



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on	02.07.2025
Pronounced on	08.08.2025

CORAM

THE HONOURABLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

SA No. 397 of 2020

AND

CMP NO. 6222 OF 2024

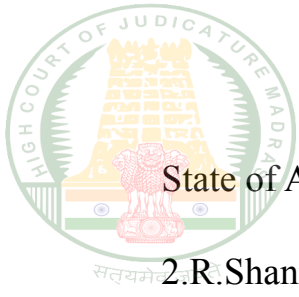
1. R.Dhanapal
S/o.Rajamanicka Chetty
Residing at Bazaar Street,
Palavakkam Village, Uthukottai Taluk,
Tiruvallur District.

2.R.Elumalai
S/o.Rajamanicka Chetty
Residing at Bazaar Street, Palavakkam
Village, Uthukottai Taluk,
Tiruvallur District.

Appellant(s)

Vs

1. R.Jayagopi
S/o.Late Rajamanicka Chetty,
428, Kamatchi Street,
New 19-2-57, Chinna Bazaar Street,
Nellore Town and District



State of Andhra Pradesh.

2.R.Shanmugam

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3.R.Shanthi

Both of them are children of
Rajamanicka Chetty and are residing at
Bazaar Street, Palavakkam Village,
Uthukottai Taluk, Tiruvallur District.

Respondent(s)

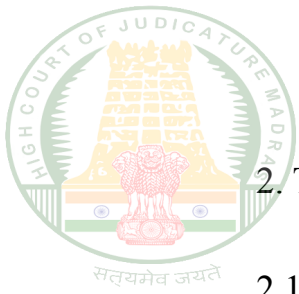
PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, against the judgment and decree of the Court of the I Additional District Judge @ Tiruvallur in AS 6 of 2019 dated 04.01.2020 in confirming the judgment and decree of the court of the Subordinate Judge @ Tiruvallur in OS 29 of 2012 dated 20.06.2018.

For Appellant(s): M/s. V.Srimathi

For Respondent(s): M/s.M.L.Ramesh for R1
RR2 And 3 - Exparte

JUDGMENT

This Second Appeal has been filed against the judgement and decree of the Court of the I Additional District Judge, Tiruvallur in A.S.No.6 of 2019 dated 04.01.2020 confirming the judgement and decree of the court of the Subordinate Judge, Tiruvallur in O.S.No.29 of 2012, dated 20.06.2018.



2. The facts that are relevant for the disposal of the case are as under:

2.1. The defendants 2 and 3 in the suit for partition are the appellants

herein. The plaintiff in the above suit has claimed 1/5th share in the suit properties. According to the plaintiff, the schedule mentioned properties are joint family properties consisting of plaintiff and the defendants. The father of plaintiff and the defendants is one Mr.Rajamanicka Chetty, purchased certain items of the scheduled properties in the name of his wife Saraswathiammal. Some of the properties were purchased by the plaintiff and the defendants out of the joint family income. The said Rajamanicka Chetty had five sons and two daughters. Among them, one son namely, R.Radhakrishna Chetty and one daughter namely R.Vijaya died unmarried. The said Rajamanicka Chetty died 20 years back and his wife Saraswathiammal died 15 years back. Except the plaintiff and the defendants no other legal heirs were left by the said Rajamanicka Chetty. No partition took place between the plaintiff and the defendants after the death of their parents regarding the suit properties. The plaintiff is demanding partition for the past three years, but the defendants are evading the same by saying some lame excuses. Hence, the plaintiff issued a



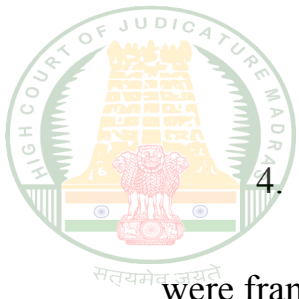
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legal notice to the defendants on 30.10.2011 for amicable partition. But the defendants 1 to 3 issued a reply notice dated 05.12.2011, stating that the plaintiff's share was already given to him. The plaintiff submits that no partition took place in the family and no share was given to him as alleged in the reply notice. Hence, the plaintiff was constrained to file the present suit for partition claiming 1/5th share in the schedule mentioned properties.

3. The above suit filed by the plaintiff was resisted by the defendants 1 to 3, stating that in addition to the property purchased by their father, the 3rd defendant, from and out of his earnings, purchased certain properties in the names of his father and brothers. After the death of their father, the plaintiff and another brother namely Danapal left the family in the year 1992 itself and started living separately. Since the plaintiff wanted his share, a pawn broker shop, which was being run from 1984 to 2006, and a cash of Rs.15 Lakhs, was given towards his share in the year 2006. The plaintiff also gave his consent before the mediators about the manner of division on 10.12.2005. In pursuance of the same, on 07.03.2006, a regular partition deed was executed and the



plaintiff and the defendants 1 to 3 offered to have it registered. It is stated that one of the daughter of Rajamanicka Chetty namely Mageshwari died and her husband Elumali is alive and he is a necessary party to the suit. Hence, the suit is bad for non-joinder of parties. The further submission is that, the plaintiff purchased some properties and improved the business at Nellore, only from and out of the financial help given by the defendants. Therefore, all the acquisitions made by the plaintiff are from and out of the joint family funds and are deemed to be joint family properties, in which, the defendants are also entitled for a share. Therefore, the non-inclusion of plaintiff's acquisitions is fatal to the suit and amounts to seeking relief of partial partition. The plaintiff is no longer a member of a jointly family and he has no share in the properties of the defendants and in the suit items. The defendants have put up houses, with their funds after 2006. In fact, most of the properties were purchased by the 3rd defendant viz., Elumalai in his name and in the name of other brothers and separate pattas were also given to them. The plaintiff was given a separate house site and the same is also not included in the suit. The suit, as framed, is not maintainable, and hence, the suit is liable to be dismissed.



4. Based upon the pleading before the trial Court, the following issues were framed:

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1. *"Whether all suit property are joint family property of the plaintiff and the defendants?"*
2. *Whether the plaintiff entitled 1/5th share as prayed for?*
3. *To what other relief, if parties are entitled to?"*

5. Before the trial Court, The plaintiff examined himself as PW1 and marked Ex.A1 to Ex.A25 and on the side of the defendants, the 3rd defendant examined himself as D.W.1 and three other witnesses and marked Ex.B1.

6. Upon conclusion of the trial and on perusal of the materials on record, the trial Court has concluded that the plaintiff is entitled for 1/5th share in the schedule mentioned properties.

7. Being dissatisfied with the finding arrived at by the trial Court, the defendants 2 and 3 have preferred the appeal in A.S.No.6 of 2019 on the file of



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Additional District Judge, Tiruvallur. The learned I Additional District Judge, Tiruvallur, by judgement and decree dated 04.01.2020, dismissed the appeal by confirming the judgement and decree of the trial Court in O.S.No.29 of 2012 dated 20.06.2018 on the file of the Sub Judge, Tiruvallur.

8. Aggrieved over the same, the defendants 2 and 3 are before this Court with the present Second Appeal.

9. At the time of admission, this Court has formulated the following substantial questions of law:

"(i) Whether the Courts below were right in decreeing the suit in respect of properties which do not form part of Ex.B1 also on the ground that the character of those properties is admitted under Ex.B1.

(ii) Whether the Courts below are right in decreeing the suit, when there is a total lack of pleadings and evidence to prove the existence of the joint family status.



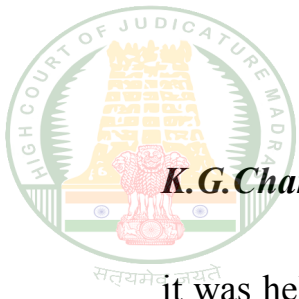
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(iii) Whether the Courts below are right in decreeing the suit when the plaintiff had failed to plead and prove existence of nucleus sufficient to purchase the properties.

(iv) Whether the Court below are correct in relying upon Ex.B1 to decide the character of the suit properties after concluding that it is inadmissible in evidence."

10. The learned counsel for the appellants/defendants submits that the burden is on the plaintiff to prove not only the joint family nucleus but also that the properties which constituted the nucleus were sufficient for purchase of the other properties. The court must see whether the evidence adduced by the plaintiff was sufficient to shift the burden which initially rested on him for establishing that there was adequate nucleus out of which the acquisitions could have been made is one of the facts depending on the nature and the extent of the nucleus. When there is no evidence for nature and extent of nucleus, the courts below ought not to have decreed the suit in favour of the plaintiff. To support her contention she has relied upon the judgment in ***Renuga and another vs.***



K.G.Chandran and another reported in ***2015 SCC Online Mad 7096***, in which

it was held that for raising a presumption, that a property standing in the name of a member of the Hindu joint family, could have been purchased out of the joint family nucleus, conditions are to be satisfied that there was a joint family nucleus and has surplus income, out of which, one can reasonably presume that the property in question could have been purchased. Moreover, the 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. While accepting Ex.B1 partition deed for the presumption that the properties were joint family properties, it should have accepted the factum of previous partition between the parties to the suit and ought to have held, that a fresh suit for partition is not maintainable and that family arrangement can be inferred from conduct spread over several years. In support of her above contention she relied on the judgment of the Hon'ble Supreme Court in ***Kale and others vs. Deputy Director of consolidation and others*** reported in ***(1976) 3 Supreme Court Cases 119***.



10.1. Her further contention is that, Ex.B1 partition deed does not require compulsory registration since it provides only for effectuating a division of joint family properties in the future. To support her contentions she has relied upon the judgment in ***K. Arumuga Velaiah vs. P.R. Ramasamy and another*** reported in ***(2022) 3 Supreme Court Cases 757***). The courts below ought to have seen that the properties which stood in the name of the defendants cannot be a subject matter of partition, especially when there is total want of evidence to substantiate the case of the plaintiff. It was the specific case of the 3rd defendant that he has purchased the properties from his personal funds, in the absence of any evidence on record that the same has been purchased from the joint family nucleus, the courts below ought to have dismissed the suit. Moreover, the plaintiff only in his proof affidavit, for the first time, took a stand that Rajamanika Chetti had purchased the properties from and out of joint family funds in his name and in the name of his wife and in the name of the parties to the suit without any pleadings. It is settled position that no amount of evidence can be looked into unless it is supported by proper pleadings. Therefore, to presume that all the properties are joint family properties, is not supported by



tangible evidence.

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10.2. She would further submit that the plaintiff himself admitted that he is living separately and carrying on separate business from the year 1984 and that the license stands in his name. In fact, plaintiff separated himself from the joint family and was given a pawn broker shop and cash by the joint family. However, the said business was not made the subject matter of the suit. Hence, the suit ought to have been dismissed for partial partition. To support her contention she relied upon the judgement of the Hon'ble Supreme Court in ***Kenchegowda (since deceased) by legal representatives vs. Siddegowda alias Motegowda*** reported in ***(1994) 4 Supreme Court Cases 294*** wherein it has been held that in a suit for partial partition, when all the joint family properties are not made the subject matter of the suit nor the co-shareres impleaded, is not maintainable. Finally the learned counsel submits that though the general rule is that the High Court will not interfere with the concurrent findings of the courts below, it is not an absolute rule. Some of the well recognised exceptions are where: (i) the courts below have ignored material evidence or acted on no



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evidence, (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. A decision based on no evidence, does not refer only to cases where there is a total dearth of evidence, but also refers to case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding. Therefore, when there is misconstruction of a document or wrong application of principle of law with regard to the document and appreciation of evidence is palpably erroneous and the finding of fact is incorrect, the High Court can very well interfere with the concurrent finding of the courts below. To support her contentions, she relied on the judgment of the Hon'ble Supreme Court in *Nazir Mohamed vs. J. Kamala and others* reported in (2020) 19 Supreme Court Cases 57.

11. *Per contra*, The learned counsel appearing for the 1st respondent/plaintiff submits that the plaintiff, in order to prove that all the suit properties are joint family properties of the plaintiff and defendants, had filed all the original



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registered sale deeds in favour of plaintiff's father and defendants, which are marked as Exhibits A1 to A11. Further, he submitted that the plaintiff also filed computerised pattas in favour of the plaintiff and the defendants 1 to 4, which were marked as Exhibits A12 to A20. The defendants 1 to 3 in their written statement categorically admitted that only on 07.03.2006, an attempt was made by preparing a written partition deed to divide the joint family properties, which would clearly goes to show that at no point of time before the year 2006 any division was made with regard to the suit schedule mentioned properties. Moreover, the first defendant Shanmugam being the elder son of the deceased Rajamanicka Chetty is karta of the family after the death of his father. The said Shanmugam failed to enter into the witness box to speak about the character of the properties, which is fatal to the defendants' case. It is pertinent to note that the 3rd defendant categorically admitted that “irrespective of the documents in favour of anyone of the family members, all the properties are the joint family properties and the same was not divided through any registered document” and also admitted the joint possession with the plaintiff.



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11.1. Further, the learned counsel submitted that except the 3rd defendant, no other sons of Rajamanicka Chetty were examined and being the youngest son of Rajamanicka Chetty, the 3rd defendant has created Ex. B1 to defeat the claim of the plaintiff. Moreover, in Ex.B1, the date of execution is not mentioned and the same is not registered. Since the defendants had miserably failed to prove the earlier partition in the family, the Courts below have rightly rejected the said documents and decreed the suit in favour of the plaintiff.

11.2. The learned counsel for the respondent further submits that in view of Ex. A12 to Ex.A20, the plaintiff is entitled to the share in the suit schedule properties. It is also submitted that though in the written statement, the 3rd defendant has stated that he has purchased some properties in the name of his father and brother, he had neither marked any document nor given any oral evidence to establish his independent source of income. Moreover, in the written statement, though the 3rd defendant has stated that since one of the daughter of Rajamanika Chetty namely Maheswari died and her husband namely Elumalai is still alive and he is necessary party to the suit, the said



contention cannot be accepted in view of Section 15(2) of the Hindu Succession

12. Heard on both sides and perused the materials available on record.

13. It is the specific case of the plaintiff that the suit properties are joint family properties consisting of the plaintiff and the defendants. According to the plaintiff, the father of the plaintiff and defendants namely Rajamanika Chetti purchased certain properties in the name of their mother Saraswathy Ammal and certain properties were purchased in the name of the plaintiff and the defendants out of joint family income. After the death of their parents, the properties were jointly enjoyed by the plaintiff and the defendants. Thereafter, the plaintiff demanded for partition and issued a legal notice on 30.10.2011. The defendants issued a reply notice claiming that the partition had already taken place and the plaintiff was given his share. The further claim of the 3rd defendant is that he had purchased certain properties in the name of his father and his brothers out of his independent income and that the plaintiff and the 2nd



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defendant left the joint family in the year 1992 and at that time the plaintiff's share was given to him. Thereafter, on 07.03.2006 partition took place in the family. It is also contended that the suit is bad for non joinder of parties for not including the husband of Maheswari. The suit is also bad for partial partition for not including the properties stood in the name of the plaintiff.

13.1. It is not in dispute that the plaintiff is living separately. In Hindu law, a plaintiff living separately from a joint family does not automatically sever the joint family status. The learned counsel for the defendants submits that there had been a previous partition between the parties to the suit under Ex.B1 and therefore, there is no question of a fresh suit for partition. As per the evidence of the defendants that on 07.02.2006 an attempt was made for executing a partition deed to divide the joint family properties. It means that prior to the year 2006, there had been no division of the properties among the plaintiff and the defendants. Except the 3rd defendant, none of the other defendants had entered the witness box to speak about the factum of partition alleged to have been taken place in the year 2006. Moreover, a document



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providing for effectuating a division of joint family properties in the future can be exempted from compulsory registration. But, the recitals in Ex.B1 shows that the document provides for effectuating a division of joint family properties on the date of execution of the document. Hence, Ex.B1 document has to be compulsorily registered and the same is inadmissible in evidence. Moreover, it is not established by the defendants that the plaintiff was a party to the said partition deed and the signature in the said deed belongs to the plaintiff, particularly when plaintiff denies the signature in Ex.B1. The defendants have failed to prove that under Ex.B1 partition deed, there was complete severance of joint family status between the parties and the courts below have rightly held that Ex.B1 could not be construed to be a partition between the parties.

13.2. However, it is well settled legal position that proof of 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 rest upon anyone asserting that any item of the property is joint to establish the fact. But, when it is established that the family possessed some joint property which from its nature and relative



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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. Therefore, the initial burden is on the plaintiff to prove not only on the joint family nucleus but also that the properties which constituted the nucleus are sufficient for purchase of the other properties. Now it has to be seen whether the evidence adduced by the plaintiff was sufficient to shift the burden which initially rested on him of establishing that there was adequate nucleus out of which the acquisitions could have been made is one of facts depending on the nature and the extent of the nucleus. The plaintiff has marked Ex.A1 to Ex.A11 sale deeds in favour of plaintiff's father and defendants. The 3rd defendant categorically admitted that all the properties are joint family properties and are in joint possession with the plaintiff. Moreover, there is nothing on record to establish that the 3rd defendant had independent income for purchasing certain properties in the name of the joint family members. Even as per the admission of the defendants, the joint family was holding agricultural lands and growing paddy and that there was income derived from the ancestral property. Having



failed to prove that the properties in the individual name of the parties is from their independent income, the trial court has rightly held that the properties are the joint family properties of the plaintiff and the defendants.

13.3. With respect to the non joinder of necessary parties, namely the husband of the deceased Maheswari, it has been held by the courts below that according to Section 15(2) of the Hindu Succession Act, when the property is received by a female from her father, and when she dies without leaving any children to succeed the said estate, the property reverts back to the legal heirs of her father. The plaintiff further submits that the husband of Maheswari has remarried. This fact was not disputed by the defendants. On the side of the defendants it is further contended that the suit is bad for partial partition since some of the properties were not included in the suit. The particulars of the properties which had been left had not been specifically mentioned by the defendants. No infirmity is found in the said findings, which warrants interference by this Court.



13.4. Hence, it can be concluded that all substantial questions of law raised in this second appeal are answered against the appellants.

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14. In the result,

1. The Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.
2. The judgement and decree of the Court of the I Additional District Judge, Tiruvallur in A.S.No.6 of 2019 dated 04.01.2020 confirming the judgement and decree of the court of the Subordinate Judge, Tiruvallur, in O.S.No.29 of 2012, dated 20.06.2018 is upheld.

08.08.2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. The I Additional District Judge, Tiruvallur.
2. The Subordinate Judge, Tiruvallur.
3. The Section Officer, VR Section, High Court, Madras.

20/21



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SA No. 397 of 2020



K.GOVINDARAJAN THILAKAVADI J.

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