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A.S.No. 541 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

A.S. No.541 of 2022
and
C.M.P.No.20168 of 2022

Ramesh,
S/o. Rangasamy

... Appellant

Vs

1. R.Kavitha,
W/o. Thangaraju

2. R.Kannagi,
W/o. Rangasamy

.. Respondents

Prayer :- This First Appeal has been filed under Section 96 of C.P.C., against the judgment and decree of the trial court in O.S.No.136 of 2018 dated 31.08.2021 on the file of Additional District Court, Namakkal

For Appellant

: Mr.C.Jagadish

For Respondents

: Ms.S.P.Arthi for R1 and R2



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JUDGEMENT

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The appellant herein is the 2nd defendant in the suit. Challenging the findings rendered by the trial judge in O.S.No.136 of 2018 filed by 1st respondent/plaintiff/his sister, claiming the relief of partition in respect of suit properties item Nos.1 to 4 stating that it is a joint family property, in which she is entitled for 1/3rd share, the 2nd defendant preferred this appeal. The 1st defendant/2nd respondent herein is mother of both plaintiff and 2nd defendant.

2. For the sake of convenience, the parties are referred as per the ranking in the suit.

3. The appellant/2nd defendant, as a brother of plaintiff contested the suit claiming that in respect of item Nos.1 and 3, already the plaintiff and his mother, 1st defendant relinquished their share by receiving valid consideration and executed a registered released deed on 20.03.2009 in his favour. In respect of Item Nos.2 and 4 of suit properties, those are self-acquired properties of appellant, in which, neither plaintiff nor his mother having share, but the trial judge though upholding the release deed, declined to grant share in respect of item Nos.1 and 3 and granted the relief in respect of the item Nos.2 and 4 allotting 1/3rd share in favour of plaintiff, as such is



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totally erroneous one. Aggrieved over the said findings, the 2nd defendant preferred this appeal in respect of those item Nos. 2 and 4 of suit properties.

4. Brief facts of the case :-

The plaintiff filed a suit claiming the relief of partition 1/3rd share in item Nos.1 to 4 of suit properties stating that her father Rangasamy was the Road Inspector, having sufficient income and out of his own nucleus, he purchased item Nos.1 and 2 of properties. Thereafter, his father Rangasamy started a hotel business in the name of Gurubhavan and after his demise, till date, her brother/2nd defendant running the said business, besides there is a marriage hall under the name of Gurubhavan Kalyanamandapam. Out of income derived from the hotel, his father purchased the property in the name of 2nd defendant in the year of 1994. Thereafter, the 2nd defendant with the help of income derived from the said joint family property, he purchased item No.4, thereby, she prayed 1/3rd share in the entire property claiming it as joint family property. She would also submit that her father Rangasamy died intestate. After his demise, her mother/1st defendant and her brother/2nd defendant and herself, each are entitled 1/3rd share. But the 2nd defendant not inclined to give the property. Hence, she has filed a suit for partition.



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5. The 1st defendant remain exparte and 2nd defendant, brother of plaintiff alone contested the suit stating that in respect of item Nos.1 and 3, plaintiff and her mother already relinquished their share by executing the release deed, which is marked as Ex.B1 on 20.03.2009. Therefore, they are not entitled to claim 1/3rd share in those items. The plaintiff denied the release deed stating that in order to borrow loan, at the request of her brother, she along with her mother signed in the document without knowing the contents, however, they have also not received any consideration on that day as alleged by her brother/2nd defendant. She admitted her signature in the Release Deed, Ex.B1. Hence, the burden is casted upon her to prove that without knowing contents of document, her brother/2nd defendant obtained signature in the said release deed. During the cross-examination, she admits that she is a M.Sc. graduate and the signature found in the document Ex.B1 belong to her. During the cross-examination, when the Release deed was shown to her, she gave evasive answer as if that signature in the said document likely that of her, but she was not certain about her signature. But she admits that she is working as a Professor in the college and she is not an illiterate woman, on the other hand, she content that only after filing of written statement, she came to know about the said document, but she had



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not taken any steps to send the said document to obtain expert opinion.

Furthermore, as rightly pointed out by 2nd defendant's counsel that if at all, the document was not executed by her, she ought to have prayed to declare the said document as null and void as it was obtained by her brother fraudulently. However, she has also not altered the claim in the prayer of the suit. Therefore, the trial judge rightly concludes the document of Release deed as such is forged one, thereby in respect of item Nos. 1 and 3 share was not granted to the plaintiff and the 1st defendant's mother. Against the said findings, the plaintiff has not preferred any cross-appeal.

6. Now, in respect of item Nos. 1 and 4, the plaintiff was granted 1/3rd share. As per the findings of trial judge, though property stands in the name of appellant/2nd defendant, it was purchased out of income derived from the joint family property i.e. item Nos.1 and 3 as well as the family business Guru Bhavan Hotal and Kalyanamandapam. So, from the nucleus derived from the property, item nos.2 and 4 were purchased, in which, the plaintiff is entitled 1/3rd share. The 2nd defendant/appellant contented that those two items were purchased by self-acquisition and there is no such joint family nucleus as claimed by the plaintiff. So, the initial burden casted upon the plaintiff to prove that those properties were purchased under joint family



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7. The point is to be decided whether the item nos.2 and 4 are self-acquired property of 2nd defendant or it was purchased out of joint nucleus from the family property as prayed by the plaintiff.

8. The item No.2 was purchased on 04.10.1994 through Ex.A2 sale deed. According to plaintiff, this property was purchased in the year of 1994 by her father Rangasamy in the name of his son (D2) out of his self-earnings, but the 2nd defendant submitted that he is running a private taxi and derived income. So, with the assistance of Guru Bhavan Hotel as well as out of his own earnings, the said property was purchased by himself. Encountering the same, the plaintiff submitted that in the year of 1994, the 2nd defendant was just completed XII std. and he has no other source of income except the dependence of his father's income. To prove the same, Headmaster of School Mr.K.Natarajan was examined as P.W.2 and as per his evidence, the 2nd defendant during the year of 1993, studied in that school and Transfer Certificate also produced as Ex.A5. As per the said certificate, his date of birth was mentioned as 16.04.1976. But, he was not cross-examined, thereby he was completed XII std. in the year of 1993, but



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the property was purchased within a short period from the completion of his school studies, which was established by the plaintiff that there is no possibility for the 2nd defendant to earn considerably during that period. Though the 2nd defendant submitted that he is running a private taxi, to that effect, he produced Ex.P10 RC book of car, itself is not sufficient to hold that he had sufficient income in the year of 1994 to purchase the property. Therefore, with the help of Ex.A5, the plaintiff established that he was just completed school studies in the year of 1994 and he has no separate income to purchase item No.2. Moreover, at that time, her father was alive and he has sufficient income and he is running a hotel business, thereby, he purchased the property in the name of his son as stated by the plaintiff is acceptable one. So, the trial judge also rightly concluded that there is no income derived by the 2nd defendant in the year of 1994.

9. In respect of item No.4, sale deed stands in the name of 2nd defendant dated 15.04.2015, which was marked as Ex.B5. According to plaintiff, out of income derived from the Guru Bhavan hotel business as well as Kalyanamandapam, the said property was purchased by her father in her brother's name out of joint nucleus of family property. But, the 2nd defendant denied the plaintiff's claim that the suit property was purchased in



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the year of 2015 out of his own earnings and at that time, there is no joint family nucleus. Therefore, the claim of plaintiff is unsustainable one. But, admittedly, Guru Bhavan hotel business was started much earlier by grandfather of plaintiff. During the cross-examination, P.W.1 stated that maternal grandfather Palanivel has started the hotel business under the name and style of Gurubhavan. Thereafter, his father Rangasamy continued the said business till his life time upto the year 2008. Thereafter, till date, the said business is continued by her brother. During cross-examination, 2nd defendant also admits that his grandfather running the hotel business under the name of Gurubhavan. Thereafter, his father continued the said business. After that, he continued the said hotel business. Further, he would submit that by selling his car as well as out of his own income, he constructed a kalyanamandapam and also admits that he purchased item No.4 out of income derived from hotel business. Further, he admits that he constructed kalyanamandapam in the year of 2000 and they are under the possession and enjoyment of this defendant. Therefore, the plaintiff able to establish that sufficient income derived from the joint family business of Gurubhavan hotel and through which, item no.4 was purchased. To support her contentions, the plaintiff relied on the ratio laid down in the authority reported in **2018 (16) SCC 645** in the case of ***Vinod Kumar Dhall vs.***



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Dharampal Dhall (deceased) through his legal representatives and

others, wherein the Apex Court in para 14 and 15 held as follows :-

“14. The bare reading of the aforesaid provision contained in Sec.4(3) of the Act makes it clear that where a person in whose name a property is held as coparcener in a Hindu undivided family and the property is held for the benefits of the coparcener in the property, provisions of Section 4 containing prohibition of the right to recover the property held benami would not be applicable. The bar of the Act is not applicable to a transaction as contained in Sections 4(3)(a) and (b). If the property is held in fiduciary capacity or is held as a trustee for the benefit of another person for whom he is trustee or towards whom he stands in such capacity. Thus, the provision of the Act could not be said to be applicable in the instant case.

15. In Vathsala Manickavasagam v. N. Ganesan, this Court considered the question whether the property was held benami or was joint family property. Where there was a tacit admission that the suit property was purchased by his father in his name for which he was not responsible, it was held to be joint family property.”

The aforesaid ratio referred by the plaintiff is squarely applicable to the facts



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of the case in respect of Item No.2.

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10. In support of contentions of 2nd defendant, he relied on the ratio laid down in the authority reported in **2017 SCC Online Mad 5904** in the case of ***Muthulakshmi Ammal and others vs. Amurdhalinga Padayachi (Deceased) and others***, wherein the Apex Court held as follows:-

“Held that when there is no evidence to show at time of partition of those properties, there was joint family property with adequate source to purchase, merely on presumption contra to documents, Courts cannot voluntarily hold that newly acquired properties are joint family properties – Hence Second appeal dismissed.”

11. He has further relied on the ratio laid down in the authority reported in **2014 (4) SCC 707** in the case of ***Keshabai @ Pushpabai Eknathrao Nalawade (dead) by LRs. and others vs. Tarabai Parabhakar Rao Nalawade and others***, wherein the Apex Court held as follows :-

“Having accepted that finding, held, High Court erred in



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placing burden of proof on defendants to prove that property in question was self-acquired property – Evidence Act, 1872 Ss.101 to 103.”

“.....Therefore, the High Court clearly committed an error in placing the burden of proof on the petitioners, who were defendants in the suit to prove that the property in question was a self-acquired property of one of the defendants.”

12. He has also relied on the ratio laid down in the authority reported in **2020 (6) SCC 387** in the case of ***Bhagwat Sharan (dead) through legal representatives vs. Purushottam and others***, wherein the Apex Court held as follows :-

*“A. Family and Personal Laws – Hindu Law – Hindu undivided family (HUF) – HUF property – Inference regarding – Requisite proof – Burden of proof
.....- Held, burden is on person who alleges existence of HUF to prove the same – Proof is required not only with respect to jointness of family, but also with respect to fact that property concerned belongs to joint Hindu family, unless there is material on record to show that the property is the nucleus of joint Hindu family or that it was purchased through funds coming out of this nucleus – In present case, existence of HUF not proved – No material to show that properties in question belonged to an HUF – Merely because business was*



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joint, held would not raise presumption that there was a joint Hindu family”

“.....The law is well settled that the burden lies upon the person who alleges the existence of the Hindu Undivided Family (HUF) to prove the same. 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.”

“.....To prove this, they will have to not only show jointness of the property, but also jointness of family and jointness of living together. The plaintiff has failed to prove existence of HUF. There is no material on record to show that the properties in question belonged to an HUF. Merely because the business is joint would not raise the presumption that there is a joint Hindu family.”

“Since there is no allegation/pleading that G and his four sons constituted an HUF, the fact that L (son of G) left the family to live by himself, would not in any manner mean that there was a disruption of the joint family status. A disruption would arise only if there was an allegation that earlier there was an HUF.”



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13. He has also relied on the ratio laid down in the authority reported in **2015 SCC Online Mad 14064** in the case of ***Amudha and others vs. Janardhanan and others***, wherein the Apex Court held as follows :-

“.....- Respondents herein have not proved that property has been purchased out of joint family income – Held, since property is not purchased in name of Kartha, it is the duty of person, who pleaded that property is joint family property must prove that the property has been purchased out of the joint family nucleus but he has not proved the same – 'D' schedule property is the separate property of the deceased Sridhar and it is not joint family property – Impugned judgment and decree set aside – Second Appeal allowed.

“.....- When a property stands in name of a coparcener who was not a 'kartha', presumption that said co-parcener exclusive owner of proeprty – Proof of existence of a Hindu



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joint family does not lead to presumption that proeprty held by any member of family joint and burden rests upon any one asserting that any item of property was joint to establish fact – Held, unless it could be shown that the property possessed a nucleus for the purchase of the same, it is not a joint family property.”

The aforesaid ratios referred by the learned counsel for 2nd defendant is not applicable to the facts of this case for the reason that the case in hand, the plaintiff proved the fact that the said property was purchased from the joint family hotel business, besides, D.W.1 also admits the same in his cross-examination and the objection on the side of D.W.1 is unsustainable one. Therefore, those authorities are not supporting the case of 2nd defendant. In the said circumstances, the plaintiff proved before trial court that item Nos.2 and 4 though stands in the name of 2nd defendant/appellant, it was not purchased by him, on the other hand, it was purchased by his father in his name as well as other items of property was purchased out of nucleus from the joint family business. Accordingly, this Appeal Suit is dismissed and the findings of the trial judge in respect of item Nos.2 and 4 in O.S.No.136 of 2018 is confirmed and the suit is decreed by preliminary decree in respect



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of item Nos.2 and 4, in which the plaintiff is entitled for 1/4th share. Now, the appellant was died and his legal heirs are permitted to add legal heirs in final decree proceedings. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index:Yes/No
Internet:Yes/no
Speaking Order/Non Speaking Order
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To

Addl. District Court,
Namakkal.

T.V. THAMILSELVI, J.



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