

C.M.A(MD)No.1416 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 24.04.2026

Pronounced on : 10.07.2026

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.1416 of 2025
and
C.M.P.(MD)No.18762 of 2025

R.Sridharan

: Appellant

Vs.

1.R.Senthilkumar

2.S.Ramasamy

3.R.K.Sundari

4.S.Santhy

5.S.Swathy

: Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Order 43 Rule 1 (r) of C.P.C., against the fair and decretal order, dated 26.09.2025 passed in I.A.No.2 of 2022 in O.S.No.183 of 2021 on the file of the II Additional District Court, Thoothukudi.

For Appellant : Mr.G.Prabhu Rajadurai

For Respondents : Mr.S.Muthu Malairaja, for R1.

: Mr.R.Vinoharan, for R2.



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JUDGMENT

The Civil Miscellaneous appeal is directed against the order passed in I.A.No.2 of 2022 in O.S.No.183 of 2021, dated 28.09.2025 on the file of the II Additional District Court, Thoothukudi, in granting temporary injunction under Order 39 Rule 1 of the Code of Civil Procedure.

2. The appellant is the fourth defendant in O.S. No. 183 of 2021. The first respondent, as the plaintiff, filed the suit seeking partition and allotment of 1/6th share in the suit properties. Pending suit, the plaintiff filed an application, invoking Order 39 Rule 1 of C.P.C., seeking temporary injunction restraining the fourth defendant from alienating the suit properties to the third parties till the disposal of the suit.

3. The relationship between the parties is not in dispute, that the second defendant is the wife, the plaintiff and the fourth defendant are the sons and the third and fifth defendants are daughters of the first defendant.



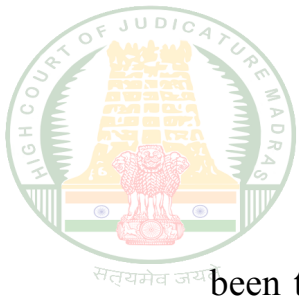
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4. The case of the plaintiff in short is as follows :

(a) The first defendant's father deceased Soundaram Chettiar had extensive properties in the village of Vedanatham and other villages of Thoothukudi District and he had huge cash holdings and other assets. The first defendant, after the death of his father Soundaram Chettiar, settled at Thoothukudi and started a bakery business utilizing liquid funds of his father Soundaram Chettiar in the name and style of 'Shanthi Bakery'. The plaintiff from his childhood used to assist the first defendant in his business.

(b) The first defendant purchased the suit properties and several other properties in the name of Shanthi Bakery and also in the name of family members utilizing the profits generated from Shanthi bakery business and other real estate business besides from the ancestral cash holdings. Some of the suit properties were purchased in the name of the first defendant's mother Nagammal and other suit properties were purchased in the name of the first defendant and also in the name of the Santhi bakery. The plaintiff and other defendants have been in joint possession and enjoyment of the suit property. Being a joint family member, the plaintiff is entitled to get 1/6 share out of the suit properties. In the meanwhile, the first defendant has



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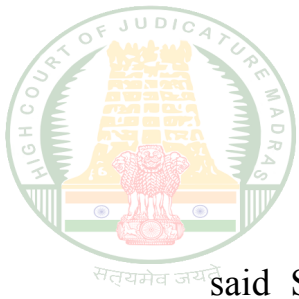
been trying to sell the suit property without making any partition between the family members and such a conduct is illegal and hence, the plaintiff was constrained to file the above suit for partition.

(c) Pending suit, the first defendant executed a registered sale deed, dated 29.07.2022 in respect of the suit properties in favour of the fourth defendant and the same is illegal and is not binding on the plaintiff. Moreover, the said transaction was hit by the principle of *lis pendens*. The plaintiff has a *prima facie* case and the balance of convenience is in his favour. If the injunction is not granted, he will be put to irreparable loss and injury and hence, he was also forced to file the above petition seeking temporary injunction.

5. The first defendant filed his written statement and the defendants 1 and 4 filed a memo adopting the statement of the first defendant as their counter to the injunction petition.

6. The defence of the defendants 1 to 4 in short is as follows :

(a) The first defendant's father Soundaram Chettiar was a pulses commission agent. He had a wife namely Nagammal and two sons namely the first defendant and one Subramanian Chettiar and six daughters. The



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said Soundaram Chettiar out of his hard-self earnings purchased some properties in his village and died intestate on 01.11.1962 and the estate of the deceased Soundaram Chettiar was devolved upon the mother of the first defendant, the first defendant and Subramanian Chettiar and six daughters of Soundaram Chettiar.

(b) The said Soundaram Chettiar had not left any cash holding as alleged by the palintiff. The first defendant and the daughters of the said Soundaram Chettiar, after the death of the Soundaram Chettiar, orally relinquished all their rights and title of their father's estate in favour of their mother and their brother Subramanian Chettiar. The first defendant's mother executed a registered Will dated 22.09.1993 bequeathing her self-acquired properties in favour of the first defendant and after her death, the Will came into force and acted upon.

(c) The plaintiff himself has admitted that the father of the first defendant had properties and huge cash holdings and other assets and in such case there cannot be any ancestral devolution of properties or ancestral nucleus to attract Section 6 of Hindu Succession Act.

(d) The first defendant started a Tea shop (Shanthi Bakery) in the year 1963 in Thoothukudi and also land brokerage business and out of hard



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work and self-earnings, he purchased several properties in his name and his tea shop concerned and also in the name of his family members. The first defendant purchased 12 items of properties in the name of the plaintiff and worth of the said properties would surpass several crores.

(e) The plaintiff sold away some of the properties and is keeping the other properties with him. The first defendant out of his own volition and clear mind has settled the suit properties in favour of his younger son the fourth defendant and only in order to cause further harassment, the plaintiff has filed the about suit making illusory claim as if the suit properties are coparcenary properties. Since the suit properties are the self-acquired separate properties of the first defendant, he settled the same in favour of the fourth defendant and hence, the plaintiff has no right to claim any share therein.

(f) The plaintiff will not be put to any prejudice as that all the transaction pending litigation would be affected by the principles of *lis pendense*. There is no *prima facie* case for granting injunction and the attempt of the plaintiff is only to abuse the process of Court and as such, the injunction petition is liable to be dismissed.



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7. During enquiry, the plaintiff exhibited 51 documents as Ex.P.1 to Ex.P.51. The defendants adduced no documentary evidence. The learned trial Judge, upon considering the pleadings, documentary evidence and on hearing the arguments of both the sides, passed the impugned order, dated 26.09.2025, allowing the petition filed under Order 39 Rule 1 of C.P.C., and thereby granting temporary injunction as prayed for. Aggrieved by the said impugned order, the fourth defendant has preferred the present appeal.

8. The learned counsel for the fourth defendant would submit that since all the properties are the self-acquired properties of the first defendant, the plaintiff has no right over the same; that the plaintiff has specifically pleaded in the plaint that Soundaram Chettiar had huge cash holding and under such circumstances, there is no room to state that the suit properties are ancestral properties; that the plaintiff has neither produced any documents nor any other materials to show that the suit properties are joint family properties; that any alienation during the pendency of the suit would be covered under Section 52 of Transfer of Property Act and as such granting of temporary injunction is unnecessary; that the plaintiff failed to

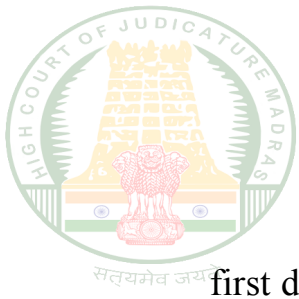


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show any prima facie title in respect of the suit properties and that the learned trial Judge failed to consider that balance of convenience was in favour of the fourth defendant and as such, he is entitled to deal with and enjoy the property in the manner known to law, but the learned trial Judge has unjustly curtailed the fourth defendant's property rights without any legal basis.

9. The learned counsel appearing for the plaintiff would submit that the fourth defendant has earlier filed a suit claiming partition similar to that of plaintiff and in the plaint, he has specifically stated that after the death of Soundaram Chettiar, the first defendant started bakery business utilizing liquid funds of his father Soundaram Chettiar; that the properties were purchased in the name of family members utilizing the profits generated from the bakery business and other real estate business besides from the ancestral cash holding by the plaintiff; that the fourth defendant has also stated in his plaint that his father has admitted in his affidavit, dated 14.11.2009 filed in the suit in O.S.No.10 of 2009 on the file of the District Court, Thoothukudi that the business operation carried on by him were only joint family business operations; that during the pendency of the suit, the



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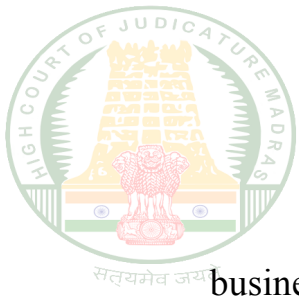
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first defendant executed a settlement deed in favour of the fourth defendant in respect of the suit properties and the fourth defendant sold several properties to third parties as evident from the documentary evidence produced and that the trial Court, considering the above aspects, has rightly granted temporary injunction and that therefore, the said impugned order does not warrant any interference.

10. Heard the learned counsel for the appellant/fourth defendant as well as the learned counsel for the first respondent/plaintiff and the learned counsel appearing for the second respondent/1st defendant.

11. Pending Civil Miscellaneous Appeal, the third respondent died on 22.12.2025. The learned counsel for the appellant filed a memo stating that the respondents 1, 2 and 4, 5 are the legal heirs of the deceased third respondent. The said memo is recorded.

12. At the outset, as rightly contended by the learned counsel for the fourth defendant as well as the learned counsel for the first defendant, the plaintiff has taken a stand in his plaint that the first defendant started bakery



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business utilizing the liquid funds of his father Soundaram Chettiar, but he has nowhere whispered that the deceased Soundaram Chettiar had ancestral properties and after his death, the same came to be devolved on the legal heirs of the deceased Soundaram Chettiar including the first defendant.

13. As already pointed out, it is the specific case of the plaintiff that the first defendant purchased the suit properties in the name of Shanthi bakers and in the name of family members utilizing the profits generated from Shanthi bakery business and other real estate business besides from ancestral cash holdings.

14. As rightly pointed out by the learned counsel for the fourth defendant, except the above vague and bald averments, the plaintiff has not elaborated anything further. Moreover, the plaintiff has not produced even *prima facie* material to show that his grandfather, Soundaram Chettiar, possessed such cash holdings or other assets, much less that the same devolved upon the first defendant and constituted the nucleus for acquisition of the suit properties.



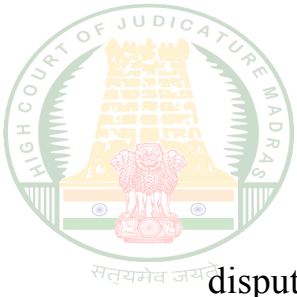
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15. As already pointed out, notably it is not the plaintiff's case that his grandfather owned any ancestral or joint family immovable properties. But according to him, what was allegedly inherited by the first defendant was only cash and other liquid assets. In the absence of any evidence regarding the existence, quantum, and receipt of such assets by the first defendant, the very basis of the plaintiff's claim appears to be doubtful.

16. As rightly contended by the learned counsel for the first defendant, even assuming that the first defendant had inherited some properties from his father, after the commencement of the Hindu Succession Act, 1956, such properties would devolve upon him in his individual capacity and would not automatically become joint family properties in the hands of his sons and that therefore, the plaintiff cannot claim a share merely on the basis that the first defendant had inherited some assets from his father.

17. It is settled law that the person asserting that a property is a joint family property must first prove that the joint family possessed a sufficient nucleus capable of generating the income required for the acquisition of the



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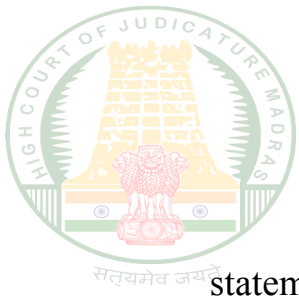
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disputed properties. The initial burden squarely lies upon the person who claims that the properties are joint family properties, only after such initial burden is discharged, the onus gets shifted to the person in whose name the properties stand to show that they are his self-acquired or separate properties.

18. In the case on hand, as rightly pointed out by the learned counsel for the fourth respondent, the plaintiff has miserably failed to discharge even the initial burden of proving *prima facie*, the existence of a joint family nucleus. It is not in dispute that the business of Shanthi Bakery was being carried on as a proprietary concern of the first defendant. Even assuming for argument sake that the first defendant's sons, including the plaintiff, were assisting in the business, that by itself would not convert the proprietary business into a joint family business.

19. In the case on hand, the learned trial Judge has mainly relied upon the pleadings raised in the plaint by the fourth defendant in O.S.No.7 of 2010 on the file of the II Additional District Court, Thoothukudi, which was filed for partition, similar to that of the present plaintiff and also the

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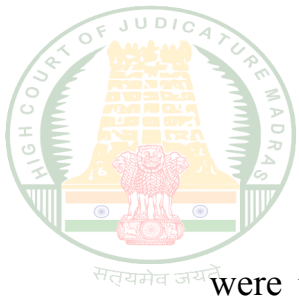
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statement allegedly made by the first defendant in O.S.No.10 of 2009 on the file of the District Court, Thoothukudi, which was referred to in the said plaint filed by the fourth defendant and the relevant portions are extracted hereunder :

“ 4. Late Soundaram Chettiar had extensive properties in the village of Vedanatham, Tuticorin District and he had huge cash holdings and other assets. After the death of Soundaram Chettiar the 1st defendant settled at Tuticorin. He started the bakery business utilizing the liquid funds of his father Soundaram Chettiar. Even from childhood the plaintiff and the 4th defendant used to assist the 1st defendant in his business. The properties were purchased in the names of the family members utilizing the profits generated from the bakery business and other real estate business besides from the ancestral cash holding by the 1st defendant.

5. The 1st defendant has admitted in his affidavit dated 14.11.2009 filed in the suit O.S.No. 10/2009, District Court, Tuticorin that the business operations carried on by him are only joint family business operations”.

20. The learned trial Judge, by referring to the above passages, has observed that the fourth defendant had admitted that the suit properties

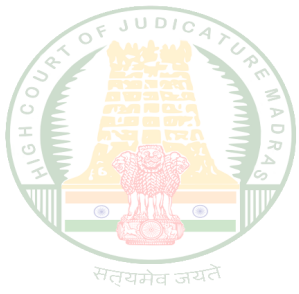


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were joint family properties acquired out of the income derived from the joint family business.

21. The learned counsel appearing for the first defendant would submit that the first defendant, along with his sons, had earlier instituted a suit in O.S.No.10 of 2009 against one Paramasivam and another, alleging that the defendants therein were using an identical trade name and identical products similar to those of Shanthi Bakery. They sought a declaration that the plaintiffs were entitled to use and enjoy the trade name 'Shanthi Bakery' and a consequential permanent injunction restraining the defendants from using the said trade name. In the said suit, the first defendant filed an affidavit stating that they had commenced the business in the name and style of Shanthi Bakery at East Car Street as a joint family business. According to the learned counsel, the said statement has been taken out of context, and the trial Court has placed undue reliance upon it to conclude that the suit properties are joint family properties acquired out of the income from the alleged joint family business. Such an inference, according to the learned counsel, is wholly unwarranted.

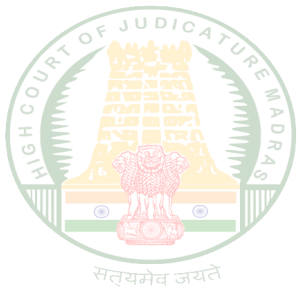


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22. The learned counsel would further submit that the above statement, even if taken at its face value, would not, by itself, render the suit properties either joint family properties or coparcenary properties. According to the learned counsel, the learned trial Judge, without appreciating the true legal import of the expressions "joint family property" and "coparcenary property", has proceeded to grant the order of temporary injunction. The mere description of the business as a joint family business cannot be construed as an admission that all the immovable properties, including the suit properties standing in the names of the first defendant, his wife and his children, are joint family properties.

23. It is pertinent to note that the issue involved in the trademark suit in O.S.No.10 of 2009 was entirely different. Moreover, there was no adjudication in the said suit regarding the nature and character of the properties standing in the names of the proprietary concern, the first defendant, or his family members. Therefore, the statement made in the said proceedings cannot be treated as a conclusive admission regarding the character of the suit properties.

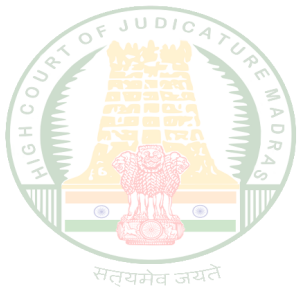


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24. In support of the above contention, the learned counsel for the first defendant relied upon the decision of this Court in S. Bagyalakshmi Vs. S. Senthilkumar and others rendered in S.A.Nos.202, 203 and 204 of 2015, dated 26.09.2018, wherein the respondents therein had also relied upon an earlier admission allegedly made by the appellant in a partition suit to contend that the property in question was a joint family property. This Court, after referring to various decisions of this Court as well as those of the Hon'ble Supreme Court, held as follows::

18. As rightly put forth by the respondent's counsel, the admission of the respondent in O.S.No.101 of 1986 as regards the character of the property, would not, in any manner, determine the character of the property. The character of the property would only be determined based on the devolution of the property from the original owner and accordingly, when ample materials have been placed to evidence that the suit property had been acquired only by the father Kandasamy Gounder and the respondent found to have acquired the suit property from Kandasamy Gounder, no doubt, by levying the partition in O.S.No.101 of 1986, in such view of the matter, when the devolution of the property in favour of the respondent and his brother Velusamy had taken place by virtue of Section 8 of the Hindu Succession Act, 1956, and as above discussed,

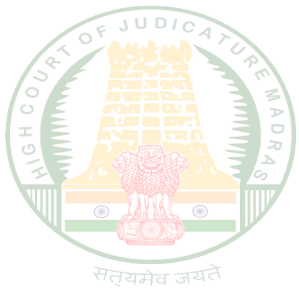


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when the appellants have miserably failed to establish the ancestral character of the suit property as projected by them and when the pleas projected by them for determining the ancestral character of the suit property are found to be highly improbable and unacceptable as above noted and as rightly determined by the courts below, in such view of the matter, the pleas made by the respondent in O.S.No.101 of 1986, would not, in any manner, alter the position of the character of the suit property. Accordingly, when it is found that the devolution of the property had taken place under Section 8 of the Hindu Succession Act, 1956, amongst the class-I heirs at the instance of the court proceeding, it could be seen that the suit property would only acquire the character of the self acquired or the separate property of the first respondent and not as the joint family property of the first respondent and his family members, namely, the appellants and the position of law has been discussed in the decision reported in 2017- 2.L.W.343 (M.Palaniappan & another vs. Nachimuthu) and in the abovesaid decision, this court had taken into consideration the various pronouncement of the Apex Court, in particular, the decision of the Apex court reported in 2016-4-L.W. 309 and it is also noted in the said decision, though the decision relied upon by the appellant reported in (2013)9 Supreme Court Cases 419 had been considered by the Apex Court in the decision reported in 2016-4-L.W. 309, the Apex Court had



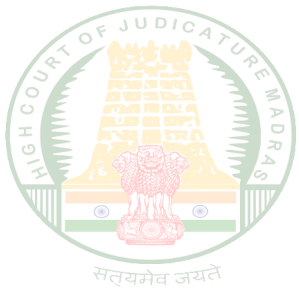
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distinguished the abovesaid decision relied on by the appellant's counsel by holding that in the abovesaid decision, there was no consideration of the effect of Sections 4,8,19 and 30 of the Hindu Succession Act, 1956, accordingly, it has been found that the self acquired property or joint family property, once they get devolved in accordance with Section 8 of the Hindu Succession Act, 1956, on principles of intestacy, the joint family property ceases to be the joint family property in the hand of the various persons, who have succeeded to it as they hold the property as tenants in common and not as joint tenants. The position of the law on the abovesaid aspect has been outlined in the above said decision as follows:

20. It could be seen that as per the provisions of Hindu Succession Act,1956, considering the devolution of interest under Section 8 of the Hindu Succession Act, 1956 amongst the Class-I heirs, the properties derived by the first defendant from his father could only be treated as his separate properties and not as the joint family properties and not as the joint family properties of the first defedant and his son Viz. the second defendant. To the above position of law, there are ample authorities and a perusal of the decisions reported, which have been cited by the counsel for the defendants, would go to show that the properties derived by the first defendant from his father could only



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be treated as the separate properties of the first defendant and not as the joint family properties of the first defendant and his son viz., the second defendant. In this connection, a useful reference may be made to the decisions reported in AIR 1979 MADRAS 1 (The Additional Commissioner of Income-tax, Madras-I v. P.L.Karuppan Chettiar), 1993 Supp (1) Supreme Court cases 580 (Commissioner of Income Tax v. P.L.Karuppan Chettiar), (1987) 100 L.W. 347 = (1986) 3 supreme Court cases 567 (Commissioner of Wealth Tax, Kanpur and others v. Chander Sen and others), 2008-2-L.W 424 = (2008) 3 supreme court cases 87 (Bhanwar Singh v. Puran and others) and the latest decision 2016-4-L.W. 309 = (2016) 4 supreme Court cases 68 (Uttam v. Saubhag Singh and others). A perusal of the avovesaid decisions would go to show that when the son inherits the property, as per Section 8 of the Hindu Succession Act, 1956, he does not take it as Kartha of his own undivided family, but take it in his individual capacity. Therefore, the position of law being above as adumbrated by our High Court and the Apex Court in the abovesaid decisions, the contention of the defendants' counsel that the suit properties are the joint family properties of the defendants 1 and 2 cannot at all be countenanced in any manner.



21. *However, still not losing hope, the defendants' counsel pressed into service, the decision reported in 2013-4-L.W. 672=(2013)9 Supreme Court Cases 419 (Rohit Chuhan Vs. Surinder Singh and Others). Though the abovesaid decision may lend support to his contention, however, the abovesaid decision is also taken note of in the decision reported in 2016-4.L.W. 309 = (2016) 4 Supreme Court Cases 68 (Uttam V. Saubhag Singh and Others) and the Apex Court has distinguished the abovesaid decision relied on by the defendants' counsel by holding that in the abovesaid decision, there was no consideration of the effect of Sections 4,8, 19 and 30 of the Hindu Succession Act, 1956. Therefore,, it could be seen that on a conjoint reading of Sections 4,8,19 and 30 of the Hindu Succession Act, 1956, it could be seen that if the self acquired property or joint family property, once they get devolved in accordance with Section 8 of Hindu Succession Act, 1956, on principles of intestacy, the joint family property ceases to be joint family property in the hand of the various persons, who have succeeded to it as they hold the property as tenants in common and not as joint tenants.*

19. *In the light of the abovesaid position, it is seen that the suit property could only be determined as the self acquired property of the respondent and therefore the so called admission said to have been*



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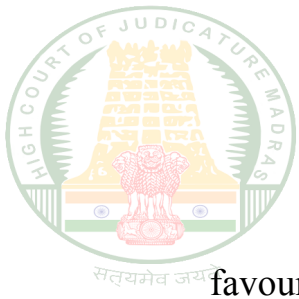
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made by the respondent in O.S.No.101 of 1986,would not, in any manner, tilt the scales in favour of the appellants for determining the character of the suit property as otherwise i.e., ancestral, as sought to be projected by the appellants.

20. In the light of the above discussions, the so called admission of the respondent in O.S.No.101 of 1986, as regards the character of the property, would not, in any manner, enure to the benefit of the appellants, particularly for determining the character of the property in dispute and when the appellants have failed to establish the ancestral character of the suit property, it is seen that the courts below are justified in negating the relief of partition prayed for by the appellants.

25. The legal position referred to above squarely applies to the facts of the present case. It is well settled that an admission has to be construed in the context in which it was made and cannot be read in isolation or taken out of context so as to confer substantive rights in a partition suit. Therefore, the statement made by the first defendant in the earlier trademark suit cannot, by itself, be construed as an admission that the suit properties are joint family or coparcenary properties.

26. It is admitted by the defendants that during the pendency of the suit, the first defendant executed a settlement deed, dated 29.07.2022 in



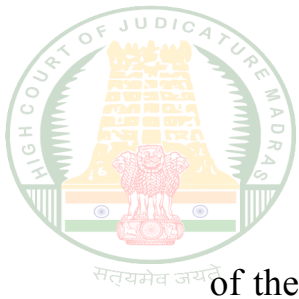
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favour of the fourth defendant. According to the plaintiff, in pursuance of the said settlement deed, the fourth defendant had executed several sale deeds in favour of the third parties and the same are hit by Section 52 of Transfer of Property Act.

27. The learned trial Judge, by mainly relying on the sales made by the fourth defendant has come to the conclusion that the plaintiff has established a strong *prima facie* case in his favour and the balance of convenience also tilts in his favour and that if the petition is not ordered, the alienations by the fourth defendant could not be restrained and on such findings granted the temporary injunction as sought for.

28. As rightly contended by the learned counsel for defendants 1 and 4, the mere execution of the settlement deed by the first defendant in favour of the fourth defendant, or the subsequent alienations made by the fourth defendant, cannot, by themselves, justify the grant of a temporary injunction, as such transfers are subject to the doctrine of *lis pendens* contemplated under Section 52 of the Transfer of Property Act, 1882. The rights of the parties to such transactions are ultimately subject to the result



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of the pending litigation and that therefore, such transfer by themselves do not establish a *prima facie* case in favour of the plaintiff.

29. In the case on hand, as already pointed out, the plaintiff has failed to produce any *prima facie* material to establish the existence of a joint family nucleus, the receipt of any cash or assets by the first defendant from his father, or the utilization of such alleged nucleus for the acquisition of the suit properties. But the trial Court, without examining the above fundamental requirements, proceeded mainly on the basis of the alleged admission and the subsequent alienations which are totally irrelevant for determining *prima facie* right.

30. Since the plaintiff has failed to show the existence of *prima facie* right, the question of considering the balance of convenience or irreparable injury does not arise. Consequently, this Court has no hesitation in holding that the order of the trial Court granting temporary injunction is legally unsustainable and is liable to be set aside.

31. Considering the facts and circumstances of the case, the parties are directed to bear their own costs. It is made clear that the observations



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and findings recorded in this judgment are only for the limited purpose of deciding the present Civil Miscellaneous Appeal and shall not influence the trial Court while deciding the suit on merits. The trial Court shall independently appreciate the pleadings and evidence and dispose of the suit in accordance with law. Considering that the suit has been pending for more than five years and also taking note of the fact that some of the parties are senior citizens, the trial Court is directed to expedite the trial and dispose of the suit as expeditiously as possible.

32. In the result, the Civil Miscellaneous Appeal is allowed. The order passed in I.A.No.2 of 2022 in O.S.No.183 of 2021, dated 26.09.2025 on the file of the II Additional District Court, Thoothukudi, is set aside. Consequently, the application for temporary injunction stands dismissed. The parties are directed to bear their own costs. Consequently, the connected Miscellaneous Petition is closed.

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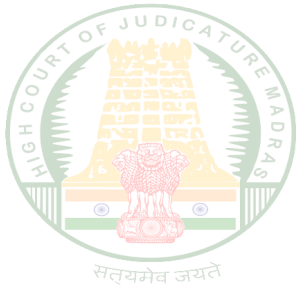
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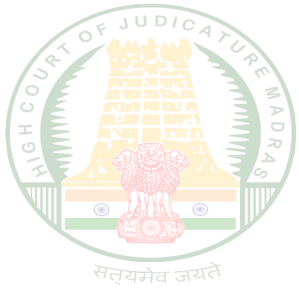


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To

- 1.The II Additional District Court, Thoothukudi.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.1416 of 2025

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.M.A(MD)No.1416 of 2025
and
C.M.P.(MD)No.18762 of 2025

10.07.2026