



A.S.No.160 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2026

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

A.S.No.160 of 2019

and

C.M.P.Nos.6001 & 6002 of 2019

Rajapathi Ammal

... Appellant

Vs.

- 1.Tami Selvi
- 2.Rani
- 3.Thilaga Ammal @ Thilagavathi
- 4.Ramakrishnan
- 5.Govindaraj
- 6.Ramajayam
- 7.Anbarasan
- 8.Settu
- 9.Renu Ammal
- 10.Indira Gandhi
- 11.Jaya Gandhi
- 12.Chennammal @ Selvi
- 13.Elumalai
- 14.Chennammal
- 15.Kamatchi
- 16.Raja
- 17.Dhanusu
- 18.Arumugam
- 19.Sankar

... Respondents

Page 1 of 23



A.S.No.160 of 2019

*[Notice to the respondents 4 to 19 are dispensed with
as they remained ex parte in the suit]*

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Prayer : Appeal filed under Order XLI Rule 1 and Section 96 of the Code of Civil Procedure against the judgment and decree dated 06.12.2018 passed in O.S.No.38 of 2017 on the file of the Fast Track Mahila Court, Thiruvannamalai.

For Appellant : Mr.V.Sekar
For R1 to R3 : Mr.N.P.Vijayakumar
for Mr.R.Pradeep
R4 to R19 : Ex parte in lower Court

J U D G M E N T

(Judgment was delivered by **N. SATHISH KUMAR, J.**)

Aggrieved over the decree and judgment passed by the learned Additional Sessions Judge, Fast Track Mahila Court, Thiruvannamalai, dated 06.12.2018, in O.S.No.38 of 2017, granting 3/4th share from 'A' Schedule Item Nos.1 to 15, 25 and 26 and the entire 'B' Schedule property to the plaintiffs, the 2nd defendant in the suit has filed the present Appeal.



A.S.No.160 of 2019

2.For the sake of convenience, the parties are referred to as per their rank before the trial Court.

3.The plaintiffs and the 2nd defendant are the daughters of the 1st defendant. The defendants 3 to 18 are the purchasers of some of the suit A-Schedule properties from the 1st defendant, on various dates.

4.1.It is the case of the plaintiffs that the entire A-Schedule properties are ancestral properties of the 1st defendant and out of the joint family nucleus, he has purchased the B-Schedule property, which is a vacant site and thereafter, the 1st defendant has put up a lodge in the B-Schedule property out of the joint family nucleus. It is the specific case of the plaintiffs that, on the date of purchase of the B-Schedule property on 17.06.1988, the 1st defendant had no other independent business except cultivation in the ancestral properties. The income from the A-Schedule properties was used to purchase the B-Schedule property. After purchase of the B-Schedule property, a lodge has been constructed in the name of “Sri Ram Lodge” out of the surplus income derived from the A-Schedule



properties and the joint exertion of the plaintiffs and the 2nd defendant, for the benefit of the joint family members. Though permission and other licence stood in the name of the 1st defendant, the property was treated as a joint family property. All the Revenue records were standing in the name of the 1st defendant only as the Karta of the joint family.

4.2.While so, in the month of January, 2008, there arose some misunderstanding between the plaintiffs and the 1st defendant and according to the plaintiffs, the 1st defendant was acting against the welfare of the joint family, as he failed to produce the income accounts and as well as the lodge maintenance expenditure. When the matter stood thus, the 2nd defendant claimed some false title over the B-Schedule property on the ground that the 1st defendant has settled the property in her favour. After that, the plaintiffs came to know that a settlement deed dated 04.12.2008 has been executed by the 1st defendant in the favour of the 2nd defendant. According to the plaintiffs, the same is not binding on them and the same has been obtained by playing fraud. It is their further contention that the 1st defendant has no right to execute any sale or settlement deed in respect of the joint family properties and the same is not binding on the plaintiffs' share in the B-



A.S.No.160 of 2019

Schedule property. Despite the demand made by the plaintiffs for partition, the same was refused by the defendants 1 and 2.

4.3.Further, it is the contention of the plaintiffs that the defendants 3 to 7 and one Venkatachala Gounder are the purchasers of some of the A-Schedule properties from the 1st defendant under various sale deeds and on different dates without the knowledge of the plaintiffs. The plaintiffs issued legal notice on 03.04.2013 to the defendants 1 to 7 and one Venkatachala Gounder.

4.4.It is the contention of the plaintiffs that the marriage of the plaintiffs was performed after the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (Tamil Nadu Act 1 of 1990) came into force on 25.03.1989 and there was no partition effected between the plaintiffs and the defendants 1 and 2. Therefore, the plaintiffs are jointly entitled to 3/4th share in the 'A' and 'B' Schedule properties as per Act 1 of 1990. Hence, the plaintiffs filed the present suit for partition of their 3/4th share in the A-Schedule and B-Schedule properties and for other reliefs.



A.S.No.160 of 2019

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5.1.The defendants 1 and 2 contested the suit by filing their written statement. It is the contention of the defendants 1 and 2 that the A-Schedule properties and B-Schedule property are not joint family properties. The plaintiffs and the 2nd defendant are not co-owners and co-sharers of the suit A-Schedule properties and B-Schedule property. The 1st defendant's only son one Dhananjayan died in the year 1998. It is denied that B-Schedule property was purchased out of the joint family nucleus and joint exertion of the plaintiffs and the defendants 1 and 2. According to the defendants 1 and 2, the B-Schedule property was purchased by the 1st defendant from and out of his own hard earned income. It is the contention of the 1st defendant that he was doing business dealing with groundnut and in the said business, the 1st defendant was getting substantial income. From and out of the hard earned income from the groundnut business, the 1st defendant has purchased Item No.6 of the A-Schedule properties for a total consideration of Rs.11,292/- under a registered sale deed dated 11.09.1978 and the 1st defendant purchased Item No.12 of the A-Schedule properties comprised in S.No.440/1 measuring an extent of 4.36 Acres and similarly, the 1st defendant purchased the B-Schedule property from and out of the income



from the groundnut business for a total consideration of Rs.13,600/- and since then, he is in exclusive possession of the B-Schedule property.

According to the defendants 1 and 2, the suit properties are not ancestral properties. It is the contention of the defendants 1 and 2 that, from and out of the independent income of the 1st defendant, the 1st defendant put up a lodge on the B-Schedule property and hence, it is their contention that it is not the joint family property. It is further denied that the 1st defendant has sold the suit properties to the other defendants without the knowledge of the plaintiffs. According to them, the 1st defendant has sold the properties for legal necessities. Hence, the defendants 1 and 2 disputed the claim of the plaintiffs.

5.2.Further, in the additional written statement, it is the contention of the defendants 1 and 2 that Item No.6 of the A-Schedule properties was purchased by the 1st defendant on 11.09.1978 for a valuable consideration of Rs.11,292/-. Similarly, Item No.12 of the A-Schedule properties was also purchased by him for a consideration of Rs.12,000/- under registered sale deed dated 14.06.1982. Hence, according to them, all the suit properties are self-acquired properties of the 1st defendant. Hence, they opposed the



partition suit.

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6. Based on the pleadings of the parties, the trial Court has framed the following issues :

1. *Whether the plaintiffs are entitled for 3/4th share from the suit properties ?*
2. *Whether it is true the 'A' Schedule Item No.5, 6, 12 and 16 are self-acquired properties of deceased 1st defendant ?*
3. *Whether it is true the suit 'B' Schedule property is self-acquired properties of deceased 1st defendant ?*
4. *Whether it is correct the settlement deed dated 04.12.2008 is null and void ?*
5. *Whether it is correct the suit 'A' Schedule Item No.6 and 12 are the separate property of 2nd defendant ?*
6. *Whether the plaintiffs are entitled for mesne profit ?*
7. *Whether the suit property was valued and correct court fees was paid ?*
8. *To what other relief ?*

7. On the side of the plaintiffs, P.W.1 and P.W.2 were examined and Exs.A1 to A19 were marked. On the side of the defendants, the 2nd defendant was examined as D.W.1, however, no document was marked.



A.S.No.160 of 2019

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8.The trial Court, after considering the oral and documentary evidence on record, by its judgment dated 06.12.2018, considering the fact that the 1st defendant's family had vast agricultural land of about 31 Acres and had sufficient nucleus from the agricultural land and out of the surplus income from the joint family properties, the 1st defendant purchased the properties in Item Nos.5, 6, 12 and 16 of the A-Schedule properties. Though the properties stood in the name of the 1st defendant, the trial Court held that those properties are joint family properties. Similarly, the trial Court held that the B-Schedule property was also purchased out of the surplus income from the joint family properties. The trial Court found that the contention of the defendants that the 1st defendant had independent groundnut business, has not been established. Further, it was held that the 2nd defendant has also not produced any document to substantiate her claim. Therefore, the trial Court granted a preliminary decree of partition allotting 3/4th share in favour of the plaintiffs in respect of both A-Schedule properties and B-Schedule property.



A.S.No.160 of 2019

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9. Aggrieved over the judgment and decree of the trial Court, the 2nd defendant has filed the above Appeal.

10. Learned counsel appearing for the appellant/2nd defendant would submit that, though except Item Nos.6 and 12 of the A-Schedule properties and the entire B-Schedule property, other properties are ancestral in nature, the trial Court has held that the properties in Item Nos.5, 6, 12 and 16 are also ancestral properties. According to the learned counsel, they are the self-acquired properties of the 1st defendant. That apart, the B-Schedule property is also purchased by the 1st defendant out of his own independent income under Ex.A1. Therefore, the entire B-Schedule property is also self-acquired property of the 1st defendant. The 1st defendant has, in fact, executed two registered settlement deeds in favour of the appellant/2nd defendant, one dated 04.12.2008 in respect of the B-Schedule property and another dated 11.09.2010 in respect of Item Nos.6 and 12 of the A-Schedule properties. It is his contention that the trial Court holding that those properties were also purchased out of the joint family nucleus, is without any evidence. It is his contention that P.W.2, examined on behalf of the



plaintiffs, is one of the witnesses to Ex.A1. He himself has clearly admitted that the B-Schedule property was purchased out of the own money of the 1st defendant. Therefore, it is his contention that, merely because the family has some agricultural lands, in the absence of surplus income proved by the plaintiffs, it cannot be said that the properties individually purchased by the Karta of the family out of his independent income, are also joint family properties. Hence, according to him, the trial Court's finding with regard to Item Nos. 6 and 12 of the A-Schedule properties and B-Schedule property, cannot be valid in the eye of law. It is his further contention that the 1st defendant has sold some of the suit properties to the defendants 3 to 18 for legal necessities and therefore, the plaintiffs cannot claim any right over the said properties.

11. Whereas, the learned counsel appearing for the respondents/plaintiffs would submit that, admittedly, the father/1st defendant had 34 Acres of agricultural land and his only avocation was agricultural activities. Out of the surplus income derived from the joint family properties, Item Nos.6 and 12 of the A-Schedule properties and B-Schedule property were purchased by the 1st defendant in his name when the plaintiffs



were minors. Therefore, merely because the properties stood in the name of the father, in the absence of any independent income shown by the father, it has to be presumed that the properties have been purchased out of the joint family nucleus. It is his contention that, though the defendants took a stand that the properties in Item Nos.6, 12 and 16 of the A-Schedule properties and B-Schedule property were purchased out of the independent income of the 1st defendant, absolutely, there is no evidence, whatsoever, available on record, to prove the independent income of the 1st defendant. It is his further contention that Ex.A3-sale deed clearly shows that the 1st defendant/father has sold a portion of the ancestral properties in the year 1985 to one Ramakrishna Gounder (3rd defendant) prior to the purchase of the B-Schedule property in the year 1988 under Ex.A1. From the said documents, it is clear that, under Ex.A3, certain ancestral properties were sold for a sum of Rs.5,000/- and odd, whereas, B-Schedule property was purchased for a sum of Rs.13,000/- and odd, which itself clearly shows that, out of the sale proceeds and also the surplus income from the joint family properties, the B-Schedule property has been purchased by the 1st defendant. The family had vast extent of land of about 31 Acres, which has been clearly spoken by the P.W.2 in his evidence, which is also not controverted. Further, it is his



contention that the defendants have not produced any document to show that certain items of the A-Schedule properties were purchased out of the independent income of the father. Therefore, it is his contention that the settlement deeds executed in favour of the 2nd defendant/appellant, are not binding on the plaintiffs. The trial Court has rightly held that the plaintiffs are entitled to their share. It is his further contention that the plaintiffs are not claiming right over the properties already sold to the third parties by the father/1st defendant.

12. In the light of the submissions made on either side, the points that arise for consideration in this Appeal are as follows :

- (1) Whether the properties in Item Nos.6, 12 and 16 of the A-Schedule properties are the self-acquired properties of the 1st defendant or purchased out of the joint family income ?*
- (2) Whether the B-Schedule property is purchased out of the independent income of the 1st defendant or out of the surplus joint family nucleus ?*
- (3) If so, whether the settlement deeds executed by the 1st defendant in favour of the 2nd defendant on 04.12.2008 and 11.09.2010 are binding on the plaintiffs ?*



Point Nos.(1) to (3) :

13.The relationship of the parties is not in dispute. The plaintiffs and the 2nd defendant are the daughters of the 1st defendant. Admittedly, the family has vast ancestral properties which is also not in dispute. The extent is around 34 Acres of agricultural land which is more fully contained in A-Schedule properties. Except Item Nos.6, 12 and 16 of the A-Schedule properties and B-Schedule property, admittedly, all other properties are ancestral properties. The only dispute raised by the defendants with regard to Item Nos.6, 12 and 16 of the A-Schedule properties is that those properties were purchased in the name of the 1st defendant out of his independent income. Even leaving alone the aforesaid three items of properties in Item Nos.6, 12 and 16 as contended by the defendants, the family had huge ancestral properties of more than 20 Acres of agricultural land.

14.It is the contention of the defendants that the 1st defendant was earning independent income out of his groundnut business. To prove the independent income of the 1st defendant, absolutely, there is no evidence,



A.S.No.160 of 2019

whatsoever, available on record. Though the 2nd defendant (D.W.1) was examined in this regard, D.W.1, in the cross-examination, has admitted that around 21 Acres of ancestral land belongs to the family and the father was enjoying the entire 21 Acres. She (D.W.2) has also admitted that A-Schedule properties consisted of both wet and dry lands and there were nine irrigation wells available in the land and she also clearly admitted that, in the entire A-Schedule properties, cash crops like sugarcane and manila were cultivated. Further, she has admitted that she is not aware as to out of which income, her father had constructed the lodge in the B-Schedule property. Though she has stated that her father had independent business, she has no evidence for that. Further, she has also admitted that only her father knows as to whether the B-Schedule property was purchased out of the income derived from the ancestral properties. She has stated that she is not aware as to whether her father had availed any loan for construction of the lodge in the B-Schedule property.

15.It is admitted by both sides that one son, namely Dhananjayan, born to the 1st defendant, died as a bachelor in the year 1988. The fact remains that all the plaintiffs got married after 1989. It is relevant to note



that, as per Section 29-A of the Hindu Succession (Tamil Nadu Amendment) Act, 1989 (Tamil Nadu Act 1 of 1990) which came into force on 25.03.1989, the daughters also become coparceners along with the male members of the family, provided they are not married before the Act came into force on 25.03.1989. The evidence of the P.W.1 (1st plaintiff) indicates that she got married in the year 2001. It is not the case of the defendants that the other plaintiffs got married prior to the Act 1 of 1990 coming into force. In the absence of any denial or assertion that the plaintiffs/daughters are not coparceners, it may be held that the plaintiffs got married after the Act 1 of 1990 came into force. Even if the son of the 1st defendant was also alive, the daughters admittedly became coparceners on the date of Act 1 of 1990 coming into force. Therefore, admittedly, they became coparceners along with their father as far as the ancestral properties are concerned. Admittedly, the son of the 1st defendant also died as a bachelor, which fact is not in dispute. The plaintiffs' mother also had already died. Though the 1st defendant/father, being the Class-2 legal heir in respect of the share of his pre-deceased son, acquired certain rights, admittedly, his share had already been sold to the third parties, which has not been challenged by anyone. Therefore, the unsold properties still remain as joint family properties.



A.S.No.160 of 2019

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16. Now, the only issue is whether the Item Nos.6, 12 and 16 in the A-Schedule properties and the entire B-Schedule property were purchased out of the independent income of the father. Absolutely, there is no material, whatsoever, placed on record to show that the 1st defendant was having any independent business and was earning considerable income. As per Ex.A3, some of the ancestral properties were sold by the father even in the year 1985. Later, in the year 1988, under Ex.A1, the father has purchased the B-Schedule property. Therefore, the probability of the father utilising the sale proceeds of the joint family property under Ex.A3 to purchase the B-Schedule property, cannot be ruled out.

17. In *Randhi Appalaswami v. Randhi Suryanarayanamurti* reported in *1947 SCC OnLine PC 42*, it is well settled that, proof of existence of joint family does not lead to presumption that the property held by any member of the family is joint and the burden rests upon anyone asserting any item of property is joint to establish the fact. But, where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may



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

18. Similarly, the Hon'ble Supreme Court, in **Surendra Kumar v. Phoolchand** reported in (1996) 2 SCC 491, has held as follows :

“6. ... It is no doubt true that there is no presumption that a family because it is joint possessed joint property and therefore the person alleging the property to be joint has to establish that the family was possessed of some property with the income of which the property could have been acquired. But such a presumption is a presumption of fact which can be rebutted. But where it is established or admitted that the family which possessed joint property which from its nature and relative value may have formed sufficient nucleus from which the property in question may have been acquired, the presumption arises that it was the joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family. Both the courts below have scrutinised the evidence bearing in mind the aforesaid legal position and have rightly come to the conclusion that the property in question is the joint family property. We see no justification for our



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A.S.No.160 of 2019

interference with the said concurrent findings of the two courts below. The appreciation of evidence has been rightly made bearing in mind the correct legal position. The appellant thus has utterly failed to establish that the consideration money for the property was paid out of his personal funds.”

19. Though it is contended by the defendants that certain properties have been purchased by the 1st defendant out of his own income by various sale deeds dated 24.01.1970, 11.09.1978 and 14.06.1982, as per their written statement, those documents have not been filed by the defendants to show the nature of the recitals. Be that as it may. Those properties have been purchased by the father when the plaintiffs and the 2nd defendant were minors. It is also to be noted that, even as per the own admission of the 2nd defendant (D.W.1) in the cross-examination, the family had vast agricultural lands and irrigation wells and cash crops like sugarcane and manila were cultivated by their father. Admittedly, before the purchase of the B-Schedule property under Ex.A1, one of the ancestral properties was also sold under Ex.A3. Therefore, once it is established that the family had sufficient nucleus and vast agricultural lands and cash crops have been raised in those vast lands, particularly, in the absence of any evidence to show that the



father was deriving independent income from independent business at the relevant point of time, it has to be held that all the properties purchased in the name of the 1st defendant are only out of the surplus income derived from the joint family properties. The defendants, having taken a stand that the father/1st defendant had independent income, have not produced any evidence, whatsoever, to substantiate their stand. Therefore, in the absence of any independent income, particularly, when the family had sufficient properties and income generated from those properties, the properties purchased in the name of the father have to be presumed to have been purchased only from the income derived from the joint family properties, unless it is established that the father acquired the properties in question from and out of his independent source, not utilising the joint family funds. Therefore, when the plaintiffs have sufficiently established that the family has vast agricultural properties and they are also fertile lands consisting of nine irrigation wells and cash crops have also been raised in those lands and when the defendants have failed to adduce any evidence to prove the independent income of the father to purchase the properties in question, the contention of the 2nd defendant/appellant that Item Nos.6, 12 and 16 are not joint family properties, cannot be countenanced. Further, the defendants



have not even produced any document to buttress their submission that Item Nos.6 and 12 stand in the name of the 1st defendant. In the absence of any evidence, it has to be presumed that the entire properties are joint family properties. Admittedly, the plaintiffs became coparceners in the ancestral properties by virtue of Hindu Succession (Tamil Nadu Amendment) Act, 1989 (Tamil Nadu Act 1 of 1990), as they got married after the Act 1 of 1990 came into force. Therefore, any transfer or settlement in favour of the 2nd defendant by the Karta, is not binding on the plaintiffs. Therefore, ***all the points are answered in favour of the plaintiffs.***

20. Accordingly, we find that the judgment of the trial Court is well balanced and does not require any interference. As a result, this Appeal is dismissed.

21. At this juncture, the learned counsel for the appellant/2nd defendant would submit that, since certain properties have been transferred in favour of the appellant by way of settlement deed executed by her father, those properties may be allotted to the appellant in the final decree proceedings based on equity. We are of the view that, equity can be claimed and worked



A.S.No.160 of 2019

out only in the final decree proceedings. We are not in a position to give any

such finding allotting such properties in this Appeal. No costs.

Consequently, connected miscellaneous petitions are closed.

(N.S.K., J.) (R.S.V., J.)
21.01.2026

mkn

Internet : Yes

Index : Yes / No

Speaking Order / Nonspeaking order

Neutral Citation : Yes

To

1.The Additional Sessions Judge
Fast Track Mahila Court,
Thiruvannamalai.

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



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A.S.No.160 of 2019

N. SATHISH KUMAR, J.
and
R. SAKTHIVEL, J.

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A.S.No.160 of 2019

21.01.2026
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