BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

A.S.(MD)Nos.142 to 144 of 2016 &
C.M.P.(MD) No.13591 of 2024

A.S.(MD)No.142 of 2016

K.Vairavan @ Jayabal ... Appellant/1st Defendant

versus

1. K.Vasudevan ... 1st respondent/Plaintiff
2. Rama.Sakadevan
3. Pairavasudaram ... Respondents 2 and 3 / Defendants 2 and 3

PRAYER: Appeal Suit filed under Order 41 Rule 1 and 2 r/w under Section 96 of C.P.C. to set aside the decree and common Judgment dated 29.01.2016 in O.S.No. 48 of 2015 on the file of the District Court, Sivagangai.

For Appellant : Mr.G.S.Asokadithyan for Mr.C.Susikumar
For Respondents : No appearance

A.S.(MD)No.143 of 2016

K.Vairavan @ Jayabal ... Appellant/1st Defendant

versus

1. Dr.Shymasundari
2. Dr.C.Sugumar
3. Dr.J.Giritharmuthu ... Respondents 1 to 3 / Plaintiffs 1 to 3
4. Rama.Sakadevan
5. Pairavasudaram ... Respondents 4 and 5/ Defendants 2 and 3

PRAYER: Appeal Suit filed under Order 41 Rule 1 and 2 r/w under Section 96 of C.P.C. to set aside the decree and common Judgment dated 29.01.2016 in O.S.No. 49 of 2015 on the file of the District Court, Sivagangai.

For Appellant : Mr.G.S.Asokadithyan for Mr.C.Susikumar

For Respondents : No appearance

A.S.(MD)No.144 of 2016

K.Vairavan @ Jayabalan ... Appellant/Plaintiff

versus

1. K.Vasudevan
2. Nagasundaram @ Chinnthamani

Dhansekari (died)

3. R.Jeyalakshmi
4. Yogam
P.Chinthamani (died)
5. Veeramani
6. M.R.Elangovan
Anbu (died)
7. C.Subbulakshmi
8. C.Jegatheesan
9. C.Sugumaran
C.Parvathi Malligapai (died)
10. A.Mageshwari
11. A.Bharath ... Respondents/ Defendants

PRAYER: Appeal Suit filed under Order 41 Rule 1 and 2 r/w under Section 96 of C.P.C. to set aside the decree and common Judgment dated 29.01.2016 in O.S.No. 54 of 2004 on the file of the District Court, Sivagangai.

For Appellant	: Mr.G.S.Asokadithyan for Mr.C.Susikumar
For R1	: Mr.G.Prabhu Rajadurai
For RR2 to 6, 10 and 11	: Mr.B.Thangamani
For R7 to R9	: No appearance

COMMON JUDGMENT

(Judgment of the Court was delivered by P.VELMURUGAN, J.)

The plaintiff in O.S.No.54 of 2004 is the appellant in all the appeal suits. He has filed these appeals challenging the common judgment dated 29.01.2016, rendered in O.S.Nos.48 of 2015, 49 of 2015, and 54 of 2004 by the District Court, Sivagangai.

2. The appellant filed a suit for partition in O.S.No.54 of 2004 before the District Court, Sivagangai. The first defendant in O.S.No.54 of 2004 had originally instituted a suit in O.S.No.223 of 2010 before the District Munsif Court, Thiruppathur, seeking a permanent injunction against the plaintiff in O.S.No.54 of 2004 and two others. This suit was subsequently transferred to the District Court, Sivagangai, to be tried along with O.S.No.54 of 2004 and was renumbered as O.S.No.48 of 2015. Similarly, the 12th defendant in O.S.No.54 of 2004 and two others filed a suit in O.S.No.224 of 2010 before the District Munsif Court, Thiruppathur, which was also transferred to the District Court, Sivagangai, and renumbered as O.S.No.49 of 2015. Thereafter, all the suits were tried

together. Upon completion of the trial, the learned District Judge, Sivagangai by a common judgment dated 29.01.2016, dismissed the suit in O.S.No.54 of 2004 and allowed the suits in O.S.Nos.48 and 49 of 2015. Challenging the said judgment, the plaintiff in O.S.No.54 of 2004 has filed these appeal suits.

3. Since all the appeal suits arise from the common judgment, they are clubbed together and disposed of by way of a common judgment. For the sake of convenience, the parties will be referred to as they are designated in O.S.No.54 of 2004.

4. The brief facts of the case of the plaintiff in O.S.No.54 of 2004 are as follows:-

4.1. The plaintiff in O.S.No.54 of 2004 and the first defendant are the sons of the late Sangilimuthu @ Kannusamy Pillai, while defendants 2 to 5 are their daughters. The said Kannusamy Pillai, for himself and his minor sons, divided the ancestral properties with his brothers under a registered partition deed dated 24.12.1965, and received the 'B' schedule property as his share. The said Kannusamy Pillai lived in Vietnam, where he conducted business and earned money. Later, he migrated to Singapore and worked for the Harbour Board. The plaintiff also lived with his father in Singapore and was employed there. During this time, his father sent money to the first defendant and his wife, Meenakshi Ammal. The first defendant used the funds sent by both his father and the plaintiff to acquire the suit properties on behalf of the joint family. Although the properties were purchased in the names of various family members, the suit properties belong to the joint family. Most of the properties were bought in the name of the first defendant since he was in India; however, he had no separate funds or income of his own. Further, the plaintiff and his father invested money in a money-lending business managed by the first defendant, with account books available in his possession. This money-lending business was a joint family venture.

4.2. In 1980, Kannusamy Pillai returned to India due to his old age and lived with the first defendant, who managed all family affairs. Kannusamy Pillai passed away on 20.06.1996. At the time of his death, the total amount available in the joint family business was estimated to be about Rs.5 lakhs. Since the plaintiff was in Singapore, the first defendant managed the business. Some properties were acquired in the name of the first defendant, as well as in the names of their father, Kannusamy Pillai, their mother, Meenakshi Ammal, and one Packiyam Ammal, the second wife of their father. During their father's lifetime, the defendants 2 to 5, who are the plaintiff's sisters, were married in the year 1989, incurring considerable expenses from the joint family fund for customary gifts.

4.3. After their father's death, the plaintiff returned to India. The first defendant and the plaintiff orally partitioned the suit properties, and a list of partition was prepared, in which, both the plaintiff and the first defendant have signed in the presence of mediators on 17.02.1998. Subsequently, Meenakshi Ammal, their mother, died on 22.06.2001. The first defendant continued to operate the money-lending business that was running by their father. Hence, the plaintiff is entitled to his share of this business. The plaintiff and the first defendant are in joint possession of all the suit properties. When the plaintiff returned to India in May 2002 and requested accounts of the business, the first defendant provided evasive responses. The plaintiff later discovered that the first defendant had fabricated some documents in his favour. Therefore, he published a notice through an advocate in a daily newspaper on 09.12.2002. Since the first defendant refused to grant him his share, the plaintiff was constrained to file the suit. According to the plaintiff, all sales made by the first defendant will not bind him. Therefore, he claims 7/18 share and also seeks separate possession.

5. The brief facts of the case of the first defendant in O.S.No.54 of 2004 are as follows:-

5.1. The first defendant's father, Sangilimuthu @ Kannusamy Pillai, and his brothers divided their ancestral properties through a partition deed dated 24.12.1965. His father subsequently went to Vietnam for business and later migrated to Singapore, where the plaintiff also accompanied him and was employed. The plaintiff acquired Singapore citizenship and purchased properties in Singapore with his earnings, as well as with funds contributed by his father. Eventually, the plaintiff settled in Singapore. After some time, the father returned to India, and he did not possess any ancestral property. The first defendant engaged in real estate and finance businesses and used the income from these ventures to purchase the suit properties in the names of his father, his mother Meenakshi Ammal, and Packiyam Ammal, his father's second wife. The first defendant asserts that all the suit properties are his self-acquired properties. He claims that the plaintiff, now residing in Singapore, never sent any money to him or his mother. Even upon his father's death, the plaintiff did not come to India. Therefore, he is not entitled to any share in the suit properties. The first defendant denied that all of the suit properties are ancestral properties. Regarding the fifth item of the suit property, the first defendant states that there is no evidence indicating that a joint family money lending business existed with an investment of Rs.5 lakhs at the time of his father's death. The first defendant started the money lending business with his own funds, which he closed in 2003.

5.2. The first defendant denied the plaintiff's claim of oral partition, and further stated that the list of partition claimed by the plaintiff is not registered and therefore not valid under the law. He further asserts that his father executed a Will on 16.02.1996, bequeathing his ancestral and other properties to the first defendant. Additionally, both Meenakshi Ammal and Packiyam Ammal executed Wills on 31.12.1995, bequeathing their properties to the first defendant as well. Therefore, the plaintiff is not entitled to any share in the suit properties. The first defendant emphasizes that the suit properties were not purchased with funds sent by the plaintiff. The further case of the first defendant is that although the plaintiff acquired properties in Singapore, he did not send any money to India. After his father's death, the plaintiff returned to India and created disputes regarding the properties, alleging that they were ancestral properties purchased with joint family funds. Therefore, the first defendant filed a suit in O.S.No.223 of 2010 for permanent injunction against the plaintiff and two others, which was later transferred to the District Court, Sivagangai, and renumbered as O.S.No.48 of 2015, and tried along with O.S.Nos.54 of 2004 and 49 of 2015.

5.3. The first defendant has been in exclusive possession of the properties for more than the statutory period. Therefore, the plaintiff has lost his right to the suit properties by 'adverse possession' as well as 'ouster.' His father, Kannusamy Pillai, in a sound and disposing state of mind, executed a Will dated 16.12.1996, bequeathing his properties in favor of the first defendant. Furthermore, his mother, Meenakshi Ammal, and Packiyam Ammal, who was the second wife of his father, also executed Wills dated 31.12.1995, bequeathing their properties to him. Therefore, after the demise of the testators in the aforementioned Wills, the first defendant is entitled to all the properties as the beneficiary. Except for the first defendant, no other person has any rights to the properties covered by these

Wills. Therefore, the plaintiff is not entitled to any share in the suit properties. The plaintiff himself stated that there was an oral partition and that a list of partition was prepared. Even assuming that there was an oral partition and the properties were already divided, the plaintiff should have filed a suit for declaration rather than for partition. Thus, the suit filed by the plaintiff is not maintainable and the same is liable to be dismissed.

6. The case of the defendants 2 to 5 in O.S.No.54 of 2004 are as follows:-

6.1. The case of defendants 2 to 5 in O.S.No.54 of 2004 is that their father, Sangilimuthu @ Kannusamy Pillai, and his brothers divided the ancestral properties through a registered partition deed dated 24.12.1965, and that the 'B' schedule property was allotted to their father, Kannusamy Pillai. The plaintiff and their father earned money in Singapore and purchased properties in India through the first defendant, who was in India. Although the properties were purchased in the individual names of family members, all the suit properties belonged to the joint family of the plaintiff and defendants. Most of the properties were acquired with the income earned by their father, Kannusamy Pillai, and the plaintiff, in the name of the first defendant since he was in India. The first defendant has no separate income of his own, and the suit properties are not separate and self-acquired properties of the first defendant. Therefore, defendants 2 to 5 are entitled to their respective shares in the properties as per the Hindu Law of Succession. After their father's death, the plaintiff and the defendants attempted to partition the suit properties; however, defendants 2 to 5 never agreed to this arrangement. The plaintiff and the first defendant executed a partition list in the presence of mediators on 17.02.1998. However, defendants 2 to 5 are not parties to this document, and it does not bind their rights to their shares in the suit properties.

6.2. According to defendants 2 to 5, their father, Kannusamy Pillai, never executed the Will as alleged by the first defendant. Furthermore, their mother, Meenakshi Ammal, and Packiyam Ammal also never executed any Will, testament, or instrument in favor of the first defendant. If such a Will exists, it may have been created by the first defendant by forging signatures. Since the suit properties are ancestral, defendants 2 to 5 are also entitled to a 1/6 share each in the suit properties. Therefore, they prayed to pass a decree in favor of defendants 2 to 5, by allotting them 1/6 share each.

7. The brief facts of the case of the defendants 10 to 12 in O.S.No.54 of 2004 are as follows:-

These defendants are the legal heirs of the 6th defendant. They admitted that a registered partition deed was executed on 24.12.1965. However, they deny that a list of partition was prepared on 17.02.1985, and even if such a list exists, they contend that it is not valid under Section 17 of the Registration Act. Since it is not a registered document, it is not admissible under Section 49 of the Registration Act. Their further case is that the sixth defendant purchased some of the properties shown in the 4th schedule of the suit property from the 1st defendant on 09.10.2003 for a sum of Rs.4 lakhs. The sixth defendant also purchased the property in Survey No.208-1A2 for a sum of Rs.3,50,000/-. Similarly, Giridhar Muthu purchased a property measuring 52 cents from the 1st defendant on 27.09.2010 for a sum of Rs.1,56,000/-. According to these defendants, they are necessary parties to the suit; however, they were not impleaded as parties. Therefore, they prayed that the suit is liable to be dismissed for non-joinder of necessary parties.

8. On the basis of pleadings of the parties, the trial Court framed the

following issues in the respective suits:-

O.S.No.54 of 2004

(i) Whether the suit is bad for partial partition?

(ii) Whether the defendant has prescriptive title by adverse possession or ouster?

(iii) Whether the Will executed by the defendant's father dated 16.02.1996 is true and valid?

(iv) Whether the Will dated 31.12.1995 executed by Meenakshi Ammal is true and valid?

(v) Whether the suit is bad for non-joinder of necessary parties?

(vi) Whether the suit is bad for misjoinder of unnecessary party?

(vii) Whether the plaintiff is entitled to 7/18 share in the suit properties?

(viii) Whether the sale deed dated 09.10.2003 is valid?

(ix) Whether the defendant is liable to account?

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

O.S.No.48 of 2015

(i) Whether the plaintiff is entitled to get the relief of permanent injunction as prayed for?

(ii) To what other relief to be granted in favour of the plaintiff?

O.S.No.49 of 2015

(i) Whether the plaintiff is entitled to get the relief of permanent injunction as prayed for?

(ii) To what other relief to be granted in favour of the plaintiff?

9. During the trial, on the side of the plaintiff, three witnesses were examined as P.W.1 to P.W.3, and 10 documents were marked as Exs.A1 to A10. On the side of the defendants, six witnesses were examined as D.W.1 to D.W.6, and 37 documents were marked as Exs.B1 to B37.

10. The trial court, after considering the pleadings, oral and documentary evidence, dismissed the suit filed for partition in O.S.No.54 of 2004 and decreed the suits in O.S.Nos.48 and 49 of 2015. Challenging the same, the plaintiff in O.S.No.54 of 2004 has filed these appeal suits.

11. It is the specific case of the plaintiff in O.S.No.54 of 2004 that his father, Kannusamy Pillai, and his brothers divided the ancestral properties through a registered partition deed dated 24.12.1965, with the 'B' schedule property allotted to his father's share. Initially, Kannusamy Pillai went to Vietnam, where he conducted business and earned a considerable income. While in Vietnam, he entrusted the property to the first defendant. Later, Kannusamy Pillai migrated to Singapore, and the plaintiff accompanied him there. Both worked in Singapore and sent their earnings to the first defendant, who remained in India, and to their mother, Meenakshi Ammal. Using these funds, items 2 to 4 were purchased from the joint family nucleus. Therefore, all properties, namely items 1 to 4, were treated as joint family properties. Item 5 represents the joint family business, which was developed from the income generated by that business. Hence, the plaintiff is entitled to a share in the suit properties. Additionally, defendants 2 to 5, who are the plaintiff's sisters and the first defendant's siblings, got married with expenses covered by Kannusamy Pillai using joint family funds and amounts provided by the plaintiff, which included jewels and customary gifts. Therefore, defendants 2 to 5 are not entitled to any share in the suit properties.

12. It is the further case of the plaintiff that his father, Kannusamy Pillai, returned to India in 1980 and, due to his old age, lived with the first defendant. At that time, the first defendant was running the joint family business, which had grown with the income sent by the plaintiff while he worked in Singapore. The business was profitable, and when Kannusamy Pillai passed away, the value of the joint family business was estimated to be around Rs.5 lakhs. After his father's death, the plaintiff returned to India, but when he requested his share, the first defendant refused to provide it. Subsequently, a partition list was prepared in the presence of mediators, and both the plaintiff and the first defendant signed it. Therefore, the plaintiff is entitled to a share in the suit properties. He claims that the Wills alleged to have been executed by his father, Kannusamy Pillai, his mother, Meenakshi Ammal, and his father's second wife, Packiyam Ammal, in favour of the first defendant are not genuine and were forged by the first defendant to claim rights over the entire property. Thus, these wills shall not bind the plaintiff's share.

13. The first defendant denied the facts as alleged by the plaintiff. According to the first defendant, his father, Kannusamy Pillai, did not have any ancestral property, and there was no joint family property. Kannusamy Pillai went to Vietnam long ago and later migrated to Singapore. The plaintiff lived with his father in Singapore, but he claims that the plaintiff never sent any money to him or to their mother, Meenakshi Ammal. The plaintiff settled in Singapore and acquired Singapore citizenship, and as such, he has no right to purchase property in India. Furthermore, no property was purchased with the plaintiff's money. His father returned to India in 1980 and lived with the first defendant due to old age. The first defendant asserts that he purchased the suit properties in his name and that of his elder family members using his own income from the real estate and finance businesses. Therefore, the suit properties are his self-acquired assets. The first defendant claims that he was taking care of his father, his mother, Meenakshi Ammal, and Packiyam Ammal until their deaths, and out of love and affection, they executed wills bequeathing their properties to him. Thus, he contends that only he has rights over the suit properties. Additionally, since his father funded the marriages of defendants 2 to 5 with substantial amounts and valuable gifts,

they are not entitled to a share in the suit properties.

14. According to the defendants 2 to 5, the suit properties are ancestral and, therefore, as per the Amendment Act 39 of 2005, they are entitled to a 1/6th share each in the suit properties. According to defendants 10 to 12, their father, the 6th defendant, purchased certain properties in 2003 and 2010. Additionally, one Giridhar Muthu also purchased property from the 1st defendant but was not impleaded as a party. As necessary parties were not impleaded, they prayed for dismissal of the suit for non-joinder of necessary parties.

15. From the above said pleadings, the following points arise for determination:

(i) Whether the appellant/plaintiff is entitled to the relief sought in the application in C.M.P.(MD)No.13591 of 2024 in A.S.(MD)No.144 of 2016, seeking permission to produce additional evidence?

(ii) Whether the plaintiff has proved that there is an ancestral property?

(iii) Whether the plaintiff has proved that all the properties were purchased out of the ancestral nucleus and 5th item is the jointly family income ?

(iv) Whether the Will dated 16.02.1996 executed by his father Kuppanasmy Pillai and the Wills dated 31.12.1995 executed by his mother Meenakshi Ammal and one Packiyam Ammal, who was the second wife of his father, in favour of the first defendant, are genuine, true and valid?

(v) Whether the plaintiff is entitled to any share in the suit properties?

(vi) Whether the plaintiff is entitled to get a preliminary decree as sought for?

Point No.(i):

16. Pending the appeal suits, the appellant/plaintiff in O.S.No.54 of 2004 has filed an application under Order 41 Rule 27 C.P.C. in C.M.P.(MD) No.13591 of 2024 in A.S.(MD) No.144 of 2016, seeking permission to produce additional evidence, viz., House Tax Receipts pertaining to the period from 2016-2017 to

2023-2024, and to mark these as additional documents in the appeal. In the affidavit filed in support of this petition, the appellant has stated that he often visited India to maintain the second item of the suit schedule property, which is currently under his peaceful possession and enjoyment. His elder sister, Nagasundaram, resides in that property. According to him, he has been regularly paying the house tax for the second item of the property, for which the House Tax Receipts for the years 2016-2017 to 2023-2024 have been submitted as additional documents. According to him, house tax is still being paid in the name of Vairava Pillai, who is the grandfather of the appellant and his predecessor in title, and whose name was mentioned in the partition deed dated 24.12.1965, marked as Ex.A3. The defendants 1 to 5 have admitted the validity of the partition deed without any objection. During the trial, it was proved that this ancestral property is identified as the second item of the suit property. Therefore, the present application has been filed to mark these documents as additional evidence.

17. A perusal of the additional documents, specifically the house tax receipts, reveals that the tax is being paid in the name of Vairava Pillai. However, it is pertinent to note that the father's name is not mentioned on these receipts.

Further, father Kannusamy Pillai acquired the property only through Will. Based on the Will, Ex.A3 partition deed was effected and his father Kannusamy got the right through testamentary succession and not by intestate succession. Moreover, even if these documents were to be accepted as evidence, they do not provide sufficient grounds to alter the outcome of the suit. The primary issue at hand revolves around the established ownership and entitlement to the property. The appellant has not demonstrated how the additional documents would substantively affect the claims made or the findings of the trial court. The mere fact that house tax has been paid in the name of Vairava Pillai does not automatically confer ownership rights or entitlement to the plaintiff, especially when the relationship and chain of title have not been conclusively established through valid legal documents. Since the additional documents are insufficient to grant relief in favour of the plaintiff, C.M.P.(MD) No.13591 of 2024 is dismissed.

Point No.(ii):

18. The specific case of the plaintiff is that the suit properties are ancestral properties. Item No.2 of the suit properties was inherited from the ancestors. Item Nos.1, 3, and 4 were purchased from the ancestral and joint family nucleus. Item

No.5 is the joint family business profit. Defendants 2 to 5 are the sisters of the plaintiff and the first defendant, and they are not claiming any share in the properties. Therefore, the plaintiff and the first defendant are entitled to share in the suit properties. Hence, the plaintiff has filed the suit for partition, claiming a 7/18th share in the suit properties and for a declaration that the sale deed dated 09.01.2003, executed by the first defendant in favour of one Chinthamani (6th defendant, now deceased), is sham, nominal, and null and void ab initio, and not binding on him, and for consequential relief of direction to the first defendant to render a true and correct account of the joint family money-lending business, along with a permanent injunction restraining the first defendant from alienating the properties.

19. The main contention of the learned counsel for the appellant/plaintiff in O.S.No.54 of 2004 is that the first defendant, who claims ouster and prescriptive title by adverse possession, must prove the same. However, the trial court, without considering this, shifted the burden of proof on the plaintiff. Further, the trial court failed to consider Ex.A2 (partition list dated 17.02.1998) in a proper perspective and erroneously concluded that Ex.A2 is a compulsorily registered

document, disbelieving it on the ground that the partition list need not be registered. Additionally, there were suspicious circumstances relating to the Wills, and the first defendant has not proved these Wills in accordance with Section 68 of the Indian Evidence Act and Section 63 of the Indian Succession Act. It is for the propounder of the Wills to prove them with satisfactory evidence and to dispel the suspicious circumstances relating to the Wills. Therefore, the first defendant, who claims rights over the properties through the Wills, must prove them in the manner known to law. Unless the first defendant, as the propounder, proves the Wills in the manner known to the law, he is not entitled to any right or interest in the properties through those Wills.

20. The further contention of the learned counsel for the appellant is that the family members had no separate income, and therefore, the presumption must be in favour of the plaintiff that the properties were purchased in the names of the female members for the benefit of all the family members. However, the trial court erroneously concluded that the properties standing in the names of the female members are their separate properties. The trial court failed to consider that, in a suit for partition, all the defendants are also considered to be plaintiffs,

and the plea taken by the other defendants regarding the partition list must be construed in a right perspective. It is a well-settled legal principle that no injunction can be granted against a co-owner or coparcener, and when the plaintiff has proved his case, the trial court failed to appreciate the pleadings and evidence, dismissed the plaintiff's suit, and erroneously allowed the defendants' suit. The learned counsel further argued that even the additional documents produced by the plaintiff clearly show that the second item of the property, which stands in the name of the plaintiff's grandfather, is still in the plaintiff's possession. Under these circumstances, all the appeals should be allowed. In support of his contention, he has also relied on the judgment of the Hon'ble Supreme Court in the case of ***Md. Mohammad Ali (dead) by Lrs. vs. Jagadish Kalita*** and others reported in ***CDJ 2003 SC 847***.

21. On the other hand, the learned counsel for the first defendant submitted that, first and foremost, item No.2 of the suit property is not ancestral property. The plaintiff's and first defendant's father, Kannusamy Pillai, acquired the property only through a Will. The partition deed dated 24.12.1965, effected between Kannusamy Pillai and his brothers (marked as Ex.A3), shows that

Kannusamy Pillai received the property through testamentary succession and not by inheritance. The learned counsel further submits that item Nos.1, 3, and 4 were purchased by the first defendant using his own income, and all the properties standing in the name of his father, Kannusamy Pillai, his mother, Meenakshi Ammal, and Packiyam Ammal (the second wife of his father) are self-acquired properties. Subsequently, they executed Wills bequeathing their properties to the first defendant, which were marked as Exs. B8 to B10. Therefore, the first defendant acquired the properties through the Wills.

22. The learned counsel for the first defendant further submitted that the plaintiff claims that one item of the suit properties is ancestral, and the other items were purchased in the name of his father, Kannusamy Pillai, his mother, Meenakshi Ammal, and Packiyam Ammal, using the surplus income from the ancestral property and joint family business. However, the plaintiff has failed to prove that there was a surplus income from the ancestral property or the joint family business. Therefore, the trial court rightly dismissed the plaintiff's suit for partition.

23. Before the trial court, the plaintiff examined himself as P.W.1. During his cross-examination, he stated that his father, Kannusamy Pillai, had two wives, Meenakshi Ammal and Packiyam Ammal, both of whom were sisters. However, the plaintiff did not implead the children born to his father through his second wife, Packiyam Ammal. The plaintiff further stated that in June 1957, when he was about 12 or 13 years old, his father took him to Singapore, and while living with his father there, he gave all his income to his father. However, the plaintiff admitted that he had not directly sent any money to the first defendant or his mother, Meenakshi Ammal. He also admitted that he was not personally aware of how much money his father had sent to the first defendant or his mother, Meenakshi Ammal, or Packiyam Ammal, and he did not know on what dates the money was sent. Furthermore, the plaintiff did not have any records to show how much money his father had sent to the first defendant or to his mother. He also did not specifically state in his plaint which properties were purchased from the ancestral nucleus. The plaintiff admitted that he attended the first defendant's marriage in 1974, and that the first defendant's wife was working as a teacher. However, the plaintiff stated that he did not know whether the first defendant's wife had retired as Headmistress, nor was he aware of the income derived from

the finance business run by the first defendant. The plaintiff also admitted that the first defendant never gave him any money or income from the finance business.

24. From the above, it is evident that the plaintiff has not clearly stated which properties are ancestral or joint family properties. The plaintiff has specifically admitted that he does not know as to how much money his father sent to the first defendant or his mother, Meenakshi Ammal. He also denied the signature of his father found in the Will dated 31.12.1995 (Ex.B10), which was said to have been executed by his mother, Meenakshi Ammal, in favor of the first defendant.

25. The first defendant, in order to prove his case, has produced the following documents before the trial Court:

(i) the sale deed dated 07.02.1976 executed by one Rajendran and Vaduganathan in favour of Kannusamy Pillai was marked as Ex.B3;

(ii) the sale deed dated 30.03.1977 executed by one Alagupillai in favour of Meenakshi Ammal was marked as Ex.B4

(iii) the sale deed dated 18.10.1975 executed by one Karuppaiah and Vairavasundaram in favour of the first defendant was marked as Ex.B5.

(iv) the power of attorney dated 15.07.2003 executed by Nagasundaram @ Chinthamani, Dhanasekari and Jeyalakshmi in favour of the first defendant was marked as Ex.B6.

(v) the Will dated 31.12.1995 executed by Backiyathammal in favour of the first defendant was marked as Exs.B7 and B8.

(vi) the Will dated 16.02.1996 executed by Kannusamy Pillai, the father of the plaintiff, in favour of the first defendant was marked as Ex.B9.

(vii) the mother of the first defendant Meenakshiammal executed a registered Will dated 31.12.1995, which was marked as Ex.B10.

(viii) the sale deed dated 26.04.1976 said to have been executed by Vairathal and Rajendran in favour of the first defendant was marked as Ex.B11

(ix) the sale deed dated 25.09.1976 executed by Sethu and Vairasundaram in favour of the first defendant was marked as Ex.B12

(x) the sale deed dated 11.03.1977 by Sethu and Vairasundaram in favour of Backiyammal was marked as Ex.B13

(xi) the sale deed dated 15.11.1978 executed by Gandhimathi in favour of

Gandhiammal was marked as Ex.B14

(xii) the sale deed dated 22.03.1976 executed by Alagappa Pillai in favour of Gandhiammal was marked as Ex.B15

(xiii) the details of the welfare fund received by the first defendant while he was working as a supervisor in Singapore Shipyard Ltd. was marked as Ex.B17

(xiv) the sale deed dated 15.02.2011 executed by the first defendant Vasudevan and Nirmal Karthick in favour of one Nazar was marked as Ex.B18

(xv) the patta pass book, which stands in the name of the first defendant was marked as Ex.B19 and tax receipts paid in the name of the first defendant was marked as Ex.B20 and computerised patta transferred in favour of the first defendant was marked as Ex.B21.

26. A perusal of the above mentioned documents show that none of the documents indicate that the suit properties were purchased from the nucleus of the ancestral property, nor they show that all the properties were purchased in the names of joint family members for the benefit of the joint family. However, the plaintiff has filed the suit for partition, claiming that the second item of the suit properties is ancestral property, while the other items were purchased from the

ancestral nucleus, and the fifth item was earned from the joint family business. When the first defendant denied these claims, it is the duty of the plaintiff to prove them. Therefore, the initial burden of proof is lying upon the plaintiff. Hence, we must determine whether the plaintiff has discharged this initial burden.

27. It is a settled proposition of law that there is no presumption joint family of property property merely by the existence of a joint Hindu family. The person asserting the property to be joint family property must prove that the property is a joint family property. If, however, the person asserting proves that there was a nucleus from which joint family property could have been acquired, there would be a presumption that the property is joint family property and the onus would then shift to the person claiming the property to be self-acquired to prove that the property was purchased with his own funds and not from the joint family nucleus.

28.Before analyzing the evidence on record, we must point out the law relating to joint family properties and the presumption. The Hon'ble Supreme Court and this Court have repeatedly pointed out that unless it is proved that the family had sufficient properties, normally referred to as the nucleus, and that this nucleus was capable of generating large income, leaving a surplus in the hands of the family to enable it to acquire other properties, the properties that stand in the name of individual members cannot be treated as joint family properties. It is well settled that unless there is a pleading of the existence of a sufficient nucleus and sufficient income therefrom, and proof of such nucleus and its income, there cannot be a presumption that the property standing in the name of an individual member is joint family property. Further, it is a settled proposition of law that the initial burden is one the person who asserts that the property belongs to an undivided Hindu Joint family. Only when the initial burden is discharged by the person claiming such a property, the opposing party can be called upon to prove the contrary.

29.In this case, admittedly, the plaintiff has filed the suit for partition, stating that the suit properties are ancestral and joint family properties, with some properties purchased only from the ancestral nucleus. The plaintiff further claimed that there was a joint family business, which was profitable, and at the time of his father's death, the amount available in the joint family business was estimated at Rs.5 lakhs. However, during cross-examination, the plaintiff admitted that he has no personal knowledge about the amount sent by his father to the first defendant or to his mother, Meenakshi Ammal. The plaintiff also admitted that he has not sent any money directly to the first defendant or his morther. Furthermore, the plaintiff has not shown any proof that the first defendant was engaged in the joint family finance business. Moreover, the plaintiff has not proved that the property derived under Ex.A3 had any surplus income, and that out of that income, the first defendant purchased other items of the suit properties in the names of his father, mother Meenakshi Ammal, and his father's second wife, Packiyam Ammal.

30. The first defendant stated that his wife had been working as a headmistress five years prior to her retirement. The plaintiff, during his cross-examination, did not deny the first defendant's wife's occupation, although he was unable to state her income From this, it is clear that the first defendant has independent income. Furthermore, Ex.A3, a partition deed dated 24.12.1965. shows that the plaintiff's father, Kannusamy Pillai, obtained the property only through a will. Therefore, the property in question was derived from testamentary

succession and not from intestate succession.

31. Additionally, the plaintiff claimed that there was a partition list in which certain properties were allotted to him, but the first defendant did not allow him to enjoy his properties or give him his divided share. If this is the case of the plaintiff, he should not have filed the suit for partition, as though the properties were ancestral or joint family property, and there was a nucleus from the joint family property. Therefore, the plaintiff, who filed the suit for partition, has to prove his case and cannot take advantage of any loopholes left by the defendants. In a partition suit, the defendant also shall be treated as the plaintiff. However, in this case, the first defendant has not accepted the plaintiff's claim that the property is ancestral or joint family property, or the result of an oral partition. Therefore, it is for the plaintiff to prove that there was ancestral property, and that out of the surplus income from the said property, other items of the suit properties were purchased.

32. As already stated, the property derived by the plaintiff's father from the partition deed Ex. A3 is not ancestral property, and he acquired the property

solely through testamentary succession. Ex A3 itself shows that the properties derived from the Will, and subsequently, they were partitioned. Even assuming that the second item of property is covered under Ex. A3, there is no evidence to show that there was surplus income from the second item, and that the first defendant purchased the other items of the suit properties from that surplus income. Further, the plaintiff has not proved that the father of the plaintiff purchased the property from the surplus income of the second item of property covered under Ex A3 Therefore, based on the evidence produced by P.W.1 and D.W.1, this Court finds that the plaintiff has failed to prove, with consistent, cogent, sufficient and reliable evidence, that the suit properties are either joint family properties or were purchased from the surplus income derived from the ancestral or joint family properties. Furthermore, the plaintiff has not shown that the first respondent, who was engaged in the financial business as part of the joint family business, had developed that business by utilizing income derived from ancestral property Under these circumstances, this Court finds that the plaintiff has miserably failed to prove that there is ancestral property, and that other items of the suit properties were purchased from the surplus income of the ancestral property.

33. In the case of Shyam Narayan Prasad vs. Krishna Prasad and others [2018 5 SCR 36], the Hon'ble Supreme Court has held as follows:

"19, Section 49 of the Registration Act, 1908 provides for the effect of non-registration of the document which is as under:

"49. Effect of non-registration of documents required to be registered No document required by Section 17 for by any provision of the Transfer of Property Act, 1882 (4 of 1882)}, to be registered shall -

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) Be received as evidence of any transaction affecting such property or conferring such power,

Unless it has been registered."

20. Section 17(i)(b) of the Registration Act mandates that any document which has the effect of creating and taking away the rights in respect of an immovable property must be registered and Section 49 of the Registration Act imposes bar on the admissibility of an unregistered document and deals with the documents that are required to be registered under Section 17 of the Registration Act. Since the deed of exchange has the effect

of creating and taking away the rights in respect of an immovable property, namely, RCC building, it requires registration under Section 17. Since the deed of exchange has not been registered, it cannot be taken into account to the extent of the transfer of an immovable property.

21. In Roshan Singh & Ors. v. Zile Singh & Ors. 1988 (2) SCR 1106, this Court was considering the admissibility of an unregistered partition deed. It was held thus:

“........Section 17(i)(b) lays down that a document for which registration is compulsory should, by its own force, operate or purport to operate to create or declare some right in immovable property........... Two propositions must therefore flow:

(1) A partition may be affected orally; but it if it subsequently reduced into a form of a document and they document purports by itself to effect a division and embodies all the terms of bargain, it will be necessary to register it. If it be not registered, S.49 of the Act will prevent its being admitted in evidence. Secondary evidence of the factum of partition will not be admissible by reason of S.91 of the Evidence Act, 1872."

(emphasis supplied)

22. It is clear from the above judgment that the best evidence of

the contents of the document is the document itself and as required under Section 91 of the Evidence Act the document itself has to be produced to prove its contents. But having regard to Section 49 of the Registration Act, any document, which is not registered as required under law, would be inadmissible in evidence and cannot, therefore, be produced and proved under Section 91 of the Evidence. Since Exhibit P2 is an unregistered document, it is inadmissible in evidence and as such it can neither be proved under Section 91 of the Evidence Act nor any oral evidence can be given to prove its contents. Therefore, the High Court has rightly discorded the exchange deed at Exhibit P2.

34. In this case, with regard to Ex.A2 (the partition list dated 17.02.1998), a reading of the language employed in Ex.A2 shows that it is not merely a list of partitions. Further, the right has been created through this document and not because the right had already been created and the list of partition was made only to confirm the oral partition which was already effected. The plaintiff has put it forward only for the purpose of evidence, as a list of partitions. Therefore. Ex.A2 is not a valid document and is not admissible in evidence. Even assuming that Ex. A2 is a valid document, the plaintiff is entitled to file a suit for declaration and recovery of possession, and not for partition. Under these circumstances, this Court finds that the plaintiff has failed to prove that there is ancestral property, and that out of the surplus income from the ancestral property and the earnings sent by him, other items of the suit properties were purchased. Accordingly, Point No (1) is answered against the plaintiff

Point No.(iii):

35. As discussed above, although the plaintiff claims that there was an ancestral property and that other items of property were purchased using the hard-earned money sent by him and his father to the first defendant and his

mother, Meenakshi Ammal, the plaintiff himself admitted during cross-examination that he has not paid any money directly to the first defendant or to his mother. This admission is crucial because it contradicts his earlier statements and undermines the credibility of his claim. In inheritance and partition cases, the burden of proof rests with the plaintiff to demonstrate, through cogent evidence, the source of the funds used for acquiring the property. A mere assertion without proper documentation or corroborative evidence cannot suffice The plaintiff has not furnished any material evidence, such as bank records, money transfer receipts, or any other documentary proof to show that his father sent money to the first defendant and his mother, nor he has produced any evidence establishing how much money his father allegedly sent, or on what dates. This failure to produce tangible proof makes his claim speculative and unsubstantiated. In cases involving property disputes, especially those claiming ancestral property or joint family property, it is essential for the plaintiff to prove that the property was indeed acquired with ancestral funds. This is a factual issue that requires specific evidence of the income, the source of the funds, and the method of acquisition of the property in question. The absence of any material documents leaves the plaintiff's claim unsupported and weakens his case significantly. The plaintiff also contended that the second item of property is covered under Ex. A3, the partition deed between his father, Kannusamy Pillai, and his brothers. However, the contents of Ex. A3 show that the property was acquired by the father, Kannusamy Pillai, through testamentary succession. The plaintiff's attempt to classify the second item of property as ancestral, based on Ex.A3, is legally flawed. The property was clearly inherited by the father under a testamentary will, which is a form of individual ownership distinct from ancestral property passed down through the family line. As such, it cannot be treated as part of the joint family property, and any claim to it as ancestral property is untenable. Accordingly, Point No.(iii) is answered against the plaintiff

Point No.(iv):

36. The first defendant has pleaded that there is no ancestral property. Ex. A3-the Partition Deed, dated 24.12.1965, shows that the father of the plaintiff and the first defendant, Kannusamy Pillai, and his brothers acquired the properties only through testamentary succession, i.e., the Will executed in 1951. Therefore,

the second item of the property derived under Ex.A3 is not ancestral property. Apart from this, the plaintiff has not produced any other documents to prove that there was ancestral property, or that there was surplus income to purchase the other items of the suit property in the name of the joint family members. Although the plaintiff has stated that he gave his earnings to his father and sent money to the first defendant and his mother, Meenakshi Ammal, and that it was out of this money that the first defendant purchased the other properties and ran the joint family business, he has not produced any documentary evidence to prove these claims. Even assuming that the plaintiff gave the money as a loan, it cannot be treated as joint family property purchased from the money given by him.

37. There is no presumption of ancestral property unless there is a specific pleading or admission. The first defendant claims that all the suit properties are covered under the registered Will dated 16.02.1996, executed by his father Kannusamy Pillai in favour of the first defendant, and the registered Wills dated 31.12.1995, executed by Packiyam Ammal and Meenakshi Ammal, both in favour of the first defendant. In order to prove his case, the first defendant examined the attestors to the Wills. Three witnesses attested the Wills, and one of the attestors

to each Will has been examined as a witness.

38. The learned counsel for the plaintiff submitted that the Wills dated 16.02.1996 and 31.12.1995 were not proved. Further, D.W.1, Chinthamani, who is one of the attestors to the Will dated 31.12.1995 executed by Packiyam Ammal, denied her signature on the Will dated 31.12.1995. She also denied the signature of Kannusamy Pillai, the testator of the Will dated 16.02.1996, and denied the signatures of the attesting witnesses, namely Sarala Devi and Masilamani, in the Will dated 16.02.1996. The learned counsel further submitted that one Sumathi signed as the scribe and not as an attestor. It is a well-settled principle of law that a scribe cannot speak about the attestation and cannot be treated as an attestor.

39. As per Section 63 of the Indian Succession Act, at least two witnesses must attest the Will. However, a perusal of Ex.B10 (the Will) shows that there are three attestors, and one Shanthy has signed as one of the attestors.

40. The contention of the learned counsel for the appellant/plaintiff is that in Ex.B8 (the Will dated 31.12.1995), the mother of the plaintiff initially signed

in Tamil, but her signature was subsequently scored out, and a thumb impression was placed in its place. Therefore, the learned counsel questioned the reason for scoring out her signature. The learned counsel for the first defendant, on the other hand, submitted that due to her old age, she was unable to sign in the manner in which she had signed previously, and for abundant caution, they obtained her thumb impression. However, the learned counsel for the plaintiff disputed this, stating that no attempt was made to compare the thumb impression of Meenakshi Ammal. The plaintiff argued that the thumb impression in Ex B8 was not that of Meenakshi Ammal. Once the plaintiff raised suspicions surrounding the Will, it was incumbent on the first defendant to dispel these doubts and remove the suspicions circumstances surrounding the Will.

41. A reading of the pleadings and oral and documentary evidence shows that the testators of the Wills were residing with the first defendant, and he alone took care of his father, mother Meenakshi Ammal, and the second wife of his father, Packiyam Ammal, until their last breath. Even the plaintiff did not come and attended the death ceremonies of his father and only arrived later. Furthermore, the plaintiff was settled in Singapore and had obtained Singapore

citizenship. The first defendant, who was taking care of his father, mother, and second wife, had his own sources of income through a real estate business and a finance business. His wife was also working as a teacher and retired as a headmistress. However, the plaintiff has not proved that he contributed any money towards running the said business. Therefore, the first defendant had financial resources. But there is no proof that there was a joint family business or ancestral nucleus, nor whether it was utilized for the purchase of the suit properties or for running the joint family business. It is a well-settled principle that one who claims the existence of ancestral property must prove the same. The plaintiff, in this case, has not proved that the suit properties were purchased by using the money sent by him and his father or from any ancestral nucleus. Moreover, this Court finds that D.W.1, D.W.2, and D.W.3 have testified about the attestation of the Wills, and the Wills were proved by examining one of the attesting witnesses under Section 68 of the Indian Evidence Act. Although the plaintiff has raised suspicious circumstances surrounding the Wills, these have not been substantiated. It is a well-established principle that a Will must be proved by examining at least one attesting witness. In this case, the first defendant has proved the Wills by examining one of the attesting witnesses.

Under these circumstances, this Court is of the view that the Wills dated 16.02.1996 and 31.12.1995, executed by his father Kannusamy Pillai, his mother Meenakshi Ammal, and the second wife of his father, Packiyam Ammal, are genuine and valid. Accordingly, Point No.(iv) is answered against the plaintiff.

Point No. (v):

42. As already stated, although the plaintiff has claimed that there was ancestral property, when the defendant denied the same, the plaintiff has failed to prove the existence of any ancestral property or that there was surplus income from the ancestral property, out of which all the properties were purchased in the names of the joint family members, and a joint family business was run by the first defendant. In the absence of any proof, it is presumed that if any property stands in the name of an individual, it is the self-acquired property of that individual. Unless the plaintiff proves otherwise, it cannot be stated that there is ancestral property. Under these circumstances, in the absence of proof on the plaintiff's side that there was ancestral property and that there was surplus income from it, or that other items of the suit properties were purchased with the surplus

income from the ancestral property and the money sent by him, the plaintiff is not entitled to any share in the suit properties. Accordingly, Point No.(v) is answered against the plaintiff.

Point No.(vi):

43. Since all the points have been answered against the plaintiff, there is no need to pass a preliminary decree in favour of the plaintiff

44. In the result, the application in C.M.P. (MD)No.13591 of 2024 in A.S. (MD)No.144 of 2016, the Appeal Suits in A.S.(MD)Nos. 142 to 144 of 2016 are dismissed, and the common judgment and decrees dated 29.01.2016 made in O.S.Nos.54 of 2004 and 48 and 49 of 2015 on the file of the District Court, Sivagangai, are hereby confirmed. Considering the facts and circumstances and the relationship of the parties, no order as to costs.

[P.V.,J.]   [K.K.R.K., J.]

14/ 02/2025

NCC : Yes/No
Index : Yes / No

Internet : Yes / No
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To

1. The District Court,
   Sivagangai.

P.VELMURUGAN, J.
and
K.K.RAMAKRISHNAN,J.

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Common Judgment made in
A.S.(MD)Nos.142 to 144 of 2016 &
C.M.P.(MD) No.13591 of 2024

___/02/2025