

A.S.No.703 of 1992

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IN THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.03.2024

PRONOUNCED ON : 21.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

A.S.No.703 of 1992

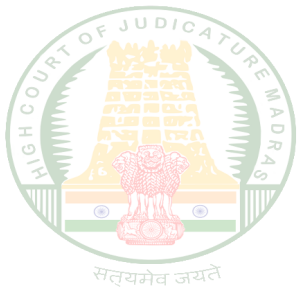
and

C.M.P.Nos. 12845 of 1992 & 8057 to 8059 of 2002

1. C.V.Ahamed Kutty (Died)
2. C.V.Alavi Kutty
3. Kunju Koyambu (Died)
4. Fathima Kutty
5. Abdul Khader
6. Faizel
7. Abida
8. Shaharabanu
9. Iyyathumma (Died)
10. Ayisha Beevi
11. Fathima
12. Sainaba
13. Muhammed Ashraf
14. Muhammed Basheer

(Appellants 4 to 8 are brought on record as LR's of deceased A1, Appellants 9 to 14 brought on record as LR's of deceased A3, vide Court order dated 06.04.2017 made in CMP(MD).No.2220 to 2225 of 2011 in A.S.No.703/1992) ...Appellants/Defendants 9 to 11

vs.



A.S.No.703 of 1992

WEB COPY

1. S.Ramalingam (Died)
2. S.Rajendran
3. Sengamala Servai (Died)
4. Rengasamy Servai (Died)
5. Satiamurthy (Died)
6. Govindammal (Died)

(Memo dated 12.04.2022 filed on 12.04.2022 in USR No. 11044 is recorded as R6 died and respondents 2, 3 and 5 who are already on record, are recorded as LR's of the deceased R6 vide court order dated 08.06.2022 made in A.S.No. 703 of 1992)

7. Perumalsamy Naidu
8. Chinnathambi
9. Kottaisami Naidu,
10. Lakshmi
11. Kailaperumal
12. Soundararajan
13. Arumugam

(Memo dated 12.04.2022 filed on 12.04.2022 in USR No. 11043 is recorded and in respect of respondents 8 to 10, steps is dispensed with vide court order dated 08.06.2022 made in A.S.No. 703 of 1992)

14. Pushpam (Died)
15. Mariammal
16. Nagarathinam
17. Tamilarasi (Died)
18. Mahalingam (Died)
19. Mahadevan (Died)
20. Ganesan
21. Gowri



A.S.No.703 of 1992

22. Manikandan

23. Geetha

24. Mahoharan (Died)

25. Thilgavathi

26. Valarmathi

27. Ayyappan (Died)

28. Revathi

29. Kalaiselvi

30. Nanthakumar

(Memo dated 21.01.2022 in USR No.2312 is recorded and in respect of respondents 12 and 25 to 30, notice is dispensed with vide court order dated 08.06.2022 made in A.S.No. 703 of 1992)

31. Lalitha

32. Ashwanth

33. Ashwanth

34. Kalarani

35. Sakthi Prakash

36. Nithish Kumar

(RR14 to 36 are brought on record as LRs of deceased 4th respondent, vide court order dated 24.09.2019 made in CMP(MD) No. 2291 to 2293/2018 in A.S.No. 703 of 1992)

37. Indhira

38. R.Shivakumar

39. R.Subha

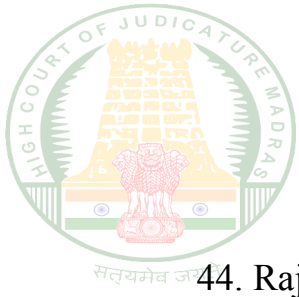
40. R.Agalya

41. R. Kumaran

(RR37 to 41 are brought on record as LRs of deceased 1st respondent, vide court order dated 24.09.2019 made in CMP(MD) No. 2299 of 2018 in A.S.No. 703 of 1992)

42. Agilandam

43. Jeya



A.S.No.703 of 1992

WEB COPY

44. Rajam

45. Susila

46. Rajeswari (Died)

47. Navaneetham

48. Meenakshi

49. Pattammal (Died)

50. Prema

51. Sampasivam

52. Ambikapthi (Died)

53. Karuppaiah

54. Muthukumar

55. Karthikeyan

(RR 42 to 55 are brought on record as LRs of deceased 3rd respondent, vide court order dated 12.12.2022 made in CMP(MD) No. 6207 of 2022 in A.S.No. 703 of 1992)

56. Indhiragandhi

57. Muthulakshmi

58. Muthukumar

(RR 56 to 58 are brought on record as LRs of deceased 52nd respondent, vide court order dated 12.12.2022 made in CMP(MD) No. 10122 of 2022 in A.S.No. 703 of 1992)

59. Nagalakshmi

60. Kalpana

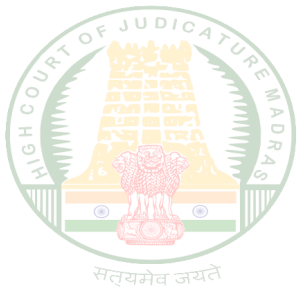
61. Indumathi

62. Alagaresan

(RR 59 to 62 are brought on record as LRs of deceased 5th respondent, vide court order dated 13.03.2023 made in CMP(MD) Nos. 2378, 2382 of 2023 in A.S.No. 703 of 1992)

63. Shanmugapriya

64. Rakshana



A.S.No.703 of 1992

WEB COPY

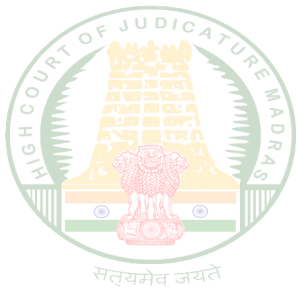
65. Nethra

(RR 14 to 27 died, and the RR 63 to 65 are sou-moto impleaded as LR's of the deceased 27th respondent vide memo dated 23.03.2023 filed on 28.03.2023 in USR.No. 11084 and also as per order of this Court dated 30.03.2023 made in CMP(MD) No.2295 of 2018 in A.S.No. 703 of 1992

....Respondents

PRAYER: The Appeal Suit is filed under under Order 41 Rule 1 of Code of Civil Procedure to set aside the judgement and decree of the Subordinate Court, Tanjore in O.S.No. 26 of 1984 dated 07.10.1991 in so far as it relates to the appellants suit items 19 to 22.

For A1, 3 & 9	:	Died
For A2	:	Mr.V.Meenakshi Sundaram for Mr.S.Thilagavathi
For A4 to A8	:	Mr. J.Barathan for Mr.I.Velpradeep
For A10 to A14	:	Mr.A.S.Mohammed Manzoor
For R1, R3 to R6, R14, R46, R49 & R52	:	Died (Steps Taken)
For R2	:	Mr.A.Senthil Kumar
For R7, R11 & R13	:	Died (Steps due)
For R8 to R10	:	Dispense with
For R12 & R25 to R30	:	Dismissed for default
For R15 & R16	:	Mr.P.Vadivel
For R17 to R20 & R24	:	Died



A.S.No.703 of 1992

WEB COPY

For R21 to R23
& R31 to R36 : Mr.T.Selvan
For R37 to R41 : Mr.V.Ragavachari
Senior Counsel
for Mr.H.Thayumanasamy

For R42, R44, R48,
R50, R51, R53 to
R55, R59 to R62 : Mr.M.P.Senthil

For R43 & R47 : Mr.K. Kuppusamy

For R45 : Mr.K.Guhan

For 56 to R58 &
R63 to R65 : Batta Due

JUDGMENT

This appeal suit has been preferred as against the decree and judgment passed in O.S.No.26 of 1984 on the file of the Subordinate Court, Thanjavur, wherein the respondents 1 and 2 herein have filed the suit for partition in respect of suit properties and the Trial Court has decreed the suit. As against the decree and judgement passed by the Trial Court, the defendants 9 to 11 have preferred this appeal.

2. The brief averments of the amended plaint are as follows:-

2.1 The plaintiffs are the sons of 1st defendant. The 2nd defendant is the younger brother of the first defendant. The suit properties are the

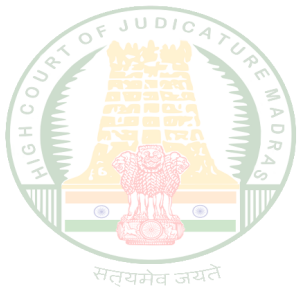


A.S.No.703 of 1992

WEB COPY

ancestral joint family properties. The 4th defendant is the wife of the 1st defendant and mother of plaintiffs. The suit properties item Nos. 1 to 15 are the properties originally owned by the plaintiffs grandfather Chinnathambi Servai. It is his ancestral property. After the demise of Chinnathambi Servai, his two sons 1st and 2nd defendants inherited the properties. The 1st and 2nd defendants are co-parceners. The items 1 to 15 of the suit properties are heavy income yielding lands. From the income of the items 1 to 15 of the suit properties, the 1st and 2nd defendants purchased properties in their name and in the name of 4th defendant and those properties also treated as joint family property. Till now the family is not divided and it continues as Joint family consist of plaintiffs and defendants 1 to 3. The plaintiffs are the members of the joint family and as co-parceners they are entitled to share in the suit properties.

2.2. The 4th defendant has no independent income and the properties stands in her name were purchased out of the income from the joint family properties. The items 17 and 18 stands in the name of the 4th defendant, items 19 to 27 and 16 stands in the name of 1st defendant, items 28 to 31 stands in the name of 2nd defendant. The above said properties are treated as joint family properties. The 1st and 2nd defendants are not paying the



A.S.No.703 of 1992

WEB COPY

share of income from the joint family properties. Further they failed to render proper account of the joint income from the plaint joint family properties. The plaintiffs issued a notice dated 17.08.1983 to the 1st and 2nd defendants and they issued a reply notice dated 26.08.1983 with false allegations. The allegations in the reply notice that the 1st and 2nd defendants had effected partition in 1952 is false. The 1st and 2nd defendants have jointly executed several sale deeds in favour of the 5th to 8th defendants. Patta also stands in the name of Chinnathambi Servai. In the previous notice dated 11.02.1983 the 1st defendant stated that the properties were not measured and divided between the 1st and 2nd defendants. But the second reply notice dated 26.08.1983 averments are in controvention of his previous notice allegations. As stated items 18 to 31 are Punja and Nanja lands and they were divided as several plots and sold some of the plots to several persons by both 1st and 2nd defendants.

2.3. On 21.06.1974, the 1st and 2nd defendants jointly executed the sale deed in favour of the 3rd parties. The 12th defendant is in possession of items 19 to 22 of the suit properties and 13th defendant is in possession of item No. 18 of the suit properties. The 14th defendant claiming some right in items 23 to 27 of the suit properties, but he has no right. The sale deed



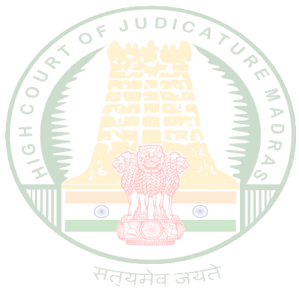
A.S.No.703 of 1992

WEB COPY

executed by 1st, 2nd and 4th defendants are not for valid consideration and the same are not binding on the plaintiffs. Item No. 11 of the suit property is an ancestral house property belonged to plaintiff's father Sengamala Servai and the same was transferred in the name of plaintiff's mother Goindammal by 1st, 2nd and 4th defendants in order to defeat the rights of the plaintiffs. As such, the plaintiffs are entitled to 1/8th share over the suit properties. The plaintiffs are entitled to the account of income from the joint family property at least for 3 years. The 3rd defendant also entitled to 1/8th share in the joint family properties.

3. The brief averments of the written statements filed by the 1st defendant are as follows:-

3.1. The suit is false and vexatious. The allegation on the plaint that items 1 to 15 are the ancestral properties is incorrect. The properties of Chinnathambi cannot be construed as ancestral so far as plaintiffs are concerned. The defendants 1 and 2 have inherited the properties of their father which can only be considered as self-acquisitions of defendants 1 and 2. Hence, there are no joint family properties. The allegation that the properties stands in the name of defendants 1, 2 and 4 were treated as joint family properties is not correct and items 1 to 16 were heavy income

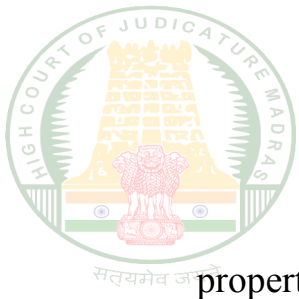


A.S.No.703 of 1992

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yielding is incorrect. The items 1 to 8 were dry lands and there was no income. The items 9 and 10 were flower gardens with meagre income and more often non-productive. Item 11 is Manaicut. Items 13 to 16 are nanja lands. There was no surplus income to form nucleus for any subsequent purchase. The properites (i.e.) items 13 to 16 were purchased only with the funds of defendants 1 to 2. Chinnathambi had neither earlier nucleus nor any wherewithal to purchase items 13 to 16 on 05.10.1939 for a sum of Rs. 3,000/-. The defendants 1 and 2 were earning independently. Similarly earlier, on 13.05.1939, with the income of defendants 1 and 2 plaint item No. 10 was purchased in the name of Chinnathambi for a sum of Rs. 300/-. So also plaint item No. 7 was purchased by the defendants 1 and 2 with their funds in the name of Chinnathambi.

3.2. There is no item No. 12 as mentioned in the plaint. The plaint items 2 to 6 were at the intervention of Governemnt, given to Burmese repatriates about 10 years back and similarly plaint item No. 17 was also taken over. The correct S.No. for item No. 17 must be R.S.No. 22/7 and not R.S.No. 22/6. The plaint item No. 8, R.S.No. 26/2, extent of 0.70 cents did not belong to Chinnathambi but belonged to the defendant's senior paternal uncle and the same was subsequently divided along with other

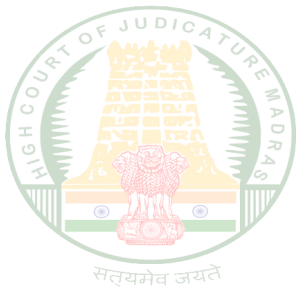


A.S.No.703 of 1992

WEB COPY

properties. The plaint item No. 8 was also taken over by the Government about 10 years back. Therefore the claim of the plaintiffs for item 2 to 6, 8 and 17 are not grantable.

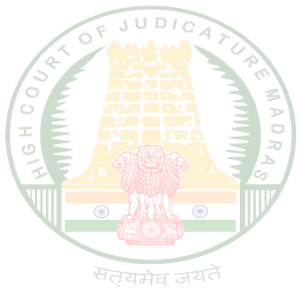
3.3. Items 18 to 20 were purchased by Govindammal, wife of first defendant with her own funds through sale deed dated 19.05.1964, 06.11.1964 and 15.04.1964 respectively. The fourth unidentifiable item does not belong to the joint family. The plaint item No. 22 was also purchased by Govindammal through sale deed dated 26.08.1964 with her funds. The plaint items 23 to 26 exclusively belongs to the first defendant and now the properties are under the lease to Kaliaperumal. The properties items 27 to 31 are self acquired properties of the first defendant. The items 23 to 26 were purchased by the first defendnat through Court Acution on 07.01.1957 for a sum of Rs. 3001/-. The plaint items 27 to 31 were purchased earlier in 1956 with his own funds. The items 27 to 31 were sold to 14th defendant in the year 1969 through sale deed and he has been in possession from 1969. The plaint items 34 to 37 exclusively belongs to the 2nd defendant.



A.S.No.703 of 1992

WEB COPY

3.4 The 1st defendant was a lessee of nearly 50 acres of cashew tope and he made enormous income of his own. There was no surplus income from the lands of Chinnathambi. Further the 1st defendant was a lessee of 30 velis of cashew tope in lakshatope belonging to Kandasamy and also he made enormous income. The properties standing in the names of 1st, 2nd and 4th defendants are not joint family properties. The 1st and 2nd defendants are not liable to pay any share and to render any account to the plaintiff. The defendants 5 to 8 are only Burmese repatriates. In fact in the items 2 to 6, 8 and 17 there are about 60 to 70 houses and the suit is bad for non joinder of necessary parties. The items 21 to 31 are manacuts is incorrect and the 12th defendant is a lessee of the 1st defendant over the items 23 to 26. The 13th defendant constructed the house in 22nd item of the property. Item No.32 is not the ancestral house. The second defendant obtained the eastern 1200 square feet in the partition with first defendant. The 4th defendant purchased 1200 square feet in the eastern side. Even in the year 1973 or 1974 the 4th defendant has constructed a terraced house at her own funds. The sale in favour of the 4th defendant was made only in the year 1983. The first defendant took the western plot along with the thatched house, since it was allotted to him. The 1st and 2nd defendant



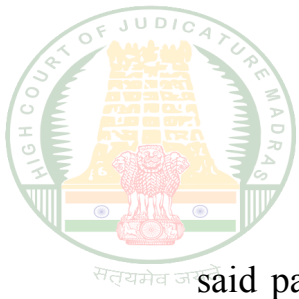
A.S.No.703 of 1992

WEB COPY

effected partition between them in the year 1952 over the properties. The 1st defendant had given Item Nos. 1 to 6, 9 and 11 properties to the plaintiffs in the year 1970 and they are in exclusive possession over those properties and the same was suppressed by the plaintiffs. The plaintiffs are bound to surrender the land in their possession to the 1st defendant and account for profit realised by them. Therefore, the suit is liable to be dismissed.

4. The brief averments of the written statement filed by the 2nd defendant are as follows:-

The suit is false and the 2nd defendant adopts the contentions of the 1st defendant in his written statement in so far as they are not in-consistents with the contentions of this defendants. Items 1 to 16 of the suit properties were not very heavy income yielding properties. In fact the items 1 to 8 are dry lands and there was no income. Items 9 to 10 were flower gardens with meagre income and more often non-productive. Item 11 is manai cut. Item 13 to 16 are nanja lands. There was no surplus income to form nucleus for any subsequent purchase. The defendants 1 and 2 effected partition between them in the year 1952 over the properties. In item No. 11, the 2nd defendant obtained the eastern 1200 square feet in the above



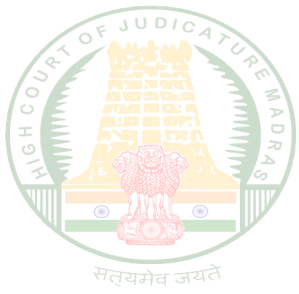
A.S.No.703 of 1992

WEB COPY

said partition and the same was purchased by the 4th defendants even in the year 1968 and the 4th defendant has now constructed the terraced house. The items 34 to 37 do not belong to joint family but belong to the second defendant absolutely. Item No. 34 to 37 were purchased through various sale deeds by the 2nd defendant though his own funds and thereby those properties are self acquired properties of the 2nd defendant. No joint family nucleus funds available and thereby they cannot be treated as joint family properties. The items 1 to 6, 9 and 11 were only the ancestral properties which were not income yielding. The items 2 to 6 were already taken over by the Government and given to the Burmese repatriates. The plaintiffs have suppressed the material facts that the properties given to them by their father. In item No. 9 northern half was allotted to the 1st plaintiff and the remaining eastern half was allotted to the 2nd plaintiff. Therefore, the suit is liable to be dismissed.

5. The brief averments of the written statements filed by the 3rd defendant are as follows:-

The plaint is false and vexatious. This defendant adopts the written statement filed by the 1st defendant. The first defendant sent a notice on 11.02.1983 wherein the properties given to the plaintiffs as well as to this



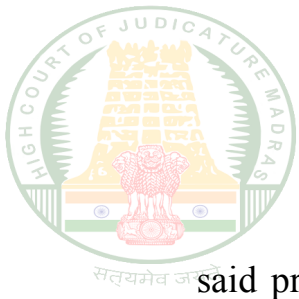
A.S.No.703 of 1992

WEB COPY

defendant in 1970 was referred. The 3rd defendant is in possession of 187 ½ Kulis on the east in plaint item 10 and the same is flower garden. The third defendant was allotted the eastern 400 square feet out of the western 1200 square feet in item 11. This defendant is in possession of 2 ¼ mahs in plaint items 14 to 16. In fact, at the time of giving properties to his sons, the 3rd defendant and the 2nd plaintiff were not married, the 1st defendant has agreed to provide for their marriage expenses by selling two of the items 1 and 7. Therefore the suit is liable to be dismissed.

6. The brief averments of the written statement filed by the 4th defendant are as follows:-

6.1. The suit is false and vexatious. It is false to state that the properties stand in the name of the 4th defendant were purchased out of joint family nucleus and the said properties were treated as joint family properties. The items 18 to 21 were purchased under three different sale deeds each 15 1/3 cents for valuable consideration by this defendant on 19.05.1964, 06.11.1964 and 15.04.1964 respectively. The said properties are self acquired properties of the 4th defendant. The plaint item No. 22 with an extent of 50 cents in R.S.No. 29 also purchased by this defendant through her own funds by way of sale deed dated 26.08.1964. Thereby the



A.S.No.703 of 1992

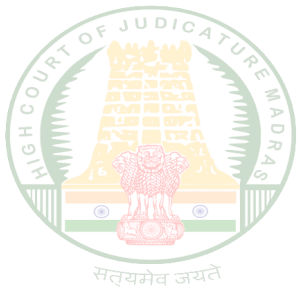
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said property is her absolute property. In respect of item No. 32, the 4th defendant had lent money to one Arumuga Rajapriar and the same was offered as security under a mortgage and the same was discharged on 08.07.1978. The item No. 33 was also obtained by this defendant an othi from on Mahaboob Hussain by paying a sum of Rs. 7,500/- and the same was also discharged in the year 1974.

6.2. The defendant purchased 1200 square feet on the east in T.S.No. 3171 which was obtained by the 2nd defendant in the partition and she constructed a house through her own funds. Thereafter he obtained sale deed from the 2nd defendant only in the year 1983. The plaintiffs are not entitled to any share in the properties purchased by the this defendant with her own funds. The 4th defendant was having milching cows and had saved money from vending milk. Further, the 4th defendant was also given Seervarisai. Therefore, the properties standing in the name of 4th defendant are her self acquired properties and no joint family income. Therefore the suit is liable to be dismissed.

7. The brief averments of the written statement filed by the 5th defendant are as follows:-

The suit is false and vexatious. This defendant does not admit that the



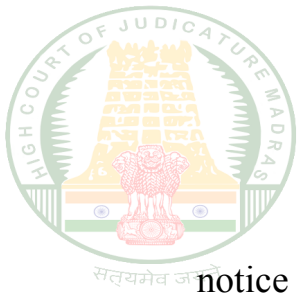
A.S.No.703 of 1992

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suit properties are the ancestral properties of the plaintiffs and the defendants 1 and 2 purchased the properties in their name out of the joint family nucleus. This defendant has built a house over the property acquired by the Governemnt. In fact apart from this defendant there are about 60 to 70 dwelling houses built over the sites granted by the Government. The property is under the possession of the 5th defendant and the same is not available for partition. Since the property have been acquired by the Government of Tamil Nadu, the Government is also a proper and necessary party to the proceedings. Therefore, the suit is liable to be dismissed.

8. The brief averments of the written statements filed by the defendants 9, 10 and 11 are as follows:-

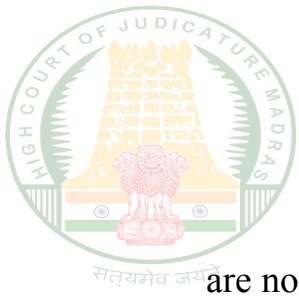
These defendants denies all the allegations in the plaint except those that are admitted by them and put the plaintiffs to strict proof of every one of the allegations. The suit items 23 to 26 are not joint family properties. It is also not admitted that the 1st and 2nd defendants are co-parceners and there was an income derived from the items 1 to 16 of the suit properties. The 1st, 2nd and 4th defendants have purchased the properties through their own income and have never been treated as joint family properties. No



A.S.No.703 of 1992

WEB COPY

notice was served to these defendants. The 1st defendant executed valid sale deeds in favour of these defendants. The 9th defendant had purchased item No. 25 of the suit properties from the 1st defendant by the registered sale deed. Items 23 and 24 have been purchased by the 10th defendant from the 1st defendant. Likewise item No. 26 has been purchased by the 11th defendant from the 1st defendant by a registered sale deed. After receipt of sale consideration as the 1st defendant evaded to register the documents they have been ordered to be compulsorily registered. The balance of sale consideration alone are payable by these defendants to the 1st defendant. Even on the date of execution of the sale deeds the respective defendants have been put in possession of the respective properties. The patta has also been transferred to their name. Some portion have already been sold and the purchasers are also necessary parties. Therefore, the suit is bad for non-joinder of necessary parties. All the transactions have been concluded by the Power of Attorney Agent of these defendants. The 1st defendant has clearly mentioned in the sale deed with the suit items 23 to 26 have been purchased in Government Auction from out of his income alone. The 1st defendant had been in possession and enjoyment of the said items of properties. Hence, the items 23 to 26



A.S.No.703 of 1992

WEB COPY

are not liable for any partition at all. After having sold his property, the 1st defendant herein seems to have set up the plaintiffs in collusion to file this vexatious suit claiming for the relief of partition. These defendants are lawful owners of the said items of properties. Hence the suit is liable to be dismissed.

9. The brief averments of the written statement filed by the 12th defendant are as follows:-

This defendant is cultivating tenants of plaint items 23 to 26 which are cashew tope. This defendant is a tenant from 1973 under 1st defendant and the rent was fixed as Rs. 600/- per annum previously and now fixed at Rs. 800/- per annum. This defendant is entitled to the benefits of Tamil Nadu cultivating Tenants prohibition Act., and as such is entitled to remain in possession. Therefore the suit is liable to be dismissed.

10. The brief averments of the written statement filed by the 13th defendant are as follows:-

This defendant is the brother's son of 4th defendant and was married to the eldest daughter of first and fourth defendant in 1960. This defendant is residing in plaint item No. 22 and the real extent of the properties is only 50 cents and not 70 cents as described in the plaint. This defendant is in



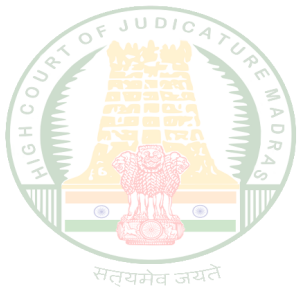
A.S.No.703 of 1992

WEB COPY

possession from 1968 onwards with his family. This defendant occupied the property with lease of 4th defendant who is the owner of the property. Therefore, the suit is liable to be dismissed.

11. The brief averments of the written statement filed by the 14th defendant are as follows:-

The plaint is false and vexatious and this defendant submits that there was no joint family nucleus to provide for the purchase by the first defendant. This defendant has purchased the plaint items 27 to 31 and another item from the 1st defendant. The properties purchased by the 1st defendant are self acquired properties in which the plaintiffs cannot claim any right. This defendant had purchased the properties from the 1st defendant through registered sale deed dated 10.03.1983. In fact, lands purchased were sold even in 1969 from which year this defendant is in possession of the properties. The 1st defendant was delaying to execute the sale deed. Thereafter the sale deed was executed on 18.03.1983 for valuable consideration which was already paid. Therefore, the suit is liable to be dismissed.



A.S.No.703 of 1992

WEB COPY

12. The brief averments of the additional written statement filed by the defendants 9, 10 and 11 are as follows:-

From out of the suit items 23 to 26 different extents of properties have been sold to the following persons mentioned by these defendants. They are also proper and necessary parties to the suits. If they are not impleaded as defendants, the suit has got to be dismissed on the ground of non-joinder of necessary parties.

13. The brief averments of the reply statement filed by the plaintiffs are as follows:-

The averments in the additional written statement filed by the 9 to 11 defendants that the purchasers from the 9 to 11 defendant are also to be made as parties is unnecessary. Once the issue decided in favour of the plaintiffs that the properties are joint family properties, the same is binding upon the purchasers. Therefore, the additional statement is unnecessary. All the share holders have been already impleaded and the subsequent purchasers are not the proper and necessary parties. The names mentioned in the additional written statement are not correct and the persons mentioned in the additional written statement are not proper and necessary parties. Therefore, the plaintiffs are entitled to share over the properties.



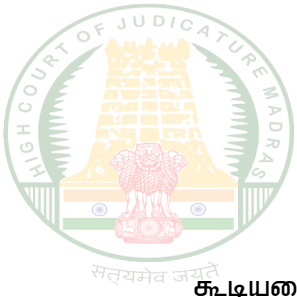
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14. Based on the above said pleadings and hearing both sides, the Trial Court had framed the following issues:-

1. வழக்குறு சொத்துக்கள் அனைத்தும் வாதிகள், ஒன்று முதல் மூன்று பிரதிவாதிகள் அடங்கியுள்ள பொதுக் குடும்பத்திற்கு உரித்தானவைகளா?
2. முதல், இரண்டு மற்றும் நான்கு ஆகிய பிரதிவாதிகளின் பெயர்களில் விற்பணம் பெறப்பட்டுள்ள சொத்துக்கள் அனைத்தும் பொதுக்குடும்ப சொத்துக்களா?
3. முதலாம் பிரதிவாதிக்கும் இரண்டாம் பிரதிவாதிக்கும் இடையே முன்னரே பாகப்பிரிவினை ஏற்பட்டுள்ளதா?
4. முதல், இரண்டு மற்றும் நான்கு பிரதிவாதிகளினால் ஏற்படுத்தப்பட்டுள்ள விற்பணங்கள் அனைத்தும் வாதிகளை கட்டுபடுத்தக்கூடியவைகளா?
5. வழக்குறு சொத்துக்கள் அனைத்தும் சரியான முறையில் விவரிக்கப்பட்டுள்ளனவா?
6. வாதிகளின் குடும்பத்திற்குள் பாகப்பிரிவினை ஏற்பட்டுள்ளதா-?
7. வழக்குறு சொத்துக்களில் வாதிகள் ஒவ்வொருவருக்கும் 1/8 பாகம் பாகப்பிரிவினையின் வாயிலாக கிடைக்கக்கூடியதா?
8. வாதிகளுக்கு கிடைக்கும் நிவாரணம் என்ன?

15. On 24.09.1991, the Trial Court has also framed the following additional issues:-

1. 9 முதல் 11 பிரதிவாதிகளுக்கு சரிநிகர் ஒப்பற்றவின் பலன்கள் கிடைக்கக்



A.S.No.703 of 1992

கூடியவைகளா?

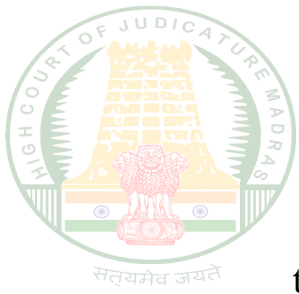
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2. இவ்வழக்கு அத்தியாவசியமான தரப்பினர்கள் சேர்க்கப்படாமை என்னும் குறைவினால் பாதிப்புற்றுள்ளதா?

16. Before the Trial Court on the side of the plaintiffs P.W.1 was examined and marked Ex. A1 to A33. On the side of the Defendants D.W1 to D.W.3 were examined and marked Ex. B1 to B84 and also marked Commissioner report as Ex.C1.

17. Considering the evidence adduced on both sides, the Trial Court has decreed the suit in respect of the properties except 2 to 6, 8 and 17 items of the suit properties. Aggrieved by the said decree and judgement, the defendants 9 to 11 have preferred this appeal on the following grounds:-

1. The judgement and decree of the learned Subordinate Judge, Tanjore is against law, weight of evidence and probabilities in the case.
2. The learned Subordinate Judge has committed an error of law by his failure to note that it was not the case of the plaintiffs that Chinnathambi Servai himself had any ancestral nucleus which enabled Chinnathambi Servai to purchase suit items 1 to 16 and

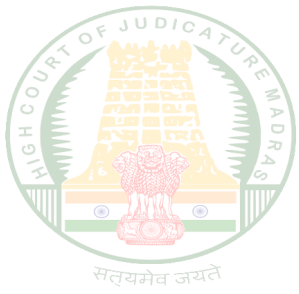


A.S.No.703 of 1992

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therefore on the very admission of the plaintiffs Court below should have held that plaint items 1 to 16 are absolute and self acquired properties of Chinnathambi Servai.

3. The learned Subordinate Judge has committed a patent error or law by his failure to note that till the death of Chinna Thambi Servai the defendants 1 and 2 could not have acquired interest in plaint items 1 to 16 by birth and afortorari, the present plaintiffs, the grand sons of Chinna Thambi Servai could not have any right at all in suit items 1 to 16.
4. The learned Subordinate Judge committed an error of law by his failure to note that only the sons defendant 1 & 2 of Chinna Thambi Servai could have inherited the properties of their father and the present plaintiffs were not the heirs at all and the Hindu Succession Act will govern the parties.
5. The learned Subordinate Judge had committed an illegality in holding that the suit items 1 to 16 were joint family properties because they were acquired by Chinna Thambi Servai and that acquisition by Chinna Thambi Servai was admitted by D1 and D2 forgetting that in law the acquisition of properties by Chinna Thambi

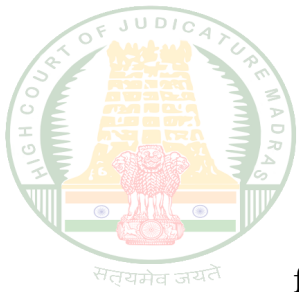


A.S.No.703 of 1992

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Servai cannot become Joint Family Properties in the hands of the son who inherited the same.

6. The learned Subordinate Judge has committed an apparent error of law by his failure to note that there is absolutely no evidence that D1 and D2 treated items 1 to 16 as joint family properties of themselves and their sons.
7. The learned Subordinate Judge has committed an error of law by his failure to note that apart from these items 1 to 16 there was no other properties of the family and therefore the concept that these plaint items 1 to 16 were thrown in hotch-pot will have no application at all and the plaintiffs cannot put forth any claims to the properties.
8. The learned Subordinate Judge has committed an error of law by his failure to note that the very conduct of D-1 and D-2 who effected change of pattas for their properties in their names and purchased properties in their own names and allegedly purchased properties in the name of D-4 the wife of D-1 will not under any stretch of imagination support the plea of plaintiffs that they have treated the properties as joint family properties.
9. The learned Subordinate Judge has committed an error of law by his



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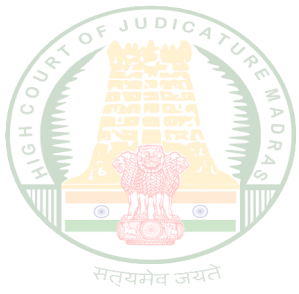
A.S.No.703 of 1992

failure to note that no evidence that item 1 to 16 yielded that amount of income to leave a surplus after meeting the expenses for the family comprising of 3 sons and 9 daughters of D-1 and the children of D-2 to enable the acquisition of further properties and this finding of the learned judge on that aspect is therefore presumptuous.

10. The learned Subordinate Judge has committed an error of law by his failure to note that there is no scope to presume that the acquisitions by D-1 and D-2 are joint family properties as there was no joint family properties at all in the hands of D-1 and D-2 and in any case the plaintiffs have not let in evidence to justify such presumption.

11. The learned Subordinate Judge has committed an error of law by ordering the partition of plaintiffs share in items 19 to 22 in the face case of conclusive proof that the alienations of those items in favour of D-9 to D-11 are fully supported by consideration and the purchasers have taken the possession of the properties, effected change of pattas in their name paid kists for those properties confirming their bonafides.

12. The learned Subordinate Judge has committed an error of law by his failure to record a finding that Defendants 9 to 11 are in physical



A.S.No.703 of 1992

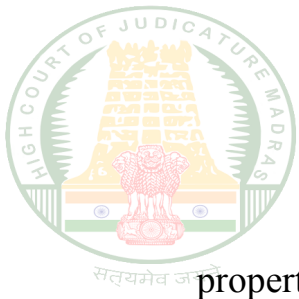
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possession of suit items 19 to 22 which is clinched by documents like Chitta Adangal Exhibits B-60 to B-61 in the name of the Defendant 9 to 11 and payment of kists as per receipts B-58 to B-53 and patta Ex. B-51 to B-53 and Adangals Ex.B.73 to B-79 and Chitta B-80 to B-82.

13.The learned Subordinate Judge has committed an error of law by his failure to note that evidence of DW-3 has proved that the vast area of the properties purchased by D-9 to D-11 have been converted into house plots and sold to various parties and any decision in this suit will be binding on those alinees and only if they are parties to the suit and therefore the failure of the plaintiffs to impleaded them in the suit is fatal.

14.The learned Subordinate Judge has committed an error of law by his failure to note that the grant of equity by allotting the items 19 to 22 purchased by the defendants 9 to 11 to the share of D-1 will not depend upon the total extent available for partition and therefore the failure of the learned judge to grant that relief is against law.

18. The learned counsel appearing for the appellants would contented that these appellants have purchased the items No. 23 to 26 of the suit

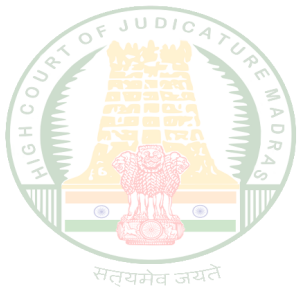


A.S.No.703 of 1992

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properties from the 3rd respondent/1st defendant for valuable consideration and they are the bonafide purchasers. In fact, initially the 3rd respondent/1st defendant entered into an agreement with one Lathip for sale of the schedule 23 to 26 items of the properties through agreement dated 23.01.1974. Thereafter, the sale deed was executed by the 3rd respondent/1st defendant in favour of 9th defendant in respect of 25 item of the suit property and the 10th defendant has purchased the suit item No. 23 and 24 from the 1st defendant. The 26 items was purchased by the 11th defendant from the 1st defendant through registered sale deeds. In fact, after execution of above said sale deeds and after receipt of part of sale consideration, the 3rd respondent/1st defendant evaded to registered documents thereby the documents have been ordered to be compulsorily registered. Even on the date of execution of sale deed, the respective defendants have been put in possession of the respective properties. Thereafter the patta has also been transferred in their respective names. Some portions of the properties are also been sold and the purchasers are also necessary parties to the suit.

18.1 The 3rd respondent/1st defendant in the above said sale deeds clearly mentioned that the suit items 23 to 26 have been purchased in Court



A.S.No.703 of 1992

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Action from out of his income alone. Further he had been in possession and enjoyment of the said items of the properties in his own right exercising all right of ownership. Therefore items 23 to 26 of the suit properties are not liable for any partition. These appellants/defendants 9 to 11 are the lawful owners of the 23 to 26 items of the properties. The plaintiffs also in the plaint have not pleaded specifically about the items 23 to 26 of the properties. They know very well about the execution of the sale deeds in favour of the 9th to 11th defendants in respect of 23 to 26 items. The plaintiffs are silent as to why these defendants are added as parties. The 3rd respondent/1st defendant also in the written statement has not pleaded anything about the sale in favour of these 9th to 11th defendants. Moreover, the 3rd respondent/1st defendant himself in the written statement filed by him specifically stated that the plaint items 23 to 26 were purchased by the 1st defendant in Court auction on 07.01.1957 for a sum of Rs. 3,001/-. Therefore the competent witness to speak about the nature of properties is the 1st defendant and he himself in the written statement pleaded that the items 23 to 26 properties were purchased by him through his own earning in a Court auction. Therefore, the properties of items 23 to 26 are all self acquired properties of the 3rd respondent/1st

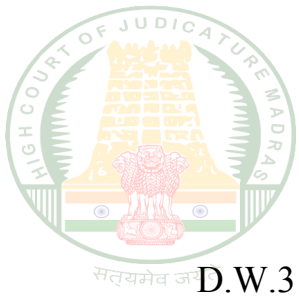


A.S.No.703 of 1992

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defendant. Thereby the plaintiffs are not entitled to any share over the items 23 to 26 of the suit properties. But the Trial Court failed to consider the above said aspects and erroneously decreed the suit.

18.2 Further, the plaintiffs have not pleaded specifically about the sale of properties and the 3rd respondent/1st defendant also did not pleaded specifically about the sale of the properties to these defendants. While so, the plaintiffs and the 3rd respondent/1st defendant colluded each other and suppressed the material facts. Moreover after sale deed in favour of the 9th to 11th defendants they sold the properties to the 3rd parties and the list of parties to whom the sale was made was also given in the additional written statement filed by this appellants/ 9th to 11 defendants, but those parties were not added as parties to the suit and thereby the suit is bad for non joinder of necessary parties. The appellants/9th to 11th defendants have produced the sale deed dated 17.04.1974 as Ex. B39, B40 and B83 respectively. The executor namely the 3rd respondent/1st defendant had never challenged the sale deeds which were compulsorily registered. The 1st and 2nd respondent/plaintiffs have also not challenged the sale deeds and the pleadings are silent in this aspects. Therefore without any pleadings evidence cannot be adduced. On the side of the defendants D.W.1 to



A.S.No.703 of 1992

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D.W.3 were examined and marked marked Ex. B1 to B84. The appellants/9th to 11th defendants have amply proved that they have purchased the properties of items 23 to 26 through sale deed and they have been in possession and enjoyment of the properties and they sold some portion of the properties to 3rd parties. The above said aspects have not been considered by the Trial Court. Further as per the Indian Stamp Act, 1899, *Executed and execution, used with reference to instruments, mean signed and signature; (and includes attribution of electronic records within a meaning of Section 11 of the Information Technology Act, 2000.*

18.3 Though the sale deed was executed, the balance of Rs. 75,000/- to be paid by these appellants. The parties have not challenged the said sale deed within the limitation period. *As per article 58 of Limitation Act, the suit relating to declaration in respect to obtain any other declaration is three years when the right to sue first accrues. As per Section 59 of Limitation Act, to cancel or set aside an instrument or decree or for the sale rescission of a contract, the period of limitation is three years when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.* In this case, the parties have not challenged sale deed within a period of three



A.S.No.703 of 1992

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years as per the Limitation act therefore the suit is not maintainable and the 1st and 2nd respondent/plaintiffs are not entitled to any partition over the items 23 to 26 of the suit properties.

18.4. The learned counsel appearing for the appellants, in support of his contention, has relied upon the following judgments:-

(i) ***A. Ramachandra Pillai v. Valliammal (died)*** reported in ***100 Mad L.W. 486.***;

(ii) ***Shanmugam v. Saraswathi*** reported in ***AIR 1997 MADRAS 226***;

(iii) ***Vijay A.Mittal and others v. Kulwant Rai (Dead) Thr. Lrs. And another*** reported in ***2019 Supp. (1) SAR (Civ) 162***;

(iv) ***Kaliaperumal v. Rajagopal and another*** reported in ***(2009) 4 SCC 193***;

(v) ***Dahiben v.Arvindbhai Kalyanji Bhanusali (Gajra) (D) Thr Lrs and others*** reported in ***AIR 2020 SUPREME COURT 3310 : AIROnline 2020 SC 634***;

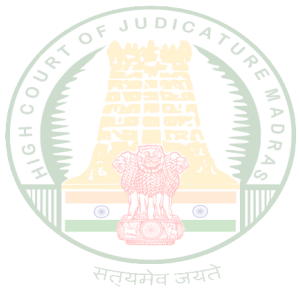
(vi) ***G.K.Palanisamy, Proprietor, Sri Kathirvelu Finance vs. Amudhaveni*** reported in ***2018 (2) MWN (Civil) 264***;

(vii) ***M.Subramaniam @ M.S.Mani vs. S.Ravichandran and another*** reported in ***2018-1-L.W.221***;

(viii) ***Vidhyadhar v. Manikrao and another*** reported in ***(1999) 3 SCC 573***;

(ix) ***Poomalai Padayachi v. Annamalai Padayachi and others*** reported in ***56 L.W. 494***;

(x) ***The Melur Co-operative Marketing Society, rep. By its president,***



A.S.No.703 of 1992

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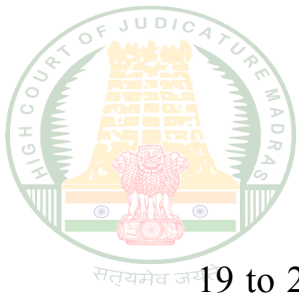
P.R.M.Periakaruppan Ambalam v. Salia Maniam and others reported in 1972 (2) MLJ 406;

(xi) ***M.Venkataperumal Naidu v. Rathnasabhpathi Chettiar*** reported in AIR 1953 Mad 821 : Vol 65 LW 657;

(xii) ***Raveedran Nair v. Thankam*** reported in 1999-3-L.W.162;

(xiii) ***Annamalai Mudaliar and 2 others v. Krishnaveni Ammal and 5 others*** reported in 2020-1-L.W.425;

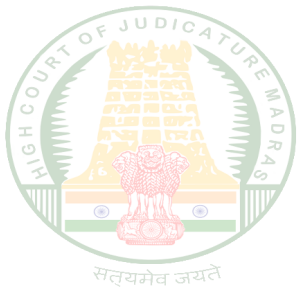
19. The learned counsel appearing for the R2, R37 and R41 would content that originally item 1 to 15 schedule properties are ancestral properties of one Chinnathambi Servai and the said Chinnathambi Servai died intestate leaving behind his two sons i.e., 1st and 2nd defendant namely Sengamala Servai and Rengasamy Servai as his legalheirs. The 1 to 15 items of the suit properties are heavy income yielding lands. From the income of items No. 1 to 15 of the suit properties, the 1st and 2nd defendant herein purchased other items of the properties in the name of 1st, 2nd & 4th defendants. Though the sale deeds stands in the name of 1st, 2nd and 4th defendants, they are the joint family properties and the same were treated as joint family properties. The plaintiffs are the members of the joint family and co-parceners and they are entitled to share in the suit properties. The items 17 to 18 stands in the name of 4th defendant, items



A.S.No.703 of 1992

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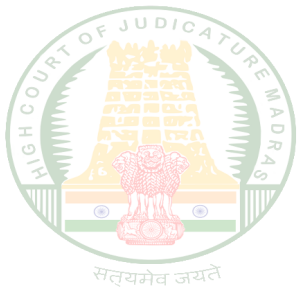
19 to 27 and 16 stands in the name of 1st defendant, items 28 to 31 stands in the name of 2nd defendant. The above said all the properties are treated as joint family properties. The 1st and 2nd defendants have not rendered proper accounts for the joint family properties and also failed to share the income of the joint family properties with the plaintiffs. Therefore, the plaintiffs issued notice on 17.08.1983 to the 1st and 2nd defendants and they sent a reply dated 26.08.1983 with false allegations. In the said notice, they stated that there was a partition between them in the year 1952 and the same is false and still the patta is stands in the name of Chinnathambi Servai. The items 18 to 31 are Punja and Nanja lands and they were divided as several plots and sold some of the plots to several persons by both 1st and 2nd defendants jointly on 21.06.1974. The 1st and 2nd defendants jointly executed the sale deeds in favour of the 3rd parties. The 12th defendant is in possession of the 19 to 22 items of the suit items and 13th defendant is in possession of items 18, 14th defendant is in possession of items 23 to 27 of the suit properties. Hence they also impleaded as parties to the suit. The defendants 12 to 14 have not right or title over the suit properties. The defendants 1 and 2 have not amenable for amicable partition thereby they filed a suit for partition.



A.S.No.703 of 1992

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19.1 In order to prove the case of the plaintiffs, the 1st plaintiff was examined as P.W.1 and marked Ex. A1 to A33. On the side of the defendants, they have examined D.W.1 to D.W.3 and marked Ex.B1 to B84 and also marked Ex.C1, Commissioner report. The plaintiff has categorically deposed about the joint family properties and the properties were purchased in the name of 1st, 2nd and 4th defendants from out of the income derived through 1 to 15 items of the properties. The appellants/ 9th to 11th defendants have not purchased the properties of 23 to 26 items as alleged by them. There was no any consideration passed through those documents and the said documents were compulsorily registered. Since there was no any consideration, the said sale deeds are not considered as valid documents in the eye of law. The 1st and 2nd defendants have taken plea of partition in the year 1952 but the same has not been proved. Once the 1st and 2nd defendant admitted the joint family properties purchased in their name have to be treated as joint family properties, unless the contrary is proved. The first defendant has no independent income and he was only depending upon the income of the agricultural properties (i.e.) 1 to 15 items. Therefore all the properties have to be treated as joint family properties and thereby the plaintiffs are entitled to 1/8th share over the suit



A.S.No.703 of 1992

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properties. The Trial Court also in the judgment after elaborate discussion correctly held that the 1st and 2nd respondent/plaintiffs are entitled to partition over the suit properties. During the pendency of the appeal, the 1st respondent/1st appellant died and his legal heirs were impleaded as 37 to 41 respondents. Therefore the present appeal is liable to be dismissed.

19.2 The learned counsel appearing for the R2, R37 and R41 has relied upon the following judgments to support their contentions:-

(i) *Shyam Narayan Prasad v. Krishna Prasad and others* reported in (2018) 7 SCC 646;

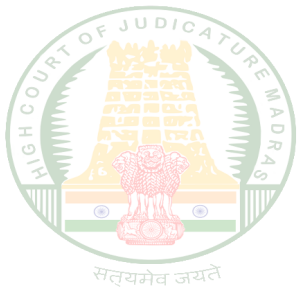
(ii) *Kewal Krishnan v. Rajesh Kumar and others* reported in (2021) 8 MLJ 623;

(iii) *Janki Vashdeo Bhojwani and another v. Indusland Bank Limited and others* reported in (2005) 2 SCC 217;

(iv) *Subhra Mukherjee and another v. Bharat Coking Coal Limited and others* reported in AIR 2000 SUPREME COURT 1203;

(v) *Prasanta Kumar Sahoo and others v. Charulata Sahu and others* reported in 2023 (2) CTC 755;

20. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Trial Court.



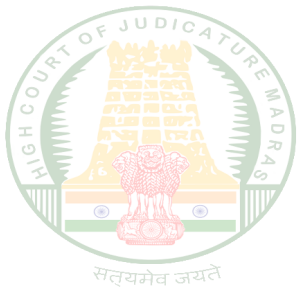
A.S.No.703 of 1992

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21. Upon hearing both sides and perusing the records, the points for determination in this appeal are as follows:-

1. Whether the suit items 23 to 26 were purchased by the 1st defendant through joint family income?
2. Whether the suit items 23 to 26 are joint family properties of the plaintiffs and the defendants 1 & 2?
3. Whether the properties of items 23 to 26 were purchased by the defendant 9 to 11 through sale deed dated 17.04.1974?
4. Whether the suit is bad for non joinder of necessary parties?
5. Whether the plaintiffs are entitled to share over the 23 to 26 items of suit properties?
6. Whether the decree and judgment passed by the Trial Court are sustainable in law and on facts?
7. To what relied the appellants are entitled to?

During the pendency of the appeal, the respondents have filed an application to receive the documents as additional evidence in C.M.P.No. 6603 of 2023 and the same was allowed by my predecessor and those documents were marked as Ex.A34 to A36. Since those documents are copy of the communication and the proceedings of Special Tahsildar both



A.S.No.703 of 1992

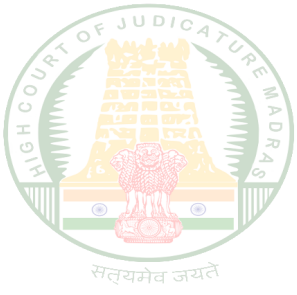
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parties agreed that no oral evidence is required based on those documents. Therefore both the counsels argued the case on merits with available documents.

22. Point No.1

22.1. The plaintiffs have filed the suit as against the defendants for the relief of partition and separate possession over the suit properties. The suit properties contains 31 items, the Trial Court has decreed the suit in respect of the properties except items 2 to 6, 8 and 17 and the present appeal is filed as against the decree and judgment in respect of items 23 to 26 by the purchasers (i.e.) defendants 9 to 11. Though the suit is decreed in respect of other items no appeal is filed by other defendants. This Court is only to decide in respect of items 23 to 26 which are the subject matter of this appeal.

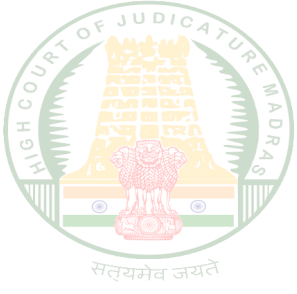
22.2 According to the plaintiffs, 1 to 15 items of the suit properties are the ancestral properties of one Chinnathambi Servai who is the grandfather of the plaintiffs. The said Chinnathambi Servai had two sons namely Sengamala Servai (1st Defendant) and Rengasamy Servai (2nd Defendant). Both the defendants 1 and 2 have jointly enjoyed the properties of joint family properties 1 to 15 and purchased the other suit



A.S.No.703 of 1992

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items properties. Items 16, 19 to 27 were in the name of 1st defendant, 28 to 31 items were in the name of 2nd defendant and 17 and 18 items were in the name of 4th defendant. Therefore, all the properties are treated as joint family properties. The above said nature of the properties of 16 to 31 items were denied by the respective defendants. While so, it is the duty of the plaintiff to prove that the joint family properties were yield more surplus income and from the surplus income other items 16 to 31 were purchased in the name of 1st, 2nd and 4th defendants. In order to prove the case of the plaintiffs, the 1st plaintiff was examined as P.W.1 and he deposed before the Trial Court about the nature of properties and the properties 1 to 15 items yielded more income and out of the income derived from 1 to 15 items, 16, 19 to 27 were purchased in the name of 1st defendant, 28 to 31 items were purchased in the name of 2nd defendant and 17 and 18 items were purchased in the name of 4th defendant. But at the same time the P.W.1 in his cross examination admitted that அயிட்டம் 23 to 26 ஏலத்தில் எடுத்தவைகள். தாவா சொத்துக்கள் பற்றி எனக்கு நேரில் தெரியும். தாவா முதல் அயிட்டம் முன்னர் பூந்தோட்டமாக இருந்தது. Item 2 to 6 என தாத்தா கிரையம் பெற்ற சொத்துக்கள். அதில் பர்மா அகதிகள் குடிசை போட்டுள்ளனர். அயிட்டம் 8ல் குடிசைகள் உள்ளன. தாவா 17வது அயிட்டத்திலும் குடிசைகள் உள்ளன.



A.S.No.703 of 1992

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மேற்காணப்பட்ட சொத்துக்களை சர்க்கார் எடுத்துக்கொண்டது. மேற்காணப்பட்ட

சொத்துக்களின் 150, 200 வீடுகள் உள்ளன.

22.3. Therefore from the above said evidence of P.W.1, it is clear that the items 23 to 26 were obtained by the first defendant through Court auction and further P.W.1 has knowledge about the 17th item which was acquired by the Government and now more than 200 house situated. But knowing very well the above said facts, the plaintiffs have filed the suit by including those properties also. It shows the intention of the plaintiffs to include the properties already taken over by the Government. Further the P.W.1 in his evidence admitted that he do not know who is enjoying the properties of Item 27 to 31. Further the P.W.1 in his cross examination admitted that என் தாத்தா இருக்கும் வரை வந்த குடும்ப வருமானம் ஆண்டிற்கு ரூ.20,000/- ஆகும். வருமானத்தினை வைத்துக் கொண்டுதான் எங்கள் குடும்பம் நடந்து வந்தது. என் தாத்தாவிற்கு ஆன செலவு பற்றி எனக்கு தெரியாது. என் தாத்தா தன் பெயரில் கிரையம் பெற்றது பற்றி எனக்கு தெரியாது. என் தாத்தா 1939 ஆம் ஆண்டிற்கு பின்னர் தன் பெயரில் சொத்து கிரையம் பெறவில்லை. நஞ்சையினை நான் அனுபவிக்கின்றேன். 1979ம் ஆண்டில் இருந்து நான் தனியாக சொத்தினை அனுபவிக்கின்றேன். D1 என்ன கட்சி எழுதி போட்டார் என்பது எனக்கு தெரியாது. என் தந்தை தாவா சொத்துக்களை சுயார்தஜிதமாக சம்பாதித்தார் என கூறுகின்றார். 1970ம் வருடம் பாகப்பிரிவினை ஏற்பட்டது என தந்தை கட்சி செய்கின்றார். அயிட்டம் 9 முழுவதும்



A.S.No.703 of 1992

WEB COPY

என் அனுபவத்தில் உள்ளது. நான் அயிட்டம் எண் 9 னை என் தந்தையினை கேட்காமல் அனுபவம் செய்கின்றேன். என் அறிவிப்பில் என் அம்மா பெயரில் ஏற்பட்ட கிரையமம் பற்றி கூறியுள்ளேன். என் அம்மா பெயரில் உள்ள சொத்துக்களை பொதுக்குடும்ப சொத்தாக அனுபவம் செய்யப்பட்டு வரப்படுகின்றது என என் அறிவிப்பில் கூறியுள்ளேன். அயிட்டம் 13 to 16ல் நானும் என் தம்பியும் 3மா அனுபவிக்கின்றேன். குளத்தினை விட்டுவிட்டு எஞ்சியுள்ள சொத்தினை 4 பாகமாக பரித்துக் கொள்ளவில்லை. Item 23 to 26 குத்தகை சாகுபடியில் உள்ளது. Item 23 to 26 வீட்டு மனைகளாக இல்லை D9 to D11 item 23 to 26 னை அனுபவம் செய்யவில்லை.

Therefore, the P.W.1 in his cross examination admitted that family was run by his parents through the income of the suit properties. Further, he admitted that he has been enjoying the property from the year 1979 and item No. 9 is under his exclusive possession and enjoyment and items 13 to 16 are under the enjoyment of both the plaintiffs and also he stated that items 23 to 26 are under lease and items 23 to 26 have not been converted as plots.

22.4. Per contra in the pleadings, the plaintiffs pleaded that in para No. 4 that items 18 to 31 are Punja and Nanja lands and they were divided as several plots and sold some of the plots to several persons by the 1st and 2nd defendants jointly. Therefore, the plaintiffs evidence that 23 to 26 items were not converted into plots is totally contrary to the pleadings. Further evidence of P.W.1 that already he has been enjoying the 9, 13 and



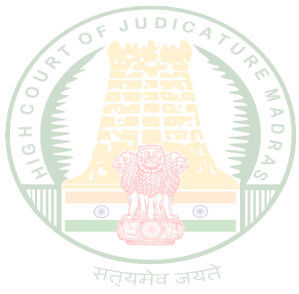
A.S.No.703 of 1992

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16 items would show that the properties separately enjoyed by the plaintiff by admitting the separate properties of the 1st and 2nd defendants.

22.5 More over during the cross examination by the 9 to 11 defendants, the P.W.1 stated that D9 to D11 எங்கள் இடத்தினை கிரையம் பெற்றதாக தெரிகின்றது. அதனால் party ஆக சேர்த்துள்ளோம் D9 to D11 இன் Power Agent எனக்கு தெரியாது. தாவாவில் D9 to D11 இன் Power Agent பற்றி கூறியுள்ளோம். Power Agent னை எனக்கு தெரியாது. D9 to D11 கிரையம் பெற்ற சொத்தின் விபரம் பற்றி எனக்கு தெரியாது. தாவா சொத்துக்களுக்கு வில்லங்கசான்று பெற்றுபார்க்கவில்லை. D9 to D11 என்ன கட்சி செய்கின்றனர் என்பது எனக்கு தெரியாது. தாவாவிற்கு பின்னர் வில்லங்க சான்று பெற்று பார்த்துள்ளேன். D9 to D11 பற்றி வில்லங்க சான்றில் கூறப்படவில்லை. என் அப்பா என்ன கட்சி செய்கின்றார் என்பது எனக்கு தெரியாது. D9 to D11 இன் கட்சி பற்றி எனக்கு தெரியாது.

Therefore the P.W.1 in his cross examination admitted that he does not know about the sale of the properties in favour of the 9 to 11 defendants in respect of the 23 to 26 items of the suit properties and he has not even know about the defence taken by his father. The plaintiffs admitted that the sale deeds are in the name of 9th, 10th and 11th defendants. The plaintiffs have not examined any other witnesses to prove that the properties of items 23 to 26 were purchased through the income of the joint family properties. The plaintiffs not even stated about the income derived from the joint family properties. Admittedly the 1st and 2nd defendants alone are the joint family members. It is the duty of the plaintiffs to



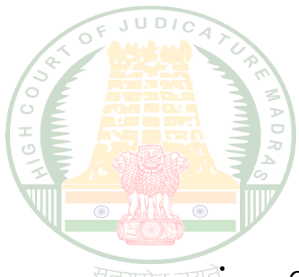
A.S.No.703 of 1992

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establish that how the properties purchased in the name of 4th defendant. Further the competent witnesses to speak about the nature of properties are 1st and 2nd defendants.

22.6 The plaintiffs are sons of the 1st defendant and thereby the competent witnesses to speak about the nature of properties is 1st defendant. The 1st defendant was examined as D.W.1 in this case and he categorically deposed that the items 1 to 8 have not fetched any income. The 2nd to 6th items of the properties were taken by the Government. The 1st and 2nd defendant have partitioned that properties and particularly he state that he purchased the properties through his earning and he had taken lease of some properties and through the lease properties he earned more money and through that money he purchased the properties. In this context he stated in his evidence that

காலாச்சேரியில் உள்ள நிலங்களை நான் கிரயம் பெற்றேன். அந்த சொத்தினை ஆறுமுகத்திடம் குத்தகைக்கு விட்டேன். 1969ம் வருடம் அந்த சொத்தினை கிரயம் பேசி ஆறுமுகத்திடம் நிலத்தினை விட்டுவிட்டேன். 1983ம் வருடம் கிரயம் பத்திரம் ஏற்பட்டது. விளார் முந்திரி தோப்பு எனக்கு கோட்டில் ஏலம் எடுத்தவகையில் கிடைத்தது. முந்திரி தோப்பினை என் சொந்த வருமானத்தினை வைத்து கிரயம் பெற்றேன். எனக்கு குத்தகை வருமானம் சொந்தமாக உள்ளது. கந்தசாமி பிள்ளையின் 30 ஏக்கரினை குத்தகைக்கு வைத்திருந்தேன். 1950ம் ஆண்டிலிருந்து 1968ம் ஆண்டு வரையில் குத்தகைக்கு வைத்திருந்தேன். ராஜா மூப்பனாரின் நிலத்திலும் குத்தகைக்கு எடுத்திருந்தேன். ஜானகியம்மாளியும் குத்தகை நிலம் எடுத்திருந்தேன் என



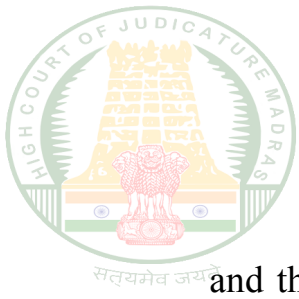
A.S.No.703 of 1992

WEB COPY

தந்தை சொத்திலிருந்து வந்த வருமானத்தினை மீதும் செய்ய இயலாது. எனக்கு 8 பெண்கள் 3

ஆண்கள். Therefore, the D.W1 who is the competent witness to speak about the nature of properties has stated that he purchased the properties of 23 to 26 items through his own earning. The plaintiffs are not competent witness to speak about the nature of properties since they have no personal knowledge about the purchase of properties in the name of 1st, 2nd and 4th defendants. Therefore the evidence of D.W.1 is reliable and acceptable.

22.7 According to the evidence of D.W.1, the properties of 23 to 26 items are self acquired properties of the 1st defendant. Further D.W.1 in his evidence stated that the properties derived from his father did not fetch income and that income was not sufficient to meet out his family expenses and he has 8 daughters and 3 sons therefore he had taken some properties for lease and earned money from those leased properties. Thereby he purchased the 23 to 26 items of properties through Court auction. Therefore the properties of items 23 to 26 were not purchased by the 1st defendant through joint family properties and the same were purchased through his own earnings. Further the learned counsel for the appellant would contend that the properties were purchased in the name of individuals and thereby the plaintiff has to prove the joint family income



A.S.No.703 of 1992

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and the said properties had fetched income and that income was utilized for the purchase of the properties.

22.8 In this context, the learned counsel appearing for the appellant has relied on the judgment in the case of **G.K.Palanisamy, Proprietor, Sri Kathirvelu Finance -vs- Amudhaveni** reported in **2018 (2) MWN (Civil)**

264, wherein this Court in in Paragraph 20 and 21 held as follows:

“20. It is contended that the suppression of the sale by PongiannaGounder in favour of the First Defendant by itself show that the case of the Plaintiff is not bona fide. No doubt when it is established that there was a Joint Family and Joint Family had enough properties, the subsequent acquisition by the Manager of the family in his name would be presumed to be Joint Family properties. In order to invoke the said presumption-

(i) it should be initially established that there was Joint Family

(ii) the Joint Family was possessed of properties.

(iii) there was substantial income from the Joint Family properties.

(iv) there was substantial surplus after meeting the expenses of the Joint Family and it was that surplus that contributed to the purchase of property in the name of the Manager.

21. Unless the Plaintiff establishes the above 4 ingredients, the Court cannot presume that the property standing in the name of the Manager is a Joint Family property. The learned Senior Counsel for the Respondents Mr. S. Jayaraman would rely upon observations of Hon'ble Supreme Court in



D.S. Lakeshmaiah's case referred to supra, which are as follows:

"If, however, the person so asserting proves that there was Nucleus with which the Joint Family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person 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."

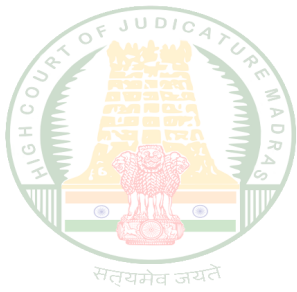
22.9 In the case of ***M.Subramaniam @ M.S.Mani -vs- S.Ravichandran and another*** reported in ***2018-1-L.W.221***, wherein this Court in Paragraph 23 held as follows:

"23. On the basis of the factual aspect of these cases and also the decisions referred supra in compendium, the Court can very well deduce the following legal aspects:

(1) Every Hindu family is a joint family. But it does not mean that every acquisition of immovable property is for the benefit of joint family, by utilising joint family income. There must be a common hotchpot and the same should contain sufficient nucleus so as to enable further acquisition.

(2) Kartha or manager or father of a joint family can acquire immovable property in his name without using surplus income of joint family. In the absence of proof of separate income or funds of Kartha or manager or father, the well established presumption is that such acquisition of immovable property has been made by utilising surplus income of the joint family for its benefit.

(3) Every member, including junior member of a joint family, is having unfettered right of acquiring immovable properties by using his separate income



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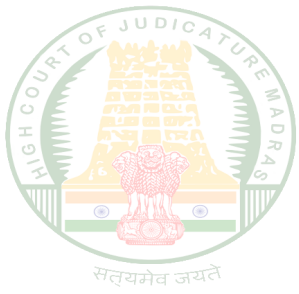
A.S.No.703 of 1992

without using joint family nucleus. If that aspect is proved, the acquisition is nothing but his self-acquisition.

(4) If a member alleges that a particular property is a joint family property, the initial burden lies upon him and then burden shifts on the person who alleges that it is his self-acquisition without utilising joint family income.”

On a careful perusal of the above said judgments, it is clear that every member including junior member of a joint family is having unfettered right of equity in immovable properties by using his separate income without using joint family funds. If that aspects is proved the acquisition is nothing but is self acquisition and if a member alleges that a particular property is a joint family property, the initial burden is upon him and the burden shifts on the person who alleges that it is a self acquisition without utilizing joint family income.

22.10 In the case on hand also, the plaintiffs alleges that the items 17 to 36 were purchased through income from the items 1 to 15 joint family properties. While so initial burden lies on the plaintiff to prove that what are the income derived from the joint family and from those income, the properties were purchased in the names of individuals through joint family income. But the plaintiffs failed to prove that contention with sufficient



A.S.No.703 of 1992

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evidence. Per contra, the DW1 who is non other than the father of the plaintiff himself stated in his evidence that the properties of items 23 to 26 were purchased through his earnings by Court auction.

22.11 The learned counsel appearing for the respondent has argued that the properties 1 to 15 are ancestral properties of the Chinnasamy Servai and thereby the defendants 1 and 2 and the plaintiffs are entitled to share over the properties. Further he relied on the judgment in the case of ***Shyam Narayan Prasad -vs- Krishna Prasad and others*** reported in ***(2018) 7 Supreme Court Cases 646***, wherein the Hon'ble Supreme Court in Paragraphs 11 to 15 held as follows:

11. Having regard to the contentions urged, the first question for consideration is whether the property allotted to Defendant 2 in the partition dated 31-7-1987 retained the character of a coparcenary property. Admittedly, Gopalji Prasad and his five sons partitioned the property by a deed of partition dated 31-7-1987. It is clear from the materials on record that Gopalji Prasad retained certain properties in the partition. Certain properties had fallen to the share of Defendant 2 who is the father of Plaintiffs 1 to 3 and grandfather of Plaintiff 4. Certain properties had fallen to the share of the first defendant. The trial court has held that the properties are ancestral properties. The High Court has confirmed the finding of the trial court. We do not find any ground to disagree with this finding of the courts below.

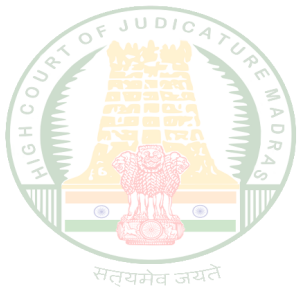


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12. *It is settled that the property inherited by a male Hindu from his father. father's father or father's father's father is an ancestral property. The essential feature of ancestral property, according to Mitakshara Law, is that the sons, grandsons, and great grandsons of the person who inherits it, acquire an interest and the rights attached to such property at the moment of their birth. The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. After partition, the property in the hands of the son will continue to be the ancestral property and the natural or adopted son of that son will take interest in it and is entitled to it by survivorship.*

13. *In C. Krishna Prasad v. CIT², this Court was considering a similar question. In the said case, C. Krishna Prasad, the appellant along with his father Krishnaswami Naidu and brother C. Krishna Kumar formed Hindu Undivided Family up to 30-10-1958, when there was a partition between Krishnaswami Naidu and his two sons. A question arose as to whether an unmarried male Hindu on partition of a joint Hindu family can be assessed in the status of undivided family even though no other person besides him is a member of the family. It was held that the share which a coparcener obtains on partition is ancestral property as regards male issue. It was held as under: (SCC p. 163. para 8)*

"8. The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. They take an interest in it by birth, whether they are in existence at the time of partition or are born subsequently. Such share, however, is ancestral property only as regards his male issue. As regards other relations, it is separate property. and if the coparcener dies without leaving male issue, it passes to his heirs by succession (see p. 272 of Mulla's Principles of Hindu Law, 14th Edn.). A person who for



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A.S.No.703 of 1992

the time being is the sole surviving coparcener is entitled to dispose of the coparcenary property as if it were his separate property. He may sell or mortgage the property without legal necessity or he may make a gift of it. If a son is subsequently born to him or adopted by him, the alienation, whether it is by way of sale, mortgage or gift, will nevertheless stand, for a son cannot object to alienations made by his father before he was born or begotten..... (emphasis in original and supplied)

14. In *M. Yogendra v. Leelamma N.3*, it was held as under: (SCC ? 192, para 29)

"29. It is now well settled in view of several decisions of this Court that the property in the hands of a sole coparcener allotted to him in partition shall be his separate property for the same shall revive only when a son is born to him. It is one thing to say that the property remains a coparcenary property but it is another thing to say that it revives. The distinction between the two is absolutely clear and unambiguous. In the case of former any sale or alienation which has been done by the sole survivor coparcener shall be valid whereas in the case of a coparcener any alienation made by the karta would be valid." (emphasis supplied)

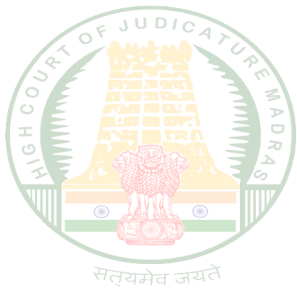
15. In *Rohit Chauhan v. Surinder Singh*, a contention was raised by Defendant I that after partition of the joint Hindu family property, the land allotted to the share of Defendant 2 became his self-acquired property and he was competent to transfer the property in the manner he desired. It was held that the property which Defendant 2 got by virtue of partition decree amongst his father and brothers was although separate property qua other relations but it attained the characteristics of coparcenary property the moment a son was born to Defendant 2. It was held thus: (SCC



pp. 424-25, para 14)

"14. A person, who for the time being is the sole surviving coparcener as in the present case Gulab Singh was, before the birth of the plaintiff, was entitled to dispose of the coparcenary property as if it were his separate property. Gulab Singh, till the birth of plaintiff Rohit Chauhan, was competent to sell, mortgage and deal with the property as his property in the manner he liked. Had he done so before the birth of plaintiff, Rohit Chauhan, he was not competent to object to the alienation made by his father before he was born or begotten. But, in the present case, it is an admitted position that the property which Defendant 2 got on partition was an ancestral property and till the birth of the plaintiff he was the sole surviving coparcener but the moment plaintiff was born, he got a share in the father's property and became a coparcener. As observed earlier, in view of the settled legal position, the property in the hands of Defendant 2 allotted to him in partition was a separate property till the birth of the plaintiff and, therefore, after his birth Defendant 2 could have alienated the property only as karta for legal necessity. It is nobody's case that Defendant 2 executed the sale deeds and release deed as karta for any legal necessity. Hence, the sale deeds and the release deed executed by Gulab Singh to the extent of entire coparcenary property are illegal, null and void. However, in respect of the property which would have fallen in the share of Gulab Singh at the time of execution of sale deeds and release deed, the parties can work out their remedies in appropriate proceeding"

On careful persual of the above said judgment, it is clear that the property in the hands of coparcener allotted to him in a partition shall be his



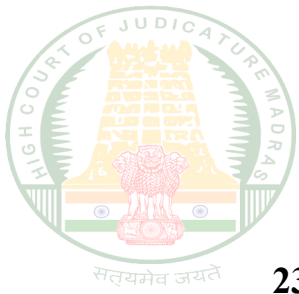
A.S.No.703 of 1992

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separate property for the same shall revive only when the child is born to him. This case law will not be applicable to the present facts of the case. Because, in the case on hand there is no dispute in respect of relationship of the parties and the dispute is whether the properties are joint family properties or not.

22.12 Further learned counsel for the respondent also relied on the judgment of the Hon'ble Supreme Court in the case of *Prasanta Kumar Sahoo and others* vs. *Charulata Sahu and other* reported in **2023 (2) CTC 755**. On careful perusal of the judgment, it will not be applicable to the present facts of the case, because in this case there is no dispute in respect of the entitlement of the share of joint family properties.

22.13 In view of the above said judgments and as discussed supra, this Court is of the opinion that the items 23 to 26 of the suit properties were purchased by the first defendant through his self acquisition and not from joint family income. Thus the point is answered.



A.S.No.703 of 1992

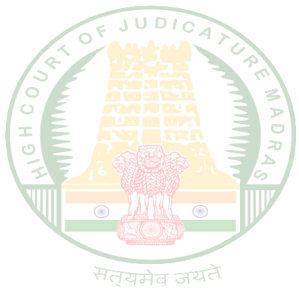
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23. Point No.2:-

According to the plaintiff, the properties of items 23 to 26 were purchased from out of the income of the joint family properties and the same was treated as joint family properties. This Court in the previous point decided that the items 23 to 26 were not purchased through the joint family income and the same was purchased by the 1st defendant through his own earning and those properties are self acquired properties of the 1st defendant. Therefore the plaintiffs failed to prove that the properties of items 23 to 28 are joint family properties of the plaintiff and the defendants. Thus the points is answered.

24. Point No. 3:-

24.1 According to the plaintiffs, items 23 to 26 are joint family properties and same were purchased through the income of joint family properties. The defendants denied the said nature of properties and this Court also in the previous point decided that items 23 to 26 are not joint family properties and the same are self acquired properties of the 1st defendant. According to the 9 to 11 defendants they had purchased the properties from the 1st defendant and the 1st defendant executed the sale



A.S.No.703 of 1992

WEB COPY

deed dated 17.04.1974 in their favour but failed to register the same and thereby the compulsorily registered the sale deeds in their favour. The said aspects has not been denied by the 1st defendant either in the pleadings or in the evidence and the P.W.1 at the time of cross examination by the defendants 9 to 11 only denied while answering the questions. In this case the 9 to 11 defendants, have examined D.W.1 to D.W.3 and deposed about the execution of sale deeds and the compulsory registration. Either the plaintiff or the 1st defendant never pleaded about the above said sale deed in favour of the 9th to 11th defendant. On perusal of the Ex. B39, 40, 83 they revealed that the 25th items was purchased by the 9th defendant through sale deed. Items 23 and 24 were purchased by 10th defendant and 26th item was purchased by the 11th defendant through separate sale deeds dated 17.04.1974 from the 1st defendant and the sale deeds were registered compulsorily.

24.2 In this context, the 1st defendant in his cross examination admitted that ஆடுதுறை பாப்பா எனப்பவர் எனக்கு பழக்கம் உள்ளவர். முந்திரி தோப்பு சம்பந்தமாக எனக்கும் பாப்பாவுக்கும் பேச்சு நடந்தது. முதலில் ஒப்பந்தம் போடப்பட்டது. D8 to D11 ஐ நான் பார்க்கவில்லை. பத்திரத்தினை ஆடுதுறையில் பாப்பா 3 நபர்களின் பெயர்களில்



A.S.No.703 of 1992

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எழுதிக்கொண்டார். ரூ.500/- பணம் கொடுத்தார். பத்திரத்தினை நான் பதிவு செய்து

கொடுக்கவில்லை. பத்திரத்தில் என்ன எழுதப்பட்டது என எனக்கு தெரியாது. பதிவு செய்ய

என்னை அழைக்கவில்லை. பத்திரத்தினை வைத்து பட்டாவிற்கு ஜமால் முகைதீன் பாப்பா நோட்டீஸ்

கொடுத்தார் பத்திரம் பதியக்கூடாது என கட்சி செய்தேன். பத்திரம் பின்னர் பதிவு ஆகிவிட்டது.

Further, D.W.1 in his cross examination admitted that தாவா 23 to 26 அயிட்டம்

சம்பந்தமாக ஒரு ஒப்பந்தம் எழுதிக்கொடுத்துள்ளேன். ஒப்பந்தம் லத்தீப் பெயரில் எற்பட்டது.

ஒப்பந்தத்தின் நகல் என்னிடம் உள்ளதா என பார்க்கவேண்டும். ஒப்பந்த காலத்தில் ரூ.10,000/-

பெற்றேன். ஒப்பந்தம் பி.வா.சா.ஆ.38. ஒப்பந்தப்படி கிரையம் பத்திரம் எழுதிக் கொடுத்துள்ளேன்.

நான் 3 பத்திரத்திலும் கையெழுத்து போட்டுள்ளேன். 3 பத்திரங்களில் D9 to D11 பெயரில் உள்ளன.

பத்திரங்களை பதிவு செய்து நான் கொடுக்கவில்லை நான் பதிவு செய்ய போகவில்லை என

கூறினால் தவறு. பத்திரங்கள் கட்டாய பதிவு ஆன எனக்கு தெரியாது. D9 to D11 இன்

எதிர்வழக்குரையினை நான் படித்துப் பார்க்கவில்லை. கட்டாய பதிவு ஆகியுள்ளது என்பதனை.

R.D.O கோர்ட்டில் சொல்லியுள்ளனர். நான் வில்லங்க சான்று பெறவில்லை. நான் கையெழுத்து

போட்ட பத்திரங்கள் பி.வா.சா.ஆ.35 to 40 கிரையத்திற்கு பின்னர் சொத்தின் அனுபவம் D9 to D11

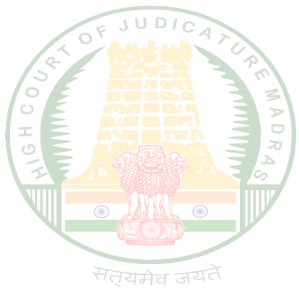
இடம் உள்ளது என்றால் தவறு. O.S.109/78ல் எற்பட்டது Exparty Decree. Exparty Decree

யினை ரத்து செய்ய மனு போடப்பட்டுள்ளது. 17 வருடம் கழித்து அந்த மனு தொடரப்பட்டுள்ளது.

D11 பெயரில் பட்டா உள்ளது. பட்டா குறித்து நான் DRO வடம் மனு கொடுத்துள்ளேன். D9 to

D11கிஸ்தி செலுத்தி வருகின்றார் என்றால் தவறு. D9 to D11 கிஸ்தி செலுத்திய விபரம் எனக்கு

தெரியாது.



A.S.No.703 of 1992

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24.3 Therefore from the above said evidence of D.W.1 it reveals that he already executed agreement in respect of the items 23 to 26 in favour of one Paapa and also notice was given to him and thereafter the deeds was registered compulsorily and further he admitted that at the time of agreement in favour of one Lathif through Ex.B38 he received sum of Rs. 10,000/-. Further he put signature in three stamps papers and the said papers were in the name of 9th to 11th defendants. He did not register the said deeds and further he had knowledge about the compulsory sale deeds and also he admitted that patta in respect of items 23 to 26 are in the name of 9th to 11th defendants. The defendants have also produced the sale deeds as Ex.B39, B40 and B83. On perusal of those documents they revealed that the sale deeds were executed and compulsorily registered and same was also admitted by the D.W.1 and he had also knowledge about the said compulsory registered sale deeds. Either the 1st defendant or the plaintiffs have not taken any steps to challenge the said sale deeds in accordance with law. Since the sale deeds were registered under the Registration Act, unless the sale deeds are challenged and set aside in accordance with law, the said sale deed are valid in the eye of law. Neither the plaintiffs nor the



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first defendant have taken any steps to set aside the said sale deeds till date.

24.4 In this context, the learned counsel appearing for the respondents 2, 37 and 41 would contend that the sale deeds in the name of 9th to 11th defendants have not been supported by consideration and they have to pay adequate consideration and still the 9th to 11th defendants have not paid the sale consideration therefore the sale deeds are void. To support his contention he relied on the judgment of Hon'ble Supreme Court in the case of ***Kewal Krishnan Vs. Rajesh Kumar and others*** reported in ***AIR 2022 SCC 564*** wherein the Hon'ble Supreme Court in Para No.15 held as follows:

“15. Section 54 of the Transfer of Property Act, 1882 (for short “the TP Act”) reads thus:

“54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only



by a registered instrument.

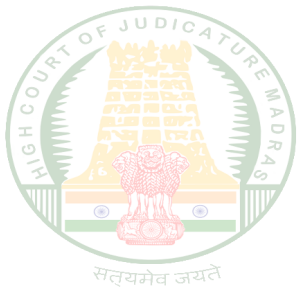
In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—*A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.*

It does not, of itself, create any interest in or charge on such property.”

Hence, a sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by Section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property.”

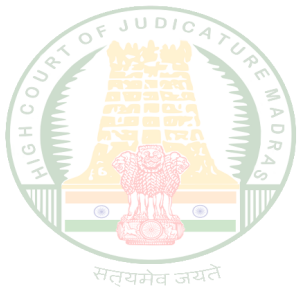


A.S.No.703 of 1992

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24.5 The learned counsel appearing for the appellants would contend that the sale deed was compulsory registered in accordance with law. As per Registration Act, once the sale deed is registered it is a presumption that the sale deed was executed in accordance with law and even if the balance amount is not paid the remedy to the respondent is that they have to sought for the relief of recovery of money due to the balance amount to be paid by the appellants. Once the sale deed is registered compulsorily, the parties to the document ought to have challenged the same in accordance with law and the said sale deed has to be declared as null and void in the manner known to law. The sale deed cannot be declared as null and void without any legal proceedings and the same is not an automatic. To support his contention he relied on the following judgement in the case of (i) ***Kaliaperumal v. Rajagopal and another*** reported in **(2009) 4 SCC 193** wherein the Hon'ble Supreme Court in Para No.17 and 18 held as follows:

“17. It is now well settled that payment of entire price is not a condition precedent for completion of the sale by passing of title, as Section 54 of the Transfer of Property Act, 1882 (“the Act”, for short) defines “sale as a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised”. If the intention of parties was that



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A.S.No.703 of 1992

title should pass on execution and registration, title would pass to the purchaser even if the sale price or part thereof is not paid. In the event of non-payment of price (or balance price as the case may be) thereafter, the remedy of the vendor is only to sue for the balance price. He cannot avoid the sale. He is, however, entitled to a charge upon the property for the unpaid part of the sale price where the ownership of the property has passed to the buyer before payment of the entire price, under Section 55(4)(b) of the Act.

18. Normally, ownership and title to the property will pass to the purchaser on registration of the sale deed with effect from the date of execution of the sale deed. But this is not an invariable rule, as the true test of passing of property is the intention of parties. Though registration is prima facie proof of an intention to transfer the property, it is not proof of operative transfer if payment of consideration (price) is a condition precedent for passing of the property.”

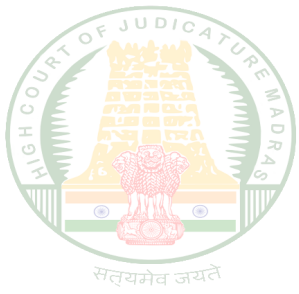
(ii) In the case of ***Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra)***

(D) Thr Lrs and others reported in ***AIR 2020 SUPREME COURT 3310 :***

AIROnline 2020 SC 634 wherein the Hon'ble Supreme Court in Para No.

15.3 held as follows:

15.3 The plaintiffs have made out a case of alleged non-payment of a part of the sale consideration in the Complaint, and prayed for the relief of cancellation of the Sale Deed on this ground.



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A.S.No.703 of 1992

Section 54 of the Transer of Property Act 1882 provides as under:

"54. 'Sale' defined.-'Sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised."

The definition of "sale" indicates that there must be a transfer of ownership from one person to another i.e. transfer of all rights and interest in the property, which was possessed by the transferor to the transferee. The transferor cannot retain any part of the interest or right in the property, or else it would not be a sale. The definition further indicates that the transfer of ownership has to be made for a "price paid or promised or part paid and part promised". Price thus constitutes an essential ingredient of the transaction of sale.

In Vidyadhar v. Manikrao and Anr. this Court held that the words "price paid or promised or part paid and part promised" indicates that actual payment of the whole of the price at the time of the execution of the Sale Deed is not a sine qua non for completion of the sale. Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction. The non-payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. In order to constitute a "sale",



the parties must intend to transfer the ownership of the property, on the agreement to pay the price either in praesenti, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record.

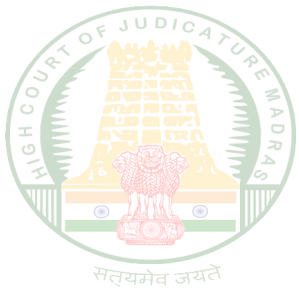
In view of the law laid down by this Court, even if the averments of the Plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the Sale Deed. The Plaintiffs may have other remedies in law for recovery of the balance consideration, but could not be granted the relief of cancellation of the registered Sale Deed.

We find that the suit filed by the Plaintiffs is vexatious, meritless, and does not disclose a right to sue. The plaint is liable to be rejected under Order VII Rule 11(a)”

iii. In the case of ***Vidhyadhar v. Manikrao and Another*** reported in ***(1999) 3 Supreme Court Cases 573*** wherein the Hon'ble Supreme Court in Para No.44 and 45 held as follows:

“44. Learned counsel for Defendants 1 thereafter contended that the deed dated 24.03.1971 was not a mortgage deed but an out and out sale with the result that the property having been transferred to Defendant 1 was not available for being sold to the plaintiff. This Contention must meet the same fate as it met in the Courts below.

45. The document is headed as Mortgage by



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A.S.No.703 of 1992

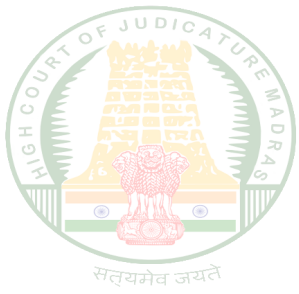
Conditional Sale (KARARKHAREDI). It is mentioned in this deed that the immovable property which was described in areas and boundaries was being mortgaged by conditional sale in favour of Defendant 1 for a sum of Rs. 1500 out of which Rs. 700 were paid at home while Rs. 800 were paid before the Sub-Registrar. The further stipulation in the deed is that the aforesaid amount of Rs. 1500 would be returned to Defendant 1 on or before 15.03.1973 and the property would be reconveyed to Defendant 2. If it was done then Defendant 1 would become the owner of the property.”

24.6 Further the learned Counsel for the appellant also relied on the Judgments in:-

(i) ***Poomalai Padayachi vs. Annamalai Padayachi and others*** reported in **56 L.W. 494.**

(ii) ***The Melur, Co-operative Marketing Society, represented by its President, P.R.M.Peria Karuppan Ambalam v. Salia Maniam and other*** reported in **1972(2) MLJ 406.**

(iii) ***M. Venkataperumal Naidu v. M. Rathnasabhpathi Chettiar*** reported in **AIR 1953 Mad 821.**



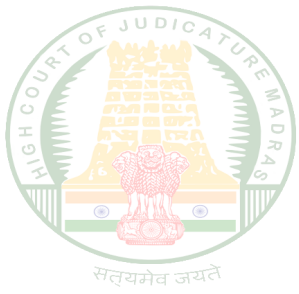
A.S.No.703 of 1992

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(iv) *Annamalai Mudaliar and 2 others v. Krishnaveni Ammal and 5 others* reported in *2002 -1-L.W.425*.

24.7 On careful perusal of the judgments relied on by the appellants, it is clear that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the sale deed. The plaintiffs may have other remedies in law for recovery of balance consideration but could not be granted relief of cancellation of registered sale deed. On careful perusal of the judgment relied on by the respondents 2, 37 and 41 would reveal that in the sale of immovable property, the payment of price is essential part under Section 54 of the Transfer of Property Act. If any sale deed is executed without payment of price and if it does not provided for the payment of price at a future date it is not a sale at all in the eye of law and such a sale will be void and it will not effect the transfer of immovable property.

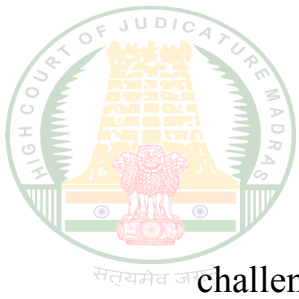
24.8 In the case on hand, according to the 9th to 11th defendants, they partly paid the sale price and part of sale consideration has to be paid to the 1st defendant. The 1st defendant also admitted that he executed an



A.S.No.703 of 1992

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agreement through Ex.B38 and received a sum of Rs. 10,000/- and executed three sale deed in favour of 9th to 11th defendants but he did not registered the documents. In this context, the D.W.3 also in his evidence stated that through Ex.B38 agreement Rs.10,000/- was paid and Rs. 15,000/- was paid to the 1st defendant and the remaining amount of Rs. 75,000/- to be paid by the defendant and also ready to pay the said amount, but the 1st defendant failed to receive the amount thereby the documents were compulsorily registered. The compulsorily registration was admitted by the plaintiffs and the 1st defendant but they have not pleaded in their respective pleadings as about the sale and the non payment of sale consideration. Once the sale deeds were executed in accordance with law, the said sale deeds have to be cancelled in the manner known to law. But either the plaintiffs or the 1st defendant have not taken any steps to cancel the said sale deeds. The 1st defendant also never taken any steps after knowing the sale deeds executed in favour of the 9th to 11th defendants. Though the 9th to 11th defendants have not paid the entire sale price only paid the part amount, the sale deed cannot be said as void since the parties have not challenged the sale deeds in accordance with law. Even as per the judgment relied on by the respondents 2, 27 and 41, the parties have



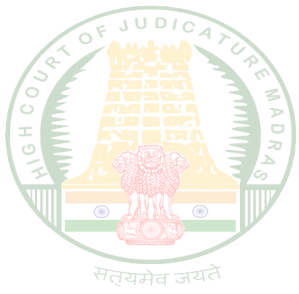
A.S.No.703 of 1992

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challenged the sale deed before the Court and the said sale deed was declared as null and void.

24.9 In the case on hand, the parties have not challenged the compulsory registered sale deeds which were compulsorily registered in accordance with law. Therefore the judgement relied on by the respondents 2, 27 and 41 will not be applicable to the present facts of the case. Per contra as per the judgement relied on by the appellants, remedy to the parties is to file a suit for recovery of money for the balance of sale consideration but the 1st defendant during his life time failed to either challenge the sale deeds or to initiate any legal proceedings to recover the money. Therefore the sale deeds in the names of 9th to 11th defendants were admitted by the plaintiffs and the 1st defendant.

24.10 The learned counsel appearing for the respondent would contend that the appellants have to prove that they have purchased the property for valuable consideration in accordance with law and the sale deeds were registered in accordance with law and the burden is lies on the appellants. They failed to prove the above said sale deeds. In this context, he relied on the judgment of the Hon'ble Supreme Court in the case of



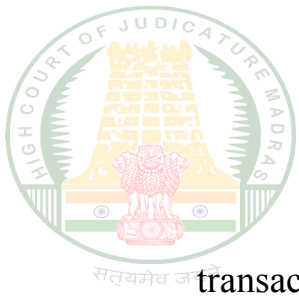
A.S.No.703 of 1992

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Subhra Mukherjee and another -vs- Bharat Cooking Coal Ltd and others reported in ***AIR 2000 SUPREME COURT 1203***, wherein it has held in Paragraph 13 as follows:

“13. There can be no dispute that a person who attacks a transaction as sham, bogus and fictitious must prove the same. But a plain reading of question No. 1 discloses that it is in two parts; the first part says ‘whether the transaction, in question, is bona fide and genuine one, which has to be proved by the appellants. It is only when this has been done that the respondent has to dislodge it by proving that it is a sham and fictitious transaction. When circumstances of the case and the intrinsic evidence on record clearly point out that the transaction is not bona fide and genuine, it is unnecessary for the Court to find out whether the respondent has led any evidence to show that the transaction is sham, bogus or fictitious.’”

24.11 On careful perusal of the said judgment, it is clear that a person who alleged the attacks a transaction as sham, bogus and fictitious must prove the same, but where the raised discloses that it is in two parts, the first part says, whether the transactions in question is bonafide and genuine one and the second part says or is a sham, bogus and fictitious transactions, it is only when the first part has been proved that the party alleging to be sham has to dislodge it by proving that it is a sham and fictitious



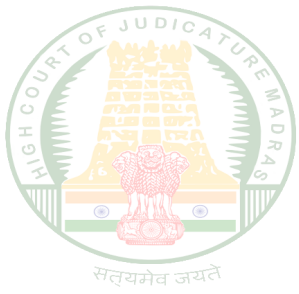
A.S.No.703 of 1992

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transaction. On careful perusal of the above said judgment, it will not be applicable to the present facts of the case. Because in this case, the appellants have proved that the first defendant has executed sale deed thereafter refused to register the same thereby the sale deed was compulsorily registered in accordance with law and the same was also admitted by the first defendant. But the same have not been challenged in the manner known to law. Therefore the defendants 9 to 11 purchased the properties of items 23 to 26 through sale deed. Thus the point is answered.

25. Point No. 4:-

25.1 The 9th to 11th defendants have taken plea that after purchase of sale deeds dated 17.04.1974, they sold the properties to third parties and they have listed the names of the parties in the additional written statement but the plaintiffs have not taken any steps to implead them as parties to the suit. According to the plaintiffs, since the original owner of the suit properties are parties, the subsequent purchasers need not be impleaded as parties. But on perusal of the records, they revealed that the properties in items 23 to 26, some portions from items 23 to 26 were sold even prior to the institution of suit and thereby they have to be impleaded as proper and necessary parties to decide the case effectively. In this context, the learned



A.S.No.703 of 1992

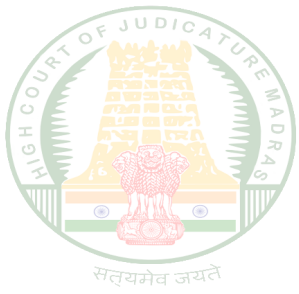
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counsel appearing for the appellants has relied on the following judgment

(i) **A. Ramachandra Pillai v. Valliammal (died)** reported in (1987) 100

Mad L.W. 486 wherein this Court in Para No.7 held as follows:

“7. Though 0.1, R.9 of the Code of Civil Procedure provides that no suit shall be defeated by reason of mis-joinder or non joinder of parties and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of parties actually before it, there is a proviso -which says that nothing in that rule will apply to non-joinder of necessary parties. In a suit for general partition, there could be no doubt that all the sharers are necessary parties as mentioned above. Apart from this, the main part of R.9 is only an enabling provision and the Court shall deal with each case with reference to the particular facts in that case. It is in that context, the decision of the Supreme Court in Kanakarathnammal v. Loganatha, is relevant. In that case, also, the plaintiff filed a suit for declaration and possession on the ground that the properties belonged to her mother and on her death she, as the sole heir, was entitled to the entirety of the properties. The suit was filed against two defendants who claimed that the father of the plaintiff had executed a will under which the first defendant had been appointed as executor and that as such executor he obtained probate of the said will got possession of the properties and handed over possession



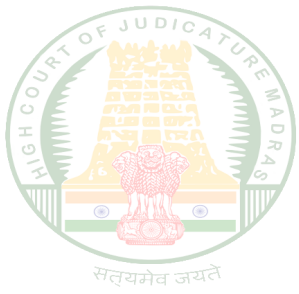
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A.S.No.703 of 1992

to the second defendant therein as directed in the will. Thus the defendants set up a title in respect of the suit properties in the appellant's father. Alternatively they also added that if the properties belonged to the plaintiff's mother, she would not be entitled to claim exclusive title to the same, because by succession, the suit properties would devolve upon the appellant her two brothers and the appellant's failure to join her brothers made the suit incompetent for non joinder of necessary parties. The trial Court held that the mother was the owner of the properties. However, it held that the suit is bad for non-joinder of necessary parties and on that ground the suit was dismissed. On appeal however, the High Court held that the properties belonged to the father. The appeal was dismissed on this ground and therefore there was no necessity to go into the question whether the suit was maintainable or not. On a further appeal, the Supreme Court accepted the contention of the plaintiff that the properties belonged to the mother. However, the Supreme Court held that since she was one of the three heirs of her mother and since she had not impleaded her two brothers to her suit, the suit was liable to be dismissed. The Supreme Court further observed:

“It is true that under Order I, Rule 9 of the Code of Civil Procedure no suit shall be defeated by reason of the misjoinder or non-joinder of the parties, but there can be no doubt that if the parties who are not joined are not only proper but also necessary parties to it, the infirmity in the



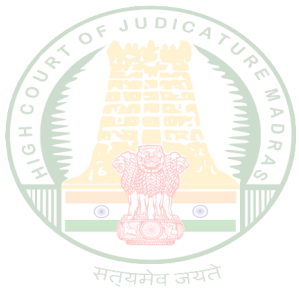
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A.S.No.703 of 1992

suit is bound to be fatal. Even in such cases, the Court can under Order 1. Rule 10, sub-rule (2) direct the necessary parties to be joined, but all this can and should be done at the stage of trial and that too without prejudice to the said parties' plea of limitation. Once it is held that the appellant's two brothers are co heirs with her in respect of the properties left intestate by their mother, the present suit filed by the appellant par- takes of the character of a suit for partition and in such a suit clearly the appellant alone would not be entitled to claim any relief against the respondents."

This decision is thus an authority for the position that in a suit for partition, all the sharers are necessary parties and also for the position that the suit is liable to be dismissed for non joinder of any one of the parties. (T. Panchapakesan and others v. PerianambiNaicker and others) also, a Division Bench of this Court has taken a similar view by judgment dated 18-7-1972. We are accordingly of the view that the finding of the learned Subordinate Judge on issue No. 10 holding that the suit is not bad for non- joinder of Nagarathinam's heirs is unsound and liable to be set aside. Accordingly, we hold that the suit is liable to be dismissed for non-joinder of the heirs of Nagarathinam."



A.S.No.703 of 1992

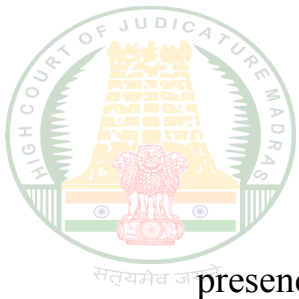
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(ii) in the case of ***Shanmugam v. Saraswathi*** reported in ***AIR 1997***

MADRAS 226 wherein this Court in Para No.7 held as follows:

“9. There is no merit in the contentions. The question of non-joinder of necessary parties in a suit for partition can be raised at any time as it goes to the root of the matter. It is well settled that a suit for partition is not maintainable in the absence of some of the co-sharers.”

25.2 On careful perusal of the above said judgments, it is clear that in a partition suit all the interested parties have to be impleaded as parties and suit for partition is not maintainable in the absence of some of the co-sharers. In the case on hand also, the plaintiffs admitted in the pleading in Para 4 that the 1st and 2nd defendants have sold the items 18 to 31 of the properties by converted into plots and sold to 3rd parties and the defendants 9 to 11 also categorically pleaded that they sold the properties to the third parties and also provided list of the person to whom the properties were sold. In spite of that the plaintiffs have not taken any steps to implead them as parties to the suit. Since the plaintiffs themselves admitted the sale of properties to 3rd parties prior to the institution of the suit, they are also proper and necessary parties to decide the case and without their



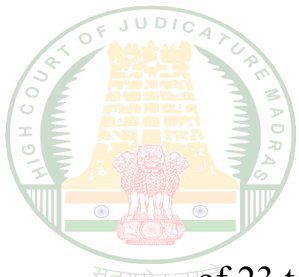
A.S.No.703 of 1992

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presence the suit cannot be decided effectively. Therefore as discussed supra this Court is of the opinion that the suit is bad for non joinder of necessary of parties. Thus the point is answered.

26. Point No. 5:-

The plaintiffs have filed a suit for partition and separate possession in respect of items 1 to 31 properties. According to the plaintiffs items 1 to 15 are ancestral properties and other items were purchased from the income derived through the ancestral properties in the names of 1st, 2nd and 4th defendants. This Court in the previous point decided that items 23 to 26 were not purchased by the 1st defendant through the income derived from the ancestral properties and the same are self acquired properties of the 1st defendant. Since the properties are the self acquired properties of the 1st defendant, the plaintiffs are not entitled to any share over the items 23 to 26 of the suit properties. Further the 1st defendant already sold the properties to the 9th to 11th defendant and in turn 9th to 11th defendant sold the properties to the 3rd parties through separate sale deed and those person have not been added as proper and necessary parties to the suit and thereby the suit is bad for non-joinder of necessary parties. In view of the above said reasons, the plaintiffs are not entitled to any share over the properties



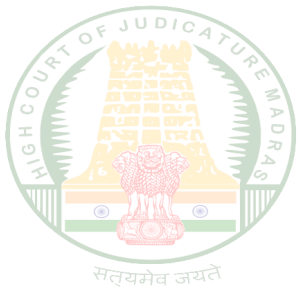
A.S.No.703 of 1992

of 23 to 26 items. Thus the point is answered.

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27. Point No. 6:-

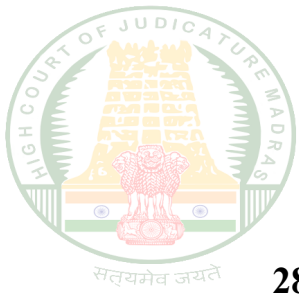
The plaintiffs have filed the suit before the Trial Court for the relief of partition and separate possession. Before the Trial Court on the side of plaintiff P.W.1 was examined and marked Ex. A1 to A33. On the side of the defendants D.W.1 to D.W.3 were examined and marked Ex. B1 to B84 and also marked Commissioner report as Ex.C1. The Trial Court after considering the evidence adduced on both sides decreed the suit by holding that the properties purchased in the name of 1st, 2nd and 4th defendants in respect of items 16 to 31 were purchased through the income of the joint family properties of the 1 to 15 items. The Trial Court failed to consider that the plaintiffs have failed to prove that there was a surplus income derived through 1 to 15 items and plaintiffs are none other than the sons of 1st and 4th defendants. The Competent witness to speak about the nature of the properties is 1st defendant who is the father of the plaintiff and 1st defendant was examined as D.W.1 and he categorically deposed about the nature of properties and he specifically deposed that he purchased the properties of 23 to 26 items through Court auction for Rs. 3,001/- through



A.S.No.703 of 1992

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his own funds and he had taken the properties to lease and also earned more money and through the income he purchased the properties. The above said aspects have not been considered by the Trial Court and further the Trial Court held that the 9th to 11 defendants failed to prove that the sale in the name of 9th to 11th defendant was aware for the benefits of joint family. The plaintiffs failed to prove that the properties are joint family properties but at the same time the evidence of D.W.1 clearly proves that the properties were purchased through his separate income and whereby those properties are self acquired properties of the 1st defendant. The above said facts have not been considered by the Trial Court. Further the Trial Court failed to consider that the sale deeds in favour of the 9th to 11th defendants were compulsorily registered in accordance with law and the said sale deeds were not challenged either by the plaintiffs or by the 1st defendants in accordance with law. Therefore, in view of the above said discussions, the decree and judgment passed by the Trial Court in respect of items 23 to 26 are unsustainable and the same are liable to be set aside by allowing this appeal.



A.S.No.703 of 1992

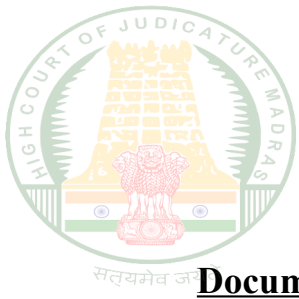
28. Point No. 7:-

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This Court in the previous point decided that the plaintiffs failed to prove that the 23 to 26 items were purchased through the joint family income from the properties of joint family properties. Per contra, the defendants proved that the properties are self acquired properties of the 1st defendant and the 1st defendant had executed the sale deeds in favour of the 9th to 11th defendant and the said sale deeds were compulsorily registered and thereby the plaintiffs are not entitled to any share over the items 23 to 26 of the suit properties. Therefore the appeal in respect of items 23 to 26 is liable to be allowed and the decree and judgement of the Trial Court are liable to be set aside to that effect.

29. In the result, the appeal suit is allowed and the decree and judgment passed in O.S. No.26 of 1984 on the file of the Subordinate Court, Tanjore dated 07.10.1991 are set aside in respect of items 23 to 26 of the suit properties and the suit is dismissed in respect of items 23 to 26 of the suit properties. There shall be no order as to costs. Consequently, Connected Miscellaneous Petitions are closed.

21.06.2024



A.S.No.703 of 1992

Documents marked on the side of respondents/plaintiffs:-

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1. Ex.A34 - Certified copy of Communication by Special Tahsildar to the District Adhi Dravidar Welfare Office, Tanjavur dated 13.12.1995.

2. Ex.A35 – Certified copy of the proceedings of Special Tahsildar for the Adhi Dravidar Welfare Department, Tanjavur dated 18.03.1996.

3. Ex.A36 – Certificate copy of Document obtained under RTI Act from Special Tahsildar Highways Department, Tanjavur, dated 19.04.2021.

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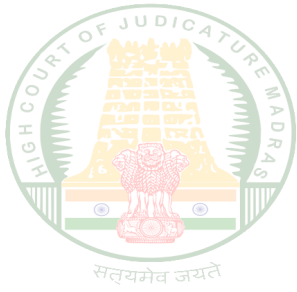
Internet : Yes

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Neutral Citation: Yes/No

To

The Subordinate Court, Tanjavur.



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A.S.No.703 of 1992

P.DHANABAL,J

(nsl)

Pre-delivery judgment in
A.S. No.703 of 1992

21.06.2024