் இவ்வழக்கில் சேர்க்காததால்
வழக்கு பாதிக்கப்பட்டுள்ளதா?

5) 30.08.2007ந் தேதியில் உயில் உண்மையான
செல்லத்தக்க ஆவணமா?

6) தாவா சொத்துக்களில் 3ம் பிரதிவாதிக்கு 9/32 பாகம்
கிடைக்கக் கூடியதா?

7) தாவா சொத்துக்களில் 14 முதல் 18 பிரதிவாதிகளுக்கு
தலா 1/8 பாகம் கிடைக்கக் கூடியதா?

8) வேறு என்ன பரிகாரம்?

The translation of the recasted issues is as follows:-

1) Whether the plaintiff is entitled to 1/4 share in the
suit properties.

2) Whether the plaintiff is entitled to seek accounting of
the income from the suit properties where he is entitled to 1/4
share in the said income.

3) Whether the claim that the sale deed dated
28.04.2004 is invalid and correct.



4) *Whether the suit is bad for non-joinder of necessary parties.*

5) *Whether the Will dated 30.08.2007 is valid.*

6) *Whether the 3rd defendant is entitled to 9/32 share in the suit properties.*

7) *Whether the defendants 14 to 18 would be entitled to 1/8th share in the suit properties.*

8) *To what other reliefs the parties entitled to?*

11. At trial, the plaintiff examined himself as P.W.1 and Exs.A1 to A51 were marked. On the side of the defendants, five witnesses were examined as D.W1 to D.W.5 and Exs.B1 to B47 were marked. On an appreciation of the evidence on record, the learned Trial Judge concluded that the properties are joint family properties. In order to come to that conclusion, the learned Trial Judge specifically relied upon the recitals in partition deed dated 25.09.1961, which was marked as Ex.A45. The learned Trial Judge rejected the contention of the defendants that the properties were acquired out of the joint exertion of the brothers and they cannot be treated as joint family properties. The learned Trial Judge also disbelieved the Will dated 30.08.2007 and granted a decree for partition as prayed for. The learned Trial Judge however, excluded the properties covered by Exs.A39 to A44



which are the sale deeds and settlement deeds executed by 1st defendant in favour of the other defendants. The learned Trial Judge proceeded on the footing that since Items 1 to 7 were allotted to the 1st defendant in the partition to him and his brothers, there cannot be any dispute regarding their character as joint family properties.

12.As regards the Will, the learned Trial Judge concluded that the attesting witness namely, D.W.2 was not reliable on the basis of certain discrepancies found in evidence regarding the presence of the other attester. Having concluded that the properties are joint family properties, the learned Trial Judge decreed the suit as stated above. Hence, this appeal is by the defendants 2 and 13. The sisters of the 1st defendant / daughters of Arunagiri have filed the appeal in A.S.No.287 of 2021. Their challenge is only to the Clause-3 of the decree which denies them a decree for partition, since they have not paid Court fee and sought for partition.

13.We have heard Mr.V.Raghavachari, learned Senior Counsel assisted by Ms.Mitra Nesha for the appellants in A.S.No.875 of 2018, Mr.S.S.Swaminathan, learned counsel for the 1st respondent, Mrs.A.L.Ganthimathi, learned Senior Counsel assisted by Mr.A.Ramkumar

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and Ms.S.A.Kanmani for the respondents 13 to 16 and the respondents 27 to 32 as well as the appellants in A.S.No.287 of 2021.

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14.Mr.V.Raghavachari, learned Senior Counsel appearing for the appellants would vehemently contend that the learned Trial Judge completely overlooked the difference between joint acquisition and joint family properties. He would submit that what was divided under the partition deed dated 25.09.1961 are only the joint properties that were acquired by the brothers out of their joint exertion and not joint family properties. In order to be characterised as joint family properties / ancestral properties, according to the learned counsel, it should be shown that the properties were either owned by the family for generations or that they were purchased out of the income from or at sufferance of the admitted joint family properties.

15.Drawing our attention to the evidence on record, particularly, the sale deed dated 13.07.1929 marked as Ex.A3, under which, the ancestor A.Bhadhra Chetty (Senior) had purchased an extent of about 1 acre 89 cents in the year 1929, the learned counsel would submit that it is preposterous, even to consider the contention that the properties that were



divided amongst the brothers under the partition deed dated 25.09.1961/Ex.A45 were purchased out of the income from the said property. The learned counsel would point out that the very partition deed dated 25.09.1961 recites that the property purchased by Bhadhra Chetty (Senior) under Ex.A3, dated 13.07.1929 was set apart for performance of certain charities at the Dhandayuthapani Swami Temple at Pazhani and therefore, the said income was not available to the brothers.

16.The learned Senior Counsel would also draw our attention to the fact that the eldest son of Bhadhra Chetty (Senior) namely, Desi Chetty was not a party to the partition deed dated 25.09.1961. That very fact by itself would dispel the claim of the plaintiff that the properties that were divided belongs to the joint family of the sons of Bhadhra Chetty. The learned Senior Counsel would also contend that it was open to the Hindu brothers to join together, carry on business and eke out their livelihood from such business. Such business cannot be termed as joint family business or a coparcenary business so as to enable the descendants to contend that the properties acquired from and out of the income from the business are joint family properties or ancestral properties. Therefore, according to the



learned Senior Counsel, the Trial Court fell in error in concluding that the properties that were divided under the partition deed dated 25.09.1961 were indisputably ancestral properties. Once it is held that the properties that were divided under Ex.A45 are not ancestral properties, the subsequent acquisitions will also not take the colour of ancestral properties.

17.The learned Senior Counsel would further contend that the Trial Court erred in concluding that the Will dated 30.08.2007 has not been proved in accordance with law. The learned senior counsel would submit that the Will was put in custody of the District Registrar and the same was taken out from the custody only on the death of the 1st defendant. Faulting the Trial Court for disbelieving the evidence of D.W.2 on the ground that he is an Advocates' Clerk, the learned counsel would submit such a conclusion is not warranted in law. Once the evidence satisfies the requirements of Section 68 of the Evidence Act, the learned Trial Judge was not right in disbelieving the Will on flimsy circumstances. The learned counsel would further contend that the fact that the Will was drafted by a very Senior Lawyer in Hosur would add credence to it. He would also draw our attention to the admission of the plaintiff in his evidence that his father used



to take the advise of the Senior Lawyer, who drafted the Will. The learned Senior Counsel would also further submit that the Trial Court erred in its conclusion on the nature and character of the property and therefore, the judgment and decree of the Trial Court is liable to be set aside.

18.Contending contra, Mrs.A.L.Ganthimathi, learned Senior Counsel and Mr.S.S.Swaminathan, learned counsel for the respondents would submit that the very recitals in the documents dated 25.09.1961 would show, what was divided under it were joint family properties and not joint properties. They would also point out that the brothers sought to allot certain properties to the eldest son of Bhadhra Chetty namely, Desi Chetty, which would demonstrate that the properties were joint family properties. They would also further contend that in the documents regarding to the business, there is a description that the business belongs to Hindu Undivided Family and the partners were shown as coparceners. According to the learned counsel, the said description would by itself justify the conclusion of the Trial Court that the properties were ancestral properties and therefore, any property acquired with the aid of ancestral nucleus would also part take the character of ancestral properties.



19.As regards the Will, the learned counsel would contend that there was no reason for exclusion of the daughters and the 3rd defendant by the plaintiff. It was also contended that the reasons assigned for exclusion of the plaintiff are also very flimsy. The learned counsel would also submit that the evidence of D.W.2 is not quite impressive and is riddled with contradictions. Therefore, according to the learned counsel, the Trial Court was justified in concluding that the Will has not been proved in accordance with law. We have considered the rival submissions.

20.Upon consideration of the rival submissions, the following points emerged for determination in these appeals:-

- i)Whether the suit properties are joint ancestral properties belonging to the joint family consisting of the 1st defendant and his sons.
- ii) Whether the Will dated 30.08.2007 has been proved in accordance with law.

Issue No.1:

21.It is a fundamental principle of Hindu Law that there is no



presumption that a joint family owns joint family properties. Ancestral property or joint family property is a property inherited by a male Hindu from his father, father's father or father's father's father. The essential ingredient or essential feature of ancestral property under Mitakshara School of Hindu Law is that sons, grandsons and great grandsons of a person, who inherits it, acquire an interest in the property at the moment of their birth. Therefore, in order to term a property as coparcenary property or ancestral property or joint family property, it must be shown that the property was either in the family for three generations or it was acquired from the income from the property, which was in the family for three generations or it was acquired by detriment to the property admitted to be ancestral property. Therefore, a property inherited by a Hindu male from his father, who had acquired by it by some means or the other except by way of devolution from his father would not become ancestral property in the hands of a person, who inherits it.

22. We have to test the character of the property in the hands of Arunagiri, the 1st defendant in the light of the principles above. A. Bhadhra Chetty (Senior) was the common ancestor, he died in the year 1942. His



wife, Kanchana died in the year 1955. He had six sons namely, Desi Chetty, Pallappa Chetty, Subbaraya Chetty, Velayutham Chetty, Arunagiri and Viswanathaiah. Bhadra Chetti had acquired an extent of 1 acre 89 cents of land in the year 1929 under Ex.A3. Five out of the six sons of Bhadhra Chetty jointly carried on business in silk yarn from the year 1947, to be precise from 20.11.1947. This fact is evidenced by Ex.A29, which is an application for import license made in the year 1962 wherein, it is shown that the brothers have been carrying on business as a Hindu Undivided Family, since 28.11.1947.

23.The form of application for import of yarn which forms part of Ex.A29 would reveal that the brothers have been carrying on business from 20.11.1947, as a proprietary concern and the proprietors are the five sons of Bhadra Chetty excluding the eldest, Desi Chetty. The brothers, who are so carrying on business had divided the properties in 1961 under Ex.A45, partition deed. It is the recitals in the said instrument that assume importance in the light of the plaintiff's claim and the evidence that is placed before us. The said document recites that the brothers were living as a joint family and they had divided the movable properties earlier. They had



nominated certain persons as Panchayathars for effecting a division of their immovable properties and according to the decision of the Panchayathars they had divided the properties in the manner set out in the document. The documents recites as follows:-

இவர்களுக்கு நாங்கள் எங்கள் குடும்ப ஸ்தாவர சொத்துக்கள் பாகவிமரிசை செய்து தீர்த்து கொடுக்க சம்மதித்து அதிகாரம் கொடுத்து அதற்கு அவர்களும் ஒப்பி அவர்கள் ஏகோபித்து ஒரு மனதாக பாகம் விமரிசை செய்தபடி நாங்கள் ஏகமனதாக ஒப்புக்கொண்டு எங்கள் குடும்பத்துக்கு சம்மந்தப்பட்ட ஸ்தாவர சொத்துக்களின் மேல் கண்ட பொதுவர்கள் செய்த பாகவிமரிசையை ஒப்பி கீழ் விவரம் கண்டபடி பாக சொத்துக்களை அவரவர்களே தனித்தனி கவாதினமும் அடைந்து விட்டிருக்கிறோம்.

The document further reads as follows:-

1 முதல் 5 வரை லக்கம் கண்டவர்கள் அவரவர்கள் கஷ்டப்பட்டு தனித்தனியாக சம்பாதித்து அவரவர்கள் பேரில் இருக்கும் சொத்துக்கள் அவரவர்களுக்கு பாத்தியப்பட்டவைகளே.

It is these recitals that led to the Trial Court to conclude that the properties are joint family properties.

24.The learned counsel appearing for the respondents would also seek support of the said recitals to justify the conclusions of the Trial Court and also to buttress their submission that these properties are the joint family



properties of the 1st defendant and therefore, the plaintiff would be entitled to right by birth. In order to part take the character of joint family property or ancestral property, it should be shown that the property was inherited from the paternal ancestor or that the property was purchased out of the income from the surplus that is shown to be available from the joint family properties. In the case on hand, except the fact that there was a partition between the brothers of certain properties terming them as family properties, there is nothing to show that these properties were either inherited or that they were purchased out of the income from the joint family nucleus that was available. In fact, there is no evidence to show that there was any joint family nucleus that was available.

25. Admittedly, Bhadhra Chetty (Senior) had died in the year 1942. He had left behind only the property that was purchased under Ex.A3 on 13.07.1929. There is no other evidence to show that Bhadhra Chetty (Senior) was possessed of vast extent of properties. The property that he owned was 1 acre 89 cents and he had a large family of six sons to support. The properties in question, which was divided under the partition deed dated 25.09.1961 were according to the defendants, purchased under Exs.B1 to



B6. Though it is ultimately pointed out by the learned counsel for the respondents that there is no co-relation between the properties covered by the Exs.B1 to B6 and the property that was divided under the Ex.A45, we are unable to sustain the said submission of the learned counsel for the respondents, since Ex.A45 specifically states that the properties that were purchased in the name of Pallappa Chetty, the second eldest brother were divided under Ex.A45.

26.It is also seen that properties covered under Ex.B1 to B6 were also situated in Hosur in the same street as that of the property that was divided under Ex.A45. Neither Exs.B1 to B6 nor Ex.A45 contain a detailed description of the properties. When suits are filed several years after the transaction, perfect evidence or meticulous evidence or very clear evidence on certain aspects would be definitely be lacking and in such situation, the Courts will have to go by preponderance of probabilities. Exs.B1 to B6, sale deeds stand in the name of Pallappa, the second eldest amongst the sons of Bhaddra Chetty (Senior). It is not disputed that these properties are situate in Hosur and Ex.A45, partition deed also relates to properties situate in Hosur and what is divided are properties that were purchased under those



documents. From the extent of properties that is available, we could safely conclude that the properties purchased under Exs.B1 to B6 were the properties that were divided under Ex.B45.

27.It is also seen from Exs.B1 to B6, the properties were purchased in the name of Pallappa, the second eldest son of Bhadhra Chetty, who admittedly is a junior member of the family. Moreover, there is no evidence to establish the fundamental fact namely, existence of a substantial nucleus, capable of yielding of large income and there being possibility of huge surplus that would have aided the acquisitions under Exs.B1 to B6. The only nucleus that is shown to be in existence is the 1 acre 89 cents purchased by Bhadhra Chetty under Ex.A3 on 13.07.1929. It is admitted fact that the brothers namely, younger five sons of Bhadhra Chetty were doing business and some of the properties, particularly, the properties under Exs.B1, B2 and B4 were purchased prior to the commencement of joint business by Pallappa Chetty. Therefore, the contention of the plaintiff that suit items 1 to 7 were purchased out of the income from the ancestral properties and therefore, they would part take the character of joint family properties in which, the plaintiff would acquire a right by birth is



unacceptable to us.

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28. Yet another factor that is pointed out by the learned counsel for the respondents in their attempt to convince us to agree with the findings of the Trial Court is the fact that Ex.A29 states that the business is carried on by a Hindu Undivided family and the owners are coparceners. This contention has to be straight away rejected because a Hindu Undivided Family is altogether different from a joint Hindu Family. It is trite in law that a Hindu Undivided family is a concept unknown to Hindu Law. It is a creature of Income Tax Act. It is all together different concept, which is often used inadvertently as a synonym to Joint Hindu Family.

29. A loose description of members as coparceners in an application for grant of no objection certificate for importing raw silk will not be sufficient to impress the character of joint family properties to the properties owned by individuals, as we had already pointed out in the absence of any evidence to establish the fundamental fact relating to the nature of properties that were divided under the partition deed dated 25.09.1961 (Ex.45), we are unable to sustain the finding of the Trial Court that suit Items 1 to 7 were



ancestral properties and the other properties were purchased out of the income from and out of the said properties.

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30.Unfortunately, the Trial Court was misled by the description in Ex.A45, which we have extracted above. We must point out that the such description itself is wholly insufficient to sustain the conclusion of the Trial Court. All that Ex.A45 states is that எங்களது குடும்ப சொத்துக்கள், which means "our family properties". This description by itself, in the absence of any other evidence to support such description is insufficient to conclude that the properties are joint family properties. There is substantial evidence to show that the brothers were carrying on various businesses at various points in time and they have been partners in some businesses. Some of the family members, who were partners have retired from some firms and while the others retired from other firms. This is evident from Ex.A2 wherein, Pallappa Chetty and Velayutha Chetty and Arunagiri Chetty, three brothers have retired from partnership business carried on in the name of B.Viswanathaiah&Co. at Weavers Street, Hosur and the other two brothers, Subbaraya Chetty and Viswanathaiah had continued as partners of the said firm.



31.The plaintiff and his two brothers had commenced a business in partnership in 1981 in the name of the Arunagiri & Co. On 04.04.1991 under Ex.A21, the 2nd and 3rd defendants, who are the siblings of the plaintiff have retired from Arunagiri & Co. These actions of the parties would demonstrate that the family was a trading family and the family was carrying on business in silk yarn and the purchased properties in the names of various members of the family and those properties, which were purchased in the name of Pallappa Chetty were partitioned under Ex.A45.

32.The important factor that was lost sight of by the learned Trial Judge is exclusion of Desi Chetty, the eldest son of Bhadhra Chetti (Senior) from the partition deed of the year 1961 namely, Ex.A45. If only the properties were joint family properties, it was Desi Chetty, who was the eldest member of the family at that point of time, who should have been Kartha, since Bhadra Chetty (Senior) had died in 1942. Therefore, the conclusion of the Trial Court that the suit Items 1 to 7 were joint family properties and the businesses were carried on as joint family business cannot be sustained. We therefore, answer Point No.1 to the effect that the suit



properties are not ancestral properties and the businesses carried on were not ancestral businesses. They were carried on together by the individuals as family members or as partners at various stages.

Point No.2:-

33.The 1st defendant in the suit Arunagiri, died on 25.10.2007 during the pendency of the suit. The appellants claimed that Arunagiri died leaving a Will distributing his properties amongst his children and the Will that was kept in deposit in the Office of the District Registrar, Krishnagiri was handed over to the 1st appellant and he had, in turn, produced it before the Court along with the sealed cover. The respondents, of course, deny the execution of the Will by the 1st defendant. The 3rd defendant, Jagannathan who was sailing with the defendants 1 and 2, who also filed joint written statement with defendants 1 and 2 and an additional written statement with defendants 2 and 13 after the death of the 1st defendant, however, chose to give evidence disputing the Will. A Will is a document that speaks from the death of the testator and it has to be proved in the manner set out in the Section 68 of the Evidence Act. The only special rule of evidence regarding proof of a Will is that at least one attesting witness should be examined and



suspicious circumstances if any surrounding the execution of the Will will have to be explained by the propounder. We must straight away point out that in the additional written statement filed by defendants 2, 3 and 13, after the death of the 1st defendant on 13.07.2012, there is a specific admission regarding execution of the Will wherein, it is stated that the 1st defendant executed a registered Will on 30.08.2007 in favour of the defendants 2, 3 and 13. The allotments made under the Will were also set out in the said written statement.

34.A perusal of the original Will shows that it has been prepared by a Senior Advocate in Hosur and one of the attesting witnesses is admittedly, the Senior Advocates' Clerk, Mr.P.Jayadevan. He has been examined as D.W.2. While the learned counsel for the appellant would submit that the Trial Court chose to disbelieve the evidence of D.W.2, on the ground that he is an Advocates' Clerk. The learned counsel for the respondents would submit that the learned Trial Judge has also noticed certain discrepancies in the evidence of D.W.2.

35.In order to satisfy ourselves as to the rival claims, we had gone through the evidence of D.W.2. D.W.2 was aged about 69 years at the time



when his evidence was recorded. He has been working as an Advocates' Clerk with the Senior Advocate, Mr.R.Narasimhan, since 1966 and he continues to work as an Advocates' Clerk, with the sons of the said Senior Advocate, who are also practising Advocates in Hosur. In his chief examination, D.W.2 has spoken about the execution of the Will. He has also admitted that Arunagiri used to consult Late Mr.Narasimhan for all his legal matters. Of course, he has admitted that he had not seen all the documents that were brought by Arunagiri, 1st defendant, for preparation of the Will. He has also stated that he does not know the details of properties in the Will. He has stated that the 1st defendant brought the schedule of properties typed in a separate paper and he copied the same in the Ex.B25 Will. As regards attestation, he has very clearly spoken as follows:-

நாங்கள் எல்லோரும் ஒரே மையினால் கையெழுத்து போட்டோம். முதலில் பி.அருணகிரி, இரண்டாவதாக நான், அதன்பிறகு கன்னப்பன், அதன்பிறகு வழக்கறிஞர் ஆர்.நரசிம்மன் ஆகியோர் உயிலில் கையெழுத்து போட்டோம். நான், அருணகிரி, கன்னப்பன், ஆகியோர்கள் ஒரே பேனாவில் கையெழுத்து போட்டோம். எங்கள் வழக்கறிஞர் எந்த பேனாவில் கையெழுத்து போட்டார் என்று எனக்கு ஞாபகமில்லை.

மாவட்ட பதிவாளர் அலுவலகத்தில் கவரில் 2வதாக சாட்சி கையெழுத்து போட்டவர் யார் என்று எனக்கு நினைவில்லை. அவரை நான் பார்க்கவில்லை என்றால் எனக்கு நினைவில்லை.

Of course, he has stated that Mr.R.Narasimhan, Advocate did not inform the



2nd defendant about the Will. He has also stated that he does not know who signed as a 2nd witness in the cover before the District Registrar.

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36.It is seen from the cover that one Gadla Dada Bai, son of Hussain Sahar residing at Anna Nagar, Hosur had signed as a 2nd witness on the cover, that by itself cannot be a ground to disbelieve his evidence regarding execution of the Will. The reasons attributed by the Trial Court for disbelieving the Will are wholly irrelevant. The learned Trial judge had disbelieved the evidence of D.W.2 on the ground that he has not recollected as to who signed on the cover before the District Registrar when the Will was deposited. We do not think that could be a ground to disbelieve his evidence, which is otherwise quite cogent and convincing.

37.It is seen from the records that Narasimhan was the counsel for the deceased, 1st defendant. Therefore, there is nothing amiss in the 1st defendant approaching Mr.Narasimhan for drafting the Will. The source of knowledge, of the 2nd defendant, regarding the Will is not very relevant for the purpose of deciding whether the Will is true and valid. We conclude that the Trial Court was not right in disbelieving the evidence of D.W.2 / the



attestor mainly on the ground that he was an Advocates' Clerk.

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38.The Hon'ble Supreme Court and this Court have repeatedly pointed out that it is not the status of the witness that would decide the veracity of the evidence. Late Mr.Narasimhan, the counsel who drafted the Will was the counsel for the 1st defendant till 2011 and there is nothing wrong in the 1st defendant approaching his counsel for drafting the Will and his long term Advocates' clerk attesting the Will. As on 2007, D.W.2 was associated with Mr.Narasimhan for nearly 40 years from 1966. He also continues to be associated with his sons as Advocates' Clerk till he gave evidence before the Trial Court on 12.01.2017. Disbelieving such evidence of a person, who had been long associated with the Lawyer, who drafted the Will on the ground that he was an Advocates' Clerk, in our opinion, is wholly unacceptable.

39.The next contention that raised by the learned counsel for the respondents for disbelieving the Will is that the deceased Arunagiri has disinherited his daughters also under the Will. Arunagiri has not only disinherited his daughters, he has also disinherited the plaintiff. He has given a specific reasons for disinheriting the plaintiff. He has stated that he



had to sell away his lands as well as his wife's jewels and pay the debts due to the Canara Bank, which had obtained a decree against the plaintiff in O.S.No.4070 of 1993. He has also point out that the plaintiff had sold land that was purchased by the plaintiff and the 2nd defendant jointly and has appropriated the entire sale consideration. He has also given reasons as to why he is not making any bequest to his daughters. He had stated that all daughters are married and residing in far off places with their husbands. The 3rd defendant is apparently is dissatisfied with what he got under the Will and therefore, he shifted his loyalties during the currency of the proceedings. Once we hold that the suit properties are the self-acquired properties of Arunagiri / the 1st defendant, he had every right to bequeath the same or to deal with the same in the manner he liked. Therefore, we do not see any reason to disbelieve the Will executed by Arunagiri the 1st defendant.

40. We find that the evidence of D.W.2 is quite cogent and convincing on the aspect of the execution of the Will. As an attesting witness he is expected to speak only about the execution of the Will and nothing else. The discrepancies that are pointed out by the learned counsel for the respondents are not so vital so as to dilute the effect of his evidence on the execution of



the Will. We therefore, conclude that the Trial Court was not justified in disbelieving the Will executed by the 1st defendant. The 2nd point is also answered in favour of the appellants.

41. In fine, the appeal in A.S.No.875 of 2018 is **allowed**, the judgment and decree of the Trial Court is set aside and the suit in O.S.No.73 of 2004 will stand dismissed. The appeal in A.S.No.287 of 2021 filed by the daughters seeking a share in the properties is **dismissed**. Bearing in mind the relationship between the parties, we do not make any order as to costs. Consequently, connected miscellaneous petitions are closed.

(R.S.M., J.) (N.S., J.)
12.01.2024

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Internet: Yes

Index: Yes

Speaking

Neutral Citation : Yes

To:-

1. The District Court,
Hosur.

2. The Additional District Court,
Hosur.

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A.S.Nos.875 of 2018 & 287 of 2



R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

KKN



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A.S.Nos.875 of 2018 & 287 of 2



A.S.Nos.875 of 2018 & 287 of 2021
and
C.M.P.Nos.23048 of 2018 & 8060 of 2021

12.01.2024