IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON :**12.10.2017**

JUDGMENT PRONOUNCED ON **: 03.11.2017**

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.278 of 1999

G.Munuswamy ... Plaintiff

Vs

1. G.Devarajulu
2. G.Kuppuswamy
3. D.Loganathan
4. D.Manivannan

5. Mrs.Susheela (Deceased)
   5th defendant impleaded as per the order of this Court dated 18.01.2001in Appl. No.191 of 2001

6. D.Jayanthi
7. D.Santhakumari
8. D.Suguna
9. D.Bhuvaneswari
10. D.Yogana Prabhavathy
11. D.Girija

Defendants 6 to 11 are brought on record
as legal heirs of the deceased 5th defendant
as per order dated 09.09.2014
in Appl. No.3823 to 3825 of 2013 ... Defendants

Plaint filed under Order VII Rule 1 of the Civil Procedure Code, read with Order IV Rule 1 of the O.S. Rules praying to grant a preliminary decree for partition of 1/3rd share in the schedule mentioned properties and for other reliefs.

For Plaintiff : Mr.S.Jayakumar

For Defendants : Mr.T.V.Ramanujam, Senior Counsel for Mr.C.Jagadish

JUDGMENT

The plaintiff has filed the suit for the following reliefs:-

i. pass a preliminary decree for partition declaring that the plaintiff is entitled to 1/3rd share in the schedule mentioned properties.

ii. direct the appointment of Commissioner for division of the properties into three equal shares and allot 1/3rd share to the plaintiff

iii. to direct the defendants 1 and 2 to furnish accounts for their period of Management of the Firm M/s.Raju Brothers.

iv. Directing the defendant to pay the cost of the suit.

2. The plaintiff and defendants 1 and 2 are the sons of one Gopal Naidu, who died in the year 1983. Defendants 3 and 4 are the sons of the 1st defendant and the 5th defendant is the wife of the 1st defendant. According to the plaintiff, the family of Gopal Naidu, belonged to a Village called Kunnathur in Cheyyar Taluk of Thiruvannamalai District and was engaged in Agriculture. In the year 1955, the said Gopal Naidu had directed the defendants 1 and 2, to go over to Madras, provided them funds

from the joint family kitty and required them to start a business in provisions in the name and style of 'Raju Brothers' at No.17 and 18 Narayanappa Road, Fruit Market, Chennai 600 001. The business was continuously supported by the father financially and due to the said support it became a profitable venture. While the father managed to run the family with the help of the income from agriculture, the income from the business as well as the surplus income from agriculture was utilised to purchase properties for the joint family at Chennai as well as at Cheyyar. The plaintiff would list out about ten items of properties as properties that belonged to the joint family. According to him, all these properties were purchased from and out of the income of the joint family from both the sources, namely the agricultural income from the lands at Kunnathur Village as well as the income from the provisions business that was carried on by the defendants 1 and 2, at Chennai, in the name of Raju Brothers. For the purposes of convenience, the properties were purchased in the names of the parents, wives as well as children of the parties. The purchase of properties in the name of various individual members was never objected to as the family remained as a cohesive joint family. The plaintiff would further allege that the partners of the firm Raju Brothers, on the date of its registration, are the defendants 1 and 2 and their father Gopal Naidu. According to the plaintiff, the partners are entitled to equal share. The plaintiff would further allege that he is an illiterate and he is residing in village. In order to facilitate easy transaction of the business, his signatures were taken in blank papers, stamp papers and bond sheets and the plaintiff unhesitatingly and unwittingly obeyed the dictates of the 1st defendant who is the eldest brother and he signed on the dotted lines, whenever he required on the firm belief that the same would be utilized in the best interest of the family and he never doubted the genuineness of the representations made by defendants 1 and 2.

3. According to the plaintiff, the provision business grew leaps and bounds and out of the income from the business the defendants as well as the plaintiff had purchased the properties morefully described in the schedule to the suit. The business includes a lodging house run by the family in the name of Bakkiam Lodge. According to the plaintiff, after the death of the father, the defendants 1 and 2 had slowly and steadily secreted income from the business, thus, depriving the plaintiff of the income from the joint family business. It is also claimed that, for the lawyers notice issued by the plaintiff on 31.08.1995, a reply containing false allegations as if, the 1st defendant joined M.A.Hadi Stores in fruit market as a sales man, even in the year 1944 and 1945, and out of the income earned from such employment, he had commenced the business in

the name of "Raju Brothers" even in the year 1957, in partnership with one Varadarajulu. Therefore, the defendants have in the reply contended that the business in provisions carried on in the name and style of "Raju Brothers" has nothing to do with the joint family. In view of the such denial, the plaintiff has come forward with the above suit, seeking partition and separate possession of his 1/3rd share in the suit properties.

4. Defendants 1 to 5 filed a common written statement, resisting the suit. In the said written statement, it was contended that the claim of the plaintiff that the business called "Raju Brothers" was commenced in the year 1955 with the help of the funds provided by the father Gopal Naidu is false. The defendants would contend that the 1st defendant came to Madras, even during the year 1944-1945 and worked in a leading provision store called M.A.Hadi Store in the fruit market as a sales man, from 1944 to 1955. Out of his savings, the 1st defendant had commenced the business in provision store in 1957 in a small shop in fruit market along with one Varadarajulu. The said partnership business was dissolved in the year 1961 and the 2nd defendant Kuppusami was taken in as a partner in 1961. The plaintiff was inducted as a partner on 01.04.1965 and he retired from the partnership on 31.03.1976. It is also claimed that the father Gopal Naidu was taken in as one of the partners on 01.04.1971 and he ultimately

retired from the partnership on 31.03.1980. All these reconstitutions as well as the first partnership deed made in the year 1961, according to the defendants, contain a specific clause stating that the partnership business does not have anything to do with the joint family that existing at Kunnathur Village. It is also made clear in each and every one of those documents, that the joint family funds have not been utilized for the purposes of the business.

5. According to the defendants, Item Nos. 2 and 3 the suit properties of the stand in the name of mother of the parties, viz. Bakkiammal; Item Nos. 4 and 5 were purchased by the 2nd defendant Kuppuswamy on 31.07.1969 and 14.10.1983 respectively; Item No.6 was purchased by defendants 3 and 4, who are the sons of the 1st defendant on 01.02.1988; Item No.7 was purchased by the 1st defendant on 11.02.1963 and Item No.8 was purchased by the 1st defendant and the 5th defendant under two sale deeds dated 20.03.1995. The defendants would also point out that though in the body of the plaint the plaintiff had claimed that about 10 properties belonged to the joint family and he would allege that the Agricultural lands at Kunnathur Village as well as certain lands in Chitrambakkam Village in Chengalpattu District, Maduranthagam and residential plots at Karungkuzhi Village in Chengalpattu District, also

belonged to the joint family, he had not chosen to seek partition of the same by including those properties in the schedule of the plaint. The defendants would also contend that the plaintiff has very cleverly omitted to include those properties which stand in his name and in the name of his family members.

6. The sum and substance of the contention of the defendants is that the properties purchased in the names of defendants 1,2,3,4 and 5, were purchased out of their individual income and as such those properties belonged to them absolutely. And there was no contribution from the joint family funds towards the purchase of those properties. It was also contended that the father Gopal Naidu did not have enough resources to provide for the commencement of the business by defendants 1 and 2. The theory of the plaintiff that there was a joint family and the said joint family owned properties and it is out of the income from the joint family properties, the capital of the partnership firm was provided by father Gopal Naidu were all denied. On the above contentions the defendants sought for dismissal of the suit.

7. On the above pleadings the following issues were framed by this Court.

1) *Whether the plaintiff is entitled to partition?*

2) *Whether the plaintiff is entitled to rendition of accounts?*

3) *To what other relief is the plaintiff entitled to ?*

8. The 5th defendant Susheela died pending suit and defendants 6 to 11, being her daughters were impleaded as legal heirs of deceased 5th defendant. The newly impleaded legal representatives did not file any separate written statement.

9. The evidence was recorded by the learned Additional Master. The plaintiff examined himself as P.W.1 and Exhibits P1 to P5 were marked. The 1st defendant examined as D.W.1 and defendants 3 and 4 were examined as D.Ws. 2 and 3 respectively. Exhibits D1 to D137 were marked on the side of the defendants.

10. I have heard Mr.S.Jayakumar, learned counsel appearing for the plaintiff and Mr.T.V.Ramanujam, Senior Counsel appearing for Mr.S.Prem Axelian Raj, learned counsel for the defendants.

<u>Issue Nos. 1 and 2</u>:

11. Mr.S.Jayakumar, learned counsel appearing for the plaintiff

would contend that the fact that there was a joint family and the fact that the joint family possessed of assets have been established by the plaintiff. He would also contend that once the existence of the joint family which possessed of certain assets has been established by the plaintiff, it is for the defendants to show that the properties purchased in their name were purchased out of their own individual income. The learned counsel would also point out that it is the case of the plaintiff that the business - “Raju Brothers” commenced in 1955 with the capital provided by the father Gopal Naidu and the said business was continuously supported by him and it was with that support, the business became a profitable venture. Therefore, according to the learned counsel, the properties having been purchased out of the income from the said business, the same should be treated as a joint family properties and as a co-parcerner, the plaintiff would be entitled to 1/3rd share. He would rely upon the recitals in the partnership deeds dated 18.09.1961, marked as Ex.D.53, the partnership deed dated 01.04.1965, marked as Ex.D69, the partnership deed dated 01.04.1971, marked as Ex.D89 to the effect that the business has nothing to do with the joint family assets at Kunnathur and the partnership business will be the exclusive business of the parties, to contend the fact that the family was possessed of certain properties as joint family properties is a matter of admission.

12. The learned counsel would also point out the fact that the plaintiff was taken in as a partner under the deed of partnership dated 01.04.1965, marked as Ex.D69, without any capital and he was given 20% share in the partnership under the said deed. Again under the partnership deed dated 01.04.1971, marked as Ex.D89, the father of the parties, viz. Gopal Naidu was taken in as a partner without capital and he was given 30% share in the partnership business, whereas the 1st defendant and the 2nd defendant were given 10% and 20% share in the profits. Relying heavily upon the above said conduct of the parties Mr.S.Jayakumar, learned counsel appearing for the plaintiff would contend that the partnership business should be presumed to be a joint family business and all the assets that has been purchased in different names of defendants 1 to 5 should be taken as joint family properties in which the plaintiff would be entitled to 1/3rd share. The learned counsel would also point out the Income Tax Assessment of the firm, which has been filed as Exs. D.52, D54, D56, D60, D61, D62 etc., to show that the firm did not have any appreciable profits to have contributed for the purchase of the properties. This according to the learned counsel, would strengthen his plea that the properties were purchased out of the income from the joint family assets at Kunnathur Village as well as the income from the business. Adverting to the oral evidence of the plaintiff and D.W.1, the learned counsel would

contend that the lack of explanation for the conduct of admitting the plaintiff as well as his father in the firm without capital would further strengthen his claim.

13. The learned counsel would also point out that Ex.P5, chitta that stands in the name of the mother, viz. Bakiammal and the documents produced by the defendants, viz. Ex.D9, which is the settlement deed executed by Gopal Naidu, in favour of the plaintiff, Ex.D19 which is the Exchange Deed executed between Gopal Naidu and the plaintiff on one side and one Varadapa Naidu on the other as well as the sale deed dated 02.06.1943, marked as Ex.D24, would show that the family was possessed of ancestral properties, which yielded substantial income.

14. Relying upon the above circumstances Mr.Jayakumar, learned counsel appearing for the plaintiff would vehemently contend that the plaintiff has established his claim that the suit properties were purchased out of the income from the joint family business as well as the agricultural income of the family and therefore, even though the properties stood in the name of the mother Bakiammal and the defendants 1 to 5, all these properties should be treated as joint family properties and decree for partition to follow.

15. Per contra, Mr.T.V.Ramanujam, learned Senior Counsel appearing for the defendants would contend that the very suit is speculative one. According to the learned Senior Counsel, the plaintiff has failed to establish the very basis of his claim that the business in provisions in the name of M/s.Raju Brothers was started, out of the capital provided by father Gopal Naidu in the year 1955. According to him, the defendants have established the fact that the 1st defendant had migrated to Madras (Chennai) even in the year 1944 and started working in M.A.Hadi Store as a sales man and it is out of the savings made by him during the period of 11 years between 1944 and 1955, he along with one Varadarajulu Naidu started a business of "Raju Brothers". The father Gopal Naidu or the other brothers, viz., the plaintiff and the 2nd defendant had nothing to do with the said business at that point of time. In fact that the partnership entered into on 18.09.1961, which has been produced as Ex.D53, contains specific recitals to the effect that the partnership business has nothing do with the joint family and funds of the joint family were not utilized for the purposes of the business. Pointing out the existence of similar clause contained in the partnership deed dated 01.04.1965 (Ex.D69), wherein the plaintiff was taken in as a partner and the partnership deed dated 01.04.1971 (Ex.D89), wherein the father Gopal Naidu was taken in as a partner, the learned

Senior Counsel would contend that the plaintiff is in fact estopped from contending that the business is a joint family business and the suit properties that were purchased out of the income from the said business has to be treated as a joint family properties.

16. Countering the arguments of Mr.S.Jayakumar, learned counsel appearing for the plaintiff regarding possession of the properties by the family, Mr.T.V.Ramanujam, learned Senior Counsel would point out that under Ex.D24 dated 02.06.1943, the father namely Gopal Naidu has purchased an extent of 34 cents of land and the settlement deed Ex. D9 dated 02.10.1980 executed by Gopal Naidu, in favour of the plaintiff dealt with property of an extent of about 3 acres and a terraced house. Referring to the recitals in the said document to the effect that the properties were the self-acquired properties of Gopal Naidu, the learned Senior Counsel would contend that the plaintiff cannot take advantage of the settlement deed since Gopal Naidu himself has asserted that the properties covered by the settlement deed are his own self-acquisitions. He would also point out that the properties that were settled on the plaintiff under Ex. D9 dated 02.10.1980 were sold by the plaintiff under Ex. D10 dated 02.04.1982. Therefore, according to the learned Senior counsel, the very claim of the plaintiff has not been established.

17. Apart from the above, the learned Senior Counsel would also point out to the various documents produced by the defendants as Exs.D1 to D34, wherein the plaintiff and his family members have purchased properties from others and sold properties to various persons. The learned Senior counsel would submit that the said conduct on the part of the plaintiff in not including those properties that were available at Kunnathur village in the plaint would itself would show that the suit is a vexatious proceeding. It is also contended by the learned Senior Counsel for the defendants that the plaintiff had sold suit items 2 and 3 covered by Ex.P5, under two sale deeds dated 06.02.2013 and 31.10.2013, during the pendency of the present suit. He would also refer to the cross examination of the plaintiff dated 18.04.2017, wherein the plaintiff has admitted such sales. The sale deed dated 31.10.2013 has been marked as Ex.D138. The learned Senior Counsel would point out that the plaintiff in his oral evidence would claim that he sold the said property for the payment of land revenue, but the recitals in the sale deed would show that the sale is for the development of the family and for discharging certain small loans. It is also pointed out by the learned Senior Counsel that the plaintiff had claimed that he is the sole and absolute owner of the property in the said sale deed. The learned Senior Counsel would also rely upon the letters, viz. Exs.D36 to

D51, which were between the period from 18.04.1950 to 22.10.1958. All these letters would show that the 1st defendant was residing at Chennai, even at that time Exs.D37, D38, D39, D40, D41, D42, D43, D44, D45, D46, D47, D48, D49, D50 and D51 would show that the 1st defendant was employed with M.A.Hadi Stores and all these letters were addressed either by the proprietor of M.A.Hadi Stores to the 1st defendant or by the 2nd defendant to the 1st defendant where the address of the 1st defendant was shown as the care of M.A.Hadi and Co. Referring to the above, the learned Senior Counsel would also draw the attention of the Court to Exs.D37, 38, D40, D44, D45, D50 and D51 which would conclusively establish that the 1st defendant was employed with M.A.Audi and Co during the relevant period between 1950 and 1957 and the effect of these letters, which are ancient documents in existence for more than 30 years old would conclusively demolish the case of the plaintiff that the father Gopal Naidu sent the two sons, viz., defendants 1 and 2, to Chennai in 1955 gave them money and required them to start the provision stores. Once that foundation of the plaintiff's case is shown to be a non existent foundation the plaintiff cannot be heard to contend that the business as well as the properties belonged to the joint family. On the above contentions the learned Senior Counsel would seek the dismissal of the suit.

18. I have considered the rival submissions as well as the oral and documentary evidence. The position of law relating to the existence of a joint family and the proof of the nature of the assets and the standard of proof that it is required to characterize the properties that stand in the name of the individual members as joint family properties is well settled. Admittedly, in the case on hand the properties are not in the name of the Manager of the joint family, viz. Gopal Naidu, who was alive till 1983. All the purchases of the properties under Ex.P1 series have been made except the purchases under the sale deed dated 01.02.1988 in the name of the defendants 3 and 4 and the sale deed dated 20.03.1995 in the name of 1st defendant and 5th defendant have been made prior to 1983, i.e., during the lifetime of Gopal Naidu himself. Therefore the properties which are claimed to be a joint family properties stand in the name of junior members and female members. It is for the plaintiff, who claims that the properties are joint family properties to establish (i) the existence of the Joint family (ii) possession of properties by the joint family (iii) quantum of income from the joint family properties (iv) existence of a surplus after defraying the expenses (iv) the sufficiency of the quantum of such surplus so as to enable the purchase of the property in the name of the junior members or female members. Unless the above ingredients are established, the property that stands in the name of female member or junior member of a

family cannot be characterized as a joint family property so as to enable the plaintiff to claim a share in the said properties.

19. This Court in ***G.Mohandoss and others v. G.Shanmugham and others,*** reported in ***2014 (2) MWN (Civil) 797***, after having considered almost all the earlier decisions, had held that unless it is established that the properties that were possessed by the joint family yielded sufficient income and that income was utilized in the purchase of the properties, there cannot be a presumption that the properties standing in the name of the individual members belonged to the joint family.

20. In ***K.V.Ramasamy and another v. K.V.Rahgavan and others, reported in 2009 (4) CTC 440***, after referring to various decisions of this Court as well as the Hon'ble Supreme Court, it was held as follows:

> *"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 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 aspect are proved.

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."

21. In the case on hand the plaintiff apart from alleging that the income from the joint family property at Kunnathur Village was utilised for the purchase of the properties at Madras (Chennai) in the names of defendants 1 to 5 would go one step further and alleged that the business has been started with the funds provided by the father, viz. Gopal Naidu would partake the character of a joint family business and therefore the properties that were purchased from and out of the income from the said

business would come within the fold of joint family properties. The foundation of the plaintiff's case is that the father of the plaintiff, viz. Gopal Naidu had given money to defendants 1 and 2 and sent them to Chennai in the year 1955, to start the business in provision store. On this claim there is no evidence except the interested testimony of the plaintiff. Evidence to the contrary is available in abundance in the form of Exs. D36 to D51. These letters spanned over a period of nearly 8 years would conclusively establish that the 1st defendant was working with M/s. M.A.Hadi Store, even in the year 1950. Letters that were written by the employer to the 1st defendant addressed to him at Kunathur would conclusively prove that the 1st defendant was employed with M.A.Hadi Store in fruit market, Madras (Chennai). In fact the father of the 1st defendant Gopal Naidu as well as the 2nd defendant had addressed several letters to the 1st defendant giving his address as C/o. M.A.Hadi, Fruit Market, Madras (Chennai). Therefore, the very claim of the plaintiff that the brothers were living in a joint family in Kunnathur till about 1955 and in 1955 the elder two sons, viz. the 1st and 2nd defendant were sent to Madras by father with funds to start a business has not been established by any evidence worthy of acceptance. As a fall-back, Mr.S.Jayakumar, learned counsel appearing for the plaintiff would contend that the recitals in the partnership deed, viz. Exs.D53, D69 and D89 dated 18.09.1961, 01.04.1965 and 01.04.1971 respectively would show that there was a joint family possessed of certain properties. May be, the said argument appears attractive, but care has been taken by the parties to keep away the partnership business from the family, right from the year 1961 under the partner ship dated 18.09.1961 marked as Ex.D53, the 2nd defendant was taken in as a partner. In the said document, recites as follows:

> *"Whereas the parties hereto specifically declare and convenant that the partnership business concerned herein shall have no connection whatsoever with the joint family properties owned by both of them along with their elder brother and father all of whom comprise a joint hindu family.*
>
> *Whereas it has been specifically declared and covenanted that the Joint Hindu Family of which the parties hereto are members shall have no interest or connection whatsoever with the partnership business commenced herein which shall be the exclusive property of the parties hereto and to other member of the Joint Hindu family wherein the parties hereto are members shall have any right or interest in the partnership business concerned herein and whereas it is also specifically declared that at no point of time, any funds or nucleus of the joint family*

were utilised for the partnership business now commenced or which the First partner was doing originally with the said Varadarajulu."

22. Similarly the partnership deed dated 01.04.1965 marked as Ex.D69 under which the plaintiff himself was taken in as a partner would recite as follows:

"21. The parties hereto specifically declare that the partnership business referred to here shall have no connection whatsoever with the Joint Family properties owned by the parties hereof along with their eldest brother and father all of whom comprise a Joint Hindu Undivided Family.

22. The parties hereto further specifically declare and covenant that at no point of time any funds or nucleus of the Joint Hindu Undivided Family were utilised by the partners herein or by the previous partners for this partnership business and hence the Joint Hindu Undivided Family of which the parties hereto are co-parceners shall have no right or interest or connection whatsoever with the partnership business conducted herein, which is the exclusive property of the partners herein.

1. *The parties hereby further agree that the partnership business as on date does not possess any immovable property whatsoever and that this partnership business shall have no concern or right whatsoever with the*

properties held personally by the individual partners."

the said document further recites as follows:-

"20. The first partner being the founder of the business shall have the absolute right to expell any of the other partners by paying him his capital and the share of profits upto date after adjusting the withdrawals he has made if he finds that the acts of the said other partner or partners is or are detrimental to the partnership business."

23. The 3rd partnership deed dated 01.04.1971, marked as Ex.D89 under which the father Gopal Naidu was taken in as a partner recites as follows:

"21. The parties hereto specifically declare that the partnership business referred to here shall have no connection whatsoever with the Joint Family properties owned by the parties hereof along with their eldest brother and father all of whom comprise a Joint Hindu Undivided Family.

22. The parties hereto further specifically declare and convenant that at no point of time any funds or nucleus of the Joint Hindu Undivided Family were utilised by the partners herein or by the preview partners for this partnership business and hence the Joint Hindu Undivided Family of which the parties hereto are co-parceners shall have no right or interest or connection whatsoever with the partnership business *conducted herein, which is the exclusive property or the partners herein.*

25. It is expressly declared that the premises No.241, Thambu Chetty Street,, G.T., Madras acquired by the First partner in his name shall belong to him absolutely and the partnership shall have absolutely no right or claim whatsoever for the same."

24. The plaintiff himself was a signatory to two of those documents, viz. Partnership deed dated 01.04.1965 and the partnership deed dated 01.04.1971. It was only to avoid these documents, the plaintiff had come forward with caveat even in the plaint that he had signed the documents in blank papers. The cursory glance of the two documents and the manner in which the signatures have been affixed would show that those documents could not have been obtained as blank papers. The plaintiff would claim that he is an illiterate, but he would admit that he knows to sign in English. In fact during cross examination of D.W.1, the learned counsel for the plaintiff had made a specific suggestion to the witness which reads as follows:

"I have not produced any document or any evidence to substantiate the claim that he studied at Perngattur upto 6 and 7th. I have not produced any evidence to substantiate that he studied in the English medium or English was taught to him.

Q. Whether Munusamy the plaintiff herein has developed knowledge in English like you?

A: Yes"

This suggestion and the manner in which the plaintiff had signed the documents would show that he should be definitely well acquainted with English. Though the plaintiff would deny the suggestion the firm "Raju Brothers" was registered in the year 1961, with Varadarajulu and Lakshmiammal as partners, he would however, admit that Varadarajulu and Lakshmiammal were partners, when "Raju Brothers" was started. He would also claim that he became a partner in the year 1976. Income tax returns of the firm for several assessment years has been produced and the Income-Tax Return for the year ending 31.03.1961, in respect of the firm has been produced. It shows that one Varadarajulu Naidu was a partner along with the 1st defendant in the said firm, and the net profit of the firm is shown as Rs. 2118.50. Similarly, the Income Tax Returns for the year ending 31.03.1962, 31.03.1963, 31.03.1965, 31.03.1966, 31.03.1967 have all been produced to show the total income of the firm as well as the accounts of the partners.

25. A perusal of all these Income-Tax Returns would show that the plaintiff himself was an Income Tax Assessee with an assessment

number. The plaintiff has not produced any of his Income Tax returns to show the income that he has received from the business. Mr.S.Jayakumar, learned counsel appearing for the plaintiff, would in answer to the submission of Mr.T.V.Ramanujam, learned Senior counsel appearing for the defendants to the effect that the plaintiff has purchased several properties and sold several properties between the years 1968 to 2006, submit that the properties that were purchased by the plaintiff in the year 1968 are very much lower in value than the properties purchased by the 1st defendant in 1963 and the 2nd defendant in 1969. May be true, but that by itself cannot be a ground to conclude that the properties that were purchased by the defendants 1 and 2 and the children of the 1st defendant to be the ancestral properties of the family without any further proof of the funds having been made available by the family. The 8th item of the suit properties having been purchased under two sale deeds dated 20.03.1995 in the name of the 1st defendant and his wife, the 5th defendant, those sale deeds were produced as Exs. D110 and 111. In order to show that the 1st defendant had enough income, the statement of accounts of 1st defendant has been produced as Ex.D113. The bank Statement of the 5th defendant has also been produced as Ex.D.114. Therefore, it is futile on the part of the plaintiff to contend that the consideration for the purchases flew out of the so called joint family business. Defendants 3 and 4 have also produced their Income-Tax Return to show that they had enough funds for purchase of the property, viz. Item No.6 of the suit schedule under the Sale deed dated 01.02.1988. The said Income-Tax return would conclusively establish that the 4th and 5th defendants have separate business and were earning members as on that date.

26. The fact that both Gopal Naidu, the father and the plaintiff himself were, at some point of time, partners in the partnership business, and while the plaintiff retired on 31.03.1976, Gopal Naidu retired on 31.03.1980. Neither the plaintiff nor Gopal Naidu during his lifetime made any claim relating to the income from the partnership business. The accounts of the partnership business that has been produced particularly the Income Tax returns would show that the partners have been paid their share of the profits then and there.

27. Yet another factor which impels to conclude that the suit itself is speculative one is the very conduct of the plaintiff. In the body of the plaint the plaintiff would list out the following as the properties purchased from the joint family funds.

1. *Sunkurama Chetty Street, Madras 1.*

2. *218, Thambu Chetty Street, Madras 1.*
3. *17/18, Narayanappa Road, Madras 1.*
4. *233, Linghi Chetty Street, Madras 1.*
5. *Chitrambakkam, Chengelput District.*
6. *Main Bazaar, Maduranthakam, Chengai - M.G.R.District.*
7. *Plots at Karunkuli Village, Chengai – M.G.R. District and*
8. *Agricultural lands at Kunarathoor Village, Cheyyar Taluk, T.S.District.*
9. *Property at Old Door No.241, New No.66, Thambu Chetty Street, Chennai 1.*
10. *Property at Old 174, New No.178, Angappa Naicken Street, Chennai 1.*

28. It is seen from the schedule of property that only items 1, 2, 4 and parts of items 8, 9 and 10 have been included in the suit. It is an admitted case of the plaintiff that item No.3, which was situate in the fruit market that does not exist as on date, but there is no explanation on the part of the plaintiff to have omitted the properties that are situate at Chitrambakkam, Maduranthakam, Karunkuli and the agricultural lands that stands in the name of the plaintiff and his family members in Kunnathur Village. Though the plaintiff would claim that the properties at Maduranthagam stand in the name of daughter of the 1st defendant, the plaintiff did not chose to implead her originally in the suit, but impleaded

her as the legal representative of the deceased 5th defendant subsequently.

29. In the light of the foregoing discussion the irresistible conclusion is that the plaintiff has miserably failed to establish his claim that the business, viz. "Raju Brothers" was started as joint family business out of the capital provided by the father of the parties, viz. Gopal Naidu and that the suit properties were purchased from and out of the income of the said business as well as agricultural income from the joint family properties at Kunnathur Village. The plaintiff is not entitled to any share in the suit properties. Once it is found that the plaintiff is not entitled to any share of the suit properties, the natural consequences is that the plaintiff is not entitled to claim rendition of accounts also. Therefore, both the issues 1 and 2 are answered against the plaintiff and in favour of the defendants.

30. In fine the suit is dismissed. However, in the circumstances of the case bearing in mind the relationship between the parties, there will no order as to costs.

03.11.2017

Index: Yes
Speaking order
Internet: Yes
jv

List of the Witnesses examined on the side of the Plaintiff:

P.W.1 M.P.Muthukumaraswamy

List of Exhibits marked on the side of the Plaintiff:

Exhibit No.	Description
Ex.P1 (S no)(series)	Xerox copy of the sale deed dated 28.5.1964, 24.06.1969, 18.07.1973, 14.10.1983, 10.03.1988
Ex.P2	Certificate issued by the Registrar of films
Ex.P3	Copy of the legal notice
Ex.P4	Reply notice dated 24.09.1995
Ex.P5	Chitta extract for the suit properties

List of the Witnesses examined on the side of the Defendants:

1. D.W.1 G.Devarajulu
2. D.W.2 D.Loganathan
3. D.W.3 D.Manivannan

Exhibit No.	Description
	List of Exhibits marked on the side of the Defendants:
Ex.D1	certified copy of the sale deed dated 22.10.1968
Ex.D2	certified copy of the sale deed dated 12.12.1968 registered as document No. 2933/1968
Ex.D3	certified copy of the sale deed dated 10.11.1969 registered as document No. 2311/1969
Ex.D4	certified copy of the sale deed dated 17.08.1972 registered as document No. 2208/1972
Ex.D5	certified copy of the sale deed dated 31.05.1978 registered as document No. 775/1978 in respect of the property
Ex.D6	certified copy of the sale deed dated 06.03.1980 registered as document No. 328/1980
Ex.D7	certified copy of the sale deed dated 19.05.1980 registered as document No. 814/1980
Ex.D8	certified copy of the sale deed dated 23.07.1980 registered as document No. 1445/1980
Ex.D9	certified copy of the settlement deed executed by my father Mr.Gopal Naidu on 02.10.1980 and registered as document no. 2045/1980
Ex.D10	certified copy of the sale deed dated 02.04.1982 executed by me registered as document no. 500/1982.
Ex.D11	certified copy of the sale deed dated 04.09.1976
Ex.D12	certified copy of the sale deed dated 17.11.1977
Ex.D13	certified copy of the sale deed dated 21.06.1978
Ex.D14	certified copy of the sale deed dated 10.11.1982
Ex.D15	certified copy of the sale deed dated 05.12.1993
Ex.D16	certified copy of the sale deed dated 06.12.93
Ex.D17	certified copy of the sale deed dated 07.12.1993

Exhibit No.	Description
Ex.D18	certified copy of the sale deed dated 09.12.1993
Ex.D19	certified copy of the Deed of Exchange dated 09.08.1972
Ex.D20	certified copy of the sale deed dated 15.08.1980 wherein myself and Gopal Naidu sold the property got from the Deed of Exchange viz.,
Ex.D21	certified copy of the sale deed dated 15.04.1991
Ex.D22	certified copy of the sale deed dated 21.07.1988
Ex.D23	certified copy of the sale deed dated 23.02.1984
Ex.D24	certified copy of the property purchased by Gopal naidu in respect of property bearing survey no.249, Kunnathur Village, Cheyyar Taluk, Tiruvannamalai District dated 02.06.1943.
Ex.D25	certified copy of the property purchased by the plaintiff in Kunnathur Village, Cheyyar Taluk, Tiruvannamalai District dated 02.03.1968.
Ex.D26	certified copy of the property purchased by the plaintiff in Kunnathur Village, Cheyyar Taluk, Tiruvannamalai District dated 20.06.1968.
Ex.D27	certified copy of the property purchased by the plaintiff in Kunnathur Village, Cheyyar Taluk, Tiruvannamalai District dated 20.06.1968.
Ex.D28	certified copy of the property purchased by Bhagyammal in respect of property bearing survey no.267, Kunnathur Village, Cheyyar Taluk, Tiruvannamalai District dated 24.06.1969.
Ex.D29	certified copy of the the property purchased by the Pounammal wife of the plaintiff in respect of survey no.234, Kunnathur Village, Cheyyar Taluk, Tiruvannamalai District dated 23.12.1987.
Ex.D30	certified copy of the property purchased by the plaintiff's wife, Pounammal, in respect of survey no.232, Kunnathur Village, Cheyyar Taluk, Tiruvannamalai District dated 27.08.1988.
Ex.D31	certified copy of the property purchased by the plaintiff in Kunnathur Village, Cheyyar Taluk, Tiruvannamalai District

Exhibit No.	Description
	dated 19.09.1990.
Ex.D32	certified copy of the property purchased in the name of plaintiff's son Loganathan in respect of survey no.236, Kunnathur Village, Cheyyar Taluk, Tiruvannamalai District dated 28.11.1994.
Ex.D33	certified copy of the property purchased by the plaintiff in respect of survey no.236, Kunnathur Village, Cheyyar Taluk, Tiruvannamalai District dated 02.04.1997.
Ex.D34	certified copy of the property purchased by the plaintiff in Kunnathur Village, Cheyyar Taluk, Tiruvannamalai District dated 30.03.2006.
Ex.D35	color xerox copy of the Patta issued in favour of the plaintiff in respect of suit property
Ex.D36	original letter dated 18.04.1950 addressed to the 1st defendant from his father Late.Gopal Naidu.
Ex.D37	original letter dated 24.06.1950 addressed to the 1st defendant from M.A.Hadi.
Ex.D38	original letter dated 30.06.1950 addressed to the 1st defendant from M.A.Hadi.
Ex.D39	original letter dated 20.07.1950 addressed to the 1st defendant having address at C/o.M.A.Hadi, No.10, Fruit Market, Madras.
Ex.D40	original letter dated 25.06.1951 addressed to the 1st defendant from M.A.Hadi.
Ex.D41	original letter dated 03.01.1952 addressed to the 1st defendant from the 2nd defendant.
Ex.D42	original letter dated 04.03.1952 addressed to the 1st defendant having address at C/o.M.A.Hadi, No.10, Fruit Market, Madras.
Ex.D43	original letter dated 25.07.1952 addressed to the 1st defendant from the 2nd defendant.
Ex.D44	original letter dated 13.01.1953 addressed to the 1st defendant from M.A.Hadi.

Exhibit No.	Description
Ex.D45	original letter dated 13.04.1953 addressed to the 1st defendant from M.A.Hadi.
Ex.D46	original letter dated 12.12.1953 addressed to the 1st defendant having address at C/o.M.A.Hadi, No.10, Fruit Market, Madras.
Ex.D47	original letter dated 17.03.1954 addressed to the 1st defendant from the 2nd defendant.
Ex.D48	original letter dated 21.06.1957 addressed to the 1st defendant from the 2nd defendant.
Ex.D49	original letter dated 22.10.1958 addressed to the 1st defendant from the 2nd defendant.
Ex.D50	original letter addressed to the 1st defendant from M.A.Hadi.
Ex.D51	original letter addressed to the 1st defendant from M.A.Hadi.
Ex.D52	office copy of the profit and Loss account of Raju Brothers for the year ended 31.03.1961.
Ex.D53	photocopy of the partnership deed dated 18.09.1961 between 1st and 2nd defendant.
Ex.D54	office copy of the profit and loss account of Raju Brothers for the year ended 31.03.1962
Ex.D55	certified copy of the sale deed dated 11.02.1963
Ex.D56	officecopy of the profit and loss account of Raju Brothers for the year ended 31.03.1963.
Ex.D57	original notice of demand issued under section 156 of the Income Tax Act, 1961 to Raju Brothers for assessment year 1962-63 dated 23.01.1965.
Ex.D58	original notice of demand issued under section 156 of the Income Tax Act, 1961 to Raju Brothers for assessment year 1962-63 dated 23.01.1965.
Ex.D59	original notice of demand issued under section 156 of the Income Tax Act, 1961 to Raju Brothers for assessment year 1962-63 dated 23.01.1965.
Ex.D60	photocopy of the income tax assessment order dated

Exhibit No.	Description
	23.01.1965 of Raju Brothers for the Assessment year 1962-63.
Ex.D61	original of the income tax assessment order dated 23.01.1965 of Raju Brothers for the Assessment year 1963-64.
Ex.D62	original income tax assessment order dated 23.01.1965 of Raju Brothers for the Assessment year 1964-65.
Ex.D63	photocopy of the proceedings of the Income Tax officer dated 23.01.1965.
Ex.D64	photocopy of the income tax assessment order dated 11.02.1965 of 1st defendant for the Assessment year 1962-63.
Ex.D65	original income tax assessment order dated 11.02.1965 of 1st defendant for the Assessment year 1963-64.
Ex.D66	original income tax assessment order dated 11.02.1965 of 1st defendant for the Assessment year 1964-65.
Ex.D67	photocopy of the notice and demand dated 28.02.1965 issued under section 156 of the Income Tax Act, 1961 to the 1st defendant for assessment year 1962-63.
Ex.D68	office copy of the profit and loss account of Raju Brothers for the year ended dated 31.03.1965.
Ex.D69	photocopy of the partnership deed dated 01.04.1965 among 1st and 2nd defendants and plaintiff.
Ex.D70	original income tax assessment order dated 10.12.1965 of Raju Brothers for the Assessment year 1965-66.
Ex.D71	original income tax assessment order dated 10.12.1965 of the 1st defendant for the Assessment year 1965-66.
Ex.D72	original notice of demand issued under section 156 of the Income Tax Act, 1961 to Raju Brothers for assessment year 1965-66 dated 13.12.1965.
Ex.D73	officecopy of the profit and loss account of Raju Brothers for the year ended 31.03.1966.
Ex.D74	original proceedings of the Income Tax Officer dated 16.01.1967.

Exhibit No.	Description
Ex.D75	original notice of demand issued under section 156 of the Income Tax Act, 1961 to Raju Brothers for assessment year 1966-67 dated 18.01.1967.
Ex.D76	original Income Tax Assessment Order dated 20.01.1967 of Raju Brothers for the Assessment year 1966-67.
Ex.D77	office copy of the original profit and loss account Raju Brothers for the year ended 31.03.1967 having the signature of the Chartered Accountant.
Ex.D78	photocopy of the statement of total income of the 1st defendant dated 31.03.1967.
Ex.D79	office copy of the original profit and loss account of Raju Brothers for the year ended 31.03.1968 having the signature of the Chartered Accountant.
Ex.D80	copy of the capital account of the 1st defendant in Raju Brothers dated 31.03.1969.
Ex.D81	officecopy of the profit and loss account of Raju Brothers for the year ended 31.03.1969.
Ex.D82	original Income Tax Assessment Order dated 23.09.1969 of Raju Brothers for the Assessment year 1968-1969.
Ex.D83	original Notice of Demand dated 23.09.1969 issued under section 156 of the Income Tax Act, 1961 to Raju Brothers for assessment year 1968-69.
Ex.D84	original Notice of Demand dated 05.01.1970 issued under section 156 of the Income Tax Act, 1961 to Raju Brothers for assessment year 1969-70.
Ex.D85	office copy of the Income Tax Assessment Order dated 05.01.1970 of Raju Brothers for the Assessment year 1969-70.
Ex.D86	officecopy of the profit and loss account of Raju Brothers for the year ended 31.03.1970.
Ex.D87	photocopy of the Income Tax Assessment Order dated 04.11.1970 of Raju Brothers for the Assessment year 1970-

Exhibit No.	Description
	71.
Ex.D88	original notice and demand dated 07.12.1970 issued under section 156 of the Income Tax Act, 1961 to Raju Brothers for assessment year 1970-71.
Ex.D89	photocopy of the partnership deed dated 01.04.1971 among 1st and 2nd defendants, plaintiff and Gopal Naidu.
Ex.D90	officecopy of the Income Tax Assessment Order dated 27.10.1971 of Raju Brothers for the Assessment year 1971-72
Ex.D91	officecopy of the Income Tax Assessment Order dated 09.09.1972 of the 2nd defendant for the Assessment year 1971-72
Ex.D92	officecopy of the Income Tax Assessment Order dated 09.09.1972 of the 2nd defendant for the Assessment year 1970-71.
Ex.D93	original Sworn declaration given by the plaintiff and Gopal Naidu in favour of the 1st defendant dated 15.01.1973.
Ex.D94	certified copy of the sale deed dated 18.07.1973 executed in favour of 1st defendant in respect of 50% share in property bearing door no.11, Sunkurama Chetty Street, Chennai–1
Ex.D95	officecopy of the profit and loss account of Raju Brothers for the year ended 31.03.1974.
Ex.D96	officecopy of the Income Tax Assessment Order dated 27.01.1975 of Raju Brothers for the Assessment year 1974-75.
Ex.D97	office copy of the Account copy as appearing in the Books of Raju Brothers.
Ex.D98	original Pass book of the 1st and 5th defendants in Indian Bank, Parrys Corner Branch.
Ex.D99	original pass book of the 1st defendant in the Bank of Rajasthan Ltd.
Ex.D100	photocopy of the partnership deed dated 01.04.1976 amount 1st and 2nd defendant and Gopal Naidu.

Exhibit No.	Description
Ex.D101	photocopy of the partnership deed dated 14.04.1980 between 1st and 2nd defendants.
Ex.D102	original counter foil challans of the 5th defendant in Indian Bank dated 18.03.1983.
Ex.D103	certified copy of the sale deed dated 14.10.1983 executed in favour of 1st defendant in respect of 10% share in property bearing door no.11, Sunkurama Chetty Street, Chennai – 600 001
Ex.D104	office copy of the statement of total income of the 1st defendant for the year ended 1984-85
Ex.D105	office copy of the statement of total wealth of the 1st defendant, 1984-85.
Ex.D106	photocopy of the notice of demand dated 28.08.1985 issued under section 156 of the Income Tax Act, 1961 to 1st defendant for assessment year 1984-85.
Ex.D107	photocopy of the Income Tax Assessment Order of the 1st defendant for the Assessment year 1984-85
Ex.D108	original Income Tax Assessment Order of the 1st defendant for the Assessment year 1995-96.
Ex.D109	officecopy statement of total income of the 5th defendant for the Assessment year 1995-96.
Ex.D110	certified copy of the sale deed dated 20.03.1995 executed in favour of the 1st defendant in respect of 50% share in property bearing door no.174, Angappa Naicken Street, Chennai – 600 001.
Ex.D111	certified copy of the sale deed dated 20.03.1995 executed in favour of the deceased 5th defendant in respect of 50% share in property bearing door no.174, Angappa Naicken Street, Chennai – 600 001.
Ex.D112	original notice and demand dated 15.03.1996 issued under section 156 of the Income Tax Act, 1961 to 5th defendant for assessment year 1995-93.

Exhibit No.	Description
Ex.D113	original statement of account dated 31.03.1995 of the 5th defendant having the signature of Chartered Accountant.
Ex.D114	original Bank statement of the 5th defendant.
Ex.D115	original Acknowledgement received by the 5th defendant from the Income Tax Department for the Assessment year 1995-96, dated 27.12.1995.
Ex.D116	officecopy of the statement of total income of the 1st defendant for the assessment year 1995-96 dated 31.03.1995.
Ex.D117	office copy of the capital account of the 1st defendant dated 31.03.1995.
Ex.D118	original statement of account of the 1st defendant dated 31.03.1995.
Ex.D119	original letter dated 30.09.1996 sent by the 1st defendant to the Asst. Commissioner of Income Tax.
Ex.D120	original Intimation from the Income Tax Department to the 1st defendant dated 11.07.1996.
Ex.D121	original notice of demand dated 17.02.1997 issued under section 156 of the Income Tax Act, 1961 to 1st defendant assessment year 1995-96.
Ex.D122	certified copy of the Form "A" of Registrar of Firms in respect of the firm M/s. Raju Brothers dated 30.10.2000.
Ex.D123	Certified copy of the sale deed.
Ex.D124	Copy of the capital account and other financial statements for the year 1987-1988
Ex.D125	Copy of the Trial Balance for the year ended 31.03.1988 of the 3rd defendant.
Ex.D126	Savings bank pass book, Indian Bank, Esplanade Branch, Madras 600 108.
Ex.D127	Copy of the Income Tax Assessment.
Ex.D128	Intimation form for the assessment year 1987-1988.
Ex.D129	Copy of the proof of filing income tax returns.

Exhibit No.	Description
Ex.D130	With the Income Tax Department for the assessment year 1987-1988.
Ex.D131	office copy of profit and loss accounts for the assessment year 1987-1988.
Ex.D132	office copy of profit and loss accounts for the assessment year 1988-1989.
Ex.D133	original Bank pass book in the bank of Rajasthan.
Ex.D134	xerox copy of the income tax written in the year 1987-88.
Ex.D135	xerox copy of the income tax written in the year 1988-89.
Ex.D136	copy of the demand notice for assessment year 1987-88.
Ex.D137	copy of the demand notice for assessment year 1988-89.
Ex.D138	Sale deed executed by the plaintiff in favour of one Tmt.Rani in respect of item No.3 of suit schedule property.
Ex.D139	General Power of attorney executed by the plaintiff, his wife, sons and daughters in favour of Tmt. Anandhiin respect of item No.2 suit schedule property

03.11.2017

jv

R.SUBRAMANIAN,J.

jv

To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

Pre Delivery Judgment
C.S.No.278 of 1999

03.11.2017