



A.S.(MD).No.139 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	28.07.2025
Pronounced on	18.11.2025

CORAM:

THE HON'BLE MR.JUSTICE **K.K.RAMAKRISHNAN**

A.S(MD) No.139 of 2014

and

M.P.(MD).No.1 of 2014

1.K.Jegadessan

2.K.Rashunathan

3.K.Thulasiraman

-- Appellants

--Vs--

1.K.Chandrasekaran

Suseela (Died)

2.R.Manamohan

3.R.Shyam Sundar

4.R.Amarnath

5.S.Rajeshwar

6.Jayashree

Usha (died)

K.Kamala (died)



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7.Maheswari

8.Rajeswari

B.Kamalabai (died)

Lakshmi Bai (died)

Sundaravalli (died)

9.Jayakiraman

10.Gouthami

11.Neelavathy

12.Ram Mohan

13.Bhaskar

14.Parvathavarthini

15.Sarala

Anusuya Bai (died)

16.A.N.Mohanram

17.Vidya Shankar

18.N.R.Ravindran

19.V.Dhanalakshmi

20.N.R.Lakshmanan

21.N.R.Surendran

22.Ramela Vasan



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23.S.Vasanthi

24.N.R.Rajendran

25.Manjula

26.K.V.Subramaniam

27.S.Sujatha

28.S.Jeyanthi

29.S.Gayathri

30.S.Kumaran

-- Respondents

Prayer : This Appeal Suit has been filed under Section 96 of C.P.C., against the judgment and decree dated 25.09.2013 made in O.S.No.56 of 2004 on the file of the learned II Additional District Judge, Tiruchirappalli.

For Appellant : Mr.R.Devaraj

For Respondents : Mr.S.Ramesh
for R2 to R6, R16 and R17

: No appearance
for R7, R9, R11, R12, R13, R15,
R21, R26, R29 and R30.

: Given Up
for R1, R10, R14, R18 to R20,
R22 to R25, R27 and R28



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JUDGMENT

The plaintiffs in O.S. No. 56 of 2004, on the file of the learned II Additional District Judge, Trichy have filed this appeal suit, challenging the judgment and decree passed in O.S. No. 56 of 2004, by the impugned judgment dated 25.09.2013 in so far as the dismissal of the suit for partition relating to the Item Nos. 1 and 3 of the suit scheduled property.

2. For better appreciation of this First Appeal suit, the rank of the parties mentioned in the suit is referred hereunder:

2.1.The plaintiffs filed the suit claiming 1/6 share in the suit item Nos. 1, 3, 7/21 share in Item No. 4 and 7/11 share in Item No. 5.

2.2.The plaintiff Put forth a case that their parent is **A.V.Kumaraswamy** and Navaneethammal . Raj Kumar, Kamalabai, Lakshmibai, Sundaravalli, Neelavathi, Jayanthi, Chandrasekaran, Raghunathan, Thulasiram are their brothers and sisters. He retired from Southern Railway Department in the year 1939 and commenced a



business by investing all his retirement benefits under the name and style of “A.V. Kumaraswamy and Sons” having its principal place of business at No.58, B.K.Bazaar, Tiruchirapalli. The business involved manufacture and sale of pillows, carpets, waxing materials, banian, undergarments, woollen goods, and similar things. He continuously conducted the said business until his demise *in the year 1949*. During his lifetime, the second son Krishnamoorthy was designated as the manager of the family business and controlled its operations and after his demise, A.V. Krishnamurthy, one of the sons, was managing the family business and administering the family affairs as the joint family manager. . In the meantime, the other sons, Rajagopalan, Chandrasekharan, Raghunathan, and Tulasiraman, joined various government departments. Therefore, Krishnamoorthy managed the family business and looked after the family affairs.

2.3.Item No. 2 of the suit schedule property was the ancestral house where all the family members resided together. With a view to uplift poor and needy children, A.V. Krishnamurthy started an elementary school known as the “Saurashtra Aided Elementary School” in place nearby the house at Saurashtra Street and due to lack of sufficient space, it became difficult to continue the



school in that location necessitating larger premises. To continue the educational institution, a house property was purchased in the Thillai Nagar Housing Construction Co-operative Society in the name of the elder member of the family, Rajagopalan, in accordance with family tradition. The purchase and subsequent modifications to the building were made using funds derived from the joint family business and agricultural income.

2.4.The school was thereafter relocated to Item No.3 of the suit property, while the family continued to reside jointly in Item No.2 the school was closed and all were shifted to Item No.3 of the suit property. Later, Rajagopalan got transfer in his employment and began residing elsewhere along with his family, But Item No. 3 was rented out and was in common enjoyment.

2.5.Apart from these, the remaining suit properties—Items 4 and 5—comprised agricultural wet lands that generated sufficient income through paddy cultivation (both *Samba* and *Kuruvai* crops). After the death of A.V. Kumaraswamy, these lands were cultivated by his other sons.

2.6.The plaintiffs contended that the purchase of Item No. 3 was intended to be for the benefit of the joint family and that the said property was enjoyed as such. Raghunathan later obtained employment with Karur Vysya



Bank, for which purpose a mortgage security deed was executed jointly by Rajagopalan, Krishnamurthy, and Raghunathan, clearly reciting that the property constituted joint family property. The other two brothers also executed similar bonds in favour of the Karur Vysya Bank, accompanied by letters specifically stating that the property was joint family property and that their respective shares were being offered as security.

2.7. Consequently, the entire property continued to be used and treated as joint family property. Due to disputes concerning the management of the school, the school was later closed, while the family business was continued by Krishnamurthy who was a known politician and contested two assembly election and local bodies election and enjoyed properties as joint family.

2.8. Rajagopalan subsequently shifted his residence to Chennai, where he passed away after suffering from age-related illness. After his demise, his wife, Smt. Susheela, created disputes within the family, resulting in the cessation of joint enjoyment of the properties. The rents from the properties, which were earlier collected jointly by the brothers, became a matter of contention after Rajagopalan's death. Consequently, the plaintiffs filed the present suit for partition.

2.9. The other defendants being the legal heirs of the remaining brothers



and sisters supported the plaintiffs' claim and filed separate written statements affirming the plaintiffs' averments.

2.10.However, the legal heirs of Rajagopalan filed a separate written statement denying the allegations. They contended that Item No. 3 of the property was purchased by Rajagopalan out of his own income and not from joint family funds. They specifically denied utilization of any part of the joint family business income or agricultural income for the said purchase, asserting that Rajagopalan individually purchased the property with his personal salary income. Hence, they sought dismissal of the suit relating to the partition of Item No. 3, while admitting the plaintiffs' entitlement to partition of the remaining properties.

2.11.The plaintiffs to prove their case examined P.W.1 to P.W.3 and marked Ex.A1 to Ex.A37. On the side of the defendants, they examined D.W.1 and D.W.2 and marked Ex.B1 to Ex.B36.

2.12.The learned trial Judge, after considering the entire oral and documentary evidence, decreed the suit in respect of Item Nos. 2, 4, and 5 of the schedule properties and dismissed the suit in respect of Item



Nos. 1 and 3. Aggrieved by the dismissal of the suit for Items 1 and 3, the plaintiffs preferred the present appeal in A.S. No.139 of 2014.

3.The learned counsel for the appellants contended that the trial court, while holding that the existence of the joint family and its properties had been established, had erred in holding that the property standing in the name of Rajagopalan was his self-acquired property, contrary to the documentary and oral evidence adduced by the plaintiffs. It was further contended that the witnesses examined on the side of Rajagopalan had no direct knowledge about the family affairs, particularly regarding the purchase of the properties in the name of Rajagopalan out of joint family funds. The learned Judge failed to properly appreciate this aspect. Once the existence of the joint family nucleus was proved, and there was a consistent pleading and evidence that the properties were purchased from joint family income and were subsequently treated as joint family properties, the learned Judge ought not to have held that the property was the separate property of Rajagopalan merely because the sale deed stood in his name.



3.1.The evidence clearly established that the joint family possessed sufficient nucleus and income, which was utilized for the purchase of the property. There was no evidence to show that Rajagopalan had any independent source of income sufficient to acquire the property in his individual capacity. Hence, the finding of the learned trial Judge that Rajagopalan purchased the property from his own income is unsustainable.

3.2.It was further submitted by the learned counsel for the appellants that, with respect to the business property (Item No. 1), there is no longer any subsisting business, and therefore, the appellants are not pressing the appeal in respect of Item No.1. Their claim is now confined to Item No. 3, which was purchased out of the joint family income and was continuously enjoyed by all the family members, treating it as joint family property.

3.3.The learned counsel relied on several judicial precedents and documentary evidence to substantiate that Raghunathan and Tulasiraman, being the senior members of the family, had complete



knowledge of the family affairs, whereas the son of Rajagopalan and other witnesses examined on the side of the defendants had no direct knowledge. Moreover, the documents produced on behalf of the defendants, in the name of Rajagopalan, were created only after his demise.

3.4.The learned counsel also pointed out that all original documents relating to the purchase, allotment of the plot, and other records remained in the custody of Raghunathan, who deposed in detail about the family affairs and the treatment of the property as joint family property.

3.5.In view of these circumstances, the learned trial Judge failed to consider the case in its proper perspective. Therefore, the appellants seek to set aside the judgment and decree of the trial court insofar as it dismissed the claim for partition relating to Item No. 3 of the suit schedule property.

4.The learned counsel for the respondents, on the other hand,



submitted that since the property stood in the name of the elder member, Rajagopalan, who was employed in the Railway Department and the property was allotted under a housing scheme, there was no circumstance to hold that the said property subsumed in joint family property. It was further submitted that no evidence was adduced on the side of the plaintiffs to prove that Rajagopalan purchased the property by using the joint family nucleus or income from the joint family business. There was also no evidence to show that a joint family business existed or that its income was utilized for the purchase of the property. Furthermore, no material was placed to prove that the property was jointly enjoyed by all the members as common property. Therefore, the learned trial Judge rightly appreciated the facts and circumstances of the case and correctly held that the property was the self-acquired property of Rajagopalan. There were no grounds to interfere with such a finding. It was also contended that all the title documents relating to the property stood in the name of Rajagopalan, and several records were produced to establish that the purchase of the property was solely through his name. The counsel further argued that the act of Rajagopalan offering the property as security for obtaining employment for Raghunathan was an act of



generosity, which cannot be construed as an indication that the property belonged to the joint family. Such generous mind cannot be misused by the plaintiffs to claim a share in the property under the guise of partition. Hence, the learned counsel sought dismissal of the appeal suit.

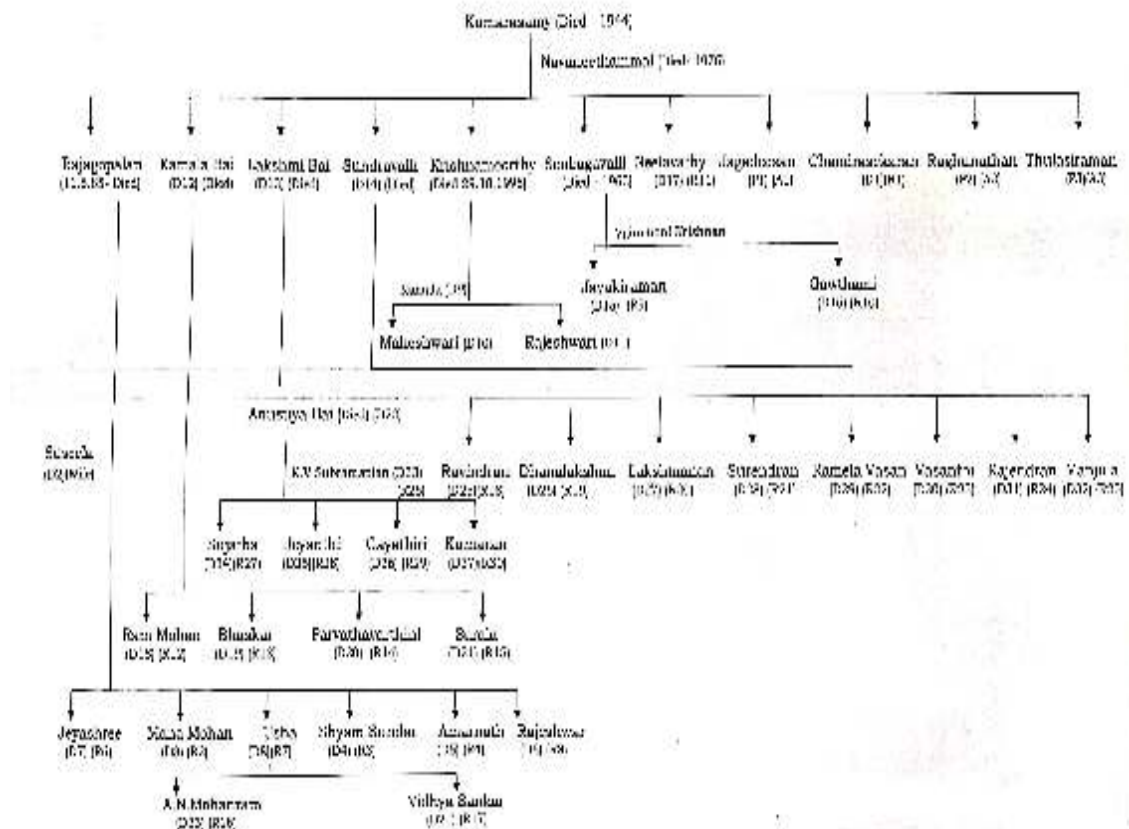
5.This Court has carefully considered the rival submissions made by the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials available on record, and examined the precedents relied upon by both parties.

6.Points for determination:

Whether the Court below is correct in holding that Item No. 3 of the suit scheduled property, stood in the name of the deceased Rajagopal was his self acquired property and never was treated as joint hindu family property, as pleaded by the contesting defendant No. 7 and his legal heirs is correct ?



7. For better appreciation of the case, it is relevant to consider the genealogy:

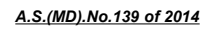




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8. Admittedly, the family business was originally started by Kumaraswamy, the father of the plaintiffs and Rajagopalan. The plaintiffs specifically pleaded that Kumaraswamy had commenced the business, which was subsequently continued by Krishnamoorthy, another brother, who managed both the family business and family affairs. The remaining schedule properties consisted mainly of wet lands, from which the family derived a reasonable agricultural income under the management of Krishnamoorthy.

9. Raghunathan specifically pleaded that item no 3 the property was purchased in 1954 out of the joint family income, and treated as joint family and also Rajagopalan, in the year 1958, left the property and served in various places and enjoyment with joint family member . The same was impliedly proved through registered a mortgage deed jointly executed by Rajagopalan, Krishnamoorthy, and Raghunathan in favour of the Karur Vysya Bank, offering the said property as security to enable Raghunathan to secure employment with clear recital that the property was joint family property. The relevant portion as follows:





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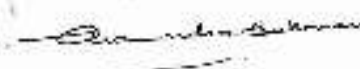
From,
K. Chandrasekaran
Queen Mary Veterans' Hospital,
1566 Queen Mary Road,
Madurai,
TAMIL NADU.

To
The Secretary,
The Tamil Nadu Bank Ltd,
KARUR.

Dear Sir,

My brother Sri K. Rajamohan is employed by you in your Bank and for that Purpose a security of Rs. 5,000/- is to be given over Immovable Property. Your With Dear No:CS4 in Fourth Cross in Thillainagar, Tiruchirappalli is offered by my eldest brother and the two other brothers, Sri S. Rajamohan and Sri K. Krishnasanthi as Security. I have a share in the house and since I am not able to come to Tiruchirappalli for registering the security deed I have no objection to the said house being shown as security and I hereby give consent to the same. This is for the benefit of my brother and I am interested in his Welfare and so I give my full consent for the said property being shown as security for the appointment of the said K. Rajamohan by the Tamil Nadu Bank Ltd.

Yours Truly,

K. 
22.12.14



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From,
K. Jagadeesan
Transport Officer, Geological Survey of India,
3 Gokhale Marg, Lucknow.

To
The Secretary, The Karur Vysya Bank Ltd. Karur.

Dear Sir,

My brother sri K. Raghunathan is employed by you in your Bank and for that purpose a security of Rs. 500/- is to be given over immovable property. House with Door No. 6-54, in Fourth Cross in Thillainagar, Tiruchirapalli is offered by my eldest brother and the other two brothers sri K. Raghunathan and sri K. Krishnaswami as Security. I have a share in that house and since I am not able to come to Tiruchirapalli for registering the security deed I have no objection to the said house being shown as Sec and I hereby give consent to the same. This is for the benefit of my brother and I am interested in his welfare and so I give my full consent for the property being shown as security for the appointment of the said K. Raghunathan by The Karur Vysya Bank Ltd.

Yours Truly,

K. Jagadeesan

(K. JAGADEESAN)

Transport Officer
Geological Survey of India
LUCKNOW.



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From,
K.Thulasiraman
130, Law College Hostel,
Madras-10.

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To
The Secretary,
The Karur Vysya Bank Ltd,
Karur.

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Dear Sir,

My brother Sri K.Raghunathan is employed by you in your Bank and for that purpose a security of Rs.5,000/- is to be given over immovable property. House with door No:6-54 in Fourth Cross in Thillainagar, Tiruchirapalli is offered by my eldest brother and the other two brothers Sri K.Raghunathan and Sri K.Krishnamurthi as Security. I have a share in that house and since I am not able to come to Tiruchirapalli for registering the deed I have no objection to the said house being shown as security and I hereby give consent to the same. This is for the benefit of my brother and I am interested in his welfare and so I give my full consent for the said property being shown as security for the appointment of the said K.Raghunathan by Karur Vysya Bank Ltd.

Yours Truly,

K. Thulasiraman
6.8.2014



10.The deceased, **Rajagopalan**, had made a statement regarding **the character of the property**, specifically stating that the property was **joint family property** and that **each member shall have a share** in it. The said instrument was a **registered document**, and its authenticity was **never disputed by the legal heirs of Rajagopalan**. It is not the case of Rajagopalan's legal heirs that the document was fabricated or forged. On the contrary, subsequent documents also describe the property as belonging to the joint family.

11.The statement made by Rajagopalan is **admissible under Section 32(7) of the Indian Evidence Act**, being a statement relating to the character of the property made by a deceased person in a relevant document. Furthermore, the **legal heirs of Rajagopalan are not entitled to adduce any contra evidence** against the terms of the said registered document, as doing so would be contrary to **Sections 91 and 92 of the Indian Evidence Act**, which prohibit oral evidence contradicting the terms of a written and duly executed document. It is also established that the property was enjoyed in common by all members of the joint family. The plaintiffs produced several documents ie., Exhibits A17, A19, A20,



A21, A22, A25, A28, and A29 which clearly demonstrate that the property was under common enjoyment. The events in question occurred prior to 1985, and the only surviving witnesses with direct knowledge were the elder members of the family, whose testimony, corroborated by documentary evidence, establishes that the property was treated as joint family property.

12. Apart from that, the legal heirs of the Rajagopalan have not allowed to give contra evidence to the terms of the documents, which is against Sections 91 and 92 of the Indian Evidence Act. Apart from that the testimony of the person had personal knowledge which corroborated with contemporaneous 30 years old document could not be placed much least position over the testimony of the person had no personal knowledge and his testimony was contradictory to the terms of the written and registered instruments, which is against Section 91 and 92 of the Evidence Act. Hence, this Court finds that there is merit in the contention of the learned counsel for the appellant/plaintiff that the property was purchased with the joint family fund and the same was blended and treated as joint family property. All the original documents



relating to the purchase and subsequent dealings remained in the custody of Raghunathan, further supporting the plaintiffs' case that the property belonged to the joint family. Therefore, there is no question of treating the said property as the separate property of Rajagopalan, and this aspect was not properly considered by the learned trial Judge. Therefore, this Court finds **merit in the contention of the learned counsel for the appellant** that the property was **purchased from joint family funds** and was **treated and proved to be joint family property**.

13.The learned Judge, in one part of the judgment, stated that the mere admission of the existence of a joint family business would not automatically establish that the property was purchased out of the income from such business. On the other hand, the learned trial Judge granted a decree based on certain admissions of witnesses. Thus, the learned Judge adopted inconsistent standards in applying the principle under **Order XII, Rule 3 of the Code of Civil Procedure**. Once there is a clear admission on record, the same must be accepted in its entirety; it is not open to the court to rely on part of an admission and disregard another part of it.Hence, the appreciation of facts by the trial court was not in



consonance with the available evidence.

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14. In the present case, this Court finds that the joint family had a sufficient nucleus, which has been clearly established through both oral and documentary evidence. Then the case of plaintiffs disputed property purchased with the said business income should have been accepted by the learned trial judge without contra evidence on side of legal heirs of Rajagopalan to prove his income and purchase with his salary. Several exhibits produced in this case prove that the suit property was treated as joint family property in all respects and that the purchase was made from the income of the joint family nucleus. There is absolutely no evidence on record to show that Rajagopalan used his own separate income for the purchase. The evidence on record shows that the consideration for the purchase emanated from the joint family business income, as deposed by the plaintiffs' witnesses. No evidence was adduced on the side of Rajagopalan to prove that he had sufficient personal income to purchase the property independently. As he was serving in the Railway Department with a modest salary, the purchase consideration for the property in 1954 was disproportionate to his known income. Moreover,



Rajagopalan, being the eldest member of the family, was also acting as the *Karta* of the joint family. It is a well-settled principle of Hindu law that when there is a sufficient joint family nucleus, a property purchased in the name of the *Karta* is presumed to be joint family property, and the burden lies upon the *Karta* to rebut this presumption by producing satisfactory evidence.

14.1. In the case of *Appallaswami v. Suryanarayanamurti* reported in **1947 SCC OnLine PC 42**, Sir John Beaumont observed as follows:

“.... 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.

14.2. The said principle is reiterated by the Hon'ble Supreme Court in the case of *Mudi Gowda Gowdappa Sankh v. Ram Chandra Ravagowda Sankh*, reported in **(1969) 1 SCC 386** has held as follows:



6. But if the possession of a nucleus of the joint family property is either admitted or proved, any acquisition made by a member of the joint family is presumed to be joint family property. This is however subject to the limitation that the joint family property must be such as with its aid the property in question could have been acquired. It is only after the possession of an adequate nucleus is shown, that the onus shifts on to the person who claims the property as self-acquisition to affirmatively make out that the property was acquired without any aid from the family estate.

14.3.In the case of **Surendra Kumar v. Phoolchand**, reported in **(1996) 2 SCC 491 at page 495** has held as follows:

6..... there is no material to establish that consideration money for the property was paid by the appellant from out of his separate funds. It is no doubt true that there is no presumption that a family because it is joint possessed joint property and therefore the person alleging the property to be joint has to establish that the family was possessed of some property with the income of which the property could have been acquired. But such a presumption is a presumption of fact which can be rebutted. But where it is established or admitted that the family which possessed joint property which from its nature and relative value may have formed sufficient nucleus from which the property in question may have been acquired, the presumption arises that it was the



joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family.

14.4. In the case of **Ramaiah vs. Petchi Ammal** reported in **1977 1**

TNLJ 7 Hon'ble Division Bench of this Court has held as follows:

‘... If the properties are acquired by a manager of a Hindu joint family, and if those properties stand in his name and in the course of his management as manager of the joint family, then the burden shifts on him to establish that such proper acquisitions are made in the properties. In a case where properties acquired are questioned, it is not for the challenging co-parcener to establish by any independent evidence that the acquisitions made by him and in his name are the result of an independent activity of his, totally unconnected with the joint family nucleus or its income. These are well-established propositions already expressed by us; but it is for the manager to show by independent evidence that the acquisitions made by him and in his name are the result of an independent activity of his, totally unconnected with the joint family nucleus or its income. These are well-established propositions.’

14.5. The same principle has been reiterated in the subsequent Hon'ble Division Bench in the case of **Thillainayaki Ammal vs.**



Sandanathammal reported in **2002 3 MLJ 683** and in the case of **K.Ramalingam vs. K.Raghuraman and others** reported in **2013 (1) MWN (Civil) 705**. Therefore, the pleadings and evidence adduced by the plaintiffs, showing that the property was purchased from joint family funds and treated as joint Hindu family property, appear to be both probable and acceptable.

15.Rajagopalan passed away in 1985, and until the filing of the suit, the property continued to be enjoyed as joint family property AND HENCE theory of blending can also easily be presumed from long course events during life period of rajagopalan. This legal position has been well settled by the Hon'ble Supreme Court in the case of **Binod Bihari Lal v. Rameshwar Prasad Sinha**, reported in (1978) 1 SCC 632 : 1978 SCC OnLine SC 34 at page 633 has held as follows:

3. It appears from the judgments of the courts below that by and large both the properties and specially the house, leaving aside the land upon which it stood, were acquired by Sheosaran Lal who had a large amount of practice as a lawyer at Arrah and Patna. But the appellants were defeated on the ground that the properties had been blended together with the joint family properties and hence quite long before



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the institution of the partition suits they had become joint family properties by blending. Mr Prasad submitted that in absence of a specific pleading to that effect in the plaint, the two items of properties could not be held to be joint on the theory of blending. We do not accept this argument as sound in this case. Having appreciated the entire facts and circumstances of the case we think that the pleading that the properties were the joint family properties was sufficient to enable the Court to look into the evidence of blending which was merely a historical aspect of the question as to how the properties had become joint family properties. The High Court has rightly held that the house at Sadisopore had become a joint family property because of blending in support of which there was ample evidence. We need not repeat what has been stated in the judgment of the High Court in this regard.

Therefore, this Court holds that the suit property in question is joint family property.

16.It is true that the revenue records and other documents produced by the legal heirs of Rajagopalan stand in his name, and after his demise, in the name of his wife, one Mrs.Jeyasree. Of course, after Rajagopalan's death, his legal heirs changed the revenue records into



their names and paid taxes accordingly. The said unilateral act is not sufficient to hold that property is self acquired property of Rajagopalan and the same is fortified by the Hon'ble Supreme Court decision in the case of ***Bhagwant P. Sulakhe v. Digambar Gopal Sulakhe***, reported in **(1986) 1 SCC 366** has held as follows:

14. 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.

16.1.In the case of ***Vinod Kumar Dhall v. Dharampal Dhall***, reported in **(2018) 16 SCC 645 : (2019) 1 SCC (Civ)**, the Hon'ble Supreme Court in similar facts has held that mere presence of allotment in the name of manager of hindu family and reciepts are also in the name of manager is not conclusive to treat self acquired property and relavant paras as follows:

18. Apart from that, when we come to the source of money for the purpose of purchase of plot, admittedly, the plaintiff was a student and he was admitted in the year



1961 at IIT, Kharagpur. At the time when the land was allotted in the name of Kumari Sneh Lata, he was still a student and he had no source of income at the relevant time in 1963 or in January 1966, when the allotment was changed in his name owing to the marriage of Kumari Sneh Lata. Thus, obviously, it was Kashmiri Lal who had spent the money in getting the land allotted and also had raised the construction in the year 1965-1966. Though the plaintiff has stated that the construction was made sometime in the year 1966, his version cannot be said to be reliable. The plaintiff was silent in the plaint when the construction was raised. The defendant has come up with a specific case that the construction was raised in the year 1965-1966 and that is reliable. Apart from that even if construction was made in 1966 the plaintiff had admitted that he obtained employment only in April 1966 and when the house was constructed in 1966, the plaintiff was not having enough earning so as to invest in the house or to purchase the plot in 1963. He was not even in a position to say his salary was Rs 400 or not. It was obviously owing to the marriage of Kumari Sneh Lata that the plot was transferred in the name of Dharampal, who happens to be the elder son of Kashmiri Lal. Thus, apparently no money was paid by Dharampal for allotment of the land to the DDA and obviously, it was paid in 1963 by Kashmiri Lal. The money was also spent in construction by the father Kashmiri Lal. Occupation and



enjoyment of the house were with the entire family right from the beginning and till today the family is residing in the house. Apart from that, the plaintiff has admitted that when he came to Delhi on posting at All India Institute of Medical Sciences, he started living in the rented accommodation, as there was a paucity of accommodation for his stay in the house in question. Thus, all the facts and circumstances indicate that it was a family property and not the exclusive property of the plaintiff Dharampal. Thus, the courts below have acted not only perversely but in a most arbitrary and illegal manner, while accepting the ipse dixit of the plaintiff and in decreeing the suit. Such finding of facts which are impermissible and perverse cannot be said to be binding. The legal inferences from admitted facts have not been correctly drawn.

19. Merely the fact that house tax receipt, electricity and water bills and other documents are in the name of Dharampal would carry the case no further, as it was the father who got the name changed of Kumari Sneha Lata in question in the name of Dharampal. The receipts were only to be issued in the name of the recorded owner, but Dharampal never resided in the house as he was in service out of Delhi, obviously, the amount was paid by family, not by Late Dharampal. Thus, we find that no benefit could have been derived from the aforesaid documents.



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16.2. Therefore this subsequent act cannot confer any independent ownership or alter the legal character of the property that was originally acquired out of joint family income and this circumstance by itself is not sufficient to hold that the purchase was made out of the independent income of Rajagopalan merely because the title stood in Rajagopalan's name. The sale consideration in 1958 was considerable, and there is no evidence to show that Rajagopalan had sufficient personal income or salary to meet such expenditure and all the documents relating to the purchase and payment were in the custody of Raghunathan. Just because the original documents were in the custody of Rajagopalan, it can not be presumed that the said property was independent property of Rajagopalan.

17. There is abundant evidence in the form of a registered instrument supported by oral testimony from witnesses of the relevant period. Hence, this Court holds that the plaintiff is entitled to succeed in the appeal, and accordingly, a decree is granted in respect of the third item of the suit schedule property as well. In conclusion, the appeal is



partially allowed, and the plaintiffs are entitled to their respective shares in the third item of the suit schedule property as claimed in the plaint.

18. In view of the above circumstances, this Court is inclined to set aside the judgment and decree of the learned trial Judge in respect of **Item No. 3 of the suit schedule property**, as the same is liable to be partitioned as prayed for by the plaintiffs.

19. Accordingly, this Appeal Suit is partly allowed in the following terms:

19.1. The portion of the judgment dismissing the suit with respect to Item No. 3 is set aside.

19.2. The plaintiffs are hereby declared entitled to **1/6th share each** in **Item No. 3 of the suit schedule property**.

There shall be **no order as to costs**. Consequently, connected miscellaneous petition is closed.

18.11.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No

sbm



A.S.(MD).No.139 of 2014

To

1. The II Additional District Court,
Tiruchirappalli.

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