



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.03.2019

Delivered on: 05.04.2019

CORAM

THE HONOURABLE Mr. JUSTICE P. RAJAMANICKAM

S.A.No.1088 of 2001

Rathinavelu

... Appellant/Plaintiff

Vs.

1. Krishnammal

2. Chinnannan

... Respondents/defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and decree dated 31.10.2000 (31.10.2001 as per the Appeal Memorandum) passed in A.S.No.44 of 1999 on the file of the Court of the Subordinate Judge, Mettur, in modifying the Judgment and Decree dated 31.01.1996 passed in O.S.No.891 of 1986 on the file of the Court of the District Munsif, Mettur.

For Appellant : Mr.P.Mani

For Respondents : Mr.S.Parthasarathy,

Senior Advocate &

M/s.M.Rajasekar for R1

M/s.Mahamandra Rajalakshmi for R2

JUDGMENT

This Second Appeal has been filed by the plaintiff against the judgment and decree passed by the Sub-Judge, Mettur in A.S.No.44 of 1999 dated 31.10.2000 (31.10.2001 as per the Appeal Memorandum) modifying the judgment and decree passed by the District Munsif, Mettur in O.S.No.891 of 1986 dated 31.01.1996.

2. The appellant herein filed a suit in O.S.No.891 of 1986 on the file of the District Munsif, Mettur, to divide the suit 'A' and 'B' schedule properties into two equal shares and to allot one such share to him. The learned District Munsif, Mettur by the Judgment and Decree dated 31.01.1996 had passed a preliminary decree to divide the suit 'A' and 'B' schedule properties into two equal shares and allot one such share to the plaintiff. However, he dismissed the suit in respect of suit 'C' schedule property. Further since the suit has been filed in forma pauperies, the learned District Munsif had directed the plaintiff to pay the court fees. Aggrieved by the same, the second defendant had filed an appeal in A.S.No.34 of 1996 on the file of the Sub-Judge, Sankagiri and subsequently, the same has



been transferred to Sub-Court, Mettur and re-numbered as A.S.No.44 of 1999. The learned Sub-Judge, Mettur by the Judgment dated 31.10.2000 had allowed the said appeal and modified the trial court's judgment and decree to the effect that the suit in O.S.No.891 of 1986 has to be dismissed in respect of the suit 'B' schedule properties. In respect of the suit 'A' schedule property, he has confirmed the trial court's judgment and decree. Feeling aggrieved, the plaintiff has filed the present second appeal.

3. For the sake of convenience, the parties are referred to as described before the trial court.

4. The averments made in the plaint are, in brief, as follows:

The plaintiff is the son of the first defendant born through his first wife viz., Alamelu. The first defendant neglected to maintain the plaintiff and his mother Alamelu. Hence, the plaintiff's mother had filed a maintenance case in M.C.No.8 of 1982 on the file of the Judicial First Class Magistrate, Salem, in which an order has been passed directing the first defendant to pay maintenance. The first defendant has also married the second defendant as second wife in or about 1966. The first defendant got ancestral property of 50 cents in S.No.299/1 and 2.64 acres in S.No.299/3 and its total extent is 3.14 acres which is described as 'A' schedule property in the plaint. Out of the income derived from the suit 'A' schedule property, the first defendant had purchased the suit 'B' schedule property in the name of his second wife (second defendant) as 'Binami' and built a terraced house. The first defendant is also having forty sheep and the same is described in plant 'C' schedule property. The first defendant is getting income of not less than Rs.10,000/- per annum. The properties described in the plaint 'B' and 'C' schedule are deemed to be joint family properties. Further, the first defendant is also doing money lending business by investing Rs.40,000/- and running dairy with five buffaloes and four cows and getting income of Rs.8,000/- per annum. The third defendant is the mother of the first defendant and she got Rs.10,000/- from her husband towards her maintenance and hence she is not having any share in the suit property. She has been added as a formal party. As per the law, the plaintiff is entitled to get half share in the suit properties and hence he issued a lawyer's notice dated 29.05.1985. The first defendant after receipt of the said notice had sent a reply notice on 07.06.1985 with false averments. Since the first defendant has not come forward for amicable partition, the plaintiff was constrained to file the above suit for partition.



5. The averments made in the written statement filed by the first defendant and adopted by the second defendant are, in brief, as follows:-

It is true that the suit 'A' schedule property is the ancestral property, but the suit 'B' schedule property was purchased by the second defendant and hence she is the absolute owner of the said property. It is false to say that the second defendant is a Binami . It is also false to say that they are having forty sheep as mentioned in the plaint 'C' schedule property. It is also false to say that the 'B' schedule property is joint family property. It is also false to say that the first defendant has built terraced house in the plaint 'B' schedule property. The said house has been built by the second defendant. It is also false to say that the first defendant is doing money lending business and also running dairy with five buffaloes and four cows. Hence, the plaintiff is not entitled to get half share in the suit properties and therefore, the defendants prayed to dismiss the suit.

6. Based on the aforesaid averments, the learned District Munsif, Mettur, had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1 and marked Exs.A1 to A4 as exhibits. On the side of the defendants, the defendants 1 and 2 examined themselves as DW1 and DW2 respectively. They also examined two more witnesses as DW3 and DW4. They have marked Exs.B1 to B9 as exhibits.

7. The learned District Munsif, Mettur, after considering the materials placed before him, found that the suit 'A' schedule property is the ancestral property of the first defendant, in which, the plaintiff is entitled to get half share. In so far as the plaint 'B' schedule property is concerned, he found that the said property has been purchased by the first defendant in the name of the second defendant out of the income derived from the suit 'A' schedule property and the second defendant is only a binami and hence in the said property also, the plaintiff is entitled to get half share. He further found that there is no evidence with regard to the existence of suit 'C' schedule property. Accordingly, he passed a preliminary decree to divide the suit 'A' and 'B' schedule properties into two equal shares and to allot one such share to the plaintiff. In respect of the 'C' schedule property, he dismissed the suit. He directed the plaintiff to pay the court fees.

8. Aggrieved by the aforesaid judgment and decree of the trial court, the second defendant had filed an appeal in A.S.No.34 of 1996 on the file of the Sub-Judge, Sankagiri and subsequently, the same has been transferred to the Sub-Court,



Mettur and re-numbered as A.S.No.44 of 1999. The learned Sub-Judge, Mettur, had allowed the said appeal and set aside the judgment and decree in respect of the 'B' schedule property. Further, he confirmed the trial court's judgment and decree in respect of the 'A' schedule property. Feeling aggrieved, the plaintiff has filed the present second appeal.

9. This court at the time of admitting the second appeal has formulated the following substantial questions of law 1 to 3.

"a) Whether in law the properties purchased by a co-parcener in the name of his wife, a member of the joint family out of the joint family nucleus could be treated as her absolute properties on the assertion of the said co-parcener that the same were purchased for her benefit and advancement when the ultimate motive behind the said purchase is to conceal the said properties from joint family properties and to disentitle other co-parceners from claiming their due share in the said properties?

b) Whether in law the Doctrine of Advancement could be applied where the presumption of joint family property could be drawn on the particular facts and circumstances of the case and when there are ample evidence on record to draw such presumption?

c) Whether the suit 'B' Schedule properties are the joint family properties when there existed sufficient joint family nucleus and the said properties were purchased out of the joint family funds in the name of the second defendant, a member of the joint family and when the second defendant utterly failed to establish that the said properties are herself acquired properties purchased out of her independent source of income?"

10. Heard Mr.P.Mani, learned counsel for the appellant, and Mr.S.Parthasarathy, learned Senior Advocate for Mr.M.Rajasekar for the first respondent and Ms. Mahamantra Rajalakshmi, learned counsel for the second respondent.

11. Substantial questions of law a, b and c:

a) The learned counsel for the appellant/plaintiff has submitted that the first appellate court erred in reversing the well considered judgment and decree of the trial court. The first appellate court failed to consider that the second defendant is not having any independent source for purchasing the suit 'B' schedule property. He further submitted that the



second defendant while examining herself as DW2 has deposed before the court that her mother gave a sum of Rs.10,000/- as sreedhana and she purchased the property only from that amount. Subsequently, she deposed that when she was 13 years old, her mother died and hence the contention of the second defendant that she purchased the suit 'B' schedule property from and out of the amount given by her mother is false. He further submitted that admittedly the joint family is having ancestral property of 3.14 acres as described in suit 'A' schedule property and from that property, a considerable income would have come. Only from that income, the suit 'B' schedule property was purchased by the first defendant in the name of the second defendant under Ex.B3 dated 29.12.1971. He further submitted that the stamp papers for the aforesaid sale deed were purchased in the name of the first defendant and that itself would show that he only purchased the suit 'B' schedule property in the name of the second defendant, but the first appellate court erroneously held that the suit 'B' schedule property is the separate property of the second defendant and therefore, he prayed to allow the second appeal and set aside the judgment and decree passed by the first appellate court and restore the judgment and decree passed by the trial court.

12. Learned counsel for the appellant/plaintiff, in support of the aforesaid contentions, relied upon the following decisions:

- 1) R.Rajagopal Reddy (dead) by LRs and others Vs. Padmini Chandrasekharan (dead) by Others (1995) 2 SCC 630
- 2) P.R.Kannaiyan (died) and others Vs. Ramasamy Mandiri 2005 (4) CTC 457.
- 3) Smt. Rebti Devi Vs. Ram Dutt and another AIR 1998 SC 310
- 4) Paras Nath and others Vs. Rameshwar Ram and Others 1995 A I H C 1739
- 5) Rapolu Yadagiri Vs. Smt. Rapolu Lakshamma and others, AIR 2003 AP 300
- 6) Mudigowda Gowdappa Sankh and others Vs. Ramchandra Revgowda Sankh (dead) by his legal representatives and another AIR 1969 SC 1076
- 7) Mayandi Thevar and Thavasi Thevar Vs. Arumughathevar 1999 -3-LW-629.
- 8) Malla Naicker @ Singari and Others Vs. Jeeva (minor) and others 2012 (1) CTC 128
- 9) Mukand Singh Vs. Harchand Singh (regular S.A.No.2464 of



1986) (O & M) on the file of the High Court of Punjab and Haryana dated 26.11.2013.

13. Per contra, the learned senior counsel for the first respondent has submitted that the person claiming certain property belongs to the joint family must prove initially that the joint family must have had sufficient nucleus and out of which, such later acquisition would have been made. He further submitted that if the property acquired in the name of a female member of a joint family, she need not prove as to how she acquired it. He further submitted that in this case, absolutely there is no evidence that a sufficient income was derived from the suit 'A' schedule property and as such, the plaintiff failed to prove that the suit 'B' schedule property was purchased by the first defendant out of the income derived from the suit 'A' schedule property. He further submitted that the first defendant has deposed before the trial court that he has not purchased the suit 'B' schedule property and it was only the second defendant who has purchased the suit 'B' schedule property out of her own funds. He further submitted that the trial court failed to consider the evidence in a proper perspective and granted decree for partition in respect of the suit 'B' schedule property also, but the first appellate court has properly appreciated the evidence and rightly dismissed the suit in respect of the suit 'B' schedule property and in the said factual findings, this court cannot interfere and therefore, he prayed to dismiss the second appeal.

14. In support of the aforesaid contention, the learned senior counsel for the first respondent has relied upon the following decisions:

1) K.V. Ramasamy Vs. K.V.Raghavan and 3 others 2009 (4) CTC 440.

2) Sadasivam and another Vs. Sankar and others, 2017 SCC online Mad 1566 = AIR 2017 Mad 175

15. The learned counsel for the second respondent has adopted the arguments of the learned senior counsel for the first respondent.

16. It is an admitted fact that the plaintiff is the son who was born through the first wife of the first defendant. It is also an admitted fact that the first defendant got married the second defendant as second wife in or about 1966. It is also an admitted fact that the suit 'A' schedule property is the ancestral property of the first defendant. So, the plaintiff is entitled to get half share in the suit 'A' schedule property.



The dispute is only with regard to the suit 'B' schedule property. According to the plaintiff, the suit 'B' schedule property was purchased by the first defendant out of the income derived from the suit 'A' schedule property in the name of the second defendant and hence, the said property also to be treated as joint family property. The case of the defendants is that the suit 'B' schedule properties were purchased by the second defendant out of her own funds.

17. At this juncture, it would be relevant to refer to the decision in K.V. Ramasamy Vs. K.V.Raghavan and 3 others (cited supra), wherein a single Judge of this court in paragraph No.34 has observed as follows:-

"34.From the conjoint reading of the decisions referred to supra, the following aspects can be culled out easily:

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

b)Initially burden lies upon a member who alleges that a particular property is a joint family property to the extent that the alleged joint family nucleus must have left sufficient surplus income and by 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.

18. It is also relevant to refer to the decision in Sadasivam and another Vs. Sankar and others, (cited supra),



wherein the Division Bench of this court in paragraph No.23 has observed as follows:

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"23. It is well settled legal principle that initially burden lies upon the 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. 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/her personal property and the same has been acquired without any assistance from the joint family property. On the failure to prove the existence of nucleus, the inevitable presumption is that the acquisition in question is nothing but self acquisition. Mere fact of existence of a joint family does not lead to the presumption that a property held by any of its members is joint family property unless the above aspects are proved. 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. "

19. From the aforesaid decisions, it is clear that initial burden lies upon the member who alleges that a particular property is a joint family property to the effect 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. If the initial burden as referred to above is discharged, then the burden shifts to the member of the joint family setting up claim that it is his/her personal property and the same has been acquired without any assistance from the joint family property. It is also clear that mere fact of existence of a joint family does not lead to the presumption that a property held by any of its members is joint family property unless the above aspects are proved. It is also clear that 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.

20. In this case, absolutely there is no evidence that the joint family had derived sufficient surplus income from the suit 'A' schedule property. The plaintiff while examining himself as PW1 has categorically admitted in his evidence that the suit 'A' schedule property is only "thdk; gh; j; j g{kp" that means does not having any source of irrigation and only during rainy season, crops can be raised. Therefore, it is clear that no



sufficient income derived from the suit 'A' schedule property. So, in view of the aforesaid decision, the plaintiff has not discharged the initial burden that the joint family nucleus is having sufficient surplus income and by utilising the same, the suit 'B' schedule property has been purchased.

21. According to the second defendant, she had purchased the suit 'B' schedule properties under three separate sale deeds from different persons. Ex.B3 sale deed dated 29.12.1971 would show that the second defendant had purchased one of the items of the suit 'B' schedule properties for Rs.10,000/-. Ex.B4 sale deed shows that the second defendant had purchased another item in the suit 'B' schedule properties on 29.09.1976 for Rs.4,000/- from one Chinnapaiyan and others. The said Chinnapaiyan was examined as DW3. He has deposed that the second defendant had directly negotiated with him and she purchased the property. Further Ex.B9 would show that even prior to Ex.B4 sale deed, the DW3 had mortgaged his property in favour of the second defendant on 04.12.1967 for Rs.2500/-. Ex.B5 sale deed would show that the second defendant purchased third item of suit 'B' schedule property on 05.12.1984 from one Palanisamy and his brother for Rs.15300/-. One of the purchasers viz., Palanisamy was examined as DW4. He also deposed that the second defendant had directly negotiated with him and purchased the property. The first defendant while examining himself as DW1 has deposed that she has not purchased any property in the name of the second defendant and the 'B' schedule properties were purchased by the second defendant out of her own funds and the said properties were never treated as joint family properties. The plaintiff while examining himself as PW1 has admitted that he does not know who paid the amount for purchasing suit 'B' schedule properties and also admitted that he never visited the suit 'B' schedule properties. So, it is clear that the 'B' schedule properties were not at all treated as joint family properties.

22. As already pointed out that PW1 has admitted in his cross-examination that the suit 'A' schedule properties are only dry lands and in which crops can be raised only during rainy season. Further, he has not stated that how much income would derive from the suit 'A' schedule properties. Further, he has not even produced cultivation accounts to show what were the crops raised in the suit 'A' schedule properties. Further, he has deposed that he does not know who paid the sale consideration for purchasing 'B' schedule properties. Therefore, the contention of the plaintiff that the suit 'B' schedule properties were purchased from the income of the suit 'A' schedule properties cannot be accepted.



23. The learned counsel for the appellant contended that since the transactions with regard to the suit 'B' schedule properties took place before the commencement of Benami Transactions (Prohibition) Act, 1988, there is no bar for the plaintiff to take a plea of benami transaction.

24. In R.Rajagopal Reddy (dead) by LRs and others Vs. Padmini Chandrasekharan (dead) by Others (cited supra), the Hon'ble Supreme Court has held that the provisions of Sections 4 (1) and 4(2) of the Benami Transactions (Prohibition) Act, 1988 cannot be applied retrospectively to all pending proceedings. The relevant paragraph reads thus:-

"16. We have already discussed earlier that there is nothing in the Act to show that Section 4 (1) and 4(2) have to apply retrospectively to all pending proceedings wherein such a right is sought to be exercised by the plaintiff or such a defence has already got allowed to the concerned defendant. As a result of the aforesaid discussion, it must be held that reasons Nos.1 and 2 which weighed with the Division Bench are not well sustained. "

25. The same view was taken by the Hon'ble Supreme Court in the subsequent decision in Smt. Rebti Devi Vs. Ram Dutt and another (cited supra) also

26. From the aforesaid decisions, it is clear that the provisions of Sections 4(1) and 4(2) cannot be applied retrospectively. In this case, admittedly the suit 'B' schedule properties were purchased under Exs.B3, B4 and B5 on 29.12.1971, on 29.09.1976 and 05.12.1984 respectively. According to the plaintiff, the suit 'B' schedule properties were purchased by his father (first defendant) in the name of the second defendant and the said transactions are only Benami transactions. The Benami transactions (Prohibition Act, 1988) came into force only in the year 1988. In view of the aforesaid decisions of the Hon'ble Supreme Court, in this case, there is no bar for taking the plea of Benami transaction, but the plaintiff has miserably failed to prove that the suit 'B' schedule properties were purchased by the first defendant and the second defendant is only a name lender.

27. In P.R.Kannaiyan (died) and others Vs. Ramasamy Mandiri (cited supra), a Division Bench of this court has held that it is apparent that an exception is carved out in the matter relating to acquisition in the name of Karta, where it is proved that Karta had no independent income and he is in possession of some nucleus and not necessarily sufficient nucleus of the joint



family property. Further, it was held that in such a case, even where sufficient nucleus is not proved but existence of some nucleus is proved and it is further proved that Karta or Manager, in whose name property had been purchased, had no independent income, the burden is shifted to the Karta to prove that the property has been acquired without the aid of the joint family and with the own separate income of the Karta or the Manager. Whereas in this case, the Karta is the first defendant and the suit 'B' schedule properties were not purchased in his name. On the contrary, the properties were purchased in the name of female member of the joint family (second defendant) and therefore, the aforesaid decision will not apply to the facts of the case.

28. In Paras Nath and others Vs. Rameshwar Ram and Others (cited supra), a stock was purchased in the name of Smt. Bacchani who is the wife of Paras Nath. The age of Paras Nath was 19 years and it was observed that Smt. Bacchani must have been much younger than Paras Nath and under the said circumstances, the Allahabad High Court has held that there was no possibility or believable fact that at such a younger age Smt. Bacchani would have purchased it out of her own money. But in this case, the facts are totally different. In this case, absolutely there is no evidence that a surplus income was derived from the ancestral properties (suit 'A' schedule properties) and with the help of the said income, the suit 'B' schedule properties would have been purchased. The plaintiff has not discharged the burden that sufficient income has been derived from the suit 'A' schedule property as held by the Division Bench of this court in Sadasivam and another Vs. Sankar and others, (cited supra). Therefore, the aforesaid decision will not help the appellant.

29. In Rapolu Yadagiri Vs. Smt. Rapolu Lakshamma and others, (cited supra), a Single Judge of the Andhra Pradesh High Court in paragraph No.29 has observed as follows:

"29. Generally, there would not be any direct evidence to prove benami nature of transaction for obvious reasons. When a person sets up a plea that the property is purchased benami in the name of another, the sale deed would not furnish any details to prove that funds were invested by such person. One has to rely on attending circumstances at or about the time of purchase of property in question. The conduct of the parties involved in the transaction and related subsequent events would also lend material for drawing inferences either way. Whether the vendee had financial capacity to buy the



property, whether the person claiming property as benami had financial capacity to invest funds, whether such person took active part in the sale transaction and whether he was involved in dealing with the property are all relevant questions."

30. In this case, the first defendant has categorically deposed that he has not purchased the suit 'B' schedule properties in the name of the second defendant. Further, as already pointed out that absolutely there is no evidence that a sufficient income was derived from the ancestral property. The plaintiff has miserably failed to prove that the joint family had sufficient income to purchase the suit 'B' schedule properties. Under the said circumstances, the aforesaid decision also will not help the plaintiff's case.

31. In Mudigowda Gowdappa Sankh and others Vs. Ramchandra Revgowda Sankh (dead) by his legal representatives and another (cited supra), the Hon'ble Supreme Court in paragraph No.6 has observed as follows:

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



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"The Hindu law upon this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property. See Babubhai Girdharlal v. Ujamlal Har-govandas I.L.R. [1937] Bom. 708, Venkataramayya v. Seshamma I.L.R. [1937] Mad. 1012 and Vythianatha v. Varadaraja I.L.R. [1938] Mad. 696. = (AIR 1938 Mad 841). "

32. From the aforesaid decision also, it is clear that the burden of proving that any particular property is joint family property in the first instance upon the person who claims it as coparcenary property. It is also clear if the possession of the nucleus of the joint family property is either admitted or proved, any acquisition made by a member of the joint family is presumed to be joint family property. It is also clear that the said presumption is subject to the limitation that the joint family property must be such as with its aid the property in question could have been acquired. It is further clear that it is only after the possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self-acquisition to affirmatively make out that the property was acquired without any aid from the family estate. In this case, as already pointed out that there is no evidence that a sufficient income was derived from the ancestral properties (suit 'A' schedule properties) and therefore, the plaintiff failed to discharge the initial burden. Under the said circumstances, the onus not shifts on the second defendant to prove that the suit 'B' schedule properties are her self-acquisitions. So, the aforesaid decision is supporting the case of the second defendant.

33. In Mayandi Thevar and Thavasi Thevar Vs. Arumughathevar (cited supra), the respondent's father Chinnadevar was the elder male member and he was the Manager of the family and a property was acquired in his name. Under the said circumstances, a single Judge of this court has held that the onus is on the respondent to show that the Ex.A1 property belongs to him exclusively and not for the benefit of the joint family. In this case, as



already pointed out that the second defendant never acted as manager of the joint family and therefore, the aforesaid decision also will not apply to the facts of the case.

34. In Malla Naicker @ Singari and Others Vs. Jeeva (minor) and others (cited supra), the joint family possessed ancestral properties and the first appellant was the Karta of the joint family and under the said circumstances, a Single Judge of this court has held that the properties purchased in the name of the first appellant and in his wife, legal presumption is that the ancestral properties must have provided the nucleus and the burden is on the Karta to prove that the properties were not purchased from and out of the income derived from the joint family and it was purchased from his own income. In this case, as already pointed out that the second defendant is not a Karta and hence the aforesaid decision also will not apply to the facts of the case.

35. In Mukand Singh Vs. Harchand Singh (cited supra), it was the admitted case that the family was an agricultural family with no independent source of income other than the agriculture. Further, admittedly the family owns more than 200 acres of land and the said properties are the ancestral properties and under the said circumstances, the High Court of Punjab and Haryana has held that the property purchased in the name of the Karta has to be presumed as joint family property and the onus of proof is on the Karta to prove that he purchased the property not from the income of the joint family. In this case, there is no evidence that the ancestral properties (suit 'A' schedule properties) yielding any income for purchasing the suit 'B' schedule properties. Further, the second defendant is not a Karta. Hence, this judgment also will not help the plaintiff.

36. From the aforesaid discussions, this court is of the view that the plaintiff failed to prove that the suit 'B' schedule properties were purchased by the first defendant in the name of the second defendant out of the income derived from the ancestral properties (suit 'A' schedule properties). As held by the Division Bench of this court in Sadasivam and another Vs. Sankar and others, (cited supra), the second defendant need not prove as to how she acquired the property. The trial court without considering the aforesaid facts in a proper perspective, passed a preliminary decree to divide the suit 'B' schedule properties also, but the first appellate court rightly held that the suit 'B' schedule properties are the separate properties of the second defendant in which the plaintiff cannot seek partition. In the said factual findings, this court cannot interfere. Accordingly, the substantial questions of law are answered against the appellant/plaintiff.



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37. In the result, the second appeal is dismissed confirming the judgment and decree passed by the first appellate court. No costs.

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Assistant Registrar

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Sub Assistant Registrar

To

1.The Subordinate Judge,
Mettur.

2. The District Munsif,
Mettur.

Copy to : The Section Officer,
V.R. Section, High Court, Madras.

+1cc to M/s.P.Mani, Advocate SR.No.33385

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Order made in
S.A.No.1088 of 2001