

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.11.2017

Delivered on : 08.12.2017

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit Nos.220, 221 and 353 of 2014

and

M.P.Nos.1,1 and 2 of 2014 in

AS.No.221 & 353/2014

and

C.M.P.No.17007 of 2016 in AS.No.221/14

AS.No.220/14:

M.Subramaniam @ M.S.Mani Appellant/Plaintiff in

vs.

1.S.Ravichandran

2.S.Nithya

... Respondents/Defendants

AS.NO.221/14:

1.M.Subramaniam @ M.S.Mani

2.S.Vatsaladevi

3.Minor Karthikeyan

... Appellants/Defendants 1 to3

rep by his guardian

M.Subramaniam @ M.S.Mani

vs.

1.S.Ravichandran

2.S.Nithya

3.K.R.Kandasamy

4.Janaki

5.The Sub Registrar,

S.R.O.Joint I,

Tiruppur

6.The Sub Registrar,

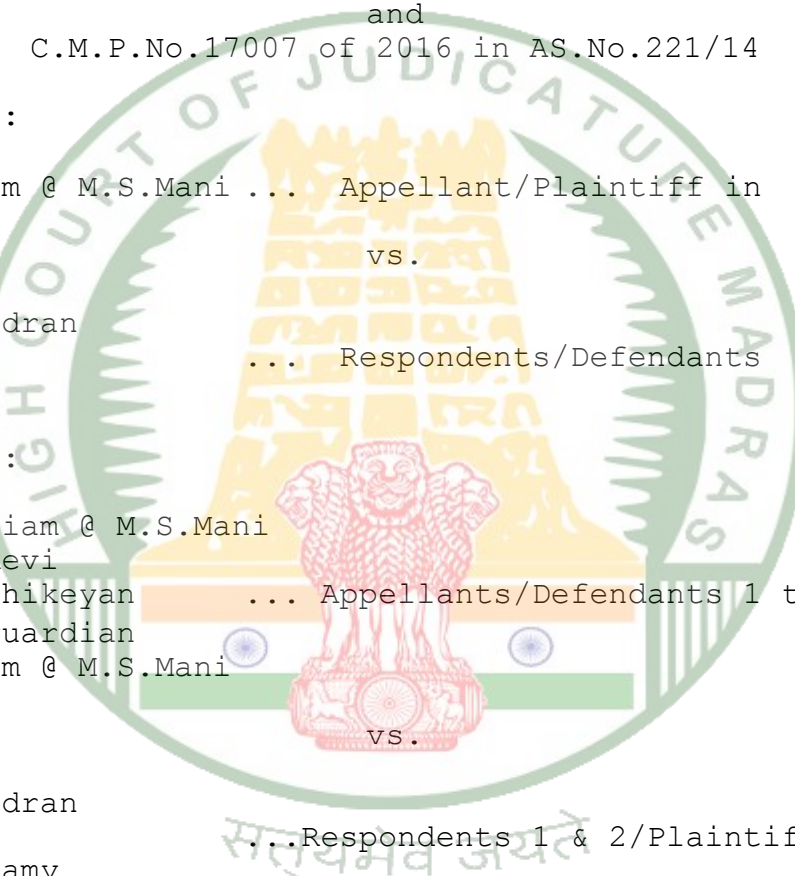
S.R.O.Joint II

Tiruppur.

...Respondents 1 & 2/Plaintiff

...Respondents 3 to6/

Defendants 4 to 7



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7.The Sub Registrar,
Annur
8.The Sub Registrar,
Avinashi
9.The Sub Registrar,
Periyanacikenpalayam
10.K.Raghu Prasad
11.K.Sampathkumar ...Respondents 7 to 11/
Defendants 8 to 12
AS.No.353/2014:

1.K.Raghu Prasad
2.K.Sampathkumar ... Appellants/Defendants 11 & 12

vs.

1.S.Ravichandran
2.S.Nithya ...Respondents 1 & 2/Plaintiffs
3.M.Subramaniam @ M.S.Mani
4.S.Vatsaladevi
5.Minor Karthikeyan
rep.by his guardian father
S/o.M.Subramaniam @ M.S.Mani
6.K.R.Kandasamy
7.Janaki
8.The Sub Registrar,S.R.O.Joint I
Tiruppur
9.The Sub Registrar, S.R.O.Joint II,
Tiruppur
10.The Sub Registrar, Annur
11.The Sub Registrar, Avinashi
12.The Sub Registrar,
Periyanacikenpalayam Respondents 3 to 12/
Defendants 1 to 10

Appeal suits filed under Section 96 read with Order 41 Rule 1 of Civil Procedure Code, 1908 against the common judgment and decrees dated 03.01.2014, passed by the Principal District Court, Tiruppur, in O.S.Nos.327, 328 and 328 of 2013, respectively.

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& Mr.K.Srinivasan,Sr.counsel for
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in A.S.Nos.220 and 221 of 2014
and for Respondents 3 to 5
in A.S.No.353 of 2014

Mr.T.R.Rajagopalan,Sr.counsel
for Mr.K.Vignesh Karthick for R1 &
(in AS.No.220,221,353/14
for Mr.R.Prabhakar for R2

M/s.P.T.Asha for
M/s.Sarvabhauman Associates
for appellants in A.S.No.353 of 2014
and for respondents 10 & 11 in
A.S.No.221 of 2014

No appearance for R3 to R9 in
A.S.No.221 of 2014 and
6 to 12 in A.S.No.353 of 2014

COMMON JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

Challenge in these Appeal Suits is to the common judgment and decrees dated 03.01.2014 passed in O.S.Nos.327 and 328 of 2013, by the Principal District Court, Tiruppur.

2.The respondents 1 and 2 in A.S.No.221 of 2014, as plaintiffs, have instituted Original Suit No.328 of 2013, on the file of the trial Court, praying to pass a preliminary decree of partition to an extent of 2/4 shares of the plaintiffs and also praying to cancel the release deed dated 26.07.2004 and also for the relief of permanent injunction, wherein, the present appellants and remaining respondents have been arrayed as defendants.

3.The appellant in A.S.No.220 of 2014, as plaintiff, has instituted O.S.No.327 of 2013, on the file of the trial Court for the reliefs of declaration and recovery of possession, wherein, the present respondents have been arrayed as defendants.

4.The material averments made in the amended plaint filed in O.S.No.328 of 2013 can be summarised as follows:

The plaintiffs are the son and daughter of the first defendant, born through his first wife. The second defendant is

the second wife of the first defendant and third defendant is their minor son. The family of the first defendant has owned extensive agricultural lands ancestrally in Semmandampalayam Village, Avinashi Taluk. A registered partition has taken place on 30.5.1955 between great grandfather of the plaintiffs and his two sons, namely, Marappa Grounder and Rengasamy Grounder, wherein, an extent of 3.19 acres of land with a well have been allotted to the share of Marappa Grounder. The grandfather of the plaintiffs, viz., Marappa Grounder and his two sons, namely, first defendant and his brother Ramasamy have jointly sold the said 3.19 acres under a Registered Sale deed dated 29.5.1985 in favour of one Sennimalai Grounder for a sum of Rs.30,000/-, for the purpose of purchasing some other properties. The suit first item has been purchased by utilising joint family income, in the names of the first defendant and mother of the plaintiffs, under two registered deeds dated 15.11.1988. The first defendant, by utilising the income derived from joint family properties, has started a company under the name and style of 'M/s.Texwell Exports'. The suit first item is a joint family property. Out of the income derived from suit first item, the first defendant has purchased the suit 3rd item by virtue of sale deed dated 10.06.1992. The first defendant has purchased the suit second item by virtue of sale deeds dated 9.2.1996, 28.5.2007 and 15.07.2008 in the name of second defendant. Thus, all the suit properties are joint family properties. The mother of the plaintiffs has passed away in the year 1993. On 26.7.2004, the first defendant has fraudulently obtained a release deed from the plaintiffs. The plaintiffs have not received the consideration mentioned therein and therefore, the release deed dated 26.7.2004 is void. The defendants 1 and 2 have created certain sale deeds in favour of some of the defendants. Since all the suit properties are the joint family properties, the plaintiffs and defendants 1 and 3 are each entitled to get 1/4th share. Despite of repeated demands made by the plaintiffs, the first defendant has not conceded to effect partition. Under the said circumstances, the present suit has been instituted for the reliefs sought therein.

5.The material averments made in the written statement filed by the first defendant and adopted by the defendants 2 and 3 can be summarised as follows:

The first defendant is the second son of Marappa Grounder. He started his career as a lorry cleaner and subsequently, he has become an Office Assistant at Sri Maruthi Transport, Tiruppur in the year 1965. In the year 1968, he has become a lorry driver. During that period, he has had acquaintance with one Jupiter Knitting Company owner. The first defendant has been employed as a cutting Master in the said company from 1975 to 1978. Thereafter, he has become a partner along with Deivanaiammal, Arumugam, C.Muthusamy and Subramaniam and they

started a new business under the name and style of 'Texwell Knitwear'. Thereafter, some changes have been made in the partnership firm in the year 1990. The first defendant has continued his business successfully with one Subramaniam. The first defendant has started another business in the year 1988 under the name and style of 'M/s. Texwell Exports' with his partners viz., A. Subramaniam, Poongodi, K. Arumugam and Krishnaraj. The same has been closed in the year 2005. Thereafter, he started another business under the name and style of 'M/s. Gayathri Textiles'. Then he started another business under the name and style of 'Texwell Designers' in the year 2005. It is false to aver that the suit first item has been purchased in the names of the first defendant and mother of the plaintiffs, viz., Poongodi, by utilising joint family income. It is also equally false to aver that the suit second and third items have been purchased in the names of the second defendant and first defendant under various sale deeds by utilising joint family income. All the suit properties have been acquired by utilising separate earnings of the first defendant, in which, the plaintiffs are not having any partible interest. The property allotted to the share of Marappa Gounder, father of the first defendant, by virtue of partition deed dated 30.5.1955 has been subsequently sold by the said Marappa Gounder and his two sons, namely, the first defendant and his brother Ramasamy for a sum of Rs.30,000/-. Since the suit first item has been purchased in the names of the first defendant and his first wife Poongodi/mother of the plaintiffs, the plaintiffs have executed a Release Deed in favour of the first defendant, after receipt of Rs.60,000/-. At the time of execution of release deed, the first plaintiff is aged about 23 and second plaintiff is aged about 20. It is false to aver that the said release deed is a void document. Since all the suit properties are separate properties of the first defendant, the plaintiffs are not having any partible interest and therefore, the present suit deserves to be dismissed.

6. In the additional written statement filed on the side of the first defendant, adopted by the defendants 2 and 3, it is averred that some sale deeds have been created in favour of the defendants 4, 5, 11 and 12, after receipt of sale consideration and the same are valid and there is no merit in the suit and the same deserves to be dismissed.

7. The material averments made in the plaint filed in O.S.No.327 of 2013 are as follows:

The defendants are the children of the plaintiff. The suit property is the absolute property of the plaintiff and a portion of the same has been purchased by the plaintiff under a registered sale deed dated 15.11.1988 and the remaining portion of the same has been purchased in the name of his first wife,

viz., Poongodi, on the same day. The said Poongodi has passed away on 16.9.1993, leaving behind her the plaintiff and defendants as her legal heirs. On 26.7.2004, the defendants have released their rights in the suit property, after receipt of valid consideration and thus, the plaintiff has become absolute owner of the suit property. In the suit property, the plaintiff has put up various houses. On 10.5.2011, the first defendant has made attempt to lock the doors of business places by way of denying the absolute right, title and interest of the plaintiff. Under the said circumstances, the present suit has been instituted for the reliefs sought therein.

8. In the written statement filed on the side of the defendants it is averred that most of the averments made in the plaint are false except the relationship between the parties mentioned therein. The first defendant has been running a business from the year 2005, in a portion of the suit property. It is true that the suit property has been purchased in the name of the plaintiff and mother of the defendants. It is false to say that the suit property is the absolute property of the plaintiff. But the same has been acquired by utilising joint family funds and therefore, the suit property is a joint family property. It is also equally false to say that both the defendants have released their interest in the suit properties after receipt of valid consideration and executed the release deed dated 26.7.2004. The defendants, as plaintiffs, have already instituted a suit for partition. Since the suit property is a joint family property, the plaintiff is not entitled to get the reliefs sought therein and therefore, the present suit deserves to be dismissed.

9. In the reply statement filed by the plaintiff, most of the averments made in the written statement filed by the defendants are denied.

10. In the additional written statement filed by the first defendant, it has been simply reiterated the averments made in the original written statement.

11. On the basis of divergent pleadings raised on either side, the trial Court has framed necessary issues in both the suits and recorded evidence (both oral and documentary evidence) in O.S.No.328 of 2013 and after perpending the available evidence on record, has decreed Original Suit No.328 of 2013 as prayed for and dismissed O.S.No.327 of 2013, by way of rendering a common judgment. Against the judgment and decree passed in O.S.No.327 of 2013, the plaintiff, as appellant, has filed A.S.No.220 of 2014 and against the judgment and decree passed in O.S.No.328 of 2013, the defendants 1 to 3, as appellants, have filed A.S.No.221 of 2014 and the defendants 11 and 12 have filed A.S.No.353 of 2014.

12. Before contemplating the rival submissions made on either side, it has become shunless to narrate the following factual aspects put forth on the side of the plaintiffs in O.S.No.328 of 2013 and defendants 1 to 3 therein.

13. The consistent case of the plaintiffs in O.S.No.328 of 2013 is that they are the son and daughter of the first defendant. The great grandfather of the plaintiffs, by name, Lingappa Gounder and his two sons, namely, Marappa Gounder and Rengasamy Gounder have effected partition by virtue of a partition deed dated 30.05.1955, in respect of erstwhile joint family properties, wherein, the grandfather of the plaintiffs, viz., Marappa Gounder has been allotted an extent of 3.19 acres of fertile lands with a well. The said Marappa Gounder and his two sons, namely, the first defendant and Ramasamy have jointly sold the said 3.19 acres in favour of one Sennimalai Gounder, under a registered deed dated 29.05.1985, for a sum of Rs.30,000/-, for the purpose of purchasing some other properties and by utilising the sale consideration, the first defendant has started a business and by utilising the income derived therefrom, he purchased suit first item in his name and also in the name of mother of the plaintiffs, by virtue of sale deeds dated 15.11.1988. The mother of the plaintiffs has passed away in the year 1993 and after her demise, the first defendant has married the second defendant as his second wife and by utilising joint family income, he purchased the suit second item in the name of the second defendant under various sale deeds. Likewise, by utilising joint family income, the first defendant has purchased the suit third item under various sale deeds and thus, all the suit properties are joint family properties. On 26.7.2004, the first defendant has fraudulently obtained a release deed from the plaintiffs in respect of a portion of the suit first item and the same is not supported by consideration and therefore, the same is a void document. Since all the suit properties are joint family properties and since the release deed dated 26.7.2004 is a void document, the plaintiffs have instituted O.S.No.328 of 2013 for the reliefs sought therein.

14. The main defence put forth on the side of the defendants in O.S.No.328 of 2013 is that even in the year 1965, the first defendant has started his career as a cleaner of a lorry and thereafter, occupied various positions and started so many business and by utilising the income derived from his business, he purchased all the suit properties in his name and also in the names of his first wife, viz., Poongodi and second wife and since a portion of the suit first item has been purchased in the name of the mother of the plaintiffs, viz., Pongodi, the plaintiffs have voluntarily executed a release deed 26.7.2004, after receipt of consideration of Rs.60,000/- and therefore, in all the suit properties, the plaintiffs are not having any

partible interest. Under the said circumstances, Original Suit No.328 of 2013 is liable to be dismissed and since the defendants in O.S.No.327 of 2013 have denied the title of the plaintiff over the suit property and also trespassed into the same, O.S.No.327 of 2013 is liable to be decreed as prayed for.

15.The trial Court, after evaluating the available voluminous evidence, as mentioned supra, has decreed O.S.No.328 of 2013 as prayed for and dismissed O.S.No.327 of 2013.

16.On the basis of rival pleadings raised on either side and also available evidence on record, the Court has to analyse and decide the following factual aspects:

(1)Whether the suit properties described in O.S.No.328 of 2013 are joint family properties of the plaintiffs therein and defendants 1 to 3?

(2)Whether the suit properties described in both the suits are the separate properties of the first defendant in O.S.No.328 of 2013 and plaintiff in O.S.No.327 of 2013?

17.The learned senior counsel appearing for the appellants in A.S.No.220 of 2014 and 221 of 2014 (defendants 1 to 3 in O.S.No.328 of 2013 and plaintiff in O.S.No.327 of 2013), has laconically contended to the effect that the great grandfather of the plaintiffs in O.S.No.328 of 2013, by name, Lingappa Gounder and his two sons, namely, Marappa Gounder and Rengasamy Gounder have effected a partition by virtue of partition deed dated 30.05.1955, wherein an extent of 3.19 acres of land has been allotted to the share of Marappa Gounder/grandfather of the plaintiffs and subsequently, the said Marappa Gounder, first defendant and his brother Ramasamy have jointly sold the same by virtue of a sale deed dated 29.5.1985 in favour of one Sennimalai Gounder for a sum of Rs.30,000/- and each of them has had only a sum of Rs.10,000/-; the first defendant has started his career in the year 1965 as a cleaner and occupied various positions and subsequently, started business separately and by utilising his income, he purchased suit first item in his name and also in the name of his first wife/mother of the plaintiffs and further he purchased the suit second item in the name of his second wife/second defendant and he also purchased the suit 3rd item in his name. Since the erstwhile Hindu joint family consisted of the first defendant, plaintiffs and third defendant has had no sufficient nucleus and since on the side of the defendants 1 to 3, voluminous documents have been filed for the purpose of proving that all the suit properties have been purchased by utilising separate income of the first defendant, all the suit properties are his separate properties and the plaintiffs are not having any partible interest and since the defendants in O.S.No.327 of 2013 have denied the title of the

plaintiff over the suit property and also trespassed into the same, the said suit has been instituted for the reliefs sought therein. The trial Court, without considering the voluminous evidence adduced on the side of the defendants 1 to 3 in O.S.No.328 of 2013, has erroneously decreed O.S.No.328 of 2013 and also erroneously dismissed O.S.No.327 of 2013, by way of rendering a common judgment. Under the said circumstances, the common judgment and decrees passed by the trial Court are liable to be interfered with.

18.To resile the contentions put forth on the side of the appellants in A.S.Nos.220 and 221 of 2014, the learned Senior counsel appearing for the respondents 1 and 2 in A.S.Nos.220 and 221 of 2014 (plaintiffs in O.S.No.328 of 2013) has repeatedly contended to the effect that the erstwhile Hindu joint family consisted of Lingappa Gounder and his two sons, namely, Marappa Gounder and Rengasamy Gounder has had possessed extensive agricultural lands and by virtue of partition deed dated 30.5.1955, joint family properties have been partitioned amongst Lingappa Gounder and his two sons, wherein an extent of 3.19 acres of fertile lands and a well have been allotted to the share of Marappa Gounder, who is none other than the grandfather of the plaintiffs and the said Marappa Gounder, first defendant and his brother Ramasamy have jointly sold the same in favour of one Sennimalai Gounder, by virtue of sale deed dated 29.5.1985 for a sum of Rs.30,000/-, wherein, a recital is found to the effect that only for the purpose of purchasing some other properties, the said sale has been effected and by utilising the sale consideration, the first defendant has purchased the suit first item in his name and also in the name of his first wife, viz., Poongodi/mother of the plaintiffs and he has also purchased the suit second and third items in his name and also in the name of the second defendant/second wife and since all the acquisitions have been made by utilising joint family income, the suit properties are the joint family properties, in which, the plaintiffs are having partible interest. The first defendant/father of the plaintiffs has fraudulently created a release deed dated 26.7.2004 as if the plaintiffs have received the consideration mentioned therein and in fact, the first defendant has obtained the signatures of the plaintiffs fraudulently. Under the said circumstances, the said release deed is nothing but void and since all the suit properties are joint family properties and since the release deed dated 26.7.2004 is a void document, O.S.No.328 of 2013 has been instituted for the reliefs sought therein. The trial Court, after evaluating the available evidence on record, has rightly decreed O.S.No.328 of 2013 and rightly dismissed O.S.No.327 of 2013 by way of rendering a common judgment and therefore, the common judgment and decrees passed by the trial Court are not liable to be set aside.

19.The learned counsel appearing for the appellants in A.S.No.353 of 2014 has advanced identical arguments as advanced by the learned Senior counsel appearing for the appellant in A.S.No.220 of 2014 and appellants in A.S.No.221 of 2014.

20.The learned Senior counsel appearing for the appellants in A.S.No.220 of 2014 and in A.S.No.221 of 2014 has relied upon the following decisions:-

(1) (2010) 1 MLJ 1019 - K.V.Ramasamy and Another vs. K.V.Rahgavan and Others, wherein, in an identical matter, this Court has marshalled the following settled principles of law:

(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 utilising the same, the property in question could have been acquired.

(c)If the initial burden 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.

(2) (2017)1 MLJ 461 -S.Munuswamy and Others vs. M.Rajendran, wherein the Division Bench of this Court has held that even a junior member of Hindu Joint family could acquire property in his name by using separate funds without using joint family funds.

21.The learned counsel appearing for the appellants in A.S.No.353 of 2014 has relied upon the following decisions:

(1)1998 SCC Online Mad 212: (1998) 2 LW 259: (1998) 2 Mad LJ 383 - Muniappa Naicker vs. Balakrishna Naicker, wherein it is that that nucleus must have left sufficient surplus income to enable acquisition. Nucleus has to be established as a matter of fact and its existence cannot be usually presumed or assumed

on probabilities.

22.The learned Senior counsel appearing for the first and second respondents in A.S.Nos.220, 221 and 353 of 2014 (plaintiffs in O.S.No.328 of 2013), in support of his contention has accited the following decisions:

(1)AIR 1961 SC 1268-Mallesappa Bandeppa Desai and another vs. Desai Mallappa alias Mallesappa and another, wherein at paragraph No.15, the Hon'ble Supreme Court has held that this fact also shows that the property acquired by respondent 1 under the compromise decree was acquired by him as representing the family of which he was the manager. The result is that the view taken by the High Court in respect of the properties in Schedule 'C' must be reversed and that of the trial Court restored.

(2)AIR 1977 Madras 171 - Sankaranarayanan and another vs. The Official Receiver, Tirunelveli and Others, wherein at paragraph No.8, it is observed that "in the present appeal, by the unsuccessful plaintiffs, the first submission is that the conclusion of the courts below that item 2 of the plaint schedule properties was not a joint family property is wrong. The learned counsel brought to my attention the decision of the Supreme court in Mallesappa v. Mallappa, . In that case, it was laid down that where a manager of a joint family claims that any immoveable property had been acquired by him with his own separate funds and not with the help of the joint family funds of which he was in possession and charge, it was for him to prove by clear and satisfactory evidence his plea that the purchase money proceeded from his separate fund. The onus of proof must in such a case, it was held, be placed on the manager and not on his coparceners. In the present case, the learned District Judge has referred to the purchase of "

(3)AIR 1994 Madras 123 - M.Shanmugha Udayar vs. Sivanandam and Others, wherein at paragraph No.20 it is observed that it is for him to prove by clear and satisfactory evidence his plea that the purchase money proceeded from his separate fund. The onus of proof must in such a case be placed on the manager and not its coparceners. Apart from the question of onus, in the absence of positive proof on the part of the appellant regarding the source of the wherewithal for the purchase of these items, we are unable to accept the claim of the appellant that these items now under consideration were purchased from his separate income.

(4)1994-L.W.273-Sonnappa Iyer vs. K.R.Ramuthaiammal and 6 others, wherein in paragraph No.18, the Division Bench of this

Court has held that in the absence of sufficient proof that the kartha or manager of the joint family has had no independent income, the Court can very well presume that the acquisition in his name has been made by utilising joint family income for the benefit of joint family.

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

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

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

(3) Every member, including junior member of a joint family, is having unfettered right of acquiring immovable properties by using his separate income without using joint family nucleus. If that aspect is proved, the acquisition is nothing but his self-acquisition.

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

24. It is a settled principle of law that each case has to be analysed on its own factual situation.

25. It is not an adulation to say that the learned counsel appearing for both sides have relied upon correct decisions, which reiterated established principles of law. In fact there is no cleavage of opinion in respect of legal points raised by them. Under the said circumstances, the Court has to meticulously analyse the rival submissions put forth on either side in O.S.No.328 of 2013.

26. It is an admitted fact that the great grandfather of the plaintiffs, viz., Lingappa Gounder and his two sons, namely, Marappa Gounder and his brother Rengasamy Gounder have effected a partition deed dated 30.05.1955 in respect of properties of

erstwhile Hindu Joint family. The said partition deed has been marked as Ex.A21, wherein an extent of 3.19 acres of land and a well have been allotted to the share of Marappa Gounder/grandfather of the plaintiffs, father of the first defendant. The consistent case of the plaintiffs is that the said extent of 3.19 acres of land has been sold in favour of one Sennimalai Gounder by the said Marappa Gounder and his two sons, namely, first defendant and his brother Ramasamy by virtue of sale deed dated 29.5.1985 and the same has been marked as Ex.A1, wherein it is clearly recited that the vendors have received a sum of Rs.30,000/- as sale consideration. Further it is recited that they sold the same for purchasing some other properties and by utilising the said sale consideration, the first defendant has started a business and by utilising the income derived therefrom, the suit properties have been purchased in the names of the defendants 1 and 2 and also in the name of mother of the plaintiffs and therefore, all the suit properties are the joint family properties of erstwhile Hindu joint family consisted of the plaintiffs and defendants 1 and 3.

27.The defence taken on the side of the defendants 1 to 3 in O.S.No.328 of 2013 is otherwise to the effect that the sale consideration mentioned in Ex.A1 is not a basis for starting a business by the first defendant and also for making acquisition of suit properties.

28. As marshalled earlier, since the first defendant being the Kartha or manager or father of the erstwhile Hindu Joint family consisted of himself, plaintiffs and third defendant, the entire burden lies upon him to prove that all the suit properties are acquired by utilising his separate funds.

29.It has already been pointed out that simply because a Hindu family is joint it does not mean that it has sufficient nucleus to make further acquisition. To put it in nutshell that there must be a common hotchpot, and the same should contain sufficient nucleus or there must be surplus income yielding properties.

30.It is an admitted fact that the suit first item has been acquired in the names of the first defendant and his first wife by virtue of two registered deeds dated 15.11.1988 and the same has been marked as Exs.A2 and A3. It is also equally an admitted fact that the suit second item has been purchased in the name of the second defendant under various sale deeds and the same have been marked as Exs.A6 to A8 and Ex.A12. Further it is an admitted fact that the suit 3rd item has been purchased under various sale deeds in the name of the first defendant and the same has been marked as Exs.A4, A5, A9 and A19.

31.The only factual and legal point involves in the present case is as to whether the acquisitions made in the names of the first defendant, his first wife and second defendant are self-acquisition of the first defendant or the same have been made for the benefit of joint family, by way of utilising surplus income of joint family.

32.As mentioned supra, the property allotted, by virtue of Ex.A21, to the share of Marappa Gounder has been sold in favour of one Sennimalai Gounder by virtue of Ex.A1 for a sum of Rs.30,000/- even in the year 1985. In Ex.A1, the vendors are Marappa Gounder, first defendant and his brother Ramasamy. The property mentioned in Ex.A1 is nothing but a joint family property and the same has been sold in the year 1985 by all the members of the joint family and therefore, each member is having only a sum of Rs.10,000/- out of total consideration of Rs.30,000/-.

33.The joint family of the first defendant consists of himself, plaintiffs and their mother. Since each vendor has received only a sum of Rs.10,000/-, it is needless to say that the said amount might have been spent for the benefit of the family and further, the first acquisitions in the names of the first defendant and his first wife, are made in the year 1988, by virtue of Exs.A2 and A3.

34.In the written statement filed on the side of the defendants 1 to 3 in O.S.No.328 of 2013, at paragraph No.4, it has been clearly expounded the initial career and also various business done by the first defendant. It is true that in Ex.A1, a recital is found to the effect that only for the purpose of acquiring some other properties, the property mentioned in Ex.A1 has been sold. It is a humdrum that in every sale deed, for the purpose of vending immovable property, some reasons have to be stated. Simply on that basis, the Court cannot come to a conclusion that subsequent acquisitions have been made only by utilising the said sale amount and further, the share of the first defendant in the sale consideration is nothing but nugae and the same is not at all sufficient for the purpose of acquiring the first item under Exs.A2 and A3.

35.As pointed out earlier, since the first defendant being Kartha or manager or father of erstwhile Hindu joint family, the entire burden lies upon him to prove that the suit first item has been purchased out of his own funds. The established fact is that after selling the property allotted to Marappa Gounder under Ex.A1, the erstwhile joint family has had no sufficient surplus income to make further acquisition. Therefore, it is quite clear that only with an empty hotchpot, the first defendant has started his career even in the year 1965,

36.The first defendant has been examined as D.W.1 and marked various documents and in fact this Court has analysed the entire evidence adduced by D.W.1 and ultimately come to a conclusion to the effect that the first defendant has established that by utilising his separate income, he purchased the entire suit properties in his name and also in the names of his first wife and second defendant.

37.At this juncture it would be apropos to look into the evidence given by the first plaintiff, who has been examined as P.W.1. During the course of cross-examination he stated to the effect that there is no mention in Ex.A2 that the sale consideration mentioned in Ex.A1 has been utilised for the purpose of purchasing the property mentioned therein. Further, he made the same admission in respect of Ex.A3. Further he admits that from the year 1978, the first defendant has conducted partnership business.

38.On the basis of the evidence given by P.W.1 the Court can easily come to a conclusion that even from the year 1978 the first defendant has run a lucrative business. Since even from the year 1978, before Ex.A1, the first defendant has done a lucrative business, there is no incertitude in coming to a conclusion that the first defendant, out of his own earnings, has purchased the suit properties in his name and also in the names of his first wife and second defendant.

39.Even at the risk of repetition, the Court would like to point out that the erstwhile Hindu joint family consisted of the first defendant, plaintiffs and their mother has had only an empty hotchpot. Since it is not positively established on the side of the plaintiffs to the effect that the erstwhile Hindu joint family has possessed of surplus income yielding properties, the Court can unflinchingly come to a conclusion that the first defendant has very well discharged the onus lies upon him and also proved that all acquisitions of suit properties are his self-acquisitions.

40.As mentioned in many places, the suit first item has been purchased in the names of the first defendant and his first wife/mother of the plaintiff by virtue of Exs.A2 and A3.

41.The consistent case of the defendants 1 to 3 in O.S.No.328 of 2013 is that both the plaintiffs have executed a release deed on 26.7.2004 in favour of the first defendant in respect of their rights in the property mentioned in Ex.A3 by way of receiving a valid consideration of Rs.60,000/-. On the side of the plaintiffs it is contended to the effect that the said release deed dated 26.7.2004 is a void document, since no consideration is passed therefrom.

42.The release deed dated 26.7.2004 is marked as Ex.A11. In Ex.A11 it is clearly mentioned that releasors have received a sum of Rs.60,000/- by way of consideration.

43.As mentioned supra, the main attack made on the side of the plaintiffs is that Ex.A11 is not supported by consideration and therefore, the same is void.

44.At this stage, the Court has to look into the age of the plaintiffs. At the time of execution of Ex.A11, the first plaintiff has attained the age of 23 and second plaintiff has attained the age of 20. Since both are majors and both of them are having worldly knowledge, it is highly impossible to come to a conclusion that they have not received the consideration mentioned in Ex.A11. Since Ex.A11 is supported by a valid consideration, the said document is nothing but a voidable document.

45.The present suit has been instituted in the year 2011. Considering the fact that the present suit has been instituted in the year 2011 and Ex.A11 has come into existence in the year 2004 and the same is nothing but a voidable transaction, the relief sought in respect of Ex.A11 is clearly barred by limitation.

46.The learned Senior counsel appearing for the respondents 1 and 2/plaintiffs in O.S.No.328 of 2013 has advanced a limb of argument to the effect that since all the suit properties are joint family properties, in which the plaintiffs are having partible interest, the relief sought in respect of Ex.A11 is nothing but supernumerary and the same can be ignored.

47.If all the suit properties are joint family properties, wherein, the plaintiffs are having partible interest, the plaintiffs can very well ignore Ex.A11. But in the instant case, as discussed earlier, position is otherwise. The relief of partition can be given only on the basis of establishing/proving the alleged fact that all the suit properties have been acquired in the names of the first defendant, his first wife and the second defendant, by utilising surplus income of erstwhile joint family.

48.As taunted earlier, absolutely there is no evidence on the side of the plaintiffs to prove that initial acquisitions under Exs.A2 and A3 are made in the names of the first defendant and his first wife by utilising joint family funds. Even on the basis of evidence given by P.W.1 (first plaintiff), the Court can very well come to a conclusion that the first defendant has acquired all the suit properties by utilising his separate

funds. Further, on the side of the defendants 1 to 3, various documents have been filed for the purpose of proving independent income yielding business of the first defendant. Therefore, in the light of the foregoing discussions of both factual and legal premise, this Court is of the considered view that the first defendant has completely discharged the onus lies upon him and proved that all the suit properties are his self-acquired properties.

49. Since the first defendant has very well established the said both legal and factual aspects, it is needless to say that the reliefs sought in O.S.No.328 of 2013 cannot be granted in favour of the plaintiffs.

50. The first defendant, as plaintiff, has instituted O.S.No.327 of 2013 against the defendants therein for the reliefs of declaration and recovery of possession by way of saying that the property mentioned therein is his self-acquired property.

51. The defence put forth on the side of the defendants therein is that the property mentioned therein is a joint family property. It has already been discussed in detail that the plaintiffs in O.S.No.328 of 2013 have failed to establish to the effect that the erstwhile Hindu joint family has had possessed of sufficient income yielding nucleus. Further, they failed to establish that all the suit properties mentioned therein have been purchased by utilising joint family income. Per contra, on the side of the defendants it has been clearly established that all acquisitions are made by the first defendant out of his own earnings. Therefore, the relief sought in O.S.No.327 of 2013 can very well be granted in favour of the plaintiff therein.

52. The trial Court, even without considering the correct legal positions of law and even without reading the documents filed on the side of the defendants in O.S.No.328 of 2013, has erroneously decreed the same and also erroneously dismissed O.S.No.327 of 2013. In view of the foregoing enunciation of both legal and factual aspects, this Court is of the view that the common judgment and decrees passed by the trial Court are liable to be reversed.

In fine, Appeal Suit Nos.220 and 221 of 2014 and 353 of 2014 are allowed without costs. The common judgment and decrees

passed in O.S.No.327 of 2013 and 328 of 2013 by the trial Court are set aside and O.S.No.327 of 2013 is decreed as prayed for without costs. The defendants are directed to deliver vacant possession of the suit property to the plaintiff within a period of six months and O.S.No.328 of 2013 is dismissed without costs. Connected miscellaneous petitions are dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The Principal District Judge, Tiruppur

copy to
The Section Officer
VR Section
High Court, Madras (+2 copies)

+2 ccs to M/s.Sarvabhauman Advocate sr 87580 & 87581
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+3 ccs to M/s.K.Vigneshkarthick Advocate sr 87217 to 87218

Appeal Suit Nos.220, 221 and 353
of 2014

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