



A.S.Nos.376 of 2008, 564 of 2008, 54 of 2011 & C.R.P.Nos.3994 & 3995 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on: 23.10.2025

Delivered on: 19.11.2025

CORAM

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

A.S.Nos.376 of 2008, 564 of 2008, 54 of 2011
& C.R.P.Nos.3994 & 3995 of 2009, M.P.No.1 of 2011, M.P.No.1 of 2012,
M.P.No.1 of 2015 and M.P.No.1 of 2011 & M.P.No.1 of 2012 &
C.M.P.No.3700 of 2023

A.S.No.376 of 2008

1. M/s.Sri Saraswathi Bus Service,
Rep. by its Managing Partner,
M.Ravichandran, No.68, Sampath Nagar, Erode.

2. M.Ravichandran,
Managing Partner,
M/s.Sri Saraswathi Bus Service,
No.71/15 A/1 Malaikavalar Kovil Street,
Tiruchengode, Namakkal District.

... Appellants/Defendants 9 & 10

/versus/

1. M.Cibiraj,
S/o.C.Marimuthu,

2. M.Jayanthi,
W/o.C.Marimuthu,
Both residing at 125-B, Veeran Land,
Arisipalayam, Salem Town and Taluk.

(R1 is declared as major and R2 is discharged from Guardianship of R1, *vide* order of Court dated 30.04.2024 made in C.M.P.Nos.9314, 9355, 9358 & 9360 of 2024 in A.S.No.376 of 2008.) [PTAJ]



A.S.Nos.376 of 2008, 564 of 2008, 54 of 2011 & C.R.P.Nos.3994 & 3995 of 2009

3. A.Sengodan,
S/o.Late Athappan Gounder,
Mekkalan Kadu, Morur Bit-I Village,
Sankari Taluk, Salem District.

4. Jaisakthi Finance Corporation,
Rep. by Partner, K.K.Kandasamy,
New Idappady Road, Sankari Town,
Sankari Taluk, Salem District.

5. Umasakthi Finance Corporation,
Rep. by Partner, K.K.Kandasamy,
New Idappady Road, Sankari Town,
Sankari Taluk, Salem District.

6. Parasakthi Finance Corporation,
Rep. by Partner, K.K.Kandasamy,
New Idappady Road, Sankari Town,
Sankari Taluk, Salem District.

7. Sakthi Finance Corporation,
Rep. by Partner, K.K.Kandasamy,
New Idappady Road, Sankari Town,
Sankari Taluk, Salem District.

8. Roshma,
D/o.Radhakrishnan,
No.1/17/C, Ebienazer Colony,
Sankari Taluk, Salem District.

... Respondents/Defendants 3 to 8

R8 is declared as major and her mother Revathi is discharged from Guardianship of R8, vide order of Court dated 30.04.2024 made in C.M.P.Nos.9314, 9355, 9358 & 9360 of 2024 in A.S.No.376 of 2008.

Prayer in A.S.No.376 of 2008: Appeal Suit filed under Section 96 of C.P.C., read with Order 41 Rule 1 of C.P.C., to set aside the judgment and decree passed in O.S.No.13 of 2004 dated 18.02.2008 on the file of the Fast Track



A.S.Nos.376 of 2008, 564 of 2008, 54 of 2011 & C.R.P.Nos.3994 & 3995 of 2009

Court, No.1, Salem and allow the appeal relating to D schedule property alone, thereby dismissing the suit.

For Appellants : Mr.M.Palani

For Respondents : Mr.T.Murugamanikkam, Sr.Counsel,
for Mrs.P.T.Ramadevi, for R1 & R2
: Mr.Mukunth, Senior Counsel,
for M/s.Sarvabhauman Associates, for R3
: No appearance, for R4 to R8

A.S.No.564 of 2008

1. S.A.Sengodan,
S/o.Late Athappa Gounder,
Mekkalan Kadu, Morur Bit-I,
Sankari Taluk, Salem District.

2. Jaisakthi Finance Corporation,
Rep. by Partner, P.Murugesan,
New Idappady Road, Sankari Town,
Sankari Taluk, Salem District.
(Substitute the Partner name of P.Murugesan instead of K.K.Kandasamy in A2, A3 & A5)

3. Umasakthi Finance Corporation,
Rep. by Partner, P.Murugesan,
New Idappady Road, Sankari Town,
Sankari Taluk, Salem District.

4. Parasakthi Finance Corporation,
Rep. by Partner, S.M.Moorthi,
New Idappady Road, Sankari Town,
Sankari Taluk, Salem District.

5. Sakthi Finance Corporation,
Rep. by Partner, P.Murugesan,
New Idappady Road, Sankari Town,
Sankari Taluk, Salem District.

... Appellants/Defendants 3 to 7



A.S.Nos.376 of 2008, 564 of 2008, 54 of 2011 & C.R.P.Nos.3994 & 3995 of 2009

Substitute the Partner name of S.M.Moorthi instead of K.K.Kandasamy in A4, *vide* Court order dated 09.10.2025 made in C.M.P.Nos.27299, 27307, 27309, 27310 of 2024 in A.S.No.564 of 2008 (Dr.GJJ & MSKJ)

/versus/

1. M.Cibiraj,
S/o.C.Marimuthu,

2. M.Jayanthi,
W/o.C.Marimuthu.
Both are residing at
125-B, Veeran Land,
Arisipalayam, Salem Taluk.

R1 is declared as major and R2 is discharged from Guardianship of R1, *vide* order of Court dated 19.10.2023 made in C.M.P.Nos.18487, 18484 of 2023 in A.S.No.564 of 2008 (RSMJ & NSJ)

3. Reshma,
D/o.Radhakrishnan,
1/17/C, Ebienezzer Colony,
Sankari Taluk, Salem District.

(R3 is declared as major and her mother Revathi is discharged from Guardianship *vide* order of Court dated 16.04.2024 made in C.M.P.Nos.18479 & 18482 of 2023 in A.S.No.564 of 2008). [RSMJ & RSVJ]

4. M/s.Sri Saraswathi Bus Service,
Rep. by its Managing Partner M.Ravichandran,
No.68, Sampath Nagar, Erode.

5. M.Ravichandran,
S/o.Muthusamy,
75/15, A/1, Malaikavalar Kovil Street,
Tiruchengode, Namakkal District.

... Respondents 3 to 5/
Defendants 8 to 10.

Prayer in A.S.No.564 of 2008: Appeal Suit filed under Section 96 of C.P.C., to set aside the judgment and decree dated 18.02.2008 made in O.S.No.13 of 2004



A.S.Nos.376 of 2008, 564 of 2008, 54 of 2011 & C.R.P.Nos.3994 & 3995 of 2009

on the file of the Additional District/Fast Track Court No.I, Salem by allowing this First Appeal before the Hon'ble Court.

For Appellants : Mr.Mukunth, Senior Counsel,
for M/s.Sarvabhauman Associates
For Respondents : Mr.T.Murugamanikkam, Senior Counsel,
for Mrs.P.T.Ramadevi, for R1 & R2

A.S.No.54 of 2011:

1. S.A.R.Somasundaram.
S/o.Arunachalam Chettiar,
No.500, Arulagam,
Kutcheri Veethi, Tiruchengode Town & Taluk,
Namakkal District.

2. R.Rajavel,
S/o.R.Raju,
No.10-A, Post Office Road,
Sankari R.S. Sankari Taluk,
Salem District.

2nd Appellant is exonerated and struck out from A.S.No.54 of 2011 and the interest of the 1st appellant in respect of Plot No.51 is substituted in addition to the petitioner/1st appellant's existing interest in Plot.No.52 which are the suit 'B' schedule entire properties/subject matter of properties in the above appeal, vide order of Court dated 20.11.2023 made in C.M.P.Nos.3039 & 3042 of 2023 in C.R.P.No.3995 of 2009 & A.S.No.54 of 2011 (RSMJ & NSJ)

/versus/

1. M.Cibiraj,
Rep. by next friend & Mother M.Jayanthi.

R1 is declared as major and R2 is discharged from Guardianship of R1, vide order of Court dated 19.10.2023 made in C.M.P.Nos.21417 & 21419 of 2023 in A.S.No.54 of 2011 (RSMJ & NSJ)



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2. M.Jayanthi,
W/o.C.Marimuthu,
Both residing at:
No.125, B, Veeran Land,
Arisipalayam, Salem Town and Taluk.

C.Marimuthu (Died)

R.Saraswathi (Died)

3. A.Sengodan,
S/o.Late Athappa Gounder,
Mccallan Kadu, Morur Bit 1 Village,
Sankari Taluk, Salem District.

4. Jaisakthi Finance Corporation,
Rep. by its Partner P.Murugesan,
New Edappadi Road,
Sankari Town, Sankari Taluk.

5. Umasakthi Finance Corporation,
Rep. by its Partner P.Murugesan,
New Edappadi Road, Sankari Town,
Sankari Taluk.

6. Parasakthi Finance Corporation,
Rep. by Partner, S.M.Murthy,
New Edappadi Road, Sankari Town,
Sankari Taluk, Salem District.

7. Sakthi Finance Corporation,
Rep. by Partner, P.Murugesan,
New Edappadi Road, Sankari Town,
Sankari Taluk, Salem District.



A.S.Nos.376 of 2008, 564 of 2008, 54 of 2011 & C.R.P.Nos.3994 & 3995 of 2009

8. Reshma,
D/o.Radhakrishnan,
1/17/C, Ebenesar Colony,
Sankari Salem District.

R8 is declared as major and her mother discharged from Guardianship vide order of Court dated 16.04.2024 made in C.M.P.Nos.21414 & 21418 of 2023 in A.S.No.54 of 2011 (RSMJ & RSVJ)

9. M/s.Saraswathi Bus Service,
Rep. by its Managing Partner M.Ravichandran,
No.68, Sampath Nagar, Erode.

10. M.Ravichandran,
S/o.Muthusamy,
71/15A/1, Malaikavalar Koil Street,
Tiruchengode,
Namakkal District.

... Defendants 3 to 10/Respondents 3 to 10.

Prayer in A.S.No.54 of 2011: Appeal Suit filed under Section 96 of C.P.C., against the judgment and decree of the Additional District Judge (Fast Track Court-I) at Salem, dated 18.02.2008 in O.S.No.13 of 2004.

For Appellant : Mr.S.Parthasarathy, Senior Counsel,
for Mr.P.Dinesh Kumar.

For Respondents : Mr.T.Murugamanikkam, Senior Counsel,
for Mrs.P.T.Ramadevi, for R1 & R2
: Mr.Mukunth, Senior Counsel,
for M/s.Sarvabhauman Associates, for R3 & R6
: Mr.M.Palani, for R9
: Not ready notice, for R4, R5 & R7
: No appearance, for R10



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C.R.P.No.3994 of 2009

S.A.R.Somasundaram.
S/o.Arunachalam Chettiar,
No.500, Arulagam,
Kutcheri Veethi,
Tiruchengode Town & Taluk,
Namakkal District.

... Petitioner/3rd Party

/versus/

1. Cibiraj, (Major)

2. M.Jayanthi,
W/o.C.Marimuthu.
Both residing at:
No.125, B, Veeran Land,
Arisipalayam, Salem Town and Taluk.

[1st Respondent is declared as Major and his mother/next friend M.Jayanthi is discharged from the Guardianship of R-1, vide Court order dated 19.10.2023 made in C.M.P.No.21416 and 21420 of 2023 in CRP.No.3994 of 2009 by RSMJ and NSJ.]

C.Marimuthu (died)

R.Saraswathi (died)

3. A.Sengodan,
S/o.Late Athappa Gounder
Mccallan Kadu, Morur Bit 1 Village,
Sankari Taluk, Salem District.

4. Jaisakthi Finance Corporation,
Rep. by its Partner K.K.Kandasamy,
New Edappadi Road,
Sankari Town, Sankari Taluk.

5. Umasakthi Finance Corporation,
Rep. by its Partner K.K.Kandasamy,
New Edappadi Road, Sankari Town, Sankari Taluk.



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6. Parasakthi Finance Corporation,
Rep. by Partner, S.M.Murthy,
New Edappadi Road, Sankari Town,
Sankari Taluk, Salem District.

7. Sakthi Finance Corporation,
Rep. by Partner, K.K.Kandasamy,
New Edappadi Road, Sankari Town,
Sankari Taluk, Salem District.

8. M/s. Saraswathi Bus Service,
Rep. by its Managing Partner M.Ravichandran,
No.68, Sampath Nagar, Erode.

9. M.Ravichandran,
S/o.Muthusamy,
No.71/15 A/1 Malaikavalar Kovil Street,
Tiruchengode,
Namakkal District.

... Respondents 5 to 11/

Defendants 3 to 9/Respondents 3 to 9

(Respondents 3 to 9 are given up in the Revision)

Prayer in C.R.P.No.3994 of 2009: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the docket order passed by the Fast Track Court No.1, Salem, dated 20.10.2009 in unnumbered I.A. of 2009 in I.A.No.1102 of 2008 in O.S.No.13 of 2004.

For Appellant : Mr.S.Parthasarathy, Senior Counsel,
for Mr.P.Dinesh Kumar.

For Respondents : Mr.T.Murugamanikkam, Senior Counsel,
for Mrs.P.T.Ramadevi, for R1 & R2

: Given up, for R3 to R9



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C.R.P.No.3995 of 2009:

R.Rajavel

exonerated and strike out.

S.A.R.Somasundaram.

S/o.Arunachalam Chettiar,

No.500, Arulagam,

Kutcheri Veethi,

Tiruchengode Town & Taluk,

Namakkal District.

... Petitioner

R.Rajavel is exonerated and strike out from C.R.P and the petitioner is impleaded vide Court order dated 20.11.2023 made in C.M.P.No.3039 of 2023 in C.R.P.No.3995 of 2009 by RSMJ & NSJ.

/versus/

1. Cibiraj,

2. M.Jayanthi,

W/o.C.Marimuthu.

Both residing at:

No.125, B, Veeran Land,

Arisipalayam, Salem Town and Taluk.

1st Respondent is declared as Major and his mother/next friend M.Jayanthi is discharged from the Guardianship of R-1, vide Court order dated 19.10.2023 made in C.M.P.No.21413 and 21415 of 2023 in CRP.No.3995 of 2009 by RSMJ and NSJ.

C.Marimuthu (died)

R.Saraswathi (died)

3. A.Sengodan,

S/o.Late Athappa Gounder

Mccallan Kadu,

Morur Bit 1 Village,

Sankari Taluk, Salem District.



A.S.Nos.376 of 2008, 564 of 2008, 54 of 2011 & C.R.P.Nos.3994 & 3995 of 2009

4. Jaisakthi Finance Corporation,
Rep. by its Partner K.K.Kandasamy,
New Edappadi Road,
Sankari Town, Sankari Taluk.

5. Umasakthi Finance Corporation,
Rep. by its Partner K.K.Kandasamy,
New Edappadi Road, Sankari Town,
Sankari Taluk.

6. Parasakthi Finance Corporation,
Rep. by Partner, S.M.Murthy,
New Edappadi Road, Sankari Town,
Sankari Taluk, Salem District.

7. Sakthi Finance Corporation,
Rep. by Partner, K.K.Kandasamy,
New Edappadi Road, Sankari Town,
Sankari Taluk, Salem District.

8. M/s. Saraswathi Bus Service,
Rep. by its Managing Partner M.Ravichandran,
No.68, Sampath Nagar,
Erode.

9. M.Ravichandran,
S/o.Muthusamy,
No.71/15 A/1 Malaikavalar Kovil Street,
Tiruchengode,
Namakkal District.

... Respondents 5 to 11/

Defendants 3 to 9/Respondents 3 to 9

(Respondents 3 to 9 are given up in the Revision)

Prayer in C.R.P.No.3995 of 2009: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the docket order passed by the Fast Track Court No.1, Salem, dated 20.10.2009 in unnumbered I.A. of 2009 in I.A.No.1102 of 2008 in O.S.No.13 of 2004.



A.S.Nos.376 of 2008, 564 of 2008, 54 of 2011 & C.R.P.Nos.3994 & 3995 of 2009

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For Petitioner : Mr.S.Parthasarathy, Senior Counsel,
for Mr.P.Dinesh Kumar.

For Respondents : Mr.T.Murugamanikkam, Senior Counsel,
for Mrs.P.T.Ramadevi, for R1 & R2

: Given up, for R3 to R9

COMMON JUDGMENT

Dr.G.Jayachandran, J.

These appeal suits by the defendants are directed against the judgement and decree passed in the Partition Suit O.S.No.13 of 2004 on the file of the Additional District/Fast Track Court No.I, Salem, by the minor son of Marimuthu, namely M.Cibiraj and his wife Jayanthi.

2. The trial Court allowed the suit and passed a preliminary decree, allotting an 11/16 share to the first plaintiff (Minor M.Cibiraj) and 5/16 share to the second plaintiff (Jayanthi), in respect of 'A' schedule (agricultural lands), 'B' (land and residential building), 'D' schedule (Bus and route permits) and 'E' schedule (immovable property of the finance companies mentioned in the 'C' schedule). In respect of 'C' schedule property, (shares in the four Finance Companies arrayed as defendants 4 to 7), the trial Court declaring the parties



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right but without fixing the share, gave liberty to the parties to get appropriate remedy in the final decree proceedings.

3. Against the said judgment and decree, the respective defendants have filed the following Appeals:-

(i) A.S.No.376 of 2008 by Defendants 9 and 10 (in respect of 'D' schedule).

(ii) A.S.No.564 of 2008 by Defendants 3 to 7. (in respect of 'A', 'C' and 'E' schedules)

(iii) A.S.No.54 of 2011, C.R.P.Nos.3994 of 2009 and 3995 of 2009 by the third party (in respect of 'B' schedule).

4. Pending suit, items Nos.1 and 2 of the 'B' schedule properties (bearing Plot Nos.51 and 52 of Ebiennezer Colony, Sankari) were sold by Saraswathi to the third-party appellant, S.A.R.Somasundaram. Subsequently, he sold a portion of it to one Rajavel. After passing of the preliminary decree and pending final decree proceedings in respect of the 'B' schedule properties, S.A.R.Somasundaram and Rajavel filed applications under Order I, Rule 10 of Code of Civil Procedure, 1908, seeking to get themselves impleaded in the final



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decree application I.A.No.1102 of 2008. Those applications were rejected by a docket order dated 20.10.2009. Aggrieved by said the rejection orders, C.R.P.No.3994 of 2009 and C.R.P.No.3995 of 2009 filed by these two pendente lite purchasers.

5. Thereafter, with leave of the Court to file the third party appeal, S.A.R.Somasudaram and Rajavel jointly filed A.S.No.54 of 2011 against the judgment and decree in respect of 'B' schedule property. Pending the appeal and civil revision petitions, the sale deed in favour of Rajavel (with his consent) was cancelled by S.A.R.Somasundaram. Hence, on his application, the name of Rajavel struck off and the name of S.A.R.Somasundaram got substituted in the Appeal and Civil Revision Petitions.

6. Pleadings of the parties:

The case of the plaintiffs:-

The first plaintiff, Minor Cibiraj, is the son of the first defendant, Marimuthu (since deceased). The second plaintiff, Jayanthi is the wife of Marimuthu. The suit properties are the properties of M.R.Chellappan, enjoyed as joint family properties. The suit for partition is filed on the premise that the



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first plaintiff is the grandson of M.R.Chellappan. Some of the properties were obtained through partition among the coparceners and some acquired through the income of his ancestral properties. His son Marimuthu married to the second plaintiff, Jayanthi and begot the first plaintiff. Thereafter deserted the plaintiffs. The defendants 1 & 2 bent upon to alienate the joint family properties.

7. According to the plaintiffs, succession opened when M.R.Chellappan died intestate on 23.12.1993. During his lifetime, he was running transport business and money lending business. He acquired the suit properties in his name and in the name of defendants 1 and 2. The properties were enjoyed jointly by him, his son (the first defendant) and his wife (the second defendant). In the meantime, the first defendant, after the birth of the first plaintiff, became hostile towards his wife, the second plaintiff and started neglecting them. He failed to take care of his minor child, the first plaintiff along with others on his behalf and on behalf of his minor son, he sold the ancestral properties shown under the 'A' schedule property to the 3rd defendant through a sale deed dated 16.03.1994. Since the said sale was neither for the family necessity nor in the interest and benefit of the minor son, same is void



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and not binding on the first plaintiff.

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8. In the 'B' Schedule:-

(i) The first item of property was purchased in the name of M.R.Chellappan as house site and building was constructed on it out of joint family income.

(ii) The second item shown in 'B' schedule was vacant site purchased in the name of Marimuthu (the first defendant) from the income derived from the joint family property.

9. After the demise of M.R.Chellappan, the defendants 1 and 2, trying to alienate the 'B' schedule property to third party with the intention to defeat the interest of the minor plaintiff.

10. The 'C' Schedule are the assets of four Finance Corporations arrayed as Defendants 4 to 7. According to the plaintiffs, in these partnership firms, M.R.Chellappan, his son and wife are partners. The joint family income is invested in it. Thus, the share in the partnership firms are the assets of the joint family. From the income derived from those Finance Corporations, the 'E'



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schedule immovable properties were acquired in the name of the said Finance partnership firms. In those partnership firms, the first plaintiff has right and share. Since the plaintiffs are not aware of the assets and liabilities detail of the partnership firms (defendant 4 to 7), their share in the firm to be determined and allotted.

11. The 'D' schedule property consists of bus with route permit and a spare bus for the said route. This was was purchased from the joint family income in the name of the first defendant when he was 20 years old, pursuing his studies in the college.

12. Alleging that the first defendant in collusion with the second defendant is bent upon to further alienate the suit properties with a view to defeat and delay the rights of the first plaintiff in the suit properties, the plaintiffs also sought for an injunction restraining the defendants from alienating or creating encumbrance over the suit property, besides sought to appoint administrator to manage the schedule 'C' financial firms and the schedule 'D' transport business. However, pending suit, items 1 and 2 in the 'D' schedule, namely the bus and route permit along with the spare bus were sold



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away by the second defendant to defendants 9 and 10, hence they are impleaded in the suit. The transfer of the bus and route permit pending suit and in spite of restrain order of injunction is not valid. In the proceedings of the District Collector, it is mentioned that the transfer of permit in favour of the defendants 9 and 10 is subject to the outcome of the Civil Suit.

13. Pending suit, the second defendant, Saraswathi W/o.Chellappan died intestate on 23.12.1993 and her son, Marimuthu (the first plaintiff), also died intestate on 03.10.2005. Accordingly, the first and second plaintiffs alone are legal heirs to inherit the estate of M.R.Chellappan, Marimuthu and Saraswathi. Therefore, after the demise of Marimuthu and Saraswathi (defendants 1 and 2), the ratio of devolution of the suit property is altered. The plaintiffs relief therefore amended, in the ratio 11/16 share for the first plaintiff and 5/16 share to the second plaintiff.

14. Besides the main relief for partition of movables and immovables, alleging that the Defendants 1 and 2, in active collusion with the other defendants, are trying to conceal the income from the suit properties which is around Rs.3,00,000/- per annum. Accordingly, the reliefs sought for:



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- *Mesne profits,*
- *Charge over the properties,*
- *Monthly maintenance,*
- *Declaration that the sale dated 16.03.1994 in favour of the 3rd defendant as null and void,*
- *Appointment of administrator,*
- *Permanent injunction,*
- *Appointment of Commissioner to effect partition,*
- *Appointment of receiver, and;*
- *Permanent injunction from alienation of the suit properties.*

15. Written Statements:-

Written statement of the first defendant:-

Marimuthu, the first defendant is the father of the first plaintiff and the husband of the second plaintiff. He, in his written statement, denies all the averments in the plaint except his relationship with the plaintiffs. He affirms that, he and the second plaintiff are not living together and the relationship is strained due to misunderstandings between them. He also affirms about the divorce proceedings pending in the Family Court. He denies the allegation of failure to maintain the plaintiffs and wilful neglect. He denies the averment that his father, late M.R.Chellappan, owned a transport business in the name Sakthi Travels. However, he admits that his father was operating lorries in the name of



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“R.K.Transports” during his life time. He claims that a portion of the 'A' Schedule property was sold to the 3rd defendant to clear the family debts and that those properties are not joint family properties but belongs to the second defendant, which she acquired in the year 1975 from out of her independent source. Accordingly, he contends that the claiming share in the properties in the name of second defendant is untenable and not maintainable.

(ii) Late M.R.Chellappan, served as a Teacher and from his retirement benefits the ‘B’ schedule property was purchased in the year 1988 from his own source. In respect of ‘C’ schedule finance institutions, the plaint is bereft of necessary particulars. Late M.R.Chellappan was noway connected with those three financial institutions. Further, items 1 to 4 under schedule ‘D’ are ancestral properties which were sold even prior to the institution of the suit. Likewise, item No.5 in schedule ‘D’ also sold in March 1994.

(iii) Written statement of the 2nd defendant:

The plaint which is bereft of details not maintainable. Seeking share in the properties which are not joint family properties is unsustainable. The plaintiffs are not entitled to seek share in the income from the transport



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business or charge over its income. The bus bearing Registration No:TN-63-A-5555 was purchased subsequent to the suit. No evidence to show Late M.R.Chellappan was partner in the financial institutions arrayed as defendants in the suit. In the 5th defendant finance Corporation, she is one of the partner. The plaintiff have no right to claim share from its income.

(iv) In the additional written statement, the 2nd defendant had further stated that, the properties which are in the name of the 2nd defendant were purchased from the fund given by her father. The value of the bus shown in 'D' schedule is highly exaggerated. The suit for partition without any right over the suit properties is not maintainable.

(v) Written statement of the 3rd defendant:-

To the plaint averments that a portion of the joint family property was sold to the third defendant to defeat the right of the plaintiffs, the third defendant had contested the suit stating, the relationship of the plaintiffs and the defendants 1 and 2 are correct. It is true that the 3rd defendant purchased some properties from the first defendant. M.R.Chellappan and first defendant were living separately and not as members of joint family. The suit schedule



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properties were never held or enjoyed as Hindu joint family properties by M.R.Chellappan and the defendants 1 and 2. M.R.Chellappan was running lorries in the business name of 'R.K.Transports'. The plaint averments that he own 'Sakthi Travels' and doing money lending business are not correct. The averments about the strained marital relationship between the second plaintiff and the first defendant is not within the knowledge of this defendant. The defendant sold a portion of their properties to the third defendant to clear their debts. The sale was not brought about to defeat the interest of the plaintiffs.

(vi) The properties enumerated in 'A' Schedule are agricultural lands. The 2nd Defendant was entitled to half share in S.Nos.76/3, 76/12, 76/15, 76/19, 105/1, 105/9, 105/10, 105/13. The 2nd Defendant had acquired title in those properties under a deed dated 05.07.75, at a time when the 2nd Plaintiff was not married to first defendant. The 2nd Defendant has purchased the properties for valid and valuable consideration from her father-in-law Appu @ Ramasamy Gounder, her brother-in-law R.Palaniappan and the family members. Again on 16.03.1994 Appu @ Ramasamy Gounder father of M.R.Chellappan, Saraswathi ammal and the 1st Plaintiff as a minor represented by the 1st defendant as guardian sold the entire extent in S.Nos.76/3, 76/7, 76/12, 76/13, 76/15, 76/18,



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76/19, 105/1, 105/9, 107/10, 105/13, 106/1 in 'A' schedule properties to this

Defendant for valid and valuable considerations for the maintenance of the child and for the repayment of existing debts.

(vii) The sale of the properties to the third defendant for value binds the plaintiffs. The relief of partition in respect of these properties does not arise. Hence, there is no cause of action as against this defendant to sustain the suit. The plaintiffs ought to have paid *advalorem* fees for the relief to set aside the sale. The Court Fees should have been paid under Section 40 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 and not under Section 37(2) of the said Act.

(viii) In his additional written statement, the 3rd defendant had reiterated that, the properties purchased by him under the sale deed dated 16.03.1994 for valuable consideration is valid. It is punja land and it is under the cultivation of this defendant. The claim of mesne profit is an afterthought. The properties which is the subject matter of the sale deed dated 16.03.1994 was purchased by the 2nd defendant in the year 1975 from out of the fund provided by her father, who was a retired employee of Railways. It is the self-



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acquired property of the 2nd defendant. The plaintiff have no right in it. There is a irrigation well in the 'A' schedule property which is shared by others. They are not impleaded as parties in the suit hence the suit is bad for non-joinder of necessary parties.

(ix) Written statement of 5th defendant (M/s.Uma Sakthi Finance Corporation) adopted by the 4th defendant (Jaisakthi Finance Corporation):-

K.K.Kandasamy as partner of the finance firms which are arrayed as defendants 4 and 5 had filed written statement refuting the averments in the plaint that M.R.Chellappan was running these Finance Corporation and they have share in it. The written statement and the additional written statement confines to the claim of plaintiffs in the Finance Corporations arrayed as defendants in the suit.

(x) According to the 4th and 5th defendants, Late Chellappan was never a partner in these firm. He was not associated to these firms in any manner. He is a total stranger to the Firms. The relief against these defendants is without any substance. The averment paragraph No.9 of the plaint is vague. Division of the partnership firm in which neither the late M.R.Chellappan nor



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his son the first defendant have any right is untenable. At the time of filing the suit, the second defendant alone was a partner in the 4th and 5th defendant Firm on her own. The plaintiffs who are not the legal heirs of the 2nd defendant, have no cause of action to sustain the suit against these defendants.

(xi) In the additional written statement of the 5th defendant adopted by the fourth defendant, it is claimed that, the 'E' schedule properties does not belong to the joint family of the first defendant. The three items of the 'E' schedule belongs to the 7th defendant. In this property, the finance corporation has constructed building and housed its office. The pleadings in respect of the finance corporation and its properties are vague and lacks necessary details.

(xii) Additional written statement of the 4th defendant adopted by defendants 5 to 7:-

The averments in the plaint as amended claiming that the defendants 1 and 2 are receiving Rs.4,00,000/- per month through the four finance Corporations mentioned under schedule 'C' of the plaint is denied. The claim made by the plaintiffs in respect of 'C' schedule properties is not maintainable.



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(xiii) The 4th defendant Finance Company by name Jai Sakthi Finance

Corporation, registered on 18.07.1990, Firm Serial No:292/1990, registered by Registrar of Firms, Namakkal. Originally, the 1st defendant's father M.R.Chellapan was partner in the firm and after his demise the 2nd defendant who was the wife of M.R.Chellappan joined as partner from 01.04.1993. Since the 2nd defendant also died, the 1st defendant who was the only son joined as partner in the firm. On 20.09.2005 the 1st defendant C.Marimuthu retired from the 4th defendant partnership finance business, after receiving his entire share capital. On and from 20.09.2005, the 1st defendant has no right or interest in the said firm. The retirement of the partner C.Marimuthu was duly communicated to the Registrar of Firms, Namakkal and suitable entry was made to that effect. Under such circumstances, the plaintiffs can not claim any share or interest in the finance company. In fact, at no point of time the defendants 1 and 2 were receiving Rs.4,00,000/- as interest from the finance company. The audited statement from 1994-1995 to 2007-2008 shows the actual profit and loss account of the 4th defendant Finance Company.

(xiv) The 5th defendant finance company by name Uma Sakthi

Finance Corporation, registered on 09.07.1990, Firm Serial No: 275/1990



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registered by Registrar of Firms, Namakkal. Originally the 2nd defendant was partner in the firm and after her demise the 1st defendant who was only son joined as partner in the firm, and running the partnership business. On 20.09.2005 the 1st defendant C.Marimuthu retired from the partnership business from the 5th defendant finance after receiving his entire share capital. On and from 20.09.2005 the 1st defendant have no right or interest in the said firm. The retirement of the partner C.Marimuthu was duly communicated. Under such circumstances, the plaintiffs cannot claim any share or interest in the finance company. In fact, at no point of time the defendants 1 and 2 were receiving Rs.4,00,000/- as interest from the finance company. The audited statement from 1994-1995 to 2007-2008 shows the actual profit and loss account of the 5th defendant finance company.

(xv) The 6th defendant finance company by name Parasakthi Sakthi Finance Corporation, registered on 29.09.1992, firm Serial No:512/1992 registered by Registrar of Firms, Namakkal. Originally the 1st defendant's father M.R.Chellappan was partner in the firm and after his demise the 2nd defendant who was the wife of M.R.Chellappan joined as partner from 01.04.1993. Even as early on 31.03.1994 itself the 2nd defendant retired from



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the 6th defendant finance. In short, even prior to the filing of the above suit, the 2nd defendant retired from the said finance. Under such circumstances, the plaintiffs cannot claim any share or interest in the finance company. The audited statement from 1994-1995 to 2007-2008 shows the actual profit and loss account of the 6th defendant finance company.

(xvi) The 7th defendant finance company by name Sakthi Finance Corporation, registered on 24.10.1979, Serial No: 185/1979 and later due to the death of one partner the said finance dissolved and again registered on 11.11.1988, Firm Serial No:294/1988 registered by Registrar of Firms, Namakkal. Originally the 1st defendant's father M.R.Chellappan was partner in the firm and after his demise, the 2nd defendant who was the wife of M.R.Chellappan joined as partner from 01.04.1993. Since the 2nd defendant also died, the 1st defendant who was the only son joined as partner in the firm. On 20.09.2005, the 1st defendant C.Marimuthu retired from the 7th defendant finance after receiving his entire share capital. On and from 20.09.2005, the 1st defendant have no right or interest in the said firm. The retirement of the partner C.Marimuthu was duly communicated to the Registrar of Firms, Namakkal and suitable entry was made to that effect. Under such



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circumstances, the plaintiffs cannot claim any share or interest in the finance company.

(xvii) In fact, to disprove the case of the plaintiffs. There is no outstanding or due to the defendants 1 and 2 from the 7th defendant's finance company and hence the plaintiffs cannot claim anything from the 7th defendant. In fact, this firm become in red and incurred heavy business loss.

(xviii) For all these Finance firms, the defendants are prepared to submit the audited accounts from 1994-1995 to 2007-2008, to disprove the case of the plaintiffs. There is no outstanding or due to the 2nd defendant from the defendant's finance company, and hence the plaintiffs cannot claim anything from the 6th defendant.

(xix) The 'E' schedule property does not belong to the family of defendants 1 and 2. The three items of 'E' schedule property belongs to the 7th defendant firm namely Sakthi Finance Corporation and the same was purchased under document Nos:612, 613 and 614 dated 29.06.1979. These properties were purchased as vacant land under three deeds and later the 7th defendant



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constructed the building for housing the Firms. Since the 1st defendant retired from the firm after receiving all his share capital during his lifetime, the plaintiffs cannot seek any relief as against the defendants in respect of 'D' and 'E' schedule property.

(xx) Written statement of 10th defendant adopted by 9th defendant:-

These two defendants were impleaded subsequently since pending suit, they purchased the bus route permits and the buses shown in 'D' schedule.

(xxi) According to them, the buses with permit they purchased does not belong to M.R.Chellappan or the joint family. On the date of their purchase, the permit and R.C stood in the name of their vendor the second defendant. The suit for partition was dismissed much earlier along with the injunction petition. These defendants purchased item Nos.1 and 2 of the 'D' schedule after the dismissal of the suit on 24.02.2003 and before its restoration. There was no injunction order in force when they acquired the right. Before the Regional Transport Authority, the objections raised by the plaintiffs for transfer of permit was duly considered and rejected.



16. Issues and findings of the trial Court:

Considering the pleadings, the trial Court initially framed 5 issues and subsequently, framed 9 more issues additionally.

(i) Whether the 1st plaintiff entitled for 3/8 share in the suit property?

(ii) Whether the plaintiffs are entitled for mesne profits?

(iii) Whether the plaintiffs are entitled for Rs.5,000/- per month as maintenance?

(iv) Whether the sale deed dated 16.03.1994 valid and binding on the plaintiffs.

(v) What other relief?

Additional issues:-

(i) Whether the transfer of the permit and sale of buses by the 1st defendant in favour of 2nd defendant prior to the suit is valid?

(ii) Whether the transfer of permit and sale of buses by the 2nd defendant to the 9th defendant is valid?

(iii) Whether the plaintiffs are entitled to object the transfer of permit by the 1st plaintiff in favour of the 2nd plaintiff?

(iv) Whether the plaintiffs are entitled to seek share in the entire suit property after amendment in the plaint?



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(v) *Whether the amendment to the value of the 'B' schedule property (enhanced from Rs.10 lakhs to Rs.1 crore) made with mala fide intention?*

(vi) *What is the true value of 'B' schedule property?*

(vii) *Whether the suit is bad for non-impleading Sridevi Bus Service as defendants?*

(viii) *Whether withdrawal of O.S.No.77 of 2009 by the plaintiffs affect the case of the plaintiffs?*

(ix) *Whether the Civil Court has jurisdiction to examine the proceedings of the R.T.O issued under the Motor Vehicles Act?*

17. The second plaintiff, Jayanthi mounted the witness box and examined as P.W.1. Totally 59 documents (Ex.P1 to Ex.P29) were marked. Four witnesses for the defendants (D.W.1 to D.W.4) were examined and 40 exhibits (Ex.D1 to Ex.D4) were marked.

18. The suit for partition allowed as prayed in respect of the properties morefully described in Schedules 'A', 'B', 'D' and 'E'. A preliminary decree was passed fixing 11/16 share to the 1st plaintiff and 5/16 share to the 2nd plaintiff. In respect of 'C' schedule properties, the decree-holder was relegated to work out his remedy in the final decree proceedings.



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19. Grounds of appeal and response by respondents:-

A.S.No.376 of 2008:-

The appellants are the purchaser of the bus with route permits and the spare bus from the second plaintiff. According to them, the trial Court judgment is contrary to law, weight of evidence and legally unsustainable because the trial court failed to consider late M.R.Chellappan got only 1.28 acres of land from the family partition and no evidence to show the other properties were purchased from the income of the ancestral property. Contrarily, it is proved that M.K.Chellappan as a school Teacher had independent income and from his retirement benefits started transport business and money lending business. Likewise the second defendant who is daughter of a retired railway employee got properties from her father and acquired properties including the bus and bus route permits. From the second defendant, these appellants purchased the bus route permits and buses for consideration after the dismissal of the suit for partition. The vendor of the appellant had absolute title over the properties and same cannot be challenged by the plaintiffs. The decree of the trial court is vague. The sale effected by Marimuthu to the vendor of the appellants not challenged, while so, the subsequent purchase by the appellant cannot be subjected to challenge.



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20. In the absence of proof that from the ancestral nucleus Late.

M.R.Chellappan had sufficient income to purchase the buses and permit and without challenging the alienation of the right in the bus and permit by the first defendant in favour of the second defendant, the relief granted to the plaintiffs against the appellants is unsustainable.

21. A.S.No.564 of 2008:

The defendants 3 to 7 in the suit are the appellants. The 1st appellant is the purchaser of the 'A' schedule in the year 1994. The other appellants are the Finance Corporations, arrayed as defendants 4 to 7. Initially, the Finance Corporations were represented by their partner K.K.Kandasamy. After reconstitution of the partnership firms, appellants 2, 3 & 5 (defendants 4, 5 & 7) were represented by their partner P.Murugasen and the 4th appellant/6th defendant was represented by one S.M.Murthy.

22. The suit for partition is not maintainable and bad for partial partition, since Sridevi Bus Services was not included as defendants. Earlier suit in O.S.No.77 of 2005, filed for the same relief, was dismissed. While so, the subsequent suit in O.S.No.13 of 2004, for the very same relief is not



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maintainable and hit by constructive *res judicata*. The 3rd defendant purchased the suit property under Ex.A1 as early as 16.03.1994. Whereas, the suit challenging the said sale filed on 21.02.2005 is not maintainable. When the father of the 1st plaintiff (namely 1st defendant) is alive, there cannot be claim for partition. His (son) right to claim share in the property will not accrue on his birth since the property is the self-acquired property. Even in case of ancestral property, if the grandfather and father are alive, the son's son cannot claim share in the ancestral property held by the grandfather. Section 8 of Hindu Succession Act, 1956, not properly applied by the Court below. The 1st plaintiff, being the grandson of M.R.Chellappan, during his lifetime of his father Marimuthu, the 1st plaintiff will not get anything from the property of his grandfather. In the absence of evidence to show that late M.K.Chellappan was partner in the finance Companies arrayed as defendants 4 to 7 on the date of filing the suit, the trial Court ought not to have allowed the suit for partition in respect of partnership firms. More so, when evidence placed before the Court to prove the reconstitution of the firm after retirement of the defendants 1 & 2. Without passing the preliminary decree in respect of 'C' schedule property, the trial Court erred in postponing the decision on the 'C' schedule property till passing of the final decree in respect of other properties. The suit for partition



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was decreed in a casual manner, unmindful of the entitlement of the plaintiffs over the suit properties. With a vague description of the suit properties in the schedules, the decree of partition is unenforceable. The trial Court failed to give reasons as to how the property purchased by the 3rd defendant in the year 1994 (Ex.A1) from the defendants 1 & 2 been included in the partition. The 1st plaintiff is a party to Ex.P1. He had been represented by its guardian. While so, the alienation under Ex.A1 ought to have been challenged within three years of the minor attaining majority.

23. A.S.No.54 of 2011, C.R.P.No.3994 of 2009 & C.R.P.No.3995 of 2009:

Initially, the appeal was filed jointly by S.A.R.Somasundaram and Rajavel, who are third parties to the proceedings. The appeal filed by third parties since they are purchasers of item Nos.1 & 2 in the 'B' schedule property pending suit. After filing the appeal, Somasundaram/1st Appellant cancelled the sale in favour of Rajavel/2nd appellant who give up his right in favour of 1st appellant. Therefore, same been recorded by order of this Court dated 20.11.2023 by deleting the name of Rajavel.



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24. The appeal A.S.No.54 of 2011 then solely pursued by the appellant/S.A.R.Somasundaram. It is also to be noted that, C.R.P.Nos.3994 & 3995 of 2009 also by the very same parties preferred against the dismissal of the unnumbered Interlocutory application by the Court below.

25. The grievance of the third party-appellant is that, item Nos.1 & 2 of the 'B' schedule property is a Plot bearing Nos.52 & 53 in Bienezer Colony, Sankari. Initially, under the partition between Marimuthu (1st defendant) and his mother late Saraswathi, Plot No.51 was allotted to Saraswathi (2nd defendant) and Plot No.52 was allotted to Marimuthu. Later, Marimuthu settled the property in favour of his mother by a registered settlement deed, thus Saraswathi become absolute owner of Plot Nos.51 & 52. The said Saraswathi sold the property to S.A.R.Somasundaram *vide* registered sale deed dated 27.10.2004. He, in turn sold part of the property to Rajavel under a registered sale deed dated 21.02.2007.

26. The appellant purchased the property without notice of the pendency of the suit. The vendor, namely Saraswathi failed to inform about the suit pendency. When the appellant filed the application to implead themselves



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on knowing about the pendency of final decree proceedings, same was rejected by the Court below stating that the final decree proceedings already passed and therefore nothing survives to entertain the implead petition. Hence, being the owner of item Nos.1 & 2 in the 'B' schedule property, sold by his vendor claiming it as her absolute property, the trial Court judgment and decree passing preliminary decree of partition is to be set aside since the trial Court held erroneously that 'B' schedule property is joint family property, purchased on 21.02.1974 under Ex.A5 prior to the family partition dated 26.05.1988.

27. In fact, 'B' schedule property are not joint family property that is the reason why the property was not included in the family partition which took place subsequent to the purchase of the 'B' schedule property. The property which was purchased subsequent to the partition are the individual properties and not the property of HUF. In any event, the trial court ought not to have included Plot Nos.51 & 52 show in 'B' schedule property in the decree of partition.

28. The appeal of S.A.R.Somasundaram against the judgment and decree passed in O.S.No.13 of 2004 and his two Civil Revision Petitions



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Nos.3994 & 3995 of 2009 directed against the rejection of the unnumbered interlocutory applications are for one and the same purpose and on same grounds.

29. S.A.R.Somasundaram and Rajavel are the third party appellants.

Their case is that, Plot Nos.51 & 52, mentioned in the 'B' schedule, were purchased by S.A.R.Somasundaram on 27.10.2004 from Saraswathi, the 2nd defendant. He sold Plot No.51 to Rajavel on 21.02.2007. Both of them came to know about the judgment and a preliminary decree passed in O.S.No.13 of 2004. Much later when final decree application I.A.No.1102 of 2008 was pending. Immediately, they filed applications to implead themselves, respectively, in the final decree proceedings; however, their applications were rejected by the court below on the ground that the final decree application in I.A. No.1102 of 2008 was allowed.

30. Being aggrieved by the rejection of the implead petition, S.A.R.Somasundaram preferred C.R.P.No.3994 of 2009 and Rajavel filed C.R.P.No.3995 of 2005. In the said circumstances, Rajavel executed a cancellation deed in favour of S.A.R.Somasundaram cancelling the sale deed



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dated 21.02.2007; thus, S.A.R.Somasundaram became owner of both Plot Nos.51 & 52. Stating the said development, S.A.R.Somasundaram preferred C.R.P.No.3994 of 2009 to exonerate and strike off the name of Rajavel and substitute his name in C.R.P. No.3995 of 2009. Similarly, an application was made by S.A.R.Somasundaram to strike out the name of Rajavel shown as 2nd appellant in A.S. No.54 of 2011. This Court, allowed those applications by order dated 20.11.2023.

31. For the sake of convenience, parties are referred as per their respective designation and ranking:

The plaintiffs are grandson and daughter-in-law of late M.R.Chellappan. The defendants fall under five different categorised:-

(i) The defendants 1 & 2, are son and wife of Chellappan, claiming absolute right over the properties and absolute right to alienate it.

(ii) The defendants 3 who had purchased the 'A' schedule property from the 1st defendant, 2nd defendant and others.

(iii) The defendants 9 & 10 who had purchased the bus and route permits from 2nd defendant.



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(iv) This category of the defendants (4 to 7) are the representatives of the finance companies in which the plaintiffs claim that late M.R.Chellappan had interest and share as partner which wholly appropriated by defendants 1 and 2 excluding the plaintiffs.

(x) Yet another category is the third party appellants, who had purchased the 'B' schedule property pending suit.

32. One more defendants, who was arrayed as 8th defendant, remained absent and no appeal by her filed.

33. Before the Court below could complete the trial of the case, the main plaintiffs' reliefs in the suit were altered: the 2nd defendant died intestate on 24.02.2005 and eight months thereafter, the 1st defendant Marimuthu died intestate on 03.10.2005. Therefore the suit for partition, which initially sought 3/8 share for the 1st plaintiff, was amended to seek 11/16 for the 1st plaintiff and 5/16 for the 2nd plaintiff due to the enlargement of their interest.

34. The case of the plaintiffs in short is that late M.R.Chellappan, the father of the 1st defendant, Marimuthu and the grandfather of the 1st plaintiff



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(minor Cibiraj, son of Marimuthu) comprised a Hindu coparcenary. From the income derived from the nucleus of the ancestral property held by late Chellappan, the rest of the suit properties were acquired and they all carry the character of ancestral joint family property. The 1st defendant Marimuthu, who married the 2nd plaintiff on 18.06.1992 and through their wedlock the 1st plaintiff was born on 17.12.1993, started neglecting the plaintiffs who are his minor son and wife.

35. To defeat the interest of the 1st plaintiff, the joint family property being ameliorated by various transactions prejudicial to the interest of the minor coparcener. Since the 2nd plaintiff had initiated proceedings against the 1st defendant seeking matrimonial remedy, the defendants 1 & 2, in collusion with the other defendants had alienated substantial portion of the suit properties prior and subsequent to the filing of the suit. Further, the case of the plaintiff is that after the birth of the 1st plaintiff, the 1st defendant wilfully neglected the plaintiffs. However, he issue a notice dated 13.08.1994 to the 2nd plaintiff through his lawyer containing vexatious and false allegation. For which, the 2nd plaintiff replied expressing a desire to re-join him. Without acceding to her request for reunion, the 1st defendant filed a petition for divorce and started



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alienating or encumbering the properties. The 2nd plaintiff instituted a petition for restitution of conjugal rights. In the interregnum, the 'A' schedule property sold to the 3rd defendant on 16.03.1994 under Ex.A.1. The 'A' schedule properties are Punja lands consisting of 12 items of property, including undivided shares in the irrigation well and common right of pathway. Out of these 12 items of the properties, some were allotted to Chellappan in the family partition and some were purchased by Saraswathi from out of the income derived from the ancestral properties. This alienation in favour of the 3rd defendant Sengodan was made to defeat the interest of the minor son and not for any his own interest. Therefore, the alienation of the minor's interest in respect of 'A' schedule property in favour of third defendant is questioned by the plaintiffs. The 'B' schedule property is the residential house and land bearing Nos.51 & 52 at Ebenezzer Colony, Sankari.

36. The evidence on the side of the plaintiffs is that, 'A' schedule property consists of ancestral land allotted under family partition and lands acquired from the income derived from the ancestral punja land. 'B' schedule property was purchased by M.R.Chellappan from income derived from the joint family property through sale deed dated 21.02.1974 marked as Ex.A.5 and



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Chellappan dealing the property as Karta. While so, soon after the death of Chellappan, on 23.12.1993, hurriedly on 29.06.1994, the defendants 1 & 2 entered into a partition deed in respect of 'B' schedule property, allotting the land and building in Plot No.51 to the Saraswathi/2nd defendant and the vacant land in Plot No.52 to Marimuthu/the 1st defendant. On the very same day, by way of settlement deed, the 1st defendant Marimuthu had settled the vacant house-site bearing Plot No.52 in favour of his mother the 2nd defendant *vide* Ex.A7. Thereafter, to create third party interest in the property, pending suit, Saraswathi the 2nd defendant executed a sale deed dated 27.10.2024 in favour of S.A.R.Somasundaram, who in turn sold the vacant land bearing Plot No.52 to one Rajavel on 21.02.2007. The plaintiffs claim that these transactions are *pendente-lite* transactions created to defeat the interest of the minor in the property, which has been included in the plaintiffs' claims for share in the property.

37. *The 'C' schedule properties is in respect of alleged interest of M.R.Chellappan in the four finance Companies arrayed as defendants 4 to 7. Since the exact interest of M.R.Chellappan is not known to the plaintiffs, they have left open the share they are entitled through M.R.Chellappan and sought*



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for the reliefs allotting appropriate share.

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38. The 'D' schedule property pertains to bus permit, spare bus and motor vehicles. The 1st item in the 'B' schedule is the bus bearing registration No.TN-28-C-4488 with the route permit. The 2nd item is the spare bus with Reg.No.TN-X-4438. The 3rd item is the motor car bearing Reg.No.TAM-5688, the 4th item is the Ambassador Car bearing Reg.No.TN-28-X-6688 and the 5th item a Maruti Ashok leyland lorry bearing Reg.No.TN-28-Y-2662.

39. The case of the plaintiffs is that these vehicles were purchased from out of the joint family income, particularly the 1st item, the bus and route permit which was purchased from the joint family income from the name of 1st defendant, Marimuthu, when he was 20 years old and pursuing his studies and when he had no income of his own. Questioning the validity of transfer of the bus permit by the 1st defendant to the 2nd defendant and 2nd defendant alienating the right to and in favour of 9th and 10th defendant pending litigation.



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Point for determination:-

(i) *Whether the 'A' schedule property continue to carry the character of ancestral joint family property after the partition deed dated 26.05.1988, marked as Ex.A2 and whether some of the properties alienated under Ex.A2 in favour of 3rd defendant purchased by the 2nd defendant under Ex.A4 is joint family property held in the name of 3rd defendant or her individual property?*

(ii) *Whether the 'B' schedule property was acquired from out of the joint family nucleus or it is the absolute property of M.R.Chellappan purchased from his retirement benefit?*

(iii) *In any case, whether the partition deed Ex.A8 between 1 & 2 appellants excluding the 1st plaintiff in respect of 'B' schedule property and the sale of the property in favour of 9th defendant on 27.10.2004 is valid and binding on the plaintiffs?*

(iv) *Whether the trial Court right in rejecting the implead petition in the final decree application on the ground that the final decree proceedings were disposed of on 10.09.2009?*

(v) *Whether the decree of the trial Court in respect of 'C' schedule property is ambitious and*



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unenforceable?

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(vi) Whether the transfer of bus permit and the buses mentioned in 'D' schedule as items Nos.1 & 2 form part of the joint family property and if so, whether the defendants 9 & 10 who had purchased the permit pendente lite can claim any right in it?

40. The defence taken by the 3rd defendant, who had purchased the 'A' schedule property is that the property was sold to him by all the members of the family including the minor son represented by his guardian. The sale was made to meet the family expenses and for the interest of the minor boy for valuable consideration and hence, cannot be challenged. The sale by Appu @ Ramasamy Gounder, Saraswathi (wife of Chellappan), Marimuthu (son of Chellappan) for himself and on behalf of his unnamed minor son (1st plaintiff) describes the property as developed by them from ancestors, by partition and by purchase. The deed also specifically states that the alienation is done to meet the maintenance of the minor and to clear the family's debt. He relies on Ex.B2 and an earlier partition among the sons of Palani Gounder (namely, Sengodan Gounder, Sellamuthu and Kandasamy), the sons of Sellamuthu (namely Kandasamy and Loganathan) and the sons of Kandasamy (Senior), namely



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Baskar and Manokar. Appu @ Ramasamy, his son Chellappan and Marimuthu (son of Chellappan), thus a larger coparcenary in which Chellappan and his son Marimuthu were members, got divided by way of a partition deed Ex.A2 dated 26.05.1988 and further, the properties devolved under this partition along with other properties purchased by Saraswathi were sold compositely under Ex.A1 dated 16.03.1994. Such alienation was done to meet the family debt and to maintain the unnamed minor child, and thus the transaction is contended to be valid and binding on the 1st plaintiff. In any event, out of the 12 items of property sold, only four items carry the character of ancestral property; the rest were the absolute property of Saraswathi who sold them to the 3rd defendant along with others who had interest in the property.

41. Ex.A-2 partition deed dated 26.05.1988 is between 11 members of the coparcenary joint family. They are all the descendants of Palani Gounder, Kandasamy Gounder and Sengoda Gounder (Senior). The 'C' Schedule properties mentioned in this partition deed dated 26.05.1988 marked as Ex A-1 allotted to Sengoda Gounder branch consisting of his son Appu @ Ramasaamy Gounder, grand son Sengodan and great grand son Marimuthu.



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42. The 'A' schedule properties in this suit consists of some of the properties allotted to Sengoda Gounder Branch i.e., Appu @ Ramasamy Gounder, his son Sengodan and grandson Marimuthu. That apart few more properties purchased in the name of Saraswathi under Ex.A-4 dated 05.07.1975 from Appu @ Ramasamy Gounder are also included. The vendors to the third defendants under Ex.A-1 are: Appu @ Ramasamy Gounder S/o.Sengoda Gounder (Senior), his daughter in law Saraswathi, his son Marimuthu and his grand son 3 months old unnamed minor represented by his father.

43. The recital in the sale deed Ex.A-1 executed in favour of the 3rd defendant specifically mentions that the properties devolved from ancestors, allotted in partition and acquired through purchase. The deed further says that they are selling the properties to meet the minor's necessity and to clear the debts.

44. The case of the plaintiff centres on the plea that the properties mentioned in Ex.A-1 sale deed in favour of third defendant are nanja agricultural land devolved from the ancestors and properties purchased from the income of the ancestral lands by Late M.R.Chellappan in the name of his



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wife Saraswathi. All the newly acquired properties got blended with the ancestral properties. When the third defendant purchased the property under Ex.A-1, it is said that the vendors sell it for minor's benefit and to clear the debts. The 3rd defendant, who claims to be a purchaser with good faith and for value had not ensured that the interest of the minor is protected or whether or not there was any un-discharged debts for the family. The sale of the ancestral property under Ex.A-1 dated 16.03.1994 was within three months of the death of the Kartha Chellappan who died 23.12.1993 leaving behind large estate and profitable business. No evidence to show that Chellappan died as un-discharged debtor. Though there was no necessity to sell the ancestral properties, the defendants 1 and 2 sold away the joint family property with a sole intention of defeating the first plaintiff right.

45. To this argument, the counsels for the 3rd defendant can only say that the suit through minor after 11 years of his purchase and transfer of possession and revenue records is only to defeat the lawful right of the bonafide purchaser for value. His further contention is that, most of the properties purchased by the 3rd defendant under A-1 are the self acquired properties in the name of Saraswathi (second defendant). It is not possible for Chellappan to



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purchase those properties in the name of his wife from out of the income derived from the ancestral property measuring only about 1.24 acres.

46. The Learned Counsel also strongly rely on the judgement of the Supreme Court rendered in *Marabasappa (dead) by LRs & others -vs- Ningappa (dead) by LRs & others* reported in (2011) 9 SCC 451.

47. In the above said judgment, the Hon'ble Supreme Court at paragraph Nos.24 and 25 has observed that,

24. Section 14 of the Hindu Succession Act, 1956 clearly mandates that any property of a female Hindu is her absolute property and she, therefore, has full ownership. The Explanation to sub-section (1) further clarifies that a Hindu woman has full ownership over any property that she has acquired on her own or as stridhana. As a consequence, she may dispose of the same as per her wish, and that the same shall not be treated as a part of the joint Hindu family property.

25. This Court has time and again held that there is no presumption of joint family property, and there must be some strong evidence in favour of the same. In



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Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade [(2007) 1 SCC 521], after examining the decisions of this Court, it was held:

“17. Therefore, on survey of the aforesaid decisions what emerges is that there is no presumption of a joint Hindu family but on the evidence if it is established that the property was joint Hindu family property and the other properties were acquired out of that nucleus, if the initial burden is discharged by the person who claims joint Hindu family, then the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property by cogent and necessary evidence.”

48. Unlike the case in hand, in the *Marabasappa case cited supra*, the property involved is the property gifted to the female by her father as stridhana. Whereas in the instant case the properties in the name of Saraswathi included in sale deed Ex A-1 along with other properties inherited as ancestral properties were alleged to have been purchased by her from her father in law Appu @ Ramasamy and his cousin Palaniappan & his children born to the two wives of Palaniappan. Thus a portion of the ancestral property is transferred in the name of Saraswathi for consideration as shown in the sale deed dated Ex.A-5 dated 05.07.1975. It is a fact undisputed that Saraswathi had no independent income of her own. It is the specific case of the defendants that Saraswathi purchased



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this property from the fund given by her father to her as shridana and share in his property. It is further case of the defendants is that the father of Sarawathi retired as Railway employee and had fund to give to his three daughters. However, no oral or documentary evidence adduced to probablise the contention that the Saraswathi had enough independent source to purchase the properties shown under Ex.A-5 which are the ancestral properties of the vendors.

49. In *Makhan Singh (dead) by LR's -vs- Kulwant Singh* reported in *2007 (10) SCC 602*, the Hon'ble Court following the earlier Judgment in *D.S.Lakshmaiah -vs- L. Balasubramaniam* reported in *(2003) 10 SCC 310*, has held that, there was no presumption in law that a property purchased in the name of a member of the family had ipso facto the character of joint Hindu family property unless it could be shown that the family possessed a nucleus for the purchase of the same. However, the burden to prove that joint family funds were available with the family with which property purchased in the name of son lay on the party who asserts this fact.



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50. In this case, the recitals in Ex.A-1 sale deed dated 16.03.1994 executed in favour of the 3rd defendant, Ex.A-2 dated 26.05.1988 the partition deed among the siblings of Palani Gounder and his sons, Ex.A-4 the sale deed in favour of Saraswathi, Ex.A-8 dated 29.06.1994 the partition deed among the first and second defendant, invariable the properties either mentioned as ancestral or joint family property. Thus the plaintiffs able to prove that while purchasing the 'A' to 'E' schedule property, Chellappan had ancestral nucleus and from it the joint family properties were acquired.

51. In *D.S.Lakshmaiah -vs- Balsubramaniam* reported in (2003) 10 SCC 310, to the query who is required to prove the nature of the property whether it is joint Hindu family property or Self-acquired property, the Apex Court answered as below:-

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



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would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.”

52. We also gone through the judgment of this Court rendered by two Learned Judges in ***Nagayasami Naidu and other -vs- Kochadai Naidu and others*** reported in ***AIR 1969 Mad 329***, for understanding the distinction and scope of presumption between properties acquired by male members of Hindu joint family and properties acquired by the female member of the Hindu joint family. The Learned Judges have succinctly explained the essential distinction as under:-

“There is an essential distinction as to the scope of the presumption in the case of acquisitions in the names of male members of a joint family and the female members of a joint family. In the case of male members of a joint family, there is a presumption that if the joint family had sufficient ancestral nucleus, the properties standing or acquired in the name of junior members are joint family properties unless the presumption is rebutted by showing that the properties are the separate properties of the particular member or members in whose names the properties stand or were acquired. There is no such



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presumption in the case of properties standing in the name of female members. In the latter case, it is for the party who claims properties as joint family properties to specifically plead the particulars and details, in the pleadings and establish the same by adducing necessary evidence. If there is no pleading and if on the side of the plaintiffs there is no evidence, there is no need for detailed scrutiny of the case of the female members or persons claiming through them, as to the resources of the female members and so to how they acquired the properties in question. If the plaintiff on whom the burden lies adduce no evidence, no further question arises and the female member in whose name the property stands, must be held to be the beneficial of the property in question. In Raghavachar's Hindu Law, 5th Edn, at page 283, footnote 180, reference is made to some of the cases in which it was held that, the presumption that property in the name of coparcener is joint family property, is inapplicable where it stands in the name of a non-coparcener such as a female member of a joint family."

53. The composite sale of the properties held in the name of Saraswathi acquired under Ex.A-5 along with the shares in the ancestral properties through Ex.A-1 in favour of the 3rd defendant, is adequate to presume that the members of the joint family headed by Appu @ Ramasamy



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treated the properties mentioned in A schedule as joint family property and they have sold it after the birth of the first plaintiff. The reason to sell the property is also mentioned as 'for meeting the necessity of the un-named minor child (the first plaintiff) and to clear the family debts'. Since, the 3rd defendant the purchaser of the property could not establish his bonafide of purchasing the minor's right, under Ex.A-1 dated 16.03.1994 in respect of A schedule property will not bind the first plaintiff who acquired right in the ancestral property by his birth. In so far as his share and right in A schedule properties, the sale is declared void.

54. Regarding the 'B' schedule property which is the land and building in Plot No.51 and vacant land in Plot No.52, the present holder of interest S.A.R.Somasundaram is that the said property which was promoted has layout by Cooperative Building Society purchased by Chellappan vide Ex.A5 dated 21.02.1974. The said land measuring 2800 sq.ft identified with Plot No.73 with boundaries in the same layout Ebenezzer Colony, Sankari, plot No.52 been sold by the Society to Marimuthu/1st defendant on 29.08.1988 vide Ex.A6, measuring 2800 sq.ft. After the death of Chellappan his son Marimuthu/1st defendant and his wife Saraswathi/2nd defendant had entered into



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a partition wherein, they have stated that Chellmuthu purchased 'A' schedule ('B' Schedule in the present suit) property from Ebienezzer Cooperative Society under sale deed No.130/1974 dated 21.02.1974 (Ex.A5) and had constructed a building on it. The 1st defendant/Marimuthu purchased the 'B' schedule property from the same society on 29.08.1988 under document No.113/1988 from out of joint family property and been jointly enjoyed by them is subjected to partition in which Saraswathi/2nd plaintiff allotted Plot No.51 and building thereon, Marimuthu allotted a vacant site identified as Plot No.52. In this partition, there is a specific recital that the property which is subject matter of 'B' schedule is joint family property been divided among mother and son as found in Ex.A8. On the very same day, son Marimuthu had executed the settlement deed in favour of his mother Saraswathi in respect of Plot No.52 a vacant site. Thus, from these two documents Saraswathi had become the title holder of entire 'B' schedule property.

55. S.A.R.Somasundaram who is the third party appellant and also revision petitioner in C.R.P.Nos.3994 & 3995 of 2009 contends that he purchased Plot No.52 from Saraswathi for a consideration of Rs.4,62,000/- vide sale deed dated 27.10.2004. His vendor Saraswathi got title over the property



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through settlement deed dated 29.06.1994 (Ex.A7) executed by her son Marimuthu, who purchased the property from Co-operative Society on 29.08.1988 under Ex.A6. Since these properties also included in the final decree proceedings for division as per the impugned judgment passed in O.S.No.13 of 2004, he and one Rajavel to whom he had sold the portion of the property subsequently filed implead petition in the final decree proceedings before the trial Court. However, those applications were rejected unnumbered, hence they have filed revision against the rejection of the unnumbered applications as well as third party appeal. Pending these proceedings, he has cancelled the sale made in favour of Rajavel and thereby he holds the title for entire 'B' schedule property by virtue of sale deed 27.10.2004 executed by Saraswathi ammal.

56. It is to be noted that the defendants 1 & 2 themselves have considered the property mentioned in 'B' schedule as joint family property. A specific recital in the partition deed in respect of this property executed on 29.06.1994 and marked as Ex.A8 indicates that this property been treated as joint family property. The source for purchase of the property by M.R.Chellappan in the year 1974 and by Marimuthu in the year 1988,



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according to the third party appellant, it was purchased from the personal income of the respective purchasers. Whereas, the plaintiffs contention is that the properties were acquired only from the joint family income in the name of family members.

57. Yet another crucial fact in this transaction which is to be noted is the transfer of this property by the 2nd defendant in favour of S.A.R.Somasundaram under sale deed dated 27.10.2004. On the date of the transfer, the suit for partition which was presented on 22.02.1995 before the Subordinate Judge, Sankari and taken on file in O.S.No.312 of 1995 was pending. So, whatever transaction done by the 1st and 2nd defendants after 21.02.1995 falls within the definition of *pendente-lite* transaction.

58. The Learned Counsel appearing for the third party Appellant in A.S.No.54 of 2011 and petitioner in C.R.P.No.3994 of 2009 and C.R.P.No.3995 of 2009 submitted that, the applications to implead in the final decree proceedings rejected on technical ground instead of considering it in true spirit of the law. In any event, having filed the appeal against the judgement and decree in respect of the 'B' schedule property which was



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purchased in good faith for value from the second defendant who had not disclosed about the pendency of the suit, his right has to be protected.

59. In support of his submission, the protection extended to a 'pendente lite' purchaser with good faith and for value, the following judgments relied:-

1) *R.K.Mohammed Ubaidullah & others -vs- Hajee C.Abdul Wahab (D) by LRS and others* reported in 2000 (6) SCC 402.

2) *V.Dhanasekaran & others -vs- A.Krishnamurthy (died) & others* reported in 2023(1) LW 517.

3) *V.K.Elayalwar -vs- N.Govindarajulu and others* reported in 1993 (2) LW 430.

60. To test whether it was a bonafide transaction *pendente-lite*, following dates and events are to be considered.

(i) 18.06.1992: Jayanthi (the second plaintiff) and Marimuthu (the first defendant) got married.



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(ii) 17.12.1993: Cibiraj (the first plaintiff) was born to them.

WEB COPY (iii) 23.12.1993: Chellappan (the father of the first defendant Marimuthu) died.

(iv) 29.06.1993: Document No.581 and Document No:582 were registered at SRO, Sankari.

61. They are the partition deed between the defendants 1 and 2, namely, Marimuthu and Saraswathi, in respect of the suit 'B' schedule property, marked as Ex.A-8 and Ex.A-7 respectively.

13.08.1994: Notice by Marimuthu through his lawyer to his wife Jayanthi.

27.10.2004: The third-party appellant S.A.R.Somasundaram had purchased the property from Saraswathi ammal on the strength of Ex.A-8 and Ex.A-7.

21.02.2007: Somasundaram had sold the property to Rajavel.

62. After passing of preliminary decree in O.S.No.13 of 2004, when final decree application I.A.No.1102 of 2008 pending, S.A.R.Somasundaram



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had filed an application to get himself impleaded stating that he is a bonafide purchaser of the 'B' schedule property from Saraswathi for a valuable consideration of Rs.4,62,000/- and got the duly registered on 27.10.2004. This petition filed on 27.01.2009 before the Additional Sessions Judge, Salem as per the court seal. In the affidavit of S.A.R.Somasundaram accompanying his implead petition, the sale of the property to Rajvelu not on 21.02.2007 not disclosed. Whereas, Rajavel had taken out a separate application under Order I, Rule 10 C.P.C., to get himself as party interested. In which he had averred that, Plot No: 51 was purchased by S.A.R.Somasundaram from Saraswathi on 27.10.2004 for Rs.7,90,000/- and from S.A.R.Somasundaram he purchased it on 21.02.2007 for Rs.12,68,000/-. Both the applications filed to get impleaded in the final decree application I.A.No.1102 of 2009 with defects were heard after curing the defects. They were rejected as unnumbered applications on 20.10.2009. The rejection order is the subject matter of C.R.P.No.3994 of 2009 and C.R.P.No.3995 of 2009.

63. Pending revision petitions, S.A.R.Somasundaram and Rajavel jointly filed A.S.No.54 of 2011 challenging the judgment and decree passed in O.S.No.13 of 2004 on the ground that they being purchaser of 'B' schedule



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property *pendente lite*, for value from Saraswathi, their rights and interest is protected under law. While pending appeal and revisions, the sale deed in favour of Rajavel cancelled and on application of S.A.R.Somasundaram, the last person in whose name the property transferred pending suit was exonerated and in his place, Somasundaram got substituted.

64. The way the title to the 'B' schedule property got transferred pending suit for partition, as narrated above with dates and events, without any doubt shows that none of the transactions after suit was made in good intention or have any semblance of bonafide. First of all, as observed earlier, there is no evidence to show that Late M.R.Chellappan purchased part of the 'B' Schedule from his independent income and put up construction from the income independent of his ancestral property income. There is no evidence to show that the first defendant, Marimuthu, had any source of income in the year 1988, when he purchased Plot No.52 from the Society under Ex.A-6. Nothing to presume that the 'B' schedule property was divided among the first and second defendants and on the same day the first defendant settled his portion allotted under the partition to and in favour of his mother, the second defendant, was for any genuine reason or with bonafide intention. More particularly, during the



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period when the defendants 1 and 2 created the partition deed and settlement deed, the suit for partition filed before the Sub-Court, Sankari in O.S.No.312 of 1995 was pending and later transferred to Additional District and Sessions Court, Salem and renumbered as O.S.No.13 of 2004. Ex.A-17, dated 20.01.1996 and Ex.A-19, dated 13.12.1998 are the announcements to the public through newspaper publication informing about the pendency of partition suit O.S.No.312 of 1995 with a warning to the public not to deal with defendants 1 to 2 in respect of properties mentioned. The 'B' schedule in the plaint is shown as item No.2 in the public notice. Therefore, the principle of 'caveat emptor' applies squarely to the facts of the case.

“45. Section 52 of the Transfer of Property Act is based on the principle that no new right should be introduced pending litigation. This principle was applied by Courts even before the commencement of Transfer of Property Act. The object of Section 52 has been dealt with in several precedents. The section is based on equity and good conscience and intended to protect that parties to a litigation against alienations by anyone of the parties to the lis. However, the Court has always held that the transaction will not become void as a whole.”



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65. From the decision in *Punithavelu Mudaliar -vs- Bhashyam Aiyangar* reported in **(12 MLJ 282)**, the consistent view of this Court is that, a plea that transferee had no notice of the pending suit will be of no avail. It is general rule that a person cannot confer on another a higher title than what he possesses. If a person purchases, with open eyes, the subject matter of a pending litigation and if he is allowed to remain unaffected by the result of the litigation, it would tantamount to giving license to the parties to the suit to alienate the subject matter of the suit.

66. As a result, we hold that, the 'B' schedule property which is a joint family property even according to Ex.A-8, a registered partition deed entered between the first and second defendant, subjected to a settlement deed in favour of second defendant by the first defendant. Further, the sale to the third party appellant made by the second defendant all during pending suit.

67. In *Radhakrishnadas -vs- Kaluram (dead)* reported in **AIR 1967 SC 574**, the Hon'ble Supreme Court has observed:-

“It is well established by the decisions of the Courts in India and the Privy Council that what the alienee is required to establish is legal necessity for the



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transaction and that it is not necessary for him to show that every bit of the consideration which he advanced was actually applied for meeting family necessity. In this connection we may refer to two decisions of the Privy Council. One is Sri Krishan Das v. Nathu Ram [ILR XLIX All 149 (PC)]. In that case the consideration for the alienation was Rs.3500. The alienee was able to prove that there was legal necessity only to the extent of Rs.3000 and not for the balance. The High Court held that the alienation could be set aside upon the plaintiff's paying Rs.3000 to the alienee. But the Privy Council reversed the decision of the High Court observing that the High Court had completely misapprehended the principle of law applicable to a case of this kind. What the alienee has to establish is the necessity for the transaction. If he establishes that then he cannot be expected to establish how the consideration furnished by him was applied by the alienor."

68. *The 'C' Schedule property consist of partnership firms running finance business. The four finance corporations are defendants 1 to 7. K.K.Kandasamy as one of the partner of defendants 4, 5 & 7 and one S.Murthy as partner of 6th defendant are representing these firms.*



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69. According to the plaintiffs, M.R.Chellappan till his lifetime was partner in these firms and he had made deposits also but they are aware of the details, hence they claim his share as per his entitlement. Similarly, 3rd item of properties morefully described in 'E' schedule are properties of M.R.Chellappan purchased in the name of the Finance Company and therefore entitled for share.

70. According to the defendants representing the finance firms, the firm is not making any profit, M.R.Chellappan was never partner of the firm, nor he has invested in the firm. The 2nd defendant, who had been partner in the firm during 2002-2003, retired from the partnership and therefore, the plaintiffs are not entitled for any share either in the assets of the partnership firm or in the property held by the firm. In this regard, the trial Court has allowed the relief in respect of the 'E' schedule as prayed by the plaintiffs and in respect of investment in the partnership firm, the defendants 4 to 7 had relegated the parties to get redressal in the final decree proceedings. In this connection, the defendants have submitted the documents pertaining to the partnership firms, including statement of accounts, release deed and income tax returns for the year 1994-1995 and contended on behalf of the defendants 4 to 7 that, late Chellappan had no interest in these firms and the interest of 2nd defendant in the



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firm was for limited period and she got retired from the firm somewhere between 2002, are all contradictory *exfacie* and not duly supported by adequate evidence. Evidence and admissions self contradicting render the case of the appellants in A.S.No.376 of 2008 unsustainable.

71. Particularly, Ex.A9 in respect of the Jaisakthi Finance Corporation, Ex.A10 in respect of Umasakthi Finance Corporation, Ex.A11 in respect of Parasakthi Corporation, Ex.A.12 in respect of Sakthi Finance (Form-A) clearly show that, M.R.Chellappan and thereafter Saraswathi were partners of the firms. These exhibits mentioned above say about the resignation of M.R.Chellappan and Saraswathi from the partnership firms. Whereas, the death announcement of M.R.Chellappan in the daily newspaper MalaiMalar marked as Ex.A18 states that M.R.Chellappan was partner of Sakthi Finance Corporation and owner of Sakthi Transport buses and lorry. The additional written statement by 4th defendant adopted by defendants 5 to 7 are that M.R.Chellappan, his wife thereafter his son were partners one after another till Marimuthu retired pending suit.



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72. The plaintiffs, in their pleadings, made specific averments that M.R.Chellappan had financial interest in the defendants 4 to 7 firms. The 2nd defendant also admits about her investment in the said firms. However, she claims that her investments were made from her independent source, which has no proof. Under these circumstances, the defendants 4 to 7 having failed to impress upon the trial Court that, on the date of filing the suit, neither M.R.Chellappan nor Saraswathi had any interest in the finance Companies enlisted in 'C' schedule and the properties described in item Nos.1 to 3 in 'E' schedule. The trial Court has relegated the parties to workout their remedy in respect of 'C' schedule in the final decree proceedings. Probably it appears that the trial Court having found that the defendants 4 to 7, being partnership firms and the evidence indicates that the family income being invested in these firms either as partners in the firms or by deposits. In a “composite suit” for movable and immovables assets had thought fit that the parties have to work out their remedy in the final decree proceedings. In a suit for partition, with property of all kinds, the judgment ascertaining the proportionate shares of the properties and directing the parties to be apportioned the properties by metes and bounds or by any other means in consonance with the judgment, is permissible under law.



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73. No doubt, the defendants 4 to 7 being partnerships duly registered under the Partnership Act and the provisions of Special Act will govern and dissolution of partnership and rendition of accounts is a remedy for a partner who has resigned or retired. A unique fact in this case is that the partners in the firms is not seeking any dissolution of the partnership or rendition of accounts. The plaintiffs are neither agents of the principal nor they have resort for independent suit. Hence, under Order XX Rule 18(2) of C.P.C., the trial Court had relegated the parties to work out their remedy in the final decree proceedings. For convenience sake, Order XX, Rule 18 (2) of C.P.C., is extracted below:

“18. Decree in suit for partition of property or separate possession of a share therein.— *Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—*

(1).....

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several



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parties interested in the property and giving such further directions as may be required.”

74. Therefore, we find no error or illegality in the judgment of the trial Court which has left open the issue ascertaining the entitlement of the plaintiffs in the defendant's finance companies. The records of the finance companies not available with the plaintiffs, obviously for the reason that they were not in the affairs of the firm before or after the lifetime of M.R.Chellappan, Saraswathi and C.Marimuthu. Neither the appellants have produced documents to ascertain how much paid to Marimuthu when he got retired from the Partnership firm pending suit. In the light of the above, this Court confirms the judgment and decree passed by the trial Court in respect of suit properties mentioned in Schedules 'C' & 'E'.

75. The appellants in A.S.No.376 of 2008 are the partnership firm by name Sri Sarasawathi Bus Service and its partners who are shown as defendants 9 & 10. They have purchased the buses and bus permit which is mentioned as item Nos.1 & 2 in the 'D' schedule property. According to the plaintiffs, the 1st item bus and bus permit was acquired in the name of 1st defendant utilising the joint family property fund. On the date of acquisition, the 1st defendant was 20



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years old and he had no independent source of income. No evidence contrary to these facts available. Therefore, being a joint family property acquired by M.R.Chellappan in the name of his son Marimuthu remains as a joint family property and available for division in which the minor son as a coparnecary has vested interest. His father/1st defendant have no right to alienate or transfer the minor's son interest particularly prejudicial to his interest. In respect of transfer of the bus permit, in the proceedings before the Regional Transport Authority and writ petitions several orders been obtained as a interim measures. However, the transfer of permit in favour of third party appellant/S.A.R.Somasundaram has been finally culminated by the order of the State Transport Appellate Tribunal vide order dated 28.05.2004, which has confirmed the order of the Regional Transport Authority, Salem, dated 16.04.2003, transferring the permit in favour of the appellants in A.S.No.376 of 2008, subject to the condition that the said transfer of permit will be subject to the out come of the other civil disputes in respect of pending cases, on claim of share of over all ancestral properties.

76. Hence, insofar as item Nos.1 & 2 of 'D' schedule property is



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concerned, whether the permit and the buses acquired from the income derived from the ancestral nucleus is the point for determination, For the said purpose, it is relevant to refer the proceedings of Regional Transport Authority, Salem, tracing the bus permit for Mohanur-Poolampatty route. The record indicates that the permit which was originally in the name of Sakthi Transport, Sankari transferred to Marimuthu son of M.K.Chellappan on 10.12.1980. Thereafter, on 27.06.1994, same was transferred in favour of Saraswathi wife of late Chellappan. We find in the said proceedings of Regional Transport Authority, Salem, Sengodan, Chellappan, Marimuthu as well as Saraswathi were all shown as Proprietors of Sakthi Transport. Thus, obviously the transfer of permit from Sakthi Transport to Marimuthu was between the same family members.

77. The appellants in A.S.No.564 of 2008 are the representatives/partners of the Finance Companies which is shown as defendants 4 to 7 in the plaint. Their specific contention is that, neither Late M.R.Chellappan nor his son Marimuthu/1st defendant or his wife Saraswathi/2nd defendant were partners in the Finance Companies. Relying upon the deed of reconstitution of the respective partnership firm would contended that, M.R.Chellappan died much before institution of the suit and he was no way



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connected with the appellant's Finance Corporation. Whereas, the defendants 1 & 2 were at some point of time partners of the finance Company. However, they both retired from all the four companies even prior to the death. The annual statement of accounts of the finance companies would indicate that the company is running at loss and no income derived from the business. Hence, the question of sharing the mesne profits from the income of four finance institutions and allotting share to the plaintiffs in the finance companies does not arise. Further, the Learned Counsel appearing for the appellant contended that the judgment and decree of the trial Court in respect of the finance companies mentioned in 'C' schedule is vague, ambitious and unenforceable. Hence, the decree against these defendants in respect of 'C' schedule property is liable to be set aside.

78. The learned Counsel appearing for the appellant also submitted that being the partnership firm, prayer for partner of the partnership firm as such not maintainable. The plaintiffs ought to have been sought for dissolution of the partnership firm and rendition of account. The relief sought in the plaint in respect of 'C' Schedule property as such not legally maintainable apart from the factual reasons stated in the written statement. The trial Court miserably



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failed to consider the legal impediment and the evidence placed by the appellant but passed a decree which could not be enforced.

79. The Learned Counsel representing the Finance Companies-Appellants 2 to 5 in A.S.No.564 of 2008, which suffers the judgment and decree, submitted that the decree as such is vague and non-executable. Further, the claim of the plaintiffs that Late Chellappan and the defendants Marimuthu and Saraswathi as partners of the four Finance Corporations liable to share the income derived through the business proportionately is baseless. The trial Court gravely erred in ignoring the evidence placed to show neither M.R.Chellappan nor his wife or son were partners in these firms.

80. Further, the trial court failed to consider the law properly while dealing with the partnership firm mentioned in Schedule 'C' and the properties of the firms mentioned in Schedule E. Under law, if any partner dies or retires the income of the outgoing partner has to be dealt as per Chapter-V of the Partnership Act. In case of dissolution of the partnership firm same to be dealt as per Chapter-VI of the Act. The trial court oblivious of the provisions of the Partnership Act, had presumed that business stands in the name of any member



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of a joint family is a joint family business. The Learned Counsel for the appellants 2 to 5/defendants 4 to 7 contended that the statement of accounts marked as Ex.B-37 to Ex.B-40, the sale deeds for the 'E' schedule properties marked as Ex.B-36 and Ex.B-37 purchased in the name of 'Sakthi Finance on 29.06.1979, no way related to the M.R.Chellappan and his family after their retirement from the partnership firm.

81. The properties sold under Ex.A-1 to the first appellant/3rd defendant includes the properties purchased by Saraswathi (2nd defendant) from Appu @ Ramasamy Gounder on 05.07.1975 under Ex.A-4 which she purchased properties from out of the fund provided by her father and not from the nucleus of joint family property. The trial Court erroneously presumed it to be the joint family property, since the vendors were living jointly. Such presumption is permissible only if the properties held by male members of joint family who form part of the coparcenary and not in case of properties in the name of female members of the family.

82. Relying on the judgement of the Supreme Court rendered in



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Marabasappa (dead) by LR's and another -vs- Ningappa (dead) by LR's and others reported in (2011) 9 SCC 451, contended that the evidence adduced to

prove that the father of the second defendant Tmt.Saraswathi had 3 daughters. From the Stridhana and share given by her father, 2nd defendant under Ex.A-4 dated 05.07.1975 purchased the properties which form part of Ex.A-1. Therefore, no presumption can be made as to joint family property in the absence of contra evidence.

83. Few items in Ex.A-1, were the properties allotted to M.R.Chellappan and his son Marimuthu under the partition deed Ex.A-2 dated 26.05.1988 between the larger coparceners consisting of 11 members from the branches of Palani Gounder two sons namely 1). Sengoda Gounder and 2). Appu @ Ramaamy Gounder.

84. Referring the recital in Ex.A-1, the Learned Counsel for the appellant/3rd defendant claimed that, after the division among the coparceners under Ex A-2 and allotting the properties mentioned in 'B' Schedule of Ex A-2, the properties have lost its character of coparcenary property. Hence, the first plaintiff have no right to claim share in the A schedule properties neither as a



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coparcener nor as person vested with interest as member of joint family.

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85. It is further contended by the Learned Counsel that, in any case, when the sale was for legal necessity and the purchaser acted in good faith, the minor son who have not even a ostensible right in the property when his father and grand father alive, have no locus to maintain the suit for partition. The judgment of the Hon'ble Supreme Court in *Gangadharan -vs- Janardhana Mallan and other* reported in (1996) 9 SCC 53 is relied.

86. Though in the pleadings the Partners of these Finance Firm had pleaded, they are ready to produce documents relating to the partners and income, what produced as evidence by them show that M.R.Chellappan had invested in these firms and was a partner in it. On his death, his wife and son had been inducted during the pendency of the suit.

87. The Learned counsel appearing for the defendants 9 and 10, the purchasers of the buses and bus permits, contended that, the permits of the bus route Mohanur to Poolampatty (via) Nammakal, Thiruchengodu is held by M/s.Saraswathi Bus Services consisting of three partners, The name transfer



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from the second defendant was objected before the Regional Transport Authority by these plaintiffs citing pendency of civil dispute in O.S.No.312 of 1995 on the file of Sub-Court, Sankari (later transferred to Additional District Court (FTC II), Salem and renumbered as O.S.No.13 of 2004). The said objection was rejected by RTO, on verifying the records that the said suit was not on file on the day, the defendants purchased the permit. The suit was dismissed for failure to pay additional court fees. The injunction granted on dismissal of the suit lost its effect. The subsequent restoration of the suit will not restore the interim injunction. Accordingly, the permit got transferred in favour of defendants 9 and 10. The second item of the schedule 'C' is in respect of spare bus and its permit. While the permit for the spare bus got cancelled even during the pendency of name transfer application, the bus sold to an education institute. The defendants 9 and 10 in any case not pendent lite purchaser since on the date of the purchase of permit, no suit pending or injunction was in force. Having purchased the bus with route permit for value, as a bonafide purchaser for valuable consideration their right is to be protected. The public notices issued in dailies on behalf of the plaintiffs has no consequence.

88. Strangely in this case, all the transactions by the defendants 1 and



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2 together or between the second defendant and the third party appellant

Mr.S.A.R.Somasundaram made as if except 1st and 2nd defendants, there is none other have right or interest in the property. Totally suppressing the minor's interest in the property, those transactions had taken place, making true the apprehension expressed by the plaintiffs that the defendants are bent upon to alienate the properties detrimental to the interest of the minor.

89. In the absence of any reason to sell the minor's interest and in the absence of wilful suppression of minors interest, the sale of the minor's share in the 'A' and 'B' schedule properties are liable to be set-aside.

90. Regarding 'D' schedule property, we have already discussed at length including the rights of the *pendente-lite* purchaser. To recapitulate, first the properties mentioned in 'D' Schedule listed.

1. The bus bearing Reg.No.TN-28-C-4488 along with route permit.
2. The spare bus bearing Reg.No.TN-28-X-4488.
3. Two cars bearing Reg.Nos.TAM-6688 and TN-28-X-6688 and;
4. Ashok Leyland Lorry bearing Reg.No.TN-28-Y-2662, all of which form part of the 'D' Schedule.

91. In their written statement, the defendants 9 & 10 had stated that



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these vehicles were sold even prior to filing of suit. However, the documents produced indicate that the bus and bus route permits were initially transferred from the name of 1st defendant to the name of 2nd defendant. Thereafter, 2nd defendant had sold the bus and permit to the 9th defendant (Saraswathi Bus Service), represented by 10th defendant (Ravichandran).

92. The copy of the Regional Transport Authority, Salem, dated 16.04.2003 is the proceedings in respect of transfer of bus and route permits by 2nd defendant in favour of 9th defendant (Saraswathi Bus Service). This proceedings marked as Ex.A39 throws necessary details about the bus and route permits. From this document, we find that on 26.02.2003, the Saraswathi bus service/9th defendant through its partners, namely Tmt.RV.Bakkiam, N.Saraswathi wife of Narayanan and P.Nirmal had jointly applied for grant of permission for transfer of permits in respect of stage carriage TN-28/C-4488. When this application was made objection by the plaintiffs, the minor Cibiraj and Jayanthi were raised stating that name transfer should not be effected while the partition suit was pending.

93. While the request for transfer pending, the civil suit for partition



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originally numbered as O.S.No.312 of 1995 on the file of Sub Court, Sankari, was dismissed for default on 24.02.2003, presumably for not filing the additional court fees. Soon thereafter, the plaintiff had filed suit in O.S.No.167 of 2003 before the District Munsif Court, Salem, seeking permanent injunction restraining the Regional Transport Authority, Salem, Regional Transport Officer, Salem and Saraswathi from interfering with their right of 3/8 share in the bus and route permit and also taken out a public notice published in the daily on 24.02.2003 stating that attempt to restore the earlier suit O.S.No.317 of 1995, which was dismissed for default is made and the application is pending.

94. The fact being so, 9th defendant had filed W.P.Nos.7685 of 2003 and got an order on 12.03.2003 directing the Regional Transport Authority to consider their name transfer application as expeditiously as possibly preferably within a period of four weeks from the date of communication of the order. In the said circumstances, after affording opportunity to the objector, namely the plaintiffs herein and being satisfied that except pendency of litigation between the parties, there is no other legal impediment. The Regional Transport Authority has decided to transfer the permit in favour of Saraswathi Transport Company. In the said proceedings marked as Ex.A39, we find Regional



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Transport Authority, Salem had traced the history of the permit which stood in the name of Chellappan transferred to Saraswathi with effect from 27.06.1994.

Saraswathi with intend to transfer the permit to Sri Saraswathi Bus, had made an application jointly on 26.02.2003. Therefore, the Regional Transport Authority has transferred the permit from the name of Saraswathi to in the name of Sri Saraswathi Bus, subject to the outcome of the civil disputes. This order was confirmed by the State Transport Appellate Tribunal, Chennai, *vide* order dated 28.05.2004. Thus, the purchase of the bus route from Saraswathi and the transfer of permit in favour of Saraswathi Bus Service are subject to outcome of the suit in O.S.No.312 of 1995 which was renumbered as O.S.No.13 of 2004 on the file of Additional District/Fast Track Court No.I, Salem. The records substantially prove that the defendants 9 & 10 were purchasers of permit with full knowledge of the litigation. Even before the name could be transferred in their favour, they know about the objections and the name transfer was done only subject to the outcome of the suit. Therefore, the defendants 9 & 10, who are the appellants in O.S.No.376 of 2008 cannot plead to be bonafide purchasers without notice.

95. In *Elayalwar vs. Govindarajalu* reported in 1993 2 L.W.430,



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when an identical issue came up for consideration, the Division bench of this Court has held that, the transfer of buses and bus permit are not transfer of movable properties simpliciter. The transfer of bus with permit creates an incorporeal right. Therefore, such transaction falls within the operation of principle of *lis pendens*, particularly when the transferees have knowledge of the pending proceedings. A Court of equity should necessarily give effect to the said principle of *lis pendens* and to prevent abuse of process of Court and miscarriage of justice. A litigant should not be allowed to snap his fingers at the Court and defeat the right claimed in a pending proceedings by simply alienating the property to third party.

96. The appellants in A.S.No.376 of 2008, who are the defendants 9 & 10, cannot take umbrage under the fact that, on the date of application, the suit for partition was not pending but dismissed for default. Prior to the transfer, the Regional Transport Authority has conducted enquiry pursuant to the High Court directions and in the enquiry, the appellants/defendants 9 & 10 were put to notice about the pendency of application for restoration. This fact been clearly recorded by Regional Transport Authority in its proceedings dated 16.04.2003.



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97. We also find that certain auxiliary proceedings were initiated in respect of the income from the bus, seeking rendition of accounts and appointment of an administrator. Since we are now addressing on the main issue, the interlocutory proceedings and interim orders passed therein gets subsumed with the final order.

98. To sum up, the evidence and judgments taken as precedent leads to the conclusion that the Court below had right in allowing the suit for partition, declaring 11/16 share to the 1st plaintiff and 5/16 share to the 2nd plaintiff in the properties held jointly by M.R.Chellappan, son of Marimuthu and the minor Cibiraj. The property held in the name of Saraswathi was not her personal property but the joint family property, purchased from the family income and blended with the joint family property. The 1st defendant/Marimuthu had no independent source of income and the bus permit, which is subject matter of item No.1 in Schedule 'D' and the residential land, which is subject matter of item No.2 in Schedule 'B' were properties purchased out of the joint family income in the name of Marimuthu. The finance companies, who are the defendants 4 to 7, are bound to render accounts and



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statements pertaining to the investments and rights of M.R.Chellappan, Marimuthu and Saraswathi in the four finance institutions. Since they are no more, the plaintiffs cannot seek for dissolution of partnerships in the finance companies. The right in the finance institutions, if any, which they entitled to derive either from Chellappan or Saraswathi or Marimuthu, same has to be worked out as permitted by the trial Court.

99. Though there is some dispute raised in the value of the bus and bus permit purchased by the 9th defendant, it suffices to hold that the 1st plaintiff, at the time of filing the suit, was holding 3/8 share in all the properties. After the demise of his father Marimuthu and other legal heirs, namely Saraswathi, the right of the 1st plaintiff is enlarged by 11/16 share and the 2nd plaintiff, being the widow of Marimuthu, is entitled to get the remaining share. Thus, she will be getting 5/16 share. The alienation by Marimuthu and Saraswathi, will not bind the minor Cibiraj, to the extent of his share as co-owner in the coparcenary property. His right in the properties mentioned in Schedules 'A' to 'E', as ascertained by the trial Court, is confirmed by this Court.

100. For the reasons stated above, A.S.Nos.376 of 2008, 564 of 2008



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and 54 of 2011 stands dismissed. Connected C.R.P.Nos.3994 & 3995 of 2009

also stands dismissed. The parties shall bear their respective costs.

Consequently, connected Miscellaneous Petitions closed. C.M.P.No.3700 of 2023 is filed to receive the certified web copies of the documents, is hereby dismissed. Pending appeal, if any money deposited as a conditional order, the same was remained in deposit till the disposal of the final decree proceedings and the Court, while passing final decree, took note of such deposit and the interest enjoyed by the parties concerned.

(Dr.G.J, J.) & (M.S.K, J.)
19.11.2025

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

bsm

To,

1. The Additional District/Fast Track Court No.I, Salem.
2. The Section Officer, V.R.Section, High Court, Madras.



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Dr.G.JAYACHANDRAN, J.
&
MUMMINENI SUDHEER KUMAR, J.
bsm

Pre-delivery common judgment made in
A.S.Nos.376 of 2008, 564 of 2008, 54 of 2011
& C.R.P.Nos.3994 & 3995 of 2009

19.11.2025