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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.11.2025

Pronounced on : 22.01.2026

CORAM:

THE HON'BLE MR.JUSTICE **V.LAKSHMINARAYANAN**

S.A.No.119 of 1999

1.Radhakrishnan @ Krishnamurthy Naidu (Died)

2.Kannaian

3.Kothandaraman (Died)

4.Seetharaman (Died)

5.K.L.Nararyanan

6.Rajakumari

7.Bharathi

8.Venugopal

9.R.Kumar

10.R.Dheenan ... Appellants

(A3 Died, A5 & R5 to R7 brought on record as Lrs of the deceased A3 vide court order dated 24.01.2023 made in CMP.No.5876 of 2020, 16701 & 16704 of 2022 in SA.No.119 of 1999)
(A1 Died, A9 & A10 brought on record as Lrs of the deceased A1 vide court order dated 24.01.2023 made in CMP.Nos.10572, 10576 & 10577 of 2022 in CMP.No.20626 of 2018 in S.A.No.119 of 1999)
(A4 Died. A6 to A8 brought on records as LRS of the deceased A4 vide court order dated made in CMP.No. In S.A.No.119 of 1999)

Vs.

1.Pandurangan

2.Purushothaman

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3.S.Rani
4.Mallika
5.Ananth
6.Bharath Bhushan ... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the judgement and decree of the learned District Judge, Villupuram District dated 28.07.1998 passed in A.S.No.90 of 1997 and against the judgment and decree of the learned Subordinate Judge, Dindivanam dated 31.01.1997 passed in O.S.No.7 of 1999.

For Appellants	: Mr.A.R.Sakthivel
For Respondents 1, 3 & 4	: Mr.Ruban Chakravathy, for Mr.S.Kaithamalai Kumaran
For Respondents 5 to 6	: Not ready in notice

JUDGMENT

The plaintiffs challenge the judgment and decree of the learned District Judge, Villipuram in A.S.No.90 of 1997 date to 28.07.1998 in confirming the judgment and decree of the learned Subordinate Judge at Tindivanam in O.S.No.7 of 1989 dated 31.01.1997.

2. For the sake of convenience, the parties will be referred to as per their ranks in the suit.

3. O.S.No.7 of 1989 is a suit for partition and separate possession. The suit schedule mentioned properties have been earmarked

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as 'A' schedule and 'B' schedule. Insofar as 'A' schedule properties are concerned, there is no dispute. The trial court decreed the suit declaring 29/49th share in 'A' schedule mentioned property and passed preliminary decree. It dismissed the suit with respect to 'B' schedule mentioned property. The defendants did not prefer an appeal, insofar as the first part of the trial court decree is concerned. It was only the plaintiffs, who had preferred an appeal, aggrieved by the dismissal of the suit with respect to 'B' schedule. The appellate court agreed with the judgment and decree of the trial court with respect to 'B' schedule. Hence, this second appeal.

4. The plaintiffs 1 to 4, defendants 2 to 4 are the children of the first defendant, Raju Naidu and Alamelu Ammal. The fifth defendant is the wife of the second defendant and the daughter-in-law of the said Raja Naidu and Alamelu Ammal.

5. For ready reference, the admitted genealogy is setforth hereunder:

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Raju Naidu – Alamelu Ammal
(D1)

Kannian (P2)		Seetharaman (P4)		Purushothaman (D2)		
Radhakrishnan (P1)	Kothandaraman (P3)		Pandurangan D1)			Rani (D3)
			(Wife)			
			Mallika (D5)			

6. The case of the plaintiffs is that 'A' schedule mentioned properties are joint family properties. Items 1 to 3 and 7 are the properties purchased by Raju Naidu in the name of his wife, Alamelu Ammal. Similarly, items 4, 5 and 6 are also properties, which belonged to the joint family. According to them, the plaintiffs had left their native village and had gone elsewhere for the purpose of their avocation. They sent monies to Raju Naidu, who was residing in the native place along with one son. The properties specified in the 'B' schedule were purchased by Raju Naidu, from and out of the funds, available in the joint family pooling it with the contributions of the plaintiffs. Raju Naidu did not have any independent right over the property nor did Alamelu Ammal. Alamelu Ammal settled the property in favour of the plaintiffs' sibling, Rani.

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7. As Alamelu Ammal herself did not have right, the execution of the settlement deed does not bind the plaintiffs. Similarly Raja Naidu had sold the properties covered in items 4, 5 and 6 in favour of Mallika, his daughter-in-law. As Raju Naidu did not have any right over the property, the alienation will not bind the plaintiffs. The plaintiffs further pleaded that whatever debts that had been incurred by the father, viz., the first defendant had been repaid and the property was debt free. As amicable partition was not possible, they came forth with the present suit for partition.

8. Pending the suit, Raju Naidu passed away. As his legal heirs were already on record, no further action had to be initiated nor was initiated. The siblings of the plaintiffs, Pandurangan and Purushothaman were served with summons, but remained exparte. The sister of the plaintiffs, 4th defendant, on being served with summons, filed a written statement and with the permission of the court, she also filed an additional written statement.

9. The fourth defendant stated that she alone maintained her father, Raju Naidu, till he passed away. He lived with her for nearly 15 years. She denied that A and B schedule mentioned properties were purchased out of the income from ancestral properties of the first defendant as well as from the joint labour and exertion of the plaintiffs

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and defendants 1, 2 and 3. She pleaded that the first plaintiff migrated to his father-in-law's house 45 years earlier to the presentation of the plaint. Similarly, the second plaintiff, Kannaian also migrated to Chennai and was indulging in vegetable vending business. She added that the third plaintiff Kothadaraman is also settled in Chennai. With the funds that the first defendant had given, the said Kothandaraman commenced a printing press business. She pleaded that the third defendant secured employment in Chennai and had settled therein along with his family. She alleged that the earnings of the plaintiffs and the third defendant were barely sufficient to meet the expenses of their family and therefore, there was no excess available with them, for funding the purchase of suit schedule properties.

10. The fourth defendant further pleaded that her father was unable to maintain the family and therefore, he sold the property situated in Survey No.35/7 together tamarind trees for legal necessity and for family benefit. She asserted that their mother, Alamelu Ammal had purchased the suit properties, from and out her own income and funds. She pleaded that as the properties were Alamelu Ammal's properties, she is entitled to alienate the same. She denied the allegation that the first defendant was residing with the second defendant and that, the first defendant had executed a sham and nominal document in her favour.

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11. Putting up a defence for the fifth defendant, she stated that the first defendant was heavily indebted and had no funds to repay the same. Therefore, he sold the items 4 to 7 to the fifth defendant under a registered sale deed dated 12.01.1977 for a sum of Rs.760/- and put her in possession of the same. As the sale had been made for family necessity and to discharge the antecedent debts, the sale is valid and binding on the plaintiffs.

12. Insofar as the items 1 to 3 and 7 of 'B' schedule are concerned, she pleaded that the purchase was made by Alamelu Ammal from and out of her own funds. She added Alamelu Ammal's parents had left for Malaysia, leaving their properties to her. From and out of the enjoyment of those properties left behind by her parents, she had sufficient income. Added to this, her parents send money from abroad and hence, Alamelu Ammal had purchased items 1 to 3 and 7 from her income.

13. The fourth defendant added that Alamelu Ammal always treated the properties purchased by her as her separate properties and never clubbed with, or threw them into, the common hotchpotch of the family. She stated that the plea of the plaintiffs that they have prescribed title by adverse possession is false. She pointed out that after she had secured the property by way of a settlement deed. As the owner of the

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property, she mortgaged items 1 and 7 to one Agilandam on 14.05.1979. Subsequently, she discharged the mortgaged on 05.08.1988. Yet again, she mortgaged items 1, 2 and 7 to the said Agilandam and had also delivered possession of the same. On the date of presentation of the plaint, she submitted that Agilandam was in possession and enjoyment. However, she is the owner of the properties 1 to 3 and 7. She alleged that the plaintiffs are colluded together to grab her property and that, the male children of Raju Naidu had abandoned him and it fell on her to maintain her father. She also pleaded that the suit is bad for partial partition and that, there is no cause of action for the suit.

14. The fifth defendant entered appearance and filed a written statement in respect to items 4, 5 and 6 of the 'B' schedule. She pleaded that items 1 to 3 and 7 belonged to Alamelu Ammal, her mother-in-law, and she alone was the owner of the same. She stated that her father-in-law, Raju Naidu was always with the fourth defendant and she alone maintained him. She denied the allegation that the first defendant had fabricated the sale deed and sold items 4, 5, and 6 to her. She also pleaded that the first defendant was heavily inducted and could not raise money to meet the expenses of cultivation. Therefore, he decided to sale the property. Instead of alienating it to a third party, he offered to sell the property to his sons, viz., the plaintiffs and the defendants 2 and 3. He made this offer by way of a notice dated 07.11.1975. Despite this notice,

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as none of the sons came forward to discharge the loans or to purchase the property, the fifth defendant had taken the assistance of her parents and along with the funds that she already had, got the registered sale deed for item 4, 5 and 6. The sale deed was for valuable consideration of Rs.760/- and it was executed and registered on 12.01.1977. She pleaded that she alone was in possession and enjoyment of the same and that she had mutated the revenue records for the properties in her favour.

15. The fifth defendant denied that the second defendant made the first defendant execute the deed fraudulently. Finally, she pleaded that the sale deed dated 12.01.1977 being one effected to discharge the antecedent debt of the first defendant and for family necessity, it is binding on the plaintiffs. She raised a plea that as the plaintiffs and the defendants 1 to 3 were not in possession of the items in the B schedule mentioned properties, the suit ought to have been valued under section 37(1) of the Tamil Nadu Court Fees and Suit Valuation Act and hence, proper court fee had not been paid. Consequently, she sought for dismissal of the suit.

16. The fourth defendant with the permission of the court filed an additional written statement. She pleaded that Alamelu Ammal had purchased item 2 of the B schedule property by way of a registered sale deed from one, Pattammal on 30.05.1945 for a sum of Rs.50/-. Similarly,

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she purchased a portion of item 3 for a sum of Rs.15/- from one Nallan. This sale, too, was registered on 29.09.1952. The remaining portion of item 3 was purchased on 24.06.1959. Alamelu Ammal purchased items 1 and 7 on 23.11.1953 from one Sundaram for a valid sale consideration of Rs.300/-.

17. The fourth defendant further pleaded that as she was the only daughter of Raju Naidu and Alamelu Ammal, Alamelu Ammal, out of love and affection towards her, executed a registered settlement deed on 29.12.1956 and had put her in possession of the same. She pleaded that the settlement deed was accepted and acted upon, and the revenue records were also mutated in her favour. On these grounds, she sought for dismissal of the suit with costs.

18. With the pleadings have been completed, the learned Trial Judge framed the following issues:

"1. வழக்கு 'எ' மற்றும் 'பி' ஷெட்யூல் சொத்துக்கள் அனைத்தும் வாதிகள் மற்றும் 1ம் பிரதிவாதிக்குரிய கூட்டுக்குடும்பச்சொத்துக்கள் என்று கூறுவது சரிதானா?

2. வழக்கு 'பி' அட்டவணையில் 1 முதல் 3 மற்றும் 7வது பிரிவு சொத்துக்கள் வாதிகள் மற்றும் பிரதிவாதிகளுக்கு சொந்தமாகிவிட்டதென்று கூறுவது சரிதானா?

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3. இவ்வழக்கை தாக்கல் செய்ய வாதிகளுக்கு மூலகாரணமே இல்லை என்று கூறுவது சரிதானா?

4. வழக்கு 'பி' அட்டவணைச்சொத்து பிரிவு, 4 முதல் 5ம் பிரதிவாதிக்குச் சொந்தமானது என்று கூறுவது சரிதானா?

5. இவ்வழக்கில் செலுத்தியிருக்கும் நீதிமன்றக் கட்டணம் சரியில்லை என்று கூறுவது சரிதானா?

6. வாதிகளுக்கு ஏற்படும் இதர அனுகூலங்கள் ஏதேனும் உண்டா?"

19. On 09.08.1994, the issues were re-framed as follows:

"1. 29.12.76 நாளிட்ட செட்டில்மெண்ட் உண்மையானதும், மற்றும் செல்லத்தக்கதா?

2. வழக்கு 'பி' அட்டவணையில் 1 முதல் 3 மற்றும் 7வது அயிட்டச் சொத்துக்கள் 4ம் பிரதிவாதிக்கு சொந்தமாகிவிட்டது என்று கூறுவது சரிதானா?

3. வழக்கு 'பி' அட்டவணையில் உள்ள 4, 5 மற்றும் 6வது அயிட்டச் சொத்துக்கள் 5ம் பிரதிவாதிக்கு சொந்தம் என்று கூறுவது சரிதானா?

4. இவ்வழக்கை தாக்கல் செய்ய வாதிகளுக்கு மூலகாரணமே இல்லை என்று கூறுவது சரிதானா?

5. வழக்கில் சொத்திலிருக்கும் நீதிமன்றக் கட்டணம் சரியானதா?

6. வாதிகளுக்கு ஏற்படும் இதர அனுகூலங்கள் ஏதேனும் உண்டா?"

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20. On the side of the plaintiffs, the third plaintiff, Kothandaraman examined himself as PW1 and one, Kuppusamy as PW2. Ex.A1 to Ex.A17 were marked on the side of the plaintiffs. During the course of cross examination of PW1, Ex.B1 was marked. The defendants 4 and 5 were examined as DW1 and DW3 and one Duraikannu was examined as DW2.

21. As pointed out in the earlier portion of the judgment, the learned trial judge decreed the suit, insofar as 'A' schedule mentioned property is concerned and dismissed the suit insofar as 'B' schedule mentioned property. The learned Trial Judge concluded as follows:

(i) Alamelu Ammal is the owner of the properties in items 1 to 3 and 7;

(ii) The settlement deed executed by Alamelu Ammal in favour of Rani is true and genuine;

(iii) Raju Naidu was deeply indebted;

(iv) Raju Naidu had executed a sale deed for valid sale consideration of Rs.760/- in favour of his daughter-in-law, Mallika-the fifth defendant;

(v) The sale having been made to discharge the debt, the same is binding on the plaintiffs.

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22. The plaintiffs carried the matter on appeal before the learned District Judge at Villupuram. The learned District Judge, Villupuram received the appeal as A.S.No.90 of 1997. The plaintiffs pleaded that Alamelu Ammal had no source to acquire the property under Ex.A5 to Ex.A8 and hence, the trial court should have concluded that the properties are joint family properties. They pleaded that the Prohibition of Benami Property Transactions Act is applicable to the facts of the case and hence, the trial court should have concluded that the purchase in favour of Alamelu Ammal was not with an intention to confer title on her. They relied upon the cross examination of DW1 to show that their sister, Rani did not have any idea about the properties or the income of their maternal grandparents. They pleaded that the settlement deed was executed under undue influence, and had not been accepted and acted upon. In contradiction, they also urged that the father, Raju Naidu had attested the document, as he was biased, against his sons and was acting against their interest. Insofar as the revenue records are concerned, they pleaded that it is only a mutation proceeding and consequently, do not confer title.

23. The learned First Appellate Judge, after detailed analysis of the evidence, agreed with the learned Trial Judge and dismissed the appeal. Hence, the second appeal.

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24. This court took the appeal on file and framed the following substantial questions of law:

> *"1. Are the provisions of the Benami Transactions Prohibitions Act applicable to a joint family?*
>
> *2. In a suit for partition of co-parcenary assets, is not onus of proof shifted on the co-parcener who sets up such plea?"*

25. I heard Mr.A.R.Sakthivel, in support of the appeal and Mr.Ruban Chakravarthy for Mr.S.Kaithamalai Kumaran for the respondents 1, 3 & 4.

26. Mr.A.R.Sakthivel urged that the parties had admitted the existence of the joint family, with the first defendant, Raju Naidu, as its karta. In such an event, the provisions of Prohibition of Benami Property Transactions Act, 1988 is not applicable. He added that in matters relating to Hindu Joint Family, there is a presumption that all the properties purchased by the joint family and its members are joint family properties and that, even if it is not thrown in the common hotchpotch, it has to be treated only as a coparcenary asset. He argued that the burden of proof is on the defendants to show that the properties are not coparcenary assets and the defendants had not displaced this burden of proof. Consequently, he sought for the appeal to be allowed and the

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judgment and decree of the courts below to be set aside and for preliminary decree for partition with respect to 'B' schedule mentioned properties also.

27. Per contra Mr.Ruban Chakravarthy appearing for both the daughter as well as the daughter-in-law argues as follows:

(i) The defendants have shown that Alamelu Ammal had sufficient funds to purchase the property and therefore, the question of property being a joint family property does not arise.

(ii) Raju Naidu was heavily inducted as is clear from Ex.B1 and has reached out to the sons and since he did not receive any response from them, he was constrained to sell the properties covered under items 4, 5, and 6 in favour of the fifth defendant, Mallika and hence, it is binding on the parties.

(iii) The courts below have analysed the issues in-depth and had rightly dismissed the suit, insofar as 'B' schedule mentioned property is concerned. He states that no interference is necessary and sought for dismissal of the appeal with costs.

28. I heard the parties. I have gone through the records. I have applied my mind to the facts of the case and the law applicable.

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29. I shall divide this judgment in two portions. The first portion of the judgment being with items 1 to 3 and 7 and the latter portion with items 4 to 6.

I - Portion

30. The analysis of Prohibition of Benami Property Transactions Act, 1988 shows that it explicitly excludes joint family properties from its operation. It notably excludes the properties held by coparceners in an Hindu Undivided Family, as the possession of one coparcener, is the possession of the other and it is held for the benefit of the family. On the same lines, the properties held in fiduciary capacity for the benefit of others are also excluded.

31. The primary object of the Act is to prohibit benami transactions. Benami transaction means a property is transferred to one person but paid for by another. The intention for such a transaction is to concede true ownership. Section 4(3) of the Act as it stood in the year, 1988, specifically excluded the properties held by a coparcener in a joint family.

32. The legal position has been settled by the Supreme Court in ***Vinod Kumar Dhall Vs. Dharampal Dhall, AIR 2018 SC 3470***. The amendment to Prohibition of Benami Property Transactions Act has

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widened the definition of Benami Transactions. However, it still preserves the exemption for the properties held in fiduciary capacity or for benefit of coparceners. The amendment clarified the properties held in the name of a coparcener for the benefit of the family are not Benami, provided they fall within the exceptions. This would answer the first question of law framed in the appeal.

33. Yet the issue still arises is whether this is a a red-herring plea or a plea raised with a ring of genuineness about it.

34. It is the assertion of the appellant that as Raju Naidu was the karta of the joint family and since properties have been purchased in the name of his wife, Alamelu ammal, there is a presumption that the property is a joint family property. The position of law is otherwise. There is no presumption, as in the case of a male coparcener, that the property standing in the name of the female too, is presumed to be from the coparcenery. The onus of proof does not shift to the defendants to show that Alamelu Ammal had sufficient funds. The law places a heavy burden on the persons asserting that the property, which had been purchased in the name of the female member, is not her individual property but that belongs to the joint family. The position of law had been settled at least 140 years ago.

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35. A Division Bench of this Court consisting of Sir Charles Turner CJ and Mr.Justice T.Muthusamy Ayyar in ***Narayana v. Krishna (1884) ILR 8 214*** observed as follows:

> *"Where a family lives in co-parcenary, the presumption which exists in the case of male members arises from the circumstance that they are co-parceners. On the other hand, the ladies are not in an undivided family co-parceners; whatever property they acquire by inheritance or gift is their separate estate, and although it is not unusual for property to be transferred to the name of a female member to protect it from the creditors of the male members, or to place it beyond the risk of extravagance on the part of the male members, such dealings are exceptional and can afford no ground for a general presumption."*

36. I should point out here that this principle, which had been applied for Mithakshra co-parcenery, was extended even to a family governed by Dhayabaga in ***Protap Chandra Gope v. Sarat Chandra Gangopadhyaya, AIR 1921 Cal 101 (DB)*** (per *Ashutosh Mookerjee,* Acting CJ and Fletcher, J).

37. The aforesaid verdicts makes it clear that the presumption sought to be projected by Mr.A.R.Sakthivel does not exist. Yet, the plaintiffs could have let in evidence to show that the money advanced to Alamelu Ammal for purchase of the property came from the joint family

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funds. This burden is very heavy. It is Mr.Sakthivel's client, who claimed that the property, which was purchased in the name of Alamelu Ammal, is a joint family property. They should have established the same through proper pleadings and evidence, since the burden of proof lies on them. The properties were purchased by Alamelu Ammal under Ex.A5 to Ex.A7. These documents are dated 24.08.1959, 23.11.1953 and 30.05.1946. The suit had been presented nearly 30 years after the date of purchase. There is no evidence to show that Raju Naidu had asserted that the properties standing in the name of Alamelu Ammal had, in fact, been treated by him as the properties belonging to the joint family. Further, there is no evidence to show that Alamelu Ammal had thrown the properties into a common hotchpotch.

38. Per contra, Ex.B4 would show that mutation of records have been made in the individual name and no joint patta had been granted. Ex.B2 shows that the revenue records for the Fascili year 1381 was in the name of Alamelu Ammal. This shows that the period of 30 years and more, Alamelu Ammal had enjoyed the properties as its owner. None of the records filed by the plaintiffs indicate that they have been treated as joint family properties. When the initial burden is on the plaintiffs and when they have not discharged the same, I am not in a position to agree with the submissions of Mr.Sakthivel that the courts below should have called upon the fourth defendant to prove that Alamelu Ammal is the

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owner of the property. It is the plaintiffs' assertion that it is the joint family property and when they have not proved the same, the onus does not shift to the fourth defendant.

39. Apart from these two facts, a perusal of Ex.A1 throws a very interesting aspect. It shows that the vendor, under Ex.A1, had mortgaged the property of Alamelu Ammal. As he was not able to discharge the same, he executed a sale deed in favour of the first defendant, Raju Naidu. This shows that as early as 1946, Alamelu Ammal was possessed of enough and more funds to give it as a loan to a third party.

40. It is here that I will take note and will approve the submissions of Mr.Ruban Chakravarthy. The period of Ex.A5 to Ex.A7 has been extracted above. It was during the said period, the first defendant had also purchased the property. A cursory conclusion would be that the husband, with the funds available with him, had purchased the properties and the wife had purchased the properties in her name from her funds. In order to get over this difficulty, the plaintiffs have pleaded that the first defendant had purchased the property in the name of his wife, as he wanted to keep the property away from the hands of his brother, namely, the paternal uncle of the plaintiffs. If this plea were to be accepted, then, Raju Naidu, would have purchased the properties in the name of his wife rather than the few in his name and few more in the

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name of his wife. The plea of Raju Naidu did so in order to keep the property away from his brother is nothing but a figment of imagination of the plaintiffs. There is absolutely no evidence on record to show that there was a dispute between Raju Naidu and his brother, during the relevant point of time.

41. It is crucial because the plaintiffs were not toddlers, when the properties were purchased, going by the declaration of the age in the plaint. PW1 would have been around 28 to 30 years. Obviously, he would have been aware of what is happening in the family, in case, there was a dispute. Unfortunately, for Mr.Sakthivel's client, no evidence has been let in before the court. There, being no presumption that the property standing in the name of a female is a coparcenary property and there being no evidence to show that Raju Naidu had advanced funds for the purpose of purchase of the property by Alamelu Ammal nor there being any evidence to show that there had been pre-existing dispute between Raju Naidu and his brother and in the light of Ex.B1, which indicates that Alamelu Ammal was possessed of sufficient funds, I am not in a position to agree with the plea of Mr.Sakthivel.

42. Insofar as the proof of settlement deed is concerned, even the plaint concedes that the settlement deed had been executed in favour of Rani, the fourth defendant. Under the proviso to Section 68 of the

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Indian Evidence Act, a party is called upon to prove the document, which requires by law to be attested, only if the execution and attestation is specifically denied. As the plaintiffs themselves have conceded to the execution of the settlement deed in their plaint, the necessity of the defendants to examine the attesting witnesses does not arise. Hence, I conclude that Alamelu Ammal, having purchased the property under Ex.A5 to Ex.A7, was the owner of the propety and she was entitled to execute the settlement deed for suit items 1 to 3 and 7 in favour of her only daughter Rani, the fourth defendant.

43. The fact that Raju Naidu did not take any action during the lifetime of Alamelu Ammal and the fact that the plaintiffs did not approach the court soon after the execution of the settlement deed casts a huge doubt over their case. If the deeds, involved in the appeal had been challenged at that time, or near the date of their execution, Alamelu Ammal would have been in a position to give evidence independent of the documents. In such a circumstances, certainly the contents of the documents would not have been accepted as a proof of the facts. The documents are at least 30 years old. By the time they came before the court, the parties to the document had grown older, or as in this case, Alamelu Ammal had passed away. Hence, the test should be whether the recitals contained in the document are consistent with the probabilities and circumstances of the case, which assumes great importance and

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cannot be interfered with. If the court were to demand the same evidence in the 1990s, as it would have demanded in the 1950s, then the title would become weaker as it grows older, and a transaction that was perfectly honest and legitimate when it took place would ultimately became incapable of justification merely due to the passage of time. The view expressed in ***Banga Chandra Dhur Biswas v. Jagat Kishore Chowdhuri and Others, 1916 L.R 43 I.A 249*** (per Lord Buckmaster) applies in full force to the facts of the present case.

Part II

44. In this portion of the judgment, I will deal with items 4, 5 and 6 of the B schedule.

45. It is the claim of the plaintiffs that the second respondent Pandurangan had practiced undue influence and coercion on Raju Naidu and got the sale deed executed in favour of his wife, the fifth defendant. The plea of undue influence and coercion implies the execution of the document is admitted, but the document is vitiated due to vitiating circumstances. The Code of Civil Procedure, under Order VI Rule 4, calls upon a party, who projects a case of undue influence and coercion, to give specific details regarding the same. The provision demands that the parties pleading misrepresentation, fraud, breach of trust, wilful default or undue influence, to state the particulars with dates and items, if

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necessary in the pleadings. Sadly in this case, the plaint does not give any such details.

46. If I were to give the benefit to the plaint, of being a moffusil pleading and thereby entitled to certain latitude, on the evidence aspect too, the plaintiffs have miserably failed. Apart from the examination of PW2, the plaintiffs have not let in any evidence to show that the practice of undue influence by the second defendant on the first defendant. There is no proof either that Raju Naidu was ever taken care by the plaintiffs or the defendants 2 and 3. On the contrary, the evidence of PW2 indicates that Raju Naidu was heavily indebted and was not in a position to carry on his agricultural activities. It is here that the document, under Ex.B1, clinches the case of the defendants. Ex.B1 is a letter written to his sons by Raju Naidu. For ready understanding, the contents are extracted *in extenso:*

" திண்டிவணம்

07.11.1975

செஞ்சி தாலுக்கா, மேல · சேவூர் கிராமத்திலிருக்கும் ராஜுநாயுடு குமாரர் ராதாகிருஷ்ண நாயுடு 1. சென்னை(n.c.) மார்க்கெட் காய்கறி வியாபாரம் செய்யும் ராஜுநாயுடு குமாரா· கன்னையய்ய நாயுடு 2. சென்னை சேப்பாக்கம் செல்லப்பிள்ளையார் கோயில் தெருவு, 7/Aகும் ஜெகஜோதி பிரஸ் உரிமையாளர் ராஜுநாயுடு குமாரர் கோதண்ட ராம நாயுடு 3. திண்டிவனம் தாலுக்கா, சாத்தனூர்

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கிராமத்திலிருக்கும் ராஜேநாயுடு குமாரர் சீத்தாராம நாயுடு 4. மதுரை தெற்கு வெளி வீதியில் 211ல் இருக்கும் சுந்தரம் industries ல் வேலை பார்க்கும் Badge No. 3008 உள்ள ராஜ ேநாயுடு குமாரர் புருஷோத்தம நாயுடு 5. திண்டிவனம் தாலுக்கா, சாத்தனூர் கிராமத்திலிருக்கும் ராஜேநாயுடு குமாரர் பாண்டுரங்க நாயுடு 6. ஆகிய உங்களுக்கு திண்டிவனம் தாலுக்கா, சாத்தனூர் கிராமத்திலிருக்கும குமாரசாமி நாயுடு இன்ஜெங்ஷன் பெற்றதால் மேற்படி திண்டிவனம் அட்வகேட் A.அருணாசல சாஸ்திரியார் தெரிவிக்கும் நோட்டீஸ்.

நீங்கள் ஆறு பேரும் என் கட்சிக்காரரின் குமாரர்கள். உங்களில் 1, 2, 3, 5 நபர்கள் வெளியூரில் இருக்கிறீர்கள். 4, 6 நபர்கள் என் கட்சிக்காரருடன் இருக்கிறீர்கள். என் கட்சிக்காரருக்கு வயதாகிவிட்டதால் கடன்கள் தொல்லை அதிகமாகி விட்டதால் ,,, கொடுக்கும் படி ... என் கட்சிக்காரருக்கு 6000/- வரையில் பிராமிசரி நோட்டுகள் லோன், கடன் கொடுக்க வேண்டி இருக்கிறது. என் கட்சிக்காரருக்கு பயிர் சிலவிற்கும் குடும்ப சிலவிற்கும் சில்லரை கடன்கள் பைசல் செய்யவும் Rs.1000/- தேவையாக இருக்கிறது. ஆகவே என் கட்சிக்காரருக்கு Rs.7000/- உடனடியாக தேவையாய் இருக்கிறது. அதற்காக என் கட்சிக்காரருக்கு குடயிறை வெளியில் உள்ள ஓடுகள் 72 செண்ட் நிலத்தில் 2 ஏக்கர் நிலம் பம்பு செட் உள்பட கிரயம் செய்து விட தீர்ப்பளித்து இருக்கிறார். உங்களில் ஒருவருக்காவது துகை கொடுத்து கிரயம் பெற்றுக் கொள்ள தயாராய் இருந்தால் அந்த நபருக்கு என் கட்சிக்காரர் கிரையம் கொடுக்க தயாராய் இருக்கிறார்.

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உங்களில் எவரும் மேற்படிதுகைக்கு கிரையம் செய்துக் கொள்ள இஷ்டப்படாவிட்டால் என் கட்சிக்காரர் வெளி நபருக்கு கிரையம் செய்து கொடுக்க அவசியம் ஏற்படும் என்பதை இந்த நோட்டீஸ் மூலம் தெரிவிக்கப்படுகிறது. கிரையம் வைத்துக்கொள்ள இஷ்டப்படும் நபர் ஒரு வாரத்திற்குள் என் கட்சிக்காரருக்கு தெரிவித்து கிரையத்தை பூர்த்தி செய்துக் கொள்ள வேண்டியது என்பதை இதன் மூலம் உங்களுக்கு தெரிவிக்கப்படுகிறது.

sd/-
Advocate
07.11.75."

47. Reading of the letter shows that the father had reached out to the sons pointing out to the debts that the family had incurred and informed them that he has decided to extinguish the assets. Raju Naidu had called upon the sons to purchase the property so as to generate funds for him and settle the debts. It is relevant to note that Ex.B1 was not produced by the defendants. While in the witness box, PW1 was confronted with this document during the course of his cross-examination. PW1 had admitted to this document. The relevant portion is extracted hereunder:

"1975ல் என் தகப்பனால் எனக்கு ஒரு அறிவிப்பு கொடுத்தார். கடன் தொல்லை அதிகமாக உள்ளது என்றும், கடன் கட்டமுடியவில்லை என்றால் சொத்துக்கள் விற்று பணம்கட்டிவிடுவேன் என்று அதில் சொல்லியிருந்தது

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அது சரியல்ல. எங்களுக்கு அனுப்பப்பட்ட நோட்டீஸ் நகல் பி.வா.சா.1 இதற்கு நாங்கள் பதில் எதுவும் கொடுக்கவில்லை. ஏன் தம்பிகள் யாரும் பதில் கொடுக்கவில்லை. இந்த அறிவிப்பு அனுப்பப்பட்ட காலத்தில் யாரும் வைத்து பராமரிக்கவில்லை என்று சொன்னால் அது சரியல்ல."

48. This letter indicates that as early as 1975, Raju Naidu was sinking in debt and was crying out for help. The sons were not willing to come to his assistance. This shows that there are antecedent debts and Raju Naidu was willing to sell the property. It was under those circumstances, that the fifth defendant had come forward to purchase the property for a sum of Rs.760/-.

49. A perusal of the sale deed also shows that it was for the purpose of extinguishing the debt that the Raju Naidu had incurred. This shows that there was an antecedent debt and the Karta had alienated the property for the purpose of extinguishing that debt. It is a well settled position of law that the sale of a karta of the joint family assets for the extinguishing antecedent debts will not only bind his share but also the shares of the sons.

50. Post the independence, the Supreme Court had an occasion to consider the issue as to the liability of the son with respect to the debts

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of father even post partition. Answering the liability to be in the affirmative, the Supreme Court in ***Pannalal v. Naraini, (1952) 1 SCC 300*** held that the sons are liable to pay pre-partition debts of the father, even after partition, unless there was an arrangement for payment of the debts of the father, at the time when partition took place. For ready reference, the relevant portion is extracted here:

> *"**13.** It can now be taken to be fairly well settled that the pious liability of the son to pay the debts of his father exists whether the father is alive or dead. **[Brij Narain v. Mangla Prasad, (1923-24) 51 IA 129 : 1923 SCC OnLine PC 49]** Thus, it is open to the father, during his lifetime, to effect a transfer of any joint family property including the interests of his sons in the same to pay off an antecedent debt not incurred for family necessity or benefit, provided it is not tainted with immorality. It is equally open to the creditor to obtain a decree against the father and in execution of the same put up to sale not merely the father's but also the son's interest in the joint estate. The creditor can make the sons parties to such suit and obtain an adjudication from the court that the debt was a proper debt payable by the sons. But even if the sons are not made parties, they cannot resist the sale unless they succeed in establishing that the debts were contracted for immoral purposes."*

51. Soon thereafter, in ***Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh, (1953) 2 SCC 265*** another three

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Judge bench of the Supreme Court, while approving the view taken in ***Pannalal***'s case cited above, held that in a suit filed by the creditor against a father, the sons are not even necessary parties. The only exception when the son was not held liable for the debt is when the debt is tainted with immorality. Having come to this conclusion, the Supreme Court approved the view of the Board in ***Mussamut Nanomi Babuasin***'s case. The law laid down by the court is as follows:

> "***11.*** *Holding, as we do, that the sons were liable in this case to discharge the decretal debt due by their father, the further question arises as to how this liability could be enforced? Could the interest of the sons in the joint property be attached and sold without making the sons parties to the suit and the execution proceedings? The point does not seem to us to present much difficulty. Strictly speaking, the sons could not be said to be necessary parties to the money suit which was instituted by the creditor against the father on the basis of a promissory note. If a decree was passed against the father and the sons jointly, the latter would have been personally liable for the debt and the decree could have been executed against their separate or personal property as well. No doubt the sons could have been made parties to the suit in order that the question of their liability for the debts of their father might be decided in their presence. Be that as it may, the money decree passed against the father certainly created a debt payable by him. If the debt was not tainted with immorality,* ***it was open to the creditor to realise the dues by attachment and sale***

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of the sons' coparcenary interest in the joint property on the principles discussed above."

52. The Supreme Court in another three Judge bench in ***Faqir Chand v. Sardarni Harnam Kaur, (1967) 1 SCR 68,*** after surveying of all the authorities, approved the view of the Privy Council in ***Suraj Bunsi Koer v. Sheo Prashad Singh [(1878) ILR 5 Cal 148 (PC)*** which held as follows:

> *"That where joint ancestral property has passed out of a joint family either under a conveyance executed by a father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debts, cannot recover that property, unless they shew that the debts were contracted for immoral purposes, and that the purchasers had notice that they were so contracted."*

53. The aforesaid verdicts make it clear that the sale executed by the father for his antecedent debts binds the sons. A sale is treated as valid, till it is set aside. The least that the plaintiffs should have sought for is a declaration that the sale deed executed by her father in favour of the fifth defendant is not binding on them. The prayer in the plaint is one simplicitor for partition without the relief of such declaration. Hence, even the maintainability of the suit is in doubt.

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54. Though Mr.Ruban Chakravarthy pleaded that the sale deeds in favour of Alamelu Ammal and the settlement deed in favour of Rani had been attested by Raju Naidu, which indicates that Raju Naidu had conceded to the ownership of Alamelu Ammal, I am not willing to take the plea of attestation to such a high level. This is because there is no plea in the written statement to that effect. It is a settled position of law that where there is no plea, there cannot be any evidence. Furthermore, the attestation alone does not operate as estoppel. Attestation can serve as a proof of evidence of a transaction or acknowledgment. It does not inherently create a legal bar unless it forms part of a broader context where the conduct, reliance and the principles of equity are inextricably involved.

55. Doctrine of estoppel requires a representation or conduct that induces reliance, which is not necessarily established, merely through attestation. As I have concluded that the plaintiffs are not entitled to a relief otherwise, the issue on estoppel raised by Mr.Ruban Chakravarthy need not be dealt with in detail beyond the above observations.

56. The fact that Raju Naidu was not flush with funds and was in debt is clear from Ex.A9. Under this document, as early as 1944, Raju Naidu had alienated his properties in favour of one Pattammal on his

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behalf and on behalf of his brother, in order to raise funds for the family. There, being no evidence dislodging the validity of the document, I am of the clear view that the defendants 4 and 5 are the owners of the items 1 to 7 of the 'B' schedule and no error was committed by the courts below in dismissing the suit for partition.

57. In fine, both the questions of law are answered against the appellants. The second appeal stands dismissed with cost throughout. The judgment and decree of the learned District Judge, Villupuram District dated 28.07.1998 passed in A.S.No.90 of 1997 confirming the judgment and decree of the learned Subordinate Judge, Dindivanam dated 31.01.1997 passed in O.S.No.7 of 1999 stands confirmed.

22.01.2026

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

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To

1.The Sub Court, Chidambaram

2.The Additional District Judge cum CJM Court, Cuddalore,

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V.LAKSHMINARAYANAN, J.

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S.A.No.119 of 1999

22.01.2026

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