

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2015

CORAM:

THE HONOURABLE MRS.JUSTICE S.VIMALA

C.S.No.708 of 1992, 1578 of 1992, T.O.S.Nos.11 of 1992
and O.P.No.784 of 1992

Reserved on : 06.04.2015

Pronounced on : 29.09.2015

C.S.No.708 of 1992:

1.S.Thiagarajan
2.T.Mahesh
3.S.Govindaraj
4.Jayanand Govindaraj
5.Jayakumar Govindaraj
6.Siddhartha
7.Aditya
8.S.Padmavati
(Jayanand Govindaraj discharged as guardian
as per order dated 06.04.2015 in Application
Nos.2590 and 2591 of 2015) ... Plaintiffs

Vs.

1.Mrs.Chitkala Govindaswamy
2.Vijayakumar Chandar
3.Sivashankar Chander
4.MAJ.General Chander Govindaswamy
5.K.R.Ramamani (deceased)
(Amended as per order dated 06.04.2015
in C.S.No.708 of 1992, C.S.No.1578 of 1992,
TOS No.11 of 1992 and O.P.No.784 of 1992)
6.R.K.Shetty ... Defendants

PRAYER: Plaint under Order IV Rule 1 of O.S.Rules r/w.
Order VII Rule 1 of C.P.C., praying for passing of a
decree and Judgment : (a) For a Declaration declaring
that the properties at Plot Nos.6, 7 and 8 bearing Door
Nos.13 and 14 Bragadambal Road, Nungambakkam, Madras 600
034 and the bungalow and garage and out houses etc. more
fully set out in the Schedule hereunder are the joint
family properties of the Plaintiffs and consequently that
the Will dated 10.12.1990 executed by Shri.

S.T.Sadasivan, bequeathing the schedule mentioned property is void, illegal, invalid and unenforceable.

(b) For partition by directing the division of the Schedule mentioned properties being Plot Nos.6,7 and 8 bearing Door Nos.13 and 14 Bragadambal Road, Nungambakkam, Madras 600034, by metes and bounds and allot one-half share to the first plaintiff, one-third share to the third Plaintiff. 1/12th share each to the 8th Plaintiff and first defendant.

(c) To appoint an Advocate Commissioner for effecting division of the suit properties and allotment thereof:

(d) For a permanent injunction restraining the defendants from in any manner seeking to dispossess or interfere with the possession and enjoyment of the properties morefully set out in the Schedule by the plaintiffs.

(e) directing the defendants to pay the costs of the suit.

For plaintiffs	: Mr.R.Parthasarathy
	for M/s.Sathish Parasaran
For D1 to D3	: Mr.V.K.Vijayaraghavan
For D4 to D6	: Mr.C.A.Diwakar

C.S.No.1578 of 1992

1. K.R.Ramamani (deceased)

(Amended as per order dated 06.04.2015 in C.S.No.708 of 1992, C.S.No.1578 of 1992, TOS No.11 of 1992 and O.P.No.784 of 1992)

2. Major General Chander Govindasamy

3. R.K.S.Shetty

... Plaintiffs

Vs.

1. S.Govindaraj

2. S.Tyagarajan

3. T.Mahesh

4. Jayanand Govindaraj

5. Jayakumar Govindaraj

6. Siddharta

7. Aditya

8. S.Padmavathy

9. Mrs.Chitkala Govindaswamy

10.Vijayakumar Chander

11.Sivasankar Chander

(Jayanand Govindaraj discharged as guardian

as per order dated 06.04.2015 in Application

Nos.2590 and 2591 of 2015)

... Defendants

PRAYER: Plaintiff under Order VII Rule 1 of C.P.C. r/w. Section 6 of Specific Relief Act and under Order IV Rule 1 of O.S.Rules, praying for passing of a decree and Judgment :

(a) for repossession of the suit property at No.13, Brahadambal Road, Nungambakkam, Madras - 600 034, with all the movable properties and documents morefully described in the Schedule hereunder, from the defendants 1 to 8 and (b) directing the defendants 1 to 8 to pay the cost of the suit.

For plaintiffs	: Mr.C.A.Diwakar
For D1 to D8	: Mr.R.Parthasarathy
	for M/s.Sathish Parasaran
For D9 to D11	: Mr.V.K.Vijayaraghavan

T.O.S.No.11 of 1992

1. K.R.Ramamani (deceased)	
(Amended as per order dated 06.04.2015	
in C.S.No.708 of 1992, C.S.No.1578 of 1992,	
TOS No.11 of 1992 and O.P.No.784 of 1992)	
2. Major General Chander Govindasamy	
3. R.K.S.Shetty	... Petitioners
Vs.	
1. S.Govindaraj	
2. S.Padmavathy	... Respondents

Prayer: Petition under Sections 222 and 276 of the Indian Succession Act XXXIX of 1925, praying to allow this petition to prove the Will and codicil in common form and that probate thereof to have effect throughout the whole of the Union of India may be granted to them.

For Petitioners	: Mr.C.A.Diwakar
For Respondents	: Mr.R.Parthasarathy
	for Mr.Sathish

Parasaran

O.P.No.784 of 1992

S.Govindaraj	... Petitioner
vs.	
1. K.R.Ramamani (deceased)	
(Amended as per order dated 06.04.2015	
in C.S.No.708 of 1992, C.S.No.1578 of 1992,	
TOS No.11 of 1992 and O.P.No.784 of 1992)	

2. Major General Chander Govindasamy
 3. R.K.S.Shetty ... Respondents

Prayer: Petition under Section 301 of the Indian Succession Act, praying to direct the removal of the respondents 1 to 3 herein as executors of the estate of late S.T.Sadasivan and direct the respondents to pay the cost of this petition.

For Petitioner : Mr.R.Parthasarathy
 For R1 to R3 : Mr.C.A.Diwakar

COMMON JUDGMENT

With 131 documents on the side of the Plaintiffs and 43 documents on the side of the Defendants, 98 documents as Court Exhibits along with evidence of, P3 (P.W.1), P1 (P.W.2), D6 (D.W.1), Niranjana Bhatt (D.W.2), Major Parthasarathy (D.W.3) and D1 (D.W.4) awaited the decision of this Court, having remained alive for 22 years.

2. The dispute is between the legal heirs of S.T.Venkatranga Iyer born of the year 1877 and died on 18.01.1948 and the legal heirs of his brother S.T.Sadasivan born of the year 1899 and died on 29.01.1992, i.e. 44 years after the death of S.T.Venkatranga Iyer.

3. ***The suit in C.S.No.708 of 1992*** has been filed for a declaration that Plot Nos. 6, 7 and 8, Bragadambal

Road, Nungambakkam, Madras and the House, Garage and Out-house therein, are Joint Family Properties of the plaintiffs and that the Will of S.T.Sadasivan is void and also for partition and separate possession of all properties of S.T.Sadasivan.

4. **Petition in O.P. No. 243 of 1992** has been filed by the deceased K.R.Ramamani, Major General Chander Govindasamy and R.K.S.Shetty, the three named executors under the Will and Codicil of S.T.Sadasivan, **for grant of Probate of the last Will** and Testament dated 10.12.1990 and the Codicil dated 16.12.1991 of S.T.Sadasivan.

Since caveats were filed objecting to the grant of Probate, the said **O.P. has been converted into T.O.S. No. 11 of 1992**. The only defendants in T.O.S. No. 11 of 1992 are 3rd and 8th Plaintiffs in C.S. No. 708 of 1992.

5. The Executors of the last Will and Codicil of S.T.Sadasivan have filed a **suit in C.S. No.1578 of 1992, under Section 6 of the Specific Relief Act**, against all the plaintiffs in C.S.No.708 of 1992 as well as Defendants 1 to 3 in C.S.No.708 of 1992, seeking the

relief of recovery of possession.

6. A petition in O.P. No.784 of 1992 has been filed by S.Govindaraj (3rd plaintiff in C.S. No. 708 of 1992), **for removal of the executors** under Section 301 of the Indian Succession Act, 1925, alleging acts of misfeasance and malfeasance against them.

Plaint averments in C.S.No.708 of 1992

7. S.T.Venkatranga Iyer (hereinafter referred to as STV) and S.T.Sadasivan (hereinafter referred to as STS) were brothers, out of whom, the former is the elder. S.T.Venkatranga Iyer had no issues and therefore, he adopted the son of his brother S.T.Sadasivan, i.e. the first plaintiff, namely, Thiagarajan as his son. S.T.Sadasivan had two sons and two daughters, of whom, plaintiffs 1 and 3 are the sons and 8th plaintiff and the first defendant are the daughters. The 4th defendant is the husband of the first defendant and defendants 2 and 3 are the sons of the first defendant. Defendants 5 and 6 are the named executors of the Will.

7.1. STS was a reputed banker. He was the Co-founder

of Indian Overseas Bank along with Sri M.Ct.M.Chidambaram Chettiar in the year 1937 and functioned as General Manager of the Bank till 1944, after which, he became the Deputy General Manager of United Commercial Bank, which later on, became UCO Bank.

7.2. S.Thiagaraja Iyer and his son STV, constituted themselves into a Hindu Undivided Family (HUF), by birth of STV in 1877. Thereafter, STS became a coparcener, upon his birth in 1899. After the death of S.Thiagaraja Iyer in 1901, STV became the karta of the HUF. Later, 3rd plaintiff and 1st plaintiff became co-parceners of HUF upon their birth in 1926 and 1931 respectively. The ancestral properties consisted of 6.41 acres of agricultural land in Valavanur Village.

7.3. Apart from agricultural operations, the HUF commenced Oil Distributorship business under 'Asiatic Petroleum Company', which later became 'Burmah Shell Oil Storage and Distribution Company'. With these funds, the HUF was able to marry off the 5 daughters of the family and also started acquiring further agricultural lands in the name of STV, in Valavanur, Koliyanoor and Salampalayam Villages in South Arcot District.

7.4. STS became employed in 1922 and ever since 1931, he started augmenting the income of the HUF by acquiring substantial shares and stocks in Companies, which was yielding substantial income for the HUF, as of the year 1940.

7.5. At the time when Plot Nos. 7 to 10, Bragadambal Road, were purchased in the name of STS on 12.8.1940 for Rs.6,900/-, the HUF was already in possession of huge income being generated from fertile agricultural lands of about 18.46 acres, shares and bonds of the value of about Rs.89,400/-, out of which the dividend income alone was to the tune of Rs.27,647/- and also income from the oil distributorship business as stated above.

7.6. Plot No. 6, Bragadambal Road, was purchased in the name of STS on 06.07.1946, for a sum of Rs.4,972/- and entire sale consideration for the said purchase, was paid by STV, from and out of his bank account, marked as Ex.P-6.

7.7. STV was managing the affairs of the joint family at the three villages in South Arcot District

(agricultural operations and oil distributorship business) and STS was looking after the interest of the joint family at Madras (Plot Nos. 6 to 10, Bragadambal Road as well as shares and stocks).

7.8. Both 1st plaintiff and 3rd plaintiff were minors at the time of purchase of Plots 7 to 10 and 1st plaintiff was still a minor at the time of purchase of Plot No.6. STV, who was the Kartha of the HUF, died on 18.01.1948 at Valavanur village, where he was always stationed.

7.9. For reasons unknown and **when P-1 and P-3 were still very young and were entirely under the control of their father, STS unilaterally declared that the Madras properties (Plot Nos. 6 to 10) were his self acquired properties and not HUF properties. Since STS was the natural father of P-1 and P-3 and the eldest member and Kartha of the family, his words were taken for granted and was never questioned till 1989.** Till that date, the plaintiffs were always under the impression that Plot Nos. 6 to 10 were the self acquired properties of STS and did not belong to the HUF.

7.10. On 30.03.1969, there was a registered deed of partition between STS, P-1 and P-3, where under, all agricultural lands, which stood in the name of STV, were partitioned among the three persons, after describing the same as HUF properties. **However, Plot Nos. 6 to 10, Bragadambal Road were not partitioned, since STS had represented that it was his self acquired properties and that is why no claim was made by any of the plaintiffs even in 1969 for partition of the Madras properties, till the mother's death in 1989 and issuance of the legal notice in October 1990.**

7.11. Further STS gifted Plot Nos.9 & 10 in favour of his wife on 12.09.1968 and this was an unilateral decision of STS, in which, the plaintiffs had no role to play. Further, STS directed his wife to gift Plot No.9 in favour of P-3 and Plot No.10 in favour of P-1, on account of the impending Urban Land Ceiling in Tamil Nadu. Even these 2 gifts were the unilateral decision of STS, in which, the plaintiffs had no role to play.

7.12. Vijaya Sadasivan, wife of STS, fell ill and was diagnosed with cancer in the year 1989. It was only

during this time that the mother of P-1, P-3 and P-8, informed P-1 in her death bed, that STS was unilaterally treating the properties, being Plot Nos. 6 to 10, as his individual self acquired properties, when the said properties are actually joint family properties. P-1 and P-3 were also informed by their mother that STS was under the active influence of D-1 and was contemplating settling all his properties only in her favour.

7.13. Vijaya Sadasivan died on 22.11.1989 and thereafter, upon a detailed investigation of all antecedent documents, it came as a shock and surprise to the plaintiffs that Plot Nos. 6 to 10 were indeed HUF properties. The plaintiffs unearthed old bank accounts and also a Deed of Registered Mortgage, executed on 11.4.1942 (Ex.P-4 and C-2), where under Plot Nos. 7 to 10 have been described as joint family properties of the mortgagors. The mortgagors in this document are STV (for himself and for and on behalf of P-1, who is his adopted son) and STS (for himself and for and on behalf of P-3). Upon further investigation, it also came to the plaintiffs' knowledge that Plot No.6 was entirely purchased out of the funds given by STV from his Bank account (Ex. P-6).

7.14. Plot Nos. 6 to 10, Bragadambal Road, were entirely purchased out of joint family funds and belonged absolutely to the HUF and the plaintiffs were all along under the mistaken impression at the behest of STS, that the said properties were not joint family properties, but, were his self acquired properties. This was on account of the relationship between the parties and that they came to know about the real character of the properties only at the time of their mother's death in 1989.

7.15. STS died on 29.01.1992 and on 15.02.1992, his Will was read out in the presence of the family members by D-5. As per this Will, Plot No. 6 as well as all properties of HUF in the said three villages were bequeathed in favour of D-1. The bungalow in Plot Nos. 7 and 8 were bequeathed in favour of D-2 and D-3 equally and all his movable properties, in the form of shares and bank deposits, were bequeathed in favour of D-1 to D-3 as well as the daughter of D-1 in equal shares. After meeting the obsequy expenses of STS, the residue of the estate has been bequeathed in favour of D-1. There is also a bequest in favour of P-8 for Rs.3 lakhs and a sum

of Rs.1 lakh each has been bequeathed in favour of D-1, D-2 and D-3 and Rs.50,000/- to Veda Pata Nidhi Trust. In his Will dated 10.12.1990, STS had appointed Sri.K.R.Ramamani, a learned Senior Counsel (since deceased) and D-4, who is the husband of D-1, as the Executors of the Will. Subsequently, by a Codicil dated 16.12.1991, STS appointed D-5 as the other executor of the Will.

Summary of written statement filed by D1, which is adopted by second and third defendants in C.S.No.708 of 1992

8. The first defendant is the second daughter of late S.T.Sadasivan. The defendants 4 to 6 are the executors under the Will and Codicil of STS.

9. STS and his brother S.T.Venkatranga Iyer had five sisters. STV lived permanently at Valavanur Village and he died on 18.01.1948. STS left the village during 1911 and studied at Madras, having qualified himself in M.A. (Hons) (Physics). He married Vijaya Sathasivam during 1921 and he was employed in several places like Bombay, Rangoon, Calcutta and Madras. He was placed in a very good position at Central Bank of India.

10. The suit properties viz., Plot Nos.7, 8, 9 and 10 were purchased by STS for the sale consideration of Rs.6,900/- which was his self earnings on 12.08.1940. The Sale Deed was drafted by K.S.Rajagopal Iyengar, who was father of the Executor late Sri Ramamani. At the time of purchase, STS was the General Manager of Indian Overseas Bank, Madras, but, he was a junior member of the family. There was no nucleus at that point of time so as to constitute a resource for purchase of the property. On the other hand, STS had sufficient financial capacity for purchasing the property. There is no material available to show that the suit properties would have been purchased from and out of the joint family funds.

10.1. The ancestral properties were located in survey No.25 to an extent of acre cents 4.20 and in R.S.No.29 to an extent of 2.21 acre cents. Apart from these two properties, there was a small house at No.40, North Agraharam, Valavanur Village, which was occupied by STV, his mother and sisters.

10.2. Though the family was in possession of properties, there was no surplus to the extent of being a

resource for the purchase of the property. The family was in poverty and therefore, the properties were mortgaged to Vythilinga Chettiar for a sum of Rs.400/- in the year 1901, which was registered on 20.09.1902. Money was repaid in installments up to 14.03.1918. On 23.06.1908, **second mortgage was executed in favour of M/s.Meenambal Ammal by STV to redeem the first mortgage for Rs.1200/-.** It was redeemed on 20.10.1912. The defendants specifically mentioned that it has taken 16 years to redeem a mortgage for a paltry sum of Rs.400/-.

10.3. Before redemption, an extent of 2.66 acres of dry land was sold out to the mortgagee Vaidyanatha Iyer on 14.02.1910 for Rs.1300/-. But it was repurchased on 24.10.1912. On 28.10.1912, again the total extent of 6.21 acres were mortgaged in favour of One Ammukuttiammal for a period of 5 years.

10.4. First mortgage dated 20.09.1902 was redeemed on 14.03.1918. Whereas the mortgage dated 28.12.1912 was redeemed on 12.08.1926. The redemption dated 12.08.1926 was made possible only with the assistance of STS. He sent money from Rangoon Branch selling 5% of Government

of India Bonds due for maturity in 1933. At that time, he was employed in Central Bank of India, Rangoon Branch. Discharge took place after 14 years.

10.5. Even though STV got Diesel Oil Dealership around 1911, he suffered loss and at that time, STS sent a sum of Rs.2,000/- from Rangoon to STV. This would make it clear that there was no surplus available for the purpose of purchasing the property.

10.6. STS remitted draft for Rs.1500/- dated 14.05.1936 to Burma Shell Company and remitted Rs.2000/- which was received by STV on 19.05.1936. STS paid a sum of Rs.5,000/- by way of demand draft during May and June 1936. Apart from that, STS provided security to the extent of Rs.24,000/- in the form of Government securities as demanded by Burma Shell Company. It was converted into stock certificates. After the death of STV, P.W.2 continued the business under the name and style of "M/s.S.Thiyagarajan and Co". After some time, the business was closed and the stock certificate given by STS was returned by the Company. As per documents, STS paid at least a sum of Rs.29,000/- to his brother. Out of Rs.29,000/-, Rs.24,000/- was returned to STS by his son

P.W.2 in the year 1959. Amount of Rs.5,000/- paid by way of DD to STV was not demanded back by STS on account of the respect shown to STV.

11. The Plaintiffs failed to show that there was sufficient income or nucleus available for the purpose of purchasing plot Nos.7,8,9 and 10. During 1922, STS was the junior officer in Central Bank, Bombay. During 1924, STS was at Madras and during 1925, he was posted at Rangoon in Burma. He became Company Secretary in 1921 and later, he became Chief Executive Officer of Burma Fire Services Company, Rangoon. He rendered his services as Chairman of Burma Local Board of Directors of Reserve Bank of India. **He deposited shares with Chartered Bank at Rangoon for getting draft facility. He invested a lot, developed and got profited. Even as on 18.05.1936, the valuation of shares held by him was Rs.62,800/-.**

11.1. During 1936, after returning to Madras, he was instrumental in the formation of Indian Overseas Bank with Overseas branches at Burma and Malaysia and commenced business in 1937. He was the first General Manager. First Foreign Branch of an Indian Branch

Exchange Bank was opened at Penang with branches at Rangoon, Kaulalampur, Singapore, Bombay etc.

11.2. ***During 1937, his partnership at Lloyds Insurance Agency at Rangoon continued. Thus, STS was financially growing stealthily and his investment became Rs.89,400/- during June 1938. (From Rs.62,800/- / 1936).*** Even though he shifted his office to Madras, his business continued upto 1942 when Japanese captured Burma in World War II. His monthly salary as G.M. was around Rs.1825/- and his salary per annum was around Rs.21,900/-. Though he helped his brother during October 1937, he was able to purchase a new Wolseley Seden Car for Rs.3,500/-. The marriage of the 8th plaintiff was celebrated on 01.09.1939 in a grand manner and for the marriage hall alone Rs.20,000/- was spent.

11.3. In July 1940, he was the General Manger of Indian Overseas Bank and he continued in that position for three years. As he felt that residing in the rented house would not be commensurate with the status, he purchased the suit properties on 12.08.1940. He constructed the Bungalow after obtaining the estimate/planning permission etc.

11.4. Debt has been incurred for the purpose of the

construction of houses in the suit property. The house itself was offered as a security. But, that does not mean that STS abandoned his exclusive right in Plot Nos.7 to 10. **Debt was repaid only by STS through IOB and UCO Bank Branches. Therefore, Mortgage deed dated 11.04.1942 had no relevance to Plaintiffs' case.**

11.5. STS gave security of his Life Insurance Policy of UILA company. On 27.11.1945, debt was discharged. STS alone dealt with loan in UILA company and not S.T.V.

12. **Plot No.6 was purchased from A.V.Ramasubba Iyer by STS on 06.07.1946 by contributing his own personal money and not out of joint family funds. Rs.500/- was paid as advance on 29.06.1946 and balance of Rs.4,472/- was paid on 06.07.1946 by giving a cheque of current account in his name.** At the time of purchase, STS was Deputy General Manger of United Commercial Bank Limited, Calcutta at the Bank of Mysore, Armenian Street (Later shifted to NSC Bose Road). The entries and extract from the securities deposit ledger of Bank of Mysore reveal that by 17.11.1994, STS had deposited Government Securities with the face value of total of Rs.40,000/- as

Security with the Bank and an overdraft limit of Rs.25,000/- has been sanctioned by the bank on the same date. **By 19.09.1945, the overdraft limit was increased to Rs.1,00,000/-**. So, the purchase money of six thousand and odd could not be a burden on STS.

12.1. Plaintiffs have not shown any evidence that plot No.6 could have been purchased with joint family funds.

13. The plaintiff allegations with regard to Grihapravesam function are not admitted. The joint family did not possess any profit or interest in Madras for STS to manage. There cannot be two Managers.

14. **STS had treated Plot Nos.7,8,9 and 10 and the BUNGALOW as his individual and self acquired properties and asserted absolute right. The property tax assessment stands in the name of only STS. The Income Tax Assessment shows that he has been assessed in his individual capacity not in the capacity of Hindu Undivided Family. For the purpose of tax, the income from the house property had been valued by STS at Rs.10/-. These details will show that STS was the owner of the property.**

15. **Plaintiffs did not file any document showing the actual income from the joint family holdings or any tax records pertaining to STV from 1940 to 1948 either individual or HUF showing the suit property as belonging to joint family.** During the life time of STV, he did not file HUF Income Tax Returns, because, there was no income apart from the meagre income from ancestral holdings. When his individual income was making losses, he was driven to the extent of borrowing Rs.29,000/- from his own brother STS. 16. In the tax returns, STS was showing the suit properties as his individual properties. This was not objected to by STV.

17. The first plaintiff attained majority in 1949. P.Ws.1 and 2 were aware of the fact that STS was making exclusive claim over that. Even though lands at Valavanur and neighbouring villages were purchased in the name of STV, consideration for the purchase was made by STS.

18. **On 26.12.1959, STS settled dry lands bearing survey No.170/1-1.39 acres and 170/2-1.52 acres at Valavanur village on Mrs.Vatsala Govindaraj, wife of the 3rd plaintiff voluntarily to benefit her. This property**

had been purchased by him on 22.07.1953 from Mr.A.Vaidyanathan.

19. During 1968, he executed a registered settlement deed of plot Nos.9 and 10 in favour of his wife on 12.09.1968 on the occasion of her 60th birthday. As it was made on an important family occasion, this could not have been out of the knowledge of the plaintiffs. No objection was raised by P1, P3 and P8.

20. In the very next year, there was a partition dated 30.03.1969 among STS, P1 and P3. Plot Nos.6 to 10 were not the subject matter of partition thus indicating that those properties are not joint family properties. Prior to the partition, in order to reduce his tax liability, he gave movable properties (shares) belonging to him to his two sons P.W.1 and P.W.2. The partition deed would confirm the absolute title of STS in the suit properties.

21. On 16.02.1976, wife of STS executed two settlement deeds to each of the plaintiffs 1 and 3. The gift deed was accepted. Therefore, the first and third

plaintiffs are estopped from denying the exclusive title of STS over Plot Nos.9 and 10. They cannot deny the title of STS over plot Nos.7 and 8 also, because they were purchased under the same document. The first plaintiff had already sold his property in favour of one Maheswari Sathyaraj on 27.11.1986. Thus, the first plaintiff had acknowledged the title of STS.

22. The purported conversation between Vijaya Sadasivan with the plaintiffs is a fabrication and it is futile attempt to save limitation.

23. When Vijaya Sadasivan was terminally ill during 1989, the third plaintiff did not come with his wife to attend her. The alleged statement of Vijaya Sadasivan to her sons that the suit properties are joint family properties is false. She was fully aware of the fact that the first defendant was the lessee of plot No.6, (from 01.06.1995) and she has been putting a house at plot No.6 with the permission of STS. **STS gave an affidavit dated 04.09.1985 stating that he had no objection for D1 to put up construction. D1 obtained planning permission dated 17.01.1985 and had constructed a house for herself to the**

knowledge of the plaintiff. D1 put up construction between 1985 to 1987. At that time, P.W.1 was putting up his construction in plot No.9. Even though the plaintiffs were aware of the lease, they did not raise any objection. In the last will executed by him, STS bequeathed plot No.6 to the first defendant. For avoiding gift tax, STS had planned this way.

24. It is inconceivable that Mrs.Vijaya Sadasivan would have waited for four years till 1989 to make these alleged disclosure.

25. The alleged discussions between plaintiffs and STS regarding plaintiffs alleged right over the suit properties and the status of the family are total fabrication.

26. The mother's will is challenged as involuntary which is incorrect and baseless. Aggrieved over the dispossession made by Vijaya Sadasivan, plaintiffs 1, 3 and 8 were nursing animosity towards STS. Finding their conduct intolerable, STS wrote a letter on 07.02.1990 to D4, giving vent to his feeling.

27. STS had availed the services of Security Guard for his personal security as the behaviour of his sons was unsavoury. The earlier notice issued by P1, P3 and P8 dated 13.10.1990 and the reply issued by STS have been suppressed. Anticipating threat to his life, he called the third defendant and handed over important documents to him.

28. Plaintiff No.8 neither performed rituals for the mother nor for the father. She came to Madras from Delhi after several days of death of STS. The Bank accounts of Mysore and United Commercial Bank of STS show that he was creditworthy.

29. The disposition of STS was natural. The plaintiffs alienated the affection of STS. At the time of execution and registration of Will, D1 to D4 were not residing at Madras. STS himself in person attended the execution and registration of the Will. **He lived 13 months after the registration of the will. He added codicil after 12 months of the Will to confirm the Will. STS did not revoke the will.** He was the Board of Director of various companies like SPIC and TCM. In fact, he died

while attending a Board meeting on 29.01.1992. These activities would show that he was in a sound state of mind.

30. After the will was read out to the legal heirs and others in the family, D4 to D6 took possession of the suit house and engaged the services of Guardwell security Agency. In fact, in the letter dated 07.02.1990, STS had written that key will be with the first defendant until the executors took over the custody of the property. Accordingly, the first defendant continued to reside till 14.04.1992 and handed over the keys to the executors by the letter dated 14.04.1992.

31. When the Executors applied for probate, the plaintiffs unilaterally drafted a compromise/family agreement which was detrimental to the interest of D1 to D3 and this arrangement was not signed by any of the defendants.

32. The first plaintiff was allowed by STS to stay in a single room on the first floor of the suit house till 1978 because he had no source of income. Thereafter, P1 took up separate residence at No.72, 4th Street,

Abiramapuram, Chennai 18. During 1987, P1 purchased flat at 5/2C Burkit Road, T.Nagar and he was staying there. His IT-Return for the assessment year 1982 to 1989 reveals that he shifted himself to a rented apartment at Pantheon road, Chennai. The third plaintiff wrote a letter to STS on 09.12.1990, stating that the first death anniversary ceremonies would be performed at P1's flat at Parshan towers. **If P1 was residing in the suit house, there is no necessity to conduct the ceremonies elsewhere.**

33. The executors were in possession/constructive possession until they obtained the key from D1 on 14.04.1992. The original keys of the house/motor car cupboard are still with the executors.

34. P1 and P3 broke open the lock and trespassed into the suit property, i.e. at No.13 Bragadambal Road, Nungambakkam on 20.04.1992. On 21.04.1992, the security guard gave letter in this regard. The first plaintiff, after trespass, sold his Burkit road flat on 04.05.1992. This conduct would show that P1 had not come to Court with clean hands.

35. At the time of trespass by P1, the fourth defendant was involved in the issues of Sovereignty and national security of Eastern Command consisting of 8 states. He was to safeguard the borders of the nation with China, Bangladesh, Nepal and Bhutan and he had to counter the insurgency operation in the northeast. After D4 leaving for Calcutta after the expiry of leave, thereafter, trespass was committed.

36. Even assuming that the properties are joint family properties, the plaintiffs have no right to take illegal possession of Plot Nos.7 and 8. Plot No.6 is in the possession of D1 from 01.06.1985 onwards. In the event of Plot No.6 being declared as joint family property and as the D1 had admittedly constructed the house, she has to be compensated.

37. The suit is barred by time on principles of ouster and exclusion. On these grounds the defendants pray for the dismissal of the suit.

Fourth defendant has filed the written statement which is adopted by D5 and D6.

38. Defendant Nos.4, 5 and 6 are the Executors

appointed by the deceased S.T.Sadasivan in his will dated 10.12.1990 and codicil dated 16.12.1991. STS died on 29.01.1992 at the age of 92 years after attending the Board Meeting of M/s.Travancore Chemicals at M/s.Taj Coromandal. **He has held in high esteem in the Corporate and Banking sector, due to his capability, honesty and integrity.**

39. After the death of STS, Defendants 4 to 6 obtained a sealed envelope, which was left by STS in the safe custody of UCO Bank Mount Road, Madras, with instruction to hand over the same to the Executors after his death. The sealed envelope was opened at the residence of STS on 15.02.1992 i.e. at No.13, Brihadambal Road, Nungambakkam. The envelope contained the Will, Codicial and Medical Certificate certifying his good health at the time of execution of the Will. In the will, STS bequeathed the suit properties in favour of the defendants 1 to 3. The enmity between STS and Plaintiffs 1,3 and 8 was deteriorated to the extent of the deceased STS, writing a letter to the fourth defendant absolving plaintiffs 1 and 3 from performing the last rites to him. Despite this, the executors permitted the plaintiffs 1

and 3 to perform the last rites of STS.

40. The possession of the suit property was with Executors on 29.01.1992. Till 15.04.1992, first defendant was permitted to stay in the house.

41. The motive attributed to the fourth defendant just because he is the husband of the first defendant is unwarranted. Therefore, the suit has to be dismissed.

Brief averments in the reply statement filed by the plaintiffs:

42. In the reply statement, the plaintiffs have reiterated their case that the properties belong to the Joint Family. It is averred that the first defendant had filed the written statement without the real knowledge of the several averments made in the written statement and that the averments stated in the written statement are not true and correct.

C.S.No.1578 of 1992

43. The plaintiffs are the Executors of the Will dated 10.12.1990 and Codicil dated 16.12.1991. As Executors of the estate, they filed the suit. S.T.Sadasivan died on 29.01.1992 while attending a Board

meeting. According to the Executors, S.T.Sadasivan executed a Will in a sound and disposing state of mind and the Will was read out to the family members after the death of Sadasivan after the expiry of mourning period on 15.02.1992. The envelope contained the Will, Codicil and a medical certificate dated 10.12.1990, issued by Dr.V.Rajaraman, certifying the fit mental condition of S.T.Sadasivan at the time of execution. The Executors, after taking custody of the properties, are stated to have taken the inventory of the movables and immovables from the house. The Executors permitted the first defendant to stay in the suit property. The second plaintiff, who arrived Madras along with his wife on 29.01.1992, was staying in the suit house.

44. Chitkala Govindasamy was permitted to stay in the suit house by the executors. While leaving to Calcutta, she handed over the keys to the executors. The executors are in possession of the keys for suit premises, cupboard and rooms. The plaintiffs filed O.P.No.423 of 1992 for grant of probate of the will dated 10.12.1990 and codicil dated 16.12.1991, on 01.04.1992. The 2nd plaintiff and his wife were threatened and intimidated by defendants 1 and 2. The settlement

suggested by them failed and they threatened P2 and his wife to hand over possession of suit property to them. The plaintiffs were not willing. The plaintiffs after taking possession continued to engage the services of M/s.Guardwell Security to protect suit premises.

45. On 20.04.1992, the defendants 1 & 2 broke open the lock and forcibly entered into the house, thus, they were in illegal occupation of the suit property. They filed application in O.A.No.337/1992 and application No.2224/1992. The application came up before this Hon'ble Court on the last working day before Summer vacation. The Court directed the defendants not to disturb the entry of executors to the two rooms in which some of the movables were kept and granted injunction against defendants 1 to 8 from interfering with their administration of the estate. The defendants 1 to 8 filed C.S.No.708 of 1992 for a declaration to declare that the properties at Door Nos.13 and 14 situated at Bragadambal Road are joint family properties and for a declaration to declare the Will dated 10.12.1990 as null and void and for partition of the property. The defendants also filed application for an order of injunction against the plaintiffs from dispossessing them

from the suit property.

46. Till the death of Sadasivan, he was the sole occupant of the suit property to the exclusion of the defendants. The plaintiffs were in occupation after his death, till 20.04.1992, when they were dispossessed illegally by defendants 1 and 2. The plaintiffs, being the executors of the will of S.T.Sadasivan, took custody of his estate and house. The defendants 1 and 2 broke open the locks and took illegal possession of the house. The 2nd defendant was staying at No.5/2C, Burkit Road, T.Nagar, Chennai - 17 and has now moved into the suit premises illegally and forcibly and the plaintiffs have been dispossessed. Therefore, the plaintiffs are entitled to repossession of the suit premises. So alleging, they filed the suit under Section 6 of Specific Relief Act 1958 for repossession.

47. The second defendant alone has filed the written statement, which is adopted by the defendants 1 and 3 to 8.

Brief Averments in the Written Statement

48. The suit is misconceived and it is not

maintainable in law and on facts. This suit is a counter blast to the suit filed in C.S.No.708 of 1992 (suit for partition). Plaintiffs were never in possession of the suit properties. Therefore, they have no right to ask for re-possession.

49. The second defendant is the natural son of late S.T.Sadasivan and he was given in adoption to his elder brother S.T.Venkatranga Iyer in the year 1941.

50. During 1940, from out of joint family nucleus, the suit property was purchased for and on behalf of the joint family consisting of D1, D2, Late S.T.Venkatranga Iyer and S.T.Sadasivan. The property was also mortgaged by all of them together. During 1946, the joint family redeemed the mortgage by discharging the debts.

51. On 08.07.1946, the Joint Family purchased plot No.6 from one A.V.Ramasubbu Iyer. For the suit house, Grahapravesam was performed by S.T.Venkatranga Iyer. Subsequent to purchase of plot No.6, during 1946, the Northern Boundary wall was extended. Garage and servant quarters were constructed. S.T.Venkatranga Iyer managed Joint Family affairs and business at the village of

Valavanur, Kolianoor and Salavampalayam. S.T.Sadasivan was looking after the interest at Madras. The suit properties were purchased out of joint family funds.

52. After the death of S.T.Venkatranga Iyer, S.T.Sadasivan declared that the suit properties and other properties at Bragadambal Road were of his self-acquisition. On 30.03.1969, registered partition took place. The properties therein were joint family properties. The Madras properties were not included in the partition.

53. S.T.Sadasivan, after partition, gifted his wife plot Nos.9 and 10. During 1976, in view of Urban Ceiling Act, Mrs.Vijaya Sadasivan, as instructed by S.T.Sadasivan, gifted 2 ½ grounds each to D1 and D2 and wanted the defendants to develop. In 1989, Mrs.Vijaya Sadasivam became ill. She informed the 2nd defendant that S.T.Sadasivan was under active influence of Chitkala Govindasamy, the 9th defendant herein. She said S.T.Sadasivan was contemplating to settle various properties to her, though Mrs.Vijaya Sadasivam wanted equal treatment to all children. D1 came from abroad at that time with his wife to look after Mrs.Vijaya

Sadasivam. The defendants verified documents and accounts and noticed that the properties at Bragadambal Road were purchased by and on behalf of Joint Family and mortgage was made thereafter. The 2nd defendant, being the adoptive son of S.T.Venkatranga Iyer, was entitled to half share. The defendants told S.T.Sadasivan that they have had no objection for him to enjoy the suit property during his life time and S.T.Sadasivan should not deal with the properties as his self-acquired. This created strained relationship between them and Mrs.Vijaya Sadasivan died on 22.11.1989. Her will referred was not voluntary. O.P.No.482/1990 was filed for probate of her will. Exchange of notice took place. On the death of S.T.Sadasivan, on 29.01.1992, the executors informed the availability of his will and its custody with UCO Bank, Mount Road Branch. The will was read out in the presence of defendants. Plot No.6 was bequeathed to 9th defendant. The bungalow in door No.13, Brahadambal Road was given to her two sons. The defendants 1 to 8 were aggrieved by the illegal bequests made by S.T.Sadasivan.

54. Late S.T.Sadasivan was in exclusive possession of suit property during his life time. The 2nd defendant was residing throughout in the said property with his

family. S.T.Sadasivan was actively influenced by 9th defendant. The plaint allegations in para nos.3, 4, 5, 6 and 7 are denied. No threat was made by the defendant to the executor or to Chitkala Govindasamy. The Will was written out of enmity and to deprive the legitimate share of defendants. The 2nd plaintiff was not in possession of suit house from 15.02.1992. The defendants at the request of executors had permitted Mrs.Chitkala Govindasamy to stay in the suit property. When 2nd defendant and family members were absent in the suit property, the 9th defendant in collusion with 2nd plaintiff wanted to lock the suit property, put security guards and not allowed access to 2nd defendant and his family members. Behind the back of defendants, M/s.Guardwell Secruity was appointed. Three sets of keys for the suit house were available. The 1st set of key was in the possession and custody of 2nd defendant. The other set was with S.T.Sadasivan and the 3rd set was in the bank locker. The key which was used by S.T.Sadasivan, was given to 9th defendant during her stay and 2nd defendant did not break open. The allegations in para Nos.8 to 16 are denied. The 2nd defendant being one half owner and having been adopted to S.T.Venkatranga Iyer, is in possession. The 2nd defendant owned a flat at Burkit

Road. It was purchased for investment purpose. He makes casual visits. It has been let out by him and subsequently, used for office purposes. It was not residential accommodation for him. Thus, they prayed for dismissal of the suit.

TOS.No.11 of 1992

55. The Executors of the Will dated 10.12.1990 and Codicil dated 16.12.1991 of late S.T.Sadasivan, who died on 29.01.1992, seek for probate of the Will and Codicil.

Brief averments in the Written Statement:

56. The relief of probate sought based upon the will and codicil cannot be granted as both the documents are unnatural, not genuine and are liable to be declared as void. The Will itself was executed when S.T.Sadasivan was 92 years old and while he was leading a solitary life, but under the constant influence of Mrs.Chitakala Govidasamy. The Will was not out of free will and volition of the executor. The Will sets out and narrate an antecedent title to the property and other particulars which is quite unnatural and therefore, the petitioners are not entitled to grant of probate.

57. There is an omission in the will in not even mentioning about his own son S.Govindndraj, who had cordial relationship with the executor. The validity of the will is in question in C.S.No.708 of 1992, on the main contention that the Executors have no right to execute the will, in respect of the entire properties, when the properties covered under the Will are joint family properties.

58. As there is no merit in the petition, the petition is liable to be dismissed.

O.P.No.784 of 1992

59. This petition has been filed seeking removal of Executors from the estate of late S.T.Sadasivan, on the allegation that the executors took away a sum of Rs.1,60,000/- from the estate account of late S.T.Sadasivan.

60. **The respondents, namely, K.R.Ramamani (deceased), Major General Chander Govindasamy and R.K.S.Shetty, were appointed as executors by late S.T.Sadasivan in his will dated 10.12.1990 and the codicil dated 16.12.1991.**

61. The 2nd respondent has operated the account of the estate of Late S.T.Sadasivan for his own personal benefit and for the benefit of his wife Mrs.Chitkala Govindasamy. He committed breach of trust and has unilaterally and secretly withdrew a sum of Rs.1,60,000/- from UCO Bank account of Late.S.T.Sadasivan. Demand Draft in the name of his wife was obtained. This act took place on 23.09.1992. A cheque was issued by 2nd respondent to obtain demand draft for Rs.1,60,000/-. This Hon'ble Court was not informed of the above withdrawal. The other heirs of S.T.Sadasivan were also not informed in this regard. The petitioner filed xerox copy of statement of UCO Bank to substantiate his contention. Therefore, the respondents are not entitled to function further as executors of the estate of Late S.T.Sadasivan.

Brief averments in the Counter:

62. These respondents filed an application in O.A.No.337 of 1992 in TOS No.11 of 1992 seeking an order of interim injunction restraining the petitioner from interfering with the respondents' possession and custody

of the assets of late S.T.Sadasivan and that prayer was granted by this Court by the order dated 30.04.1992. The order of injunction was later made absolute.

63. The petitioner and his brother had broken into the premises and had taken illegal possession of the property.

64. Respondents have filed a suit in C.S.No.1578 of 1992 under Section 6 of the Specific Relief Act seeking re-possession of the property and the suit is pending before this Court.

65. The contention that the Second respondent Govindasamy and his wife resorted to unethical action is not correct. It is the petitioner and his brother Thiagarajan, who had adopted a hostile and enemical attitude towards S.T.Sadasivan. The wife of the second respondent i.e. Mrs. Chitkala Govindasamy, is the sole surviving joint holder of the fixed deposit. The amount mentioned in the petition proceed from the encashed fixed deposit and the interest thereon which belonged to Mrs. Chitkala Govindasamy. After the death of S.T.Sadasivan, Mrs. Chitkala Govindasamy encashed the

fixed deposit on its maturity and had deposited the same into the estate account to provide the liquidity of funds which was required for obtaining probate. The amount of Rs.1,85,000/- therefore belongs to Chitkala Govindasamy. The amount was returned to Chitkala Govindasamy with instructions that it shall be made available in case of necessity in the estate account.

66. The administration of estate was made only in accordance with law. Therefore, the contention that the respondent should be removed from executor is totally unwarranted. The petition is an attempt to intimidate the executors. Hence the petition is liable to be dismissed.

67. The following issues have been re-framed in respect of each of the following cases on 19.03.1998 and the re-framed issues are as under:

i. C.S.No.708 of 1992:

1. Whether Plot No.6, 7 and 8 are joint family properties of late S.T.Venkatranga Iyer and S.T.Sadasivan liable to be partitioned as contended by the plaintiffs?

2. Whether the plaintiffs are liable to pay compensation to the first defendant for the improvements made by her in Plot No.6 in the event of Plot No.6 being declared as joint family property?

3. Whether late Sadasivan had prescribed title to suit properties on principles of ouster and exclusion and the suit filed by the plaintiffs is barred by time?

4. Whether the trespass alleged by the first defendant in respect of Door No.13, Bragadambal Road by the plaintiffs is true?

5. Whether the suit properties have been under valued?

6. Whether the suit as framed by the plaintiffs is not maintainable?

7. Whether the plaintiffs 1 and 3 are estopped from denying the exclusive title of S.T.Sadasivan in the suit properties in view of the acceptance of two gift deeds 16.02.1976 executed by Vijaya Sadasivan?

8. Whether the plaintiffs 1 and 3 having got plot Nos.9 and 10 accepting the exclusive title of late S.T.Sadasivan can re-probate and contend that the plots 7 and 8 purchased under the same sale dated 12.08.1940 as joint family properties?

9. To what relief the parties are entitled?

ii. **C.S.No.1578 of 1992:**

1. Whether the plaintiffs are entitled to re-possession of suit property from the defendants 1 to 8 as prayed for?

2. To what relief the parties are entitled?

iii. **T.O.S.No.11 of 1992**

1. Whether the Will and codicil dated 10.12.1990 and 16.12.1991 respectively executed by late S.T.Sadasivan are true, valid and enforceable?

2. Whether the petitioners are entitled to the grant of probate?

3. To what relief the parties are entitled?

iv. **O.P.No.748 of 1992**

1. Whether the respondents are liable to be removed from the executorship for the reason given in the application?

2. To what relief, the parties are entitled?

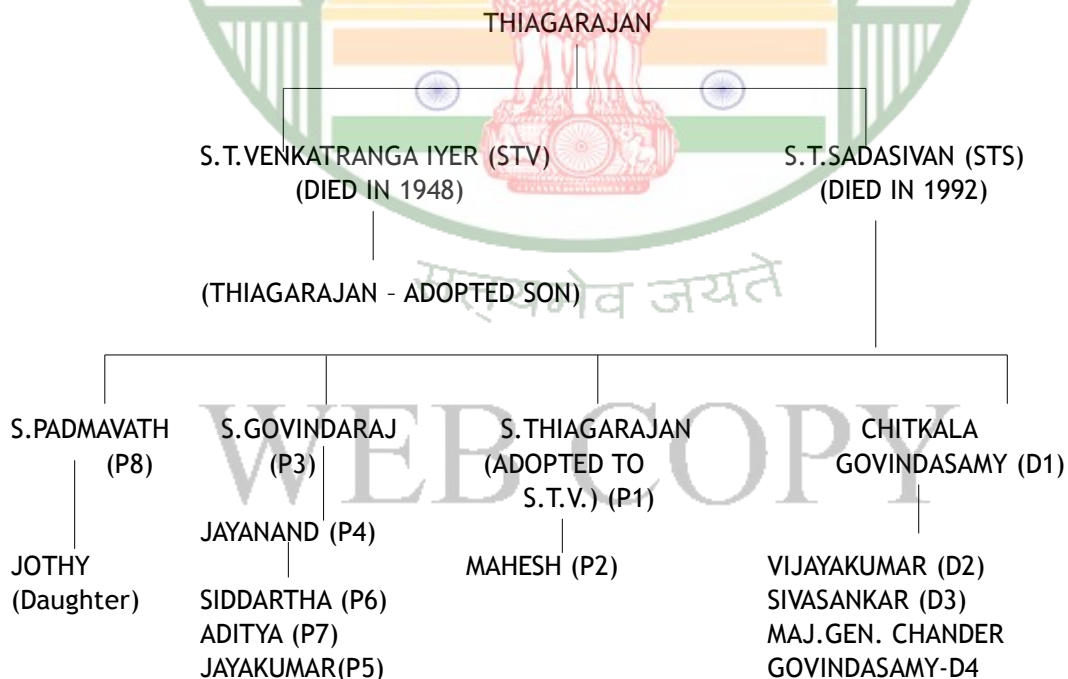
68. By the order dated 30.08.1997, joint trial has been ordered in respect of all the four cases and common evidence was ordered to be recorded in C.S.No.708 of 1992. Through out the discussion, the parties are referred to as per the nomenclature assigned to them in C.S.No.708 of 1992.

C.S.No.708 of 1992

69. The suit in C.S.No.708 of 1992 has been filed seeking declaration that the properties situated at Plot Nos.6, 7 and 8 bearing Door Nos.13 and 14 Bragadambal Road, Nungambakkam, Madras, along with the bungalow, garage and out-houses etc. are the joint family properties of the Plaintiffs and consequently for a declaration that the Will dated 10.12.1990 executed by S.T.Sadasivan is void, illegal, invalid and unenforceable and for partition, by directing the division of suit properties by metes and bounds and to allot one-half share to the first plaintiff, one-third share to the

third Plaintiff and 1/12th share each to the 8th Plaintiff and the first defendant.

70. The relationship between the parties is an admitted fact. The 1st, 3rd, 8th plaintiffs and the first defendant are the sons and daughters of S.T.Sadasivan. His brother S.T.Venkatranga Iyer had no issues and therefore, the first plaintiff was given in adoption to his brother and thus, the first plaintiff became the adopted son of S.T.Venkatranga Iyer. The **genealogy** will better explain the relationship between the parties.



71. STV died intestate on 18.01.1948, but, STS died on 29.01.1992, after allegedly executing a Will dated 10.12.1990 and Codicil dated 16.12.1991. Under the Will, the petitioners in C.S.No.1578 of 1992 have been appointed as Executors and as Executors, they are seeking repossession of the suit properties for the purpose of administration. The petitioners in TOS No.11 of 1992 (Executors of the Will) are seeking probate of the Will. The 3rd plaintiff in C.S.No.708 of 1992 has filed O.P.No.784 of 1992 seeking removal of the Executors of the Will from the administratorship.

72. The plaintiffs seek the relief of partition on the ground that the suit properties are joint family properties of STV, STS and the legal heirs of both of them and therefore, the properties are liable to be partitioned.

73. But, the case of the first defendant, who is the major beneficiary of the Will, is that the suit properties are separate properties of STS and therefore, the properties are not liable to be partitioned.

74. If the suit properties are found to be joint

family properties, then, the plaintiffs in C.S.No.708 of 1992 can get the relief of partition. If the Court comes to the conclusion that the suit properties are separate properties of STS and if the Will is found to be true, then, the suit in C.S.No.708 of 1992 is liable to be dismissed.

75. If the suit properties are held to be separate properties of STS, then, the next question will be as to whether the Will and Codicil executed by STS is true, legal and valid?.

76. The Will suffers attack on the ground that the Will is unnatural, improbable, and have been brought into existence by the exercise of undue influence exerted by the first defendant over the deceased STS.

Joint family properties / separate properties

77. For appreciating the issue as to whether the suit properties belong to the Joint Hindu Undivided Family of S.T.Sadasivan and S.T.Venkatranga Iyer, or exclusively to S.T.Sadasivan, apart from the pleadings of parties, their conduct, documents filed, treatment of properties by them, blending if any, and other attendant circumstances have to be looked into and the totality of

circumstances would have a crucial role to play in deciding this issue, as the attributes of ownership are (1) right to have and to get possession ; (2) right to prevent interference by others ; (3) Power of alienation; (4) liberty of using the object according to owner's will; (5) liberty of enjoying the fruits and to avail of the object owned; (6) liberty of changing its form and even destroying it.

78. Admittedly, the document of title in respect of plot Nos. 6 to 10 stands in the name of STS. At the time of purchase, he was not the kartha of the family and he was the junior member of the family. As the plots were allegedly purchased by S.T.Sadasivan and the document of title stands in his name, the claim that the property did not belong to him, but the joint family, has to be established by the plaintiffs.

79. This is the settled law as propounded in the case of Srinivas Krishnarao Kango v. Narayan Devli Kango and Ors. (1955 SCR 1), wherein it is held that proof of the existence of a joint family does not lead to the presumption that property held by any member of the

family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property. Therefore, so far as the proposition of law is concerned, the initial burden is on the person who claims that it was joint family property but after initial discharge of the burden, it shifts to the party who claims that the property has been purchased by him through his own source and not from the joint family nucleus.

80. The general doctrine of Hindu Law is that property acquired by a karta or a coparcener with the aid or assistance of joint family assets is impressed with the character of joint family property. To put it differently, it is an essential feature of self-acquired property that it should have been acquired without assistance or aid of the joint family property. The test

of self-acquisition by the karta or coparcener is that it should be without detriment to the ancestral estate. It is therefore clear that before an acquisition can be claimed to be a separate property, it must be shown that it was made without any aid or assistance from the ancestral or joint family property.

81. The source of sale consideration would be the primary factor to decide the title and it would be relevant to point out that the pleadings are lacking in the plaint. However, the plaintiffs have filed several documents and on that basis they want to contend that the suit properties are joint family properties and that they are entitled to share in the same and that the will executed by late S.T.Sadasivan for the entire suit properties bequeathing them to D1-D3 was not valid.

82. Before appreciating the evidence both oral and documentary, the following dates have to be considered to understand as to how the plots purchased under two sale deeds viz., Exhibits C1 and C4 were dealt with by S.T.Sadasivan and the various acts of ownership exercised by him.

C1/P3 12-08-1940 Registered Sale deed in favour of
8 S.T.Sadasivan for Plot Nos. 7, 8,
9 & 10

C48 13.03.1941 Letter by S. Krishna Iyer to
Mr.S.T.Sathasivam with regard to
estimate for construction of
building.

C49 06.05.1941 Letter by S.Krishna Iyer to Mr.
S.T.Sathasivam for License fee.

C51 02.12.1941 Letter by Mr. S.T.Sathasivam to
Revenue Officer Corporation of
Madras to assess the house for
tax.

C52 13.03.1942 Permit to construct issued by
Corporation of Madras in favour of
Mr. S.T.Sathasivam.

C53 18.03.1942 Letter by Mr. S.T.Sathasivam to
Revenue Officer, Corporation of
Madras.

C55 Bills of KrishnaIyer from
24.03.1941 onwards.
(11 receipts)

C56 16.01.1942 Letter by S.Krishna Iyer to Mr.
S.T.Sathasivam requesting payment
of Rs.7167-1-6.

C2/P4 11-04-1942 Mortgage deed executed by
2 S.T.Venkat Ranga Iyer,
S.T.Sadasivan and minor sons.

C54 12.08.1942 House became fit for occupation

C3 **19-06-1946** Redemption of mortgage took place.

C4/P3 **06-07-1946** Sale deed in favour of
9 S.T.Sadasivan in respect plot
No.6.

-- 18-01-1948 S.T.Venkat Ranga Iyer died
(Karthha)

C8 12-09-1968 Settlement deed executed by
S.T.Sadasivan to his wife of Plot
Nos.9 & 10 (For her 60th birth day)

P44 30-03-1969 Partition of lands among
S.T.Sadasivan, PW1 and PW2. (suit
plots not include).

21.05.1969 Partition of movables took place
between PW 1, PW 2 and STS.

P63 16-02-1976 Gift deed executed by Mrs. Vijaya
Sadasivan in favour of 3rd
plaintiff in respect of Plot
No.9.

16-02-1976 Gift deed executed by Mrs. Vijaya
Sadasivan in favour of 1st
plaintiff Plot No.10. (Not filed)

D 13 17.05.1985 Registered Lease deed executed in
favour of D1 for plot no. 6 by
S.T.Sadasivan

D14 04.09.1985 Affidavit given by S.T.Sadasivan
to D1 enabling D1 to put up
construction.

D32 27-11-1986 PW2 sold Plot No.10 to Mrs.
Sathiyaraj accepting th title of
S.T.Sadasivan for plot no.10.

D 30 30.03.1989 Letter of Mrs. Vijaya Sadasivan to
D1

83. From the nature and content of the documents
referred supra, it is evident that all letters have been
addressed by STS and not by STV; as the kartha of the

family, he would have addressed all those letters in the capacity as kartha, if the properties had been treated as the joint family properties; the fact that those correspondence stand in the name of STS would be one of the factors, if not the only factor, to come to a conclusion that the properties have been treated as the separate properties of STS.

84. The plaintiffs have shown plot nos.6, 7 and 8 only as suit properties and did not include Plot Nos.9 and 10. They are situated at Brahadambal Road, Nungambakkam, Chennai. It is seen that in July, 1940, S.T.Sadasivan was General Manager of Indian Overseas Bank. He was residing in a rented house in T.Nagar. His financial resources and income were sound. The above facts are admitted one.

85. On 12.08.1940, as per Exhibit C1 dated 12.08.1940, he bought plot nos.7-10 in P.K.Subbaiah's layout in Brahadambal Road. The sale consideration was Rs.6,900/-. The deed was registered at the office of the Sub Registrar, Mylapore. The consideration had been paid by S.T.Sadasivan by cheque. The stamp papers stand in his name. The deed was drafted by his advocate

Rajagopala Iyengar. S.T.Sadasivan was a junior member in the family and he was well employed. The apparent tenor of the deed shows that S.T.Sadasivan must be the owner of plots. S.T.Venkatranga Iyer, his elder brother was alive when plots were purchased.

86. As far as plot no.6 is concerned, it was purchased by S.T.Sadasivan on 06.07.1946 under Exhibit C-4 from A.V.Ramasubbaiyer. It was registered at the office of the Sub Registrar, T.Nagar. S.T.Sadasivan paid Rs.500/- as advance in cash. The balance amount Rs.4,472/- was paid by him by cheque from his current account no.193 of United Commercial Bank Ltd., Calcutta at the Bank of Mysore, Armenian Street. 5 stamp papers were used. Two stamp papers are in the name of S.T.Sadasivan and 3 stamp papers are in the name of K.S.Rajagopala Iyengar. The apparent tenor and recitals in the deed lead us to the conclusion that S.T.Sadasivan must have been the owner. The recitals in the sale deed do not show that funds were provided by S.T.Venkatranga Iyer.

87. When the payment has been made by way of cheque and it is shown that STS who issued the cheque was an

earning person, prima facie, it is a piece of evidence to show that purchase money ought to have come from his pocket. But, this aspect has to be looked into along with other evidence available, especially when the plaintiffs contended that purchase money was paid from out of the income from the joint family nucleus.

88. The ancestral holding of Thiagaraja Iyer, father of S.T.Venkatranga Iyer and S.T.Sadasivan was 4.20 acre dry in S.No.25 and 2.21 acres wet comprised in S.No.29 and a small house no.40, in Valavanur North agraharam. The contention of the plaintiffs is that there were sufficient income from the agricultural lands and that was the source of purchase money. However, the 1st defendant contends that the above lands were mortgaged and the family of S.T.Venkatranga Iyer was suffering due to poverty. The documents showing the ancestral holding and the mortgage created are Exhibits D25 to D29. Exhibit D25 mortgage is dated 20.09.1902. It was for Rs.400/-. There are five repayments on different dates made or endorsed in the deed and the debt was finally discharged on 14.04.1918. Exhibit D-26 deed of mortgage is dated 23.06.1908. On 01.10.1912, it was discharged. The deed refers that the mortgage was made to discharge

the debt due under earlier mortgage dated 20.09.1902. Exhibit D26 was executed for a sum of Rs.1200/-. It came to be discharged on 20.10.1912. The entire extent of 6.41 acre which belonged ancestrally to the two brothers was mortgaged periodically. As per Exhibit D27 dated 14.02.1910, registered sale deed was executed in favour of Vaidhyanatha Iyer for Rs.1300/- with a direction to discharge the mortgage deed dated 23.06.1908. The extent sold was 2.66 acre out of 4.20 acre, which was later on re-purchased under Ex.D28-registered sale deed dated 26.10.1912. On 28.10.1912, registered mortgage was executed by S.T.Venkatranga Iyer in favour of Ammukutty Ammal. Small sums towards discharge of debt was paid on four occasions at the rate of Rs.100/-. The balance thereafter became due. The mortgagee died and the debt was discharged subsequently on 12.08.1926. Here the discharge of mortgage had been possible only after a period of 14 years.

89. Thereafter, there is no evidence to show that there was sufficient yield from the joint family properties to the extent of enabling the coparceners to purchase the properties, i.e. Plot Nos.7 to 10. Under such circumstances, it is probable that the joint family would not have been armed with sufficient wealth to

purchase the property.

90. The plaintiffs contend that prior to 1940 lands were purchased and there was income for the joint family to purchase plots 7 to 10. The total extent purchased from 1920 to 1939 was 8.20 acres. The sale deeds marked by the plaintiffs are Ex.P23 to Ex.P40.

<u>S. No.</u>	<u>Exhib its</u>	<u>Date</u>	<u>DETAILS</u>
1.	P23	24.07.1920	Sale deed to S.T.Venkatranga Iyer by Kuppusamy Iyer for Rs.2,400/- an extent of 1.89 acres (subject to maintenance of Meenakshi Ammal, 2 nd wife of Kuppusamy Iyer)
2.	P24	03.02.1930	Sale deed to S.T.Venkatranga Iyer by Kandasamy Chettiar for Rs.300/- vacant site (N-S 120 ft E W S 28 ft, & N 23 ½ ft.)
3.	P28	01.02.1933	Sale deed to S.T.Venkatranga Iyer by Sivarama Chettiar, for Rs.650/- vacant site (N-S 185 ft E - W = 19 ¼ ft.)
4.	P27	28.07.1933	Sale deed to S.T.Venkatranga Iyer by Official Assignee for Rs.401/- vacant site (N-S 210 ft E - W = 37 ft.)
5.	P26	22.11.1937	Sale deed to S.T.Venkatranga Iyer by Abdul Razak Sahib for Rs.400/- an extent of (1/6 th Share) 69 cents out of 4.12 acres
6.	P25	27.01.1938	Sale deed to S.T.Venkatranga Iyer by Abdul Lathif Sahib for Rs.1375/- an extent of (4/6 th Share) 2.75 cents out of 4.12 acres

7.	P40	17.07.1939	Sale deed to S.T.Venkatranga Iyer by Krishnasami Pillai for Rs.2000/- an extent of 2.87 acres
----	-----	------------	---

91. Exhibits P-23, P-24, P-26, P-27, P-28 and P-40 are sale deeds executed in favour of S.T.Venkatranga Iyer by the respective vendors. Under the above sale deeds, 8.20 acre of lands were purchased by him. Of the sale deeds, Exhibits P-24, P-27 and P-28 relate to vacant site. Under Exhibit P-26, one-sixth share and in Exhibit P-25, 4/6th share were purchased. It is doubtful whether partition took place after purchase and enjoyment of land was made by S.T.Venkatranga Iyer. Exhibit P-23, the sale deed refers maintenance claim due to one Meenakshi Ammal, 2nd wife of Kuppusamy Iyer. In other words, subject to maintenance right, the land was purchased by S.T.Venkatranga Iyer. Except the land comprised in Exhibit P40 dated 17.07.1939, it cannot be contended by the plaintiffs that there was income from other lands. No evidence was adduced by the plaintiffs to show about the income from the lands, expenditure and surplus income if any available to the family to purchase plot nos.7-10. The nexus between the income realized and purchase of 4 plots remain unestablished. In law, the nexus between the income realised and purchase of 4 plots remains

unproved.

92. It is not in dispute that S.T.Sadasivan was employed during 1922 and while being posted to various places in and around India, he enjoyed high salary, perks, and other privileges. The 1st defendant has produced several records to confirm the assets of S.T.Sadasivan and contended that S.T.Sadasivan was capable of purchasing plot 7-10 and no joint family fund nor money was available with him nor was given by S.T.Venkatranga Iyer to purchase.

93. S.T.Sadasivan had been employed as General Manager of Indian Overseas Bank during 1940 before purchase of plot nos.7-10. Further, Exhibit D3, a letter shows the securities and assets, he had before purchase, as on 18.05.1936. The document refers overdraft availed by him and it contains several shares held by him to the tune of Rs.62800/-. Exhibit D5 dated 22.06.1938, is a letter showing the list of shares held by S.T.Sadasivan. Exhibit D6 is a hand-written account indicating the interest and dividends available to his credit from 01.01.1938 to 31.12.1941.

94. No evidence has been adduced by the plaintiffs that the agricultural holding prior to 1940 provided funds/nucules for purchase of plots 7-10 as per sale deed dated 12.08.1940. The income realized, expenditure involved and surplus income if any from Exhibit P23 to Exhibit P40 has not been established by the plaintiffs. On the contrary, S.T.Sadasivan had good education and was in gainful employment.

95. The documentary evidence produced in this case is amply supported by the evidence of P.W.1 himself. P.W.1 has spoken about the scholarly qualification acquired by STS, coveted posts occupied by him in various places and consequent mounting financial position attained by him. The relevant part of the evidence reads as under:

Evidence of P.W.1:

"My father has joined as a Junior Officer in the Central bank of India limited in the year 1922, at Bombay. Later, he was also the Manager at Madras and Rangoon. My father during his life time, was holding number of Coveted posts in various places. In Burma, my father was working in Marine Insurance Company at Burma. Later he was under-writer for Lloyds Insurance, London. He was also working as Financier Correspondent for Rangoon Gazette.

The above assignments were held by him between 1930 to 1936. Before 1940, my father became the Founder and General Manger of Indian Overseas Bank Limited. It was one of the highest posts at Rangoon."

96. With reference to the financial position of the father in the evidence, he has further stated that at the time when plot Nos.6 to 10 were purchased, his father was able to command money and Rs.6,900/- was nothing for him and it is a very small sum for him and his position is very high on that day. Further, he has stated that he did not file any document to prove that funds were provided by his maternal uncle to purchase the properties. From the evidence, positively it is established that it is only STS who provided funds and negatively, it is established that it is STV, who could not have contributed for the purchase of the property from the joint family income and thus, the source of purchase money speaks about the title in favour of STS and not in favour of anybody else.

Title deed in the name of STS:

97. There had been innumerable transactions in the family of STV as well as STS. Several sale deeds stand only in the name of STV, but, these properties which had

been purchased on 12.08.1940 vide Ex.C1/P38 (Plot No.7, 8, 9 and 10) and on 06.07.1946 vide Ex.C4/P39 (Plot No.6), alone stand in the name of STS and the reason for the same is not explained by the plaintiffs.

98. Normally, in a case of purchase of property by the joint family, property would be purchased only in the name of kartha/eldest male member of the family. In this case, the kartha/eldest male member was STV. STV died only on 18.01.1948. Therefore, the question is, if the property is the joint family property, why the property was purchased in the name of junior member when the senior member was alive? There is no answer to this issue by the plaintiffs.

Treatment of the property after purchase:

99. The subsequent conduct of the purchaser would also give highlight regarding the object and purpose of purchasing the properties which in turn give a clue as to who could have been the title holder of the properties.

100. The relevant documents in this regard is described as under:

Ex.No.	Date	Description of Documents
C1/P38	12.08.1940	Original Sale deed for Plot No.7 to 10 standing in the name of STS IOB General Manager/T.Nagar resident

Ex.No.	Date	Description of Documents
P44	30.03.1969	Partition deed among STS and his son (Tamil)
P63	16.02.1976	Settlement deed executed by Mrs.Vijaya Sathasivam to P.W.1 (Plot No.9) R/w C.8
P64	18.02.1976	Letter by STS to PW1 to procure a copy of Gazette Urban Ceiling Act. Dated 17.02.1976
P67	14.12.1976	Letter by STS to PW1 about Urban Ceiling
C4	06.07.1946	Sale deed for Plot No.6 stamp papers in the name of S.T.S. & Rajagopala Ayyangar
C7	28.11.1945	Letter sent on the instructions of STS to K.S.Rajagopal Ayyangar (17 documents)
C8	12.09.1968	Settlement deed executed by STS to his wife Mrs.Vijaya Sathasivam of Plot No.9 and 10 purchased by him as per Ex.C1
D9	28.12.1943	Letter from IT Department to Mr.S.T.Sathasivam (Interest on Mortgage referred).
D13	17.05.1985	Regd. Lease deed between Mr.S.T.Sathasivam and D1 in respect of Plot No.6 (for five years commencing from 01.06.1985).
D14	04.09.1985	Affidavit for construction given to D1 by STS for plot No.6 (N.O.C. given by Mr.S.T.Sathasivam)
D15	22.03.1990	Lease deed between Mr.S.T.Sathasivam and D1 for plot No.6
D17	13.10.1990	Lawyer notice issued to Mr.S.T.Sathasivam by plaintiffs through Mr.Mohan Paramasivan
D18	14.11.1990	Reply given by Mr.S.T.Sathasivam to the above notice
D32	27.11.1986	Sale deed executed by P.W.2 in favour of Mrs.Sathiya Raj for Plot No.10

101. The documents marked as Exhibit C-48, C-49, C-51, C-53, C-54, C-55, C-56, D-7, D-8 relate to house construction over plot Nos.7 to 10. They would show the payments and correspondence between S.K.Krishna Iyer, who was the contractor who put up the construction and S.T.Sadasivan, the implication of which is discussed already.

102. Exhibit C-8 dated 12.09.1968 was executed by STS to his wife. It was in respect of plot nos.9 and 10, which was purchased under Exhibit C-1. Out of 4 plots he purchased, 2 plots were settled by him to his wife under Exhibit C-8. The deed would show that the gift was given prior to 12.09.1968, on her 60th birthday. The above two plots were subsequently gifted by Mrs.Vijaya Sadasivam on 16.02.1976. Plot No.9 was given to P.W.1. Plot No.10 was given to P.W.2 on the same date. In this connection, P-64 has to be seen. The plaint states that because of Urban Ceiling Proceedings, the gifts to P.W.1 and 2 were directed to be given by S.T.Sadasivan and accordingly, two settlement deeds were executed by Vijaya Sadasivam. In order to avoid, excess extent being taken by the Government under Ceiling Act, in good faith, S.T.Sadasivan wanted to preserve and protect the plots. In short, he wanted to benefit his sons, lest the

Government would take the excess. In the plot given under Settlement deed dated 16.02.1976, P.W.1 had constructed a house. P.W.2 on 27.11.1986, under Exhibit D-32 had sold it, thereby accepted the title of S.T.Sadasivan. Exhibit C-8, P-63, P-64 and D-32, have to be read jointly to appreciate the mind of S.T.Sadasivan, his intention and ownership asserted by S.T.Sadasivan.

103. Even though gift deed was executed by the wife of STS, P.W.1 and P.W.2 can claim derivative right and title only from S.T.Sadasivan who purchased the plots under Ex.C.1. They accepted the title as recited in the above deed. Having received benefits from STS and his wife for plot nos.9 and 10, they cannot dispute S.T.Sadasivan's title for the suit items.

Estoppel

104. In view of Exhibits P-63, C-8 and D-32, title of STS was established beyond doubt. The conduct of P.W.1 and 2 may have to be scanned in the light of above documents to appreciate the truth of their submission in the suit. By reason of P-63, C-8, D-32 and in view of the recitals therein, the plaintiffs cannot question the title of STS to suit plots. In law, they cannot approbate and reprobate. The above deeds would show how

the property was treated by STS though mortgage under Exhibit C-2/P42 took place on 11.01.1942. P.Ws.1 and 2 accepted the title and on principles of election they are precluded in law to give a re-look to the rights of S.T.Sadasivan or dispute his title and on that score, the suit is liable to be dismissed. Plot Nos.9 and 10 are not included in the suit schedule for division schemingly, for those items P.W.1 and P.W.2 impliedly admit that they were self acquired property of their father and for suit items 7 and 8, they contend that they were joint family properties. All the 4 plots were purchased under one sale deed in the year 1940. Their contentions are therefore, not sustainable. Further, when acts are done for the benefit of P.W.1 and P.W.2, it cannot be contended by them that they were unilateral acts forgetting to note who was the beneficiary. He wrote letters to P.W.1 under Exs.P64, P67, P68, P80 and P81. They will be revealing of his intention to benefit them and preserve the property. When Urban Ceiling came, STS wanted to benefit his sons. Similarly, when law relating to agricultural holding was about to come, he protected the lands from acquisition. Exhibit P44, dated 13.03.1969 is a registered partition. The partition made under Ex.P44 was not challenged nor contended as

inequitable. Exhibit P44 itself would show that S.T.Sadasivan and S.T.Venkatranga Iyer were divided already before the partition and that the properties allotted to S.T.Venkatranga Iyer in that partition were enjoyed by his adopted son, P.W.2, as is evident from the recital found in Ex.P.44. The earlier partition referred in the deed in Ex.P44 has not been highlighted by the plaintiffs in the suit.

105. The next contention is that the plaintiffs did not acquiesce in the title of STS. The specific contention is that the non-inclusion of Plot Nos.6 to 8 in the deed of partition dated 30.03.1969 should not be interpreted as the plaintiffs admitting the title of STS. The partition deed dated 30.03.1969 is alleged to be unilateral decision of STS due to impending wealth tax on agricultural land and the impending reduction in the land ceiling limit by the Government of Madras.

106. The contention of the learned counsel for the plaintiffs is that the plaintiffs are not estopped from disputing the title of STS in the suit property or the suit of the plaintiffs will not amount to re-litigation of issue. Therefore, it is necessary to understand the

concept of estoppel and consequences of plea of estoppel.

Denning. J. in Central London Property Trust Ltd. v. High Trees House Ltd. explained the concept of estoppel and the observation reads as under:

"A bar that prevents one from asserting a claim or right that contradicts what one has said or done before, or what has been legally established as true. Estoppel may be used as a bar to the relitigation of issues or as an affirmative defense."

107. Towards supporting the proposition raised, the learned counsel for the plaintiffs relied upon the following decisions:

(1) 2014 (4) Supreme Court Cases 196 (Pratima Chowdhury vs. Kalpana Mukherjee and another)

"It needs to be understood that the rule of estoppel is a doctrine based on fairness. It postulates the exclusion of the truth of the matter. All for the sake of fairness. **A perusal of the above provision reveals four salient preconditions before invoking the rule of estoppel.** Firstly, one party should make a factual representation to the other party. Secondly, the other party should accept and rely upon the aforesaid factual representation. Thirdly, having relied on the aforesaid factual representation, the second party should alter his position. Fourthly, the instant altering of

position, should be such, that it would be iniquitous to require him to revert back to the original position. Therefore, the doctrine of estoppel would apply only when, based on a representation by the first party, the second party alters his position, in such manner, that it would be unfair to restore the initial position."

(2) 2011 (14) Supreme Court Cases 770 (State of Punjab vs. Davinder Pal Singh Bhullar and others)

"39. In Power Control Appliances vs. Sumeet Machines (P) Ltd. This Court held as under:-

"26. Acquiescence is sitting by, when another is invading the rights.... It is a course of conduct inconsistent with the claim... It implies positive acts; not merely silence or inaction such as involved in laches. The acquiescence must be such as to lead to the inference of a licence sufficient to create a new right in the defendant....."

40. ***Inaction in every case does not lead to an inference of implied consent or acquiescence as has been held by this Court in P. John Chandy & Co. (P) Ltd. V. John P. Thomas.*** Thus, the Court has to examine the facts and circumstances in an individual case.

41. ***Waiver is an intentional relinquishment of a right.*** It involves conscious abandonment of an existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, a party could have enjoyed. In fact, it

is an agreement not to assert a right. There can be no waiver unless the person who is said to have waived, is fully informed as to his rights and with full knowledge about the same, he intentionally abandons them. (Vide: Dawsons Bank Ltd. v. Nippon Menkwa Kabushihi Kaish, AIR 1935 PC 79; Basheshar Nath v. Commissioner of Income-tax, Delhi and Rajasthan & Anr., AIR 1959 SC 149; Madamsetty Satyanarayana v. G. Yelloji Rao & Ors., AIR 1965 SC 1405; Associated Hotels of India Ltd. v. S. B. Sardar Ranjit Singh, AIR 1968 SC 933; Jaswantsingh Mathurasingh & Anr. v. Ahmedabad Municipal Corporation & Ors., (1992) Suppl 1 SCC 5; M/s. Sikkim Subba Associates v. State of Sikkim, AIR 2001 SC 2062; and Krishna Bahadur v. M/s. Purna Theatre & Ors., AIR 2004 SC 4282).

42. This Court in Municipal Corporation of Greater Bombay v. Dr. Hakimwadi Tenants' Association & Ors., AIR 1988 SC 233 considered the issue of waiver/acquiescence by the non-parties to the proceedings and held:

"14. In order to constitute waiver, there must be voluntary and intentional relinquishment of a right. The essence of a waiver is an estoppel and where there is no estoppel, there is no waiver. Estoppel and waiver are questions of conduct and must necessarily be determined on the facts of each case.....

15. There is no question of estoppel, waiver or abandonment. There is no specific plea of waiver, acquiescence or estoppel, much less a plea of abandonment of right. That apart, the question of waiver really does not arise in the case. Admittedly, the tenants

were not parties to the earlier proceedings. There is, therefore, no question of waiver of rights, by Respondents 4-7 nor would this disentitle the tenants from maintaining the writ petition."

So far as this case is concerned, it is not a case of mere silence or inaction on the part of the plaintiffs, while the partition deed was executed between STS and P.W.1 and P.W.2. P.W.1 and 2 were majors at the time of partition and they have signed in the partition deed. Subsequently, the conduct in signing the partition deed would amount to consent and this consent is corroborated by accepting the gift deed executed by the wife of STS. Acceptance of gift deed amount to acceptance of the title of STS as his exclusive self acquired property. Therefore, the principle of estoppel applies in this case.

108. With regard to the contention regarding Land Ceiling, it is necessary to look into the Tamil Nadu Urban Land (Ceiling and Regulation) Act.

Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978

This is an act to provide for imposition of a ceiling on vacant land in urban agglomerations for the acquisition of such land

in excess of the ceiling limit, to regulate the construction of building on such land and for matters connected therewith, with a view to preventing the concentration of the urban land in the hands of a few persons and speculation and profiteering therein and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good.

Commencement of this Act is 3rd day of August 1976 in respect of any urban agglomerations specified in Schedule I which covers properties comprised in Madras Corporation.

Under Section 4 on and from the commencement of this Act, no person shall be entitled to hold any vacant land in excess of the ceiling limit.

The ceiling limit is provided in Section 5. Under Section 5 in case of every person (other than a family and an industrial undertaking), the ceiling limit shall be

(A) Where the vacant land is situated in an urban agglomeration falling within category I (properties comprised within Madras Corporation) specified in Schedule I five hundred square metres

In case of every family, a) where the family consists of two members, one thousand square metres; (b) where the family consists of three members, one thousand five hundred square

metres; (c) where the family consists of four or more members, two thousand square metres.

In case of industrial undertaking, the ceiling limit was two thousand square metres in respect of properties comprised within Madras Corporation.

109. From the provisions of Tamil Nadu Urban Land (Ceiling and Regulation) Act, it is evident that the Act itself came into force only in the year 1976. Therefore, the contention that only in order to safeguard the HUF from Tamil Nadu Urban Land (Ceiling and Regulation) Act, the partition was effected, cannot be accepted.

110. It is not in dispute that Plot Nos. 9 and 10 were gifted by STS to his wife on 12.09.1968, which were subsequently gifted by the wife of STS to first and third plaintiffs on 16.02.1976. Based on this conduct, plea of approbate and reprobate is raised against the plaintiffs. The learned counsel for the plaintiffs would submit that these two documents have to be looked into, in the light of a letter dated 18.02.1976 (Ex.P64) and letter dated 04.03.1976 (Ex.P65), both in the handwriting of STS and addressed to the 3rd plaintiff, both immediately before and after the gift deed. The learned counsel for the

plaintiffs again contended that this was also an unilateral decision of STS in having instructed his wife to execute a gift deed in favour of 1st and 3rd plaintiffs and it was also with a view to avoid the rigors of Urban Land Ceiling Act. If this be the real spirit in the contention of the plaintiffs, the plaintiffs should have stated that they have not accepted the gift deed and that the gift deed should also be the subject matter of the declaration in the suit filed by them. That is not the case of the plaintiffs. This contention has been raised only for namesake. Therefore, this contention without including those properties (Plot Nos.9 & 10) in the suit for declaration would only reveal the belief of the plaintiffs that the Courts are also ignorant/sleepy/susceptible to superficial arguments.

111. The specific contention of the learned counsel for the plaintiffs is that the doctrine of approbate and reprobate can be applied only, where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself and that it must not be applied in such a manner, so as to violate the principles of, what is right and, of good conscience. In support of the

same, the following decisions are relied upon:

(1) AIR 1956 SC 593 (Nagubai Ammal and others vs. B.Shama Rao and others)

"21. ... The observations of Scrutton, L. J. on which the appellants rely are as follows:

"A plaintiff is not permitted to 'approve and reprobate'. The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election-namely, that no party can accept and reject the same instrument: Ker v. Wauchope: Douglas-Menzies v. Umphelby. The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approve and reprobate the transaction".

It is clear from the above observations that the maxim that a person cannot 'approve and reprobate' is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who

are parties thereto. The law is thus stated in Halsbury's Laws of England, Volume XIII, page 454, para 512:

"On the principle that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais, and may conveniently be referred to here. Thus a party cannot, after taking advantage under an order (e.g. payment of costs) be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it".

(2) AIR 1961 SC 1327 (Bhau Ram vs. Baij Nath Singh and others)

"7. It seems to us however, that in the absence of some statutory provision or of a well-recognised principle of equity, no one can be deprived of his legal rights including a statutory right of appeal. The phrase "approbate and reprobate" is borrowed from Scots Law where it is used to express the principle embodied in the English doctrine of

election, namely, that no party can accept and reject the same instrument (per Scrutton, L. J., in *Verschures Creameries v. Hull and Neitherlands Steamship Co. Ltd.*). The House of Lords further pointed out in *Lissenden v. C. A. V. Bosch, Ltd.* that the equitable doctrine of election applies only when an interest is conferred as an act of bounty by some instrument. In that case they held that the withdrawal by a workman of the compensation money deposited by the employer could not take away the statutory, right of appeal conferred upon him by the Workmen's Compensation Act. Lord Maugham, after pointing out the limitations of the doctrine of approbate and reprobate observed towards the conclusion of his speech:

"It certainly cannot be suggested that the receipt of the sum tendered in any way injured the respondents. Neither estoppel nor release in the ordinary sense was suggested. Nothing was less served than the principles either of equity or of justice." (pp. 421-422)."

(3) 2013 (5) Supreme Court Cases 470 (Rajasthan State Industrial Development and Investment Corporation and another vs. Diamond & Gem Development Corporation Limited and another)

"I. Approbate and Reprobate

15. ***A party cannot be permitted to "blow***

hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner, so as to violate the principles of, what is right and, of good conscience.

112. The decisions are relied on the side of the plaintiffs, but it supports only the case of the defendants. The plaintiffs having elected to accept the gift, having derived some advantage, having accepted the title in favour of their mother, in turn that of their father, cannot be permitted to turn round and say that the father had no title just because the plaintiffs wanted to claim a share in the properties of the father. The plaintiffs cannot be permitted to deny the title when the defendants are beneficiaries, having chosen to accept the title when they are the beneficiaries.

113. The learned counsel for the defendants would

submit that it is not open to the plaintiffs to approbate and reprobate and having accepted the title of the father as exclusive by accepting the gift deed of the mother, it is not open to them to contend that STS has exclusive title over Plot Nos.6 to 8.

114. In order to appreciate the contention, it is necessary to explain the concept regarding approbate and reprobate:

The maxim *qui approbat non reprobat* (one who **approbates** cannot **reprobate**) is firmly embodied in English Common Law and often applied by Courts in this country. It is akin to the doctrine of benefits and burdens which at its most basic level provides that a person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying with the latter. A person cannot **approbate** and **reprobate** or accept and reject the same instrument.

115. In support of this contention, the following decisions are relied upon:

(1) 2011 1 L.W. 481 (Shyam Telelink Ltd. Now Sistema Shyam Teleservices Ltd. vs. Union of India)

"Maxims/Qui approbat non reprobat (one who

approbates cannot reprobate) - It is akin to the doctrine of benefits and burdens, A person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying with the latter..."

(2) AIR 1993 Supreme Court 352 (R.N.Gosain v. Yashpal Dhir)

"Law does not permit a person to both approbate and reprobate. No party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage."

(3) 1994 1 L.W. 133 (S.Nagarathinam v. S.Balakathiresan)

"S. 180 of the Succession Act corresponds to S.35(1) of the Transfer of property Act which deals with the doctrine of election. The main principle is that there is an obligation on the legatee who takes a benefit under a will or other instrument to give full effect to that instrument and if he finds that the instrument, purports to deal with something which it is beyond the power of the donor to dispose of,

but to which effect can be given by the concurrence of him who receives a benefit under the same instrument, the law will impose on him who takes the benefit, the obligation and carrying the instrument into full and complete force and effect. He must elect either to retain his own property or to relinquish his own and take in its place property given to him by the will.

These decisions are directly in support of the case of the defendants and therefore, it is not open to the plaintiffs to dispute the title of STS as his exclusive properties and to claim that the properties are the joint family properties.

Financial capability to put up construction:

116. The following admissions, which are very crucial, would throw light on the claim made by the respective parties not only with regard to title and also with regard to financial capability to put up construction in the properties:

(i) The evidence of P.W.1 speaks about the subsequent conduct of STS after purchasing the property which would go to show, who could have been the purchaser. It is stated that his father claimed exclusive ownership not only over plot Nos.7 & 8, but,

also over the building constructed in it. The affluence circumstance in which the father had been placed has been spoken to by P.W.1 and the evidence reads as under:

"My father was one of the top person in banking industry in India. My father when he went to New York, London and Paris stayed in very big Hotel. When my father went on his business work. The bank had given my father several cars as part of banking service contract, which were foreign cars." (Page 67)

"My father was always a dominating person till his death. **Whatever he said went.**" (Page 70)

(ii) The evidence of P.W.2 with regard to construction of a building in Plot Nos.7 and 8 coupled with documents would go to show that the building should have been build up by STS for his own use and purpose and the relevant part of the evidence runs as under:

"My father prepared the plan and got it approved for construction. He constructed ground and first floor in Plot 7 and 8. He has put up a compound wall for all the four plots. Plot Nos.7, 8, 9 and 10. Total area of the ground floor is 3000 Sq.ft. The first floor constructed by him was 2000 Sq.ft. The first floor constructed by him was 2000 Sq.ft. **At**

that time my father's bungalow was the biggest and individual. My father put up a garage at Plot No.7 for an extent of 200 Sq.ft. In plot 9 and 10 father had put up cattle shed for rearing cows. He brought milk cows. The construction was entrusted by my father to Krishna Iyer of Raval and Company. Building was constructed by my father after obtained plan from architect. The building was built by my father by table moulded brick. It was a superior brick. My father used Burma teak for construction of building. It came specially for him from Burma. Plumping and Sanity work were done by King and Co., at Madras. They are the top people at that time. The electrification was also done for the house by a top person (Page 56)."

"He bought excellent furniture from WRENN. The furniture bought by him are still available at home (Page 57)."

(iii) It is also stated in the evidence that for cultivation, much money was required during this period and that his father **always was in a position to provide money** or amounts to S.T. Venkatranga Iyer when occasion needed (**Page 84**) .

Thus, the capacity of STS to purchase the property as

well as to put construction has been proved by the plaintiffs themselves.

117. The oral evidence relating to treatment of plots by S.T.Sadasivan by P.W.1 and P.W.2 and Ex.P44 are succinctly stated hereunder:

In the evidence of P.W.1, it is stated that during 1969, his father claimed plot Nos.6 to 9 as his exclusive and self acquired properties. He is fair enough to state that he did not dispute the title of his father in plot Nos.9 & 10, even at the time of settlement in his favour and first plaintiff. There is a critical admission made in page 59 of the evidence reads as under:

"My father had shown the building in Plot Nos.7 and 8 in his Income - Tax and Wealth Tax returns as his own. The assessment Ex.D9 relates to the financial year 1942-1943. The property was shown as Hindu Undivided Family property. In financial year 1942 and 1943, the house was declared as HUF property. However, for the corresponding taxation year, 1943-44, this fact was suppressed and my father claimed exclusive ownership by my father. Thereafter, the exclusive ownership claimed by him had continued till 1991. Wrongly, he claimed ownership over plot nos.7 and 8 and the building for a period of 50 years to our

knowledge. My father was a very honest person."

The very vital admissions are as stated below:

"From 1946 to 1990, my father alone was asserting rights in Plot No.6 and I believe it so (Page 65)."

"Even before the death of S.T.Venkatranga Iyer, my father had declared that he was the owner of the above plots in his income tax returns in the assessment year 1943-1944. The assertion continued even after 1943/1944. Even before the Corporation authorities also my father declared these plots as his own, and self acquired before the death of S.T.Venkatranga Iyer. S.T.Venkatranga Iyer did not correct it to my knowledge. My father denied the right of S.T.Venkatranga Iyer absolutely before his death, in respect of Plot Nos.7, 8, 9 and 10 (Page 80)"

Similar admissions are made in the evidence of P.W.2 also, wherein, P.W.2 would state that his natural father was showing plot Nos.6 to 10 as his exclusive properties in the income tax return and his adoptive father did not show plot Nos.6 to 10 as his properties in the income tax returns, even though both of them had cordial relationship. Regarding his own conduct, he would state

that as per the partition in 1969, he did not claim any right in the suit property.

118. Long after the purchase under Exhibit P-91, dated 13.09.1991, the notice was given by the plaintiffs demanding partition. Prior notice was Exhibit D-17 dated 13.10.1990. STS gave reply to the plaintiffs under Exhibit P-92 dated 27.09.1991 and D-18 dated 14.11.1990. In the notices issued by the plaintiffs demanding partition, he asserted that he was the exclusive owner of suit lands and narrated his rights. He repudiated the request of plaintiffs to divide the suit properties. In order to explain the circumstances under which mortgage was executed, he has explained his exclusive right in the will in Exhibit C-5 and STS died on 29.01.1992. Till his death from the date of purchase, he claimed ownership for the plots.

Mortgage Deed:

119. The next contention is that as the mortgage dated 11.01.1942 has been created by both the brothers along with the respective male members of the family, then, the property should be treated as only the joint family property and not the separate property.

120. As far as the mortgage is concerned, it is dated 11.01.1942. The discharge of the mortgage was on 18.06.1946. No evidence has been adduced by the plaintiffs to show that the joint family provided funds for discharge.

121. The mortgage was entered into by the mortgagors for the construction of house building and to meet a portion of the cost of construction. The documents pertaining to mortgage and discharge are as follows:

Ex. No.	Date	Description of Documents
P9	30.04.1945 to 21.04.1947	UCO Bank Sowkarpur pass book in the name of STS and his wife from 30.04.1945 to 21.04.1947
C2/P42	11.04.1942	Original Mortgage deed executed by S.T.Venkatranga Iyer, S. Thiagarajan (Minor), S.T. Sathasivam and S.Govindaraj (Minor) to UILA
C 3	18.06.1946	Endorsement of discharge of amount in C2 Rs.10,342.15.0/-.
D17	13-10-1990	Notice given by plaintiffs to S.T.S.
D18	14-11-1990	Reply given by S.T.S.
C 5	10.12.1990	Original Will executed by Mr. S.T.Sathasivam.
D91	13-09-1991	Notice given by plaintiffs to S.T.S.
P92	27-09-1991	Reply given by S.T.S.

Ex. No.	Date	Description of Documents
C 7	28.11.1945	Letter of United India Life Assurance Limited sending documents with list. Sent on the instruction of STS to Mr. K.S. Rajagopala Iyengar. 17 documents including discharged Mortgage deed (list given).
C 10		Payments of instalments by Mr. S.T.Sathasivam. (Hand written copy).
C50	20-05-1941	IOB letter to Mr. S.T.Sathasivam for a Cheque of Rs.2225/8/0.
C 57	02.06.1942 to 01.12.1944	27 receipts of Indian Overseas Bank showing payment of installments by STS (Current account Counter foils)
D9	28.12.1943	Letter from IT Department to Mr. S.T.Sathasivam. (Interest on Mortgage referred).
D12	29.12.1943	Office copy of reply given by Mr.S.T.Sadasivam (Mortgage loan referred).
C63		Payment
D11/D12		I.T. deduction.
C35/C37		S.T.V. Contra.

122. In Exhibit C-2/P-42, dated 11.01.1942, the stamp papers of original mortgage deed were purchased by STS. The other members were shown as co-mortgagors. The deed dated 11.01.1942 is relied much by the plaintiffs to advance their contentions with regard to nature of property, i.e. to claim that it is a joint family property. In other words, this is the only document that

reads Plot No.7 to 10 are coparcenary properties.

123. Admittedly, if the case of plaintiffs were to be accepted, there should have been family income and nucleus at or about the time of Exhibit C2. The fact that the mortgage deed was executed and amounts were borrowed would show that the family had no funds obviously. Further, in Exhibit C-5 dated 10.12.1990. S.T.Sadasivan had explained the inclusion of co-mortgagors in Exhibit C-2. When demand was made under Exhibit D17 on 13.10.1990, the request was turned down under Exhibit D18 dated 14.11.1990. STS, not contend with the reply under Exhibit D18, has explained in his will under Exhibit C5 as to the circumstances under which he was persuaded to execute Exhibit C-2 with co-mortgagors. STS went from end to end to protect his properties. The subsequent payments towards discharge by him would amply show that the family or family fund was not used in discharging the loan. Mention must be made about Exhibits C-7, C-10, C-15, C-57 and D-9. Under Exhibit C-7, dated 28.11.1945, STS instructed the documents to be sent to his advocate K.S.Rajagopala Iyengar. All the 17 documents inclusive of mortgage discharge note was sent to his lawyer. They were not given to STV. Exhibit C-50

was a cheque payment of Rs.2225.80. Exhibit C-57 from 1942 to 1944 payments in instalments were made by STS towards discharge. Exhibit D-9 dated 28.12.1943 relates to interest on mortgage. The mortgage/interest was shown to the IT Department by S.T.Sadasivan. Under Exhibit D-12, on 29.12.1943, reply was given with regard to mortgage loan. Exhibit C-63 was payment of amount and the IT deductions are exhibited under Exhibits D-11 and D12. During the relevant period, no evidence was adduced by the plaintiffs to show that joint family funds were paid or utilized to discharge the debt. In the IT accounts of STV, neither the mortgage loan nor its discharge was reflected. STS had treated the mortgage liability as his liability, paid interest and discharged the loan amount. Here, the plaintiffs did not adduce any evidence that discharge was made by the joint family. Further, it is not the case of plaintiffs that STV gave amounts to S.T.Sadasivan for discharge of the debt. Policy of STS alone was given as security to the mortgage. S.T.Venkatranga Iyer alone held the agricultural holding of family. The above evidence coupled with the admissions made by P.W.1 and P.W.2 extracted hereunder would show that the plaintiffs contention that the mortgage loan was repaid by the joint

family is unacceptable. In law, joining as co-mortgagor (s) to satisfy the creditor, while availing loan, will not create right or title to the co-mortgagors. The co-mortgagors independently have to prove their pre-existing right in the property which they have failed. Therefore, it is needless to state that the plaintiffs want to construct house of cards on the basis of Exhibit C-2 and their stand is not acceptable.

124. Further, the plaintiffs want to succeed in the suit primarily on the basis of statement made by deceased mother. Under the above circumstances, the deed of mortgage would not lend a helping hand nor leverage to plaintiffs case. In short, the plaintiffs cannot jack-up Exhibit C-2 to achieve their desired ends. A perusal of the mortgage deed in Exhibit C-2 would show that the loan was applied by S.T.Sadasivan. He gave security of house and the policy of assurance belonging to him. The house was constructed by him and the fact S.T.Sadasivan had applied for loan, for the purpose of discharging the debts incurred for the construction of superstructure in the plots. The relevant exhibits showing the details and the construction done by STS are stated below. During

this period, no evidence was produced by the plaintiffs to confirm that the family or STV had advanced amounts for construction of building. The loan itself is for discharging the debts incurred. Though the mortgage deed refers "mortgagors", STS alone had constructed the house with his funds and with the amounts borrowed by him and he alone discharged the loan.

125. It is admitted in the evidence of P.W.1 that the debt entries in the passbook (Ex.P9) between 07.08.1945 and 27.11.1945 relates to payment made to United India Life Assurance Co. towards repayment of mortgage loan. It is stated by him for discharging the mortgage under Ex.C3 neither he nor his brother made any payment. He did not see any record in the name of STV discharging the debt or showing the payment and that he did not file any document to show that STV has made any payment towards money payable under Ex.C2.

126. The plaintiffs have not filed any document to prove construction by joint family and payment to builder. In view of the various admissions of P.W.1 in the matter of construction of house and when no evidence was adduced by the plaintiffs that the family or HUF provided funds for construction, the contentions of plaintiffs are improbable and have to be rejected. The

competancy of STS to spend and construct to befit his status cannot be doubted or disputed and therefore, the house was constructed with his funds. The plaintiffs have not established their pre-existing right in the property. Mere recital in the mortgage deed as though the hypotheca is coparcenary property will not be conclusive to hold that the property was joint family property and plaintiffs cannot succeed on that basis. The loan was raised for construction purposes. The house constructed belong to S.T.Sadasivan and the plaintiffs' contention that the house belonged to Joint Family is not acceptable on the basis of evidence available on record.

127. The learned counsel for the plaintiffs relied upon the following decisions in support of the contentions that a) there is a presumption that a family is joint; (b) the properties acquired in the name of STS belong to the joint family and therefore, the properties are joint family properties; (c) in respect of joint family properties, the right to sue accrues on the birth of the son not on the death of the father; (d) even assuming that the properties belong to STS, those properties have become joint family properties on the application of rule of blending and (e) as the plaintiffs have discharged the proof of existence of joint family

nucleus, it is for STS to show that it is a separate property.

(1) AIR 1960 SC 335 (Mst.Rukhmabai vs. Lala Laxminarayan and others)

5. **There is a presumption in the Hindu Law that a family is joint.** There can be a division in status among the members of a joint Hindu family by definement of shares which is technically called "**division in status**", or an actual division among them by allotment of specific property to each one of them which is described as "**division by metes and bounds**".

...But there is no presumption that any property, whether movable or immovable, held by a member of a joint Hindu family, is joint family property.

The **burden lies** upon the person who asserts that a particular property is joint family property to establish that fact. But if he proves that there was sufficient joint family nucleus from and out of which the said property could have been acquired, the **burden shifts** to the member of the family setting up the claim that it is his personal property to establish that the said property has been acquired without any assistance from the joint family property.

(2) 1986 (3) SCC 567 (Commissioner of Wealth Tax, Kanpur and others vs. Chander Sen and others)

15. It is clear that under the Hindu law, the moment a son is born, he gets a share in the father's property and becomes part of the coparcenary. **His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth.** ... But the question is; is the position affected by Section 8 of the Succession Act, 1956 and if so, how? The basic argument is that Section 8 indicates the heirs in respect of certain property and class I of the heirs includes the son but not the grandson. It includes, however, the son of the predeceased son. It is this position which has mainly induced the Allahabad High Court in the two judgments, we have noticed, to take the view that the **income from the assets inherited by son from his father from whom he has separated by partition can be assessed as income of the son individually.** Under Section 8 of the Hindu Succession Act, 1956, the property of the father who dies intestate devolves on his son in his individual capacity and not as karta of his own family. On the other hand, the Gujarat High Court has taken the contrary view.

(3) AIR (34) 1947 Privy Council 189 (Appalaswami vs. Suryanarayanamurti and others)

11. ...The Hindu law upon this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property is joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property : see I.L.R. [1937] Bom. 708, I.L.R. (1937) Mad. 1012, ILR (1938) Mad. 696..... Consequently there is no force in the suggestion that the appellant improperly claimed as his own property which belonged to the joint family, and that is the only ground now relied upon to show that this suit was filed in the interest of the minors.

(4) AIR 1954 SC 379 (Shrinivas Krishnarao Kango Vs. Narayan Devji Kango and others) [burden of proof]

"Proof of the existence of a joint family does not lead to the presumption that property

held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the **burden shifts** to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property "

(5) AIR 1961 SC 1268 (V 48 C 229) (Mallesappa Bandeppa Desai and another vs. Desai Mallappa alias Mallesappa and another)

11. In our opinion, it is difficult to answer this question in favour of the appellants. The rule of blending postulates that a coparcener who is interested in the coparcenary property and who owns separate property of his own may by deliberate and intentional conduct treat his separate property as forming part of the coparcenary property. If it appears that property which is separately acquired has been deliberately and voluntarily **thrown by the owner into the joint stock with the clear intention of abandoning his claim on the said property and with the object of**

assimilating it to the joint family property, then the said property becomes a part of the joint family estate; in other words, the separate property of a coparcener loses its separate character by reason of the owner's conduct and get thrown into the common stock of which it becomes a part.

(6) 2003 (10) SCC 310 (D.S.Lakshmaiah and another vs. L.Balasubramanyam and another)

"19. ...the law on the aspect of blending is well settled that property separate or self-acquired of a member of joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein but to establish such abandonment a clear intention to waive separate rights must be established. **From the mere fact that other members of the family were allowed to use the property jointly with himself, or that the income of the separate property was utilized out of generosity to support persons whom the holder was not bound to support, or from the failure to maintain separate accounts, abandonment cannot be inferred, for an act of generosity or kindness will not ordinarily be regarded as an admission**

of a legal obligation [see Lakkireddi Chinna Venkata Reddy v. Lakkireddi Lakshamama [1964 (2) SCR 172] and K.V. Narayanan v. K.V. Ranganadhan & Ors. [(1977) 1 SCC 244]]."

(7) 2007 (1) Supreme Court Cases 521 (Appasaheb Peerappa Chamdgade vs. Devendra Peerappa Chamdgade and others)

"15. Similarly, in Bhagwant P. Sulakhe v. Digambar Gopal Sulakhe and Ors., their Lordships have held that the character of any joint family property does not change with the severance of the status of the joint family and a joint family property continues to retain its joint family character so long as the joint family property is in existence and is not partitioned amongst the co-sharers. **By a unilateral act it is not open to any member of the joint family to convert any joint family property into his personal property.**

(8) AIR 1965 SC 1531 (Union of India vs. Sree Ram Bohra and others)

12. Reference was made to the case reported as Bhagwan Dayal v. Mst. Reoti Devi (1). It was stated at p.482 : "The legal position may be stated thus : Coparcenary is a creature of Hindu law and cannot be created by agreement of parties except in the case of

reunion. It is a corporate body or a family unit. The law also recognizes a branch of the family as a subordinate corporate body. The said family unit, whether the larger one or the subordinate one, can acquire, hold and dispose of family property subject to the limitations laid down by law. Ordinarily the manager, or by consent, express or implied, of the members of the family, any other member or members can carry on business or acquire property. subject to the limitations laid down by the said law, for or on behalf of the family."

The fact that any other member or members other than the manager of the joint Hindu family, carry on business etc., on behalf of the family, does not mean that such members who act for the family do so as kartas of the family.

13. ...

14. Two persons may look after the affairs of a joint Hindu family on the basis of the members of the joint Hindu family clothing them with authority to represent the family. They would be two persons entitled to represent the family and their power to represent would depend on the terms of the authority conferred on them by the members of the joint Hindu family. Their authority to act for the family is not derived under any principle of Hindu law, but is based on the members of the joint Hindu family conferring certain authority on

them."

(9) 1986 (1) Supreme Court Cases 366 (Bhagwant P.Sulakhe vs. Digambar Gopal Sulakhe and others)

"13. The facts and circumstances of this Case clearly indicate that in the partnership agreement and the managing agency agreement in which the plaintiff Bhagwant and defendant No. 2 Dattatraya were parties, they had become parties on behalf of the joint family representing the joint family and the entire remuneration received by them, whether by way of commission or the directors' fees or by way of salary for having acted as the managing agent, was joint family income. ...As the entire income coming in the hands of the plaintiff Bhagwant or defendant No. 2 Dattatraya on the basis of the partnership agreement and the managing agency agreement, whether on account of commission or by way of directors' fees or remuneration for acting as the managing agent, belonged to the joint family and formed part of the joint family property, the same position must necessarily continue in the eye of law so long as the partnership agreement and the managing agency agreement continued. The plaintiff by seeking to bring about a severance in the status of the joint family, cannot deprive the joint family of this property and the income derived on the basis of the managing

agency agreement continues to remain the property of the joint family, so long as this joint family asset is not partitioned and otherwise continues to remain in existence."

(10) 2003 (6) Supreme Court Cases 595 (Roop Kumar vs. Mohan Thedani)

"22. This Court in Smt. Gangabai v. Smt. Chhabubai (AIR 1982 SC 20) and Ishwar Dass Jain (dead) thr. Lrs. v. Sohan Lal (dead) by Lrs. (AIR 2000 SC 426) with reference to Section 92 (1) held that it is permissible to a party to a deed to contend that the deed was not intended to be acted upon, but was only a sham document. The bar arises only when the document is relied upon and its terms are sought to be varied and contradicted. Oral evidence is admissible to show that document executed was never intended to operate as an agreement but that some other agreement altogether, not recorded in the document, was entered into between the parties."

(11) 2011 (5) Supreme Court Cases 532 (Booz Allen and Hamilton Inc. vs. SBI Home Finance Limited and others)

"37. It may be noticed that the cases referred to above relate to actions in rem. **A right in rem is a right exercisable against the**

world at large, as contrasted from a right in personam which is an interest protected solely against specific individuals. Actions in personam refer to actions determining the rights and interests of the parties themselves in the subject matter of the case, whereas actions in rem refer to actions determining the title to property and the rights of the parties, not merely among themselves but also against all persons at any time claiming an interest in that property. Correspondingly, judgment in personam refers to a judgment against a person as distinguished from a judgment against a thing, right or status and Judgment in rem refers to a judgment that determines the status or condition of property which operates directly on the property itself. (Vide : Black's Law Dictionary)."

128. On the other hand, it is contended by the learned counsel for the defendants that a) even though there is a presumption that the family is joint, there is no presumption that the properties are also joint; (b) the existence of nucleus alone is not sufficient, but, it must be proved that there was sufficient surplus income from the said nucleus; (c) there is no presumption that a business standing in the name of any member is a joint family business; (d) the presumption with regard to joint

family property when it is acquired by a member of the joint family will not apply, when the acquisition is in the name of the junior member; and (e) the mere recitals in a document showing a particular person as owner cannot be conveyed any interest in the property unless there had been a pre-existing right. In support of these contentions, the following decisions are relied upon:

(1) 1978 1 MLJ 56 (Ranganayaki Ammal and others vs. S.R.Srinivasan and others) ".... While considering the term nucleus it should always be borne in mind that such nucleus has to be established as a matter of fact and **the existence of such nucleus cannot normally be presumed or assumed on probabilities.** The extent of the property, the income from the property, the normal liability with which such income would be charged and the net available surplus of such joint family properties do all enter into computation for the purpose of assessing the content of the reservoir of such nucleus from which alone it could with reasonable certainty be said that the other joint family properties have been purchased **unless a strong link and nexus is established between the available surplus income and the alleged joint family properties.** The person who comes to Court with such bare allegations

without any substantial proof to back it up should fail.

The burden is very heavy on the plaintiff to establish the existence of joint family nucleus. The mere lapse of time will not relieve him from discharging his obligation...

.....

"15...*The father has consistently from 1937 to 1964 treated these properties and described them as his self-acquisitions. The plaintiff never took any objection to such a treatment of the properties. Even if it could be presumed that the plaintiff was helping his father that by itself is not sufficient, as acts of generosity and kindness by a father by which the son was allowed to participate in the administration of his self-acquired properties or enjoy a part of its income by itself would not be evidence to sustain the contention that the self acquisitions of the father are joint family properties.*"

(2) 1998 2 LW 259 (Muniappa Naicker vs. Balakrishna Naicker)

"18. In AIR 1996 SC 411 (Achuthan Nair v. Chinnammu Ammal and Ors.), it was held thus:

Under Hindu Law, **when a property stands in the name of a member of a joint family, it is incumbent upon those asserting that it is a joint family property to establish it. When it is**

proved or admitted that a family possessed sufficient nucleus with the aid of which the member might have made the acquisition, the law raises a presumption that it is a joint family property and the onus is shifted to the individual member to establish that the property was acquired by him without the aid of the said nucleus. This is a well settled proposition of law. But the principle is not applied to acquisition of properties in the name of a junior member of a tarwad (anandravan) under the Marumakkathayam law. There is no presumption either way and the question has to be decided on the facts of each case....

18-A. A reading of the above decisions makes it clear that if a coparcener is in management of the family properties, a presumption may arise that an acquisition made by him is for the benefit of the family. **But if he is not in management, or the family properties are not in his possession,** there is no scope for such a presumption.

(3) 1998 3 CTC 703 (K.R.Sathyanarayana Rao and another vs. K.R.Venkoba Rao and six others)

"Property purchased from income not

traceable to Joint Family nucleus is not Joint Family Property."

(4) 2001 (3) CTC 577 (Gowri Ammal and another vs. Vaithilingam (deceased) and 10 others).

"14. ...if the existence of joint family nucleus is established, then the onus should be shifted on the manager to establish that the property was purchased by him out of his set-earnings, and not with the help of joint family funds of which he was in possession....**mere existence of nucleus is not the sole criterion to come to the conclusion that the said acquisition by the karta of the joint family is having family character, but it should be established that the family had sufficient surplus income from the said nucleus so as to enable the karta to acquire the properties.**

15. This view has been taken in the decision in Ramakrishna v. Vishnumoorthi, in which, it is held as follows:- सत्यमेव जयते

"5. The proposition of law is well, established that it is not enough to show that the family had a nucleus of the family property in order that the later acquisitions made by the manager of the family should have the attribute of family character but what is necessary is that the nucleus must be such as to leave sufficient income therefrom after meeting the expenses as would enable the manager to acquire properties

with that...."

(5) 2014 (4) LW 695 (G.Mohandoss and others vs. G.Shanmugham and others)

"43. In the judgment reported in (2010) 1 MLJ 1019 (K.V.Ramasamy and another Vs. K.V.Rahgavan and others), it is held as follows:-

" Para No.34, From the conjoint reading of the decisions referred to supra, the following aspects can be culled out easily :-

a) The joint family nucleus must have left sufficient surplus income so as to enable acquisition.

b) Initially, burden lies upon a member, who alleges that a particular property is a joint family property to the extent that the alleged joint family nucleus must have left sufficient surplus income and by utilizing the same, the property in question could have been acquired.

c) If the initial burden as referred to above is proved, then the burden shifts to the member of the joint family setting up claim that it is his personal property and the same has been acquired without any assistance from the joint family property.

d) Failure to prove existence of nucleus, the inevitable presumption is that the acquisition in question is nothing but self acquisition.

e) Mere fact of existence of a joint family

does not lead to presumption that a property held by any of its member is joint family property unless the above aspects are proved.

and

f) If the property acquired is standing in the name of the female member of a joint family, she need not prove as to how she acquired it."

(6) AIR 1968 Supreme Court 1276 (G.Narayana Raju (dead) by his legal representative vs. G.Chamaraju and others)

"It is well established that **there is no presumption under Hindu law that a business standing in the name of any member of the joint family is a joint family business even if that member is the manager of the joint family.** Unless it could be shown that the business in the hands of the coparcener grew up with the assistance of the joint family property or joint family funds or that the earnings of the business were blended with the joint family estate, the business remains free and separate."

7. 2004 3 LW 60 (Kokila vs. Swathanthira and others)

"50. Similarly, the Mortgage Deed executed by Rathinasabapathy Mudaliar on 01.03.1972 (Document Sl.No.2), including the first

defendant has a party mortgagor and **describing him as constituting a member of the Hindu coparcenary would not create a joint family unless there is a pre-existing right in favour of the first defendant.**"

....

17...

The same was followed by the Kerala High Court in the decision reported in Sarojini v. Santha Trading Company and others, 1969 K.L.T. 412 and it was held thus:

"A recital in confirmation of pre-existing rights in a person, who had no such right in fact, would not convey any right in the property to him. **A mere recital that the property belongs to both the husband and the wife will not, therefore, convey any interest in the property of the wife of the husband.**"

(8) **ILR 1946 MD 557** (Appavu @ Lakshmanan Pillai and another vs. Manikkam Pillai and four others)

".... Statements made by members of the family on **certain occasion for certain purposes** that they are joint or divided in status are not of much consequence."

(9) 1996 1 MLJ 251 (M.P.P.Jayagandhi Nadar and Company by Partner, M.P.P.Jayagandhi Nadar vs. Arunachalam Pillai and another)

"... No evidence that father intended to throw the property in the common hotchpot - Fact that son also joined in execution of subsequent mortgage deeds - Held, not sufficient to show that father intended to waive his separate right over his self-acquisition.....

... Naturally, he had to obey the **dictates of his creditor**. If the creditor insists that the son should also be made a party, that will not show an intention on the part of the claimant that he intended to waive his separate right over his self-acquisition."

(10) 2000 (1) SCC 10 (Anandram Chandanmal Munot and another vs. Bansilal Chunilal Kabra (Since deceased) through Lrs and others):

"8... Apart from that as pointed out by the Privy Council in Alluri Venkatapathi Raju vs. Dantuluri Venkatanarasimha Raju (AIR at pp. 268-269):

"it sometimes happens that persons make statements which serve their purpose or proceed upon ignorance of the true position; and it is not their statements, but their relations with the estate, which should be taken into consideration in determining the issue."

(11) 2008 3 L.W. 1211 (Dhanalakshmi and five others vs. K.Loganathan and another)

"10. **Merely because the property was mortgaged with the George Town Co-operative Bank Limited, Madras and the loan was raised and utilised for the purpose of construction of suit property and all have been enjoying the property, it cannot be taken as a proof that the property was actually thrown into the hotchpotch of Hindu Undivided Joint Family.**"

(12) 2013 4 L.W.651 (Vathsala Manickavasagam and others vs. N.Ganesan & another)

"Admission, constitutes a substantial piece of evidence, which can be relied upon for proving the veracity of the facts, incorporated therein - Scope of.

Onus would shift to the party who made an admission and it will become an imperative duty on such **party to explain it** - In the basence of explanation, it will have to be presumed to be true."

(13) AIR 1958 Calcutta 105 (Kunja Behari Rena and others v. Gourhari Rana and others)

"Where the question is whether a property standing in the name of a junior member of a

Hindu joint family is his self-acquisition, the matter for enquiry among others is from what source did the consideration money come. Evidence to the effect that such junior member had no funds of his own or had paid the consideration money and that the father had the financial capacity to advance the amount being before the Court, the latter will be justified in drawing the conclusion that the father had advanced the consideration money. In such a case, however, it would be necessary to consider whether the father had made a gift of the amount to his sons or that he was making a benami transaction."

41. The onus is on the party who contends that the property was not a self-acquisition. Evidence to the effect that such junior member had no funds of his own or had paid the consideration, money and that the father had the financial capacity to advance the amount being before the Court, the latter will be justified in drawing the conclusion that the father had advanced the consideration money.

.....

57. Unless it can be shown that Kunja had treated these properties as joint properties with his brothers or had thrown them into the common stock they must be held to have been the separate properties of Kunja.

(14) 1976 1 MLJ 105 (R.Selvaraj vs. R.Radhakrishna Pillai @ R.R.Krishna Pillai and another)

"8. ...It is not every sporadic or unimpressive contribution by a member of the joint family, may be the father, that would make the resultant activity, a joint family activity. The contribution of labour, service or money by one member of the joint family to the other should be so conspicuous and impressive that on a prima facie, examination of such material, a reasonable and a prudent person should gain the impression that the two members were so associated with the common object of exploiting a commercial activity to the advantage of the joint family as a whole and in general... In the absence of such essential features, which would make such contribution by one member to the other a commercial activity the intendment and purpose of which is to make it a joint family trade, it is hazardous to infer that such unisoned activity between the members should be equated to a co-ordinated activity on their part equatable to the activity of members of a Hindu joint family resulting in the properties acquired by such common exertions as joint family properties."

129. From the decisions relied on the side of the

defendants, it is clear that without any pre-existing right, if a statement is made in any document, describing a particular person as a owner, that statement cannot make the person as the owner, as per the decision reported in **2004 3 LW 60 (Kokila vs. Swathanthira and others)** .

130. So far as the various letters written by STS to Income Tax authorities and land ceiling authorities are concerned, the issue raised is answered in the decision reported in **ILR 1946 MD 557** (Appavu @ Lakshmanan Pillai and another vs. Manikkam Pillai and four others), wherein, it is held that "Statements made by members of the family on **certain occasion for certain purposes** that they are joint or divided in status are not of much consequence."

Plot No. 6:

131. So far as the plot No.6 is concerned, it was purchased on 06.07.1946 (C-4/P-39). The agricultural holding between 12.08.1940 to 06.07.1946 was 33.35 acres. The sale deeds pertaining to the purchase are Exhibits P29 to P36. The plaintiffs stated that fund was given by S.T.Venkatranga Iyer to purchase plot no.6. Plot no.6 was purchased by S.T.Sadasivan on 06.07.1946. Ex.C-4 is

the original sale deed standing his his name. 5 stamp papers were used. Two stamp papers are in the name of S.T.Sadasivan, Nungambakkam. Three stamp papers are in the name of K.S.Rajagopala Iyengar who was advocate to S.T.Sadasivan. The sale consideration was Rs.4,972/-. Rs.500/- was paid as advance by S.T.Sadasivan. On 29.06.1946, for Rs.4,472/-, a cheque was issued by him to the vendor of plot no.6. The apparent tenor and recitals in the sale deed would confirm that S.T.Sadasivan was its owner. At the time of purchase, the position of S.T.Sadasivan was very high. S.T.Venkatranga Iyer, as per recitals in the sale deed, did not provide any sale consideration. It is contended by the plaintiffs that sale consideration was given for purchase of plot no.6 only by STV as per the bank accounts maintained and produced into Court. Bank accounts are Exhibits P6 to P18 and P11.

<u>Ex. No.</u>	<u>Description of documents</u>
P6	UCO Bank Sowkarpeth pass book in the name of STV from 02.06.1945 to 04.02.1948 (Burma shell Valavanur)
P7	UCO Bank Sowkarpeth pass book in the name of PW1
P8	- Do -
P9	UCO Bank Sowkarpeth pass book in the name of STS and his wife (from 30.04.1945 to 21.04.1947)
P10	• Do - (from 06.03.1947 to 05.10.1949)

According to P.W.1, the relevant pa

133. The case of D1 is that no agricultural income or income from oil business was available nor provided

for to S.T.Sadasivan by S.T.Venkatranga Iyer to purchase plot no.6.

134. P-6, Bank account starts from 06.06.1945. It stood in the name of S.T.Venkatranga Iyer, merchant, Valavanoor. The 1st entry is dated 06.06.1945. When account was opened, what had happened to earlier passbooks in the name of S.T.Venkatranga Iyer were not explained. The entry dated 27.06.1946 as per cheque no.002832 for Rs.5,000/- has been passed into service by the plaintiffs. The entry was debit balance. In other words, it shows that S.T.Venkatranga Iyer has had no money to his credit in the bank account at that time of issue of cheque on 27.06.1946. However, he gave a cheque for Rs.5,000/- from his OD Account. So actual money was not paid by him to his brother STS.

135. According to plaintiffs, this Rs.5,000/- was credited in the accounts of STS under P-111 on 27.06.1946. P-111 is available in page no.529 of Vol.3. This has been referred in P-111 at page No.532. P-111 is a pass book of Bank of Mysore Ltd. (A/c. No.12). The relevant entry is dated 27.06.1946.

136. Cheque was issued by S.T.Sadasivan to K.S.Rajagopalan on 03.07.1946 for Rs.300/-. To V.Ramasubbaier, a cheque was issued by S.T.Sadasivan for Rs.4,472/- on 08.07.1946. The plaintiffs contend that a sum of Rs.5,000/- was received from S.T.Venkatranga Iyer by S.T.Sadasivan towards payment of sale consideration. S.T.Sadasivan account was also OD Account. Already he was having debit balance of Rs.12,377.8.2. On the day on which Rs.5,000/- was deposited, as sum of Rs.16,772.6.2 was his debit balance in his account. His debit balance as on 30.06.1946 was Rs.12,377.8.2.

137. Both S.T.Venkatranga Iyer and S.T.Sadasivan accounts are OD (overdraft) Accounts. S.T.Sadasivan from his OD Account, it is clear, has paid money to the vendor. Exhibit P-6 was closed after the death of S.T.Venkatranga Iyer and S.T.Sadasivan had paid the OD amount due in his account totaling Rs.14,921.6.5 on 04.02.1948 and the debt was discharged. Therefore, the contention that S.T.Venkatranga Iyer paid sale consideration to purchase plot no.6 cannot be accepted. Agricultural income was not paid to purchase plot. No evidence was adduced that the cheque amount given by S.T.Venkatranga Iyer went to purchase plot no.6 and the

nexus between the payment and purchase was not proved.

138. In respect of Plot No.6 also, it is admitted that his father asserted exclusive title and ownership, but, STV did not make such a claim. With regard to payment of money, the evidence which are relevant is extracted:

"Before purchasing plot No.6, my father consulted with the advocate K.S.Rajagopala Iyengar. Rajagopala Iyengar has prepared the document Ex.C4 pertaining to Plot No.6 and he had also attested that document. Advocate Mr.Srinivasan has also attested Ex.C4 towards preparation consultation my father has paid Rs.300/- to his counsel. On 29.06.1946, my father paid an advance of Rs.500/- to A.V.Rama Subbaiyar for the purchase of plot No.6 (Page 89)".

"The payment of Rs.500/- was made from Ex.P9 standing in the name of S.T.Sadasivam and Vijaya Sadasivam. The balance amount of Rs.4,472/- was paid by my father from the bank of Mysore Ltd., from the overdraft account.

For the payment of Rs.4,472/- my father had to

borrow from the overdraft account which was paid to A.V.Ramasubbaiah. At or about the purchase of plot No.6, my father was liable to pay the bank of Mysore Ltd., Rs.17,670/- which is inclusive of the payment of Rs.4472/-. S.T.Venkatranga Iyer was in a position to pay Rs.5,000/- in cash at the time of purchase of plot No.6. He was having Rs.5,000/- with him in his house (Page 90)".

"As far as the subject matter of the litigation concerned the relevant period of income is 1940 and 1946. The accounts produced from 1945 to 1969. March do not show any income of the proceeding year. Particularly when plot Nos.7 to 10 were purchased. As far as plot No.6 is concerned the relevant document to show the income in Ex.P6. All documents from Ex.P7 to P10 do not have any nexus to the purchase of plot No.6 (Page 92)"

Business:

139. It is the case of the plaintiffs that the income from the oil business and the profits from the

shares were utilized for the purchase of the plot Nos.7 to 10. Therefore, the issue to be considered is whether the **business income** contributed for the purchase of plot Nos.7 to 10.

140. Admittedly, the licence for the oil dealership, stood in the name of STV. S.T.Sadasivan gave Rs.2,000/- from Rangoon which was received on 19.05.1936 by STV. He remitted a draft dated 14.05.1936 for Rs.1,500/- to the Burma Shell Company. On 13.06.1936, he gave Rs.1,500/- to the company as per the covering letter. The company demanded S.T.Venkatranga Iyer to give security. It was provided, not by STV but by S.T.Sadasivan to the extent of Rs.24,000/-. After his death, P.W.2 continued the business under the name of S.Thiagarajan and Co.

141. The relevant records and exhibits on which reliance was placed are as under:-

Ex.No	Date	Description of documents
D19	17-06-1936	Acknowledgement sent by Burma Shell Company to Mr. S.T. Sathasivam for the draft and letter dated 13-06-1936 relating to STV (draft for Rs.1500/-)

D20	13-06-1936	Letter from Chartered Bank, Rangoon to Mr.S.T.Sathasivam showing receipt of Rs.1500/-
D21	14.05.1936	Memo from Chartered Bank India, Australia, China for the receipt of Rs.1500/- (Rangoon)
D22	19.05.1936	Acknowledgment for receipt given by Mr. S.T.Sathasivam to STV (Insured letter)
D23	21.08.1959	Letter sent by Mr. Karunakar of UCO Bank to Mr. S.T.Sathasivam.
D24	26.10.1959	Letter sent by Mr. Karunakar of UCO Bank to Mr. S.T.Sathasivam.
P19	21-07-1954	Agency agreement of STS and ParameshwaraIyer.
P20	25-02-1956	Agency agreement of Parameshwara Iyer and Thiyagaraj Sathasivam. (Pw2)
P21		Letter head of 1950 in the name of STV & STS.
C33		I.T. of STV.(Burma shell)
A to C		
C34		I.T. of STV. (Burma shell)
A to C		
C35		I.T. of STV(Burma shell)
A to C		(Individual)

142. It is not in dispute that S.T.Sadasivan was employed from 1922 onwards and started earning his livelihood. Thus, he had assured income from 1922 onwards. In the written statement in para no.32 to 37,

his employment has been detailed. Significantly, during the relevant period, when S.T.Sadasivan was in Burma/Rangoon, from the records produced, he had made much money, as detailed above.

143. Coupled with the documentary evidence, the evidence of P.W.1 would be essential to arrive at an answer, which reads as under:

"P.W.1 would candidly admit that he has no record to show the business has contributed for the education and marriage of his sisters and that he cannot say about the profit earned in the oil business prior to 1940 upto 1950."

Hence, there is no proof to show that the business income was available for the purchase of the suit property. Hence the contention that the suit property is separate property must be accepted.

Shares:

144. The plaintiffs contend that shares were purchased by the Joint Family. The 1st defendant contended that the family did not purchase shares and it was purchased only by STS. According to her, her father S.T.Sadasivan has had enough funds to purchase shares.

The shares were converted as HUF under Ex.P45. Even before 1940, it is contended by her that S.T.Sadasivan had purchased lot of shares and his credit worthiness was very high.

145. In order to show as to whether the joint family purchased shares or STS purchased shares the following documents are crucial:-

Ex.No.	Date	Description of documents
C11	21.05.1969	Original declaration of partition of movables made by Mr.S.T.Sathasivam, P.W.1 and P.W.2
C12		Typed notes prepared by Mr.S.T.Sathasivam relating to share at South Africa from 1934 onwards
C37	02.08.1938	Letter showing payment to loan A/c. of STS of Rs.2200/- from S.RM M.CT.M.
C38	12.08.1938	Letter of payment by Mr.S.T.Sathasivam to S.RM.CT.M. firm and towards Burma Oil Company shares of Rs.3000/-.
C39	29.04.1953	Letter showing stock certificate given to Mr.S.T.Sathasivam for 5400 shares.
C40	18.11.1953	Letter showing payment to Mr.S.T.Sathasivam from Rubber & London Mining Agency Ltd. Cheque of Rs.2048-7-0.
C41	23.11.1953	Letter showing stock unit of Mr.S.T.Sathasivam
C42	29.04.1953	Stock unit of 1150 units of Mr.S.T.Sathasivam.
C43	18.11.1953	Letter (London) showing payment to Mr.S.T.Sathasivam

Ex.No.	Date	Description of documents
C44	23.11.1953	Acknowledgment letter from STS for c43.
C60 (1) To C60 (23)	13.06.1936 to 07.11.1938	Correspondence between Mr.S.T.Sathasivam and Chartered Bank of India, Australia and China, Lloyds Bank Ltd., London and IOB. (Shares held by STS (23) Letter and advices)
C61	23.03.1939	Letter from the office of the ITO Rangoon to Mrs.S.T.Sathasivam (refund circle).
C62	13.05.1939	Letter from Mr.S.T.Sathasivam to R.S.Whittam, ITO, Rangoon.
C65	27.12.1945	Copy of letter from Mr.S.T.Sathasivam to CBIAC regarding securities held by CBIAC for Mr.S.T.Sathasivam to be held on behalf of Mr.S.T.Sathasivam and or Vijaya Sathasivam deliverable to either Mr.S.T.Sathasivam or Vijaya Sathasivam.
D3	18.05.1936	Letter with list of securities and shares sent by Chartered Bank, Australia to Mr.S.T.Sathasivam.
D4	22.06.1938	Letter with list of securities and shares sent by Chartered Bank Australia to Mr.S.T.Sathasivam.
D5	22.06.1938	Letter with list of securities and shares sent by Chartered Bank Australia to Mr.S.T.Sathasivam.
D6		Handwritten account of Mr.S.T.Sathasivam from 01.01.1938 to 31.12.1941 showing the interest from dividends during the said period.

146. The oral evidence of P.W.1 and P.W.2 and their admissions would go to show the shares could not have been purchased by the joint family.

"As far as the modus operandi for purchase of shares is concerned my father used to by

them outright when there was sufficient funds. But, in many other cases, he relied on overdrafts against the security of the shares with overdrafts being given by banks other than the United Commercial Bank. The banks usually employed by him were Bank of Baroda Ltd., The Union Bank of India Ltd., and other banks, the reason being the senior bank Official, he was not allowed by rules to obtain an overdraft from his own bank. To circumstant this rule, he applied for shares in the name of his mother Vijaya Sathasivan, and also in the name of his brother S. Thiagarajan (Page 24)."

Further admissions made which are very important to decide this issue are found in paras 153 and 156.

"He was a great multiplier of money by way of purchasing and selling the shares. He was also raising overdrafts in his name as well as in the names of all his family members and purchasing shares (Page 153)."

"Whenever necessary, my father used to sell shares and purchase another shares. My father understood the share market well. My father was astute and clever in share market. In file No.6 my father had joint account along with his wife in United Commercial Bank/Ltd., Sowkarpur, Madras (Page 156)."

147. The evidence of P.W.1 would certainly show that

shares were purchased only by STS. It is stated by him that STS had availed O.D. facility to purchase shares. He borrowed amounts in this regard to purchase shares. Subsequently, the shares were converted into HUF by STS and were divided on 21.05.1967 under Exhibit C-11. This has also been admitted by P.W.1. No document was filed to conclude or confirm that the income of agricultural lands were used for purchase of shares. P.W.1 says that STS was a money maker or a money multiplier. Owing to magnanimity and to reduce tax liability, it is obvious he converted the shares into HUF. From the evidence, it is seen that STV was possessing 25 shares only. P.W.1 has admitted that STS did not purchase share in the name of STV nor STV purchased in the name of his brother STS. Under the above circumstances, it is evident the shares belonged exclusively to STS and were converted as HUF at or about the time of division.

cause of action:

148. The alleged cause of action in this case would go to show that the case of the plaintiffs cannot be true. Irrespective of the pleadings and evidence, the mere persual of cause of action would lead one to the conclusion that the case of the plaintiff cannot be true

at all. There is an admission that plaintiffs are not included plot Nos.9 & 10 in the suit properties. If it is the case of them that the properties purchased by STS are the joint family properties, then, the plaintiffs must have included Plot Nos.9 & 10 also in the suit properties. Having remind silent during 1969 when the partition took place and having gladly accepted the gift when it was given by their mother, but, title having been derived through the father, now it is not open to the plaintiffs to contend that the properties are joint family properties. The cause of action alleged is very strange. It is stated that only on Vijaya Sadasivam telling them on her death-bed that the properties are joint family properties, the suit has been filed.

149. S.T.Venkatranga Iyer died on 18.01.1948. Similarly, it is admitted in the plaint that again at the time of partition on 30.06.1969. S.T.Sadasivan claimed exclusive title. S.T.Sadasivan died on 29.01.1992 and no action was taken nor suit was filed before his death. The plaint states that in 1989 when Mrs.Vijaya Sadasivam was ill, she said that the properties were joint family properties. This statement was improbable as Mrs.Vijaya Sadasivan was given gift of plot no.9 and 10 on

12.09.1968 under Exhibit C-8 by S.T.Sadasivan. When Urban ceiling came, she executed settlement deed to his two sons on 16.02.1976 (P-63). Therefore, the cause of action for the suit as though Mrs.Vijaya Sadasivan told on her death bed that the properties were joint family properties was unbelievable. In the plaint the exercise of ownership over the plots has been admitted and there was no plea raised that S.T.Venkatranga Iyer had advanced money to S.T.Sadasivan to purchase plots 6 to 10. In other words, there was no plea that S.T.Venkatranga Iyer purchased plots using agricultural income in the name of his younger brother was raised. The plaint refers joint family nucleus and fund and the source for purchase of plots was not precisely stated and income from the agricultural land has not been referred nor quantum of income received or surplus available was stated. The plaintiffs did not prove the surplus income/income and its advancement and nexus for purchase of plots. No plea in regard that blending of suit plots took place with admitted joint family properties was raised by the plaintiffs in the plaint.

Thus, it is very clear that the cause of action itself is a created one for the purpose of maintaining the suit.

Claim of adverse possession by the defendants:

150. The contention of the plaintiffs is that even if the Court comes to the conclusion that the properties at the time of purchase were made from out of the joint family funds and subsequently, if it is found to be in possession of STS, it cannot be held to be his separate properties based on the claim of adverse possession. The further contention is that when possession is referable to title, then the possession will not be considered as adverse and the defendants making an express claim based upon document of title cannot make any claim based upon adverse possession.

151. Invoking the concept of approbate and reprobate and contending that ouster and exclusion vis-a-vis co-owners are only different facets of the concept of adverse possession and that the concept of adverse possession presuppose a person entering into a possession adverse to the interest of the other co-heirs and this concept cannot be applied in a case where possession is claimed by virtue of lawful title, the learned counsel for the plaintiffs relied upon the following decisions:

(1) AIR 1957 SC 314 (P.Lakshmi Reddy vs. L.Lakshmi Reddy)

"4. Now, the ordinary classical requirement of adverse possession is that it should be ***nec vi nec clam nec precario***. (See Secretary of State for India v. Debendra Lal Khan). The possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. (See Radhamoni Debi v. Collector of Khulna). But it is well-settled that in order to establish adverse possession of one co-heir as against another ***it is not enough to show that one out of them is in sole possession and enjoyment of the profits of the properties. Ouster of the non-possessing co-heir by the co-heir in possession, who claims his possession to be adverse, should be made out.*** The possession of one co-heir is considered, in law, as possession of all the co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title. The coheir in possession cannot render his possession adverse to the other co-heir not in possession merely by any secret hostile animus on his own part in derogation of the other co-heir's title. (See Corea v. Appuhamy). ***It is a settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with***

exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster. This does not necessarily mean that there must be an express demand by one and denial by the other. There are cases which have held that adverse possession and ouster can be inferred when one co-heir takes and maintains notorious exclusive possession in assertion of hostile title and continues in such possession for a very considerable time and the excluded heir takes no steps to vindicate his title. Whether that line of cases is right or wrong we need not pause to consider. It is sufficient to notice that the Privy Council in *N. Varada Pillai v. Jeevarathnammal* quotes, apparently with approval, a passage from *Culley v. Deod Taylerson* which indicates that such a situation may lead to an inference of ouster "if other circumstances concur". (See also *Govindrao v. Rajabai*). It may be further mentioned that it is well-settled that **the burden of making out ouster is on the person claiming to displace the lawful title of a co-heir by his adverse possession."**

(2) 1995 (2) Supreme Court Cases 543 (*Annasaheb Bapusaheb Patil and others vs. Balwant alias Balasaheb Babusaheb Patil*)

"15. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title."

(3) 2006 (7) Supreme Court Cases 570 (*T. Anjanappa and others vs. Somalingappa and another*)

"13. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them:

"24. It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co-owner can be referred to his status as co-owner, it cannot be considered adverse to other co-owner"

....
15.Adverse possession is of two kinds, according as it was adverse from the beginning, or has become so subsequently.Adverse possession not only entitled the adverse possessor, like every other possessor, to be protected in his possession against all who cannot show a

better title, but also, if the adverse possessor remains in possession for a certain period of time produces the effect either of barring the right of the true owner, and thus converting the possessor into the owner, or of depriving the true owner of his right of action to recover his property and this although the true owner is ignorant of the adverse possessor being in occupation. (See *Rains v. Buxion* (1880 (14) Ch D 537).

(4) 2007 (6) Supreme Court Cases 59
(P.T.Munichikkanna Reddy and others vs. Revamma and others)

"8. Therefore, to assess a claim of adverse possession, two-pronged enquiry is required:

1. Application of limitation provision thereby jurisprudentially **"willful neglect" element on part of the owner** established. Successful application in this regard distances the title of the land from the paper-owner.
2. Specific **Positive intention to dispossess on the part of the adverse possessor effectively shifts the title already distanced from the paper owner,** to the adverse possessor. Right thereby accrues in favour of adverse possessor as

intent to dispossess is an express statement of urgency and intention in the upkeep of the property.

9...

.....

18. On intention, The Powell v. McFarlane is quite illustrative and categorical, holding in the following terms:

"If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ('animus possidendi')."

(5) 2009 (13) Supreme Court Cases 229 (L.N.Aswathama and another vs. P.Prakash)

"17.The legal position is no doubt well settled. To establish a claim of title by prescription, that is adverse possession for 12 years or more, the possession of the claimant must be physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period exceeding twelve years. It is also well settled that long and continuous possession by itself would not constitute adverse possession if it was either permissive possession or possession without animus possidendi. The pleas based on title and adverse possession are mutually inconsistent

and the latter does not begin to operate until the former is renounced."

(6) 2014 (5) CTC 275 (G.Radhakrishnan and another vs. Kanna Pillai and others)

"12. When a co-owner set up a plea of ouster to prove adverse character of such possession by asserting affirmatively and that too, to the knowledge of other members that he asserted the exclusive hostile title and if the possession continues for statutory period of more than twelve years, then only, the co-owner/purchaser from the co-owner can succeed. Therefore, it is necessary to find out whether the burden of proof has been discharged either by the first defendant or by defendants 2 & 3, who are claiming title through the first defendant."

7. 2015 (1) SCC 417 (N.Padmamma and others vs. S.Ramakrishna Reddy and others)

"10. It is fairly well-settled principle of law that the possession of a co-heir is in law treated as possession of all the co-heirs. If one co-heir has come in possession of the properties, it is presumed to be on the basis of a joint title. A co-heir in possession cannot render its possession adverse to other co-heirs not in possession, merely by any secret hostile animus on his

own part, in derogation of the title of his other co-heirs. Ouster of the other co-heirs must be evidenced by hostile title coupled by exclusive possession and enjoyment of one of them to the knowledge of the other (See Corea v. Appuhamy (1912 AC 230 (PC)). Reference may also be made to the decision of this Court in P.Lakshmi Reddy vs. L.Lakshmi Reddy (AIR 1957 SC 314)."

(8) 1975 MLJ 370 (R.Subadhra Ammal (deceased and others vs. Thankkappan Thumper)

"17. In Abdul Kadir v. Umma I.L.R.(1970) 2 Mad. 636, a Bench of this Court elaborately discussed the law relating to ouster in respect of a stranger and also in respect of a co-owner. **It is also stated therein that the question whether evidence is sufficient to infer ouster will depend upon the facts of each case and that no hard and fast rule can be laid down.** Nevertheless the following factors in such cases are held to be relevant:

- (i) exclusive possession and perception of profits for well over the period prescribed by the law of limitation (twelve years in India);
- (ii) dealings by the party in possession treating the properties as exclusively belonging to him;

(iii) the means of the excluded co-sharer of knowing that his title has been denied by the co-owner in possession.

Thus, it is clear from the above decision that the decision on the question of ouster depends upon the facts of each case."

152. On the other hand, contending that the plea of title and adverse possession cannot be said to be inconsistent pleas and that the only requirement is that the person must have intention to possess the property as his own in order to claim adverse possession, the learned counsel for the defendants relied upon the following decisions:

(1) 2000 3 MLJ 785 (Sadasiva Gounder and other vs. Purushothaman)

"7... There is a school of thought that to claim adverse possession there must be an admission that the property belonged to the other party and the party claiming adverse possession has to have this "animus" viz., that it is somebody else's property, that somebody alone had title and he did not have title. Animus in the legal parlance **would mean mind, design, will, intention, disposition. To claim with regard to possession, the term is animus possidendi, which means the intention of**

possessing. THE person claiming adverse possession must intend in his mind to possess a property as his own. In my view, it does not mean that he must be conscious that the property belongs to somebody else. **All that is required by the term "animus" in the context of adverse possession is that the person must have intention to possess the property as his own....**
 “

(2) 2002 (3) MLJ 718 (P.Subramania Chettiar vs. Tmt.Amirtham and others)

“On the contrary, the counsel for the plaintiffs cited the decisions in Municipal Board, Etawah v. MT.Ram Sri (A.I.R. 1931 Allahabad 670), THANGAMANI v. SANTHIAGU (2000 III M.L.J.589), Karnataka Wakf Board v. State of Karnataka and SADASIVA GOUNDER v. PURUSHOTHAMAN (2000 III M.L.J. 785), wherein it is held that where the occupier has been in open and continuous occupation asserting positive title in themselves and **against every one, the said occupier can claim adverse possession and the pleas of title and adverse possession cannot be said to be inconsistent pleas.**”

(3) 1956 SC 548 (Mohammad Baqar and others vs. Naim-un-Nisa Bibi and others)

“As under the law, possession of one co-sharer is possession of all co-sharers, it cannot be

adverse to them, unless there is a denial of their right to their knowledge by the person in possession, **and exclusion and ouster following thereon for the statutory period. There can be no question of ouster, if ther is participation in the profits to any degree."**

153. The learned counsel for the plaintiffs pointed out the specific case of the defendants with regard to the purchase of plot Nos. 6 to 10 as having purchased plot Nos.7 to 10 on 12.08.1940 and plot No.6 on 06.07.1946, by two different sale deeds and at that point of time, plaintiffs 1, 3 and 8 were all minors at the time of purchase of plot Nos.7 to 10 and out of three, the first plaintiff still continued to be a minor even at the time of purchase of Plot No.6; 8th plaintiff got married one year prior to the purchase of Plot Nos. 7 to 10; the 3rd plaintiff, as soon as he graduated in 1948, left India and till 1990, he was out of India; neither the parties had knowledge regarding source of funds for the purchase of plot Nos.6 to 10 nor they had any idea as to whether the said plots were Hindu Undivided Family property till 1989. Pointing out various admissions made by the witnesses that all the sons and daughters used to

reside in the house of STS, it is contended that the possession cannot be said to be adverse. This contention has to be accepted having regard to the nature of relationship between the parties. However, the occasional user of the property as an invitee or licensee or a visitor cannot be termed to be possession. It is not the case of the sons and daughters of STS that they were in possession of the property in their own right. However, it is the contention of the learned counsel for the defendants that STS had, on many occasions, asserted his right in the property as an exclusive owner, of which, the plaintiffs never made any objection. Yet, having regard to the title pleaded by STS, it is not open to him to claim title by adverse possession. Therefore, the claim for adverse possession cannot be accepted.

Will

154. Will is defined under Indian Succession Act, 1925 as "The legal declaration of the intention of the testator, with respect to his property, which he desires to be carried into effect, after his death.

154.1. The Corpus Juris Secundum, defines the Will as " The legal declaration of a man's intentions, which

he **wills to be performed** after his death or an instrument by which a person makes a disposition of his property to take effect after his death."

154.2. The Will, being Sacrosanct, a special document, it requires special mode of proof (as contemplated under Section 63 of the Indian Evidence Act), and it should be shown to be free from suspicious circumstances, shrouding the execution.

154.3. Having said Will is Sacrosanct, then how should the interpretation of the Will be, is an essential question.

154.4. Interpretation of the Will, in legal parlance, is the preservation of solemnity of the will, without ignoring the suspicious circumstances, weighing it in the balance of testator's intention as to, in what manner he wanted his property to devolve after his mortal frame decays and the **Court is bound to look into every molecule of the Will under "Arm Chair" doctrine leading to the satisfaction of judicial conscience.**

155. In the construction of will, the Court must keep in view four cardinal presumptions:

- (1) There is always a presumption against intestacy. Whenever possible, Courts will prevent intestacy; (Ashrafali Versus Mohomedalli, AIR 1947 Bom.122)
- (2) There is a presumption of legality of a Will. The Court should be inclined to believe that the testator had not intention to transgress any law, (Leach Versus Leach 63 ER 222)
- (3) Where a Will has been duly executed and attested, there is a presumption that the Testator had knowledge of the contents and approve of the same, (Fluton Versus Andrew (1875 7 HL 448)
- (4) There is a presumption that Testator intend to benefit the members of his family rather than strangers. (Farrant Versus Nichols, 50 ER 370)

156. Testament is defined by Bentham in his theory of legislation as under:

"The law not knowing individuals, cannot accommodate itself to the diversity of their wants. All that can be exacted from it, is to

offer the best possible chance of satisfying those wants. It is for each proprietor, who can and who ought to know, the particular circumstances in which those who depend upon him will be placed at his death, to correct the imperfections of the law in those cases which it cannot furze. ***The power of making a will is an instrument entrusted to the hands of individuals to prevent private calamities"***

157. The same power may be considered as an instrument of authority entrusted to individuals, for the encouragement of virtue in their families and repression of vice.

158. It is the case of the plaintiffs that S.T.Sadasivan ought to have executed the will under undue influence. But the case of the defendants is that he executed a Will and a codicil in respect of his properties and did not die intestate. It is not the case of the plaintiffs that the signature in the Will is not that of the testator, but, the contention is that either somebody would have dictated the Will and STS should have signed it or the signature in the blank paper must have been utilized to fabricate the Will. The specific

contention is that the Will is an outcome of the undue influence exerted by the first defendant.

159. It is pointed out by the plaintiffs that there are suspicious circumstances surrounding the Will and therefore, the validity of the Will cannot be upheld by this Court. The decisions reflecting upon, the nature of evidence required to a) prove a will; b) evidence showing that the disposition was made with requisite mental capacity; c) testator's free will and mind; d) there were convincing explanations for the suspicious circumstances; e) when duty of Court multiplies in assessing the genuineness and validity of the will; f) duty to consider whether the will is natural or unnatural; g) registration of the Will by itself does not ensure the genuineness of the Will.

160. In support of the proposition, the following decisions are relied upon by the learned counsel for the plaintiffs:

(1) AIR 1959 SC 443 (H.Venkatachala Iyengar vs. B.N.Thimmajamma and other)

"18. ... Has the testator signed the will ? ***Did he understand the nature and effect***

of the dispositions in the will ? Did he put his signature to the will knowing what it contained ? Stated broadly it is the decision on these questions which determines the nature of the finding on the question of the proof of wills. It would prima facie be true to say that the will has to be proved like any other document except as to the special requirements of attestation prescribed by Section 63 of the Indian Succession Act. As in the case of proof of other documents so in the case of proof of wills it would be idle to expect proof with mathematical certainty. The test to be applied would be the usual test of the satisfaction of the prudent mind in such matters.

19. However, there is one important feature which distinguishes wills from other documents. Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or not ; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document -propounded is proved to be the last will and testament of the departed testator. Even so, in dealing with the proof of wills the court will start on the same enquiry as in the case of the proof of documents. The propounder would be called upon

to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder.

(2) 1977 (1) Supreme Court Cases 369 (Smt. Jaswant Kaur vs. Smt. Amrit Kaur and others)

"9. In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience and then the true question which arises for consideration is **whether the evidence led by the pro- pounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator.** It is impossible to reach such satisfaction unless the party which sets up the will offers a 'cogent and convincing explanation of

the suspicious circumstances surrounding the making of the will."

(3) 1990 (3) Supreme Court Cases 364 (Ram Piari vs. Bhagwant and others)

"2. Soft corner for grand-children or likeability for a son or daughter or their issues is not uncommon to our society. Rather at times it becomes necessary either to provide for the lesser fortunate or to avoid the property from passing out of the family. But when disputes arise between heirs of same degree, and the beneficiary even chooses to deny the blood ties, and that too unsuccessfully, then court's responsibility of performing its duties carefully and painstakingly multiplies. Unfortunately it was not properly comprehended by any of the courts, including the High Court which was swayed more by happy marriage of appellant, a consideration which may have been relevant for testator but wholly irrelevant for courts as their function is to judge not to speculate. Although freedom to bequeath one's own property amongst Hindus is absolute both in extent and person, including rank stranger, yet to have testamentary capacity or a disposing state of mind what is required of propounder to establish is that the testator at time of disposition knew and understood the property he

was disposing and persons who were to be beneficiaries of his disposition. **Prudence, however, requires reason for denying benefit to those who too were entitled to bounty of testator as they had similar claims on him. Absence of it may not invalidate a Will but it shrouds the disposition with suspicion as it does not give any inkling to the mind of testator to enable the Court to judge if the disposition was voluntary act.** Taking active interest by propounder in execution of Will raises another strong suspicion..."

(4) 2002 (1) CTC 650 (D.Kausalya, W/o.Late Durai, 16, Manicka Naicken Street, Purasavakkam, Chennai-7, vs. S.Sankaran, 16, Manicka Naicken Street, Purasavakkam)

"14. Even if it is established that the Will was executed by the testator without any undue influence by the beneficiary or the legatee still it is for the court to consider whether the Will is a natural one or unnatural. The unnatural Will is one whereunder the undue preference is given to anyone of the legal heirs or the bequeathment is in favour of a third person.

15. Undoubtedly giving preference to one of the heirs and excluding the other from inheritance will be a suspicious circumstance which must be got over by the propounder. In order to appreciate this proposition, it is better to

refer the law lay down by the Supreme Court.

.....

18. In a later judgment in V.S. Mane v. Ganeshkar, also the Apex Court held that the unfair and unjust disposal of property will be of suspicious circumstance requiring the propounder to explain the same in the following words:

"There is also a large body of case law about what are suspicious circumstances surrounding the execution of the Will which require the propounder to explain them to the satisfaction of the Court before the Will can be accepted as genuine..... Some of the suspicious circumstances of which the court has taken note are:

- (1) The propounder taking a prominent part in the execution of a Will which confers substantial benefits on him;
- (2) Shaky signature
- (3) A feeble mind which is likely to be influenced;
- (4) Unfair and unjust disposal of property.

20.

21.... When at the time of execution of the Will the testator was aged 83 years old and totally under the control of the respondent's mother, definitely there will be some amount of

influence on him with regard to the execution of the Will, giving preference to her alone by bequeathing the entire property to her.

22. If the entire evidence is looked into, the respondent did not offer any acceptable explanation for the exclusion of the appellant from inheriting the property."

(5) 2008 (1) CTC 97 (J.Naval Kishore vs. D.Swarna Bhadran)

"71. Admittedly Javantharaj was well conversant with Court proceedings. There is no dispute that he used to consult eminent Lawyers like Mr.P.Gopalsami Iyengar and Mr. M. Srinivasan [as His Lordship then was] and used to get legal advice from the said eminent lawyers. It may be noted that documents executed by Javantharaj were also drafted only by Advocates. For instance, Ex. P-4 Supplemental Trust Deed dated 31.07.1990 was drafted by advocate Mr. Radha Krishnan. Ex. P-5 Deed of Supplemental Trust [dated 28.05.1990] was drafted by Advocate Mr. P.K.Sivasubramaniam. Indisputedly, Javantharaj had legal counselling for drafting and in managing his affairs. While so, while he had bequeathed his properties of huge value, the question arises, would he have just left behind an unregistered Will ? Absolutely there is no evidence as to who drafted Ex.P-2 Will and who typed it. Drafting of the Will is shrouded with suspicion, which is not at all dispelled.

72. We are conscious that mere registration of the Will by itself will not dispel all suspicions regarding execution and attestation of the Will. Registration of the Will by itself does not ensure the genuineness of the Will. But act of registration is a solemn act which would lend assurance to the genuineness of the Will.

The legal propositions cannot be disputed and the issue is whether the dictum laid down is applicable to the facts of the case."

161. Per contra, the learned counsel for the defendants would contend that a) the execution of the will is admitted by the plaintiffs themselves by taking a plea that the Will suffers from undue influence; b) there is a difference between influence and undue influence; c) there is a difference between persuasion and undue influence; d) there is no pleading as per the requirement of Order 6 Rule 2 & 4 with regard to the plea of undue influence; (e) the approach to be made in case of holographic will is different as per the Judgment of the constitution Bench in Sasikumar Banarjee's case; (f) the idea behind execution of will is to interfere with the normal line of succession and hence, it will not raise any suspicion and in support of these contentions,

the following decisions are relied upon:

(1) AIR 1955 SC 363 (Naresh Charan Das Gupta vs. Paresh Charan Das Gupta and another)

"10. It is elementary law that it is not every influence which is brought to bear on a testator that can be characterised as "undue". It is open to a person to plead his case before the testator and to persuade him to make a disposition in his favour. And if the testator retains his mental capacity, and there is no element of fraud or coercion-it has often been observed that undue influence may in the last analysis be brought under one or the other of these two categories-the will cannot be attacked on the ground of undue influence. The law was thus stated by Lord Penzance in - 'Hall v. Hall', (1868) LP&D 481 at p.482 (C):

"But all influences are not unlawful. Persuasion, appeals to the affections or ties of kindred, to a sentiment of gratitude for past services, or pity for future destitution, or the like, these are all legitimate and may be fairly pressed on a testator."

On the other hand, pressure of whatever character, whether acting on the fears or the hopes, if so exerted as to overpower the volition without convincing the judgment, is a species of restraint under which no valid will can be made. Importunity or threats, such as

the testator has the courage to resist, moral command asserted and yielded to for the sake of peace and quiet, or of escaping from distress of mind or social discomfort,-these, if carried to a degree in which the free play of the testator's judgment, discretion, or wishes is overborne, will constitute undue influence, though no force is either used or threatened. ***In a word, a testator may be led, but not driven; and his will must be the offspring of his own volition, and not the record of some one else's".***

(2) AIR 1976 SC 163 (Afsar Shaikh and another v. Soleman Bibi and others)

"Although "undue influence", 'fraud', 'misrepresentation' are cognate vices and may, in part, overlap in some cases, there are in law distinct categories, and are in view of Order 6, Rule 4, read with Order 6, Rule 2 of the Code of Civil Procedure, required to be separately pleaded, with specificity, particularity and precision. A general allegation in the plaint, that the plaintiff was a simple old man of ninety who had reposed great confidence in the defendant is much too insufficient to amount to an averment of undue influence."

(3) 1992 2 L.W. 520 (S.P.Thirunavukkarasu vs.

S.P.Loganathan and another)

"8.Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, Courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated."

(4) AIR 1977 SC 63 (Beni Chand (Since Dead) now by L.Rs. Appellants vs. Smt. Kamla Kunwar and others)

"The son's behaviour was far too unfilial and remorseless for him to find a place in the affections of his mother. He had bruised her so badly that she could not possibly reward him with a precious inheritance. But she gave her estate not to strangers but to his children born of the first two wives and to the second wife."

(5) 2002 1 M.L.J. 346 (Jeyaraj and others vs. Gangammal and others)

"Persuasion, appeals to the affections or tie of kindred, to a sentiment of gratitude of past services, or pity for future destitution or the like, these are all legitimate and may be fairly pressed on a testor".

As pointed out by the Supreme Court:

"It is elementary law that it is not every

influence which is brought to bear on a testator that can be characterised as "undue". It is open to a person to plead his case before the testator and to persuade him to make a disposition in his favour. And if the testator retains his mental capacity, and there is no element of fraud or coercion, the Will cannot be challenged."

64....

65.

66.

67. As pointed out by the Privy Council in Motibhai Hormusjee's case, AIR 1924 P.C. 28: **"A man may act foolishly and even heartlessly, if he acts with full comprehension of what he is doing the Court will not interfere with the exercise of his volition."**

(6) 2002 1 MLJ 749 (Family Manager, Muruga Padayachi (died) and others vs. Family Manager, Arumuga Padayachi, S/o. Alaga Padayachi at Pothiramangalam Village, Thittagudi Taluk, South Arcot District (deceased) and others):

"13. Similarly, in Rabindra Nath Mukherjee v. Panchanan Banerjee, AIR 1995 SC 1684, it was held that deprivation of the natural heirs should not raise any suspicion because the idea behind execution of Will is interfere with the normal line of succession.

(7) 2002 3 L.W. 627 (K.Sadagopan vs. K.Yamunan)

"22. It is well settled that once it is shown that the will was executed by the testator when he was in sound and disposing state of mind, the burden of proving allegations that it is vitiated by coercion, fraud or the like factors, is entirely on the defendant. In this case, the evidence adduced by the defendant is nothing more than his own **ipsi dixit**, the allegations made in the written statement alleging coercion also being very vague."

(8) 2010 5 L.W. 97 (Ittiamam & others vs. Cherichi @ Padmini)

"32. Section 90 of the Act is on the principles of English Law and this Court in Gnambal Ammal Vs. T.Raju Ayyar and others (AIR 1951 SC 103) speaking through Justice B.K. Mukherjea (as His Lordship then was) clarified the position. This Court considered the decision of Privy Council in Venkat Narasimha (supra) and held that the presumption against intestacy may be raised if it is justified from the context of the document or the surrounding circumstances and where there is ambiguity about the intention of the testator. It is true that presumption against intestacy cannot be raised ignoring the intention in the Will. That is why Section 90 stipulates that the deeming clause will operate only where there is no contrary intention. In this case it is common ground that no contrary intention could be discerned in the Will in

respect of items 4 to 7."

(9) 2010 3 L.W. 282 (Karpagam and another vs. E.Purushothaman and 2 others)

"19. **Signature of executant is thus proved by admission of 1st Defendant herself.** Courts below concurrently found that Ex.A1 Will was 'legally proved' as per Sec.69 of Indian Evidence Act, exercising jurisdiction under Sec.100 C.P.C., High Court will not interfere with such concurrent findings.

20. Denial of execution of Ex.A1 Will in the written statement appears to be a casual denial. In (2008) 1 MLJ 1123 [R.Vellingiri and another v. R.Kannaian and others], **it was held that examination of an attesting witness to a Will is unnecessary when the parties have not joined issue on the validity or genuineness of the Will.**"

162. The contention of the learned counsel for the plaintiffs is that the Will executed by STS cannot be true and it is not valid as it suffers from unnaturalness and unfairness. The first contention is that there is no reason as to why the testator should leave his own son when the relationship was very pleasant and cordial with his son.

163. On the other hand, it is the contention of the learned counsel for the defendants that the conduct of the plaintiffs themselves were suicidal to them and there was love-lost between STS and his sons and the sons humiliated their father who achieved the higher-echelons and occupied exalted position and that the anatomy of the conduct of the sons would go to show that the relationship between the sons and STS had attained the point of no-return and therefore, it is nothing unnatural that he did not like to give any property to his sons. It is pointed out that apart from the sons' behaviour being too unfilial, they did not even express the feelings of remorse and therefore, the blameworthy conduct of the sons was instrumental in not getting the bequeath in favour of them.

164. The learned counsel for the plaintiffs relied upon various letters exchanged between the testator and the third plaintiff, starting from **3.04.1969 (Ex P 46)** until **20.06.1989 (Exs P- 51, 58, 59, 64 - 90)** i.e for a period of 20 years and the General Powers of Attorney in favour of STS, authorizing him to deal with all their affairs in Madras (**Ex P - 2, 3, 4 & 5**), to show that the

relationship between the 3rd plaintiff and the testator was extremely cordial and it would also be apparent that the testator was taking care of all the affairs of the 3rd plaintiff at Madras and was frequently keeping the 3rd plaintiff informed about the same.

164.1. This contention is answered in the evidence of the Chitkala Govindasamy, wherein, she has categorically stated in her **chief examination**, that the relationship between all the parties to the suit was very cordial till December 1989 and the said relationship turned hostile only after 24.12.1989, when the Will of Vijaya Sadasivan (Mother of the P1, P3, P8 and D1) was read out. This statement is also supported in the **cross examination of the First defendant**. She further stated in her **cross examination** that she was aware of the fact that STS was handling all the accounts of the 1st and 3rd plaintiffs' whenever they were not in Chennai. It would be noteworthy to mention that the 3rd plaintiff was throughout stationed out of Madras ever since 1948 and came back to Madras only in 1989. All the above would show that the 1st and 3rd plaintiffs' and their families,

were in good and cordial terms, not only with STS, but also with the first defendant and her family, till December 1989. Upto this point, the contention of the counsel for the plaintiffs that the relationship between STS and his sons were cordial is true till **December 1989**. But, the incident happened after 1989 has proved to be an anti climax.

165. The first submission of the learned counsel for the first defendants with regard to the Will is that there was "love-lost" between the sons and the father and therefore, there is nothing unnatural in father bequeathing the substantial property in favour of the daughter and son-in-law. There are various circumstances to show that there was embittered relationship between the father and sons. It is further submitted that the dislike towards the sons was not a natural dislike and the dislike was natural because of the exchange of legal notices prior to the death of STS. It is pointed out that the deceased should have been in a belligerent mood because of the uneasy, uncomfortable, and unharmonious relationship that existed between the sons and the father after the sons knowing the execution of Will by the

mother bequeathing majority of the property in favour of her two daughter and not in favour the sons.

166. It is contended that the soaring relationship between the sons and the father should have been the reason for the father to have executed the will dated 10.12.1990.

167. Normally, the court would be left with the responsibility of ascertaining the intention largely from the surrounding circumstances of the Will and in this case, fortunately, the mind of the testator STS has been brought under limelight by issuance of two legal notices by the sons, for which, STS has given two reply notices. P.W.1 has admitted in his evidence that after the disclosure of the will of the mother, there was total disruption in the family and there was cessation of relationship between STS and his sons.

168. P.W.1 further submitted that there was exchange of notice under Ex.D17 dated 16.10.1990 alleging discriminatory and undue favourable treatment to the first defendant by STS. For this notice, STS has given a reply dated 14.11.1990 under Ex.D18. It is appropriate to

mention that P.W.1 himself has admitted that he did not allege any undue influence by D1 on the father in Ex.D17. Only thereafter, the father has executed the will on 10.12.1990, (Ex.C5) i.e. between one month of his reply notice. One more importance is attached to that day.

That was the day on which the mother's death ceremony was observed. It is equally admitted that on the day of execution of the Will, the propounders of the Will namely, the first defendant was away from Madras and the husband of D1 was in Calcutta. It is also evident that STS has appointed a Security from Guardwell Security and Allied Services and PW1 was denied access to the said house. P.W.1 would further submit that they gave a legal notice to their father on 13.09.1991 demanding partition making a claim that plot Nos.6, 7 and 8 are joint family properties. This claim was made **on the basis of the disclosure of the mother that the properties are joint family properties.**

168.1. There is positive evidence adduced by P.W.1 himself wherein he has stated that father was not willing to give the property in favour of all of them. The relevant lines read as under:

"My father was always a dominating person. Till his death, whatever he said went. Therefore, when my mother said that the immovable properties should be settled in favour of all, my father did not acceded to her request"

169. There cannot be any better admission than this to show that STS wanted to give the property only in favour of his daughter and not in favour of his sons. Moreover, the determination on the part of the father not to give the property to the sons would also speak about mental soundness of STS to take a decision with regard to the persons to whom the properties should go.

170. The learned counsel for the defendants would submit that the plaint allegation itself if cumulatively considered would be sufficient to show that the Will should be a genuine one. In fact, the counsel from the inception was submitting that the **plaint is, document No.1** in support of the case of the defendants.

171. In the evidence of D.W.2 also, it is stated (under Ex.D17) that after the death of the mother, STS was having a dislike towards P.W.2, his brother and his

sister Padmavathy. It is the statement in Ex.D17 that the father's conduct changed from bad to worse against them and he was totally hostile towards them. The relevant lines in Ex.D17 showing the extent of hostility reads as under:

"You had gone to the extent of putting a watchman and directing them not allow my clients into family's ancestral house."

172. It is also admitted that in the reply notice issued by STS under Ex.D18, while describing the relationship between the sons and himself as uneasy, unpleasant and inharmonious, has further stated that the sons were behaving in a spiteful and ungrateful manner. When it is admitted that even thereafter, the sons did not seek any excuse or pardon from STS would make the circumstance probable that STS would have chosen not to give any property to the unremorseful sons.

173. Yet another contention is that the **letter dated 07.02.1990 (Ex D 34)** said to have been written by STS to D4, appears very strange and this letter has been concocted only to give the appearance of genuineness to

the Will and it is completely out of place and contains certain glaring inconsistent statements. The following unnatural elements are pointed out:

a. **Firstly**, this is a **typed letter** with the signature of STS and is addressed to D4. When all earlier letter of STS till November 1989, are in the handwriting of STS, why Ex.D34 alone should remain as a typed letter is not explained. In other words, it is contended as it is concocted letter it is in a typed form.

b. **Secondly**, the letter complains about the so called gross misbehavior of the 1st and 3rd plaintiffs' "**Over the years**" and also complains about the so called unruly conduct of the children of the 1st and 3rd plaintiffs' and the daughter of the 8th plaintiff; this is completely untrue, as it is demonstrated by documents and evidence on record, that the relationship between STS on the one hand and the 1st and 3rd plaintiffs' on the other hand was very cordial **until December 1989**, which is just 2 months prior to Ex D34.

c. **Thirdly**, there is a very startling statement made in this letter (**Not once but twice**) that **STS was suffering from terminal illness**; this statement is also completely untrue. It is nobody's case that STS was

suffering from any Terminal Illness at any point in time; this is also belied by the opening words in the will dated 10.12.1990, where STS states that he is of sound mind and body. Further, the will is also accompanied by a doctor's certificate (**Ex C - 87**) certifying that STS is of sound mind, healthy body and was having disposing ability.

d. Fourthly, this letter Ex.D34 states that STS has left behind a will, with Defendants 4 and 5 being named as executors of the will. However, the will which is now sought to be probated and in which D4 and D5 are named executors, is dated 10.12.1990, **which is 8 months after Ex.D34**. This assumes significance in as much as there is no mention of any previous will by STS, in his will dated 10.12.1990. Thus, only two consequences flow from the reading of Ex.D34, the first one being that Ex.D34 was not written by STS at all and is cooked up, in which event, there is a grave suspicion on the conduct of D1 and D4, since they are the addressees of the letter. On the other hand, if Ex D 34 was indeed sent by STS to D 4, then it raises a big question mark on the then state of mind of STS. If Ex D 34 is genuine, it is apparent that STS was not in a proper frame of mind after his wife's

death on 22.11.1989 and was extremely agitated and had completely lost his mental balance, as would be evident from the reading of not only Ex D 34, but also the letter dated **15.01.1990 (Ex C 9)**, addressed by STS to the security agency, in which detailed reasons are given by STS for requiring security for himself. It is incomprehensible that a man of the stature of STS would choose to reveal his personal information to a security agency, when all he had to do was demand security without assigning any reason. A conjoint reading of **Ex C 9 and Ex D 34** would clearly reveal that both these letters have been cooked up by the defendants, or in the alternative, STS was extremely disturbed upon the death of his wife and upon Plaintiffs 1, 3 and 8 questioning the validity of the will of his wife and had completely lost his mental balance and was not in a sound and disposing state of mind.

174. The events that transpired in the one year period between the death of Vijayam on 22.11.1989 and the Will dated 10.12.1990, especially after reading of her Will on 24.12.1989, the issuance of letter dated 15.01.1990 (Ex C 9), the issuance of letter dated

07.02.1990 (Ex D 34), the exchange of legal notice and reply on 13.10.1990 (Ex D 17) and 14.11.1990 (Ex D 18), would all point out to the fact that STS was isolated from the rest of his family (i.e P-1, P-3 and P-8) and was under the constant influence of D1 and her family. This is fortified by the various admissions made by R.K.S.Shetty, the 6th defendant, who was examined as DW-1 and who was made an executor of the will, under the codicil dated 16.12.1991. In fact, DW-1 clearly states, in his cross examination, dated 24.10.2007 (Page 249) that he use to visit STS innumerable times between 1979 and 1992; that his visits were originally once on 15 days and after 1990 (after death of Vijayam), his visits were almost daily and he states in his cross examination dated 18.07.2007 (Page 244) that after the death of Vijayam, D1 use to visit STS often. D1 herself stated in her cross examination dated 27.08.2009 that her two sons were staying with STS in the suit house, since D4 was on a transferable job till 1987; she further states in her cross examination dated 6.12.2010 and 16.12.2010, that she used to stay with her father whenever she came to Chennai, since her two sons were staying in the suit house.

175. These contentions are inter-related and therefore, a common answer combining all has to be given.

176. It is the case of the plaintiffs' that the Will has been executed by STS at a stage when he was 92 years old and was leading a solitary life after the death of his wife and was under the constant influence of D1. This allegation, according to the plaintiffs, will have to be viewed in the light of Ex.D34 and Ex.C9, which certainly do not reflect on the healthy state of mind of STS and raises a suspicion that a 92 year old man, who was deeply affected by the death of his wife, could have been easily influenced by his daughter, who's family is virtually the sole beneficiary under the will.

177. Much has been commented upon Ex.D34, which is the letter dated 07.02.1990 alleged to have been written by STS to his Son in law (D4). This letter is claimed to be a suspicious letter, the suspicious circumstance being a Will spoken about, but, not produced. It is pointed out that the produced Will is dated 10.12.1990 and not the earlier Will.

178. It is true that a Will has been spoken about in Ex.D34, but, for reasons best known that the Will is not produced. But, it is settled law that it is only the last Will that would prevail. The Will produced before the Court is the last Will according to the case of the defendants. No doubt, there is no reference about this Will referred in Ex.D34 in the last Will of the testator. But, the mere non-mentioning of the earlier Will in the subsequent Will is not fatal as at the age of 92, a) one cannot expect STS to remember everything, which has happened in the late evening of his life; b) the Will having been written by him and not by a document writer, STS would have been unfamiliar with the necessity of mentioning the earlier Will in the later will. Considering the overall circumstances, no importance can be attached to the non-mentioning the earlier will in Ex.C5.

WEB COPY

179. It is pointed out that STS was always in the habit of writing by hand and strangely, Ex.D34 and Ex.C5 are found to be typewritten. This contention cannot be accepted as with the advancement of age, there would be difficulty in writing, without any shaking. Perhaps, that

should have been the reason for STS to typewrite Ex.D34 and Ex.C5. Even assuming that there had been some suspicious circumstances in Ex.D34, that cannot have any great impact upon the genuineness of Ex.C5 with regard to authenticity, but, can have impact only on the question of undue influence.

180. Now, the question to be decided is whether there was any undue influence on the part of the first defendant in getting the Will in her favour?

181. It is the case of the plaintiffs that the sons of the first defendant had been staying with STS during the evening of his life and admittedly, the first defendant had been with her father whenever she visited Chennai. The conduct of the first defendant cannot be faulted with, as, in the capacity as daughter she might have visited her father. The sons of first defendant might have resided with the grand father in order to give moral support to their grand father. There is no evidence to show that the propounder of the will, namely, D1 to D4, took up a predominant part in the writing of the will. The testator himself had been alive nearly for a period of one year after the execution of the will. It

is a will of a man of such high education and social status. If really, the testator is not happy with the Will, he had ample opportunity to modify the will and cancel the will. That has not been done till the end.

182. Yet another contention is that STS was not suffering from any disease. There is no necessity to mention that he was suffering from terminal illness.

183. **Terminal illness** is a disease that cannot be cured or adequately treated and that is reasonably expected to result in the death of the patient within a short period of time. This term is more commonly used for progressive diseases such as cancer or advanced heart disease than for trauma. In popular use, it indicates a disease that eventually ends the life of the sufferer.

A patient who has such an illness may be referred to as a **terminal patient**, **terminally ill** or simply **terminal**. Often, a patient is considered terminally ill when their estimated life expectancy is six months or less, under the assumption that the disease will run its normal course.

184. The existence or otherwise of the terminal

illness would have serious repercussion only in cases where the mental soundness of the testator is an issue. This is a case where the mental capacity has been certified by the Doctor, who was the close family friend of the testator himself, for a period of 35 years. This certificate has been found along with the Will. Apart from that, the testator had been attending the Board Meeting even on the date of death. Therefore, the application of the phrase "Terminal illness" might have been used inadvertently. In any event, that does not affect the validity of the will.

185. The learned counsel for the defendants would contend that when the will itself is a holographic will, the contention that the deceased had been suffering from terminal illness and on account of that mental capacity had remained torn should not be accepted. It is a case, where the testator had been alive more than one year after the execution of the will. It is the case of plaintiffs that the entire Will was typewritten and therefore, it cannot be construed as a holographic will. The definition of the term "holographic will" is brought to the notice of the Court. The term "holographic will" has been defined as follows:

"A will entirely handwritten, dated and signed by the testator (the person making the will), but not signed by required witnesses. Under those conditions it is valid in about half the states despite the lack of witnesses."

186. It is not a case where there are no witnesses to the will. There is evidence to show that no advocate was present at the time of execution of the Will. It is a case of the propounder of the Will that the entire will was typewritten, but the evidence did not show whether the will is typed by some body else or by the testator himself. However the will has been proved by examination of the attesting witness and therefore, the will has been proved as per the legal requirement.

187. The evidence of P.W.1 in which certain admissions made would clearly go to show that the will cannot be a concocted document and evidence reads as under:

"Ex.P 95 is the copy of the will given to me. The Codicil dated 16-12-1991 with regard to the will dated 10-12-1990 was also read out to me. Ex.P.96 is the copy of the codicil given to me. Ex.D1 & 2 are the original will and original codicil. **The signature in Ex. D1 and D2 are**

that of my father. The 5 signatures four found in the margin and one in the bottom in Page NO.1 of the will are all of my father's signature and my father has signed for the corrections made therein in page 1. In the last page, Page No.7 only my father in his own handwriting has written the words 'I reserve the rights to modify or rectify revoke this will at any time during my life time in the last paragraph and he has also signed separately for this writing and he has signed again in the place of the testator. In the last age Page 7 my father has written 'Draft my self' and is signed by my father."

188. The mental capacity of the testator cannot be upheld on the basis that it is a holographic will, but, it should be upheld on account of the doctor's certificate which was accompanying the will and other attendant circumstances.

189. It is pointed out that undue influence has to be pleaded with specificity, particularity and precision and cannot be entertained on a general allegation. It is the contention of the learned counsel for the defendant that a) under Order VI Rule 4, instances have to be given describing undue influence; this is a statutory

requirement; this was not complied with; love and affection towards 1st defendant by her father cannot be mistaken for influence or undue influence; obviously, PW 1, PW 2 etc., earned the hatred of STS and misbehaved with him to get property after they came to know that STS wanted to settle properties to D1-D3; this fact has been admitted in the plaint itself.

190. As rightly contended by the learned counsel for the defendants, the enmity between STS and his sons after the death of the mother of plaintiffs 1 to 3, is an admitted fact in the plaint itself. Therefore, without even placing required facts with regard to undue influence, it is not for the plaintiffs to contend that the will suffers on account of undue influence.

191. It is argued by the learned counsel for the defendants that a) undue influence has been spoken only for plot Nos. 6-8; b) for the remaining items shown in the will, no undue influence was pleaded; c) For the remaining items shown in the will, no prayer for division of the said items was made including Valavanur house; (d) the plaintiffs accept the will and seek probate only for those items; (e) It is significant that D1 was permitted to construct as per Ex.D13 in the year 1985; again, the

lease was extended by D-15; under Exhibit D-14, STS gave affidavit of No objection to D1 to construct house; f) No undue influence was pleaded by the plaintiffs for D13, D14 and D15; it is distressing to note that PW 1 and 2 claimed share in the items, but it was refused by STS; (g) When plots are given to them viz., 9 and 10, no undue influence was alleged nor spoken; when they were given to D2 and D3, undue influence has been spoken; (h) Similarly, when settlement deed was executed for plot 9 and 10, to Vijaya Sadasivam, D1 did not ask for it; (i) Plot 9 and 10 which were purchased along with plot 7 and 8 were given to PW 1 and PW 2 at the direction of STS.

192. These contentions are farfetched and just because undue influence was pleaded for one transaction, it is not necessary that the same should be pleaded for rest of the transaction also.

193. The question to be considered is whether the suit transaction was an outcome of undue influence.

194. One peculiar plea taken by the plaintiffs is that P.W.1 is disputing only the disposition in respect of Plot Nos.6, 7 & 8 to D1 and he is not questioning the

other disposition made in the Will. It is not known, how a Will could be partly be out of undue influence and the remaining be tainted on account of undue influence.

195. Evidence reveals that STS was totally independent and could not be carried away by any influence. According to D1, this theory of the undue influence has been propounded by the plaintiffs only in order to destroy the rights vested with D1-D3. It is to be pointed out that PW 2 himself admitted (P.176) "my natural father leased out plot No.6 to my sister Chitkala to enable her to construct a house. Hence, I shifted the business from plot no. 6 to plot no. 10, which was earlier gifted to me". Plot No. 6 has been given to 1st defendant in the will executed by S.T.Sadasivan.

196. From the perusal of Ex.C5, it is seen that the attestors to the Will are Mr.R.K.Shetty and Lakshmi Narayanan. It is described in the Will itself that it was drafted by STS himself.

196.1. Ex.C6 is the Codicil dated 16.12.1991. The attesor R.K.Shetty has been examined to prove the Will. For proving the Codicil, attesor Nirajan Bhatt has been

examined as D.W.2.

196.2. The will is a registered one. The Will has been in a sealed envelop and left by the testator in the custody of UCO Bank, Mount Road, Madras with instruction to hand over the same to the Executors. Accordingly, the Executors have opened the will in the presence of family members on 15.02.1992 at the residence of STS.

197. In the evidence, PW1 has said "the will was opened in our fathers house at No. 13, Bragadambal Road. Along with the abovesaid will, in Exhibit C5, a codicil and a medical certificate were also enclosed. They were enclosed in two different envelops".

198. It was not in dispute that even though STS was 92 years at the time of his death, at the moment of death, he was attending a board meeting and he collapsed therein. This part of evidence would go to show that he must have been a person with good mental capabilities.

198.1. Moreover, a Doctor who is a good friend of STS, who ought to have been interested in fulfilling the wishes of the testator, would not have been a party to issue a false certificate.

199. D.W.1 the attesting witness is the senior Manager in the Company, called SPIC Ltd., where STS himself had functioned as one of the Director. STS was also the chairman of Audit Sub Committee.

199.1. According to D.W.1, on 10.12.1990, Mr. Sadasivam asked him and Lakshmi Narayanan, another attester to come to the Sub-Registrar Office, Thousand Lights, to be the witness to his will. In the Sub Registrars office, Mr. Sadasivan signed in all pages of the Will and corrections were made by him.

200. The cessation of relationship between STS and his sons and the nearness of sons of first defendant and the first defendant herself as and when she visited Chennai should have provided complete solace to STS and that would have made him to make D1, D2, D3 and D4 as major beneficiaries. He should have been melted by the affection shown by the daughter and his grandsons.

201. The totality of the facts and circumstances only indicate that the alleged injury suffered by the plaintiffs on account of the will executed by STS bequeathing property not to his sons but, Defendants 1 to

4 seems to be an invited injury.

202. It is not in dispute that STS pumped money into the joint family for the benefit of almost all members of the family and having been in exalted/coveted position in higher echelon, having created money mountain, whether could have tolerated the son removing a colour television from his house.

203. In the evidence of P.W.1, it is stated as follows:

"The colour television set mentioned in Ex.C9 belongs to me. The said TV set was removed from my father's house on my instructions from West Indies. My wife did not remove the lamps from the Puja room at 13, Bragamdambal Street. **Jayakumar Govindaraj referred to Ex.C9 is my son. He entered the residence and removed the television set.**

204. It is not the matter of television, but, the vision and teleological vision that matters much. The sons should have realized the practical difficulties of the father in spending quality time in the evening of his life and he should have the courtesy to say that he wants

to remove the television. Once again, it is not the television, but, the concern that the sons should have shown towards the quality time and happiness of his father, especially when he lost his wife. Having failed to understand his feelings, emotions, emptiness on account of the death of his wife, his special requirements that too at his old age, would have made the father to decline the grant of property in favour of his sons. This solitary incident is not the deceive matter, but this incident is a single incident, which would throw much light on the conduct of the plaintiffs towards their father especially after the death of their mother.

205. The anatomy of the conduct of the sons, in consideration of the entire facts and circumstances would go to show that the father would not have been inclined to give property in favour of his sons. The execution of the Will by the father in other words is the invited injury by the sons themselves.

206. Older people face tremendous life changes, especially after the death of long lived life partner. Ongoing emotional support is required to assist them to cope with the experiences of bereavement and illness. People may undergo feelings of loss, anxiety, frustration, anger or grief. This change may also cause

some people to seek measures to relieve from the past traumas. Contact, communication and concern are concomitant to revive life in every elderly person, who often suffer social isolation and long for regaining sense of belonging by the members of the family. When STS found that it was lacking from sons and was abundantly available from D1, he might have preferred to give the property in favour of D1.

207. It is the case of the plaintiffs that the conduct of D-1 throws a grave suspicion on the validity of the Will; it is the consistent case of the **first defendant in her chief examinations dated 11.06.2008 (Pg.276) and 12.08.2009 (Pg.300) and cross examination dated 27.08.2009 (Pg.304)**, that STS never told her about the will dated 10.12.1990 and that she came to know about the Will and codicil for the first time only on 15.12.1992, the day on which Shri K.R.Ramamani read out the same; however, she would admit in her **cross examination dated 02.02.2011 (Pg. 355)**, that she knew about the will in September 1991 (4 months prior to the death of STS) and that she was told of the same by STS himself; further, **Ex D-34** is dated February 1990 and

talks of a will left behind by STS; if D1 knew about the will prior to the death of STS (which she in any event knew on account of receipt of Ex D 34 in February 1990), her conduct in uttering false statements on Oath would cast a serious doubt on her bonafides and also the genuineness of the will.

208. No doubt, there is a contradiction in the evidence of D1 about the time at which she came to know about the execution of the will by her father. Judging by the general standard in assessing the conduct of human beings, it is quite natural that the father would have informed about the execution of the Will to his daughter. Therefore, the contention that the first defendant knew about the will of her father just four months prior to the death of her father must be true and other version, that she came to know about the will only after the death of the father, may not be true. However, the impact of this untrue statement did not outweigh the evidence with regard to execution of the will by STS.

209. It is the case of the plaintiffs that the evidence of the only executor who was examined in this case (D-6 was examined as DW-1) does not inspire any

confidence at all, on account of the fact that D6 states in his **cross examination dated 6.07.2007 (Pg. 240)**, that he saw STS drafting the will at his residence and that it was typewritten; he also specifically states that there was nobody else present on that day apart from him and STS; he would however state subsequently that he does not remember when the will was drafted; or how long it took STS to draft the will; or how many days prior to 10.12.1990 it was drafted; or whether there was any typist available at the house at that time; he would also state in his **cross examination (Pg. 241 and 242)**, that he did not remember whether the day, on which the will was drafted, was a working day or holiday; or whether the drafting was done prior to the date of registration of the will or the same day; or who typed the will; or if the will was typed immediately after it was drafted without any time gap; or if the will was typed by reading from some draft; all the above statements in the cross examination of D6 clearly show that his evidence is untrustworthy and unreliable and casts a serious doubt on the manner of drafting the will and also casts a serious doubt as to whether STS was the author of the will, or whether the will was prepared by someone else or at the

instance of someone else and was merely signed by STS.

210. Under normal circumstances, this kind of denial of knowledge would raise a doubt. But, in this case, having regard to the admission made by the plaintiffs themselves in the plaint admitting the strained relationship between the sons and STS and scented relationship between daughter's family and STS, the will must be true in all probabilities, more, especially, when the execution itself is not disputed by the plaintiffs.

211. Yet another contention is that, when the Will set out the entire antecedent title to the suit property and various other particulars leading to the discharge of the mortgage created in 1942; the will also seeks to explain the circumstances under which the mortgage was created in 1942; the reason why the suit property was called as joint family property of STS and STV and the repayment of the Mortgage; these explanations which find place in the will are wholly unnatural, inasmuch as there is no whisper about any of these statements in **Ex.P92**, which is the reply notice dated 27.09.1991 sent by counsel for STS to the legal notice dated **13.09.1991**

(Ex.P91); in their legal notice, the plaintiffs' have made specific allegations that Plot 6 to 10 were purchased out of joint family funds; that the plaintiffs' were kept in dark about this fact since they were minors at that time; that STS unilaterally declared the properties as his self acquired properties; that the said suppression continued even in 1969 during the family partition and thereafter, when portions of the property were gifted to the wife of STS and in turn by her to P 1 and P 3; that the plaintiffs' knew about the fact that the suit properties were HUF properties only during July 1989 at the death bed of Vijayam Sadasivan; that P1 and P3 thereafter traced various documents to show that the suit properties are joint family properties; that the first defendant had started misleading STS with a view to snatch away the properties; however, in answer to all these allegations, the reply notice in Ex P 92 did not state any of the explanations or the detailed particulars as contained in the will dated 10.12.1990.

212. It is not in dispute that so much of details as found in the will did not find place in the reply notice issued by STS. How much of the information is to be said

in the reply notice and how much information need to be disclosed at the time of filing the written statement are all decided by the lawyer, who defend the case, of course, subject to information being given by the client. Strategies are involved in drafting the written statement. Defence in Written statements are made taking into account the burden of proof and the possibility of proving the same, if any particular defence is taken. It is not open to the plaintiffs to contend so because as per the evidence adduced by the plaintiffs, **there is an admission that their father must have anticipatory litigation on their side and therefore, his father narrated to them as to how he acquired the properties in his will, i.e. Ex.C5 and C6 dated 10.12.1990 and 16.12.1991.** Therefore, merely because, those details did not find place in the reply notice, the will cannot be doubted, especially, when the authenticity of the will is not disputed.

WEB COPY

213. It is the case of the plaintiffs that there are other suspicious circumstances surrounding the will through the statement made in **Ex.D18 dated 14.11.1990,** which is the reply notice sent by the counsel for STS to

the legal notice dated 13.10.1990 (Ex.D17), issued by the counsel for plaintiffs 1, 2 and 8, in which, there is a statement made to the effect that STS has always treated all his children equally; if the admission that STS has always treated all his children equally is true, **then it is indeed surprising that STS has not even mentioned about the existence of the 1st and 3rd plaintiffs' and their children in the will and has completely disinherited them without stating any reason;** if the so called conduct of the 1st and 3rd plaintiffs in questioning the Will of Vijayam Sadasivan and issuing legal notices in Ex.D17 and Ex.P91 had lead to the deterioration in the relationship between the parties, then, the least that was excepted was for STS, is to state in the will itself about the reasons for his disinheriting the 1st and 3rd plaintiff' and their children; however, the 1st and 3rd plaintiffs' and their children are not even mentioned in the will; this is directly contrary to the statement made in Ex.D18, that STS always treated all his children equally; interestingly, nothing of what is stated in Ex.C9, Ex.D34 or the reply notices in Ex D 18 or P 92, is stated in the will.

214. All these contentions are incorrect. The deterioration in the relationship between the parties, is an admitted fact by the plaintiffs themselves. Treatment of children equally would have different meaning, different shades of meaning, different sense of meaning, depending upon the context, behaviour, action of the children towards STS. In any human relationship, the give and take is mutual.

215. As Graham Greene said, in human relationships, kindness and lies are worth a thousand truths. Now-a-days, even in business relationship, people try to maintain personal relationship so that, the business relationship survives; while so, if personal relationship are treated like business relationship calculating and maintaining the profit and loss account, the loss is unavoidable sometimes. Speaking of successful business, Ross Perot said "Business is not just doing deals; business is having great products, doing great engineering, and providing tremendous service to customers. Finally, business is a cobweb of human relationships." Unfortunately, during the fag end of the life of STS, perhaps, believing the success in the legal

fight, the plaintiffs have lost the affection of STS and hence, these properties also. Much has been argued about non-mentioning of P1 to P3 and their children and also regarding the non-mentioning reasons as to why the properties were not given to them. The reasons are obvious. Already plot Nos.9 & 10 have been gifted to two sons in accordance with the direction of STS. Therefore, STS would have not thought of giving any property to them, especially, on account of humiliating relationship which the sons maintained with the father.

216. It is contended that, even the bequest of Rs.3,00,000 made in the will to the 8th plaintiff arouses a suspicion, in as much as the reply notice dated 14.11.1990 (Ex D 18) clearly states that the relationship between STS and the 8th plaintiff has been "uneasy, unpleasant and unharmonious for a number of years". If that be so, there is no reason why a bequest should have been made to P8 at all and it appears that P8 has been included as a beneficiary of a paltry amount, only in order to lend some credence to the will.

217. This contention may appear to be correct on the

face of it, but, on deeper analysis, it is found that this contention also cannot be correct. Admittedly, she is a daughter, settled at Chennai. No serious allegations are made against the daughter as made against the sons. The bequest only indicate that STS was neither happy nor unhappy with P8.

218. The other suspicious circumstance surrounding the will, as pointed out by the plaintiffs, is that the will is a **typed document and is stated to be drafted by "Self"**; as can be seen from various exhibits in the form of letters written by STS to the third plaintiff, the last of which was on 20.06.1989 (**Ex P 90,**) all of them were in the handwriting of STS; this was in spite of the fact that STS had sustained a wrist injury around March 1989, **as admitted by D4 in her chief examination dated 16.07.2008 (Pg 283);** thus, there is no reason why out of the blue, the will should be typewritten; further, it is an admitted fact that STS had able legal advice till his death from Shri. K.R. Ramamani, who was a learned senior counsel practicing in this Hon'ble Court and who was also the son of K.S. Rajagopala Iyengar; Shri K.R.Ramamani was also one of the executors appointed under the will;

thus, it is extremely unlikely that STS would not know about the inherent advantages of a holographic will, or that STS would have drafted the will himself, especially when the will takes the trouble of explaining away ancient registered documents and when the recitals are also extremely argumentative and legal in nature.

219. These arguments appear to be a double-edged weapon. The difficulty presented in the argument of the learned counsel for the plaintiffs is that without taking appropriate pleadings in the plaint and thereby, depriving the other side of the opportunity to contest the same, now, during arguments only, so many contentions are raised, for which, one cannot expect any answer, as there was no pleading, there will be no evidence. So far as the will is concerned, it is not the case of the plaintiffs that the will is a forged one. It is not the case of the plaintiffs that the signature in the blank paper was utilized to write the will. It is their case that the will is out of undue influence. In that case, it is not open to the plaintiffs to contend any thing beyond undue influence. Having not been able to establish undue influence, the plaintiffs have started embarking on raising issues pertaining to the execution itself.

220. So far as the legal advice is concerned, as the material shows STS had been maintaining close relationship with lawyer. It is not necessary that the lawyer should have been present along with the testator at the time of execution of the will. The testator, having been a person with higher level of education, having known how to multiply money in all probability, should have obtained legal advice by forethought, well in advance.

221. So far as this case is concerned, the will was accompanied by a certificate of a Doctor, with regard to mental capacity of the testator. That doctor was admittedly not alive at the time of examination of witnesses. Therefore, the defendants could not have examined the doctor. However, whether the wrist injury was so serious to the extent of remaining an obstacle for STS to write away, is not known.

222. ***When P.W.1 has admitted that when the mother wanted immovable properties to be settled in favour of all the sons, the father did not accept the request.***

This part of the evidence is more than sufficient to hold that the will must be true. The fact remains that, admittedly STS had barricaded himself fearing threat for his life from his own sons. There is a fatal admission by P.W.1 after the mother's will was disclosed, there was total disruption in the family and cessation of relationship. It is the grievance of STS mentioned under Ex.D18 that the sons behaved in a spiteful and ungrateful manner.

223. The learned counsel for the plaintiffs submitted that the major beneficiaries under the Will dated 10.12.1990 are the 1st defendant and the three children of D1 and D4, two of whom are defendants 2 and 3; the only other beneficiaries are the 8th plaintiff, to an insignificant extent of Rs.3,00,000/- and the Veda Pata Nidhi Trust for Rs.50,000/-; since the beneficiaries under the will are D-1 who is the wife of D-4 and the children of D4, the propounder of the will, by virtue of being one of its executors, is vitally interested in the bequest; therefore this is also a suspicious circumstance surrounding the will.

224. This contention also cannot be correct. D4 is

not the only Executor and, along with him, there is yet another Executor . It is not a case where the propounder of the will has taken any part in the execution of the will. Even though the will was executed on the day of death ceremony of the mother, neither D1 nor D4 were along with STS at the time of execution of the will and they were away from Chennai. Therefore, D4 having been made as executor, cannot create any suspicion in the execution of the will. Considering the totality of facts and circumstances, this Court hold that the defendants have established the truth and validity of the will of STS.

To conclude, it is appropriate to quote the decision reported in AIR 1977 SC 63 (Beni Chand (Since Dead) now by L.Rs. Appellants vs. Smt. Kamla Kunwar and others)

"The son's behaviour was far too unfilial and remorseless for him to find a place in the affections of his mother", where the word mother has to be replaced by the word father. This exactly seems to have happened in this case.

C.S.No.1578 of 1992

225. In a suit filed for re-possession under Section 6 of Specific Relief Act, title to the property is not a relevant consideration.

226. Suffice to point out that the claim as executor is based upon the will of deceased Sadasivam.

227. The Plaintiffs/Executors seek repossession of the suit property on the ground that they have been wrongfully and forcefully dispossessed on 20.04.1992.

228. It is an admitted fact that Sadasivan died on 29.01.1992 and till his death, he was in occupation of the suit properties. It is the case of the Plaintiffs/Executors that the defendants 1 and 2 (Plaintiffs 3 and 1 in C.S.No.708 of 1992) illegally broke open the lock on 20.04.1992 and occupied the suit house.

WEB COPY

229. The plaint proceeds on the footing that the possession of suit property was taken by the executors/plaintiffs on 15.02.1992 after the expiry of mourning period. The Executors state that the will was read out to the family members on that date. The

executors further state that inventory was taken to the knowledge of defendants (Plaintiffs and D1 in C.S.No.708 of 1992). According to Executors, Mrs.Chitkala Govindasamy was permitted by them to reside in the suit property and the security guard was allowed to continue to protect the property. The Son-in-law of STS and his wife came to Madras on 29.01.1992 and stayed in the suit house. On 29.01.1992 when S.T.Sadasivan died, he was the sole occupant. The 2nd plaintiff/Major General Chander Govindasamy was in possession from 15.02.1992. 9th defendant/Chitkala Govindasamy left the premises and went to Calcutta to rejoin her husband. Complaint was given by the security guard. On the basis of direction by the Hon'ble High Court, two rooms are made available to the executors.

230. The second defendant/S.Thiagarajan contends that he was in possession of the suit property. The occupation of the house by Chitkala Govindasamy and the security arrangements made by deceased Sadasivam was continued by the Executors, is also an admitted fact. D1 and D2 were having separate house and never claimed that they were jointly living with Sadasivan.

231. It is in the suit property that S.T.Sadasivan

lived and died. According to evidence, one set of keys is available with him and that the deceased had permitted Chitkala Govindasamy to occupy the suit house. Under such factual scenario, who was in occupation of the suit property and whether the Executors have been illegally dispossessed by the defendants in **this suit** (all the plaintiffs and the first defendant in C.S.No.708 of 1992) are the issues to be considered.

232. According to the Executors, the following dates and events are relevant to appreciate the claim of trespass and unlawful dispossession of suit house:

- (1) 29.01.1992 S.T.Sadasivan died
- (2) 15.02.1992 Will was read out and possession of house taken by the executors.
- (3) 18.02.1992 - Inventory in the suit house was taken
29.02.1992 by the executors
- (4) 14.04.1992 D1 left the suit house for Calcutta to rejoin her husband and she occupied the house temporarily upto 14.04.1992 with the permission of executors and handed over the keys to them while vacating.
- (5) 20.04.1992 House broken open. Possession of executors was unlawfully taken by P.W.1 and 2 and P.W.2 occupied the house and his earlier stay was at Burkit Road, T.Nagar.

233. It is submitted that there are unqualified admissions made in the plaint as well as in the evidence

of P.W.1-Govindaraj, P.W.2-Thiagarajan, which would go to show that the Executors/plaintiffs were illegally dispossessed and the defendants herein had trespassed into the suit property.

234. Before looking into the evidence, it is necessary to point out the defendants 1 to 8 are plaintiffs in C.S.No.708/1992. **Common evidence was adduced and recorded in C.S.No.708/1992.** To appreciate the contentions of parties, the plaint averments and evidence recorded have to be looked into in the first instance.

235. It is the contention of the learned counsel for the plaintiffs herein that there are admissions in the plaint itself, wherein, it is admitted that a) **S.T.Sadasivan was quite old, leading a solitary life, particularly after the death of his wife in the house (para xi) (Page 21 of the plaint) and that P.W.2/1st plaintiff is at present living at No.13, Bragadambal Road, Nungambakkam, Chennai - 34 (para xv) (page 26 of the plaint).** These admissions are available in the plaint as contended.

The following are the admissions made in the evidence of P.W.1 and P.W.2.

The admissions as recorded runs as under :

a. "My father had appointed a security from Guardwell Security and Allied Services. **The plaintiffs were denied access** to 13, Brahadambal house by my father from last week of December 1989. From September 1990 onwards, **I was denied access** to the said house. Ex.C9 is the letter dated 15-01-1990 by my father to the Director, M/s.Guardwell Security and Allied Services. Security was sought by my father because of strained relationship. After my mothers ceremony was over, **my father was alone in the house** After my mother's will was disclosed, there was total disruption in the family and cessation of relationship. (Page 86)

b) It is true that my father was a strict disciplinarian and did not want the security to send any one inside **without seeking his permission. Even after my arrival in India, my father did not allow any one of us (plaintiffs) to see him** (Page 105).

c) **The 1st defendant was living in the said house even after the inventory was taken for 2 ½ months and then left for calcutta.**

..... Even when the relationship became strained

between my father and my brother, my brother did not return the keys to my father. At the time when my father was in the hospital, my brother was residing in Burkit Road (Page 106)

d) Mr.Ramamani was there along with my father in a Board Meeting that took place on 29.01.1992. D1 and D4 were living at No.13, Brahadambal Road to look after the affairs of administering the property and for probating the will..... To my knowledge, one Steel cabinet belonging to my brother is available at No.13, Brahadambal Road. The aforesaid steel cabinet is in a room and the said room is locked and the keys are with the executors (Page 108).

e) I do not know where my brother was residing prior to occupying the house at No.13, Brahadambal Road (Page 109).

f) After the inventory was over, executor Shetty took away the keys of the two locked rooms (Page 110).

g) My sister locked the house and left the house at Brahadambal Road (Page 114).

h) My father prevented me from entering into the house (Page 117)

i) My father was alone in his house (Page 126).

j) My brother was also staying at Pantheon Road long time ago. **He was in a flat at Pantheon Road.** In the said flat, the ceremonies of Vijaya Sathasivam were performed in December 1990 (Page 127)

k) **The last person to live at No.13, Brahadambal road was the first defendant.** I came to know that she left on 15th April, 1992 (Page 131).

l) that prior to Burkit Road, my brother was residing at Abiramapuram.

..... I went with my brother to occupy the house (Page 132).

Vital admissions are made by P.W.2 also, which has been recorded in pages 175, 177, 182, 184, 185, 196, 197, 199, 200, 201, 202, 208, 209, 214, 219, 221, 222, 226 and 231, out of which, the evidence in page 182, 184, 185 are of critical importance, wherein, the evidence reads as under:

a) In fact, I gave my duplicate keys of my steel cupboard wherein all our valuables are kept to S.T.Sadasivan which I never claimed till his death. **I think the keys are be with the executors since they took possession of all the documents and the keys from his room** One of those rooms contains my steel cupboard

which has all our valuables. **After my mothers death, my father appointed a professional security agency for the suit property (Page 182)."**

b) "My brother-in-law was staying in the suit property till 31.03.1992 when he left for Kolkatta. **My sister Chitkala stayed in the suit property till 14.04.1992. I was staying in the suit property at that time (Page 184)."**

c) "On 14.04.1992, my sister Chitkala left abruptly taking with her the keys which I handed over to her. I handed over one set of the suit property keys to her for her use while she was staying in the suit property. At that point of time, I was not in Chennai (Page 185)."

236. There is no necessity to elaborate further admissions, as going on adding admissions would only be a duplication.

237. The plaintiffs (executors) contended that possession of suit house was taken, after reading out the will on 15.02.1992. It is admitted that inventory was also taken of the available movables in the suit house by the executors for several days from 18.02.1992 to

29.02.1992. Further security was already available for the suit property. Mr.S.T.Sadasivan had appointed them while he was alive. The same security was continued by the executors even after taking possession of property on 15.02.1992. This was admitted by P.W.1 and P.W.2. The P.W.1 and 2 admitted that 1st defendant in the suit was the last occupant of suit property. She obtained the permission of the executors to stay in the suit house and she had vacated on 14.04.1992. The trespass was alleged on 20.04.1992 by P.W.1 and P.W.2.

238. In view of the evidence given by P.W.1 and P.W.2, it is clear and evident that the last occupant of the suit property was the 1st defendant (in C.S.No.708 of 1992). It is in evidence that the house was locked up and keys taken by the executors and the 1st defendant in her evidence had stated that she handed over the keys to the executors. The executors examined before the Court confirm her occupation of the house.

239. According to the evidence available, the relationship between father and son was normal before the death of Mrs.Vijaya Sadasivan. It became strained and abnormal after her death. Therefore, no importance can

be attached to Exhibit P113 to P129. P.W.2 admits that he gave his address as that of the suit property after 1969 (page 208). Assuming that P.W.2 was permitted to come and go to the suit property or given a key as contended by him, it is all referable to leave and licence granted to him by his natural father. Once possession of suit house was taken by the executors lawfully on 15.02.1992 to administer the estate to the knowledge of P.W.1 and P.W.2, neither P.W.1 nor P.W.2 has justification or right to interfere with their possession or cause dispossession of suit property who filed the suit for repossession.

240. The defendants 1- 8 filed C.S.No.708/1992 for partition. Even in the notice issued by them under D-17 and D-18, to S.T.Sadasivan, possession or occupation of the suit house by P.W.1 or P.W.2 was not mentioned in the notice and the evidence shows cook was available to prepare and provide food for S.T.Sadasivan during the life time after the death of his wife and the relationship between father and his son and daughter was very much strained resulting in father arranging security for himself for the suit house and directed the security to obtain his permission for allowing entry of all

visitors. P.W.1 himself accepts that there was cessation of relationship and plaintiffs were prevented access to the suit house.

241. When the position or relationship of parties stood as abovesaid, it is difficult to accept the case of defendants in the suit that P.W.2, was in occupation of the suit house along with S.T.Sadasivan. P.W.2 and S.T.Sadasivan could not or did not live jointly in the suit house, is the conclusion that could be arrived at based upon the evidence.

242. The plaintiffs in C.S.No.708 of 1992 contend that Ex.P113 to P129 prove the occupation of P.W.2 in the suit property. P.W.2 was given in adoption to the brother of S.T.Sadasivan. He was not heir at law to the estate of deceased S.T.Sadasivan. Moreover, in his evidence, he had stated that one key alone was given to him to open the house during late hours in the night long back in 1972. When the possession of suit house has been lawfully taken by the executors on 15.02.1992, after the death of S.T.Sadasivan and the possession of suit property continued with the executors, it cannot be disturbed nor they be dispossessed unlawfully. The

parties to the suit cannot interfere in the administration of the estate of deceased S.T.Sadasivan. P.W.2 has been in occupation of several flats in various places and at several point of time. Before the death of S.T.Sadasivan, his residence was in Burkit Road which was admitted by P.W.1.

243. It appears both P.W.1 and 2 taking advantage of situation, that the house was locked, and unoccupied after D1 had left on 14.02.1992, and keys were with the executors, boldly broken open the same and dispossessed unlawfully the executors from their occupation. The reference to Ex.P113-129 as though P.W.2 was a resident of the suit house cannot be accepted. For his own reasons, as admitted by him, he has created address in the documents as though he was in occupation of the suit house. In fact, D-35 and D-36 dated 26.12.1991 would show that cavet was served to him and his son in the Burkit Road address. D-43 produced affirm that P.W.2 was not a resident of suit house.

244. It is seen that D.W.1 and D.W.3 are independent witnessess examined and they admitted trespass by P.W.1 and P.W.2 of suit house.

245. In view of several admission made by P.W.1 and P.W.2 and other acceptable evidence adduced by the executors (D.W.1, 3 and 4) the 1st defendant (in C.S.No.708 of 1992) who was examined as D.W.4 was the last occupant after the death of her father and she had vacated the house on 14.02.1992 and the defendants 1 and 2 in C.S.No.1578 of 1992 had forcefully occupied the suit house and that the plaintiffs in C.S.No.1578 of 1992 are entitled to the relief of repossession of suit property and accordingly, decree and judgment are granted to them.

TOS No.11 of 1992

246. The petitioners in TOS No.11 of 1992 (Executors of the Will) are seeking probate of the Will.

247. As the will has been declared proved and as the validity of the will has been upheld, there is no impediment in granting probate. Therefore, TOS No.11 of 1992 filed by the Executors seeking probate is allowed.

O.P.No.748 of 1992

248. The 3rd plaintiff in C.S.No.708 of 1992

(Govindaraj, the son of STS), has filed O.P.No.784 of 1992, seeking removal of the Executors of the Will from the administratorship.

249. P.W.1-Govindaraj has sought for removal of the respondents from the executorship of the estate of STS on the ground that the executors are guilty of breach of trust inasmuch as the executors have withdrawn Rs.1,60,000/- without the permission of the Court. This removal is sought for, as contemplated under Section 301 of Indian Succession Act.

250. The defence of the Executors is that the executors were in need of funds for payment of probate fee and other expenses, towards meeting out that expenditure, the first defendant (beneficiary under the Will) had encashed the Fixed Deposits as she, being the sole surviving joint holder of the fixed deposit, has made available, the funds from the estate of S.T.Sadasivan. Accordingly, only with the permission of the first defendant, the amount was utilized and subsequently at the request of the first defendant, the amount was repaid and hence, there is no question of

breach of trust.

251. In view of the rival contentions, the issue to be decided is as to whether the respondents are liable to be removed from the executorship?

252. In order to appreciate the contentions raised in this petition, it is necessary to look into the legal status of the Executors and the power of administration as entrusted to them under the law.

i. Under Section 211 (1) of the Indian Succession Act, Executor is a legal representative of the deceased for all purposes and all properties of the deceased person vests in the Executor and that vesting is from the date of the death of the Testator.

ii. As per Section 307, the Executor has power to dispose of the property of the deceased vested in him under Section 211 in a **manner he thinks fit**.

iii. Under Section 308 of the Indian Succession Act, the General Powers of Administration vested may in addition to and not in derogation of any other powers of expenditure lawfully exercisable by him to incur expenditure.

iv. Section 317 provides that the Executors shall, within 6 months of grant of probate, exhibit an inventory containing a full and true estimate of property, credits and debts of the estate and within one year from grant of probate, exhibit an account of the estate showing the assets that have come to the hands of the Executors and the manner in which they have been applied or disposed of.

v. According to the Executors, S.T.S reposed absolute confidence in the Executors, whom STS chose for their stature and position; the Senior Executor K.R.Ramamani being a senior Lawyer and a doyen of the Tax Bar, the administration of the estate of STS has always been in accordance with the legal principles enunciated in the provisions cited above.

253. According to the Executors, the amount was utilized only for the purpose of applying for probate. Petition for probate is also pending before this Court.

254. It is also not in dispute that the amount was taken with the concurrence of the beneficiary of the will. It is the specific contention of the Executors that the amount itself do not belong to the estate of the deceased but it belonged to the first defendant in the

suit. It is explained that when the amount was standing in ERS account between STS and D1 and on the death of STS, D1 became the absolute owner of the amount which stood in the bank and therefore, it is the exclusive property of D1 and not the property of the deceased and therefore, the petition is misconceived. This contention should be accepted and even if the property is in the estate of the deceased, the proper remedy open to the beneficiary is the one provided under Section 317 of the Indian Succession Act.

255. Section 301 of the Indian Succession Act provides for removal of executor or administrator and provision for successor, which reads as under:

"The High Court may, on application made to it, suspend, remove or discharge any private executor or administrator and provide for the succession of another person to the office of any such executor or administrator who may cease to hold office, and the vesting in such successor of any property belonging to the estate."

255.1. Section 317 of the Indian Succession Act creates a statutory obligation upon the executors and administrators to exhibit in Court an inventory of all

the property, movable and immovable, and of all credits and debits due to the estate of the deceased within six months from the date of the grant, without any proceedings calling upon them to do so.

In like manner there is a statutory obligation on the executors and administrators to exhibit, within one year from the grant or within such further time which such Court may appoint, an account of the estate.

256. The protection afforded to parties interested in the will and as against persons appointed as administrators is in threefold.

First of all, if the final account is filed under Sub-section (4) of Section 317 and if that account is false in any particular the executor or administrator makes himself punishable under the Indian Penal Code. The other remedy open thereunder to the interested parties is to file an action against the executor or administrator questioning the correctness of the accounts.

Secondly, it is open to the parties interested under the will to apply for revocation of grant of probate or letters of administration under Section 263(e).

Thirdly, an administration suit can be filed for enforcing the obligations under the will.

257. The object of the account and inventory being exhibited, seems to be that the account and inventory should be available for inspection by the legatee or other parties interested in the administration of the estate. If the interested person is either denied the right of inspection, or if, on being permitted to inspect, he is not satisfied with the result of the inspection, he has a right to file an administration suit and ask for administration of the estate by the Court.

258. Moreover when the Court is seized of the proceedings, under sections 301 and 302 of Indian Succession Act, in relation to the administration, a person interested in the estate can move the Court to scrutinize the accounts filed under Section 317 in order to show, whether the executor has so misconducted himself as to make it necessary for him to be removed.

259. The Court can also scrutinize the accounts suo motu for this purpose even when not specifically moved to do so. But the mere fact that accounts have been filed in the probate Court or even the fact that accounts have been passed by the Court does not absolve the executor or administrator from his liability for any particular sums

of money, which may have been misappropriated by him and he may be sued in the ordinary way for such sums by a person interested in the administration of the estate and he may also be made criminally liable under Section 406 of Indian Penal Code, with the previous sanction of the probate Court.

260. It is only after the inventory and final account (contemplated by Section 317) have been filed and passed and the executor or administrator has been discharged, that a legatee or beneficiary can take action. The remedy of the party not satisfied with the accounts is not under Section 317, but a suit for accounts.

261. As rightly contended, the grievance, if any, can only arise after the exhibiting the inventory and filing of accounts as contemplated under Section 317.

262. As contended by the Executors, the dispositions other than plot Nos.6,7 & 8 not being an issue in the proceedings pertaining to the Will, the transaction cited in the petition has no relevance to the claim of the

Plaintiffs and the vexatious petition has been filed only to harass & intimidate the Executors.

263. Moreover, as it is found that the will executed by STS did not confer any benefit to the petitioner and that even after challenging the will, the petitioner is not found to have any interest in the property, the petitioner has no locus standi to challenge the transaction and hence, the petition is liable to be dismissed and dismissed accordingly.

264. In the result:

(i) C.S.No.708 of 1992 seeking declaration and partition in respect of suit properties by the plaintiffs is dismissed;

(ii) C.S.No.1578 of 1992 filed by the executors of the will, seeking repossession of the suit property at No.13, Bragadambal Road, Nungambakkam, Madras - 600 034, with all the movable properties and documents morefully described in the Schedule hereunder, from the defendants 1 to 8, is allowed;

(iii) TOS No.11 of 1992 filed by the executors seeking probate is granted;

(iv) O.P.No.784 of 1992 filed by petitioner, Govindaraj, seeking removal of the respondents 1 to 3

herein as executors of the estate of late S.T.Sadasivan,
is dismissed.

sd/.S.V.J

29.09.2015

//Certified to be a true copy//

Dated this the day of 2016.
S.s/11.05.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies
of the Order/Judgment Decree in this format.



WEB COPY