

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2015

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THE HONOURABLE MS. JUSTICE R.MALA

S.A.No.739 of 2008

Judgment reserved on 06.07.2015	Judgment pronounced on 13.07.2015
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1.Amudha
2.Minor Sriram
3.Minor Srinivasan Respondents 1 to 3/ Defendants 1 to 3
Appellants

(Minors rep. by their mother and natural
guardian, the 1st appellant)

Vs

1.Janardhanan ... 1st Respondent/Appellant/Plaintiff/
2nd Respondent//4th
Respondent/
4th Defendant

2.Choodamani
3.Raghunathan
4.Minor Pradeepa
5.Minor Praveena ... Respondents 3 to 5/ Respondents 6 to 8/
LRS at deceased D5

(Minors rep. by their father and natural
guardian, the 3rd respondent)

Prayer: Second appeal filed under Section 100 of CPC against the
Judgment and Decree dated 11.12.2007 in A.S.No.25 of 2006 on the
file of the District Court, Thiruvannamalai modifying the Judgment
and Decree dated 21.02.2006 in O.S.No.58 of 2004 on the file of the
Subordinate Court, Arni.

For Appellants : Mr.V.Raghavachari

For Respondents : Mr.T.R.Rajaraman

JUDGMENT

This second appeal arises out of the Judgment and Decree dated 11.12.2007 in A.S.No.25 of 2006 on the file of the District Court, Thiruvannamalai modifying the Judgment and Decree dated 21.02.2006 in O.S.No.58 of 2004 on the file of the Subordinate Court, Arni.

2.The first respondent as a plaintiff filed a suit for partition and separate possession of his 5/12 share in A, B, C, D and E schedule properties. 'A' schedule property has been purchased by the plaintiff's father and his brother, 'B' schedule property is the ancestral property, 'C' schedule property was purchased in the name of the plaintiff out of the joint family income, 'D' schedule property has been purchased out of the income derived from the 'A' schedule property in the name of the deceased Sridhar, who is the brother of the plaintiff. 'E' schedule property is the Company by name Sriam Engineering Works at Chennai. All the properties are treated as joint family properties. The plaintiff claim right over the properties stating that he and one Sridhar are the sons of Sampath, who is the son of Balakrishna Naidu. Balakrishna Naidu had two sons, namely, Panirandu Azhwar Naidu and Sampath. Sampath had two sons and two daughters, namely, Janardhanan/the plaintiff, Sridhar, Sudamani/4th defendant and Jayagantham/5th defendant. The said Sridhar died leaving his wife, Amutha/1st defendant and two sons, namely, Minor Sriam/2nd defendant and Minor Srinivasan/3rd defendant. Since, the plaintiff sought for partition, the first defendant raised a plea stating that she had no objection for dividing A, B and C schedule properties and she further stated that D and E schedule properties were separate properties of her husband Sridhar and prayed for an order in accordance with law.

3.The Learned Trial Judge after considering the averments both in the plaint and written statement and arguments on either side counsel has framed necessary issues and on perusing the oral and documentary evidence viz., P.W.1 to P.W.3, D.W.1 to D.W.4 and Exs.A1 to A14, Exs.B1 to B16, decreed the suit in respect of A, B and C schedule properties and dismissed the suit in respect of D and E schedule properties. Aggrieved against the judgment and decree of the trial court, the plaintiff preferred an appeal in A.S.No.25 of 2006 on the file of the District Court, Thiruvannamalai.

4.The learned First Appellate Court has considered the argument advanced on either side and framed necessary point for consideration and allowed the appeal in respect of 'D' schedule property stating that the property has been purchased out of joint family nucleus and dismissed the appeal in respect of 'E' schedule property. Against granting of preliminary decree in respect of 'D' schedule property, the defendants 1 to 3 have preferred the present second appeal.

5.At the time of admission of the above second appeal, the

following substantial questions of law were framed for consideration.

"1. Whether the sale of the property under Ex.A10 and the purchase of the D schedule property under Ex.B15 are not remote and improbable so as to impinge the latter with joint family character?

2. When the documents under Exs.B9 to B14 and B15 prove that the deceased had purchased the property from his own earnings, is the lower appellate court justified in holding it to be a joint family acquisition?"

6. Challenging the preliminary decree of the First Appellate Court in respect of 'D' schedule property, the learned counsel for the appellants/defendants 1 to 3 would submit that the 'E' schedule property is the self acquired property of the deceased Sridhar. The said Sridhar left the native place in the year 1977 and he was working under P.W.2, A.Ramadas and after that, he started the lathe and doing the mechanical work and thereby earning separate income. He was also the subscriber of the chit and further, he obtained loan from the bank to start the business. Once the First Appellate Court came to the conclusion that 'E' schedule property is the separate property of the deceased Sridhar, the First Appellate Court ought to have dismissed the appeal stating that the 'D' schedule property is the self acquired property of the deceased Sridhar. He further submitted that the sale agreement, Ex.B15 dated 14.12.2000, wherein sale consideration has been mentioned as Rs.81,000/- and an advance amount of Rs.68,000/- has been paid. But whereas the First Appellate Court has held that the property has been sold under Ex.A10 on 17.01.2001 for Rs.27,000/- and in that, it was specifically mentioned that for purchase of the property by the third party at Chennai, the property has been sold and so, the sale proceeds from alienating the ancestral property has been utilized for purchased of the 'D' schedule property. The First Appellate Court has held that the property is a joint family property and granted the preliminary decree, which is unsustainable because the sale agreement/Ex.B5 dated 14.12.2000 was much prior to Ex.A10 dated 17.01.2001. So, the Trial Court has considered all the aspects in proper perspective and dismissed the suit stating that the 'D' schedule property is the separate property of the deceased Sridhar. But the First Appellate Court has committed an error and held that the 'D' schedule property is the joint family property and granted the preliminary decree of partition of 5/12 share, which is against law. He further submitted that it is the duty of the person who pleaded the property as joint family property to prove that the property is a joint family property. To substantiate his argument, the learned counsel appearing for the appellants relied upon the following decisions:

1. 1999(III) CTC 717(Vembu Ammal and 7 tohers vs. Pattuammal and 3 others)
2. 2014 (12) MWN (Civil) 797 (G.Mohandoss and others vs. G.shanmugham and others)

3. 2013 (3) MWN (Civil) 385 (K.S.Chandrasekaran and others vs. Maragathammal and others)
4. 2012 (6) CTC 194 (Lalitha and another vs. Singaram and others)
5. 2003 (10) SCC 310 (D.S.Lakshmaiah and antoher vs. L.Balasubramanyam and another)
6. 1969 (1) SCC 386 (Mudi Gowda Gowdppa Sankh vs. Ram Chandra Ravagowda Sankh)
7. 2007 (10) SCC 602 (Makha Singh (Dead) by Lrs. vs. Kulwant Singh)

Hence, he prayed for allowing the appeal.

7. Resisting the same, the learned counsel appearing for the respondents would submit that in Ex.A10, it was specifically mentioned that to purchase the property in Chennai by the third party. The third party is none than the deceased Sridhar. He purchased the property under Ex.A15 on 24.01.2001 for Rs.1,63,145/- and as per Exs.A9 to A11, the joint family properties have been sold and also the sale proceeds has been utilized for purchasing the property. So, the First Appellate Court has rightly held that the 'D' schedule property is the joint family property. He fairly conceded that they have not preferred any appeal against the 'E' schedule property. He further submitted that the presumption has been rebutted by the plaintiff/first respondent and so, the onus is shifted on the defendants 1 to 3/appellants to prove that 'D' schedule property has been purchased out of the separate income of the deceased Sridhar. To substantiate his argument, the learned counsel appearing for the respondents relied upon the following decisions:

1. AID 1960 SC 335 (Mst.Rukhamabai vs. Lala Laxminarayan and others)
2. AIR 1969 SCC 1076 (Mudi Gowda Gowdppa Sankh and others vs. Ram Chandra Ravagowda Sankh (dead) by his legal representatives and another)

Hence, he pray for dismissal of the appeal.

8. Considered the rival submissions made on both sides and also perused the material records and both oral and documentary evidence.

9. The genealogy is necessary for the disposal of the case, which is as follows:

Balakrishna Naidu

Panirandu Azhwar Naidu

Sampath

Rajasekar

 Jayagantham defendant)	Janardhanan (plaintiff)	= Sridhar (4 th defendant)	Sudamani (5 th defendant)
Amutha (1 st defendant)			

 Sriram (2 nd defendant)		 Srinivasan (3 rd defendant)	

10.It is admitted fact that there is no dispute in respect of A, B and C schedule properties, preliminary decree has been passed and no appeal has been preferred. The Trial Court has dismissed the suit in respect of D and E schedule properties stating that both the D and E schedule properties are not joint family properties. But the First Appellate Court has granted decree in respect of 'D' schedule property, however dismissed the appeal against the 'E' schedule property.

11.Now, this Court has to decide whether the 'D' schedule property is the joint family property of the parties or the separate property of the deceased Sridhar? The learned counsel appearing for the appellants would submit that the person who pleaded that the property is the joint family property must prove that the property is the joint family property and the if he proved the same, then only the burden will be shifted to the party who asserts that it is his separate property. At this juncture, it is appropriate to consider the decisions relied upon by the learned counsel appearing for the appellants and the learned counsel appearing for the respondents.

12.The learned counsel appearing for the appellants relied upon the decision reported in 1999(III) CTC 717(Vembu Ammal and 7 tohers vs. Pattuammal and 3 others), wherein it was held that there is a presumption that if the joint family had sufficient ancestral nucleus, the properties standing or acquired in the name of junior members are joint family properties unless the presumption is rebutted by shows that the properties are separate properties of particular member or members in whose name the properties stand or whether acquired. It is appropriate to incorporate paragraph No.7, which reads as follows:

"7.In this case, the onus is not one the 1st defendants to prove that the suit properties standing in her name have not been purchased from the joint family nucleus. The Courts have held that when properties stand in the name of female member, evidence should be very strong to the effect that the said properties were purchased in her name from the nucleus of the joint

family.

.....

"There is no essential distinction as to the scope of the presumption in the case of acquisitions in the names of male members of a joint family. In the case of male members of a joint family, there is a presumption that if the joint family had sufficient ancestral nucleus, the properties standing or acquired in the name of junior members are joint family properties unless the presumption is rebutted by showing that the properties are separate properties of the particular member or members in whose names the properties stand or were acquired.."

13. He has also relied upon the decision reported in 2014 (12) MWN (Civil) 797 (G. Mohandoss and others vs. G. Shanmugham and others), wherein it was held that mere existence of nucleus alone is not enough to hold that acquisitions were made utilizing income from nucleus. Whether there is any evidence to the existence of nucleus and the income derived from such nucleus and it cannot be stated that the properties were purchased from and out of the income from the nucleus. It is appropriate to incorporate paragraph Nos. 45 to 47, which read as follows:

"45. In the judgment reported in the matter of Muniappa Naicker Vs. Balakrishna Naicker (1998) 2 L.W. 388, this Court held that nucleus must have left sufficient surplus income to enable acquisition. If a member 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 claim that it is his personal property to establish that the said property has been acquired without any assistance from joint family property.

46. In the judgment reported in the matter of (Sri Chandru V. K. Nagarajan and others) (2012) 2 L.W. 326 this Court held that mere existence of nucleus alone is not enough to hold that the acquisitions were made utilizing the income from nucleus, when there is no evidence as to the existence of nucleus and the income derived from such nucleus, it cannot be stated that the properties were purchased from and out of the income from the nucleus."

14. He has also relied upon the decision reported in 2013 (3) MWN (Civil) 385 (K. S. Chandrasekaran and others vs. Maragathammal and others), wherein it was held that when the properties stand in the name of one of the member of the joint family and he was doing business and purchased the properties in his name which are only vacant sites, it cannot be presumed that the consideration must have

been provided by him and they are his separate properties. It is appropriate to incorporate paragraph No.14, which reads as follows

"14.It is seen from the plaint that the main contention of the plaintiffs was that the properties were the separate properties of Subramania Mudaliar. Under Ex.A3, dated 12.5.1965, four plots were purchased in the name of the third defendant and those are items 11 to 13. In Ex.A3, the third defendant was described as businessman (Varthakam). Admittedly, Subramania Mudaliar died on 21.1.1969 and as per Ex.B3, dated 6.3.1968, the third defendant executed surety bond in favour of one Ponnambala Raja for a sum of Rs.20,000/=. In Ex.B3, he was described as businessman. Therefore, even during the life time of his father, he has executed a surety deed for the loans availed by him. Further, under Ex.A4 and A6, he described himself as Forest Contractor. Under Ex.A9, dated 5.7.1963, he purchased one property and that property was not included in the suit and in that sale deed also, he described himself as the businessman and therefore, under Ex.B3 and A9, it has been made clear that during the life time of his father, he was doing business and he purchased the property in his own name. Therefore, under Ex.A3, when he purchased the properties which are only vacant sites, it can be presumed that the consideration must have been provided by him and they are his separate properties. Ex.B8 dated 4.12.1972 is the notice sent by the income tax authorities to the third defendant directing him to pay the income tax and that would prove that the third defendant was having independent income in the year 1972 and considering all these aspects, it was rightly held that items 11 to 13 were separate properties of the third defendant. The Trial Court, considering these aspects rightly held that items 11 to 13 were purchased by third defendant out of his personal income and they were his separate properties and the plaintiffs cannot claim any share in respect of the properties and I do not find any infirmity in respect of those findings. Hence, points 1 and 2 are answered against the appellant and I hold that items 11 to 13 were separate properties of the third defendant and they were not joint family properties of the plaintiffs and they cannot claim any share in those properties."

15.He has also relied upon the decision reported in 2012 (6) CTC 194 (Lalitha and another vs. Singaram and others), wherein it was held that the presumption is that the said coparcener is an exclusive owner of the property. It is appropriate to incorporate paragraph Nos.11 and 12, which reads as follows:

"11.I recollect and call up the trite proposition of

Hindu Law that when a property stands in the name of a co-parcener who is not a 'Karta', the presumption is that the said co-parcener is the exclusive owner of the property. It would like to cite the following decisions in that regard:

(i) Srinivas Krishnarao Kango vs. Narayan Devji Kango and others, AIR 1954 SC 379. An excerpt from it would run thus:

"8. proof of the existence of a Hindu joint family does not lead to the presumption that property held by any member of the family is joint and the burden rests upon any one 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.

10. Whether the evidence adduced by the plaintiff was sufficient to shift the burden which initially rested on him of establishing that there was adequate nucleus out of which the acquisitions could have been made is one of fact depending on the nature and the extent of the nucleus. The important thing to consider is the income which the nucleus yields. A building in the occupation of the members of a family- and yielding no income could not be a nucleus out of which acquisitions could be made, even though it might be of considerable value. On the other hand, a running business in which the capital invested is comparatively small might conceivably produce substantial income, which may well form the foundation of the subsequent acquisitions. These are not abstract questions of law, but questions of fact to be determined on the evidence in the case.

Where the finding of the Courts is that the income from the ancestral lands was not sufficient even for the maintenance of the members and the houses in dispute are substantial, burden is on the plaintiff who alleges the houses to have been acquired out of joint family funds, to establish it.

Held that if the contention that on proof of the existence of the Watan lands the burden had shifted on to the defendants to prove that the acquisitions were made without the aid of joint family funds, that burden had been discharged.

Likewise, it was held that since the ancestral Watan lands are intact, and were available for partition, and the small income derived from them must have been utilised for the maintenance of the members of the

family, whether it were held that the plaintiff had failed to discharge the burden which lay on him of establishing sufficient nucleus, or that the defendants had discharged the burden of establishing that the acquisitions were made without the aid of joint family funds, the result was the same."

(ii) *Rukhmabai v. Lala Laxminarayan and others*, AIR 1960 SC 335, and an excerpt from it would run thus:

"There is a presumption in Hindu Law that a family is joint. There can be a division in status among the members of a joint Hindu family by refinement 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". A member need not receive any share in the joint estate but may renounce his interest therein, his renunciation merely extinguishes his interest in the estate but does not affect the status of the remaining members vis- a-vis the family property, A division in status can be effected by an unambiguous declaration to become divided from the others, and that intention can be expressed by any process. Though prima facie a document clearly expressing the intention to divide brings about a division in status, it is open to a party to prove that the said document was a sham or a nominal one not intended to be acted upon but was conceived and executed for an ulterior purpose. 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."

(iii) *Pattusami Padayachi v. Mullaiaammal and others*, 1976 (2) MLJ 225:

"18. The properties purchased by one or other of the member of a co-parcenary or joint family when the family is joint cannot as a matter of course be treated as joint family property. The co-parcener who challenges such title in the member and pleads that they should also be brought to the hotch-pot out to establish by cogent and mature evidence that there was enough surplus income which was available in the joint family and which positively could be the foundation for such annexures made by one or the other of the members of the joint

family. In all cases definite proof is required that the further purchase in the names of joint family members ought to have been made and could not have been made otherwise than from the surplus income of the family. For a greater reason the rule is made strict in the case of properties in the name of female members. The fact that a female member in a joint family has properties in her own name would not necessarily lead to the conclusion that the origin of such properties should be traced to the joint family or to the income from the joint family, inasmuch as the stridhanam property of a female and possession of property by her have been recognized from ancient times."

12. A mere poring over and prusal of those precedents would unarguably and unequivocally display and demonstrate that 'B' scheduled property, namely the tractor, which stood in the name of the deceased Manoharan is presumed to be the exclusive proeprty of Manoharan only. No doubt it is a rebuttable presumption. It has to be seen as to how far the plaintiffs rebutted such presumption.

16. He also relied upon the decision reported in 2003 (10) SCC 310 (D.S. Lakshmaiah and another vs. L. Balasubramanyam and another), wherein it was held that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. It is appropriate to incorporate paragraph Nos. 9 and 18, which reads as follows:

"9. In Appalaswami v. Suryanarayanamurti & Ors. [AIR 1947 PC 189], in a partition suit filed against their father by minor sons from the first marriage, the father claimed the properties in question were his self-acquired properties and denied that the plaintiffs had any right to seek partition. The High Court, reversing the judgment of the trial court, held that the view expressed by the trial court that only joint family property was that which the father took under partition Exhibit A was not correct and further held that whole of the property set out in Schedule to the written statement of the appellant/father, which had been acquired after partition Exhibit A was joint family property. The contention accepted by the High Court was that the share which the father took under Exhibit A formed the nucleus from which all his further acquisitions sprang. The plea of the father that was accepted by the Privy Council was that the whole of the property that came to him under Exhibit A was intact and unencumbered except a small portion sold which amount had been debited against household expenditure. The Privy Council held that 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 D.S. Lakshmaiah & Anr vs L. Balasubramanyam & Anr on 27 August, 2003 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. In the case before the Privy Council, on facts, it was held that the burden had shifted to the father to prove self-acquisition of properties as it was established that the family possessed joint property which from its nature and relative value, may have formed the nucleus to acquire the property in question. Those properties were large in number and have been noticed in Privy Council decision. However, on further facts found, it was held that the father had discharged that burden. The properties were held to be self-acquired properties of the appellant.

18. The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available."

17. He has also relied upon the decision reported in 1969 (1) SCC 386 (Mudi Gowda Gowdppa Sankh vs. Ram Chandra Ravagowda Sankh), which is also relied upon by the learned counsel appearing for the respondents, wherein it was held that there is no presumption that merely because the family is joint they have joint property. So, the person alleged that the property to be coparcenary property must prove it. But if it is shown that there was a nucleus of the joint family property then any acquisition by its aid by a member is joint property. In such an event, the person claiming the property to be self acquired has to prove it to be so. It is appropriate to incorporate paragraph No.6, which reads as follows:

"6. We pass on to consider the next question arising in this appeal, viz. whether the High Court was right in

holding that the 12 pieces of lands were joint family properties and were not the self acquisition of Goudappa. The case of the appellants was that these lands were self-acquisition of Goudappa, but the respondents contended that they were joint family properties. The law on this aspect of the case is well settled. Of course there is no presumption that a Hindu family merely because it is joint, possesses any joint property. The burden of proving that any particular property is joint family property, is, therefore, in the first instance upon the person who claims it as coparcenary property. But if the possession of a nucleus of the joint family property is either 'admitted or proved, any acquisition made by a member of the joint family is presumed to be joint family property. This is however, subject to the limitation that the joint family property must be such as with its aid the property in question could have been acquired. It is only after the possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self acquisition to affirmatively make out that the property was acquired without any aid from the family estate. In Appalaswami v. Suryanarayanamurti I.L.R. (1948) Mad. 440. (P.C.), Sir John Beaumont observed as follows :

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 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. See Babubhai Girdharlal v. Ujamlal Har-govandas I.L.R. [1937] Bom. 708, Venkataramayya v. Seshamma I.L.R. [1937] Mad. 1012 and Vythianatha v. Varadaraja I.L.R. [1938] Mad. 696."

18.He has also relied upon the decision reported in 2007 (10) SCC 602 (Makha Singh (Dead) by Lrs. vs. Kulwant Singh), wherein it was held that unless it could be shown that the property possessed a nucleus for the purchase of the same, it is not a joint family property. It is appropriate to incorporate paragraph Nos.6 and 8, which reads as follows:

"6.Mr. Gulati, the learned counsel for Kulwant Singh plaintiff-respondent has, however, supported the judgment of the High Court and pointed out that the

conduct of the defendant inasmuch as he had even denied the execution of the agreements at the initial stage clearly belied his story as all the courts had found that the agreements in question had been duly executed and that he had not been willing to execute the sale deeds. He has submitted that the document Ex.P-4 which is a copy of the application submitted by the defendant before the Sub-Registrar to mark his presence on 10.8.1992 and a statement recorded by the Sub-Registrar contemporaneously clearly showed that the property belonged to him and him alone without the slightest hint that it was Joint Hindu Family property, and it was after an amendment of the written statement that the plea that the property in question was Joint Hindu Family Property had, for the first time, been taken. It has also been pleaded that there was no evidence whatsoever to show that the aforesaid property had been purchased from the income of the Joint family so as to give it the character of a Joint Hindu Family property and that the onus which lay on the defendant as the propounder of the joint family, as envisaged by the judgment of this Court in D.S. Lakshmaiah & Anr. Vs. L. Balasubramanyam & Anr. (2003) 10 SCC 310 had clearly not been discharged. It has, further, been argued that the finding of the High Court that a decree for 11 marlas of land could not be granted as this land had been purchased by Dula Singh during his life time and had passed on to his son by succession after his death in 1966 was therefore Joint Hindu Family in the hands of his sons too was wrong as observed in K.V.Narayanaswami Iyer Vs. K.V. Ramakrishna Iyer & Ors. (1964) 7 SCR 490 as there was no presumption in law that a property purchased in the name of a member of a family had ipso-facto the character of Joint Hindu Family property unless it could be shown that the family possessed a nucleus for the purchase of the same. It has, further, been pleaded that the finding of the High Court that the 11 Marlas purchased by Dula Singh in his own name which devolved on his sons after his death in 1966 too had the character of Joint Hindu Family property was also an erroneous assumption in the light of the judgment of this Court in Commissioner of Wealth Tax, Kanpur & Ors. vs. Chander Sen & Ors. (1986) 3 SCC 567 in which it has been held that there could be no presumption that if the property purchased by a father fell to his son by inheritance it was deemed to be in his position as a Karta of a Hindu Undivided Family."

19.The learned counsel appearing for the respondents has also relied upon the decision reported in AIR 1960 SC 335 (Mst.Rukhmabai

vs. Lala Laxinarayan and others), wherein it was held that there is a presumption in 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". 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. Once it was established, the burden shifted to the member of the family setting up the claim that it is his personal property. It is appropriate to incorporate paragraph No.5, which reads as follows:

"5. There is a presumption in Hindu Law that a family is joint. There can be a division in status among the members of a joint Hindu family by refinement 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". A member need not receive any share in the joint estate but may renounce his interest therein, his renunciation merely extinguishes his interest in the estate but does not affect the status of the remaining members vis- a-vis the family property, A division in status can be effected by an unambiguous declaration to become divided from the others and that intention can be expressed by any process. Though prima facie a document clearly expressing the intention to divide brings about a division in status, it is open to a party to prove that the said document was a sham or a nominal one not intended to be acted upon but was conceived and executed for an ulterior purpose. 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."

20. The Hon'ble Apex Court in Srinivas Krishnarao Kango, Rukhmabai and Pattusami Padayachi's case, has stated that the properties standing not in the name of the Kartha, the property is the exclusive property of the member of the family, which is a rebuttable presumption. Once the presumption is rebutted, the burden is shifted to the person who pleaded the separate property was to prove the same.

21. So, now this Court has to decide whether the first

respondent/plaintiff has rebutted the presumption because the property stands in the name of the member of the joint family? The learned counsel appearing for the respondents has taken me to Exs.A5 and A9 to A11. Ex.A5 came into existence on 24.10.2001, but the sale agreement, Ex.B5 is dated 14.12.2000 for Rs.81,000/- and Rs.68,000/- has been paid as advance, Ex.A9 is dated 25.10.1999 for Rs.75,000/-, Ex.A10 is dated 17.01.2001 for Rs.27,000/- and Ex.A11 is dated 26.11.2001 for Rs.23,000/-. But only in Ex.A10, it was mentioned that for purchasing the property by third party i.e. Sridhar, the husband of the first defendant/first appellant. It is appropriate to incorporate the relevant portion in Ex.A10, which reads as “எங்கள் 3லக் நபர் சென்னையில் வீட்டு மனை வாங்குவதற்காகவம்”, This denotes that they sold the property for purchase of the property in the name of the deceased Sridhar. The averments itself shows that during the lifetime of the father of the plaintiff, Sampath and his brother Panirandu Azhwar, the property was divided orally and the son of Panirandu Azhwar joined in the sale deed, which shows that the amount has been evenly paid and it is for his share. That factum was rightly considered by the Trial Court.

22.Furthermore, D.W.1 in her evidence has stated that during the lifetime of the Sridhar, he is the subscriber of chit from the year 1988 and that has been evidence from Exs.B4, B5, B9, B10 and B11. After the death of the Sridhar, his wife, namely, the first defendant/first respondent is the subscriber of the chit. Furthermore, the deceased Sridhar obtained loan from Indian Bank and the statement of account has been marked as Ex.B8. Even in the year 1991, as per Ex.A12, the partnership business has been dissolved on 30.07.1991 and thereafter he did his business independently and earned money and purchased the property. The Trial Court on perusal of P.W.1 came to the conclusion that in the year 1977 the deceased Sridhar left the native place and went to Chennai for his work. He worked under P.W.2, Ramadas, his junior paternal uncle for five years. He further stated that during the lifetime of his father, the deceased Sridhar was at Chennai. But on perusal of Ex.B15, sale agreement and Ex.A5, sale deed, he has not assigned any reason why this property alone has been purchased in the name of the deceased Sridhar since he is the junior member of the family. But he himself purchased the property at Ambattur, Chennai in his name i.e. the 'C' schedule property. The deceased Sridhar got married on his own accord and he lead his life and that has been proved by the appellant. Merely because there is a recital in the document it shall not be presumed that the property has been purchased out of the joint family nucleus. Admittedly, P.W.1, the first respondent was in possession and enjoyment of the entire joint family properties But he has not filed any document to show what is the surplus income from the ancestral properties and how many properties were purchased. Furthermore, the First Appellate Court has rightly dismissed the suit in respect of 'E' schedule property stating that it is the separate property of the deceased Sridhar because from the year 1991 onwards

he is doing his business independently after dissolving the partnership with Radhakrishnan under Ex.A12.

23.So, by applying the dictum of the Hon'ble Apex Court the respondents herein have not proved that the property has been purchased out of the joint family income because as already stated Ex.B15, sale agreement is dated 14.12.2000, Ex.A9 is dated 25.10.1999, Ex.A10 is dated 17.01.2001, Ex.A11 is dated 26.11.2001, but Ex.A5 is dated 24.10.2001. In such circumstances, I am of the view that since the property is not purchased in the name of the Kartha, it is the duty of the person, who pleaded that the property is the joint family property must prove that the property has been purchased out of the joint family nucleus but he has not proved the same. Per contra, the appellants herein have filed the documents, Exs.B4 to B6, B8 to B12 and proved that the 'D' schedule property has been purchased out of the separate income of the deceased Sridhar. So, the Trial Court has considered all these aspects in proper perspective and came to the correct conclusion that the sale of the property under Ex.A10 and purchased of property under Ex.B15 are remote and so, the 'D' schedule property is not the joint family property. Thus, the Substantial Question of Law Nos.1 and 2 were answered in favour of the appellants.

24.Hence, I am of the considered view that the 'D' schedule property is the separate property of the deceased Sridhar and it is not the joint family property. Hence, the judgment and decree of the First Appellate Court is unsustainable and it is hereby set aside and the judgment and decree of the Trial Court is a well reasoned one and the same is hereby restored. Consequently, the second appeal is hereby allowed.

25.In fine,

- The Second Appeal is allowed.
- The decree and judgment passed by the First Appellate Court/the learned District Judge, Thiruvannamalai in A.S.No.25 of 2006 dated 11.12.2007 is hereby set aside.
- The decree and judgment passed by the Trial Court/the learned Subordinate Judge, Arni in O.S.No.58 of 2004 dated 21.02.2006 is hereby restored.
- There is no order as to costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

cse

To

1. The District Judge
Thiruvannamalai.
2. The Subordinate Judge,
Arni.
3. The Record Keeper,
V.R.Section, High Court, Chennai.

+lcc to Mr.T.R.Rajaraman, Advocate sr.no.35626
+lcc to Mr.V. Raghavachari, Advocate sr.no.35076

S.A.No.739 of 2008

rj[col]
srg 31.07.2015



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