



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2026

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

S.A.Nos.568 to 571 of 2005

S.A.No.568 of 2005

Balakrishnan

Appellant/1st respondent/Plaintiff

Vs

1.Thippa Reddy
2.Gopinath
3.Mohanram

..Respondents/Appellants/Defendants- 2,3
and 4

4.Rathinammal
5.Subbammal
6.Vanadhakshi

Respondents/Respondents 2, 4 and 5 /

Defendants 5 to 8

S.A.No.569 of 2005

Balakrishnan

...Appellant/Respondent/Defendant.
Vs

1.Gopinath
2.Mohanram
rep. By their Power of Attorney
Thippa Reddy, Bajanai Koil Street,
Sellavur, Periyapudur Post,
Katpadi TK, Vellore District.

...Respondents/Appellants/Plaintiffs.

S.A.No.570 of 2005

Balakrishnan

...Appellant/Appellant/Defendant
vs

Rathinammal

..Respondent/Respondent/Plaintiff.



S.A.No.571 of 2005

Balakrishnan

..Appellant/Appellant/Plaintiff

VS

1.Thippa Reddy

2.Gopinath

3.Mohanram

Rep. By their Power of Attorney

Thippa Reddu, viz., 1st respondent

4.Rathinammal

5.Subbammal

6.Vandhakshi

..Respondents/Respondents/

Defendants 2 to 4 & 5, 7 & 8

PRAYER in SA.568 of 2005:

Second Appeal filed under Section 100 of Code of Civil Procedure, praying to set aside the common judgment and decree dated 20.01.2005 made in A.S.No.33 of 2004 on the file of the Court of the Principal District Judge, Vellore, reversing the common judgment and decree dated 15.12.2003 made in O.s.No.289 of 1993 on the file of the Court of the Principal District Munsif, Vellore.

PRAYER in SA.569 of 2005:

Second Appeal filed under Section 100 of Code of Civil Procedure, praying to set aside the common judgment and decree dated 20.01.2005 made in A.S.No.32 of 2004 on the file of the Court of the Principal District Judge, Vellore, reversing the common judgment and decree dated 15.12.2003 made in O.S.No.288 of 1993 on the file of the Court of the Principal District Munsif, Vellore.



PRAYER in SA.570 of 2005:

Second Appeal filed under Section 100 of Code of Civil Procedure, praying to set aside the common judgment and decree dated 20.01.2005 made in A.S.No.70 of 2004 on the file of the Court of the Principal District Judge, Vellore, reversing the common judgment and decree dated 15.12.2003 made in O.S.No.115 of 1993 on the file of the Court of the Principal District Munsif, Vellore.

PRAYER in SA.571 of 2005:

Second Appeal filed under Section 100 of Code of Civil Procedure, praying to set aside the common judgment and decree dated 20.01.2005 made in A.S.No.72 of 2004 on the file of the Court of the Principal District Judge, Vellore, reversing the common judgment and decree dated 15.12.2003 made in O.S.No.289 of 1993 on the file of the Court of the Principal District Munsif, Vellore.

For Appellant(s): Mr.V.Ramamurthy
for Mrs.P.Kamatchi

For Respondent(s): Mr.Sricharan Rangarajan, Senior
Counsel for
Mr.A.K.Athiban Vijay
for R1 to R4.
R5 and R6- No appearance.



COMMON JUDGMENT

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The appellant/Balakrishnan herein filed Suit in O.S.No.289 of 1993 for partition and separate possession as against his father/1st defendant and his brother/2nd defendant and other defendants viz., sons and wife of the 2nd defendant, claiming 1/3rd share in respect of entire A, B, C and D suit schedule properties, stating that all the above properties are ancestral joint family properties.

2. The 5th defendant Rathinammal filed suit in O.S.No.115 of 1993 claiming permanent injunction claiming reliefs in respect of D Schedule property stating that it is her absolute property, in which, the said Balakrishnan has no right and title.

3. The 1st defendant/father of the plaintiff claimed that the suit properties are his self-acquired property; 2nd defendant's wife D-5 claimed that 'D' schedule property is her absolute property.

4. On contest, partition was granted in respect of A, B, C schedule properties. However, in respect of the disputed property viz., D schedule property is concerned, the suit was dismissed.



5. Aggrieved by that, Balakrishnan filed A.S.No.72 of 2004 only in respect of D schedule property. The said 1st appeal was also dismissed. Against which, he filed S.A.No.571 of 2005. So also, defendants 1 and 2 preferred appeal in A.S.No.33 of 2004 in respect of A, B, C schedule properties, wherein, the 1st appellate court allowed the said appeal and set aside the findings of the trial court, thereby, the relief of partition not granted. Aggrieved by that, the plaintiff has filed S.A.No.568 of 2005 in respect of A, B, C Schedule properties; S.A.No.571 of 2005 in respect of D schedule properties.

6. Rathinammal, sister-in-law of the plaintiff filed separate suit in O.S.No.115 of 1993 against this appellant Balakrishnan stating that D schedule properties. [D Schedule property also in O.S.No.289 of 1993] is a separate property and D5 claims that it is her self acquired property. On contest, the suit was decreed in favour of Rathinammal, against which, the appellant Balakrishnan filed appeal in A.S.No.70 of 2004 and the same was dismissed. Aggrieved by that, he preferred appeal in S.A.No.570 of 2005.

7. The plaintiff's brother's sons i.e, D-2's sons viz., Gopinath and Mohanram filed another suit in O.S.No.288 of 1993 stating that as per the Settlement Deed executed by their grandfather, they are the absolute owners of



A, B, C and D schedule properties covered in O.S.No.289 of 1993. The above said suits O.S.288/1993 and 289/1993 were dismissed by the trial court, against which, the said Gopinath and another preferred appeal in A.S.No.32 and 33 of 2004 and the same were allowed by the 1st Appellate Judge. Aggrieved by that, the appellant/Balakrishnan filed S.A.No.568 and 569 of 2005.

8. As the parties and the suit properties are one and the same, all the above appeals are taken up together and heard jointly for pronouncing the common judgment.

9. The contention of the appellant/Balakrishnan in the legal notice issued to the defendants is that A, B, C, D suit properties as described in O.S.No.289 of 1993 is a joint family property belongs to his father and managed by his father/1st defendant-1st respondent herein. However, the respondents in their reply notice, denied the averments and stated that the averment that they are in common enjoyment is incorrect. Therefore, the appellant/plaintiff Balakrishnan filed suit in O.S.No.289 of 1993 claiming 1/3rd share in the suit properties.

10. The father of the plaintiff contested the case stating that there is no ancestral nucleus for the family and the properties A, B, C properties are his self-acquired property. Ever since he purchased the same, he is in enjoyment as



absolute owner and he executed the settlement deed to his grandsons viz., D-3 and D-4 [Defendant Nos.3 and 4] through settlement deed thereby denied the plaintiff's 1/3rd share in those properties.

11. In respect of D schedule property, wife of D-2 viz., Rathinammal contended that she purchased the property by her separate income. Ever since her purchase, she was in enjoyment of the property as absolute owner and it is not a joint family property at any point of time, thereby, she claimed absolute right over C, D schedule property.

12. After considering the evidence, the findings of the trial court in respect of comprehensive suit in O.S.No.289 of 1993, wherein, the appellant/plaintiff claimed the relief of partition, is that there was ancestral nucleus and with the help of the same, the other suit properties viz., B and C properties were purchased by the 1st defendant and the said properties was put in common hotspot and enjoyment and the same was proved by the plaintiff. The trial court further held that but the separate source of income pleaded by the 2nd defendant has not been proved. The learned Trial Judge held that A, B, C schedule properties are joint family properties in nature and therefore, in respect of joint family properties, 1/4th share to the plaintiff is to be allotted and the suit was partly decreed.



13. In respect of D schedule property, learned Trial Judge held that it is absolute property of D5-Rathinammal and there is no material evidence to prove that the said D schedule property was purchased with the help of joint family funds and the name of D-5 as a Benami Holder as such has not been proved clearly, therefore, the claim of D-5 in the written statement that it is the absolute property of the said Rathinammal was held to be correct. Holding so, the suit in respect of D schedule property was dismissed, consequently, the suit filed in O.S.No.115/1993 was decreed.

14. The 3rd and 4th defendants viz., sons of the 2nd defendant filed suit in O.S.No.288 of 1993 claiming absolute rights based upon Settlement Deed executed by grandfather/D-1. Since the trial Judge held that A, B, C properties are joint family properties, father/1st defendant is not entitled to execute the settlement deed. Therefore, the settlement deed executed by the 1st defendant/father of the plaintiff is concerned, 1st defendant has no right to convey the property in favour of his grandsons, thereby held that settlement deed will not bind the plaintiff. Consequently, the suit filed by them was dismissed.

15. In respect of dismissal of the suit as regards D schedule property, the plaintiff/Balakrishnan filed appeal in A.S.70/2004, wherein, the First Appellate



Judge also confirmed the findings of the trial Judge and held that D schedule property is the absolute property of Rathinammal, thereby the appeal in A.S.No.70 of 2004 was dismissed. So also in respect of A, B, C schedule of properties, the defendants 1 to 4 preferred appeal in A.S.32 of 2004, wherein, the 1st appellate Judge has held that the properties are self-acquired properties and accordingly appeal in A.S.No.32 of 2004 was allowed. So also, the claim made by Gopinath and his brother claiming right over the A,B,C schedule properties are concerned, the 1st appellate Judge held that the same is valid. Accordingly, their appeal in A.S.No.32 of 2004 was allowed.

16. As per the findings of the 1st appellate court, in respect of A, B. C, D schedule properties, the appellant's share was denied. Therefore, the plaintiff/Balakrishnan preferred S.A.Nos.568 to 571 of 2005 challenging the findings of the first appellate court.

17. The following substantial questions of law are framed for considering Second Appeal Nos.568, 569, 571 of 2005:-

“ A. Whether incorrect shifting the burden of proof of all the issues by the Court below on the Appellant, including on the basic and vital issue of the Kartha of the Joint Family claiming the properties purchased in his name are his self-acquired properties, had



not vitiated its findings and judgment and made them perverse?

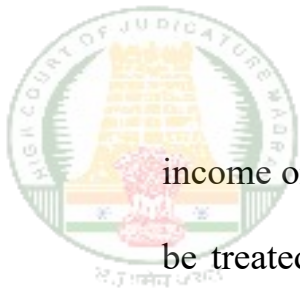
B. Whether the Suit-A to D Schedule properties purchased by Chinnamuni Reddy viz., the father of the Appellant out of the income derived from the properties owned by his ancestor and by selling the same and also thrown, blended as the joint family properties as evidenced by Ex.A.8, would not be available for partition between the members of the Joint family, including the appellant?

C. Whether Ex.B.1 & 69 executed by Chinnamuni Reddy transferring the entire Suit-A to C schedule properties in favour of the respondents-2 and 3, instead of his 1/3rd share, that too, after issuance of Ex.A.11, legal Notice by the Appellant seeking for partition of the same, are legal, valid and convey title and possession to them?

S.A.No. 570 of 2005:-

(A) Whether the suit property purchased out of the funds of the Joint Family, consisting of Chinnamuni Reddy, the appellant and husband of the respondent in the name of this appellant for its benefit, can be treated as her own property?

(B) Whether in view of the failure of the appellant to produce any materials and also examine herself as a witness to prove that she had source of



income on the date of purchase of the Suit-D schedule property, the same cannot be treated as the joint family property and available for partition between the members of the Joint family?”

18. Brief facts of the case:-

(a) The appellant/Balakrishnan for the sake of convenience, is denoted as plaintiff and the respondents are denoted as defendants and their rank is denoted as per their litigative status in O.S.No.289 of 1993.

(b) In O.S.No.289 of 1993, the plaintiff and the defendants are the appellant and respondents in all the above appeals.

(c) The plaintiff/Balakrishnan and the 2nd defendant Thipaa Reddy are the sons of the 1st defendant-Chinna Muni Reddi (died). 5th defendant is the wife of the 2nd defendant and their children are 3rd and 4th defendants. The plaintiff and the defendants 1 to 4 are constituting the members of Hindu Joint Family.

(d) The 1st defendant is the Manager and kartha of the Joint Family and he managed the entire family affairs as well as the suit properties. The father of the 1st defendant viz., Thippa Reddy (Senior) owned ancestral properties around 8 acres landed property and house property at Gudiyatham Taluk, North Arcot



District and agriculture is the only avocation to the family and thus the said landed properties yielded lot of income to the joint family and with the help of said income derived from the ancestral properties, A and B Schedule properties were purchased by the 1st defendant and his brother Periya Muni Reddy through a registered Sale Deed dated 09.10.1930 and they also purchased some landed property under a registered sale deed dated 02.09.1947 pertaining to A schedule property; that the 1st defendant and his brother Periya Muni Reddy had undertaken to discharge the debts of their vendor Muniammal; that the 1st defendant and Periya Muni Reddy had discharged the said debts from the income of their ancestral properties and by selling some portions of their ancestral properties and from the income of the properties covered under the sale deed dated 09.10.1930; that the 1st defendant and his brother Periya Muni Reddy purchased the 'B' Schedule mentioned properties and some other portions from one Gangammal and her sons under a registered sale deed dated 02.05.1947; that the 1st defendant and his brother Peria Muni Reddy from the income derived from their ancestral properties and their joint family properties covered under the sale deed dated 09.10.1930, B schedule mentioned properties were purchased; that the A and B schedule mentioned properties became the joint family properties of the 1st defendant and his brother Periya Muni Reddy and the avocation of the 1st defendant and his brother Periya Muni Reddy is only agriculture and there is no other source of income to the 1st defendant and Periya



Muni reddy; that A and B schedule mentioned properties and other half share covered under the sale deed dated 09-10-1930, 02.05.1947 were created as the joint family properties and enjoyed by the 1st defendant and Periya Muni Reddy as their joint family properties and the properties covered under the sale deed dated 09.10.1930, 1947 and 02.09.1947 were thrown into the common hotchpot and blended with other joint family properties and acquired the character of joint family properties; that the 1st defendant and his brother Periya Muni Reddy partitioned the joint family properties covered under the sale deeds dated 09.10.1930, 02.05.1947 and 02.09.1947 in about 30 years back and the said A and B schedule mentioned properties were fallen to the share of the 1st defendant, since then the 1st defendant and his sons viz., the plaintiff and the 2nd defendant have been in joint possession and enjoyment of the A and B schedule mentioned properties and the 1st defendant never in exclusive possession and enjoyment of A and B schedule mentioned properties.

(e) Further out of ancestral property, they purchased properties jointly in respect of A and B schedule property through sale deeds 09.10.1930, 02.05.1947 and 02.09.1947 and thrown into common hotchpot and blended with joint family properties, thereby acquired the character of jointly family properties about 30 years back; all the family properties partitioned between the 1st defendant and his brother Periya Muni Reddy in which A and B Schedule



property fallen into share of the 1st defendant; since then 1st defendant and his sons viz., the plaintiff and the 2nd defendant have been in joint possession and enjoyment of A and B Schedule properties and all properties were fertile lands; out of income yielded from that properties and with the help of the money contributed by the plaintiff who joined in the Military Service in the year 1960, 1st defendant became kartha and manager of the joint family properties and he purchased C schedule property in the year 1964 in his name for the benefit of joint family and all the properties were enjoyed jointly. While so, to avoid the land proceedings under the Land Ceiling Act, D schedule property was purchased by the 1st defendant through income derived from A, B, C schedule properties purchased in the name of 5th defendant, daughter in law of the 1st defendant. Thereafter, all the A, B, C schedule properties were enjoyed in common. Since the plaintiff had refused to marry granddaughter of her paternal uncle Periya Muni Reddy, misunderstanding arose between the plaintiff and the 1st defendant; in order to defeat the rights of the plaintiff, 1st defendant executed settlement deed in favour of D3 and D4 grandsons/sons of the 2nd defendant on 21.02.1985. Thereafter, there was inconvenience in enjoyment of the property. Therefore, the plaintiff issued notice calling for division of properties on 15.04.1984 to divide the schedule properties. Thereafter, 1st defendant executed settlement deed dated 21.02.1985 in respect of B and C schedule property in favour of defendants 3 and 4, but the said settlement deed was not binding for



the reasons that all the properties are joint family properties, in which, the plaintiff's father has no exclusive right to convey the entire property in favour of his grandsons.

(f) Further the plaintiff would state that D schedule property is also Joint Family property and the 5th defendant has no exclusive right over the contesting 1st defendant/father of the plaintiff.

19. (a) The 1st defendant/father of the plaintiff has stated that he admitted the relationship, but denied the other allegations made by the plaintiff. He contended that there is no ancestral nucleus. While purchased the properties in the suit mentioned, he and his elder brother viz., Periya Muni Reddi joined and purchased the same on 09.10.1930; they were not having any money at that time, so they have not paid any consideration to the owner Polammal and they agreed to discharge the mortgage debt of her vendor out of sale consideration of Rs.4000/-. On or after the date of the purchase, they were not in possession and in enjoyment of any of the property either ancestral or otherwise. Thereafter on 10.07.1935, he along with other brothers sold some of the properties purchased by them to one Kondareddy to discharge mortgage debt in regard to their vendor



Polammal and the possession was also not taken immediately. As per their purchase, after some dispute with their vendor and the same got settled on 10.07.1935, they took possession of the property and they were not able to discharge the loan of their vendor and so they have leased out their property for a period of 5 years in the year 1935, thereby, claimed that till 1940 they were not in possession of the property and it did not yield any income. They actively participated in mango business and other business. In the mean while, his elder brother got employment as Village Munsif and the 1st defendant was doing business, out of which, they cleared mortgage debt and thereafter, on 02.09.1947, they purchased some of the items forming part of A schedule certain items and they also purchased B schedule house sites as self acquired properties. Thereafter, they jointly along with elder brother purchased B schedule properties and thereafter, they divided equally among themselves all the properties purchased by them. There is no ancestral nucleus property to blend them and these properties cannot acquire the character of joint family properties and there was no ancestral property as alleged by the plaintiff.

(b) After the partition in the year 1964, 1st defendant purchased 'C' schedule property out of his own income and out of the agriculture income. He



was suffering with ulcer for which he was hospitalised and the hospital expenses was taken care of by his son D-2. Therefore, the 1st defendant executed a Will to D3 and D4 on condition that they should clear debts and possession of the said property was also given to him immediately after the said settlement, in the year 1985. Ever since they were in the property B and C schedule property, the plaintiff leading wayward life and no cordial terms with father, brother and other family members. Out of his own earnings, plaintiff purchased lands and some immovable properties he got separated and employed and not maintained the family. The 2nd defendant was married in the year 1972. He was a teacher and out of his own income, he purchased some properties. After his marriage, he purchased property and his wife purchased some properties and it was never treated as joint family property. The said D schedule property was never enjoyed as joint family property and therefore, the 1st defendant prayed for dismissal of the suit.

(c) Further D schedule property was never put to common hotchpot nor treated as joint family property and in fact, suit properties are at no point of time, treated as joint family property. B and C schedule properties are self acquired properties.

(d) 2, 3, 4 defendants also contended that the suit property A, B and C



schedule properties are not joint family properties and all the properties are self acquired properties and D schedule property is a separate property of 5th defendant. Further D3 and D4 are having absolute claim over the C schedule property based on the settlement deed dated 21.02.1985. He further stated that ever since the execution of settlement deed, they are in enjoyment of the properties.

20. The 5th defendant - Rathinammal has stated that at the time of her marriage, her father gave sufficient jewellery and by selling those jewels and borrowing amount from her sisters, she purchased the property. After the marriage, they lived separately from the year 1973 onwards. She purchased D schedule properties in her name. Further she raised loan for installing pumpset and for doing agriculture and she claimed that it is her separate property and it was never come under joint family property. She contended that the plaintiff has no right to claim partition over the same.

21. Further the 5th defendant already filed suit in O.S.No.115 of 1993 claiming for permanent injunction against this plaintiff/Balakrishnan, so also D3 and D4 filed separate suit in O.S.No.288 of 1993 for permanent injunction in respect of A, B, C schedule properties.



22. Before the trial court, O.S.Nos.115, 288 and 289 of 1993 were jointly tried. On the side of the plaintiff, P.W.1 and 2 examined. On the side of defendants, 2nd defendant was examined as D.W.1 and other individual witnesses were examined as D.W.2 to D.W.4 , Ex.A.1 to 12 were marked, Ex.B.1 to B.69 were marked. On considering both oral and documentary evidence on record, the trial Judge has framed separate issues in all the three suits. The foremost issues framed in O.S.No.289 of 1993 is as to whether the plaintiff is entitled for partition as prayed for? The other issues are as under:-

- (1) Whether the plaintiff and the defendants 1 to 4 are constituting members of the joint Hindu family and the 1st defendant is the manager and Kartha of the said joint family?
- (2) Whether the 1st defendant and his brother Muni Reddy have inherited any ancestral property?
- (3) Whether the plaint 'C' schedule mentioned properties are the self acquired properties of the 1st defendant?
- (4) Whether the plaint 'D' Schedule properties are the self acquired properties of the 5th defendant?
- (5) Whether the plaint 'A' and 'B' schedule mentioned properties are the self acquired properties of the 1st defendant and his elder brother ?
- (6) Whether the suit properties viz., 'A', 'B', 'C' and 'D' schedule mentioned properties are the joint family properties of the plaintiff and defendants 1 to 4?



(7) Whether the plaintiff and the defendants 1 to 4 are in joint possession and enjoyment of the 'A', 'B' and 'D' schedule mentioned properties?

(8) Whether the settlement deed dated 21.2.1985 in respect of B and C schedule mentioned properties in favour of defendants 3 and 4 is sham and nominal and not acted upon ?

(9) Whether A and B schedule mentioned properties were fallen to the share of the 1st defendant in an oral partition between the 1st defendant and the elder brother?

(10) Whether the valuation of the suit and the court fee paid is correct?

(12) Whether the plaintiff is entitled for mesne profits?

(13) To what relief the plaintiff is entitled?"

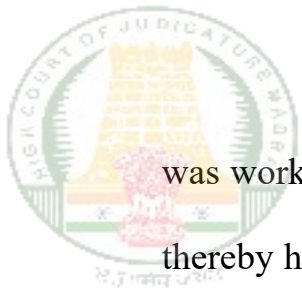
23. The foremost issues framed by the trial Judge was that whether the plaintiff and the defendants 1 to 4 are led by 1st defendant as Joint Family and the 1st defendant was the Manager for it and also other issues pertaining to A, B, C, and D schedule properties. Whether it is self acquired properties of D1, D5 ? The other issues was whether the settlement deed executed by the 1st defendant was acted upon and it binds the plaintiff.

24. On considering the evidence on record, the trial Judge concluded that the plaintiff has proved that there was ancestral property to the family by relying



on Ex.A.1 sale deed but it stands in the name of the plaintiff's grand father Thippa Reddy [Senior] and also held that the 1st defendant and his brother Periya Muni Reddy along with father as joint family enjoyed the properties. Out of income derived from the ancestral property, D1 and his brother jointly purchased A, B, Schedule properties through sale deed Ex.A,2, A.6, A.7. Out of income derived from agricultural properties, B schedule properties was jointly purchased by D1 and his brother and some of the ancestral properties were sold by D1 and his brother jointly. To that effect, recitals found in Ex.A.8 sale deed substantiated that D1 and his brother sold the properties. Thereafter, they discharged some of the family debts. Thereafter, the trial Judge also held that 'C' schedule properties was purchased as kartha of the joint family by 1st defendant.

25. Further trial Judge also held that C schedule property was purchased by the 1st defendant as a guardian for minor plaintiff through the sale deed Ex.A.8 and the recitals prove that it is joint family property, thereby, C Schedule property is a separate property and it is also ancestral property. The Trial Judge also held that as per Ex.A.7 sale deed of the year 1964 through which the 1st defendant and his elder brother jointly sold some of the property to the 3rd parties and the recitals denote that till 1964 they jointly possessed and enjoyed all the properties and also held that there is no evidence to prove that the 1st defendant was doing the business so also his brother Periya Muni Reddy who



was working as a village karnam and earned a separate income. The trial Judge, thereby held that A and B schedule properties are not self acquired properties so also, C schedule property was also a joint family property though it stands in the name of the 1st defendant.

26. The trial Judge also held that at that particular point of time, plaintiff was serving in the Army and contribution to the family was given. To that effect, plaintiff produced sufficient evidence thereby held that A, B, C schedule properties are joint family properties in which the plaintiff is entitled to 1/3rd share in respect of A, B and C Schedule properties.

27. The trial Judge held that D5 Rathinammal purchased the properties in the year 1974 and sale deeds were marked as per sale deed Ex.B.17, Ex.B.19, Ex.B.22, 25. All the documents stand in the name of said Rathinammal- D5. Patta also stands in the name of Ex.B.27 and kist receipts and house tax receipts in Ex.B.29, 30 and 31 also prove the same and that she is in possession of the property and paying house tax and she also obtained permission of well boring. The trial Judge also concluded that her husband was a teacher and at the time of marriage, her father gave seervarisai thereby having sufficient source for purchasing the property.

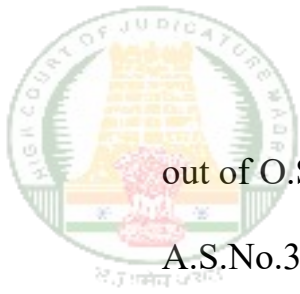


28. The Trial Judge further held that D schedule property stands in the name of Rathinammal and it is her absolute property. Plaintiff has no share in respect of D schedule property. The suit filed by the plaintiff was dismissed; consequently, the suit filed by D-5 in OS.No.115 of 1993 was allowed by granting permanent injunction.

29. The Trial Judge, so also in respect of B and C schedule properties, held that since the properties A, B and C properties are joint family properties, 1st defendant had no right to execute the settlement deed in favour of his grand sons D3 and D4, therefore, the settlement deed executed by 2nd defendant in favour of his grandsons in respect of entire C schedule suit property is set aside. The settlement deed was not binding the plaintiff and it is also not valid under law. In consequence, the suit filed by D3 and D4 as beneficiaries of the settlement deed in O.S.288 of 1993 was dismissed.

30. Aggrieved by the above said findings of the Trial Judge, the plaintiff has filed appeal in respect of D schedule property in A.S.No.70 of 2004 and all the defendants except D-5 filed appeal in respect of entire suit property in A.S.Nos.32 and 33 of 2004.

31. A.S.No.32 of 2004[filed by D2 and D3 against plaintiff] was arising



out of O.S.No.288 of 1993;

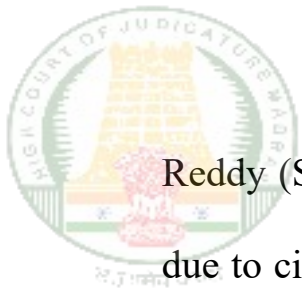
A.S.No.33 of 2004 [filed by D1, D2 and D3 against plaintiff and D5 to D8] was arising out of O.S.No.289 of 1993;

A.S.No.70 of 2004 [filed by plaintiff against D5] was arising out of O.S.No.115 of 1993;

A.S.No.72 of 2004 [filed by plaintiff against defendants] was arising out of O.S.No.289/1993.

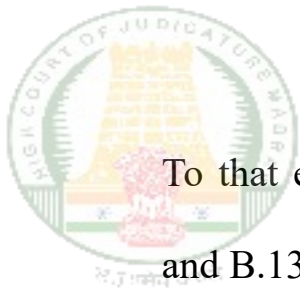
32. All the first appeals were jointly heard by the 1st Appellate Judge. The learned First Appellate Judge framed separate points for consideration and analysed the entire facts on record.

33. On considering the oral and documentary evidence, the 1st appellate Judge held that as per Ex.A.2, though the 1st defendant and his elder brother jointly purchased the property, since there was a dispute in O.S.No.398/31 on the file of District Munsif Court, Ranipet and in O.S.No.399 of 1931 on the file of District Munsif Court, Gudiyattam, the 1st defendant and his elder brother have not taken possession of the property. As per compromise entered into in O.S.No.398 of 1931 and O.S.No.399 of 1931, it has been clearly proved that even though Thippa



Reddy (Senior) purchased the properties under Ex.A.1 on 27.04.1921, but due to civil dispute, it was under lease and after that only the property has been enjoyed by him. So no income was derived from those properties viz., A schedule property. Subsequently, Senior Thippa Reddy discharged the loans in the year 1933 and 1935. Thereafter, D1 and his brother sold the properties covered under Ex.A.1, thereby, there is no ancestral nucleus. After a long time, in the year 1947, D1 and his brother jointly purchased properties and there is no proof for the amount under the sale consideration of the property covered under Ex.A.5 and Ex.A.6 that income derived from A schedule property were utilised.

34. Therefore, the 1st Appellate Judge held that the plaintiff has not proved that out of income derived from A schedule property, other properties were purchased and it is out of Joint Family Nucleus since the property purchased by D1's father was under lease and that there was no other source of income. There is no joint family nucleus nor any surplus income, thereby held that when the property purchased by D1 and his brother are his separate properties so also there was mortgage deeds which were also cleared by D1 and his brother by selling some of the properties.



To that effect, the 1st appellate Judge relied on Ex.B.9, B.10, B.11, B.12 and B.13.

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35. The 1st appellate Judge also observed that the 1st defendant was a Panchayat Member and his elder brother was a village karnam through which they earned separate income. Further, the property purchased by Senior Thippa Reddy was already sold by the family and there is no sufficient ancestral income to purchase B and C schedule property.

36. Further the 1st Appellate Judge, by relying upon the ratio laid down in **2003(1) CTC page 271**, held that the property jointly purchased by the 1st defendant and his brother would have a character of coparcenary property since because it was jointly purchased by the brothers. It is also held that the plaintiff not adduced any evidence to show the existence of joint family nucleus. But 1st defendant proved that the properties A, B and C schedule properties are self acquired properties and not joint family property and it is self acquired property of the 1st defendant. In respect of D schedule property, the 1st Appellate Judge, has held that when sale deed stands in the name of D-5 and that she was gifted with sufficient



seervarisai, even though she is a house wife with the help of gift and jewels, she got sufficient means to purchase the property. By relying on Ex.B.34, the 1st Appellate Judge observed that permission was granted by the District Collector to 5th defendant to put up electric motor pumpset and the tax receipt stands in her name; and other relevant documents from Ex.B.17 to Ex.B.54 proves that 5th defendant Rathinammal was in possession and enjoyment of her property as self acquired property. To that effect, findings given by the Trial Judge was set aside.

37. Further, the 1st Appellate Judge also held that A, B, C schedule properties are separate properties. Ex.B.1 settlement deed is also proved through the admission made by the 1st defendant in the written statement filed by him. Thereby, the 1st Appellate Judge held that settlement deed as such is valid and binding the plaintiff.

38. In respect of the Will relied on by the 1st defendant, the 1st Appellate Judge held that since the 1st defendant executed Ex.B.1 settlement deed in favour of 3rd and 4th defendants, a portion of the property was already given as per the said settlement deed; for the



remaining portion, he executed a Will through Ex.B.69 and the same also been proved by the attesor/D.W.2, thereby, held that Will was proved as genuine. Therefore, the appeal filed by the defendants in A.S.No.32 of 2004 and A.S.33 of 2004 were allowed and the appeal filed by the plaintiff/Balakrishnan in A.S.No.70 of 2004 and A.S.No.72 of 2004 were dismissed. The plaintiff was not given any share in A, B, C, D schedule properties.

39. (i) The learned counsel for the appellant/Plaintiff/Balakrishnan argues that the court below ought to have seen that admittedly Chinnamuni Reddy was the kartha of the joint family consisting of himself and his two sons viz., the appellant and Thippa Reddy and the suit A to C schedule properties purchased in his name. If he claims that the said properties are his self acquired properties, the onus of proof is on his shoulders, without appreciating the said position of law, it was not right in holding that it is the duty of the appellant viz., one of the members of the joint family to prove that those properties are the joint family properties and on that basis, dismissing the suit filed by the appellant for partition. Such a mistake on the basic and vital issue had vitiated its findings and judgment and made



them perverse.

(ii) The learned counsel also contended that the Court below ought to have seen that the inclusion of the appellant also as one of the vendors to Ex.A.8, Sale deed dated 03.07.1961 for selling item 1, 7, 8 and 9 purchased by their ancestor Thippa Reddy under Ex.A.1 would clearly confirm and establish that those properties were treated only as Joint Family properties by all of them, including the Chinnamuni Reddy. Therefore, all the contrary finding given by it are incorrect, untenable and perverse.

(iii) Learned counsel for the appellant further contended that the court below ought to have seen that after the partition, the joint family, consisting of Chinnamuni Reddy and his two sons, the appellant and Thippa Reddy and headed by the father as its Kartha was owning and in possession of the Suit-A & B schedule properties. Out of the income derived from the Suit-A schedule properties and also the amount sent by the appellant from his salary, the suit -C schedule were purchased in the name of the Kartha viz., Chinnamuni Reddy under Ex.A.7. Therefore, all



the properties described in the Suit-A, B and C schedules were purchased out of the ancestral nucleus in the name of the Kartha of Joint family viz., Chinnamuni Reddy.

(iv) The learned counsel for the appellant also contended that the court below ought to have seen that even assuming without admitting that the Suit-A, B and C schedule properties were not purchased from the funds of the ancestral nucleus and only from the funds of Chinna Muni Reddy, he had thrown, blended and treated all those properties as the joint family properties as evidenced by Ex.A.8. Again, from and out of the income of the joint family, the suit – D schedule property was purchased in the name of the 1st daughter-in-law of the family under Ex.A.10. Therefore, all the properties described in the suit A, B, C and D schedules are all the joint family properties and Chinna Muni Reddy, the appellant and Thippa Reddy as members of the same are entitled to equal shares therein.

(v) The learned counsel further argued that the below ought to have seen that the materials on record would prove that out of the income derived from the agricultural lands of the joint family, Chinna Muni Reddy



and Periya Muni Reddy had purchased (I) items 4, 5 and 9 of the Suit-A Schedule under Ex.A.5 and (ii) the suit “B” schedule under Ex.A.6 and treated the same also as joint family properties.

(vi) The learned counsel for the appellant also contended that the court below ought to have seen that the materials on record would prove that out of the income derived from the agricultural lands of the joint family, Chinna Muni Reddy and Periya Muni Reddy had purchased (I) items-4, 5 and 9 of the Suit -A schedule under Ex.A.5 and (ii) the suit “B” schedule under Ex.A.6 and treated the same also as joint family properties.

(vii) The learned counsel submitted that the court below ought to have seen that after the appellant issued Ex.A.11 legal notice calling upon them for partition of the suit properties, Chinna Muni Reddy and Thippa Reddy with malafide intention, have created Ex.B.1, falsely claiming that the suit -B and C schedule properties are self acquired properties of Chinnamuni Reddy and he is settling the same in favour of the sons of Thippa Reddy.



(viii) The learned counsel argued that the court below ought to have seen that Ex.B.1 and 69 were created by Chinna Muni Reddy and Thippa Reddy to defeat the rights of the Appellant for partition and they are sham and nominal documents and not acted upon. Therefore, those documents would not convey any title over any portion of the suit – A & B schedule properties in favour of the sons of Thippa Reddy. Further, the said Settlement Deed is not binding on the appellant and liable to be ignored.

(ix) The learned counsel submitted that the court below ought to have seen that the deceased/1st defendant and his brother had been selling one item and after another of the properties purchased by their father under Ex.A.1 for purchasing the suit-A to C schedule properties and also for discharging the debts of the vendors which were treated as part of the sale consideration. Therefore, without appreciating the same, it was not right in holding that the suit-A schedule properties are purchased under Ex.A.1 and proceeded to dispose of the appeals.

(x) The learned counsel submitted that the court below ought to have seen that all the items of the properties purchased by ancestor Thippa



Reddy under Ex.A.1 was possessed and enjoyed by his joint family, consisting of himself and his two sons till his sons, including the appellant (under Ex.A.8) had sold them. Therefore, the contrary finding given by it in Para 21 of its judgment are incorrect and untenable.

(xi) The learned counsel contended that the court below ought to have seen that the materials on record and also the admissions made by the respondents would prove that the suit-A to C schedule properties are properties of the joint family consisting of Chinnamuni Reddy and his two sons. Therefore, Chinnamuni Reddy had no right to transfer the entirety of the same in favour of the sons of Thippa Reddy by any means. Therefore, even if Ex.B.1 and 69 are true and valid document, the same would not convey any title in their favour over the Suit-A to C schedule properties.

(xii) The learned counsel submitted that the court below ought to have seen that even assuming without admitting that the Suit-A, B and C Schedule properties were not purchased from the funds of the ancestral nucleus and only from the funds of Chinna Muni Reddy, he had thrown, blended and treated all those properties as the joint family properties as



evidenced by Ex.A.8. Again, from and out of the income of the joint family, the suit D schedule property was purchased in the name of the 1st daughter-in-law of the family under Ex.A.10. Therefore, all the properties described in the suit-A, B, C and D schedule are all the joint family properties and Chinna Muni Reddy, the appellant and Thippa Reddy as members of the same are entitled to equal shares therein.

(xiii) The learned counsel also contended that the court below ought to have seen that after the appellant issued Ex.A.11 legal notice, calling upon them for partition the suit properties, Chinna Muni Reddy and Thippa Reddy with malafide intention, have created Ex.B.1, falsely claiming that the Suit-B and C schedule properties are self acquired properties of Chinnamuni Reddy and he is settling the same in favour of the respondents.

(xiv) The learned counsel also submitted that the court below ought to have seen that Ex.B.1 and 69 were created by Chinna Muni Reddy and Thippa Reddy to defeat the rights of the appellant for partition and they are sham and nominal documents and not acted upon. Therefore, those



documents would not convey any title over any portion of the suit A and B schedule properties in favour of the sons of Thippa Reddy, Further, the said Settlement Deed is not binding on the appellant and liable to be ignored.

(xv) The learned counsel for the appellant also argues that through Ex.A.1, the plaintiff was able to establish that grandfather owned nearly 9 acres of agricultural land out of which they had sufficient nucleus to purchase other properties subsequently and also proved that the father-D1 and grand father were doing agricultural activity and earning a considerable income by the properties owned by the family out of joint family nucleus. Subsequently properties were purchased and the same has been established and the 1st defendant who claimed that all the properties are self acquired property and their separate income are not proved; in spite of that, the court below had erroneously held that plaintiff has not proved the joint family nucleus, which is perverse and the burden shifted on him is also an erroneous finding and the same is liable to be set aside. To that effect plaintiff has relied on the following judgments:-

1. 2012 1 CTC 128 [Malla Naicker @ Singari and others Vs.



Jeeva (minor) and others, wherein this court held that Joint Family property-Presumption of joint family property-suit for partition filed by coparcener of joint family property claiming share in joint family property- Kartha of Joint family property pleads that suit properties are separate properties and not joint family properties- Burden of proof – Onus lies on Kartha to prove that properties are his separate properties and purchased out of joint family property-Kartha should also prove that there is no existence of ancestral nucleus in joint family property.

2. **2004 4 CTC 208 [R.Deivanai Ammal (died) and another Vs. G.Meenakshi Ammal and others]** wherein this court held that Onus is not on acquirer to prove that property standing in his name was not purchased from joint family funds unless acquirer is manager of joint family – Female members who acquire property are not enjoined with such burden. Once person pleading that property is ancestral properties establishes that there was nucleus burden shifts to party alleging that property is self acquired property.

3. **(2003) 10 SCC 310 [D.S.Lakshmaiah and another Vs. L.Balasubramanyam and another]** wherein this court held that Hindu Law-Joint Family-Whether joint family property or self-acquired -Property



cannot be presumed to be joint family property merely because of existence of a joint family -Burden to prove the property to be joint lies on the person who asserts so-But if he proves that the family possessed sufficient nucleus with the aid of which joint family property could be acquired, then presumption would be that the property is joint and onus would shift on the person claiming it to be self-acquired-On failure to establish the nucleus, held, burden of proof would remain on the person who asserts the property to be joint.

4. 2004 (2) CTC page 145 [*Chandrasekaran Vs. Palanisamy and thirteen others*] wherein, this court held that Joint Family Property, settlement of -Hindu male allotted property under partition deed-such male had two sons and property continued to joint family property of such male and his two sons as sons had right by birth -Deed of settlement executed by such male in favour of his wife selling whole of property will not bind sons-Such male can settle only his 1/3rd share.

40. By way of reply, learned counsel for the respondents/defendants argues that the 1st defendant and his brother Periya Muni Reddy have jointly purchased the properties under A to C schedule properties. Though



they jointly purchased the property through Ex.A.2, no consideration was paid at that time and the loan borrowed by the vendor was ordered to be discharged and the same also not been paid by them immediately and with regard to the purchase of the properties, there was a separate suit in O.S.No.399 of 1931 and thus suits were ended in compromise in the year 1935, so near about 5 years they have not taken possession. Further, the property merely stands in the name of D1's father Senior Thippa Reddy. Ex.A.1 sale deed dated 27.04.1921 is the subject matter of O.S.398 of 1931 filed by one Errakkal @ Polammal against D1. Therefore, D1 and his brother was not able to derive income from the property as the possession was under dispute. Further more, to discharge other loans, the property covered under Ex.A.1 was sold in the year 1935 and thereafter as a village karnam, his elder brother earned considerably and 1st defendant was doing mango business and other seasonal business and in the year 1947, they purchased A, B schedule properties. So also, C schedule properties also purchased by the 1st defendant in the year 1964 as separate property and all those documents were considered in favour of the 1st defendant by the First Appellate Judge and dismissed the suit in respect of A, B and C schedule properties, which requires no interference.



41. Learned counsel also argues that D schedule property was purchased by D-5 out of money she got by selling articles given as seervarisai and from the date of purchase of the said property viz., from the year 1974 and from the date of marriage, she enjoyed the possession absolutely. To that effect, documents and tax receipts were produced and marked on the side of D-5 and the same was rightly relied on by both the courts, which requires no interference. Further, the learned counsel also submits that even though the documents stand in the name of the 1st defendant and his elder brother, it does not mean that it is joint family property. At the most, it was jointly purchased and the document itself speaks as it is self acquired property of D1 and his brother. Therefore, the burden is on the plaintiff to prove that there was a joint family nucleus and the burden was rightly established by the appellant/plaintiff.

42. Though the trial court failed to come to correct conclusion that A, B and C schedule properties are self acquired properties of D1 and his brother, in the case on hand, the burden falls on the plaintiff to prove that out of joint family nucleus or surplus income derived from the alleged



joint family property, A, B and C schedule properties are purchased.

Thereby, the 1st appellate Judge rightly held that A, B, C are properties purchased by D1 and his brother out of their self acquired income. To support his argument, the learned counsel relied on the decisions reported in (i) **T.K.Kamala Vs.A.R.Thulasi Rao 2002-3-L.W.581**, to point out the proposition that *jointly purchased property cannot be contended as Joint family/Coparcenary property*.

(ii) **Chetti Balakrishnamma Vs. Chetti Chandrasekhar Rao and others (1990) SCC Online Ori33** wherein it is held that property purchased jointly without help of joint family cannot be termed as joint family property.

(iii) **Ramasamy gounder @ Senban (died) Vs. 1. Chinnapillai @ Nallammal (2022) 3 CTC 703**. The following paragraphs are relied on to point out that “*mentioning as ancestral property in the recitals or adding a party as Vendor will not confer the status of joint family property*”.

“27. In order to appreciate the stand taken by the defendant, it will be more appropriate to take note of some judgments cited by the learned counsel for the appellants;

a) [Bhagwat Sharan v. Purushottam](#) reported

in (2020) 6 SCC 387. The relevant portions



are extracted hereunder:

“18. However, there is no material on record to show that the properties belonged to an HUF. They may have been joint properties but merely on the basis of the recitals in the mortgage deed they cannot be said to be a joint family property. It appears that by another mortgage deed dated 26-11-1946, the value of the mortgaged properties was enhanced to Rs. 45,000/-, and in addition to the 5 houses, one oil mill at Pachhar was also mortgaged. Seth Budhmal filed a suit (Ext. P-4) against Hari Ram, Brij Mohan, Rameshwar Lal, Radha Krishan, Nathu Lal, etc. for realisation of the mortgage money under the said mortgage deed. In Paras 6 and 8 of the plaint it was averred as follows:

“6. That, the defendants at the time of execution of aforesaid documents constituted a trading joint Hindu family and of which all major members personally and minor members through their head of the branch were represented in the execution of mortgage deeds.

8. That, minors mentioned in the documents have now attained majority. Therefore, they have been impleaded in person as defendants. Their liability is limited to the extent of property of joint Hindu family and personal dealing. Defendants 1 to 3 are personally and in the capacity of head of their branch



are made in as defendants.”

21. An admission made by a party is only a piece of evidence and not conclusive proof of what is stated therein. It is in this light that we have to examine the admission made by Hari Ram and his brothers while filing the written statement to the suit filed by Seth Budhmal. In Para 6, the averment was that the defendants constituted trading joint Hindu family. It is obvious that the admission was with regard to a trading family and not HUF. In view of the law cited above, it is clear that not only jointness of the family has to be proved but burden lies upon the person alleging existence of a joint family to prove that the property belongs to the joint Hindu family unless there is material on record to show that the property is the nucleus of the joint Hindu family or that it was purchased through funds coming out of this nucleus. In our opinion, this has not been proved in the present case. Merely because the business is joint would not raise the presumption that there is a joint Hindu family. As far as Para 8 is concerned, in our view, there is no clear-cut admission. The allegation made was that the minors were represented by Defendants 1 to 3, who were head of their respective branches. In reply to this it was stated that Defendants 1 to 3 were neither the head or the karta, nor was the mortgage transaction made in that capacity. This admission cannot be said to be an unequivocal admission of



there being a joint family.”

b) Pandian v. Madhanmohan reported in [\(2018\) 4 LW 193](#).

The relevant portions are extracted hereunder:

“13. In the light of the above position, it is seen that PW3 Kannan cannot claim any right to the suit property on the footing that it is the ancestral property of the family. Accordingly, it is found that the suit property is only the absolute property of Muthukumarasamy and when admittedly, Muthukumarasamy has not joined the execution of Ex.A1, under which, the plaintiff claims title to the suit property, it is found that the plaintiff cannot lay any claim of right or partition in the suit property by way of the said document.”

c) Amudha v. Janardhanan reported in [2015 SCC OnLine Mad 14064](#) : [\(2015\) 3 MWN \(Civil\) 353](#). The relevant portions are extracted hereunder:

“13. Now, this Court has to decide whether the ‘D’ schedule property is the joint family property of the parties or the separate property of the deceased Sridhar? The learned counsel appearing for the appellants would submit that the person who pleaded that the property is the joint



family property must prove that the property is the joint family property and the if he proved the same, then only the burden will be shifted to the party who asserts that it is his separate property. At this juncture, it is appropriate to consider the decisions relied upon by the learned counsel appearing for the appellants and the learned counsel appearing for the respondents.

24. Furthermore, D.W.1 in her evidence has stated that during the lifetime of the Sridhar, he is the subscriber of chit from the year 1988 and that has been evidence from Exs.B4, B5, B9, B10 and B11. After the death of the Sridhar, his wife, namely, the first defendant/first respondent is the subscriber of the chit. Furthermore, the deceased Sridhar obtained loan from Indian Bank and the statement of account has been marked as Ex. B8. Even in the year 1991, as per Ex. A12, the partnership business has been dissolved on 30.07.1991 and thereafter he did his business independently and



earned money and purchased the property. The Trial Court on perusal of P.W.1 came to the conclusion that in the year 1977 the deceased Sridhar left the native place and went to Chennai for his work. He worked under P.W.2, Ramadas, his junior paternal uncle for five years. He further stated that during the lifetime of his father, the deceased Sridhar was at Chennai. But on perusal of Ex. B15, sale agreement and Ex. A5, sale deed, he has not assigned any reason why this property alone has been purchased in the name of the deceased Sridhar since he is the junior member of the family. But he himself purchased the property at Ambattur, Chennai in his name i.e the 'C' schedule property. The deceased Sridhar got married on his own accord and he lead his life and that has been proved by the appellant. Merely because there is a recital in the document it shall not be presumed that the property has been purchased out of the joint family nucleus. Admittedly, P.W.1, the first respondent was in possession and enjoyment of the entire joint family properties But he has not filed any document to show what is the surplus income from the ancestral properties and how many properties were purchased. Furthermore, the First Appellate Court has rightly dismissed the suit in respect of 'E' schedule property stating that it is the separate property of the deceased Sridhar because from



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the year 1991 onwards he is doing his business independently after dissolving the partnership with Radhakrishnan under Ex. A12.”

d) Ekambaram v. Jayalakshmi reported in CDJ (2019) MHC 3722. The relevant portion is extracted hereunder:

“10. The argument has also been put forth that in respect of the properties standing in the name of Mannathan and which had been sold, all the brothers had joined in the execution of the sale deed. As held by the Courts below, merely because, the four brothers had joined in the sale of the abovesaid items that would not lead to inference that the properties standing in the name of Mannathan are only the joint family properties. Mere joining of the party in the execution of the sale deed or mortgage deed does not create any right for such a person and such inclusion might be at the instance of the purchasers or the mortgagee. Therefore, it is found that the abovesaid position of law has been rightly appreciated and followed by the Courts below and in such view of the matter, the Courts below are found to be totally justified in holding that the items 9, 20 & 21 of the plaint schedule properties are not the joint family properties and they are the separate and independent properties of Mannathan and hence, they are not liable for partition



as claimed by the plaintiff.”

e) Nedunchezhiyan v. Rani reported in [2020 SCC OnLine Mad 11573](#). The relevant portion is extracted hereunder:

“10. As regards the other claim, it is common knowledge that sons join fathers in execution of Sale Deed by way of abundant caution at the instance of the purchaser/s. Merely because a son joins the execution of Sale Deed by the father, there cannot be a presumption that the properties are ancestral properties or joint family properties in which the son acquires a right by birth. A property which is assigned to an individual by the Government cannot and will not partake the character of ancestral property.”

“12. However, the Courts below seems to have been carried away by the recitals found in the sale deed dated 13.03.1982, under which, the defendant claims title to the suit property marked as Ex.B1 No doubt, in Ex.B1, the recitals disclose that the suit property has been described as the ancestral as well as the self acquired property of the vendor Muthukumarasamy. On that basis, the Courts below have proceeded to hold that the suit property is only the ancestral property and accordingly, both Muthukumarasamy as well as his son



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Kannan would be entitled to equal share in the same. However, when the facts, as discussed above, unerringly lead to the conclusion that the suit property had been acquired by Rethina Padyachi only by way of purchase as depicted in Ex. A1 and when the same is admitted by his grandson Kannan examined as PW3 and also by the plaintiff examined as PW1, the mere recitals found in Ex.B1 as the suit property being ancestral as well as the separate property of Muthukumarasamy by itself would not lead to the conclusion that the same is the ancestral of the family consisting of Muthukumarasamy and Kannan.

28. It is clear from the above judgments that merely because a property is described as an ancestral property in the recitals of the document, that by itself is not a conclusive proof as to what is stated therein, more particularly when there are other materials to show that properties concerned are not ancestral properties. In the present case, there is no pleading available in the plaint making reference to Ex.A3 and Ex.A4 Therefore, there was no occasion for the defendant to deny and to explain about the properties dealt with under Ex.A3 and Ex.A4 All of a sudden, these documents cropped up during evidence and it is clear from the parent documents that the properties



concerned are not ancestral properties.

29. Insofar as adding the name of the son while executing Ex.A3 and Ex.A4 documents, that by itself does not confer any right on the son. The above judgments have dealt with cases with almost similar facts and it has been held that such practice is very common where the purchasers of the property insist for the son to join in the execution of the document along with the father. Therefore, the son of the defendant joining the defendant in the execution of Ex.A3 and Ex.A4 documents, by itself does not convert the properties as ancestral properties.”

43. Further, the learned counsel also submitted that there was no nexus between the sale of the property covered under Ex.A.1 and utilising the sale proceeds for acquisition of properties under Schedule B and C.

44. Submitting the above points, the learned counsel for the defendants submits that no substantial question of law involved in the above second appeals and hence prayed to dismiss all the above second appeals.



45. Heard and considered both sides submissions.

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46. The relationship between the parties are admitted. The point to be decided is as to whether as claimed by the plaintiff there was no source of income from any of the defendants or the properties were purchased by D1 and his brother by self acquisition. As the plaintiff approached the court claiming that there was joint family nucleus through which there was a surplus sufficient income and with the help of the same, the properties are purchased by D1 and his brother jointly and all the properties were thrown into a common hotchpot and enjoyed by them in common. There is no presumption of joint family property.

47. It is settled proposition that there is no presumption of joint family property and the initial burden is on the plaintiff/appellant to prove that there was sufficient joint family nucleus and also there was income from the ancestral property. The initial burden of proof was proved by plaintiff. To that effect, the plaintiff has relied on Ex.A.1 sale deed dated 27.04.1921 stands in the name of his grandfather Thippa Reddy. As per the sale deed, near about 9 items, an extent of 11 acre along with well;

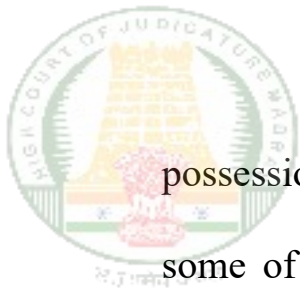


irrigation facilities and house was covered under the said document.

Ex.A.1 sale deed document was also admitted by the defendants.

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48. As per the contention of the 1st defendant, the properties were enjoyed by them. Since there was some dispute in O.S.No.399 of 1931, it was claimed that some of the items were settled by his father in favour of one Polammal for maintenance. Admittedly, the said Polammal has no legal heirs and no children. As per the condition imposed, some of the items covered under Ex.A.1 bound to revert back to his sons D1. Admittedly, the father of the 1st defendant/grand father of the plaintiff own 11 acres land with well irrigation facilities. As per Ex.A.4 + B.11 and B.9 which covers with 1st defendant and his brother mortgaged some of the property covered under Ex.A.1 in favour of one Ramalingam. Thereafter redeemed the same by selling 1 acre 19 cents in the year 1935. Further, from the recitals of Ex.A.4, the 1st defendant and his brother jointly sold the property covered under Ex.A.1, wherein, recitals clearly show that as per Ex.A.3 and 4 through which the properties were sold by 1st defendant and his elder brother, it is mentioned in the schedule that patta in relation to those properties were in the name of their father but they were in joint



possession of them. Moreover the patta in Sl.No.5 117/3 was sold and for some of the items under Ex.A.1, patta stands in the name of plaintiff's grand father and the same was sold by defendants, pertaining to Survey No.100/1 with well irrigation facilities in S.No.101 and 102, covered under Ex.A.1 reveals that ancestral property of the family were jointly possessed by 1st defendant and his brother and they sold the property subsequently. While selling the property they admit that patta for the said property stands in the name of his father, but they were in joint possession of the property. So nearly 10 acres owned by plaintiff's grand father was prima facie established through sale deed of the year 1921. The 1st defendant also admits that he along with his brother sold some of the property which they were not in possession but the properties were under lease and to discharge the same, finally sold in the year 1921 but they have not derived any income from those properties. But as per Ex.A.2 in the year 1930, the 1st defendant and his brother purchased some of the items in A Schedule properties. At that time, some of the ancestral properties available is discussed above.

49. But the contention of the 1st defendant is that they have not



derived any income. In such circumstances, the burden is on him to prove that they have not derived any income from the properties covered under

Ex.A.1. Though there was some mortgage deeds in the family, that alone was not sufficient to prove that there was no income from the properties.

50. Admittedly, D1's father was doing agriculture so also the 1st defendant's brother also doing agriculture. But the 1st defendant denied the said contention and stated that his brother was village karnam and he was doing some seasonal business and earned considerable income. But there was no proof to show that there was separate income for the family. Initial burden was discharged by the plaintiff clearly stating that his grand father owned nearly 10 acres; subsequently owned by D1 and his brother. Therefore, the burden is on the 1st defendant to establish that there was separate income. However, except oral testimony, there is no supporting evidence that they had separate income but jointly purchased A, B, C schedule properties.

51. All the sale deeds stand in the name of 1st defendant and his brother, it is stated as "pgaph; \$Pt dk;" – agriculture. If at all they had any



separate business, the same ought to have been mentioned however, since because they only did agriculture, the same is mentioned in all the sale deeds.

52. One of the contentions of the 1st defendant is that 1935 property covered under Ex.A.1 was sold in the year 1947. The part of the A and B schedule property was purchased and there was no nexus between the selling of the family property and purchase of the property. But as discussed above, in the year 1930 itself, they purchased some of the items in A schedule property and all were agricultural lands. Though there was some civil disputes with regard to the properties, they were dealt with the property.

53. The above contention of the 1st defendant that after the compromise entered in the suit, they took possession of the property but except the decree they were in possession and enjoyment of the property. Therefore, the burden cast upon the plaintiff was discharged by establishing that his grand father owned nearly 11 acres of the property and the portion of the property were in possession and enjoyed by his



father and his father's brother, subsequently though they sold some of the properties wherein they themselves admitted that patta stands in the name of the father. So there was a joint family nucleus proved by the plaintiff. Further the plaintiff also proved that after the purchase made by the 1st defendant and his brother, all those properties were thrown into common hotchpot and enjoyed jointly and the same is evident from the sale deed of the year 1961 wherein the 1st defendant and his brother jointly sold the property. So also while purchasing the property in the year 1964, as per Ex.A.7, for himself and his minor son, the 1st defendant purchased the property. During that period, the plaintiff joined Military service and used to send Rs.50 every month and the same has not been disputed by the 1st defendant. Therefore, the 1st defendant and the plaintiff along with elder brother constituted the joint family.

54. Considering the fact that there was joint family property nucleus and it was also been proved by the plaintiff and that the plaintiff had contributed to the family was also proved and that the 1st defendant was a kartha of the family and purchased the property under Ex.A.7. The recitals is as under:-



“fpiuak; U/4000-- 1964 tUc&k; ork;gh; 30 Kg;gJ
 njjp Foahj;jk; jhYf;fh tz;lhe;jh';fy; fpuhkk;; kJuh ry;yht{h;
 fpuhkj;jpy;'trpf;Fk;'bul;oahh;. ee;jyjpg;ghbul;o Fkhuh;
 rpd;dKdp bul;oahh;'mth;fSf;fF ic&& fpuhkk; \$hjp
 \$Ptdk;ee;jy bghpaKdpbul;oa Fkhuh;fs; g[z;zpanfhl;o
 bul;oahh;-1nyhfehj bul;oahh;-2 Mfpa eh';fs; ,UtUk;
 rk;kjpp;J vGjpf;bfbLj;j tpf;fpupak;.../////”

55. In spite of the recitals found in the sale deed that the property belongs to the father of D1 and was jointly possessed and enjoyed by D1 which itself speaks and proves that there was sufficient nucleus, the 1st Appellate Judge held that there is no joint family nucleus and ancestral nucleus. Therefore, the findings of the 1st Appellate Judge is set aside. Accordingly, the substantial questions of law (A) and (B) raised in SA.Nos.568, 569 and 571 of 2005 are answered in favour of the appellant/plaintiff. To that effect, the authorities relied on by the appellant supported his contention and the principles are squarely applicable to the facts of this case.



56. On the other hand, though the proposition in the authorities relied on by the respondents is acceptable one, considering the facts and circumstances of the case, the same is not supporting the case of the respondents.

57. Further more, as discussed above, the joint family properties are put into common hotchpot and the same is evidenced from Ex.A.8, thereby, the plaintiff proved that properties A, B and C schedule, fall under joint family nucleus.

58. The execution of the settlement deed in favour of D3 and D4 through Ex.B.1 as such is not binding the plaintiff. To that effect, the authority relied on by the plaintiff reported in **2004 (2) CTC 1** is supporting the case of the appellant. At the most, 1st defendant is entitled to 1/3rd of the property in respect of 1/3rd share. But no alternative plea was claimed by the 1st defendant. Further more, after issuance of Ex.A.11- legal notice, 1st defendant with an intention to defeat the plaintiff's right over the property with malafide and ill intention executed the settlement



deed in respect of entire property, as such, is illegal and not binding the plaintiff. Accordingly, the substantial question of law (C) raised in SA.Nos.568, 569 and 571 of 2005 is answered in favour of the appellant/plaintiff.

59. Since the properties are proved as joint family properties, the 1st defendant has no right to execute the settlement deed. The finding of the 1st Appellate Judge is based on Ex.B.1 and rendered the finding, which will not bind the plaintiff in respect of D schedule property.

60. Admittedly, D5/R5 is the wife of the 2nd defendant and they got married around in the year 1975. It is not a disputed fact. In the year 1974, already D5 purchased the property and she dealt with the property absolutely as absolute owner and the same was proved through documents Ex.B.17 to Ex.B.69 which was rightly appreciated by the trial court and also by the 1st Appellate Court. Therefore, D schedule property is the absolute property of R5/D5. Accordingly substantial question of law (A) and (B) raised in S.A.No.570 of 2005 are answered against the appellant/plaintiff



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61. Therefore, in the result,

(i) the suit filed by the plaintiff in O.S.Nos.289 of 1993 is partly allowed. The suit is partly decreed in favour of the plaintiff and he is entitled for 1/3rd share in all the 3 items in respect of A, B and C schedule properties. Accordingly, S.A.No.568 and 571 of 2005 are allowed.

62. The decree passed in the suit in O.S.No.115 of 1993 in favour of D-5 Rathinammal and confirmed by the 1st Appellate Judge, is not interfered with. Accordingly, S.A.No.570 of 2005 is dismissed.

63. S.A.No.569 of 2005 is allowed, consequently, the suit filed by D3, D4 in O.S.No.288 of 2004 is dismissed. No costs.

17-02-2026

nvsri

Neutral Citation:Yes/No

To



- 1.The Principal District Judge, Vellore,
- 2.The Principal District Munsif, Vellore.
- 3.The Section Officer, V.R.Section, High Court, Madras.

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SA Nos.568 to 571 of 2005



T.V.THAMILSELVI J.

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SA No.568 to 571 of 2005

17-02-2026