IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2024

PRONOUNCED ON : 26.04.2024

CORAM

THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**

A.S.No.693 of 2014

1.Mr.M.Ranganath Gupta

2.Mr.M.Subramania Chetty … Appellants/Plaintiffs

Vs

1.Mr.M.Venkata Reddappa Chetty

2.Mr.M.Balaram Reddy

3.Mr.M.Sankaranarayana Chetty … Respondents/Defendants

4.Mr.M.K.Sridharan (Died) … Respondents/3rd Plaintiff

5.Mrs.Jyothi Lakshmi

6.Ms.Kalai Kaviya

7.Ms.Karthika … Respondents

R4 died, RR5 to 7 are brought on record as Lrs of deceased fourth respondent vide order of the Court dated 31.10.2022 made in CMP.Nos.19882, 19886 and 19892 of 2018 in A.S.No.693 of 2014.

PRAYER: These First Appeal have been filed Under Order 41 Rule 1 read with Section 96 of the Civil Procedure Code, against the judgment and decree dated 03.03.2014 made in O.S.No.1806 of 2011, on the file of the learned VII Additional Judge City Civil Court Chennai.

For Appellants : Mr.K.P.Ashok

For Respondents : Mr.K.J.Parthasarathy for RR1 to 3
R-4 Died

Mr.J.Srinivasan for
Mr.V.P.Parivallal for RR5 to 7

JUDGMENT

The instant appeal had been preferred by the Plaintiffs 1 and 2 as being aggrieved by the judgment and preliminary decree of the Court below dismissing the suit for Preliminary Decree of Partition of the suit property by allotting 1/6th share each to the plaintiffs 1 to 3.

2.The factum of the case in the appeal before this Court in a nutshell is that this present appeal is filed by Plaintiffs 1 and 2 as against all the three defendants and third plaintiff. Since, the third plaintiff died, the *lis pendens*, present respondents 5 to 7 have been impleaded. The plaintiffs 1 to 3 and the defendants 1 to 3 are siblings.

Case of the Appellants:

3.The father of the plaintiffs and defendants, Late.M.Krishnaiah Chetty purchased the suit schedule property situated at Door No.15, Old Door N.51, Plot No.127, 4th Cross Street, Srinivasa Nagar, Kolathur, Chennai- 600 099 ad measuring about 3807 sq.f.t in the name of defendants 1 to 3 from one Mr.Shanmugam for a sale consideration of Rs.30,000/- vide sale deed dated 24.07.1974. Thereafter, late.M.Krishnaiah Chetty had constructed a house in the said property and lived there along with his family till his last breath. Therefore, after the death of their father, the plaintiffs 1 to 3 and defendants 1 to 3 as legal heirs of late.M.Krishnaiah Chetty inherited to the suit property. The plaintiffs 1 to 3 sent a legal notices, dated 30.10.2010 and 01.11.2010, calling upon the defendants 1 to 3 for partition of the suit property. The same was refused by the defendants 1 to 3 through their reply notice dated 17.11.2010 and in turn the defendants demanded to handover the vacant possession of the suit property which was in the possession of the third plaintiff. Furtherance to that, a rejoinder dated 04.12.2010 was sent by the plaintiffs. Hence, the plaintiffs 1 to 3 filed suit for preliminary decree for partition of the suit property and sought to allot 1/6th share to each plaintiffs.

4. The above claim was refuted by the defendants 1 to 3. They had submitted that their father late M.Krishnaiah Chetty was a tailor working in a tailor shop and did not have sufficient income even to meet the day to day needs of the family. He had spent most of his earnings in gambling. Further, even the defendants 1 to 3 were admitted in a hostel run by one of the charities for continuing their education, as their father did not have means to support their education. After completing their education, the respective defendants had joined lucrative jobs and out of their earnings they had purchased the suit property.

5. Considering the pleadings and available evidence that was available before the Trial Court, the following issues were framed by the Trial Court for consideration,

1) *Whether the suit property bearing Door No.15, Old Door No.51, Plot No.127, 4th Cross Street, Srinivasa Nagar, Kolathur, Chennai-99 is the joint family property of the plaintiffs and the defendants?*
2) *Whether Mr.Krishnaiah Chetty, father of the plaintiffs and the defendants had funds to purchase the suit*

property?

3) *Whether the defendants have purchased the suit property from and out of their own income and without any nucleus from the joint family or any contribution by their father M.Krishnaiah Chetty?*
4) *Whether the plaintiffs are entitled for any share in the suit property?*
5) *Whether the plaintiffs are entitled for partition of the suit property?*
6) *To what reliefs the parties are entitled to?*

6. After considering the facts and evidence of both the parties, the Court below dismissed the above suit on the basis that the suit property is not a joint family property of the plaintiffs and the defendants.

7. Heard Mr.K.P.Ashok, learned Counsel for Appellants, and Mr.K.J.Parthasarathy, learned Counsel for Respondents 1 to 3 and Mr.J.Srinivasan, learned Counsel appeared for Mr.V.P.Parivallal, learned Counsel for Respondents 5 to 7.

8.Mr.K.P.Ashok, Learned Counsel for Appellants submitted that the suit property was purchased by late.M.Krishaiah Chetty, who is the father of the plaintiffs and defendants for a sale consideration of Rs.30,000/- vide sale deed dated 24.07.1974 in the name of the defendants 1 to 3 marked as Ex A2. The Ex A2 was executed in favour of defendants 1 to 3 alone, since, the plaintiffs 1 to 3 were minors at the time of purchase of the suit property. The sale consideration of Rs.30,000/- for the said property was paid in the following manner which is tabulated as follows

Sl.No	Date	Amount	Payment Mode	Source of Payment
1	18.06.1974	Rs.5,000/-	Cash	Fund raised by Property Sold at Andhra Pradesh
2	15.07.1974	Rs.500/-	Cash	M.Krishnaiah Chetty Own Fund
3	24.07.1974	Rs.4,481/-	Cash	Fund raised from Pledging M.Krishnaiah Chetty Wife Jewels
4	24.07.1974	Rs.5,000/-	Promissory Note	Executed by Defendants 1 to 3 Paid by M.Krishnaiah Chetty
5	1974-1984	Rs.15,019/-	Loan Installments	Loan From Madras City Co-operative House Mortgage Society Limited

9. The learned counsel for the Appellant contended that the father of the plaintiffs and defendants constructed a house in the purchased suit site and stayed there along with his family. Thereafter, his children got married one by one. In furtherance to that, the third plaintiff alone stayed in the suit property along with his parents and all other siblings who are in

constructive legal possession of the said property. Subsequently, their father expired on 01.04.2005 and followed by his death, his wife Mrs.M.Nagarathinama died on 08.10.2010. Since, the plaintiffs and defendants are the legal heirs of late.M.Krishnaiah Chetty, they have inherited the suit property. Therefore, the suit property is a self acquired property of the father of the plaintiffs and defendants. After the death of their father and mother, the plaintiffs and defendants had inherited to the suit property as legal heirs. Hence, he submitted that the plaintiffs are entitled for 1/6th share of the suit property.

10. He argued that the Court below failed to consider that in order to substantiate that the suit property is a joint family property and purchased by Late.M.Krishnaiah Chetty through his own income, the plaintiffs contended that the property at Andhra Pradesh belong to father of M.Krishnaiah Chetty was sold for a sum of Rs.10,000/- vide sale deed dated 14.08.1970 marked as Ex A23 (translated copy Ex A31) and a sum of Rs.5,000/- is retained for the purpose of purchasing the suit property. The court failed to take note of the same and that to substantiate the same, PW1 and PW2 deposed that the ancestral property was sold and residue sale consideration was retained to purchase the suit property.

11. He further contended that the court below erred in holding that the said Krishnaiah Chetty was finding it difficult to maintain his family from 1974 to 1984 and that there is no evidence to show that the mother of the plaintiffs was having gold jewels or that the additional construction was put up out of Joint family funds. These are only presumptions and assumptions. He would submit that Krishnaiah Chetty had sufficient income which is clearly proved in the evidence of all witnesses including that of the defendants. He further submit that the defendants have clearly stated in their proof affidavit that their father came to Madras in the year 1965 along with the third defendant and the plaintiffs who were minors at that time and their father was working as Tailor, at that time he was earning around Rs.300/- per month. He contended that the court below failed to note that even otherwise the said admissions of Defendants 1 to 3 established that late M.Krishnaiah Chetty had good sufficient income from tailoring work and he has financial capacity to purchase the property. He made submissions that court below failed to take note that the Income Certificate of Mr.M.Krishnaiah Chetty issued by Tahsildar in the year of 1964, marked by D1 as “Exhibit -B1” is obtained only for the benefit of the first defendant for getting scholarship. Therefore, the said certificate cannot

be construed as an evidence for the income of the late.M.Krishnaiah Chetty.

12. He vehemently contended that the court below failed to note that nevertheless the defendants marked 45 exhibits, but, neither the documentary nor independent oral evidence was produced by the defendants to establish that the initial amount of Rs.5,000/- and further amount of Rs.4,481/- was paid by the defendants alone. He submitted that the monthly installment amount of Rs.224/- from 1974 to 1984 was paid only by cash and there is also no direct evidence produced by the defendants to establish the installments were paid by the defendants alone. Moreover, it is evident from the above evidence adduced by both the plaintiffs and defendants that their father was having sufficient income and that the first and second plaintiffs were also earning from 1977/1978 onwards. Since, all of them were living as joint family from the date of purchase of suit property and much after the repayment of loan amount in the year 1984, henceforth, it has to be construed from the evidence of PW3 and PW4, who are none other than the cousins of the plaintiffs and defendants that the plaintiffs and their father also contributed substantial amount towards the sale consideration and repayment of loan to the Society. Further, though the loan was completed in the year 1984, no steps

were taken by the defendants to get the loan account closed, which exhibits that they did not bother to do so since the property was joint family property.

13. He put forth that the court below failed to note that despite of the Society assented for entering into a separate agreement and had executed necessary documents to transfer the loan account vide Ex B4, but, it was not transferred in the name of the defendant which reveals that the defendants did not show any interest to do so since, it is joint family property. Moreover, though, after clearance of loan, the defendants have not took any efforts to obtain Patta, water and sewage connection to the suit property till date in their name.

14. He further submitted that the plaintiffs examined PW4, an independent witness and close relative of the plaintiffs and defendants who had clearly given evidence that the promissory note was discharged by M.Krishnaiah Chetty. Though the defendants claim that the promissory note of Rs.5000/- was discharged out of the funds raised by second defendant by foreclosing his chit fund account and also from the funds provided by first and second defendants yet there is no documentary or

independent oral evidence produced by them to substantiate that the said promissory note was discharged by them. Further, the alleged Ex.B10 does not contain the discharged endorsement by the vendor.

15. He further contended that the court below failed to note that for further sale consideration, a further sum of Rs.4,481/- was paid by cash at time of registration of the sale deed by pledging the jewels of the mother of the plaintiffs and the defendants, has been corroborated by PW2, PW3 and PW4. Moreover, the defendants in their written statement mentioned that their mother did not possess any jewels except a pair of ear ring and a nose ring and by pledging those small jewels, the suit property cannot be purchased. However, per contra, in Ex A18, the reply sent by the defendants, they have stated that their mother was having 30 sovereigns of gold. Furthermore, the first defendant in his proof affidavit has stated that a sum of Rs.4,481/- was paid by him to purchase the suit property. In contra, in their written statement, the defendants have stated that all the defendants together had paid the money.

16. He further contented that there is no mentioning in the sale deed marked as Ex A2 how much money was contributed by each purchaser and how it was paid. The first defendant in his proof affidavit, has stated how

the three defendants paid the sale consideration which is beyond the written statement. Therefore, he contended that it has to be presumed that the suit property was purchased from the joint income of the plaintiffs, defendants and their father. The aforesaid ocular and documentary evidence would establish that the suit property is a joint family property purchased and developed out of the income derived from the nucleus of joint family. He also submitted that it is the settled position of law that initial burden of proof lies on the plaintiff to establish that the suit property was purchased with joint family nucleus. Once the plaintiff discharges the initial burden, the burden of proof shifts on the defendants to establish that the suit property is purchased on their self acquired funds. The learned counsel for Appellant relied upon the Judgments of Apex Court in the case of ***Appasaheb Peerappa Chamdgade Vs Devendra Peerappa Chamdgade*** reported in ***2007(1) SCC 521***. He also relied on the Judgment of this Court in the case of ***Malla Naicker @ Singari & others Vs Jeeva (Minor)*** and others reported in ***2012(1) CTC 128*** and submitted that when coparcener claims certain properties purchased are his separate properties, then the onus lies on him to prove that properties were not purchased out of joint family income. The defendants are coparceners in the joint family along with the plaintiff and hence, the defendants failed to discharge the burden of proof that the suit property was purchased by them from their self acquired funds and not purchased out of joint family nucleus. Therefore, the plaintiffs are entitled for 1/6th share in the suit property and the suit property is liable for partition by metes and bounds and that the court below ought to have allowed the above suit for partition and decreed the same as prayed for in the plaint. Henceforth, he would contend that the Appeal Suit would have to be allowed and the judgment and decree of the Court below would have to be interfered with.

17. Countering the argument of the Appellants, Mr.K.J.Parthasarathy, learned Counsel appearing for Respondents 1 to 3 contended that the defendants are the elder brothers of the plaintiffs. The father of the Plaintiffs and defendants late.M.Krishnaiah Chetty worked as Tailor in a Tailor Shop. The income of their father was not sufficient to meet the livelihood of the family members and he was a regular gambler by playing cards at Choudepalli Village and spent whatever he earned for gambling. He never cared for the welfare of the children and his wife. The defendants were admitted in a hostel run by SKPD Charities and by the philanthropists of the community took care of their education and other expenses. The first defendant, after Post Graduation joined as a Lecturer at

Pachaiyappa's College at Kancheepuram in 1969. The second defendant after obtaining B.Sc., Maths, while doing M.Sc. joined as Clerk in Union Bank of India in 1971 and the third defendant did Diploma in Pharmacy with stipend from the Tamil Nadu Government as pharmacist in 1972. All the defendants joined the services on or before 1972 and they were getting a decent salaries, when the plaintiffs were minors. Hence, the defendants purchased the suit property on 24.07.1974 with a building thereon, from and out of their own income and without any nucleus from the joint family or any contribution by their father. The defendants have put up an additional construction in 1979 from their own income.

18. He submitted that the defendants denied that their father paid a sum of Rs.5000/- as advance in cash for the purchase of the suit property. Thr property belonging to the family situated at Chowdapalle, which was inherited by their father for Rs.6000/- on 14.08.1970 was sold vide sale deed Ex A23. The purpose to sell the property was to discharge the loan payable to one Venkatarama Goud to whom the property was mortgaged by their father. The said sale deed was marked as Ex A23 in which it is clearly stated that the sale consideration was only for a sum of Rs.6000/- and not Rs.10000/-. PW3 has specifically admitted that at the time of

Ex.A23 sale deed, a sum of Rs.5,000/- was due to Venkataraya Goud towards a mortgage loan. So there is no possibility to keep a sum of Rs.5,000/- by Krishnaiah Chetty. Moreover, the ancestral house at Chowdapalli was sold in the year 1970 and the suit property was purchased in the year 1974. The contention of the plaintiffs that the balance amount was kept by Krishnaiah Chetty for a period of four years to purchase a house at Chennai in 1974 is only imaginary and has not been substantiated.

19. He also relied upon that the cross examination of PW4 wherein he had deposed that his Chithappa Krishnaiah Chetty did not have enough income to maintain his family and therefore, he had sent the defendants 1 and 2 to Hostel at Chennai for education. This clearly exhibits that their father struggled to maintain his family and there is no possibility for him to buy a property with his income. Further, the plaintiffs have not produced any material evidence to show that the income of the Krishnaiah Chetty was sufficient to purchase the suit property.

20. He vehemently contended that though the plaintiffs stated that Krishnaiah Chetty and the plaintiffs have also contributed to the payment of installment amounts due on the mortgage, no materials were produced to

substantiate the same. Further, it is an admitted fact that the plaintiffs 2 and 3 were minors in the year 1974. Further, Ex A26 undoubtedly establish that the plaintiffs have no income till the year 1977. The Court below also correctly concluded that the Krishnaiah Chetty found it difficult even to maintain his family from the year 1974 to 1984 and it is not possible for the plaintiffs too to make the payment of installment amount.

21. He further contended that at the relevant point of time, the mother did not possess jewels which could have raised a sum of Rs.4,481/- by pledging the same. All that the defendants in their reply affidavit had stated in respect of their mother's possession of the jewels and silver articles would relate to the date on which the reply was given. He contented that the Court below correctly held that the defendants have admitted that their mother possessed gold in the year 2010 and not in the year 1974 which is also corroborated in the cross examination by DW1. Further, Ex B9 receipt is also produced by the defendants. From the above contentions and the oral and documentary evidences, it is amply clear that the plaintiffs failed to prove their stand, that the suit property is a joint family property. In the above context, the learned counsel for the Respondents 1 to 3 relied upon the Judgments of Apex Court in the case of ***Shrinivas Krishnarao Kango***

Vs Narayan Devji Kango and others reported in ***AIR 1954 SC 379, Mudi Gowda Gowdappa Sankh Vs Ram Chandra Ravagowda Sankh*** reported in ***1969 (1) SCC 386, Kuppala Obul Reddy Vs Bonala Venpata Narayana Reddy*** reported in ***1984 (3) SCC 447****,* ***D.S.Lakshmaiah and another Vs L.Balasubramanyam and another*** reported in ***2003 (10) SCC 310*** and the judgments of this Court in the case of ***M.Saminatha Vellalar and three others Vs Govindaraju and Seven others*** reported in ***2002 (3) CTC 141*** and ***R.Deivanai Ammal (Died) and another Vs G.Meenakshi Ammal and others*** reported in ***2004 (4) CTC 208.*** Relying upon the said judgments, the learned counsel submitted 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. Further, he put forth that the basic legal principal is the burden lies on the plaintiff to prove his case on basis of materials available and he cannot simply rely on weakness or absence of defence of defendant to discharge the onus, for the said principle he relied upon Judgment in the case of ***Rangammal vs Kuppuswami and another*** *reported in* ***2011 (12) SCC 220.*** Thereby, the plaintiffs are not entitled for a share in the suit property which is a self acquire property of the defendants. Hence, the judgment and the decree passed by the Court below does not require any interference.

22. I have heard the rival submissions made by the respective counsels and perused the materials placed on record.

23. On analysis of the arguments and the materials available on record, I am of the considered view that the following issues arise for consideration:-

I) whether the suit property is a joint family property having been purchased by their father in the name of defendants 1 to 3?

ii) whether the defendants had sufficient means to purchase the suit property out of their income only?

iii) whether the appellants are entitled to a share in the suit property by way of a partition?

Issue Nos.(i) & (ii)

24.The claim of the appellants is that the suit property had been purchased from and out of the residue of a sale of property which was inherited by the father and by pledging the jewels of the mother. It is the further case of the appellants that the remainder of the sale consideration was based upon a promissory note executed in favour of the vendor and a loan that had been availed from the Society. According to the appellants, the promissory note and the mortgage had been redeemed by the father along with the appellants and the respondents and on the other hand, the respondents 1 to 3 had claimed that they had all been beneficially engaged in the services and from and out of the income that they had derived as salary, the suit property had been purchased and that the loan amount had also been discharged by them.

25.To drive home their claim, the appellants have examined themselves as PW-1 and PW-2 and two other witnesses were also examined on their side. Even though they had claimed that the property which belonged to their father had been sold for a sum of Rs.10,000/- and that after disbursement of a loan to the tune of Rs.5,000/-, the father had a residue of Rs.5,000/- which together with the pledged jewel of the mother formed the part of the sale consideration, which had been paid on the date of the registration and the balance sum had been raised as loan through a promissory note and mortgage of the suit property. The PW.4 who was the cousin of the parties, had supported the claim of the appellants, but however, he had not admitted whether the said amount had been paid.

26.A perusal of the copy of the sale deed which had been marked as Ex.A-23, relates to the sale of property by the father would indicate that the total sale consideration that had been received by their father was Rs.6,000/-. Admittedly, a sum of Rs.5,000/- had been used for discharge of the loan and therefore, there could be only be a balance sum of Rs.1000/- Even though PW-4 in his chief-examination had claimed that a sum of Rs.10,000/- was received as consideration. There was no other supporting evidences to substantiate such a claim.

27.A reading of Ex.A-31, which is a translated copy of Ex.A.23, would show that the sale deed had been executed by the father for himself on behalf of his sons namely that the appellants and the respondents 1 to 4 primarily to repay the loan that had been availed by the father of the parties to the *lis* and to meet out the family expenses including the welfare of the minors and their educational expenses. It has been brought on record that the respondents 1 to 3 were major at that point of time. The recitals in the aforesaid document would indicate that there has been no intention on the part of the father to invest the sale consideration received by him for purchase of any property including the suit property. There is a clear and explicit recital that the sale is being effected to release the property which has been subject of a mortgage and to meet the family expenses and for the welfare of the minors and their educational expenses.

28.When that being so, it would be a tall claim of the appellants that there was a residue of the sale consideration which had been utilized for the purchase of the suit property.

29.It is also an admitted case, that the appellants had secured employment pursuant to the purchase of the suit properties. On the other hand, the respondents have substantiated that they have been in service much prior to the purchase of the suit property. The respondents 1 to 3 have also substantiated by necessary oral and documentary evidences that they had been in possession of valuable money for purchase of the suit property. Even though the appellants have claimed that they had been very instrumental in discharge of the loans, no evidence had been produced by them either oral or documentary evidences except to make a tall claim. On the other hand, the respondents had produced the documents by which the mortgage had been discharged at the behest of the third respondent. All these aspects had been rightly considered by the Court below in dismissing the Suit filed by the appellants.

Issue No.(iii)

30.In view of the aforesaid findings and reasonings arrived at in issue Nos.(i) & (ii), I am of the view that the appellants would not be entitled to seek partition of the suit property.

31.In fine the Appeal Suit fails and the same is accordingly dismissed. However, there shall be no order as to costs.

26.04.2023

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation:Yes/No
pbn

K.KUMARESH BABU,J.

pbn

To

VII Additional Judge City Civil Court Chennai.

A.S.No.693 of 2014

26.04.2023