



A.S. (MD) No. 307 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 27th March, 2024

PRONOUNCED ON: 07.06.2024

CORAM

THE HON'BLE MR. JUSTICE P. DHANABAL

A.S. (MD) No. 307 of 2008

1. Chellammal (Died)

(Memo dated 06.01.2021 filed on 07.07.2022
In USR No. 13091 is recorded as 1st appellant
Died and appellants 2 to 5 who are already on
record are recorded as LRs of the deceased
1st appellant vide Court Order dated 27.03.2024
Made in A.S.(MD)No. 307 of 2008 by PDBJ)

2. Minor Nagajothi @ Nagalakshmi

3. Minor Rajathi

(2nd and 3rd appellants declared as major
and guardianship discharged vide Court
Order dated 20.10.2016 made in C.M.P. Nos.
9649 to 9652 of 2016 in A.S. No. 307 of
2008 by MSNJ & JNBJ)

4. Minor Chitradevi

5. Minor Priya

(Minor appellants 4 and 5 declared as major



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And guardianship of their mother/1st appellant
Is discharged vide court order dated 14.07.2022
made in C.M.P.(MD) NO. 5916 and 5918 of 2022
in A.S.(MD) No. 307 of 2008 by PVJ)

..Appellants

Vs.

1. Dhanalakshmi (died)

(R2, R3 & R6 are recorded as LR's of deceased
R1 vide memo USR No. 704/09 made in A.S.
No. 307 of 2008 order dated 14.03.2009 by
D.R. (Judl.)

2. Ganesan (Died)

3. Mahalakshmi

4. Minor Sangeetha (Died)

5. Minor Saranya

(R4 & R5 represented by their maternal
grandmother & guardian 1st respondent herein –
The term “minor” in respect of R4 & R5
deleted in view of the order of this Court dated
17.03.2023 made in C.M.P.(MD) Nos. 2874 &
2879 of 2023 in A.S.(MD) No.307 of 2008 by
NSKJ)

(5th respondent declared as major vide Court Order
dated 07.12.2017 made in C.M.P.(MD) No. 11146
Of 2017 in A.S.(MD) NO. 307 of 2008 by
MKKSJ & TKJ)

6. Nagarajan



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(6th respondent set ex parte in the Lower Court. Hence,
no claim against the 6th respondent)

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7. Backialakshmi
8. Soundarya
9. Sriram Kayambu

(R7 to R9 are brought on record as LR's of the deceased
2nd respondent vide court order dated 15.12.2022 made
in C.M.P.(MD)No. 6287 of 2022 in A.S.(MD)No. 307
of 2008 by NMJ.)

10. Sivakumar
11. Pratheesha

(R10 and R11 are brought on record as LR's
of the deceased 4th respondent vide Court Order
dated 17.03.2023 made in C.M.P.(MD) Nos.
2874 & 2879 of 2023 in A.S.(MD)No.307
Of 2008 by NSKJ)

..Respondents

Prayer: First Appeal as against the decree and judgment dated
24.07.2008 passed in O.S. No. 112 of 2004 by the learned Additional
District and Sessions Court cum Fast Track Court, Dindigul.

For Appellants :: Mr.M.P. Senthil for
Mr.D. Venkatesh



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For Respondents :: Mr.P. Vinoth for
Mr.R. Subramanian for
R3, R7 to R9
No appearance for R5,
R10 & R11

J U D G M E N T

This appeal has been preferred as against the decree and judgment dated 24.07.2008 passed in O.S. No. 112 of 2004 by the Additional District and Sessions Court cum Fast Track Court, Dindigul. Originally, the suit in O.S. No.112 of 2004 was filed by respondents 1 to 5 herein as plaintiffs for the relief of partition and by the judgment under challenge, the suit was decreed as against which defendants 2 to 6 before the Trial Court have preferred this appeal.

2. A brief summary of the plaint averments are as follows:

(a) Plaintiffs 2, 3, the 1st defendant, one Periyasamy and Pappathi are the sons and daughters of the 1st plaintiff, Dhanalakshmi and one Kayambu Yadav. The 2nd defendant is the wife of Periyasamy; Plaintiffs 4 and 5 (daughters of Pappathi) and defendants 3 to 6 (daughters



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of Periyasamy and 2nd defendant) are the grandchildren of 1st plaintiff and late Kayambu Yadav. The suit properties originally belonged to Kayambu Yadav, husband of the 1st plaintiff. The said Kayambu Yadav, out of the sale proceeds derived from the sale of his ancestral house, started running onion commission business in Dindigul under the name “Jayam and Co” and “Periyasamy Traders” from the year 1960. Out of the earnings from the said onion commission business, Kayambu Yadav purchased properties in the name of plaintiffs 1 to 3, his son late Periyasamy, 2nd defendant, his daughter-in-law and defendants 3 and 4, his granddaughters. The properties so purchased were enjoyed as joint family properties. The “A” Schedule properties were purchased by Kayambu Yadav on various dates under various sale deeds in the name of his wife, sons, daughters and granddaughters. Item No.1 of “A” Schedule property is a house purchased by Kayambu Yadav; item Nos. 2, 3, 4, 11 and 12 were purchased by him as vacant sites, wherein, houses were constructed from and out of the joint family income and the said houses were rented out to tenants and the income earned therefrom was enjoyed jointly. Item Nos. 5 to 8, 13 and 14 are Punja lands. Item No.9 of the said “A” Schedule property is an



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agricultural land and item Nos. 10, 15 and 16 are house-sites. “B”

Schedule pertains to the loans given to outsiders as well as those given to late Periyasamy from the joint family income while “C” Schedule deals with liabilities of the joint family.

(b) Kayambu Yadav, who had been running the onion commission business, died intestate on 27.04.1998. After his demise, the 2nd plaintiff, Periyasamy and one Sethuramalingam joined together and did onion commission business in the name of “ K.P. Traders” and purchased properties in the name of the 2nd defendant, which were enjoyed in common. Therefore, the suit properties were enjoyed by Kayambu Yadav’s wife, sons and daughters as joint family properties.

(c) Pappathi, the eldest daughter of Kayambu Yadav and 1st plaintiff and the mother of Plaintiffs 4 and 5, became mentally unstable, went missing in the year 1995 and her whereabouts could not be traced. Since then, plaintiffs 4 and 5 have been under the care and custody of the 1st plaintiff. Periyasamy, the husband of the 2nd defendant and father of defendants 3 to 6 died on 24.12.2002, leaving behind the 1st plaintiff and defendants 2 to 6 as his legal heirs to succeed to his estate. Since the suit



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properties are self-acquired properties of Kayambu Yadav, on his demise, his wife and children are entitled to equal share, i.e, plaintiffs 1 to 3, Periyasamy and Pappathi are each entitled to $1/6^{\text{th}}$ share. Since Pappathi is deemed to be dead, plaintiffs 4 and 5 would be entitled to her $1/6^{\text{th}}$ share. Likewise, as Periyasamy is no more, the 1^{st} plaintiff and defendants 2 to 6 would be entitled to receive his $1/6^{\text{th}}$ share. In other words, the 1^{st} plaintiff would be entitled to $7/36^{\text{th}}$ share, plaintiffs 3, 4, 5 and the 1^{st} defendant would be each entitled to $6/36^{\text{th}}$ share and defendants 2 to 6 would be each entitled to $5/36^{\text{th}}$ share in the suit properties.

(d) In the lower portion of item No.2 of the properties under “A” schedule, plaintiffs 1,2,4 and 5 are residing while in the upper portion, the 3^{rd} plaintiff is residing. The 1^{st} defendant is residing in a portion of item No. 1 while defendants 2 to 6 are residing in item No.4. All other properties and income earned by way of rent are enjoyed in common by the parties. The attitude of the 2^{nd} defendant changed after the demise of her husband Periyasamy and she had been at loggerheads with the plaintiffs. Therefore, the plaintiffs demanded partition of their share in the suit properties. Since the defendants were evasive to such partition, the suit was laid.



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WEB COPY 3. The sum and substance of the written statement filed by defendants 2 to 6 are as follows:

The suit is false, frivolous and vexatious. The plaintiffs are not entitled to any relief sought in the suit. The relationship between the parties is not denied. However, defendants 2 to 6 deny the running of onion commission business by Kayambu Yadav under the name “Jayam & Co.” and “ Periyasamy Traders”; the sale of ancestral house by Kayambu Yadav for the purpose of setting up onion commission business; the purchase of properties by him out of the earnings from the said business and the enjoyment of the properties so purchased as joint family properties by the family members of Kayambu Yadav. According to defendants 2 to 6, the onion commission business did not generate much income and Kayambu Yadav earned only meagre amount sufficient enough to run the family. The 1st defendant and Periyasamy, the husband of 2nd defendant did not have sufficient income and they did masonry work for their livelihood. The 2nd plaintiff was also going for a job and the 1st plaintiff, Dhanalakshmi Ammal, never had any business or income of her own. There was no such income as joint family income as pleaded in the plaint. That being so, the so-called



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purchase of properties by Kayambu Yadav through his earnings in favour of plaintiffs and defendants is totally denied. Moreover, there was neither any source of income nor any necessity for Kayambu Yadav to purchase properties in the name of his family members.

(b) The 2nd defendant married Periyasamy, the son of the 1st plaintiff and Kayambu Yadav in the year 1987 and in the year 1991, Periyasamy went to North India, where he started onion commission business and carried on exports on a large scale. In the year 1996, he started onion commission business in Dindigul and earned huge income. Out of the income derived therefrom, it was Periyasamy, who had purchased “A” Schedule properties in the name of his mother, brother, sisters, wife and children and not Kayambu Yadav as alleged in the plaint. Kayambu Yadav had no income of his own to enable Periyasmy to buy the properties. There was neither any reason nor necessity for Kayambu Yadav to purchase properties in favour of his wife, sons, daughters, daughter-in-law and grandchildren. Some of the properties purchased by Periyasamy were plots, some of them were house-sites while others were lands. In the plots so purchased, Periyasamy had put up constructions out of his own income



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and had been enjoying the same. He had also let out some of the houses for rent and received the rents. The property tax in respect of the said properties had been paid by Periyasamy in his name and he had also helped his parents and siblings with his income. The plaintiffs, taking advantage of the sale deeds, purchased in their name, are proclaiming that those properties belong to them. The income earned from the properties of Periyasamy were never shared with the plaintiffs and the 1st defendant. The 1st plaintiff is not entitled to any share in the “A” Schedule properties and defendants 2 to 6 alone are entitled to have a share in the said properties. Hence, the suit is liable to be dismissed.

4. Based on the above pleadings, the Trial Court framed the following issues:

"1. பிராத்தில் கோரியபடி வாதிகளுக்குரிய பாகத்தைப் பொறுத்து பாகப்பிரிவினை மற்றும் தனித்த சுவாதீனம் கிடைக்கத்தக்கதா?

2. தாவாச் சொத்துக்கள் 2 முதல் 6 பிரதிவாதிகளின் தகப்பனாரால் கூட்டுக் குடும்பச் சொத்துக்களிலிருந்து



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வாங்காமல் அவரது சுய சம்பாத்தியத்தால் வாங்கப் பட்டதா?

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3. வாதிகளுக்கு கிடைக்கத்தக்க வேறு பரிகாரம் என்ன?

The English translation of the issues framed by the Trial Court is as hereunder:

- (i) *Whether the plaintiffs are entitled to partition and separate possession as prayed for in the plaint?*
- (ii) *Whether the properties were purchased by Periyasamy through his personal earnings?*
- (iii) *To what relief, the plaintiffs are entitled to?*

5. Before the Trial Court, on the side of the plaintiffs, the 1st plaintiff was examined as P.W.1 and Exs. A1 to A37 were marked. On the side of the defendants, the 2nd defendant and two others were examined as D.Ws. 1 to 3 and Exs. B1 to B5 were marked. The Bank Pass Book of Periyasamy in Central Bank of India pertaining to the period 03.09.1996 to 12.10.2000 and 12.10.2000 to 09.07.2007 were marked as Exs. C1 and C2.



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6. After considering the evidence adduced on both sides, the Trial Court decreed the suit in favour of the plaintiffs and passed a preliminary decree in respect of “A” Schedule properties and dismissed the suit in respect of “B” and “C” Schedule properties. Aggrieved over the same, defendants 2 to 6, as appellants, have come forward with the present appeal raising the following grounds:

(i) The decision of the Trial Court is against law.

(ii) The Trial Court failed to consider that the pith and substance of the plaint allegations have to be construed only as benami purchase by late Kayambu Yadav and the plaintiffs wanted to emphasize that the properties covered under various sale deeds standing in the name of appellants and deceased Periyasamy were purchased for the benefit of family members. However, the said contention would attract the provisions of Benami (Transactions) Prohibition Act 45/1998 and after the advent of the Act, the said contention cannot be raised by a suitor and this aspect was not considered by the Trial Court carefully.

(iii) The Trial Court failed to consider that even assuming that late Kayambu Yadav gave amounts to purchase properties standing in the name



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of appellants and late Periyasamy, he cannot claim any ownership in the properties subsequently and any division of the properties after his death by the plaintiffs cannot be granted.

(iv) The Trial court did not appreciate the fact that the properties were not purchased either for the benefit of the family by late Kayambu Yadav or for the joint family as alleged by the plaintiffs. The properties were neither treated nor blended nor thrown in the hotch pot by the appellants and late Periyasamy for the purpose of making division of the same among the members at a later point of time.

(v) The Trial Court failed to appreciate that if really, late Kayambu Yadav had wanted to benefit all the members of the family with suit items 3 to 12, in the suit “A” Schedule, he would not have purchased the same in the name of deceased Periyasamy and the appellants alone. The fact that the properties were purchased during the lifetime of Kayambu Yadav in the name of appellants and late Periyasamy would show that late Kayambu Yadav was not the owner of suit items 3 to 12 shown in “A” Schedule. The said fact was not considered by the Trial Court in the right perspective.



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WEB COPY (vi) The Trial Court failed to consider the admission of P.W.1 that Periyasamy had purchased properties, patta was granted in his name, the assessment for the properties stood in his name, he had constructed buildings, received rent and paid taxes and did not share income from the land etc. to P.W.1, which would conclude the exclusive right claimed in the properties by late Periyasamy and the appellants.

(vii) The Trial Court also failed to appreciate that late Periyasamy was neither the Kartha nor Manager of the family and at the time of purchase of properties in Schedule “A”, he was a junior member of the family as his father was alive and the fact that late Periyasamy was living separately and was not in the joint family has also been lost sight of by the Trial Court.

(viii) The Trial Court failed to see that the bank accounts and documents produced by way of Exs.A28 to A33 do not confirm or probabalise the purchase of the properties in the name of appellants and late Periyasamy.

(ix) The fact that except P.W.1 no other witness was examined to substantiate the contention of the plaintiffs that the purchase was from and



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out of joint family fund by late Kayambu Yadav was not considered by the Trial Court.

(x) The Trial Court failed to consider that even if joint family was available, there is no presumption under Hind Law that joint family owns joint family properties for granting division.

(xi) The Trial Court failed to consider that no documents were filed by the plaintiffs to show that late Kayambu Yadav and late Periyasamy had done business jointly.

(xii) The Trial Court also failed to appreciate the evidence adduced by D.W.s 1 to 3.

(xiii) The Trial Court ought not to have granted division of the properties standing in the name of the 1st appellant, who is a female member and her children.

7. Learned counsel for the appellants would contend that respondents 1 to 5 had filed the suit before the Trial Court for the relief of partition and separate possession alleging that the properties under “A” Schedule are joint family properties and the Trial Court also erroneously



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decreed the suit in respect of “A” Schedule properties since they are not joint family properties of plaintiffs and defendants. Though it is stated in the plaint that the first item of the properties under “A” Schedule was purchased by Kayambu Yadav in his name; the second item was purchased by him in the name of the 1st plaintiff, his wife; item Nos. 3 to 10 were purchased by him in the name of Periyasamy out of his own earnings as well as the income generated from joint family business and likewise, item Nos. 11 and 12 were purchased by Kayambu Yadav in the name of the 2nd defendant and defendants 3 and 4 respectively, no documents were filed by the plaintiffs to substantiate their case of purchase of properties out of joint family income and therefore, the relief of partition sought in respect of the suit properties is untenable.

7.1 Further, the learned counsel would contend though P.W.1, the 1st plaintiff was examined on the side of the plaintiffs, she herself had deposed that item Nos. 3 to 12 of the properties under “A” Schedule were purchased by Periyasamy; that he had also put up constructions in the said properties and that he never shared the income from the said properties with



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the plaintiffs. Therefore, the 1st plaintiff herself had admitted that the suit properties were under separate possession and enjoyment of the family of Periyasamy. However, the Trial Court failed to take note of the same and granted a decree for partition in favour of the plaintiffs. Moreover, though some of the properties were stated to have been purchased in the name of plaintiffs 3 and 4 and the 1st defendant, they have not been examined as witnesses to prove the fact that the properties standing in their name were purchased by Kayambu Yadav. According to the learned counsel, the Trial Court mainly relied upon Bank Pass Books marked as Exs.A28 to A32. But, the said documents would only speak about the nature of transaction and it cannot throw light on how the amount required for the purchase of properties was procured from the business. Even assuming that the properties were purchased by Kayambu Yadav, still, there is no explanation forthcoming as to why all the sale deeds stood in the name of Periyasamy. There is no iota of evidence to show that the properties standing in the name of 2nd plaintiff, 3rd plaintiff and the 1st defendant were also purchased by their father Kayambu Yadav.



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7.2 The learned counsel for the appellants would further add that when it is admitted that Periyasamy went to North India and had his own business through which he earned huge income, the Trial Court ought to have held that the properties were purchased by Periyasamy through his personal earnings, that there was no joint family business and that the income of Periyasamy was not shared in the joint family. The Trial Court, without considering the evidence adduced on the side of the defendants in proper perspective, found fault with the evidence of D.W.1 stating that she had suppressed the joint family business and proceeded to decree the suit in favour of the plaintiffs. The learned counsel would submit that when it is the duty of the plaintiffs to prove that there was joint family income out of which only, the properties were purchased in the name of Periyasamy by Kayambu Yadav and when the plaintiffs have miserably failed to prove the same, it has to be presumed that the properties standing in the name of Periyasamy and defendants 2 to 6 are their exclusive properties. In support of the above contentions, the learned counsel for the appellants placed reliance on the following judgments:

(i) ***Bhagwat Sharan (Dead) through his legal representatives Vs.***

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Purshottam and Others ((2020) 6 SCC 387).

(ii) Rajendran and another Vs. Radhakrishnan and 2 others (2023 (6) CTC 732).

(iii) R. Deivanai Ammal (Died) and anothr Vs. G. Meenakshi Ammal and Others (2004 (4) CTC 208).

(iv) Ramasamy Gounder @ Senban (died) and 3 others Vs. Chinnapillai @ Nallammal and 2 others (2022 (3) CTC 703).

(v) M.Subramaniam @ M.S. Mani Vs. S. Ravichandran and another (2018-1-L.W.221).

(vi) Amudha and 2 others Vs. Janardhanan and 4 others (2015 (3) MWN (Civil) 353).

8. On the other hand, learned counsel appearing on behalf of respondents 3 and 7 to 9 would contend that the properties are joint family properties of plaintiffs and defendants. In fact, Kayambu Yadav, who is the husband of the 1st plaintiff was carrying on onion commission business and out of the income earned from the said business, had purchased properties in the name of plaintiffs 1 to 3, late Periyasamy and defendants 2 to 6. The plaintiffs and defendants were in common enjoyment of the said properties



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Defendants 2 to 6 have suppressed the fact that Kayambu Yadav along with the 2nd plaintiff and 1st defendant was carrying on onion commission business and after the demise of Periyasamy, defendants 2 to 6 denied the right of plaintiffs over the joint family properties, necessitating them to file the suit for partition and separate possession. The Trial Court, based on the evidence adduced on both sides, after elaborate discussion, had rightly decreed the suit. In support of his contention, learned counsel for respondents 3 and 7 to 9 have relied on the following judgments:

- (i) ***Mr.Malla Naicker @ Singari Vs. Miss. Jeeva (Minor) (Judgment dated 08.08.2011 rendered in S.A. No. 212 of 2011.***
- (ii) ***D.S. Lakshmaiah and Another Vs. L. Balasubramanyam and Another ((2003) 10 SCC 310) .***

For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status/ranking in the Trial Court.

9. This Court heard the submissions made by both sides and perused the materials on record. Based on the submissions made by both sides, the points that arise for determination in this appeal are as hereunder:

1. *Whether item Nos. 3 to 12 of suit “A” Schedule properties*



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were purchased by Periyasamy in his name and in the name of

his wife and children out of his own earnings?

2. *Whether the suit properties are joint family properties of plaintiffs and defendants?*

3. *Whether the plaintiffs are entitled to a share over the suit properties?*

4. *Whether the judgment and decree passed by the Trial Court are sustainable in the eye of law and on facts?*

5. *Whether the appeal has to be allowed or not?*

6. *To what other reliefs, the appellants are entitled to?*

10. **Point No.1:**

As already stated, the suit was filed by the plaintiffs for the relief of partition and separate possession of the suit properties. There were three schedule of properties mentioned in the plaint, namely, Schedule “A”, “B” and “C” and the Trial Court had decreed the suit in respect of “A” Schedule properties in favour of the plaintiffs and dismissed the suit as against “B” and “C” Schedule properties. According to the plaintiffs,



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Kayambu Yadav, husband of the 1st plaintiff, had purchased the properties through the income earned by him from onion commission business. At the risk of repetition, it has to be stated that according to the plaintiffs, item No. 1 of the properties under “A” Schedule was purchased by Kayambu Yadav in his name; property mentioned as item No.2 was purchased by him in the name of 1st plaintiff, his wife; properties mentioned as item Nos. 3 to 10 were purchased by Kayambu Yadav out of joint family income as well as his earnings in the name of his son Periyasamy; item No.11, which is a vacant site was purchased by him in the name of the 2nd defendant, who is his daughter-in-law and wife of Periyasamy; item No.12 was bought in the name of defendants 3 and 4, his grandchildren; item Nos. 13 and 14 were purchased by Kayambu Yadav in the name of the 2nd plaintiff, Ganesan, who is his son and item Nos. 15 and 16 were purchased in the name of the 3rd plaintiff, Mahalakshmi, who is his daughter. However, the purchases made by Kayambu Yadav in the name of his family members were denied by defendants 2 to 6 stating that Periyasamy, who is the husband of the 2nd defendant and father of defendants 3 to 6 had gone to North India, started onion commission business and exported them to foreign countries. He



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carried on business on a large scale and also established onion commission business in Dindigul after his return from North India and reaped huge profits. According to the defendants, it was through the separate earnings of Periyasamy that item Nos.3 to 10, 11 and 12 of “A” Schedule properties were purchased by him and not as contended by the plaintiffs.

(ii) To test the veracity of the claim made by either parties and to determine point No.1, it would be worthwhile to examine the evidence of the 1st plaintiff/P.W.1.

(iii) The 1st plaintiff, who was examined as P.W.1 reiterated the averments made in the plaint as regards the purchases made by Kayambu Yadav in the name of family members. Further, P.W.1, in her evidence, had stated that her husband was doing onion commission business in the name of “Jayam & Co”; that he had licence to carry on onion commission business; that he invested Rs.3 lakhs in the said business - Rs.1 lakh earned from the sale of his ancestral property and Rs.2 lakhs given as loan by the 1st plaintiff's father; that Periyasamy was residing along with them for about 10 to 12 years after marriage; that she does not know about the profit earned by her husband from onion commission business; that after the demise of her



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husband Kayambu Yadav, her sons Periyasamy and Ganesan along with one Sethuramalingam started doing onion commission business under the name “K.P. Traders”; that the business was carried on for four years; that out of the profit earned, Sethuramalingam was given Rs.1.5 lakhs and the remaining amount was entirely taken by Periyasamy; that she does not know how much amount was taken by Periyasamy; that Ganesan was running the business without any partners even after the demise of Periyasamy on 24.12.2002 and therefore, the said joint family business was not included in the suit.

(iv) P.W.1 had also admitted that Periyasamy went to North India, carried on business and earned huge money, out of which several properties were purchased in his name. She had also admitted that item No.11 of the “A” Schedule properties was purchased in the name of 2nd defendant by Periyasamy by selling the properties in his name purchased by Kayambu Yadav; that she does not know during which year, from whom and for how much consideration, the property was purchased by her husband in the name of Periyasamy and that she does not know about the year of sale and the person, to whom the property was sold by Periyasamy. It is also admitted



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by P.W.1 during the course of her cross-examination that item Nos.15 and 16 of “A” Schedule properties were purchased in the name of her daughter Mahalakshmi, 3rd plaintiff; that item Nos. 13 and 14 were purchased in the name of her son Ganesan, 2nd plaintiff and that she has no idea about the consideration that was paid towards the purchase of said properties. P.W.1 had admitted that item Nos. 11 and 12 were in possession and enjoyment of the 2nd defendant; that there were many properties standing in the name of Periyasamy; in respect of punja lands, patta also stood in his name; that he was paying taxes in respect of the properties in his name; that he had put up constructions in those properties; that he was receiving rent from those properties; that after his demise, house tax is now being paid by his legal heirs; that she had not taken any steps to include her name in the revenue records after the demise of Periyasamy; she had also admitted that she was enjoying the properties standing in her name and the income derived therefrom; so also, Periyasamy and his children were enjoying the properties in their name and the income therefrom. She had also deposed that there were no documents to show that her husband and Periyasamy were carrying on business jointly and that they were living as a joint family; that there



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were no outstanding dues for her husband at the time of his demise; that at the time of death of Periyasamy, loan amount of Rs.40 lakhs was recoverable from outside; that the same might have been received by the 2nd defendant and she had not questioned about the said amount.

(v) From the above evidence of P.W.1, it is clear that the properties standing in the name of Periyasamy and defendants 2 to 4 were separately enjoyed by them and the income derived from those properties were also not shared with the plaintiffs. There is also no evidence as to what was the income derived from the properties standing in the name of plaintiffs 2, 3 and the 1st defendant. Hence, the plaintiffs have failed to prove that properties were purchased by Kayambu Yadav in the name of Periyasamy. Further, there is no reason stated as to why all the properties were purchased in the name of Periyasamy and why the properties were not purchased in the name of Pappathi. Besides, plaintiffs 2, 3 and the 1st defendant did not enter into the witness box to state about their entitlement to the properties, whether the properties were purchased by Kayambu Yadav or they are their self-acquired properties. Besides, though Exs.A28 to A32, the Pass Books pertaining to “Jayam & Co.” in various banks were marked to prove that



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Kayambu Yadav had enough money to make such purchases, it cannot be gainsaid that availability of sufficient cash balance in bank account alone is enough to prove that the same had been utilised for the purchases made by Kayambu Yadav.

(vi) That apart, it is also an admitted fact that after the demise of Kayambu Yadav, the 2nd plaintiff/Ganesan and Periysamy along with Sethuramalingam started onion commission business and thereafter only, the properties were purchased in the name of Ganesan. Therefore, the properties were purchased in the name of the individual concerned through their own earnings. There is no proof that Kayambu Yadav shared the said properties. Further, item Nos. 15 and 16 of the suit properties were purchased in the name of the 3rd plaintiff and she was already married. While so, it is the duty of the plaintiffs to prove as to why the properties were purchased in the name of the 3rd plaintiff by Kayambu Yadav. Though it is contended by the plaintiffs that Kayambu Yadav had purchased the properties in the name of his wife, sons, daughters and grandchildren for the benefit of the joint family, it could be seen that most of the properties alleged to have been purchased by Kayambu Yadav stand in the name of his



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son Periyasamy and in the absence of any reason as to why the properties were purchased in the name of Periyasamy coupled with the version of defendants 2 to 6 that all the properties were purchased by Periyasamy in the name of his family members, it can only be inferred that it was only Periyasamy, who had purchased the properties in the name of his family members through his own earnings.

(vii) The learned counsel for the appellants relied on the following judgments in support of his contentions:

(A) *Bhagwat Sharan (Dead) through his legal representatives Vs. Purshottam and Others ((2020) 6 SCC 387)*

wherein the Hon'ble Supreme Court, at paragraph No.12, held thus:

“12. *In D.S. Lakshmaiah V. L. Balasubramanyam*⁵ this Court held as follows:

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

*Similar view was taken in Rukhmabai V. Lala Laxminarayan*⁶ and



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*Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade*⁷. The law is thus well settled that the burden lies upon the person who alleges the existence of the Hindu Undivided Family to prove the same.”

[5. (2003) 10 SCC 310; 6. (1960) 2 SCR 253; Air 1960 SC 335; 7. (2007) 1 SCC 521]

(B) ***Rajendran and another Vs. Radhakrishnan and 2 others***

(2023 (6) CTC 732) wherein the Division Bench of this Court, at paragraph No. 48, observed as follows:

“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*, 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.



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(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.”*

(C) ***R. Deivanai Ammal (Died) and another Vs. G. Meenakshi***

Ammal and Others (2004 (4) CTC 208) wherein the relevant paragraph at paragraph No.14 reads thus:

“14. The doctrine of blending of self-acquired property with joint family has to be carefully applied with reference to the facts of each case. No doubt it is settled that when members of a joint family by their joint labour or in their joint business acquired property, that property, in the absence of a clear indication of a contrary intention, would be owned by them as joint family property and their male issues would necessarily acquire a right by birth in such property. But the essential sine qua non is the absence of a contrary intention. If there is satisfactory evidence of an intention on the part of the acquirer such property to treat it as his own, but not as joint family property, the presumption which ordinarily arises, according to the personal law of Hindus that such property would be regarded as joint family property, will not arise.”



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(D) **Ramasamy Gounder @ Senban (died) and 3 others Vs.**

Chinnapillai @ Nallammal and 2 others (2022 (3) CTC 703)

wherein this Court, at paragraph No.21, held as hereunder:

“21. The proof of the existence of a Joint Family does not lead to the presumption that the property held by any member of the family is joint. The Plaintiff is expected to prove that there was a Joint Family Nucleus and the Joint Family properties were capable of earning income and further there was surplus income to purchase the suit property after meeting other commitments of the Joint Family. The property standing in the individual name of a Co-Owner will be presumed to be his property and the burden of proof is upon the plaintiff to establish that it was purchased from the surplus income from the Joint Family Nucleus. This is not a matter of assumption and it has to be necessarily pleaded and proved through evidence.

(E) **M.Subramaniam @ M.S. Mani Vs. S. Ravichandran and another (2018-1-L.W.221)** wherein a learned Single Judge of this

Court held as follows:

“39. Even at the risk of repetition, the Court would like to point out that the erstwhile Hindu joint family consisted of the first defendant, plaintiffs and their mother has had only an empty hotchpot. Since it is not positively established on the side of the plaintiffs to the effect that the erstwhile Hindu joint family has possessed of surplus income yielding properties, the Court can unflinchingly come to a conclusion that the first defendant has very well discharged the onus lies upon him and also proved that all acquisitions of suit properties are his self-acquisitions.”



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(F) *Amudha and 2 others Vs. Janardhanan and 4 others (2015*

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(3) MWN (Civil) 353). The relevant portion at paragraph No.20 is as hereunder:

*“20. The Hon'ble Apex Court in **Srinivas Krishnarao Kango, Rukhmabai and Pattusami Padayachi's case**, has stated that the properties standing not in the name of the Kartha, the property is the exclusive property of the member of the family, which is rebuttable presumption. Once the presumption is rebutted, the burden is shifted to the person who pleaded the separate property was to prove the same.”*

(viii) As far as the judgments relied on by the learned counsel for the appellants is concerned, on a careful perusal of the same, it is clear that the burden is on the person, who alleges existence of Hindu Undivided Family to prove the same and 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. There should be 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. Further, the proof of existence of joint family would not lead to the presumption that the property held by any member of the family is joint. The property standing in the individual name of a Co



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-owner will be presumed to be his property and the burden of proof is upon the plaintiffs to establish that it was purchased out of the surplus income from the Joint Family Nucleus.

(ix) On the other hand, the following judgments were relied on by the learned counsel for respondents 3 and 7 to 9 to substantiate his contentions:

(A) ***Mr.Malla Naicker @ Singari Vs. Miss. Jeeva (Minor)***

(Judgment dated 08.08.2011 rendered in S.A. No. 212 of 2011)

wherein this Court held at paragraph No. 19 as follows:

“19. As a matter of fact, this principle of law was also reiterated in the judgment reported in A.I.R. (2007) S.C. 1808 (cited supra) which is extracted hereunder:

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 joint family nucleus that was available.”



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(B) ***D.S. Lakshmaiah and Another Vs. L. Balasubramanyam***

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and Another ((2003) 10 SCC 310) wherein the Hon'ble Supreme

Court, at paragraph No.18, observed 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.”

As far as the judgments relied upon by the learned counsel for respondents No.3 and 7 to 9 are concerned, on a careful perusal of the same, it is clear that 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.



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(x) In the case on hand, the plaintiffs failed to prove the joint family business and the income derived from the joint family nucleus. Per contra, available evidence shows that the deceased Periyasamy purchased the properties through his separate business. Therefore, the case laws submitted by the learned counsel for respondents 3 and 7 to 9 will not be applicable to the present facts of the case.

(xi) In view of the foregoing discussion, this Court is of the opinion that the plaintiffs have failed to prove that item Nos. 3 to 10, item No.11 and item No.12 of "A" Schedule properties were in fact purchased by Kayambu Yadav in the name of Periyasamy, 2nd defendant and defendants 3 and 4 respectively. *Hence, point No.1 is answered accordingly.*

11. **Point No.2:**

This Court, while deciding Point No.1, has concluded that item Nos. 3 to 12 of the suit properties were purchased by Periyasamy through his own earnings and that the plaintiffs have failed to prove that item Nos. 3 to 12 of suit "A" Schedule properties were purchased by Kayambu Yadav in



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the name of Periyasamy, his wife and children. Admittedly, item No.2 of

"A" Schedule properties stand in the name of the 1st plaintiff; item Nos. 13 and 14 stand in the name of the 2nd plaintiff and item Nos. 15 and 16 stand in the name of the 3rd plaintiff. However, the 2nd and 3rd plaintiffs have not been examined as witnesses to speak to this point. Therefore, there is no evidence as to how the properties were jointly enjoyed and what was the income derived from each item of property. If really, the properties were joint family properties, then the plaintiffs ought to have disclosed in the plaint the income derived from suit properties and how the family had shared the income. It has to be stated that the plaint is silent on this aspect, which would only lead to the irresistible conclusion that the properties were not under the joint possession of plaintiffs and defendants. If at all, only item No.1, which was purchased by Kayambu Yadav in his name, could be termed as joint family property, after his demise in the year 1998, as the plaintiffs and defendants are the legal heirs of Kayambu Yadav. As far as "B" and "C" Schedule are concerned, there is no evidence to show that those properties are available for partition. Moreover, as against the dismissal of the suit by the Trial Court qua "B" and "C" Schedule properties, the



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plaintiffs have not chosen to prefer any appeal or cross-objection.

Therefore, it has to be concluded that the suit properties, except item No. 1 of "A" Schedule are not joint family properties of plaintiffs and defendants. During pendency of the suit, 1st plaintiff died. Though item Nos. 3 to 10 were purchased by Periyasamy in his name, the 1st plaintiff, being mother of deceased Periyasamy is entitled to a share over item Nos. 3 to 10 of the suit properties. Likewise, the 2nd item of the properties stands in the name of 1st plaintiff and after the demise of the 1st plaintiff, item Nos. 2 and 3 to 10 have to be shared among her legal heirs, i.e, plaintiffs 2 to 5 and defendants 1 to 6 as the properties are undivided family properties. Thus, ***Point No.2 is answered accordingly.***

12. **Point No.3:**

The relationship between the parties is not in dispute. This Court has already decided that the plaintiffs have failed to prove that except item No. 1, all other items of "A" Schedule properties are joint family properties and that they were purchased from the income of Kayambu Yadav. It has also been concluded by this Court that item No.1 in the name of Kayambu Yadav alone is the joint family property and that the legal heirs of Kayambu Yadav are entitled to a share in respect of the same. Therefore, plaintiffs 1 to 3 are



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each entitled to 1/6th share, plaintiffs 4 and 5 are jointly entitled to 1/6th share, the 1st defendant is entitled to 1/6th share and defendants 2 to 6 are jointly entitled to 1/6th share. Since Periyasamy died intestate, in respect of item Nos. 3 to 10 of "A" Schedule properties, which stand in his name, the 1st plaintiff would be entitled to 1/6th share and defendants 2 to 6 would be each entitled to 1/6th share. Since the 1st plaintiff, i.e, the 1st respondent herein died pending the appeal, her 1/6th share in respect of item No.1 of "A" Schedule property has to be divided into 5 parts and thereby her sons, i.e, 2nd plaintiff and 1st defendant are each entitled to 6/30 share (i.e., 1/5th share), likewise, her daughter 3rd plaintiff is entitled to 6/30 share 4th and 5th plaintiffs are jointly entitled to 6/30 share and defendants 2 to 6 are jointly entitled to 6/30 share. Since the 2nd plaintiff died during the pendency of the appeal, his legal heirs, who are respondents 7 to 9 in this appeal are jointly entitled to 6/30 share of the 2nd plaintiff. The 4th plaintiff/4th respondent in the appeal also died during the pendency of the appeal and respondents 10 and 11 have been impleaded as her legal heirs. Hence, respondents 5, 10 and 11 are jointly entitled to 6/30 share. Further, the 1st appellant/2nd defendant also died pending the appeal and appellants 2 to 5 are her legal heirs. Therefore, they are jointly entitled to 6/30 share over item No.1 of



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"A" Schedule property.

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12.1 As far as item No.2 of "A" Schedule property, which stands in the name of the 1st plaintiff/1st respondent herein is concerned, since the 1st plaintiff/1st respondent herein died pending the appeal, her share will have to be divided into 5 parts to be settled on her legal heirs. Accordingly, the 3rd respondent/3rd plaintiff herein and the 6th respondent herein would be each entitled to 1/5th share. Since the 2nd respondent herein/2nd plaintiff is no more, his 1/5th share would be jointly shared by respondents 7 to 9 (his legal heirs); respondents 4 and 5 would be jointly entitled to 1/5th share; the share of 4th respondent, who is no more, would be jointly shared by respondents 10 and 11 thereby, respondents 5, 10 and 11 would be jointly entitled to 1/5th share and appellants 1 to 5 would be jointly entitled to 1/5th share and the share of the 1st appellant/2nd defendant, who died pending the appeal, would also be shared by appellants 2 to 5. As far as item Nos. 3 to 10 of "A" Schedule property are concerned, since the 1st plaintiff/1st respondent died, her share has to be divided into 5 parts and appellants are entitled to 26/30 share; since the 1st appellant died during the pendency of the appeal, appellants 2 to 5 are jointly entitled to her share; respondents 7 to 9, being legal heirs of 2nd respondent are jointly entitled to 1/30 share, 3rd and 6th

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respondents are each entitled to 1/30 share and respondents 5, 10 and 11 are jointly entitled to 1/30 share. The plaintiffs are not entitled to share over other items of the suit properties since they are separate properties of the individuals. ***Thus, Point No.3 is answered as above.***

13. **Point Nos. 4 & 5:**

The Trial Court failed to consider the fact that item Nos. 3 to 10 of "A" Schedule properties are in the name of deceased Periyasamy; item No. 11 stand in the name of 2nd defendant; item No.12 stand in the name of defendants 3 and 4; item Nos. 13 and 14 stand in the name of 2nd plaintiff and item Nos. 15 and 16 stand in the name of 3rd plaintiff. The burden is on the plaintiffs to prove that the suit properties were purchased out of the joint family nucleus. There is no sufficient evidence adduced by the plaintiffs to prove the same and the Trial Court, having failed to consider the same, erroneously held that the plaintiffs proved that the properties were purchased through the joint family nucleus. Further, the Trial Court failed to consider that except the 1st plaintiff, the other plaintiffs did not enter the witness box to state as to how the properties were purchased in their name.

13.1 The evidence of P.W.1 alone is not sufficient to prove that the



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properties were purchased in the name of joint family members by Kayambu Yadav. Though Kayambu Yadav had some income, simply based on the bank accounts, the Court cannot come to the conclusion that "A" Schedule properties were in fact purchased through that income. That apart, there is absolutely no evidence as regards how much income was generated from the business run by Kayambu Yadav; how many properties were bought utilising the same and whether the amount mentioned in the Bank Pass Book was sufficient for the purchases made. Besides, when P.W.1 herself had admitted that the properties purchased in the name of Periyasamy were not shared with the plaintiffs and that the income derived from item No.1, which was under the possession and enjoyment of the 1st plaintiff, was only received by her, the Trial Court failed to consider the said evidence and erroneously decreed the suit holding that in all the properites, the plaintiffs are entitled to a share. Therefore, the judgment and decree of the Trial Court are not sustainable and the same will have to be set aside by allowing the appeal. ***Point Nos. 4 and 5 are answered thus.***

14. **Point No.6:**

This Court, after elaborate discussion and careful consideration, has decided that all the properties under "A" Schedule are not joint family



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properties; only item No.1 of the said Schedule is a joint family property of plaintiffs and defendants; that in respect of item No.1, plaintiffs 1 to 3 and 1st defendant are each entitled to 1/6th share while plaintiffs 4 and 5 are jointly entitled to 1/6th share and so also, defendants 2 to 6. Likewise, since the 1st plaintiff is the mother of Periyasamy and he died intestate, the 1st plaintiff would be entitled to 1/6th share in item Nos. 3 to 10 of "A" Schedule properties standing in the name of Periyasamy and defendants 2 to 6 would be each entitled to 1/6th share in respect of those properties. Since the 1st plaintiff, i.e, the 1st respondent herein died pending the appeal, her 1/6th share in respect of item No.1 of "A" Schedule property has to be divided into 5 parts and thereby her sons, i.e, 2nd plaintiff and 1st defendant are each entitled to 6/30 share, her daughter 3rd plaintiff is entitled to 6/30 share, 4th and 5th plaintiffs are jointly entitled to 6/30 share and defendants 2 to 6 are jointly entitled to 6/30 share. Since the 2nd plaintiff died during the pendency of the appeal, his legal heirs, who are respondents 7 to 9 in this appeal are jointly entitled to 6/30 share of the 2nd plaintiff. The 4th plaintiff/4th respondent in the appeal also died during the pendency of the appeal and respondents 10 and 11 have been impleaded as her legal heirs. Hence, respondents 5, 10 and 11 are jointly entitled to 6/30 share. Further,



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the 1st appellant/2nd defendant also died pending the appeal and appellants 2 to 5 are her legal heirs. Therefore, they are jointly entitled to 6/30 share over item No.1 of "A" Schedule property.

14.1 As far as item No.2 of "A" Schedule property, which stands in the name of the 1st plaintiff/1st respondent herein is concerned, since the 1st plaintiff/1st respondent herein died pending the appeal, her share will have to be divided into 5 parts to be settled on her legal heirs. Accordingly, the 3rd respondent herein/3rd plaintiff and the 6th respondent herein would be each entitled to 1/5th share. Since the 2nd plaintiff is no more, his 1/5th share would be jointly shared by respondents 7 to 9 (his legal heirs); respondents 4 and 5 would be jointly entitled to 1/5th share; the share of 4th respondent, who is no more, would be jointly shared by respondents 10 and 11, thereby respondents 5, 10 and 11 would be jointly entitled to 1/5th share and appellants 1 to 5 would be jointly entitled to 1/5th share and the share of the 1st appellant/2nd defendant, who died pending the appeal, would also be shared by appellants 2 to 5. As far as item Nos. 3 to 10 of "A" Schedule property are concerned, since the 1st plaintiff/1st respondent died, her share has to be divided into 5 parts and appellants are entitled to 26/30 share; since the 1st appellant died during the pendency of the appeal, appellants 2

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to 5 are jointly entitled to her share; respondents 7 to 9, being legal heirs of 2nd respondent are jointly entitled to 1/30 share, 3rd and 6th respondents are each entitled to 1/30 share and respondents 5, 10 and 11 are jointly entitled to 1/30 share. ***Thus, Point No.6 is answered accordingly.***

15. In the result, the appeal is partly allowed. The judgment and decree dated 24.07.2008 passed in O.S. No. 112 of 2004 by the learned Additional District and Sessions Judge (Fast Track Court), Dindigul is modified as hereunder:

(i) In respect of the property mentioned as item No. 1 in "A" Schedule, plaintiffs 1 to 3 would be each entitled to 1/6th share, plaintiffs 4 and 5 would be jointly entitled to 1/6th share, 1st defendant would be entitled to 1/6th share and defendants 2 to 6 would be jointly entitled to 1/6th share. Since the 1st plaintiff, i.e, the 1st respondent herein died pending the appeal, her 1/6th share in respect of item No.1 of "A" Schedule property has to be divided into 5 parts and thereby her sons, i.e, 2nd plaintiff and 1st defendant are each entitled to 6/30 share, her daughter 3rd plaintiff is entitled to 6/30 share, 4th and 5th plaintiffs are jointly entitled



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to 6/30 share and defendants 2 to 6 are jointly entitled to 6/30 share. Since the 2nd plaintiff died during the pendency of the appeal, his legal heirs, who are respondents 7 to 9 in this appeal are jointly entitled to 6/30 share of the 2nd plaintiff. The 4th plaintiff/4th respondent in the appeal also died during the pendency of the appeal and respondents 10 and 11 have been impleaded as her legal heirs. Hence, respondents 5, 10 and 11 are jointly entitled to 6/30 share. Further, the 1st appellant/2nd defendant also died pending the appeal and appellants 2 to 5 are her legal heirs. Therefore, they are jointly entitled to 6/30 share over item No.1 of "A" Schedule property.

(ii) As far as item No.2 of "A" Schedule property, which stands in the name of the 1st plaintiff/1st respondent herein is concerned, since the 1st plaintiff/1st respondent herein died pending the appeal, her share will have to be divided into 5 parts to be settled on her legal heirs. Accordingly, the 3rd respondent herein/3rd plaintiff and the 6th respondent herein would be each entitled to 1/5th share.



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Since the 2nd plaintiff is no more, his 1/5th share would be jointly shared by respondents 7 to 9 (his legal heirs); respondents 4 and 5 would be jointly entitled to 1/5th share; the share of 4th respondent, who is no more, would be jointly shared by respondent Nos. 10 and 11, thereby respondents 5, 10 and 11 would be jointly entitled to 1/5th share and appellants 1 to 5 would be jointly entitled to 1/5th share and the share of the 1st appellant/2nd defendant, who died pending the appeal, would also be shared by appellants 2 to 5.

(iii) As far as item Nos. 3 to 10 are concerned, the 1st plaintiff would be entitled to 1/6th share and defendants 2 to 6 would be each entitled to 1/6th share. Since the 1st plaintiff/1st respondent died, her share has to be divided into 5 parts and appellants are entitled to 26/30 share; since the 1st appellant died during the pendency of the appeal, appellants 2 to 5 would be entitled to her share as well; respondents 7 to 9, being legal heirs of 2nd respondent are jointly entitled to 1/30 share, 3rd and 6th respondents are



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each entitled to 1/30 share and respondents 5, 10 and 11 are

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A preliminary decree is passed to the above effect. In respect of other items, the suit is dismissed. There shall be no order as to costs. Connected miscellaneous petition is closed.

07.06. 2024

nv

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking order

P. DHANABAL,J.

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Pre-Delivery Judgment in
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