



A.S.No.366 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :13.06.2022

Pronounced on :24.06.2025

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Appeal Suit No.366 of 2022

S.Geetha Rani,
W/o R.Sivakumar,
At Door No.48/113,
Arasamara Street,
Tiruvannamalai.

.. Plaintiff/Appellant

/versus/

1.M.Ganesan(died)
S/o Milagu Kannan Chettiyar,
At No.168/380,
Murugar Koil Street,
Thenimalai,
Tiruvannamalai.

2.G.Panneerselvam,
S/o Gamesan,
At No.380/168,
Murugar Koil Street,
Thenimalai, Tiruvannamalai.



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3.R.Manoharan,
S/o C.Rajendran,
At Pavupattu Village,
Tiruvannamalai.

4.R.Ashokan,
S/o C.Rajendran,
At Pavupattu Village,
Tiruvannamalai.
(R1 died, R2 to R4(who were already)
on record are recorded as LR's of
the deceased R1, vide order of Court
dated 20.03.2025 made in A.S.No.366/2022
(NSKJ)).Memo recorded(9063)

..Defendants 1 to 4 /Respondents 1 to 4

Appeal Suit has been filed under Section 96 of Civil Procedure Code, praying to set aside the judgment and decree dated 23.06.2022 made in O.S.No.26 of 2015 on the file of the Hon'ble Additional District Court, Tiruvannamalai, so far as against the plaintiff concerned and grant decree for item Nos.1 to 3, 12 and 13 of suit schedule properties also by decreeing the suit in its entirety as prayed for by the plaintiff by allowing the above First Appeal.

For Appellant :Mr.J.Ramakrishnan

For Respondents :Mrs.S.Suseela Devi for R1 and R2

Mr.K.P.Promoh Kumar for R3 & R4



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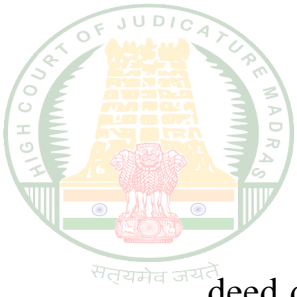
JUDGMENT

Suit filed for partition and separate possession.

2. The plaintiff is the daughter of the first defendant and sister of the second defendant. She claims 1/3rd share in the 13 items of immovable properties morefully described in the schedule to the plaint. The two purchasers of the First item property from the first defendant are arrayed as defendants 3 and 4. The Trial Court partly allowed the suit for partition in respect of items 4 to 11 and dismissed in respect of properties item 1,2,3,12 and 13. Being aggrieved, in respect of disallowed items the plaintiff is before this Court.

3. For convenience sake, the parties are described as per their status and ranking in the suit.

4. **The case of the plaintiff:** The suit schedule properties items 3 to 11 are ancestral properties, which her father got under a registered partition



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deed dated 10.03.1989 entered between the plaintiff's father, father's father and father's brother. The first item property was purchased from the income derived from the ancestral property in the name of the first defendant on 04.03.1992. The second item property settled by the grandfather in favour of her father/ the first defendant on 29.09.2004 for the benefit of joint family. The 12th and 13th items of properties were purchased on 13.02.2004 and 10.04.2013 respectively in the name of the first defendant from out of the surplus income from the ancestral properties.

5. The case of the defendants : The defendants 1 and 2 state that the suit properties are not Hindu Joint Family properties and the plaintiff is not a member of the joint family. The averment in the plaint that items 1,12 and 13 were purchased from the income derived from the nucleus of the ancestral properties, is denied. The averment that those properties purchased in the name of the first defendant and got blend with the ancestral properties, is denied.

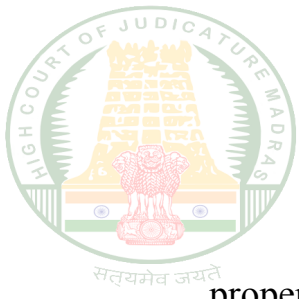


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6. According to the defendants, the first item of the suit property is the self acquired property of the first defendant, who had his own income as employee under the Tamil Nadu State Transport Corporation and other places. He purchased the first item of property on 04.03.1992 from out of his income and enjoying it absolutely. Being the absolute owner of the first item property, he sold it to 3rd and 4th defendants on 31.01.2013. Whereas, Items 2 and 3 of the suit properties were the properties allotted to Milagu Kannan Chettiyar, the father of the first defendant under the partition deed dated 10.03.1989. The said Milagu Kannan Chettiyar settled these two properties under deed dated 29.09.2004 to the first defendant. In that settlement deed, the husband of the plaintiff is one of the witness. The first defendant had taken possession of it and was enjoying it exclusively till he settled it to his son along with items 3 and 4 of the schedule.

7. Items 4 to 11 were allotted to the first defendant in the partition dated 10.03.1989 between the first defendant (Ganesan), his brother(Gopal) and his father (Milagu Kannan Chettiyar). From that date of partition, these

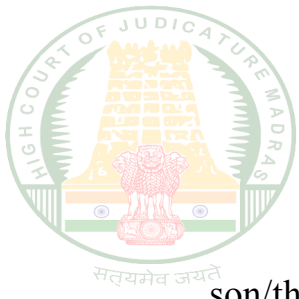


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properties are in possession and enjoyment of the first defendant as his absolute properties. On 06.06.2012, the first defendant had settled items 2 to 5 of the properties to his son the second defendant who is in enjoyment of it absolutely. In so far as the 12th item property, it was purchased by the second defendant from one Rajeswari on 13.02.2004 out of his income and the same is his self acquired property. Likewise, the 13th item of property was purchased by the second defendant on 13.02.2004 from out of his savings and borrowing from the third parties.

8. The case of the defendants in short is that, the plaintiff is not entitled for any share in the suit properties, since it does not carry the character of co-parenary or joint family properties. While, the properties in items 1, 12 and 13 were purchased from the personal income of the first defendant, the rest of the properties are the absolute properties of the first defendant, who got it through the family partition (items 4 to 11) and through settlement from his father Milagu Kannan Chettiyar (items 2 and 3). The further case of the defendants is that he had settled items 2 to 5 to his



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son/the second defendant. After the partition in the year 1989, these properties are enjoyed as the individual properties of the respective sharers. They were enjoying and dealing the property independently. Later, Milagu Kannan Chettiyar settled items 2 and 3 to his son Ganesan (first defendant) on 29.04.2004. Thereafter, Ganesan (first defendant) settled items 2 to 5 to his son Panneerselvam (second defendant) on 06.06.2012. In respect of items 1,12 and 13, they were purchased out of the independent source of income of the second defendant and they are his self acquired properties. The first item property later sold to the defendant 3 and 4 for valuable consideration. They are bonafide purchasers for value under sale deed dated 30.01.2013. They took possession of the land and had completed construction on it. They are enjoying the property absolute.

9. The plaintiff had come forward with a vexatious litigation without any cause of action. Having not in joint possession, the Court fees paid under Section 37 (1) of the TamilNadu Court fees and Suit valuation Act is not proper.



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10. Issues recast on the basis of the pleadings of the parties:-

1. Whether the suit 1 to 3 items are not the absolute properties of the first defendant?

2. Whether the suit items 4 to 11 are the ancestral properties of the plaintiff, D1 and D2?

3. Whether the items 12 and 13 are the self acquire properties of the second defendant?

4. Whether the alienation made by the first defendant in favour of 3 and 4 defendants regarding the suit first item is valid and binding on the plaintiff?

5. Whether the settlement deed dated 06.06.2012 regarding the suit items 2 to 5 is true valid and binding on the plaintiff?

6. Whether the plaintiff is entitled to 1/3rd share over the suit items?

7. To what relief, if any, is the plaintiff is entitled to?

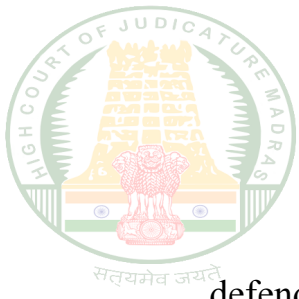


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11. The plaintiff to prove her case had mounted the witness box and examined as PW-1. In her support, one Sivakumar examined as PW-2. 10 documents marked as Ex.A-1 to Ex.A-10. On the side of the defendants, 4 witnesses were examined and 13 documents were marked as Ex.B-1 to Ex.B-13.

12. The Trial Court, after scrutiny of the documents and the oral evidence of the witnesses on either side, held that the items 4 to 11 are the ancestral properties, which is held jointly by the family consisting of the plaintiff, the first and second defendants. Hence, the plaintiff has 1/3rd share in those properties. Whereas the items 1, 12 and 13 are the properties purchased by the first defendant from out of his own source of income. The plaintiff failed to prove any surplus from the family nucleus to buy these properties in the name of the first defendant as Manager of the family. In respect of items 2 and 3, the Trial Court held that the settlement deed, dated 29.09.2004 (Ex.A-3) of Molavukannan in favour of Ganesan (first



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defendant)is valid. However, the subsequent settlement deed of the first defendant dated 06.06.2012 (Ex.A-7) in favour of his son the second defendant, is valid only in respect of items 2 and 3 properties, but not in so far as items 4 and 5.

13. Being aggrieved by the Trial Court finding that the plaintiff failed to prove that the items 1, 12 and 13 were purchased in the name of the first defendant as Manager of the joint family from out of the surplus income derived from the joint family nucleus and for excluding items 2 and 3 from division, the appeal suit is filed.

14. The point for determination:

Whether the plaintiff has discharged the burden of proving the existence of a Hindu Joint Family and surplus income from the nucleus to purchase items 1, 12 and 13 of the suit properties, whether the sale deed executed in favour of the 3rd and 4th defendants by the first defendant through Ex.A8 and Ex.A9 respectively are valid and whether exclusion of



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items 2 and 3 properties is proper?

15. The admitted facts in this case is that the suit properties 2 to 11 are the ancestral properties, which were divided among Milagu Kannan Chettiyar (Karthi) and his two sons Ganesan and Gopal through a registered partition deed dated 10.03.1989 (Ex.A4). It is also not in dispute that items 2 and 3 were allotted to Milagu Kannan and 4 to 11 were allotted to Ganesan, the first defendant.

16. The plaintiff, Geetha Rani, the daughter of Ganesan contends that being aggrieved by her mother settling all her properties in her favour, her father, the first defendant and her brother, the second defendant refused to give her share in the ancestral properties. According to her, items 1, 12 and 13 though purchased in the name of the first defendant, it was purchased from out of the surplus income derived from the ancestral property and got bended with the ancestral properties. For her claim of blending, there is not enough evidence to prove that the ancestral properties allotted to the first defendant under Ex.A4, had surplus income to purchase items 1, 12 and 13.

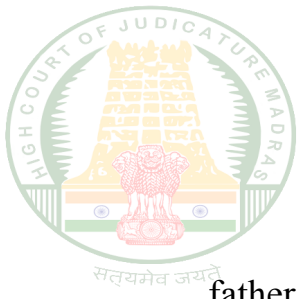


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The exhibits placed before this Court indicates that the first item property purchased by the first defendant on 04.03.1992 for a sum of Rs.22,600/-. The 12th item property purchased by the first defendant on 13.02.2004 under Ex.A5 for a sum of Rs.25,000/-. The 13th of the suit property purchased by the first defendant on 10.04.2013 under Ex.A6 for a sale consideration of Rs.3,60,000/-. The first defendant as well as the second defendant mounted the witness box and categorically stated that these properties were not purchased from the surplus income of the nucleus but from out of the income of the first defendant, who is a qualified mechanical engineer, and effectively employed and had income of his own.

17. To contradict the above assertion of the defendants, the plaintiff not placed any evidence that the ancestral property allotted to the first defendant under the partition deed Ex.A4 had surplus income to purchase these properties. There is not even a statement in the plaint indicating the potential of the ancestral property to yield sufficient income. It is also to be noted that while settling items 3 and 4 properties to the first defendant, his



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father Milagu Kannan Chettiyar had stated in the deed that the first defendant has no enough income from his share of the ancestral property, therefore, to supplement the income to support the family, items 2 and 3 is gifted to him under Ex.A3 dated 29.09.2004. Therefore, apart from absence of proof for surplus income through joint family property, also in the light of the positive evidence about the earning capacity of the second defendant, the plea of the plaintiff that items 1,12 and 13 were purchased in the name of the first defendant as Manager of the joint family, does not carry any merit for consideration.

18. In this regard, the following judgments of the Hon'ble Supreme Court lend support to the case of the respondents.

The Privy Council in ***Randhi Appalaswami v. Randhi Suryanamurti*** reported in [1947 SCC Online PC 42], held that the initial burden which lay on the plaintiff of establishing that the properties of which a division was claimed were joint family properties had not been discharged. The law was thus stated in that case:

“.....The Hindu law upon this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property is joint to



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establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property.”

19. The judgment of the Hon'ble Supreme Court in ***Shrinivas Krishnarao Kango v. Narayan Devji Kango and others reported in [(1954)1SCC 544]***, wherein it was held that:

“The burden of proving blending is heavily on the plaintiff. He has to establish that the defendants had so dealt with the properties as to show an intention to abandon their separate claim over it. This is a question of fact on which the courts below have concurrently found against the appellant, and there are no grounds for differing from them.”

20. The Hon'ble Supreme Court in ***Bhagwat Sharan (dead through legal representatives) v. Purushottam and others reported in [(2020)6 SCC 387]*** wherein, it is held in paragraph Nos.10 and 12, which reads as follows:-

10.At the outset we may note that a lot of arguments



were addressed and judgments were cited on the attributes of HUF and the manner in which it can be constituted. In view of the facts narrated above, in our view, a large number of these arguments and citations need not be considered. The law is well settled that the burden is on the person who alleges that the property is a joint property of an HUF to prove the same. Reference in this behalf may be made to the judgments of this Court in *Bhagwan Dayal v. Reoti Devi* [*Bhagwan Dayal v. Reoti Devi*, AIR 1962 SC 287] . Both the parties have placed reliance on this judgment. In this case, this Court held that the general principle is that a Hindu family is presumed to be joint unless the contrary is proved. It was further held that where one of the coparceners separated himself from other members of the joint family there was no presumption that the rest of coparceners continued to constitute a joint family. However, it was also held that at the same time there is no presumption that because one member of the family has separated, the rest of the family is no longer a joint family. However, it is important to note that this Court in *Bhagwati Prasad Sah v. Dulhin Rameshwari Kuer* [*Bhagwati Prasad Sah v. Dulhin Rameshwari Kuer*, 1951 SCC 486 : 1951 SCR 603] , it held as follows:

“10. ... Except in the case of reunion, the mere fact that separated coparceners chose to live together or act jointly for purposes of business or trade or in their dealings with properties, would not give them the status of coparceners under the Mitakshara law.”

.....

.....

12. In *D.S. Lakshmaiah v. L. Balasubramanyam* [*D.S. Lakshmaiah v. L. Balasubramanyam*, (2003) 10 SCC 310] this Court held as follows : (*D.S. Lakshmaiah case* [*D.S. Lakshmaiah v. L. Balasubramanyam*, (2003) 10 SCC 310] , SCC p. 317, para 18)



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“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.”

21. The specific case of the appellant/plaintiff is that, items 1, 12 and 13 purchased in the name of the first defendant, got blended with the ancestral property. In the absence of proof that the manager had separate fund, it is to be presumed that the property was purchased from the surplus of the nucleus fund.

22. The decision of the Hon'ble Supreme Court in ***Mallesappa Bandeppa Desai and Another v. Desai Mallappa alias Mallesappa and another*** reported in ***[AIR 1961 SC 1268]***, which deals about the concept of blending relied by the appellant:-

“The rule of blending postulates that a coparcener who is interested in the coparcenary property and who



owns separate property of his own may by deliberate and intentional conduct treat his separate property as forming part of the coparcenary property. If it appears that property which is separately acquired has been deliberately and voluntarily thrown by the owner into the joint stock with the clear intention of abandoning his claim on the said property and with the object of assimilating it to the joint family property, then the said property becomes a part of the joint family estate; in other words, the separate property of a coparcener loses its separate character by reason of the owner's conduct and get thrown into the common stock of which it becomes a part. This doctrine, therefore, inevitably postulates that the owner of the separate property is a coparcener who has an interest in the coparcenary property and desires to blend his separate property with the coparcenary property. There can be no doubt that the conduct on which a plea of blending is based must clearly and unequivocally show the intention of the owner of the separate property to convert his property into an item of joint family property. A mere intention to benefit the members of the family by allowing them the use of the income coming from the said property may not necessarily be enough to justify an inference of blending; but the basis of the doctrine is the existence of coparcenary and coparcenary property as well as the existence of the separate property of a coparcener."

23. The evidence placed before this Court clearly indicates that the first defendant being a qualified Mechanical Engineer, had separate funds through his avocation, as employee in the Transport Corporation and later, in a private firm. There is also evidence to show that the ancestral property



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allotted to the first defendant had not sufficient income to meet out the family expenses. The conduct of the first defendant also does not indicate that he blended the self acquired properties purchased from his funds into the hotchpot of the ancestral property.

24. Therefore, in the absence of proof that the ancestral property had surplus fund, coupled with positive proof that the first defendant had sufficient independent funds through his avocation to purchase items 1,12 and 13 and in the absence of proof that by his conduct, the first defendant blended his property with the ancestral property, this Court holds that the first defendant has discharged his onus of proof that he had sufficient income of his own, and from that income he purchased items 1,12 and 13 and he did not blend his self acquired properties with the ancestral property.

25. So far as items 2 to 5 of the suit schedule properties covered under Ex.A7, dated 06.06.2012 the recital of the settlement deed indicates that the first defendant gifted items 2 to 5 of the suit property to his son, the second



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defendant. In this regard, the trial Court has found that items 2 and 3 were not the property allotted to the first defendant under the partition. Therefore, it will not carry the character of the ancestral property, after the division, which took place in the year 1989, properties items 2 and 3 dealt by Milagu Kannan Chettiyar, to whom these two properties were allotted, since Milagu Kannan Chettiyar has dealt with the property as his property and settled it in favour of his son/the first defendant, these two properties have lost the character of ancestral property. Therefore, the first defendant, who got these properties from his father by way of settlement has absolute right to settle these two items of the property in favour of his son, the second defendant.

26. As rightly held by the trial Court, insofar as items 4 and 5, which were allotted to the first defendant under the partition deed (Ex.A4), still carry the character of the ancestral property. Therefore, the plaintiff, as the daughter of the first defendant, is entitled for 1/3rd share in the property, after the amendment in the Hindu Succession Act, which has been given effect from 09.09.2005 along with the other properties items 6 to 11.



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27. The trial Court after proper appreciation of evidence and the law governing Hindu Succession had rightly dismissed the claim of partition made by the plaintiff in respect of items 1,2,3,12 and 13.

28. In the light of the above facts and circumstances, **this Appeal Suit stands dismissed.** The judgment and decree passed by the Additional District Court, Tiruvannamalai, in O.S.No.26 of 2015 dated 23.06.2022, are hereby confirmed. Taking note of the relationship between the parties, there shall be no order as to costs.

24.06.2025

Index:yes

Speaking order/non speaking order

Neutral citation:yes/no

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To

1.The Additional District Court, Tiruvannamalai.

2.The Section Officer, VR Section, High Court, Madras.

20/21



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Dr.G.JAYACHANDRAN,J.

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Delivery judgment made in
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24.06.2025