IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE C.KUMARAPPAN

AS.No.560/2016

1.Mr.N.Chokalingam
2.Mr.N.Somasundaram .. Appellants

Vs.

1.Mrs.S.Prema
2.Mrs.Meenakshi
3.Mrs.S.Amsa Sujathan
4.Mr.A.Chidambaram
5.M/s.CFA Customer Relationship Centre
Thirumagal Bhavana, 100 Feet Road
Gandhipuram, Coimbatore 641012.
6.M/s.Sri Srivatsa Traders
Door No.198, 100 Feet Road
Gandhipuram, Coimbatore 641 012.
7.M/s.The Rainbow Mobiles
Door No.199, 100 Feet Road,
Gandhipuram, Coimbatore 641 012.
8.M/s.VIP Modern Furniture Danya Agencies
Thirumagal Bhavanam, 100 Feet Road
Gandhipuram, Coimbatore 641 012.

9.Mr.S.P.Paramasivam
Auditor, Thirumagal Bhavanam
100 Feet Road
Gandhipuram, Coimbatore 641 012. .. Respondents

Prayer:- Appeal Suit filed under section 96 of CPC against the decree and judgment dated 31.03.2016 passed in OS.No.653/2009 on the file of learned IV Additional District Judge, Coimbatore.

For Appellants	:	Mr.D.Kanagasundaram
For R1	:	Mr.J.Pothiraj
RR2 to 4,6&9	:	No appearance

JUDGMENT

[Judgment of the Court was delivered by S.S.SUNDAR, J.,]

(1) Plaintiffs in OS.No.653/2009 on the file of the IV Additional District Court, Coimbatore, are the appellants in the present Appeal.

(2) The appellants filed the suit for partition of their $4/5^{th}$ shares in the suit property and for consequential reliefs.

(3) The case of the appellants as plaintiffs, in the plaint, can be summarised as follows:

(4) Plaintiffs and defendants 1 and 2 are sons and daughters of one Mr.Natarajan and Mangalambal. One Vasantha Kokilam was also the other daughter of Natarajan and she died before suit. Defendants 3 and 4 are the children of the deceased daughter Vasantha Kokilam.

(5) It is the case of the plaintiffs that the suit properties are the joint family properties of plaintiffs and their father. The same was purchased and registered under a Sale Deed dated 27.06.1973 [Ex.B2] in the name of Mr.Natarajan. Since Mr.Natarajan, was the Kartha and head of the family, it is stated that the properties were purchased in his name out of the income from the joint family business. It is the further case of the plaintiffs that the family had a business of letting out vessels, furnitures and other items suitable for marriage functions and like events and social gatherings. Stating that the father and sons jointly exerted and looked after the business, it is contended that the income and savings from the business were utilised to purchase the suit properties. It is stated that the family members at all times, treated and acknowledged the

suit properties as the joint family properties of plaintiffs and their father.

(6) The further case of the plaintiffs is that the 2nd defendant though got married, she got separated from her husband and was living with her parents as a divorcee. The father of plaintiffs was suffering from sugar complaint and several other ailments. In view of his physical ailments, the plaintiffs' father could not maintain mental balance and it was at that time, the daughters had brought the two documents, namely,the Sale Deeds dated 30.01.1995 and 01.02.1995 marked as Exs.B3 and B4 in favour of Vasantha Kokilam, the deceased daughter and 1st defendant. According to plaintiffs, the documents were not supported by any consideration. It is the further case of plaintiffs that their father had no power to alienate the properties and the fictitious documents, namely the Sale Deeds, are therefore, void and not binding on plaintiffs.

(7) The plaintiffs further state that their sisters started continuously staying with plaintiffs' parents and defendants 1 and 2 colluded with their parents and brought about a Settlement Deed dated

04.12.2002 marked as Ex.B5 taking advantage of their fiduciary position. Since the daughters were already given enough properties by their parents, it is contended that the Settlement Deed could not have been executed but for the physical ailments and mental incapacity of their father. The father of plaintiffs died intestate on 03.04.2004 and the monther Mangalambal died on 20.10.2004. The plaintiffs as members of joint family, claimed to 1/3rd share each and 1/18th share in their father's 1/3rd share and 1/19th share in their mother's 1/18th share. In all, the plaintiffs claimed that they are entitled to 4/5th share in the suit properties.

(8) The suit was resisted by the 1st defendant by filing a written statement. She denied the averments made in the plaint parawise. It is the case of the 1st defendant that the suit properties are the absolute self-acquired properties of her father namely Mr.Natarajan. The contention of plaintiffs that the father purchased the suit property as Kartha and head of family was emphatically denied. It is stated that there was no family business to yield income in 1973 and that the property was purchased out of

his own savings. The 1st defendant specifically denied the contention in the plaint that plaintiffs' father earned income from the family business even in the year 1973. Referring to the fact that 2nd defendant is a divorcee and affected by epilepsy, the 1st defendant contended that 2nd defendant was under the care and custody of her parents and that their father executed the Sale Deeds in favour of 1st defendant and Vasantha Kokilam for a valuable consideration and there is no question of collusion or defendants dominating the will of their father to get the Sale Deeds. Stating that the Sale Deeds executed in the year 1995 is well known to plaintiffs, it is contended by 1st defendant that plaintiffs never questioned the alienations at any point of time during the life time of their father. After referring to the Settlement Deed, the 1st defendant contended that their father was always desirous of giving the remaining properties by way of settlement and plaintiffs have no right to question the alienations or the Settlement Deed which was validly executed by their father in favour of defendants 1 and 2 and their sister Vasantha Kokilam.

(9) The Trial Court, after considering the pleadings, framed the following issues:-

1. *Whether the plaintiffs are entitled for the relief claimed?*
2. *Whether the plaintiffs are entitled for the relief of permanent injunction?*
3. *Whether the suit property belongs to D1 and her sisters based on Sale Deeds and Settlement Deed?*
4. *To what other relief the plaintiffs are entitled to?*

(10) Before the Trial Court, 2nd plaintiff was examined as PW1 and one K.L.Arunachalam was examined as PW2. Exs.A1 to A5 were marked on behalf of plaintiffs. 1st defendant examined herself as DW1 and marked Exs.B1 to B19.

(11) After elaborately discussing the evidence in detail and considering the lengthy arguments of the learned counsels appearing on either side, the Trial Court found that there is no oral or documentary evidence to prove the case of plaintiffs that the suit properties are joint family properties. Since no documentary evidence was

produced by plaintiffs to show that there was joint family business which yielded substantial income, the Trial Court found that without evidence, the properties cannot be held as joint family properties. The Trial Court also relied upon several precedents for the proposition that there is no presumption of properties being joint family properties merely on account of existence of joint family and that, burden lies on the person who asserts the property as a joint family property to prove its character. After elaborately extracting the evidence of plaintiffs, the Trial Court found that existence of joint family properties has not been proved by plaintiffs by any acceptable evidence. The Trial Court further held that the father as the absolute owner of the suit properties, was entitled to execute Sale Deeds and Settlement Deed marked as Exs.B3, B4 and B5. The contention of plaintiffs that their sisters, namely defendants 1 and 2 obtained the Sale Deeds and the Settlement Deed under coercion and undue influence, was held not proved. The Trial Court gave a finding that the plaintiffs miserably failed to prove that their father was suffering from any mental ailment as pleaded in plaint. Referring to the documents-Exs.B2 and B3 namely Sale Deeds, the learned counsel for the plaintiffs before Trial Court, came up with a case that the father of plaintiffs had admitted that he was taking only 10% share in the suit properties and therefore, the properties are held to be the joint family properties in which plaintiffs had definite share. This contention was also rejected by the Trial Court. Aggrieved by the judgment and decree in dismissing the suit for partition, the plaintiffs have preferred the above Appeal Suit.

(12) Learned counsel for the appellants elaborately made his submissions relying upon the documents filed before the Trial Court. Learned counsel submitted that the Partnership business was started in the year 1964 long prior to the Sale Deed obtained by the father in the year 1973 and the properties were purchased out of the income derived from the family business. Referring to the Partnership Deed under Ex.A4 dated 04.01.1974, learned counsel for the appellants submitted that the family was carrying on business of letting on hire, furnitures, vessels and other utensils

for marriages and other functions from the year 1964 and the Trial Court ought to have seen that the income from the business alone was utilised for the purchase of properties under Ex.A3 dated 27.06.1973. Learned counsel then pointed out that the Trial Court went wrong in relying upon several precedents which are not applicable to the case on hand. Since the documents Exs.B3 to B5 are all void, it is submitted by the learned counsel for appellants tht the Trial Court ought to have held that the alienations are not binding on plaintiffs.

(13) This Court heard the learned counsel appearing for the 1st respondent and also perused the materials placed.

(14) Having regard to the pleadings and submissions of the learned counsels appearing on either side, the following points arise for consideration in this appeal:

A) Whether the suit properties are the joint family properties of appellants and their father Natarajan or separate properties of Natarajan?

B) Whether appellants have proved that suit properties were acquired by their father out of *joint family or from the income of the joint family business?*

C) Whether the Sale Deeds and the Settlement Deed executed by Natarajan/appellants' father is binding on appellants?

D) Whether the suit for partition is maintainable without a prayer to invalidate the documents, namely Sale Deeds and the Settlement Deed in favour of defendants?

POINTS [A] & [B]:-

(15) It is the specific case of appellants in the plaint that the suit properties are acquired out of the income from the joint family business. However, it is admitted that the suit properties are purchased under Ex.A3 dated 27.06.1973 in the name of appellants' father Natarajan. It is not even pleaded in the plaint that the suit properties were purchased out of ancestral nucleus. What is pleaded in the plaint is that the suit properties were purchased in the name of father as he was the Kartha or head of the family and that the properties were acquired out of the joint family business income. To sustain their plea, the plaintiffs have produced Ex.A4

dated 04.01.1974 which is a Partnership Deed. This Deed of Partnership was between their mother Mangalambal and plaintiffs. As per the said Partnership Deed, the partners have commenced the business on 01.04.1973 by letting on hire, furnitures, vessels and other utensils for marriages and other functions. Since the suit properties were acquired in the name of father under Ex.A3 dated 27.06.1973 and the partnership business was started only on 01.04.1973, this Court cannot presume that there was substantial income from the said business to acquire substantial properties by paying consideration of Rs.32, 000/- in the year 1973. Though there is reference to the fact that plaintiffs and their mother were carrying on business from 1964, this Court cannot presume the partnership business run by mother along with her two sons as a joint family business without specific pleading. Nowhere it is stated that the business was ancestral business. In the absence of pleading or evidence that the business was started out of the joint family income, we cannot treat the partnership business run by plaintiffs along with their mother as a joint family business. From the document-Ex.A3 dated 27.06.1973, it is seen that a sum of Rs.12,000/- was paid and the father of plaintiffs agreed to pay balance of Rs.20,000/- within a period of one year with interest @ 12% per annum for the remaining amount. The source for paying consideration is not indicated in the document Ex.A3. Though the plaintiffs pleaded that the properties were acquired out of the joint family business income, the joint family meant by appellants cannot be anything but the partnership business carried on by the appellants along with their mother Smt.Mangalambal. Absolutely there is no evidence or pleading that this business was started by the ancestors of Natarajan to treat the same as the ancestral business of their family. When it is alleged that appellants along with their mother started a business in the year 1964 itself, this Court cannot presume that joint family as a whole, was involved in the business. Absolutely there is no plea as regards nucleus, either from the joint family properties or from any other source to treat the properties as ancestral or coparcenary. If a mother and sons start a business in partnership, it cannot be presumed to be a joint family business unless the income from the joint family nucleus is utilised for the business. At best, the business carried on by the appellants can be considered as a business of members of a family. Even assuming that the income from the said business is utilised for the purchase of properties in the name of father, this Court cannot presume that the properties are joint family properties. When the income from the partnership business is utilised to purchase properties in the name of a third party who is not a partner, the property cannot be a property of the partners in business. Partnership Firm may recover the money as a loan. Above all, there is no acceptable evidence to show that the income from the business was utilised to purchase the property in 1973.

(16) Having regard to the nature of plea, this Court finds that there is a basic lacuna in the case pleaded by the appellants. It is well settled that the plaintiff who assert that suit properties were purchased in the name of his/her father out of the joint family nucleus or funds, the burden lies on him/her to prove and there cannot be a presumption particularly when the existence of joint family

nucleus is neither pleaded nor proved by plaintiff. Even if it is proved that the joint family possess some joint property, that is not sufficient unless it is proved that the joint family from its nature and relative value may have formed nucleus from which the property in question could have been acquired. Therefore, from the nature of pleadings, this Court is unable to countenance the submission of the learned counsel appearing for the appellants that the properties were acquired in the name of their father out of the joint family income so as to treat the properties as joint family properties of appellants and their father. From the recitals of Ex.A3, this Court has no clue as to the source of purchase. In the absence of any evidence, the presumption is that the properties were acquired in the year 1973 by the father and it is his separate properties. Therefore, this Court hold that the suit properties are separate properties of the appellants' father and the alienations by father are binding on the appellants. **Hence, Point [A] is answered holding that the suit properties are separate properties of the father of plaintiffs and defendants 1 and 2.**

Point [B] is answered in negative and against appellants.

POINT [C]:-

(17) The appellants have pleaded that the documents, namely Sale Deeds and Settlement Deed under Exs.B3 to B5 are void as the said documents were obtained from the father when he was in a disposition state of mind and that there was undue influence and coercion. This Court finds that there is no specific plea of undue influence or coercion satisfying the requirement of law. Assuming that there is a plea of undue influence, this Court is unable to find any evidence to show that defendants 1 and 2 and the deceased daughter Vasantha Kokilam were in a position to dominate the will of their father. It is admitted that appellants were doing business successfully. Therefore, it is natural for the father to execute Sale Deeds and the Settlement Deed in favour of his daughters. It is to be noted that the appellants have not come forward to challenge the Sale Deeds and the Settlement Deed on any ground within the period of limitation. In such circumstances, this Court is unable to countenance the arguments of the learned counsel for the

appellants. As pointed out by Trial Court, the appellants have miserably failed to prove existence of joint family business or that the suit properties were purchased out of the income derived from the joint family business. Assuming that the appellants have established that the income derived from the partnership business was utilised for the purchase of suit properties, this Court cannot treat the properties as joint family properties. Though the appellants can recover the money that was utilised for purchase of suit properties upon proof of payment within limitation, this Court cannot treat the properties as properties of joint family in the absence of specific plea and convincing evidence. Learned counsel for the appellants relied upon the recitals of Exs.B3 and B4-Sale Deeds to substantiate the argument. In the two Sale Deeds, the appellants' father referred to the properties as his absolute properties purchased under the Sale Deed dated 27.06.1973. However, he has also referred to a family arrangement dated 12.01.1995. It is further stated that he was given 10% share of the value of properties under the family arrangement that the Sale

Deed is in respect of his undivided 5% of the assets. This recitals do not corroborate the specific case pleaded by appellants in the plaint. It is well settled that no amount of evidence can be let in without a specific plea. The recitals of the subsequent Settlement Deed is contrary to the recitals in the Sale Deeds under Exs.B3 and B4. Having regard to the fact that the alleged family arrangement dated 12.01.1995 is neither pleaded nor established, this Court is unable to accept the case of appellants before this Court on the basis of recitals in Exs.B3 and B4. **Hence, the Sale Deeds and the Settlement Deed executed by the father of appellants in favour of his daughters, are binding on the appellants. Point [C] is answered accordingly.**

POINT [D]:-

(18) There is no specific prayer to set aside the Sale Deeds as well as the Settlement Deed under Exs.B3 to B5. In the absence of a prayer invalidating the documents of conveyance, the suit for partition is not maintainable. **Hence, Point [D] is answered accordingly.**

(19) This Court is unable to find any merit in the Appeal and the Appeal suit is liable to be dismissed.

(20) Accordingly, **AS.No.560/2016 stands dismissed confirming** the judgment and decree dated 31.03.2016 passed in OS.No.653/2009 by the learned IV Additional District Judge, Coimbatore. No costs.

[SSSRJ] [CKJ]
06.06.2023

AP
Internet : Yes

To
1.The IV Additional District Judge
Coimbatore.
2.The Section Officer
VR Section, High Court, Chennai.

S.S.SUNDAR, J.,
AND
C.KUMARAPPAN, J.

AP

AS.No.560/2016

06.06.2023