



C.S.No.518 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Judgment Reserved on
27.10.2022

Judgment Pronounced on
25.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

C.S.No.518 of 2007

RM. Meenal
5203, Julestar Dr.Centre ville, VA.,
20120-3019 USA
represented by her Power of Attorney Agent
S.Thirunavukkarasu
No.21, Sreepuram Colony,
First Cross Street,
St.Thomas Mount,
Chennai-600 016.

... Plaintiff

..VS..

1. RM. Sethu
2. RM. Thenammai
3. M.Sornam
4. PL. Chidambaram (deceased)
5. CT. Vallikannu
6. CT. Sethuraja
7. CT. Suganthi
8. D.S.Kulkarni Developers Limited



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“Gayathri”, 3rd Floor
No.3, Dr.Neduncheahian Road
Kalakshetra colony,
Besant Nagar, Chennai – 600 090.

9. NuMart Developers Pvt. Ltd.,
“Mantri House”, No.41
Vittal Mallya Road
Bangalore – 560 001.

... Defendants

(4th defendant was impleaded as per order dated 05.12.2008 in Application No.4379 of 2008).

(Defendants 5 to 7 were impleaded as legal heirs of deceased 4th defendant, vide order dated 02.01.2014 in Application No.5868 of 2013)

(Defendants 8 and 9 were impleaded as per order dated 30.08.2016 made in Application No.654 of 2014)

This Civil Suit is filed under Order VII Rule 1 of CPC read with Order IV Rule 1 of Original Side Rules and Order XXIV of Original Side Rules praying to pass the judgment and decree,

a) that the properties of joint Hindu family of late P.L.Ramanathan @ P.L.Meenakshi Sundaram morefully described in the schedule hereunder be divided by metes and bounds and 1/3rd share be allotted to the plaintiff;

b) that an Advocate Commissioner be appointed to divide the immovable properties of the joint Hindu family of



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P.L.Ramanathan @ P.L.Meenakshi Sundaram and others by
metes and bounds and to give separate possession of the 1/3rd
share to the plaintiff ;

c) that an account be taken of the properties, both
movable and immovable of late P.L.Ramanathan @
P.L.Meenakshi Sundaram including the funds in his bank
accounts, shares, jewels and the businesses of the family run
under the name of Palaniappa Bankers and Palaniappa Jewellers;

d) that the costs of the suit be deducted out of the estate of
the joint family of late P.L.Palaniappa Chettiar and others.

For Plaintiff : Mr.P.L.Narayanan

For Defendant-1 : Mr.V.Anand
for
Mr.S.Victor Prasath

For Defendant-3 : Mr.V.Raghavachari

For Defendants 5 to 7 : Mr.AR.L.Sunderesan
for
M/s.AL.Ganthimathi

For Defendant-9 : Mr.G.Vivekanand

JUDGMENT



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This is a suit for partition, accounts and costs.

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2. The plaintiff is one of the coparceners of the joint family, consisting of her father late P.L.Ramanathan @ P.L.Meenakshi Sundaram and her brother R.M.Sethu. Defendants 2 and 3 are the plaintiff's mother and sister. The joint Hindu family of late P.L.Ramanathan @ P.L.Meenakshi Sundaram possessed several immovable properties at Chennai, Madurai and Kumbakonam, apart from the properties owned in Malaysia. The properties were purchased during the lifetime of plaintiff's grandfather late Palaniappa Chettiar out of the joint family nucleus in the name of various members of joint Hindu Family of grandfather late Palaniappa Chettiar. Some of the properties of larger joint Hindu family of grandfather late Palaniappa Chettiar were divided and distributed to the joint Hindu family of his sons including joint Hindu family of P.L.Ramanathan @ P.L.Meenakshi Sundaram and few other properties still retain their character as properties of joint Hindu family of grandfather late Palaniappa Chettiar. Thus, all the assets and properties owned by P.L.Ramanathan @ P.L.Meenakshi Sundaram are properties traceable to ancestral wealth and none of the properties are self acquired



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properties of P.L.Ramanathan @ P.L.Meenakshi Sundaram and therefore, the plaintiff has vested right, title and interest over the properties as coparceners. She is entitled to 1/3 share in the properties of the joint Hindu family. Plaintiff's father died on 10.04.1992 and plaintiff was aged about 17 years and was unmarried at that time. She got married in 1998. After the death of plaintiff's father, first defendant started managing the joint family properties in India and in Malaysia and was maintaining the entire accounts. In view of the close relationship, neither the plaintiff nor defendants 2 and 3 have raised any issues. However, first defendant became very selfish and wanted to have all the wealth to himself. Second defendant, who is executrix of the Will of the plaintiff's father was not even allowed to perform the duties as the executrix and first defendant kept her away from the affairs of the properties and assets.

3. Plaintiff's father made a Will dated 04.03.1991 as his last Will and Testament. Apart from appointing family friend Valliappan @ Palaniappan @ Sinna Valieppan @ Valieppa Chettiar, as the executor of his will, he appointed his wife, the second defendant, as the executrix to act jointly and severally. Though the Will states that the executors shall pay and apply



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such sums according to the Chettiar Community customs as required for the marriage expenses, gifts and dowry for the plaintiff, when the second defendant wanted to take and apply such amounts from the assets of the plaintiff's late father, first defendant did not allow her. The deceased father expressed his desire that the marriage of the plaintiff should be celebrated in a grand manner, but the first defendant stood in the way. However, second defendant conducted plaintiff's wedding in a grand manner by incurring huge expenditure by borrowing. The Will was probated before the Court of Malaysia. It was known to the plaintiff that first defendant had alienated the Malaysian property and appropriated huge wealth to himself, without the knowledge of the plaintiff and other family members. First defendant constructed a house at Thennore, Trichy, out of the joint family assets. Plaintiff is entitled to 1/3 share as a coparcener of the joint Hindu family in respect of the joint family assets. First defendant was trying to illegally deal with plaintiff's share in the properties claiming under the Will of late father. Therefore, a notice dated 25.01.2006 was issued to the first defendant calling upon him not to deal with plaintiff's 1/3 share in the properties. First defendant sent a reply dated 23.02.2006 claiming that there are no joint family



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properties and that the properties are self acquired properties of late P.L.Ramanathan @ P.L.Meenakshi Sundaram. This is a false claim.

Therefore, this suit.

4. Case of the first defendant is that there is no joint family comprising of late father P.L.Ramanathan @ P.L.Meenakshi Sundaram, plaintiff and first defendant. It is denied that the joint family of late P.L.Ramanathan @ P.L.Meenakshi Sundaram possessed several immovable property at Chennai, Madurai, Kumbakonam and Malaysia. It is also denied that the properties were purchased during the life time of plaintiff's grandfather Palaniappa Chettiar in the name of various members of joint family out of the joint family nucleus, that some of the properties were divided and distributed and some other properties still retain the character of joint family properties. Plaintiff's claim as a coparcener of joint family and she is entitled to 1/3 share is not correct. She is not entitled to any share. Properties of father were initially managed by second defendant and one Valliappan as executors of the Will executed by late P.L.Ramanathan Chettiar @ P.L.Meenakshi Sundaram. Second defendant as an executrix sold one of the property in Malaysia and she



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has not properly accounted it. The Will of P.L.Ramanathan Chettiar @

P.L.Meenakshi Sundaram was probated at Malaysia. First defendant spent a huge sum on the marriage of the plaintiff. First defendant is the absolute owner of the properties. It is denied that the first defendant purchased properties at Trichy and constructed a bungalow using the amounts collected by selling the properties at Malaysia. Trichy property belongs to the first defendant and his wife jointly and was purchased out of their own funds. Kopanpatti property is not an ancestral property. Palaniappa Financiers at Kumbakonam was run exclusively by second defendant and was closed by her in 2005. First defendant sent a suitable reply to plaintiff's notice. There are no joint family properties. All the properties are the absolute properties of the first defendant. There is no cause of action for the suit. Suit is not properly valued. Till this day, first defendant is providing gifts to the plaintiff periodically and the plaintiff is happily living with her husband in USA. Second defendant is retaining with her Rs.4,00,000/- which was set apart in 1992 and that amount would be given to plaintiff and third defendant after the lifetime of the second defendant. Jewels are also in the custody of second defendant and it is for her to make division of the jewellerys. There is no joint



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family properties and therefore, the suit is liable to be dismissed.

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5. Case of the defendants 5, 6 and 7 is that they are the legal heirs of the deceased fourth defendant. The suit is not maintainable. Item No.1 of the suit property is not the property of P.L.Ramanathan @ P.L.Meenakshi Sundaram. P.L.Ramanathan @ P.L.Meenakshi Sundaram's father L.P.L.Palaniappa Chettiar and fourth defendant's father P.L.Palaniappa Chettiar were very close relatives. P.L.Palaniappa Chettiar's sister was given in marriage to L.P.L.Palaniappa Chettiar and as such, they were brother-in-laws. They were carrying on business of partnership in Malaysia and India. They had the habit of sending their savings from the share of income of the said firm to India for the purchase of immovable property and such property would be purchased in the name of family members of the said persons. Accordingly, on 04.02.1966, funds were provided by the said L.P.L.Palaniappa Chettiar, grand father of the plaintiff and P.L.Palaniappa Chettiar, father of the fourth defendant in the ratio of 5 : 8 and 3 : 8 respectively and the property was purchased in the name of P.L.Ramanathan Chettiar S/o. L.P.L.Palaniappa Chettiar. Though the property was purchased



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through the sale deed in the name of P.L.Ramanathan Chettiar, it was never intended to be his absolute property at any point of time. It was purchased out of the funds of L.P.L.Palaniappa Chettiar and P.L.Palaniappa Chettiar. It was acknowledged in the accounts of L.P.L.Palaniappa Chettiar. P.L.Ramanathan Chettiar also acknowledged this in Urban Land Ceiling proceedings that the entire 62 cents did not belong to him, but belong to his father L.P.L.Palaniappa Chettiar and fourth defendant's father in the ratio of 5/8 and 3/8.

6. On 06.09.1967, L.P.L.Palaniappa Chettiar and P.L.Palaniappa Chettiar entered into an agreement duly acknowledging that 62 cents in Plot No.112, Survey No.672 of Velacherry was purchased in the name of P.L.Ramanathan Chettiar on 04.02.1966 out of the funds provided by them and it was purchased for the benefit of two of them. P.L.Ramanathan Chettiar had also admitted the factum of the said agreement. Thus, plaintiff's grandfather L.P.L.Palaniappa Chettiar was entitled to only 5/8 share in item No.1 of the suit schedule. Plaintiff and defendants 1 to 3 can only claim share in 5/8 and not in respect of the entire item No.1 of the property.



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7. 3/8 share in item No.1 belong to P.L.Palaniappa Chettiar and after his death, it devolved upon his legal heirs. Fourth defendant, being the son of P.L.Palaniappa Chettiar, is one of the legal heirs and defendants 5 to 7 being the legal heirs of deceased fourth defendant are entitled to his share. P.L.Palaniappa Chettiar had a daughter by name P.L.Thenammai and she was given in marriage several decades ago and hence, she is not entitled for share. P.L.Palaniappa Chettiar had also one son by name P.L.Palaniappan. He is not cooperating with the fourth defendant, for impleading in the suit. Thus, these defendants are entitled to 1/2 of 3/8 share in item No.1 of the suit schedule. They pray that preliminary decree of partition and separate possession of 3/16 share of item No.1 may be granted in their favour.

8. It is stated in the written statement filed by the Ninth defendant that Ninth defendant is concerned with the land measuring 2.85 acres in S.No.208/3A, New S.No.208/20 situated at Nagalkeni, Pammal Village, Chrompet. Plaintiff is not in possession of the said 2.85 acres and therefore, valuation of the suit on the basis of joint possession and payment of



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Court Fee is not correct. This land was developed as apartment complex and were sold to third party purchasers. Third party purchasers are in exclusive possession and enjoyment of 2.85 acres. Third party purchasers are not impleaded as parties and therefore, the suit is bad for non-joinder of necessary parties. Other legal heirs of L.P.L.Palaniappa Chettiar were also not impleaded. All the assets and liabilities of the joint family are not included and therefore, the suit is bad for partial partition.

9. Originally this property belonged to M.Murthuraja Sahib, S/o.Madhar Sahib. He sold the property to K.Abdul Kader Sahib on 07.08.1939 and after intermediate sales, finally, one K.A.Shaik Mohammed Saibu sold the said 2.85 acres in favour of L.P.L.Palaniappa Chettiar, S/o.Letchumanan Chettiar on 12.02.1976. Palaniappan @ Thiyagarajan, S/o. L.P.L.Palaniappa Chettiar @ Sethu Chettiar predeceased on 31.01.1992 leaving behind his wife P.L.Valliammal and children, viz., (1)P.L.Sethuraman (2)P.L.Palaniappan @ Chinnathambi (3)P.L.Eagappan and (4) P.L.Senthilnathan. L.P.L.Palaniappa Chettiar died on 18.10.1985 and he executed his last Will and Testament on 18.08.1983 bequeathing his properties



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mentioned in para-4(g) of the Will in equal shares to his sons, viz., (1) Meenachisundaram @ Ramanathan (2) Lakshmanan @ Singaram @ Sethulakshmanan (3) Rajendran @ Muthappan and (4) children of L.P.L.Palaniappa Chettiar's predeceased son Palaniappan @ Thiyagarajan. This Will remains undisputed and unchallenged till date. L.P.L.Palaniappa Chettiar appointed his eldest son Meenachisundarm @ Ramanathan and third son Lakshmanan @ Singaram @ Sethulakshmanan as executors of the Will and the Will dated 18.08.1983 was probated before the High Court of Malaya at Kuala Lumpur on 22.04.1986.

10. The said 2.85 acres was assigned new S.No.208/20 measuring 1.15.5 hectares and registered in the name of P.Ramanathan and six others. Meenachisundaram @ Ramanathan died on 10.04.1992 leaving behind his last Will and Testament dated 04.03.1991. This Will was probated before the High Court of Malaya at Kuala Lumpur by grant of probate dated 12.02.1999. Rajendran @ Muthappan, S/o. L.P.L.Palaniappa Chettiar died on 20.09.2003 leaving behind Chithradevi - his wife, children – Sornalakshmi and Sethunarayanan to succeed to his estate. (1) Sethulakshmanan @ Singaram,



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(2) R.M.Sethu (3) P.L.Sethuraman (4) P.L.Palaniappan @ Chinnathambi (5)

P.L.Eagappan (6) P.L.Senthilnathan (7) Chitradevi and (8) Sethunarayanan

partitioned the property among themselves in terms of the Will dated

18.08.1983 of L.P.L.Palaniappa Chettiar vide partition deed dated

27.03.2006. The said 2.85 acres was divided as follows:-

R.M.Sethu	-	0.71 $\frac{1}{4}$ acres
P.L.Sethuraman and 3 others	-	0.71 $\frac{1}{4}$ acres
Sethu Lakshmanan @ Singaram	-	0.71 $\frac{1}{4}$ acres
Chitradevi and Sethunarayanan	-	0.71 $\frac{1}{4}$ acres

11. They offered these properties to the Eighth defendant.

Eighth defendant through its counsel issued paper publication on 06.12.2007

in Dinamalar and on 07.12.2022 in New Indian Express. No claims of

objection was received. Eighth Defendant purchased the said 2.85 acres acres

on 10.01.2008 and in exclusive possession and enjoyment of this property.

Eighth defendant entered into an agreement of sale dated 05.04.2010 in

respect of this property with Ninth defendant. Eighth defendant appointed

Ninth defendant as power of attorney agent on 05.04.2010. As per the power



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of attorney deed, Ninth defendant applied for planning permission for construction of residential building consisting Blocks A to J with 272 dwelling units. Ninth defendant spent substantial amounts towards obtaining planning and building permission for the construction. Entire 2.85 acres along with building were sold in favour of prospective purchasers. There are more than 200 families living in the said 2.85 acres. Ninth defendant is a bonafide purchaser for valuable consideration. First defendant and Eighth defendant suppressed the pendency of this suit. Plaintiff had acquiesced the right, interest and title of this defendant in 2.85 acres. Without prejudice to its contention, Ninth defendant submits that if this Court finds that the plaintiff is entitled to partition of the said 2.85 acres, on equity, the said 2.85 acres shall be allotted in favour of the first defendant and the plaintiff be allotted any other plaint schedule property equivalent to the value of the plaintiff's share in the said 2.85 acres.

12. On the basis of these pleadings, the following issues were framed, on 25.10.2016, for trial:-



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1. Whether the plaintiff is entitled for the relief of partition ?
2. Whether the plaintiff is entitled for one third share in the suit properties and separate possession thereof ?
3. Whether there are and were businesses of the family at Kumbakonam run under the name and style of Palaniappan Bankers and Palaniappa Jewellers and whether the first defendant is liable to account for the profits in the said business ?
4. Whether the suit properties are the joint family properties or absolute properties of late P.L.Ramanatha Chettiar ?
5. Whether the plaintiff is in joint possession of the suit properties ?
6. Whether the Court Fees paid under the Section 37(2) of Court Fees Act is maintainable ?
7. Whether the plaintiff is entitled for any other relief or reliefs?

On 10.01.2017, the following additional issues were framed:-



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- (1) Whether the suit is barred for non-joinder of proper and necessary parties ?
- (2) Whether the suit is barred by limitation ?
- (3) Whether the suit is barred for partial partition ?
- (4) Whether sale in the name of the ninth defendant is hit by lis pendens ?
- (5) To what extent the plaintiff is entitled to ?

13. PW.1 was examined and Exs.P1 to P8 were marked. DW.1 and DW.2 were marked and Exs.D1 to D22 were marked.

14. Learned counsel for the plaintiff submitted that the suit properties were purchased from the joint family nucleus. Therefore, the suit properties are joint family properties and as such, the plaintiff is entitled to 1/3 share. Ex.D16 is a copy of the Will executed by father late P.L.Ramanathan @ P.L.Meenakshi Sundaram. Provision is made for the daughters, namely, plaintiff and third defendant in the Will. However, defendants 1 and 2 have not followed the directions in the Will and failed to make provisions for



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plaintiff and third defendant as per Will. The documents produced in this case, namely, Ex.P2 – Certified copy of the sale deed and Ex.D11 – photocopy of the Will dated 18.08.1983 executed by the grandfather of the plaintiff, would show that there were ancestral properties and out of the ancestral nucleus, the suit properties were purchased. First defendant is in possession of all the relevant and material documents. However, he has not chosen to produce those documents. Plaintiff has proved that the suit property is purchased from the ancestral nucleus and therefore, the suit is to be decreed as prayed for.

15. Learned counsel for the first defendant submitted that the execution and probate of Ex.D11 and Ex.D16 Wills are not disputed, rather admitted by all the parties. Plaintiff and third defendant received benefits under Ex.D16 Will. No ancestral nucleus or property is mentioned in Ex.D5. There is absolutely no evidence to show that there was ancestral property or ancestral nucleus available in the family. In the absence of any evidence to show the availability of ancestral property and ancestral nucleus, the Will executed by L.P.L.Palaniappa Chettiar in Ex.D11 and Will executed by



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P.L.Ramanathan @ P.L.Meenakshi Sundaram in Ex.D16 are to be construed only as related to self-acquired properties. Clause-4(f) and (g) in Ex.D11 indicate that after the lifetime of testator, the capital gain and interest should be divided among his heirs.

16. It is further submitted that the claim of defendants 5 to 7 relying on Exs.D8, D9 and D18 to D21, as if they are entitled to 3/8 share in item No.1 of the suit property is not correct. Ex.D9-order passed by the land ceiling authority shows that the property belongs to P.L.Ramanathan @ P.L.Meenakshi Sundaram. That order became final. Ex.D18 is hit by Section 4(1) and (2) of the Prohibition of Benami Transaction Act, 1988. Ex.P2- sale deed, Ex.D5- auditor statement and Ex.D6-income tax return of the grandfather show that Ex.D11-Will was executed in respect of self acquired properties. The counter claim by defendants 5 to 7 is not maintainable. No presumption can be drawn with regard to the existence of ancestral joint family property or ancestral joint family nucleus, unless it is supported by evidence. There is no pleading with regard to the jewels. PW.1 – power agent of the plaintiff is the root cause for filing this suit, with a view to grab the property



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from the first defendant.

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17. Learned counsel for the defendants 5 to 7 submitted that these defendants are concerned with item No.1 of the suit properties alone. Though item No.1 of the suit properties was purchased in the name of plaintiff's father P.L.Ramanathan @ P.L.Meenakshi Sundaram, this property was purchased by plaintiff's grandfather L.P.L.Palaniappa Chettiar and fourth defendant's father and defendants 5 to 7's grandfather P.L.Palaniappa Chettiar, in the name of P.L.Ramanathan @ P.L.Meenakshi Sundaram. It is evident from Exs.D5 to D9 and D18 to D21. As per these documents, defendants 5 to 7 are entitled for 3/8 share in item No.1 of the suit properties.

18. Learned counsel for the ninth defendant submitted that ninth defendant is concerned only with item No.2 of the suit properties. This property was originally purchased by L.P.L.Palaniappa Chettiar. It was his self acquired property. L.P.L.Palaniappa Chettiar bequeathed item No.2 of the suit properties to and in favour of his sons equally. All his sons and in the absence of his sons, their legal heirs, are entitled for a share in item No.2 of the



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suit properties. However, plaintiff has not impleaded all the rightful claimants as parties to the suit. Therefore, the suit is bad for non-joinder of necessary parties. Item No.2 of the suit properties was purchased by ninth defendant, from the legal heirs of L.P.L.Palaniappa Chettiar. Residential units were constructed in item No.2 of the suit properties and sold. The purchasers are not impleaded as parties to the suit properties. Few other properties still retain the character of joint family properties. Those properties are not included. Therefore, the suit is bad for partial partition. In the original plaint, item No.5 of the suit properties was struck off, but in the amended plaint, item No.5 of the suit properties was included without seeking permission from the Court. Item No.2 of the suit properties was not ancestral property or purchased from ancestral nucleus, but it was a self acquired property of L.P.L.Palaniappa Chettiar.

19. In reply, learned counsel for the plaintiff submitted that the Will executed by plaintiff's father, assuming that it is valid, it will be valid only to the extent of 1/16 share of the properties owned by the father, which



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came to him through the Will executed by his father L.P.L.Palaniappa Chettiar. Third defendant is also entitled for share in the properties, in view of the decision in *Vinita Sharma ..vs.. Rakesh Sharma reported in (2020) 9 SCC 1*. The claim of 1/3 share made in the plaint is not correct and the plaintiff is entitled for 1/16 share. Even if the parties make wrong claim, the Court shall apply the correct share of division as per law. In support of this claim, he relied the judgment in *Annapoorni ..vs.. Janaki* reported in *1995-1-LW-141*. All the legal heirs of L.P.L.Palaniappa Chettiar need not be impleaded for the reason that the suit is filed claiming share in the joint family properties, which came to the hands of the father P.L.Ramanathan @ P.L.Meenakshi Sundaram. In the plaintiff's community, management of the assets has always been with the male members and therefore, the plaintiff has no documents. However, first defendant, who is in possession of the documents, failed to produce the material documents. Adverse inference has to be drawn against him. MPLM firm was run by L.P.L.Palaniappa Chettiar with his brother-in-law P.L.Palaniappa Chettiar. This business is an ancestral business. Income from this business was utilised for the purchase of the suit properties. Even if it is held that the suit properties are not ancestral



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properties, plaintiff and third defendant are entitled to share, as per clause- (f) of Ex.D11- Will.

20. **Issue No.4:**

We understand from the case set out by the parties that the plaintiff filed this suit claiming herself as one of the co-parceners of the joint hindu family consisting of her father late P.L.Ramanathan @ P.L.Meenatchi Sundaram, her brother RM.Sethu, who is the first defendant. She impleaded her mother R.M.Thenammai, the second defendant and sister M.Sornam, the third defendant for effective adjudication. It is claimed that late L.P.L.Palaniappa Chettiar, out of the joint family nucleus, purchased properties in the names of the various members of the joint hindu family. Thus, all the properties owned by the joint hindu family consisting of her father late P.L.Ramanathan @ P.L.Meenatchi Sundaram are traceable to the ancestral wealth and none of the properties are self earned properties of late P.L.Ramanathan @ P.L.Meenatchi Sundaram. This case of the plaintiff is denied by the defendants. The specific case of the first defendant is that there is no joint hindu family properties available in the family.



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21. The first task of this Court is to find out whether the suit properties are joint hindu family properties or self acquired properties of plaintiff's father late P.L.Ramanathan @ P.L.Meenatchi Sundaram. The learned counsel appearing for the plaintiff relied on the judgment reported in ***(2007) 1 SCC 521 Appasaheb peerappa chamdgade Vs.Devendra peerappa chamdgade and others*** for the proposition that there is no presumption as to joint family property and the initial burden is on the assertor to prove that the property is a joint family property. He also relied on the judgment reported in ***(2013) 9 SCC 419 Rohit Chauhan Vs.Surinder singh and others*** for the proposition that the property acquired from partition by a sole co-parcener is his self acquired property. However, on the birth of a son, it becomes a co-parcenary property.

22. The learned counsel for the first defendant relied on the judgment ***Amirthalingam Vs. Uthayathamma and 15 others*** reported in ***1999 – 2 - LW 713*** for the proposition that one who alleges, that the properties were acquired from the ancestral nucleus and therefore, the acquired properties are



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joint family properties, has to prove that the family had ancestral properties and ancestral nucleus for purchasing the properties and thus, they acquired the character of joint family properties. For the same proposition, he relied on the judgment in *Appasaheb peerappa chamdgade Vs.Devendra peerappa chamdgade and others* reported in **2007 0 AIR SC 218**.

23. It is pertinent here to refer to the following judgments:

(i) In *Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade*, reported in **(2007) 1 SCC 521**. it is observed as follows:-

13. In Shrinivas Krishnarao Kango v. Narayan Devji Kango [(1955) 1 SCR 1 : AIR 1954 SC 379] their Lordships held that proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging

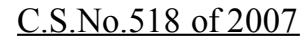


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self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property. Therefore, so far as the proposition of law is concerned, the initial burden is on the person who claims that it was joint family property but after initial discharge of the burden, it shifts to the party who claims that the property has been purchased by him through his own source and not from the joint family nucleus. Same proposition has been followed in Rukhmabai v. Lala Laxminarayan [(1960) 2 SCR 253 : AIR 1960 SC 335] wherein it was observed as follows: (SCR pp. 259-60)

“There is a presumption in Hindu law that a family is joint. There can be a division in status among the members of a joint Hindu family by definement of shares which is technically called ‘division in status’, or an actual division among them by allotment of specific property to each one of them which is described as ‘division by metes and bounds’. A member need not receive any share in the joint estate but may renounce his interest therein, his renunciation merely extinguishes his interest in the estate but does not affect the status of the remaining members vis-à-vis the family property. A division in status can be effected by an unambiguous declaration to become divided from the others and that intention can be expressed by



“Under Hindu law, when a property stands in the name of a member of a joint family, it is incumbent upon those asserting that it is a joint family property to establish it. When it is proved or admitted that a family possessed sufficient nucleus with the



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aid of which the member might have made the acquisition, the law raises a presumption that it is a joint family property and the onus is shifted to the individual member to establish that the property was acquired by him without the aid of the said nucleus. This is a well-settled proposition of law.”

15. Similarly, in Bhagwant P. Sulakhe v. Digambar Gopal Sulakhe [(1986) 1 SCC 366 : AIR 1986 SC 79] their Lordships have held that the character of any joint family property does not change with the severance of the status of the joint family and a joint family property continues to retain its joint family character so long as the joint family property is in existence and is not partitioned amongst the co-sharers. By a unilateral act it is not open to any member of the joint family to convert any joint family property into his personal property.

16. In Surendra Kumar V. Phoolchand their Lordships held as follows:

“It is no doubt true that there is no presumption that a family because it is joint possessed joint property and therefore the person alleging the property to be joint has to establish that the family was possessed of some property with the income of which the property could have been acquired. But such a



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presumption is a presumption of fact which can be rebutted. But where it is established or admitted that the family which possessed joint property which from its nature and relative value may have formed sufficient nucleus from which the property in question may have been acquired, the presumption arises that it was the joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family”.

17. Therefore, on survey of the aforesaid decisions what emerges is that there is no presumption of a joint hindu family but on the evidence of it is established that the property was joint hindu family property and the other properties were acquired out of that nucleus, if the initial burden is discharged by the person who claims joint hindu family, then 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 by cogent and necessary evidence.

(ii) *In **Rohit Chauhan v. Surinder Singh**, reported in (2013)*

9 SCC 419, it is observed as follows:-

11. In our opinion coparcenary property means the



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property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. Coparcenary is a narrower body than the joint Hindu family and before the commencement of the Hindu Succession (Amendment) Act, 2005, only male members of the family used to acquire by birth an interest in the coparcenary property. A coparcener has no definite share in the coparcenary property but he has an undivided interest in it and one has to bear in mind that it enlarges by deaths and diminishes by births in the family. It is not static. We are further of the opinion that so long, on partition an ancestral property remains in the hand of a single person, it has to be treated as a separate property and such a person shall be entitled to dispose of the coparcenary property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property becomes a coparcenary property and the son would acquire interest in that and become a coparcener.

12. The view which we have taken finds support from a judgment of this Court in M. Yogendra v. Leelamma N. [(2009) 15 SCC 184 : (2009) 5 SCC (Civ) 602] in which it has been held as follows: (SCC p. 192, para 29)



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“29. It is now well settled in view of several decisions of this Court that the property in the hands of a sole coparcener allotted to him in partition shall be his separate property for the same shall revive only when a son is born to him. It is one thing to say that the property remains a coparcenary property but it is another thing to say that it revives. The distinction between the two is absolutely clear and unambiguous. In the case of former any sale or alienation which has been done by the sole survivor coparcener shall be valid whereas in the case of a coparcener any alienation made by the karta would be valid.”

.....

14. As observed earlier, in view of the settled legal position, the property in the hands of Defendant 2 allotted to him in partition was a separate property till the birth of the plaintiff and, therefore, after his birth Defendant 2 could have alienated the property only as karta for legal necessity. It is nobody's case that Defendant 2 executed the sale deeds and release deed as karta for any legal necessity. Hence, the sale deeds and the release deed executed by Gulab Singh to the extent of entire coparcenary property are illegal, null and void. However, in respect of the property which would have fallen in the share of Gulab Singh at the time of execution of sale deeds



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and release deed, the parties can work out their remedies in appropriate proceeding.

(iii) In ***Amirthalingam vs. Uthayathamma*** reported in **1999 –**

2 – L.W.713, it is observed as follows:-

"There is no presumption that a Hindu family merely because it is joint, possesses any joint property. The burden of proving that any particular property is joint family property is joint family, is, therefore, in the first instance upon the person who claims it as coparcenary property. But if the possession of a nucleus of the joint family property is either admitted or proved, any acquisition made by a member of the joint family is presumed to be joint family property. This is however subject to the limitation that the joint family property must be such as with its aid the property in question could have been acquired. It is only after the possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self-acquisition to affirmatively make out that the property was acquired without any aid from the family estate. AIR 1947 PC 189. relied on."

24. From the consideration of these judgments, the following



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principles would emerge:

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- *No presumption that a property is joint family property, just because the family is joint.*
- *Burden rests on the claimant, who asserts that that the property is joint family property.*
- *To render the property joint, plaintiff must prove the following things:*

- ◆ *The family was possessed of some property with income and from which property could have been purchased.*

Or

- ◆ *The property must have been purchased from joint family funds such as sale proceeds of ancestral property or by joint labour*

It must be noted that these above alternatives are not legal presumptions, it must have been brought to the cognizance of the court by way of evidence.

- *Only when either of the above facts is established or admitted the burden shifts on the other side.*
- *Important element for consideration is the income which the nucleus yielded.*
- *Ultimately, what is to be shown is that the family had a*



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nucleus with sufficient surplus income, from which subsequent acquisitions could be made.

- ➔ *Well-settled proposition is that, if at the date of acquisition of a particular property in the name of any major or minor family member, sufficient nucleus exist, then presumption is that the property is joint, when the particular member has no independent income.*
- ➔ *Property in the hands of any one of the joint family members, which came into his/her hands by operation of law of inheritance, will be treated as his/her separate property.*
- ➔ *Further, the character of the joint family property does not change with severance of the status of joint family so long as the property is in existence and is not partitioned among the co-sharers.*
- ➔ *In the similar way, when the manager of the property claims a property to be a separate one, the burden is on him to prove that the property is not out of joint family nucleus.*

Therefore, it is clear that there must be positive evidence to show that there were ancestral property/properties and those properties yielded sufficient income to meet the expenses and there were savings and that



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savings, namely, ancestral nucleus was available and was used for the purchase of properties, which are claimed as joint hindu family properties.

Whether these factors are present in this case are to be considered now.

25. The original plaint, under the head schedule of properties, shows five items of properties. 5th item of the suit properties was deleted by scoring over the description of the property. However, in the amended plaint filed, item no.5 of the suit properties is also shown as one of the suit properties. One of the main contentions of the defendants is that without seeking any permission for inclusion of item no.5 of the suit properties, item no.5 of the suit properties was included in the amended plaint and therefore, the plaintiff is not entitled to seek any relief on item no.5 of the suit properties. On going through the records, this Court found that item no.5 of the suit properties was deleted by scoring over the description of the property in the original plaint and that was included in the amended plaint. The learned counsel for the plaintiff is not able to show that this inclusion of item no.5 of the suit properties in the amended plaint was made after obtaining proper permission from the Court by way of filing an amendment petition. Therefore,



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this Court is of the view that the defendants' claim that the plaintiff is not entitled to claim any relief in respect of item no.5 of the suit properties shown in the amended plaint is justified.

26. Not only that from the documents produced in this case, there is no evidence produced to show that item no.5 of the suit properties or for that matter, item no.3 & 4 of the suit properties are owned by the joint hindu family of late P.L.Ramanathan @ P.L.Meenatchi Sundaram. Not even a single piece of paper was filed to show, how these properties were acquired, by whom they were acquired, whether they were enjoyed by late P.L.Ramanathan @ P.L.Meenatchi Sundaram or by his legal heirs and whether they are presently in possession of any of the members of the family of late P.L.Ramanathan @ P.L.Meenatchi Sundaram. In the absence of any document/evidence to show that item nos.3 to 5 of the suit properties are owned/possessed by the members of the family of late P.L.Ramanathan @ P.L.Meenatchi Sundaram, the claim of partition in respect of these properties, in the considered view of this Court, cannot be entertained. The claim of partition in respect of these properties is necessarily liable to be dismissed.



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27. Item no.1 of the suit properties is a land measuring an extent of 62 cents in S.No.672, Ram Nagar – Murugu Nagar Vth street, Velachery, Chennai. 9th defendant has no claim over this property. Plaintiff and other defendants stake claim in this property. It is seen from the plaint averments that there is no specific mention as to how item no.1 of the suit properties was acquired. Though generally it is claimed that the properties were acquired in the name of family members out of joint hindu family funds, we have also seen that the defendants 5 to 7 claim that this property was purchased by L.P.L.Palaniappa Chettiar and P.L.Palaniappa Chettiar. Item no.1 of the suit properties was purchased by them by contributing the sale price in the ratio of 3/8 and 5/8. In support of this claim, they relied on Exs.D5 to D9 and D18 to D22. Ex.D5 is the copy of the statement of accounts of M.P.M.L.Firm, 32, Leboh Ampang, Kuala Lumpur, for the year ended 31st December 1969. This document is filed to show that L.P.L.Palaniappa Chettiar and P.L.Palaniappa Chettiar are partners in this firm and that partnership firm owned assets and that it had profitable business. Ex.D6 is the counter part of the income tax return, dated 17.06.1972, of L.P.L.Palaniappa



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Chettiar. Ex.D7 is the counter part of the income tax return, dated 24.08.1974. Ex.D8 is the copy of the accounts entry to show the purchase of item no.1 of the suit properties, contribution made by P.L.Palaniappa Chettiar and L.P.L.Palaniappa Chettiar in the ratio of 3/8 and 5/8 respectively. Ex.D9 is the certified copy of the order by the Assistant Commissioner, Urban Land Tax, in respect of item No.1 of the suit properties in N.S.R. 50/83B, dated 14.03.1992. Reading of Ex.D9 shows that the plaintiff's father raised an objection with regard to the proceedings taken under the Land Ceiling Act, claiming that this property was partitioned between his father L.P.L.Palaniappa Chettiar and his uncle P.L.Palaniappa Chettiar in the ratio of 5/8 and 3/8 respectively. L.P.L.Palaniappa Chettiar is entitled to 39 cents and P.L.Palaniappa Chettiar is entitled to 23 cents. However, this claim was rejected by the Assistant Commissioner, Urban Land Tax and he declared 500 sq.m of land as excess land.

28. It is submitted by the learned counsel for the defendants 5 to 7 that when there is a positive evidence to show that L.P.L.Palaniappa Chettiar and P.L.Palaniappa Chettiar ran a partnership firm and they acquired



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properties and that their share of contribution was entered, in the accounts books maintained by them regularly, the rejection order passed by the Assistant Commissioner, Urban Land Tax, in Ex.D9 is not correct and that order will not bind the parties in claiming their respective shares in the partition. To strengthen his submissions that acquisition of item no.1 of the suit properties was jointly made by L.P.L.Palaniappa Chettiar and P.L.Palaniappa Chettiar and that they acknowledged their share in the ratio of 5/8 and 3/8 respectively, he further relied on Exs.D18 to D22. Ex.D18 is the copy of the memorandum of confirmation dated 06.09.1967 entered into between L.P.L.Palaniappa Chettiar and P.L.Palaniappa Chettiar. This document shows that item no.1 of the suit properties was purchased in the name of P.L.Ramanathan @ P.L.Meenatchi Sundaram son of L.P.L.Palaniappa Chettiar on 04.02.1966. It is acknowledged that the sale consideration was paid by both. Therefore, P.L.Palaniappa Chettiar has காலே அரைக்கால் பங்கு L.P.L.Palaniappa Chettiar has அரையே அரைக்கால் பங்கு. It is reiterated that though the property was purchased in the name of P.L.Ramanathan @ P.L.Meenatchi Sundaram, L.P.L.Palaniappa Chettiar and P.L.Palaniappa Chettiar are entitled to this property as per the shares

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mentioned above.

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29. Ex.D19 is the copy of the கொள்முதல் கணக்கு which confirms the share in item no.1 of the suit properties in the ratio of 3/8 and 5/8 to P.L.Palaniappa Chettiar and L.P.L.Palaniappa Chettiar. Ex.D20 is the copy of the statement given by P.L.Ramanathan @ P.L.Meenatchi Sundaram, father of the plaintiff. It is seen from this statement that he claimed that he purchased this property on 22.02.1966 in document no.470/66 and patta stood in his name in patta no.206. He also stated that there is yet another sharer in this property and his name is P.L.Chidambaram Chettiar. Though the property was purchased in his name and patta stood in his name, the property was shown in his name and P.L.Chidambaram Chettiar's name in the income tax account. P.L.Chidambaram Chettiar has 3/8 share in this property. Ex.D21 is another statement of P.L.Ramanathan @ P.L.Meenatchi Sundaram, in which, he claims that this property was purchased by his father L.P.L.Palaniappa Chettiar and his brother in law P.L.Palaniappa Chettiar. Therefore, his father L.P.L.Palaniappa Chettiar has 5/8 share and his brother in law P.L.Palaniappa Chettiar has 3/8 share, i.e., in the ratio of 39 cents and

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23 cents. Therefore, he is entitled only for 39 cents in item no.1 of the suit properties. Ex.D22 is the statement made by P.L.Chidambaram Chettiar claiming that he and his brother have share in item no.1 of the suit properties.

30. The plaintiff has not filed any document to show as to how item no.1 of the suit properties was acquired by the family. On the other hand, from the documents above discussed, through the sale deed in favour of P.L.Ramanathan @ P.L.Meenatchi Sundaram in respect of item no.1 of the suit properties is not filed, it can be safely concluded that item no.1 of the suit properties was purchased by L.P.L.Palaniappa Chettiar and his brother in law P.L.Palaniappa Chettiar by making joint contribution in the ratio of 5/8 and 3/8, in the name of plaintiff's father P.L.Ramanathan @ P.L.Meenatchi Sundaram. L.P.L.Palaniappa Chettiar and P.L.Palaniappa Chettiar acknowledged their respective share through Ex.D18. Most importantly, the plaintiff's father late P.L.Ramanathan @ P.L.Meenatchi Sundaram had also acknowledged the share of L.P.L.Palaniappa Chettiar and P.L.Palaniappa Chettiar in the abovesaid ratio through Exs.D9, D20 and D21.



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31. The analysis of the documentary evidence shows that L.P.L.Palaniappa Chettiar and P.L.Palaniappa Chettiar conducted a partnership firm in the name of M.P.M.L.Firm, Kuala Lumpur. This fact is strengthened from the recitals of the Ex.D11 Will executed by L.P.L.Palaniappa Chettiar. While dealing with his properties, he mentioned about his interest of 5/8 share in the partnership business, namely, M.P.M.L.Firm, in Kuala Lumpur, Malaysia. Therefore, it is patently clear and evident that L.P.L.Palaniappa Chettiar and P.L.Palaniappa Chettiar, who were brothers-in-law, ran a partnership firm in the name of M.P.M.L.Firm, in Kuala Lumpur, Malaysia, had purchased properties including item no.1 of the suit properties. A joint hindu family consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters. L.P.L.Palaniappa Chettiar and P.L.Palaniappa Chettiar are not the lineal descendants of the common ancestor. They are brothers-in-law and therefore, they cannot be considered as joint family members. They are only partners. In their capacity as partners, they purchased properties either in their individual name or in the name of their family members. Therefore, the claim of the plaintiff that item no.1 of the suit properties was purchased out of joint family



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nucleus/ancestral nucleus and ancestral wealth is not true and in fact it is not correct. This Court finds that item no.1 of the suit properties was purchased by L.P.L.Palaniappa Chettiar and P.L.Palaniappa Chettiar, in the name of P.L.Ramanathan @ P.L.Meenatchi Sundaram from the income derived from their partnership business.

32. At this juncture, it is submitted by the learned counsel for the first defendant that Benami transaction is not permissible and therefore, the claim of the defendants 5 to 7 that item no.1 of the suit properties was purchased by L.P.L.Palaniappa Chettiar and P.L.Palaniappa Chettiar Benami in the name of P.L.Ramanathan @ P.L.Meenatchi Sundaram and therefore, they are entitled for 3/8 share cannot be entertained and sustained. This submissions was countered by the learned counsel for the defendants 5 to 7 on the ground that the Prohibition of Benami Property Transactions Act, 1988 had come into force only from 1988 and the Benami transactions were prevalent and approved prior to the introduction of this Act.

33. The sale in respect of item no.1 of the suit properties had



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taken place in the year 1966. Ex.D18 memorandum of confirmation between L.P.L.Palaniappa Chettiar and P.L.Palaniappa Chettiar had been executed on 06.09.1967 before introduction of the Prohibition of Benami Property Transactions Act, 1988. Whether the provisions of the Prohibition of Benami Property Transactions Act, 1988 are applicable to the transactions covering item no.1 of the suit properties is a moot question.

34. We had already seen that the first defendant had taken a plea that the defendants 5 to 7 cannot claim partition of 3/8 share in item no.1 of the suit properties on the ground that their claim is barred under Section 3 & 4 of the Prohibition of Benami Property Transactions Act, 1988 Act. Section 3 & 4 of the Prohibition of Benami Property Transactions Act, 1988 reads as follows:

3.Prohibition of benami transactions:- (1) No person shall enter into any benami transaction.

(2) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(3)Whoever enters into any benami transaction



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on and after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016, shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in Chapter VII.

4.Prohibition of the right to recover property held benami.-(1) *No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.*

(2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

As per these sections, we can understand that section 3 prohibits benami transaction and section 4 prohibits right to recover the property held benami. No suit, claim or action to enforce any right in respect of any property held benami and no defence based on any right in respect of any property held benami shall be allowed in a suit claim or action by or on behalf of a person



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claiming to be the real owner of the property. When considering the case in

Mithilesh kumari and another Vs.Prem behari khare reported in (1989) 2

SCC 95, the Hon'ble Supreme Court came to consider the applicability of the provisions, especially, Section 4 of the Prohibition of Benami Property Transactions Act, 1988, to the transactions that had taken place prior to the introduction of the Prohibition of Benami Property Transactions Act, 1988. In the said case, the plaintiff filed a suit for declaration that he be declared to be the sole and real owner of the suit house and that the defendant be permanently restrained from transferring the suit house. The suit was decreed by the learned Civil Judge, Lucknow. In the first appeal by the defendant, the First Appellate Court confirmed the findings of the trial Court and found that the plaintiff paid the consideration and purchased the suit house as benami in the name of the defendant. Second appeal was also dismissed. The transactions concerned in this case had taken place prior to the introduction of the Prohibition of Benami Property Transactions Act, 1988. Against the dismissal of second appeal, defendant filed Special Leave Petition, later it was converted as Civil Appeal No.2311 of 1978.



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35. One of the question that arose for consideration of the Hon'ble Supreme Court was whether despite the decree in favour of the plaintiff/respondent, his suit or action will be affected by the subsequent legislation, namely, the Prohibition of Benami Property Transactions Act, 1988. It was found that the suit house was held benami by the plaintiff in the name of the defendant. As to the applicability of the Act, it was found that the Prohibition of Benami Property Transactions Act, 1988 has not been made retrospective by any specific provisions. While considering Section 3 & 4, it was observed in paragraph 22 as follows:

22. As defined in Section 2(a) of the Act "benami transaction" means any transaction in which property is transferred to one person for a consideration paid or provided by any other person." A transaction must, therefore, be benami irrespective of its date or duration. Section 3, subject to the exceptions, states that no person shall enter into any benami transaction. This section obviously cannot have retrospective operation. However, section 4 clearly provides that no suit, claim or action to enforce any right in re- spect of any property held benami



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against the person in whose name the property is held or against any other person shall lie, by or on behalf of a person claiming to be real owner of such property. This naturally relates to past transactions as well. The expression "any property held benami" is not limited to any particular time, date or duration. Once the property is found to have been held benami, no suit, claim or action to enforce any right in respect thereof Shall lie. Similarly, sub-section (2) of section 4 nullifies the defences based on any right in respect of any property held benami whether against the person in whose name the property is held or against any other person in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property. It means that once a property is found to have been held benami, the real owner is bereft of any defence against the person in whose name the property is held or any other person. In other words in its sweep section 4 envisages past benami transactions also within its retroactivity. In this sense the Act is both a penal and a disqualifying statute. In case of a qualifying or disqualifying statute it may be necessarily retroactive. For example when a Law of Representation declares that all who have attained 18 years shall be eligible to vote, those who attained 18 years in the past would be as



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much eligible as those who attained that age at the moment of the law coming into force. When an Act is declaratory in nature .the presumption against retrospectivity is not applicable. Acts of this kind only declare. A statute in effect declaring the benami transactions to be unenforceable belongs to this type. The presumption against taking away vested right will not apply in this case inasmuch as under law it is the benamidar in whose name the property stands, and law only enabled the real owner to recover the property from him which right has now been ceased by the Act. In one sense there was a right to recover or resist in the real owner against the benami- dar. Ubi jus ibi remedium. Where there is a right, there is a remedy. Where the remedy is barred, the right is rendered unenforceable. In this sense it is a disabling statute. All the real owners are equally affected by the disability provision irrespective of the time of creation of the right. A right is a legally protected interest. The real owner's right was hitherto protected and the Act has resulted in removal of that protection.

36. The understanding we get from this judgment is that Section 3 of the Prohibition of Benami Property Transactions Act, 1988 cannot



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have retrospective operation. When Section 4 clearly provides that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of suit property, it naturally relates to past transactions as well. Once a property is found to have been held benami, the real owner is bereft of any defence against the persons in whose name the property is held or any other persons. Ultimately, the Hon'ble Supreme Court annihilated the decree passed by the lower Court and dismissed the suit filed by the plaintiff. It is clear from this judgment that though the Prohibition of Benami Property Transactions Act, 1988 came into force subsequent to the purchase of item no.1 of the suit properties in the name of P.L.Ramanathan @ P.L.Meenatchi Sundaram by L.P.L.Palaniappa Chettiar and P.L.Palaniappa Chettiar, obviously as a benami, nobody can claim a share in item no.1 of the suit properties as they are prevented from making such a claim by the Prohibition of Benami Property Transactions Act, 1988. Thus, this Court finds that Item no.1 of the suit property can only be considered as a self acquired property of P.L.Ramanathan @ P.L.Meenatchi Sundaram despite his admission that P.L.Palaniappa



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Chettiar's heirs are entitled for 3/8 share in this property.

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37. Assuming that Benami Transactions Prohibition Act, 1988 is not applicable to this transaction, even in the written statement filed by the defendants 5 to 7, it is claimed that P.L.Palaniappa Chettiar had two sons and one daughter, namely, P.L.Chidambaram Chettiar, P.L.Palaniappan and P.L.Thennammai. P.L.Palaniappan and P.L.Thennammai were not impleaded for the reason that P.L.Thennammai was married several decades ago and therefore, she is not entitled for share in the property and that P.L.Palaniappan was not co-operating for conducting this case and therefore, he was not impleaded. It is well settled after the judgment in *Vineeta Sharma Vs.Rakesh Sharma* reported in (2020) 9 SCC (1) daughters are entitled for equal share in the ancestral property on par with the sons. Therefore, P.L.Thennammai can also share in the 3/8 share in item no.1 of the suit properties along with P.L.Palaniappan and the deceased P.L.Chidambaram Chettiar. After the death of P.L.Chidambaram Chettiar, his legal heirs are entitled for the share of P.L.Chidambaram Chettiar in 3/8 in item no.1 of the suit properties. However,



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P.L.Thennammai and P.L.Palaniappa Chettiar are not parties to this suit and in their absence partition in respect of this property cannot be considered.

38. Item no.2 of the suit properties is 3 acres of land in S.No.208/3A (acres 2.85 cents), 209/2A (3 cents) and 502/1(12 cents) in Nagalkeni, Chrompet, Zamin Pallavaram Village, Chennai South. Plaintiff has produced Ex.P2, copy of the sale deed in respect of item No.2 of the suit properties. Through this document, L.P.L.Palaniappa Chettiar had purchased this property from one K.A.Shaik Mohammed Saibu on 12.02.1976. The plaintiff has not produced any document or other evidence to show that the family of L.P.L.Palaniappa Chettiar possessed ancestral properties, especially, ancestral properties which yielded income sufficient enough to manage the expenses and to make savings. On the other hand, the evidence we have in the form of Exs.D5 to D8 & D18 to D22 and Ex.D11 Will shows that L.P.L.Palaniappa Chettiar was a partner in various businesses and had interest in various partnership firms. The evidence available in the form of Ex.D5 shows that there was a partnership between L.P.L.Palaniappa Chettiar and P.L.Palaniappa Chettiar in the name and style of M.P.M.L.Firm. In the



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absence of any material to show that there were ancestral properties and ancestral nucleus available to purchase properties, the only conclusion that can be drawn is that item no.2 of the suit properties was also purchased by L.P.L.Palaniappa Chettiar from his independent income through partnership business.

39. It is pertinent here to refer to the evidence of PW1 and PW2. PW1 is the father in law and power agent of the plaintiff. He stated during the course of his cross examination that he did not know whether the grandfather of the plaintiff and P.L.Palaniappa Chettiar were doing partnership business along with his brother in Malaysia. He did not know as to whether the grandfather of the plaintiff and P.L.Palaniappa Chettiar purchased the properties out of the income generated by them from the partnership conducted in Malaysia. He had not seen the last Will and Testament of the grandfather of the plaintiff. He has mentioned in the plaint that apart from the suit properties there are also other joint family properties available. They are not the subject matter of the suit for the reason that they are not likely to fetch realisational value. He did not know whether the funds



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received on account of the sale of the property in Malaysia was utilised in performing the marriage of the plaintiff. He claimed that the suit properties were purchased by the grandfather of the plaintiff and he had not filed any document to show that the suit properties were purchased by the grandfather of the plaintiff. He did not know the sources from which the suit properties were purchased. He did not enquire with reference to the ancestral nucleus before filing the suit. He stated that he did not know that the first defendant obtained the suit properties through the Will from his father, which were received by the first defendant's father from his father and the properties were purchased by doing partnership business in Malaysia. He stated that apart from Ex.P4, there are documents to show the ancestral nucleus, but those documents have not been filed.

40. It is his evidence that the legal heirs of late Mr.Palaniappa Chettiar are entitled to share in the ancestral nucleus, but he did not make the legal heirs of late Mr.Palaniappa Chettiar as parties. He stated that the plaintiff's father Mr.Ramanathan Chettiar was carrying on businesses such as financing and looking after his father's estate. He is not aware as to how the



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father of Mr.Ramanatha Chettiar got these properties. He stated that there is an unregistered partition, in which, sons of late Mr.Palaniappa Chettiar and the legal heirs of one deceased son were parties. He is not aware about the source of income from which the grandfather of the plaintiff purchased item no.2 of the suit properties. He stated that the 5th item in the suit properties in the original plaint was struck off because he did not get the details of the property. He admitted that the amended plaint shows five items and he did not obtain any permission in the Court for including item no.5 of the suit properties.

41. He admitted that the legal heirs of late Mr.Palaniappa Chettiar are the executants of Ex.D3 sale deed in favour of the 8th defendant and he had not disputed the rights, interest and titles of the executants of Ex.D3, except the right of the legal heirs of Mr.Ramanatha Chettiar. Ex.D3 is the copy of the sale deed executed by one Sethu Lakshmanan and 9 others in favour of the 8th defendant in respect of item no.2 of the suit properties. When he was cross examined by the learned counsel for D5 to D7, he stated that the plaintiff's grandfather L.P.L.Palaniappa Chettiar was doing business in



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partnership with the fourth defendant's father P.L.Palaniappa Chettiar in Malaysia. He admitted that item no.1 of the suit properties was purchased with the funds provided by the plaintiff's grandfather L.P.L.Palaniappa Chettiar and fourth defendant's father P.L.Palaniappa Chettiar in the name of plaintiff's father P.L.Ramanathan @ P.L.Meenatchi Sundaram. He also admitted that the ratio of contribution by the plaintiff's grandfather and the fourth defendant's father was 5:3. He admitted that on 06.09.1967, plaintiff's grandfather and fourth defendant's father entered into a memorandum of confirmation of joint ownership. He is aware of the Urban Land Ceiling proceedings in respect of the item no.1 of the suit properties. He is also aware that P.L.Ramanathan @ P.L.Meenatchi Sundaram and fourth defendant gave statements in the course of Urban Land Ceiling proceedings that item no.1 of the suit properties was owned by the plaintiff's grandfather L.P.L.Palaniappa Chettiar and fourth defendant's father P.L.Palaniappa Chettiar in the ratio of 5/8 and 3/8. He admitted that the plaintiff's family is entitled only to 5/8 in item no.1 of the suit properties and fourth defendant's father is entitled to 3/8 share in this property.



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42. DW1 reiterated his submissions that the suit properties are the self acquired properties of his father and that properties were purchased during the life time of his grandfather. He stated that his grandfather did not inherit any property from his ancestors. He admitted that M.P.M.L.Firm belongs to his grandfather L.P.L.Palaniappa Chettiar. He did not know about the Urban Land Ceiling proceedings in respect of item no.1 of the suit properties, but his father might be knowing. He also admitted that his paternal uncle has share in the Pammal properties along with his father.

43. DW2 produced Exs.D18 to D22 and claimed that defendants 5 to 7 are entitled to $\frac{3}{8}$ share in item no.1 of the suit properties reiterating the claim that this property was purchased by the plaintiff's grandfather and his grandfather in the ratio of $\frac{5}{8}$ and $\frac{3}{8}$.

44. From the oral and documentary evidence produced and the analysis and appreciation of the evidence, it is clearly evident that there is absolutely no iota of any evidence to show that the plaintiff's grandfather L.P.L.Palaniappa Chettiar had any ancestral properties, ancestral nucleus to



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show that he purchased suit properties or any other properties, especially item no.1 and 2 of the suit properties from ancestral nucleus. The source for the purchase of the properties in his name and in the name of his son P.L.Ramanathan @ P.L.Meenatchi Sundaram is from the partnership business he had with P.L.Palaniappa Chettiar as evidenced from Exs.P5 to P9, P11, P18 to P22 and also the evidence referred above especially the admitted evidence of PW1. Therefore, the suit laid on the basis that the suit properties were purchased from the ancestral nucleus and therefore they acquired the character of the joint family properties and that the plaintiff as a co-parcener is entitled to 1/3 share in the properties, in the considered view of this Court is not correct.

45. Admittedly, the plaintiff's father P.L.Ramanathan @ P.L.Meenatchi Sundaram had executed Ex.P4 Will. Another copy of Ex.P4 Will is produced as Ex.D16. Prior to the execution of this Will, there was a Will executed by L.P.L.Palaniappa Chettiar dated 18.08.1983. This Will is produced as Ex.D11. The photocopy of the probate of Ex.D11 Will is produced as Ex.D12. Both Will had been probated in Malaysia. It is not in



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dispute. As per Ex.P4 Will, plaintiff, the first and third defendant's mother, second defendant R.M.Thenammai and one Valliappan @ Palaniappan @ Sinnavaliappan A/L Valliappa Chettiar were appointed as executors and trustees. Under Ex.D11 Will executed by L.P.L.Palaniappa Chettiar, he appointed his sons P.L.Ramanathan @ P.L.Meenatchi Sundaram, namely, the plaintiff's father and his other son Lakshmanan @ Singaram @ Sethu Lakshmanan as executors and trustees. It is seen from Ex.D11 Will that L.P.L.Palaniappa Chettiar had four sons, namely, 1.Meenatchisundaram @ Ramanathan, 2.Palaniappan @ Thiyagarajan 3.Lakshmanan @ Singaram @ Sethu Lakshmanan and 4.Rajendran @ Muthappan and two daughters, namely, 1.Adaikammani @ Rukmani 2.Meenal @ Meenakshi. At the time of execution of this Will, his second son Palaniappan @ Thiyagarajan was not alive and he was shown as deceased.

46. As per clause 3(a) of this Will, he gave the trustees, power to manage and administer his interest in seven businesses. In clause (b), there is a direction to pay his two daughters, Rs.1,00,000/- each. Clause (c) directed that his two daughters to be provided with all customary gifts and presents



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from time to time according to the customs of the Nattukottai Chettiar Community. Clause (d) directs the manner in which the neck ornament of his late wife has to be divided among his daughters and sons. Clause (e) directs to pay his share/interest in i) Quality Leather at Gundoor and ii) Sethu Leather at Periyamet, Madras, equally to the issues of his son Thiagarajan. Clause (f) directs the division of credit amount in favour of his grand children, namely, R.M.Sornam, R.M.Sethu, R.M.Meenatchi, P.L.Sethu, P.L.Palaniappan @ Chinnathamby, P.L.Yegappan, L.Sornalatha and L.Sethu Rajah standing in the books of accounts of the business/es wherein he was having capital interest or his son(s) and/or his daughter(s) is/are having capital interest equally amongst his four sons. Clause (g) deals with the residue of his estate other than the items referred in item (b), (d), (e) and (f). This residue has to be shared among his sons and the issues of his second son Palaniappan @ Thiagarajan in the ratio of 1/4 share to each. Clause 5 made a condition that the distribution referred in clause 4 (g) is to be made after providing fund/s for payment of customary gifts and presents to his daughters referred in clause 4 (c). Clause 6 deals with the disposition of properties in case either or any of his sons die in his life time.



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47. From this Will, it is clear that the interest in the partnership business and the properties movable and immovable, were bequeathed to his sons and daughters. There is absolutely no mention about the availability of properties which were acquired by him from his ancestors. It is a Will having no description of the properties to be shared. Similarly in Ex.D4 Will, there is no description of the properties sought to be disbursed. Through Ex.D11, whatever the properties possessed by L.P.L.Palaniappa Chettiar, were bequeathed to his sons and the legal heirs of the deceased son.

48. On 04.03.1991, plaintiff's father P.L.Ramanathan @ P.L.Meenatchi Sundaram executed Ex.P4 Will in respect of his properties. At the time of execution of his Will, he had his wife R.M.Thenammai, daughters M.Sornam and RM.Meenal and son RM.Sethu living with him. He claimed that his daughter M.Sornam was married and she was given dowry and gifts according to the Chettiar community. He appointed his wife RM.Thenammai and Valliappan @ Palaniappan @ Sinnavaliappan A/L Valliappa Chettiar jointly and severally to be executors and trustees of his Will. He directed his



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executors and trustees to pay and apply according to the Chettiar Community customs, such sum as the executors and trustees shall or in their absolute discretion think fit towards the marriage expenses, gifts and dowries of his daughter RM.Meenal. There is a direction to pay his daughters all the customary gifts and presents from time to time according to the customs of the Chettiar Community. Even after the demise of his wife R.M.Thenammai, there is a direction to the remaining executor and trustee Valliappan @ Palaniappan @ Sinnavaliappan A/L Valliappa Chettiar to give his two daughters a sum of Rs. 2,00,000/- each. He directed the executors/trustees to distribute all the jewellerys to his daughters, namely, M.Sornam and R.M.Meenal, subject to the payment of debts funeral and other testamentary expenses and estate and other duties. Then, he bequeathed all his properties, personal, real, movable, immovable whatsoever and wheresoever situate, which he may or might die possessed of unto his son RM Sethu absolutely. As already stated, details of all properties are not described in this Will, but it is made clear from the Will that his son RM.Sethu, namely, the first defendant was bequeathed properties subject to the payments aforementioned.



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49. The main grievances of the plaintiff is that the first defendant has not acted as per the conditions/clauses in the Will. Because of the first defendant's indifferent attitude, the second defendant, their mother, had to borrow heavy loan to celebrate her marriage. She was not provided with the customary gifts and presents from time to time as per the Chettiar Community. Marriage expenses, gifts and dowry were not properly taken care. Rs.2,00,000/- and jewelleries were also not given.

50. The plaintiff's claim that the first defendant had not acted in compliance to the conditions of the Will is one thing, and the challenge made to the very execution of the Will on the ground that the suit properties are ancestral joint family properties and therefore, the Will executed by their father P.L.Ramanathan @ P.L.Meenatchi Sundaram will bind only in respect of his share and will not extend to whole of the properties is another thing. There is unimpeachable evidence to show that share in item nos.1 and 2 of the suit properties was bequeathed to plaintiff's father P.L.Ramanathan @ P.L.Meenatchi Sundaram through Ex.D11 Will. We have also seen that the properties bequeathed under D11 Will were self acquired properties of



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L.P.L.Palaniappa Chettiar . When the self acquired property of an individual is bequeathed to his son, son acquires the property only as self acquired property and not as ancestral property. This position is made clear in the judgment ***Govindbhai Chhotabhai Patel v. Patel Ramanbhai Mathurbhai*** reported in **2020 (16) 255**. It is observed in the judgment as follows:

11. This Court in a three-Judge Bench decision in C.N. Arunachala Mudaliar [C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar, 1954 SCR 243 : AIR 1953 SC 495] considered the question as to whether the properties acquired by Defendant 1 under the will are to be regarded as ancestral or self-acquired property in his hands. It is a case where the plaintiff claimed partition of the property in a suit filed against his father and brother. The stand of the father was that the house properties were the self-acquired properties of his father and he got them under a will executed in the year 1912. It was held that father of a Joint Hindu family governed by Mitakshara law has full and uncontrolled powers of disposition over his self-acquired immovable property and his male issue could not interfere with these rights in any way. The Court while examining the question as to what kind of interest a son would take in the self-acquired property of his father which he receives by gift



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or testamentary bequest from him, it was held that Mitakshara father has absolute right of disposition over his self-acquired property to which no exception can be taken by his male descendants. It was held that it was not possible to hold that such property bequeathed or gifted to a son must necessarily rank as ancestral property. It was further held that a property gifted by a father to his son could not become ancestral property in the hands of the donee simply by reason of the fact that the donee got it from his father or ancestor.

.....

20. In view of the undisputed fact, that Ashabhai Patel purchased the property, therefore, he was competent to execute the will in favour of any person. Since the beneficiary of the will was his son and in the absence of any intention in the will, beneficiary would acquire the property as self-acquired property in terms of C.N. Arunachala Mudaliar case [C.N. Arunachala Mudaliar v. C.A. Muruganatha Mudaliar, 1954 SCR 243 : AIR 1953 SC 495] . The burden of proof that the property was ancestral was on the plaintiffs alone. It was for them to prove that the will of Ashabhai intended to convey the property for the benefit



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of the family so as to be treated as ancestral property. In the absence of any such averment or proof, the property in the hands of donor has to be treated as self-acquired property. Once the property in the hands of donor is held to be self-acquired property, he was competent to deal with his property in such a manner he considers as proper including by executing a gift deed in favour of a stranger to the family.

51. As per this judgment, the self acquired property gifted by a father to his son will not be treated as ancestral property, but only as a self acquired property. Therefore, this Court finds that shares which the plaintiff's father P.L.Ramanathan @ P.L.Meenatchi Sundaram got under the Ex.D11 Will, would be treated as his self acquired property and in respect of his self acquired property, he is entitled to bequeath the property through a Will to his son, namely, the first defendant and the first defendant got the properties as self acquired properties. Therefore, through Ex.P4 Will, plaintiff's father P.L.Ramanathan @ P.L.Meenatchi Sundaram had excluded his wife, plaintiff and second defendant from claiming any share in his properties, especially, item nos.1 & 2 of the suit properties. Thus, this Court finds that the plaintiff is



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not entitled to claim share in the suit properties claiming that the suit properties are the ancestral joint family properties and she is a co-parcener. Thus, this issue is answered that the suit properties are the self acquired and absolute properties of late P.L.Ramanatha Chettiar and not the joint family properties. Since the plaintiff is not entitled to claim share in the suit properties, the judgment relied by the learned counsel for the plaintiff in the case of *Annapoorni Vs. Janaki* reported in **1995 – 1 – L.W.141** is of no use to this case.

52. **Issue No.3:**

Though it is claimed in the pleadings that there was business of family at Kumbakonam run under the name and style of Palaniappan Bankers and Palaniappa Jewellers and the first defendant was liable to account for the provisions in the said business, no evidence is produced by either side to show the running of the businesses. Therefore, this Court finds answer to this issue in negative.

53. **Issue Nos.5 & 6:**



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The evidence available in this case shows that the plaintiff is not in physical possession of any of the suit properties. She resides in U.S.A. and conducts this case through her power of attorney PW1. There is also evidence to show that there are about 272 residential flats in item no.2 of the suit properties. Therefore, this Court finds that the plaintiff is not in possession of the suit properties and Court fee paid under Section 37 (2) of the Court fees Act claiming to be in joint possession is not correct for issue nos.5 & 6.

54. **Additional Issue No.4:**

It is seen from Ex.D3 that item no.2 of the suit properties was sold to 8th defendant by 10 persons, who claim that they are sharers to this property as per Ex.D11 Will. Before purchasing this property, it is seen that Exs.D2, D10 paper publications were made in the newspaper. After purchasing item no.2 of the suit properties, 8th and 9th defendants had entered into Ex.D4 agreement for sale. It is now claimed by the 9th defendant that 272 residential units had been constructed in the land. The learned counsel for the 9th defendant submitted that the 9th defendant's interest has to be protected as 9th defendant is a bonafide purchaser for value after taking necessary steps by issuing paper



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publications. No one objected to the purchase by 9th defendant.

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Ex.D3 sale deed was executed on 10.01.2008 during the pendency of the suit and therefore, it is no doubt that this sale in favour of the 9th defendant is hit by lis pendens. The right of pendente lite purchaser in item no.2 of the suit properties is subject to the right available to the owner of the property. Accordingly, this issue is answered.

55. **Additional Issue No.1:**

We have already seen that all the legal heirs of P.L.Palaniappa Chettiar are not impleaded as parties to the suit. D5 to D8 as the legal heirs of D4 claim 3/8 share in item no.1 of the suit properties. However, other legal heirs of P.L.Palaniappa Chettiar, P.L.Thenammai and P.L.Palaniappan are not impleaded as parties to this suit. Now it is found that the claim of partition in item no.1 of the suit properties by defendants 5 to 7 is barred by the Prohibition of Benami Property Transactions Act, 1988. Therefore, the other legal heirs of P.L.Palaniappa Chettiar are not proper and necessary parties to this suit. Similarly, the sale in favour of the 8th defendant and subsequent construction of flats by the 9th defendant had taken place after the institution of



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the suit. Therefore, the impleadment of the buyers of the flats is not necessary for the reason that the sale transaction is hit by the principle of lis pendens and therefore, they are not proper and necessary parties. Accordingly, this issue is answered.

56. **Additional Issue No.3:**

Even as per the admitted evidence of PW1, he claims that there are certain other joint family properties, but they are not shown as suit properties. Even in respect of item nos.3 to 5 of the properties, there is no evidence produced to show that these properties are in possession and enjoyment of the family. The defendants have also not given the details of the properties, which are not included. Therefore, it is held that the suit is not hit by partial partition.

57. **Additional Issue No.2:**

The plaintiff has filed the suit presuming that the suit properties are joint family properties and as a co-owner, she is entitled for partition. She had issued Ex.P5 notice before the institution of the suit. There is no plea of ouster



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taken by the defendants. She has subsisting right as per Ex.D11 Will.

Therefore, this suit cannot be held as barred by limitation.

58. **Issue Nos.1, 2, 7 & Additional Issue No.5:**

The learned counsel for the plaintiff submitted that apart from the claim of partition as co-parcener, the plaintiff is also entitled for partition as per clause 4(g) of Ex.D11 Will. It is true that in clause 4 (f) of Ex.D11 Will, there is a direction to divide the credit amount in favour of grand children, namely, R.M.Sornam, R.M.Sethu, R.M.Meenatchi, P.L.Sethu, P.L.Palaniappan @ Chinnathamby, P.L.Yegappan, L.Sornalatha and L.Sethu Rajah standing in the books of accounts of the business/es, wherein, L.P.L.Palaniappa Chettiar was having capital interest. However, there is absolutely no evidence produced in this case as to the capital interest of L.P.L.Palaniappa Chettiar that he had in his business/es. There is no details given in the share of the property, as well in this regard. Therefore, this claim of the learned counsel for the plaintiff for claiming share in the suit properties cannot be entertained.



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59. The plaintiff issued Ex.P5 notice and a reply was sent by first defendant through Ex.P7. One of the executor of Ex.D4 Will, second defendant, R.M.Thenammai remained ex parte. Ex.P5 notice was issued on behalf of the plaintiff and the second defendant R.M.Thennammai. The terms of the Will were extracted in the notice and allegations were made against the first defendant that he had acted with extreme unreasonableness and preventing the second defendant from managing and administering the properties as executrix/trustee. She had to obtain a loan of Rs.28,00,000/- for the marriage of the plaintiff and had to spend Rs.2,50,000/- towards travelling expenses to USA during the delivery of the child by plaintiff and she had to spend about Rs.20,00,000/- for kidney stone treatment. All these allegations are denied by the first defendant in his reply and the written statement. The allegations in Ex.P5 notice are also reiterated in the plaint as well. It is seen from Ex.D11 Will that the powers, duties and responsibilities of the executors is not limited to a certain period. So far as the second defendant is concerned, her duties and responsibilities and powers as a executant/trustee continue till her death and the powers, duties and responsibilities of the other



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executants/trustees namely Valliappan @ Palaniappan @ Sinnavaleppan A/L

Valliappa Chettiar continue even after the death of the second defendant R.M.Thennammai. Importantly, the properties in favour of the first defendant were bequeathed subject to the payment of debts, funeral debts, other testamentary expenses, estate debt and other duties and after payment of Rs.2,00,000/- to each of the daughters, namely, M.Sornam and R.M.Meenal. This is a conditional bequeath. Therefore, the executors and trustees, namely, R.M.Thennammai and Valliappan @ Palaniappan @ Sinnavaleppan A/L Valliappa Chettiar have every right to enforce the terms of the Will as intended by the testator. Though this Will is not useful to advance the case of the plaintiff for partition, this Will is certainly useful to enforce her claim under the Will, if the executors fail to exercise their duties, responsibilities and powers.

60. It was found that item nos.1 & 2 of the suit properties are the self acquired properties of the first defendant through Ex.P4 Will executed by his father P.L.Ramanathan @ P.L.Meenatchi Sundaram and therefore, this Court finds that the plaintiff is not entitled for the relief of partition or for that matter any other relief.



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61. Since the defendants 5 to 7's claim is barred by the provisions of the Prohibition of Benami Property Transactions Act, 1988, they are also not entitled for claiming partition of their 3/8 share in item no.2 of the suit properties as a counter claim. The suit as well as the counter claim of the defendants 5 to 7 are dismissed.

62. In the result, the suit and the counter claim of defendants 5 to 7 are dismissed. Parties are directed to bear their own costs.

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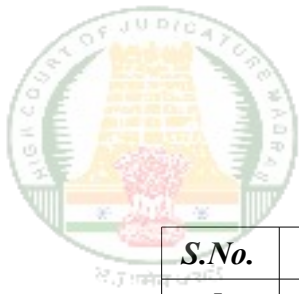
25.11.2022

List of witnesses examined on the side of plaintiff:

1.S.Thirunavukkarasu (PW1)

List of documents marked on the side of plaintiff:

<i>S.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
1.	P1	Photo copy of General Power of Attorney dated 20/02/1998.
2.	P2	Certified copy of Title deed dated 12/02/1976.
3.	P3	Original legal heirship certificate dated 28/04/1992.
4.	P4	Copy of Will dated 04/03/1991



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<i>S.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
5.	P5	Copy of legal notice dated 25/01/2006 sent by the plaintiff's counsel.
6.	P6	Acknowledgment card of first defendant (Original)
7.	P7	Reply dated 23/2/2006 sent by the first defendant's counsel (Original)
8.	P8	Authorization letter by the plaintiff.

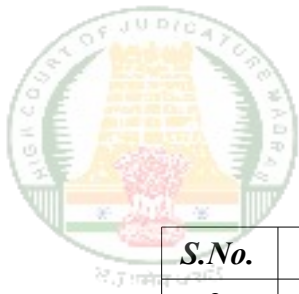
List of witnesses examined on the side of the defendants:

1.RM.Sethu (DW1)

2.CT.Sethuraja (DW2)

List of documents marked on the side of defendants:

<i>S.No.</i>	<i>Exhibits</i>	<i>Description of documents</i>
1.	D1	The marriage invitation of plaintiff.
2.	D2	The paper publication in "Dinamalar" with regard to item No.2 of the schedule property.
3.	D3	Certified copy of sale deed dated 10/01/2008.
4.	D4	Certified copy of agreement of sale dated 05/04/2010
5.	D5	The original Balance Sheet prepared by the Chartered Accountant dated 7/4/1970.
6.	D6	The counter part of the Income Tax return dated 17/06/1972 of L.P.L.Palaniappa chettiyar, Malaysia.
7.	D7	The counter part of the Income Tax return dated 24/08/1974 of L.P.L.Palaniappa chettiyar, Malaysia.
8.	D8	Certified copy of extract of statement of accounts of the book of PL.Palaniappa Chettiar



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S.No.	Exhibits	Description of documents
9.	D9	The certified copy of Order passed by the Assistant Commissioner, Urban Land Tax.
10.	D10	The photo copy of public notice published in Indian Express.
11.	D11	The photo copy of the Will dated 18/08/1983 executed by Sethu chettiar @ Palaniappa chettiar.
12.	D12	The photo copy of Probate order dated 22/04/1986.
13.	D13	The photo copy of death certificate of Sethu @ Palaniappa chettiar.
14.	D14	The photo copy of legal heirship certificate.
15.	D15	The photo copy of legal heir certificate.
16.	D16	The photo copy of the Will dated 04/03/1991.
17.	D17	The Probate order dated 12/02/1999.
18.	D18	The certified copy of Memorandum of confirmation dated 06/09/1967 entered into between PL.Palaniappa chettiar and L.Pl.Palaniappa chettiar.
19.	D19	The certified copy of Madras property purchase Account dated 04/02/1966 of LP.L.Palaniappa chettiar.
20.	D20	The certified copy of Statement of Sri.PL.Ramanathan chettiar S/o.Palaniappa chettiar to the Assistant Commissioner, Urban Land Ceiling Tax, Alandur.
21.	D21	The certified copy of Statement of PL.Ramanathan chettiar dated 27/09/1984.
22.	D22	The certified copy of Statement of PL..Chidambaram S/o.Palaniappa Chettiar to the Assistant Commissioner Urban Land Tax.

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mra/sli

Index : Yes

Internet: Yes

Speaking Order/Non-Speaking Order

G.CHANDRASEKHARAN, J.,

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Judgment
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