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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.08.2025

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THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

A.S.No.320 of 2018

and Cross Obj. No.29 of 2022

and CMP. No.14508 of 2018

A.S.No.320 of 2018:

Narasimmamurthy

... 1st Defendant/Appellant

Vs.

... Plaintiff/1st Respondent

1. K.V.Kirubanandam
2. K.V.Kesavamurthy
3. K.V.Krishnamurthy
4. K.V.Devasena

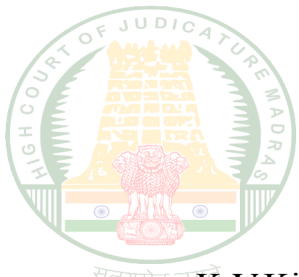
...Defendants 2 to 4/Respondents 2 to 4

This Appeal Suit has been filed under Section 96 of the Civil Procedure Code, as against the judgment and decree dated 13.02.2018 made in O.S.No.15/2013 on the file of the learned II Additional District Judge, Vellore @ Ranipet, Vellore District.

For Appellant : Mr. A.Gouthaman

For Respondents : Mr. K.Mohanamurali R1
RR2 to 4 – No appearance

Cross Obj. No.29 of 2022 :



K.V.Kirubanandam
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... Appellant

Vs.

1. K.V.Narasimmamurthy
2. K.V.Kesavamurthy
3. K.V.Krishnamurthy
4. K.V.Devasena

...Respondents

This Cross Objection has been filed under Order XLI Rule 22 of CPC, as against the judgment and decree dated 13.02.2018 made in O.S.No.15/2013 on the file of the learned II Additional District Judge, Vellore @ Ranipet, Vellore District.

For Appellant : Mr. K.Mohanamurali

For Respondents : Mr. A.Gouthaman R1
RR2 to 4 – No appearance

COMMON JUDGMENT

While the unsuccessful first defendant has preferred the appeal in A.S.No.320/2018 challenging the judgment and decree passed in OS. No.15 of 2013, dated 13.02.2018, the plaintiff has also preferred the cross objection No.29/2022 in A.S.No.320/2018 challenging the very same judgment and decree. For the sake of convenience, the parties are referred as per their ranking in the trial Court.

2. The suit has been filed for partition directing the defendants to divide the suit C & D schedule properties into 5 equal shares and allot

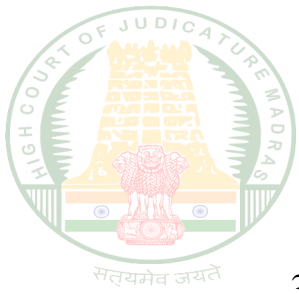


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each one such share to the plaintiff. The trial Court has passed the preliminary decree in respect of the suit C schedule properties into five equal shares and allotted one such share to the plaintiff and in respect of the suit D schedule property, the suit was dismissed.

3. The brief case of the plaintiff is as follows:

The defendants are brothers and sisters of the plaintiff. The suit A-schedule properties are ancestral properties of the plaintiff's father one K.G.Vadivelu Mudhaliar. He inherited the properties through the partition effected between the brothers of the said K.G.Vadivelu Mudhaliar. As such, A-schedule properties are the ancestral properties of the plaintiff and the defendants. In order to purchase the B schedule properties, the plaintiff's father K.G.Vadivelu Mudhaliar sold the A schedule properties to one S.R.Sambanda Mudhaliyar under registered sale deed dated 17.12.1958 and out of the sale consideration amount, the suit B schedule properties were purchased on 17.12.1958.



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3.1 At the time of purchasing the B-schedule properties, the sale deed was obtained in the name of the defendants 1 & 2 are minors and the purchase was only for the benefit of the said K.G.Vadivelu Mudhaliar. The defendants 1 & 2 are name lender and they have not been contributed anything for purchasing the B-schedule property, they are only a name lenders, they have no exclusive right over the B-schedule property.

3.2 One Panduranga Naidu is the adjacent land owner and he is having lands adjacent to the B-schedule properties. Hence, for convenience of use and cultivation the plaintiff's father K.G.Vadivelu Mudhaliar and the said Panduranga Naidu have entered into an exchange deed dated 19.04.1961. In the exchange deed, the said B-schedule property was exchanged and C-schedule properties was allotted to the plaintiff's father.

3.3 The said K.G.Vadivelu Mudhaliar died intestate on 14.03.1987.



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His wife Karpaga Sundari Ammal died intestate on 27.08.1990. From the date of death and even prior to the death of K.G.Vadivelu Mudhaliar, the first defendant being elder son took after the entire family affairs. The suit C-schedule properties are fertile and having sufficient and surplus irrigation sources and commercial crops were raised such as Sugarcane, paddy etc. Apart from the income from the B Schedule properties, the defendants 2 to 4 are handed over their income to the first defendant. Out of the income from the B-schedule properties and funds provided by the defendants 2 to 4, the D-schedule property was purchased in the name of the first defendant. The B-schedule property was acquired by the Government and the compensation amount was appropriated by the first defendant and using the said compensation amount, the first defendant constructed a two storied building in D schedule property, thereby also the D schedule property is having ancestral nucleus. The land in S.No.223/12 and 13 total extent 1 acre 13 cents is being kept for conducting poojas in Arulmigu Haripradsa Eswarar Temple, Karivedu by the ancestors of the Plaintiff's and his predecessor. But the first defendant



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had mortgaged the said property under the unregistered mortgage deed dated 20.01.1989 which was not redeemed by the first defendant. To meet out the marriage expenses of the 3rd defendant, the E -schedule property was sold jointly by plaintiff and defendants 1 to 3 on 19.08.1994. The marriage of the 3rd defendant was celebrated in the year 1994. After marriage of the 3rd defendant, due to the nature of work, the families of the plaintiff and defendants 1 to 3 were scattered to various places. But the suit C and D – schedule properties are not divided among the plaintiff and the defendants and all are having absolute right over the said properties. However, the first defendant is acting adverse to the interest of the plaintiff regarding the C and D – schedule properties by claiming absolute right over the said properties. Hence, the suit.

4. The brief case of the first defendant is as follows:

The father of the plaintiff and the defendants got the sale deed registered exclusively in the name of the defendants 1 & 2 for their exclusive benefit. Thus, the said B schedule properties were the absolute



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self-acquired property of the 1 and 2 defendants, hence, no one including this plaintiff has any right over the said B schedule properties. Further, at the time of said sale transactions, this plaintiff and the defendants 3 & 4 were not born and they have no right to claim the said B schedule properties in any way. The B-schedule properties are in the absolute possession and enjoyment of the defendant. The first defendant admits the exchange of B schedule properties for the C-schedule properties with the person namely Panduranga Naidu through a registered exchange deed dated 19.04.1961 for the absolute benefit as convenient of the defendants 1 & 2 and not as alleged by the plaintiff for the benefit of their father. Hence, the suit schedule properties are the absolute self acquired properties of the defendants 1 & 2. The said exchange deed was executed by their father only in the capacity as a guardian of the defendants 1 & 2 since they were minors at the time of the said exchange and not as an owner of the said B schedule properties. During lifetime of their parents, the first defendant after his marriage started living separately as he got employment in the Government on 22.08.1980. out of his own monthly



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income, he purchased the D schedule property in his name vide sale deed dated 12.03.1987 as a vacant site. The first defendant out of the loan amount sanctioned by his department being a government employee and by his own income had constructed that that said building in the D schedule properties. The plaintiff had never in the joint and constructive possession of the suit properties along with this defendant.

5. The brief case of the second defendant is as follows:

The suit properties are only an ancestral properties and the D-schedule property was purchased out of the income from the ancestral properties. The first defendant along is enjoying the entire income from the suit properties. Prior to the death of his father K.G.Vadivelu Mudhaliar, he instructed the first and second defendants to divide the suit properties equally between the plaintiff and defendants. Hence, the second defendant admits the claim of the plaintiff.

6. The brief case of the third defendant is as follows:



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The suit properties are an ancestral properties and the same is liable for partition. The first defendant alone doing cultivation in the joint family properties and he alone appropriated entire income, the third defendant also assisted in cultivation. However, the first defendant has failed to pay anything to this defendant. The other defendants and the plaintiff were demanding for partition for past many years, but the first defendant did not hear the demand of the siblings. Apart from the D schedule property the first defendant purchased four sand tipper lorry and one tractor with trailer and Ford Icon Car out of the income of the C and D schedule properties. Apart from the movables, the first defendant purchased a house site at Tiruttani out of the income of the joint family properties. Hence, this defendants admits the claim of the plaintiff.

7. Based the above pleadings, the trial Court has framed the following issues:

1. Whether the plaintiff is entitled for partition of 1/5th share in C and D – schedule?



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2. *Whether the C and D schedule are not joint family properties?*

3. *Whether the plaintiff is entitled for permanent injunction?*

4. *To what relief?*

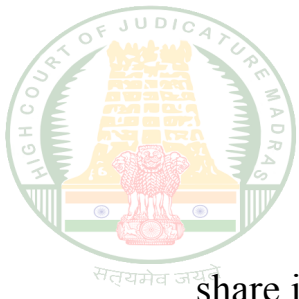
During the trial, before the trial Court, on the side of the plaintiff, himself examined as PW1 and Ex.A1 to Ex.A8 were marked. On the side of the defendants, the first defendant himself examined as DW1 and Exs.B1 to B12 were marked.

8. The findings of the trial Court: On the partition of the ancestral property and on allotment of A-schedule property, the status of ancestral nature is lost and it becomes the absolute and separate property of the said K.G.Vadivelu Mudhaliar. The fact remains that A-schedule property was sold by the said K.G.Vadivelu Mudhaliar and the properties B-schedule were purchased in the name of the defendants 1 & 2 by him as the Kartha of the family. Later, the said Vadivelu Mudhaliar has also exchanged some of the B-schedule property and acquired C-schedule properties to the name of the defendants 1 & 2. The said properties were



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not exclusively enjoyed by the beneficiaries viz., defendants 1 & 2 till the death of the said kartha Vadivelu Mudhaliar. It has been jointly enjoyed by the family of the Vadivelu Mudhaliar alone. There is no evidence to show that the said properties either separated from the family and exclusively enjoyed by the defendants 1 & 2. So, the properties have been thrown into the joint family and hence, it is to be considered as having acquired the status of the joint family property. The first defendant himself has admitted that he has left the family even as early as in the year 1986 and lived separately after his marriage. Therefore, he could not have taken care of the properties as absolute owner and the entire family had jointly enjoyed and cultivated the properties and C-schedule properties cannot be taken as self acquired property or absolute property of the defendants 1 & 2. As per Ex.B3 to B9, which reveals that D-schedule property was acquired through loan by the first defendant from his department. Even if anything is attributed to D-schedule property out of the source from the joint family, there is no evidence regarding the same by the plaintiff side. The plaintiff is entitled to 1/5th



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share in the C-schedule property alone and the plaintiff is not entitled any relief in respect of D – schedule property.

9. The learned counsel appearing for the appellant/first defendant in A.S.No.320 of 2018 and the first respondent/appellant in Cros. Obj. No.29 of 2022 would submit that at that time of execution of Ex.A1 to A3, dated 17.12.1958, the appellant/first defendant was of two years old and the second defendant was aged about one year as found in Ex.A2 and A3. It is an admitted case of the parties that on that day, the plaintiff and the 3rd defendant were not born. The moment when an ancestral properties were allotted to a person, it is his separate property of him provided on the date of partition, if his sons are alive, then his sons are also equally entitled to the properties along with their father. As per the paint allegations and as per law the said K.G.Vadivelu Mudhaliar was entitled to an undivided common 1/3rd share in the properties comprised in Ex.A1 and the first and second defendants were entitled to an undivided common 1/3rd share in the same as they were alive at the time



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of execution of Ex.A1. Thus, the plaintiff and defendants 3 & 4 were not entitled to any share in the same as they were not born as on the date of execution of Ex.A1 dated 17.12.1958. The said K.G.Vadivelu Mudhaliar, entitled to 1/3rd share as per law, his separate property and he is entitled to alienate his share as he pleases. After selling the properties comprises in Ex.A1, K.G.Vadivelu Mudhaliar purchased the properties comprised in Ex.A2 in the name of the first defendant and and properties comprised in Ex.A3 in the name of the second defendant. Therefore, the properties comprises in Ex.A2 is the separate and self-acquired properties of the first defendant and after exchanging deed in Ex.A4, and as per the oral arrangement, the first item of the plaint in C-schedule property are the separate and self acquired property of the first defendant and in the same manner in Ex.A3, the second defendant became entitled to their properties comprised in Ex.A3, as his separate and self acquired property. To strengthen his arguments, the learned counsel relied upon the judgment reported in **2010 (5) LW 329 in the case of Kumaran and another Vs. Rajesh and another** to show that when a divided son or a

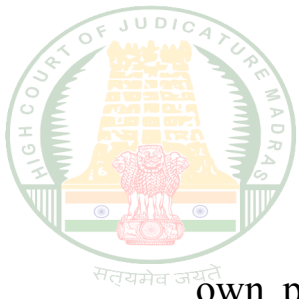


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daughter has got the property belonging to their father in a partition, whether it is an ancestral or self-acquired property of the father, the children became the owner of the their respective shares.

9.1 The learned counsel would further argued that the son of the divided son does not get his right from his father by birth who is included by virtue of Section 8 of the Hindu Succession Act, he cannot became coparcenor in the property in question. To strengthen his contention, the learned counsel relied upon the judgment reported in **2014 (1) CTC 73 in the case of Arunagiri Vs. Ayyan Muthuraja** to show that applying the law laid down in the judgment cited supra in the case of Kumaran, son of divided son does not get any right from his father by birth.

9.2 The learned counsel would submit that the plaintiff and defendants 3 & 4 are not entitled to any share in the suit properties viz., suit C & D – schedule properties much less 1/5 th share in the same. It is will settled proposition of law that a minor cannot sell any property in his



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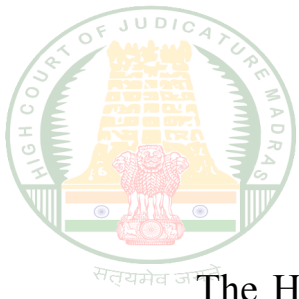
own property whereas a minor can purchase any immovable property through his guardian. The first defendant immediately after his marriage in the year 1986, he went away from the joint family and the first defendant was a Government employee as early as in the year 1980 much earlier to the date his marriage and therefore, he is lived separately and through his separate earnings he acquired several properties including the plaint B-schedule property as a vacant site and thereafter, he constructed a house out of his funds and obtained loan from the Government. Through the document Ex.A2, the case of the first defendant that the item No.1 of the plaint C-schedule and the plaint D-schedule properties are the absolute and separate properties of the first defendant. The first defendant obtained tractor loan in the Indian Overseas Bank by pledging original title deed of Ex.A2 even if any properties purchased in the name of one of the joint family members, it cannot be presumed that the same is joint family property. To strengthen his contention, the learned counsel relied upon the judgment reported in *2000 (2) MLJ 508 in the case of Gurupandaram Died and other Vs. G.Gurusami* wherein it has been



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held that mere proof of the existence of joint family does not lead to the presumption that the property held by a member is joint family property.

9.3 The learned counsel would further argued that even a joint family member can purchase the property in his independent name and the said property would be considered as his separate property. To strengthen his contention, the learned counsel also relied upon the judgment reported in **1986 (3) SCC 567 in the case of Commissioner of Wealth Tax, Kanpur and others Vs. Chander Sen and others** wherein it has been stated that if income from assets inherited by a son from his father from whom he had separated by partition, then it can not be assessed as income of Hindu undivided family of son. Tthe another judgment reported in **1993(1) Supp(1) SCC 58 in the case of Commissioner of income tax Vs. P.L.Karuppan Chettiar** wherein it has been stated that the properties inherited by son from his divided father constituted his separate and individual properties and not the properties of the joint family consisting of himself, his wife, son and daughters and hence, the income therefrom is not assessable in the hands of assessee.



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The Hon'ble Supreme court of India reported in **2006 (8) SCC 5810 in the case of Sheeladevi and others Vs. Lalchand and others** to show the birth of a son does not alter the nature of property. The learned counsel would submit that prior to birth of defendants 2 to 4, the property was alienated so it will not again considered as ancestral property. The existence of joint family will not lead a presumption that the properties hold by the joint family will be treated as joint family property and prayed to allow the appeal and dismiss the cross objection.

10. Per contra, the learned counsel appearing for the first respondent/plaintiff in A.S.No.320/2018 and the cross objector in Crsos. Obj. No.29 of 2022 submit that there is no proof that the suit C-schedule property was separately enjoyed by the defendants 1 & 2. When the C-schedule property stood in the name of the defendants 1 & 2 and the patta also stands in the name of the first defendant under Ex.B1. This will further proved that as a kartha the patta was issued in the name of the first defendant. The second defendant has consented for partition of the c-



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schedule property through his written statement. The Ex.A6 was executed by all the members of the joint family on 19.09.1994 after death of the K.G.Vadivelu Mudhaliar in the year 1987. The plaintiff has also filed an application in the appeal seeking to mark in two documents viz., copy of the document No.387 of 1971 dated 14.03.1970 and the letter dated 11.08.2021 sent by the Secretary, Arakonam Cooperative Primary, Argi and Rural Development Ltd.,. The said additional documents clearly proved that the father of the plaintiff his own handwriting in the additional document No.1. Admitted the said mortgage deed is not cancelled. The claim of the plaintiff under the C-schedule property based on the Ex.A1 to A6 together with additional documents clearly proves that there exist joint family being the plaintiff and the defendants and hence, the claim of the C-schedule property has to be confirmed.

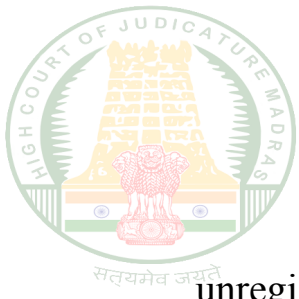
11. The cross objection has been filed in the subject matter of dismissal of the suit for the D-schedule property. Admittedly, his joint family status exist between the plaintiff and the defendants. The first



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defendant except the claiming that he had obtained loan from the Government and no witnesses were examined. Under ExA5, the first defendant had purchased the property vide sale deed dated 27.0.1987 which was registered on 12.03.1987 which shows the crucial role to reject the Ex.B3 to B9. The father of the plaintiff and the defendants K.G.Vadivelu Mudhaliar was admitted in the Kancheepuram Hospital for about two weeks and thereafter, died on 14.03.1987. Except Ex.B3 the proceeding of the District Collect and Ex.B4 letter by the District Collector to the Sub Registrar's Office, and the loan letter dated 20.01.1998, there is no other documents produced to substantiate the claim of the first defendant who purchased the property with the loan sanctioned from the Government. Ex.A5 sale deed was not supported by any independent income except from the joint income of the family.

11.1 The learned counsel would further argued that the first defendant alone received the entire loan amount granted by the Government and not share with others as per Ex.A7. Similarly another



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unregistered mortgage deed in Ex.A8 also clearly proves that one of the joint family property was put in mortgage by the first defendant. The claim of the appellant/first defendant attempting to claim that the suit c-schedule property is in favour of the property of the defendants 1 & 2 is liable to be rejected and the defendant failed to prove that the D-schedule property was purchased only through his individual income and claim it his exclusive property is also liable to be rejected. The judgments relied by the appellant /first defendant is on the pretext, if the property stood in the name of the living persons, the date of the purchase in the property will stand in the eye of law.

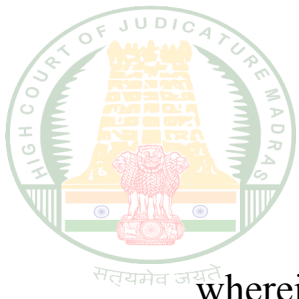
11.2 To strengthen his contentions, the learned counsel has relied upon the judgment rendered by the Hon'ble Supreme Court reported in ***1954 (1) SCC 541 in the case of Shrinivas Krishnarao Kango Vs. Narayan Dev ji Kango and others*** to show that the burden shifts to the party alleging self acquisition to establish affirmatively that the property was acquired without the aid of the joint family property. Another



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judgment reported in **1999 (3) LW 636 in the case of Mayandi Thevar and Thavasi Thevar Vs. Arumughathevar** to show that 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 partly alleging self-acquisition to establish affirmative that the properties were acquired without the aid of the joint family.

11.3 The learned counsel also relied upon the judgment reported in **2014 aa ADJ 602 in the case of Chhotey lal kasera Vs. Kanhaiya lal kasera** to show that it is now well settled in view of several decisions of this Court that the property in the hands of a sole coparcener allotted to him in partition shall be his separate property for the same shall revive only when a son is born to him. Yet another judgment rendered by this Court reported in **2022 Supreme (MAD) 987 in the case of S.Ramya (Deceased) and other Vs. N.Lakshmayya (Deceased) and others**



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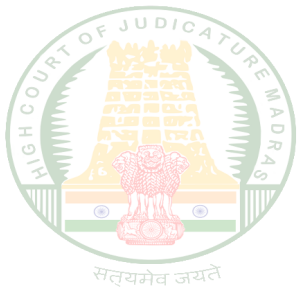
wherein it has been held that the properties purchased by the kartha will be presumed to be ancestral properties unless proved otherwise by the kartha. The elder brother failed to establish that the B schedule properties are separate properties, and the C schedule properties have not been proven to be purchased out of the joint family nucleus. He prays to allow the cross objection and prays to dismiss the appeal.

12. During pendency of the appeal, the plaintiff has filed an application under Order 41 Rule 27 to receive two documents as an additional documents in this appeal. It is stated in the affidavit filed by the plaintiff that the suit C & D - schedule properties are the ancestral properties. Admittedly, the second defendant, who is also a owner of the C-schedule property, has also filed a written statement seeking for partition among the plaintiff and the defendants. Insofar as the D-schedule property is concerned, admittedly, there exists the joint family status except claiming that he had obtained loan from the Government, no independent witnesses were examined. The plaintiff recently found two documents on his cupboard I.e. mortgage deed dated 14.03.1970



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obtained by his father K.G.Vadivelu Mudhaliar by mentioning the name of K.V.Narasimmamurthy, K.V.Kesavamurthy, K.V.Kirubanandan and K.V.Krishnamurthy. The said documents were registered in favour of Arakonam Cooperative Bank Village and Rural Development Bank Ltd., The said mortgage deed is not cancelled till today. The plaintiff is also able to found a letter dated 11.08.2021 issued by the Secretary of the above said Bank to the Sub Registrar, the said document of cancellation which was duly signed and it was not registered till today. For the reasons that, the first defendant did not cooperate for the registration of the document. The first defendant is trying to grab the entire property that is C & D schedule properties without even sharing to the second defendant. The above said documents shows the existence of the joint family status originally under the head of K.G.Vadivelu Mudhaliar and thereafter, under the head of the first defendant. Since the earlier counsel viz., Mr.Chithiramani died during the pendency of this case and the documents submitted to the said counsel was received from the junior counsel from the month of May 2025. If the documents are not received as an additional evidence, the plaintiff will be put to great hardship. Hence, the plaintiff has filed the miscellaneous petition.



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13. The first respondent/defendant has filed counter affidavit. There is no existence of joint family properties between the plaintiff and the defendants. The C & D -schedule properties are separate properties of the first defendant. The documents submitted along with the petition should have been marked before the trial court. The second document is subsequent to the suit. The present application filed to receive the additional documents is belated one. The requirements mandated under order 41 Rule 27 of CPC has not been complied with by the plaintiff. The documents produced along with the petition as an additional evidence, is no relevancy over the suit property. There is not due diligence on the part of the appellant/plaintiff and the present application has been filed only to drag on the proceedings.

14. This Court has considered the submissions made on either side and perused the materials on record.

15. The points for determination arise in this appeal is that



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(i) *Whether the petition filed under Order 41 Rule 27 of CPC in CMP. No.14508 of 2018 is to be allowed?*

(ii) *whether the plain C-schedule properties are ancestral properties to the suit?*

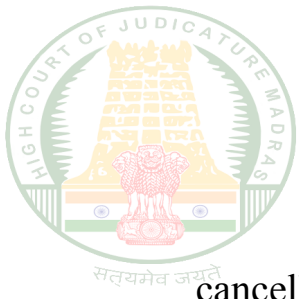
(iii) *Whether the plaint D-schedule property is the joint family property of the parties to the suit?*

(iv) *Whether Item No.1 of the plaint C-schedule property and D-schedule property are self-acquired properties of the first defendant?*

(v) *Whether the first defendant is in separate and exclusive possession of the first item of the C-schedule properties and plaint D-schedule properties?*

Point No.(1)

16. It is stated in the affidavit filed by the plaintiff that the plaintiff was traced two documents in his cup-board. The mortgage deed dated 14.03.1970 obtained by his father K.G.Vadivelu Mudhaliar by mentioning the name of his sons viz., K.V.Narasimmamurthy, K.V.Kesavamurthy, K.V.Kirubanandan and K.V.Krishnamurthy. The said document was registered in favour of Arakonam Cooperative Agri and Rural Development Bank Ltd., and the said mortgage deed is not



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cancelled till today. It is also stated that the plaintiff was able to found a letter dated 11.08.2021 issued by the Arakonam Cooperative Agri and Rural Development Bank Ltd., to the Sub Registrar. The said document of cancellation which was duly and signed and circulated not registered till today. The first defendant is at present trying to grab the entire properties of the C & D -schedule properties within even sharing to the second defendant. The above documents substantiate that there exists the joint family status originally under the head of K.G.Vadivelu Mudhaliar and thereafter, under the head of the first defendant. It is also stated that since the records submitted to the counsel died and the same was received back from the junior counsel in the year 2025. Hence, the present miscellaneous petition has been filed belatedly.

17. It is relevant to read under Order 41 Rule 27 of CPC as follows:

"27. Production of additional evidence in appellate Court.



(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court, but if

a. The court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

aa. The party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the appellate Court may allow such evidence or document to be produced or witness to be examined.

(2) wherever additional evidence is allowed to be produced by an appellate Court, the Court shall record the reason for its admission. "

18. The reasons stated in the affidavit are not sufficient and not attracted the requirements mandated under Order 41 Rule 27 of CPC.



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The second document is subsequent to the suit. The documents produced along with the petition as an additional evidence, is no relevancy over the suit property and no relevancy to decide the issues involved in the present appeal and therefore, the miscellaneous petition is liable to be dismissed.

Point Nos.II & III:

19. Admittedly, the appeal in As.No.320 of 2018 has been filed by the first defendant against the preliminary decree passed in respect of suit 'C'-schedule properties. The plaintiff has filed cross objection No.29/2022 against the dismissal of the suit for the D-schedule properties.

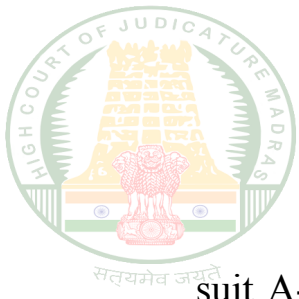
20. It is the specific case of the plaintiff that the suit A-schedule property was an ancestral property owned by K.G.Vadivelu Mudhaliar and the said K.G.Vadivelu Mudhaliar sold ancestral properties of suit A-schedule property under Ex.A1 sale deed dated 17.12.1958. The said K.G.Vadivelu Mudhaliar with the sale proceeds on the same day



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purchased the suit B schedule property under Ex.A2 and A3 sale deeds dated 17.12.1958. The suit D-schedule was purchased in the name of the first defendant by virtue of sale deed Ex.A5 dated 27.02.1987 which was registered on 12.03.1987. There is a Hindu Joint family status the plaintiff and the defendants 2 to 4. The suit c- schedule property are curtailed by the first defendant and income from the c-schedule property is entirely accommodated by the first defendant. Out of the income of the suit C-schedule property, the first defendant has purchased the suit D-schedule property. Apart from the suit C-schedule property to an extent of 52 cents in S.No.22/4A, Karivedu Village was acquired by the Government and the entire compensation of Rs.15,00,056/- was enjoyed by the first defendant without even sharing to other defendants. The plaintiff and the defendants father the said K.G.Vadivelu Mudhaliar died on 14.03.1987. After death of their father, the first defendant was taken control as head of the family and stood as kartha for the entire family.

21. Per contra, it is the specific case of the first defendant that the



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suit A-schedule property was sold and B-schedule was purchased. The suit B-schedule property was given and exchanged and thereafter, suit C-schedule property was purchased. The suit D-schedule property is the first defendant's absolute property and claims that he is a government servant and he obtained a loan to purchase the property.

22. The defendants 2 & 3 have filed a written statement extending consent for partition between the plaintiff and the defendants as they are the coparcenors and a joint family status exists between them. Admittedly, the plaintiff's father K.G.Vadivelu Mudhaliar owned the ancestral property mentioned in suit A-schedule. The said K.G.Vadivelu Mudhaliar sold the suit A-schedule property under Ex.A1 sale deed dated 17.12.1958 and purchased the suit B-schedule properties under Ex.A2 sale deed in Document No.3291 of 1958 dated 17.12.1958 and in Ex.A3 sale deed dated 17.12.1958 document No.3292. It is also not disputed that the plaintiff was born on 17.08.1960 and Ex.A4 is registered exchange deed dated 19.04.1961. The first defendant has claimed his right on



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the main ground is that the property come to the hands of the plaintiff's father and he purchased the suit B-schedule property in the name of the defendants 1 & 2 and hence, it is the absolute property of the 1st and 2nd defendants.

23. It is also not disputed that the suit B-schedule property was given and exchanged and the suit C-schedule property was obtained. Another ground raised by the first defendant in the appeal is that the suit D-schedule property is absolute property and claims that the Government servant obtained a loan and purchased a property.

24. A perusal of Ex.A6 sale deed, in the the document No.806 of 1994 dated 19.09.1994 shows that there exist a Hindu joint family between the plaintiff and the defendants. The fact remains that the suit A-schedule property was sold and B-schedule property was purchased in the name of the family members in the name of the defendants 1 & 2 as the Kartha of the family. Later, some of the B-schedule was exchanged and C-schedule property was obtained in the name of the defendants 1 & 2 who were minors at that time of exchanging.



25. It is relevant to mention that the presumption regarding the coparcenary property vis-a-vis separate property and the person on whom the burden lies has been succinctly stated in Mulla Hindu Law, 17th Edition Volume 1, Page 344 in paragraph No.233 as follows:-

1) Presumption that a joint family continues joint --

2) There is no presumption that a joint family possesses joint property-

" To render the property joint, the plaintiff must prove that the family was possessed of some property with the income of which the property could have been acquired or from which the presumption could be drawn that all the property possessed by the family is joint family property or that it was purchased with joint family funds, such as the proceeds of sale of ancestral property or by joint labour. None of these alternatives is a matter of legal presumption. It can be brought to the cognizance of a Court in the same way, as any other fact, namely, by evidence.

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



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presumption arises that it was joint property and the burden shifts to the party alleging self acquisition to establish affirmative that the property was acquired without the aid of the joint family. However, no such presumption would arise if the nucleus is such that with its held the property claimed to be joint could not have been acquired. In order to give rise to the presumption the nucleus must be such that with its held the property claimed to be joint could have been acquired. "

26. It is pertinent to mention that the law recognizes two standards of burden of proofs, one for the Kartha of the joint family and another for a co-parcener, when they claim that certain properties are their separate properties and not joint family properties. Admittedly, the joint family possessed of some nucleus, eventhough no evidence was adduced by the respondents/plaintiffs about the nature of income from that nucleus, in the absence of any source of independent income by the other co-parcener, in whose name, the property was purchased, it can be presumed that the joint family properties would have provided the consideration for the purchase of the suit properties.



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27. It is relevant to cite the judgment of the Hon'ble Supreme Court, In the judgment reported in ***(2003) 10 S.C.C. 310 in the case of D.S.Lakshmaiah and another Vs. L.Balasubramaniam and another,*** wherein it has been held that 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".

28. It is pertinent to mention that with regard to the presumption as per the law laid down by the Hon'ble Supreme Court and as stated in Mulla Hindu Law that when a Kartha claims certain properties as a separate properties and the joint family admittedly possessed of some nucleus, the burden is on the



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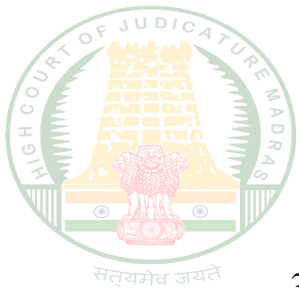
Kartha to prove that the properties are his separate properties and not purchased out of the joint family properties income. On the other hand, if the co-parcener claims certain properties as his separate properties, then the burden is cast on the other co-parcener, who claims that the property is a joint family property to prove that the property purchased out of the joint family properties income and it was not a separate property.

29. According to the plaintiff, as the C-schedule properties are purchased from the ancestral nucleus, all the sons are entitled co-parcener. According to the first defendant, the other sons including the plaintiff was not born at the time of the sale of the suit A-schedule property. It is pertinent to mention that on the partition of the ancestral property and on the allotment of A-schedule property, the status of ancestral property nature is lost and it becomes the absolute and separate property of the father of the plaintiff late Vadivelu Mudhaliar. It is also to be noted that the said Vadivelu Mudhaliar sold the suit A-schedule property and purchased the suit B-schedule property in the name of the defendants 1 & 2 as Kartha of the family. Later, the said Vadivelu Mudhaliar has also exchanged some of the B-schedule properties and



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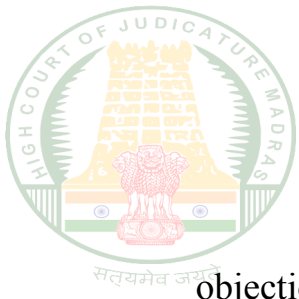
acquired C-schedule properties in their names. Therefore, it is clear that the properties have not been exclusively enjoyed by the defendants 1 & 2 till the death of the said Vadivelu Mudhaliar. Therefore, it is clear that the properties have been jointly enjoyed by the family of the Vadivelu Mudhaliar alone. The first defendant has not let in any evidence to show that the said properties were separated from the joint family and exclusively enjoyed by the defendants 1 & 2. The first defendants has relied upon Ex.B1 patta to show that the first defendant is in exclusive possession and enjoyment. The first defendant himself had admitted that he has left the family even as early as 1986 and living separately after his marriage. In such circumstances, the said C-schedule properties have been jointly enjoyed by the family members. Hence, the suit C-schedule property cannot be taken as self-acquired property or absolute property of the defendants 1 & 2. The first defendant has not denied that the family property allotted to the temple was mortgaged under Ex.A8 by him only as a member of the joint family. The first defendant also admits that all the members of the joint family were executed two sale deeds under Exs.A5 and A6.



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30. According to the plaintiff, the suit D-schedule property was purchased out of the income and sale proceeds of the joint family property by the first defendant and he has chosen to construct a building by using the money derived from the joint family nucleus. The first defendant has produced the Ex.B3 to B9 documents to show that the said D-schedule properties was acquired through loan obtained from his department. In order to disprove the above said aspects and prove the fact that out of the income derived from the joint family, the suit D-schedule property came to be purchased, the plaintiff has not let in any evidence. Thus, keeping in mind, the ratio laid down by the Hon'ble Supreme Court cited supra, we shall see the evidence adduced by the parties. The plaintiff has failed to prove the case that the suit D-schedule property is fully sourced from the joint family property. The plaintiff has also failed to prove the case that the suit D-schedule property was also enjoyed jointly.

31. The rulings relied upon by the learned counsel appearing on either side are not supported to their case. Since the facts of the present case is different from those cases There is no merit in this appeal and the cross



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objection. The Court below, after hearing bothsides and considering the evidence on record, has rightly decreed the suit in part. There is no reasons warranted to interfere with the judgment and decree of the Court below. The points are answered accordingly.

32. In the result, the appeal suit is dismissed and the cross objection is also dismissed. Consequently, CMP. No.14508 of 2018 is also dismissed. The judgment and decree passed in OS.No.15/2013 dated 13.02.2018 passed by the learned II Additional District Judge, Vellore @ Ranipet, Vellore District is confirmed. There shall be no order to costs.

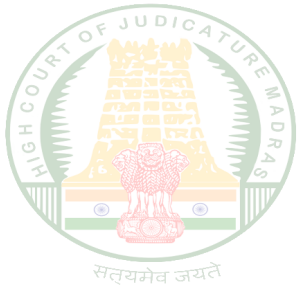
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To

The II Additional District Judge

Vellore @ Ranipet, Vellore.



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M.JOTHIRAMAN,J.

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A.S.No.320 of 2018
and Cross Obj. No.29 of 2022
and CMP. No.14508 of 2018

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