



C.S.No.216 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 23.02.2023

Judgment Pronounced on : 28.04.2023

CORAM : JUSTICE N.SESHASAYEE

C.S.No.216 of 2013

1.K.Kesavaperumal
2.V.Saraswathi
3.K.Perumal
4.A.Kasthuri

.... Plaintiffs

Vs

1.K.Rengammal (dead)
2.P.Vanitha
3.S.K.Parthasarathy
4.G.Mariammal

.... Defendants

Prayer : Civil Suit filed under Section Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 of CPC., praying for a judgment and decree as against the defendants as under :

- (a) for partition and separate possession of the suit 'B' and 'C' mentioned properties into eight equal shares and allocation of one such share to each of the plaintiffs and or in the event, the division of the suit properties is not feasible, appoint an Advocate Commissioner to



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effect sale of the properties and after defraying the expenses incurred thereto, apportion 1/8th each of the sale proceeds so realized and distribute the same to the plaintiffs according to their entitlement.

- (b) for a declaration that the purported settlement deed dated 18.11.2004 and registered as Doc.No.5392 of 2004 in the Office of the Sub Registrar, Velachery executed by S.Krishnaswamy in favour of the 3rd defendant in respect of Schedule 'B' Item 1 more fully described in the schedule hereunder is illegal, invalid, non-est in the eyes of law and not binding upon the plaintiffs.
- (c) for a declaration that the purported settlement deed dated 18.11.2004 and registered as Doc.No.5391 of 2004 in the Office of the Sub Registrar, Velachery executed by the 1st defendant in favour of the 3rd defendant in respect of the Schedule 'B' Item-2 more fully described in the schedule hereunder is illegal, invalid, non-est in the eyes of law, and not binding upon the plaintiffs.
- (d) for a declaration that the alleged Will dated 28.10.2011 and registered as Doc.No.72 of 2011 in the Office of the Sub Registrar, Velachery executed by S.Krishnaswamy in favour of the 3rd defendant is illegal, invalid, non-est in the eyes of law and not binding upon the plaintiffs.
- (e) directing the defendants to render true and proper accounts of the income derived from “M/s.S.Krishnaswamy Pawn Broker” Item-9 of



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Schedule 'C' from the date of its inception, viz., from 1973 till date.

- (f) directing the defendants to render true and proper accounts of the rental income derived from the suit schedule 'B' mentioned properties morefully described in the schedule hereunder.
- (g) for determination of mesne profits from the date of acquisition of the properties till the date of actual division of the plaint schedule 'B' properties Items 1 and 2 under Order XX, Rule 12 of CPC.,
- (h) for a permanent injunction restraining the defendants, their men, agents, servants or person or persons or anyone claiming through them or authorized by them from encumbering or alienating or dealing with the property either by way of mortgage, sale, lease or otherwise or altering the physical features of the property more fully described in Schedule 'B' items 1 & 2 mentioned property.
- (i) for a permanent injunction restraining the defendants, their men, agents, servants or person or persons or anyone claiming through them or authorized by them from disturbing or interfering with the peaceful possession and enjoyment of the portion of the property more fully described in Schedule 'B' item1 mentioned hereunder.
- (j) for such further or other reliefs
- (k) costs of the suit.



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For Plaintiffs : Mr.R.Thiagarajan

For Defendants : Mr.C.T.Mohan [D2 & D4]
Ms.S.Shyamala [D3]

JUDGMENT

1. The dispute pertains to the estate of late Krishnaswamy. The suit is principally laid for partition of two items of immovable properties and certain bank deposits, which are detailed respectively in Schedule-B and Schedule-C in the suit, and also for declaration that few documents whose existence might affect the plaintiffs' prayer for partition, be set aside as null and void.

2. The case of the plaintiffs is :

- A certain Krishnaswamy was married twice, and his wives are Rengammal and Subbuthai, both of whom, as between themselves were sisters. Subbuthai predeceased Krishnaswamy.
- Rengammal is the first defendant. Through Rengammal, Krishnaswamy had two sons namely the 1st plaintiff and the 3rd defendant, and two daughters who are the 2nd plaintiff and another



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Sundaravalli, since deceased (in fact she pre-deceased her father Krishnaswamy). Sundaravalli's rights are represented by her daughter, the 2nd defendant.

- Krishnaswamy through his second wife Subbuthai had one son and two daughters, and they are the plaintiffs 3 and 4, and the fourth defendant.
- Krishnaswamy was engaged in multiple businesses which include running a grocery shop, dealership in kerosene, pawn brokering and licensee to run a ration shop etc.
- The sisters Rengammal and Subbuthai had a property at Vilathikulam in Tirunelveli District. They had sold this property.
- On 06.06.1973, Krishnaswamy purchased B schedule Item-1 property, partly by utilising the sale proceeds of the Vilathikulam property of Rengammal and Subbuthai, and also with the funds generated by the family members including the plaintiffs, who had contributed their efforts for running the businesses of Krishnaswamy.
- While so, on 18.11.2004, Krishnaswamy had settled B-schedule Item-1 property in favour of the third defendant. Krishnaswamy had no right in him to settle the property as the property is joint family



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property, and that he did not have absolute title to settle this piece of family property. This apart considerable improvements were made in this property from time to time, and the first plaintiff too had contributed considerably to the improvements so made.

- Be that as it may, on 05.11.1997, Krishnaswamy had purchased B-schedule Item-2 property in the name of his wife Rengammal, the first defendant. This property was also purchased out of the income of the joint family property.
- On 18.11.2004, Rengammal settled this B-schedule Item-2 property in favour of the third defendant. Even though this property stands in the name of Rengammal, she is only a name lender, and it belongs to the joint family.
- This apart, Krishnaswamy had few specified bank deposits and they are disclosed in C-schedule, Items-1 to 7. Item 8 in C-schedule relates to the amounts that are to be recovered from the creditors and mortgagees. Item 9 in C-schedule property is the pawn brokering business which was run in the name and style of 'M/s.S.Krishnasamy Pawn Broker'.
- Krishnaswamy is also known to have executed a Will dated



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28.10.2011, again in favour of the third defendant.

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- Inasmuch as the immovable properties are of the joint family, neither Krishnaswamy, nor the first defendant have any right in law to execute any testamentary or non-testamentary instruments in favour of the third defendant. The documents executed by them are illegal, invalid and not binding on the plaintiffs.
- The third defendant is instrumental in bringing about these fraudulent documents. In particular, the Will purported to have been executed by Krishnaswamy is shrouded in suspicion, since Krishnaswamy had never discriminated any of his children, but under the Will, bequeath is made only in favour of the third defendant.
- The plaintiffs and defendants are in joint possession of all the suit properties. Indeed, the plaintiffs have allowed the third defendant to collect the rents from the tenants. When the plaintiffs began insisting for an amicable partition of the estate in the settlement deeds and the Will which Krishnaswamy and Rengammal, as the case may be, had executed in favour of the 3rd defendant, the latter declined it.

Hence, plaintiffs have laid the suit claim for declaration that the settlement deeds dated 18-11-2004 executed by Krishnaswamy and Rengammal in favour



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of the third defendant, and also the alleged Will of Krishnaswamy, dated 28.10.2011 as null and void, and for partition of their combined 4/8th share in the suit properties and also for other ancillary reliefs.

3.1 The first defendant Rengammal had passed away, but not before she filed her written statement. She has pleaded:

- The income derived from the sale of Vilathikulam property by her as well as her sister Subbuthai were not utilised for the purchase of B-schedule Item-1 property. The sale consideration paid for the purchase of this property was mobilised by Krishnaswamy from and out of his multi-various businesses. Indeed B-Schedule, Item-1 property originally belonged to one Kannan. On 11.01.1967 he borrowed a sum of Rs.1,000/- from Krishnaswamy, and created a mortgage over this property. Later he created two more puisne mortgages as well. Since Kannan, the mortgagor, could not redeem the property, it came to be purchased by Krishnaswamy, after adjusting the mortgage money in the sale consideration. And in purchasing it, there cannot be any contribution from the first plaintiff as alleged by him, since he was barely 8 years old at the time of the



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purchase, and he was hardly 14 years, when the property was improved. This property is the absolute property of Krishnaswamy, and hence the deed of settlement which Krishnaswamy had executed in favour of the third defendant is valid in law.

- So far as Item-2 in B-schedule property is concerned, this property was purchased by her by sale of her jewellery and also with her own funds. It is her absolute property. There never was any joint family businesses nor were any joint family funds as alleged by the plaintiffs.
- It is true that the plaintiffs and 4th defendant are in possession of B-schedule Item-1 property, not as co-sharers but as tenants. B-schedule, Item 1 property consists of one residential portion and three non-residential portions. The plaintiffs 1 and 2 are the occupants of the residential portion as tenants, and they pay Rs.1,750/-, Rs.1,160/- respectively as rents. While so, the third plaintiff trespassed into the portion of the suit property in B-schedule Item-1 just prior to the institution of the suit. This apart the husband of the fourth plaintiff is also a tenant in one of the non-residential portions where he is running a tea shop, and paying a monthly rent of Rs.1,750/-. There are two other shop-buildings, and they are let out to third parties.



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- The allegation that the plaintiffs had permitted the third defendant to collect rents from tenants is false, and that the latter had begun collecting the rents ever since Krishnaswamy had settled the B-schedule Item-1 property in his favour.
- The third defendant has no role in execution of any of the documents in his favour either by Krishnaswamy or by her, as the case may be. Indeed, Krishnaswamy had a cardiac surgery and it was the third defendant who took utmost care of his father, whereas the plaintiffs did not bestow any care upon their parents. She herself is confined to bed for close to six years due to a spinal problem, and required 24x7 attention, and frequent hospitalisation, and only the third defendant and his family take good care of her.

3.2 Adopting the same line of defence as the first defendant, the third defendant pleaded that the first plaintiff had not contributed his stipend amount he received, for running the family business. Regarding the bank deposits described in items 1 to 6 of the C schedule, the following particulars were provided :



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Item Nos.1 to 6 in C-Schedule Property as per plaint			Defendants' Response
Item No.	Banker's Name / A/c.No.	Name of the Account Holder	Name of the Account Holder
1	UCO Bank, Saidapet Branch SB A/c. No.413	Krishnaswamy	Jointly in the name of Krishnaswamy, first and third defendant.
2	MCC Bank, Adambakkam Branch. SB A/c.No.10501010008759	Krishnaswamy	Jointly in the name of second and third defendant.
3	MCC Bank, Adambakkam Branch SB A/c.No.10501010009934	Kesavaperumal	Item Nos.3, 4, & 5 of C-schedule do stand not in the individual names of the first, fourth and second plaintiff respectively as alleged, but it represents the joint names of the third defendant, and that it was operated by the third defendant.
4	MCC Bank, Adambakkam Branch. SB A/c.No.10501010009932	A.Kasthuri	
5	MCC Bank, Adambakkam Branch. SB A/c.No.10501010009933	V.Saraswathy	
6	MCC Bank, Adambakkam Branch, 1) FDR No.10501030635625 2) FDR No.10501030635700 3) FDR No.10501030635702 4) FDR No.10501030635704	Kesavaperumal	Jointly in the name of Krishnaswamy and first plaintiff.

Of the above said deposits (i) and (iv) of Item No.6, have already matured and are not renewed. And, of the balance two, one fixed deposit has already been closed and the proceeds are credited to the Saving Bank account, and the yet another fixed deposit got matured after the demise of Krishnaswamy and this has been renewed in the names of the first plaintiff and first defendant. And as per the Will of Krishnaswamy, the plaintiffs 1 to 4 are entitled to it, on they



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attaining the age of 60 years. So far as Item No.7 is concerned, this has no relevance on the plaintiffs, as it stands in the name of the third defendant. As regards Item No.9, pawn brokering business is concerned, the third defendant has been in association with his father since the age of 15 and he alone continued the business after his father's demise and even the licence now stands in the name of the third defendant.

3.3 The suit is barred by limitation. The suit is not maintainable and therefore, the prayers sought for in the plaint are not sustainable.

4. Though the defendants 1 and 3 have filed their separate written statements, but its substance is same as the written statement of the first defendant. The defendants 2 and 4 have adopted the written statements filed by the first defendant.

5. On the above pleadings, the following issues are framed for consideration of the trial:

(1) Whether the suit scheduled B and C properties are joint family properties?



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- (2) *Whether the plaintiffs are entitled to 1/8th share each in Schedule B and C properties?*
- (3) *Whether the Deed of Settlement dated 18.11.2004 is true, genuine and valid one?*
- (4) *Whether the Will dated 28.10.2011 in favour of the third defendant is illegal, true, genuine and binding upon the plaintiff?*
- (5) *Whether the registered settlement deed executed by K.Rengammal on 18.11.2004 in favour of the third defendant is true, valid and genuine?*
- (6) *Whether the suit is barred by limitation?*
- (7) *Whether the plaintiffs are entitled to rendition of accounts?*
- (8) *Whether the defendants are liable to pay mesne profits?*
- (9) *Whether the plaintiffs are entitled to permanent injunction?*
- (10) *To what other reliefs, the parties are entitled to?*

6. The dispute went to trial. On the side of the plaintiffs, the first plaintiff examined himself as PW1 and he has produced Ext.P1 to P16. Of which, Ext.P4 and Ext.P5 are the settlement deeds executed in favour of the third defendant respectively by Krishnaswamy and the first defendant; Ext-P6 is the Will executed by Krishnaswamy in favour of third defendant. On the side of defendants, the third defendant is examined as D.W.1 and he has produced Ext.D1 to Ext.D8.



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Submissions of the Plaintiffs' counsel:

7. 1. The learned counsel for the plaintiffs submits :

- It is not in dispute that Krishnaswamy was married twice, and his wives as between themselves were sisters. These sisters had a property in Vilathikulam, and they sold it under Ext.P1 sale deed dated 13.08.1971 in favour of one Krishnammal. This document recites that the sale deed (Ext.P1), was executed for them as well as for their minor children. A further recital in the sale deed is to the effect that the sale is made *inter alia* for some business purposes.
- Krishnaswamy had purchased Item No.1 of 'B' schedule property under Ext.P2 sale deed dated 06.06.1973. According to the plaintiffs, part of the sale proceeds of Ext.P1 sale was utilised by Krishnaswamy for the purpose of purchasing 'B' schedule - Item No.I property. And, since the sale proceeds obtained under Ext.P-1 was utilised for providing consideration for Ext.P-2 sale deed it partakes the character of joint family property.
- Krishnaswamy was engaged in several businesses, which included



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money lending and pawn broking too. His pawn broking business is the Item No.9 in 'C' schedule property. His sundry creditors are listed in Item No.8 of the 'C' schedule property. Item Nos.1 to 7 in 'C' schedule property are his bank deposits.

- While so, on 18.11.2004, both Krishnaswamy and Rengammal had executed separate settlement deeds as regards Item Nos.1 and 2 of B-schedule properties, both in favour of the third defendant.
- On 05.12.2012, Krishnaswamy died, while his second wife Subbuthai had pre-deceased him. The suit came to be instituted in 2013, and during the pendency of the suit, Krishnaswamy's first wife, the first defendant in the suit, died, sometime in November 2016.

7.2. The plaintiffs' assertion of title is founded on the following set of allegations:

- (a) So far as Item No.1 in 'B' schedule property is concerned, inasmuch as the sale proceeds of Ext.P1 sale deed was utilised for the purpose, it partakes the character of a joint family property and hence, Ext.P4 settlement deed executed by Krishnaswamy in favour of the third defendant is incompetent, since Krishnaswamy as the *karta* of the joint



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family cannot settle the coparcenary property.

(b) At the time when Ext.P-4 settlement deed was executed, Krishnaswamy was ill and was unconscious due to urinary infection that and hence he could not have lent his free consent for the execution of Ext.P4 settlement deed.

(c) So far as Ext.P5 settlement deed executed by Rengammal is concerned, Rengammal never had any independent source of income. Therefore, this property is a *benami* purchase by Krishnaswamy for his own benefit and not for the benefit of Rengammal.

(d) So far as 'C' schedule property is concerned, the contesting third defendant has set up a Will, which though produced was not probated. Therefore, no value can be attached to that Will, and the plaintiffs would be entitled to their share in the 'C' Schedule property.

8. Defending the action and refuting the arguments of the learned counsel for the plaintiffs, the counsel for the third defendant argued (which the counsel for the defendants 2 and 4 adopts the lines of argument of D3):

- Neither of the properties in Item No.1 and Item No.2 of 'B' schedule covered under Exts.P-4 and P-5 settlement deeds are joint family



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properties and that they are competent to execute those settlement deeds.

So far as 'B' schedule Item No.1 is concerned, plaintiffs contend that the sale consideration for buying this property is funded from and out of the sale proceeds of another property which both the wives of Krishnaswamy have provided. This is belied by the following facts :

- (a) The property under Ext.P1 was sold on 13.08.1971 for a total consideration of Rs.7,900/-. In this, Rengammal and Subbuthai, the two wives of Krishnaswamy were entitled to about Rs.2,700/- each. The combined total sale proceeds would at the best be Rs.5,400/-
- (b) Item No.1 was purchased by Krishnaswamy on 06.6.1973 under Ext.P-2. The total sale consideration quoted in the sale deed is Rs.9,000/-. The sale deed itself recites that part of the sale consideration totalling Rs.6,500/- was adjusted against an outstanding mortgage money due to Krishnaswamy from the vendor of the property, and the sale deed further recites that these mortgages were created between 1967 and 1970. This is well prior to Ext.P1 sale in 1971. All that Krishnaswamy paid under this sale deed is Rs.2,500/-.



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(c) Krishnaswamy had his independent source of income and that he was engaged in multiple businesses and was a licensee to run a ration shop, as a kerosene-dealer, authorised rice dealer etc., To substantiate it, the defendants have produced Ext.D1 to Ext.D6, all of which covers the period from 1964 to 1973. Indeed, the first plaintiff (P.W1) himself admits it in the cross-examination. This apart, these businesses were commenced long before even the first plaintiff was born.

- So far as 'B' schedule Item No.2 property is concerned, that stands in the name of Rengammal, and this property was purchased by her under Ext.P3, sale deed dated 05.11.1997. While Rengammal (D1) had filed her written statement detailing her independent source of income, she died during the pendency of the suit and, hence she could not prove herself. The first plaintiff (P.W.1) in his cross-examination has admitted that both his parents Krishnaswamy and Rengammal were doing independent money lending business, and that he (first plaintiff) did not engage in any money lending business, and this creates a strong probability that Rengammal also had her independent source of income to purchase 'B' schedule Item No.2. When it is



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admitted by the first plaintiff that Rengammal had her independent source of income, the burden is heavy on the plaintiff to establish that the so called family business had funded the sale consideration for the purchase of 'B' schedule Item No.2.

- It now emanates from these facts that when it is established that both Krishnaswamy and Rengammal had their independent sources of income for the purchase of 'B' schedule Items Nos.1 and 2, necessarily, they are competent to deal with their property. Other than challenging the right of Krishnaswamy and Rengammal to execute the settlement deeds for want of absolute title over 'B' schedule Item No.1 and 2, as the case may be, the plaintiffs have not attempted to impeach these documents on any of the grounds that might vitiate the contract.
- So far as 'C' schedule business is concerned, P.W1 concedes that even during the life time of his father, D3 has been looking after the business. He has contributed his physical labour for running that business.
- So far as Bank deposits are concerned, except two accounts where plaintiffs 1 and 2 are joint account holders along with Krishnaswamy,



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the other accounts are frozen by the Bank. So far as these two accounts are concerned, the joint account holders had withdrawn the amounts and have credited the said amount into their accounts. The learned counsel however concedes that in these amounts, the plaintiffs do have a share.

- The settlement deeds Ext.P4 and Ext-P5 were executed on 18.11.2004, and the father was alive till 05.12.2012 and the mother was alive till 2016. Even assuming that the plaintiffs had any right to impeach these documents, it should have been exercised within three years from the date on which Ext.P4 and Ext.P5 were executed.

9. In response, the learned counsel for the plaintiffs argued:

- That the plaintiffs came to know of these settlement deeds only after the demise of their father in 2012 and hence the suit is in time.
- They also concede even in the plaint that they have permitted the third defendant to collect the rents. This is incongruent to the ordinary course of human conduct that parties would permit another party with whom they do not have cordial relationship to deal with the property and collect the income from them.



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- The plaintiffs have paid the Court fee only under Section 25(d), if at all they ought to have paid the Court fee under Section 25(b).
- Even assuming Krishnaswamy had purchased the property in the name of Rengammal, still the presumption is that it enure to the benefit of Rengammal.

Hence, the suit is liable to be dismissed.

Discussion & Decision:

10. There are two parts to the litigation. If the immovable properties described in B-schedule to the plaint are either ancestral property in the hands of Krishnaswamy or was purchased by him benami in the name of his wife Rengammal, then the plaintiffs are likely to have a share in them, since the settlors under Exts.P4 and P5 settlement deeds might not have absolute right over them to settle both the items of immovable property absolutely in favour of the third defendant. Alternatively, in the eventuality of this Court arrives at a conclusion that they are the self acquired properties of Krishnaswamy and Rengammal, then they still might obtain a share if only they could create a preponderating probability through the evidence on record that Exts.P-4 and



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P-5 settlement deeds are invalid. The C-schedule properties are essentially certain bank deposits etc. These apart there are a few ancillary issues that this Court is required to address.

Issue No:1

a) Character of Item 1 property in B-Schedule:

11.1 It is not in dispute that this item of property was purchased by Krishnaswamy vide Ext.P.2 sale deed, dated 06.06.1973 for a total sale consideration of Rs.9,000/-, from his mortgagor, out of which he adjusted Rs.6,500/- due from his vendor and had paid a mere Rs.2,500/- for the purchase. The plaintiffs would contend that this part of amount was contributed by the two wives of Krishnaswamy, who mobilised a sum of Rs.7,900/- by the sale of their property under Ext.P-1 sale deed, dated 13.08.1971. And, curiously enough, they would contend that since the wives have contributed their money for the purchase of property under Ext.P-2, it (B schedule Item 1) would assume the character of a joint family property.

11.2 This theory is plainly preposterous. This Court wonders since when a



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property purchased by the husband with the contribution made by his wives would convert the property so purchased into ancestral or joint family property, when Mulla in his treatise on Hindu Law most authoritatively tells us that only a property inherited by a male Hindu from his father, grandfather or great grandfather, or any property purchased out of the income from any existing ancestral property, or where a self acquired property is consciously blended with other ancestral properties, alone are ancestral or a joint family properties? This fallacy in legal perception has supplied a heavy dose of misconception, and hence the plaintiffs' claim that B schedule Item I property is ancestral fails instantly.

11.3 If the evidence on record is scanned for its merits, it informs that Krishnaswamy was an enterprising businessman who had run few businesses successfully (for there is no evidence that he failed miserably in any of the businesses), it could be derived that he had the capacity to mobilise a meagre Rs.2,500/- for paying the balance sale consideration payable towards the sale price for the purchase of B schedule Item 1, after adjusting the mortgage-money dues from the vendor. This court has very little hesitation to hold that B-schedule Item 1 property was purchased by Krishnaswamy and it is his self-



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acquired, personal property over which he had absolute power of disposition.

b) B Schedule, Item-2 :

12. So far as this Item of property is concerned, this was purchased in the name of Rengammal under Ext.P3, sale deed dated 05.11.1997. The evidence on record, more particularly, the testimony of first plaintiff as P.W1 in his cross-examination informs, that Rengammal was also engaged in money lending business at her level, which indicates that she matched her husband's skill in making her own independent income, and the sale consideration passed for the purchase of this property under Ext.P3 is only Rs.1,80,000/-. The plaintiffs would contend that this property was purchased by Krishnaswamy in the name of his wife Rengammal, out of joint family funds. It is not adequately established what the joint family properties are, and what kind of income that they generated. The law on the point is that even where ancestral properties are available, there could be no presumption that the property purchased in the name of one of the joint family members can be treated as ancestral property. So far as the present case is concerned, nothing was established and necessarily, this Court has held that the properties in B-schedule Item-2 is the



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self-acquired property of the first defendant, Rengammal, and that she had absolute power of disposition over them.

Issues Nos.3 & 5 :

13. They pertain to the genuineness of Ext.P4 and Ext.P5 settlement deeds, both dated 18.11.2004, executed respectively by Krishaswamy and Rengammal as regards the properties described in B-schedule in favour of the third defendant. As very rightly contended by the counsel for the third defendant, the plaintiffs have not attempted to impeach these settlement deeds on any of the grounds that may vitiate a contract, but solely on the ground that the settlors under these documents namely Krishnaswamy and the first defendant Rengammal do not have absolute power of disposition vis-a-vis these properties. As was found earlier, Item Nos.1 and 2 properties in B-schedule are the absolute properties respectively of Krishnaswamy and Rengammal. Therefore, this Court holds that Ext.P4 and Ext.P5 are valid. Indeed, some attempt is seen made about the mental capacity of Krishnaswamy to execute Ext.P4, but that was not pleaded in the plaint, and even the half hearted attempt made during trial was inadequate to taint the execution of Ext.P4 with any element of suspicion.



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Issue No:4

14. This pertains to a registered Will dated 28.10.2011 alleged to have been executed by Krishnaswamy. It was propounded by the third defendant and was marked as Ext.P6. And, it deals with the bank deposits and sundry debtors of Krishnaswamy, but the propounder of the Will has not chosen to prove it by any of the methods made available under Sec.68 to 70 of the Evidence Act. Therefore, this Will cannot be said to have been proved, and this issue is decided in favour of the plaintiffs.

Issues 2, 7 to 9:

15.1 This Court has already held that both the items of immovable properties described in B-schedule are not available for partition, and hence, there is no difficulty in holding that the plaintiffs are not entitled to any share in them.

15.2 So far as C-schedule property is concerned, since the Will which the 3rd defendant had propounded to resist the claim of the plaintiffs has neither been produced nor proved that the various deposits in C-schedule property is



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available in partition. Accordingly, the plaintiffs would be entitled to 1/7 share each in Item Nos.1 to 6 bank deposits. And as concerning Item No.7, there is no clear proof about it and hence dismissed, and in Item No.8, the details are not provided and that too is dismissed. So far as Item No.9, pawn brokering business is concerned, plaintiffs are entitled to a share whatever that is available as on the date of death of their father Krishnasamy and hence, preliminary decree for partition is given, and accounts is directed to be taken till the date of death of Krishnasamy.

15.3 Other Issue Nos. 8 and 9 are concerned, in view of the above findings already made, they too fail.

Issue No.6 :

16. Is the suit barred by limitation? The answer is plain 'No', since the plaintiffs are not the executants of either Ext.P4 or Ext.P5, settlement deeds.

17. In the result, the suit is partly decreed and the plaintiffs 4/7 share is declared in 'C' schedule Item Nos. 1 to 6, and so far as Item 9, business is



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concerned, the plaintiffs are entitled to a share whatever that is available till

05.12.2012, the date on which Krishnaswamy was dead. No costs.

Consequently, connected miscellaneous petitions if any, shall stand closed.

28.04.2023

Index : Yes / No

Speaking order / Non-speaking order
ds



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APPENDIX

I. Witnesses :

<i>Plaintiffs :</i>	
PW1	K.Kesavaperumal (1 st plaintiff)
<i>Defendants :</i>	
DW1	S.K.Parthasarathy (3 rd defendant)

II. Exhibits :

Ex.P1	13.08.1971	Certified copy of sale deed executed in favour of Tmt.Krishnammal
Ex.P2	06.6.1973	Certified copy of sale deed executed in favour of Mr.Krishnasamy by Kannan & others
Ex.P3	05.11.1997	Certified copy of sale deed executed by Tmt.Kuppammal in favour of Tmt.Rengammal (1 st defendant)
Ex.P4	18.11.2004	Certified copy of settlement deed executed in favour of Mr.S.K.Parthasarathy, 3 rd defendant by Mr.Krishnasamy
Ex.P5	18.11.2004	Certified copy of settlement deed executed in favour of S.K.Parthasarathy, 3 rd defendant by the first defendant Rengammal, first defendant
Ex.P6	28.10.2011	Will executed by Mr.Krishnasamy
Ex.P7	01.02.2013	Statement of Accounts of Kesavaperumal, first plaintiff in M/s.MCC Bank, Adambakkam Branch.
Ex.P8	01.02.2013	Statement of Accounts of Mrs.Saraswathi, second plaintiff in M/s.MCC Bank, Adambakkam Branch.
Ex.P9	01.02.2013	Statement of Accounts of Ms.Kasthuri.A, fourth plaintiff in M/s.MCC Bank, Adambakkam Branch.
Ex.P10	31.03.2005	Balance sheet & Accounts details of Mr.Krishnasamy
Ex.P11	31.03.2005	Balance sheet & Accounts details of Mrs.Rengammal, first defendant



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Ex.P12	31.03.2005	Balance sheet & Accounts details of Mr.S.K.Parthasarathy first defendant
Ex.P13		Xerox copy Family Card / Ration Card of Mr.Kesavaperumal, first plaintiff
Ex.P14		Xerox copy Family Card / Ration Card of Mr.Venkatesa Perumal, husband of Mrs.Saraswathy, 2 nd plaintiff
Ex.P15		Xerox copy Family Card / Ration Card of Mr.Perumal, third plaintiff
Ex.P16		Xerox copy Family Card / Ration Card of Kasthuri, fourth plaintiff
Defendants :		
Ex.D1	20.06.1964	Sales Tax Demand Notice issued to Mr.Krishnaswamy
Ex.D2	18.06.1969	Xerox copy of the proceedings of the Rationing Officer, Saidapet Zone, issued to Mr.Krishnaswamy, appointing him as registered retail dealer for Kerosene
Ex.D3	30.01.1970	Proceedings authorising Mr.Krishnasamy Chetty as authorised dealer to receive, hold and sell Government stocks of paddy and rice.
Ex.D4	12.02.1972	Xerox copy of the receipt towards receiving the licence fee for the year 1973 – 1974 from Mr.Krishnasamy
Ex.D5	11.04.1973	Receipt issued by Sales Tax Collection Inspector to Krishnasamy
Ex.D6	18.10.1973	Registration Certificate issued to Me.Krishnaswamy to carry Kerosene retail business
Ex.D7		Accounts book maintained by the third defenant for collecting the rents from tenants and electricity charges
Ex-D8 series		Photocopies of FD Sr.Citizen Quarterly Deposit Receipts of Chennai Central Co-operative Bank

28.04.2023



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N.SESHASAYEE.J.,

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Pre-delivery Judgment in
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