



Appeal Suit No.175 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 30.09.2022

Judgment Delivered on : 12.10.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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and

M.P.No.1 of 2013

1.S.P.Anandan (died)

2.S.N.Sridharan

3.S.A.Sushila

4.S.A.Parthasarathy

5.S.A.Rajesh

6.S.A.Premnath

... Appellants

[Appellants 3 to 6 brought into record as Legal representatives of the deceased 1st Appellant viz., S.P.Anandan, vide Court order dated 25.02.2022, made in CMP.Nos. 9779, 9782 and 9783 of 2020]

Versus

1.S.C.Haribabu

2.S.C.Amarnath (died)

3.S.C.Jayakumar



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4.S.C.Ramesh

5.Mrs.Sujatha

6.S.A.Deepak

7.S.A.Balaji

... Respondents

[Respondents 5 to 7 brought on record as Legal Representatives of the deceased 2nd Respondent viz., S.C.Amarnath, vide Court order dated 04.07.2022, made in CMP.No.4057 of 2022]

Prayer: Appeal Suit is filed under Section 96 of the Code of Civil Procedure, 1908, against the Judgment and Decree of the Learned XIX-Additional City Civil Court at Madras in O.S.No.14801 of 2010, dated 01.03.2013.

For Appellants : Mr.V.Raghavachari

For Respondents : Mr.N.Subbarayalu

JUDGMENT

A.The Appeal :

This Appeal suit is laid by the aggrieved plaintiffs challenging the dismissal of the suit filed by them in O.S.No.14807 of 2010 by a Judgment and Decree dated 01.03.2013, on the file of the XIX – Additional City Civil Court, Chennai.



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2.For the sake of convenience, the parties are referred to as per the array of parties in the original suit.

B.The case of the plaintiffs:

3.The suit property being an extent of 2616 Sq.ft and in Door No.733-A, Anna Salai, Chennai 600 006, was in occupation of the plaintiffs' ancestors since 1941. Originally, one *Mr.S.Venkatarayalu(since deceased)*, was in occupation of the suit property. Thereafter, his son *Sailendra Parthasarathy(since deceased)* was in occupation of the suit property. The said *Sailendra Parthasarathy* was married to one *Kanthamma(since deceased)*, and through her, he got one son, by name *S.P.Chinnaiah(since deceased)*. The said *S.P.Chinnaiah* had four sons, namely *S.C.Hari Babu*, *S.C.Amarnath*, *S.C.Jayakumar* and *S.C.Ramesh*, who were arrayed as defendants Nos.1 to 4 in the suit. After the demise of his wife *Kanthamma*, the said *Sailendra Parthasarathy*, again got married to the sister of his first wife, again by the name *Kanthamma(since deceased)*, and through the second wife, he had got two children, namely *S.P.Anandan*, (the first plaintiff), *S.P.Neelkandan*, who died leaving behind his son, *S.N.Sridharan* (the second plaintiff), and



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S.P.Dhanalakshmi, (who died as a spinster), and the plaintiffs alone are her legal heirs.

4.In the year 1971, one *Rajeshwari* and *others*, filed a suit in C.S.No.24 of 1971, seeking eviction of several of their tenants from their properties, which included the suit property. The said *S.P.Chinnaiah*, being the eldest son of the said *Sailendra Parthasarathy*, was shown as one of the defendants in the said suit. However, after the death of the said *Sailendra Parthasarathy*, all his sons and daughters through both his wives were in joint possession and enjoyment of the suit property. By decree dated 08.03.1977 the rights of the said joint family were recognized and the property became the absolute property of the joint family, as the same was left by the said plaintiffs in favour of the 44th defendant/*S.P.Chinnaiah*, and his family. Thus, thereafter, the plaintiffs and the defendants became joint owners of the suit property. While so, on 16.05.2007, the defendants being the legal heirs of *S.P.Chinnaiah*, entered into a partition deed and registered the same as Document No.473 of 2007 among themselves, without the plaintiffs being parties and without their knowledge. Therefore, the plaintiffs filed the present suit for declaration



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that the partition deed dated 16.05.2007 entered into between the defendants as null and void and for permanent injunction, restraining the defendants Nos.1 to 4, or their men or agents from encumbering or alienating or in any manner dealing with this suit property.

C.The case of the defendants:

5.The defendants resisted the suit by filing written statement by the 3rd defendant and the same being adopted by the other defendants. It is the case of the defendants that Late *S.P.Chinnaiah*, their father, became the absolute owner of the suit property, by virtue of the Joint Compromise Memo filed in C.S.No.24 of 1971. The said *S.P.Chinnaiah* died intestate on 06.07.1986, and therefore, the defendants being the only legal heirs of the said *S.P.Chinnaiah*, alone are entitled to the suit property. Though the defendants grand-father *Sailendara Parthasarathy*, and the great-grand-father *Venkatarayalu*, were in occupation of the suit property, the defendants' father *S.P.Chinnaiah*, alone became the owner, by virtue of a compromise decree passed in C.S.No.24 of 1971. The said *S.P.Chinnaiah* was employed in the Labour Department of the Government of Tamil Nadu, and therefore, he had an independent source



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of income. The said *S.P.Chinnaiah* alone had purchased the suit property after payment of sale consideration of Rs.82,000/-. There were no joint family funds. There was no existence of any joint family and there was no other earning member in the family to contribute funds for the purchase of the suit property. The Late *S.P.Chinnaiah*, out of love and affection allowed his brother *S.P.Neelakandan* to occupy a small portion of the suit property. Therefore, the said *S.P.Neelakandan* is only a permissive occupant of the meager extent of the suit property and the same would not in any manner confer any right, title, or share in the suit property.

D. The Issues & The Trial :

6.On the above pleadings, the Trial Court framed six issues, which were recasted as five issues, which reads as follows:-

“i) Whether the suit property is the joint family property of the plaintiffs and the defendants?

ii) Whether the plaintiffs are entitled to declare that the partition deed dated 16.05.2007 entered into by the defendants as null and void?

iii) Whether the suit is valued properly?

iv) Whether the plaintiffs are entitled for permanent injunction as prayed for?



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v) *To what relief to the plaintiffs? ”*

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7. On the above issues, the second plaintiff was examined as P.W.1 and **Exs.A-1** to **A-12** were marked on behalf of the plaintiffs. On behalf of the defendants, the third defendant was examined as D.W.1, and **Exs.B-1** to **B-6** were marked.

E. Findings of the Trial Court:

8. On a consideration of pleadings and evidence, the Trial Court found that even though the said *Venkatarayalu* and *Sailendra Parthasarathy*, were occupants of the suit property, ultimately, they did not have any title and the suit property was purchased for sale consideration of Rs.82,000/-, by *S.P.Chinnaiah*, pursuant to the compromise decree in C.S.No.24 of 1971. Therefore, the Trial Court came to the conclusion that the only question which has to be decided is that, whether the said *S.P.Chinnaiah*, had purchased the same from and out of the joint family funds. The Trial Court further held that the plaintiffs should prove that there was a joint family nucleus and that the sale consideration was from and out of the joint family funds. The Trial Court found that the plaintiffs failed to prove the same, and on the other hand,



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S.P.Chinnaiah was employed in the Labour Department and had an independent income. Therefore, the Trial Court concluded that the plaintiffs' claim that the property is a joint family property, is doubtful, and hence, it was held that the plaintiffs are not entitled to the declaration and the consequential relief as prayed for by them, and dismissed the suit, aggrieved by which, the present Appeal Suit is filed.

F.The submissions:

9.Heard, *Mr.VRaghavachari*, learned Counsel for the appellants and *Mr.N.Subbarayalu*, learned Counsel appearing on behalf of the respondents.

10.Pending the Appeal Suit, first appellant died and the appellants 3 to 6 were brought on record as his legal heirs. The second respondent /second defendant had died and his legal heirs were also brought on record as Respondent Nos.5 to 7.

11.*Mr.V.Raghavachari*, learned Counsel for the appellants, taking this Court through the oral and documentary evidence on record, would



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rely upon the various exhibits in *Exs.A-1 to A-8* and *Exs.A-15 to A-17*, to press home the point that at all times, the address of the plaintiffs and the defendants was the suit property and these documents would evidence that both the plaintiffs as well as the defendants are in joint possession and enjoyment of the suit property. Drawing the attention of the Court to *Ex.A-9 & A-10*, the pleadings in the earlier suit in C.S.No.24 of 1971, he would submit that it could be seen from the pleadings that the property was originally found to be a part and parcel of the estate of the Prince of Arcot. The same was included in the item of the property being sold by way of public auction on 12.12.1963, by the Competent Officer, under Section 10 of the Evacuee Interest (Separation) Act, 1951, and a certificate of sale was issued in favour of the said plaintiffs. Therefore, the plaintiffs filed a suit for ejectment of various tenants/other persons, who were in occupation of the portions of the said larger extent of the property. The defendants' father *S.P.Chinnaiah*, was included as the 44th defendant in the said suit. He contested the said suit by stating that the property, namely, 2/149 Mount Road, Madras, had always been the property of the 44th defendant and his ancestors. The superstructure was put up by the grand-father of the said *S.P.Chinnaiah*, i.e., *Venkatarayalu* and the said *Venkatarayalu* was paying



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the rents to the Prince of Arcot, and therefore, the defendants therein continued to be tenants, and are entitled to protection under the Madras City Tenants Protection Act, 1921. However, the said suit ended in compromise, by filing a joint compromise memo entered into between the plaintiffs and the defendants Nos.32, 33, 44, 48 and 49. The plaintiffs in the said suit agreed to receive a sum of Rs.82,000/- from the sub-tenants of the said *S.P.Chinnaiah* and family, who were the defendants Nos.48 and 49 in the said suit, and agreed to execute separate sale deeds, in respect of the said sub-tenants, namely, the defendants Nos.48 and 49 in that suit in respect of the front portion of the property, in which a commercial construction of a hotel was put up by the said persons and a separate sale deed was to be executed in favour of the said *S.P.Chinnaiah*, in respect of the rear side, which is the present suit property.

12.The learned Counsel would rely upon Clause (v) of the said Memorandum of Compromise in which it was clearly stated that the 44th defendant (the said *S.P.Chinnaiah*) shall get the release deed signed and attested by all the legal heirs of the original tenant *Venkatarayalu*. The said release deed is also marked as ***Ex.A-12***, in which the others joined as



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parties to release the right in the superstructure, in respect of the property given to the 48th and 49th defendants. Therefore, he would submit that the suit property were in the occupation of the Hindu undivided joint family. Leasehold and possessory rights are also inheritable rights and the said rights were inherited from *Venkatarayalu* by *Sailendra Parthasarathy*, and from the said *Sailendra Parthasarathy*, to the plaintiffs and the defendants. The defendants father *S.P.Chinnaiah* alone was added as the defendant being the "Kartha"/eldest member living after the *Sailendra Parthasarathy*. Therefore, the same does not in any manner confer absolute title in favour of the said *S.P.Chinnaiah*. The very nature of the property and the joint possession clearly proves that the property is a joint family property and the Trial Court was swayed by the fact that the said *S.P.Chinnaiah* was employed in the Government. For that matter, even the plaintiffs were employed in the Government and therefore, that by itself was not a factor of determination.

13.In support of his contentions, the learned Counsel for the appellants relied upon the Judgement of the Hon'ble Supreme Court of India, in *N. Padmamma v. S. Ramakrishna Reddy*¹, more specifically

¹ (2015) 1 SCC 417 : (2015) 1 SCC (Civ) 527 : 2014 SCC OnLine SC 843 at page 424



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paragraphs Nos.9 and 10, which reads as follows:-

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“ 9.....Any recognition of his being in possession and personal cultivation of the land held by his father was, in the absence of any plea or proof of ouster, to be taken as cultivation on behalf of the entire family, and not in his individual capacity. We say so because the demise of Ramachandra Reddy, the original occupant of the land, could not on any juristic principle grant exclusivity to his son (Respondent 1 in this appeal) to claim the right to possession or cultivation of the land which Ramachandra Reddy held in his individual capacity and which upon his demise would logically and as a matter of course devolve upon the legal heirs left behind by him in equal share. The status of Respondent 1 as a legal heir of the deceased was no better than other legal heirs of Ramachandra Reddy. Grant of occupancy rights to Respondent 1 as the only male member of the family, could not result in the extinction of the rights of the appellants who had an equal claim in no way inferior to that of Respondent 1 to succeed to the estate left behind by the deceased including succession to all such rights that may have been inchoate on the date of the demise of Ramachandra



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Reddy but as could result in a beneficial grant in his favour based on his being an inamdar. That the family was joint on the demise of Ramachandra Reddy is not in dispute. That it was dependent upon the land is also not in dispute. In the absence of any evidence much less cogent and credible one to establish ouster of the other members of the Ramachandra Reddy's family it is difficult to appreciate how Respondent 1 could claim the legacy of Ramachandra Reddy whether in regard to the property owned by the deceased or the rights which the deceased had as an occupant. The reference order is, therefore, right when it says: (N. Padmamma case [N. Padmamma v. S. Ramakrishna Reddy, (2008) 15 SCC 517] , SCC p. 526, para 18)

“18. Right of inheritance and succession is a statutory right. A right in a property which is vested in terms of the provisions of the Hindu Succession Act cannot be taken away, except in terms of provisions of another statute, which would have an overriding effect. Such special statute should be a complete code. It shall ordinarily be a later statute. Ordinarily again it must contain a non obstante clause.”

10.It is fairly well-settled principle of law that the possession of a co-heir is in law treated as



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possession of all the co-heirs. If one co-heir has come in possession of the properties, it is presumed to be on the basis of a joint title. A co-heir in possession cannot render its possession adverse to other co-heirs not in possession, merely by any secret hostile animus on his own part, in derogation of the title of his other co-heirs. Ouster of the other co-heirs must be evidenced by hostile title coupled by exclusive possession and enjoyment of one of them to the knowledge of the other. (See Corea v. Appuhamy [1912 AC 230 (PC)] .) Reference may also be made to the decision of this Court in P. Lakshmi Reddy v. L. Lakshmi Reddy [AIR 1957 SC 314] wherein this Court has succinctly summed up the legal position as under: (AIR p. 318, para 4)

“4. ... But it is well settled that in order to establish adverse possession of one co-heir as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits of the properties. Ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. When one co-



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heir is found to be in possession of the properties it is presumed to be on the basis of joint title. The co-heir in possession cannot render his possession adverse to the other co-heir not in possession merely by any secret hostile animus on his own part in derogation of the other co-heir's title. It is a settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster.””

14.The learned Counsel also relied upon the Judgment of the Hon'ble Supreme Court of India, in ***R. Janakiammal v. S.K. Kumarasamy***², more specifically paragraph Nos.99 to 103, wherein, to press home the point that inspite of the decree being in the name of S.P. Chinnaiya, it is the nature of the property which has to be seen and the same reads as follows:-

“99. When D-1 comes with the case that there was partition on 8-3-1981 of all immovable properties standing in the names of three branches, which was implemented on 6-8-1984, the

² (2021) 9 SCC 114 : 2021 SCC OnLine SC 444 at page 150



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conclusion is irresistible that family was joint and had the three branches not been part of joint Hindu family, there was no occasion for attempting any partition on 8-3-1981 as claimed by D-1. The fact that Defendant 1 is coming with the case that there was partition on 18-3-1981 itself proves that three branches were joint till then as per case of D-1 himself.

100. *It is to be noted that the plaintiff never admitted the agreement dated 8-3-1981 or alleged partition of 8-3-1981, it is, thus, clear that parties remained joint and properties standing in the names of three branches remained joint till the consent decree was passed on 6-8-1984.*

101. *Thus, in the year 1979 when residential property of Tatabad was obtained in the name of Defendant 1, all three branches were part of the joint Hindu family and the house property purchased in the name of one member of joint Hindu family was for the benefit of all.*

102. *Both the courts below although accepted the partition dated 18-3-1981 as pleaded by D-1 but erred in not considering the consequence of such pleading. When partition of all immovable and movable properties is claimed on 8-3-1981, the conclusion is irresistible that the*



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family was joined till then. The theory set up by D-1 that all the three branches were separate after 7-11-1960 is denied/belied by claim of partition on 8-3-1981.

103. *Both the trial court and the High Court have given much emphasis on the fact that three branches were filing separate income tax returns and wealth tax returns after 1967. An individual member of joint Hindu family can very well file his separate returns both under the Income Tax Act as well as the Wealth Tax Act and filing of such returns was not conclusive of status of the family. The plaintiff's case throughout was that family continued to be joint after 7-11-1960 and D-1 who alone had filed the written statement and appeared in the witness box having come with the case of partition on 8-3-1981 which he claims to be implemented on 6-8-1984 by compromise decree, it is proved that family was joint at least till then i.e. 8-3-1981 or 6-8-1984. Thus, in the year 1979, when the Tatabad residential property was acquired, the three branches were joint. ”*



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15.The learned Counsel would rely upon the Judgment of the Hon'ble Supreme Court of India, in **Anant Kibe v. Purushottam Rao**³, more specifically paragraph No.18, for the proposition that any grant will not affect the joint family nature of the property and the said paragraph is reproduced hereunder:-

“ 18. The point in controversy really stands concluded by the recent decision of this Court in Nagesh Bisto Desai case [(1982) 2 SCC 79 : AIR 1982 SC 887 : (1982) 3 SCR 341] . There, the question was whether the plaintiff being the holder for the time being of the Kundgol Deshgat estate which was an impartible estate, the succession to which was governed by the rule of lineal primogeniture, was entitled to remain in full and exclusive possession and enjoyment of the watan lands resumed under Section 3(4) of the Bombay Pargana and Kulkarni Watans (Abolition) Act, 1950 and Section 4 of the Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955 which had been re-granted to him as an occupant thereof under Sections 4 and 7 of the Acts respectively. It was held that the plaintiffs contention ran counter to the scheme of the

³ 1984 Supp SCC 175



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Bombay Hereditary Offices Act, 1874 and was against settled legal principles, and that the Watans Act was designed to preserve the pre-existing rights of the members of the joint Hindu family. The submission based on the alleged impartibility of watan property and the applicability of the rule of lineal primogeniture regulating succession to the estate was rejected on the ground that it could not prevail as these being nothing more than the incidents of the watans stood abrogated by Section 3(4) of the 1950 Act and Section 4 of the 1955 Act. It was held that the effect of the non obstante clause in Section 3(4) of the 1950 Act was to bring about a change in the tenure or character of the holding as watan lands but did not affect the other legal incidents of the property under the personal law and if the property belonged to the joint Hindu family, then the normal rights of the members of the family to ask for partition were not in any way affected and therefore the re-grant of the lands to the watandar under Section 4(1) of the 1950 Act and Section 7 of the 1955 Act must enure to the benefit of the entire joint Hindu family. That precisely is the position here. Although under the Bombay Pargana and Kulkarni Watans (Abolition) Act, 1950 and the



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Bombay Merged Territories Miscellaneous Alienations Abolition Act, 1955 there was at first an abolition of watans and resumption of watan lands, followed by re-grant of such lands to the watandar as an occupant under the Bombay Land Revenue Code, 1879, that hardly makes a difference in principle. The only difference is that under Section 158(1)(b) of the M.P. Land Revenue Code, there was a simultaneous extinction of the inams resulting in conferral of bhumiswami rights on every person holding inam lands on the date on which the Code was brought into force.”

Thus, learned Counsel for the appellants would pray that the appeal suit may be allowed.

16.Per contra, *Mr.N.Subbarayalu*, learned Counsel for the respondents would submit that admittedly in this case, though the family members were in occupation, they did not have any title. Relying upon the rough sketch filed, he would submit that only an extent of AHYZ was allotted to the defendants Nos.48 and 49 in the earlier suit in C.S.No.24 of 1971. Only the said extent the other members of the family were joined as



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releasers and the same has got nothing to do with the suit property. The suit property is 'B- Schedule' in the compromise decree and this is clearly described by the boundaries BCDEFGYZ in the rough sketch and the same is clearly allotted and conveyed only to the 44th defendant in the suit. It is clear that at the relevant point of time, the first plaintiff or the second plaintiff's father did not claim any right whatsoever and after the decree was passed in the year 1977, absolutely no steps whatsoever have been taken by the plaintiffs for claiming title or partition in respect of the suit property. Thus, the property clearly belonged to the said *S.P.Chinnaiah*. The plaintiffs did not prove any joint family nucleus for the purchase of the property. On the other hand, in this case, the amounts were paid by the 48th and 49th defendants are not from any joint family funds.

17.Even otherwise, the defendant's father *S.P.Chinnaiah*, was a Government servant and once the said fact is accepted by the plaintiffs and when there is a source for independent income unless the contrary is proved by the plaintiffs that the property is purchased from and out of the joint family nucleus, the plaintiffs cannot claim any right, and therefore, he would submit that the Trial Court has rightly dismissed the suit.



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18. In support of his contentions, the learned Counsel for the respondents relied upon the Judgement of the Hon'ble Supreme Court of India, in ***Bhagwat Sharan v. Purushottam***⁴, more specifically paragraphs Nos.10 - and 12 for the proposition that it was only the plaintiffs who have to prove that the property was purchased from and out of the joint family nucleus, and the said paragraphs read thus:-

“10. At the outset we may note that a lot of arguments were addressed and judgments were cited on the attributes of HUF and the manner in which it can be constituted. In view of the facts narrated above, in our view, a large number of these arguments and citations need not be considered. The law is well settled that the burden is on the person who alleges that the property is a joint property of an HUF to prove the same. Reference in this behalf may be made to the judgments of this Court in Bhagwan Dayal v. Reoti Devi [Bhagwan Daya v. Reoti Devi, AIR 1962 SC 287] . Both the parties have placed reliance on this judgment. In this case, this Court held that the general principle is that a Hindu family is presumed to be joint unless the contrary is proved. It was further held that where one of the

⁴ (2020) 6 SCC 387 : 2020 SCC OnLine SC 348 at page 392 : 2020 (3) CTC 111



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coparceners separated himself from other members of the joint family there was no presumption that the rest of coparceners continued to constitute a joint family. However, it was also held that at the same time there is no presumption that because one member of the family has separated, the rest of the family is no longer a joint family. However, it is important to note that this Court in Bhagwati Prasad Sah v. Dulhin Rameshwari Kuer [Bhagwati Prasad Sah v. Dulhin Rameshwari Kuer, 1951 SCC 486 : 1951 SCR 603] , it held as follows : (SCC p. 491, para 10)

“10. ... Except in the case of reunion, the mere fact that separated coparceners chose to live together or act jointly for purposes of business or trade or in their dealings with properties, would not give them the status of coparceners under the Mitakshara law.”

11. The Privy Council in Randhi Appalaswami v. Randhi Suryanarayanamurti [Randhi Appalaswami v. Randhi Suryanarayanamurti, 1947 SCC OnLine PC 42 : ILR 1948 Mad 440] held as follows : (SCC OnLine PC)

“... The Hindu law upon this aspect of the case is well settled. Proof of the existence of a joint



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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.”

The aforesaid view was accepted by this Court in Shrinivas Krishnarao Kango v. Narayan Devji Kango [Shrinivas Krishnarao Kango v. Narayan Devji Kango, (1955) 1 SCR 1 : AIR 1954 SC 379] .

12. *In D.S. Lakshmaiah v. L. Balasubramanyam [D.S. Lakshmaiah v. L. Balasubramanyam, (2003) 10 SCC 310] this Court held as follows : (D.S. Lakshmaiah case [D.S. Lakshmaiah v. L. Balasubramanyam, (2003) 10 SCC 310] , SCC p. 317, para 18)*

“18. The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of



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existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.”

Similar view was taken in Rukhmabai v. Lala Laxminarayan [Rukhmabai v. Lala Laxminarayan, (1960) 2 SCR 253 : AIR 1960 SC 335] and Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade [Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade, (2007) 1 SCC 521] . The law is thus well settled that the burden lies upon the person who alleges the existence of the Hindu Undivided Family to prove the same.”

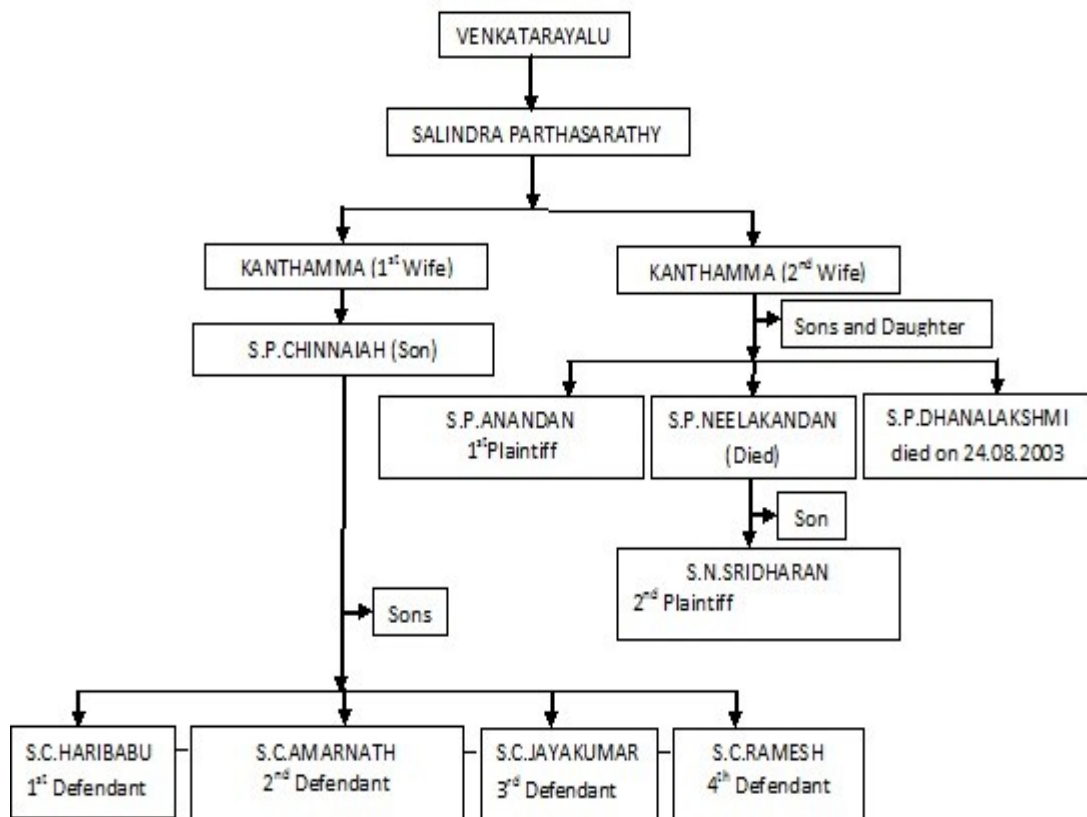
Therefore, the learned Counsel for the respondents would contend that the Trial Court has rightly dismissed the suit and would pray that the Appeal Suit may be dismissed.



G. Findings on Facts:

19.I have considered the rival submissions made on behalf of either side and perused the material records of this case.

20.Regarding the parties, except for the minor contradiction, regarding the name of the father, in respect of the third defendant in the suit, the relationship is admitted by the parties, and therefore, I find that the following genealogy is a correct one depicting the relationship between the parties:-





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21.As far as the suit property is concerned, a perusal of **Ex.A-9**, being the plaint filed the suit in C.S.No.24 of 1971, **Ex.A-10**, the written statement, **Ex.A-11**, the joint compromise memo entered into between the parties, **Ex.A-12**, the release deed, **Ex.A-13**, the decree in C.S.No.24 of 1971, the three sale deeds in **Ex.B-2**, **Ex.B-3**, **Ex.B-4**, and the oral evidence of the parties, I find that the following are the facts:-

- One *Sailendra Venkatarayalu*, the grand-father of the first plaintiff and the great-grand-father of the second plaintiff and the defendants Nos.1 to 4, in the suit, was in occupation of an extent of 4332 Sq.ft of the property in S.No.32 being part of what is known as Rangoon Cherry, Chennai – 6, bearing new R.S.No.32/1, and he had also put up a superstructure in the same property and he and his family were residing in the said property;
- After the death of the said *Sailendra Venkatarayalu*, his only son namely *Sailendra Parthasarathy*, was in enjoyment of the property. The said *Sailendra Parthasarathy*, had two wives. The plaintiffs represent the clan through the second wife and the defendants represent the clan through the first wife;
- Of the total extent, the front portion bearing an extent of 1716 was



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sub-leased, and the sub-tenants had also put up a superstructure being a Hotel upon the same;

- One *Rajeshwari* and *others* claimed to be the purchasers of the larger extent of the property in the said Rangoon Chery by way of a certificate of sale, dated 15.05.1954 and filed a suit for eviction of the tenants/occupants of the said larger extent of the property. In the said suit, the said *S.P.Chinnaiah*, the father of the defendants Nos.1 to 4, and the brother of the first plaintiff was arrayed as 44th defendant and sub-tenants were arrayed as the 48th and 49th defendant.
- A separate memorandum of compromise was entered into between the third party claimants/plaintiffs and *S.P.Chinnaiah*, the 44th defendant and the sub-tenants, defendants Nos.48 and 49, and as per the said Memorandum of Compromise, which formed part of the decree in the said suit, a total sum of Rs.82,000/-, shall be paid by the sub-tenants, namely 48th and 49th defendants to the plaintiffs in the said suit;
- Upon payment of the said sum, the plaintiffs in the said suit, agreed to convey the schedule 'A' property of an extent of 1716 Sq.ft



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absolutely in favour of the sub-tenants, namely, the 48th and 49th defendants, and the present suit scheduled property i.e., an extent of 2616 Sq.ft in favour of the 44th defendant and the 44th defendant along with the other legal heirs of the original tenant, *Venkatarayalu*, should also execute a release deed in favour of the sub-tenants, namely the defendants Nos.48 and 49, in respect of the superstructure and rights relating to the 1716 Sq.ft.;

- A perusal of ***Exs.B-2 to B-4***/ sale deeds and ***Ex.A-12***/release deed, it is clear that the said sub-tenants, by themselves and by arranging from the third parties and had paid the entire sum of Rs.82,000/-, and none of the sale consideration was paid by the Late *S.P.Chinnaiah*, the father of the defendants Nos.1 to 4.
- Even though the same sub-tenants, namely, the defendants Nos.48 and 49, got all the relevant documents, namely, the sale deeds from the plaintiffs in the said suit and the release deed from the first plaintiff, and his brothers, vide ***Ex.A-12***, there was NO sale deed which was executed in favour of the Late *S.P.Chinnaiah*, the 44th defendant in the suit, either in his individual capacity or in the capacity as the "*Kartha*" of the family;



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- However, except for the non-execution of the sale deed, as far as the plaintiffs in C.S.No.24 of 1971 are concerned, it can be seen that they have received the sale consideration and relinquished their rights thereof in respect of the present suit property and they have no claim of any right, title whatsoever in respect of the suit property.
- The plaintiffs and the defendants are jointly in occupation of the suit property ever since the date of decree in the said suit in C.S.No.24 of 1971 and even prior to the decree also.
- While so, in the year 2007, by the partition deed, which is sought to be declared as null and void, for the first time, the defendants Nos.1 to 4 tried to deal with the suit schedule property by partitioning the same between themselves.

H. Point for Consideration:

22.On the above facts, now the question that has to be determined is as to the nature and title in respect of the suit schedule property. It may be seen that the Late *S.P.Chinnaiah*, himself had categorically claimed in *Ex.A-9*/written statement that the property belonged to his ancestors. He did not obtain any sale deed in his individual name, even after the decree



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based on the Joint Memorandum of Compromise dated 07.03.1977. Even in the said Joint Memorandum of Compromise, though it mentioned that the property should be conveyed to the 44th defendant, it also clearly mentions that in respect of the other extent to be given to the sub-tenants, the release deed should be executed by all the legal heirs of *Venkatarayalu*. Therefore, it can be seen that even though the title sought to be derived in the name of Late *S.P.Chinnaiah*, it is only on behalf of the joint family. As a matter of fact, the question as to whether the *S.P.Chinnaiah* had any income or was working with the Government or not, does not arise for consideration at all as the entire sale consideration being the sum of Rs.82,000/-, was paid to the owners of the property, namely *Rajeshwari* and *others*, was paid only by the defendants Nos.48 and 49 in the suit. The manner of payment is clearly expressly mentioned in **Ex.B-2**/sale deed itself and it is necessary to extract the same, which reads as follows:-

“ NOW, THIS DEED OF ABSOLUTE SALE WITNESSES, that in pursuance of aforesaid agreement and in consideration of the sum of Rs.82,000/- paid to the vendors in the manner following Rs.22,000, paid by the defendants Nos.48 and 49, vis., Haji. M.K. Abdullah and E.V.Abubaker,



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to the vendors on 08.03.1977; Rs.15,000/- paid by the purchasers herein to the vendors through the said Haji M.K. Abdullah and E.V.Abubakar, by cheque No.B.D.618586, dated 04.07.1977, drawn on the State Bank of India, Teynampet, favouring the vendors, and Rs.45,000/- to be paid by the purchasers to the vendors before the Registering Officer at the time of registration of the sale deed, the receipt of which sum of totalling Rs.82,000/- in the manner aforesaid, the vendors do hereby admit and acknowledge and release the purchasers from payment of the same.”

23. Therefore, the sale consideration was paid by the said sub-tenants. The same was paid in consideration of the alienation of the tenancy rights/right to occupation of the family, and it was originally acquired by the said *Venkatarayalu*, inherited by *Sailendara Parthasarathy*, and thereafter, inherited by the first plaintiff, the father of the defendants *Late S.P.Chinnaiah* and *others*. Therefore, in this case, the evidence is on record to show that if at all the title, even if it is said to have been in the individual name of *S.P.Chinnaiah*, the same is derived by payment of consideration of the sum of Rs.82,000/-, by third parties,



which is in consideration towards the rights of joint family over the subject matter property. The joint family nucleus need not necessarily be cash or funds and can be in any form. The tenancy/leasehold rights are inheritable in nature and became the rights of all the heirs of *Sailender Parthasarathy*. The Hon'ble Supreme Court of India has categorically held in ***Tara Chand and Another -Vs- Ramprasad***⁵, that these rights are inheritable and it is relevant to extract paragraph No.16, which reads as follows :-

*"16. On her death, the rights to succession to an estate of the deceased owner vested immediately on his/her than (sic then) nearest heirs and cannot be held in abeyance except when a nearer heir is then in the womb. The vested right cannot be divested except by a retrospective valid law. **The appellants by virtue of intestate succession under Hindu Succession Act, being Class I heirs, succeeded to the heritable interest in the leasehold right of a demised premises held by Smt Anandi. They, thereby, stepped into the shoes of the tenant.** They continued to remain in possession as on the date of the suit as statutory tenants. Thereby, they are entitled to the protection of their continuance as a statutory tenant under the Act. The succession having been opened to the appellants and succeeded in September 1966 to the estate of the tenant without any hiatus and restriction on the heritable interest in the leasehold right held by the tenant Smt Anandi, the Amendment Act being admittedly prospective in operation, does not apply to the facts of the case and does not have the effect of divesting their vested rights in the leasehold held*

⁵ (1990) 3 SCC 526



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by the tenant. They are entitled to enjoy the tenancy rights without any restrictions or hedge put by the Amendment Act. We, thereby, hold that the Amendment Act does not apply to the facts of this case. But the appellants succeeded to the heritable interest in the leasehold right in the demised premises governed by the Act subject to the rights and limitations prescribed under the Act and also subject to the rights in favour of the respondent created under Section 13(1)(a) to (k) and other provisions of the Act.."

[Emphasis Supplied]

Therefore, it is only from the joint family nucleus and the said *S.P.Chinnaiah* did not pay any money from and out of his individual income towards the acquisition of the title in respect of the suit scheduled property. From the conduct of the Late *S.P.Chinnaiah* that he did not obtain the sale deed in his individual name the conclusion is fortified. Further all the brothers continued to be in occupation of the suit property before and after the decree, and it clearly and categorically proves the joint ownership of the suit property. Therefore, I hold that the first plaintiff, the second plaintiff being the son of deceased *S.P.Neelakandan*, and the first and second plaintiffs being the only legal heirs of *S.P.Dhanalakshmi*, who died on 24.08.2003, and the defendants Nos.1 to 4 in the suit being the sons of *S.P.Chinnaiah*, are all the joint owners of the suit property.



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24.As a matter of fact, the Trial Court found in paragraph No.19 of the Judgment that as if there is a sale deed in the name of *S.P.Chinnaiah*, and it is the bounden duty of the plaintiffs to prove that the suit property belongs to them, the said finding by itself is erroneous, as there is no sale deed in the name of *S.P.Chinnaiah*. It was further held that there is no evidence to show that the joint family was having sufficient income to pay the sale consideration of Rs.82,000/-, the same is perverse in the teeth of ***Ex.B-2*** sale deed produced by the defendants themselves.

25.The further finding that the said *S.P.Chinnaiah* was working in the Labour Department, and the same is also not disputed by the plaintiffs, is also without any application of mind and as no money was ever paid by the said *S.P.Chinnaiah*, and therefore, whether the said *S.P.Chinnaiah*, or even for that matter, whether the first plaintiff or the others, were working or not, was not at all a relevant question in the suit.

26.The further finding of the Trial Court in paragraphs Nos.20 and 21, that the suit property was purchased by the said *S.P.Chinnaiah* in the year 1977 is again factually incorrect and even after the compromise



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decree, the Late *S.P.Chinnaiah*, has specifically omitted to obtain any sale deed from the plaintiffs in the earlier suit in C.S.No.24 of 1971, namely, *Rajeshwari* and *others*. Thus, each and every finding on the Trial Court is absolutely without even adverting to the documentary evidence on record and the Judgment of the Trial Court, is absolutely unsustainable and is liable to be interfered with.

I. Answer to the Issues :

27.In view of my above findings, I answer the recast issue No.1 that the suit property is the joint family property of the plaintiffs and the defendants. In view thereof, issue No.2 is answered that the defendants alone cannot enter into a partition deed on 16.05.2007 and that the same is null and void and the plaintiffs are entitled for a declaration as such. The plaintiffs are also entitled for the consequential relief of permanent injunction and I accordingly answer issue No.4. As far as issue No.3 is concerned, since I have answered that the property is joint family property and is in joint possession, I hold that the plaintiffs have correctly valued the suit property. In view thereof, I answer issue No.5 that the plaintiffs are entitled to the reliefs prayed for, in the plaint namely the declaration



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that the partition deed dated 16.05.2007, is null and void, and for a permanent injunction, restraining the defendants or their men or agents from encumbering or alienating or in any manner dealing with the suit property.

J. The Result:

28.The Appeal Suit in A.S.No.175 of 2013 is allowed;

(i) The Judgement and Decree dated 01.03.2013, in O.S.No.14807 of 2010, on the file of the XIX-Additional City Civil Court, Chennai, is set aside;

(ii) The O.S.No.14807 of 2010, on the file of the XIX-Additional City Civil Court, Chennai, stands decreed as prayed for;

(iii) The appellants/ plaintiffs are entitled for the costs;

(iv) Consequently, the connected miscellaneous petition is closed.

12.10.2022

Index : yes/no

Speaking/Non-speaking order

klt



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D.BHARATHA CHAKRAVARTHY, J.

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To

- 1.The XIX-Additional Judge, City Civil Court, Chennai.
- 2.The Section Officer, V.R. Section, High Court of Madras.

A.S. No.175 of 2013
and
M.P.No.1 of 2013

12.10.2022