



SA(MD)No.16 of 2006

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 29/04/2025

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

SA (MD) No.16 of 2006
and
CMP (MD) No.156 of 2006

Mr.Karnan : Appellant/Appellant/
Plaintiff

Vs.

1.Rajeswari Nachiar
2.Sugumaran
3.Sivarani Nachiar
4.Vasanthakani Ammal
5.S.A.Syed Ibrahim (Died) : Respondents 1 to 5/
Respondents/Defendants

6.Asraf Ali
7.Sadhik
8.S.Mohamed Zakaria
9.Abdul Kareem Kani
10.Mohamed Abubackkar : Respondents 6 to 10/
(Respondents 6 to 10 are LR.s of the Deceased
brought on record as LR.s 5th Respondent
of the deceased 5th Respondent
vide court order, dated 20/01/2025
made in CMP(MD)No.13772 of 2004 in
SA(MD)No.16 of 2006)

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 13/08/2003 and made in AS No.151 of 1999 on the file of the Principal District Judge, Ramanathapuram, confirming the judgment and decree, dated 05/11/1998 made in OS No.253 of 1995 on the file of the District Munsif Court-cum-Judicial Magistrate, Kamuthi.



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For Appellant : Mr.TSR.Venkatramana
Senior Counsel
for Mr.Thamos Rajadurai

For 1st Respondent : Mr.B.Jeyakumar
(No Appearance)

For R2 to R4 : Ex-parte
(Memo filed)

For 5th Respondent : Died (Steps Taken)

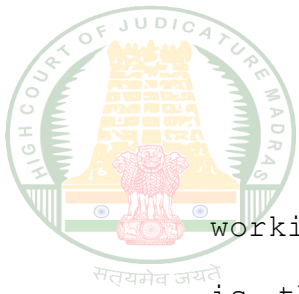
For R6 to R10 : No appearance

J U D G M E N T

This second appeal is filed against the judgment and decree, dated 13/08/2003 passed in AS No.151 of 1999 by the Principal District Judge, Ramanathapuram, confirming the judgment and decree, dated 05/11/1998 passed in OS No.253 of 1995 by the District Munsif Court-cum-Judicial Magistrate, Kamuthi.

2.The plaint averments:-

(i)The suit schedule items No.1 to 9 originally belongs to the plaintiff's father ancestrally. He died in 1977 leaving behind the plaintiff and his wife Duraikannu Nachiar. Duraikannu Nachiar died in the year 1989. Along with the plaintiff, one Kottaisamy and the second defendant Sugumaran were born. The 4th defendant is the only female heir. After the death of the father, the plaintiff came down to the village and doing agricultural operation. The 2nd defendant, after completing his studies

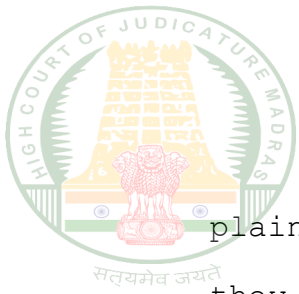


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working in a Government Department. The first defendant is the wife of Kottaisamy. The third defendant is the wife of the second defendant. After the death of the father, Kottaisamy was in management of the Hindu undivided family along with the second defendant Sugumaran. Out of the income derived from the joint family income for the benefit of the joint family, items 10 and 11 were purchased in the name of the first defendant on various dates such as 23/09/1982, 04/08/1988 as benami, so also the items 12 to 14 were purchased in the name of the third defendant for the benefit of the joint family, on 04/08/1988. Even though, the properties were purchased in the name of the first defendant and the third defendant, those properties were enjoyed as joint family properties along with the existing ancestral properties.

(ii) There was no division between the coparcener. After the death of the father, Kottaisamy died on 13/05/1995 leaving behind the first defendant as his wife. There was no children between them. As per Hindu Succession Act 1956, the plaintiff is entitled to 5/16th share, so also the defendants 1 to 2. So far as the 4th defendant is concerned, she is entitled for 1/15th share. Because of the difference of opinion between them, the



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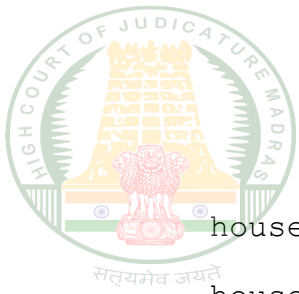
plaintiff does not want to continue as coparcener. So, they demanded partition of the property. But the defendants evading. Hence, the suit.

3.The statement of the first defendant:-

(i)The relationship between the parties is admitted, but not the pleadings. Wherein it has been stated that for the benefit of the joint family, items 10 and 11 were not purchased in her name, out of the joint family income, those properties were the first defendant's personal and separate properties, in which the joint family members are not having any right.

(ii)The joint enjoyment pleaded in the plaint items 10 and 11 is also denied as false.

(iii)The marriage between the first defendant and the deceased Kottaisamy took place around 1970. At the time, Kottaisamy was working in the Government Department. The Joint family properties were divided orally around 1979 between Kottaisamy and the second defendant. As per the oral family arrangement and partition, Kottaisamy constructed a house on the western portion of 9th item and residing there. Eastern portion was allotted to the second defendant. He constructed a



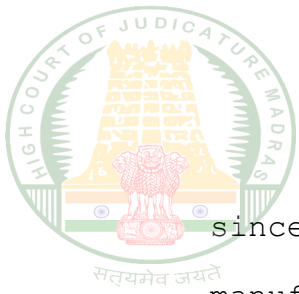
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house and residing there. On the south of those two houses, the ancestral house was situated, wherein the plaintiff was living. After that, the ancestral house became damaged and so the plaintiff is living in the second defendant's house. Now the second defendant is living in Paramakudi. The 4th defendant was married, out of the joint family income and so, she was ousted from the properties. Ultimately, items 10 and 11 were purchased by the first defendant out of the funds provided by her parents. Even before the date of the suit, the first item was sold to the 5th defendant, wherein the 5th defendant put up a PVC manufacturing company. 11th item is in possession and enjoyment of the first defendant. So, the plaintiff is not entitled for any share in the items 10 and 11.

4. The statement of the 5th defendant:-

It is denied that 10th item belongs to the joint family consisting of the plaintiff, Kottaisamy and the second defendant. It is equally denied that it is purchased out of the joint family income. The suit properties items 10 and 11 are purchased out of the funds provided by the first defendant's husband, who was working in the Forest Department. He purchased the 10th item, on 07/02/1980 for valid consideration and ever-



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since, he is in possession and constructed a PVC pipe manufacturing company. Revenue records mutated in his name and the Company is also functioning.

5. On the basis of the pleadings, the following issues were framed by the trial court:-

(1) Whether suit items 1 to 9 are the ancestral properties of the plaintiff's father Ganesa Pandia Thevar is true?

(2) Whether it is corrected that items 10 and 11 of the suit properties were purchased on 23/09/1982, 04/08/1988 in the name of the first defendant, who is the wife of the elder male member of the family by name Kottaisamy from and out of the income derived from the family income?

(3) Whether items 12, 13 and 14 of the suit properties were purchased on 04/08/1988 in the name of the 3rd defendant, who is the wife of the second defendant for the benefit of the joint family?

(4) Whether the plaintiff is entitled to get 5/16th share in the suit property as prayed for in the plaint?



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(5) To what other relief, the plaintiff is entitled to?

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6. During trial, on the side of the plaintiff, 5 witnesses were examined and 5 documents marked. On the side of the defendants 1 and 5, 2 witnesses were examined and 34 documents marked.

7. At the conclusion of the trial process, the trial court partly decreed the suit granting preliminary decree for partition in respect of items 1 to 9. So far as the other items are concerned, the suit is dismissed.

8. Against which, the plaintiff preferred appeal before the appellate court namely the Principal District Judge, Ramanathapuram, in AS No.151 of 1999. The appellate court also concurred with the judgment and decree of the trial court and dismissed the appeal.

9. Against which, this second appeal is preferred.

10. At the time of admission, the following substantial questions of law were framed:-

(1) Whether the courts below are correct in dismissing the suit with



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regard to items 10 to 14, when admittedly items 1 to 9 are found as joint family properties?

(2)Whether the courts below are correct in dismissing the suit with regard to items 10 to 14 when admittedly there was a joint family nucleus?

(3)Whether the courts below are correct in dismissing the suit with regard to items 10 to 14 having accepted the plaintiff's case and when the defendants 2 to 4 remained *ex-parte*?

11.Heard the appellant.

Substantial Question of Law No.3:-

12.Before we go into the main issue, the admitted facts may be kept in mind. One Ganesa Pandia Thevar was having ancestral properties namely Items Nos.1 to 9. He died in 1977 leaving behind the plaintiff, his elder son Kottaisamy and the second defendant Sugumaran, the 4th defendant Vasandhagani Ammal as the only daughter as legal-heir. Kottaisamy joined in the Forest Department originally temporarily, later he became permanent around 1966. Duraikannu Natchiar also died in 1989. The second



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defendant Sugumaran joined in the Revenue Department around 1976. The third defendant is the wife of the second defendant. Items 10 and 11 were standing in the name of the first defendant, the wife of the deceased Kottaisamy. Item No.10 was purchased by the 5th defendant in 1988. Items 12 to 14 are standing in the name of the third defendant by way of purchase in 1988. So, these are the admitted facts.

13.The simple case of the plaintiff is that out of the joint family income derived from items 1 to 9, items 10 to 14 were purchased in the name of the first defendant (items 10 and 11) and the third defendant (12 to 14 item). When the properties are standing in the name of the female members, it is the duty of the plaintiff to prove that items 1 to 9 were yielding income and out of the excess income, those properties were purchased for the joint family benefit in the name of the defendants 1 and 3.

14.The third defendant did not enter appearance. According to the plaintiff, the defendants 1 and 5 alone contesting the matter. The judgment of the trial court does not indicate that the defendants 2 to 4 remained *ex-parte*. But the statement of the first defendant and 5th



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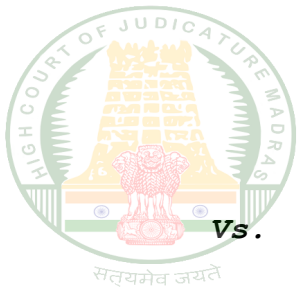
defendant alone are extracted in the judgment. Even during the course of the discussion, it is noted that the defendants 2 to 4 did not appear. But it has taken into account the evidence of the first defendant for the items Nos.12 to 14 also.

15.But simply because, the third defendant did not appear, the decree is not automatic in favour of the plaintiff. It is the duty of the plaintiff to establish the above said fundamental facts mentioned above.

16.So, the contention on the part of the appellant that the trial court as well as the appellate court have committed an error in not decreeing the suit in respect of items 10 to 14 is un-sustainable. So, this substantial question of law is answered that no error was committed, either by the trial court or by the appellate court in deciding the issue on the basis of the merits, even in the absence of the 3rd defendant.

Substantial Question of Law Nos.1 and 2:-

17.The learned Senior counsel appearing for the appellant would rely upon the judgment of the Hon'ble Supreme Court reported in ***Appasaheb Peerappa Chandgade***



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Vs. Devendra Peerappa Chandgade and Others (AIR 2007

SUPREME COURT 218) and would submit that when admittedly, there is joint family nucleus in the form of items 1 to 9, naturally then presumption is available that the items 10 to 14 were purchased in the name of the family members out of the joint family income. He is referring to para 9 and 10 of the judgment, which is extracted herein under:-

9. So far the legal proposition is concerned, there is no gain saying that whenever a suit for partition and determination of share and possession thereof is filed, then the initial burden is on the plaintiff to show that the entire property was a joint Hindu family property and after initial discharge of the burden, it shifts on the defendants to show that the property claimed by them was not purchased out of the joint family nucleus and it was purchased independent of them. This settled proposition emerges from various decisions of this Court right from 1954 onwards.



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10. In the case of *Srinivas Krishnarao Kango v. Narayan Devli Kango and Ors.* , their Lordships held that 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 was joint to 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. Therefore, so far as the proposition of law is concerned, the initial burden is on the person who claims that it was joint family property but after initial discharge of the burden, it shifts to the party who claims that the property has been purchased by him through his own source and not from the joint family nucleus. Same proposition has been followed in the case of *Mst. Rukhmabai v. Lala Laxminarayan and Ors.* wherein it was observed as follows:



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There is a presumption in Hindu Law that a family is joint. There can be a division in status among the members of a joint Hindu family by definement of shares which is technically called "division of status", or an actual division among them by allotment of specific property to each one of them which is described as "division by metes and bounds". A member need not receive any share in the joint estate but may renounce his interest therein; his renunciation merely extinguishes his interest in the estate but does not affect that status of the remaining members vis-a-vis the family property. A division in status can be effected by an unambiguous declaration to become divided from the others and that intention can be expressed by any process. Though prima facie a document clearly expressing the intention to divide brings about a division in status, it is open to a party to prove that the said document was a sham or a nominal one not intended to be acted upon but was conceived and executed for an ulterior purpose. But there is no presumption that any property, whether moveable or immovable, held by a member of a joint Hindu family, is joint family property. The burden lies upon the person who asserts that a particular



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property is joint family property to establish that fact. But if he proves that there was sufficient joint family nucleus from and out of which the said property could have been acquired, the burden shifts to the member of the family setting up the claim that it is his personal property to establish that the said property has been acquired without any assistance from the joint family property.

Similarly, in the case of [Achuthan Nair v. Chinnammu Amma and Ors.](#) , their Lordships held as follows:

Under Hindu law, when a property stands in the name of a member of a joint family, it is incumbent upon those asserting that it is a joint family property to establish it. When it is proved or admitted that a family possessed sufficient nucleus with the aid of which the member might have made the acquisition, the law raises a presumption that it is a joint family property and the onus is shifted to the individual member to establish that the property was acquired by him without the aid of the said nucleus. This is a well settled proposition of law.

Similarly, in the case of [Bhagwant P. Sulakhe v. Digambar Gopal Sulakhe and Ors.](#) , their Lordships have held that



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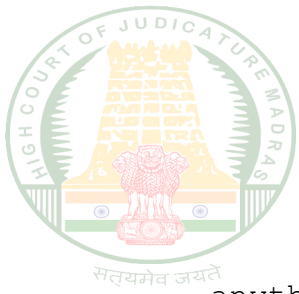
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the character of any joint family property does not change with the severance of the status of the joint family and a joint family property continues to retain its joint family character so long as the joint family property is in existence and is not partitioned amongst the co-sharers. By a unilateral act it is not open to any member of the joint family to convert any joint family property into his personal property."

18.He would also further submit that the court may take judicial notice on the probable income that might have been derived from the joint family nucleus. All the 9 items are wet lands measuring about 4.32 acres and an average of 108 kottai paddy would have been derived from the wet lands. So, this income itself will indicate that excess money was available in the hands of Kartha of the joint family to purchase the properties.

19.As mentioned above, Ganesa Pandia Thevar died in 1977. Only after that, 10 to 14 items were purchased. After the death of Ganesa Pandia Thevar, it was the Kottaisamy, who was the Kartha of the joint family.



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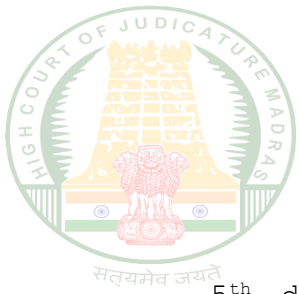
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20.Now we will go to the evidence of PW1 whether anything is available in his favour to show that those lands were yielding income; excess amount were available in the hands of Kottaisamy to purchase the properties in the name of the first and third defendants.

21.A plea is taken by the first defendant that there was partition in the family orally. But no evidence is available on that account. So, we can ignore that point now. Now the background of the facts may also be taken into account.

22.PW1 would say that 10 days prior to the filing of the suit, an occurrence took place when he was working as Milk Society President. They were milking near Highways. At that time, one relative of his brother along with several persons came to that place, prevented them from milking, try to assault. On the basis of the information given by the labourers, he lodged a complaint with the Abiramipuram police station.

23.So, it is seen that within 10 days from the date of occurrence, the present suit was filed.



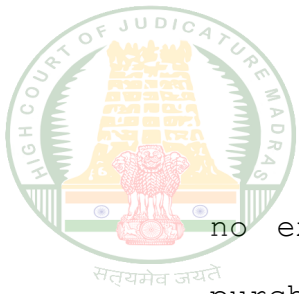
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24.He also admits that 10th item was purchased by the 5th defendant; He put up the plant there, after making construction. That fact was known to him right from the day of laying foundation till completion. On the date of the suit, the plant was functioning, but he did not make any objection while constructing the plant by the 5th defendant in the item No.10. Even without including the construction, he filed the suit only for site. This indicates the preliminary point that something went wrong between the plaintiff and the second defendant, which caused filing of the suit.

25.As mentioned above, sales were made by the third defendant around 1988. But the suit was filed only in 1995. The reason for such a long delay is not explained by him.

26.Even the argument advanced by the learned Senior counsel appearing for the appellant in respect of yielding from the agricultural land is not spoken by him. Even if we say that the coparcener or joint family continued even after the marriage of the deceased Kottaisamy and the second defendant, why the property was purchased by Kottaisamy in the name of the third defendant for the benefit of the joint family, there is

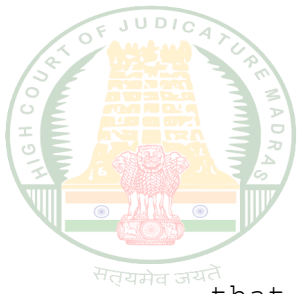


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no explanation. The plaintiff was married in 1989. The purchase took place in 1988. It is to be noted that on the date of the purchase, Kottaisamy and the second defendant were working and earning income. But the first defendant says that Kottaisamy was a spend thurst, was indebted to several persons; So, there is no excess income, either personally or from the joint family. Purchases were made at the funds provided by her parents. But for this also, there is no evidence. But that cannot be taken advantage by the plaintiff.

27.It is admitted by the plaintiff himself that the mother expired in 1989. So, it is the duty of the plaintiff to prove by the independent evidence that even after the death of the father, the coparcenary continued till the filing of the suit. But there is an admission by him to the effect that he mortgaged the share on 04/06/1999. Whether it is a slip of tongue or not, was not brought on record in the form of re-examination. At one point of time, he says that there was no partition in the family and at another point of time, he would say that the property allotted to him was mortgaged by him. So, his evidence is not cogent, convincing inspire any confidence.



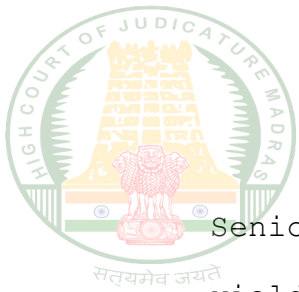
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28. In respect of item Nos.10 and 11, he would say that the sale price was paid by his brother to the seller. He would further say that his father was cultivating property measuring about 3 acres, 10 acres, 60 cents under one Sethuramalinga Mudaliar. Sethuramalinga Mudaliar in turn mortgaged the property to his father around 1968. So, this according to the plaintiff, item Nos.10 and 11 was already under mortgage with his father and later, purchased in the name of the first defendant. This was also pointed out by the learned Senior counsel at the time of argument. So, according to him, this will show that the joint family nucleus was yielding sufficient money.

29. But for this, absolutely there is no evidence on record, except the oral evidence of the plaintiff.

30. Regarding the item Nos.12 to 14, he would say that by whom the purchase price was paid was not known to him. No presumption can be drawn because of the non-appearance of the third defendant to the effect that those properties were purchased only out of the joint family income. So, when the plaintiff's oral evidence is not convincing and suiting his own case, I am of the considered view, the argument advanced by the learned



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Senior Counsel for the appellant that nanja lands were yielding excess income cannot be taken into account at all. So, I find that no error or illegality were committed either by the trial court or by the appellate court in dismissing the suit, so far as the items 10 to 14 are concerned. Accordingly, the substantial question of law Nos.1 and 3 are answered.

31.In the result, the second appeal fails and the same is **dismissed** with costs confirming the judgment and decree of the courts below. Consequently, connected CMP is closed.

29/04/2025

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Principal District Court,
Ramanathapuram.
- 2.The District Munsif-cum-Judicial Magistrate,
Kamudhi,
Ramanathapuram District.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.

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G.ILANGOVAN, J

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29/04/2025