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S.A.No.1719 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	19.03.2024
Pronounced on	:	28.03.2024

CORAM

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

S.A.No.1719 of 2008

and

M.P.No.1 of 2008

1.Govindammal
2.Karikalan (Died)
3.Muruganandam (Died)
4.Pichaiyammal
5.Manikandan
6.Rani
7.Ashok
8.Arun
9.Anitha
[Appellants 6 to 9 are impleaded
vide order dated 14.12.2023]

...Appellants

Vs.

1.Anjugam
2.Saravanan
3.Sivagami
4.Rajan
5.Ammu @ Abirami

... Respondents

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code to set aside the judgment and decree of the Additional District Judge's (FTC) Court at Ariyalur dated 09.08.2007 in A.S.No.62 of 2004, reversing the



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judgment and decree of the District Munsif Court at Ariyalur dated 28.06.2002 in O.S.No.185 of 2000.

For Appellants : Mr.N.Manoharan for Mr.R.Gokula Krishnan

For Respondents : Mr.R.Bharath Kumar

JUDGMENT

By order dated 31.01.2019, the second appeal was dismissed, confirming the judgment and decree of the Lower Appellate Court. The matter went in appeal before the Hon'ble Supreme Court in C.A.No.524 of 2023 and the Hon'ble Supreme Court by an order dated 25.01.2023 allowed the appeal, setting aside the order dated 31.01.2019 and remanded the matter to this Court for fresh disposal. Pursuant to the order of remand, the Appeal is listed before this Court.

1. The plaintiffs 1, 3 and 4 are before this Court in the Appeal as appellants 1 to 3 and legal heir of the 2nd plaintiff is the 4th appellant. Pending appeal, the 2nd and 3rd appellants died and the legal heirs have been substituted as appellants 5 to 9.

2. This appeal is filed challenging the judgment and decree dated 09.08.2007 on the file of the learned Additional District Judge's (FTC) Court,



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Ariyalur in A.S.No.62 of 2004 reversing the judgment and decree dated 28.06.2002 in O.S.No.185 of 2000 on the file of the District Munsif Court, Ariyalur.

3. For the sake of convenience, parties are referred as per the ranking before the trial Court.

4. According to the plaintiffs, one Maruthumuthu had four sons namely, Ramasamy, Dharmalingam, Gurusamy and Rengaraj. Maruthumuthu had purchased the suit property in the name of his son Rengaraj, who is the defendant and he enjoyed the suit property as joint family property till his life time along with other joint family properties. Maruthumuthu died about 20 years ago, leaving behind his sons as the legal heirs to succeed his estate. After the death of Maruthumuthu, Ramasamy being the elder son was in possession and enjoyment of the suit properties till his life time for himself and other legal heirs. The other son Gurusamy died intestate leaving behind him, the 2nd and 3rd plaintiffs as his legal heirs and the said Ramasamy also died intestate, leaving behind him his wife, the 1st plaintiff as the legal heir. The plaintiffs and defendants are in joint possession and enjoyment of the suit property as joint family property. Patta has been issued in the name of the plaintiffs and



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defendants in the year April 2000 and the kist for the suit property has also been regularly paid by Ramasamy and the 1st plaintiff. The entire consideration was paid by Maruthumuthu. The defendant did not have any independent income at the time of purchase and further after the purchase of the suit property, it has been treated as joint family property and therefore the defendant has no independent rights, except his right of 1/4th share. Based on the petition filed by Rengaraj, the Revenue Divisional Officer, Ariyalur had passed orders in favour of the defendant for issuing separate patta in the suit property. The Revenue Authority had not taken note of the fact that the suit property has been treated as joint family property. Since the defendant made hectic efforts to sell the suit property, plaintiffs came up with a suit to declare the suit property as joint family property of the plaintiffs and defendants and for permanent injunction.

5. As the defendant had died, his legal heirs were impleaded as defendants 2 to 6 in the suit and they resisted the suit by contending that the 1st defendant Rengaraj, due to the dispute with his father had left the house even at an early age and was residing separately at Trichy. He had been working in a tea shop and also doing independent business. He worked in a shop called Radio Tea Stall near Trichy Tollgate for several years and also as a Cashier in



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the tea shop and earned independent income. Out of the income earned by him, he had purchased the suit property on 09.04.1956 adjacent to the ancestral property. The 1st defendant had cleared the loan amount of vendor through the sale deed and also paid the balance sale consideration. When the 1st defendant was not residing with his father Maruthumuthu and there was also a dispute among them, the claim that suit property was purchased by Maruthumuthu in the name of the 1st defendant is not acceptable. After the purchase, he had been in possession and enjoyment of the suit property for some time and after he joined as a driver in the Government, he entrusted the suit property to his brother Ramasamy to look after the same. On behalf of the 1st defendant, his brother Ramasamy had leased out the property to one Salapadhumai and they had been doing lime stone business in the leased property. As the tenant did not vacate the property, the 1st defendant had filed a suit in O.S.No.302 of 1993 and obtained decree and vacated the tenant. The suit property was never treated as a joint family property and was also never in joint possession. Even if Ramasamy had paid the kist in respect of the suit property, it will not give any right to him. Only when the joint patta was issued in respect of the other properties, Ramasamy had fraudulently obtained a joint patta in respect of the suit property also. Immediately after coming to know about the same, the 1st defendant had filed petition before the Revenue Divisional Officer and joint patta was



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cancelled and separate patta in favour of the 1st defendant for the suit property was issued. The suit property never belonged to the plaintiffs or the deceased Ramasamy or Gurusamy. Infact there had been a partition in respect of the joint family properties and each person had taken possession of their respective shares and sold to 3rd parties. Only since the suit property was not a joint family property, that was not included in the partition. Prior to UDR, the patta never stood in the name of Maruthumuthu or Ramasamy for the suit property and it continued to remain in the name of vendor Muniamuthu and only in the year 2000, a joint patta was wrongly issued, and it has been rightly cancelled and a separate patta has been issued in favour of the 1st defendant. Therefore, sought for dismissal of this suit.

6. During trial, the 1st plaintiff examined herself as PW1 and Durairaj as PW2 and marked Exs.A1 to A4. On the side of the defendants, DW1 and DW2 were examined and Exs. B1 to B8 were marked. After appreciating the documents and evidence, the trial Court decreed the suit. The trial Court observed that since Maruthumuthu was a Government servant and he had lands, there is a possibility for him to had savings and it can be assumed that the suit property has been purchased from the income derived from the joint family properties. The trial Court also observed that since defendant was aged only 20



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to 25 years at the time of purchase, there is no possibility for any separate income for him and since he had left the family at an early age, Maruthumuthu could have thought to purchase the property in favour of his last son, 1st defendant. Therefore, concluded that suit property is a joint family property.

7. Aggrieved defendants filed Appeal in A.S.No.62 of 2004. The Lower Appellate Court after re-appreciating the evidence, allowed the Appeal. The Lower Appellate Court found that as the sale deed, in respect of the suit property stood in the name of the 1st defendant, unless the contrary is proved, the general presumption is that he is the owner. When the plaintiffs claimed that the suit property was purchased from the joint family nucleus, they have not established the same and therefore, found that the suit property is the self acquired property of the 1st defendant and thereby, reversed the decree of the trial Court.

8. Aggrieved plaintiffs are before this Court on Appeal. This Court by order dated 23.01.2009 admitted the 2nd appeal and framed the following substantial questions of law,

"(1) Whether the Lower Appellate Court is correct in law in reversing the well considered judgment and decree of



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the learned District Munsif at Ariyalur especially when plaintiffs have proved by concrete evidence the joint nucleus funds which have been used for the purchase of the suit property?

(2) Whether the Lower appellate Court is correct in law in relying upon Patta Ex.B4 for concluding that the property belonged to Rangaraj totally overlooking the fact that patta is not a document of title?"

9. The learned counsel appearing for the appellants argued that, when the suit property was purchased on 09.04.1956 in Ex.B1, and the 1st defendant was only around 20 years of age, he had no separate income to purchase the property. Even from the schedule to the sale deed in Ex.B1, it can be seen that the suit property lies adjacent to the joint family properties of Maruthumuthu. Further the sale deed in Exs.B7 and B8 which has been marked by the defendants themselves would show that the joint family properties were available, which were partitioned and sold. The learned counsel further contended that the suit property was never in the possession of the defendants and a joint patta has also been issued in Ex.A1 for the suit property. Further the defendants had not let in any evidence to show that 1st defendant was earning and he had sufficient means to purchase the suit property on his own.



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10. The learned counsel further contended that the letter written by the 1st defendant in Ex.A3 shows that, he was in need of money. Even if there is no evidence to show that there was any surplus income available from the joint family properties, from the evidence it could be ascertained that joint family properties were available. More particularly, when no evidence has been let in by the defendants to show that he had any separate income, then in all probability, it could be only taken that the suit property is a joint family property and not a separate property of the defendants. The learned counsel also by referring to the cross examination of PW1 contended that existence of joint family property is established.

11. The learned counsel relied on the judgment in the case of *Nagayasami Naidu and ors Vs. Kochadai Naidu and ors* in 1967 (81) LW 436 for the proposition that unless contrary is proved, there will be a presumption that the property purchased in name of a member of the joint family is the joint family property.

12. The learned counsel contended that, when the trial Court has rightly decreed the suit, the Lower Appellate Court erroneously reversed the findings



against the legal position, which is perverse and sought for allowing the appeal.

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13. Per contra, the learned counsel appearing for the respondents argued that the plaintiffs has to plead and prove that the suit property has been purchased from the surplus in the joint family nucleus and that the suit property is a joint family property. There is no evidence let in by the plaintiffs to show as to what was the extent of the joint family properties that was available, what was the income and whether there was any surplus sufficient enough to purchase the suit property.

14. Learned counsel further argued that only since there was a partition in the year 1994 - 1995 itself, the respective parties have taken possession of the shares allotted to them and also sold it to the 3rd parties, which is established through Exs.B7 to B8. The plaintiffs who are actually claiming for partition had cleverly drafted and filed this suit for declaration. The learned counsel further contended that the patta in respect of the suit property all along continued to be in the name of the vendor and only on 20.04.2000, the plaintiffs fraudulently obtained a joint patta in Ex.A1, but the same was canceled on the petition filed by the 1st defendant and a separate patta has been issued. Further, when there was a dispute in respect of the tenant not vacating the suit property, the 1st



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defendant had filed a suit and obtained the decree on 05.07.1993 in Ex.B3 and the tenant is none other than the brother of the 1st plaintiff who had also been examined as DW2.

15. The learned counsel further contended that at the time of purchase of the suit property, the 1st defendant was 25 years of age and also admittedly he had enmity with his father and left for Trichy and resided there. Therefore, the 1st defendant was not holding any joint family properties, but on the contrary, he worked and earned income and through which he purchased the suit property.

16. The learned counsel for the respondents, in support of his arguments relied on the following decisions,

(i) ***Ramasamy Gounder & ors Vs. Chinnapillai and ors***
reported in 2022 3 CTC 703.

(ii) ***Muniappa Naicker Vs. Balakrishna Naicker***
reported in 1998 SCC Online Mad 212.

(iii) ***D.S.Lakshmaiah and anr Vs. L.balasubramanyam***
and anr reported in 2003 10 SCC 310.

(iv) ***S.Subramanian Vs. S.Ramasamy and ors*** *reported*



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in 2019 6 SCC 46.

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17. Learned counsel further contended that since the plaintiffs failed to establish that the suit property is a joint family property as it has been purchased through the joint family nucleus, the Lower Appellate Court has rightly arrived at a finding of fact, based on the available materials and therefore, sought for dismissal of this appeal.

18. Heard the counsel on both sides and perused the materials available on record.

19. Admittedly, the suit property has been purchased in the name of the 1st defendant Rengaraj on 09.04.1956 through a sale deed in Ex.B1. It is also admitted that Maruthumuthu had four sons viz., Ramasamy, Dharmalingam, Gurusamy and Rengaraj. It is further admitted that the 1st defendant Rengaraj being the last son, had some misunderstanding and dispute with his father Maruthumuthu and he had left his family at an early age and he was residing at Trichy and earned his own living. Maruthumuthu had died in the year 1980 and also his 1st son Ramasamy died in the year 1997 and the other son Gurusamy also died and even the 1st defendant Rengaraj died after filing of the suit.



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20. The 1st plaintiff, wife of deceased Ramasamy, 2nd plaintiff Dharmalingam, the 2nd son of Maruthumuthu and two sons of Gurusamy, plaintiff 3 and 4 had filed the suit as against Rengaraj. The plaintiffs claim that Maruthumuthu was a Government servant and was earning and he also had ancestral property and from out of the savings and income derived, Maruthumuthu had purchased the suit property in the name of his younger son, Rengaraj and the sale consideration had been only paid by Maruthumuthu. The plaintiffs also claim that the 1st defendant was never in possession and the suit property was treated as joint family property all along. Therefore, the 1st defendant except his 1/4th share cannot claim exclusive ownership.

21. On the contrary, it is the case of the defendants that after the 1st defendant left the family and settled at Trichy, he had been working in a tea shop for a long time and also was carrying independent business and out of the independent income derived by him, he had purchased the suit property. Therefore, the suit property is the self acquired property of the 1st defendant.

22. As the plaintiffs have come up with the case that the suit property is joint family property even though it stands in the name of the 1st defendant, as



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they have been allegedly purchased through the income from the ancestral property, onus is on the plaintiffs to establish that the ancestral properties were available, ancestral properties derived income and from that income so derived, there was a surplus, sufficient enough to purchase the suit property. Unless this foundational facts are established and the plaintiffs discharges the burden, the onus will not shift on the defendants to prove the contrary.

23. At this juncture, it is useful to refer the recent Division Bench judgment of our Hon'ble Court in the case of ***Rajendran and anr Vs. Radhakrishnan and ors.***, reported in ***MANU/TN/5829/2023***. After referring to several decisions in this aspect, the Division Bench held that unless the foundational facts are proved, there cannot be a presumption that the property that stands in the name of one member of the joint family can be treated as joint family property. The relevant paras are extracted herein under,

“43. Before analyzing the evidence on record, we must point out that the law relating to joint family properties and the presumption that the property is joint, is fairly well settled. The Hon’ble Supreme Court and this Court have been repeatedly pointing out that unless it is proved that the family had sufficient properties which is normally referred to as the nucleus and the said nucleus is



*shown to be capable of generating a large income leaving a surplus in the hands of the family to enable it to acquire other properties, properties that stand in the name of individual members cannot be treated as joint family properties. In **S.Chinnayan & Others Vs. C.Chidambaram & Ors.**, reported in 1993 (6) MLJ 41, a learned Single Judge of this Court (Hon'ble Mr.Justice Abdul Hadi) after referring to various judgments on the law relating to joint family properties held that unless there is pleading of existence of sufficient nucleus and sufficient income there from and proof of such nucleus and the income there from, there cannot be a presumption that the property that stands in the name of an individual member is joint family property.*

*44. In **K.Sengodan Vs. K.Dharmalingam & 5 Ors.**, reported in 1995 (2) LW 74, a Division Bench had pointed out that the initial burden is on the person who asserts that the property belongs to an undivided Hindu family and only when that initial burden is discharged by the person who sets up such a claim, the other side can be called upon to prove the contrary. In doing so, the Division Bench had observed as follows:*

“19.It can, however, not be denied that the initial burden is only on the one who contends that the property belongs to an undivided Hindu



Family, and only where the initial burden is discharged by the one who is setting up such a claim, then the other side who contends to the contrary, be called upon to establish his case. The law on the subject has never been in doubt.”

*45. In **Muniappa Naicker Vs. Balakrishna Naicker**, reported in 1998 (2) LW 259, Hon’ble Mr. Justice S.S.Subramani, had an occasion to deal with the said question. The learned Judge had traced the genesis of the law relating to joint family property in para 11 of the said judgment and the same read as follows:*

“11. In 'Dr. Paras Diwan - Hindu Law', First Edn. -1995, at page 209, the learned Authors have discussed about the concept of separate property thus:

“It appears that when the concept of communal property prevailed among Hindu communities, the question of self-acquisitions could not have arisen. When the communal system got transformed into the typical Hindu joint family, the members of the family, including coparcener, were allowed to have self-acquisitions.” But, it seems, in the beginning he was given limited right over them. He was allowed to retain it during his lifetime. In the second stage of development, he was allowed double share. In the last state of development he was allowed to retain it as his separate property having full rights over it. But basic



postulates of all such acquisitions was that they were acquired without any detriment to the joint family property.

*A text of **Manu** is explicit on the matter:*

What one member acquires by his exertions without using paternal wealth, with acquisition of his own effort, he shall not share except by his own will.

Yajnavalkya laid down:

‘Whatever is acquired by the coparcener himself, without detriment to the father's estate, as a present from a friend, or a gift at nuptials, does not appertain to the co-heirs. Nor shall he who recovers hereditary property, which has been taken away, give it up to coparceners; nor what has been gained by science.

***Vijaneshwara's comment** on this text are:*

‘Consequently what is obtained from a friend as a return of an obligation conferred at the charge of the patrimony; what is received at marriage concluded in the Asura form or the like; what is recovered of the hereditary estate at the expenditure of the ancestral wealth; all must be shared with the whole of the brethren and the father. He need not give to the co-heirs what has been gained by him through science, by reading the scripture or by expounding their meaning.

The crux of the matter is that only those acquisitions would be self-acquisitions which are acquired "without



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detriment" to the joint family property. As a corollary, all acquisitions made by a coparcener with the aid of the joint family property or funds are part of the joint family property. In the modern Hindu Law, this is the well established proposition. But a difficulty often arises as to when we would say that acquisitions are without any detriment to the joint family property, and when we can say that they are to the detriment to the property.

[Emphasis supplied]

Finally, at page 213 of the same book, the learned Authors have summarised the concept regarding 'separate property' as follows: —

"In our submission the following propositions would help us in the understanding of the law:

(a) The property acquired with self-exertion or labour will be separate property only when it is acquired without any detriment to the joint family property, that is, without any aid of joint family funds.

(b) Where in the acquisition of property by a member, there is a detriment to the joint family property, i.e., in its acquisition joint family property has been used, or there is joint family nucleus the property so acquired will be separate property.

(c) If the detriment to the joint family property is insignificant or the joint family property nucleus is nominal, then the property so acquired will be separate property.



(d) Whether or not mere is detriment to the joint family property would depend upon the facts and circumstances of each case.”

According to me, the above passage by the learned Authors is the summary of the law declared by the Privy Council, the Supreme Court and also our High Court.

*46. The position in law was reiterated by the Hon’ble Supreme Court in **D.S.Lakshmaiah & Anr. Vs. L.Balasubrmanyam & Anr.**, reported in **2003(10) SCC 310**, where again the Hon’ble Supreme Court reiterated the need for evidence to show that the nucleus that existed was capable of yielding income and rendering a surplus to enable the family to acquire the property. The legal principle was set out in para 18 of the said judgment 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, 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.”

47. *The very same position in law was reiterated by the Hon'ble Supreme Court in **Marabasappa (died) by Lrs. & Ors. Ningappa (died) by LRs. & Ors.**, reported in 2011 (9) SCC 451, wherein again the Hon'ble Supreme Court pointed out that unless it is shown that there was sufficient surplus or there was detriment to the joint family property, the acquisitions by members in their own name cannot be treated as joint family property. One of us (R.Subramanian, J.) had an occasion to consider the very same question in **G.K.Palanisamy, Prop. Sri Kathirvelu Finance Vs. Amudhaveni & Ors.**, reported in 2018 (2) MWN (Civil) 264, wherein after referring to **D.S.Lakshmaiah & Anr. Vs. L.Balasubramanyam & Anr.**, as well as **Muniappa Naicker Vs. Balakrishna Naicker**, referred to above, the essential requirements to enable the Court to invoke the presumption regarding joint family properties were set out in the paragraphs 20 and 21 as under:*

20. It is contended that the suppression of the sale by Pongianna Gounder in favour of the first defendant by itself show that the case of the plaintiff is not bonafide. No doubt when it is established that there was a joint family and joint



family had enough properties, the subsequent acquisition by the manager of the family in his name would be presumed to be joint family properties. In order to invoke the said presumption i) It should be initially established that there was joint family ii) The joint family was possessed of properties. iii) there was substantial income from the joint family properties. iv) there was substantial surplus after meeting the expenses of the joint family and it was that surplus that contributed to the purchase of property in the name of the manager.

21. Unless the plaintiff establishes the above 4 ingredients, the court cannot presume that the property standing in the name of the manager is a joint family property. The learned Senior Counsel for the respondents Mr.S.Jayaraman would rely upon observations of Hon'ble Supreme Court in D.S.Lakeshmaiah's case referred to supra, which are as follows.

'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. '

48. In view of the above clear pronouncements of the Hon'ble Supreme Court as well as this Court, the initial burden is on the plaintiff to show that there was a sufficient nucleus which yielded very large income and it was from and out of the said surplus, the properties that stand in the name of the members of the family were acquired. In K.V.Ramasamy and another v. K.V.Rahgavan and others, reported in 2009 (4) CTC 440, after referring to various decisions of this Court as well as the Hon'ble Supreme Court, it was held as follows:

“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 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.”

24. Further, in the decision in ***Makhan Singh (Dead) by Lrs Vs. Kulwant Singh***, reported in **2007 (10) SCC 602**, it is held that onus of proof is on the propounder. Relevant portion is usefully extracted hereunder,

“ “7. The question to be determined in the present case is as to who is required to prove the nature of property whether it is joint Hindu family property or self-acquired property of the first appellant.”

8. The query was answered in para 18 in the following terms: (SCC p. 317)

“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.”
(emphasis supplied)

9. The High Court has also rightly observed that there was no presumption that the property owned by the members of the joint Hindu family could a fortiori be deemed to be of the same character and to prove such a status it had to be established by the propounder that a nucleus of joint Hindu family income was available and that the said property had been purchased from the said nucleus and that the burden to prove such a situation lay on the party, who so asserted it. The ratio of *K.V. Narayanaswami Iyer case* [AIR 1965 SC 289 : (1964) 7 SCR 490] is thus clearly applicable to the facts of the case. We are therefore in full agreement with the High Court on this aspect as well. From the above, it would be evident that the High Court has not made a simpliciter reappraisal of the evidence to arrive at conclusions different from those of the courts below, but has corrected an error as to the onus of proof on the existence or otherwise of a joint



Hindu family property.”

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25. It is also pertinent to extract the judgment in the case of **Ramasamy Gounder and ors Vs. Chinnapillai and ors** reported in **2022 3 CTC 703**, relied by the learned counsel for the respondents,

“27.In order to appreciate the stand taken by the defendant, it will be more appropriate to take note of some judgments cited by the learned counsel for the appellants ;

a) Bhagwat Sharan v. Purushottam reported in (2020) 6 SCC 387. The relevant portions are extracted hereunder:

“18. However, there is no material on record to show that the properties belonged to an HUF. They may have been joint properties but merely on the basis of the recitals in the mortgage deed they cannot be said to be a joint family property. It appears that by another mortgage deed dated 26-11-1946, the value of the mortgaged properties was enhanced to Rs 45,000, and in addition to the 5 houses, one oil mill at Pachhar was also mortgaged. Seth Budhmal filed a suit (Ext. P-4) against Hari Ram, Brij Mohan, Rameshwar Lal, Radha Krishan, Nathu Lal, etc. for realisation of the mortgage money under the said mortgage deed.



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...

21. *An admission made by a party is only a piece of evidence and not conclusive proof of what is stated therein. It is in this light that we have to examine the admission made by Hari Ram and his brothers while filing the written statement to the suit filed by Seth Budhmal. In Para 6, the averment was that the defendants constituted trading joint Hindu family. It is obvious that the admission was with regard to a trading family and not HUF. In view of the law cited above, it is clear that not only jointness of the family has to be proved but burden lies upon the person alleging existence of a joint family to prove that the property belongs to the joint Hindu family unless there is material on record to show that the property is the nucleus of the joint Hindu family or that it was purchased through funds coming out of this nucleus. In our opinion, this has not been proved in the present case. Merely because the business is joint would not raise the presumption that there is a joint Hindu family. As far as Para 8 is concerned, in our view, there is no clear-cut admission. The allegation made was that the*



minors were represented by Defendants 1 to 3, who were head of their respective branches. In reply to this it was stated that Defendants 1 to 3 were neither the head or the karta, nor was the mortgage transaction made in that capacity. This admission cannot be said to be an unequivocal admission of there being a joint family.”

b) Pandian Vs. Madhanmohan reported in 2018 (4) LW 193.

The relevant portions are extracted hereunder:

“13. In the light of the above position, it is seen that PW3 Kannan cannot claim any right to the suit property on the footing that it is the ancestral property of the family. Accordingly, it is found that the suit property is only the absolute property of Muthukumarasamy and when admittedly, Muthukumarasamy has not joined the execution of Ex.A1, under which, the plaintiff claims title to the suit property, it is found that the plaintiff cannot lay any claim of right or partition in the suit property by way of the said document.”

...

e) Nedunchezhiyan and Others Vs. Rani and Others reported in 2020 SCC OnLine Mad 11573. The relevant



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portion is extracted hereunder:

“10. As regards the other claim, it is common knowledge that sons join fathers in execution of Sale Deed by way of abundant caution at the instance of the purchaser/s. Merely because a son joins the execution of Sale Deed by the father, there cannot be a presumption that the properties are ancestral properties or joint family properties in which the son acquires a right by birth. A property which is assigned to an individual by the Government cannot and will not par take the character of ancestral property.”

“12. However, the Courts below seems to have been carried away by the recitals found in the sale deed dated 13.03.1982, under which, the defendant claims title to the suit property marked as Ex.B1. No doubt, in Ex.B1, the recitals disclose that the suit property has been described as the ancestral as well as the self acquired property of the vendor Muthukumarasamy. On that basis, the Courts below have proceeded to hold that the suit property is only the ancestral property and accordingly, both Muthukumarasamy as well as his son Kannan would be entitled to



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equal share in the same. However, when the facts, as discussed above, unerringly lead to the conclusion that the suit property had been acquired by Rethina Padyachi only by way of purchase as depicted in Ex. A1 and when the same is admitted by his grandson Kannan examined as PW3 and also by the plaintiff examined as PW1, the mere recitals found in Ex.B1 as the suit property being ancestral as well as the separate property of Muthukumarasamy by itself would not lead to the conclusion that the same is the ancestral of the family consisting of Muthukumarasamy and Kannan.”

26. From the above decisions, it is clear that burden of proof is upon the plaintiffs to establish the foundational facts to treat the suit property as joint family property and unless the burden is discharged, the plaintiffs' claim that the suit property is joint family property cannot be sustained.

27. Coming to the case on hand, it could be seen that plaintiffs have not filed any documents to establish the extent of the ancestral property that was available and whether the ancestral property was yielding any income and



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further from the income so yielded, was there any surplus and that surplus was sufficient enough to purchase the suit properties. In fact even the plaintiffs have not even pleaded as to the extent of the ancestral properties that was available and also the income derived from those properties. In the absence of the pleading to show that there was a surplus from the income derived from the ancestral property and that from the joint family nucleus, the suit property was purchased in the name of the 1st defendant, the plaintiffs have not proved the foundational facts to claim that the suit property is the joint family property. When it is an admitted case that the 1st defendant was not in cordial terms with his father Maruthumuthu and he has left the family at an early age and settled at Trichy and the 1st defendant had been working and having an independent income, the property purchased by the 1st defendant through the sale deed dated 09.04.1956 in the Ex.B1 can only be treated as the self acquired property of the 1st defendant.

28. After the purchase of the suit property in Ex.B1, the suit property had been given on lease in favour of one Salapadhumai, the wife of DW2, who is none other than the brother of the 1st plaintiff. As the tenant did not vacate the property, the 1st defendant alone had filed the suit as against the tenant, and in pursuant to the decree dated 05.07.1993 in Ex.B3 in O.S.No.302 of 1993 on the



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file of the Distrit Munsif Court, Ariyalur, the 1st defendant had vacated the tenant from the suit property. Further, it has also been admitted by PW1 that the patta in respect of the suit property had never been in the name of Maruthumuthu or Ramasamy, it had always been in the name of the vendor from 1956 to 2000. Only on 20.04.2000, a joint patta was issued in Ex.A1 and pursuant to the petition filed by the 1st defendant, the orders were passed on 21.07.2000 in Ex.B4 and a separate patta in favour of the 1st defendant was issued on 31.07.2000 in Ex.B5 in respect of the suit property. From the documents filed in Exs.B1, B3, B4 and B5, it could be seen that the 1st defendant had purchased the suit property and a separate patta has been issued in his favour and also the suit property was on lease and since the dispute arose, the 1st defendant had filed a suit and obtained orders for vacating the tenant, which all goes to show that the defendant has purchased the property and he is exclusive owner of the suit property.

29. From the available records and also the admission of PW1 and the evidence of DW2, it could be ascertained that there had been a partition in respect of the joint family properties in the year 1990, pursuant to which the parties have taken possession of their respective shares and also the respective parties have sold the shares allotted to them in favour of 3rd parties. The sale



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deed dated 24.02.1994 filed in Ex.B7 has been executed by Ramasamy in favour of one Rani conveying the properties allotted to his share in the partition. Further by a sale deed dated 20.09.1995 filed in Ex.B8, the two sons of Gurusamy, viz., Karikalan and Muruganandam had conveyed the properties allotted to their share in favour of one Rani. In fact, DW2 who is none other than the brother of the 1st plaintiff had deposed that there had been a partition around 10 to 12 years back and the parties have taken possession of their respective shares. The fact that there had been a partition executed among the sons of Maruthumuthu and the joint family properties were partitioned, in which the suit property has not been included, only goes to show that the suit property being the self acquired property of the 1st defendant, has not been included in the partition.

30. PW1 in her evidence had also admitted that, at the time of purchase of the suit property, the 1st defendant was aged around 22 years and that there was no cordial relationship between Maruthumuthu and the 1st defendant and they were not in talking terms and therefore, 1st defendant left for Trichy. PW1 had not asserted in respect of any extent of the ancestral property available, but only had deposed that around 10 gannies of lands might have been available. PW1 had also further admitted that till 2000, the patta in respect of suit



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property remained in the name of the vendor and immediately after joint patta was issued, the same was cancelled and separate patta was issued in favour of the first defendant. PW1 has further admitted that she is not having any dispute with her brother Narayanaswamy, who had been examined as DW2. PW1 had also further deposed that the sale deed have been executed by respective parties in respect of the shares allotted to them in partition, but however some properties were left from being partitioned. Further Ramaswamy, husband of 1st plaintiff also had separately sold some of the properties.

31. DW2, who is the brother of the 1st plaintiff and also the husband of earlier lessee in the suit property had categorically deposed that the suit property is a self acquired property of the 1st defendant and that pursuant to the lease, he had been paying rent to the 1st defendant. DW2 had also deposed that since there was a dispute between his wife and the 1st defendant, a suit was filed and pursuant to a compromise the 1st defendant had paid a sum of Rs.8,500/- and thereafter, DW2 had vacated from the suit property. Further DW2 has deposed that the properties allotted to the respective parties had been sold by them and only the suit property, which is the self acquired property of the 1st defendant is available with the defendants.



32. From the evidence of PW1 and DW2, it could be seen that the suit property was the self acquired property of the 1st defendant, having purchased through the sale deed in Ex.B1 and based on which patta in Ex.B5 has been issued in favor of 1st defendant. Joint family properties have been partitioned among the sons of Maruthumuthu and also the parties have sold their respective shares allotted to them.

33. It could also be seen that Ramasamy had not made any claim in respect of the suit property till his lifetime. Further when the 2nd plaintiff Dharmalingam, who is the only son of Maruthumuthu who is alive and also a party to the suit, he would have been a better person to give evidence in respect of the nature of the suit property. When the burden was on the plaintiffs to establish the fact that the suit property is joint family property, the non examination of 2nd plaintiff, who had complete knowledge of the properties of Maruthumuthu and also suit property did not chose to enter into the witness box to give evidence, for the reasons best known to him which leads only to an adverse inference to be drawn.

34. The learned counsel for the appellants have vehemently contended that, since from the boundaries in the sale deed in Ex.B1, it could be seen that



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suit property lies adjacent to the ancestral property of Maruthumuthu and also the fact the property that were partitioned have been sold in Exs.B7 and B8, whereby the existence of the joint family property is established and therefore it has to be presumed that the suit property was purchased from the joint family nucleus and it has to be treated as a joint family property. As already referred above, the property cannot be presumed to be a joint family property merely because of the existence of the joint family and the burden is on the person who asserts that the property is a joint family property, even though it stands in the name of an individual member. Only if the foundational facts are pleaded and proved, the burden will shift on the defendants to establish the contrary.

35. When from the available materials and pleadings the plaintiffs have failed to prove the extent of the ancestral property that was available and the income derived and the surplus that was available, which was made use for the purchase of the suit property, this Court can only come to the conclusion that the suit property is the self acquired property of the 1st defendant.

36. It is also submitted by the learned counsel for the respondents that the original sale deed of the suit property is available with the 1st defendant and when admittedly, the plaintiffs have not pleaded that there was any surplus



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income from the joint family properties, even assuming that there was any joint family properties available, that will not be suffice to hold that plaintiffs have discharged their burden. It could also be seen that much reliance was placed on the letter written by the 1st defendant to his brother Ramaswamy in the year 1968 asking for some money. When the suit property has been purchased in the year 1956, a letter written by the 1st defendant to one of his brother alone cannot be taken in isolation to hold that he was not having any means in the year 1956 i.e., 12 years ago to purchase this suit property.

37. In the absence of any evidence available to show that Maruthumuthu had any saving from the income derived from his employment or that there was any surplus income available that was derived from the income generated through the join family properties and that the surplus so available was used for purchase of this suit property, the plaintiffs have miserably failed to discharge their initial burden to prove that the suit property is the joint family property.

38. Admittedly when the 1st defendant was away from the family and he was not holding any joint family properties, by no means, it can be taken that the suit property purchased by him in Ex.B1 was through the joint family nucleus for, treating it to be a joint family property.



39. Even though, in the plaint it has been averred that the suit property has been treated as joint family property by the plaintiffs and the defendants, there is no pleading in respect of blending. It is useful to refer the judgment in [2019 6 SCC 46] in the case of **S.Subramanian Vs. S.Ramasamy and ors.**, para 9 is usefully extracted hereunder,

“9. Even the reasons given by the High Court that as the loans were taken on the suit properties for borewell, crop loan, electric motor pump set loan, jewel loan by all the three joint family members, namely Sengoda Gounder, Ramasamy and Subramanian and, therefore, there was a blending of the suit properties into join family properties also, cannot be accepted. As all the three were residing together and some loans might have been taken by the family members residing together, by that itself, it cannot be said that there was a blending of the suit properties into joint family properties. The law on the aspect of blending is well settled that property separate or selfacquired 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. Clear intention to abandon the separate rights in the property must be



proved. Even abandonment cannot be inferred from mere allowing other family members also to use the property or utilisation of income of the separate property out of generosity to support the family members."

40. Therefore, in respect to the claim of blending, first there have to be necessary pleadings to that effect and it has to be established that the self acquired property has been voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim and such intention must be proved. In the absence of any of these evidence, it cannot be taken that the suit property is a joint family property by blending.

41. The trial Court on assumption stated that since Maruthumutu was working and some properties were available, it could be assumed that there was a probability that the suit property could have been purchased from the savings and only since the 1st defendant was around 22 to 25 years of age, he could not have any separate income to purchase this suit property, is against the settled principles and the Lower Appellate court has rightly arrived at a findings that in the absence of the plaintiffs establishing the availability of any income derived from the joint family properties and joint family nucleus was used to purchase the suit property, has rightly decided that the suit property is the self acquired



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property of the 1st defendant. The findings of the fact arrived by the Lower Appellate Court is based on the materials available on record and is not perverse.

42. In view of the findings, both the substantial questions of law are answered against the appellants and in favour of the respondents.

43. In view of the same, this Second Appeal is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

28.03.2024

Index:Yes/No
Speaking/Non speaking order
NCC:Yes/No
gd

To

1. The Additional District Judge's (FTC) Court, Ariyalur.
2. The District Munsif Court, Ariyalur.



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G.ARUL MURUGAN .J.,

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28.03.2024