

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.02.2019

PRONOUNCED ON : 08.03.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.1327 of 2005

Periyasamy ... Appellant / Respondent / Defendant

Vs.

Manavalan ... Respondent / Appellant / Plaintiff

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.104 of 2004 on the file of the Principal District Judge, Villupuram dated 28.02.2005 in reversing the Judgment and Decree in O.S.No.130 of 1995 on the file of the Additional Subordinate Judge, Tindivanam dated 18.03.2004.

For Appellants : Mr.S. Srinath

For Respondent : Mr.A.K.Kumarasamy, Senior Counsel
for M/s.Kaithamalai Kumaran

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 28.02.2005 passed in A.S.No.104 of 2004, on the file of the Principal District Court, Villupuram, reversing the judgment and decree dated 18.03.2004 passed in O.S.No.130 of 1995 on the file of the Subordinate Court, Tindivanam.

2. The second appeal has been admitted on the following substantial questions of law.

"a) When the plaintiff has failed to prove that the properties involved are the joint family properties by acceptable evidence, whether the Lower Appellate Court is correct in granting a decree only on the basis of A1 just because the plaintiff and defendant has

signed the said document, when there is no mention that the property involved is either ancestral property or joint family property?

b) Whether the Lower Appellate Court is right in shifting the burden on the defendant to prove that the properties involved are self acquired properties when the plaintiff has not proved by concrete evidence that it is joint family property?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. The Parties are referred to as per their rankings in the trial Court for the sake of convenience.

5. The suit has been laid by the plaintiff against the defendant for partition. It is not in dispute that the plaintiff and the defendant are brothers and of them, the defendant is the eldest. Claiming that the suit properties are the joint family properties belonging to the plaintiff and the defendant and also putting forth the case that the suit properties had been acquired out of the income derived from the ancestral properties and also out of the joint exertion of the plaintiff and the defendant and also putting forth the case inasmuch as the defendant was the eldest member, the properties had come to be acquired in the name of the defendant, however, the same had been treated and enjoyed only as the joint family properties belonging to the plaintiff and the defendant and accordingly contending that the defendant cannot lay any claim of exclusive right in the joint family properties and on the other hand, inasmuch as the defendant had refused to part with the share of income in the joint family properties to the plaintiff and deprived the plaintiff of his due share in the properties, according to the plaintiff, he has been necessitated to lay the suit against the defendant for partition.

6. The defendant resisted the plaintiff's suit contending that the suit properties are the separate and self acquired properties of the defendant and according to the defendant, the joint family owned only one acre of land ancestrally and out of the same $\frac{1}{2}$ acre had been alienated for discharging the family debt and the remaining $\frac{1}{2}$ acre is not income yielding land and therefore, the ancestral properties owned by the joint family did not produce any income and therefore, disputed the case of the plaintiff that the suit properties had been acquired out of the income derived from the ancestral properties and according to the defendant, he has been rearing sheep and cattle and also

running vehicle and derived income therefrom and also running brick kiln and thus contended that the income derived from the abovesaid sources were utilised for the acquisition of the plaint schedule properties in his own name and also further putforth the case that his son was also doing contract business and out of the income derived therefrom, acquired various properties in his name and accordingly resisted the plaintiff's case that the suit properties are the joint family properties belonging to the plaintiff and the defendant, on the other hand, put forth that the suit properties are his self acquired properties. Furthermore, according to the defendant, the plaintiff and the defendant had become divided in the year 1978 itself by way of a Koorchit partition in the presence of the panchayathars and it is the specific case of the defendant that in the abovesaid partition, the plaintiff had been allotted even the properties owned by the defendant independently as detailed in the written statement and accordingly, it is contended that thereafter, the plaintiff and the defendant had not been joint and become divided since then and therefore, disputed the claim of the plaintiff that the plaintiff and the defendant continued as the members of the joint family and the suit properties are the joint family properties and the plaintiff is entitled to seek half share in the same and accordingly prayed for the dismissal of the plaintiff's suit.

7. Based on the materials placed on record and the submissions made by the respective parties, both oral and documentary, the trial court was pleased to dismiss the plaintiff's suit. On appeal, the first appellate court was pleased to set aside the judgment and decree of the trial court and thereby granted the preliminary decree in favour of the plaintiff as prayed for. Challenging the same, the present second appeal has been preferred.

8. The relationship between the parties is not in dispute. The fact that the defendant is the eldest member is also not in dispute. According to the plaintiff, as averred in the plaint, the joint family consisting of the plaintiff and the defendant owned ancestral properties of an extent of $2\frac{3}{4}$ kani lands and further according to the plaintiff out of the income derived from the ancestral properties, he and the defendant acquired various properties and also acquired properties by joint exertion and accordingly contended that the suit properties are the joint family properties. Per contra, according to the defendant, the ancestral property owned by the joint family was only one acre of land and out of the same $\frac{1}{2}$ acre of land was alienated for discharging the family debt and the remaining $\frac{1}{2}$ acre was not income yielding land and therefore, it is contended by the defendant that he had acquired the suit properties out of his own, separate and independent income

obtained by rearing sheep, cattle, etc., running vehicle and brick kiln and therefore, disputed the claim of the plaintiff that the suit properties are the joint family properties. Further according to the defendant, his son was also obtaining independent income out of his contract business and acquired various properties in his own name. Further it is also pleaded that the plaintiff and the defendant became divided during 1978 by way of a koorchit partition.

9. In the light of the abovesaid rival contentions, inasmuch as the joint family had been admitted to be in existence atleast till 1978 as per the case of the defendant and the defendant being the eldest member of the family and the defendant has taken the plea that the suit properties are his separate and independent properties acquired out of his self income and not out of the income derived from the ancestral properties and as according to the defendant, the ancestral property available with the joint family did not yield any income, in such view of the matter, since the defendant being the eldest member / manager of the joint family, inasmuch as the properties in issue are stated to have been acquired by him in his own name, without the aid of the ancestral nucleus and when the existence of some ancestral nucleus has been admitted one way or the other, it has to be seen whether the ancestral nucleus of the joint family were capable of yielding income and whether the same constituted the source for the acquisition of the suit properties as putforth by the plaintiff or de hors the same, the defendant had acquired the suit properties out of his own self earned income as putforth by him. The position of law with reference to the abovesaid issue is that though the defendant being the manager of the joint family, it is not enough for the plaintiff to plead the existence of ancestral nucleus alone for shifting the burden on the manager to establish that he had purchased the suit properties from out of his self earnings and on the other hand, the plaintiff has to establish not only the existence of ancestral nucleus belonging to the joint family but also the availability of surplus funds or income out of the available nucleus at the time of the acquisition of the suit properties.

10. The above position of law could be gathered from the decision relied upon by the defendant's counsel reported in 2001 (3) CTC 577 (Gowri Ammal and another Vs. Vaithilingam (decd) and 10 others.

11. Insofar as this matter is concerned, on a perusal of the admission tendered by the defendant and his witnesses in the matter during the course of evidence would go to show that the joint family consisting of the plaintiff and the defendant was owning considerable ancestral nucleus and the said ancestral nucleus was capable of income earning assets and it could be

seen that the income derived from the ancestral nucleus mainly constituted the source for the acquisition of the suit properties as pleaded by the plaintiff. The defendant has been examined as D.W1 and D.W.1 during the course of chief examination has admitted that on the demise of the father, in the partition effected between him and his paternal uncle, he was allotted two acres of land and according to him, out of the same, half acre of land alone is presently available and disposed of the remaining 1 ½ acres of land for discharging the family debt and admitted that the out of the remaining income derived therefrom, purchased lands and clearly admitted that in the land allotted to him in the abovesaid partition, cultivation could not be done for more than one bogum. During the course of cross examination, he has deposed that till 1978, he, his brother, namely the plaintiff, and their mother were joint and he and his brother got divided only during the month of Vaigasi 1978 and admitted that in the land belonging to the joint family one motor pump set was available and further admitted that the joint family owned 0.70 cents of land at Mangamarathu kollai and the same is the only ancestral land and admitted that the said land consist of well, motor pump set bearing service No.77 and also further admitted that the joint family also own motor pump sets with service connection No.35 and further admitted that 6,7 years back he had acquired lands in the nearby residence and also obtained service connection and an extent of 0.57 cents of land is available there and the same is their ancestral property and further admitted that he had put up a new construction in the abovesaid ancestral property comprising of 57 cents and further admitted that near Kamichan Kulam he and the plaintiff own less than 2 acres of land and the same had been acquired by them from one Parasuraman and further admitted that he and his pangali own a well and also admitted that he had been engaged in the cultivation of the said land through kavalai prior to the obtainment of service connection and also admitted that he and the plaintiff alienated certain lands to one Devaki and one Irusan and out of the income derived there from, purchased the property from one Parasuraman and also admitted that by selling 0.31 cents of the land, they had purchased the other lands and out of the income derived therefrom, purchased cattle and admitted that he owns 5 HP Motor pump set with service connection No.35 standing in his name and erected the said motor in the year 1967 and admitted that a 4 HP Motor with service connection No.70 stand in his name and the same is put up in 0.70 cents land, which is the ancestral land and admitted that he had alienated 0.31 cents of land to one Thiruvengadam, which is the ancestral land and admitted that the same had been alienated both by him and the plaintiff and also admitted that he and the plaintiff had alienated one acre of land to one Irusan and out of the income derived there from acquired a property from Parusuraman and also further admitted that near

the land acquired from Parusuraman, they own ancestral property and engaged in the cultivation of the same by using kalavai and as above seen further admitted that he has put up the new construction only in the ancestral property measuring 0.57 ½ cents and further admitted that the joint family acquired the properties by way of two sale transactions and two exchange transactions and also admitted that he had mortgaged 0.70 cents of land to Murugesu Gounder, which is the ancestral property and also further admitted that he had also mortgaged the property to Manicka Gounder and out of the income derived therefrom acquired motor engine and further admitted that he had mortgaged the property to one Ponnammal and out of the income derived therefrom, purchased the property from Parasuram Gounder.

12. In the light of the abovesaid evidence adduced by D.W.1, it is evident that the joint family consisting of the plaintiff and the defendant owned considerable lands with motor pump set, service connection, etc., and accordingly the plaintiff and the defendant are found to have been engaged in the cultivation of the same and earning income therefrom and it is also noted that they mortgaged the ancestral properties to various persons and obtained amounts therefrom and utilising the same for the acquisition of various properties and accordingly it is seen that inasmuch as the plaintiff and the defendant had acquired various properties out of the income derived from the ancestral nucleus, thereafter, to augment their income further, they alienated the properties jointly to others and out of the income derived from the abovesaid sale transactions, further acquired other properties and in such view of the matter, the case / defence projected by the defendant that the joint family owned only one acre of land and after the sale of ½ acre of land, the family owned only the remaining ½ acre, which is not income yielding, as such, cannot be believed and accepted in any manner and the same had been rightly disbelieved by the first appellate court.

13. The defendant had examined one Gopal as D.W.2 to establish the factum of the division between him and the plaintiff in the year 1978 as put forth by him in the written statement. D.W.2 during the course of evidence has admitted that the plaintiff and the defendant owned ancestral property, but he does not know the extent of the same and further admitted that the ancestral property consists of one oil engine and also admitted that one 5 HP motor was available in Manga Marathu Kollai, which is their ancestral property and also stated that he does not know whether they had divided in respect of their ancestral property at Kamichankulam and admitted that there is a oil engine in Kamichankulam and further admitted that the defendant put up the house construction only in the ancestral property and also admitted that when the plaintiff and the

defendant were joint, the plaintiff used to rear sheep and also further admitted that other than the abovesaid properties, they had also acquired properties at Kaveripakkam and engaged in the cultivation of the same jointly and does not know whether they had acquired properties out of the income derived there from. Therefore, even from the evidence of D.W.2, it is clearly seen that the joint family consisting of the plaintiff and the defendant owned considerable properties with motor pumpset, etc., and accordingly deriving income and furthermore it is also seen that the plaintiff was engaged in the rearing of sheep and deriving income therefrom and thus it is found that as put forth by the plaintiff, he has also contributed income in the acquisition of the properties belonging to the family in the name of the defendant, who is the eldest member.

14. The witness Kothandapani was examined as D.W.3 with reference to the case of the partition pleaded by the defendant. During the course of cross examination, he has also admitted that the plaintiff and the defendant owned ancestral property measuring 2 ¼ kani consisting of 5 HP motor pump set and that it was a old motor pumpset and also further admitted that they owned well and pumpset in the land at Kamichankulam and also had oil engine and well in the land near the village and also further admitted that in the lands, where the defendant put up the house construction, there is a motor pumpset and also admitted that they own land near Kamichankulam which is a considerable income yielding land and further admitted that prior to the partition effected in 1978, the plaintiff and the defendant were joint, engaged in the cultivation and thus from the evidence of D.W.3 also, it is found that the joint family owned ancestral nucleus which were capable of yielding income sufficiently and accordingly it is found that both the plaintiff and the defendant were engaged in the cultivation of the family lands and deriving income and therefore, the case projected by the defendant that the joint family did not hold or owned income yielding nucleus, as such, falls to the ground and cannot be accepted.

15. D.W.5 Selvaraj who had also been examined to establish the factum of partition between the plaintiff and the defendant during 1978, during the evidence has deposed that the plaintiff and the defendant own two motor pumpsets and they own 0.60 cents of land at Mangamarathu kollai ancestrally and the said land consist of motor pump and further admitted that they were having motor pumpset in the ancestral property. Therefore, the evidence of D.W.5 also go to indicate that the joint family consisting of the plaintiff and the defendant owned ancestral property capable of yielding income.

16. In the light of the abovesaid evidence adduced by the defendant and his witnesses when it is found that the joint family consisting of the plaintiff and the defendant owned adequate nucleus ancestrally and when even as per the case of the defendant certain ancestral nucleus were sold for discharging the debts and as could be gathered from the abovesaid evidence noted, when the joint family was holding or owning sufficient nucleus with motor pump sets, well, etc., and the members were engaged in the joint cultivation of the same and accordingly, it is palpably evident that they were deriving income out of the same considerably and therefore, the defendant cannot be allowed to putforth the contention that the ancestral property did not yield income so as to constitute the source for acquisition of the properties standing in his name. On the other hand, when prima facie or reliably the plaintiff has established the existence of the ancestral nucleus with motor pumpset, well, etc., and also the plaintiff is found to be engaged in the rearing of sheep and also found to be engaged in the joint cultivation of the ancestral lands with the defendant and the parties had been acquiring various properties out of the income derived from the ancestral lands and also alienating jointly land and properties as above pointed out, in such view of the matter, as rightly determined by the first appellate court, from the abovesaid admission of the defendant and his witnesses itself, the plaintiff has established the existence of the ancestral nucleus and also established that the abovesaid ancestral nucleus were capable of yielding adequate income.

17. In the light of the abovesaid factual matrix, when admittedly the defendant is the eldest member and the manager of the family at the relevant point of time and when the materials placed on record, as above noted, go to disclose the existence of ancestral nucleus capable of yielding sufficient income, in such view of the matter, the defendant claiming that the suit properties standing in his name had been acquired out of his self earned income independently without the aid of the ancestral nucleus or the income derived therefrom, when the existence of ancestral nucleus capable of yielding adequate income has been established, as above noted, as rightly put forth by the plaintiff and determined by the first appellate court, the presumption arises that the suit properties acquired by the defendant had been acquired only out of the income derived from the ancestral nucleus and it is for the defendant to discharge or rebut the said presumption and unless the same is established by the defendant, the presumption raised in favour of the plaintiff would prevail.

18. However, though the defendant would claim that he had been rearing sheep and cattle and running vehicles and also claimed to have been running brick kiln, etc., and also putforth

the case that his son was engaged in contract business, with reference to the same, there is absolutely no material placed on the defendant to hold that at the relevant point of time, he had been engaged in the abovesaid business and deriving income therefrom. On the other hand, at the relevant point of time, it is found that other than the income derived from the ancestral nucleus as above pointed, the defendant in particular, was not earning any independent income on his own and in such view of the matter, the claim of the defendant that the suit properties had been acquired in his name independently without the aid of the ancestral nucleus out of his self earnings sans any material pointing to the same, it has to be held that the defendant has failed to discharge the presumption raised against him as abovenoted.

19. It is pleaded by the defendant that though he and the plaintiff had remained joint, according to him, they got separated during Vaigasi 1978 and it is stated that by way of a Koorchit and in the presence of panchayathars they had become divided. Further according to the defendant, in the abovesaid partition, the plaintiff had been allotted even the properties earned by him independently and therefore, it is the case of the defendant that, thereafter, the plaintiff and the defendant had not remained joint and become divided and therefore it is contended that the plaintiff cannot be allowed to seek partition once again in respect of the suit properties alleging that the same had been acquired out of the income derived from the ancestral nucleus. The abovesaid case of the defendant has been stoutly disputed by the plaintiff.

20. Though the defendant would claim that he and the plaintiff had become divided by way of a koorchit, however, for the reasons best known to him, the koorchit by way of which they were stated to have been divided, has not been produced by the defendant. Conveniently, the defendant has pleaded that the copy of the same is available only with the plaintiff and not with the defendant. When the brothers, according to the defendant, divided by way of the koorchit in the presence of the panchayathars, naturally, both would have been furnished with the copy of the koorchit with reference to the shares allotted to them in the abovesaid partition. At the foremost, the defendant has not come out with a specific case as to what are the joint family properties owned by the joint family at the time of effecting division during the year 1978 and what are the properties allotted to the plaintiff out of the joint family properties and what are the properties allotted to the defendant out of the joint family properties. Very vaguely he comes forward with the case that during Vaigasi 1978, he and the plaintiff had divided the properties by way of the koorchit in the presence of the panchayathars. However, if according to the defendant, he

had acquired the various properties in his name out of his independent and self earned income and if the abovesaid partition pleaded by the defendant is true, one would have expected the defendant to allot only the shares to which the plaintiff would be entitled to in respect of the properties owned by the joint family, however, as above noted, the defendant has not come forward with the specific case as to what are the actual joint family properties possessed by the joint family at the time of partition and conveniently he would come forward with the case and state that in the abovesaid partition, the plaintiff had been allotted even the properties standing in his name and acquired by him independently. It has not been explained by the defendant as to why he had chosen even to allot the properties earned by him independently to the share of the plaintiff in the abovesaid partition. On the other hand, as rightly put forth by the plaintiff and determined by the first appellate court, inasmuch as all the properties including the suit properties had been acquired out of the income derived from the ancestral nucleus and inasmuch as the defendant being the eldest member / manager, the properties had come to be acquired in his name and only to resist the same one way or the other, it is found that the defendant had come forward putting forth the case that in the abovesaid alleged partition, the properties standing in his name and earned by him independently had also been allotted to the plaintiff.

21. To establish the factum of the abovesaid partition, the defendant has examined certain witness.

(i) D.W.2 Gopal, who has been examined to establish the said fact, during the course of evidence, in the chief examination, would claim that he was also available at the time of the abovesaid oral partition. However, during the course of cross examination, he would state that at the time of oral partition Thalayari Ramakrishna pillai was present and it was he who settled the partition between the brothers and admitted that no chit was entered recording the factum of partition and according to him, the defendant had informed that he had allotted certain shares to the plaintiff and requested them to measure the same and accordingly they had measured the said lands and admitted that other than the same, he does not know anything. Therefore, when as per the evidence of D.W.2, no chit had been recorded evidencing the factum of partition and when he has not come out clearly as to what are the properties owned by the joint family at the relevant point of time and out of the same, what are the properties allotted to the plaintiff and the defendant respectively and would only claim that they had measured the properties said to have been allotted to the plaintiff by the defendant and that he does not know anything further, his evidence being above, as rightly pointed out by the plaintiff's

counsel, the evidence of D.W.2 would be of no use or to sustain the factum of partition pleaded and put forth by the defendant.

(ii) Similarly, the witness D.W.3, who has also been examined to establish the factum of partition would claim that in the abovesaid partition, certain lands were allotted to the parties and according to him, the partition deed / chit was recorded by the Thalayari and further according to him, certain lands were also measured at the time of recording the partition, however, would state that he has not signed in the said document. If really D.W.3 was available at the time of alleged partition, at the first instance, he should have come out clearly as to what are the properties owned by the family and out of the same, what are the properties allotted to the plaintiff and the defendant respectively. If he had been really present at the time of alleged partition, he would have also signed in the record written evidencing the factum of the abovesaid partition. When he has admitted that he has not signed the partition record written at the relevant point of time, in such view of the matter, his evidence cannot be taken into consideration in any manner for holding that he was actually present at the time of the alleged partition and in his presence the plaintiff and the defendant had been allotted the properties belonging to the joint family or the properties owned by the defendant independently had also been allotted to the plaintiff as claimed by the defendant. Therefore, I am unable to place safe reliance upon the evidence of D.W.3 for accepting the case of partition putforth by the defendant.

(iii) D.W.4, the Village Administrative Officer has admitted that he has not produced the records to evidence that the plaintiff and the defendant had been paying the tax in respect of the properties and according to him he has only seen the documents and that he would not be in a position to state as to what are the properties owned by the joint family consisting of the plaintiff and defendant and also admitted that from the records available with him he cannot say whether they had become divided. Therefore, his evidence would be of no use to sustain the plea of partition projected by the defendant.

(iv) D.W.5 who has also been examined to establish the factum of partition, and he, during the course of evidence has admitted that he does not know the extent of the ancestral property or the other land owned by the plaintiff and the defendant and when he has not come out clearly as to what are the properties available for partition at the relevant point of time and what are the properties allotted to the plaintiff and the defendant by way of the same and other than pleading very vaguely that certain properties had been allotted to the plaintiff and not come forward to clearly state as to what are

the properties actually allotted to the defendant and in such view of the matter, on the basis of the unreliable evidence of D.W.5, we cannot safely conclude that the plaintiff and the defendant had become divided as pleaded by the defendant.

22. To cap it all, if really the plaintiff and the defendant had become divided in status and in respect of their properties during vaigasi 1978, as put forth by the plaintiff, to evidence the same, at the foremost, the defendant should have come forward with the record pointing to the same, namely, the koorchit. The said document has not seen the light of the day and in addition to that, if according to the defendant he and the plaintiff had become divided in status and not joint since Vaigasi 1978, however, contradicting the same, it is found that both the plaintiff and defendant had endeavoured to alienate certain properties jointly to one Devaki by way of Ex.A1 sale transaction and also to one Irusan thereafter. The same has also been admitted by the defendant as abovenoted during the course of evidence. Therefore, it is found that inasmuch as the plaintiff and the defendant had not become divided in status or in respect of the joint family properties owned by them during Vaigasi 1978 as pleaded by the defendant and accordingly it is found that even thereafter, they had chosen to jointly alienate the family properties to third parties as above seen and furthermore, when according to the defendant, all the properties standing in his name had been acquired out of his self income and not with the aid of ancestral nucleus, it does not stand to reason as to how come the defendant had accepted the allotment of the properties standing in his name to the share of the plaintiff at the time of the alleged oral partition. In such view of the matter, it is found that, as rightly determined by the first appellate court, with a view to deprive the plaintiff of his lawful share in the joint family properties including the suit properties, it is evident that the defendant has come forward with the false case that the parties had become divided during Vaigasi 1978 and however, when the material placed on record go to show that even thereafter, the parties had remained joint and by way of the same had jointly alienated certain properties to others and enjoying the income derived therefrom one way or the other, in all, it is found that the plea of partition putforth by the defendant is nothing but a false defence projected only to stifle the claim of partition putforth by the plaintiff in respect of the suit properties. When the defendant has failed to establish that he and the plaintiff had become divided by severance in status or in respect of the properties, etc., the case of the defendant that the properties acquired by him thereafter and standing in his name should be held to be his own properties as such cannot be accepted. When the division of status or in respect of the properties by way of the partition alleged had not been proved or established in any

manner, on the other hand, even after the alleged partition they are found to be united and jointly alienating the properties one way or the other, in such view of the matter, as rightly found and determined by the first appellate court, the parties still had not become divided and accordingly enjoying the suit properties jointly acquired with the aid of the ancestral nucleus and inasmuch as the properties had been acquired in the name of the defendant, as he being the eldest member, it is found that the defendant with a view to deprive the same from the claim of the plaintiff, has projected the false case and resisted the plea of partition put forth by the plaintiff. In the light of the above position, the decision relied upon by the defendant's counsel reported in 1995 AIR SC 297 (Kondiram Bhiku Kirdat vs. Krishna Bhiku Kirdat, since deceased by Lrs.) would not be useful to sustain his defence.

23. In the light of the above discussions, as rightly determined by the first appellate court, the plaintiff has clearly established the existence of income yielding ancestral nucleus and accordingly the first appellate court has rightly drawn the presumption in favour of the plaintiff that the suit properties, in all, had been acquired only out of the income derived from the joint ancestral nucleus and the defendant has failed to establish the existence of any independent or self acquired income of his own and accordingly it is seen that the suit properties are only the joint family properties belonging to the plaintiff and the defendant and in such view of the matter, the first appellate court is justified in shifting the burden on the defendant to prove that he had been deriving independent income enabling him to acquire the suit properties in his own name, particularly, without the aid of the income of the ancestral nucleus. Accordingly, the substantial questions of law formulated in the second appeal, are answered against the defendant and in favour of the plaintiff.

24. In conclusion, the second appeal is found to be not entitled to acceptance and accordingly the same is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

bga

To

1. The Principal District Judge, Villupuram
2. The Additional Sub-ordinate Judge, Tindivanam

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

+1 cc to Mr.S.Srinath, Advocate, S.R.No.22299

+1 cc to M/s.Kaithamalai Kumaran, Advocate, S.R.No.21871

S.A.No.1327 of 2005

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