



WEB COPY



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2025

CORAM :

THE HONOURABLE MR.JUSTICE R.KALAIMATHI

S.A.No.1289 of 2013

1. Sriramulu

S/o Late Munusamy

2. Gopal

S/o Late Munusamy

3. Kasthuri

W/o Govindan No.12, Velachry Villge, Morai Firka, Ambattur Tk.

... Appellants

Vs.

1. Doss

S/o Late Munusamy

2.Kanchana

W/o Doss, No.48/8 Type II Quarters

CVRDE Quarters Avadi Poonmallee

Tk, Chennai-600 054

3.Sriramalu Naidu

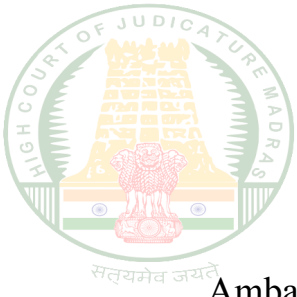
Bajanai Koil St, Mittanallee Village

and Post, Morai Firka, Ambattur Tk

4.Jayakrishna

S/o Late Munusamy, No.12

Velachery Village, Morai Firka,



Ambattur Tk
WEB COPY

.....Respondents

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the judgment and decree dated 28.02.2013 made in A.S.No.6 of 2009 on the file of III Additional Judge, Tiruvallur at Poonamallee confirming the judgment and decree dated 09.02.2004 passed in O.S.No.607 of 1995 on the file of the learned Sub Ordinate Judge, Poonamallee.

For Appellant : Mr.G.Dilipkumar

For Respondents : Mr.M.R.Khapali
No.1&2

JUDGMENT

Aggrieved by the judgment and decree dated 28.02.2013 passed in A.S.No.6 of 2009 by III Additional District Judge, Tiruvallur at Poonamallee, the plaintiffs no.2 to 4 have preferred this Second Appeal.

2.The parties are indicated as per their litigative status and ranking before the trial Court.



WEB COPY

3.The case of the plaintiffs is that the plaintiffs' father Tr.Munusamy died in or about 1965. Since the date of death of said Munusamy, the 4th plaintiff, namely Kasthuri and her husband Govindan had taken charge of the minor children of Munusamy. They worked hard by plying bullock-cart and cultivating lands in the village on lease and doing other business, like paddy procurement and thereby earned sufficient income. Based on the said income, the minor children were well fed, educated and maintained. In the course of time, the 4th plaintiff and her husband expanded their resources and secured employment for the first defendant, first and second plaintiffs in the year 1978, 1980 & 1988 respectively in the Defence Establishment at Avadi. The third plaintiff had associated with the farming operations and paddy business etc, which is carried on by the family.

4. It is the further case of the plaintiffs that there is a custom of forming composite family prevailing in the plaintiffs family. 4th plaintiff's husband Govindan, all the plaintiffs and the first defendant had mutually agreed to form a composite family. They had also agreed to



WEB COPY

live and work together, pool their resources and exertions through their gains and income with the joint stock, shoulder the common risks and utilize their sources and savings indiscriminately for the purpose of the entire family. The family was well-knitted by bonds of relationship and matrimony. There was complete cooperation among the members and their spouses and as the first defendant was efficiently managing the family, considerable savings were effected and with such savings, the first defendant had acquired the schedule mentioned properties in his name and in the name of his wife, who is the second defendant herein. The income from the said properties were utilized for the benefit of all the members of the composite family without any discrimination. It was agreed that each member will take an equal share when they opt for a partition at a later date.

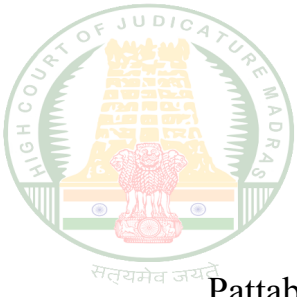
5. First and the second plaintiffs, in fact, handed over their income to the first defendant. The 1st defendant shifted his residence to Avadi from the family residence in or about the year 1992 and thereafter there is disruption in common living. The plaintiffs are in joint possession of all the suit properties on the date of suit. Therefore, the plaintiffs and the first



WEB COPY

defendant are entitled to equal $1/5^{\text{th}}$ share in the suit property. As the first and the second defendants started negotiating with the third defendant for sale of the suit properties suppressing the interest of the plaintiffs in the suit properties, the plaintiffs are constrained to lay the suit for partition of the suit properties for allotment of plaintiffs' $4/5$ shares in the suit properties.

6.Per contra, it was counter acted by the defendants by stating that the plaintiffs' father Munusamy, had been working as an agricultural coolie and after his demise, the plaintiffs and the first defendant were under the care and custody of Govindan, husband of the 4^{th} plaintiff for some time. The first defendant availed the facility of free education and completed 10^{th} Standard in the year 1969-70. During his school education, the first defendant used to do part time agricultural work and milk vending business and out of the income earned by his individual efforts, he got admission in Industrial Training Institute at Ambattur and came out successfully in the year 1972. The first defendant secured employment in M/s.Sivananda Steels, Ambattur Industrial Estate in the year 1973 and later he got appointed in M/s.Southern Structural

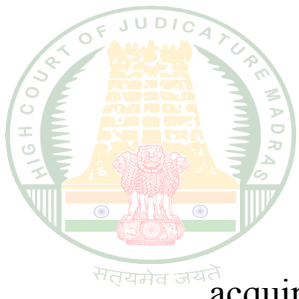


WEB COPY

Pattabiram. After 3 years of service, he was observed in CVRDE in the year 1977 as Trademan-E on monthly salary of more than Rs.400/- per month plus overtime wages to the tune of Rs.400/- per month.

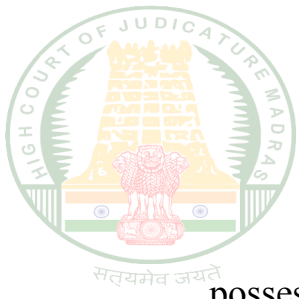
7.It is further case that the first defendant's mother Mrs.Kannammal died in the year 1976 and soon after securing employment in the year 1973 by him, he shouldered the entire family responsibilities and he has been managing the family expenses out of his income. In the year 1981, he secured employment for his younger brother namely Jayakrishna in CVD at Avadi. In the year 1973, the husband of the 4th plaintiff namely Govindan, became sick and bed ridden due to T.B and chest pain. The first defendant took care of his health(Govindan) and admitted him in many hospitals for necessary treatment and the entire medical expenses were borne out by him. After a prolonged illness, the said Govindan died in the year 1995.

8.It is incorrect to allege that the 4th plaintiff and her husband were managing the family and all of them agreed to form a composite family and agreed to live and work together in agriculture. The first defendant



WEB COPY

acquired schedule mentioned properties out of his own income derived out of his hard and sustained effect. The suit schedule properties are the absolute properties of the first defendant and his wife. The first defendant purchased the first item of the plaint schedule item in the year 1979 by raising loan from C.V.R.D.E Thrift and Credit Society and purchased the 4th to 7th items of the plaint schedule properties by raising loan from the Land Development Bank, Saidapet CVRDE Thrift and Credit Society. Out of General Provident Fund, 8th item of the plaint schedule property was purchased by raising loan in the Society and at the Credit of the General Provident Fund of the first defendant. The second defendant, who is the wife of the first defendant, got a sum of Rs.1,25,000/- from her maternal grandmother towards her share from the disposal of a property at Minjur, Athipattu in the year 1986. Out of the said income, the first defendant purchased a housing plot at Soranchery, Madura Sekkadu in S.Nos.154/1, 155/25, measuring 0.06 cents in the year 1987 and purchased 0.19 cents of land in S.No.44/84 at Vellachery and also purchased the property in S.No.157/3A, 157/3B measuring 0.76 cents at Vellachery Village in the name of his spouse, namely, the second defendant. The plaintiffs and the first defendant were never in joint



WEB COPY

possession of the suit properties and the plaintiffs are not entitled for 4/5 share in the suit properties.

9. Based on the rival pleadings, the trial Court framed the relevant issues.

10. At trial, to substantiate the plaint details, on the side of the plaintiffs, the first plaintiff has examined herself as PW1 and the 4th plaintiff, namely Kasthuri, one Chengaiah and Amirthammal were examined as PW2 to PW4 and Exs.A1 to A3 were marked. Exs.A1 and A2 are the Kist receipts. Ex.A3 is the E.B card stand in the name of Doss, the first defendant herein. On the side of the defendants, the first defendant has examined himself as DW1 and Exs.B1 to B30 were marked. The sale deeds in the name of the first defendant have been marked as Ex.B7 to B9. Exs.B10 to B12 are the sale deeds in the name of the second defendant and his Bank passbooks have been marked as Exs.B18 to B24.



WEB COPY

11.The trial Court, upon consideration of evidence and after hearing the arguments advanced by either side held that the concept of composite family was not proved and observed that even for joint family, ancestral nucleus is to be established and the plaintiffs and defendants were never in joint possession of the suit properties and ultimately concluded that the plaintiffs are not entitled to any share in the suit properties and chose to dismiss the suit.

12.Aggrieved by the judgment and decree of the trial Court, the plaintiffs preferred Appeal in A.S.No.6 of 2009 before the III Additional District Court, Tiruvallur at Poonamallee. Upon hearing both side arguments and upon evaluating both oral and documentary evidence let in on either side, the Appellate Judge held that the concept of composite family and the other related particulars are not detailed by the plaintiffs in their plaint and the first defendant after the completion of education, he got employment in Avadi and the properties were acquired from and out of his own income.

13.The plaintiffs 1 to 4 and the first defendant are siblings. The



WEB COPY

father of the plaintiffs and the first defendant, namely, Munusamy was an agricultural coolie and he died in the year 1962. After the demise of the said Munusamy, the eldest person, namely, the husband of the 4th plaintiff viz, Govindan was taking care of the entire family. PW1 to 3 are the plaintiffs in the suit. A careful perusal of the plaint, in entirety, the plaintiffs have not pleaded about their community to which they belonged to and what was the custom prevailing in their community etc. Without any pleadings in detail in the plaint and in the absence of evidence to support the case of the plaintiff, the evidence let in through PW3 & 4 cannot be considered.

14.As regards the nature of composite family, this Court has discussed in the case of “***R.Rajagopal Reddy and Others Vs. Padmini Chandrasekaran and Others***” reported in *AIR 1990 Madras*353, wherein, it has been held that ..

“A coparcenery is purely a creature of law and it cannot be created by act of parties: In contrast, a composite family is the result of an agreement express or implied. There are incidents to the constitution of a composite family, but all incidents are consequences of

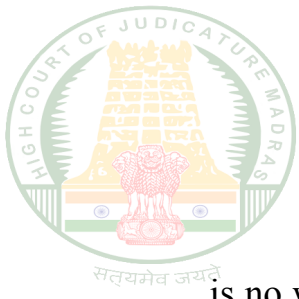


WEB COPY



the agreement between the parties.....The concept of composite family is not one known to conventional Hindu Law. It has come to be recognised in law on the basis of custom prevailing in certain parts of South India and in particular in the State of Andhra Pradesh, Judicial precedents have set down the requirements before there could be a spelling out of such a custom. There must be such a custom in the family itself. The constitution of the composite family must be traced to an agreement express or implied. The constitution should have been for the purpose of living and working together, so that the resources of the families could be pooled; their gains thrown into the joint stock; the common risks could be shouldered together and the resources of the units could be exploited without discrimination for the purposes of the entire family called the composite family. Only when these ingredients are demonstrated to have had been present by acceptable evidence, Courts could accept this theory of composite family.”

15. This Court is of the considered view that the plaintiffs have simply pleaded that they formed a composite family and though that being a custom in their community, these details are not pleaded in the plaint as mentioned supra. In order to constitute a composite family, there should be some agreement between the family members. But there



WEB COPY

is no whisper about these details in the plaint. In the absence of pleadings in the plaint, those details need not be looked into.

16. From the pleadings made in the written statement and the evidence of the defendants' side, it can be deduced that the first defendant was taken care of by the husband of the 4th plaintiff, namely Govindan, after the death of his father till he got employment after completion of ITI Feeder course. DW1 was employed in a private sector and thereafter, he got a permanent employment in CVRDE at Avadi, a Central Government Establishment in the year 1977.

17. More so, it is also relevant to note that the first and the second plaintiffs also got employment in the same establishment (CVRDE). Of course, for some time, the husband of the 4th plaintiff was taking care of the family including the first respondent. But that does not mean that a composite family was formed among them. Govindan, who is husband of the 4th plaintiff worked hard by plying bullock cart and he was engaged in agricultural work. There was no clinching record, to show that he had sufficient income attributing for the betterment of the family.



WEB COPY

18. Only to prove the resources of income by the first defendant for purchasing the properties, the following documents were marked, viz., Ex.B13, Pay slips of the first defendant, Ex.B14, Pass book of CVRDE, Avadi, showing the loan amount and repayment details, Ex.B15, the receipts issued in the name of the first defendant by Saidapet Cooperative Primary Land Development Bank Ltd., EX.B16 is the GPF slips of the first defendant showing the details of subscriptions and refund of advance, Ex.B19 is the pass book issued by Shriram Chits, wherein, the first defendant was a member of the chit. Ex.B20 is the series of receipts issued by the Life Insurance Corporation of India for payments towards loan amount, Exs.B21 and B22 are the pass books issued by the State Bank of India, Ex.B23 is the Post Office Savings Book in the name of the first defendant, Ex.B26 is the series of Loan cards issued by the RBF Nidhi Ltd, wherein, the defendants had availed jewel loans. From these documents, it can be safely concluded that the first defendant out of his own earnings, had acquired the properties in his name. The second defendant, who is the wife of the first defendant, was working as an agent of Peerless General Finance & Investment Company Limited. Ex.B17 is



WEB COPY

the Agent certificate and renewal certificates of the said Agency. It was stated that the second defendant got some amount from her mother side and purchased the properties under Ex.B11 & B12 ("C" schedule properties). Ex.B10 is the sale deed in the name of the second defendant.

19.Further more, it has already been concluded that the concept of composite family is not at all pleaded by the plaintiffs. It is also not in dispute that the plaintiffs 1 & 2, after employment and marriage, were living separately. There was no mention about the ancestral property or joint family property in the plaint. It is not the case of the plaintiffs that the 4th plaintiff's husband namely Govindan acquired property, when the family was headed by him.

20.Mere pleadings in the plaint and evidence that they had joint family income and it was utilized for acquiring the said properties in the name of the first and the second defendants, is not suffice to establish the case of the plaintiffs. The documents, namely Ex.A1, A2, Kist receipts and Ex.A3-Electricity White Meter Card in the name of the first defendant would not improve the case of the plaintiffs.

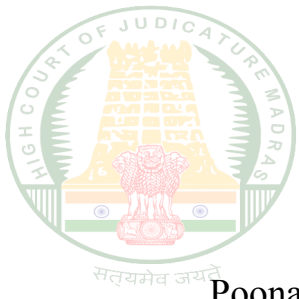


WEB COPY

21. On a careful analysis of the oral and documentary evidence, in its entirety, it is made clear that the plaintiffs have neither pleaded the custom of forming the composite family nor proved sufficiently. There was no pleadings about the agreement entered into between the family members towards forming of composite family with specific object.

22. The First Appellate Court has discussed about these details based on the oral and documentary evidence let in by both the sides and came to the conclusion that there was no composite family as pleaded by the plaintiffs and the suit properties were acquired by the defendants 1 & 2 through their earnings. One of the daughters of Munusamy namely Radha is not made as a party to the suit. The plaintiffs have utterly failed to establish their case and rather the defendants have satisfactorily pleaded and proved their defence case. Ultimately, no substantial question of law would arise for consideration.

23. Based on the aforesaid discussions and observations, the Second Appeal stands dismissed. Sequel to this, the Judgment and Decree dated 28.02.2013 passed by the III Additional District Judge, Tiruvallur at



16

Poonamallee stands confirmed. No costs.

WEB COPY

24.04.2025

dn

Index : Yes/No

Neutral citation : Yes/No

To

- 1.The III Additional Judge, Tiruvallur at Poonamallee
- 2.The learned Sub Ordinate Judge, Poonamallee.



WEB COPY



17

R.KALAIMATHI.J,

dn

SA.No.1289 of 2013

24.04.2025



WEB COPY



**Pre-Delivery Order in
Crl.OP.No.17858 of 2023**

**to
Hon'ble Justice G.K.ILANTHIRAN**

**Most respectfully submitted
dn-PA**