



A.S. (MD) .No.65 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on: 27.03.2024	Pronounced on: 12.06.2024
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CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

A.S.(MD).No.65 of 2016

1.Sathesh Kumar

(first appellant declared as major and guardianship discharged vide order dated 12.11.2023 made in M.P.Nos.1 & 2 of 2013 in A.S.SR.No.13587 of 2006)

2.Durgadevi

(Minor 2nd appellant is declared as major and her guardianship is discharged vide Court order dated 28.03.2022 made in C.M.P.(MD).Nos.2505 & 2509 of 2022 in AS.(MD).No.65 of 2016)

(Name of the 2nd appellant is amended vide Court order dated 28.03.2022 made in C.M.P.(MD).No. 2507 of 2022 in A.S.(MD).No.65 of 2016)

.. Appellants

Vs.

1.Vellaiammal (died)

(Memo dated 18.08.2023 in USR.No. 27949 is recorded as R1 died and RR2 to 4 who are already on record, are recorded



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as LRS of the deceased R1 vide Court Order dated 27.03.2024 made in A.S. (MD).No.65 of 2016)

2.A.P.K.Selvaraj

3.Rangeeswari

4.Padmavathi (died)

5.Arumugam

6.A.P.Velucisamy (died)

(R11 & R12 are brought on record as LRS of deceased R6 vide order dated 29.01.2015 made in M.P.No.3 of 2013 in AS.SR.No.13587 of 2006)

7.Periyasamy

8.Sundaram

9.Palanivel Gounder (died)

(R9 died and the appellants are exempted from bringing on record his LRS vide Court Order dated 28.03.2022 made in C.M.P.(MD).No.2511 of 2022 in A.S. (MD).No.65 of 2016)

10.A.P.V.Ramaraj

11.Rajalakshmi

12.Rengammal



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13.Kuppuchamy

14.Gunasekaran

15.Priyadharshini

.. Respondents

(RR13 to 15 are brought on record as LRS of the deceased 4th respondent vide Court order dated 20.10.2023 made in C.M.P.(MD).Nos.10797 to 10799 of 2023 in A.S.(MD).No.65of 2016)

Prayer: This First Appeal is filed under Section 96 read with Order XLI & XLI-A of Civil Procedure Code against the judgment and decree dated 25.08.2005 in O.S.No.261 of 2004 on the file of the Additional District and Sessions Judge, Fast Track Court, Dindigul.

For Appellants : Mr.Lakshmi Shankar

For RR1, 4, 6 & 9 : Died

For RR 2, 3, 7, 8
& 10 to 12 : No appearance

For R5 : Mr.R.R.Kannan

For RR 13 to 15 : Mr.S.Ramesh

J U D G M E N T

This appeal suit has been preferred as against the decree and judgment passed in O.S.No.261 of 2004 on the file of the Additional District and



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Sessions Judge, Fast Track Court, Dindigul, dated 25.08.2005, wherein the appellants herein have filed a suit for the relief of partition and separate possession over the suit properties and the said suit was dismissed by the Trial Court. Aggrieved by the decree and judgment, the present appeal has been preferred by the plaintiffs.

The brief facts of the plaint are as follows:-

2.The first item of the schedule mentioned properties originally belonged to one A.Palaniappa Gounder ancestrally. The said Palaniappa Gounder had three sons namely A.P.Palaniappa Gounder, Kandhasamy Gounder and Veluchamy Gounder. After the demise of A.Palaniappa Gounder, his three sons had been in joint possession and enjoyment of the properties. The first son of A.Palaniappa Gounder namely A.P.Palaniappa Gounder married the first defendant Nandammal @ Chellammal. They had no issues. Therefore, the first defendant is the only legal heir of the A.P.Palaniappa Gounder. The 2nd defendant is the wife of Kandhasamy Gounder and the defendants 3 to 6 are the daughters and sons of Kandhasamy



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Gounder. The said Kandhasamy Gounder died few years back. The 6th defendant is the father of the plaintiffs. The 7th defendant is the brother of A.P.Palaniappa Gounder and the defendants 8 to 10 are entered into an agreement with the defendants to purchase the third item of the suit property.

2.1.The said A.P.Palaniappa Gounder died in and about one years ago. The said A.Palaniappa Gounder died 50 years back. After the demise of A.Palaniappa Gounder, A.P.Palaniappa Gounder has maintained the properties as Kartha of the joint family. Out of the income derived from the first schedule of the property, the 2nd item of the property was purchased in the name of the A.P.Palaniappa Gounder 40 years back. The 3rd item of the property was also joint family property of A.P.Palaniappa Gounder and his father and his brothers. The said A.P.Palaniappa Gounder executed a sale deed to one Perumal Reddiyar belongs to Sunnakampatty, but the property was under the enjoyment of the plaintiffs' predecessors. Thereafter, the sale price was repaid to the Perumal Reddiar. But, however the property is under the enjoyment of the plaintiffs' predecessors and again the said third item of the property was re-purchased through the income derived from the joint



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family properties. Therefore, all the properties have been enjoying jointly as joint family properties. Therefore, the plaintiffs are entitled to share over the suit properties.

2.2.The property was purchased by the A.P.Palaniappa Gounder for the benefit of the joint family in S.F.No.364/2 and the 7th defendant had constructed a house and also constructed cattle shed in the said property and the defendants 2 & 3 are residing there. The plaintiffs' father got inter-caste marriage and thereby the defendants 1 to 5 along with A.P.Palaniappa Gounder and 7th defendant threatened the 6th defendant and got the release deed as if they paid a sum of Rs.1,00,000/- to the 6th defendant. In that deed, there was no mention about the properties and the 6th defendant has released his 1/5th share over the properties. The 6th defendant has no right to release the share of the plaintiffs since the properties are ancestral Hindu undivided joint family properties. The properties are worth about Rs.67.50 lakhs. Therefore, the said release deed is not a valid one. The plaintiffs are entitled to 2/15th share over the properties. In the mean time, the defendants 1 to 5 & 7 attempted to sell the property of the third item to the defendants 8 to 10,



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whereby the plaintiffs issued notice by demanding partition of the properties on 26.03.1997 and the same was received by the defendants 1 & 7 and defendants 2 to 5 have issued reply notice on 07.04.1997. In the said notice, they falsely alleged that before thirty (30) years ago, the said A.P.Palaniappa Gounder and his brother Kandhasamy Gounder and Veluchamy Gounder have partitioned the properties. Therefore, the plaintiffs filed the suit for partition.

3.The brief averments of the written statement filed by the 3rd defendant and adopted by the defendants 2, 4 & 5 are as follows:-

3.1.The suit is false, frivolous and not maintainable either in law or on facts. The relationship of the parties are admitted and the plaintiffs were never in joint possession along with the defendants. The suit is not maintainable since the natural guardian of the plaintiffs' father has not filed any suit. But, this suit has been filed by the mother of the plaintiffs. The description of the property is not correct. The property in S.F.No.343/1 to an extent of 5.07 alone is ancestral properties and the same was purchased by



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A.Palaniappa Gounder and other properties are separate properties of the concerned parties. Except the first item of the properties, all other properties are not joint family properties. In or about 30 years ago, the plaintiffs' grand father namely Kandhasamy Gounder and his brothers A.P.Palaniappa Gounder and Veluchamy Gounder partitioned the properties and lived separately. Thereafter, they purchased the properties through their personal income in their name. The properties mentioned in the plaint, S.F.Nos.346/1A and 346/2 were sold by one Aththappa Gounder, father of A.Palaniappa Gounder and his wife in the year 1935.

3.2. Thereafter, A.P.Palaniappa Gounder purchased the properties through his own earnings and the said A.P.Palaniappa Gounder also sold some portion of the properties. In those sale deeds, the brothers of A.P.Palaniappa Gounder had attested i.e., Veluchamy Gounder and Kandhasamy Gounder. Therefore, the properties purchased by A.P.Palaniappa Gounder are his separate properties and they are not available for partition.



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3.3. The averments that in S.F.No.346/2, the new construction and the cattle shed was constructed out of the income derived from the joint family property is not correct. A.Palaniappa Gounder purchased the properties in S.F.No.342/2, 342/3 and 342/4 and thereafter the property in Survey No. 346/2 was exchanged with third parties. The Palaniappa Gounder purchased the properties through the sreedhana articles of his wife. The 7th defendant A.P.Veluchamy Gounder purchased the properties in his name in S.F.Nos. 342/1, 342/2, 342/3, 342/4. The deceased Kandhasamy Gounder also jointly purchased 1/3 share in S.F.Nos.342/1, 342/2, 342/3, 342/4. But, the above said material facts have been suppressed by the plaintiffs. After the marriage of the plaintiffs' father, there was some misunderstanding between his family and he demanded share over the properties of Kandhasamy Gounder. Thereafter, as per the advise of Panchayatars, the plaintiffs' father, 6th defendant agreed to receive a sum of Rs.1,00,000/- and relinquished his right over the property through release deed dated 12.06.1995. The said deed was executed voluntarily for himself and on behalf of minor son and not obtained by threats made by the defendants as alleged by the plaintiffs. After the release deed, the plaintiffs' father was residing separately and there is no



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joint family as alleged by the plaintiffs. Now due to increase of the price of the lands, at the instigation of the 6th defendant, the plaintiffs have filed this suit. Therefore, the suit is liable to be dismissed.

4.The 6th defendant filed written statement by admitting the plaint averments and also stated that he got intercaste marriage against the wish of their family, which was objected by the defendants and under the said circumstances, he was threatened by the other defendants while so, when the 6th defendant was in his house at about 11.00 PM, he was taken away in a car at the instance of A.P.Palaniappa Gounder and got signature in the unfilled documents. The defendant never intended to release his share in respect of the suit properties. The alleged document dated 12.06.1995 is not valid and not binding on the defendants since it has been got under threat and coercion.

5.The averments of the written statement filed by the 7th defendant are as follows:

The suit is false frivolous and not maintainable either in law or on



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facts. Already the 7th defendant adopted the written statement filed by the 3rd defendant. The 7th defendant's son namely Ramaraj and his daughter Rajalakshmi are also having share over the properties and thereby they are proper and necessary parties. The properties in S.F.No.342/1, 342/3 and 342/4, 1/12th were purchased by 7th defendant's son from one Mayavan through sale deed dated 05.07.1993 and also in the same Survey Numbers, he also purchased properties from one Kaliyammal, wife of Azhaguperumal and others through sale deed dated 01.09.1988 through his own earnings. In the above said properties, the plaintiffs have no right. The suit is bad for non-joinder of necessary parties. Further, the 7th defendant purchased the property in S.F.No.342/1, 342/3 & 342/4 with 1/8th share through sale deed dated 15.07.1985 and he has been in possession and enjoyment of the property. The plaintiffs have no right over the said property. The plaintiffs' father 6th defendant already relinquished his right over the properties through released deed dated 12.06.1995. Therefore, either the plaintiffs or the Arumugam had no share over the properties. The plaint schedule properties in S.F.Nos. 346/1A, 346/2A, 345 were purchased in the name of third defendant through the income derived from the joint family properties. Therefore, those



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properties are also joint family properties. In those properties, 7th defendant is entitled to share over the property. Therefore, the suit is liable to be dismissed.

6. Based on the above said pleadings, the Trial Court has framed the following issues:

(i) Whether the plaintiffs are entitled to 1/10th share over the suit properties?

தாவாச் சொத்தில் வாதிக்கு 1/10 பாக பாத்தியதை உள்ளதா?

(ii) To what relief the plaintiffs are entitled to?

வாதிக்கு வழங்கப்பட வேண்டிய இதர பரிகாரம் யாது?

7. The learned counsel for the appellants would contend that the suit properties are Hindu Undivided joint family properties of the plaintiffs and defendants 1 to 7. Originally the property belonged to one A.Palaniyappa Gounder and he had three sons namely A.P.Palaniyappa Gounder, Veluchamy Gounder and Kandhasamy Gounder. The 1st defendant is the wife of A.P.Palaniyappa Gounder and he has no issues. Veluchamy Gounder is



arrayed as 7th defendant. Kandhasamy Gounder died leaving behind the defendants 2 to 6 as his legal heirs. The 2nd defendant is wife of Kandhasamy Gounder and defendants 3 to 6 are daughters and sons of Kandhasamy Gounder. The 1st plaintiff is son of Arumugam, 6th defendant.

8.While so, when the plaintiffs demanded for partition of the properties, the defendants denied for amicable partition and thereby the plaintiffs issued notice dated 29.06.1997. Thereafter, the defendants issued reply notice dated 07.04.1997 stating that before 30 years, the properties were partitioned between the brothers of plaintiffs' grand father and also the 6th defendant's father executed a release deed in favour of the defendants 2 to 5, therefore, the plaintiffs have no right over the property. The above said averments are denied by the plaintiffs. In fact the 6th defendant has no right to execute the release deed. Moreover the above said release deed was obtained by threat. Since the plaintiffs' father had an intercaste marriage, the defendants threatened him and obtained the release deed. Therefore, the said release deed is not binding upon the plaintiffs. But the Trial Court has failed to consider the above said aspects. Even according to the defendants, the release deed was executed by the 6th defendant, but, in the said release deed,



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the name of the minor plaintiff SatheeshKumar has been interpolated and also there is no mention about the share of the minor plaintiff. Therefore, the said deed is not binding upon the share of the plaintiffs. The Trial Court has not considered the above said aspect and dismissed the suit and therefore, the decree and judgment passed by the Trial Court are liable to be set aside.

8.1.To support the above said submissions, he relied the following judgments:

- (i)Kehar Singh (dead) through legal representatives and others Vs. Nachittar Kaur and others, [(2018) 14 SCC 445];**
- (ii)Maddali Sreeramulu and another Vs. Kavur Thandavakrishnayya and others, (55 L.W. 594)**
and
- (iii)M.Krishnan Vs. Ramaswami and others, (97 L.W. 406).**

9.The learned counsel for the respondents would contend that the first item of the property was ancestral property and the same was purchased by



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one A.Palaniyappa Gounder and the same was under the possession and enjoyment of the sons of A.Palaniyappa Gounder. The plaintiffs are grand parents of Kandhasamy Gounder, who is one of the son of A.Palaniyappa Gounder. The other items of the suit properties were purchased by the respective parties through their separate income. The properties of A.Palaniyappa Gounder were partitioned between three sons thirty years back and thereafter they are enjoying the properties separately as their absolute properties. Therefore, the properties purchased by the individuals are their separate properties and the plaintiffs have no right over the properties. The 7th item of the property was purchased by the Palaniappa Gounder and the same is ancestral property. The plaintiffs' father, namely the 6th defendant has relinquished his share in favour of the defendants 2 to 5 through release deed dated 12.06.1995 in respect of his share over the properties. The 6th defendant got intercaste marriage and left from the family and after some time he demanded share over the properties thereby, in the presence of Panchayatars, he agreed to receive a sum of Rs.1,00,000/- towards his share and he executed the above said release deed in favour of defendants 2 to 5. Therefore the plaintiffs have no right over the 7th item of the ancestral property and



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other items of the properties are separate properties of respective defendants.

The plaintiffs have included separate properties of the defendants and have not impleaded the son and daughter of the 7th defendant. Therefore, the suit is bad for non-joinder of necessary parties. The Trial Court after taking into consideration all the aspects, correctly dismissed the suit and therefore, the present appeal is liable to be dismissed.

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

11.This Court heard the learned counsels on both sides and perused the records.

12.Upon hearing both sides and perusing the records, the points for determination in this appeal are as follows:

- i)Whether the suit properties except S.F.No.343/1 were purchased through the income derived from the joint family properties?



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ii)Whether the suit properties are joint family properties of the plaintiffs and defendants?

iii)Whether the suit is bad for non-joinder of necessary parties?

iv)Whether the release deed executed by the 6th defendant is binding on the plaintiffs?

v)Whether the plaintiffs are entitled to partition of the suit properties?

vi)Whether the decree and judgment passed by the Trial Court are sustainable in law and on facts?

vii)Whether this appeal has to be allowed or not?

viii)To what relief the appellants are entitled to?

Point No.i)Whether the suit properties except S.F.No.343/1 were purchased through the income derived from the joint family properties?



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13. The suit is filed by the plaintiffs for the relief of partition and separate possession alleging that the first item of the property is belonged to grand father of the plaintiff namely A.Palaniyappa Gounder and the said A.Palaniyappa Gounder had three sons namely A.P.Palaniyappa Gounder, Veluchamy Gounder and Kandhasamy Gounder. The plaintiffs are grand sons of Kandhasamy Gounder born through his son namely Arumugam, 6th defendant. The said properties were jointly enjoyed by the sons of A.Palaniyappa Gounder and they purchased the properties from and out of the income derived through the joint family property. Item Nos.2 & 3 of the suit properties were purchased through the income of the first item of the suit property. The said contention is denied by the defendants. According to the defendants, the property situated in S.F.No.343/1 alone belongs to A.Palaniyappa Gounder and other properties were purchased by the defendants through their personal earnings. The first item of the suit property was partitioned between the brothers of plaintiffs grand father namely Kandhasamy Gounder 30 years back and thereafter the brothers of the Kandhasamy Gounder were in separate possession of their respective shares. Therefore, the suit properties except S.F.No.343/1 which is shown as 7th item



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are not joint family properties and the same are separate properties of the respective parties.

14.In order to prove the same on the side of plaintiffs, they have examined P.W.1 to P.W.3 and marked Exs.A1 to A6. On the side of the defendants, they examined D.W.1 to D.W.5 and marked Exs.B1 to B19. Ex.A1 is the genology tree and Ex.A2 is the notice issued by the plaintiffs. Exs.A3 & A4 are the reply notice issued by the defendants. Ex.A5 is the copy of the sale deed in the name of A.P.Palaniyappa Gounder and Ex.A6 is the copy of the sale deed in the name of Perumal Chettiyar.

15.The plaintiffs have not filed any documents to prove that the properties were purchased in the name of other defendants through the income derived from the joint family properties. In the plaint, the plaintiffs have mentioned all the seven items of the properties, but the same has not been described in the pleadings and they only referred about the item Nos.1 to 3 of the properties. However, the defendants admitted that S.F.No.343/1 was purchased by A.Palaniyappa Gounder and the same is ancestral property



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of the plaintiffs and defendants. The said property in S.F.No.343/A was referred as 7th item in the suit schedule as S.F.No.343/1A. Other properties were purchased by the defendants on various dates through separate sale deeds in their individual name. In some documents, the grandfather of the plaintiff Kandhasamy Gounder and Veluchamy Gounder had attested as witnesses. Further on the side of the plaintiff, P.W.1 to P.W.3 were examined. P.W.1 in her evidence stated that the properties are joint family properties and the property in S.F.No.346/2A measuring to an extent of 2.71.5 hectares was purchased by one Palaniyappan and the same was enjoyed as joint family property and no partition has taken place in respect of the said property and other properties were purchased through income of the joint family properties.

16.However, during the cross examination she stated that she does not know how much of properties were shown in the plaint and she does not know about the properties purchased by A.P.Palaniyappa Gounder through sale deeds and the same were attested by his brothers Kandhasamy Gounder and Veluchamy Gounder. Moreover the plaintiffs have not adduced any



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evidence to prove the income derived from the joint family property. Even according to pleadings, the plaintiffs are not sure about the purchase of the properties and as per their pleadings, the 3rd item of the suit property was purchased through the earnings derived from 1st and 2nd items. There is no proof that the 1st and 2nd items of the suit properties are ancestral joint family properties of the plaintiffs and the 1 to 7 defendants. Per contra, the 7th item viz., S.F.No.343/1A alone is the ancestral property and the same is also admitted by the defendants. Further, P.W.2 & P.W.3 have also not deposed about the purchase of the properties and they have not stated anything about the income derived from the joint family property.

16(a).Per contra, the evidences of D.W.1 to D.W.5 and Exs.B1 B19 shows that the properties were purchased in the name of individual defendants on various dates. According to the defendants, already the properties were partitioned between the brothers of A.P.Palaniyappa Gounder, Veluchamy Gounder and Kandhasamy Gounder and thereafter they purchased the properties. The properties were purchased by the respective parties through separate sale deeds shows that the properties were purchased



by them and nowhere stated about the joint family and therefore, the plaintiffs failed to prove that the properties were purchased from the income derived through the joint family properties. Per contra, the defendants side evidence shows that those properties purchased in their individual name were purchased through their own funds as separate properties of the defendants. Since, the sale deeds stands in the names of individual defendants, the plaintiffs have to prove that those properties were purchased from the income derived through joint family but no sufficient evidences adduced by the plaintiffs. Hence, the plaintiffs failed to prove that the suit properties except item No.7 in S.F.No.343/1A are joint family properties.

16(b).In this context, the learned counsel appearing for the appellants would rely upon the judgment of this Court in **M.Krishnan Vs. Ramaswami and others**, reported in (97 L.W. 406), wherein this Court held in paragraph No.11 as follows:-

*“11.In this connection, it will be apposite to refer to two other decisions where the facts are more akin to the case on hand than the decisions cited by Mr.Jagadeesan. **M.Bondeppa Desai Vs. Desai Mallapa**, is a case where an item of property had been purchased by the manager of a joint family in his personal name. The bone of contention in that case was*



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that the item of property was also a joint family property. Naturally the question arose regarding the burden of proof and the degree of proof required to establish the claim that the property was joint family property. The Supreme Court held as follows:

"The onus of proof must in such a case be placed on the manager and not on his coparcener."

*It was further observed that "where a manager claims that any immovable property has been acquired by him with his own separate funds and not with the help of the joint family funds of which he was in possession and charge, it is for him to prove by clear and satisfactory evidence his plea that the purchase money proceeded from his separate fund." The above ratio has been applied by a Division Bench of this Court in **Ramiah and another Vs. Pechiammal and others**", and the Division Bench held that if the properties are acquired by the Manager of a Hindu joint family in his name and such acquisition had been made in the course of his management as manager of the joint family, then the burden shifts on him to establish that such properties are his own and they are not joint family properties. The ratio contained in the above two decisions will directly apply to the facts of the instant case."*

16(c). On a careful perusal of the said judgment, it is clear that in a case wherein any item of property had been purchased by the manager of a joint family in his personal name and that purchase had been made in the course of his management as Manager of the joint family, the onus of proof must be



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placed on the manager and not on his coparcener. In the case on hand, so many properties were purchased in the name of individuals and not by the kartha of the joint family as Manager. Hence, the said case law will not be applicable to the present facts of the case. In view of the above said discussions, this Court is of the opinion that the plaintiffs failed to prove that the suit properties except S.F.No.343/1A were purchased from the joint family income. Thus, the point is answered.

Point No.ii)Whether the suit properties are joint family properties of the plaintiffs and defendants?

17.The plaintiffs have filed the suit for partition alleging that the suit properties are joint family properties and they are in joint possession along with the defendants. The said contention is denied by the defendants and already this Court also in the previous point decided that except the property in S.F.No.343/1A, all other properties are separate properties of the respective defendants and thereby the plaint schedule property in S.F.No. 343/1A alone is joint family property of the plaintiffs and the defendants 2 to



7 and other properties are not joint family properties and the plaintiffs are also not in joint possession of other properties.

Point No.iii)Whether the suit is bad for non-joinder of necessary parties?

18.The defendants have taken a plea that the 7th defendant's son and daughter are also having share over the properties and the plaintiffs have not impleaded the daughter of the 7th defendant and thereby the suit is bad for non-joinder of necessary parties. According to the defendants, already the suit properties are partitioned between them. However, they have taken a plea that the daughter of the 7th defendant also proper and necessary party. In this context, it is admitted that the plaintiffs are claiming share of the ancestral properties and already this Court decided that except the suit property in S.F.No.343/1A, all other properties are not ancestral properties and therefore, the daughter of the 7th defendant is represented by the 7th and 11th defendants. Therefore, there is sufficient representation on behalf of the daughter of the 7th defendant. Therefore, the suit is not bad for non-joinder of necessary parties.



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Point No.iv)Whether the release deed executed by the 6th defendant is binding on the plaintiffs?

19.Already this Court decided in the previous point that except S.F.No. 343/1A, all other properties are not joint family properties of plaintiffs and defendants. The property in S.F.No.343/1A alone is joint family property. The defendants 2 to 5 have taken a plea that the plaintiffs' father namely the 6th defendant had executed a release deed in favour of the defendants 2 to 5 in respect of his share and his minor son who is the 1st plaintiff in the suit through release deed dated 12.06.1995. A copy of the said deed has been marked as Ex.B1. On perusal of Ex.B1, it reveals that the deed was executed by the 6th defendant in favour of the defendants' 2 to 5. In that deed in the body of the document in the first page, the name of the minor has been inserted.

20.Further, in all pages the words for himself and on behalf of the minor in Tamil, தனக்கும் மைனருக்கும் has been inserted. There is no explanation on the side of defendants as to why the name of the minor was



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interpolated. Further, the recitals of the documents shows that the 6th defendant has relinquished his 1/5th share and nowhere stated about the share of minor in the body of the document. Only in the first page of the document and the bottom of the document shows that the document was executed for himself and on behalf of the minor SatheeshKumar and thereafter nowhere in the document stated that 1/5th share belongs to the 6th defendant as well as to the minor SatheeshKumar. Per contra, the recitals shows that the 6th defendant has relinquished his 1/5th share of the property, therefore it is clear that the minor name has been inserted after the execution of the document. Even in the document, there is no mention about the legal necessity to execute the document on behalf of the minor. Therefore, the said document has not been executed on behalf of the minor. In this context, the learned counsel appearing for the appellant has relied the following judgments:

(i)Kehar Singh (dead) through legal representatives and others Vs. Nachittar Kaur and others, [(2018) 14 SCC 445], wherein the Hon'ble Supreme Court in paragraph Nos.20 to 23 has held as follows:



“20.Mulla in his classic work "Hindu Law" while dealing with the right of a father to alienate any ancestral property said in Article 254, which reads as under:

“Article 254

254. Alienation by father – A Hindu father as such has special powers of alienating coparcenary property, which no other coparcener has. In the exercise of these powers he may:

(1) make a gift of ancestral movable property to the extent mentioned in Article 223, and even of ancestral immovable property to the extent mentioned in Article 224;

(2) sell or mortgage ancestral property, whether movable or immovable, including the interest of his sons, grandsons and great-grandsons therein, for the payment of his own debt, provided the debt was an antecedent debt, and was not incurred for immoral or illegal purposes(Article 294).”

21.What is legal necessity was also succinctly said by Mulla in Article 241, which reads as under:

“Article 241

241. What is legal necessity? The following have been held to be family necessities within the meaning of Article 240:



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- (a) payment of government revenue and of debts which are payable out of the family property;*
- (b) Maintenance of coparceners and of the members of their families;*
- (c) Marriage expenses of male coparceners, and of the daughters of coparceners;*
- (d) Performance of the necessary funeral or family ceremonies;*
- (e) Costs of necessary litigation in recovering or preserving the estate;*
- (f) Costs of defending the head of the joint family or any other member against a serious criminal charge;*
- (g) Payment of debts incurred for family business or other necessary purpose. In the case of a manager other than a father, it is not enough to show merely that the debt is a pre-existing debt;*

The above are not the only indices for concluding as to whether the alienation was indeed for legal necessity, nor can the enumeration of criterion for establishing legal necessity be copious or even predictable. It must therefore depend on the facts of each case. When, therefore, property is sold in order to fulfil tax obligations incurred by a family business, such alienation can be classified as constituting legal necessity."



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22.The High Court, after taking note of the aforementioned legal principles of Hindu law, dealt with this question on facts in para 19, which reads as under:

“19. In the light of the aforesaid legal position, now it has to be examined as to whether the defendants have discharged their onus to prove the existence of the legal necessity at the time of the impugned sale deed. Defendant Tara Singh, while appearing as DW 13 has stated that amount of Rs.5,500/? was paid by him as earnest money, Rs.500/? was spent for payment of Taccavi loan and registration of sale deed and Rs.934/? was paid to the vendor, about 3?4 days prior to the registration of the sale deed, for payment of Taccavi loan an amount of Rs.12,566/? was paid at the time of registration of the sale deed. DW 1 Shri Gopal, who was an Assistant in the DC office, Ludhiana has stated that Pritam Singh vendor was granted loan of Rs. 3,000/? in the year 1995 and he did not pay a penny from the said loan till 20.11.1964. DW 2 Ram Dass, a tubewell mechanic has proved that Pritam Singh had spent Rs.4,000/? for installing a tubewell in the year 1963. DW 9 Sat Pal, Additional Wasil Baga Nawis, Ludhiana has proved that the vendor Pritam Singh had taken various loans from the department for purchase of seeds bag. Rs. 500/? for repair of house and Rs.2,500/? for purchasing pumping set. This witness further stated that Pritam Singh had



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purchased a Rehri for Rs.1,025/? from him in the year 1961. DW 11 Dalip Singh has proved that Pritam Singh had borrowed a sum of Rs.3,000/? from him in the year 1959 by executing a pronote. This witness has also stated that Pritam Singh had performed marriage of his 5 children.”

23.In our considered opinion, the approach, reasoning and the conclusion arrived at by the High Court on the question of legal necessity as to whether it existed in this case while selling the suit land by Pritam Singh or not does not call for any interference as the same was rightly dealt with by the High Court while appreciating the evidence on record.”

21.On careful perusal of the said judgment, it is clear that kartha of the family can sell the property for legal necessity. But in the case on hand, there is no recitals in the document as about the legal necessity. While so it is the duty of the defendants to establish as to what legal necessity he had executed the deed has to be explained by the defendants, but, there is no explanation. Therefore, on conjoint reading of the recitals of the Ex.B1 / document and on the interpolation made in the Ex.B1 / document, shows that the document was



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only executed by the 6th defendant and not on behalf of the minor son. It is admitted fact that the property in S.F.No.343/1 is ancestral property and on the date of execution of the release deed by the 6th defendant, the 1st plaintiff minor was born to the 6th defendant, thereby the minor son is also a coparcener and he is also entitled to share over the joint family property. As far as the release deed executed by the 6th defendant is concerned, he never questioned about the document and he has not taken any steps in respect of the document. Therefore, the 6th defendant admitted the execution of the document. However, it will not be binding upon the plaintiffs' share, since the property was acquired by the 6th defendant through ancestrally. Once the 1st plaintiff minor has share over the property, the father of the plaintiff without any legal necessity cannot alienate the minor share of the property. Moreover, the execution of the document shows that it was not intended to release the share of the minor and thereby, the document will not be binding upon the share of the minor. Thus, the point is answered accordingly.

Point No.v)Whether the plaintiffs are entitled to partition of the suit properties?



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22. According to the plaintiffs, all the suit properties are joint family properties and the plaintiffs are entitled to $1/10^{\text{th}}$ share over the suit properties. This Court in the previous point decided that the suit property in S.F.No.343/1A alone is the joint family property. According to the defendants that property was partitioned between the brothers of Kandhasamy Gounder, but there is no mention about division of shares between the parties as to which property was allotted to whom. It is admitted that the grand father of the 6th defendant and great grand father of plaintiffs had three sons namely, Kandhasamy Gounder, A.P.Palaniyappa Gounder and Veluchamy Gounder. Therefore, the property has to be divided into three parts and Kandhasamy Gounder is entitled to $1/3^{\text{rd}}$ share and $1/3^{\text{rd}}$ share of Kandhasamy Gounder has to be divided into five shares. Therefore, the father of the plaintiffs is entitled to $1/15^{\text{th}}$ share of the property in S.F.No.343/1A.

23. According to the defendants, the plaintiffs' father relinquished his right over the properties and thereby he has no share over the property. Already this Court decided that the plaintiffs' father did not execute the release deed for entire property by including entire minor share. Therefore,



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entire 1/15th share of the 6th defendant was not released to the joint family.

Though the 6th defendant had executed a release deed in favour of defendants 2 to 5, that relinquishment is only in respect of joint family. Therefore, the other legal heirs of the deceased Kandhasamy are equally entitled to the properties of joint family by excluding the 6th defendant. Though the 6th defendant father of the plaintiff relinquished his right over the properties of joint family, the relinquishment of one co-sharer in favour of other co-sharers is only an enlargement of shares between the other co-sharers. Therefore, the relinquishment of 6th defendant is no way affects the rights of the plaintiffs, since the property is undivided joint family coparcener property.

24. At this juncture, it is relevant to refer the judgment of the Hon'ble Supreme Court in ***Thamma Venkata Subbamma (dead) Vs. Thamma Rattamma***, reported in ***AIR 1987 SC 1775***, wherein the Hon'ble Supreme Court in paragraph Nos.20 & 21 held as follows:

“20. Coming back to the facts of the case, we find that Rami Reddy made the gift for the common benefit of the donee as well as his sons as held by the High Court. It is submitted on behalf of the respondents that really it is a case of renunciation



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or relinquishment by Rami Reddy of his interest in favour of his brother and his sons. It was the intention of the donor that the property might be enjoyed by his brother and his sons and, excepting that the donor had reserved to himself a life interest, presumably for his maintenance, he gifted his entire interest in the coparcenary property to his brother. There is some force in the contention of the learned Counsel for the respondents that the gift should be construed as relinquishment or renunciation of his undivided interest by the donor in favour of the other coparceners. Although the gift is ostensibly in favour of Veera Reddy, but really the donor meant to relinquish his interest in the coparcenary in favour of Veera Reddy and his sons. In this connection, we may refer to the following passage from Mulla's Hindu Law, Fifteenth Edition, [Article 264](#) at page 357:-

"Art. 264. (1) Renunciation, or relinquishment of his share.---A coparcener may renounce his interest in the coparcenary property in favour of the other coparceners as a body but not in favour of one or more of them. If he renounces in favour of one or more of them the renunciation enures for the benefit of all other coparceners and not for the sole benefit of the coparcener or coparceners in whose favour the renunciation is made. Such renunciation is not invalid even if the renouncing coparcener makes it a condition that he would be paid something towards maintenance. The renunciation or relinquishment must, of course, be genuine. If fictitious and not acted upon it would not be operative as between the



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parties and partition can be claimed."

21.Assuming that it is a renunciation in favour of one of the coparceners, namely, Veera Reddy, such renunciation enures for the benefit of all other coparceners and. not for the sole benefit of the coparcener in whose favour the renunciation was made. In our view, the gift made by Rami Reddy to Veera Reddy should be construed as renunciation of his undivided interest in the coparcenary in favour of Veera Reddy and his sons who were the remaining coparceners. The gift was, therefore, valid construing the same as renunciation or relinquishment by Rani Reddy of his interest in the coparcenary and, accord- ingly, the consent of other coparceners was immaterial."

24.1.Further, in the same judgment, the Hon'ble Supreme Court held as follows:

"The parties are admittedly governed by the Mitakshara School of Hindu Law. The essence of a coparcenary under the Mitakshara School of Hindu Law is community of interest and unity of possession. A member of joint Hindu family has no definite share in the coparcenary property, but he has an undivided interest in the property which is liable to be enlarged by deaths and diminished by births in the family. An interest in the coparcenary property accrues to a son from the date of his birth. His interest will be equal to that of his father."



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25. Further, the Hon'ble Full Bench of this Court after referring the judgment of Hon'ble Full Bench of this Court in the case of *The Chief Controlling Revenue Authority Vs. Rustorn Nusserwanji Patel*, reported in *AIR 1968 Mad 159 (FB)*, has held as follows:

“Of the several authorities that have been referred to before us, the decision of the Full Bench in [Board of Revenue v. Murugesu Mudaliar](#), (AIR 1955 Mad 614) (FB) would appear to be most relevant, and indeed, virtually decisive of the issue. There also the Full Bench was concerned with a transaction between co-owners, with regard to property under which these co-owners held undivided shares, and there had been to division by metes and bounds. The relevant canon was stated by Rajamannar C. J. in the following form:--

"In such a case there need to be conveyance as such by one of the co-owners in favour of the other co-owners. Each co-owner in theory is entitled to enjoy the entire property in part and in whole. It is not therefore necessary for one of the co-owners to convey his interest to the other co-owners. It is sufficient it he releases his interest. The result of such a release would be enlargement of the share of the other co-owners. There can be no release by one person in favour of another who is not already entitled to the property as co-owner".



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Court held as follows:

“10. In that context, therefore, we do not think that the mere fact that these persons can be described in a certain sense as tenants in common would convert a document which purports to be a document of release into a conveyance.

(11) On the contrary, we may emphasise that the essential ingredients of release are here present. There is already a legal right in the property vested in the release, and the release operates to enlarge that right into an absolute title for the entire property, as far as the parties are concerned.”

26. On a careful perusal of those judgments, it is clear that a coparcener may renounce his interest in the coparcenary property in favour of other coparceners as a body but not in favour of one or more of them and if he renounces in favour of one or more of them, the renunciation enures for the benefit of all the coparceners and not for the sole benefit of the coparcener or coparceners in whose favour the renouncement is made. Further, it is clear that an interest in the coparcenary property accrues to a son from the date of his birth and his interest will be equal to that of his father.



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27. In the case on hand also, the 1st plaintiff was born on the date of the alleged release deed executed by the father of the 1st plaintiff, i.e., 6th defendant and thereby the 1st plaintiff also had interest equal to that of his father. This Court also in the previous point decided that the release deed was not executed on behalf of the minor son of the 6th defendant. The defendants admitted that the suit 7th item, i.e., S.F.No.343/1 is the ancestral property and the same was partitioned before 30 years between the grandfather of plaintiffs, but no sufficient evidence adduced by the defendants to prove the same. Therefore, the S.F.No.343/1 has not been divided between the parties so far. After the relinquishment made by the 6th defendant, the 2nd plaintiff also born to him and there by she is also entitled to share over the property as a coparcener. Therefore, in view of the said judgments and in view of the above said discussions made supra, this Court is of the opinion that the plaintiffs are entitled to share over the suit property in S.F.No.343/1A, since the father of the plaintiffs, 6th defendant executed the release deed in respect of coparcenary property in favour of other coparceners as a body but not in favour of one or more of them.



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28. Thereby, the property has to be divided into 15 parts. The plaintiffs are jointly entitled to 1/15 share, defendants 2 to 5 are each entitled to 1/15 share, the 1st defendant is entitled to 5/15 share and the 7th defendant is entitled to 5/15 share over the 1st item of the suit property. In view of the above, the legal heirs of A.P.Palaniyappa Gounder, i.e., the 1st respondent / 1st defendant is entitled to 5/15 share, the brother of A.P.Palaniappa Gounder and Kandhasamy Gounder the 7th defendant A.P.Veluchamy Gounder are each entitled to 5/15 share, since the Kandhasamy Gounder died, his legal heirs are jointly entitled to 5/15 share, i.e., the plaintiffs are jointly entitled to 1/15 share, the defendants 2 to 5 each are entitled to 1/15 share over the said 7th item S.F.No.343/1A of the property. During pendency of the suit, the 1st defendant died and the 1st defendant had no children and thereby her share has to be divided into two parts i.e., to A.P.Veluchamy and heirs of Kandhasamy Gounder.

29. Before the Trial Court the death of the 1st defendant was recorded as no legal heirs. There is no reference in the judgment of the Trial Court about the share of the 1st defendant Nandammal @ Chellammal, who is the wife of



A.P.Palaniyappa Gounder. If the 1st defendant died interstate, the properties of the 1st defendant would devolve to defendants 2 to 7. Similarly, while pendency of the appeal, the 2nd defendant who is the 1st respondent in the appeal was also died and the share of the 1st respondent / 2nd defendant would devolve to respondents 2 to 5 / defendants 3 to 6. However, this suit is filed by the plaintiffs for their respective shares. Therefore, it is for the legal heirs of the deceased 1st defendant and the 1st respondent / 2nd defendant to work out their remedy through appropriate legal proceedings in accordance with law.

30.This Court already in the previous point decided that the 6th defendant cannot execute the release deed in respect of share of the 1st plaintiff. The release deed was executed in favour of the defendants 2 to 5. Since, the properties have not been divided between the parties and the 1st plaintiff was minor on the date of release deed, the relinquishment of share by the 6th defendant goes to all the joint family members and not only for the defendants 2 to 5 to whom the release was made. It is admitted facts that the suit property in S.F.No.343/1A is ancestral property and on the date of release deed, the 1st plaintiff was minor. Though the 2nd plaintiff was not born on the



date of release deed by the 6th defendant, the property was joint family property and not partitioned so far, hence, the 2nd plaintiff also being the coparcener entitled to share over the property. Therefore, as discussed above the plaintiffs are also entitled to share in the coparcenary joint family property which was relinquished by the 6th defendant. Thus, this point is answered.

Point No.vi)Whether the decree and judgment passed by the Trial Court are sustainable in law and in facts?

and

Point No.vii)Whether this appeal has to be allowed or not?

31.Before the Trial Court, the plaintiffs have filed the suit for partition and separate possession. The Trial Court after careful consideration decided that except 1st item, all other items of the suit properties are self acquired properties of the respective parties and father of the plaintiffs had executed a release deed and thereby they are not entitled to share over the property. The Trial Court has failed to consider that the release deed was executed only by the father of the plaintiffs and the release deed was not executed on behalf of



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the minor and this Court already decided in the previous point that the release deed was not executed on behalf of the minor. The said aspects have not been considered by the Trial Court and thereby the judgment and decree passed by the Trial Court are unsustainable and are liable to be modified by allowing this appeal in part.

Point No.viii)To what relief the appellants are entitled to?

32.In the previous point, this Court decided that the Trial Court has committed an error and failed to allot shares to the plaintiffs and thereby this Court modified the judgment and decree passed by the Trial Court. Therefore, the appellants are jointly entitled to 1/15 share over the 1st item of the suit property.

33.In the result, this appeal is partly allowed. Accordingly, the judgment and decree dated 25.08.2005 passed in O.S.No.261 of 2004 on the file of the Additional District and Sessions Judge, Fast Track Court, Dindigul, are hereby modified. The suit in O.S.No.261 of 2004 on the file of the Additional District and Sessions Judge, Fast Track Court, Dindigul, is



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partly decreed and preliminary decree is passed dividing the 7th item of the suit property in S.F.No.343/1A into 15 parts and to allot 1 share to the plaintiffs. The plaintiffs are entitled to final decree in terms of the preliminary decree. In other aspects the Trial Court judgment is confirmed. No costs.

12.06.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

- 1.The Additional District and Sessions Judge,
Fast Track Court, Dindigul,
- 2.The Section Officer,
VR Section,
High Court, Madras.



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P.DHANABAL, J.

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Pre-delivery judgment in
A.S.(MD).No.65 of 2016

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