



**REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(S). 2129-2130 OF 2012**

**DORAIRAJ**

**...APPELLANT**

**VERSUS**

**DORAISAMY (DEAD)  
THROUGH LRs & ORS.**

**...RESPONDENT(S)**

**J U D G M E N T**

**SATISH CHANDRA SHARMA, J.**

**FACTUAL MATRIX**

1. The present Civil Appeals arise out of a long-drawn family dispute concerning partition, and alienation of agricultural properties situated primarily in and around Perambalur Taluk, Tiruchirappalli District. The dispute pertains to 79 items of immovable properties, all of which are set out with survey numbers, extents, and boundaries in the plaint schedule consisting mainly of agricultural lands. At each stage of adjudication, the concerns have primarily pertained to the nature and character of the suit properties; the extent to which certain alienations are binding on the coparcenary; and the legal

effect of an alleged testamentary disposition purported to have been executed shortly before the demise of the family patriarch. The litigation has resulted in concurrent findings of fact, subject to limited and item-specific modifications at the appellate stages.

2. The genealogy of the parties is admitted and forms the foundational backdrop of the lis. One Pallikoodathan was the common ancestor. He had three sons, namely Chidambaram, Sengan, and Natesan.

- Chidambaram predeceased the institution of the suit. Upon his death, his minor children pursuant to the orders passed by the competent court were represented through their natural guardian, Sengan, and subsequently through other legal representatives as brought on record.
- Natesan's branch is represented through his legal heirs.
- Sengan, the central figure in the dispute, was the father of the Plaintiff Duraisamy and the second Defendant Dorairaj.

During his lifetime, Sengan resided with his sons and managed the agricultural affairs of the family. Several suit properties stood in his name, while others were acquired in the names of his sons or through transactions involving the heirs of his

deceased brother Chidambaram. Sengan died during the pendency of the suit on 27.11.1989.

3. The suit for partition being O.S. No. 99 of 1987 was instituted by Duraisamy, seeking partition and possession of his one-fourth share in the suit schedule properties. The case was founded on the premise that the suit properties constituted joint Hindu family properties, either by reason of being ancestral in origin or by reason of having been acquired from the income derived from ancestral properties during the subsistence of the joint family. It was pleaded that the family remained joint in residence, cultivation, enjoyment, and management, and that there had never been any partition, either oral or written. As per the plaint, Sengan, being the senior-most male member, acted as the Karta of the Hindu joint family, and properties purchased in his name or in the names of other family members were, in substance, acquisitions made for and on behalf of the family.

4. Primary contention was that the said acquisitions were made at a time when the family lived and functioned jointly, pooling its resources, and that Appellant (D2) herein did not possess independent income at the relevant point of time, particularly during the late 1960s and early 1970s to justify exclusive ownership of the properties standing in his name. However, the Appellant (D2) provided that substantial number

of suit items were the self-acquisitions of Sengan, purchased from his own income generated through diverse sources including agricultural affairs, money-lending, panchayat-related works, and other sources. Further, it was pleaded that several properties were purchased by Dorairaj himself from his independent income earned as a contractor and businessman, particularly after the mid-1960s.

5. A central factual assertion in the plaint related to Item No(s). 14 and 15 of the suit schedule properties, described as ancestral agricultural lands situated in Thoramangalam Village. These lands were stated to have devolved from Pallikoodathan and were pleaded to constitute the principal source of income for the family. Reliance was placed upon revenue records, including Adangal extracts for Fasli years 1390 to 1395 (1980-1985), to demonstrate continuous cultivation. It was specifically pleaded that these lands were supported by wells and oil motor pumps, and that agricultural operations over several years yielded income sufficient to sustain the family and facilitate acquisition of other properties.

6. A substantial portion of the factual controversy also relates to a series of registered sale deeds executed by Sengan in favour of Dorairaj, covering multiple suit items. These alienations were effected under various sale deeds dated

16.12.1968, 05.07.1985, 01.08.1986, and 08.05.1987 pertaining to suit items including Item No(s). 1 to 7, 9, 10, 13, 16, 18, 19, 20 to 25, 31, 33 to 41, 52, 54 to 60, and 63. These documents referred to discharge of debts, medical expenses, and other family needs. Dorairaj claimed that these alienations were valid and binding, having been effected for lawful necessity, and asserted that possession and revenue entries stood mutated in his favour pursuant thereto. Plaintiff, however, disputed the necessity and binding nature of these transactions, contending that the consideration was either illusory or sourced from joint family funds, and that alienations in favour of one coparcener could not bind the others in absence of genuine necessity.

7. Another set of transactions involved alienations made by Sengan in his capacity as guardian of the minor children of his deceased brother Chidambaram, pursuant to permissions obtained in guardianship proceedings. Certain suit items, including Item No(s). 15, 27 to 30, 32, 44, 67, and 69, were sold in this manner. While Dorairaj/Appellant herein contended that these alienations were valid and binding, having been effected in accordance with court orders, the Plaintiff pleaded that such transactions did not divest the properties of their joint family character and could not result in exclusive ownership in favour of the Appellant herein.

8. During the pendency of the suit, Sengan died on 27.11.1989. Shortly thereafter, reliance was placed by certain defendants on an unregistered Will dated 24.11.1989, said to have been executed three days prior to his death, purporting to bequeath the entirety of his properties in favour of certain grandchildren. Plaintiff disputed the genuineness and validity of the Will, alleging suspicious circumstances relating to the age and health of the testator, the manner of execution, the use of thumb impression, and the exclusion of natural heirs.

9. The Trial Court framed issues relating to the nature and character of the suit properties; the existence of joint family properties; the validity of the alienations; the effect of the alleged Will; and the entitlement of the parties to partition and consequential reliefs. *Vide*, judgement dated 22.04.1992 in O.S. No. 99 of 1987, the Trial Court declared that the Plaintiff was entitled to 1/4<sup>th</sup> share in the suit properties excluding Item No(s). 15, 27, 28, 29, 30, 32, 44, 67, 69, 26, 31, 1 to 7, 9 to 13, 18, 19, 20, 21 to 25, 33, 36, 39, 40, 41, 52, 55, 57, 60, and 63; and certain other properties sold under documents not forming part of the plaint schedule. The suit was decreed accordingly, without costs.

10. Aggrieved, by the judgement of the Trial Court, the Plaintiff preferred A.S. No. 160 of 1994, while Defendant(s) 3

to 7 preferred A.S. No. 161 of 1994, before the 1<sup>st</sup> Additional District Judge, Tiruchirappalli. *Vide* judgement dated 26.09.1995, the First Appellate Court modified the preliminary decree and declared the Plaintiff entitled to a 5/16<sup>th</sup> share in the suit schedule properties.

11. Second Appeals bearing S.A. No(s). 1561 and 1562 of 1995 were thereafter preferred before the High Court of Judicature at Madras. *Vide* judgment dated 12.08.2009, the High Court partly allowed the appeals and held that the Plaintiff was entitled to 5/16<sup>th</sup> share, excluding:

- Item No. 74, which had been purchased by Dorairaj from Mookayee, who was not a coparcener;
- Item No. 66 and 4 cents out of 12 cents in Item No. 36, covered by Exhibit B75, as these did not form part of the coparcenary.

It is against this backdrop of concurrent and modified findings that the present Civil Appeals have been filed.

### **SUBMISSIONS BY THE PARTIES**

12. Ld. Senior Counsel for the Appellant (D2) at the outset submits that the Courts below have erred in holding that the suit properties constitute joint Hindu family properties in entirety. It

is contended that the Plaintiff failed to provide facts necessary to establish the existence of any income-yielding joint family property capable of supporting subsequent acquisitions. As per the Appellant, the plaint was conspicuously silent on the manner in which the suit properties are alleged to have been acquired from any common family source.

13. It is contended that mere proof of ancestral origin of Item No(s). 14 and 15 does not, by itself, justify the inference that all subsequent acquisitions are presumed to bear the character of joint family property. The Appellant maintains that the Plaintiff failed to demonstrate a clear nexus between the ancestral properties and the acquisitions standing in the name of individual family members.

14. It is submitted that the first Defendant, Sengan, had substantial and continuous independent sources of income over several decades. Reliance was placed on documentary and oral evidence to show that Sengan was engaged in government service, panchayat administration, money-lending, temple trusteeship, and later as a Sub-Jail contractor.

15. It is contended that the said independent earnings fully explain the acquisitions made in his name and negate the presumption that such properties were purchased from any common family fund. The Appellant submits that the courts



below failed to properly appreciate this evidence while mechanically invoking presumptions relating to joint family property.

16. It is further submitted that appellant himself had independent sources of income and financial capacity to acquire properties in his own name from as early as 1963 and continuously thereafter till 19.04.1991. It is contended that there was no justification for the courts below to discard or disbelieve the purchases made by the Appellant during this period.

17. Learned counsel emphasises that a series of registered covenants evidencing purchases and subsequent transactions effected, including Ex(s). B-2, B-10, B-13 to B-19, B-67, B-73, B-75, B-76 and B-104 are to be considered. These documents, as per the Appellant, clearly demonstrate a consistent pattern of independent acquisition, enjoyment, and in certain cases alienation, wholly inconsistent with the understanding of joint family ownership.

18. Reliance is placed on Ex(s). B-121 to B-141, including Ex(s). B-125, B-126, B-127, B-128, B-129, B-131, B-132, B-133, B-134, B-135, B-137 and B-142, which consist of contract orders, completion certificates, income records, and allied documents to establish the income out of which such

purchases are made. These, establish beyond doubt that the Appellant was engaged in gainful commercial and contractual activities and had sufficient independent income to fund the acquisitions.

19. Primary concern of the Appellant is that the courts below failed to undertake an objective evaluation of the aforesaid documents and unjustly discarded the same without assigning legally sustainable reasons. It is submitted that such an approach has resulted in serious prejudice to the Appellant.

20. It is further submitted that even assuming the existence of a joint family, the alienations effected by the first Defendant in his favour were legally valid and binding. It is contended that the first Defendant, being the admitted head of the family, was indebted and medically indisposed and that the sales effected under including Ex(s). B-17, B-18 and B-19 were necessitated by compelling circumstances, including medical expenses and discharge of certain debts. Reliance is placed on promissory notes, hospital records, and other contemporaneous documents to substantiate the plea of necessity. It is argued that alienations effected for lawful necessity cannot be questioned by other coparceners.

21. With regard to properties originally belonging to Chidambaram, it is submitted that the first Defendant was

appointed guardian of Chidambaram's minor children by order of the District Court, Tiruchirappalli. Pursuant to the permission obtained, sale deeds including dated 16.12.1968 (Ex. B-2) was executed in favour of the Appellant. It is contended that the sale proceeds were utilised to discharge Chidambaram's debts and that the transactions were lawful, binding, and immune from challenge.

22. The Appellant also assails the rejection of the Will dated 24.11.1989 (Ex. B-200), contending that it was duly executed and proved through the scribe and attesting witnesses. It is largely submitted that the courts below erred in treating the Will as suspicious and in failing to appreciate the evidence in its proper perspective.

23. Reliance is placed on admissions made by the Plaintiff during cross-examination, including admissions relating to independent transactions, payment of consideration under sale deeds and existence of debts explaining the joint family character of the suit properties. It is contended that these admissions disentitle the Plaintiff from asserting joint family ownership and operate as estoppel against him.

24. On the contrary, Respondent(s) submit that the existence of a joint Hindu family and the ancestral origin of Item No(s). 14 and 15 are admitted. It is contended that once ancestral

properties yielding income were shown to exist and acquisitions were made during the subsistence of the joint family, the burden shifted to the Appellant to establish self-acquisition, which he failed to do.

25. It is further submitted that the Trial Court undertook a meticulous item-wise scrutiny of alienations, upheld those supported by necessity, and excluded others. The High Court, far from acting unfairly, granted relief to the Appellant by excluding Item No. 74, Item No. 66, and part of Item No. 36 from partition.

26. The Respondent(s) also submit that the rejection of the Will attained finality, having not been challenged at the appropriate stage. The Appellant cannot now seek to resurrect the issue in second appeal.

### **ANALYSIS AND FINDINGS**

27. Having given anxious consideration to the record and contentions made by the parties; impugned judgment of the High Court reflects a correct appreciation of the pleadings, exhaustive analysis of the record and settled principles governing partition of joint Hindu family properties.

28. At the outset, it must be emphasized that the High Court correctly identified that the relationship between the principal

parties was admitted, and that the suit was instituted by one coparcener against the others during the subsistence of the joint family. The genealogy traced to Pallikoodathan and his three sons was not in dispute, nor was the fact that Sengan (D1) and his three sons namely, Duraisamy (Plaintiff), Durairaj (D2), and the deceased Rajakannu, constituted a coparcenary at the relevant time. The High Court therefore approached the controversy on a settled factual foundation, without allowing any other dispute to cloud the core issues.

29. The principal contention by the Appellant before the High Court, and reiterated before us, is that the First Appellate Court erred in holding that the suit properties were joint family properties, particularly in the absence of what was described as an “income-bearing joint family nucleus”. The High Court primarily placing its reliance on MLJ (II) 1976 225 (Pattusami Padayachi v. Mullaiaammal and others); 1954 1 SCC 544 Shrinivas Krishnarao Kango v. Narayan Devji Kango and Ors. noted that proof of the mere existence of a joint family does not by itself render all properties as joint family properties, but equally, once it is established that ancestral properties yielding income existed and acquisitions were made during the continuance of the joint family, the burden shifts to the person asserting self-acquisition.

30. In this context, the High Court undertook a detailed examination of Item No(s). 14 and 15, which were admittedly ancestral properties. The plea of the Appellant that these lands were perpetually water-logged, and incapable of yielding income was carefully examined. On the contrary, reliance was placed on revenue records (Ex(s). B-201 to B-206), which categorically evidenced cultivation over several fasli years and disclosed the existence of wells and oil-engine pump sets. The High Court further examined the Appellant's reliance on the alleged independent income of Sengan (D1). It accepted that Sengan had engaged in various jobs over his lifetime, including service and contractual work. However, it correctly rejected the simplistic assumption that the mere existence of some independent earnings would automatically negate the contribution of joint family income. The High Court observed that Hindu law does not require other coparceners to establish with precision the exact source of funds for each acquisition made by the Karta. Where acquisitions are made during the subsistence of the joint family, and where ancestral properties yielding income are shown to exist, properties acquired in the name of the Karta are ordinarily regarded as joint family properties unless the contrary is proved.

31. Significantly, the High Court also examined the factual position of the Appellant (D2) during the relevant period. On

the basis of material on record, it noted that he was pursuing his studies till about 1966 and that his claim of having amassed substantial savings sufficient to purchase properties while still a student was subjected to careful scrutiny. The High Court's reasoning on this aspect is neither conjectural nor speculative; it is rooted in a realistic appraisal of the evidence and the surrounding circumstances.

32. On the plea of prior partition or division in status, the High Court recognised that separate enjoyment of portions, installation of irrigation facilities, or even obtaining borrowings individually, do not by themselves establish partition in law. What is required is a clear and unequivocal intention to sever the joint status. The High Court correctly emphasized that all relevant conveyances described the interests conveyed as undivided shares, that there was no mutation evidencing division, and that there was no separate payment towards borrowings. In the absence of any declaration or conduct evidencing an intention to divide, the inference of continued joint family status was inevitable.

33. The High Court then addressed with notable clarity; the validity of alienations effected by Sengan (D1) in favour of the Appellant (D2) as per various sale deeds Ex(s). B-17 to B-19. It correctly distinguished between alienations for proved legal

necessity and those which were legally impermissible. The Courts below undertook an item-wise scrutiny of each transaction and upheld those alienations where legal necessity was established, while excluding others where such necessity was not proved. The High Court affirmed this calibrated approach, reiterating that alienations by a Karta in favour of one coparcener must be proved to be for legal necessity and that vague or general recitals are insufficient to bind the interests of other coparceners. However, it protected D2's right to establish actual medical expenses during final decree proceedings.

34. Of particular significance is the High Court's approach to Ex. B-2, qua properties sold by Sengan as guardian of the minor sons of Chidambaram. The High Court in paragraph 82 to 89 meticulously analysed the surrounding circumstances, the court permission obtained, the recitals in the sale deed, and the endorsements on the promissory note. It found glaring inconsistencies and rightly concluded that the Trial Court had upheld Ex. B-2 without adequate reasoning. The First Appellate Court's correction of this error was therefore fully justified.

35. Likewise, on the issue of the Will dated 24.11.1989 (Ex. B-200), the High Court's reasoning is both legally and factually compelling. It noted that the testator was habitually signing documents but affixed only a thumb impression as far as this



document is concerned; that the Will was allegedly executed barely 72 hours prior to death; that it was scribed by a close relative instead of a professional scribe; and that the scribe's presence itself was doubtful due to election duty. These circumstances clearly warranted a finding of suspicion. Importantly, the High Court also noted that the rejection of the Will by the Trial Court had not been challenged by D2 at the appropriate stage and had therefore attained finality. The Appellant cannot be permitted to approbate and reprobate at different stages of litigation.

36. The High Court further dealt with the impleadment applications filed by alleged heirs of Rajakannu. It correctly held that there was no evidence of collusion in the suit, that the share of Rajakannu was already represented, and that permitting impleadment at such a belated stage would unsettle proceedings that had otherwise attained finality. This approach reflects a proper balance between substantive justice and procedural discipline.

37. Finally, the High Court exercised its powers with restraint and precision by granting limited relief to the Appellant. Item No(s). 66 and 74, as well as a portion of Item No. 36 were clearly shown to have been purchased from third parties, accordingly, were excluded from partition as they were

the exclusive properties of D2. Save and except these limited modifications, the High Court affirmed the judgment and decree of the First Appellate Court.

## **CONCLUSION**

38. For the reasons recorded hereinabove, we are of the considered view that the impugned judgement is reasoned and borne out from the material on record. Except to the limited extent expressly modified therein, this Court finds no ground to take a view different from that taken by the High Court.

39. Accordingly, the Civil Appeals are dismissed. No order as to cost.

.....J.  
[SANJAY KAROL]

.....J.  
[SATISH CHANDRA SHARMA]

NEW DELHI  
February 05, 2026.