



SA. No.1229 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.03.2025

Pronounced on : 12.03.2025

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

S.A.No.1229 of 2009

C.Murali

.. Appellant

Versus

1.S.Kumar @ Kumarasami

2.R.Shanmugasundram (Died)

3.Rajalakshmi (Died)

(R2 and R3 died. R1 and R4 are recorded as
legal heirs of the deceased vide order dated 14.12.2020
made in S.A.No.1229 of 2009 as per memo dated
14.02.2020 by VPNJ)

4.Kalaiselvi

.. Respondents

Prayer: Second appeal filed under Section 100 of Civil Procedure Code, against the judgement & Decree passed in A.S No.5 of 2009 dated 13.07.2009 on the file of learned Principal District Judge, Coimbatore confirming the judgement and decree passed in OS No. 122 of 2005 dated 23.04.2004, by the learned Principal Subordinate Judge, Coimbatore.

For Appellants : Mr.T.M.Hariharan

For Respondent : Mr.N.Sridhar

for Mr.R.Bharath Kumar

R2 and R3 died

R4 exparte



SA. No.1229 of 2009

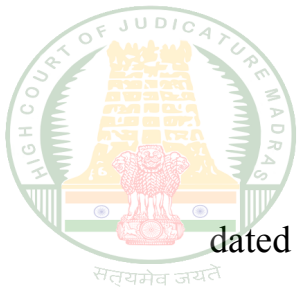
JUDGMENT

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2. Originally suit in O.S No.122 of 2005 was filed by the first respondent seeking for partition of the suit property into three equal shares and for allotment and possession of 1/3rd share. The plaintiff is the son the defendants 1 and 2. The third defendant is the sister of the plaintiff.

3. The parties are referred to as per their own ranking before the Trial Court.

4. It is the case of the plaintiff that the suit property is a joint family property acquired during the lifetime of his paternal grandfather Ramasami Gounder and grandmother Karuppathal. Ramasami Gounder and Karuppathal and other children conveyed the suit properties vide sale deed



SA. No.1229 of 2009

dated 13.02.1974 in favour of his defendants 1 and 2. The suit is a joint family property as per the recitals in the sale deed. Even though as per the recitals of the sale deed that the second defendant along with the first defendant has purchased the suit properties, she is only a name lender and no separate consideration passed from her. Hence, she has no independent right over the suit property. The purchase was made as the joint family property represented by the first defendant as Kartha. The suit property always remained as the joint family property in the hands of the plaintiff and the first defendant and the plaintiff and defendants 1 to 3 are in joint possession of the suit property. The plaintiff is entitled to one third share by birth and thus, the three co-parceners are the plaintiff, the first defendant and third defendant. While things stood thus, the defendants 1 and 2 tried to alienate the suit property in favour of the fourth defendant/appellant. Hence, the plaintiff issued a legal notice and thereafter, the present suit has been filed.

5. It is the contention of the second defendant in the written statement that the suit properties are not joint family properties as claimed by the plaintiff. Originally, the southern portion of the suit property was purchased



SA. No.1229 of 2009

by Karuppathal/grand mother of the plaintiff vide sale deed dated 07.10.1946. The northern portion of the suit property was purchased by Ramasamy Gounder vide sale deed dated 07.02.1959 from Narayana Naicker. Consequently, the two sites constituted one unit and were in respective possession of the husband and wife. In fact, the property devolved from a maternal line and therefore, cannot be described as ancestral property. Further, they mortgaged the suit property to one Ramaswamy Gounder and borrowed a sum of Rs.1000/- and thereafter, on 11.12.1964, the mortgage deed was discharged. Thereafter, since, the Ramasami Gounder was indebted to Thudiyalur Co-operative Society to the extent of Rs.3000/-, they entered into an agreement of sale with defendants 1 and 2 fixing the sale price as Rs.7500/- and an advance of Rs.4000 was also received by them. Thereafter, sale deed was executed on 13.02.1974 and the defendants 1 and 2 have improved the built up area out of their own exertions and savings. It is the further contention that after the marriage of the second defendant, the first defendant and second defendant lived separately in a rented house and was accustomed to physical work by supplying milks to third parties and out of frugal savings by the first and second defendant, they purchased the suit property vide sale deed dated

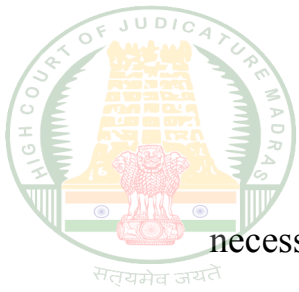


SA. No.1229 of 2009

13.02.1974, hence, she is not only a name lender to the sale deed dated 13.02.1974. Electricity service connection is also in their name.

6. Further, it is the contention that plaintiff was married in the year 1998 and for expenditure, they borrowed hefty amount of loan from third parties, not bearing with the same, the defendants in order to discharge the debt, they intended to sell the property to the fourth defendant. The fourth defendant had advanced monies on behalf of the defendants 1 and 2 to discharge the debt due to the Thudiyalur Co-operative Society. Hence, the defendants 1 and 2 have executed the sale deed in favour of the fourth defendant on 10.03.2005 to discharge their debts. The said sale deed has been attested by the third defendant. Hence, opposed the suit.

7. It is the contention of the fourth defendant/appellant in the written statement that it was the representation of the plaintiff and his wife that the suit property exclusively belongs to the defendants 1 and 2. The suit property is not a joint family property as claimed by the plaintiff, it was purchased by the plaintiff's grand parents out of their savings and thereafter, it was sold to the defendants 1 and 2. The defendants 1 and 2, out of



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necessity, sold the suit property to the fourth defendant in order to discharge their debt. Hence, the plaintiff is bound by the plaintiff and cannot claim any right in the suit property. The third defendant/sister of the plaintiff never claimed any share in the suit properties. The plaintiff issued notice on 07.03.2005 and immediately, on the next day filed the suit on 08.03.2005. Therefore, procedures prescribed before filing the suit are not properly followed by the plaintiff. Hence, opposed the suit.

8. Based on the above pleadings, the Trial Court framed the following consideration:

- a. Whether the plaintiff is entitled to relief as prayed for?
- b. To what other reliefs the plaintiff is entitled?
- c. Whether the fourth defendant is entitled to counter claim of damages as prayed for?

9. After considering the oral and documentary evidence, the Trial Court held that plaintiff is entitled to 1/3rd share in the suit properties and decreed the suit vide judgment and decree dated 23.04.2007. Aggrieved over the same, the fourth defendant filed the appeal in A.S No. 5 of 2008,



SA. No.1229 of 2009

wherein the first appellate court confirmed the suit and dismissed the appeal. Accordingly, the suit was decreed confirming the findings of the Trial Court. Challenging the same, the fourth defendant filed this appeal.

10. The first and foremost contention of the learned counsel for the appellant/fourth defendant is that the ingredient of joint family nucleus has not at all established by the first defendant/plaintiff. The burden of proof lies on the plaintiff to show that the land in question is a joint family property, however, no evidence has been produced to establish that family had property yielding income or nucleus sufficient to constitute a joint family property.

11. The said Karuppathal and Ramasamy Gounder have separately purchased the suit property from Rangammal and Narayana Naicker respectively vide sale deeds dated 07.10.1946 and 07.02.1959 out of their own savings. Subsequently, the defendants 1 and 2, who out of their hard earned money have purchased the property from the grandparents of the plaintiff along with the other legal heirs. Hence, the property is a self acquired property by the defendants 1 and 2 and the joint family nucleus has

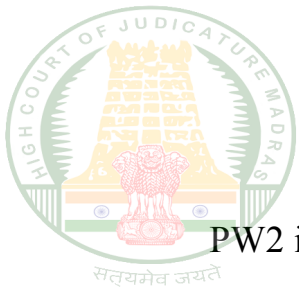


SA. No.1229 of 2009

not been established. Further, it is the contention that defendants 1 and 2 have supported the case of the fourth defendant/appellant.

12. It is his further contention that PW2/Karuppathal, who is the only surviving party has not supported the very case of the plaintiff, that the suit property is a joint family property. PW2 in her evidence has admitted that she has parted with her interest in the suit property therefore her evidence is not admissible and it is manifest that she is reporting against the very contents of the registered documents with a view to support the case of the plaintiff. Hence, the Courts below relying on the evidence of PW2 and granting decree cannot be sustained in the eye of law.

13. The documents in Ex.B2/sale deed executed by the Rangammal in favour of Karuppathal and Ex.B3/sale deed executed by Narayana Naicker in favour of Ramasamy Gounder, there is no indication that the properties are acquired out of ancestral properties/joint family nucleus. Further, a reading of Ex.B6/sale agreement executed in favour of the defendants 1 and 2 and B7/sale deed executed in favour of the defendants 1 and 2 would clearly indicate that the property is a separate property and the evidence of



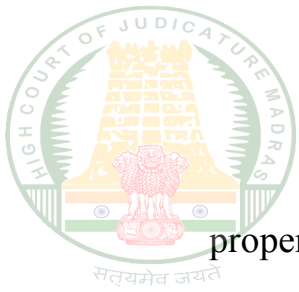
SA. No.1229 of 2009

PW2 in this regard is contrary to the execution of registered document.

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14. It is the further contention that the recitals in Ex.B7 that the children are enjoying the suit property ancestrally is made only to assure title to the vendee, however, the property is a self acquired property of Ramasamy Gounder and Karuppathal. Further, PW2 has deposed that no consideration was made to the sale under Ex.B7, such self-serving statement is not admissible. It is a matter of fact that the debts have been discharged by the defendants 1 and 2, hence, the very statement that no consideration is passed on to her is falsity on record.

15. It is the further contention of fourth defendant that even assuming that it is a joint family property, when all the family members have joined the sale, the sale is valid and is binding on all the members of the family. Wherein, a valid sale consideration is also passed on to the family members to discharge their debts. Therefore, the family members cannot question the sale. Further, PW2 in her evidence has not stated that the property is a joint family property acquired from joint family fund, whereas, the Trial Court has concluded that PW2 has deposed that the suit property is a joint family



SA. No.1229 of 2009

property.

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16. It was further contended the plaintiff in his evidence to the suggestion whether any document supporting his great grandfather Kuppanna had property or not, she feigned ignorance. Further, it is his evidence that male members would carry out agricultural works and female members would carry out dairy farming, the earnings from dairy farming by the female members will not be handed over to the male members. Hence, it is the contention that the Karuppathal doing dairy farming had purchased southern portion of the suit property and thus, the suit property is not a joint family property acquired from joint family nucleus.

17. Similarly, it was further contended that the plaintiff himself in his evidence had stated that the Kuppannan/great grandfather had three sons including the grandfather of the plaintiff and they had no properties. First and foremost, his grandmother had purchased a portion of the suit property on 07.10.1946. Prior to the purchase, there is no document to show any ancestral properties. It is also admitted by the plaintiff that before the execution of Ex.B2, part of the amount and during the execution of Ex.B2,



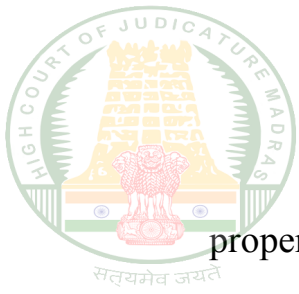
SA. No.1229 of 2009

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his grandfather Ramasamy Gounder paid the remaining amount before the registering authorities. Hence, the evidence itself shows that suit property is a self acquired property.

18. The learned counsel for the first respondent/plaintiff submitted that with regard to the findings of the Courts below that the suit property is a joint family property, the defendants 1 and 2 have not filed any appeal. It is the further contention that before filing of the suit, legal notice was issued to the defendants and thereafter, the suit was filed. Even after filing of the suit for partition, the appellant knowing fully that the suit property is a joint family property has purchased the property from the defendants 1 and 2 vide sale deed dated 10.03.2005. The legal notice was issued on 07.03.2025, suit was filed on 08.03.2002 and the sale deed came to be executed on 10.03.2005. Hence, it is his contention that the suit is hit by doctrine of lis pendens.

19. Lis pendens itself is treated as constructive notice to a purchaser that he is bound by a decree to be entered in the pending suit. Hence, the contention of the fourth defendant that the plaintiff has no right in the



SA. No.1229 of 2009

property cannot be sustained in the eye of law.

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20. It is the further contention that the very sale deed executed on 13.02.1974 would clearly indicate that the suit property purchased by Ramasamy Gounder and Karuppathal in the year 1959 and 1956 were being enjoyed by the family members as a joint family property. Hence, the contention of the plaintiff that the deposition of DW1 that her husband had specifically allotted properties to each of their children and the same has to be coined as their own separate property cannot be accepted. It is well settled position of law that if a member of a joint hindu family voluntarily throws his self-acquired property into common hotchpot with the intention of abandoning his/her separate claim over it and render it for the benefit of all other members as well, such a property becomes a joint family property. Thus, the contention of the appellant that property purchased by Karupathal is a self acquired property cannot be countenanced.

21. It is the further contention that PW2 in her evidence has clearly established that the suit property was originally purchased by the her husband Ramasamy Gounder out of joint family nucleus and her husband as



SA. No.1229 of 2009

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a Kartha had purchased the suit property in her name and in his name. She in her individual capacity has not purchased the property. The sale made in favour of the defendants 1 and 2 is not an actual sale, it was a family arrangement and no consideration was obtained by PW2. Further, deposed that the suit property is a joint family property. Hence, the plaintiff has proved the properties is a joint family properties.

22. It is further submitted that it is a well settled position that when a kartha asserts property purchased in his name is a separate property, it must be shown that purchase was made without any aid or assistance from the ancestral or joint family property. The onus shifts on the Kartha to establish that the suit property is not a joint family property. Whereas, in this case, the defendants 1 and 2 have not filed any appeal with regard to the findings of the Courts below that the suit property is a joint family property. Hence, seeks for dismissal of this appeal.

23. Heard both sides and perused the materials placed on record.



SA. No.1229 of 2009

24. This Court admitted this second appeal on 20.11.2009 with the

following substantial questions of law

“ 1. Whether the Courts below are right in assuming that the properties acquired by Karuppathal and Ramasami Gounder under Exs.B2 and B3 are joint family properties available for division in the absence of any indication to that effect in the documents themselves?

2. Are the Court below right in relying on the evidence of Karuppathal as P.W.2 which is against the contents of registered document and tendered with a view to support her grandson the plaintiff, long after she has conveyed the property, having no subsisting interest in the subject matter?

3. When it is evident from Exs.B6 and B7 that the sale in favour of respondents 2 and 3 has been effected to discharge family debts is not the sale binding on the 1st respondent even assuming that the property were joint family property?

4. Whether the Courts below are right in readily assuming that the property acquired by respondents 2 and 3 under Ex.B7 is joint family property in their hands even



SA. No.1229 of 2009

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without any pleading or proof that there was substantial ancestral property in the hands of the 2nd respondent forming nucleus and yielding sufficient surplus to admit the acquisition and that the said surplus was so applied for the acquisition?

5. Whether, in any event, the property in the hands of the 3rd respondent is not her separate property and are the Courts below right in readily assuming that the property standing in the name of a female is joint family property?"

25. The suit has been filed seeking partition of 1/3rd share in the suit property. The plaintiff is the son of the defendants 1 and 2. The third defendant is the sister of the plaintiff. The fourth defendant is the purchaser of the suit property after filing of the above suit. The suit property has been purchased by Ramasamy Gounder and Karuppathal in the year 1959 and 1946 from Narayana Naiker and Rangammal and thereafter vide sale deed dated 13.02.1974, the suit property was sold to the defendants 1 and 2. The plaintiff who is in occupation of the suit property has filed the suit for partition claiming 1/3rd share in the suit property. The Trial Court decreed the suit for partition granting 1/3rd share in the suit property to the plaintiff.



SA. No.1229 of 2009

On appeal, the First Appellate Court confirmed the order of the Trial Court.

Hence, this appeal.

Points (1) to (5)

26. The suit has been filed claiming partition for the property purchased by grandfather and grandmother as a joint family property. Further, it is the contention that nominal sale was executed in favour of the defendants 1 and 2 on 13.02.1974 and no consideration has been passed. The purchase was in fact for the benefit of the joint family, the first defendant as Kartha has no independent right over the suit property. Therefore, the plaintiff is entitled to claim of 1/3rd share in the suit property. The second defendant/mother of the plaintiff has filed a written statement, wherein, she has taken a stand that the property acquired under Ex.A2 = Ex.B7 are self acquired property. It is the further stand of the second defendant in the suit that her father in law and mother in law purchased the property by way of their self earning. Her mother in law owned 4 milch cows, out of income by selling milks, she had purchased the property. According to her, the sale deed was executed to the defendants 1 and 2 only to discharge the family debt. Both Courts below on analysis of entire

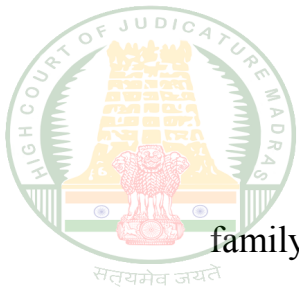


SA. No.1229 of 2009

evidences has come to conclusion that the property is a joint family property.

27. Though Ex.A1 and Ex.B2 does not indicate that the property is purchased from and out of joint family nucleus along with the sons of the Ramasamy Gounder and Karupathal, Ex.A2 and Ex.B7 makes it clear that while selling the property to the defendants 1 and 2, all the sons and daughters of Ramasamy Gounder and Karuppathal are made as parties, wherein, they have clearly averred that the property is an ancestral property. Even though there was no indication in Ex.A1 and Ex.B2 documents purchased in the name of grandparents about the nucleus to purchase the property, the conduct of the parties treating the properties as a joint family properties as ancestral property cannot be ignored altogether.

28. Only the Kartha/head of the unit alone is aware of the purchase. PW2 is Karuppathal. Though the property stood in the name of Karupatthal, she has been examined as PW2. In her evidence, she has stated that properties has been purchased from the joint family nucleus. Though the property was purchased in her name, it was purchased only out of joint

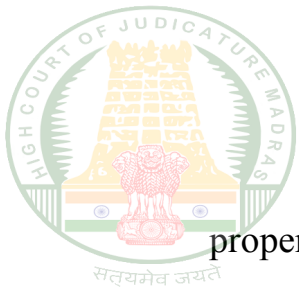


SA. No.1229 of 2009

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family nucleus. Her evidence coupled with the very recitals in Ex.A2 and Ex.B7 makes it clear that property was treated as joint family property all along. It is the specific case of the plaintiff that though nominal sale was executed under Ex.A2 in favour of the defendants 1 and 2, it is only for the benefit of family and no consideration has been passed. When the parties all along treated the property as a joint family property, though there was no sufficient nucleus pleaded in the plaint, the fact remains that PW2 in her chief examination has stated that the property is purchased from the joint family nucleus. Therefore, in spite of deficiency in the pleadings, when parties understood the case and proceeded to trial of all those issues by producing evidences, now, it cannot be open to the parties to raise the question of absence of pleadings. This has been held in the case of *Ram Sarup Gupta vs. (Dead) by LRs vs. Bishun Narain Inter College and others* reported in *AIR 1987 SC 1242*.

29. In fact, the parties went on trial and adduced evidence to the effect that though the properties purchased in the grandparents name, it is only out of joint family nucleus. Therefore, this Court is of the view that mere absence of any indication under Ex.A1 and B2 to the effect that the

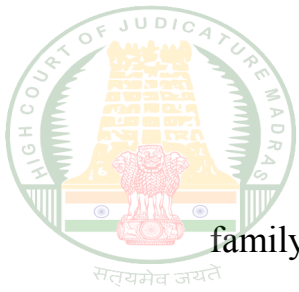


SA. No.1229 of 2009

properties purchased out of joint family nucleus that cannot be a sole factor.

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It is common in hindu joint family to purchase the property in the name of elder member of the family. Therefore, merely because the property stood in the name of elder family member, it cannot be said that since there was no indication about the nucleus in the document the property is a self acquired property. When the party to the document herself deposed before the Court as PW2 that the property was purchased out of the nucleus and stood in her name, later while executing the document in favour of the defendants 1 and 2, the parties averred in the document itself that this is an ancestral property. As far as the PW2 evidence is concerned, as far as the claim for partition mere recitals in the documents is not a determinative factor. It is the conduct of the parties as to how they treat the properties are relevant, therefore, the evidence of PW2 cannot be ignored merely because the document where she was a party silent about the joint family nucleus. Therefore, this Court has to hold that mere non indication in the document itself is not sufficient to hold that it is a separate property of one Karuppathal and Ramasasmy Gounder. Ex.A2 itself clearly indicate that the property is an ancestral property. PW2 also supported the same in her evidence. While executing the sale deed, all other co-parceners joined. According to PW2, this is only a



SA. No.1229 of 2009

family arrangement in the family, therefore, the property has been conveyed.

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It is the specific case of the plaintiff that no consideration has been passed while executing Ex.A2. Whereas, it is the specific stand of the second defendant that for the legal necessity the property has been sold. Ex.A2 itself clearly shows that the property is an ancestral property.

29. When the father of the plaintiff purchased the property as a Kartha, he has to explain whether there is a consideration passed or not. The stand of the second defendant is that property has been sold for discharge of debts, what is the nature of the debt has not been established. The first defendant though adopted written statement of the second defendant conveniently not appeared before the Court. Though written statement of the second defendant is adopted by him, as an elder member of the family he ought to have been examined which has not been done so. Whereas, it is also relevant to note that PW2/grandmother of the plaintiff in her evidence has clearly stated that the property is purchased in her name originally, out of joint family nucleus of her husband. Joint family character is also clearly stated in Ex.A2. DW1 in her evidence also clearly admitted that she is not aware of the nature of the property held by her father in law and mother in law. She has also admitted that in Ex.A2, it is recorded as ancestral property



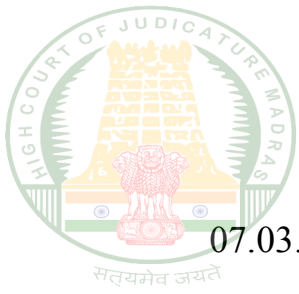
SA. No.1229 of 2009

and and also admitted that the plaintiff is in possession of the property.

Further, she is also not aware that the property has been let out by her son.

Though she has stated that she has purchased the property by selling milk and she has account, she has not produced any accounts. Her evidence does not indicate that only to discharge the family debts, sale has been made under Ex.A2 in their favour. Whereas, it is the specific case contention of the plaintiff that there was no consideration passed and sale has been made only for the benefit of family members, since it is a joint family property.

30. Further, it is also relevant to note that both the Courts below have concurrently held that the property is a joint family property, as against such findings, the defendants 1 and 2 have not filed any appeal, whereas, only the purchaser has filed the appeals. It is also to be noted that first defendant conveniently being a Kartha having adopted the written statement filed by the second defendant has not subjected himself for cross examination. Further, DW1 in her evidence has not proved the self acquisition by her father in law and mother in law. Therefore, when the Kartha himself avoided and abstained from appearing before the Court, the adverse inference has to be necessarily drawn against him. It is further to be noted that the suit has been filed on 08.03.2005 and legal notice is also issued on

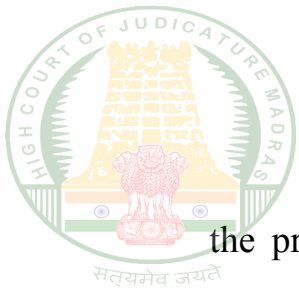


SA. No.1229 of 2009

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07.03.2005 under Ax.A4. The said legal notice has not been received by the defendants 1 and 2, whereas, the fourth defendant/appellant has received the legal notice on 08.03.2005. Immediately, the plaintiff presented the suit on 08.03.2005 itself and the suit was numbered on 09.03.2005.

31. It is not the case of the appellant that defendants 1 and 2 and the plaintiff are colluding each other. In fact, there was hot contest, second defendant was examined and several documents have been produced. Further, the finding of the Trial Court that the suit property are joint family property has not been challenged by defendants 1 and 2, whereas, only the purchaser has filed the appeal suit, that too, lis pendens purchaser has filed the appeals. The very fact that first defendant not appearing before the Court indicate that he has avoided to come to the Court only in order to defeat the rights of the plaintiff. The legal necessity has to be established for sale of the property which has not been established. Only the elder member of the family alone has knowledge about the family affairs of the property held by them which are all the facts in the exclusive knowledge of the elder member of the family. When the elder member of the family become adversary and conveniently abstained from the Court, it has to be held that plaintiff case is true. When the Courts below on analysis of entire evidences have held that



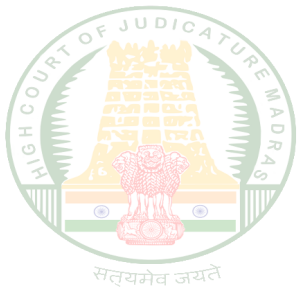
the property is a ancestral joint family property, the plaintiff is certainly entitled to share, such finding ought to have been challenged only by the defendants 1 and 2, whereas, they have not filed any appeal. Therefore, the appellant being the pendente lite purchaser cannot canvass the case of the defendants 1 and 2, his purchase is always subject to the decree and judgment.

32. Much emphasis has been made by the learned counsel for the appellant in the case of Mudi Gowda Gowdappa Sankh vs. Ram Chandra Ravagowda Sankh¹, wherein, the Hon'ble Apex Court referred to the judgment in the case of *Appallaswami vs, Suryanarayanamurti*² which held as follows:

“ The Hindu law upon this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property is joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, 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.

¹1. (1969) 1 SCC 386

²2. 1947 SCC OnLine PC 42



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33. Similarly, the Hon'ble Supreme Court in the case of *Surendra*

*Kumar vs. Phoolchand (Dead) through Lrs and another*³ has held as follows:

“ It is no doubt true that there is no presumption that a family because it is joint possessed joint property and therefore the person alleging the property to be joint has to establish that the family was possessed of some property with the income of which the property could have been acquired. But such a presumption is a presumption of fact which can be rebutted. But where it is established or admitted that the family which possessed joint property which from its nature and relative value may have formed sufficient nucleus from which the property in question may have been acquired, the presumption arises that it was the joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family. Both the courts below have scrutinised the evidence bearing in mind the aforesaid legal position and have rightly come to the conclusion that the property in question is the joint family property. We see no justification for our interference with the said concurrent findings of the two courts below. The appreciation of evidence has been rightly made bearing in mind the correct legal position. The appellant thus has utterly failed to establish that the consideration money for the property was paid out of his personal funds. ”

34. In *D.S.Lakshmaiah and another vs. L.Balasubramanyam and*

³ (1996) 2 SCC 491

⁴ (2003) 10 SCC 310



another⁴ has held as follows:

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“ 19. Another contention urged for the respondents was that assuming Item 1 property to be self-acquired property of Appellant 1, he blended the said property with the joint family property and, therefore, it has become joint family property. Assuming the respondents can be permitted to raise such a plea without evidence in support thereof, the law on the aspect of blending is well settled that property separate or self-acquired of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein; but to establish such abandonment a clear intention to waive separate rights must be established. From the mere fact that other members of the family were allowed to use the property jointly with himself, or that the income of the separate property was utilised out of generosity to support persons whom the holder was not bound to support, or from the failure to maintain separate accounts, abandonment cannot be inferred, for an act of generosity or kindness will not ordinarily be regarded as an admission of a legal obligation (see *Lakkireddi Chinna Venkata Reddi v. Lakkireddi Lakshmama* [AIR 1963 SC 1601 : (1964) 2 SCR 172] and *K.V. Narayanan v. K.V. Ranganandhan* [(1977) 1 SCC 244])”



SA. No.1229 of 2009

WEB COPY

35. Absolutely, there is no dispute with regard to the position of law in this regard. Normally, burden lies upon the person who alleges the existence of the Hindu Undivided Family (HUF) to prove the same. Burden to prove the existence of joint family not always static. When the manager takes a stand that property is purchased in his name out of self acquisition, the burden lies on the manager of the family to prove that he acquired with his separate funds. This has been held by the Hon'ble Supreme Court in the cases of *Mallesappa Bandappa Desai vs. Desai Mallappa* ⁵ and *Srinivas Krishnarao Kango vs. Narayan Devji Kango* ⁶

36. The judgment in *D.S.Lakshmaiah and another vs. L.Balasubramanyam and another* ⁷ was cited to show that there must be a clear intention to abandon the separate rights in the property must be established. Abandonment cannot be inferred from mere allowing other family members also to use the property or utilisation of income of the separate property out of generosity to support the persons whom the holder was not bound to support or failure to maintain separate accounts. '

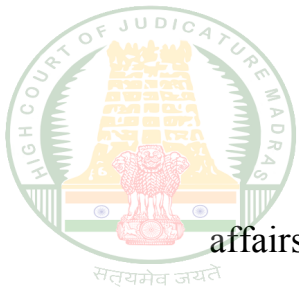
⁵AIR 1961 SC 1268



SA. No.1229 of 2009

WEB COPY 37. It is the specific case of the plaintiff that in this case the property purchased by the grandparents is out of joint family nucleus, in support of such contention, PW2/one of the party to the document is also examined. Ex.A2/sale deed executed in favour of the defendants 1 and 2 shows that the property is ancestral property and the sale is challenged on the ground that no consideration has been passed and it is only an arrangement for the benefit of the family. This Court is of the view that once the property is established as an ancestral property, the plaintiff is certainly entitled to his right of share. When the father being the manager of the family takes a plea that sale was made for legal necessity, burden lies on him to establish the same, however, he has not come to the box. That apart findings rendered by the Courts below that the suit property is a joint family property and the decree and judgments of both the Courts below have not been challenged by the defendants 1 and 2, therefore, the appellant being the pendente lite purchaser, In the absence of challenge made by the defendants 1 and 2 cannot canvass the case of defendants 1 and 2. The father of the plaintiff/only Kartha of family who is in exclusive knowledge of the family

6. AIR 1954 SC 379
7. (2003) 10 SCC 310



SA. No.1229 of 2009

affairs, when he has not come before the Court, despite adopting the written statement filed by the second defendant has not established the so-called legal necessity and self-acquisition of such purchase. Merely on the basis of some agreement said to have been executed prior to the purchase, it cannot be held that property is self acquired. Therefore, the first defendant being the manager has not discharged his burden to show that property is his self acquisition by independent source, whereas, the evidence of DW1 clearly indicate that she has no idea about the property that has been purchased by her father in law and mother in law. Therefore, independent source when not established by first defendant, it has to be held that property is available for partition.

38. Woman can also be a member of the joint family though she cannot be a coparcener. Once it is probabalised that the property was purchased out of joint family nucleus and sale is made to one of the joint family member. Admittedly, DW2 is also member of the joint family at the relevant point of time, now, it cannot be said that it is a self acquired property, particularly, when the Kartha himself not appeared before the Court. Further, no appeal whatsoever filed by defendants 1 and 2



SA. No.1229 of 2009

WEB COPY

challenging the findings of the Courts below. Both the Courts below have held that the plaintiff is in possession of the property. Therefore, in the absence of challenge by defendants 1 and 2, appeal by lis pendens purchaser has to fail.

39. In view thereof, this second appeal stands dismissed. No costs.

12.03.2025

dhk

Internet : Yes/No

Neutral Citation : Yes/No

To

1. The Principal District Judge,
Principal District Court, Coimbatore

2. The Principal Sub Judge,
Principal Sub Court, Coimbatore

3. The Section Officer
VR Section, Madras High Court



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SA. No.1229 of 2009

N.SATHISH KUMAR,J.

dhk

SA. No.1229 of 2009

12.03.2025