



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :06.11.2025

Pronounced on :12.12.2025

CORAM

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

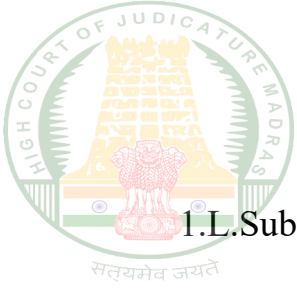
A.S.Nos.112 of 1993, 962 of 1995, 113 of 1993, 228 of 1993, 605 of 1995 &
825 of 1993 and C.M.P.Nos.25203 of 2019, 9885 of 2022, 9880 of 2019, 12
of 1998, 5781 of 2001, 5865 of 1998, 5867 of 1998 and 84 of 2001

A.S.No.112 of 1993:

- 1.L.RMK.Valliammal Achi,
- 2.L.RMK.R.M.Amirtham @ Kannammai Achi
- 3.L.RMK.S.P.Natchamami @ Santhanam Achi
- 4.L.RMK.V.Vasantha Achi,
- 5.L.RMK.L.Theivanai @ Meyyammai Achi
- 6.S.P.Meenakshi,
- 7.V.Valliammai @ Meenakshi
- 8.L.Vallinayagi

..Appellants 3,8,12,15,
17, 31 to 33

/versus/



1.L.Subramanian Chettiar,

..Plaintiff/1st Respondent

2.S.P.PM.L.Ramakrishnan Chettiar,
S/o Late SP.PM.L.Letchumanan Chettiar
Rep.by Power Agent L.RMK.L.Kannan @
Ramakrishnan

3.L.RMK.Subramanian Chettiar

4.L.RMK.Valliappa Chettiar

5.L.RMK.Narayanan Chettiar @ Lakshmi Narayanan Chettiar

6.L.RMK.RM.Ravinderan @ Ramakrishnan

7.Minor L.RMK.RM.Annamalai
Through his mother and guardian
L.RMK.RM.Amirtham @ Kannamalai Achi

8.Minor L.RMK.RM.Ramesh
through his mother and guardian
L.RMK.RM.Amirtham @ Kannamai Achi

9.Minor L.RMK.SP.Rajendran @ Ramanathan
Though his mother and guardian
L.RMK.SP.Nachammai @ Santhanam Achi

10.Minor L.RMK.SP.Ramakrishnan @ Saravanan
Through his mother and guardian L.RMK.SP.
Nachammai @ Santhanam Achi

11.L.RMK.V.Narayanan Chettiar @
Ramakrishnan

12.L.RMK.L.Kannan @ Ramakrishnan

13.L.RMK.L.Annamalai @ Valliappan

14.ST.S.Theivanai Achi



15.ST.S.Karunanithi

16.L.KN.Thriuvathal @ Alamelu

17.L.KN.Ramanathan @ Singaram Chettiar

18.L.KN.Lakshmanan @ Manickkam Chettiar

19.L.SP.Kalyani @ Umayal Achi

20.L.SP.Ramanathan @ Pathmanathan Chettiar

21.L.SP.Kannappan

22.L.SP.Lakshmanan @ Senthilnathan Chettiar

23.Unnamalai Trust Rep.by its Trustees,
L.Ramakrishnan Chettiar,
S/o SP.RM.L.Letchumanan Chettiar
L.RMK.Valliammai Achi
W/o L.Ramakrishnan Chettiar

24.A.Natarajan

25.S.P.Meenakshi Achi

26.C.Sakunthala Achi

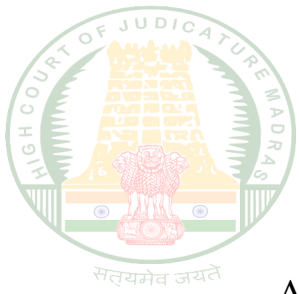
27.C.Sarada Achi

28.K.N.Visalakshi

29.Vijaya @ Vijayalakshmi

R29 Impleaded vide order dated 07.04.2000
in C.M.P.No.13916 of 1999.

..Respondents



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Appeal Suit has been filed under Section 96 of C.P.C., against the judgment and decree dated 13.03.1992 made in O.S.No.43 of 1982 on the file of the Subordinate Judge of Sivaganga.

For Appellants :Mr.S.Parthasarathy, Senior Counsel
Except A7 Asst.by Mr.P.Dinesh Kumar

M/s J.Selvarajan for
Mr.D.Srinivasasaragavan for A7

For Respondents :Mr.T.R.Rajagopalan, Senior Counsel for
M/s T.R.Rajaraman for R1, R16 & R28

Mrs.A.L.Gandhimathi, Senior Counsel for
Mr.R.Karthikeyan for R29 and R31

Mr.D.Kanaga Sundaran for R20

Mr.R.Annamalai
for R7-party in person

No appearance for
R2, 3, 4, 7 to 15, 17, 22, 26, 29

R18-died

A.S.No.962 of 1995:

L.K.N.Ramanadhan Chettiar
alias Singaram Chettiar

..Defendants 23/appellant

/versus/

1.L.Subramania Chettiar

2.S.RM.L.Ramakrishnan Chettiar



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3.L.RMK.Valliammal Achi

4.L.RMK.Subramanian Chettiar

5.L.RMK.Valliappa Chettiar

6.L.RMK.Narayanan alias Latchumi Narayanan

7.L.RMK.R.M.Amirtham alias Kannamai Achi

8.L.RMK.RM.Ravinderan alias Ramakrishnan

9.L.RMK.RM.Annamalai

10.L.RMK.RM.Ramesh

(RR9 and 10 are declared as majors and
the guardian discharged as per order of Dy.
Registrar in C.M.P.No.8179/1995 dated 28.07.1995)

11.L.RMK.SP.Natchammai alias Santhanam Achi

12.Minor L.RMK.SP.Rajedran Alias Ramanathan
S/o L.RMK.Subramanian Chettiar
by father and guardian the 4th respondent herein

13.Minor L.RMK.SP.Ramakrishnan alias Savaranan
Son of L.RMK.Subramanian Chettiar
by father and guardian the 4th respondent herein

14.L.RMK.V.Vasanth Achi

15.L.RMK.V.Narayanan alias V.Ramakrishnan

16.L.RMK.L.Theivanai alias Meyyammai Achi

17.L.RMK.L.Kannan alias Ramakrishnan

18.L.RMK.L.Annamalai alias Valliappan

19.S.T.S.Theivanai Achi

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20.S.T.S.Karunanithi

21.L.K.N.Thiruvathal @ Alamelu

22.L.KN.Lakshmanan alias Manickam

23.L.SP.Kalyani alias Umayal Achi

24.L.SP.Ramanathan alias Padmanabhan Chettiar

25.L.S.P.Kannappan Chettiar

26.L.SP.Lakshmanan Chettiar @ Senthilnathan

27.Unnamalai Trust rep.by its Trustees
L.Ramakrishnan Chettiar

L.RMK.Valliammal Achi
Wife of L.Ramakrishnan Chettiar

28.A.Natarajan

29.SP.Meenakshi,

30.V.Valliammai @ Meenakshi

31.L.Vallinayagi

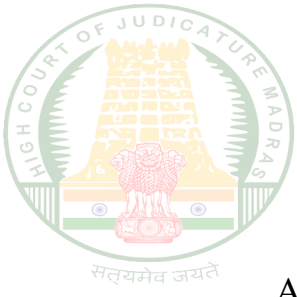
32.C.Mennakshi Achi

33.C.Sakunthala Achi

34.C.Saradha Achi

35.K.N.Visalatchi Achi

..Plaintiffs 1 and 3rd defendant
and defendants 5 to 22, 24 to 37/Respondents



WEB COPY

Appeal Suit has been filed under Section 96 of C.P.C. against the judgment and decree dated 13.03.1992 on the file of the Subordinate Judge, Sivaganga and made in O.S.No.43 of 1982.

For Appellants :Mr.D.Kanaga Sundaram

A.S.No.113 of 1993:

1.L.RMK.Subramanian Chettiar

2.L.RMK.Valliappa Chettiar

3.L.RMK.RM.Ravinderan @ Ramakrishnan

4.Minor L.RMK.RM.Annamalai
S/o L.RMK.Ramanathan Chettiar
through his mother and guardian
L.RMK.RM.Amirtham @ Kannammai Achi.

5.Minor L.R.K.RM.Ramesh
S/o L.RMK.Ramanathan Chettiar,
Through his mother and guardian
L.RMK.RM.Amirtham @ Kannammai Achi

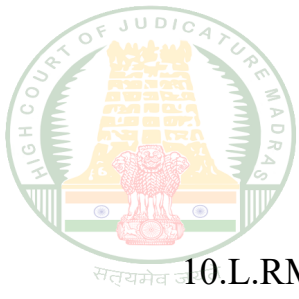
6.L.R.M.K.SP.Rajendran @ Ramanathan
(Minor declared as major vide in C.M.P.
No.9558/2000 order dated 20.07.2000(PSJ))

7.L.R.M.K.SP.Ramakrishnan@ Saravanan
Minor declared as Major in C.M.P.No.
9557/2000 vide order dated 20.07.2000(PSJ))

8.L.RMK.V.Narayanan Chettiar @ Ramakrishnan

9.L.RMK.L.Kannan @ Ramakrishnan

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10.L.RMK.L.Annamalai @ Valliappan

..Defendants 5,6,9,10,11,13,14,16,18,&19/
Appellants

/versus/

1.L.Subramaniyan Chettiar

2.SP.RM.L.Ramakrishnan Chettiar
S/o Late SP.RM.L.Letchumanan chettiar
Rep.by power agent L.RMK.L.Kannan @
Ramakrishnan

3.L.RMK.Valliammai Achi

(R3 recorded as LR of the deceased 4th respondent
vide order of Court dated 20.06.2008 made in
C.M.P.No.19 of 2008)

4.L.RMK.Narayanan Chettiar
@ Laksh Narayanan Chettiar(died)

5.L.RMK.RM.Amirtham @ Kannammai Achi

6.L.RMK.SP.Natchammai @ Santhanam Achi

7.L.RMK.V.Vasanth Achi

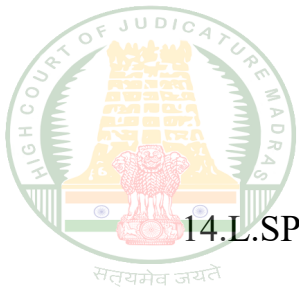
8.L.RMK.L.Theivanai @ Meyyammai Achi
Widow of L.RMK.Lakshmanan chettiar

10.ST.S.Karunanithi

11.L.KN.Thiruvathal @ Alamelu

12.L.KN.Ramanathan @ Singaram Chettiar

13.L.KN.Lakshmanan @ Manickkam Chettiar



14.L.SP.Kalyani @ Umayal Achi

15.L.SP.Ramanathan @ Pathamanathan

16.L.SP.Kannappan

17.L.SP.Lakshmanan @ Senthilnathan Chettiar

18.Unnamalai Trust Rep.by its Trustees,
L.Ramakrishnan Chettiar,
S/o SP RM.L.Letchumanan Chettiar

19.A.Natarajan

20.SP.Meenakshi

21.V.Valliammai @ Meenakshi

22.L.Vallinayagi

23.C.Meenakshi

24.C.Sakunthala Achi

25.C.Sarada Achi

26.K.N.Visalakshmi

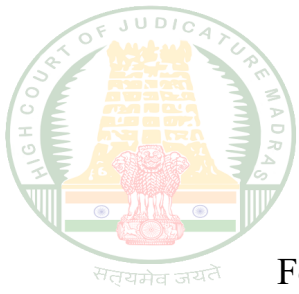
27.Vijaya @ Vijayalakshmi
R27 impleaded vide order dated
07.04.2000 in C.M.P.No.13918 of 1999(PSJ))

28.Lalitha Narayanan

..Defendants 1 to 3, 7,8,12,15,17, 20 to
37/Respondents 2 to 26

Appeal Suit has been filed under Section 96 of C.P.C., against the judgment and decree dated 13.03.1992 made in O.S.No.43 of 1982 on the file of the Subordinate Judge of Sivaganga.

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For Appellants

:Mr.T.M.Hariharan, A1, A6 and A7
Mr.V.Ramajagadeesan for A2
Mr.C.Krishnan for A4 and A5
Mr.C.T.Mohan for A9 and A10
M/s J.Selvarajan for Mr.D.Srinivasaragavan for A8
M/s Rupert J.Bernabas for A3

For Respondents

:Mr.S.Parthasarathy, Senior Counsel for R2, R3, R6
to R10, R18, R19

Mrs.A.L.Gandhimathi, Senior Counsel for
Mr.R.Karthikeyan for R28 and R29

Mr.D.Kanaga Sundaram for R12

No appearance for R5,6,14 to 16
20 to 24 and 26

R1, 3, 4, 11 & 13 died

A.S.No.228 of 1993:

SP.RM.L.Ramakrishnan Chettiar

S/o Late SP.RM.L.Letchumanan Chettiar

Rep.by Power Agent L.RMK.L.Kannan @

Ramakrishnan

(C.T.accepted as per order in C.M.P.No.3380/1993

dated 17.03.1993-Dy.Registrar)

..1st Defendant/Appellant

/versus/

1.L.Subramanian Chettiar

..Plaintiff/1st Respondent

2.L.RMK.Valliammai Achi



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3.L.RMK.Subramanian Chettiar

4.L.RMK.Valliappa Chettiar

5.L.RMK.Narayanan Chettiar @ Lakshmi Narayanan Chettiar (died)

6.L.RMK.RM.Amirtham @ Kannammai Achi

7.L.RMK.PM.Ravinderan @ Ramakrishnan

8.Minor L.RMK.PM.Annamalai
S/o L.RMK.Ramanathan Chettiar
through his mother and guardian L.RMK.PM.Amirtham @
Kannammai Achi the 6th respondent

9.Minor L.RMK.RM.Ramesh
S/o L.RMK.Ramanathan Chettiar
L.RMK.RM.Amirtham @ kannamai Achi
the 6th respondent

10.L.RMK.SP Natchammai @ Santhanam Achi

11.L.RMK.SP.Rajendran @ Ramanathan

12.L.RMK.SP.Ramakrishnan @ Savaranan
(RR11 & 12 minors declared as major and guardian
discharged from guardianship as per order of Court
dated 25.03.2003 made in C.M.P.Nos.9559 and 9560
of 2000 by PSMJ @ PSDJ)

..Defendants 3 and 5 to
37/Respondents 2 to 35

13.L.RMK.V.Vasanth Achi

14.L.RMK.V.Narayanan Chettiar @ Ramakrishnan

15.L.RMK.L.Theivanai @ Meyyammai Achi

16.L.RMK.L.Kannan @ Ramakrishnan



17.L.RMK.L.Annamalai @ Valliappan

18.ST.S.Theivanai Achi

19.ST.S.Karunanithi

20.L.KN.Thiruvathal @ Alamelu

21.L.KN.Ramanathan @ Singaram Chettiar

22.L.KN.Lakshmanan @ Manickkam Chettiar

23.L.SP.Kalyani @ Umayal Achi

24.L.SP.Ramanathan @ Pathamanathan Chettiar

25.L.SP.Kannappan

26.L.SP.Lakshmanan @ Senthilnathan Chettiar

27.Unnamalai Trust Rep.by its Trustees,
L.Ramakrishnan Chettiar,
S/o SP.RM.L.Letchumanan Chettiar
L.RMK.Valliammai Achi
W/o L.Ramakrishnan Chettiar

..Defendants 3 to 5 to 37/
Respondents 2 to 35

28.A.Natarajan

29.SP.Meenakshi

30.V.Valliammai @ Meenakshi

31.L.Vallinayagi

32.C.Meenakshi Achi

33.C.Sakunthala Achi

34.C.Sarada Achi



35.K.N.Visalakshi

36.Lalitha Narayanan

37.Minor N.Ramakrishnan

38.Minor N.Valliammai @ Valli Shree

minors rep.by guardian R36.

39.Vijaya @ Vijayalakshmi

(R39 impleaded vide order dated
07.04.2000 in C.M.P.No.13962 of 1999 (PSJ))

(RR36 to 38 are brought on record as LR's of the
deed R5 and R36 appointed as guardian for RR37 and 38
as per order of Court dated 13.12.1996 in
C.M.P.nos.15951, 15951 of 1996 by PSJ
RR11 and 12 are declared as majors and the guardian
discharged as per order of Court dated 13.12.1996
in C.M.P.No.16869/1996 by PSJ)

..Defendants 3 & 5 to 37/
Respondents 2 to 35

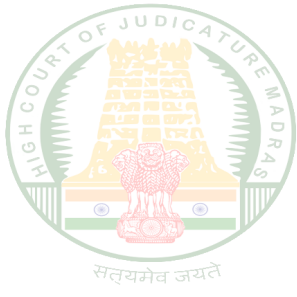
Appeal Suit has been filed under Section 96 of C.P.C., against the
judgment and decree dated 13.03.1992 made in O.S.No.43 of 1982 on the file
of the Subordinate Judge of Sivaganga.

For Appellants :Mr.S.Parthasarathy, Senior Counsel for
Asst.by Mr.P.Dinesh Kumar

For Respondents :Mr.T.R.Rajagopalan, Senior Counsel for
M/s T.R.Rajaraman for R1 and R35

Mr.A.L.Gandhimathi, Senior Counsel for
Mr.R.Karthikeyan for R36 & 38

Mr.J.Selvarajan for



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Mr.D.Srinivasaragavan for R4,13, 14 & 30
No appearance for R2 to 7, 9, 10,12, 13 to 18, 19.
21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 34
R20-died

A.S.No.605 of 1995

L.Kn.Lakshmanan @ Manickam Chettiar

(Appellant and Respondents in the initial in
the cause title amended as per order of Court
dated 13.11.1998 in C.M.P.No.8627/1998
(SMAWJ)

..Appellant/Defendant 24

/versus/

1.L.Subramanian Chettiar (died)

2.S.P.Rm.L.Ramakrishnan Chettiar

3.L.Rm.K.Valliammai Chettiar

4.L.Rm.K.Subramanian Chettiar

5.L.Rm.K.Valliappa Chettiar

6.L.Rm.K.Narayanan Chettiar

7.Rm.Amirtham @ Kannammai Achi

8.Rm.Raveendran @ Ramakrishnan

9.Rm.Annamalai
S/o Ramanathan Chettiar
(minor rep.by its mother and guardian
Valliammai Achi)



10.Rm.Ramesh
S/o Ramanathan Chettiar
(Minor rep.by its mother and guardian
Valliammai Achi)

11.SP.Naachammai @ Santhanam Achi

12.SP.Rajendran @ Ramanathan
(Minor rep.by its mother & guardian Naachammai Achi)

13.SP.Ramakrishnan @ Saravanan
(Minor rep.by its mother and guardian Natchiammai Achi)

14.V.Vasantha Achi

15.V.Narayanan Chettiar @ Ramakrishnan

16.L.Rm.K.L.Devanai @ Maiyammai Achi

17.L.Rm.K.L.Kannan @ Ramakrishnan

18.L.Rm.K.L.Annamalai @ Valliappan

19.A.Devanai

20.A.Karunanithi

21.L.Kn.Thiruvatthal @ Alamelu

22.L.Kn.Ramanathan @ Singaram Chettiar

23.L.SP.Kalyani @ Omaiya

24.L.SP.Ramanathan @ Padmanabhan

25.L.SP.Kannappan

26.L.SP.Lakshmanan Chettiar

27.SP.Rm.Unnamalai Trust rep.by Trustees

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SP.Rm.L.Ramakrishnan Chettiar
S/o Lakshmanan Chettiar and
L.Rm.K.Valliammai Achi
W/o L.Ramakrishnan Chettiar

28.A.Nadarajan

29.SP.Meenakshi

30.V.Valliammal @ Meenakshi

31.L.Valli Nayaki
D/o Late Lakshmanan Chettiar

32.C.Meenakshi

33.G.Sagunthala

34.C.Saratha

35. Kn.Visalatchi

Respondents/Defendants 2 to 35

36.Smt.Lalitha

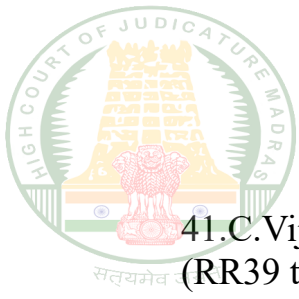
37.Ramakrishnan (minor)

38.Valliammal
(Rep.by mother and natural guardian Lalitha)

(RR36 to 38 have been brought on record as LRS
of the deceased 6th respondent and RR37 and 38 have been
appointed -Lalitha as natural guardian vide order dated 07.04.2007
in C.M.P.Nos.17843 to 17846 of 1998 PSJ)

39.A.N.Deivammai Achi

40.S.Meenakshi



41.C.Vijaya

(RR39 to 41 have been brought on record LR's of the deceased vide order in C.M.P.No.7178 /99 (PSJ))

..Respondents/Defendants 2 to 35

Appeal Suit has been filed under Section 15 of Letters Patent Act, against the order passed in learned Sub Court, Sivaganga made in O.S.No.43 of 1982 dated 13.03.1992.

For Appellant

:Mr.M.V.Venkataseshan

For Respondents

:Mr.S.Parthasarathy, Senior Counsel Asst.by
Mr.P.Dinesh Kumar for
R2,4,19,21,22,27,28,36 to 38

Mr.D.Kanaga Sundaram for R22

Mr.R.Vijayaraghavan for R9

M/s J.Selvarajan for Mr.D.Srinivasaragavan
for R4,13,14 & 29

No appearance for R2 to 5, 7 to 11,14 to
18,19, 20,21,22,24 to 33,35 to 41

A.S.No.825 of 1993:

1.L.Subramania Chettiar

..Plaintiff/1st Appellant

2.L.K.N.Thiruvattal @ Alamelu Achi

..22nd Defendant/2nd
Appellant

3.C.Saradha Achi

..36th Defendant/3rd Appellant

4.K.M.Visalatchi

..37th Defendant/6th Appellant



/versus/

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- 1.L.Ramakrishnan Chettiar
- 2.L.RM.K.Valliammal Achi
- 3.L.RM.K.Subramanian Chettiar
- 4.L.R.M.K.Valliappa Chettiar
- 5.L.R.M.K.Narayanan @ Lakshmi Narayanan Chettiar
- 6.L.R.M.K.R.M.Amirtham @ Kannammai Achi
- 7.L.R.M.K.R.M.Ravindran @ Ramakrishnan
- 8.L.R.M.K.R.M.Annamalai(Minor)
Son of L.R.M.K.Ramanathan Chettiar
- 9.L.R.M.K.R.M.Ramesh (minor)
Son of L.R.M.K.Ramanathan Chettiar
- 10.L.R.M.K.S.P.Nachammai @ Santhanam Achi
- 11.L.R.M.K.S.P.Rajendran @ Ramanathan (Minor)
Son of LRNK, Subramanian Chettiar
- 12.L.R.M.K.S.Ramakrishnan @ Saravanan (Minor)
Son of LRMK Subramanian Chettiar
- 13.L.R.M.K.V.Vasantha Achi
- 14.L.R.M.K.V.Narayanan @ Ramakrishnan
Son of LRMK, Valliappa Chettiar
- 15.L.R.M.K.L.Deivanai @ Meyyammai Achi
Widow of late LRMK.Lakshmanan Chettiar



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16.L.R.M.K.L.Kannan @ Ramakrishnan

17.L.R.M.K.L.Annamalai @ Valliappan

18.S.T.S.Deivathal Achi

19.S.T.S.Karunanidhi

20.L.K.N.Ramanathan @ Singaram Chettiar

21.L.KN.Lakshmanan @ Manickkam Chettiar

22.L.S.P.Kalyani @ Umayal Achi

23.L.SP.Ramanathan @ Pathamanathan Chettiar

24.L.S.P.Kannappan

25.L.S.P.Lakshmanan @ Senthilnathan Chettiar

26.Unnamalai Trust Rep.by its Trustees,
(i)L.Ramakrishnan Chettiar
(ii)L.R.M.K.Valliammai Achi

27.A.Natarajan

28.SP.Meenakshi

29.V.Valliammai @ Meenakshi

30.L.Vallinayagi

31.C.Meenakshi Achi

32.C.Sakunthala Achi

(Minor respondents 8 and 9 rep by 6th respondent
Minor respondents 11 and 12 rep by 3rd respondent)

...Respondents



WEB COPY

Appeal Suit has been filed under 96 of C.P.C., against the judgment and decree dated 13.03.1992 and made in O.S.No.43 of 1982 on the file of Subordinate Court, Sivagangai.

For Appellants :Mr.T.R.Rajagopalan, Senior Counsel for
M/s T.R.Rajaraman

For Respondents :Mr.S.Parthasarathy, Senior Counsel Asst.by
Mr.P.Dinesh Kumar for R2, 4,13, 18, 31 & 32

Mr.D.Kanaga Sundaram for R20

M/s J.Selvarajan for Mr.D.Srinivasaragavan for
R14, & 29

No appearance for R3,7,18 to 22,
24 to 28,31,32,39

=====

COMMON JUDGMENT

DR.G.JAYACHANDRAN,J.
AND
MUMMINENI SUDHEER KUMAR,J.

The judgment and decree in O.S.No.43 of 1982 on the file of the Subordinate Court, Sivaganga, rendered on 13.03.1992, is the subject matter of the batch of six appeal suits.

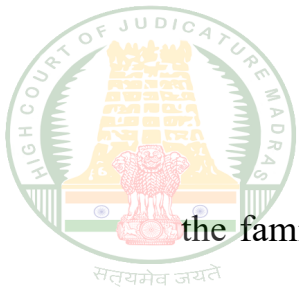


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2. Late SP.RM.L.Lakshmana Chettiar, a businessman, had three sons, by name, (i)L.Ramakrishna Chettiar, (ii)L.Subramanian Chettiar (iii)L.Kannappa Chettiar. He had his business, in India as well as in Burma, Ceylon and Malaysia. His eldest son, L.Ramakrishna Chettiar, was looking after the business at Ceylon. He was given Power of Attorney by his father in the year 1935 to carry on the business operations seamlessly. At that time, the other two sons were minors. SP.RM.L.Lakshmana Chettiar died on 16.10.1970.

3. Case of the plaintiff:

The suit for partition was filed by L.Subramanian Chettiar who is the second son of Late Lakshmana Chettiar. The partition suit is in respect of properties more-fully described under the schedule 'A' to 'H'. The plaintiff claims that the properties are joint family property held by Lakshmana Chettiar as 'Karthā' and that, each one of the sons is entitled for 1/3rd share in the schedule A, C, D and E properties. For the remaining properties, he claims his respective portion based on the title deeds. As per the plaint, the first defendant, being the eldest male member, was appointed as power of attorney by their father SP.RM.L.Lakshmana Chettiar. He had control over



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the family business in Ceylon. For the purpose of complying the Ordinance issued by the Ceylon Government, a partition deed was created and submitted to the Government. However, no partition, by metes and bounds, was effected in the true sense. The family members continued to live jointly and to carry on the business jointly. The income from the joint family business was shared among them and the surplus income was invested in coffee estates. On 27.07.1962, a YADASTHI was entered between the three brothers, but it was not given effect due to the non-co-operation of the first defendant.

4. During the life time, SP.RM.L.Lakshmana Chettiar, he first executed a Will dated 07.06.1967 bequeathing his share to his wife and youngest son SP.RM.L.Kannappa Chettiar (the second defendant). Later, SP.RM.L.Lakshmana Chettiar cancelled the said Will and he executed another Will on 27.07.1967. According to the plaintiff this is the last will of Late Lakshmana Chettiar. While the fact being so, the first defendant set up a Will dated 05.08.1968 and a Codicil dated 30.08.1968 at Ceylon with concocted facts to claim rights in the properties which were acquired in the name of family members, including female members of the first defendant, from out of the income derived from the joint family income. Only with an intent to avoid agricultural income tax a sham and nominal partition deed was



created but never acted. Hence, the suit for partition and consequential relief.

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5. Case of the defendants:

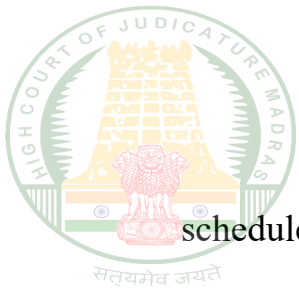
The first defendant (L.Ramakrishnan Chettiar), in his written statement, states the averments that some of the suit properties were purchased in the names of the defendants as '*benami*', are denied. It is true that late Lakshmana Chettiar executed a Will on 07.06.1967 and later, cancelled it on 27.07.1967. However, it is not true to say that, that was his last Will. He subsequently wrote a Will dated 15.08.1968 and a Codicil dated 30.08.1968. The above said Will and Codicil are his last instruments. As per this Will, the plaintiff and the defendants 1 and 2 are to get 1/13 share equally. The properties, which were purchased after 1941, are the properties of the individuals, who purchased it jointly or individually. It is not correct to plead that, on 11.10.1942, the partition deed is an in-genuine document. It is also not correct to say that, the first respondent was in charge of all the properties and administering them to render accounts. Only the plaintiff and the second defendant were holding some of the properties for some time and maintaining the accounts. In respect of 'D' schedule, items 1 and 2 are with the first defendant after the partition. The plaint is silent about their existence or in whose possession they are. The 'B' schedule property was purchased



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jointly in the name of six persons and it is not joint family property. The division of this property by boundaries, was already effected. In respect of Vasambadi Estate after the division of the family, this estate was purchased in the year 1960 by the defendants 1,2,4 to 6, 20 and 26 and the father of the defendants 18 and 19. This estate is not the joint family property. For the period of managing Vasambadi estate and Maryland estate, the first defendant and his son are entitled for their remuneration from the owners of the estate.

6. The power of attorney given to the first defendant in the year 1935 was cancelled in the year 1952 itself. Therefore, the plaintiff is not entitled for the relief of rendition of accounts from the first defendant. In the 'A' schedule, items 1 to 3, 5 and 12 are the properties already divided under the partition deed dated 11.10.1942. Without the relief to declare the earlier partition deed as invalid or void, present suit for partition is not maintainable. The plaintiff is estopped from filing the suit for partition. Items 13 to 40 in the schedule 'A' were purchased by family members individually, and they are the absolute owners of those properties. Insofar as, items 4, 6 to 11 in the 'A' schedule, the first defendant has no objection for division as prayed by the plaintiff. He is ready to give 1/3rd share to the plaintiff. Likewise, he concedes to allotting Lot 'C' in Maryland Estate (i.e.) item 1 of plaint B



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schedule and to a 1/12th share in item 1 of 'C' schedule and 1/6th share items 2 to 4 in the 'B' schedule, to the plaintiff. The first defendant, on conceding to the extent as mentioned above, makes a counter claim of 1/6th share in items 2 to 4 of the 'B' schedule and 1/3rd share in the 'D' schedule.

7. The first defendant has reiterated that he is not liable to render accounts in respect of 'E' schedule properties and the company shares shown are owned absolutely by the persons in whose names, they were issued. The first defendant has also pleaded that the suit for partition is to be dismissed, since there is no cause of action; the suit is not properly valued and proper court fee has not been paid and also it is also bad for non-joinder of necessary parties.

8. The written statement filed by the 2nd defendant, adopted by the defendants 22 to 24. In his written statement, they deny the plaint averments in respect of items 35 to 40 in 'A' schedule and in respect of items 54 to 57 in the 'E' schedule. The second defendant case is that he was a minor, while the partition dated 11.10.1942 and partnership agreement dated 30.08.1943 was executed. Therefore, these documents do not bind him. These documents were executed only for the purpose of income tax avoidance and to avoid the



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rigor of land Ceiling Act. Concurring the averments made in the plaint, the 2nd defendant has alleged that the first defendant and his family had enriched themselves from the joint family properties. Both the plaintiff and the first defendant are responsible for rendering accounts of the income from the joint family property up to his age of majority. The YADASTHI, dated 27.07.1962 has to be given effect to, as agreed by the parties. The Vasambadi Estate and Maryland Estate are to be divided into three equal shares and given to the three sons of late Lakshmana Chettiar. The first defendant must give accounts for the income derived from these two estates. The claim of the plaintiff that the properties in the name of the 2nd defendant, were purchased from the joint family income and that, the 2nd defendant is only a name lender (benami) is denied.

9. The fourth defendant in his written statement claims that the partition deed dated 11.10.1942 was given effect. The last Will of late Lakshmana Chettiar is dated 05.08.1968 and the Codicil dated 30.08.1968. These Will and Codicil are true and genuine. In the year 1971, the plaintiff and the defendants 1 and 2 had entered in to partition to use for the purpose of income tax department at Ceylon. The 21 partners of SPRML firm have individual income and maintain accounts for their personal income. The



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avermment that some of the properties were purchased from the joint family income in the names of female members of the family, is denied and the 4th defendant claims that the properties in his name were purchased from his personal sources. Accounts for the Maryland estate from the year 1971 and for the Vasambadi estate from the year 1961 were not rendered by the first defendant, despite repeated request. Instead, the first defendant and his sons are disbursing the peaceful enjoyment of her personal properties since 1958. This defendant has no contact with the plaintiff. The properties which are in her name and her family members name are to be deleted from the suit schedule.

10. The 7th defendant, who filed a joint memo to adopt the written statement of the first defendant, had filed additional written statement with the averments that the properties, which are in the name of the defendants 1,3 to 21, 29 to 33, are the properties belong to the branch of the first defendant. Hence, he is entitled to a 1/6th share in those properties. In his second additional written statement, the 7th defendant had thrown more facts about the suit properties and the family details of the first defendant branch. In this additional written statement, the 7th defendant has pleaded that the defendants 1,3 to 21, 29 to 33 are the members of the joint family headed by the first

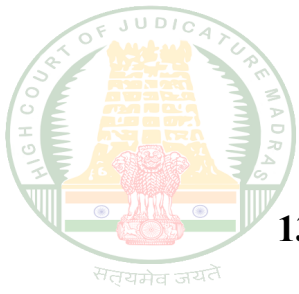


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defendant as 'Karthi'. The first defendant had purchased the properties from the members of his joint family. They were purchased at the time when the 7th defendant was a minor. When the properties in the 'B' schedule were purchased in the year 1957 and 'C' schedule in the year 1960, he was still a minor.

11. The first defendant has created a sale deed dated 09.12.1965 in favour of the 30th defendant and others in respect of the land mentioned under 'C' schedule. This sale was not with consent of the 7th defendant.

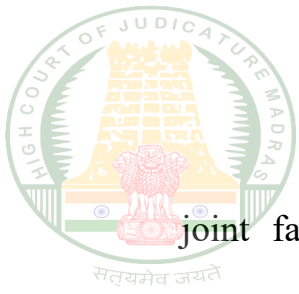
12. As per the High Court order in C.M.A.No.505 of 1986, the 7th defendant and the 27th defendant are appointed as 'party receivers'. Hence, act of animosity, the first defendant forcibly took over the money lending business run in the name of Sri Venkateswara Bankers, Sri Dhanalakshmi Bankers and Sri Ramajayam Bankers. The 1st defendant had also falsely created the documents in favour of his family members to defeat the lawful claim of the 7th defendant. The settlement deed dated 07.06.1980 and 08.03.1994 are few such documents.



13. In reply to the written statement and the additional written statement, the plaintiff had responded as below:-

Items 1 and 2 in the 'F' schedule purchased by defendants 1 and 3 personally and these properties are not joint family properties income. Item 3 is the absolute property of defendants 1,3 to 21, 29 to 33. The claim seeking partition of the properties which stands in the individual names of defendants 1, 3 to 21, 29 to 33 is hit by Benami Transaction Act, 1988.

14. In brief, the pleadings of the parties centers around the family partition alleged to have effected on 01.04.1941 and reduced into writing on 11.10.1942 by way of partition deed. Consequential partnership agreement to share the properties was executed on 30.08.1943. Alleged YADASHTI was entered in the year 1962 and three Wills, one Codicil alleged to have been executed by late Lakshmana Chettiar. While the plaintiff, who is the second son of late Lakshmana Chettiar, pleads that the entire suit properties belonged to the undivided joint family consisting of the plaintiff branch and the defendants 1 and 2 branch. The partition deed marked as Ex.A24 was not given effect to. There was no agreement for dividing the property in the year 1943 nor the YADASTHI alleged to have been executed in the year 1962 was given effect. Family continue to purchase the properties from out of the



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joint family income in the name of family members including female members and they are all to be divided among the family members of three branches. Whereas the defendants states that the suit for partition as averred is not maintainable. Most of the properties stand in the name of the partnership firm. Hence, if at all any right vests to the plaintiff in the suit property, remedy available to the plaintiff is to seek for dissolution of a partnership. The late Lakshmana Chettiar and his three sons namely, the plaintiff and the defendants 1 and 2, were living as a joint family and were holding the properties in India, Burma, and Ceylon, besides money lending business. Later, the division among the family members took place on 30.08.1943.

15. Referring certain transactions in respect of the property between Lakshmana Chettiar and his 3 sons, at that time and letter communications between the parties, the defendants contended that there is no status of joint family existing between the plaintiff and the defendants 1 and 2 and after the partition in the year 1941, what remains is only the relationship as partners in the business.



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16. The trial Court, based on the rival pleadings, initially framed as much as 26 issues. Subsequently, 3 issues were deleted and 6 additional issues were framed for consideration. 221 exhibits were marked on the side of the plaintiff. The plaintiff, L.Subramania Chettiar was examined as PW-1. On behalf of defendants 542 exhibits were marked. 7 witnesses were examined, which includes first defendant (DW1), 5th defendant (DW2), 7th defendant (DW-4) and the 23rd defendant (DW-5).

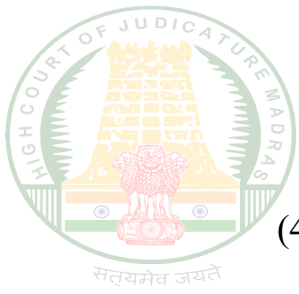
17. On appreciation of the evidence, both oral and documentary evidence, the trial Court partly allowed the suit and passed preliminary decree as below:-

“A” schedule property

(1) Item Nos. 1 to 13 and 15 under “A” schedule property were shared equally in 3 parts, as per the partition deed dated 11.10.1942 to the plaintiff branch and defendants 1 and 2 branch.

(2) The 1/3rd share of the first defendant, shall constitute the joint family property of the first defendant.

(3) Item Nos.14, 16 to 31 under “A” schedule property and five plots in Item No.33 belongs to the joint family of first defendant.



(4) Item Nos.33 and 34 under 'A' schedule property belongs to the plaintiff branch and Item Nos.35 to 40 belongs to the second defendant branch.

"B" Schedule property

(5) Lot-A, Lot-B, and Lot-F in the 1st item under "B" Schedule property, are declared as joint family properties.

(6) Lot-C and Lot-D in the 1st item under 'B' schedule property are declared as the properties of the plaintiff and Lot-E is declared as the properties of the second defendant.

(7) In the B schedule property, item Nos. 2 to 4 consisting of 6 portions marked as A, B, C, D, E and F. Out of these 6 portions, the first defendant branch allotted portions A, D, E and F and the same was declared as joint family property of the first defendant branch. Portions B and C allotted to the plaintiff branch.

" C " schedule properties:

(8) In " C " schedule, In item 1, out of 581.61 acres, the plaintiff branch is entitled for 96.96 acres; 2nd the defendant branch is entitled for 48.48 acres; the 20th defendant branch is entitled for 37.33 acres; 21st defendant branch is entitled for 23 acres; the 30th defendant branch is entitled 23 acres; the 4th defendant is entitled for 6.75 acres; the 5th defendant is



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entitled for 16.16 acres; the 6th defendant is entitled 24.24 acres; the 7th defendant is entitled for 83.78 acres; the 9th defendant is entitled for 11.75 acres; 10th defendant is entitled to 6.75 acres; the 11th defendant is entitled 6.75 acres; the 13th defendant is entitled for 16.16 acres; the 14th defendant is entitled for 16.16 acres; the 16th defendant is entitled for 24.24 ; the 18th defendant is entitled for 16.16 acres; the 19th defendant is entitled for 16.00 acres; for the first defendant as his joint family property 24.32 acres land allotted. The balance acres of 83.78, whether the third defendant have any exclusive right has to be decided in the final decree proceedings.

(9) The building and structures in the first item of the property described in 'C' schedule consisting of bungalow, office, staff quarters, etc., and machinery, coffee fields, and stores, the plaintiff branch is entitled for 2/12 share; the 2nd defendant branch to get 2/12 branch , 20th defendant branch is entitled for 2/12 share. The balance 6/12 share allotted to the first defendant branch as their joint family property.

(10) Under 'C' schedule property, the second item property declared as joint family property of the first defendant branch. If the said property purchased by the third defendant exclusively from out of his personal income, it is open for him to agitate in the final decree proceedings. If the sale is found valid, the portion sold to be adjusted from the other portion of the land



in the same schedule.

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‘D’ schedule property.

(11) Under ‘D’ schedule property, item Nos.1 and 2 are not available for partition.

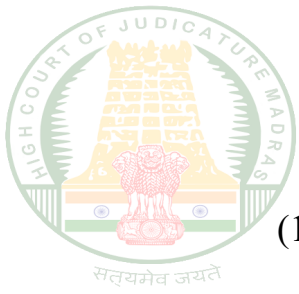
(12) In item Nos.3 to 10 under ‘D’ schedule property, the plaintiff and the defendants 1 and 2 have to divide it equally. The portion allotted to the first defendant to be treated as joint family property of the first defendant branch.

‘E’ schedule property

(13) Item Nos.1 to 4 under ‘E’ schedule property are the property of the partnership firm consisting of the plaintiff, defendants 1 and 2. Hence, no partition can be granted in respect of this property.

(14) Item Nos.5 to 18, 30, 31, 39, 60 to 66 under ‘E’ schedule property, are the properties outside the jurisdiction of the Indian Court namely, Ceylon, Burma and some of the properties are held by the Firm called SPRML a third parties. Therefore, no partition in respect of the property can be granted.

(15) Item Nos.19 to 22 under ‘E’ schedule property are the properties already subjected to partition. For Item Nos.23 to 28 under ‘E’ schedule property no relief can be granted. Item Nos.32 to 36 and 38 under ‘E’ schedule are the properties, which could not divide in the present suit.



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(16)Item Nos.37 under 'E' schedule property being the private limited company, no division of property is possible.

(17)Item Nos.42 to 53 and 56 to 58 under "E" schedule property will stand in the name of the person, who holds the title as on date.

(18)Item Nos.40 and 41 of the plaint under 'E' schedule property, to be shared between the plaintiff branch and the defendants 1 and 2 branch equally in the ration of 1/3 share of the first defendant as declared as his joint family property.

(19)Under 'E' schedule property, item No.29 stands in the name of the third defendant and the defendants 22 and 25. The said property to be divided among the three persons.

(20)In respect of Item Nos.54 and 55 under 'E' schedule property, the second plaintiff branch have a right and hence, not subjected to partition.

' F ' Schedule properties:

(21)Under 'F' schedule, Item Nos.1 to 3 declared as the first defendant branch joint family property. In this property, if the defendants 3, 8, 12 and 15 claims any share that has to be decided in the final decree proceedings. The property under 'F' schedule to be allotted to the members of the first defendant family.



"G" Schedule properties:

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(22)Item Nos.1 and 2 under “G” schedule property to be allotted to the 29th defendant trust.

(23)Under ‘G’ schedule, Item Nos.3 to 5 are allotted to the first defendant branch, which has to be treated as joint family property of the first defendant branch. It is open to the third defendant to prove his ownership over the items 3 to 5 under ‘G’ schedule during the final decree proceedings.

(24)The 6th item under ‘G’ schedule belongs to the private limited company. The share holders are the defendants 1,3,6,8,12,15 and 17.

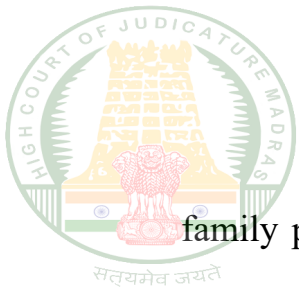
(25)The 7th item under “G” schedule to be allotted to the first defendant branch for using it as his joint family property.

(26)Under ‘G’ schedule property item Nos.8 to 11 to be the partnership firm. Hence, there cannot be a partition in respect of that property.

(27)Under ‘G’ schedule, Item Nos.12 to 98 are the shares of various companies. About this share, the parties are given liberty to agitate their cause before the final decree proceedings.

(28)Under ‘G’ schedule property, 12,400 kg. the gold has not been explained through adequate witness. Hence, the prayer in respect of gold jewels dismissed.

(29)The properties described under ‘A’ to ‘H’ schedule being the joint



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family property of the first defendant, the 7th defendant is entitled for 1/6th share.

(30) That apart, the trial Court has also passed certain orders commemorating the need of executing the decree.

(31) In the plaint, the first defendant did not disclose the accounts as requested by the plaintiff and the second defendant .

(32) For the said purpose, the first defendant directed to render accounts. In the final decree proceedings, the second respondent has to disclose the income from the suit property and from out of it, 1/6th share to be given the 7th defendant.

(33) As per the report of the Advocate Commissioner, the trial Court directed the parties to get respective shares as per the partition.

(34) Appointment of the defendants 7 and 27 as the Administrators of the property, no separate order passed except directing them to submit audit report. In respect of the other specified properties, the defendants 3,5, and 7, 23 and 26 are appointed as Administrators and they are directed to render the accounts derived from the said property.

(35) Regarding cost- for the first plaintiff branch, a sum of Rs.43,605.60 and in respect of the Legal heirs of the second defendant cost of Rs.26,211.25 was ordered payable by the first defendant. For the defendants



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3,5,6,8 to 21, the cost of Rs.29,140.50 payable by the first defendant was ordered.

18. On being aggrieved by the judgment and decree passed by the trial Court, the following Appeals are filed:-

(i) A.S.No.112 of 1993 is by L.RMK.Valliammai Achi and seven others, who are the defendants 3,8,12,15,17,31 to 33.

(ii) A.S.No.113 of 1993 filed by L.RMK.Subramanian Chettiar and others who were the defendants 5,6,9,10,11,13,14,16,18 and 19.

(iii) A.S.No.228 of 1993 filed by SP.RM.L.Ramakrishnan Chettiar, who is the first defendant in the suit.

(iv) A.S.No.825 of 1993 filed by the plaintiff, L.Subramania Chettiar and three others, who were the defendants 22,36,37.

(v) A.S.No.605 of 1995 is by L.Kn.Lakshmanan @ Manickam Chettiar, who is the 24th defendant in the suit.

(vi) A.S.No.962 of 1995 filed by L.KN.Ramanathan Chettiar @ Singaram Chettiar who is the 23rd defendant in the suit.

19. The above judgment and the preliminary decree challenged by the parties as against the disallowed portion. For better appreciation, the gist of the grounds of appeal in each of the appeal is extracted below, though some of



the grounds are common in all the appeals.

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19. Grounds of appeals:

A.S.No.112/1993:

(i) The Court below ought to have seen that it is not open to the 7th defendant to urge the contention that the defendants 3, 8, 12, 15 and 17 are the benamidars of the joint family of the first defendant and the suit is not maintainable against them as well as against the properties standing in their names by virtue of Benami Transaction (Prohibition) Act, 1988. The Learned Trial Judge, having framed an issue by way of additional issue No.1 erred in law in not considering that issue by applying the principles and provisions contained in the Benami Transactions (Prohibition) Act 1988. Moreover, the judgment in respect of that issue does not satisfy the mandatory requirements of Order 20, Rule 5 C.P.C., which specifically stipulates that the Court shall state its findings or decision with reasons therefor upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

(ii) The Court below ought to have seen that as per Section 4 of the Benami Transactions (Prohibition) Act, 1988, no suit, claim or action to



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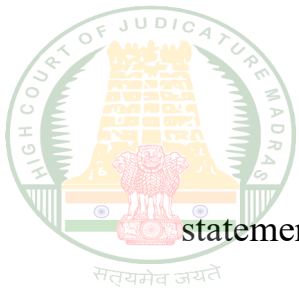
enforce any right in respect of any property held Benami either against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property. The two exemptions provided under Sub-Clause (3) of Section 4 of the said Act, namely:

- (1) A person in whose name the property stands is a co-parcener in a Hindu Undivided Family and;
- (2) A trustee or other person person standing in a fiduciary capacity,

have absolutely no application to the point in issue, as the appellants are neither co-parceners nor trustees of the joint family of the 1st defendant.

(iii) The Court below ought to have seen that, even assuming without admitting that the appellants are the benamidars of the joint family of the 1st defendant, even then the suit is barred under the provisions of the Benami Transactions (Prohibition) Act 1988. Furthermore, the Court below ought to have seen that the 7th defendant is estopped from claiming that the properties standing in the names of the defendants 3, 8, 12, 15 and 17 are the joint family properties of the 1st defendant, as he himself has clearly admitted as early as in the year 1975 in Ex.A.13 (Reply notice) and in the first written

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statement filed by the 1st defendant and adopted by the 7th defendant, that the properties purchased after 1941 in the names of any of the defendants belong to him/her exclusively and not available for partition. It is therefore incorrect to assert that the properties purchased in the name of one or other lady members were acquired from the joint Family funds and they are all joint family properties.

(iv) The Court below grievously erred in law in not considering the material evidence marked as Ex.B.502 and Ex.B.503, which are solemn and sworn affidavits of the 7th defendant, in which he has taken a specific stand that several suit properties therein which stand in his name belong to him no one else has any claim against them. The above documents would clearly flimsify the case of the seventh defendant stated in his additional written statement that all the properties standing in the name of the several defendants viz., that 1st defendant and defendants 3 to 21 and 29 to 33 including himself are the joint family properties.

(v) The Court below failed to appreciate that the stand taken by the seventh defendant in the additional written-statement that he has no separate properties and that all the partnership firm and properties standing in the name of defendants 1, 3 to 21 and 28 to 33 are all nothing but joint family



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businesses and properties of the first defendant is falsified by his categorical assertions and admissions made in Ex.B.502 and Ex.B.503 sworn affidavits in which his specific case was that he is the co-owner of Vasambadi Estate (C Schedule item-10 Upper Cliten Estate (Part of Item 29 of A Schedule) and sole proprietor of Narayanan Estate (Part of Item 30 of A-Schedule) wherein he totally owns about 100 acres of coffee lands that he is a partner and managing partner of various partnership firms and that he owns 1/6th shares in suit items 22, 23 and 24 of A Schedule and in suit item 3 of F Schedule.

(vi) The Court below to appreciate that the 7th defendant accepting the businesses as partnership business and not joint family business filed 3 suits in O.S.Nos.505/87, 519/87, and 529/87 in Sub Court, Salem for mandatory injunction that the other partners should hand over management and possession of the firms to him and he should be re-instated as Managing Partner. The complaints in those suits were marked as Ex.B.499 to Ex.B.501. The 7th defendant has clearly admitted the filing of the suits in his oral evidence as D.W.4. These suits would clearly establish that the stand taken by the 7th defendant in the additional written-statement that all business are only joint family businesses is nothing but false. In the above said complaints, the 7th defendant never stated that the businesses are joint family businesses. This



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would amply prove the falsity of the case stated in the additional written statement by the 7th defendant.

(vii) The Court below ought to have held that the 3rd respondent has purchased the following properties out of her own funds and that by virtue of Benami Transactions (Prohibition) Act, 1988, the suit is not maintainable in respect of the following properties:

(a) 1/6th share in item 23 of A-schedule purchased under Ex.B.179 to Ex.B.182 dated 27.1.1975.

(b) Item 25 of A-Schedule purchased under Ex.B.90, dated 30.4.1951.

(c) Item 26 of A Schedule purchased under Ex.B.91 dated 12.6.1981.

(d) Item 27 of A Schedule purchased under Ex.B.92 dated 02.07.1952.

(e) Item 28 of A Schedule purchased under Ex.B.93 dated 06.08.1955.

(f) 1/6th share in Upper Clifton and 1/5th share in Lower Clifton Estates in item 29 of A-Schedule



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purchased under Ex.B.355 and Ex.B.356 both dated 24.11.1973.

(g) 83.78 acres in item 1 of C Schedule purchased under Ex.B.94 dated 09.12.1965.

(h) Half share in item 2 of C Schedule purchased under Ex.B.95 dated 01.02.1973.

(i) Half share in items 1 and 2 of F-Schedule purchased under Ex.B.96 and Ex.B.97 dated 21.7.1986.

(j) Item 4 of G Schedule purchased under Ex.B.159 dated 23.12.1985.

(viii) In the instant case having held that the evidence let in by the 7th defendant is not sufficient to decide about the source of consideration, the Court below ought to have rejected the case of benami put forward by the 7th defendant and declared the title of the appellants in the properties purchased by them,

(ix) The Court below ought to have seen that in all revenue records, the properties purchased by the 3rd defendant were always shown as her own separate properties and she has been in continuous possession of the same as absolute owner. The Court below ought to have seen that item 30 of A



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Schedule was purchased by defendants 8, 12, 15 and 17 and later developed into a Coffee plantation by borrowing a sum of Rs.1,10,000 from the State Bank of India, Salem by mortgaged the said properties as evidenced by mortgaged deed marked as Ex.B.410, dated 24.2.1970 and Ex.D.290 to Ex.D.292.

(x) The Court below ought to have seen that after developing item 30 of A schedule as Coffee plantation defendants 8, 12, 15 and 17 started receiving good income from the above said property. The Court below have seen that the 7th defendant, who claims that defendants 3, 6 12,15 and 17 are the Benamidars of the joint family of the 1st defendant and the properties purchased by them are benami for the benefit of the family of first defendant never pleaded and established the basic tests of Benami as laid down by the Hon'ble Supreme Court and this Hon'ble Court in several decisions, vide:

- (1) A.I.R 1974 Supreme Court: 171,
- (2) A.I.R 1980 Supreme Court: 1040,
- (3) A.I.R 1985, Madras 321 at 329(DB).

(xi) The Court below ought to have seen that the note written by the 7th defendant marked as Ex.B.487 and admitted by him in his oral evidence as



D.W.4 would clearly establishes that defendants 31 to 33 had contributed funds for purchasing item 1 of G Schedule.

20. A.S.No.962 of 1995:

(i) The Court below erred in holding that there was a valid partition in the family between the father and 1st and 2nd defendants of the plaintiff as evidenced by Ex.A-24. The Court below ought to have held that the said partition Ex.A-24 was never acted upon and that there was no actual division by metes and bounds, there was also no proper and correct division of the properties and there was also no change of ownership of the properties in the names of the persons to whom the properties were allotted. The Court below failed to note that even in the panchayat and municipal records, the properties continued only in the name of grandfather and taxes are being paid only by the 1st defendant in respect of all the properties on the basis that it was a joint family and there was no division. The Court below failed to note that no significance can be attached to the partnership deeds or the accounts maintained on the basis of their being separate partners and that was only keeping up the not in the partnership and that will not in any manner detract from the correct position that all the family members continued to remain joint. The Court below failed note that the 1st defendant had not let in any satisfactory or acceptable evidence that “Alaviyara” estate, acquired in 1940, 46/117



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is his own property acquired out of his own separate funds. The Court below erred in not drawing the adverse inference against the 1st defendant for not producing or marking the alleged partnership deed dated 24.07.1943. Only the 1947 Partnership Deed (B-18) was produced in Court. The Court below ought to have held that Ex.A-24 was created only to comply with the Business Names Ordinance in Ceylon and there was no actual division of status among the members of the family and only to suit the laws of Ceylon this division document was brought.

(ii) The Court below ought to have held that in any event, after the execution of the Yadast Ex.A2, Ex.B12 there was reunion in the family and this completely wipes out whatever the effect of the partition Ex.B24 is and the subsequent partnership stated to have been entered into between the plaintiff, defendants 1 and 2 and their father. The Court below failed to consider any of the above significant and other important admissions made by the 1st defendant that there was no actual divisions/partition at any time. The Court below failed to consider the effect and use of the clear words “பாகம் பிரித்து கொள்ள வேண்டியது” indication for effecting partition of the family properties and not the words “உலவீனம் செய்து கொள்ள வேண்டியது”, which will be proper words dissolving the firms. This significant aspect of the matter has



been completely lost sight of by the Court below. The Court below ought to have held that at the time of alleged partnership, 2nd defendant was only a minor and there is no proof/claims pleading that it is for the benefit of the minor. The said partnership was never acted upon is also evident from the fact that no property was purchased at any time in the name of the firms or in the name of the Partners in their capacity as partners. The Court below failed to note that the Ex.B.89 to B.241 clearly show that though the “estates” were purchased in the name of the Latchumanan Chettiar or in the name of his sons, all the estates were managed and enjoyed by the father and the sons jointly only the letters Ex.B-195 and B-197 are significant and in these letters, the 1st defendant has given direction to the 2nd defendant regarding kullathachi Boseward and Alivigara Estates.

(iii) The Court below failed to note that on the death of one of the partners, Letchamanan Chettiar, the partnership automatically dissolved and there was no need to file a suit by any party for dissolution. The Court below failed to note that in 1942, there was no unequivocal ‘intention’ for partition or division in status and this is also evident from the facts that the father was suffering from paralysis, the plaintiff had ‘joint’ just then became a major and 2nd defendant was a minor and none of them neither plaintiff nor D-2 were



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married and accordingly, there was really no need for effecting a partition in the family at all. The Court below failed to note that the partition Ex.A-24, was brought about with retrospective effect from 01-04-1941, which is the beginning of the financial year, which clearly shows that it was for particular purposes as claimed by the plaintiff and the 2nd defendant group. The Court ought to have held that the partition was executed only for taxation purposes and to suit then existing laws and the evidence discloses that it was more probable that there was really no partition. The Court below failed to note that the necessary inference against the case of partition have to be drawn there was no change of or transfer of patta or change of ownership of house tax registry after Ex.A-24 till date. The Court below failed to note that there was no payments of kist or house tax on behalf of the firm and the family continued to be joint even after Ex.A-24, and even at the time of Ex.B-14 and Ex.B-15. It is also without significance that there is no reference to Ex.A-24 in the notices A6 and A7 sent by the 1st defendant. The Court below failed to note that though there were then civil proceedings between the plaintiff and the 1st defendant both in Ceylon and India. There was no reference to Ex.A24 in the said proceedings, as admitted by DW1 in his evidence in cross examination dated 15.11.1991, in Sec.5220/B/1973, 5221/B/74, 4331/B/76-A-26 & 27 and O.S.No.1557/71, as per A1 and A23.



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(iv) The Court below failed to note that Maryland Estate was purchased in the names of six persons and even as per the evidence of DW1, 1st defendant's sons had no means or income or separate property at the time Ex.B14(Sale deed for Maryland) and that they are more name lenders, as admitted by DW1 in Ex.B10, Ex.B289 and Ex.B.240. The Court below failed to note that only with the funds provided by Letchumanan Chettiar by withdrawing funds his accounts in "National Greenland Bank" where monies were transferred from Ceylon to his accounts, after obtaining the necessary permission from the exchange Central Authorities the Estate was acquired. The evidence of DW-1 on 15.11.1991 and 18.11.1991 will fully prove and establish the appellant's case.

(v) The Court below ought to held have that a perusal of the evidence of DW1 read with Ex.B189 to Ex.B192 will clearly show that the amounts received by Lakshmana Chettiar from the National Greenland Bank were utilized for purchasing the property covered by Ex.B14. The Court below failed to note that the 1st defendant has no consistent case as to the enjoyment of Maryland Estate. At one place he says that the property was divided into six divisions and converted into a partnership and enjoyed as such later at



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another place, he in his evidence dated 18.11.1991, had stated that till the Receiver was appointed by Court, he was never in management or enjoyment of the said property. The Court below failed to note that the fact that Maryland Estate was only in the custody of 1st, 6th and 7th defendants clearly established that others were not in enjoyment of the same and there was no enjoyment as per Ex.B14 sale deed and the property was only a joint family acquisition and only 1st defendant and this family were enjoying all the incomes therefrom and the real owners were not getting either the properties/benefits therefrom, at any time.

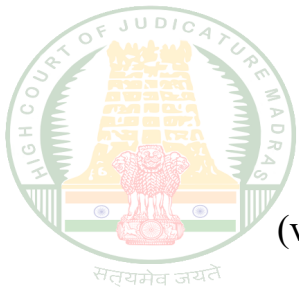
(vi) The Court below has not properly considered or adverted to the evidence of D.W-4 who is the son of the 1st defendant and his admissions. The Court below failed to note that the persons who purchased Maryland Estate and Vasambadi Estate are not identical and if they do not belong to the joint family, as claimed by the appellant, there is really no explanation for the monies of one Estate being spent for the other Estate and vice versa. The Court below failed to consider the important aspect that some persons who are not owners i.e. D6 and D7 were claimed to be managing the Maryland Estate and 1st defendant, who claimed to have purchased A schedule had stated that he has never managed the said estate. If according to the 1st



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defendant, each of the owners paid their own separate funds, for getting their, separate share, there is no justification for 'mingling' the income of one estate with the other. These only indicate that the estates are only owned by the Joint Family and Ex.B14 and Ex.B15 are not the separate purchasers of the various parties in whose names the documents who got executed. The Court below failed to note that even in respect of Vasambadi Estate B-1's father's monies who utilized from the National and Greenlands Bank and Indian Bank Loan was utilised (see also Ex.213 to Ex.244 to Ex.B.203)

(vii) The Court below ought to have held that the evidence of DW1 recorded on 19.11.1991 that no portions of the Letchumanan Chettiar's monies were utilised for acquiring the Vasambadi Estate is clearly false and it is clearly false and it is clearly contrary to the documentary and other evidence, including the admissions of DW-1 on the same date. The Court below failed to note that even in respect of the properties in the name of the members of the 1st defendant's branch, they are only name lenders for the 1st defendant and name of the properties were purchased with the funds of the persons in whose names the properties who purchased and only joint family funds were utilised for purchasing the aforesaid properties.



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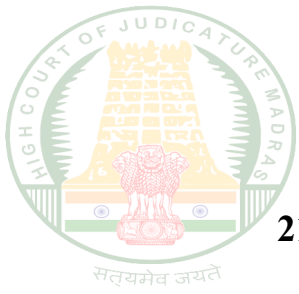
(viii) The Court below failed to note that DW-2, who claimed to dispose on behalf of the other purchasers, however, could not explain any of the affairs of these persons for whose sake he would claim to dispose. The Court below ought to have held that DW-3 is an Auditor and son-in-law of the 1st defendant and only on account of his ill-advice, records have been created by the defendant 1 to defraud the other brother's due share in the family property. The Court below ought to have held that Exs.B94 and B.95 on the face of it are only sham and nominal documents and even PW-4 in his evidence any right or exclusive enjoyment of these properties and neither he nor his mother gave any monies for acquiring the properties covered by the said document. The Court below ought to have held that the evidence of DW-4 clearly establishes that the accounts produced on behalf of the 1st defendant are not true or correct accounts and several lakhs of rupees received by way of income from Maryland and Vasambadi Estates were retained by the 1st defendant and utilised in the starting of money lending business and for acquiring properties in the names of the members of the 1st defendant's family. The Court below ought to have held that the evidence of DW-4 who belongs to the 1st defendant's family fully corroborates the evidence of the plaintiff and the 2nd defendant's branch. The Court below ought to have held that a comparative study of his letter Exs.B.11, B.189 to



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B.249 will establish the point that the 1st defendant is a scheming man who will go to any extent to achieve his objectives and ends and who will go to the extent of suppressing the material facts, when it is inconvenient for him. The Court below ought to have held that there are significant admissions in the letter Ex.B.409 written by defendants 1 to 4 as regard the cheating of some lakhs by the 1st defendant due to his brothers.

(ix) The Court below erred in holding that the plaintiff cannot get relief without specifically asking for the relief of dissolution of the partnership. The Court ought to have held that the Ex.A-57 and Ex.A-58 are genuine documents and they clearly show that the father was really unhappy that the 1st defendant is cheating his other sons. The Court below failed to note that even after Ex.A.24, new power was given by the other members of the family for the management of the partnerships of their personal properties and that only shows that even after 1962, he was only enacting under the earlier power and which was only on the basis that it was and a joint family. The Court below failed to note that Ex.A.2 fully supports the appellant's case for partition of all the properties and the parties treated all the properties and businesses as joint family's only and division-able for partition.



21. A.S.No.113/1993

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(i) The appellants are L.R.M.K.Subramanian Chettiar and others (defendants 5,6,9 to 11, 13,14,16,18 and 19). They belong to the branch of Ramakrishna Chettiar(first defendant). According to these appellants, the trial Court rightly found that the family of the 1st defendant, plaintiff, the 2nd defendant and their father got separated as early as in 1941 as evidenced by Ex.A.24 registered partition deed dated 11.10.1942, that the 1st defendant, plaintiff, the 2nd defendant and their father were doing business only in partnership and that the properties purchased after 1941 are the exclusive properties of the parties in whose names they stand. However :-

(i) the Court below erred in law by holding that the properties purchased by the defendants 1, 3 to 6 and 8 to 19 out of his/her own effort and earnings are the joint family properties of the 1st defendant and therefore, the 7th defendant is entitled to 1/6th share in those properties.

(ii) The Court below grievously erred in law in not properly applying the principles relating to:

- (1) The concept of Hindu undivided family:
- (2) Acquisition of properties by members of the Hindu Undivided family; and
- (3) Holding of ancestral property and self-acquired property by co-parceners in considering the claim of



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partition made by the 7th defendant and this erroneous approach has vitiated the entire judgment.

(iii) The Trial Court ought to have seen that the 7th defendant in paragraph 2 of Ex.A.13, reply notice dated 23.6.1975 has specifically stated that the properties purchased by him with his own funds alone stand in his name in all the relevant records, that it is false to state that any property was purchased by the 1st defendant in his name with any joint family funds and that he is neither a benami holder nor a name lender. Further, the 7th defendant has specifically stated that in none of the properties owned and possessed by him the plaintiff has any right, interest, share or title. This statement would make it clear that the 7th defendant has taken a specific stand as early as in 1975 that the properties purchased in the names of the co-parceners and non-co-parceners in the 1st defendant's family belong to him/her exclusively.

(iv) The Trial Court failed to appreciate that in paragraph 11 of the original written statement filed by the 1st defendant and adopted by the 7th defendant it is specifically stated that the existence of the joint family came to an end in 1941 and any property purchased thereafter, in the names of any of the defendants belongs to him/her exclusively and is not available for

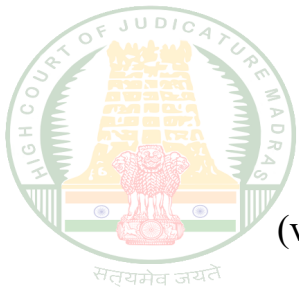
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partition. Further, it is stated in the same paragraph that the allegations contained in paragraph of the plaint that the properties purchased in the names of one or other lady members were acquired from the joint family funds are all joint family properties are not correct. Having specifically admitted that the properties purchased by the defendants subsequent to 1941 belongs to him/her exclusively, the 7th defendant is estopped from making a claim over the exclusive properties of the 1st defendant, 3rd defendant, 4th defendant, 5th defendant, 6th defendant and defendants 8 to 21 and 29 to 33 by taking a totally inconsistent and conflicting stand in the additional written-statement filed in the year 1989 that too 7 years after the 1st written-statement was filed.

(v) The Court below grievously erred in law totally ignoring the material evidence marked as Ex.B.502 and B.503 which are solemn and sworn affidavits of the 7th defendant, in which he has taken a specific stand that several properties detailed therein belong to him and no one else has any claim against them, while in the additional written statement he takes a different stand that all the properties standing in the name of the several defendants viz, 1st defendant and defendants 3 to 21 and 29 to 33 including his are the joint family properties of the 1st defendant.



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(vi) The Court below failed to appreciate that the stand taken by the seventh defendant in the additional written statement that he has no separate properties and that 11 the partnership firms and properties standing in the name of defendants 1, 3 to 21 and 29 to 33 are all nothing but joint family businesses and properties of the first defendant is falsified by his specific admissions made in Ex.B.502 and B.503 sworn affidavits in which his specific case was that he is the co-owner of Vasambadi Estate (C Schedule Item-1); Upper Cliften Estate (Part of item 29 of A Schedule) and sole proprietor of Narayanan Estate (Part of Item 30 of A Schedule) wherein he totally owns about 100 acres of coffee lands that he is a partner and managing partner of various partnership firms and that he owns 1/6th share in suit items 22, 23 and 24 of A Schedule and in suit Item-3 of F. Schedule.

(vii) The Court below failed to take into account the admission of the 7th defendant made in the counter affidavit filed in I.A.No.440 of 1982 that the suit B-Schedule properties are the self-acquired properties of the persons in whose name the properties stand.

(viii) The Court below failed to appreciate that the 7th defendant accepting the businesses as partnership business and not joint family business filed 3 suits in O.S.No.505/87, 519/87 and 529/87 in Sub Court, Salem for 58/117



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mandatory injunction that the other partners should hand over management and possession of the firms to him and he should be re-instated as Managing Partner. The plaints in those suits were marked as Exs.B.499 to 501. The 7th defendant has clearly admitted the filing of the suit in his oral evidence as D.W.4. These suits would clearly establish that the stand taken by the 7th defendant in the additional written-statement that all the businesses are only joint family business is nothing but false. In the above said plaints the 7th defendant never stated that the businesses are joint family businesses. This would amply prove the falsity of the case stated in the additional written-statement by the 7th defendant.

(ix) The Court below ought to have seen that the 7th defendant as D.W.4 has admitted that he has sold shares held by him in Parkside Explosives and Industries Limited which according to him are also joint family properties.

(x) The Court below ought to have seen that the 7th defendant has categorically admitted in his oral evidence and in Ex.B.504 that his wife has purchased 13.49 acres in Puliur Village in Yercaud under 4 sale deeds, two dated 14.08.1989 and the other dated 28.08.1989 for a sum of Rs.1,48,200/- and 1.02 acres of land and building in S.No.49/2 in Convent Road, Yercaud

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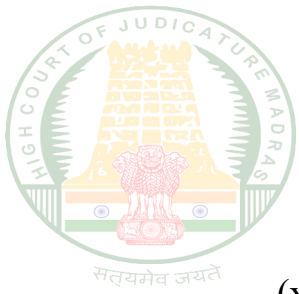


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under sale deeds dated 04.01.1989 and 13.3.1989 for which he has provided entire sale consideration raised out of the properties standing in his name which according to him are joint family properties in nature.

(xi) The Court below failed to consider that the burden is upon the person who claims the property as joint family property to specifically plead the particulars and details and establish the same by adducing necessary evidence.

(xii) The Court below ought to have held that in suit item 13 of A-Schedule, the 7th defendant cannot claim a share as the said property originally belonged to the mother of defendants 1 and 2 and plaintiff and after her death the first defendant succeeded to 1/3rd share in that property as heir of his mother. The property inherited from the mother cannot be treated as a joint family property. The Court below ought to have seen that the 1st defendant is assessed to Income Tax both in his individual capacity as well as in the status of Kartha of Hindu Undivided Family. For instance for the assessment year 1959-60 he has assessed both in his individual capacity and as Kartha of Hindu undivided Family as evidenced by Ex.B.46 and Ex.B.49. This would clearly establish that the 1st defendant had a separate source of income apart from managing the Hindu Undivided Family.



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(xiii) The Court below ought to have seen that the 1st defendant is the Kartha of his family consisting of himself, D4, D5, D6, D7, D8 and D19 and that he had separate source of income to enable him to purchase suit items 17, 20 of A Schedule, the 1/6th share in item 24 of A Schedule, half share in items 1 and 2 of F Schedule, 1/6th share in item 3 of F Schedule; items 3, 5, 6 and 7 of G Schedule and item 42 of E Schedule are to be given to this appellant.

(xiv) The Court below having rightly found in issues 13 and 16 that the suit items 1 to 4 of B Schedule and item 10 of C Schedule were purchased by the individual sharers out of their own funds; borrowals and gifts received and that those properties belong exclusively to the individuals in whose names they stand erred in law in ultimately holding that Lots A, B & F of items 1 of B Schedule and items 2 to 4 of B Schedule belong to the 1st defendant's joint family and that the 7th defendant is entitled to a 1/6th share therein.

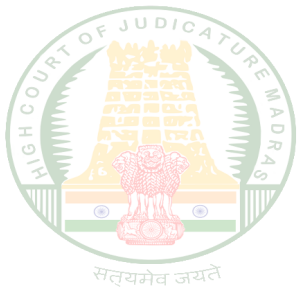
(xv) Having rightly held on issues 13 and 16 that suit B Schedule and item 1 of C Schedule properties were purchased by different sharers out of borrowals and gifts and also in rightly decreeing that item 1 of C Schedule



belongs to the different sharers. The Court below grievously erred in law in adopting a different yard stick in not ultimately holding that B Schedule property also belongs to the different sharers in whose name it stands, and in granting 1/6th share to the 7th defendant on the ground that 'B' and 'F' of item 1 of B Schedule and items 2 to 4 of 'B' Schedule is the joint family property of the first defendant.

(xvi) The Court below having rightly found on issues 13 and 16 that the husband of the 17th defendant and father of defendants 18 and 19 borrowed funds and received gifts to enable him to purchase 1/6th share in suit items 1 to 4 of B Schedule erred in law in ultimately holding that Lot 'F' of item 1 of B Schedule (allotted to him in Sub Division among the erstwhile partners of Marylands Estate) and his share in items 2 to 4 of B Schedule are the joint family properties of the 1st defendant.

(xvii) The Court below ought to have held that the following circumstances would clearly establish that apart from the fact that the husband of the 17th defendant purchased his 1/6th share in B Schedule properties out of borrowals and gifts the said properties were always enjoyed and treated by him as his exclusive properties. :-



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(a) Copy of application in Form-1 of the Indian Partnership Act 1938 marked as Ex.B.51 filed by the 6 partners of Maryland Estates filled up in the hand of the 2nd defendant to register the firm of Maryland Estates with the Registrar of Firms, Madras.

(b) Agricultural Income Tax Assessment order relating to the firm of Maryland Estates marked as Ex.B.52 for the assessment year 1959-60.

(c) Ex.B.36 notice dated 14.4.1960 issued by the Plaintiff to the Agricultural Income Tax Officer stating that the firm of Maryland Estates was dissolved since 30.3.1960.

(d) Ex.B.54 order dated 24.4.1963 passed in Appeal Nos.21 to 26 of 1963 by the Madras Agricultural Income Tax Appellate Tribunal allowing the appeals preferred by the partners of the Maryland Estates regarding the allowance of interest on capital borrowed for purchase of the B Schedule property as a deduction from Agricultural income.

(f) Ex.B.55 order of the Agricultural Income Tax Officer, Salem, dated 25.2.1964 deleting the firm M/s. Maryland Estates from the General Index Register (GIR) accepting the dissolution of the firm of



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Maryland Estate with effect from the assessment year 1961-1962.

(g) Wealth Tax Assessment order of husband of the 17th defendant for the assessment year 1970-71, 1971-1972, 1972-73 and 1978-79 marked as Ex.B.363, Ex.B.364, Ex.B.366 and Ex.B.365.

(xviii) The Court below ought to have seen that after the death of the husband of 17th defendant lot 'F' of item 1 of B Schedule and 1/6th share in items 2 to 4 of B Schedule and 1/12th share in item 1 of C Schedule devolved upon defendants 18 and 19 absolutely and they have been assessed by the Agricultural Income Tax Department as to the lands inherited by them from their deceased father as evidenced by Ex.B.370 to Ex.B.373. Thus it is established that defendants 18 and 19 have their separate source of income ever since 1968. The subsequent purchases made by them. viz. 1/6th share in item 23 of A Schedule and 1/6th share in item 3 of F Schedule should be held as their separate properties purchased out of their separate income and not as joint family properties of the 1st defendant.

(xix) The Court below ought to have seen that Ex.B.368 order of the Income Tax Department for the assessment year 1979-80 passed in respect of

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the assessment of the husband of the 17th defendant would clearly prove that the family of defendants 17 to 19 had a total income of Rs.1,849,989 per annum. This would amply prove the sufficient source of income of the family of the defendants 17 to 19 and income accrued to them every year which enabled them to purchase properties of their own. The Learned Subordinate Judge ought to have seen that apart from the fact that the consideration was paid only by the 4th defendant for purchasing his 1/6th share in B-Schedule properties the said property was always enjoyed by the 4th defendant as his exclusive property and the following circumstances would establish the same.

(xx) The Court below ought to have seen that once it is established that the 4th defendant had more than sufficient income to purchase his properties then the properties purchased by him viz. 1/6th share in item 23-of A-Schedule purchased under Ex.B.179 to Ex.B.182 1/6th share in item 24 of A. Schedule purchased under Ex.B.86 to Ex.B.88 are his separate properties and cannot be held to be the joint family property of the 1st Defendant. Having rightly held on issue Nos.13 and 16 the 2/12th share in item 1 of C. Schedule (Vasambadi Estate) was purchased by the 5th defendant out of his own borrowals and gifts received, the Court below ought to have held that subsequent purchases made by the 5th defendant out of his own earnings are his separate properties and the 7th defendant cannot claim a share therein.

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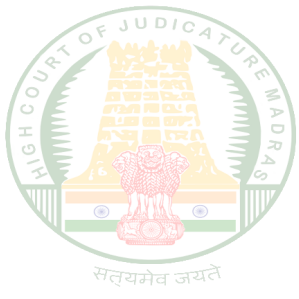
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(xxi) The Court below ought to have seen that the 5th defendant along with other partners started a partnership business in banking viz., Sri Rama Village Bankers, Salem (item 32 of E Schedule) in 1966 and he has been earning income therefrom ever since 1966 as evidenced by Ex.B.282. The Court below ought to have seen that the 5th defendant apart from having agricultural income from item-1 of C Schedule was also receiving income from partnership firms (items 32 and 33 of E Schedule) and the following documents would disclose his separate income from items 32 and 33 of E Schedule.

(a) Ex.B.492 current account copy for the year ended 31.03.1973 in respect of item 32 of E Schedule signed by the 7th defendant and admitted by him as D.W.4 in his oral evidence would disclose an annual share income of Rs.6,424.97 to the 5th defendant.

(b) Ex.B.486 profit and loss account of item-32 of E Schedule for the assessment year 1979-80 signed by the 7th defendant and admitted by him as D.W.4 would disclose a share income of Rs.9,107/- to the 5th defendant.

(c) Ex.B.494 profit and loss account and balance sheet for the assessment year 1977-78 in respect of item



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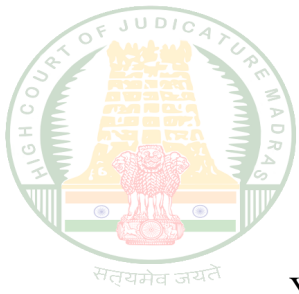


32 of E Schedule signed by the 7th defendant and admitted by him in his oral evidence as D.W.4 would disclose an annual share income of Rs.5,951/-.

(xxii) Having rightly held on issue No.11 that the transfers in favour of defendants 1, 3 to 7, 9,13,16, 18, 19 to 21, 26, 27 and 28 are not nominal as contended by the plaintiff in para 13 in the plaint, the Court below ought to have held that the properties in the name of the defendants 13, 14 and 16 are their separate properties. The Court below ought to have held that the properties (a portion in Lot A of item 1 of B Schedule) gifted to defendant 13, 14 and 16 and one V.Meenakshi (not a party to the suit) under Ex.B.108 and Ex.B.109, are their separate properties and they cannot be held to be the joint family properties of the 1st Defendant.

(xxiii) The Court below ought to have held that the properties (a portion of Lot B of item 1 of B Schedule) sold by the 4th defendant to defendants 13 and 16 under Ex.B.173 and Ex.B.174 are their separate properties and that they cannot be held to be the joint family property of the 1st defendant. The Court below ought to have seen that ever since the date of transfer, the defendants 13, 14, and 16 have been enjoying their respective properties in item-1 of B Schedule as their separate properties and the following circumstances would establish the same.

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(a) Ex.B-322 order of Agricultural Income Tax Officer. Yercaud for the assessment year 1981-82 clearly specifies the extent of land held by 10th defendant in Yercaud.

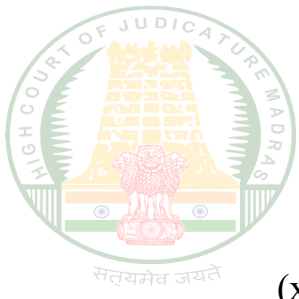
(b) Wealth tax assessment order marked as Ex.B.321 would establish that the properties transferred in item 1 of B Schedule have been treated and enjoyed by the 13th defendant as his separate properties and that he has been admitting the same in his wealth tax returns.

(c) Income Tax Assessment order marked as Ex.B.320 would disclose that the income from the properties transferred in the name of the 13th defendant has been received only by the 13th defendant which income he has been showing in his income tax returns.

(d) The Agricultural Income Tax Order, marked as Ex.B.325 would prove that the properties transferred to 16th defendant in Yercaud in suit B Schedule properties has been enjoyed by him as his separate properties ever since the date of transfer.

(e) Wealth Tax order marked as Ex.B.324 would also prove that the 16th defendant is treating the properties transferred to him as his separate properties and has been admitting the same in his wealth tax returns.

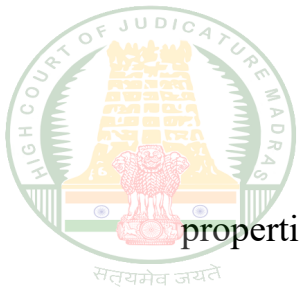
(f) The order of the Income Tax Department marked as Ex.B-323 would prove that the 16th defendant has admitted that he has been receiving the income from the properties transferred to his name in item 1 of B Schedule as his separate income.



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(xxiv) Having rightly held that in as far as the firms and private limited companies which are not parties to the suit, the claim of the parties for partition cannot be gone into in this suit, the Court below erred in law in ultimately decreeing the item 33 of A-Schedule belongs to plaintiff while if actually belongs to a limited company which is not a party to the suit. The Court below ought to have seen that item 33 of A Schedule has also been shown as item 37 of E Schedule. While the claim of the plaintiff second defendant's branch and 7th defendant in respect of item 37 of E Schedule was rejected on the ground that the claim of the parties cannot be gone into in respect of firms and private limited companies and their properties.

(xxv) The findings of the Court below in additional issue No.3 that G-Schedule properties are all joint family properties of the 1st defendant and therefore the 7th defendant is entitled to 1/6th share is clearly erroneous and against evidence. The Court below ought to have seen that it cannot be said that merely because the family of the 1st defendant is joint, the properties purchased by several members of the family are the joint family properties and there is no such presumption in the eye of law. The Court below having referred to the important aspect that the 7th defendant has refused to admit that the properties standing in the name of his wife are all joint family



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properties of the 1st defendant erred in law in holding that the properties purchased by defendants 3, 8, 12, 15 and 17 are the joint family properties of the 1st defendant.

(xxvi) Clause 26 of the decree in respect of items 8 to 11 of G Schedule is against the ultimate conclusions reached by the Court below in the Judgment in the suit. In the Judgment, the Court below has specifically held that items 8 to 11 of G Schedule are partnership firms and therefore the claims of the parties cannot be decided in the partition suit. But Clause 26 of the decree contains the word 'Koottu Kudumba Niruvanam' instead of the word 'Kootu Niruvanam' as found in the judgment. The above mistake in the decree should be amended. The Learned Judge grievously erred in law in granting the cost of Rs.43,605.60 to the plaintiff and Rs.29,140.50 to the 2nd defendant particularly when all the claims and contentions of the plaintiff and 2nd defendant had been rejected by the court in toto.

22. A.S.No.228 of 1993

(i) The appellant is L.Ramakrishnan Chettiar, who is the first defendant in the suit. In his grounds of appeal he claims that,

The trial Court rightly found that the family of the 1st defendant, Plaintiff, the 2nd defendant and their father got separated as early as in 1941 as



evidenced by Ex.A.24 registered partition deed dated 11.10.1942, that the 1st

Defendant, Plaintiff, the 2nd defendant and their father were doing business only in partnership and that the properties purchased after 1941 are the exclusive properties of the parties. The Court below erred in law in holding that the properties purchased by the defendants 1, 3 to 6 and 8 to 19 out of his/her own effort and earnings are the joint family properties of the 1st Defendant and therefore, the 7th defendant is entitled to 1/6th share in those properties.

(ii) The Learned Subordinate Judge grievously erred in law in not properly applying the principles relating to:

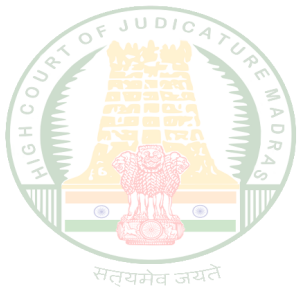
(1) The concept of Hindu Undivided family;

(2) Acquisition of properties by members of the Hindu Undivided family; and

(3) Holding of ancestral property and self-acquired property by co-parceners in considering the claim of partition made by the 7th defendant and this erroneous approach has vitiated the entire judgment.

(iii) The Court below erred in law in brushing aside the material evidence and the vital aspect viz., the stand taken by the 7th defendant in:

(1) The suit reply notice marked as Ex.A.137.



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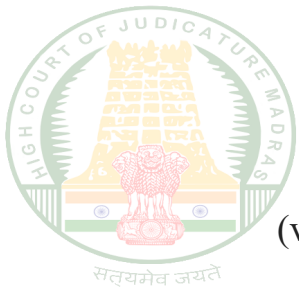
(2) First Written-Statement filed by the 1st Defendant and adopted by the 7th Defendant.

(3) Counter affidavit filed by the 7th Defendant in I.A.No.440/82 regarding B-Schedule properties.

and

(4) Two solemn and sworn affidavits of the 7th defendant marked as Exs.B.502 and B.503 which would clearly establish that the specific stand taken by the 7th defendant is that the properties purchased after 1941 in the names of any of the defendants belongs to him/her exclusively and is not available for partition.

(iv) The Trial Court ought to have seen that the 7th Defendant in paragraph 2 of Ex.A.13, reply notice dated 23.06.1975 has specifically stated that the properties purchased by him with his own funds alone stand in his name in all the relevant records, that it is false to state that any property was purchased by the 1st Defendant in his name with any joint family funds and that he is neither a benami holder nor a name lender. Further the 7th defendant has specifically stated that in none of the properties owned and possessed by him the plaintiff has any right, interest, share or title. This statement would make it clear that the 7th Defendant has taken a specific stand as early as in 1975 that the properties purchased in the names of the co-parceners and non-co-parceners in the 1st Defendant's family belong to him/her exclusively.



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(v) The Trial Court failed to appreciate that the original written-statement filed by 1st defendant and adopted by the 7th defendant it is specifically stated that the existence of the joint family came to an end in 1941 and any property purchased thereafter in the names of any of the defendants belong to him/her exclusively and is not available for partition. Further, it is stated that the allegations in the plaint that the properties purchased in the names of one or other lady members were acquired from the joint family funds are all joint family properties are not correct. Having specifically admitted that the properties purchased by the defendants subsequent to 1941 belongs to him/her exclusively, the 7th defendant is estopped from making a claim over the exclusive properties of the 1st defendant, 3rd defendant, 4th defendant, 5th defendant, 6th defendant and defendants 8 to 21 and 29 to 33 by taking a totally inconsistent and conflicting stand in the additional written-statement filed in the year 1989 that too 7 years after the 1st written-statement was filed.

(vi) The Court below grievously erred in law in totally ignoring the material evidence marked as Ex.B.502 and B.503 which are solemn and sworn affidavits of the 7th defendant, in which he has taken a specific stand that several suit properties detailed therein belong to him and no one else has any claim against them, while in the additional written-statement he takes a

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different stand that all the properties standing in the name of the several defendants viz., 1st defendant and defendant's 3 to 21 and 29 to 33 including his are the joint family properties of the 1st defendant.

(vii) The Court below failed to appreciate that the 7th defendant accepting the businesses as partnership business and not Joint family business filed 3 suits in O.S.Nos.505/87, 519/87 and 529/67 in Sub Court, Salem for mandatory injunction that the other partners should hand over management and possession of the firms to him and he should be re-instated as Managing Partner. The plaints in those suits were marked as Exs.B.499 to 501. The 7th defendant has clearly admitted the filing of the suits in his oral evidence as D.W.4. These suits would clearly establish that the stand taken by the 7th defendant in the additional written-statement that all the businesses are only joint family business is nothing but false. In the above said plaints the 7th defendant never stated that the businesses are joint family businesses. This would amply prove the falsity of the case stated in the additional written-statement by the 7th defendant.

(viii) The Court below totally failed to consider the concept of self-acquired property of individual co-parceners, from a correct stand point and



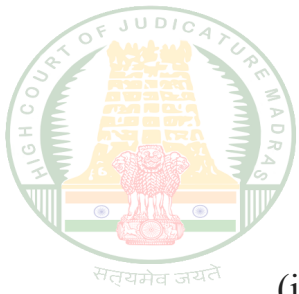
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proper perspective. The Court below ought to have seen that there is no presumption that merely because the family is joint, the properties purchased by individual co-parceners are also joint family properties. The Court below failed to consider that the burden is upon the person who claims the property as joint family property to specifically plead the particulars and details and establish the same by adducing necessary evidence. The Court below ought to have seen that, 1st defendant has no objection in giving a share to the 7th defendant in the following properties even though they were purchased by him in his name as he was treating and enjoying the same as joint family properties.

(1) Items 14, 16, 18, 19, 21 of A-Schedule purchased under sale deeds and marked as Ex.B.76, dated 13.1.1942; Ex.B.77 dated 21.11.1956; Ex.B.79 dated 12.9.1960; Ex.B.80 dated 24.6.1959; Ex.B.82 dated 25.10.1948; Ex.B.83 dated 6.12.1948; Ex.B.84 dated 11.5.1949 and Ex.B.85 dated 6.6.1949;

(2) Lot-A of item 1 of B-Schedule exclusive of the extent gifted under Ex.B.108 dated 18.3.1974 to the 13th and 16th defendants and Ex.B.109 dated 7.6.1980 to the 14th defendant and one V.Meenakshi, who is not a party to the suit;

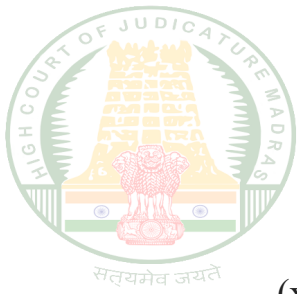
(3) 26 acres of Coffee land out of 581,61 acres in item 1 of C Schedule along with 1/12th share in Bungalow, buildings and machinery in item-1 of C-Schedule.



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(ix) The Court below ought to have held that in suit item 13 of A Schedule, the 7th defendant cannot claim a share as the said property originally belonged to the mother of defendants 1 and 2 and plaintiff and after her death the first defendant succeeded to 1/3rd share in that property as heir of his mother. The property inherited from the mother cannot be treated as a joint family property. The Court below ought to have seen that the 1st defendant is the Kartha of the family consisting of himself, D4, D5, D6, D7, D18 and D19 and that he had separate source of income to enable him to purchase suit items 17, 20 of A-Schedule; 1/6th share in item 24 of A-Schedule half share in items 1 and 2 of F-schedule, 1/6th share in item 3 of F-Schedule; items 3, 5, 6 and 7 of G-Schedule and item 42 of E-Schedule.

(x) The Court below having rightly found in issues 13 and 16 that the suit items 1 to 4 of B-Schedule and item 1 of C-Schedule were purchased by the individual sharers out of their own funds; borrowals and gifts received and that those properties belong exclusively to the individuals in whose names they stand erred in law in ultimately holding that Lots A, B & F of item-1 of B Schedule and items 2 to 4 of B-Schedules belong to the 1st defendant's joint family and that the 7th defendant is entitled to a 1/6th share therein.



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(xi) The trial Court rightly held on issues 13 and 16 that suit 'B' Schedule and item-1 of C-Schedule properties were purchased by different sharers out of borrowals and gifts and also in rightly decreeing that item-1 of C-Schedule belongs to the different sharers. The Court below grievously erred in law in adopting a different yard stick in not ultimately holding that schedule properly also belongs to the different sharers in whose name it stands, and in granting 1/6th share to the 7th defendant on the ground that Lots A, B and F of item-1 of B-Schedule and items 2 to 4 of B-Schedule is the joint family property of the first defendant.

(xii) The Court below having rightly found on issues 13 and 16 that he husband of the 17th defendant and father of defendants 18 and 19 borrowed funds and received gifts to enable him to purchase 1/6th share in suit items 1 to 4 of B-Schedule erred in law in ultimately holding that Lot-F of item 1 of B Schedule (allotted to him in Sub Division among the erstwhile partners of Marylands Estate) and his share in items-2 to 4 of B Schedule are the joint family properties of the 1st Defendant.

(xiii). The Court below ought to have seen that after the death of the husband of 17th defendant Lot F of item 1 of B Schedule and 1/6th share in



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items 2 to 4 of B-Schedule and 1/12th share item 1 of C.Schedule devolved upon defendants 18 and 19 absolutely and they have been assessed by the Agricultural Income Tax Department as to the lands inherited by them from their deceased father as evidenced by Exs.B.370 to B.373. Thus, it is established that defendants 18 and 19 have their separate source of income ever since 1968. The subsequent purchases made by them viz. 1/6th share in item 23 of A-Schedule and 1/6th share in item 3 of F-Schedule should be held as their separate properties purchased out of their separate income and not as joint family properties of the 1st defendant.

(xiv). The Court below ought to have seen that Ex.B.368 order of the Income Tax Department for the assessment year 1979-80 passed in respect of the assessment of the husband of the 17th defendant would clearly prove that the family of defendants 17 to 19 had a total income of Rs.1,49,989/- per annum. This would amply prove the sufficient source of income of the family of the defendants 17 to 19 and income accrued to them every year which enabled them to purchase properties of their own.

(xv). The Court below having rightly considered the evidence of P.W.1 who clearly admits that the 4th defendant had borrowed money for the purchase of his share in B-Schedule erred in law in ultimately holding that

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Lot B of item 1 of B-Schedule and the 1/6th share of the 4th defendant in items 2 to 4 of B-Schedule are the joint family properties of the 1st defendant.

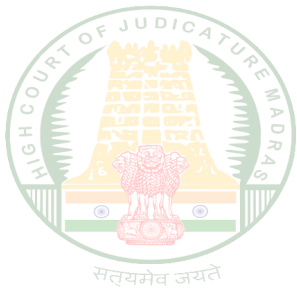
The Court below ought to have seen that apart from the fact that the consideration was paid only by the 4th defendant for purchasing his 1/6th share in B-Schedule properties the said property was always enjoyed by the 4th defendant as his exclusive property and the following circumstances would establish the same.

(a) Copy of application in Form-I of the Indian Partnership Act, 1938 marked as Ex.B.51 filed by the 6 sharers of Maryland Estates filled up in the hand of the 2nd defendant to register the firm Mary Land Estates with the Registrar of firms Madras.

(b) Ex.B.5 partnership deed dated 27.8.1957 entered into between the 6 sharers of B-Schedule property.

(c) Agricultural Income Tax Assessment order relating to the firm of Maryland Estates marked as Ex.B.52 for the assessment year 1959-60.

(d) Ex.B.6 Notice dated 14.4.1960 issued by the plaintiffs to the Agricultural Income Tax Officer stating that the firm of Maryland Estates was dissolved since 30.3.1960.



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(e) Ex.B.54 order dated 24.4.1963 passed in Appeal Nos.21 to 26 of 1963 by the Madras Agricultural Income Tax Appellate Tribunal allowing the appeals preferred by the partners of the Maryland Estates regarding the allowance of interest on capital borrowed for purchase of the B-Schedule property as a deduction from Agricultural Income.

(f) Ex.B.55 order of the Agricultural Income Tax Officer, Salem dated 25.2.1964 deleting the firm M/s.Maryland Estates from the General Index Register (GIR) accepting the dissolution of the firm of Maryland Estates with effect from the assessment year 1961-62.

(g) The Wealth Tax assessment orders relating to the Assessment year 1970-71, 1971-72 and of the 4th defendant marked as Ex.B.386 to B.388 showing Lot B of item 1 of B Schedule and 1/6th share in items 2 to 4 of B Schedule and 1/12th share in item-1 of C-Schedule as his exclusive property.

(h) Ex,B.390 and B.391 orders of Agricultural Income Tax Officer for the assessment year 1984-85 shoving that the above property was held exclusively by the 4th defendant and his son the 9th defendant.

(xvi) The Learned Court below ought to have seen that the properties acquired by the 5th defendant are his self-acquired properties and the 7th

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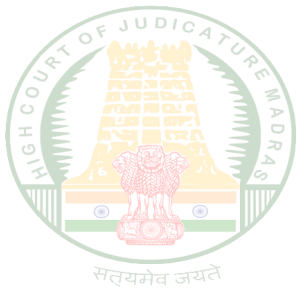


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defendant cannot claim those properties as joint family properties of the 1st defendant and claim a 1/6th share therein. The Court below ought to have seen that Ex.B2 account extract written by the Plaintiff would clearly establish that the 5th defendant had a deposit of Rs.32,000/- with SP.RM.L.Firm Nattarasankottai prior to the purchase of item 1 of C-schedule.

(xvii) The Court below ought to have seen that the 5th defendant along with other partners started a partnership business in banking viz. Sri.Rama Vilas Bankers, Salem (item 32 of E-Schedule) in 1966 and he has been earning income therefrom ever since 1966 as evidenced by Ex.B.282. The Court below ought to have seen that the 5th defendant apart from having agricultural income from item 1 of C Schedule was also receiving share income from partnership firms (items 32 and 33 of E Schedule) and the following documents would disclose his separate income from items 32 and 33 of E-Schedule.

(a) Ex.B.492 current account copy for the year ended 31.03.1973 in respect of item 32 of E-Schedule signed by the 7th defendant and admitted by him as D.W.4 in his oral evidence would disclose an annual share income of Rs.6,424.97 to the 5th defendant.



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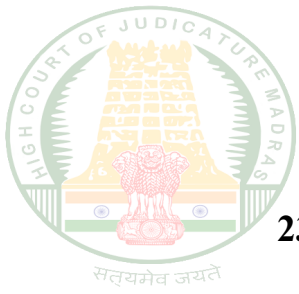


(b) Ex.B.486 profit and loss account of item 32 of E-schedule for the assessment year 1979-1980 signed by the 7th defendant and admitted by him as D.W.4 would disclose a share income of Rs.9,107/- to the 5th defendant.

(c) Ex.B.494 profit and loss account and balance sheet for the assessment year 1977-1978 in respect of item 32 of E Schedule signed by the 7th defendant and admitted by him in his oral evidence as D.W.4 would disclose an annual share income of Rs.5,951/-.

(xviii) The Court below ought to have seen from the above documents that the 5th defendant had enormous sources of income to enable him to purchase 1/6th share in items 23 and 24 of A Schedule for a sum of Rs.50,000/-. The Court below ought to have seen that it cannot be said that merely because the family of the 1st defendant is joint, the properties purchased by several members of the family are the joint family properties and there is no such presumption in the eye of law.

(xix) The Court below having referred to the vital documents Ex,B.502 and Ex.B.503 viz., sworn affidavits of the 7th defendant erred in law in not giving effect to those documents in arriving at his ultimate conclusions.



23. A.S.No.605 of 1993

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This appeal is filed by L.K.N.Lakshmanan @ Manickam Chettiar on the ground that the trial Court failed to see that there was absolutely no basis to arrive at the conclusion that there was partition as per Ex.A.24. The trial Court erred in relying upon Ex.B.18 to show that there was partition as per Ex.A.24. The trial Court failed to see that it was normal in any trading family to enter into such agreements in order to avoid the statutory restrictions imposed thereon. The trial Court failed to see that the plaintiff and DW2 faithfully signed Ex.A24 and B18 as required by D1 as there was no reason to refuse since the said documents were never intended to be acted upon. The trial Court failed to see that no body denied the existence of Ex.A24 and B18 and that there were regular accounts maintained for the firm and that as a matter of fact, the said documents were acted upon. The trial Court failed to see that the documents relied upon by the plaintiff clearly established that Ex.A24 and B18 were never acted upon. The trial Court erred in holding that the plaintiff failed to establish that there was a joint family in existence. The trial Court erred in law in placing reliance on the Income Tax returns to arrive at the conclusion that there was severance of joint family. The trial Court erred in holding that the first defendant did not act as the agent of Lakshmanan Chettiar after 1962. The Trial Court erred in holding that it had



no jurisdiction to determine the dispute relating to the business at Ceylon.

The Trial Court erred in holding that the properties purchased in the name of family members were not purchased for and on behalf of the joint family. The trial Court erred in holding that the first defendant was not liable to render accounts from 1935 in respect of entire suit property. The trial Court erred in holding that items 41 to 53 and 56 to 59 in 'E' schedule in the plaint were not joint family properties. The trial Court having found that till the death of Lakshmanan Chettiar, he had those valuable properties and when it is so clear from the evidence of DW-5 that the first defendant had them after his father's death, erred in holding that they were not in existence merely on the ground that DW-5 was not able to give the value of the those jewels.

24. A.S.No.825 of 1993

(i) This appeal has been filed by L.Subramania Chettiar on the ground that the learned Subordinate Judge erred in holding that the partition dated 11.10.1943 under Ex.A24 is a true partition and that it is not a nominal one. His reasons therefor are erroneous and unsustainable. The learned Subordinate Judge erred in holding that the partnership deed dated 30.06.1943 is not a nominal deed but it was acted upon by the parties. His reasons therefore are erroneous and unsustainable. The learned Subordinate



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Judge failed to see that Ex.A24 partition was never given effect to and the parties always continued as joint family and acquired properties from the income derived from the business and properties owned by the joint family. The learned Subordinate Judge erred in holding that the income derived by the family is not joint family income but the income of the partnership business.

(ii) The learned Subordinate Judge erred in not advertng to the various documents produced by the plaintiff and the other defendants which would clearly establish that Ex.A-24 was never acted upon and the properties owned by the joint family was being managed either by the father or by the first defendant as the Manager of the joint family. The learned Subordinate Judge failed to note that the subsequent dealings and conduct of the parties are inconsistent with the case of partition pleaded by the first defendant and that would only show that the said partition was not given effect to or acted upon. The learned Subordinate Judge having seen that the 2nd defendant was a major on the date when Ex.A24 was executed and the deed was not signed by him but he was shown as a minor represented by his father. The learned Subordinate judge ought to have therefore held that Ex.A24 is not a valid partition and his inclusion that the 2nd defendant cannot question A24 without



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seeking to set aside the same is unsustainable and contrary to law. The learned Subordinate Judge failed to see that Ex.A24 is invalid and was not acted upon and therefore there is no need to have the same set aside.

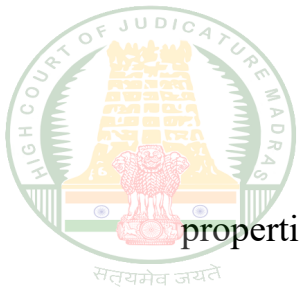
(iii)The Court below was in error in relying upon the fact that the plaintiff had written accounts Ex.B1, B2 for coming to conclusion that the partition under Ex.A24 is true and the parties were governed by the partnership formed in the year 1943. The learned Subordinate Judge failed to note that from the contents and tenor of the letters produced by the plaintiff it is clear that the family continued to be joint, that there was no partition and that the first defendant was in management and control of the properties. The Court below ought to have therefore held that the first defendant is liable to account to the other coparceners. The learned Subordinate Judge erred in assuming that there was a partition in the year 1942 by merely relying on the assessment orders passed by the Income Tax Authorities and failed to note that the plaintiff's case itself is that the document came to be executed only for tax purposes. The Court below failed to see that the first defendant, who is always in control and management of the entire family business and the properties, is in the position of a trustee and a manager and that therefore, it is for him to establish that the transfers effected in the name of the various



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defendants are real and for valid consideration. The first defendant had miserably failed to prove that the transfers in the name of various defendants as mentioned in para 1 of the plaint are real or for valid consideration. The learned Subordinate Judge ought to have therefore found issue No.11 in favour of the plaintiff. The learned Subordinate Judge erred in misreading the contents of the Ex.A2 and erred in observing that there is no recitals in it referring to the business and properties purchased with the income of the business. The learned Subordinate Judge erred in holding that items 1 & 2 in 'D' schedule are not available and the said conclusion is without any basis. The learned Subordinate Judge ought to have therefore granted the relief in respect of entirety of 'D' schedule properties. The Court below erred in holding that 'B' & 'C' schedule properties were purchased out of the income from the business and therefore, they cannot be treated as joint family properties.

(iv)The Court below failed to see that even though entries are made in the books of accounts indicating that the purchase price was contributed by various members, they were only book entries made by the first defendant while managing the affairs of the family. The learned Subordinate Judge ought to have therefore ignored the entries in the accounts and held that the



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properties were purchased only by the joint family and not from out of the income of partnership business. The Court below failed to see that the division of the Vasambadi estate into 12 units and Maryland into 6 units was made only for the purpose of agricultural income tax and the said vision will not change the character of the properties. The Court below failed to see that the burden is on the first defendant to establish that C and D schedule properties are his separate properties and that of the members of his family and as the first defendant had failed to establish the some the properties are available for partition as claimed by the plaintiff. The learned Subordinate Judge failed to see that the entire acquisition of properties in the name of plaintiff and the defendants were made only out of joint family income, that the first defendant, who was the manager of the relevant point of time, have been acquiring the properties in the name of different individual members of the family (junior male and female members) and continuance of the joint family and possession of these properties by the joint family treating them as joint family properties treating there as joint family properties, prove that the suit properties are joint family properties. The members in whose name the properties were purchased are in possession of the trustees and they cannot claim any exclusive right over the said properties. The Court below ought to have hold that the properties mentioned in 'F' schedule are joint family



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properties having been purchased from joint family funds or from the income derived from the joint family properties.

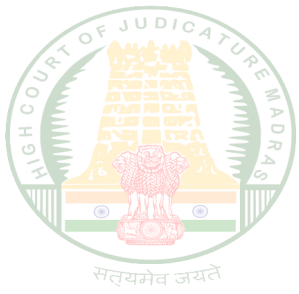
25. The points for determination:-

(i) Whether the Trial Court erred in holding that Ex.A24 is a valid partition and the 2nd defendant cannot question, Ex.A24, without seeking to set aside the same is, sustainable in law ?.

(ii) Whether the Court below was right in holding, Ex.A24 is valid and was acted upon?

(iii) Whether the contents and tenor of the letters produced by the plaintiff taken as proof for the fact that the family continued to be joint, that there was no partition and that the first defendant was in management and control of the properties, discarding the partnership deeds and income tax returns and other documents?

(iv) Is the Trial Court erred in holding that the properties purchased in the name of family members after the family partition in the year 1941, were not purchased for and on behalf of the joint family?



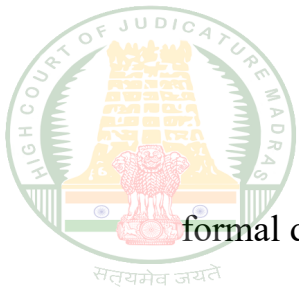
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(v) Whether the suit for partition is maintainable in respect of the partnership firms, instead of prayer for dissolution of the partnership firms?

26. The learned counsels in addition to their oral submissions also filed written arguments for connivance of the Court. The submissions are taken into consideration.

27. The appeals are against the judgment and decree of the trial Court, which has partly allowed the suit for partition in respect of movables, immovable and valuable securities, more fully described in Schedules 'A' to 'H'.

28. The plaintiff had claimed that the suit properties are the joint family properties consists of late Lakshmana Chettiar and his three sons namely, (1) Subramania Chettiar, the plaintiff (2) Ramakrishna Chettiar, the first defendant (3) Kannappa Chettiar, the second defendant. Preliminary decree was passed holding that the character of joint family came to an end 01.04.1941. The registered deed of partition dated 11.10.1942 records the disruption of joint family. Same has come into effect though there is no



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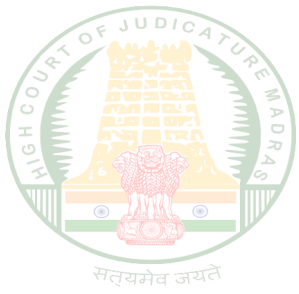
formal division by metes and bounds. The partnership firms started thereafter cannot be taken as a device to overcome the requirement of Income Tax Ordinance passed by the Srilankan Government. After the Benami Transaction Act 1988 came into force, Section 281 A of Income tax Act got repealed. Hence, it has no application to the facts of case. The properties, which were purchased jointly by the respective members of the family, are their properties as per the title documents in which they will have respective shares. The properties held by the first defendant, are the properties of his family members, in which his branch alone has to get shares per stripe.

29. In short, the Trial Court held items 1 to 13 and 15 of the 'A' schedule alone are joint family properties in which the 3 branch of Late Lakshmana Chettiar will each have 1/3rd share. 'B' schedule property purchased jointly was later divided into 6 lots to be shared, as per the documents. In 'C' schedule, the land measuring 581.61 acres was divided per head among all the members of three branch as per the proportion mentioned leaving 83.78 acres for decision in the final decree. Buildings 1/2 share to the first defendant and the remaining 1/2 to the plaintiff, the second defendant and 20th defendant. In 'D' schedule, items 1 and 2 held not available. No proof to show that it was held by the family even during the life time of the



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Kartha. In items 3 to 10, the plaintiff, the first and the second defendants are to get 1/3rd each. From 1/3rd allotted to the first defendant, his family members have share proportionately. In 'E' schedule property, items 19 to 22 have already been divided. Items 22 to 28 relief sought was declined. Items 32 to 36 and 38 cannot be subjected to partition. Item 37 being a Limited Company, the partition of it does not arise. Items 40 and 41 among the three branches of the plaintiff, the first and the second defendant are entitled each 1/3rd. From the 1/3rd share of the first defendant, his legal heirs have share. In respect of 'F' schedule, the Trial Court declared it as the joint family property of the first defendant. The claims of his joint family members (defendants 3,8,12 to 15) to be decided in Final Decree proceedings. Items 1 and 2 in 'G' schedule held to be the property of the Trust (29th Defendant). Items 3 to 5 are the property of first defendant joint family. The claim of 3rd defendant, if any, to be decided in the final decree proceedings. Item 6, which is a limited company, is declared as the property of defendants 1, 3, 6, 8, 12,15 to 17 defendants. Item 18 belongs to the joint family of the first defendant. Items 8 to 11 are properties of partnership firm, hence, not subjected to partition in the present suit. In items 12 to 98 being share certificates in public limited companies, the rights in it to be decided among the respective holders of shares in the final decree.



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30. For want of evidence about the 12.400 kg of gold jewels mentioned in 'G' schedule, the relief sought declined. As far as the shares allotted to the first defendant and specifically mentioned as joint family property of first defendant, the Trial Court has declared, the 7th defendant shall have 1/6th share.

31. In respect of the issue touching upon the documents dated 01.04.1941, 11.10.1942 and 30.08.1943 and the YASTU of the year 1962, the trial Court, after tracing the genealogy of late Lakshmana Chettiar family, had recorded that there was no dispute among the parties in the nature of joint family up to the year 1941 and the properties held by the family members till then were the joint family property for which late Lakshmana Chettiar was the Kartha. The first defendant, being the eldest son, was administering the properties along with the father and the execution of power of attorney in his favour in the year 1935, are admitted facts. Whereas, the plaintiff's contention that the partition deed dated 11.10.1942, registered on 12.10.1942 is only a sham and nominal document intended for the income tax purposes and there was no division by metes and bounds. Likewise, the partition agreement dated 24.09.1943 entered between the father and the three sons



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was only to satisfy the legal requirements of the Ceylon Government, otherwise, the family was continued to be a joint family and the properties were enjoyed as joint family properties, with late Lakshmana Chettiar as the Kartha not tenable being contrary to the documents. The claim of the plaintiff that the YASTU entered between the plaintiff and the defendants 1 and 2 in the year 1962, were never given effect and the suit property, therefore, are still continued to be the joint family property rejected by the Trial Court.

32. It is to be noted that one of the grand daughters of L.Ramakrishnan, the first defendant, born to his son L.R.M.K.Subramanian, was not made a party to the proceedings. Likewise, the another granddaughter born to L.Ramakrishnan Chettiar, the first defendant, born to his other son, by name, L.R.M.K.Valliappan, was not made a party to the proceedings. Taking note of the exclusion of these two persons, the Trial Court has proceeded to examine the evidence. Wherever it found that the parties not before it, if have any right or share in the suit properties, they can work out the remedy in the final decree proceedings.

33. The Trial Court has observed that, the plaintiff in his evidence, has feigned ignorance about the distinction between the joint family property and



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the property of partnership firm. He was not aware of the existence of partnership firm by name S.P.R.M.L operating in Srilanka. The Trial Court had specifically observed that, there is no material to show that, the first defendant was managing the properties, after 24.09.1943 and there was no evidence to show that the plaintiff demanded accounts from the first defendant. The documents viz., Ex.B16, dated 13.08.1944, addressed to the Income Tax Officer, Karaikudi and Ex.B17 dated 07.03.1947, the assessment order of the Income Tax Officer, reveal that, the partition in the Lakshmana Chettiar family in the year 1941 has been intimated to the Income Tax Department and the members of the family, after division, had filed income tax return individually. Ex.B1 relates to the accounts of S.P.R.M.L. firm, which was formed under Ex.B18. This account covers the period from 01.04.1950 to 30.03.1951. The trial Court, examining the accounts had recorded that the father and three sons as partners, have received dividends from the firm and it is admitted by PW-1, the plaintiff that, these accounts were written by him. Therefore, it is evident that the partners of the S.P.R.M.L. firm were aware of the accounts even on 01.04.1950.

34. The admission of P.W-1 that in Ex.B2, there is no specific description of the properties as joint family property, is highlighted by the



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trial Court. Ex.B2 is the YASTU dated 27.07.1967. This document is between the plaintiff and the first defendant. It is also admitted by the plaintiff that, after he attained majority, the S.P.R.M.L. firm was functioning at Kandi and forwarding the accounts to the others in Nattarasankottai. He has identified the portions of his writing in the accounts marked as Ex.B1 as well as portions of the accounts written by the first defendant. Thus, the pleadings of the plaintiff that he was not aware of the existence of the partnership firm by name S.P.R.M.L. firm, functioning at Kandi, is disbelieved by the trial Court, in view of the extensive knowledge possessed by the plaintiff about the firm and his admission that he maintained the accounts of the said firm for some time.

35. Referring to Ex.B2, the trial balance account as on 30.03.1960, which was also partly prepared by the plaintiff. The trial Court arrived at a conclusion that the accounts in Ex.B1 and Ex.B2 were maintained only as a partnership firm and not as a joint family concern. In Ex.A24, the registered copy of the partition deed dated 11.10.1942, one Kannappa Chettiar signed as a witness and the other witness is one Kadiresan Chettiar. Both witnesses are closely related to the parties and were not alive at the time of trial. However, the plaintiff admits about the letter dated 06.07.1949 addressed to the first



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defendant, in which he has admitted about the partition deed. Therefore, the trial Court had arrived at a conclusion that the members of the Lakshmana Chettiar family got separated, pursuant to the partition deed in the year 1941, and the same is reflected in Ex.A24 dated 11.10.1942. The plaintiff had given an application to the authorities to start mill by name Gurunekala D and C Oil Mill at Colambur. This firm was registered on 02.02.1957 on the application of the plaintiff. In the said application, the plaintiff has shown him as the Managing Partner. The application was not made in a representative capacity on behalf of the joint family, but in his capacity as the Managing Partner of the firm. Thus, from Ex.B18 in respect of S.P.R.M.L. firm, which was formed in the year 1943 and Ex.B4 in respect of Gurunekala D & C Oil Mill formed in the year 1957, it appears that even at that point of time, there was no joint family property in existence. Thus, it is also evident from the cross examination of the plaintiff that after 1941, the properties were purchased only from the income of the individual members, either separately or jointly. This includes Maryland Estate, purchased under Ex.B5 and divided among the joint owners on 26.06.1957.

36. The plaintiff admitted in his cross-examination that, as a partner in the Maryland Estate, he had signed the deed Ex.B5. Ex.B6 is the letter signed



by the plaintiff to the Agriculture Tax Officer at Salem, dated 14.04.1960.

The plaintiff admits having sent this letter, and it was sent by him individually and not on the instructions of the first defendant. The plaintiff has also admitted that each of the co-purchasers had raised funds independently and paid their respective consideration amount for purchase of the Maryland Estate. The division of the Maryland Estate into six parts and the allotment of Lot 'C' and Lot 'D' to the plaintiff and the 26th defendant, is not disputed. The evidence indicates that, in the Maryland Estate, the plaintiff and his son, the 26th defendant were allotted two lots and the first defendant's family was allotted three lots and the second defendant allotted one lot.

37. With respect to the Vasambadi Estate, though the plaintiff claims that it was purchased from out of the joint family funds, the plaintiff has already got the Lots 'C' and 'D' as his share and has further allotted them to his children. The other five estates were also found to have been purchased by the respective purchasers individually and not from the joint family income.

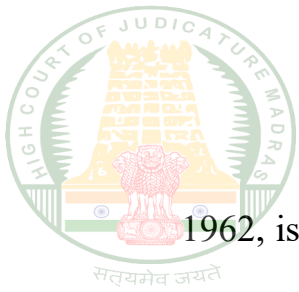
38. We, thus find that, the Trial Court, after considering each and every documents, concluded that the plaintiff has failed to prove that after 1941, the



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parties retained their joint family character. Considering the evidence of P.W-2 and the title documents of the properties, the Trial Court has concluded that the letters communication between the parties did not fortify the plea that the joint family continued after 1941. Therefore, from 01.04.1941, the plaintiff and the defendants 1 and 2, along with the father, got separated from the joint family. At the same time, the trial Court held that though on 11.10.1942, partition deed existed, it was not given effect to as the properties were never divided by metes and bounds. This conclusion of the trial Court, after a detailed discussion about the existence of the partition deed, knowledge of the partition deed on the part of the parties, and the fact that the second defendant though a minor at that time, he did not question the division, but acted upon the partition for several years, after he attained majority, states that the absence of division by metes and bound, will not nullify the partition deed, particularly when the parties have given effect to it and enjoying the income separately.

39. With regard to the power of attorney deed executed in favour of the first defendant and the relief for rendition of account, the view of the trial Court that after 1962, the first defendant was not acting as the agent of late Lakshmana Chettiar and therefore, he was not liable to render accounts after

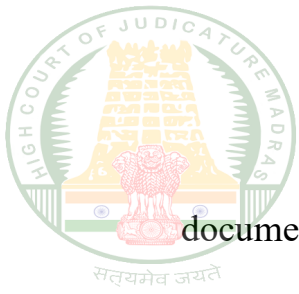


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1962, is based on evidence and legal or factual error noted. At the same time, the Trial Court taking into consideration that the first defendant as Kartha of his joint family, held that he has to render account to the 7th defendant, the holder of 1/6th share in respect of the properties held by the first defendant.

40. The Trial Court held that the argument of the plaintiff as well as the second defendant that there was no partition among the joint family members, is not acceptable, in view of the evidence regarding the division of the properties on 01.04.1941 and the execution of the partition deed dated 11.10.1942. The Trial Court has held that the plea that the partnership deed was not given effect, is unacceptable and that, the properties purchased thereafter were not the properties purchased from out of the partnership deed dated 30.08.1943, as valid.

41. In our view, the conclusion of the Trial Court on this issue is the probable view and the other plausible view projected by the plaintiff harping of customary practice in the Nattukottai Chettiar community or the plea of sham and nominal partition deed to evade the rigor of Income Tax Ordinance promulgated in Srilanka, are being contrary to the documentary evidence and admission of the parties. The oral evidence cannot override the content of the



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documentary evidence, when the documentary evidence is clear without any ambiguity.

42. Ex.A-24, dated 11.10.1942 is a registered partition deed; Ex.B16, dated 13.08.1944 and Ex.A-44 dated 23.01.1945 are the documents referring and acknowledging the partition. That apart, the parties had subsequently filed the Income Tax Returns individually and orders passed by the Income Tax Officer on their returns. Those documents are marked as Ex.B-17, Ex.B-41 to Ex.B-50, Ex.B-532 to Ex.B-537, Ex.B-540, Ex.B-541 from the assessment years 1944. The income tax returns are documents filed in the course of ordinary business and for compliance of statutory requirement. These documents lend enough proof to hold that the joint family character had come to an end long ago.

43. Ex.A-2 is the YASTU executed in the year 1962. It had come into the picture with an intention to divide the running business after cancelling the power of attorney given in favour of the first defendant vide document Ex.A1 dated 11.03.1935. After the execution of the YASTU, the first defendant was no more the agent of Lakshmana Chettiar and the members of the FIRM in respect of the partnership firm. Therefore, having



held that he was not the agent of Lakshmana Chettiar after 1962, the trial Court had rightly concluded that the first defendant is not also responsible for rendering the account thereafter.

44. Considering the provisions of Section 281 of the Income Tax Act, 1961 and Benami Transaction Act, 1988, the trial Court has concluded that these provisions will not bar the parties to have a division of their property. It was held by the Court below that in respect of the partnership firm by name S.P.R.M.L, located in Srilanka, it an fact admitted that the firm was managed by one or more partners in rotation and they were maintaining the accounts. However, the accounts of the business carried in the name of the above firm at Srilanka not produced. Hence, the prayer for rendition of accounts in respect of the said firm was rejected by the trial Court, holding that since the business is located outside the jurisdiction of India, the relief to directing rendition of accounts on the premise that it is joint family property, is not maintainable.

45. Regarding three Wills and one Codicil, the trial Court has taken note of the fact that no relief sought based on the Wills and the property had already been divided in the year 1941. Therefore, there is no necessity to test



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whether the last Will of Lakshmana Chettiar dated 05.08.1968 and the codicil dated 30.08.1968 are valid and genuine. The trial Court also rejected the plea of the plaintiff that the first defendant had purchased the properties in India and Srilanka in his name and in the name of his family members using joint family funds holding that the said plea is vague and bereft of particulars.

46. Regarding the shares and investment in India and Srilanka which form part of the items 41 to 53 and 56 to 59 in 'E' schedule, the finding of the trial Court has to be sustained, since in the plaint, no adequate details provided about the shares and investment. The description of the shares is vague without details.

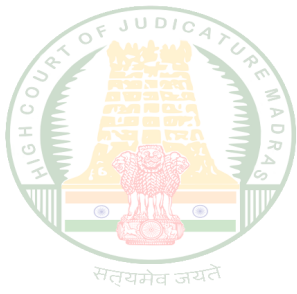
47. In respect of the YASTU, dated 27.07.1962 marked as Ex.A2, the trial Court has held that this document is between the plaintiff and the defendants 1 and 2. The father of the late Lakshmana Chettiar is not a signatory to this document. Relying upon Ex.A2, the plaintiff has filed the suit alleging that the property still remains undivided. Reading of the recitals in Ex.B1 entered between the three sons of the late Lakshmana Chettiar, shows that all the three sons of Lakshmana Chettiar resolved to jointly manage the properties in India and Srilanka and that each one of them will be



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entitled to take Rs.13,000/- per month. For income tax and insurance premiums and the education expenses of Ramanathan (D-26), the funds from the business can be utilized, but for no other purpose. If money was required for any other purpose, all three must consult and obtain consent for such withdrawal. In the YASTU, there was other references, how to keep gold in safe. However, there is no indication in the YASTU that the sons have again reunited to form a joint family. Nowhere, in these documents, the properties are identified as joint family properties. The finding of the trial Court that the YASTU dated 27.07.1962 does not indicate that the properties mentioned in that Yastu Ex.A-2 are joint family property. The conspicuous absence of any mention that the properties are joint family property, naturally leads to the only alternate inference that they are held jointly as their individual property and not as family property, which means that the other members of the family also have rights.

48. While considering ‘D’ schedule property consisting of 10 movable items, the trial Court has held that out of 10 items shown in the schedule, the safe locker and items 3 and 4, which are admitted to be in possession of the first defendant, were ordered to be shared among the three branches of late Lakshmana Chettiar.



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49. In respect of 'B' schedule property, consisting of the Maryland Estate, the Vasambadi Estate and the buildings in the estate, the trial Court has ruled out the plaint averments that these were purchased from out of the joint family property. Consequently, the trial Court ordered that the two estates shall stand in the name of the persons, who purchased them. The purchase of these estates from the funds mobilized by the respective purchasers will be taken in the account in holding that the properties were not purchased from the joint family income.

50. The Court below disbelieved the case of the first defendant that the properties, which stood in the name of the defendants 22 to 24 were purchased from their individual incomes. Taking into account the admissions made by the plaintiff and the second defendant, the trial Court held that the properties were purchased during the period, when the joint family status was in existence.

51. With all these analysis of evidence in respect of each and every property, the trial Court had concluded that the oral and documentary evidence proves that the first defendant, after the partition in the year 1941,



had established the partnership firm in the year 1943.

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52. From the income derived as share from those firms, the first defendant had purchased properties in his own name, as well as in the names of his son and daughters. Some of the properties were purchased jointly in the name of his family members. The properties, which are purchased during that period in the names of other family members, have been considered as joint family property of the first defendant along with the 1/3rd share, he got through the family partition between his brothers namely, the plaintiff and the second defendant. The Court below ruled out that the plaintiff has failed to prove that the properties standing in the names of the members in the family including female members were purchased out of the joint family fund and they were only *benami*.

53. The suit for partition in respect of more than 150 items of properties acquired on different dates in the name of different persons jointly or individually or by partnership firm sought for partition on the premise that they are all joint family property consisting of the plaintiff and the first and the second defendants. The suit for partition laid in the year 1982 on the premise the partition deed Ex.A24 of the year 1942 never given effect. The



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Trial Court after consideration the evidence, had arrived at right conclusion that the partition deed Ex.A-24 had determined the joint family character.

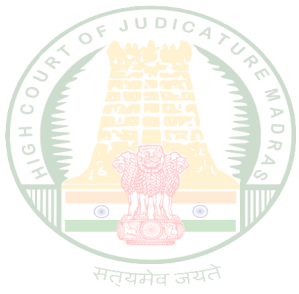
After the said partition, the members were carrying business only as partners or holding the property as joint owners and not as co-parcnary of a hindu joint family. This finding is well supported by the conduct of the parties and the income tax returns.

54. The Trial Court has thought fit to consider the plea of the defendants particularly, the descendants of the first defendant, who had sought partition within partition. While the plaint for partition among the three sons of Late Lakshmana Chettiar, the partition among the members of first defendant branch also considered and relief granted. The Trial Court to avoid multiplicity of proceedings had thought fit to ascertain the right of the family members of first defendant, who form part within the larger family consisting of the other descendants of Late Lakshmana Chettiar. Peculiarly in this case, cited family custom, the family got divided as early as in the year 1942, projected as a joint family taking advantage of the partnership firms run by the family members and purchase of properties jointly by few of the members. The subsequent conduct of joint business is not a proof for reunion of the family. The reunion of the divided family is not a matter of inference,



particularly, after the parties on record confirming the division and dealing the assets, not as joint family assets.

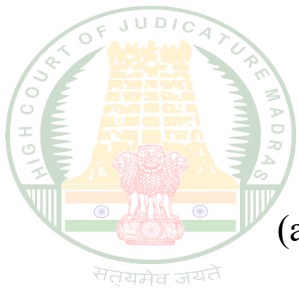
55. The settled principles of law is that the members of a joint family even if they are co-parceners, they could without disturbing the status of the joint family or the co-parcenary, acquire separate property or run independent business for themselves. Whether they live within the joint family and even without partition or partial partition. The evidence in this case right from Ex.A-24 proves partition. The income tax returns of the parties proves that the partition been acted upon. No document produced to show that the plaintiff and defendants 1 and 2 treated their entire income or part of the income as income of HUF (Hindu Undivided Family). Therefore, the burden to prove that the partition was not acted upon or that after partition, the family property got reunited and all put for blending into the family nucleus is on the plaintiff. In the absence of proof for such blending, the Trial Court has rightly held that the partition was effected. The properties devolved from the ancestors and the property purchased in the name of the Kartha Late Lakshmana Chettiar, alone to be equally divided between the three sons of Late Lakshmana Chettiar and the rest of the properties shall go to the respective title holders and to be treated as their separate property.



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56. By applying the said legal principle, while considering the properties under 'A' schedule, out of 40 items, items 1 to 13 and 15, which are the properties devolved through survivor-ship and the properties purchased in the name of Late Lakshmana Chettiar alone were found to be divided into 1/3 and given one each to the sons. While considering the 4 items of properties under schedule B, the Trial Court found that, the first item property purchased under Ex.B-5, dated 27.08.1957 jointly by 6 persons. Likewise items 2 to 4 purchased under Ex.B-14 dated 26.06.1957 by 6 persons. They subsequently decided to divide the property under the Yadastu entered on 27.07.1962 (Ex.A-2), however the Late Lakshmana Chettiar is not a signatory to Ex.A-2. Hence, the trial Court has discarded Ex.A-2. The 4 items of properties in 'C' schedule are coffee estates, buildings, fixtures etc., The trial Court has divided these properties, based on the respective title documents and the letter Ex.B6 addressed to Agricultural Income Tax Officer, Salem informing division of the estate among its owners.

57. Regarding the properties, which are coffee estate, some of the appellants grievance is that, the trial Court did not consider the below circumstances and evidence properly:-



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(a) Copy of application in Form-1 of the Indian Partnership Act 1938 marked as Ex.B.51 filed by the 6 partners of Maryland Estates filled up in the hand of the 2nd defendant to register the firm of Maryland Estates with the Registrar of Firms, Madras.

(b) Agricultural Income Tax Assessment order relating to the firm of Maryland Estates marked as Ex.B.52 for the assessment year 1959-60.

(c) Ex.B.6-Notice dated 14.04.1960 issued by the Plaintiff to the Agricultural Income Tax Officer stating that the firm of Maryland Estates was dissolved since 30.03.1960.

(d) Ex.B.54 order dated 24.4.1963 passed in Appeal Nos.21 to 26 of 1963 by the Madras Agricultural Income Tax Appellate Tribunal allowing the appeals preferred by the partners of the Maryland Estates regarding the allowance of interest on capital borrowed for purchase of the 'B' Schedule property as a deduction from Agricultural income.

(f) Ex.B.55 order of the Agricultural Income Tax Officer, Salem, dated 25.02.1964 deleting the firm M/s. Maryland Estates from the General Index



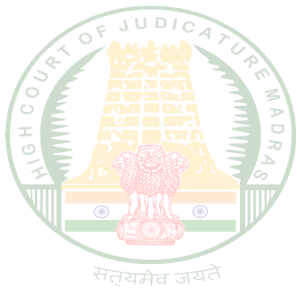
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Register (GIR) accepting the dissolution of the firm of Maryland Estate with effect from the assessment year 1961-1962.

(g) Wealth Tax Assessment order of husband of the 17th defendant for the assessment year 1970-71, 1971-1972, 1972-73 and 1978-79 marked as Ex.B.363, Ex.B.364, Ex.B.366 and Ex.B.365.

58. The above mentioned exhibits at the most only indicates that the joint owners of the estate has been dealing the affairs of the estate and the Firm owning the said estate got dissolved in the year 1960. This noway disturbs the finding of the trial Court which has divided the properties per head and allotted to the plaintiff as well as the defendants, who are the partners of the dissolved firm M/s Maryland estate.

59. The defendants 18 and 19 contend that, after the death of the husband of 17th defendant lot 'F' of item No.1 of 'B' Schedule and 1/6th share in item Nos.2 to 4 of 'B' Schedule and 1/12th share in item No.1 of 'C' Schedule devolved upon defendants 18 and 19 absolutely and they have been assessed by the Agricultural Income Tax Department as to the lands inherited by them from their deceased father as evidenced by Ex.B.370 to Ex.B.373.



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60. We find from the trial Court judgment, the properties, which were purchased in the individual names of Defendants 17 to 19, from out of family nucleus, alone were held to be liable for division. Wherever the evidence placed by these defendants that the properties were purchased from source mobilized from outside and on their own, those properties are exempted. No doubt, the Court had held that the 4th defendant had independent income. It held that the 2/12th share in item 1 of 'C' Schedule (Vasambadi Estate) was purchased by the 5th defendant, out of his own borrowals and gifts received. However, no evidence was placed to show that the 5th defendant also had sufficient source to make subsequent purchases out of his own earnings as his separate properties. Therefore, the sufficiency of income from the separate source to by the property been taken into account by the trial Court.

61. 'C' schedule property identified as Vasambadi estate consists of two items. The plaintiff conduct settling a part of the property in favour of his family members been taken adverse to the plaintiff claim that 'C' schedule property purchased from joint family nucleus. Hence, as per title documents, the vast extent of about 581.61 acres was divided per head among the defendants.

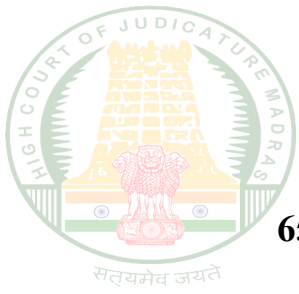


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62. " D " schedule properties are movables. Items 1 and 2 held not available. Items 3 to 10 were held to be divided among the three sons each 1/3rd. From the 1/3rd allotted to first defendant, his family members are entitled for a share in it.

63. In 'E' Schedule property out of 66 items, some of the properties are not within Indian Territory. Some are not available. Some belongs to the FIRM by name SPRML firm. Some were already divided among the sharers. One item (item 37) belongs to a private limited company. Items 40 and 41 to be shared equally by the plaintiff, the first and the second defendants. The 1/3rd share given to the first defendant will be the joint family property of his family members. Item 29 stands in the name of 3rd, 22nd and 25th defendants. They are entitled for this property to share equally. Items 54 and 55 declared as properties of the 2nd defendant branch. The division and other observations in respect of the movables mentioned above, is affirmed.

64. In one of the grounds of appeal, it is brought to the notice of this Court that the trial Court decree at clause 26, there is an error in describing the nature of the partnership. It is contrary to the judgment.



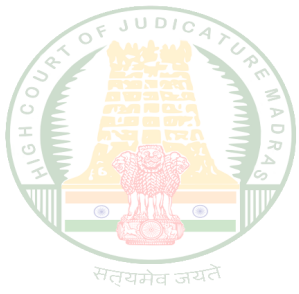
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65. According to the appellant, clause 26 of the decree in respect of items 8 to 11 of 'G' Schedule property is against the ultimate conclusions reached by the Court below in the judgment in the suit. In the Judgment, the Court below has specifically held that items 8 to 11 of 'G' Schedule are partnership firms and therefore, the claims of the parties cannot be decided in the partition suit, but clause 26 of the decree contains the word 'Koottu Kudumba Niruvanam' instead of the word 'Kootu Niruvanam' as found in the judgment. The above mistake in the decree should be amended.

66. We find some force in this submission. Decree should go in consonance with the judgment. In case there is any error, the same has to be rectified. The error pointed by the appellant can be cured by the Court below which has passed the judgment by way of amendment. Hence, liberty is given to make necessary petition to amend the decree as per the judgment.

67. The Court below, after considering the evidence, has partly allowed the suit. These appeals are filed against the disallowed portion. In short, the parties wanted the properties, which are in their names to be given to them exclusively, as per title documents and in the rest of the properties, in which they do not have title, they claim, those properties are either ancestral property or properties purchased from the joint family income.

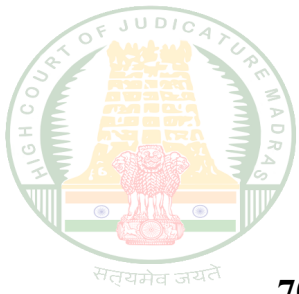
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68. Having found from the evidence that there was no joint family after Ex.A-24, the properties acquired subsequently either jointly or individually has to be taken only as per the documents. The partition is in the year 1941 and reduced into writing in the year 1942. Thereafter, new businesses and properties purchased jointly or separately only as joint purchasers and not as representatives of joint family. The Yadastu of the year 1962, Will and codicil of the late Lakshmana Chettiar before his death in the year 1970 and the suit for partition filed in the year 1982 claiming all the properties described in the schedule 'A' to 'F' are substantially found to be vexatious. Plea of Community customs, benami transaction, or the plea of sham and nominal partition deed cannot be countenanced, since it suffers vagueness.

69. Hence, we uphold the judgment and decree of the trial Court, except the error in clause 26 of the decree in description of the character of the partnership firms. Any interim order passed, pending appeal, shall be subject to the result of the appeals.



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70. In the result,

All the Appeal Suits stand dismissed. The judgment and decree of the Court below viz., The Subordinate Judge, Sivagangai, in O.S.No.43 of 1982 dated 13.03.1992 is hereby confirmed. Consequentially, all miscellaneous petitions stand closed. Considering the relationship between the parties, no order as to costs.

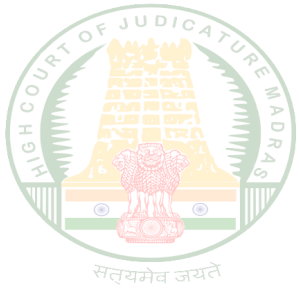
(Dr.G.J.J.) & (M.S.K.J.)

12.12.2025

Index :Yes
Speaking order/non speaking order
Neutral Citation:yes/no
ari

To,

The Subordinate Judge of Sivaganga.



WEB COPY



Dr.G.JAYACHANDRAN, J.
and
MUMMINENI SUDHEER KUMAR, J.

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Common Judgment made in
A.S.Nos.112 of 1993, 962 of 1995, 113 of 1993,
228 of 1993, 605 of 1995 & 825 of 1993 and
C.M.P.Nos.25203 of 2019, 9885 of 2022, 9880 of 2019,
12 of 1998, 5781 of 2001, 5865 of 1998,
5867 of 1998 and 84 of 2001

12.12.2025