



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.02.2020

PRONOUNCED ON : 27.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

S.A. (MD) No. 485 of 2010

and

C.M.P. (MD) Nos. 9239 and 12240 of 2019 and 1368 of 2020

1. A. Maheswari
2. Minor A. Meenu
3. Minor A. Sanjana ... Appellants / Respondents 4 to 6 /
Defendants 6 to 8
(Appellants 2 and 3 are minors represented through their mother and
natural guardian 1st Appellant)

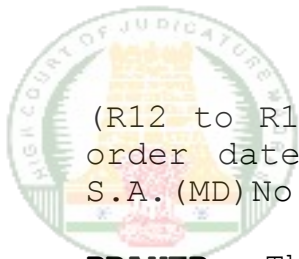
Vs.

1. A. Jeyaraj ... 1st Respondent / Appellant / Plaintiff
2. Sankara Sadhasivam (died) ... 2nd Respondent / 1st Respondent /
1st Defendant
3. Kumaravel (Died) ... 3rd Respondent / 2nd Respondent /
3rd Defendant
4. T. P. Selvarayan (died) ... 4th Respondent / 3rd Respondent /
5th Defendant
5. M/s. Excel Educational and Charitable Trust,
Represented by its Managing Trustee,
S. Albert Reyen
6. S. Arunasekar
7. Ganga Sivadhanu
8. R. Ramesh
9. Jamunavalli
10. S. Kumar
11. S. Vellaisamy Ganesh
12. Shantha
13. K. Arun Selvan
14. K. Venkata Shopa
15. K. Komathi Valli ... Respondents 5 to 15

(R5 impleaded as party respondent vide order dated 14.09.2011 made
in M.P. (MD) No. 1 of 2011 in S.A. (MD) No. 485 of 2010)

(R6 to R11 are brought on record as the LRS., of the deceased R2
vide order dated 04.09.2019 made in C.M.P. (MD) Nos. 10715 to 10717 of
2018 and C.M.P. (MD) No. 23 of 2019 in S.A. (MD) No. 485 of 2010)

(Memo presented in Court is recorded as R4 died and steps against
the death of R4 is dispensed with vide order dated 26.11.2019)



(R12 to R15 are brought on record as LRS., of the deceased R3 vide order dated 27.01.2020 in C.M.P. (MD) Nos.11510 to 11512 of 2016 in S.A. (MD) No.485 of 2010)

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree 21.12.2009 made in A.S.No.86 of 2007 on the file of the Sub Court, Valliyoor, reversing the judgment and decree dated 30.10.2006 made in O.S.No.59 of 2002 on the file of the Additional District Munsif Court, Nanguneri.

For Appellants	: Mr.S.Parthasarathy, Senior Counsel, for Mr.H.Arumugam
For R1	: Mr.R.Vijayakumar, for Mr.S.Kumar
For R2 and R3	: Died
For R4	: Died-steps dispensed with
For R5	: Mr.S.Siva Thilakar
For R6 to R8	: Mr.R.Vijayakumar
For R9 and R11	: Mr.J.Lawrance
For R10	: Mr.R.Subramanian
For R12 and R13	: Mr.P.Thiagarajan
For R14 and R15	: No Appearance

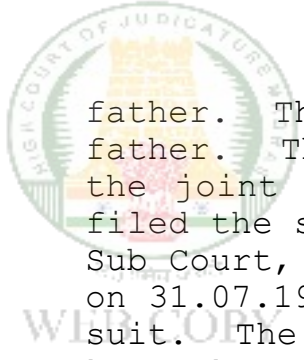
JUDGMENT

Aggrieved over the reversal finding of the First Appellate Court, decreeing the suit filed for partition, the present Second Appeal is filed.

2.The parties are arrayed as per their rank before the trial Court.

3.The brief fact, leading to file this Second Appeal, reads as follows:-

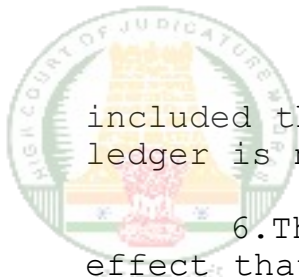
The plaintiff, defendants 1 to 3 and one Rathinavelu are the brothers. The second defendant died during the pendency of the suit. His legal heirs were added as defendants 4 and 5. Subsequently, the fourth defendant also died. His legal heirs also added as defendants 6 to 8. It is the case of the plaintiff that his father by name Arunachala Chettiar died on 10.11.1958, leaving the Will dated 06.11.1958, under which he directed the sons to take all properties with equal shares and they have to meet the marriage expenses of their sisters. The plaintiff and the defendants and another brother, namely Rathinavelu, who is not alive now, all of them constituted joint family. The defendants 1 and 2 were managing the estate, left behind by the said Arunachala Chettiar. The estate was a large one yielding very huge income. The plaintiff and his brother one Rathinavelu were minors at the time of death of their



father. The third defendant was the student during the death of his father. The defendants 1 and 2 were realizing all the income from the joint family estate till the year 1975. The plaintiff herein filed the suit for partition in O.S.No.82 of 1975 on the file of the Sub Court, Tirunelveli and final decree in the above suit was passed on 31.07.1991. The suit property was not included in the above said suit. The omission was due to inadvertence. The plaintiff came to know the availability of the suit property of partition only at the very later date of the said suit. The suit property was joint family property, belonging to the plaintiff and the defendants. The property was purchased in the name of the second defendant from the income of the estate left behind by the said Arunachala Chettiar. This fact is mentioned in the account relating to the estate. The suit property was purchased in the name of the second defendant by means of three sale deeds on 21.11.1964 from Duraisamy Nadar, Ramasamy Nadar, Chelladurai and others. A sum of Rs.1,000/- was used for the said purchase and a sum of Rs.145.90/- was used for stamp towards registration expenses, which have been entered into the joint family accounts ledger in Page No.106 relates to the year 1964. As soon as the plaintiff came to know about the omission to include the suit property in the earlier suit, he filed an application in I.A.No.81 of 1989 in O.S.No.82 of 1975, amending the plaint and the preliminary decree adding the suit property. The trial Court has allowed the petition, however, the revision filed before this Court by the second defendant was allowed. Against the order of the High Court, the plaintiff has filed S.L.P.No.12558 of 1991 before the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court has granted permission to file a separate suit, claiming partition on the schedule property. The schedule mentioned property lies adjacent to the Survey Nos.1772, 1775, 1776 with total extent of 54 acres. These items are the subject matter of partition suit in O.S.No.82 of 1975. The access to the said survey number is only through the schedule mentioned property. The said extent of 54 acres has been allotted to the plaintiff and the defendants in separate portions under the final decree passed in O.S.No.82 of 1975. Hence, the suit is filed for partition, claiming $\frac{1}{4}$ share in the schedule mentioned property.

4.The first defendant has filed written statement, admitting that the suit property was purchased from the income of the joint family and the second defendant has not filed any sale consideration and it is only joint family property.

5.The second defendant has filed written statement, denying the contention that the suit property is joint family property. It is the contention of the second defendant that he has purchased the property in three different sale deeds and he is enjoying the same from 21.11.1964 and the property was purchased from the income of his wife, no amount was spent by the joint family. In the previous suit, the suit property was not included. The plaintiff, knowing



included the same in the previous suit. The alleged family account ledger is not valid one, hence, prayed for dismissal of the suit.

6. The third defendant has filed written statement to the effect that the property was purchased for the purpose of access to the larger extent of joint family property out of the joint family income.

7. On the side of the plaintiff, P.W.1 was examined and Exs.A.1 to A.13 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Exs.B.1 to B.15 were marked. After perusal of the oral and documentary evidence, the trial Court has dismissed the suit on the ground that the original ledger account Ex.B.11 has not been filed and the suit is also barred by limitation under Article 113 of Indian Limitation Act, whereas the First Appellate Court has allowed the appeal and passed the preliminary decree. Against which, the present Second Appeal is filed.

8. While admitting the Second Appeal, the following substantial questions of law have been framed by this Court:-

"a. Whether the Lower Appellate Court has committed error in reversing the judgment and decree of the trial Court and decreeing the suit totally ignoring that the suit is hit by Order 2, Rule 2 of CPC in view of the omission to include the claim in respect of the suit properties in the earlier suit for partition in O.S.No.82/75 on the file of the 1st Additional Subordinate Judge, Tirunelveli?

b. Whether the Lower Appellate Court has committed error in allowing the appeal by rejecting I.A.No.214/09 without considering the settled principles of law that a suit for partition will have to fail for non joinder of necessary parties namely legal heirs of 5th defendant died during pendency of appeal?

c. Whether the Lower Appellate Court is right in decreeing the suit, without considering that the suit claim is barred under Article 110 of Indian Limitation Act?

d. When the title to the suit property stands in the name of 2nd defendant namely Salvanayagam, whether the Lower Appellate Court is right in shifting the burden of proof upon the appellants to prove that the property does not belong to joint family property, ignoring the settled principles of law that the person who pleads that the property belong to joint family has to prove when the title deed stands in the name of an individual?

e. When the trial court has taken adverse inference against the 1st respondent for not producing the



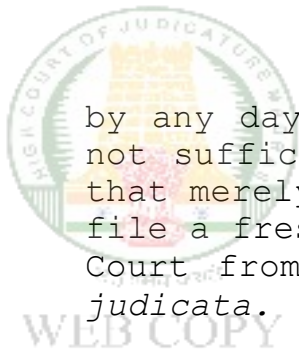
original book of Ex.A-13, whether the Lower Appellate Court is right in reversing the judgment of trial court without properly appreciating the law of adverse inference to be taken under Section 114 of Indian Evidence Act?

f. Whether the Judgment of the Lower Appellate Court is vitiated on account of not complying mandatory provision under Order 41, Rule 31 of CPC?

9. After hearing the arguments, the following additional substantial question of law has been framed:-

"g. Whether the entries relied upon by the respondents under Ex.B.11 alone is sufficient to prove the purchase by the joint family income, whether such entries have been proved in the manner known to law?"

10. The learned Senior Counsel appearing for the appellants vehemently contended that the First Appellate Court has granted decree, relying upon Ex.B.11 only xerox copy of the joint family business accounts. The original has not been produced and no other corresponding documents have been filed to prove the entries in Ex.B.11. Further, the accountant, who made entries, has also not been examined. Though the first defendant in his evidence stated that he has purchased the property in the name of the second defendant, in his cross-examination he has clearly stated that he was not present in India at the time of purchase of the suit property. From the year 1981, there are some disputes between the parties. The evidence of P.W.1 clearly shows that in the year 1981 itself, the second defendant is claiming independent right over the suit property. Such being the position, he ought to have included the suit property in the previous suit. The omission to include the suit property in the previous suit makes it very clear that the suit property is only an independent property of the second defendant. Further, it is the contention that the conduct of the parties not including the property even when there was a hot contest in the earlier suit makes it very clear that the property is an individual property of the second defendant. Further, Ex.B.11 is not related to the said Arunachala Chettiar and sons, whereas it relates to the different business. Therefore, it cannot be said that there was a joint family existing and the income has been used to purchase the suit property. Though there is a presumption of joint family, there cannot be any presumption that the property is joint family property. Hence, it is the contention that the First Appellate Court has not appreciated the entire evidence properly and allowed the appeal, whereas, the trial Court has clearly analyzed the facts and held that Ex.B.11 has not been proved and if the property was all along treated as joint family property, the accounts would have been produced by the plaintiff. Hence, he submitted that when the books of accounts are produced, merely the ledger is not supported



by any day book containing any entries or transaction, the same is not sufficient to prove the entries. Further, it is the contention that merely because the Hon'ble Apex Court has granted permission to file a fresh suit, claiming partition, the same will not prevent the Court from dismissing the suit on the ground of principal of res judicata.

11. In support of his submissions, he relied upon the following judgments:-

(i) (2011) 4 SCC 746 (Ravindra Pal Singh Vs. Santhosh Kumar Jaiswal and others);

(ii) 1996 (II) CTC 199 (Arulmigu Viswewaraswami and Veeraraghava Perumal Temples, Tiruppur, Coimbatore District Vs. R.V.E. Venkatachala Gounder and another);

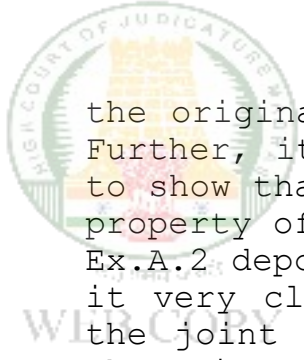
(iii) (1989) 2 SCC 630 (Smt. Chandrakantaben and Vadilal Bapala Modi and others);

(iv) AIR 2008 Supreme Court 2187 (Dadu Dayalu Mahasabha, Jaipur (Trust) Vs. Mahant Ram Niwas and another);

(v) (2000) 1 SCC 434 (Ishwar Dass Jain (dead) through LRS., Vs. Sohan Lal); and

(vi) 2015-1-L.W. 312 (Madras Cements Limited Vs. T.M.T. Kannammal Educational Trust and another).

12. The learned counsel appearing for the first respondent vehemently contended that in the previous suit, larger extent of properties was the subject matter and due to oversight, the suit property was not included. It is the contention that in order to reach the larger extent of the property, the suit property was purchased in different sale deeds in the year 1964 in the name of the second defendant, who is the junior member of the family. Whereas, the entire sale consideration was paid out of the joint family business. Ex.B.11 though is a xerox copy of the ledger, the original ledger is produced before the Court and only xerox alone is marked after consent of both sides, which has been clearly recorded by the First Appellate Court. To show that the original ledger is available with the Court, he submitted the copy application, which indicates the same. Further, it is the contention that when the plaintiff has filed amendment application in the previous suit to include the suit property, the same was dismissed. However, the Hon'ble Apex Court has granted permission to file a fresh suit for partition, for which the defendants have also not disputed the same. Therefore, it is the contention that when the leave is granted by the Hon'ble Supreme Court, subsequent suit is maintainable under Order 2 Rule 3 of C.P.C. It is the further contention that the entire written statement of the second defendant is only evasive denial. The specific allegation in the plaint that the amount has been spent by the joint family and it was entered in the ledger, is not disputed. Similarly, all the original documents and title deeds of the suit property were produced by the plaintiff. If really the



the original title deeds were not retained by the second defendant. Further, it is the contention that no materials available on record to show that from the year 1964, the property was held as individual property of the second defendant. It is the further contention that Ex.A.2 deposition of the second defendant in the previous suit makes it very clear that he himself admitted that he was the manager of the joint family business. Hence, it is the contention that when the written statement is vague and evasive denial, the allegation in the plaint is deemed to be admitted and considering the entire circumstances and the fact that the second defendant himself admitted in the previous suit that he is the member of the joint family and he is the Manager, the First Appellate Court has rightly accepted the case of the plaintiff. It is the further contention that on the side of the second defendant, after his death no one has come to the witness box. The property has been dealt during the pendency of the suit. Now, the subsequent purchaser is prosecuting the appeal, hence, without any evidence on the side of the second defendant, disputing that the property was not purchased from the joint family income, the appellants cannot succeed in this appeal. Hence, he prayed for dismissal of the appeal.

13. In support of his contention, he has also relied upon the following judgments:-

- (i) (2019) 10 SCC 259 (Prahlaad Pradhan and others Vs. Sonu Kumhar and others);**
- (ii) 2019 (2) CTC 30 (Andivel Chettiar and another Vs. Murugesan and others); and**
- (iii) 2017 (3) CTC 79 (Muthusamy Vs. S. Kalliammal and others).**

14. I have perused the entire materials available on record carefully.

15. It is the case of the plaintiff that the plaintiff, defendants 1 to 3 and one Rathinavelu are the brothers and sons of one late Arunachala Chettiar. He died in the year 1958. After his death, the defendants 1 and 2 were managing the entire properties. The plaintiff and another brother namely, Rathinavelu were minors at the time of death of their father. The plaintiff has originally filed suit in O.S.No.82 of 1975 and obtained final decree in respect of larger extent of the properties. In the above suit, the suit property was inadvertently not included and the application has also been filed to include the suit property in the above suit. The application was allowed by the trial Court and on revision, the same was reversed by this Court and against which, S.L.P., was also filed before the Hon'ble Apex Court and the same is dismissed by the Hon'ble Apex Court. However, the Hon'ble Apex Court has granted permission to the plaintiff to file a fresh suit for partition. Filing of the earlier suit in O.S.No.82 of 1975 and filing of the amendment application to include the suit property in the above suit have not been disputed, which is an admitted fact. Before the



Hon'ble Supreme Court, the defendants have also not disputed for filing fresh suit by the plaintiff. Therefore, the present suit came to be filed. Therefore, the question of *res judicata* does not arise at all.

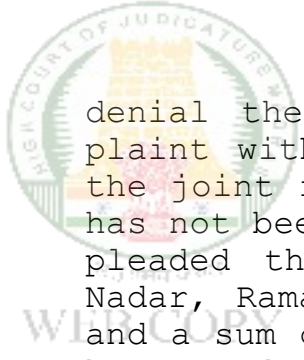
16. In this regard, it is very useful to refer Order 2 Rule 2 (3) of C.P.C., which is extracted hereunder:-

"(3) Omission to sue for one of several reliefs- A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted."

17. Admittedly, during the pendency of the earlier suit, an amendment application was filed, which is reached upto the Hon'ble Apex Court. While dismissing the S.L.P., the Hon'ble Apex Court has granted permission to file a fresh suit for partition, for which the defendants have also not disputed the above position. In view of liberty granted by the Hon'ble Apex Court, the suit filed by the present plaintiff is very well maintainable.

18. It is the specific case of the plaintiff that the suit property was purchased out of the joint family income and the property was purchased through three sale deeds dated 21.11.1964 from Duraisamy Nadar, Ramasamy Nadar, Chelladurai and others. A sum of Rs.1000/- and another sum of Rs.145.90/- were used for the said purchase. The said sale consideration has been entered into joint family accounts ledger under page No.106 relating to the year 1964. Therefore, it is the contention that the suit property though purchased in the name of the second defendant, it is the joint family property. Further, it is the contention that the property has been purchased only for the access to the survey Nos.1772, 1775, 1776 with the total extent of 54 acres. The defendants 1 and 3 have supported the case of the plaintiff. It is also the case of the plaintiff that one of the brothers, namely, Rathinavelu died during the pendency of the suit. As his legal heirs have already relinquished their shares, they have not added as parties. The case of the second defendant, in whose name the property was purchased, is that ever since the date of purchase i.e., on 21.11.1964, he is enjoying the property. The property is absolutely belonging to him. The property has been purchased out of the income of his wife. There was no income spent from the joint family. Further, he has stated that he is not the manager of the joint family and the accounts relied upon by the plaintiff is also denied. The above document is not valid in the eye of law.

19. It is to be noted that on perusal of the entire written statement of the second defendant, it is seen that except general

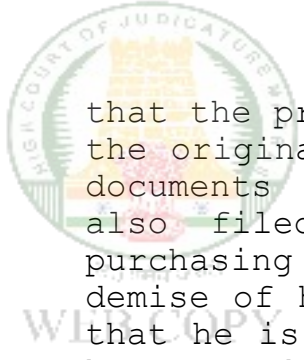


denial there is no specific denial. The allegation made in the plaint with regard to the fact that expenses have been entered in the joint family account in Page No.106 of ledger of the year 1964, has not been denied. Further, in paragraph No.7, it is specifically pleaded that the suit property was purchased from one Duraisamy Nadar, Ramasamy Nadra, Chelladurai and others and sum of Rs.1000/- and a sum of Rs.145.90/- were used for the said purpose. This fact has not been denied specifically. Similarly, the fact alleged in the plaint that the entries have been entered in page No.106, has also not been denied, except general denial. When the specific fact pleaded in the plaint is not denied or denied evasively, such evasive denial is deemed to have admitted by the defendants.

20.The relationship between the parties is not in dispute. The second defendant would contend that the property was purchased out of the income of his wife. It is relevant to note that in the previous suit, the second defendant was examined in the Court. Now he died, therefore, his deposition is marked as Ex.A.2. In the above suit, he has given evidence that the second item in the second schedule was purchased in the name of his wife and it is an individual property. He has not whispered anything about the suit property was purchased individually out of the income of his wife. If really the suit property purchased in the year 1964, definitely, he would have made mention in the deposition also. Similarly, in his cross-examination and deposition, he clearly admitted that he and his brother were jointly managed the entire joint family business, prior to the suit in O.S.No.82 of 1985. This fact clearly shows that he was a member of the joint family at the relevant point of time. The previous deposition is relevant and admissible under Section 33 of the Indian Evidence Act for proving the status of the parties.

21.The evidence of the second defendant in the previous suit clearly shows that he was also member of the joint family and was managing the business along with another brother. Therefore, the contention in the written statement that he is not managing any property of the joint family cannot be countenanced. Further, after his death, his legal heirs have not come into witness box. Therefore, the previous deposition given by the second defendant in respect of the affairs of the family and its management certainly become relevant to prove the fact that he was in the joint family at the relevant point of time. The plaintiff was examined as P.W.1 and the defendants 1 and 3 were examined as D.W.1 and D.W.2. On the side of the second defendant, none entered into the box. But other brothers in one voice stated that the property has been purchased out of the income of the joint family properties.

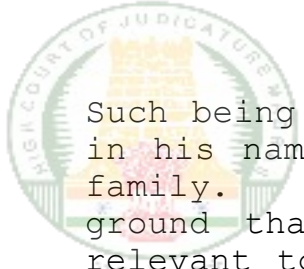
22.It is also relevant to note that in the previous suit, an application in I.A.No.81 of 1989 was filed to amend the plaint and include the suit property, wherein counter was filed by the first defendant in which a specific stand was taken by him to the effect



that the property was purchased from the joint family income and all the original documents with him and in fact, he has also given such documents available with him. Whereas, the second defendant has also filed counter, stating that there was no necessity for purchasing the property by the funds of the joint family, after the demise of his father. It is the contention of the second defendant that he is the man of means and he has purchased the property. He has not whispered anything about that his wife has given money to purchase the suit property as pleaded in the written statement in I.A.No.81 of 1999 in O.S.No.82 of 1975 and the defence in the written statement filed in the present suit by the second defendant is totally contradictory to earlier pleadings. That itself clearly shows that in fact the contradictory statement of the second defendant probalised the case of the plaintiff that the suit property was purchased only for the purpose of access to the larger extent of land owned by the joint family. It is also to be noted that the specific allegation in the plaint that the property was purchased only for the purpose of access to the larger area owned by the family, which was the subject matter of the suit in O.S.No.82 of 1975, is not even denied in the written statement.

23. The deposition of the second defendant in previous proceedings marked as Ex.A.2 makes it clear that he was managing the joint family business along with another brother. If really the property was dealt individually from the year 1964 or even after 1975, there should have been some records to show that the property is all along treated as individual property of the second defendant. Whereas, the very sale deeds relating to the property was produced by his brother. This fact clearly indicates that the property though purchased in the name of the second defendant, who was also member of the joint family and managing the estate, the intention of the purchase was only to have access to the larger extent of the property. If really as contended by the second defendant that the property was purchased out of his wife income, there was no reason as to why the original title deeds left with the plaintiff and other members of the joint family. This fact clearly probalised the plaintiff's case that the property has been purchased only for the benefit of the family. It is the definite case of the second defendant that the property has been purchased out of the income of his wife, whereas, he has not taken such plea in the counter filed in I.A.No.81 of 1989 in O.S.No.82 of 1975, marked as Ex.A.6. Further, to show that he had a separate income and the suit property was purchased from the income of his wife not from the income of the joint family, there must be some evidence. Whereas, none was examined on the side of the second defendant and his legal heirs have also not entered into the box, whereas, the deposition of the second defendant under Ex.A.2 shows that he was managing the joint family business along with his brother.

24. Admittedly, the second defendant was in management of the property as per his own deposition at the relevant point of time.



Such being the position, the fact proves that the property acquired in his name was actually purchased out of the income of the joint family. The trial Court has non-suited Ex.A.13 accounts on the ground that the original ledger has not been produced. It is relevant to note that the original ledger has been produced by the defendants and only after comparison attested by the notary, the original ledger is alone filed, particularly, Page No.106. Whereas, the original ledger was retained by the Court. This has been clearly observed by the First Appellate Court.

25.The evidence of D.W.1 makes it clear that the original ledger was in fact produced whereas, the Court has marked only xerox copy of the same. Merely because the Court has marked only xerox, despite the original ledger is filed, it cannot be said that the original has not at all produced. Mere marking of the xerox instead of original by the Court cannot be said that the document is totally inadmissible. It is already stated that the documents and title deeds have been produced by the first defendant. If really the second defendant is all along enjoying the property, there should have some mutation of revenue records and no documents were filed to show that the property was dealt by him individually. Whereas, the evidence of P.W.1 clearly shows that the property was jointly maintained by himself and the second defendant. This aspect have not been denied in the cross-examination. Further, it is the specific case of the plaintiff that the property has been purchased only for the purpose of access to go to the larger extent. This fact has also not been denied in the cross-examination. Therefore, *de hors* Ex.A.13 and B.11, xerox alone filed without any connected document. When the second defendant was admittedly the member of the joint family and managing the business of the joint family as per his own deposition in Ex.A.2, coupled with the fact that the title deeds of the property is not with him and only with other brothers and no other documents have been filed to show that the property is all along treated as separate property and further inconsistent plea of the second defendant that the suit property was purchased out of the income of his wife and he has also own income in the previous suit in I.A.No.81 of 1989, the plaintiff's case is probabilised. Further, the specific allegation made in the plaint with regard to the purchase of the property out of the joint family account, the nature of the amount paid, the nature of the stamp amount paid, has not been denied specifically, except evasive denial.

26.It is to be noted that such evasive denial is deemed to be admission. Similarly, none of the legal heirs of the second defendant is entered into the box, to show that the property was all along dealt individually by the second defendant and no documents were filed to show that the property was sub-divided and taxes are paid individually by the second defendant. Further, the allegation that the property was purchased only for the purpose of access to



the second defendant in the previous proceedings that he was managing the family business, is to be presumed that the property has been purchased in the name of the second defendant only for the benefit of the family.

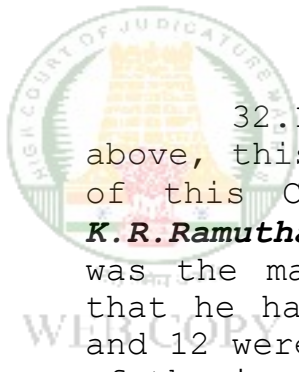
27. In the judgment reported in 2015-1-L.W.215 referred to above, this Court has held that when the plaintiff has not proved his case by examining the person, who wrote the accounts and received the payments from the defendants, mere production of statement of accounts will not be sufficient to charge the defendants with any liability.

28. In the judgment reported in (1989) 2 SCC 630 referred to above, the Hon'ble Apex Court in Paragraph Nos.13 and 14 held that the account books without support of any preliminary evidence, the correctness of the entries in the account books not supported by any witness is not reliable.

29. Similarly, in judgment reported in (2000) 1 SCC 434, the Hon'ble Apex Court has held that only extracts of the account books were filed and original books were not produced for comparison and non production of such accounts is not admissible in evidence.

30. In 1996 (II) CTC 199, this Court has held that when the books produced nor containing entries or transaction they cannot be relied upon.

31. Admittedly, though the plaintiff has not produced original of the ledger, the defendants have produced the original. The entries in fact clearly show that the property was purchased out of the joint family business. The business was only in the name of brothers and the previous deposition Ex.A.2 itself clearly shows that in fact the second defendant was managing the business of the family along with another brother. Therefore, merely because the person who entered entries has not been examined, that cannot be a ground to ignore the above documents altogether. Even *de hors* Ex.B.11 and A.13, this Court is of the view that other circumstances as referred to above clearly show that the property has been purchased in the name of the second defendant only for the benefit of family particularly for the purpose of access to the larger extent of the property owned by the joint family. None of the legal heirs of the second defendant have entered into box. The property has been dealt to the third party during the pendency of the suit. Therefore, much reliance has been placed by the learned Senior Counsel appearing for the appellants that the plaintiff himself admitted that there is a mutation of records in the name of the second defendant but no records have been filed. Even assuming that any such mutation is taken place, the same cannot confer any title on the property, whereas, circumstances show that the property was purchased for the benefit of the family.



32. In the judgment reported in 2017 (3) CTC 79, referred to above, this Court has relied upon the judgment of the Division Bench of this Court reported in **1994 (1) MLJ 44 (Sonnappa Iyer Vs. K.R. Ramuthaiammal and others)** and held that when the first defendant was the manager of the entire properties, it is for him to prove that he had separate income and the properties covered by Exs.B.11 and 12 were purchased by him out of the said income, without the aid of the income from the joint family properties.

33. The relevant Paragraph Nos.4 and 5 in the judgment reported in 2019 10 SCC 259 referred to above, are extracted hereunder:-

"4. The courts below have found on the basis of the evidence adduced by the parties, that the appellants had failed to prove that the suit property was the self-acquired property of Mangal Kumhar. The burden to prove that the suit property was the self-acquired property of Mangal Kumhar was on the appellant purchasers. Reliance is placed on this Court's judgment in Adivappa V. Bhimappa wherein it was held that: (SCC p.589, para 19)

"19. It is a settled principle of Hindu Law that there lies a legal presumption that every Hindu family is joint in food, worship and estate and in the absence of any proof of division, such legal presumption continues to operate in the family. The burden, therefore, lies upon the member who after admitting the existence of jointness in the family properties asserts his claim that some properties out of entire lot of ancestral properties are his self-acquired property."

The appellants have failed to discharge the burden to prove that the suit property was separate or self-acquired property of Mangal Kumhar.

5. The contention raised by the appellants is that since Mangal Kumhar was the recorded tenant in the suit property as per the Survey Settlement of 1964, the suit property was his self-acquired property. The said contention is legally misconceived since entries in the revenue records do not confer title to a property, nor do they have any presumptive value on the title. They only enable the person in whose favour mutation is recorded, to pay the land revenue in respect of the land in question. As a consequence, merely because Mangal Kumhar's name was recorded in the Survey Settlement of 1964 as a recorded tenant in the suit property, it would not make him the sole and exclusive owner of the suit property."



34. Having regard to the above judgment and the deposition of the second defendant in the previous suit, stating that he was managing the joint family business and title deeds also not with him which was produced by other members of the family, merely because the particular suit property was omitted in the previous suit, the same itself cannot be a ground to hold that the properties are self acquired property of the second defendant. With regard to other question of law that the legal heirs of the said Rathinavelu have not been added, therefore the suit barred by non-joinder of the necessary parties, it is the specific case of the plaintiff that one of the brothers, namely, Rathinavelu died during pendency of the suit, his legal heirs have relinquished their shares in the property. Therefore, they have not added as parties in the suit. The above fact is not even denied by the defendants. Therefore, when the specific fact pleaded in the plaint with regard to the relinquishment of right, substantial question framed by this Court does not arise at all and the suit cannot be barred by non-joinder of necessary parties. With regard to questions of law as limitation both sides have fairly submitted that the suit is filed within the period of limitation, hence, question of law does not arise at all. In view of the same, the question of law as the limitation become insignificant and not answered.

35. Accordingly, the other substantial questions of law are answered. The findings of the First Appellate Court is confirmed.

36. In the result, this Second Appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ / 2020

Sub Assistant Registrar (CS)

Myr

To

1. The Subordinate Judge,
Valliyoor.

2. The Additional District Munsif,
Nanguneri.



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