

(1975) 03 MAD CK 0064
In the Madras High Court

R. Selvaraj

APPELLANT

Vs

R. Raadhakrishna Pillai alias R.R. Krishna Pillai and Another

RESPONDENT

Date of Decision : 21-03-1975

Acts Referred:

Citation : AIR 1976 Mad 156 : (1976) 89 LW 19 : (1976) 1 MLJ 105

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Division Bench

Judgement

T. Ramaprasada Rao, J.—The unsuccessful" plaintiff in O.S. No. 3 of 1968 on the file of the Court of the Subordinate Judge of Nagapattinam, is the appellant. Originally the suit was numbered is O.S. No. 42 of 1967 on the file of the Court of the District Judge, East Thanjavur at Nagapattinam. The suit is one for partition and separate possession of the plaintiff's one-third share in the suit properties and for future profits. The plaintiff's case is that his paternal grandfather Rajagopal Pillai started a photo business in 1917 under the name and style of Sri Krishna. Photo Studio. The first defendant is the plaintiff's father and the second defendant is the step-brother of the plaintiff. It is claimed that the first defendant got himself associated with his father in the photo business and both of them ran it as a joint family business. When the grandfather Rajagopal Pillai became old, the first defendant, was in sole charge of the studio and the business and the plaintiff after completing the school course, participated in the same and contributed his labour also. Thus, the family photo business was continued after the death of Rajagopal Pillai in 1965 and considerable properties were acquired from and out of the profits of the business. The plaintiff says that he became an expert in the said business and the grand-father himself till his death was doing the sedentary part of the business. As the joint family had no other business or source of earning except the photo studio, the plaintiff acquired a right by birth in the family activity and the assets secured in exercise of such profession. The family acquired the house in which the studio is at present situate besides agricultural lands of an extent of 6.80 acres in Serukudi village from and out of the business profits. It is claimed that large sums of money have

also been deposited by the first defendant in his name in various banks. Soon after the death of the grand-father there were misunderstandings between the plaintiff and the first defendant, who was under the influence of his second wife and by the end of April, 1967 the bickerings compelled the plaintiff to demand a division of the joint family properties and allotment of his one-third share to him. The plaintiff also refers to a partition in the family to which he was a party but claims that it is an unstamped and unregistered document and, therefore, would not bind him. As the first defendant refused to effect any proper division of the properties and give his one-third share, though such a demand was made through mediators, he had to file the present action claiming a one-third share in the plaint A to D schedule properties. A schedule properties deal with the materials in the photo studio; B schedule refers to a house in Thiruvarur town. C schedule deals with the agricultural lands and the D schedule refers to a deposit of a sum of Rs. 10,000 made by the first defendant in the Indian Overseas Bank at Thiruvarur.

2. In the first defendant's written statement he admits that the plaintiff was living with him till April, 1967. Thereafter the plaintiff was living separately with his wife. It is denied that the photo studio called Sri Krishna Photo Studio is a joint family business and the properties mentioned in the various schedules to the plaint are joint family properties. Rajagopal Pillai, the grand-father of the plaintiff was a public servant employed as a clerk in the Sub-Registrar's Office in the first instance and later in the railways. Rajagopal Pillai thereafter started a business in watch and clock repairs and later learnt photography and was carrying on a mere photography business at Nagapattinam and Thiruthurai pundi and was not even successful. He was adjudicated as an insolvent and the first defendant emphatically denies that there were any ancestral nucleus left by Rajagopal Pillai for the first defendant to exploit the same. The first defendant's independent case is that he was trained by one G. V. Naidu, photographer of Nagapattinam and he became proficient in it. With a paltry sum of Rs. 130 given to him by his maternal uncle, he purchased a camera and carried on the profession as a photographer at Thiruvarur. Thereafter he started a photo studio of his own at Thiruvarur and with the funds provided by his paternal aunt, he opened the studio Sri Krishna photo studio on 19th February, 1931. Thereafter he had to borrow some moneys for purchases of cameras and equipment and thus, no funds were provided by his father and no photographic equipment was inherited by him to continue the so-called photographic business of Rajagopal Pillai, the grand-father of the plaintiff. Thereafter, this studio was shifted to a pucca building and with the borrowings made from third parties and banks, the first defendant continued his own separate studio business as the proprietor thereof. In course of time, he improved the business and began to deal with the photographic materials and earning income therefrom. He lent moneys on mortgages and purchased immovable properties mentioned in the schedules and they are his sole and separate properties. The house and the agricultural lands are not joint family properties and the plaintiff has no interest or right by birth in

them. The allegation that the plaintiff assisted his grand-father as well as the first defendant in conducting the alleged photographic business started by Rajagopal Pillai in 1917 is denied. The plaintiff if at all was writing some accounts and beyond that no contribution was made by the plaintiff in acquiring the schedule mentioned properties. The bank deposit of Rs. 10,000 is denied. The first defendant also refers to some mediation at the instance of respectable persons and the fact that a draft partition deed was drawn up whereunder the first defendant was prepared to give the plaintiff an ex-gratia sum of Rs. 4,501 and five mas of land so that the plaintiff could live upon it and maintain himself. The first defendant also refers to a release deed which the plaintiff had to execute incorporating the terms agreed upon during the course of mediation. Though the plaintiff signed a copy of such deeds and affixed his signature thereto, he wriggled out of the situation and at the instance of his friends, has filed this suit on false allegations. The plaintiff's claim of one-third share in the schedule mentioned properties is denied.

3. In the reply statement, the plaintiff reiterates his position and repudiates the circumstances under which the unstamped document was signed by him.

4. On the above pleadings, the following issues were framed:

1. Whether the "Sri Krishna Studio" is the joint family business of the parties?
2. Are all the properties concerned the joint family properties?
3. If issues 1 and 2 are found in favour of the plaintiff, are the jewels items 1, 3, 4, 8, 9, 11 and 12 in the inventory list, the properties of the first defendant's second wife belonging to her exclusively as her stridhana properties?
4. What are the movables and furnitures available for division?
5. Is the document dated 29th April, 1967 invalid and inoperative as is contended by the plaintiff?
6. To what relief is the plaintiff entitled?

5. The learned Subordinate Judge found on issue No. 1 after detailed consideration of the oral and documentary evidence that the association of the plaintiff in the business of the first defendant was only out of generosity and kindness and in the course of the conduct of a dutiful son towards his father and that the plaintiff could have assisted the first defendant in the matter of writing accounts etc. only when he completed his school in 1956, and there has not been a blending of the properties of the first defendant with the joint family properties if any, and that the Sri Krishna Studio is not the joint family business of the plaintiff and the 1st defendant. Consequent upon his finding on issue No. 1, the learned Judge did not agree with the plaintiff's case that the other properties mentioned in the schedules could be treated and considered as joint family properties on the legality and the admissibility of Exhibit B-75, which is the unregistered release deed to which the plaintiff was a party and found that

the plaintiff was not speaking the truth and that Exhibit B-75 is a true document. But he would not base his conclusion on it fully, as it was an unregistered one. He looked into it for certain purposes and ultimately held that the plaintiff was not entitled to any partition and share of the properties.

6. The plaintiff has come up in appeal.

7. Sri Gopalaswamy Iyengar, repeated the contentions made in the lower Court and contends that the material before us is sufficient to hold that Sri Krishna Photo Studio was originally started by the grandfather and that the subsequent accretions made by the plaintiff's father by continuing the said business should be deemed to be joint family property in which the plaintiff has a legitimate share. Mr. D. Ramaswamy Iyengar learned Counsel for the respondent would, however, say that the plaintiff should fail on his own evidence and in any event no connecting link has been shown by the plaintiff to establish the continuity of an ancestral business which is the essential sine qua non to prove ancestral nucleus and to further establish that the properties acquired by a male member from the income of such alleged joint family activity should also be considered as joint family properties. In the main his contention is that all the properties claimed by the plaintiff as joint family properties are the self-acquisitions of the first defendant in which the plaintiff cannot claim a share.

8. The foundation of the appellant's case is that it was the grand-father Rajagopal Pillai, who started the photo studio and the ancillary photographic business. If this basis or hypothesis on which the edifice of this argument is built, is taken out, then the plaintiff should naturally fail. Rajagopal Pillai was a Government servant. He was working in the Sub-Registrar's office for sometime and later on in the railways. He was for sometime doing business in watch repairs. Thereafter he got a camera on a hire purchase and was taking photos. He was later adjudicated insolvent in 1927. This by itself is sufficient to discredit the story of the plaintiff as well as his witnesses that there was ancestral nucleus left by Rajagopal Pillai for the first defendant to continue the same. Exhibit B-90 is the insolvency petition. Exhibit B-91 is the affidavit filed by Rajagopal Pillai pleading inability to pay his debts. Exhibit B-92 is the application for discharge, which was pending till 30th October, 1928. The final order of discharge was made directing Rajagopal Pillai to deposit a sum of about Rs. 25 for distribution amongst his creditors and he was given six months time for payment. It is, therefore, seen that Rajagopal Pillai was unable to make both ends meet even in 1928, as he could not pay the sum of Rs. 25 in one lump sum and he wanted six months time for payment of the same. Rightly, therefore, the lower Court stated that it would be unwise to comprehend that Rajagopal Pillai was conducting a photo studio during 1927 and 1928 and that too at Thiruvapur, a place not mentioned in Exhibits B-90 and B-92. It was only in 1931 that the first defendant started his own photo business. There is no link to prove that the grand-father provided the father of the plaintiff with funds during 1929 and 1930 to enable the father to start a photo studio business at Thiruvapur in 1931. When the first

defendant started his studio in 1931, it may be that Rajagopal Pillai was assisting him. When Rajagopal Pillai associated himself with his son's new photo business at Thiruvarur, proclaiming that his son was the proprietor of the concern, that is sufficient admission on the part of Rajagopal Pillai that he had nothing to do with the new photo business started by his son. Exhibits B-2, B-48 to B-59 establish that the grand father admitted that he was receiving only a salary of Rs. 25 or Rs. 35 as an employee in the photographic business of his son. The conduct of Rajagopal Pillai throughout gives the lie direct to the plaintiff's case that Rajagopal Pillai was the author of Sri Krishna Studio, Thiruvarur and that his association with the said business of which the first defendant was the proprietor was in the status of a member of an undivided joint family. The plaintiff did not let in any evidence to show that the grandfather handed over at least a camera to the first defendant as an undischarged insolvent or after discharge for him to continue the so-called joint family business. The contention, however, is that the grand-father was also interested in his son's business and that he contributed sufficient labour for raising a presumption that there was a joint family activity. It is not every sporadic or unimpressive contribution by a member of the joint family, may be the father, that would make the resultant activity, a joint family activity. The contribution of labour, service or money by one member of the joint family to the other should be so conspicuous and impressive that on a prima facie, examination of such material, a reasonable and a prudent person should gain the impression that the two members were so associated with the common object of exploiting a commercial activity to the advantage of the joint family as a whole and in general. In the instant Case, the grand-father was writing accounts acknowledging that the father was the sole proprietor of the Thiruvarur photo business. The grand-father also accepts that he was receiving a salary for such service rendered. The surrounding circumstances also belie the tall story of the plaintiff that the grand-father and the father so associated themselves so as to make their joint activity a joint family venture. In the absence of such essential features, which would make such contribution by one member to the other a commercial activity the intendment and purpose of which is to make it a joint family trade, it is hazardous to infer that such unisoned activity between the members should be equated to a co-ordinated activity on their part equatable to the activity of members of a Hindu joint family resulting in the properties acquired by such common exertions as joint family properties.

9. In *C. Sundaram Vs. Rukmani Ammal and Others*, , *Ramanujam and V. Ramaswami, JJ.*, hinted as to what should be the nature of such assistance which a member of a Hindu joint family should render so as to make him also the joint owner of the properties secured by such co-ordinated activity. They said:

Where a business was in its origin the exclusive business of the father, whether that business came to acquire a joint family character would depend on the nature of the help or assistance given by the son. It is not every act or work done or assistance given by a son to the father in the conduct of the business that will make the business a joint family business. If the work done or

assistance given by the son is such as to lead to the inference that the father had intended to treat his exclusive business as a joint family business, then alone the presumption of joint business could be invoked. In invoking such a presumption the joint exertion by the son with his father should be such that the father could be said to have intended to treat the business as belonging to both, or to the joint family.

In the instant case, we have no evidence to assume or presume that the nature of the assistance rendered by Rajagopal Pillai to the first defendant after he was discharged as an insolvent was such as to lead to the necessary inference that the first defendant intended to treat his exclusive business as a joint family business. On the other hand, we have referred to the salient features in this case that the first defendant maintained his individuality and proprietorship over the business and even the grand-father Rajagopal Pillai acknowledged such a right in his son. A fortiori therefore, the plaintiff as the grandson cannot ignore such essential features in the case and claim that the business is a joint family business.

10. The plaintiff, however, wants to take advantage of certain advertisements made by his father to show that Krishna Photo Studio, Tiruvarur, is but a continuation of the quondam business of Rajagopal Pillai. Exhibit A-1 is an advertisement notice which shows that Krishna Photo Studio, Thiruvarur, was established in 1917. To the same effect are Exhibits A-2 and A-3. The lower Court rightly condemned these documents by examining them physically. We are also satisfied that these Exhibits could not have been printed in 1917. In that year no one comprehended the existence of a road named after Netaji. In fact, there was no such road in Thiruvarur as Netaji road as early as 1917. The first defendant explains these exhibits by saying that he adopted an advertisement puff to the effect that he started the business in 1917 so that he could compete with other rival photographers. We are not, therefore, satisfied that Exhibits A-1, A-2 and A-3 conclusively establish that there was a continuity of the joint family business by the first defendant when he started his studio at Thiruvarur. The plaintiff again relies upon Exhibits A-5 and A-6. They are written to third parties including P. W. 3. Exhibit A-6 bears a rubber stamp of Sri Krishna Studio Photographer, Thiruvarur. The letter is dated 28th March, 1930. The plaintiff wants to build up a case that this by itself establishes that the first defendant was continuing his father's business. Exhibits A-5 and A-6 do not contain any reference to such business. The plaintiff relies upon the rubber stamp impression on the letters. It would be unsafe to rely upon them for, as pointed out by the learned Judge, those impressions could easily be got affixed later by interested parties. The plaintiff also relies upon the evidence of P. W. 3, who is a relative, anxious to help the plaintiff. Exhibit A-7 is a photograph in which P. W. 3 and his relations are seated. According to P. W. 3 it was Rajagopal Pillai, who took the photograph in 1924. Exhibit A-7, as such does not disclose that the photograph was so taken. Even otherwise P. W. 3 says that the two children found in Exhibit A-7 would now be aged about 35 and 33, It, therefore, follows that the photo

ought to have been taken only after 1933 and not in 1924 or before 1928. It is not clear from Exhibit A-7 whether Rajagopal Pillai was having a studio by name Sri Krishna Photo Studio in 1924. The manuscript writing on the photograph cannot be relied upon for the purpose. To a similar effect is another photograph Exhibit A-8, which does not mention that it was taken in the year 1938. The testimony of P.W. 3 is belied by the fact that he has no personal knowledge as to whether the studio was in existence in the year 1924. In fact, till 1928 Rajagopal Pillai was at Thiruturaipundi where his insolvency proceedings were pending. It is, therefore, unnatural and possibly unlikely that he would have continued his photographic business in 1928, when he was adjudicated an insolvent by then. P.W. 3 and the first defendant were not on amicable terms ever since 1933 and he appears to be a competitor in the trade. His evidence to the effect that he learnt photograph from Rajagopal Pillai and purchased a camera from him are all to be considered in the above light and particularly when he is not favourably disposed towards the first defendant. P. W. 3's testimony, therefore, does not further the plaintiff's case. P. W. 4 is another person, who was not on talking terms with the first defendant for 10 years and it is in this predicament he comes to help.

11. Thus, we notice that the plaintiff's witnesses who have been deliberately brought for the occasion do not further the case of the plaintiff. Photographic art is out and out objective, though it is the product of subjective entrepreneur-ship. A keen intellect, a perceptive aesthetic taste, an open mind and creative? art are all the essential characteristics of photography. The introvertic content of photography is something which cannot be measured by any yardstick of conception but it is a variable norm mostly reflecting the prowess of the artist himself. These essential elements in the art of photography have to be acquired or at least shown to have been acquired by a person before he claims to be an expert successful photographer. The plaintiff has miserably failed to establish that his association with the family is such as to gain the impression that he is a photographer himself of that eminence and merit and that his grand-father put his father into the limelight by injecting in the first defendant the above elements for us to conclude that there was any continuity in the photographic business or for the matter of that photographic trade.

12. Sudarsanarn Maistry v. Narasimhulu Maistry ILR (1902) Mad. 149 : (1902) 2 M.L.J. 353, is relied upon by Mr. Gopalaswamy Iyengar. Their Lordships said:

Even if the undivided family is not possessed of any nucleus of property which has come to it as "unobstructed heritage", it may be that, by act of parties property acquired jointly by all the members or separately by one or more members thereof, can be impressed with the character and incidents of unobstructed heritage or joint property belonging to the main family or to any of its branches.

But the evidence in this case does not support the above well-accepted proposition. No act of the first defendant has been brought to our notice so as to

establish that the first defendant intended to do the photographic business and trade so as to hold the same and the accretions made thereunder as joint family property in the Mitakshara sense of that expression. We have already stated that the labour contributed by the grand-father does not give any indication of any intention on the part of the first defendant to treat the business and the additions from its income as joint family property. There has not been such blending of the properties acquired by the first defendant as is required in Hindu Law so as to impress such properties with the badge of joint family properties. The doctrine of blending of self-acquired property with joint family has to be carefully applied with reference to the facts of each case. No doubt it is settled that when members of a joint family by their joint labour or in their joint business acquired property, that property in the absense of a clear indication of a contrary intention, would be owned by them as joint family property and their male issue would necessarily acquire a right by birth in such property. But the essential sine qua non is the absence of a contrary intention. If there is satisfactory evidence of an intention on the part of the acquirer of such property to treat it as his own, but not as joint family property, the presumption which ordinarily arises, according to the personal law of Hindus that such property would be regarded as joint family property, will not arise. Certain incidents may be cited to prove that the first defendant did not subordinate his individuality or give up his right as owner of the acquired properties so as to raise a presumption that he desired to treat these properties as joint family properties.

13. However, one such incident relied upon is the writing of accounts of Sri Krishna Photo Studio by Rajagopal Pillai. Such occasional offers by the grandfather to render service to the father after he was discharged as an insolvent cannot be put in the forefront to show that Rajagopal Pillai associated himself with the son so as to make the activity of the first defendant a joint activity. It may be that the first defendant as a dutiful son allowed his father to help him in his business during the early part of its commencement. We have already referred to the fact that Rajagopal Pillai himself was paid a salary of Rs. 25 per month as is seen from Exhibits P-60 to 69. Exhibits B-48 to B-59 are letters written by the grand-father to various persons to intervene on his behalf and request the first defendant to send a sum of Rs. 30 per month. The one other incident referred to by the plaintiff is his own contribution to the business. That he has experience in photography is vaguely referred to by P.Ws. 2 and 5. It may be that the plaintiff is interested in photography. But the question is, whether he rendered assistance to his father and contributed his labour to set up a case that the business as well as the properties acquired from the surplus income, are joint family properties. He did not receive any salary or any remuneration from the first defendant. He also assisted his father during his spare time by writing a few entries in the accounts. Even such association by the plaintiff would not make the commercial activity of his father a joint family business, A conscious, voluntary abandonment by the first defendant of his separate rights in the business should be established. He might have taken some

photographs on some occasions. He might have proficiencies as a photographer as is seen from Exhibit B-70 which is the advertisement given in The Hindu to show that he is an experienced photographer. But all such sporadic acts and exhibitions of proficiency cannot make the business of the father a joint family business. The well established principles as is seen from the pronouncements of the Supreme Court and our High Court is to the effect that there is no presumption that a business conducted by a member of the joint family is a joint family business. On the other hand the presumption is to the contrary. The person alleging such a state of affairs should prove the same by acceptable and clinching evidence. The fact that the business started by one of the members was of the same nature as the business which was carried on by his ancestors will not by itself be a sufficient discharge of the burden of proof on the part of the person alleging that such business is ancestral business. Even if it is assumed that the first defendant out of his generosity associated for certain purposes the plaintiff and put him in administrative charge of a part of his affairs, it does not tantamount to a relinquishment or abandonment of his exclusive rights in his business and conversion of his separate business into joint family business. Even if the first defendant trained the plaintiff for acquisition of the necessary knowledge as a photographer that would not be a telling feature to prove blending or intentional abandonment of his exclusive rights in the photographic business and trade. One other feature very strongly relied upon by the plaintiff is that when the account book was opened by the first defendant on 19th February, 1931 in the name of Sri Krishna Photo Studio, a sum of Rs. 379-11-0 was credited towards the photographic charges from customers. When the business was started on 19th February, 1931 the entry as if a sum of Rs. 379-11-0 is due from customers indicates that there was a continuity of an old business. The learned Judge on a careful consideration of the entries in Exhibit B-2 which contained the above entry also rightly held that it represents the amount due by way of charges for photographs taken on that date. It is not unlikely that a credit is shown on that date for services rendered by the photographer to his customers. Invariably a business man would try to boost up his business. Apparently on such anxiety, the first defendant might have made these entries on the very date when he started the business. The first defendant, however sent some old bill books containing the bill numbers which are not continuous. The first defendant explains the position by saying that the order forms were loose sheets got from another photographer.

14. Though this explanation is not fully supported by evidence, yet this sporadic instance cannot belie the first defendant's case. The facts of this case establish that Rajagopal Pillai, who became an insolvent just about two or three years prior to the opening of the business by the first defendant, could not have had such custom on 19th February, 1931 for him to transmit the same to the first defendant. This again is a factor, which has to be taken into consideration, as was rightly done by the Court below. There is again a credit entry of Rs. 375 in Exhibit B-2. The first defendant explains this entry as a sum borrowed from his

paternal aunt. The plaintiff's case is that this credit entry represents the value of the camera and other materials, which Rajagopal Pillai might have given to the first defendant on the date when he started the new accounts. There is absolutely no evidence to show that Rajagopal Pillai was possessed of such photographic implements for him to pass them on to his son. There was no such disclosure in the insolvency proceedings. The argument on behalf of the plaintiff that these are the assets which the first defendant obtained from his father is without any basis whatsoever.

15. On the other hand, the evidence of the first defendant is more acceptable. He speaks to the fact that he went over to his maternal grand-father's house at Veliapalayam when he was 11/2 years old and was living with his uncle and not with his father. It was only when he was aged about six he became acquainted with his own father. He speaks about the insolvency proceedings in which his father was adjudicated as an insolvent. He is emphatic that he did not visit his father at Nagapattinam when he was seeking his livelihood as a photographer and that he did not learn photography under him, since the father did not care for him. He says that prior to his opening of his business in Thiruvarur, his father came of his own accord and took up residence with him and it was during that period of stay that Rajagopal Pillai was asked to assist him in writing accounts. He denies the suggestion that his father started the photo business in 1917 and that his father was partaking in the business throughout. He refers to the fact that from and out of the surplus income, he purchased the suit schedule properties. He says that his son stopped his education in October, 1956 when he was 17 years old, that he was unable to pick up the art of photography. He says that the plaintiff was occasionally looking after his business when he was not well. He refers to Exhibit B-75 a release deed, executed by the plaintiff, which emphasises his proprietorship in the business of Sri Krishna Photo Studio. The testimony of D.W. 1 and his witnesses read with the provisions of the Hindu Gains of Learning Act, prompts us to accept the first defendant's case. Prior to 1930, when the above Act was passed, the common notion was that all such gains of learning of a member of a joint family by the practice of a profession or occupation at the expense of joint family property was to be treated as joint, family property and if such gains were made by personal labour without reference to the joint family funds, they were the self-acquired property of the said member. But after the passing of the Act, no gains of learning shall be held not to be the exclusive and separate property of the member of the joint family on the only ground that such learning was imparted to him at the expense of joint family funds and with its aid. The fact that during the acquisition of such knowledge and learning the concerned member of the family was maintained by the joint funds of his family will not matter. Under the provisions of the Hindu Gains of Learning Act also, the first defendant's theory that all the acquisitions made by him and referred to by the plaintiff in the pleadings are his self-acquired property, has to be accepted. The plaintiff himself has subscribed unambiguously to the fact that his father was the proprietor of Sri Krishna Photo Studio as is

seen from Exhibit B-75 which we shall presently consider. That there was no ancestral nucleus has been proved. The plaintiff was not even born when his father started his business. It is impossible to believe that the plaintiff contributed to the commercial activity of his father to such an extent so as to give the impression that the father voluntarily divested himself of his right over his business and the properties acquired therefrom as sole proprietor and sole owner thereof.

16. We shall now deal with Exhibit B-75. This is an unregistered release deed dated 29th April, 1967 executed as between the plaintiff on the one hand and the first defendant on the other. The plaintiff would say that he signed it under coercion and compulsion. He has two versions to give. The first one is that he signed the same voluntarily because of his confidence in his brother-in-law, who intervened in the matter. His second version is that he signed it without reading the contents. He admits the presence of independent persons at the time when Exhibit B-75 was executed. Taking all the circumstances under which Exhibit B-75 came into existence, we are unable to accept the self-serving evidence of the plaintiff that he was compelled to execute the release deed. D.W. 10 is one of the witnesses, to such execution. D.W. 7 is the Vakil's clerk, who was present throughout, when the deed was prepared under instructions from both the plaintiff and the first defendant. D.W. 7, would swear that the plaintiff was informed that after the release, he was free to carry on the photo business by himself excepting in the name of Sri Krishna Photo Studio. The first defendant has categorically referred to the fact that Krishna Photo Studio and the properties purchased by him from Its income are his self acquisitions. Whilst holding therefore, that Exhibit B-75 should have been executed in the manner and at the time as suggested by the first defendant, we apply the principle that admissions in an unregistered deed is evidence to prove the same and particularly to establish that some of the properties covered by it are the self-acquisitions of one of the executants of the same. This principle is referred to in *Rajangam Ayyar Vs. Rajangam Ayyar* through his next friend N. Sankaram Ayyar, As in our opinion Exhibit B-75 is a true document, the recitals therein that the photo studio is a self-acquired property of the first defendant has to be given sufficient weightage and effect and even on this ground, the plaintiff's case that the suit properties are joint family properties fails.

In conclusion, we recapitulate the principle as laid down by the Supreme court in *Lakkireddi Chinna Venkata Reddi Vs. Lakkireddi Lakshmama*, . The Supreme Court said:

Property separate or self-acquired of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein. To establish such abandonment, a clear intention to waive separate right must be established. From the mere fact that other members of the family were allowed to use the property, jointly with himself or that the

income of the separate property was utilised out of generosity to support persons, whom the holder was not bound to support or from the failure to maintain separate accounts, abandonment cannot be inferred for an act of generosity or kindness will not ordinarily be regarded as an admission of a legal obligation.

The above principle squarely applies to the facts of this case. We have, therefore, no hesitation in agreeing with the findings of the Court below on all the issues. We are not traversing the few facts in relation to the other issues, as they were not seriously argued before us. As no arguments were addressed before us challenging such findings on such issues the appeal fails and it is dismissed. But as it is a litigation between the father and son and as the son has come to Court with an unreasonably wide open mouth as against his own father, we do not feel inclined to award costs. There will be no order as to costs.

C.M.P. No. 11427 of 1973:

17. No orders. Dismissed.