

V.Baskaran Vs. Manjula

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Court : Chennai

Decided On : Mar-19-2013

Judge : G. Rajasuria

Appellant : V.Baskaran

Respondent : Manjula

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

19. 03.2013 Coram: THE HONOURABLE MR.JUSTICE G. RAJASURIA
S.A.No.76 of 2011 and M.P.Nos.1 and 3 o

1. V.Baskaran 2.V.Mohan Doss ... Appellants vs. 1.Manjula 2/Varalakshmi
3.Vijaya Nirmala ... Respondents This Second Appeal is focussed as against the
judgment and decree dated 21.9.2010 passed by the Principal District & Sessions
Judge, Chengalput, confirming the judgement and decree dated 23.9.2008 passed
by the Principal Sub-Judge, Chengalput, in O.S.No.143 of 2000 For appellants :
Mr.D.Mahesh For respondents : Mr.N.Manokaran JUDGMENT This Second
appeal is focussed by the defendants 1 and 2 animadverting upon the judgment
and decree dated 21.9.2010 passed by the Principal District & Sessions Judge,
Chengalput, confirming the judgment and decree dated 23.9.2008 passed by the
Principal Sub-Judge, Chengalput, in O.S.No.143 of 2000, which was one for
partition.

2. The parties, for the sake of convenience, are referred to hereunder according to their litigative status and ranking before the trial Court. 3. Niggard and bereft of unnecessary details, the germane facts absolutely necessary for the disposal of this second appeal would run thus: (i) The first respondent herein, as plaintiff, filed the suit seeking the following reliefs: "a) to grant preliminary decree for partition of $\frac{3}{10}$ th share of the plaintiff in the entire suit properties, dividing the same into 4 equal share in the first instance, allotting one such share ($\frac{1}{4}$) to the plaintiff and again dividing the $\frac{1}{4}$ th share which remains for her late father into 5 equal shares among the plaintiffs and the defendants and allot one such share ($\frac{1}{20}$) to the plaintiff; totalling ($\frac{3}{10}$ th) share to the plaintiff. b) to appoint an Advocate Commissioner to divide the suit properties according to their share of the plaintiff and defendants and allot $\frac{3}{10}$ th share in the suit properties to the plaintiff. c) to grant permanent injunction restraining the defendants from making any sort of encumbrance over the suit properties. d) to ascertain the income from the suit properties from the date of the plaint. e) to direct the defendants to pay the plaintiff the cost of the suit." (extracted as such) on the main ground that the suit properties are the ancestral properties; since the plaintiff remained unmarried as on the date of commencement of the Hindu Succession (Tamil Nadu Amendment) Act, [Tamil Nadu Act 1 of 1990], which came into vogue with effect from 25.03.1989, she was deemed to be one of the coparceners. As such, after the death of her father, who happened to be the 'kartha' of the family, during the year 2000, she demanded partition, which was refused by her two brothers, namely, Baskaran and Mohandoss/the appellants herein/defendants 1 and 2, which necessitated the plaintiff to file the suit. D3-Varalakshmi and D4-Vijaya Nirmala were married daughters as on 25.3.1989, so to say, on the date of commencement of the Hindu Succession (Tamil Nadu Amendment Act) Act, [Tamil Nadu Act 1 of 1990]. Accordingly, the plaintiff prayed for partition. (ii) Per contra, the defendants filed the written statement, the gist and kernel of which would run thus: Varadharaja Mudaliar-the father of the plaintiff and the defendants, acquired the suit properties, namely, items 1 and 2, from out of his own income as a teacher. He, during his life time, volitionally and voluntarily executed the Will Ex.B5 dated 29.4.1994, bequeathing the suit properties in favour of his two sons, namely, D1 and D2 and also specifying that in respect of his three daughters, he performed what were all a

dutiful father should do for them and solemnized their marriages and gave them Stridhana etc. As such, the Will came into effect, and the plaintiff is having no right to seek for partition. Accordingly, the defendants 1 and 2 prayed for dismissal of the suit. (iii)Whereupon issues were framed. Up went the trial, during which, the plaintiff examined herself as P.W.1 along with P.W.2 and marked Ex.A1 to A12. The first and third defendants examined themselves as D.W.1 and D.W.2 along with D.Ws.3 to 5 and marked Exs.B1 to B10. (iv)Ultimately the trial Court disbelieving the Will, decreed the suit holding that the first item of the suit properties happened to be the self-acquired property of Varadharaja Mudaliar and the second item of the properties happened to be the coparcenary property of Varadharaja Mudaliar and his children and accordingly, allotted share in favour of Manjula-the plaintiff, as per the following preliminary decree. "The plaintiff is entitled 1/4th share in the suit 1st item of property and 3/10 share in the suit 2nd item of property. and allot the same by appointing an Advocate Commissioner in the final decree as per the preliminary decree." (v)Challenging and impugning the judgment and decree of the trial Court, the defendants 1 and 2 preferred the appeal for nothing but to be dismissed by the first appellate Court, confirming the judgment and decree of the trial Court. 4. Being aggrieved by and dis-satisfied with the judgments and decrees of both the Courts below, this second appeal has been focussed by D1 and D2 on various grounds and also suggesting the following substantial questions of law. "(i)Have not the trial Court and first appellate Court have committed grave illegality in holding that the suit schedule item-II property is the joint family property in the absence of any evidence much less legal evidence let in by the plaintiff either to prove the existence of alleged joint family or to prove suit item-II of the schedule property at the hands of the deceased Varadharajan was held alleged joint family property. (ii) Have not the trial Court and first appellate Court have committed grave illegality in holding that the property covered under Exhibit-A9 sale deed dated 1.2.1970 purchased by deceased Varadharajan acquired the character of joint family property because in Exhibit-A6 sale deed, dated 9.3.1973 by which deceased Varadharajan sold ancestral property inherited by him and in that recital it was stated that the same was sold to discharge the debts availed for purchase of Nanja Land at Perumattunallur Village. (iii)Have not the trial Court and first appellate Court had

drawn wild presumptions and inferences that the sale proceeds of the Exhibit-A6 sale deed dated 9.3.1973 was utilized to discharge the loans availed for purchase of the property covered under Exhibit-A9, dated 1.2.1970. In the absence of any recitals in Exhibit-A6 linking the sale for the discharge of alleged loan, which is presumed to have availed for purchase of property covered under the Exhibit-A6, especially after Exhibit-A9 purchase the deceased Varadharajan purchased a house property on 28.9.1972 by Exhibit-B3 and another Nanja land on 11.1.1973 by Exhibit-B1, which is just two months prior to Exhibit-A6 Sale dated 9.3.1973. In any event the alleged linkage drawn by the courts below relating to the sale proceeds under Exhibit-A6 to purchase the property under Exhibit-A9 without any specific recitals about in Exhibit-A6 and in the absence of any evidence let in by the plaintiff to prove, such inferences drawn by the courts below is against all canons of jurisprudence and the judgement and decree of the courts below are liable to be set aside. (iv) Have not the trial Court and first appellate Courts have committed grave material illegality perplexing on the face of record and total non-application of mind in declaring that the plaintiff is entitled to share in suit item-I and 3/10th share in suit item-II of the property, while holding that the suit item-I is self acquired property of late Vaadharajan, father of the plaintiff and defendants 1 to 4 and suit item-II as joint family property of the plaintiff and defendants 1 and 2 and late Varadharajan. Even if the judgement and decree of the courts below are acceptable, the correct calculation of shares of the plaintiff would be 1/5th share each to the plaintiff and defendants 1 to 4 in the suit item No.-I and 1/4th share each in suit item No.-II to the plaintiff and defendants 1 & 2 and also to late Varadharajan. Further the share of the deceased Varadarajan devolves upon the plaintiff and defendants 1 to 4. Therefore the net share available to the plaintiff is 6/20 share in suit item-II and defendants 1 & 2 are entitled to 6/20th share each and defendants 3 & 4 are entitled to 1/20th share each. Hence, in view of the above the judgment and decree of the courts below are liable to be set aside. (v) Have not the courts below erred in holding that Exhibit-B10 is a registered Will duly registered under the provisions of the Indian Registration Act by the deceased Varadharajan was not proved particularly presumption of due execution and genuineness was available under the provisions of the Indian Registration Act and Indian Evidence Act, 1872 that the officials acts

have been done property in accordance with law. (vi)Have not the trial Court and first appellate Court erred in holding that Exhibit-B10 Will was not proved by the defendants, especially except the plaintiff the other two daughters of late Varadharajan, namely, the defendants 3 & 4 had not disputed the execution of Exhibit-B10 Will in favour of his sons namely the defendants 1 & 2. (vii)Have not the courts below committed grave illegality in holding that Exhibit-B10 was not proved especially when the plaintiff's case was that the suit properties are joint family properties and the signatures in the Will, Exhibit-B10 was admittedly signatures of late Varadharajan. (viii)Have not the Courts below committed jurisdictional error in decreeing the suit filed by the plaintiff for partition in the absence of any evidence much less legal evidence to prove the alleged joint family as projected by the plaintiff." (extracted as such) 5.Heard both. 6.The learned counsel for the appellants/defendants 1 and 2 would pyramid his arguments, which could succinctly and precisely be set out thus: (i)The suit properties belonged to Varadharaja Mudaliar as his absolute properties, as he was working as teacher during the period between 1946 and 1985 and he earned sufficiently. Those two items of properties were purchased vide sale deeds Exs.A9 dated 01.02.1970 (II item) and Ex.B1 dated 14.1.1973 (I item), respectively. (ii)The sale considerations for those properties were meager and the preponderance of probabilities are in favour of the contentions of D1 and D2 that their father Varadharaja Mudaliar in all probabilities might have had that much meager amount to purchase those two items of properties as his self-acquired properties. (iii)Both the Courts below were carried away by the recitals in Ex.A6-the sale deed dated 9.3.1973, wherein formally it was stated as though in order to discharge the loan incurred by Varadharaja Mudaiar to purchase the second item of the suit properties, the ancestral property was sold by him and his the then minor son-Baskaran(D1). (iv)One cannot try to make a mountain out of mole hill. A Kartha of a family can sell, for discharging his personal loan, the ancestral property, and the decision of the Honourable Apex Court reported in A.I.R. 1936 PRIVY COUNCIL 277 SAT NARAIN AND ANOTHER V. SRI KISHEN DAS AND OTHERS would reveal the same. (v)Absolutely there is no shard or shred, molecular or mint, jot or iota evidence to exemplify and indicate that income bearing ancestral property was in the hands of Varadharaja Mudaliar and that from out of the income derived from

the said property, he purchased the suit items 1 and 2. Wherefore, in the absence of evidence, there is no presumption that the properties purchased by Varadharaja Mudaliar have to be treated as ancestral properties. (vi) Both the Courts below fell into error in misapplying the law and giving verdicts. (vii) The fact remains that Ex.B1-the sale deed dated 14.1.1973 in favour of Varadharaja Mudaliar executed by Nataraja Mudaliar would also reveal that within a short span of time, Varadharaja Mudaliar was purchasing several properties and that would connote and denote, convey and portray that Varadharaja Mudaliar had sufficient financial wherewithal to purchase properties and he was not under any dire necessity to raise loan allegedly for the purpose of purchasing the second item of the suit properties. (viii) The recitals in Ex.A6-the sale deed dated 9.3.1973 should be down played and it cannot be given undue importance. But both the Courts below gave undue importance and decided the lis, warranting interference in second appeal. (ix) Relating to the Will-Ex.B5 is concerned, it is a registered one. Artificially D.W.3-Venugopal-the attester of the Will-Ex.B5 would wax eloquence as though he had not seen the testator signing the Will and he was not also the identifying witness. His version is quite antithetical to the preponderance of probabilities and the illustration (e) to Section 114 of the Indian Evidence Act. (x) A public official is presumed to be the one who acted genuinely. D.W.3's evidence would go contra to his written commitments in Ex.B5-the Will. Over and above that, D.W.5-the scribe after putting his signature under the seal 'scribed and attested' in the Will, would veer round and take a plea as though he was not an attesting witness to the Will and that he did not see the signing of the Will by the testator or the witnesses. As such, both the Courts should have taken note of this incongruity and simply ignored those depositions of D.W.3 and D.W.5, and given importance to Ex.B5-the Will. (xi) Ex.B5 is a solemn document. A dead man's wish and will should be implemented and that is the bedrock of our jurisprudence. Ignoring that, both the Courts below simply ignored the Will, warranting interference in second appeal. (xii) Ex.A6-the sale deed emerged on 9.3.1973, whereas the second item of the suit properties was purchased vide sale deed dated 1.2.1970 (Ex.A9) and as such, there is no knowing of the fact as to how subsequent sale of the ancestral property would enable the plaintiff to treat the second item of the suit properties as the one purchased from out of the sale proceeds of the ancestral property. A 'kartha' of a

joint family can very well sell the joint family property for discharging his personal loan and in such a case, the recitals in E.A6-the sale deed dated 9.3.1973 would not be fatal to the claim of D1 and D2 that the second item of the properties was purchased under Ex.A9 as the self-acquired property of Varadharaja Mudaliar. Accordingly, the learned counsel for the appellants/D1 and D2 would pray for setting aside the judgments and decrees of both the Courts below. 7.Per contra, the learned counsel for the plaintiff would advance his arguments, buttressing and fortifying the findings given by both the Courts below. 8.The learned counsel for D3 would submit that no doubt as against the judgment of the trial Court or the first appellate Court, no appeal was filed by D3 and in fact, D3 also filed the written statement along with D1 and D2. He would stress upon the fact that in a suit for partition, the plaintiff is the defendant and vice versa. In such a case, the Court would not be hesitant to interfere whenever there is some error in dividing the property, after giving a finding. 9.The Courts below gave a finding categorically that item No.1 of the suit properties happened to be the self-acquired property of Varadharaja Mudaliar. In such a case, axiomatically and obviously, the property of Varadharaja Mudaliar, i.e. item No.1 should have been divided into five equal shares, so to say, among the two sons and the three daughters of Varadharaja Mudaliar. Instead of doing that, both the Courts below fell into error in dividing the property improperly, warranting interference in second appeal and this Court being the High Court can very well rectify the error committed by both the fora below. 10.Whereas, the learned counsel for the plaintiff in all fairness on hearing the extempore argument submitted by the learned counsel for D3 would fully endorse his submission by pointing out that as on 25.3.1989, so to say, on the commencement of the Hindu Succession (Amendment Act) Act, (Tamil Nadu Act 1 of 1990), amending the Hindu Succession Act, the plaintiff alone was unmarried and the other two daughters were married and as such, the defendants 3 and 4 were not entitled to the second item of the suit properties, but only they are entitled to their shares in the first item of the suit properties along with their brothers. 11.As such in view of the extempore submissions submitted by the learned counsel for D3 as well as the submissions made by the learned counsel for the plaintiff, I would like to formulate the following substantial questions of law to the knowledge of both sides: (i)Whether both the Courts below, after giving findings that item

No.(1) of the suit properties happened to be the self-acquired property of Varadharaja Mudaliar and item No.(2) as the ancestral property, were justified in simply dividing the item not I of the suit properties into four shares and allotting one such share to the plaintiff and that too, in the wake of Varadharaja Mudaliar having died during the year 2000, leaving behind his two sons and three daughters? (ii) Whether there is any perversity or illegality in the judgments and decrees of both the Courts below? IN Re ENTERTAINING SECOND APPEAL 12 At the outset itself, I would like to fumigate my mind with the following recent decision of the Hon'ble Apex Court reported in 2012(8) SCC 14.[Union of India v. Ibrahim Uddin and another]; an excerpt from it would run thus: "59. Section 100 CPC provides for a second appeal only on the substantial question of law. Generally, a second appeal does not lie on question of facts or of law. In SBI v. S.N.Goyal (2008) 8 SCC 92.this Court explained the terms "substantial question of law" and observed as under: (SCC p.103, para

13) "13.....The word "substantial" prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the partiesany question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing on the final outcome, will not be a substantial question of law.....There cannot, therefore, be a straitjacket definition as to when a substantial question of law arises in a case." (emphasis added) 13. In the same precedent, the following decisions are found referred to: (1) AIR 196.SC 331.[Chunilal V. Mehta & Sons Ltd. v. Century Spg. and Mgf. Co. Ltd.] (2) (2011) 1 SCC 67.[Vijay Kumar Talwar v. CIT] (3) AIR 194.PC 1.[Bibhabati Devi v. Kumar Ramendra Narayan Roy] (4) (1949) 17 ITR 26.(Nag) [Suwalal Chhogalal v. CIT] (5) AIR 195.SC 85.[Oriental Investment Co. Ltd. v. CIT] (6) AIR 19.SC 160.[Jagdish Singh v. Natthu Singh] (7) (1996) 5 SCC 35.[Parativa Devi v. T.V.Krishnan] (8) (1998) 6 SCC 42.[Satya Gupta v. Brijesh Kumar] (9) AIR 200.SC 53.[Ragavendra Kumar v. Firm Prem Machinery & Co.] (10) AIR 200.SC 126.[Molar Mal v. Kay Iron Works

(P) Ltd.] (11) (2010) 11 SCC 48.[Bharatha Matha v. R.Vijaya Renganathan] (12) (2010) 12 SCC 74.[Dinesh Kumar v. Yusuf Ali] (13) (2002) 3 SCC 63.[Jai Singh v. Shakuntala] (14) (2008) 12 SCC 79.[Kashmir Singh v. Harnam Singh] 14. A mere running of the eye over the above precedents would connote and denote, exemplify and demonstrate that unless there is any substantial question of law is involved, the question of upsetting the finding of the court below would not arise. IN Re SELF ACQUIRED PROPERTY AND COPARCENARY PROPERTY 15 At the outset itself I would like to advert to the main argument focussed placing reliance on Ex.A6-the sale deed dated 9.3.1973 by both sides. 16.The learned counsel for the appellants/defendants 1 and 2 would stress upon the fact that the following recitals in Ex.A6 should be taken as a formal one. Certain excerpts from it would run thus: "ehd; ehsJ njjpapy; f PH;tUk; g[";ir epyj;ij j';fSf;F U:gha; 4.500-f;F (vGj;jhy; ehyhapuj;J lehW kl;Lk;) Rj;jk; fpuak; bra;J bfhLg;gjha; rk;kjpj;J bjhif mile;j tptuk; ehd; br';fy;gl;L jhYf;fh. bgUkhl;U:h; fpuhkj;jpy; e";ir epyk; th';fpajpy; vw;gl;Ls;s fld; ghf;fpia igry; bra;at[k;. / / / / / / / @ 17.Normally, according to the learned counsel for D1 and D2, while drafting a sale deed there would be formal clauses, so to say, the reason for selling etc. As such, the above recitals in Ex.A6 emerged and undue importance should not be given to them so as to enable the plaintiff to label and dub the second item of the properties as an ancestral property; furthermore, after purchasing of the second item of the suit properties, the question of ushering in support from the subsequently emerged sale deed(Ex.A9) is a well-nigh impossibility. 18.Whereas, the learned counsel for the plaintiff in a bid to torpedo and pulverise the arguments as put forth and set forth on the side of D1 and D2 would submit that the precise question involved here is not concerning any challenge of the sale as contained in Ex.A6, but the right of the plaintiff to place reliance on the recitals therein. Item No.(II) of the suit properties, which was purchased under Ex.A9-the sale deed dated 1.2.1970, was indubitably and indisputably, admittedly and unarguably purchased by Varadharaja Mudaliar-the then kartha of the family by raising loan. The loan was discharged by selling the ancestral property as per Ex.A6-the sale deed dated 9.3.1973. In such a case, the second item of the suit properties should automatically be deemed and treated as the coparcenary ancestral property and both the Courts below appropriately and appositely, correctly and legally rendered their findings, warranting no interference

in second appeal.

19. The learned counsel would also cite the decision of this Court in 2012(1) CTC 128-MALLA NAICKER @ SINGARI AND OTHERS. 20.I would also cite the following decisions of the Honourable Apex Court: (i) AIR 195.SC 37.(Srinivas Krishnarao Kango vs. Narayan Devji Kango and others). An excerpt from it would run thus: "8. 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 establish affirmatively that the property was acquired without the aid of the joint family property.

10. Whether the evidence adduced by the plaintiff was sufficient to shift the burden which initially rested on him of establishing that there was adequate nucleus out of which the acquisitions could have been made is one of fact depending on the nature and the extent of the nucleus. The important thing to consider is the income which the nucleus yields. A building in the occupation of the members of a family and yielding no income could not be a nucleus out of which acquisitions could be made, even though it might be of considerable value. On the other hand, a running business in which the capital invested is comparatively small might conceivably produce substantial income, which may well form the foundation of the subsequent acquisitions. These are not abstract questions of law, but questions of fact to be determined on the evidence in the case. Where the finding of the Courts is that the income from the ancestral lands was not sufficient even for the maintenance of the members, and the houses in dispute are substantial, burden is on the plaintiff who alleges the houses to have been acquired out of joint family funds, to establish it. Held that if the contention that on proof of the existence of the Watan lands the burden had shifted on to the defendants to prove that the acquisitions were made without the aid of joint family funds, that burden had been discharged. Likewise, it was held that since the ancestral Watan lands are intact, and were available for partition, and the small income derived from them must have been utilised for the

maintenance of the members of the family, whether it were held that the plaintiff had failed to discharge the burden which lay on him of establishing sufficient nucleus, or that the defendants had discharged the burden of establishing that the acquisitions were made without the aid of joint family funds, the result was the same." 21. The aforesaid decision would unambiguously highlight the point that in order to prove that the property is the joint family property, there should be evidence to show that there was joint family nucleus and income was arising out of it so as to enable the joint family to purchase additional properties and that the burden of proof is on the person, who pleads that even though the property might stand in the name of one of the co-sharers, nonetheless, it belongs to the joint family. Undoubtedly, this case should necessarily be analysed in the light of the dictum set out in the cited decision. (ii) AIR 196.SC 33.(Rukhmabai vs. Lala Laxminarayan and others) and an excerpt from it would run thus: "5. There is a presumption in Hindu law that a family is joint. There can be a division in status among the members of a joint Hindu family by refinement of shares which is technically called division in status, or an actual division among them by allotment of specific property to each one of them which is described as division by metes and bounds. A member need not receive any share in the joint estate but may renounce his interest therein, his renunciation merely extinguishes his interest in the estate but does not affect the status of the remaining members vis-a-vis the family property. A division in status can be effected by an unambiguous declaration to become divided from the others and that intention can be expressed by any process. Though prima facie a document clearly expressing the intention to divide brings about a division in status, it is open to a party to prove that the said document was a sham or a nominal one not intended to be acted upon but was conceived and executed for an ulterior purpose. But there is no presumption that any property, whether movable or immovable, held by a member of a joint Hindu family, is joint family property. The burden lies upon the person who asserts that a particular property is joint family property to establish that fact. But if he proves that there was sufficient joint family nucleus from and out of which the said property could have been acquired, the burden shifts to the member of the family setting up the claim that it is his personal property to establish that the said property has been acquired without any assistance from the joint family property."

22. A mere running of the eye over the above precedent would exemplify and demonstrate, portray and parody that once there is admission by the 'kartha' himself that by selling the ancestral property, a new property, in this case, the item not II, was purchased, then that should be deemed to be the joint family property. Here there is no question of putting the horse behind the cart or putting the cart before the horse. The recitals in Ex.A6-the registered document cannot be resiled from in view of Sections 91 and 92 of the Indian Evidence Act. 23. In this connection I would like to cite the following decision of the Honourable Apex Court. (i) 1993-2-L.W.205 NANJAMMAL (DIED) AND ANOTHER V. PALANIAMMAL, certain excerpts from it would run thus: "5. It was one of the contentions urged in the Court below that the plaintiff had not even obtained encumbrance certificate before the execution of Exhibit A1 and she had not taken the title deed from the defendant. The Court below has pointed out the recital in Exhibit A1 under which the defendant had undertaken to obtain an encumbrance certificate and give it to the plaintiff. The fact that the plaintiff had not taken the title deed in advance does not in any way discredit the truth of the agreement in Exhibit A1. In fact, the evidence of the defendant is that what was written was really an agreement though it was only for the purpose of securing the loan. She (defendant) has admitted that the plaintiff wanted her to execute an agreement for sale by way of security for the loan and she did execute such an agreement. When that is the fact, it is not open to the defendant to raise a plea that the terms of the agreement should be ignored as the real purpose was to secure the loan transaction. It is conceded by learned counsel for the appellants that the defendant is barred from raising such a plea by S.92 of the Indian Evidence Act.

6. Hence the only question to be considered is whether the relief of specific performance should not be granted to the plaintiff. The normal rule is that once the truth of the agreement is made out the Court shall enforce it unless there are circumstances which would prove that equity will suffer by enforcing the agreement for sale. In the present case no such circumstances have been brought to the notice of the Court either in the pleadings or in the evidence to show that equity favours the defendant and relief of specific performance should be denied. The defendant has stated in the evidence that the property was worth much more than Rs.1,01,000/- at the time of the agreement. But there is absolutely no

evidence in support of the same. No document has been produced to prove the value of the lands in the locality and no witness has been examined to speak to the same. In such circumstances we cannot accept the case of the defendant that the property is more valuable than the consideration mentioned in Exhibit A1." (ii) (1982) 1 SCC 4.at page 10 -Gangabai v. Chhabubai, certain excerpts from it would run thus: "11. The next contention on behalf of the appellant is that sub-section (1) of Section 92 of the Evidence Act bars the respondent from contending that there was no sale and, it is submitted, the respondent should not have been permitted to lead parol evidence in support of the contention. Section 91 of the Evidence Act provides that when the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself. Sub-section (1) of Section 92 declares that when the terms of any contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms. And the first proviso to Section 92 says that any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law. It is clear to us that the bar imposed by sub-section (1) of Section 92 applies only when a party seeks to rely upon the document embodying the terms of the transaction. In that event, the law declares that the nature and intent of the transaction must be gathered from the terms of the document itself and no evidence of any oral agreement or statement can be admitted as between the parties to such document for the purpose of contradicting or modifying its terms. The sub-section is not attracted when the case of a party is that the transaction recorded in the document was never intended to be acted upon at all between the parties and that the document is a sham. Such a question arises when the party

asserts that there was a different transaction altogether and what is recorded in the document was intended to be of no consequence whatever. For that purpose oral evidence is admissible to show that the document executed was never intended to operate as an agreement but that some other agreement altogether, not recorded in the document, was entered into between the parties (Tyagaraja Mudaliyar v. Vedathanni⁹¹⁹). The trial court was right in permitting the respondent to lead parol evidence in support of her plea that the sale deed dated January 7, 1953 was a sham document and never intended to be acted upon. It is not disputed that if the parol evidence is admissible, the finding of the court below in favour of the respondent must be accepted. The second contention on behalf of the appellant must also fail. 24.A mere perusal of those decisions would highlight and spotlight that if there are certain recitals in a registered document then contra evidence cannot be adduced by either of the parties. Pleading that the said document was not intended to be acted upon, is different from pleading that certain averments found set out therein are untrue. 25.Those precedents would unambiguously and unequivocally indicate and exemplify the fact that the recitals in a registered deed cannot be given a go-by and the party who committed himself in black and white cannot veer round and take an antithetical stand. 26.Absolutely there no shard or shred, miniscule or molecular, jot or pint of evidence to convey and display as to why those recitals in Ex.A6 should be ignored or pooh-poohed, belittled or slighted for the purpose of benefiting D1 and D2. As such, the recitals in Ex.A6-the sale deed dated 9.3.1973 should be given due weightage. 27.Accordingly, if viewed it is crystal clear that the second item of the suit properties was not purchased from out of the self acquired income of Varadharaja Mudaliar, but only by raising loan, which was discharged from out of the sale proceeds, which he got subsequently under E.A6, by selling the ancestral property. Not to put too fine a point on it, there is no embargo as per law to treat such a property as ancestral property and the finding of both the Courts below is in concinnity and commensurate with the aforesaid precedents also. 28.Regarding the first item of the suit properties is concerned, the Courts below held that there is nothing to indicate that as per Ex.B1-the sale deed 14.1.1973 the first item of the suit property was purchased from out of the joint family income.

29. This is a peculiar and singularly singular case, in which, the plaintiff failed to adduce evidence to establish and demonstrate that Varadharaja Mudaliar had income bearing ancestral nucleus. In such a case, it cannot be assumed that the first item of the suit property was purchased from out of the income derived from the ancestral nucleus. Over and above that, the findings of both the Courts below is based on analysis of fact which this Court, while exercising its power under Section 100 of C.P.C. may not be willing to interfere with the same and that is also not legally permissible, unless there is any perversity or illegality and I could see no perversity or illegality in such a finding also. IN re PROVING THE WILL-EX.B5 30.Relating to the Will is concerned, the learned counsel for the plaintiff would try to place heavy reliance on illustration (e) to Section 114 of the Indian Evidence Act. Before discussing on merits the evidence as well as the findings concerning the Will, I would like to keep myself informed of the following decisions, as my mind is reminiscent and redolent of the same.

1. 1994 (5) SCC 13.(Bhagwan Kaur vs. Kartar Kaur and others 2. 2003 (12) SCC 3.(Bhagat Ram and another vs. Suresh and others) 3. 2006 (13) SCC 44.(B.Venkatamuni vs. C.J.Ayodhya Ram Singh and others) 31.A perusal of the aforesaid judgments would cumulatively reveal that the propounder of a Will has to prove the due execution of the Will by the testator as per Section 63 (c) of the Indian Succession Act r/w Section 68 of the Indian Evidence Act. There could be no quarrel over the proposition that a Will has to be proved strictly in accordance with those aforesaid provisions of law. (i) 2005(1) SCC 4.[Daulat Ram and other vs. Sodha and others] (ii) 2005(1) SCC 28.[Meenakshiammal (Dead) through LRs. and others vs. Chandrasekaran and another] (iii) 2005(1) CTC 44.[Sridevi and others vs. Jayaraja Shetty and others] (iv) 2005(1) L.W.455 [Janaki Devi vs. R.Vasanthi and 6 others] (v) 1989 (1) L.W.396 [Nagarajan and 3 others vs. Annammal] (vi) AIR 198.SC 13.[Smt.Indu Bala Bose and others vs. Manindra Chandra Bose and another] (vii) AIR 198.SC 50.[Satya Pal Gopal Das vs. Smt. Panchubala Dasi and others] (viii) AIR 199.Bom. 148 [Asber Reuben Samson and others v. Eillah Solomon and others] (ix) 2008(2) MLJ 11.[M.Anandan and others vs. A.Dakshinamoorthy] (x) 2006(4) L.W.942 [Gurdev Kaur & others vs. Kaki & others] (xi) 2008(1) MLJ 133.SC [Savithri and others vs. Karthyayani Amma and others] (xii) 2007(3) L.W.916 [1. J.Mathew (died) 2. J.Damien and 3 others vs.

Leela Joseph] (xiii) (1990) 1 SCC 26.(Kalyan Singh, London Trained Cutter, Johri Bazar, Jaipur vs. Smt.Chhoti and others) (xiv) (1990) 3 SCC 36.(Ram Piari vs. Bhagwant and others) (xv) (1962) II Madras Law Journal Reports (Supreme Court) 27 (Rani Purnima Debi and another vs. Kumar Khagendra Narayan Deb and another) (xvi) 1976 STPL (LE) 8415 SC (Smt.Jaswant Kaur vs. Smt.Amrit Kaur and others) (xvii) 1984 (II) MLJ 13.(M.Krishnan vs. Ramaswami and others) (xviii) 2004 (1) CTC 61.(SC) (P.S.Sairam and another vs. P.S.Rama Rao Pisey and others) (xix) (2008) 8 MLJ 64.(Thayammal vs. Ponnusamy and another) 32.Among the aforesaid decisions, the decision of this Court reported in 2001(3)CTC 28.[Corra Vedachalam Chetty and another vs. G.Jankiraman] is on the point that the Court while analysing the Will is acting as a Court of conscience. An excerpt from the above said decision would run thus: "26. This need for caution, cannot be exploited by unscrupulous caveators who choose to cull out imaginary suspicions with a view to prevent the legatees under the Will from claiming the benefit thereunder and to render the last Will of the deceased wholly ineffective. In this context, the conduct of the persons who raise the alleged ground for suspicion is also to be looked at, to know as to how credible are the grounds for suspicions sought to be raised by such persons. In this case, the suspicion is sought to be raised by a person who is keenly interested in making the Will ineffective and whose conduct is far from one which would inspire confidence in truthfulness of his statements." 33.As such, the cited precedent would also highlight that the Court should not attach undue importance to imaginary suspicions. All these aforesaid decisions are on the point that the Court should not at the time of analysing the validity of the Will proceed on the hypothesis that the Will is an invalid one.

34. At this juncture, my mind is reminiscent and redolent of one other decision reported in 2003(1)CTC 30.[Janki Narayan Bhoir vs. Narayan Namdeo Kadam]. An excerpt from it would run thus: "8. To say will has been duly executed the requirements mentioned in clauses (a), (b) and (c) of Section 63 of the Succession Act are to be complied with i.e., (a) the testator has to sign or affix his mark to the will, or it has got to be signed by some other person in his presence and by his direction; (b) that the signature or mark of the testator, or the signature of the person signing at his direction, has to appear at a place from which it could appear that by that mark or signature the document is intended to have effect as a will; (c)

the most important point with which we are presently concerned in this appeal, is that the will has to be attested by two or more witnesses and each of these witnesses must have seen the testator sign or affix his mark to the Will, or must have seen some other person sign the Will in the presence and by the direction of the testator, or must have received from the testator a personal acknowledgement of signature or mark, or of the signature of such other person, and each of the witness has to sign the Will in the presence of the testator.

9. It is thus clear that one of the requirements of due execution of Will is its attestation by two or more witnesses which is mandatory.

10. Section 68 of the Evidence Act speaks as to how a document required by law to be attested can be proved. According to the said Section, a document required by law to be attested shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving an evidence. It flows from this Section that if there be an attesting witness alive capable of giving evidence and subject to the process of the Court, has to be necessarily examined before the document required by law to be attested can be used in an evidence. On a combined reading of Section 63 of the Succession Act with Section 68 of the Evidence Act, it appears that a person propounding the Will has got to prove that the will was duly and validly executed. That cannot be done by simply proving that the signature on the Will was that of the testator but must also prove that attestations were also made properly as required by clause (c) of Section 63 of the Succession Act. It is true that Section 68 of the Evidence Act does not say that both or all the attesting witnesses must be examined. But at least one attesting witness has to be called for proving due execution of the Will as envisaged in Section 63. Although Section 63 of the Succession Act requires that a Will has to be attested at least by two witnesses, Section 68 of the Evidence Act provides that a document, which is required by law to be attested, shall not be used as evidence until one attesting witness at least has been examined for the purpose of the proving its due execution if such witness is alive and capable of giving evidence and subject to the process of the Court. In a way, Section 68 gives a concession to those who want to prove and establish a will in a Court of law by

examining at least one attesting witness even though will has to be attested at least by two witnesses mandatorily under Section 63 of the Succession Act. But what is significant and to be noted is that that one attesting witness examined should be in a position to prove the execution of a will. To put in other words, if one attesting witness can prove execution of the will in terms of the clause (c) of Section 63, viz., attestation by two attesting witnesses in the manner contemplated therein, the examination of other attesting witness can be dispensed with. The one attesting witness examined, in this evidence has to satisfy the attestation of a will by him and the other attesting witness in order to prove there was due execution of the Will. If the attesting witness examined besides his attestation does not, in his evidence, satisfy the requirements of attestation of the Will by other witness also it falls short of attestation of will at least by two witnesses for the simple reason that the execution of the will does not merely mean the signing of it by the testator but it means fulfilling and proof of all the formalities required under Section 63 of the Succession Act. Where one attesting witness examined to prove the will under Section 68 of the Evidence Act fails to prove the due execution of the Will then the other available attesting witness has to be called to supplement his evidence to make it complete in all respects. Where one attesting witness is examined and he fails to prove the attestation of the Will by other witness there will be deficiency in meeting the mandatory requirements of Section 68 of the Evidence Act." 35. A plain reading of the above decision would highlight that if there are suspicious circumstances, then the same should be dispelled to the satisfaction of the Court by the propounders of the Will.

36. With this in mind, this Court is enjoined to analyse the evidence as well as the facts placed before it for the purpose of deciding the substantial questions of law involved in this case.

37. So far interpretation of documents is concerned, the following maxims would govern the adjudication: (a) *Verba generalia genaraliter sunt intelligenda* General words are to be understood generally. (b) *Verba ita sunt intelligenda, ut res magis valeat quam pereat* - Words are to be so understood that the matter may have effect rather than fail. (c) *Qui haeret in litera, haeret in cortice*: One who clings to the letter clings to the shell or surface. (d) *Mala grammatica non vitiat chartum*.

Sed in expositione instrumentorum mala grammatica quoad fieri possit evitanda est. Bad grammar does not vitiate a deed. But in the exposition of instruments, bad grammar, as far as it can be done, is to be avoided.

38. The above maxims would connote and denote that a document has to be interpreted in such a manner so as to validate it and not to invalidate it, but those maxims blindly cannot be applied in respect of Will. 39. I also I recollect and call up the following maxim: 'In dubiis non praesumitur pro testamento' In doubtful cases, there is no presumption in favour of the Will. 40. So far Will is concerned, which is a solemn document, it should be proved beyond reasonable suspicion. As such, while interpreting a document other than Will, the approach of the Court is different. 41. To put in single syllable words, while interpreting documents other than Wills, the Courts are enjoined to interpret the impugned documents in such a manner so as to validate rather than invalidate them over looking insignificant mistakes or errors in them. But exception is to the Will. A Will cannot be interpreted so as to validate it if there are suspicious circumstances and over and above that the Honourable Apex Court had occasion to reiterate, to the risk of repetition, but without being tautologous, that strictly in accordance with Section 68 of the Indian Evidence Act, and if necessary as per Section 69 of the Indian Evidence Act, the Will has to be proved. Here to say the least, absolutely there is no shard or shred, iota or jot of evidence in support of the Will. 42. I would like to suo motu refer to the following decision of the Honourable Apex Court: (2005) 8 SUPREME COURT CASES 6 PENTAKOTA SATYANARAYANA AND OTHERS V. PENTAKOTA SEETHARATNAM AND OTHERS, certain excerpts from it would run thus: "24. In the instant case, the propounders were called upon to show by satisfactory evidence that the Will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts indicated above. It was argued by learned counsel for the respondent that the propounders themselves took a prominent part in the execution of the Will which confer on them substantial benefits. In the instant case, the propounders who were required to remove the said suspicion have let in clear and satisfactory evidence. In the instant case,

there was unequivocal admission of the Will in the written statement filed by P.Srirammurthy. In his written statement, he has specifically averred that he has executed the Will and also described the appellants as his sons and Alla Kantamma as his wife as the admission was found in the pleadings. The case of the appellants cannot be thrown out. As already noticed, the first defendant has specifically pleaded that he had executed a Will in the year 1980 and such admissions cannot be easily brushed aside. However, the testator could not be examined as he was not alive at the time of trial. All the witnesses deposed that they had signed as identifying witnesses and that the testator was in sound disposition of mind. Thus, in our opinion, the appellants have discharged their burden and established that the Will in question was executed by Srirammurthy and Ext.B-9 was his last Will. It is true that registration of the Will does not dispense with the need of proving, execution and attestation of a document which is required by law to be proved in the manner as provided in Section 68 of the Evidence Act. The Registrar has made the following particulars on Ext.B-9 which was admitted to registration, namely, the date, hour and place of presentation of the document for registration, the signature of the person admitting the execution of the Will and the signatures of the identifying witnesses. The document also contains the signatures of the attesting witnesses and the scribe. Such particulars are required to be endorsed by the Registrar along with his signature and date of document. A presumption by a reference to Section 114 of the Evidence Act shall arise to the effect that particulars contained in the endorsement of registration were regularly and duly performed and are correctly recorded. In our opinion, the burden of proof to prove the Will has been duly and satisfactorily discharged by the appellants. The onus is discharged by the propounder adducing prima facie evidence proving the competence of the testator and execution of the Will in the manner contemplated by law. In such circumstances, the onus shifts to the contestant opposing the Will to bring material on record meeting such prima facie case in which event the onus shifts back on the propounder to satisfy the court affirmatively that the testator did know well the contents of the Will and in sound disposing capacity executed the same." 43.However, the Honourable Apex Court, in the subsequent decision in B.VENKATAMUNI V. C.J.AYODHYA RAM SINGH [(2006)13 SCC 449)], in respect of PENTAKOTA SATHYANARAYANA'S CASE -

(2005) 8 SUPREME COURT CASES 67 , observed thus: "However, having regard to the fact that the will was a registered one and the propounder had discharged the onus, it was held that in such circumstances, the onus shifts to the contestant opposing the will to bring material on record meeting such prima facie case in which event the onus shifts back on the propounder to satisfy the court affirmatively that the testator did not (sic) know well the contents of the will and in sound disposing capacity executed the same. 23.Each case, however, must be determined in the fact situation obtaining therein." 44.The precedent referred to supra, namely, B.VENKATAMUNI's case is referred to in the decision of the Honourable Apex Court reported in (2009)4 SUPREME COURT CASES 78 YUMNAM OGBI TAMPHA IBEMA DEVI V. YUMNAM JOYKUMAR SINGH AND OTHERS. 45.Wherefore, the current law on the subject is that even if a Will is an admitted one, the burden of proof is on the propounder of the Will to prove it by examining witness/witnesses and it should be established strictly in accordance with Section 68 of the Indian Evidence Act. 46.D.W.3 pulling no punches candidly and categorically stated thus: @/ / // rhh;gjpthsh; Kd;dpiyapy; tujuh\$Kjypahh; ifbaGj;J nghl;ljhft[k; mjw;F ,d;dhubud;W epUgpj;jth; vd;w ,lj;jpy; ehDk; rhl;rp ifbaGj;J nghl;nld; vd;why; rhpay;y/ ehd; gj;jpu mYtyfj;jpy; btspna epd;W bfhz;oUe;njd;/ mg;ngghJ vd;dplk; ifbaGj;J th';fp bfhz;lhh;fs;/ ehd; tpy;y';f ehd;W bgWtjw;fhf ehDk;. vd; kfDk;. Fg;g[rhkp vd;gtUk; gj;jpug; gjpt[mYtyfj;jpy; ,Ue;njkh;/ Fg;g[rhkp vd;gth; epyk; th';fp tpw;Fk; xU g[nuhf;fh;/ Fg;g[rhkp;F tujuh\$ Kjypahiu bjhpah[kh bjhpahjh vd;why; vdf;F bjhpahJ/ ehd; rhl;rp ifbaGj;J nghl;r brhd;ndd;/ mtUk; rhl;rp ifbaGj;J nghl;lhh;/ / / / / / tujuh\$ Kjypahh; f';fhjud; vd;w gj;jpu vGj;jh; K:yk; me;j capiy vGjp vd; Kd;dpiyapy; goj;Jg;ghh;j;J ifbaGj;J nghl;lhh; vd;why;. ehDk; mth; Kd;dpiyapy; rhl;rp ifbaGj;J nghl;nld; vd;Wk;. ,d;bdhU rhl;rpa[k; tujuh\$ Kjypahh; ifbaGj;J nghl;lij ghgh;j;jhh; vd;Wk;. mth; Kd;dpiyapy; mtUk; rhl;rp ifbaGj;J nghl;lhh; vd;why; rhpay;y/ / / / / 47.D.W.3 was also presumably cross-examined by advocate for D.1 and D.2, but in the deposition, the commencement of cross-examination was not separately shown, even though the answers of D.W.3 would indicate and point up that he gave such answers only during cross examination. D.W.3 candidly and categorically stated that he simply put his signature in the Will, but he did not see the testator signing it and according to him one other attesting witness also died. He also disowned his signature as identifying witness-Ex.B5. 48.A mere perusal of

Ex.B5 the Will would show up that one and the same witnesses, namely, Kuppusamy and Venugopal signed as the attesting witnesses as well as the identifying witnesses. But Venugopal-D.W.3 would depose that he did not sign as attesting witness. 49.The learned counsel for D.1 and D.2 would submit that witnesses might go to the extent of denying anything and everything under the sun, but it is for the Court to hold such denial as false and separate the truth from falsehood; Ex.B5 is a registered Will and in such a case, the Registrar might not have gone to the extent of simply colluding with some persons and registered the Will. Both the Courts below failed to consider the probabilities in that aspect. 50.The learned counsel for the plaintiff, by way of reply to such an argument put forth by the learned counsel for the appellants/D1 and D2, would put forth his arguments, a thumbnail sketch of the same would run thus: It is not as though the Legislators were not aware of the juridical act of registration of Will and also significance attached to such registration; nevertheless the Legislators in their wisdom thought fit to clearly stipulate under Sections 68 and 69 of the Indian Evidence Act that despite admission of either a registered Will or an unregistered Will it should be proved by examining at least one of the attesting witnesses. 51.Here, as has been discussed supra, the deposition of D.W.3 in no way supports the case of the propounder of the Will, namely, D.1 and D.2, who are claiming to be the beneficiaries under the Will and in fact, it boomerangs as against them. 52.The learned counsel for the defendants would try to place reliance on the deposition of D.W.5-the scribe by pointing out that as an 'A' grade scribe, he signed Ex.B5 under the seal "drafted and attested", and in such a case, his subsequent resiling from his commitment cannot be given undue importance, but that has to be ignored and the genuineness of the Will should be upheld. 53.Whereas, the learned counsel for the plaintiff would submit that the scribe no doubt signed under his seal "drafted and attested", but he has not put his signature as one of the witnesses along with Kuppusamy and Venugopal and as such, animus attestandi is absent. 54.It is quite obvious from a mere look at Ex.B5-the Will, that the scribe did not sign beneath the signatures of Venugopal in that attesting witnesses column, but he would, beneath his seal, sign and in his deposition he would reiterate that he signed not in his capacity as an attesting witness, but only as a scribe. 55.Even for argument's sake it is taken that since the

scribe signed under the seal "drafted and attested", he should be taken as an attesting witness, yet his evidence is to the contrary. He would repeatedly assert that he did not see the testator signing or the attesting witnesses signing the Will. Wherefore D.W.5's deposition would not come to the help of D1 and D2. 56. In the facts and circumstances of this case, no steps have been taken to summon the Registrar to prove the signature of D.W.3 as one of the identifying witness, but for reasons best known to themselves, they have not chosen to do so.

57. As such, in the light of the dictum laid down by the Honourable Apex Court concerning the proof of the Will, scarcely could it be taken that the available evidence of D.W.3 and D.W.5 could be taken as sufficient to prove the Will-Ex.B5 58. It is the categorical assertion of the defendants that only a few days after the execution of the Will by their father, the defendants came to know about it. 59. When such is the position, D.W.1(D1) and D.W.4(D2) were not competent to talk about the genuineness of the Will, because they could not have seen, as per their own version, the testator signing and also the attesting witnesses attesting the Will. As such, both the Courts below *au fait* with law and *au courant* with facts held and that too, after due analysis of the evidence, that the Will-Ex.B5 was not proved, warranting no interference in second appeal. IN RE ALLOTMENT OF SHARES 60 I could see no perversity or illegality in the findings of both the Courts below. However, in view of the fact that after giving the finding that the first item of the suit properties was the self acquired property of Varadharaja Mudaliar and that Varadharaja Mudaliar died intestate during the year 2000, leaving behind his five children, the first item of the suit properties should have been divided into five shares and the plaintiff and D.1 to D4 should have been allotted 1/5th share each; wherefore I hereby allot accordingly. 61. Regarding the second item of the suit properties is concerned, in view of the finding that it is an ancestral property, as on the date of death of Vardharaja Mudaliar during the year 2000, the property notionally should be divided into four shares. Varadharaja Mudaliar and the plaintiff and D.1 and D.2 were entitled to 1/4th share each. Out of that, the 1/4th share notionally allotted to Varadhara Mudaliar should be further divided into five shares, and 1/5th share each, out of such 1/4 share, should be allotted in favour of the plaintiff and D.1 to D4. 62. On balance, the substantial questions of law are answered as under: Substantial Question of Law No.(i) is decided to the effect that

both the Courts below were not justified in allotting shares after giving the correct finding that item No.(I) of the suit properties was the self-acquired property of Varadharaja Mudaliar and the second item was the ancestral property in the hands of Varadharaja Mudaliar. Substantial Question of Law No.(ii) is decided to the effect that there is perversity and illegality in the judgements and decrees of both the Courts below. 62.Accordingly, the preliminary decree stood modified as indicated supra. The ambiguity, if any, shall stand disambiguated in the preliminary decree and afresh a preliminary decree shall follow in the aforesaid manner in respect of the first and second items of the suit properties. Wherefore the judgments and decrees of both the fora below shall stand modified as above. 63.In the result, the second appeal is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed. 19.3.2013 Index:Yes Internet:Yes To 1.The Principal District & Sessions Judge, Chengalput. 2.The Principal Sub-Judge, Chengalput G.RAJASURIA, J.

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