

S.A(MD)No.297 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 18.02.2026

Delivered on : 19.02.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD).No.297 of 2015

Rajalingam

: Appellant

/Vs./

Ramalinga Nadar (died)

1.Rajalakshmi

2.Harikrishnan

3.Thangambal

4.Nainar Asari

5.Gnana palanisamy

6.Ramasamy Nadar

7.Ramasamy

8.Gurusamy Nadar

9.Sakthivel Nadar

10.Subramaniam

11.Sundari Pappa

12.Balasubramanian

13.Kumaresan

14.Ponthurai

: Respondents



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 26.06.2012 made in A.S.No.39 of 2010 on the file of the Subordinate Court, Ambasamudram, confirming the judgment and decree, dated 24.01.2006 made in O.S.No.45 of 2004 on the file of the Principal District Munsif Court, Ambasamudram.

For Appellant : Mr.T.S.R.Venkatramana, Senior Counsel,
for Mr.A.Parameshwaran.

For Respondents : Mr.K.P.Narayanakumar, for R1.

: R2 to R14 dispensed with.

JUDGMENT

The Second appeal is directed against the judgment and decree made in A.S.No.39 of 2010, dated 26.06.2012 on the file of the Subordinate Court, Ambasamudram, confirming the judgment and decree passed in O.S.No.45 of 2004, dated 24.01.2006 on the file of the Principal District Munsif Court, Ambasamudram.

2. The appellant herein is the plaintiff in the suit. He laid the suit in O.S.No.45 of 2004 originally seeking partition and separate possession of his ½ share in the suit properties. Pending suit, the first defendant, who is the father of



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the plaintiff and the second defendant, died and consequently, the plaint came to be amended seeking declaration of title over the entire suit properties or in the alternative, for partition and separate possession of 5/6 share in the suit properties and for mesne profits.

3. For the sake of convenience and brevity, the parties hereinafter referred as per their ranking/status before the trial Court.

4. Admittedly, the plaintiff is the son and the second defendant is the daughter of the first defendant Ramalinga Nadar.

5. The case of the plaintiff, in brief, is as follows :

a) The suit properties are belonging to Hindu joint family consisting of the plaintiff and the first defendant. Some of the suit properties were owned by the first defendant ancestrally. Some of the properties were purchased by the first defendant from and out of the income derived from the ancestral nucleus. Hence, all the suit properties were treated and enjoyed as joint family properties.

b)The first defendant, who was aged about 77 years, was not in a position to independently manage his affairs and the second defendant and her husband,



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by exercising undue influence and dominance over him, were attempting to alienate or encumber the suit properties. Since the suit properties are the joint family properties and the plaintiff is entitled to get $\frac{1}{2}$ share in all the suit properties, the first defendant has no power or authority to alienate the properties or to gift any portion of the properties in favour of the second defendant.

c) The plaintiff sent a legal notice, dated 25.06.1996 to the first defendant demanding partition and allotment of his $\frac{1}{2}$ share in the suit properties. The first defendant having received the legal notice, sent a reply notice with false and untenable allegations. The first defendant's contention is that there was no surplus income available from ancestral properties for purchasing the other properties and that he purchased the other properties with his hard-earned income and as such, they are his separate and self-acquired properties.

d) Items 1 to 6 of the first schedule are ancestral properties and the other items were purchased by utilising the income derived therefrom. The properties standing in the name of Lakshmi Ammal, the mother of the first defendant, were also stated to have been acquired with the aid of joint family income. On the death of the first defendant during the pendency of the suit, the plaintiff claimed that he became entitled to the entire suit properties, or in the alternative, to $\frac{5}{6}$ share therein.



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6. The defence of the defendants 1 and 2, in brief, is as follows :

a) The suit properties are not joint family properties and that the plaintiff is not entitled to any share therein. The ancestral properties were very meagre in extent and were incapable of generating sufficient income even for the maintenance of the family and that there was absolutely no surplus income available to form any joint family nucleus for acquisition of further properties.

b) The first defendant had independently cultivated leasehold lands, engaged in business in palm jaggery (karuppatti) and paddy, and was also earning income by renting out cart buffaloes and thereby acquired several properties out of his own independent earnings without any aid from the ancestral properties. Certain properties were also stated to have been acquired by Lakshmi Ammal out of her own income.

c) Some of the properties were jointly owned by the first defendant along with his pangalis and that necessary parties had not been impleaded in the suit and therefore, the suit is bad for non-joinder of necessary parties as well as for partial partition.



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d) The first defendant purchased the first item of first schedule property under a sale deed, dated 29.10.1945 as his separate property. The second item of the first schedule measuring 30 cents, is a rocky land, wherein the samadhi of the first defendant's mother is situated. In the third item of the first schedule, out of 16 cents, an extent of 2 cents was allotted for road purposes and the remaining portion is also rocky and not suitable for cultivation. The fourth item of the first schedule property was purchased in the year 1924, when the first defendant was a minor, and thereafter, he constructed a house thereon with his own funds and has been in possession and enjoyment of the same.

e) The fifth item measures 1 acre 5 cents and not one acre 3 cents as alleged and the other Pangalis are necessary parties in respect of the said property. The sixth item of the first schedule is jointly owned by the first defendant along with his pangalis. The first item of second schedule was purchased jointly by the first defendant and one Anaintha Perumal Nadar and subsequently, the first defendant acquired the entire property and constructed a rice mill thereon with the aid of a loan obtained from District Industrial Centre (மாவட்ட தொழில் மையம்).



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f) The second item of second schedule property originally belonged to the first defendant's mother. The third item of second schedule property was purchased by the first defendant out of his own income under a sale deed, dated 13.02.1959. Out of the said property, he had gifted a portion of the land for construction of a 'Maternity and Child Welfare Hospital' (தாய், சேய் நல விடுதி) and had sold another portion to one Ramasamy Nadar, Subramania Nadar and Pitchakkannu. The remaining extent is in possession and enjoyment of the first defendant.

g) Items 1 and 2 of the third schedule properties originally belonged to the first defendant's mother Lakshmi Ammal and upon her death, the same devolved upon the first defendant. Out of the first item, the first defendant had gifted an extent of ten cents of land for road purposes.

h) The first defendant had encroached upon the first item of the fourth schedule property and has been in possession and enjoyment of the same. The second item of fourth schedule was owned by the first defendant's mother. The first defendant had settled certain properties belonging to him in favour of her daughter/second defendant on 21.12.1994.



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7. After the death of the first defendant, the second defendant filed a written statement stating that the first defendant, while he was alive, executed a Will dated 19.07.1989 in favour of the second defendant, in respect of the properties owned by the first defendant and on the basis of the said Will, the second defendant has become the owner of the suit properties. Hence, the suit is liable to be dismissed.

8. On the basis of the above pleadings, the learned Trial Judge framed the following issues and additional issue for determination:

- 1) Whether the plaintiff is entitled to a share in the suit properties and if so, to what extent?
- 2) Whether the suit properties are ancestral/joint family properties as contended by the plaintiff?
- 3) Whether the Settlement Deed dated 21.12.1994 is true and valid and whether the same was executed by the first defendant out of his own free will and volition?
- 4) Whether the plaintiff is entitled to mesne profits?
- 5) Whether certain suit properties were purchased by the first defendant and his mother out of their independent income?



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6) Whether the plaintiff ought to have sought for cancellation of the Settlement Deed dated 21.12.1994?

7) Whether the extent of the suit properties was not shown correctly ?

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

9) Whether the Court fee paid under Section 37(2) of the Tamil Nadu Court Fees and Suits Valuation Act is proper?

10) To what other reliefs is the plaintiff entitled?

Additional Issue (framed on 23.02.2005):

Whether the Will dated 19.07.1989 was executed by the first defendant in favour of the second defendant in a sound and disposing state of mind and of his own free will?

9. During trial, the plaintiff examined himself as P.W.1 and examined two other witnesses Thiru.Ramasamy Nadar and Thiru.Shanmugam as P.W.2 and P.W.3 and exhibited 14 documents as Ex.P.1 to Ex.P.14. The second defendant examined her husband Thiru.Vijayaram and two other witnesses Thiru.Sivalingam and Thiru.Madakkannu Nadar as D.W.1 to D.W.3 and exhibited 18 documents as Ex.D.1 to Ex.D.18.



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10. The learned trial Judge, upon considering the pleadings and the evidence both oral and documentary and on hearing the arguments of both the sides, passed a preliminary decree, declaring that the plaintiff is entitled to get $\frac{3}{4}$ shares in items 2, 3 and 4 of first schedule; $\frac{1}{2}$ share in first item of first schedule, items 2 and 3 of second schedule, excluding 17 cents sold in favour of the defendants 7 and 8 and in third schedule excluding 10 cents allotted for road purposes and items 2 and 3 of 4th schedule of suit properties and dismissed the suit with respect to the other properties. A separate enquiry into the mesne profits was also ordered under Order 20 Rule 12 of C.P.C. Aggrieved by the said judgment and decree, the plaintiff filed an appeal in A.S.No.39 of 2010 and the learned Subordinate Judge, Ambasamudram, upon considering the materials available on record and on hearing the arguments of both the sides, has passed the impugned judgment, dated 26.06.2012, dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the plaintiff has preferred the present second appeal.

11. At the time of admission, the following substantial questions of law came to be formulated :



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“1. Whether the Courts below have erroneously held that the properties, mamely fifth and sixth items of the first schedule, first item of the second schedule and first item of fourth schedule were the absolute properties of the deceased-first defendent Ramalinga Nadar, even though the possession of joint family nucleus in the form of other items of all the four schedules has been admitted?

2. Whether the Courts below have committed an error in failing to raise a presumption that the acquisitions made by the kartha of the the family were acquisitions made by the joint family, when sufficient evidence has been adduced to show that the joint family owned vast extent of agricultural lands capable of yielding surplus income?”

12. Heard the learned Senior Counsel appearing for the appellant and the learned counsel appearing for the first respondent.

13. The plaintiff's specific case is that items 1 to 6 of first schedule of the suit properties are ancestral properties; that Lakshmi Ammal, the mother of the first defendant and the plaintiff's grandmother, had purchased the third and fourth schedule properties with the aid of income derived from the ancestral properties;



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that the first defendant had, with the aid of income derived from the ancestral properties, purchased the second schedule properties and that therefore, all the properties are the ancestral and joint family properties of the plaintiff and the first defendant and as such, he is entitled to get $\frac{1}{2}$ share in the entire properties.

14. As already pointed out, pending suit, since the first defendant/father died and consequently, the plaintiff amended the plaint claiming ownership over the entire suit properties or in the alternative, partition and allotment of 5/6 shares in the suit properties. At the time of arguments, the learned counsel appearing for the plaintiff would submit that the plaintiff's claim of entire properties is given up and that the plaintiff is now restricting his claim to partition and allotment of 5/6 shares in the suit properties.

15. No doubt, the defendants 1 and 2 have admitted that the items 2 and 3 of first schedule of properties are the ancestral properties; that the second and third schedule of properties were purchased by the first defendant's mother Lakshmi Ammal with her hard-earned income and as such, they were separate properties of the said Lakshmi Ammal; that the first defendant purchased the other suit properties from his hard-earned income and not with the aid of income allegedly derived from the ancestral properties and that after the death of his



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mother Lakshmi Ammal, he had been enjoying all the properties, except items 2 and 3 of first schedule of properties, as his separate properties. The learned trial Judge as well as the learned Ist Appellate Judge gave a finding that the items 2, 3 and 4 of the first schedule properties are the ancestral properties belonging to the family consisting of the plaintiff and the first defendant and on that basis, the plaintiff was allotted $\frac{3}{4}$ shares in the said properties.

16. Admittedly, the finding of the Courts below that the fourth item of the first schedule of suit properties is ancestral in character, was not at all challenged by the second defendant by way of any cross appeal or cross objections and as such, the said finding has attained finality. The Courts below, having held that the first item of first schedule, items 2 and 3 of second schedule, items 1 and 2 of third schedule, items 2 and 3 of fourth schedule are the separate properties of the first defendant, have allotted $\frac{1}{2}$ share therein, excluding the portion already sold or gifted. Regarding items 1 and 1A of second schedule, the Courts below have found that they are the separate properties of the first defendant and that pursuant to the settlement deeds executed by him under Ex.D.16 and Ex.D.18 in favour of the second defendant, the second defendant has become the absolute owner thereof and on that ground, dismissed the suit in respect of the said properties.



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17. The Courts below, having held that the plaintiff is not entitled to any share in items 5 and 6 of first schedule and item 1 of the fourth schedule properties, dismissed the suit in respect of those other properties.

18. As already pointed out, the main contention of the plaintiff is that the first defendant's mother as well as the first defendant had purchased the other schedule properties only with the aid of the income derived from the ancestral properties and that therefore, all the properties are liable to be treated as joint family properties.

19. Before proceeding further, it is necessary to consider the legal position with regard to the joint family properties. In Mulla's Hindu Law, 22nd Edition, Section 231 deals with presumption as to coparcenary and self-acquired property and the relevant passages are extracted hereunder :

“ 231. Presumption as to coparcenary and self-acquired property.- Where a suit is brought by a Hindu to recover property, alleging that it is his self-acquired property, and the defendant contends that it is joint family property, or where a suit is brought by a Hindu on partition of property, alleging that it is joint family



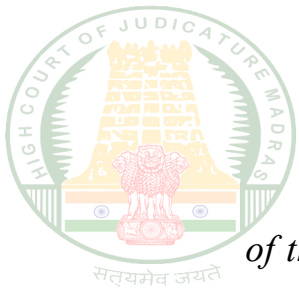
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property and the defendant contends that it is his self-acquired property, the question arises upon whom the burden of proof lies. The following are the leading rules on the subject:

(1) Presumption that a joint family continues joint. - Generally speaking, 'the normal state of every Hindu family is joint. Presumably every such family is joint in food, worship and estate. In the absence of proof of division, such is the legal presumption.

(2) No presumption that a joint family possesses joint property. There is no presumption that a family, because it is joint, possesses joint property or any property. When in a suit for partition, a party claims that any particular item of the property is joint family property, or when in a suit for a mortgage, a party contends that the property mortgaged is joint family property, the burden of proving it rests on the party asserting it.

Where it is established or admitted 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 presumption arises that it was joint property and the burden shifts to the party alleging self acquisition to establish affirmative, that the property was acquired without the aid



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of the joint family. However, no such presumption would arise, if the nucleus is such that with its help, the property claimed to be joint could not have been acquired. In order to give rise to the presumption, the nucleus must be such that with its help, the property claimed to be joint could have been acquired. A presumption that properties in the hands of individual coparcener is coparcenary property would arise only if family nucleus is proved. In the absence of proof of nucleus the members would only be co-sharers and on death, such property would devolve by inheritance, and not by survivorship."

It is thus an established concept, that the mere existence of a joint family cannot raise a presumption that such family owns property jointly. A person asserting existence of joint family property has to prove nucleus with which such property could be acquired. It is only then that such property could be presumed to be joint and the onus of proving self acquisition would shift to the person asserting as such. As stated, the initial burden of jointness having been discharged, the onus of asserting self acquisition would shift and it would have to be proved that the property claimed as a self acquisition was purchased without the aid of the joint family nucleus.



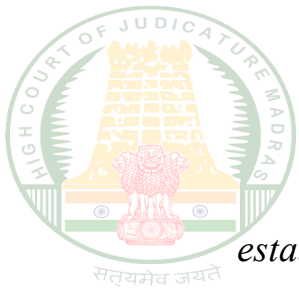
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Conversely, therefore, where the plaintiff failed to discharge the burden of proving that the property had been acquired out of joint family funds, and the defendant was able to prove separate earnings and other records were also in his name, the suit for partition was liable to be dismissed. Thus, when properties were proved to be self acquired properties, coupled with the fact that there was no evidence as regards joint family nucleus, such properties could be dealt with for disposition in any manner, as they were self acquired."

20. The learned counsel for the appellant/plaintiff would rely on a decision of Hon'ble Supreme Court in the case of **Shrinivas Krishnarao Kango vs Narayan Devji Kango And Others** reported in **AIR 1954 SC 379** and the relevant passage is extracted hereunder :

8. The law was thus stated in that case:

" The Hindu law upon this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to



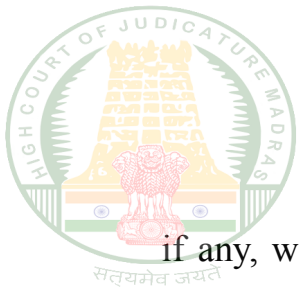
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establish affirmatively that the property was acquired without the aid of the joint family property.”

21. In view of the above, the legal position is well settled that the initial burden lies upon the party who asserts that a particular property is joint family property to establish that the family possessed some joint family property which, by its nature and relative value, could have constituted an adequate nucleus for the acquisition of the property in question. Proof of the existence of a joint family, by itself, would not give rise to any presumption that the properties standing in the name of any member of the family are joint family properties. Only upon establishing the existence of such nucleus, capable of generating sufficient income for the acquisition, would the burden shift to the party asserting self-acquisition to affirmatively prove that the property was acquired without the aid of the joint family nucleus.

22. In the present case, it is the specific contention of defendants 1 and 2 that items 2 and 3 of the first schedule properties are rocky in nature and not suitable for cultivation and that even otherwise, cultivation could not be carried out in more than 40 cents of the ancestral lands. According to them, there was no substantial income derived from the ancestral properties and the meagre income,



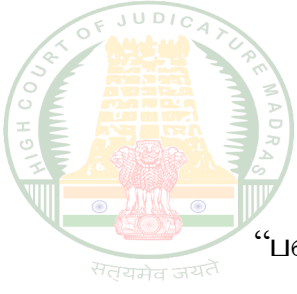
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if any, was not even sufficient to meet the family expenses and therefore, there was no surplus income available for the purchase of the other suit properties.

23. As rightly observed by the Courts below, the plaintiff has not produced any material evidence to establish that the ancestral lands were under cultivation and were yielding sufficient income and that, after meeting the family expenses, there existed any surplus income which could have been utilised by Lakshmi Ammal or subsequently by the first defendant for the acquisition of the other suit properties.

24. In the absence of any evidence to show that items 2 to 4 of the first schedule properties yielded surplus income, no presumption can be drawn that the other properties were acquired out of the income derived from the ancestral properties so as to treat them as joint family properties.

25. The defendants 1 and 2 have taken a specific stand that the first defendant was earning income by renting out bullock carts and by engaging in business in Palm jaggery and paddy. The plaintiff as P.W.1 even in his chief examination would admit ,



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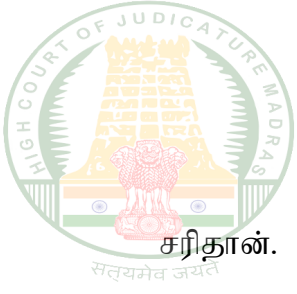
“பனைகளிலிருந்து பதநீர் எடுத்து காய்ச்சி கருப்பட்டி விற்று என் அப்பா வியாபாரம் செய்வார். அதனை வீட்டில் வைத்து விற்பனை செய்து வந்தோம். ஷை விவசாயம், கருப்பட்டி, ஆடு, கோழி வளர்த்தல் முலமும் வருமானம் வந்தது. அந்த வருமானங்களை என் தந்தை சேர்த்து வைத்து குடும்பத்திற்கு செலவு செய்தார். சேர்த்து வைத்த வருமானத்தை வைத்து பூர்வீகச் சொத்துக்களில் அபிவிருத்தி செய்தோம்.”

26. P.W.1 in cross examination would admit that his father was not having any bad habits; that he is a good person and that he would not sell any property, without any valid or proper reason and the relevant portion is extracted hereunder :

“என் தந்தைக்கு கெட்ட சகவாசம் கிடையாது. என் தந்தை யோக்கியமானவர்தான். என் தந்தை காரணம் இல்லாமல் சொத்தை விற்க மாட்டார்.”

P.W.1 in his further cross examination would admit

“பிராது 1ம் தபசில் 1ம் அயிட்டம் சொத்து என் தந்தை பெயரில் அவரால் சுயார்ஜிதமாக கிரையம் வாங்கப்பட்டது. பிராது 2ம் தபசில் 3ம் அயிட்டம் என் தந்தையால் சுயார்ஜிதமாக கிரையம் வாங்கப்பட்டது. பிராது 3ம் தபசில் 1ம் அயிட்டம் என் தந்தையால் சுயார்ஜிதமாக கிரையம் வாங்கப்பட்டது என்றால்



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சரிதான். என் தந்தை வெளியில் தனிப்பட்ட நபரிடமும் யாரிடமும் கடன் வாங்கவில்லை. ரைஸ் மில் கட்டுவதற்கு டிக்கில் கடன் வாங்கியுள்ளார். என் தந்தை ரைஸ் மில் கட்ட டிக்கில் வாங்கிய கடனுக்கு நான் ஜாமீன் போடவில்லை. என் தந்தை தனித்த முறையில் சொத்தை காட்டி டிக்கில் கடன்மீசினரி வாங்க/கடன் வாங்கியுள்ளார். என்னிடம் காண்பிக்கப்படும் ஆவணங்கள் என் தந்தை டிக்கில் லோன் வாங்கியதற்கு கொடுத்த ஆவணங்கள் தான் அவைகள் பி.வா.சா.ஆ.3 வரிசை. பி.வா.சா.ஆ.3 வரிசை ஆவணங்களில் என் தந்தை குடும்பத்தின் கர்த்தா மற்றும் மேனேஜர் என்ற முறையில் வாங்கியதாக துலங்காது.

27. P.W.2 in his evidence would admit that the first defendant is not having bad habits and he is a hard worker,

“ 1ம் பிரதிவாதிக்கு எந்தவிதமான கெட்ட பழக்கமும் இல்லை. 1ம் பிரதிவாதி கடுமையான உழைப்பாளி.

28. In view of the above evidence, the Courts below have rightly come to the conclusion that the first defendant had independent sources of income and that the same were utilised by him for the purchase of the other properties. Insofar as the third and fourth schedule properties are concerned, as already pointed out, they were purchased by the first defendant's mother, Lakshmi



Ammal. However, it is the contention of the plaintiff that the said properties were purchased by her with the aid of income derived from the ancestral properties.

But in cross examination, P.W.1 would admit,

“ என் பாட்டி லட்சுமியம்மாள் விவசாயத்தில் நல்ல உழைப்பாளி. அந்த அம்மாள் மெய்ப்பாடு செய்து வருமானம் உண்டு பண்ணினார்கள். என் பாட்டி ஆடு, மாடு வளர்த்து சம்பாத்தியம் செய்தார். பால் வியாபாரம் செய்து சம்பாதித்தார். அடகு பிடித்து அதில் வருமானம் எதுவும் செய்யவில்லை. என் பாட்டிக்கு சுய வருமானம் உண்டு என்றால் சரிதான். பிராது தபசில் சொத்துக்களில் என் பாட்டி தனியாக கிரையம் வாங்கிய சொத்துக்களையும் காட்டியுள்ளேன்.

பிராது தபசில் 4ம் அயிட்டத்தில் 2ம் அயிட்டமாக காட்டப்பட்டது என் பாட்டிக்கு வாரிசு முறையில் கிடைத்த சொத்தாகும். பிராது தபசில் 1ல் 4வது அயிட்டம் என் பாட்டி சுயார்ஜிதமாக கிரையம் வாங்கியது. பிராது 4ம் தபசில் 1ம் அயிட்டம் என் பாட்டிக்கு, பாட்டியின் தந்தையின் வாரிசு முறையில் கிடைத்த சொத்தாகும். பிராது 2ம் தபசில் 1ம் அயிட்டம் என் தந்தையின் தாயாருக்கு சுயார்ஜிதமாக பாத்தியப்பட்ட சொத்து என்றால் சரிதான். பிராது 2ம் தபசில் 2ம் அயிட்டச் சொத்து என் தந்தையின் தாயாரான லெட்சுமி அம்மாளுக்கு சுயார்ஜிதமாக பாத்தியப்பட்ட சொத்து என்றால் சரிதான். பிராது தபசில் 4ல் 3ம் அபிட்டச் சொத்து என் தந்தையின் தாயாருக்கு சுயார்ஜிதமாக பாத்தியப்பட்டது என்றால் சரிதான். என் பாட்டி லெட்சுமி அம்மாளுக்கு என் தந்தை தான் ஒரே வாரிசு என்று என் பாட்டி சொல்லித் தெரியும்.



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29. In view of the above, it is evident that the plaintiff himself has admitted that his grandmother, Lakshmi Ammal, had independent sources of income. In the absence of any evidence to show that she was deriving surplus income from the ancestral properties and in the light of the admission of the plaintiff that Lakshmi Ammal had separate income, the Courts below have rightly come to the conclusion that the third and fourth schedule properties were purchased by Lakshmi Ammal out of her own independent earnings and not with the aid of any income derived from the ancestral properties.

30. As already pointed out, items 1 and 1A of second schedule are the separate properties of the first defendant, in respect of which, he had obtained loan from District Industrial Centre and constructed a rice mill. It is the specific case of the defendants 1 and 2 that the first defendant had executed two settlement deeds under Ex.D.16 and Ex.D.18 settling the suit properties in favour of the second defendant in respect of the said properties. In order to prove the execution of said settlement deeds, the second defendant summoned and examined Thiru.Sivlingam as D.W.2, who is one of the attestors to the said settlement deeds. D.W.2 has spoken about the execution of Ex.D.16 and Ex.D.18 settlement deeds.



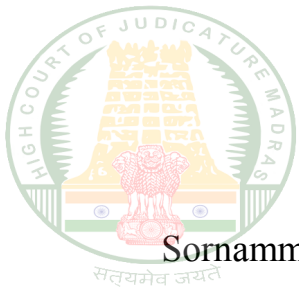
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31. The learned trial Judge, upon accepting the settlement deeds and the evidence of D.W.2, has rightly held that the said properties are owned by the second defendant and as such, the plaintiff is not entitled to claim any share therein.

32. Insofar as item 5 of the first schedule property is concerned, admittedly, neither party has produced any document to establish that the said property was owned by the first defendant. Though the plaintiff, in his evidence, has stated that the said property was inherited by his mother, he has not elaborated the same with any supporting material. The learned Trial Judge, by observing that there is no evidence to show as to who originally owned the said property and as to how it came into the possession of the first defendant, has rightly held that the plaintiff is not entitled to any share therein.

33. In respect of item 6 of the first schedule property, no document has been produced in relation to the land in S.No.459/4. However, the lands in S.Nos. 459/2 and 459/3 were sold by the first defendant under the sale deed dated 20.06.1989 marked as Ex.P.9 in favour of the fourth defendant. It is pertinent to note that the said sale deed was executed by the first defendant along with



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Sornammal, Gurusamy and Sakthivel and it is recited therein that the sale consideration was received for meeting family expenses and for discharging family debts. The learned Trial Judge, observing that Ex.P.9 does not disclose the share of the first defendant or any prior partition between the executants, and that the property was sold without partition, has rightly held that the plaintiff is not entitled to claim any share in the said property.

34. Regarding the 1st item of fourth schedule, the said property was sold by the first defendant in favour of third defendant vide sale deed, dated 09.02.1989 under Ex.P.8. Since the said property was the separate property of the first defendant, the alienation made by him in favour of the third defendant cannot be questioned by the plaintiff and on that ground, the Courts below have held that the plaintiff is not entitled to claim any share therein.

35. At this juncture, it is necessary to refer the mandate of Hon'ble Supreme Court for High Courts in deciding the second appeal under Section 100 of the Civil Procedure Code, given in the case of ***Gurnam Singh (dead) by LRs., and others Vs. Lehna Singh (dead) by LRs.***, reported in ***AIR 2019 SC 1441***, that the jurisdiction of the High Court in an appeal under Section 100 of the Code of Civil Procedure is strictly confined to the case involving substantial question of law and the relevant passage is extracted hereunder:



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“18. Before parting with the present judgment, we remind the High Courts that the jurisdiction of the High Court, in an appeal under Section 100 of the CPC, is strictly confined to the case involving substantial question of law and while deciding the second appeal under Section 100 of the CPC, it is not permissible for the High Court to re-appreciate the evidence on record and interfere with the findings recorded by the Courts below and/or the First Appellate Court and if the First Appellate Court has exercised its discretion in a judicial manner, its decision cannot be recorded as suffering from an error either of law or of procedure requiring interference in Second Appeal. We have noticed and even as repeatedly observed by this Court and even in the case of Narayanan Rajendran v. Lekshmy Sarojini, (2009) 5 SCC 264, despite the catena of decisions of this Court and even the mandate under Section 100 of the CPC, the High Courts under Section 100 CPC are disturbing the concurrent findings of facts and/or even the findings recorded by the First Appellate Court, either without formulating the substantial question of law or on framing erroneous substantial question of law.”

36. In the case on hand, as already pointed out, the trial Court as well as the First Appellate Court, upon appreciation and re-appreciation of the evidence available on record, have rightly come to the conclusion that the plaintiff is entitled to $\frac{3}{4}$ share in items 2 to 4 of the first schedule properties on the ground



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that they are ancestral in nature and that the plaintiff is entitled to $\frac{1}{2}$ share in the first item of first schedule, items 2 and 3 of second schedule, items 1 and 2 of third schedule and items 2 and 3 of fourth schedule on the ground that they are separate properties of the first defendant and he died intestate in respect of the said properties.

37. Moreover, the Courts below, have held that first item of second schedule is the separate properties of the first defendant and that in view of the execution of the settlement deeds under Ex.P.16 and Ex.P18 in favour of second defendant, she has become the absolute thereof and on that basis, rejected the plaintiff's claim for any share in the said property.

38. It is pertinent to mention that the appellant has not shown that the material evidence available in the case had been ignored by the first appellate Court or that there was no evidence at all. It is not his case that any wrong inference had been drawn by the first appellate Court from the proved facts by applying the law erroneously. Hence, the concurrent findings of the Courts below cannot be found fault with. Accordingly, the substantial questions of law are answered against the appellant. Consequently, this Court concludes that the second appeal is liable to be dismissed. In the other facts and circumstances of the case, the parties are directed to bear their own costs.



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39. In the result, the Second Appeal is dismissed, confirming the concurrent judgments and decrees passed by the learned Principal District Munsif, Ambasamudram in O.S.No.45 of 2004 and by the learned Subordinate Judge, Ambasamudram in A.S.No.39 of 2010. The parties shall bear their own costs.

19.02.2026

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

To:

- 1.The Principal District Munsif Court,
Ambasamudram.
2. Sub Court, Ambasamudram.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

DAS

Pre-delivery Judgment made in
S.A.(MD).No.297 of 2015

Dated: 19.02.2026