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OSA No. 256 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON  
10.02.2026

PRONOUNCED ON  
13.03.2026

CORAM

**THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN**

**AND**

**THE HON'BLE MR.JUSTICE K.KUMARESH BABU**

**OSA No. 256 of 2021**  
**and C.M.P.Nos.12888 of 2022**  
**& 20248 of 2021**

C.Nirmal Prasad  
No.14/16, 1st Floor, Sarojini St, T.Nagar,  
Chennai - 600 017

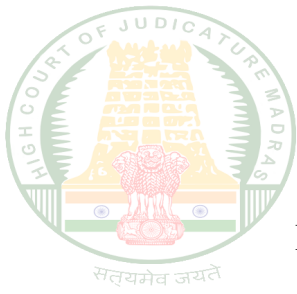
..Appellant(s)

Vs

1. C.Ananda Acharyulu(deceased)  
1. C.Ravi Prasad, No.14/1, Sarojini St, T.Nagar,  
Chennai - 600 017
2. C.Sridhar Prasad  
14/1, First Floor, Sarojini St, T.Nagar ,  
Chennai - 600 017
3. V.Subbarayalu  
New No.47, New Boag Road, T.Nagar  
Chennai - 600 017

..Respondent(s)

**PRAYER:-** Appeal filed under Order XXXVI Rule 1 of the Original Side Rules r/w. Clause 15 of the Letters Patent to set aside the judgment and decree passed in CS.No.843/2009 dated 22/07/2020 on the file of the Honble High court, Madras and pass such further orders.



For Appellant(s): Mr.V.Manohar

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For Respondent(s): M/s.I.bobby Portia for R1

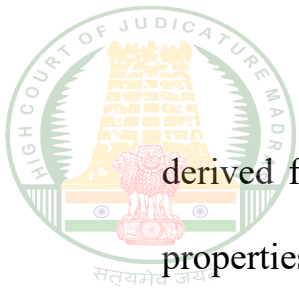
Mr.Ashok Rajaraamen  
for Ms.C.Deivasigamani for R2

### **JUDGMENT**

**(Judgment of the Court was delivered by K.Kumaresh Babu J.)**

This Original Suit Appeal has been preferred by the second defendant challenging the judgment and decree dated 22.07.2020 passed in C.S. No.843 of 2009, whereby the learned Single Judge decreed the suit for partition and dismissed the counter-claim with respect to item No.3 of the suit schedule properties and rejection of counter claim. For the sake of convenience, the parties are referred to in accordance with their rank before the trial Court.

2) The brief facts leading to the appeal are as follows. The first plaintiff, who died pending the suit, was the father of the second plaintiff and the defendants 1 and 2. The third defendant is the brother-in-law of the second defendant. His legal representatives have been brought on record. The plaintiffs and the defendants were engaged in a goldsmith business. The case of the plaintiffs was that the suit schedule properties were acquired out of the income



derived from the joint family business and, therefore, constituted joint family properties. On that premise, the suit was instituted seeking partition and separate possession of 1/3rd share for the second plaintiff. The second defendant resisted the claim contending that the suit properties were not joint family properties and that certain items were acquired in his individual capacity. He also raised a counter-claim seeking reimbursement of a sum of Rs.26,80,390/-, which, according to him, was paid to discharge a loan secured over the properties.

3) On the basis of the pleadings, the learned Single Judge framed the following issues,

- a) Whether the plaintiff is entitled for 1/3<sup>rd</sup> share in the suit schedule properties?
- b) Whether the cancellation deed dated 23.11.2009 executed by the father of the parties is true and legally valid?
- c) Whether the third item of the property is the individual property of the second defendant?
- d) Whether the second defendant is entitled to recover a sum of Rs.26,80,390/- towards the claim of reimbursement for the payment made by the second defendant to clear the loan on the property?
- e) Whether the settlement deed dated 23.11.2009 on the file of the Sub



Registrar is true and valid?

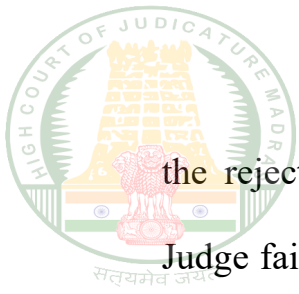
f) Whether the fourth item of the property is not available for partition?

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4) Upon appreciation of the oral and documentary evidence, the learned Single Judge passed a preliminary decree declaring that Items 1, 2, 3 and 5 of the suit schedule properties be divided into three equal shares, allotting one such share each to the second plaintiff and defendants 1 and 2. In respect of Item 4, 3/10th share was directed to be divided into three equal parts and allotted in similar proportion. The counter-claim of the second defendant was dismissed. Aggrieved with the judgment in respect of grant of partition in respect of Item No.3 of the suit schedule properties and the rejection of the counter claim made by the second defendant, the present appeal has been filed by the second defendant along with an application to accept the additional documents on the file to consider the counter claim.

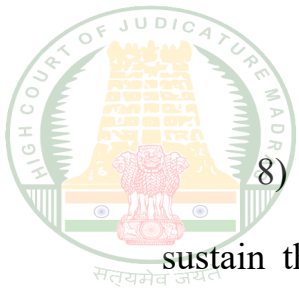
5) Heard Mr. V. Manohar, learned counsel for the appellant; Mr. I. Bobby Portia, learned counsel for the first respondent; and Mr. Ashok Rajaraaman, learned counsel appearing for the second respondent.

6) The learned counsel for the appellant assailed the judgment in respect of grant of partition in respect of Item No.3 of the suit schedule properties and



the rejection of the counter claim. It was contended that the learned Single Judge failed to properly appreciate the evidence and misconstrued the nature of the property. According to the appellant, Item No.3 was purchased in his individual capacity and had no nexus with the alleged joint family business. It was further submitted that the father of the parties had settled certain properties in favour of the parties by way of settlement deed dated 23.11.2009, and the implications of the said settlement was not properly considered.

7) The appellant further contended that the learned Single Judge proceeded to decree partition merely on the basis of the relationship between the parties without examining the contribution made by each member towards acquisition of the properties. With regard to the counter-claim, it was submitted that the second defendant had discharged the loan liability to the extent of Rs.26,80,390/- in order to prevent proceedings under the SARFAESI Act and that such payment enured to the benefit of all co-owners. It was argued that the said fact was not effectively disputed and that the learned Single Judge erred in rejecting the counter-claim on the ground of lack of pleading and proof. He further submits that in order to prove his case, the appellant has filed an application to accept the additional documents to make out a case for counter claim. Hence, he prays to accept the additional documents and allow the appeal.



8) Per contra, the learned counsel for the first respondent sought to sustain the judgment of the learned Single Judge. It was submitted that the appellant failed to establish his exclusive ownership over Item No.3. In cross-examination, the appellant/second defendant admitted that he purchased the property in 2004 but was unable to state the extent of the property and failed to produce the sale deed in his favour. It was contended that the burden of proof lay upon the person asserting exclusive ownership, and in the absence of documentary evidence, the claim of individual acquisition could not be accepted.

9) It was further contended that the administration of the joint family funds was admittedly handled by the appellant, and in the absence of proof of independent income or separate acquisition, the learned Single Judge has rightly held that Item No.3 was purchased out of joint family funds. As regards the counter-claim, it was contended that the pleadings and evidence were insufficient to substantiate the claim for reimbursement and that no error had been committed in rejecting the same. The learned counsel for the respondent further submitted that the existence of a loan or erection of a tower over Item No.1 would not operate as an impediment to partition and that no valid ground had been made out warranting interference with the well-reasoned judgment of the learned Single Judge. He further submits that the appellant has not taken any

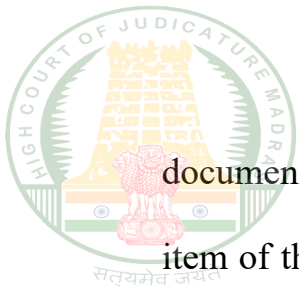


steps to file the additional documents before the learned Single Judge even after the first respondent filed the written statement for his counter-claim. He further submits that an application to consider the additional documents at the appellate stage that too without any reason whatsoever and as to why the same was failed to be presented at the first instance, is merely a rush to dislodge the finding of the learned Single Judge. Hence, he prays to dismiss the petition and appeal.

10) The learned counsel for the second respondent also stood with the contention of the learned counsel for the first respondent and submitted that the learned Single Judge rightly decreed the suit for partition.

11) We have considered the rival submissions and perused the materials available on record.

12) Before dealing with the main issue on hand, it is pertinent to consider the petition filed to permit the appellant herein to produce the schedule mentioned documents as part of the records of the case to consider the same along with facts stated in O.S.No.256 of 2021, firstly, after filing the Written statement and counter claim, the appellant has not taken any steps to file any



document to substantiate the fact that he paid the loan which was availed for 2<sup>nd</sup> item of the suit schedule property, though it was rebutted in the reply statement of the plaintiffs. Further the appellant had also not substantiated by any documents for which the loan was availed. Secondly, the learned Single Judge rejected the counter claim for want of evidence. Thirdly, as per Order XLI Rule 27 of CPC, in general, the additional evidence cannot be produced in the Appellate Court unless, the Court permits the same in certain circumstances. For better understanding, the provision is extracted hereunder,

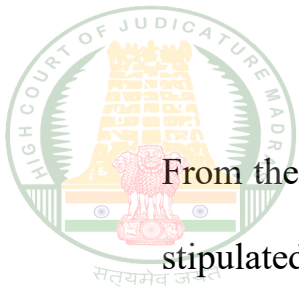
*“... 27. Production of additional evidence in Appellate Court.- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-*

*(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or*

*(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or*

*(b) the Appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,*

*the Appellate court may allow such evidence or document to be produced, or witness to be examined...”*



From the above observation, it is clear that in the petition, the appellant has not stipulated the reason for non-production of additional documents at the first instance. Hence, this court abstains itself to consider the said petition at this stage.

13) Upon such consideration, the following points arise for determination:

*1. Whether Item No.3 of the suit schedule property is the self-acquired property of the appellant or forms part of the joint family properties liable for partition?*

*2. Whether the appellant is entitled to the counter-claim for recovery of Rs.26,80,390/- allegedly paid towards discharge of the loan, together with interest?*

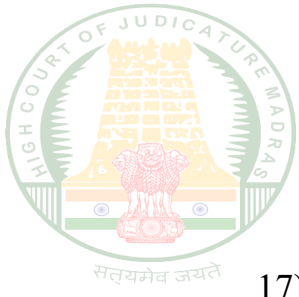
14) There is no dispute regarding the relationship between the parties. The controversy is confined to the character of Item No.3 of the suit schedule properties and the counter-claim.

15) The burden of establishing that Item No.3 is self-acquired squarely rests upon the appellant. Except for a bare assertion in the written statement and oral deposition, no documentary evidence was produced. Though it was



contended that consideration was contributed by the third defendant, no material was placed to substantiate the same. On the contrary, the evidence indicates that the appellant was managing the joint family business and its finances. When the existence of joint family business and nucleus is not in dispute, and acquisition is made during its subsistence by the managing member, the only presumption that could be arrived at is that the property was purchased out of joint family funds. Unless the same is rebutted by cogent evidence of independent income and in the present case, such rebuttal is absent. The finding of the learned Single Judge that Item No.3 forms part of the joint family property does not suffer from perversity or mis-appreciation of evidence.

16) With respect to the counter-claim, though the appellant asserts that he discharged the loan liability, the evidence does not establish that the entire amount was paid exclusively by him under a legally enforceable arrangement entitling him to reimbursement. The learned Single Judge has noted that the loan amount was admitted to have been paid by all three sons, and no conclusive proof was produced to show that the entire burden was borne solely by the second defendant. Mere assertion of payment, without clear documentary substantiation and proof of corresponding liability of the other co-sharers, is insufficient to sustain a money decree in a partition suit. Though, the appellant produced the receipt issued by Standard Chartered Bank, Chennai-1 showing the statement of loan closure



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17) The findings of the learned Single Judge are based on proper appreciation of evidence and settled principles governing joint family property and burden of proof. No perversity, illegality or material irregularity warranting interference in appeal has been demonstrated.

18) Accordingly, this Court finds no merit in the appeal. The judgment and preliminary decree passed by the learned Single Judge are confirmed. C.M.P.No.20248 of 2021 stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

**(C.V.K.,J.) (K.B.,J.)**  
**13.03.2026**

Index: Yes/No  
Speaking/Non-speaking order  
Neutral Citation: Yes/No

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OSA No. 256 of 2



**C.V.KARTHIKEYAN, J.  
AND  
K.KUMARESH BABU, J.**

**GBA**

A Pre-Delivery order made in  
**OSA No. 256 of 2021**

**13.03.2026**