



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-12-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

**SA No. 894 of 2009
and M.P.No.1 of 2009**

1. S.Dorairaj
At Mettukarkonam Village
Karkonamvillage Madura
Thiruvannamalai Taluk and another

2.S.Vijayaraj
At Mettukarkonam Village
Karkonamvillage Madura
Thiruvannamalai Taluk

Appellants

Vs

1. M.Virudhachalam
Mettukarkonam Village Hamlet Of
Karkonam Village Thiruvannamalai
Taluk

Respondent

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, praying to set aside the judgment and decree passed in A.S.No.7 of 2007 on the file of the Principal Subordinate Court, Thiruvannamalai, dated 12.10.2007, confirming the judgment and decree dated 22.12.2006 made in O.S.No.346 of 2005 on the file of Additional District Munsif of Thiruvannamalai.



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SA No. 894 of 2009



For Appellant(s): Mr R. Thiagarajan

For Respondent(s): Ms. V.Srimathi For Sole
Respondent

JUDGMENT

This Second Appeal is filed praying to set aside the judgment and decree passed in A.S.No.7 of 2007 on the file of the Principal Subordinate Court, Thiruvannamalai, dated 12.10.2007, by which the learned Principal Subordinate Judge, confirmed the judgment and decree dated 22.12.2006 passed in O.S.No.346 of 2005 on the file of Additional District Munsif of Thiruvannamalai.

2. At the time of admission of this Second Appeal, this court admitted the Second Appeal on the following substantial questions of law:-

“1. Whether the courts below are right in coming to the conclusion that the suit property is not the self-acquired property of Mannar Gounder, which had been validly settled in favour of Pachaimmal, who had settled the same in favour of the plaintiffs/appellants as stated by them ?



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2. Whether the Trial Court as well as the Appellate Court is right in holding that the settlement in favour of the appellants is non-est in the eyes of law ?”

3. The appellants herein are the plaintiffs in the suit in O.S.No.346 of 2005. Before the trial court, the plaintiffs filed the suit for declaration and delivery of possession and other alternate reliefs against the respondent/defendant.

4. The suit was contested by the defendant by filing written statement. After analysing the evidence on record, the trial Judge dismissed the suit. Against which, the plaintiffs filed an appeal in A.S.No.7 of 2007. The learned Judge, First Appellate Court, after appreciating the entire pleadings, evidence and findings of the trial Judge, concurred with the view of the trial Judge and dismissed the Appeal in A.S.No.7 of 2007. Aggrieved by the said concurrent findings of the courts below, the plaintiffs/appellants have preferred this Second Appeal.

5. For the sake of convenience, the parties are addressed as per their ranking before the trial court.



6. The brief facts of the case is as follows:-

(a) According to the plaintiffs, the suit property as described in the plaint was to an extent of 26 cents in Old Survey No.42/13 New Survey No.47/1 along with other properties were self-acquired property of one Mannar Gounder who purchased the properties through 3 sale deeds of the year 1956, 1963 and 1964. The said Mannar Gounder has two wives and the defendant is the son of Mannar Gounder born through his 1st wife Mannu Ammal. After demise of the 1st wife, he married one Pachai Ammal as second wife. Through him, he begotten one son viz., Saravanan and two daughters.

(b) The plaintiffs herein are the sons of the said Saravanan and grandsons of Mannar Gounder and his second wife Pachai Ammal. The plaintiffs contend that the said Mannar Gounder had one brother Muthusamy and they enjoyed their ancestral property. Out of oral partition, he got 2 acres of dry lands. Thereafter, on his own efforts, he purchased 3 items of property through 3 sale deeds. Out of love and affection, the self-acquired property of Mannar Gounder was settled in favour of his 2nd wife on 11.12.1974 and the said settlement was duly executed and attested and the settlement deeds were delivered to the Settlee and possession also handed over to her and her sons. From 1974 onwards, Pachai Ammal was also in enjoyment and possession of the said property; patta was also transferred in her name. Thereafter, the said Pachai



Ammal, out of love and affection towards her sons, executed registered settlement deed dated 03.11.2004, through which she gave the property which was given by her husband in the year 1974 and delivered properties to the plaintiffs. Thereafter, they are in possession and enjoyment of the said properties and patta also transferred in their name.

(c) While so, the defendant claiming the said property, requested the plaintiffs to alienate the suit properties in their favour and when the plaintiffs refused to heed to the request of the defendant, the defendant attempted to interfere with the plaintiffs' peaceful possession and enjoyment of the suit property. Therefore, the plaintiffs issued a notice to the defendant on 09.04.2005, for which, the defendant gave a reply notice on 01.05.2005 and the defendant trespassed into the suit property on 04.05.2005 and now the defendant is in possession of the suit property and hence, the plaintiffs have come forward with the suit.

(d) On notice from the trial court, the respondent/defendant contested the matter by filing written statement, wherein, he admitted the relationship and also admitted that Mannar Gounder purchased the properties through 3 sale deeds but denied that those purchased properties are self-acquired property of the Mannar gounder. The defendant contended that there was an ancestral



property allotted to Mannar Gounder to an extent of around 2 acres; through oral partition, Mannar Gounder was allotted with 4 acres of dry lands and 2 acres of wet lands and out of surplus income from the Joint Family Property, Mannar Gounder purchased properties through 3 sale deeds dated 03.08.1956, 09.02.1963 and 27.03.1964. At the time of allotting shares to the members of the family, the properties were purchased in the name of Mannar Gounder, but the same was enjoyed as joint family property. Thereafter, after the demise of Mannar Gounder, the plaintiffs' father Saravanan oral partitioned the property and in enjoyment of the same as absolute owner. In that oral partition, the suit property which is in northern eastern portion was allotted to the defendant and he enjoyed the same as absolute owner. Therefore, he denied the alleged trespass as claimed by the plaintiffs. Further, the defendant also contended that Mannar Gounder's wife Pachai Ammal viz., the 2nd wife has no right to settle the property, since Mannar Gounder himself has no right to execute the settlement deed in respect of Joint Family Property at any point of time. Possession was also given to neither Pachai Ammal nor plaintiffs. But the defendant came to know about the alleged settlement deed recently besides more than 40 years he possessed and enjoyed the properties. Therefore, he derived the adverse possession.



7. Before the trial court, the parties adduced oral and documentary evidence. On the side of the plaintiffs, Ex.P.1 to P.9 marked and P.W.1 was examined and on the side of defendants D.W.1 and D.W.2 were examined but no document was marked.

8. Considering both sides evidence and submissions, the Trial Judge has framed 4 issues for determination of the suit. With regard to the purchase made by Mannar Gounder through sale deeds, one such sale deed pertains to the suit property. The trial Judge held that as per the admission of the plaintiffs, Mannar Gounder was allotted with 2 acres of land as per oral partition with his brother and the defendant also submits that there was an ancestral property around 8 acres out of which dry lands 4 acres of wet lands. Out of which, 6 acres was allotted to Mannar Gounder and therefore, there was surplus income of the Joint Family property. Besides the defendant who is an eldest son of the family born through first wife and his father held all the joint family nucleus and 3 items were purchased by the plaintiffs' grandfather Mannar Goundar. Therefore, Mannar Gounder as a major of the Hindu Joint Family, purchased those 3 items through 3 sale deeds which are marked as Ex.A.1, Ex.A.2 and Ex.A.3 and as such, it is proved that it is a joint family property and not a separate property. Accordingly, Issue No.1 was concluded. Consequently, the learned Trial Judge held that Mannar Gounder is not entitled to execute the settlement deed in



favour of Pachai Ammal through Ex.B.4 so also Pachai Ammal has no right to execute the settlement deed to grandsons i.e., plaintiffs and both settlement deeds would not bind the defendant, thereby, held that the plaintiffs are not entitled for declaration. Consequently, suit was dismissed.

9. Aggrieved by the said findings and dismissal of the suit, the plaintiffs filed First Appeal before the Principal Subordinate Judge, Thiruvannamalai. The learned Judge, First Appellate Court also framed separate points for consideration of appeal and finally concluded that the kist receipt relied on by the plaintiffs is not valid document and the plaintiffs failed to establish that the suit property was the self-acquired property of Mannar Gounder. On the other hand, the defendant proved that the family owned 2 acres of land and out of the income derived from the joint family properties, lands were purchased in the name of Mannar Gounder and hence, the suit properties were deemed as ancestral joint family property; the plaintiffs failed to prove that Mannar Gounder had an independent source of income to purchase the suit property and confirmed the findings of the trial court and dismissed the appeal.

10. The learned counsel for the appellants/plaintiffs argues that the courts below failed to take note of the fact that Mannar gounder purchased the suit property nearly 20 years after the alleged oral partition and mere existence of



some other family property alone is not sufficient to conclude that the other 3 properties were purchased by him out of joint family nucleus. But without any evidence on the side of the defendant to prove the surplus income of the joint family property, the courts below erroneously concluded that the properties are purchased in the name of Mannar Gounder as a kartha of the joint family property as joint family nucleus which is illegal, unsustainable and liable to be set aside.

11. Further, the learned counsel for the appellants/plaintiffs pointed out that the settlement deeds stand in the name of Pachai Ammal of the year 1974 document. Around for 30 years, the said document was in force and the same has not been challenged by the defendant nor he produced any document to show that he possessed and enjoyed the properties as per the alleged oral partition without which the courts below erroneously appreciated the position of the plaintiffs, as such, it is clear case of wrong appreciation of fact and law and on that ground, he pleaded to set aside the findings of the courts below.

12. To support his arguments, the learned counsel for the appellants/plaintiffs relied on following decisions:-

(i) Learned counsel for the appellants relied on the proposition laid down



by the Supreme Court in Civil Appeal No.2089 of 2000 dated 27.08.2003 reported in 2003 (10) SCC 310 [D.S.Lakshmaiah and Ors vs

L.Balasubramanyam and Ors.]. Paragraph 18 of the said decision is as under:-

“18. The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.”

(ii) The learned counsel relied on the proposition laid down by this court in paragraph 13 and 14 of the decision reported in **AIR 2004 Mad 529 [R.Deivanai Ammal Vs. G.Meenakshi Ammal and Ors.]**.

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



14. It is well-established principle of law that where a party claims that any particular item of property is joint family property, the burden of proving that it is so rests on the party asserting it. Where it is established or admitted 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 presumption arises that it was 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. But no such presumption would arise if the nucleus is such that with its help the property claimed to be joint could not have been acquired. In order to give rise to the presumption, the nucleus should be such that with its help the property claimed to be joint could have been acquired. A family house in the occupation of the members and yielding no income could not be nucleus out of which acquisitions could be made even though it might be of considerable value.”

(iii) The learned counsel for the appellants also relied on the decision of the Supreme Court in ***Civil Appeal No.6875 of 2008 dated 03.04.2020*** ***[Bhagwat Sharan (Dead thr LRS) Vs. Purushottam and Ors.]*** Paragraph 11 of the said decision is as follows:-

“ 11. Normally, an HUF can only comprise of all the family members with the head of the family being karta. Some property (1955) 1SCR 1 (2003) 10 SCC 310 (1960) 2 SCR 253 (2007) 1 SCC 521 has to be the nucleus for this joint family. There is cleavage of opinion as to whether two brothers of a larger group can form a joint family. But assuming that such a joint family could have been formed by Madhav Prashad and Umrao Lal the burden lies heavily on the plaintiff to prove that the two of them joined together to form an HUF. To prove this, they will have to not only show jointness of the property but also jointness of family and jointness of living together. “



13. In reply, the learned counsel for the respondent/defendant argues that before the trial court, the plaintiffs themselves who were the grandsons of Mannar gounder was allotted with 2 acres of land as per the oral partition held with his brother, apart from that, nearly about 6 ½ acres was allotted to the share of Mannar Gounder and he is an agriculturalist. Except agricultural income, he has no other separate source of income, thereby out of joint family income of nucleus along with physical labour rendered by the defendant, as the son of the 1st wife, as a kartha of the joint family manager, 3 properties were purchased through 3 different sale deeds Ex.A.1, A.2 and A.3 in the name of Mannar Gounder. But all the purchased properties were in joint family possession and as such, with other properties of Joint Family properties in oral partition of the suit property was allotted to the defendant. Before the courts below, the plaintiffs failed to establish that the suit properties are the separate properties of Mannar Gounder and on the other hand, the defendant proved the joint nucleus and the same was rightly appreciated by the courts below and neither Mannar gounder nor his wife are entitled to execute settlement deed in respect of the joint family property. Therefore, the courts below also rightly concluded that those settlement deed would not bind the defendant and therefore, the judgments of the courts below requires no interference. Accordingly, the learned counsel for the respondent/defendant prayed to dismiss the Second Appeal as there is no



merit in the second appeal.

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14. Considering both sides submissions, it is transpired that the defendant herein is the son born through 1st wife of Mannar gounder and the plaintiffs' father Saravanan is the son born through Pachai Ammal which is not disputed. After the demise of the 1st wife, Mannar gounder married the 2nd wife Pachai Ammal and it is an admitted fact.

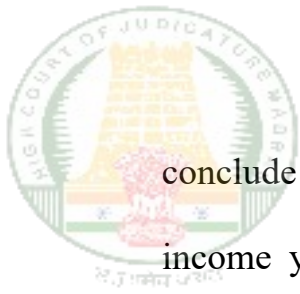
15. As per Ex.A.1, Ex.A.2, and Ex.A.3, 3 sale deeds stand in the name of Mannar Gounder; very particularly Ex.A.1 dated 05.08.1956 to an extent of 26 cents is pertaining to the suit property herein. According to the plaintiffs, through 3 sale deeds, Mannar Gounder purchased the properties and claimed separate property. Further, they contend that though there were 2 acres of dry lands allotted to Mannar Gounder as per oral partition along with his brother, out of his self-acquisition, these properties were purchased by Mannar Gounder.

16. The respondent/defendant also contended that there was oral partition held with Mannar gounder and his brother, out of which, he was given 4 ½ acres wet lands and 2 acres of dry lands. But both of them not produced any relevant document as to which extent of land was allotted to Mannar Gounder in the alleged oral partition held with his brother. However, the fact reveals that there



was around 2 acres of land and the considerable portion of the land was allotted to Mannar Gounder. As per the contention of the defendant, around 70 years back from the date of the suit of the year 2005, oral partition held, which may be around in the year 1935. Thereby, the oral partition held between Mannar Gounder and his brother would have taken place around in the year 1935. But the properties purchased by Mannar Gounder was of the year 1956, 1963 and 1964 nearly about 20 or 25 years later than the oral partition. Therefore, the burden is heavily on the defendant to show that there was joint family nucleus around the family to buy those 3 properties by the Mannar Gounder. But on the side of the defendant, there is no independent witness or material evidence submitted to establish that Mannar gounder owned as Joint Family Nucleus out of the property derived from the said oral partition held nearly about 25 years prior to the alleged purchase.

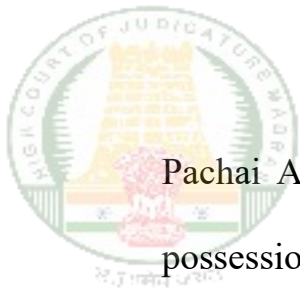
17. As per the arguments advanced on the side of the appellants/plaintiffs, mere existence of the property alone is not sufficient; there must be an evidence to assert that there was nucleus and surplus income derived from the said Joint Family Property and the onus is heavily on the person who claims that it is a joint family property. By relying on the said proposition, the learned counsel for the appellants/plaintiffs submits that simply because there was around 2 acres or more than 2 acres was allotted to Mannar Gounder alone is not sufficient to



conclude or sufficient to presume that there was joint family nucleus or surplus income yielding from that property and there must be concrete evidence to prove that there was income derived from the property and the same was utilised to purchase the property in the name of Mannar Gounder.

18. As discussed above, from about 25 years later, 3 items of the property was purchased by Mannar gounder, but there is neither any material evidence on the side of the defendant that there was sufficient income was derived from the joint family property nor any revenue records placed before the court to substantiate his contention, without which, the courts below erroneously concluded that there was Joint Family Nucleus to purchase the property in the name of Mannar gounder and the proposition laid down by the Supreme Court and this Court relied on by the learned counsel for the appellants/plaintiffs squarely applies to the facts of the case. Therefore, the findings of the courts below that the suit properties are deemed joint family properties purchased by Mannar Gounder and it was not self-acquired properties, is not sustainable and the same is liable to be set aside.

19. As discussed above, the properties are separate properties of Mannar Gounder and he is entitled to execute the settlement deed in favour of his wife. Accordingly, through Ex.A.4, Mannar gounder settled property to his 2nd wife



Pachai Ammal. Ever since according to the appellants/plaintiffs, she was in possession of the property throughout her life time and she executed settlement deed dated 03.11.2004 as per Ex.A.5. Thereafter, from the year 1974 onwards, the settlement deed was in force. Since about 30 years, the document was in force and it was not challenged by the defendant. Settlement deed more than 30 years old is valid under law but the defendant simply contend that the said document was not acted upon. But there is no proof to that effect.

20. On the other hand, near about 30 years, the document was alive and it was not challenged by the defendant. Therefore, Pachai Ammal was the absolute owner of the property as per the settlement deed as it is more than 30 years old document. But the courts below failed to appreciate the said aspect, but erroneously held that Mannar Gounder has no right to execute the settlement deed so also Pachai Ammal has no right to execute the settlement deed as she has no right to execute the document, but the said findings is incorrect and is liable to be set aside for the reason that Mannar Gounder is having right to execute the document in respect of self-acquired property. Therefore, to that effect, the findings rendered by the courts below is liable to be set aside. Therefore, the two settlement deeds are valid in law and it would bind the defendant. But the courts below erroneously held that those two settlement deeds will not bind the defendant, which finding is nothing but illegal and



accordingly, the said finding is set aside. Accordingly, Substantial Questions of law 1 and 2 are answered in favour of the appellants/plaintiffs.

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21. It is the case of the defendant that as per the oral partition, the suit property was allotted to him along with other property, but to prove the same, he has not adduced any witness nor any document to show that he is in possession and enjoyment of the suit property. The defendant specifically pleaded that oral partition is held as per which, he is in deemed possession and the same is lawful but no proof to that effect. But the courts below failed to appreciate the same. In all aspects, the plaintiffs' title over the property is right from the date of settlement deed and therefore, possession follows the title. Therefore, the appellants/plaintiffs are entitled to both reliefs as sought for in the suit prayer.

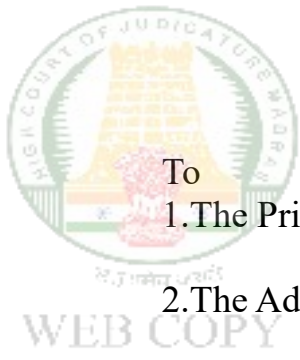
22. In the light of the above discussion, the judgments passed by the courts below, are set aside. The Second Appeal is allowed. Suit is decreed as prayed for. Time to hand over the possession is 3 months from the date of receipt of a copy of this judgment. Considering the relationship of the parties, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

19-12-2025

nvsri

Neutral Citation: Yes/No

17 / 19



To

1. The Principal Subordinate Court, Thiruvannamalai,

2. The Additional District Munsif, Thiruvannamalai.

3. The Section Officer, V.R. Section, High Court, Madras.



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T.V.THAMILSELVI J.

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