



A.S.No.584 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.06.2023

PRONOUNCED ON : .07.2023

CORAM

THE HON'BLE MR. JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

Appeal Suit No.584 of 2017

and

Civil Miscellaneous Petition No.19680 of 2017

and

Civil Miscellaneous Petition No.3085 of 2023

N.Rajesh Kanna

... Appellant /18th defendant

Versus

1.K.Subramanian

Chandra (Died)

Minor S.Prasanna (Died)

Adopted son of K.Subramanian

Rep.by his father and next friend K.Subramanian

2. K.Chakrapani Reddiyar (Died)

3. Aamsa

4. Navaneetha Krishnan

Murugan (Died)

5. Rajagopal

6. Anuradha Ravi

7. V.Gopinath

8. Siva



A.S.No.584 of 2017

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9. Vimala
10. Vijay Ananth
11. R.Subbiah
12. A.S.Narayanan
13. M.V.Sai Babu
14. M.Mangai Thayar
15. S.Ravi
16. M/s.Holy Cross Matriculation School,
represented by its Correspondent
17. S.Devika
18. J.Pushparathan
19. Dhanamary
20. Peter
21. M.Muthuselvi
22. M.Suresh
23. K.C.Ramesh

... Respondents/Defendants

[R3 and R23 brought on record as LR's of the deceased 2nd respondent viz., Chakrapani Reddiyar vide Court order dated 06.04.2022 made in C.M.P.No.3033/2021 in A.S.No.584/2017]

[R4 to R22 already set ex-parte in O.S.No.31 of 2010. Hence notice to them is dispensed with]

The Appeal Suit filed under Section 96 of the Code of Civil Procedure to set aside the Judgment and Decree dated 25.05.2017 passed in O.S.No.31 of 2010 on the file of the District Court No.II, Kancheepuram.

For Appellant	: Mr.G.Balasubramanian For M/s. Leela & Co.,
For R2, R3 & R23	: Mr.Ravichandran
For R4 to R22	: Dispensed with



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A.S.No.584 of 2017

JUDGMENT

[The Judgment of the Court was delivered by K.RAJASEKAR,J.,]

The 18th defendant in the Original Suit, filed this appeal to set aside the Judgment and Decree passed by the District Court No.2, Kancheepuram in O.S.No.31 of 2010, dated 25th May 2017, whereby, the trial Court has dismissed the suit for partition filed by the plaintiffs.

2. The parties are referred to hereunder according to status and ranking before the trial Court.

3. The case of the plaintiffs in brief is as follows:

(a) The suit 'A' and 'B' Schedule properties originally belongs to Mr.Krishna Reddiyar and his wife Mrs.Mangalakshmi Ammal respectively. They have entrusted the properties to first defendant who is their son for managing the same. By using surplus income received from 'A' and 'B' Schedule properties, 'C' Schedule properties were purchased in the name of the first defendant. Mr.Krishna Reddiyar has executed a Will, dated 22.02.1980, relating 'A' Schedule property, whereby, he has bequeathed life estate in favour of his sons viz., first plaintiff, first defendant, third



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defendant and after demise of the life estate holders, the property shall be given to the male children born to the above sons. Similarly, Mangalakshmi Ammal executed a Will dated 25.06.1981 relating to 'B' Schedule property, bequeathing life estate to her daughter-in-laws i.e., second plaintiff, second defendant and fourth defendant and after their demise, the property shall be given to the male children born to the above daughters-in-law. 'C' Schedule properties were stands in the name of the first defendant hence, those properties were not included in the above two Wills. The third plaintiff is the adopted son of the plaintiffs 1 and 2. During the pendency of the suit, he died leaving plaintiff No.2 as a legal heir.

(b) The defendants 1 to 4 have not permitted the plaintiffs 1 and 2 to enjoy the properties and the first defendant is managing 'A' to 'C' Schedule properties as Manager of Hindu Joint Family. Subsequently, as instructed by the first defendant, plaintiffs 1 and 2, defendants 1 to 4 have jointly executed a Power of Attorney in favour of the defendant No.23 namely, Mr.S.Peter. Subsequently, plaintiffs 1 and 2 have revoked the Power of Attorney on 27.02.2016, by proper intimation. They have demanded partition of the suit properties but the defendants No.1 to 4 are evading the same with malafide intention. Thereafter, they have constrained



A.S.No.584 of 2017

to issue notice to the defendants 1 to 14 on 07.09.2006 demanding partition which was replied by the defendants 1 and 2 on 09.10.2006 stating false averments.

(c) The defendants 1 to 4 have leased out the house properties in Item No.1 and 8 of 'A' Schedule properties and earning a sum of Rs.30,00,000/- per annum. The first defendant has also created various documents in respect of Item Nos.1 and 2 of 'C' Schedule properties in favour of the defendants 5 to 20 and also item Nos. 3 to 6 in favour of the defendant No.21 and 22 hence they have been added as a parties. Those documents are not binding on the plaintiff and they are entitled for 1/3 share in the properties. Hence the suit.

4. The case of the defendants 1 and 2 in brief is as follows:

(a) As per the Wills executed by Krishna Reddiyar and Mangalakshmi Ammal, the first plaintiff, first defendant, third defendant, second plaintiff, second defendant and fourth defendants are the life estate holders for 'A' and 'B' Schedule properties and they have executed a Power of Attorney to sell the properties in favour of the defendant No.23 in the year 2004. Since they were not having any male issues at the time of execution of



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Sale deeds, sale is valid and they have not entitled for any share in the suit properties. Subsequently, the plaintiffs Nos.1 and 2 adopted third plaintiff but he died leaving the second plaintiff as his only legal heir. The Power of Attorney executed by the plaintiffs Nos.1 and 2 in favour of defendant No.23 is also enforced and acted upon. Based on the same, some of the properties have also been sold.

(b) 'C' Schedule property is a self-acquired property of the first defendant, he had purchased after his marriage in the year 1965. His father-in-law has purchased 'C' Schedule property in the name of the first defendant. The entire sale consideration was also paid by him and there is no surplus income from 'A' and 'B' Schedule properties. The Court fees paid is not proper and the suit is not maintainable and liable to be dismissed.

5. The defendants Nos.8, 9, 10, 11, 12, 13, 14, 17 and 19 have filed separate written statements. They are the purchasers of the portion of 'C' Schedule properties and their case is as follows:

(a) These defendants have purchased some portion of the land which form part of the layout called Kumaran Nagar and they are the bonafide purchasers and the Sale deed is also binding on the plaintiffs. Now



A.S.No.584 of 2017

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this defendants are in possession of the purchased properties and prays for dismissal of the suit.

6. The defendant No.18, who is the son of Defendant No.3 (Appellant herein) in his written statement admitted the relationship between the parties, execution of Will by Krishna Reddiyar and Mangalakshmi Ammal and supported the case of the plaintiffs with regard to the fact that 'C' Schedule property is the property purchased from the income of the 'A' and 'B' Schedule property and claimed that first defendant is only a name lender. He had executed the Power of Attorney under the influence of the first defendant on the terms that sale proceedings should be used by the properties mentioned in the Power of Attorney or in the hands of the first defendant. The first defendant has also leased out some properties and earning good income and he has not shared the income with this defendant. The only male members born to the family are son of first defendant namely Mr.Ramesh and this defendant and they alone are entitled for 1/2 share in the properties bequeathed as per the Will, and the other life estate holders are not entitled to sell the properties. He is having 1/2 share in the properties however, prays to dismiss the suit.



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7. The defendant No.23 has filed separate written statement

adopted by the defendant Nos.21 and 22 and their case in brief is as follows:

(a) The plaintiffs and defendants 1 to 4 have executed a Power of Attorney on 06.12.2004 and in favour of defendant No.23 and it has not been revoked and the Power of Attorney is already acted upon. He has also paid a sum of Rs.2,53,80,000/- to the plaintiffs and defendant Nos.1 to 4 and received a receipt dated 06.12.2004 and thereafter, possession of the properties given to him and he is in possession of the properties. Hence prays to dismiss the suit.

8. After considering the above pleadings, the Trial Court has framed issues and subsequently, it has re-casted is as follows:

- “ 1. Whether the plaintiffs are entitled to 1/3 share in 'A' and 'B' Schedule properties based on the Wills dated 22.02.1980 and 25.06.1981?*
- 2. Whether the 'C' Schedule properties are joint family properties or not?*
- 3. Whether the plaintiffs are entitled to partition of 1/3 share in the 'C' Schedule properties?*
- 4. Whether the suit is maintainable?*
- 5. Whether the valuation of the suit is Correct or not?*



A.S.No.584 of 2017

6. Whether the plaintiffs are entitled to decree for partition as prayed for?

7. To what relief the parties are entitled ? ”

9. Before the trial Court, on the side of the plaintiffs P.W.1 was examined and Ex.A1 to A31 were marked and on the side of the defendants, first defendant was examined as D.W.1 and defendant No.18 (Appellant herein) was examined as D.W.2 and Exs.B1 to B8 were marked.

10. After considering the evidence placed on the record, the Trial Court has held that the 'Wills' Exs.A5 and A6 executed by Krishna Reddiyar and Mangalakshmi Ammal were not been proved by the plaintiffs hence Schedule 'A' and 'B' properties shall be succeeded by legal heirs as per intestate succession. Since, some of the legal heirs have not been made as a party to the suit, the suit is held to be bad for non-joinder of necessary parties. The 'C' Schedule properties are held to be self acquired properties of the first respondent and no others are having any right over the same and the suit is dismissed.



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11. The plaintiffs have not filed any appeal against the dismissal of the suit. Defendant No.18, who is the son of defendant No.3 has filed this appeal on the ground that he is having vested interest in Schedule 'A' and 'B' properties as per the two Wills as Exs.A5 and A6. He contends that without properly appreciating the evidence relating to admission of the parties, the Trial Court has erred in holding that the Wills have not been proved. 'C' Schedule properties was purchased from the income of 'A' and 'B' Schedule properties, hence 'C' Schedule properties to be treated as joint family properties, prays to set aside the finding of the Trial Court, prayed for partition of properties.

12. The points for consideration arose with this appeal before this Court is as follows:

1. Whether the Trial Court is erred in holding that Exs.A5 and A6 Wills executed by Krishna Reddiyar and Mangalakshmi Ammal respectively have not been proved?
2. Whether 'C' Schedule properties are joint family properties and the same is purchased from the income earned from 'A' and 'B' Schedule properties as contended by defendant No.18 and the plaintiffs?
3. Whether the appellant/defendant No.18 is entitled for partition as claimed?
4. Whether the dismissal of the suit for non-joinder of necessary parties



A.S.No.584 of 2017

is proper or not?

5. Whether the Judgment and decree passed by the Trial Court is liable to set aside and the appeal is to be allowed?
6. To what other reliefs the parties are entitled to?

13. Point No.1:-

The plaintiffs have pleaded and adduced evidence before the Trial Court that 'A' and 'B' Schedule properties belongs to Krishna Reddiyar and his wife Mangalakshmi Ammal respectively, under various Sale deeds. The ownership of Krishna Reddiyar and Mangalakshmi Ammal has been admitted by all the parties. Similarly, the plaintiffs have pleaded that the Krishna Reddiyar has executed his last Will dated 22.02.1980 - Ex.A5 and Mangalakshmi Ammal has executed her last Will dated 25.06.1981 – Ex.A6 and bequeathed their properties and they have not died intestate and the plaintiffs have relied on the above Wills to claim that they are having right over the Schedule 'A' and 'B' properties. Defendants No.1 and 2 have also admitted the execution of Wills in the written statement. Defendant No.3 alone has filed written statement denying the execution of the Wills, subsequently he died. His son defendant No.18 has filed separate written statement, which is contrary to the written statement of his father with



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regard to the execution of Wills by Krishna Reddiyar and Mangalakshmi Ammal. Similarly, others have also not disputed the execution of Wills. At the time of entering into the issue, all the contesting parties have relied on the Wills of Krishna Reddiyar and Mangalakshmi Ammal and they claimed right over the suit properties based on the above Wills.

14. The Trial Court in issue No.1 has proceeded to decide the rights of the plaintiffs in 'A' and 'B' Schedule properties on the basis of Wills. By relying on Section 68 of the Indian Evidence Act which deals with proof of execution of document required to be attested and Section 63 of the Indian Succession Act relating to execution of unprivileged Wills, by following the Judgment of the Hon'ble Apex Court in ***Ramesh Verma (d) Through his Lrs Vs. Lajesh Saxena (d) by Lrs and another*** reported in ***2017 (1) SCC 257*** has arrived its conclusion that the plaintiffs have not proved the Wills Exs.A5 and A6 and they are not entitled to claim any right in favour of them.

15. The learned counsel for the appellant/18th defendant would submit that there is no dispute between the contesting parties regarding execution of Exs.A5 and A6. It is true that no witness relating to execution



A.S.No.584 of 2017

of Wills have been examined either on the plaintiffs' side or by the defendants side. However, there is no issue raised between the parties and unnecessarily the Trial Court has ventured in to the question of proof of Wills. Since all the parties have accepted the execution of Wills, the Trial Court ought to have accepted the Wills. Eventhough Defendant No.3 who filed this Written statement denied the execution of Wills, after his death, his son filed written statement stating that he is not disputing the execution of Wills and prays to grant relief based on Wills Ex.A5 and Ex.A6.

16. In ***Ramesh Verma (d) through his Lrs Vs. Lajesh Saxena (d) Lrs and another*** reported in ***2017 (1) SCC 257*** case cited above in Paragraph No.13, the Hon'ble Apex Court has considered the requirements for proving the Will and held that “*This is the mandate of Section 68 of the Evidence Act and the position remains the same even in a case where the opposite party does not specifically deny the execution of the document in the written statement.*”

17. Recently, the Division Bench of this Court in ***Boomathi (died) by her Lrs vs. Murugesan (died) by his Lrs*** reported in ***2023 (2)***



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CTC 273 has considered the scope for proving the Will in case of admission of Will by the parties. In paragraph Nos.23, 24, 25, 30, 32 and 33 reads as follows:

“23. First and foremost, it is to be borne in mind that before the Hon'ble Supreme Court in Jagdish Chand Sharma Vs. Narain Singh Saini [Dead] through Legal Representatives and Others, reported in MANU/SC/0522/2015 : 2015 [8] SCC 615, the validity of the Will was a core issue and the Hon'ble Supreme Court proceeded to discuss the law with regard to proof of a Will in accordance with the statute. In such context, the Hon'ble Supreme Court has held that the position with regard to proof of a Will remains the same even if the opposite party does not specifically deny execution of the same.

24. The above judgment has been followed by learned Single Judges of this Court in P.Malliga Vs. P.Kumaran reported in MANU/TN/2920/2022 : 2022 [2] LW 393 and Akkinirajan Vs. Maheswari & Others reported in MANU/TN/7602/2022 : 2023 [1] LW 72.

25. This Court draws the distinction between 'specifically denied', 'not specifically denied' and 'admitted'. The first two instances, namely, 'specifically denied' and 'not specifically denied', would fall within one category. Insofar as proof of a Will in both cases in this category, the Will would have to be necessarily proved by the propounder. However, where the opposite party categorically admits to the Will, the position would be certainly different. In India, we follow what is called the system 'adversarial proceedings', which is also



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A.S.No.584 of 2017

followed in the British Courts. The foundation of this School is that parties before a Court would have to deal with facts in issue namely facts that are asserted and denied by the parties to the lis and the Court would proceed to adjudicate on such issues. When there is no dispute between the parties on certain matters, the Court would not venture to require proof of such admitted facts.

30. This Court also noticed the judgments of two learned Single Judges of this Court in the case of Vanjiammal [Died] through LR's. Vs. Vidya and Others in CRP [PD] No. 3659/2013 dated 21.04.2017 and P.Radha Vs. Irudayadoss and Others reported in MANU/TN/2524/2022.

32. In Akkinirajan's case [cited supra] reported in MANU/TN/7602/2022 : 2023 [1] LW 72, a learned Single Judge relied on the judgment of the Hon'ble Supreme Court in the case of S.R. Srinivasa and Others V. Padmavathamma reported in MANU/SC/0285/2010 : 2010 [5] SCC 274, and held that the Will was required to be proved even though the plaintiff in that case, had admitted in earlier proceedings regarding execution of the Will by the testator. The judgment of the Hon'ble Supreme Court relied by the learned Single Judge was a case, where the Will was not seriously objected to and in that context, rightly the Hon'ble Supreme Court held that in such cases, proof of Will cannot be dispensed with. As already mentioned hereinabove, proof would become warranted only in cases where execution of the Will has not been admitted, say in cases where execution is specifically denied or not specifically denied.

33. This Court has applied its mind to the



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A.S.No.584 of 2017

various principles laid down by the Hon'ble Supreme Court as well as this Court and other High Courts, especially in the context of Section 68 of the Indian Evidence Act, proof of a Will where execution is not specifically denied and in cases where the execution is categorically admitted. The ratio laid down by the Hon'ble Supreme Court in Ramesh Verma's case [cited supra] reported in MANU/SC/1549/2016 : 2017 [1] SCC 257, cannot be a precedent for the proposition where the opposite party clearly admits to the execution of the subject Will as in the instant case. Therefore, we are not in respectful agreement with the judgments in P.Malliga's case and Akkinirajan's case [cited supra] following the ratio laid down by the Hon'ble Supreme Court in Jagdish Chand Sharma's case. On the contrary, we approve the ratio laid down in P.Radha Vs. Irudayadoss and Others reported in MANU/TN/2524/2022 and Vanjiammal and Others Vs. Vidya and Others in the order dated 21.04.2017 made in CRP.[PD] No. 3659/2013. Hence, Point [B] is answered accordingly.

18. In the present case, the first plaintiff has adduced oral evidence as P.W.1 and the Defendant No.1 was examined as D.W.1 and Defendant No.18 was examined as D.W.2 and others have not come forward to adduce evidence in this case.

19. It is the evidence of P.W.1 that as per the Will executed by the Krishna Reddiyar, he along with two brothers i.e., Defendant Nos.1 and



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3 are having right over the properties. Similarly, the plaintiff No.2, Defendants Nos.2 and 4 having right over the 'B' Schedule property as per the Will. Defendants No.1 and 18 have also adduced very same evidence relating to the execution of Wills. The evidence of P.W.1, D.W.1 and D.W.2 shows that there is no issue relating to validity and execution of Will by Krishna Reddiyar and Mangalakshmi Ammal. P.W.1 also claimed that he along with his wife, plaintiff No.2, have adopted third plaintiff namely, minor S.Prasanna and was died during the pendency of the suit and as per the recitals in the Will, this minor is also having a vested interest based on the Will. Hence, the minors vested interest shall be devolve on his wife as a legal heir of minor.

20. Similarly, defendant No.1 and defendant No.18 have claimed that based on the Will, there is a life estate created in favour of the sons and daughters-in-law of Krishna Reddiyar and Mangalakshmi Ammal. Accordingly, they claimed right over the 'A' and 'B' Schedule properties. By way of pleadings and by oral evidence, the contesting parties have admitted the execution of the Wills-Ex.A5 and Ex.A6. As held by the Division Bench of this Court in ***Boomathi (d) by her Lrs vs. Murugesan (d) through his Lrs*** cited above, in this case, the execution of Will has been categorically admitted by the parties and this admission is sufficient to hold that Krishna



A.S.No.584 of 2017

Reddiyar and Mangalakshmi Ammal have executed the Will and bequeathed their 'A' and 'B' Schedule properties and they have not died intestate.

21. It is also the admitted case of the contesting parties that they have executed a registered Power of Attorney-Ex.P13, dated 06.12.2004 in favour of one Peter-Defendant No.23 in which, the plaintiff No.1, defendants No.1 and 3 who are the sons of the testators joining with their respective spouses viz., second plaintiff, second defendant, fourth defendant and also eighteenth defendant and son of the first defendant have come forward to appoint defendant No.23 as their power agent, to deal with the properties bequeathed by Krishna Reddiyar in his Will-Ex.A5. This Ex.A13-Power of Attorney has been revoked by the plaintiff Nos.1 and 2 by execution of Ex.A14, it shows that, the parties have come forward to enforce the recitals in the Will-Ex.A5 and it strengthened the case of Appellant/Defendant No.18 that, parties have not contented validity of Wills.

22. As discussed supra, this Court is of the view that the Trial Court ought not to have considered the issue relating to proof and validity of the Will executed by Krishna Reddiyar and Mangalakshmi Ammal, as per the decision of the Division Bench of this Court in **Boomathi (d) by her Lrs vs. Murugesan (d) through his Lrs** cited supra. The finding given by the



Trial Court that the Wills have not been proved by the plaintiffs is not sustainable since there is no obligation on the part of the plaintiffs to prove the fact that the Wills Exs.A5 and A6 have been executed by the testators. Accordingly, point No.1 is answered accordingly.

23. Point No.2:-

The plaintiffs and defendant No.18 have claimed the share in 'C' Schedule properties on the ground that the same is purchased from the income earned from 'A' and 'B' Schedule properties. The test to determine the nature of properties as Hindu Joint Family property or separate property of member of Hindu Joint Family considered by the Hon'ble Apex Court and this Court under various Judgments and some of the relevant Judgments are considered herein as follows:

24. The Hon'ble Apex Court in ***Shrinivas Krishnarao Kango vs. Narayan Devji Kango and Others*** reported in ***AIR 1954 SC 379***, the Hon'ble Supreme Court in paragraph No.8 held that:

“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 self-acquisition”.

25. In ***Mudigowda Gowdappa Sankh and Others vs.***

Ramachandra Ravagowda Sankh and Another reported in ***AIR 1969 SC***

1076 the Hon'ble Supreme Court held that:

“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, 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”.

26. In ***D.S.Lakshmaiah and Another vs. L.Balasubramanyam***

and Another reported in ***2003 10 SCC 310***, the Hon'ble Apex Court in

Paragraph Nos.18 and 19 as held as follows:



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A.S.No.584 of 2017

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

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

19. *Another contention urged for the respondents was that assuming Item 1 property to be self-acquired property of Appellant 1, he blended the said property with the joint family property and, therefore, it has become joint family property. Assuming the respondents can be permitted to raise such a plea without evidence in support thereof, the law on the aspect of blending is well settled that property separate or self-acquired of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein; but to establish such abandonment a clear intention to waive separate rights must be established. From the mere fact that other members of the family were allowed to use the property jointly with himself, or that the income of the separate property was utilised out of generosity to support persons whom the holder was not bound to support, or from the failure to maintain separate accounts, abandonment cannot be inferred, for an act of generosity or kindness will not ordinarily be*



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A.S.No.584 of 2017

regarded as an admission of a legal obligation (see Lakkireddi Chinna Venkata Reddi v. Lakkireddi Lakshmama [AIR 1963 SC 1601:(1964) 2 SCR 172] and K.V.Narayanan v. K.V.Ranganandhan [(1977) 1 SCC 244]).

27. This Court, after considering various previous judgments, in

K.V.Ramasamy and Another vs. K.V.Raghavan reported in **2010 (1) MLJ**

1019 in paragraph No.34 reiterated the following principles:

“34. From the conjoint reading of the decisions referred to supra, the following aspects can be culled out easily:

a) The joint family nucleus must have left sufficient surplus income so as to enable acquisition.

b) Initially burden lies upon a member who alleges that a particular property is a joint family property to the extent that the alleged joint family nucleus must have left sufficient surplus income and by Utilising the same, the property in question could have been acquired.

c) If the initial burden as referred to above is proved then the burden shifts to the member of the joint family setting up claim that it is his personal property and the same has been acquired without any assistance from the joint family property.

d) Failure to prove existence of nucleus, the inevitable presumption is that the acquisition in question is nothing but self acquisition.

e) Mere fact of existence of a joint family does not lead to presumption that a property held by any of



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A.S.No.584 of 2017

its member is joint family property unless the above aspect are proved.

f) If the property acquired is standing in the name of the female member of a joint family, she need not prove as to how she acquired it.”

28. The Division Bench of this Court in ***Sri Chandru vs. K.Narayanan and Others*** reported in **2012 (2) LW 326**, in Paragraph No.28 held that:

“To prove that the suit properties are joint family properties, the plaintiffs are to adduce evidence as to existence of nucleus. The mere existence of nucleus alone is not enough to hold that the acquisitions were made utilising the income from nucleus.” In the absence of any proof regarding nucleus or the income of the joint family and in the absence of any evidence, the contention of the Plaintiffs that the suit properties are the joint acquisitions does not merit acceptance.”

29. This Court in ***Kaveri vs. Anandayee*** in **S.A.No.739 of 2009, dated 20.12.2019** in paragraph No.18, has once again reiterated the principle laid down in earlier Judgments as held as follows:

“18.The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired,



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A.S.No.584 of 2017

there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available”.

30. Admittedly, 'C' Schedule properties stands in the name of the first defendant. According to the plaintiffs' that 'A' and 'B' Schedule properties were under the management of Defendant No.1 and from the income earned from 'A' and 'B' Schedule properties, he purchased 'C' Schedule properties in his name.

31. In the cross examination, P.W.1/first plaintiff has stated that the first defendant was elder son of the family and his parents have purchased the property in the name of the first defendant. These properties were purchased under Exs.A2 to A4, prior to the execution of the Will and he denied that those properties were separate properties of the first defendant.

32. It is admitted that the properties bequeathed under Ex.A5 and Ex.A6 by Krishna Reddiyar and Mangalakshmi Ammal are their separate properties and it is not a joint family properties. In the cross examination, it is elicited from the plaintiff-P.W.1 that they have not lived as



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a joint family. The third defendant was lived separately by marrying another lady namely, Sundari, after deserting his wife Renukadevi, who is the mother of the Defendant No.18-appellant herein and the said Renukadevi and Defendant No.18 were lived under the care of first defendant. Krishna Reddiyar and Mangalakshmi Ammal were lived separately in first item of 'A' Schedule property.

33. The plaintiff was residing separately at Paadi and the first plaintiff viz., K.Subramanian was residing separately. The above facts shows that the parents i.e., Krishna Reddiyar and Mangalakshmi Ammal were residing at Paadi and the first defendant along with his family members and Defendant No.18 were residing at Virugambakkam and the first plaintiff along with his family were residing at Paadi separately. These facts shows that eventhough there is evidence placed on record to show that the sons of Krishna Reddiyar separated themselves from joint family, there is no evidence placed on record when they have separated. As observed by the Hon'ble Apex Court judgments cited supra, mere existence of Joint Hindu Family shall not raise presumption that the property stands in the name of one of the member of joint family also joint family property. In this case, it is an admitted fact between the parties that the properties bequeathed



by the parents i.e., 'A' and 'B' Schedule properties are separate properties and there is no Hindu Joint Family Properties, possessed by the family.

34. In the absence of Hindu joint family properties, or income from joint family properties neither the plaintiffs nor the defendant No.18 are entitled to claim that the income earned from separate property of the parents shall be treated as a nucleus for the purchase of the property i.e., 'C' Schedule properties in favour of the first defendant. There is no evidence adduced either by the plaintiff or the other contesting respondents that there was income earned from 'A' and 'B' Schedule properties and those income has been used by their parents to purchase the property in favour of their elder son. While executing the Will by Krishna Reddiyar and Mangalakshmi Ammal, they have not included 'C' Schedule properties in the Will and not taken any steps to bring 'C' Schedule properties to any arrangements for the purpose of sharing the same with the other family members. This shows that 'C' Schedule properties is not belongs to the family or purchased by the parents in favour of the first defendant. Thus the plaintiffs and defendant No.18 are not entitled to claim any right over the Schedule 'C' properties. Point No.2 is answered accordingly.

35. Point No.3:-



A.S.No.584 of 2017

The plaintiffs and Defendant Nos.1 and 18 have claimed

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partition based on the Wills Exs.A5 and A6. On a perusal of the Wills Exs.A5 and A6, it shows that Krishna Reddiyar has bequeathed 'A' Schedule property to the unborn children of male issues of the first plaintiff, first defendant (died), third defendant, after giving life estate to the first plaintiff, defendant Nos.1 and 3. Similarly, Mangalakshmi Ammal executed the Will, Ex.A6, bequeathing the properties to the unborn child born to her daughters-in-law after giving life estate to her daughters-in-law i.e., second plaintiff, second defendant and fourth defendant after their death. Now, the Defendant No.18 as a male heir, who is having vested interest on the suit 'A' and 'B' Schedule properties, seeks partition of the same. Admittedly, the life estate holder of 'A' Schedule properties i.e., the first plaintiff is alive. Similarly, the life estate holder of 'B' Schedule properties i.e., second defendant is also alive. Till their demise, the male issues i.e., Defendant No.18 and Defendant No.23 (who is the son of the first defendant) are not entitled to claim any partition in the properties since vested right shall not be enforceable during the life time of life interest holders. Resultantly, the claim of Defendant No.18 seeking partition in 'A' and 'B' Schedule property is liable to be rejected. In point No.2, this Court has already rejected the claim of the defendant No.18 on the Schedule 'C' properties, the point No.3 is



A.S.No.584 of 2017

answered accordingly.

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36. Point No. 4 to 6:-

As far as the non-joinder of daughters of Krishna Reddiyar and Mangalakshmi Ammal is concerned, they have not been bequeathed any right over the 'A' and 'B' Schedule properties as per Exs.A5 and A6. Similarly, 'C' Schedule properties is the separate properties of the first defendant hence, non-joinder of the sisters of the first plaintiff, defendants No.1 and 3 is not bad for maintainability of the suit. However, considering the discussions cited supra, this Court is of the view that either the 18th defendant or the plaintiff are not having any right to seek for partition in the suit properties. Originally the plaintiff filed the suit by joining with his wife/second plaintiff for seeking partition on the basis of Wills/Exs.A5 and A6 as if, he is having separate right through the Wills whereas, the plaintiffs are not having any separate right except the right to enjoyment till the death of life inherent holders. Accordingly, the plaintiffs herein are not having any right over to claim for partition. Accordingly, the suit filed by the plaintiffs liable to be dismissed. Consequently, the appeal filed by the 18th defendant is



A.S.No.584 of 2017

also liable to be dismissed.

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37. In the result, the Appeal Suit is dismissed. The Judgment and Decree made in O.S.No.31 of 2010, dated 25.05.2017 passed by the District Court No.II, Kancheepuram, dismissing the suit is hereby confirmed. Consequently, the connected miscellaneous petitions are closed. No costs.

(S.V.N.,J.) (K.R.S.,J.)
.07.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
ssi

To:

1. The District Judge No.II,
Kancheepuram.
2. The Section Officer,
V.R.Section,
High Court, Madras.



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A.S.No.584 of 2017

S.VAIDYANATHAN

and

K.RAJASEKAR

ssi

A.S.No.584 of 2017

.07.2023