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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Delivered on
01..11.2023	..11..2023

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

**A.S.(MD)No.198 of 2018
and
A.S.(MD)No.203 of 2018**

A.S(MD)No.198 of 2018

S.Palani @ Sundar

... Appellant/Plaintiff

Vs.

1.Sundararaju
2.S.Lakshmi
3.S.Kannan
4.S.Sekar
5.S.Kesavan

... Respondents/Defendants

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, against the decree and judgment dated 09.10.2018 in O.S.No.218 of 2010, on the file of the I Additional District Judge, Madurai.



A.S(MD)No.203 of 2018

S.Palani @ Sundar

... Appellant/Defendant

Vs.

Sundararaju

... Respondent/Plaintiff

PRAYER: Appeal Suit filed under Section 96 of the Civil Procedure Code, against the decree and judgment dated 09.10.2018 in O.S.No.202 of 2015, on the file of the I Additional District Judge, Madurai.

For Appellant : Mr.V. Ramakrishnan
[in both appeals]

For Respondent(s) : Mrs.J. Anandavalli
[in both appeals]



COMMON JUDGMENT

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The plaintiff in O.S.No.218 of 2010 and who is also the sole defendant in O.S.No.202 of 2015 has come up with these Appeal Suits aggrieved by the dismissal of his suit for partition in respect of 'B' and 'C' Schedule properties and decree passed against him in the suit for bare injunction.

2. The suit in O.S.No.218 of 2010 was filed by the appellant herein for partition and the suit in O.S.No.202 of 2015 was filed by the 1st defendant in O.S.No.218 of 2010 against the plaintiff therein for permanent injunction. Since a joint trial was conducted and the evidence was recorded in common in O.S.No. 218/2010, the parties are referred according to their rankings in O.S.No.218 of 2010 for the sake of clarity.

3. The brief facts, leading to the filing of these Appeal Suits, are as follows:-

3.a. The plaintiff in O.S.No.218 of 2010 is the son of 1st and 2nd defendants, and defendants 3 to 5 are his brothers. It is the case of the plaintiff that 'A' Schedule Property is ancestral property of the family. The said lands were cultivated by the entire family including the plaintiff. The plaintiff had secured a job in U.A.E. and from and out of his earnings, he had sent substantial



amounts to the the 1st defendant/father and the 1st defendant had acquired several properties in the name of 1st defendant as well as in the name of defendants 2 to 5, besides 3 houses had also been constructed with the help of fund provided by the plaintiff. The said ancestral house and the ancestral properties are described as 'A' Schedule property. The properties purchased in the name of defendants from the funds provided by the plaintiff are described as item 'B' and 'C' in the Schedule. Hence, it is the contention of the plaintiff that all the properties are in joint possession and enjoyment of the family. The plaintiff also took defendants 3 to 5 to U.A.E. for employment. However, they returned back to India to look after the properties of the family.

3.b. Though B and C schedule properties were acquired out of the funds provided by the plaintiff, he himself had treated those properties as joint family properties along with the defendants. However, when the dispute arose between the parties it was agreed in the negotiation held in the month of January 2010 that the plaintiff shall be allotted 1/4th share in all the properties. When the matter stood thus the 1st defendant has filed a suit for permanent injunction in respect of suit B and C-Schedule properties. According to the plaintiff, the defendants 1 to 3 and 5 are deemed to be in joint possession, though the plaintiff parted with



amounts to purchase the properties in the name of the 1st defendant. Hence the suit for partition.

3.c The suit in O.S.No.202 of 2015 filed by the 1st defendant for permanent injunction restraining the plaintiff in O.S.No.218 of 2010, his men, agents and servants from in any way interfering with his peaceful possession and enjoyment.

4. Denying that suit B and C-Schedule properties purchased from out of the funds provided by the plaintiff, it is the contention of the defendants 1, 2 & 4 that those properties are absolute properties of the defendants. In fact, 1st defendant went to Dubai in 1976 and had been working there for two years. Subsequently, he shifted his employment to Singapore for one year and thereafter, he held up at Iraq for about 2 years. He had worked hard for the welfare of the family as a father initially, thereafter his elder son 3rd defendant went to foreign countries for employment in 1983 and to UAE in 1995. He worked there for more than seven years. The younger son of the 1st defendant went abroad in the year 1993 and ever since he has been working there. The entire source of their income vest with them in their names as self acquisition. The 1st defendant as a Power of Attorney purchased properties in the name of the



plaintiff from the income of the plaintiff. Hence it is the contention of the 1st defendant that the plaintiff had never given any amount to the 1st defendant to purchase the property in the name of others. No houses were constructed with aid of the funds provided by the plaintiff. According to the 1st defendant he had sold some of the ancestral properties in the year 1962 itself to clear off debts and also for family expenses. In the ancestral house the 1st defendant has only 1/4th share. The 1st defendant purchased property in the name of plaintiff in the year 2007. Hence it is his contention that suit B and C-Schedule properties are absolute self acquired properties of the defendants and no properties are available for partition as claimed by the plaintiff except A Schedule property.

5. It is the contention of the 3rd defendant in the Written Statement that the plaintiff had suppressed various purchases made in his name. The quantum of money which the plaintiff has given to his mother in law through his wife would clearly show all his secret plans and ulterior motive. The properties stood in the name of the defendants are their self-acquired properties and not that of HUF. The plaintiff has suppressed his self-acquisitions and not even a whisper about the same in the plaint. The plaintiff suppressed the purchase of Plot No.382 in Karpaga Nagar and on 21.08.2008 he has purchased a house property in Melur



Town as Power Agent. The plaintiff has also suppressed the purchase of a bus in his name. The 1st defendant has been keeping account separately for each of his son upon his own properties. The plaintiff's money has been utilized for the purchase of properties. Hence the suit has to be dismissed. Further, it is the specific case of the 3rd defendant that he had deposited amounts into the plaintiff's account and the plaintiff had, in turn, transferred the funds to the 1st defendant's account.

6. Based on the Pleadings the Trial Court had framed the following issues in O.S.No.218 of 2010:

1. whether 'A' Schedule properties are ancestral properties?
2. Whether the Suit B and C Schedule properties are Hindu Joint Family properties?
3. Whether the plaintiff is entitled to the reliefs as prayed for in O.S.No.218/2010?
4. Whether the 1st defendant is entitled to the reliefs as prayed for in O.S.No.202/2015?



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5. To what other reliefs the plaintiff is O.S.No.218 of 2010 is entitled to?

7. On the side of the plaintiff two witnesses were examined and Exs.A1 to A32 were marked. On the side of the defendants, three witnesses were examined and Exs.B1 to B.84 were marked. Based on the evidence and materials, the trial Court has decreed the suit in O.S.No.218 of 2010 in part for 1/5th share in respect of 'A' Schedule property and dismissed the suit in respect of suit B & C-Schedule properties. O.S.No.202 of 2015 for bare injunction was decreed as prayed for.

8. The plaintiff who is unsuccessful in respect of 'B' and 'C' Schedule Properties has filed the Appeal in A.S.No.198 of 2018. Similarly, he has also challenged the decree of permanent injunction passed against him in O.S.No.202 of 2015 by way of Appeal in A.S.No.203 of 2018.

9. Learned counsel for the Appellant would submit that the 'A' Schedule property shown in the plaint is ancestral property which has been established on record. When the plaintiff has established ancestral nucleus, it is for the defendant to show that there was no nucleus available in the ancestral properties for purchase of the other properties. In evidence also it is established that A schedule properties are joint family properties. When the joint family nucleus



has been established it has to be presumed that all other properties are also joint family properties. It is his further contention that the ancestral properties in the hands of the 1st defendant formed the nucleus, thus the properties in B Schedule were purchased in the name of the defendants also to be treated as joint family properties. It is his further contention that P.W.1 has admitted that he has purchased certain properties in the year 1971 which would clearly indicate that the properties were purchased from the joint family nucleus. It is the further contention of the learned counsel that the plaintiff has also established by way of accounts statement that he had been sending his income periodically to his father for purchase of properties in his name. However, the father of the plaintiff, the 1st defendant had purchased some of the properties in his name while some other properties in the name of the other defendants and therefore, all the properties are to be treated as joint family properties.

10. Exs.A.22, A.23 and A.24 clearly established the fact that the plaintiff has sent money to his father 1st defendant to purchase the property. Further it is his contention that though the defendants filed certain documents to show that they have purchased property in their individual names, it is his contention that the documents filed by the defendants are not in respect of entire



B and C-Schedule properties. Therefore, in the absence of any document to show title of the properties, the plaintiff is entitled to share in the properties in respect of which title have not been established by the defendants. Similarly, the plaintiff also has established the fact that he has spent money to discharge the loan to Sundaram Finance. All these facts clearly prove that the properties are treated as Joint family properties. Further the 1st defendant has not established any individual income earned by him at the relevant point of time to purchase various properties. Since the ancestral property was not partitioned, the other properties purchased from the income of joint family and from and out of the amounts sent by the plaintiff, the plaintiff is entitled to a share in the property.

In support of his contention he relied upon the following judgments:

1. *Muddasani Venkata Narsaiah (Dead) through LRS. vs. Muddasani Sarojana [(2016) 12 SCC 288]*
2. *Malla Naicker @ Singari vs. Jeevar(minor) [2012 (1) CTC 128]*
3. *M. Shanmugha Udayar vs. Sivanandam and Ors. [1993-2-LW 72]*



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4. *Kothanramappa vs. Thimmaiah and Ors. [AIR 2006 Mad 304]*

5. *Mallesappa Bandeppa Desai and Ors. vs. Desai Mallappa and ors. [AIR 961 SC 1268]*

6. *M.Shanmuga Udayar vs. Sivanandam and Ors. [AIR 1994 Mad 123]*

7. *Rajani Kanta Pal and Ors. vs. JagaMohan Pal [AIR 1923 PC 57]*

11. Therefore, it is his contention that the plaintiff is entitled to 1/5th share. The Decree and Judgment of the trial court dismissing the suit in respect of B and C-Schedule properties has to be set aside and the plaintiff being the co-owner decree of permanent injunction passed by the trial Court has to be set aside.

12. Whereas the learned counsel for the defendants submitted that though A Schedule properties are ancestral properties, the above said properties are not yielding any profit. According to him, the plaintiff and defendants had independent sources of income. The father of the plaintiff and the defendants 2 to 5, the 1st defendant was also getting independent income through his



employment abroad in 1977. Further, the defendants 3 to 5 were also employed abroad and had purchased certain properties in their name from and out of their own sources. Therefore, the contention of the learned counsel for the defendants is that suit B & C-Schedule properties have been purchased out of the self-earnings of the defendants. Exs.B.48 to Ex.B.53 filed on behalf of the defendants would clearly establish the fact that many properties have been purchased in the name of the plaintiff from the amounts sent by him. That being the position, the suit filed by the plaintiff for partition in respect of the other properties, which have been purchased individually by the defendants in their own income, suppressing those facts, is not maintainable. Hence the appeals are liable to be dismissed. In support of her contention the learned counsel for the defendants relied upon the following judgments:

1. *K.R. Sathyanarayana Rao and another v. K.R. Venkoba Rao and six others [1998 (III) CTC 703]*
2. *R.Devanai Ammal (Died) and another vs. G. Meenakshi Ammal and others [2004(4)CTC 208]*



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3. *D.S.Lakshmaiah and Another vs. L. Balasubramanyam and another [(2003) 10 SCC 310]*
4. *Mudi Gowda Gowdappa Sankh vs. Ram Chandra Ravagowda Sankh [(1969) 1 SCC 386]*
5. *Makhan Singh (dead) by LRS. vs. Kulwant Singh [(2007) 10 SCC 602]*

13. In the light of the above submissions, the points that arise for consideration in the present Appeal Suits are as under:-

1. Whether the suit B and C-Schedule properties described in O.S.No.218 of 2010 were purchased from and out of the income provided by the Plaintiff/Appellant?
2. Whether the properties were purchased from and out of joint family nucleus?
3. Whether the properties purchased from and out of the individual income of the earning members of family could be treated as joint family properties?
4. Whether the decree and judgment granting permanent injunction is proper?



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14. Since these Appeal Suits have been preferred arising out of a common judgement rendered in O.S.No.218 of 2010 and O.S.No.202 of 2015, these appeal suits were taken up together, arguments were heard and are being disposed of by way of this common judgement. For the sake of convenience, the parties in these appeals suits will hereinafter be referred to as per their array in suit in O.S.No.218 of 2010.

Issue Nos.1 to 3:

15. The plaintiff is the son of the defendants 1 and 2. The defendants 3 to 5 are his brothers. The Original Suit in O.S.No.218 of 2010 was filed claiming partition for division of suit schedule property into five equal shares and allot one such share to the plaintiff in respect of A-Schedule property and division of suit B & C-Schedule properties into four equal shares and allot one such share to the plaintiff while the other original suit in O.S.No.202 of 2015 was filed by the 1st defendant in O.S.No.218 of 2010 against the plaintiff in O.S.218 of 2010 for bare injunction. A joint trial was conducted before the trial court and the evidence was recorded in common in O.S.No.218 of 2010 and the suits were disposed of by a common judgement.

16. It is the specific case of the plaintiff that suit A-Schedule property is



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ancestral property. Whereas the suit B-Schedule properties were purchased from the funds provided by the plaintiff. It is the further specific case of the plaintiff that C-Schedule property was purchased from the funds provided by the plaintiff as well as the income from the joint family properties. The entire pleading in the plaint, more particularly, paragraphs 5 & 6 of the plaint make it clear that it is the specific case of the plaintiff that suit B-Schedule property was purchased from and out of the funds provided by the plaintiff. Only in one line in paragraph 5, the plaintiff had pleaded that C-Schedule property was purchased from and out of the funds provided by him as well as from and out of the income from the said joint family properties. In paragraph 6, he has specifically pleaded that suit B & C-Schedule properties were acquired from and out of the funds provided by the plaintiff, however, yet in view of the broad understanding in the family, insofar as the suit B & C schedule properties are concerned, the plaintiff himself has volunteered and treated the same as joint family properties and he did not take exception for the enjoyment of the same by the defendants since the income from the said properties were utilized for the development of the joint family properties. In nutshell, it is the case of the plaintiff that suit B & C-Schedule properties were purchased from and out of his own income and have been



blended with the joint family properties.

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17. On the other hand, it is the stand of the defendants that suit B & C-Schedule properties are individual properties of the respective defendants and they have separate income and the 1st defendant as well as the defendants 4 and 5 were also employed in foreign countries at the relevant point of time when the properties were purchased. The amounts sent by them from foreign countries were utilized for the purchase of the properties in their individual names. Similarly, it is the defence of the 1st defendant that the monies sent by the plaintiff was utilized for the purchase of the property in the name of the plaintiff. However, those properties were not included in the suit schedule.

18. In the light of the above pleadings, now, it has to be seen whether the suit B & C-Schedule properties were purchased from and out of the income of the plaintiff alone in the name of the defendants. On a careful perusal of the entire pleadings, this court is unable to find any pleadings as to the nature of the income earned by the plaintiff and also the nature of the amounts said to have been transferred to the defendants from time to time.

19. On a perusal of Ex.B.16 to B.36, it could be seen that the various properties more fully described under B-Schedule were purchased in the name of



the 1st defendant and the first of such property was purchased in the name of the 1st defendant on 07.12.1985 under Ex.B.16. Thereafter, the other properties were purchased in the name of the 1st defendant in 1992 under Ex.B.32, in 1996 under Ex.B.33, Ex.B.35, Ex.B.36 & Ex.B.17 to Ex.B.20, in 2000 under Ex.B.21 & Ex.B.22, in 2003 under Ex.B.23 & Ex.B.25, in 2004 under Ex.B.25, in 2005 under Ex.B.25, in 2006 under Ex.B.26, in 2007 under Ex.B.28 and Ex.B.29, in 2008 under Ex.B.30, in 2009 under Ex.B.31 and in 2010 under Ex.B.36. It is relevant to note that the properties described under suit B-Schedule are immovable properties. The plaintiff even in his chief examination asserted that suit B-Schedule property was purchased from and out of his own earnings which he had sent to the 1st defendant on various dates. Whereas, according to the plaintiff, suit C-Schedule property was purchased not only from and out of the funds provided by him but also from and out of the income of the joint family. It is also the admitted case of the plaintiff that the defendants 3 to 5 were also working in foreign countries for some time at the relevant point of time. In the light of the specific pleadings of the plaintiff that immovable properties described under suit B-schedule were purchased from and of out the funds sent by him in the name of the 1st defendant, now, it has to be seen whether the



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purchase of the property in the name of the 1st defendant in 1985 under Ex.B.16 is highly improbable. Though the plaintiff had stated that he was working as Engineer abroad, the evidence of P.W.2, who is none other than the wife of PW.1 (plaintiff) would go to show that the plaintiff was not graduated in Engineering and was working only in an Engineering Company. To show what was the nature of amount sent by him to purchase the immovable properties covered under Ex.B.17 to Ex.B.36 described under B-Schedule, there was absolutely no evidence let in on behalf of the plaintiff. However, much reliance has been placed on Ex.A.22.

21. Ex.A.22 is a copy of the E-mail communication said to have been received by the plaintiff from UAE Exchange. This document has however not been authenticated and not accompanied by a certificate under Section 65-B of the Indian Evidence Act so as to make it as admissible in evidence. De hors the certificate under Section 65B of the Indian Evidence Act, which is mandatory to make a document admissible in evidence, a cursory perusal of the document makes it very clear that the very transaction was started in 2014 in the name of various persons. Though there are certain entries found in the name of the 1st defendant and 3rd defendant in one entry in the year 2005 and 2006, merely on



the basis of such entries, this court is unable to countenance the contention of the plaintiff that only from and out of such amounts sent to the 1st defendant, various immovable properties described under suit B-Schedule were purchased. It is the specific contention of the defendants that out of the amounts sent by the plaintiff as his Power of Attorney, the 1st defendant purchased various properties in the name of the plaintiff and his wife which has not at all been disputed by the plaintiff (P.W.1). The said factum was in fact suppressed by the plaintiff. Ex.B. 48, Ex.B.49, Ex.B.50, Ex.B.51, Ex.B.52, Ex.B.53, Ex.B.54, Ex.B.55 and Ex.B.56 would show that the properties covered thereunder stand in the name of the plaintiff and his wife. The above said properties were purchased in the name of the plaintiff and his wife by the 1st defendant as Power of Attorney except Ex.B. 48 & Ex.B.52 wherein the properties covered thereunder were purchased directly by the plaintiff. The transfer of amounts made in favour of the plaintiff and his wife under Ex.B.48 to Ex.B.56 were taken place in 2005 & 2006. At the relevant point of time, even assuming Ex.A.22 is admissible in evidence, the very factum of purchase by the father (1st defendant) as the Power of Attorney of the plaintiff would only probabalize the defence case that the amounts received by the 1st defendant were utilized for the purchase of the properties either in the name of



the plaintiff or his wife. Further, it would only probabilise the case of the defendants that the other properties were purchased in the individual names of the defendants from and out of the income of the respective defendants. Admittedly, two of the defendants had also been working in foreign countries and two other defendants were working in foreign countries at the time of trial.

22. Therefore, merely on the basis of Ex.A.22, the plaintiff cannot contend that the properties described under suit B-Schedule were purchased only from and out of the funds provided by him. Whereas, it could be seen from Ex.A.22 that, at the relevant point of time, from and out of the amounts sent by the plaintiff certain properties were purchased in the name of the plaintiff by the 1st defendant as power of attorney. However, the plaintiff had conveniently chose not to plead about the same in his plaint. The properties standing in the name of the 1st defendant and covered under Ex.B.16 to Ex.B.25 & Ex.B.32 to Ex.B.35 were purchased between 1985 and 2004. Therefore, the contention of the plaintiff that the amounts sent by him, as could be evidenced from Ex.B.22, were utilized for the purchase of the properties described under B-Schedule cannot be countenanced as it is highly improbable. Though it could be seen that the other properties covered under Ex.B.26 to Ex.B.31 were purchased between 2006 and



2009, merely on the basis of Ex.A.22, it cannot be said that so-called amounts sent by the plaintiff were utilized for the purchase of the properties.

23. The available evidence would clearly show that even before the plaintiff had secured a job abroad, the father of the plaintiff, 1st defendant had started purchasing the properties in his individual name. The other specific contention of the 1st defendant that the other defendants who were abroad had also sent amounts and properties were purchased in their respective names. Therefore, in the absence of nature of income and specific mentioning of quantum of amounts and proof, merely on the basis of Ex.A.22, an unauthenticated document, the plaintiff cannot claim B-Schedule property was joint family properties, particularly, when the defendants had also been employed in foreign countries at the relevant point of time. It is also evident from the evidence of the 1st defendant (D.W.1) that he was also working abroad from 1976 onwards. That apart, his two other sons were also working abroad even during trial. Therefore, any property purchased out of the separate income of the member of the joint family such property at no stretch of imagination could be treated as joint family property unless deliberate abandonment and blending are pleaded and proved. When any property has been acquired by any member of the



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joint family from the income earned by him separately, such property should be held to be a self acquired property. When any member of the family without disturbing the status of the joint family acquired a separate property out of his own income in the absence of proof of throwing into common hotch-pot, such property cannot be treated as joint family property. Admittedly, the 1st defendant was also working abroad for many years. This was spoken to by the 1st defendant (D.W.1) and not disputed by the plaintiff. The other sons of the 1st defendant were also working abroad. It is the specific defence of the defendants that from their individual income, properties were purchased in their respective name for their individual benefits. Similarly, the amounts sent by the plaintiff were also utilized for the purchase of the properties in the name of the plaintiff and his wife. This has been established on record through Ex.B.48 to Ex.B.56. Such being the position, if any member of the joint family earns income from his employment and acquires any property, such property should be treated as separate property as per Hindu Gains and Learning Act. Such Act provides that no gains of learning to be held, not to be separate property of acquirer merely by reason of his earning having been imparted to him by any member of the family or with aid of the joint funds of his family or with the aid of the funds of any



member thereof. Therefore, when the properties were purchased by the 1st defendant and other defendants from their own income, such properties cannot be treated as joint family properties merely on the basis of existence of some small piece of joint family property. When the properties purchased by the defendants from and out of their own income are not traceable to joint family nucleus such properties cannot be treated as joint family properties. Admittedly, there is no pleading or evidence on the side of the plaintiff as to the nature of the income yielded from the ancestral property and in the absence of any such proof, it is very difficult for this court to presume that only out of the nucleus the other properties were purchased. As already discussed, it is not the case of the plaintiff that the entire B-Schedule property was purchased from out of the income of the ancestral property. But, it is the specific case of the plaintiff that those properties were acquired from out of the income through his employment. However, the said fact has not been proved by the plaintiff by oral and documentary evidence. Such being the position, the fact that the defendants were also employed and getting income and properties were purchased in their names cannot be held to be the joint family properties as contended by the plaintiff.

24. Ex.A.23 - Accounts List dated 26.04.2012 from Sundaram Finance



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Limited, Ex.A.24 - Accounts List dated 26.04.2012 from Sundaram Finance Limited and Ex.A.25 – Original Pass Book of the plaintiff in respect of the Savings Bank Account maintained with State Bank of India were filed to show that some of the instalments towards loan in respect of the purchase of buses bearing Nos.TN 63 J 3999 & TN 63 J 446 were paid to Sundaram Finance Limited by the plaintiff. In this regard, a careful analysis of the entire pleading and the evidence available on record, more particularly, the pleadings of the defendants, particularly, the defence of the 3rd defendant, make it clear that it is the stand of the defendants that amounts which were sent by the defendants to the plaintiff's account and thereafter, the plaintiff had cleared the loan dues. In order to substantiate the same Ex.B.79 was filed. It could be seen from Ex.B.79 that various amounts were transferred to the plaintiff's account and the said amounts were transferred from Dubai under Ex.B.79 to the plaintiff's Account which is also evident from Ex.A.25 Passbook of the plaintiff.

25. ExB.78-UAE Exchange Receipts filed on the side of the defendants would also clearly indicate that various amounts were sent by the defendants to the plaintiff's Account. This document was not at all disputed by the plaintiff in the cross examination. The only suggestion put was that those amounts were



sent towards loan account and except this, Ex.B.78 was not seriously disputed by the plaintiff. D.W.2 also stated that he had purchased the bus bearing Regn. No. TN 47 S 1933 in his individual capacity by applying loan and produced Ex.B.73-Statement of Bank Account maintained with ICICI Bank and Ex.B.74-Income Tax Statement. Ex.B.75 filed to prove the nature of the amounts paid by him towards the loan. Therefore, merely because some transactions were taken place through the plaintiff's account in respect of which amounts were already deposited in his account by the 3rd defendant, it cannot be said that the plaintiff had parted with entire money for the purchase of buses described under C-Schedule property also.

26. Coming to the judgements cited by the learned counsel for the appellant/plaintiff, in the case of **Malla Naicker @ Singari v. Jeeva (minor) [2012 (1) CTC 128]**, a learned single Judge of this Court has held that when the kartha of the family pleads that the suit properties were separate properties and not joint family properties, the onus lies on the kartha to prove that the properties are self-acquired properties and he should also prove that there is no existence of ancestral nucleus in the joint family properties.

27. In the case of **Rajani Kanta Pal v. Jaga Mohan Pal [AIR 1923 PC**



57], while dealing with a matter relating to dayabhaga system, the Privy Council has held that the general presumption that arises when members of a joint family who have control over the joint estate blend that estate with property in which they have separate interest is that the properties acquired with such mixed up funds are intended for the benefit of the joint family. There is no difference in this respect between a case where the separate estate is brought into the joint family account as in **Suraj Narain v. Ratun Lal [(1917) MWN 477 : 6 LW 509]** and a case where joint family property is brought into the separate accounts.

28. In the case of **Muddas Ani Venkata Narasaiah (dead) through LRs v. Muddasani Sarojana** [(2016) 12 SCC 288] the Supreme Court has held that denial of a fact in the written statement was not specific and if it was evasive, the same shall be taken to be admitted. In other words, evasive or vague denial of fact in the written statement of such fact should be taken to be no denial and so deemed to be admitted. This judgement was also relied upon for the proposition that if the plaintiff's side witness was not cross-examined on a particular fact, then, the court should presume that witness's account has been accepted.

29. In the case of **M. Shanmugha Udayar v. Sivanandam [1993-2-LW 72]** it has been held that where a manager claims that any immovable property has



been acquired by him with his own separate funds and not with the help of the joint family funds of which he was in possession and charge, it is for him to prove by clear and satisfactory evidence his plea that the purchase money proceeded from his separate fund.

30. In the case of **Kothanramappa v. Thimmaiah** [AIR 2006 Mad 304], a learned single Judge of this Court has held that where a manager of the Hindu Joint Family blended his self-acquired property with the property of the joint family, all the properties so blended became a joint family property, then the burden of proof lies on the defendant to prove that the property was self acquired property.

31. In the case of **Mallesappa Bandeppa Desai v. Desai Mallappa** [AIR 1961 SC 1268] the Supreme Court has held that if the property which was acquired separately is deliberately and voluntarily thrown into the joint stock by the owner, then it must be included in the joint family property with a clear intention to relinquish his right to the said property.

32. Per contra, on the side of the respondents/defendants, the learned counsel cited the judgement in the case of **D.S.Lakshmanaiah v. L.Balasubramanyam** [(2003) 10 SCC 310], wherein the Supreme Court has



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held that presumption of a property being joint family property cannot be drawn merely on account of existence of a joint family. The Supreme Court has held that the one who asserts has to prove that the property is a joint family property and if the person so asserting proves that there was nucleus with which the joint family property could be acquired, then, 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.

33. The learned counsel for the respondents/defendants also relied upon a judgement of this Court in the case of **R.Deivanai Ammal (Died) v. G.Meenakshmi Ammal** [2004 (4) CTC 208] wherein it has been held that a person alleging that certainly is ancestral property should establish that there was nucleus by means of which property had been acquired by co-parcener member of family in his name and if nucleus is not one which yields income then, it cannot be reasonably lead to a conclusion that property in individual name could have been acquired with such nucleus.

34. In the case of **Mudi Gowda Gowdappa Sankh v. Ram Chandra Ravagowda Sanki** [(1969) 1 SCC 386], it has been held that no presumption



could be drawn merely because the family is joint, they have joint property. The person who alleges the property to be co-parcenary property must prove it. But, if it is shown that there was nucleus of the joint family then any acquisition by its aid by a member is joint property and in such an event, the person claiming the property to be self acquired has to prove it to be so.

35. On appreciation of the entire evidence available on record, as already discussed herein above, this court is of the view that it is not the case of the plaintiff in his entire plaint that the immovable properties described under suit B-Schedule were purchased from and out of the joint income derived from the suit A-schedule property which is admittedly an ancestral property. Whereas it is the specific case of the plaintiff that properties described under suit B-Schedule were purchased from and out of the funds provided by him from his earnings abroad. This was however not established by the plaintiff by letting in acceptable oral evidence supported by documents. The only documents relied on by the plaintiff are Ex.A.22 to Ex.A.25. But, they are not sufficient enough to substantiate his case. Ex.A.22, which is a statement of bank account, was not certified as required under Section 65-B of the Indian Evidence Act. De hors the fact if the said document is taken into consideration as already held this court is of the definite



conclusion that the amounts transacted and sent to the 1st defendant were all properly utilized to purchase properties in the name of the plaintiff and his wife which were not the subject matter of the suit. Therefore, the contention of the plaintiff is that properties described under suit B-Schedule property were all purchased from and out of the amounts parted with by him has no legs to stand. It is the admitted case of the defendants that they were also employed and two of them were in fact were in employment abroad and the 1st defendant was employed abroad as early as in 1976 and two of the other defendants were working abroad at the time of trial of the suit. Such being the position, the plaintiff cannot contend that the properties described under suit B-Schedule was purchased from and out of his earnings will also constitute as joint family properties.

36. As far as the movable properties viz., the buses described under suit C-Schedule are concerned, it is the contention of the plaintiff that he parted with amounts to discharge the loan amount due and payable to Sundaram Finance Limited. In this regard, the plaintiff relied on Ex.A.23 to Ex.A.25. These documents would clearly indicate that though certain amounts were transferred from the account of the plaintiff, those amounts were, in fact, received by the



plaintiff from the 3rd defendant from Dubai as could be seen from Ex.B.79. D.W.

2 also in his evidence clearly established his stand that he had purchased the buses in his name. On the other hand, in order to prove the availability of joint family nucleus from A-Schedule property in respect of which no appeal was filed, and that A-Schedule property was generating adequate income and the same was utilized for the purchase of C-Schedule property and other properties absolutely there was no evidence brought on record by the plaintiff. Therefore, merely on the basis of possession of some dry land, it cannot be presumed that such property generated income to purchase various properties. It is relevant to note that even assuming that ancestral property generated some income, till the plaintiff and the other defendants 2 to 5 got employment and became independent, they would have been certainly looked after and educated by their father, the 1st defendant with the help of such income. Only thereafter, the plaintiff and the defendants might have become independent and purchased the properties in their individual names from the income earned from their employment. Such being the position, merely because ancestral property was not partitioned, the properties purchased from out of the self-earnings out of employment by the individual family members in their individual names cannot



be said to be joint family property as per Hindu Gains and Learning Act.

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37. Further, except the pleading to the effect that the plaintiff volunteered and treated the properties as joint family properties, the plea of blending has not been established. Mere pleading that the plaintiff volunteered and treated the properties covered under B-Schedule as joint family property will not constitute blending. In order to constitute blending of a property in common hotch-pot, deliberate abandonment in respect of the property should be established. Absolutely there is no material whatsoever is available on record to evidence the plea of blending. To establish the blending, it must be shown that the properties were acquired by his income, a person who pleads so must also establish the fact that he deliberately and voluntarily thrown by him into joint stock with a clear intention of abandoning his claim on the said property with the object of treating it the same to be the joint family property and if only such onus is discharged such property becomes a part of the joint family estate. Without there being any pleading and evidence to show that properties described under B-Schedule were purchased from and out of the plaintiff's income, the plea of blending must also fail.

38. In the light of the above discussions, the appeal preferred by the



plaintiff in O.S.No.218 of 2010 must necessarily fail. Issue Nos.1 to 3 are answered accordingly against the appellant.

Issue No.4

39. With regard to the suit in O.S.No.202 of 2015 filed by the 1st defendant in O.S.No.218 of 2010 for bare injunction as against the plaintiff in O.S.No.218 of 2010, the defendant in O.S.No.202 of 2015 having failed to establish the fact that the properties set out in the schedule would constitute joint family property and the plaintiff in O.S.No.202 of 2015 being title holder and true owner of the properties, he is entitled to protect his possession and enjoyment of the properties from the defendant and his men. This court does not find any perversity or illegality in the judgement and decree of the trial court. This issue is also answered accordingly against the appellant.

Issue No.5:

40. In the light of the entire discussion as above, this court is of the view that the appellant is not entitled for any relief in both the appeal suits and the appeal suits are liable only to be dismissed.

In the result, both the Appeal Suits are dismissed. The common judgement



and decrees passed in O.S.No.218 of 2010 and O.S.No.202 of 2015 by the learned I Additional District Judge, Madurai, are hereby confirmed. Considering the relationship between the parties, both parties are directed to bear their respective costs.

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Index : yes / no

Neutral Citation : yes

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N.SATHISH KUMAR.J.,

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To

- 1.The I Additional District Judge, Madurai
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

Pre Delivery Judgement
in
A.S.(MD) Nos.198 & 203 of 2018

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