

(1976) 08 MAD CK 0043
In the Madras High Court

Ranganayaki Ammal and Others

APPELLANT

Vs

S.R. Srinivasan and Others

RESPONDENT

Date of Decision : 13-08-1976

Acts Referred:

Penal Code, 1860 (IPC) — Section 406

Citation : (1978) 1 MLJ 56

Hon'ble Judges : Ramaprasada Rao, J

Bench : Division Bench

Judgement

Ramaprasada Rao, J.—Defendants 1 and 3 to 6 appeal against the preliminary decree for partition, given by the learned Subordinate Judge of Kumbakonam. Srinivasa Iyengar had two sons, Ramaswami Iyengar and Rajagopala Iyengar. They originally constituted members of a Hindu undivided family. The plaintiff is the son of Ramaswami Iyengar. The first defendant is the second wife of Ramaswami Iyengar. The second and the third defendants are the son and daughter of Ramaswami Iyengar through his second wife. The fourth and the fifth defendants are the children of the third defendant and the 6th defendant is the husband of the third defendant. The 7th and 8th defendants are the grandchildren of Ramaswami Iyengar born to his daughter Bhuma, who in turn was the first daughter through his first wife Padmasani Ammal. The case of the plaintiff is that Srinivasa Iyengar, Ramaswami Iyengar and Rajagopala Iyengar formed a Hindu undivided family and when he was an one month child, his mother Padmasani Ammal died and since then, he was with his maternal grand father for the purpose of education. He, however, admits that his father Ramaswami Iyengar spent for his maintenance and education and even for his upanayanam and marriage. The plaintiff retired after entering Government service in the year 1959. His father Ramaswami Iyengar died in 1964 leaving considerable joint family properties. He would concede that Ramaswami Iyengar executed several wills bequeathing properties to him and to defendants 1 to 5 and such wills are inoperative in the eye of law, as all the properties, which were the subject-matter of the wills, were to be deemed and held to be joint family properties. He

therefore, ignores the said wills and he claims a 6/15th share in the totality of the suit properties. He also seeks for mesne profits in respect of his share and accounting regarding the same as against the defendants and for a further direction as against defendants 9 to 12 to deposit the amounts lying to the credit of T.S. Ramaswami Iyengar into Court and for costs. In the course of the pleadings, he would refer to an alleged sham legal proceedings in the year 1898 between T.S. Ramaswami Iyengar on the one hand and Srinivasa Iyengar and Rajagopala Iyengar on the other. That was a suit filed by the plaintiff's father for a partition of the joint family properties as against his father Srinivasa Iyengar and his brother Rajagopala Iyengar. That suit ended in a compromise . Prima facie, under the compromise decree in that suit, Ramaswami Iyengar did not receive any amounts or did not secure any joint family property, but on the other hand would take over the liability to pay a sum of Rs. 260 to his father and brother. Though no properties were actually taken over by Ramaswami Iyengar, yet the plaintiff's case is that his father was managing the joint family properties during the absence of his grandfather Srinivasa Iyengar and that he was also holding the office of karnam, as a trustee for the family, as that office was originally held by Srinivasa Iyengar and during the course of such managership and during the time when he exercised the office of karnam, which was an enviable one on those days, he secreted large amounts of the income from the joint family and lent moneys benami in the names of his second wife and second wife's children besides taking them in his own name and these amounts were all set out in the written statement-marked as Exhibit A-4) filed by Srinivasa Iyengar in the suit O.S. No. 65 of 1898 on the file of the Court of the District Munsif, Valangaiman at Kumbakonam and that, therefore, the prima facie recitals in the compromise decree are a make-belief affair. His further contention is that having secured such nucleus from the joint family after instituting a suit for partition, Ramaswami Iyengar, who was a very shrewd gentleman, developed the same by lending it to third parties and thereafter acquired considerable properties either in his own name or in the name of his second wife and children through her. According to the plaintiff, all the properties enumerated by him in the plaint schedule, though standing in the name of the female members of the family or other male members including Ramaswami Iyengar, should be deemed to be joint family properties, as there was sufficient joint family nucleus for the acquisition of such properties. The alternative case of the plaintiff is that Ramaswami Iyengar intended at all times to treat the properties either in his name or in the names of other members of the family as joint family properties. The case of blending is pleaded. On the foot of this alternative plea, it is said that Ramaswami Iyengar had always intended to treat the properties acquired by him though as self-acquired properties, for the benefit of the entire family, and that therefore, the Suit properties should be treated and held as joint family properties in which the plaintiff is entitled to his legitimate share.

2. The appellants as defendants would contend that the compromise decree in O.S. No. 65/1898 on the file of the Court of the District Munsif, Valangaiman at

Kumbakonam cannot give the impression and much less the reasonable impression that it was a make-belief affair invented by the father and the two sons and that in fact Ramaswami Iyengar did not take at the time when he compromised the partition action and came forward from his family any share in the joint family properties. The enumeration of the various advances as if made by Ramaswami Iyengar either in his own name or in the name of his second wife and her children are fictitious and at no time Ramaswami Iyengar did receive any benefit from the joint family either in the shape of secreting the income therefrom or utilising the same for his benefit to the disadvantage of the other coparceners and that factually the properties which were the subject matter of the partition suit of 1898 were so unyielding and not valuable that it could not reasonably be said that there was considerable surplus income from the joint family properties which could have enabled Ramaswami Iyengar to slice away a portion of such income and secrete them and utilised them for the benefit of himself and his second wife and her children to the disadvantage of the plaintiff. The specific case of the defendants is that Ramaswami Iyengar, who was very forward by himself and who was considered as an Advocate-General by the residents of the village, earned by himself and such earnings of his had at no time any reference to the utilisation of the joint family surplus income. Ramaswami Iyengar was doing lucrative money lending business, the nucleus for which was provided by himself and as a karnam of the village and as a clerk in a Chettiar's firm and by his own efforts Ramaswami Iyengar acquired properties both moveable and Immoveable after seeing his female and male children are duly educated and fully provided for at the appropriate times. The blending of the self-acquired properties with the so-called joint family properties is denied. The defendants would refute the claim of the plaintiff.

3. Regarding the deposits mentioned by the plaintiff in his plaint, defendants 9, 10, 11 and 12 have pleaded their respective cases. The 13th defendant, who is a tenant, says that he is an unnecessary party. Defendants 7, 8 and 14 to 19 remained ex parte. On the above relevant pleadings, the following issues were framed:

1. Whether the nucleus set forth in the plaint was true and constituted sufficient nucleus for later acquisitions and developments to make all the properties left by father Ramaswami Iyengar as joint family properties?
2. Whether they have been thrown into joint stock?
3. Whether the plaintiff's mother left any jewels and the same could constitute a joint family nucleus?
4. Whether the plaint properties are joint family properties and which of the parties is in possession of the same?
5. Whether the several wills and dispositions, settlements etc., alleged by defendants are true, executed in a sound disposing state of mind and voluntary?

6. Whether they are vitiated by undue influence and pressure?
7. Whether the Wills, settlements and dispositions of monies, etc. are valid and binding on plaintiff and 2nd defendant?
8. Whether the plaintiff and 2nd defendant are estopped from questioning the wills and dispositions?
9. Whether the plaintiff and 2nd defendant are entitled to the share of 6/15 or any other share in suit properties and monies?
10. Whether plaintiff is not in joint possession?
11. Whether the 2nd defendant is liable to render an account in respect of "C" schedule and any and what moneys?
12. Whether there are amounts in deposits in the Banks (defendants 9 to 12) and whether they are bound to put the same into Court?
13. Whether the claim is barred by time?
14. Whether the suit is bad for nonjoinder of parties?
15. Whether the valuation and Court-fees paid are correct?
16. What are the moveables, jewels cash, Bank deposits, etc., which are liable to division?
17. Whether defendants 1 and 3 also are not liable to render account as claimed?
18. What provision is to be made for charities?
19. Whether plaintiff is entitled to charge?
20. To what reliefs are the respective parties entitled?

4. On issues 1 to 4, the trial Judge answered them in favour of the plaintiff, but held under issue No. 3, that the jewels left by the plaintiff's mother could not have constituted the joint family nucleus. Under issues 5 to 8 the learned Judge held that the wills and gifts executed by Ramaswami Iyengar, were all executed by him, while he was in a sound disposing state of mind, but at the end would say that the wills and dispositions are binding only to the extent of 1/3 share of T.S. Ramaswami Iyengar in his property and that the plaintiff is estopped from questioning them to that extent. Certain other directions were given by the learned Judge regarding the accounting and ultimately, he gave a preliminary decree for partition and possession of the plaintiff's one-third share in cash deposits and in all the suit properties excepting the C schedule properties. He gave a decree for accounting against defendants 1 to 3 and directed the 9th defendant to deposit the fixed deposits amount in to Court. It is against this, defendants 1 and 3 to 6 have appealed.

5. We have already seen that the plaintiff, who was living all along away from the

family since his childhood, can only speak to the broad probabilities, as he cannot pinpoint the issues which arose in this case. The burden no doubt is on the plaintiff to establish that there was adequate joint family nucleus out of which his father Ramaswami Iyengar can reasonably be said to have acquired all the suit properties. In a Hindu joint family, if one sues for partition on the foot that the properties claimed by him are joint family properties, then three circumstances ordinarily arise. The first one is an admitted case where there is no dispute about the existence of joint family properties at all. The second is a case where certain properties are admitted to be joint family properties and the other properties in which a share is claimed are alleged to be the accretions or acquisitions from the income of the available joint family properties or in the alternative have been acquired by a sale or conversion of such available properties. The third head is that the properties standing in the names of the female members of the family are benami and that such a state of affairs has been deliberately created by the manager or the head of the family and that really the properties or the amounts standing in the names of female members are properties of the joint family. It is by now well established that properties standing in the names of the female members are their own, unless there is definite, clinching proof to the contrary by the challenging member. It is not for the female member to prove how she acquired the same. In ordinary cases also where a plea of benami is set up it is for the person who comes to Court to establish that the properties standing in the name of the other co-parceners or members are really joint family properties which stemmed from the joint family nucleus. While considering the term nucleus it should always be remembered that such nucleus has to be established as a matter of fact and the existence of such a nucleus cannot normally be presumed or assumed on probabilities. The extent of the property, the income from the property, the normal liability with which such income would be charged and the net available surplus of such joint family properties do all enter into computation for the purpose of assessing the content of the reservoir of such nucleus from which alone it could with reasonable certainty be said that the other joint family properties have been purchased unless a strong link and nexus are established between the available surplus income and the alleged joint family properties; the person who comes to Court with such bare allegations without any substantial proof to back it up should fail. It is in this background that this case has to be considered.

6. We should first of all consider whether there was any motive or scheme when Ramaswami Iyengar filed O.S. No. 65 of 1898 on, the file of the Court of the District Munsif, Valangaiman at Kumbakonam, for a partition of the joint family properties, which ultimately ended in a compromise. In the written statement filed by Srinivasa Iyengar exhibited as Exhibit A-4 the stand taken up by the father was that Ramaswami Iyengar took away cash from the family properties and that he had been doing money-lending business in his own name by utilising the same. He refers to certain properties as his own properties but would in the main contend that Ramaswami Iyengar during the time when he was managing

the joint family and when he exercised the office of karnam, lent monies as stated in the third schedule to that plaint and would assert that he has secreted a sum to the extent of about Rs. 5,500. He also catalogues the debts of the family amounting to Rs 1,420 which, were outstanding on that date. Ramaswami Iyengar was examined and his deposition is marked as Exhibit B-36. He would admit that he had independently borrowed monies and his father and his brother are not in any way responsible to pay those debts. He would swear that the monies lent in the name of his wife belong to her and that he was by then doing money-lending business of his own. In Exhibit B-36 as produced, there is no suggestion to Ramaswami Iyengar that these monies were secreted by him from the income of the joint family. There was no attempt on the part of Srinivasa Iyengar in that litigation to prove that the catalogued items in the third schedule to his written statement were all monies which at one time belonged to the joint family and which were misappropriated by Ramaswami Iyengar. It was in these circumstances, that the compromise was effected. Under the compromise decree, Ramaswami Iyengar gave up all his rights in the family lands and took over the burden to pay his debts to which he spoke in his examination. Mr. Chellaswamy would contend that the enumeration of the details in the written statement of Srinivasa Iyengar to the effect that there has been such misappropriation would by itself be sufficient to give the impression that Ramaswami Iyengar secreted the family funds to his advantage. His argument is that the compromise decree and Exhibits A-1 to A-4 which relate to the suit O.S. No 65 of 1898 do give the impression that Srinivasa Iyengar and Rajagopala Iyengar gave up their right to the said sum of Rs. 5,000 misappropriated by Ramaswami Iyengar and in lieu thereof Ramaswami Iyengar gave up his right over the joint family properties. This is a very tall suggestion. This will be made clear from the conduct of the parties after the compromise decree and how the family properties were dealt with and that possibly could have been the income from the properties even assuming that Ramaswami Iyengar was for sometime in sole management of it. An accent is made on "(referred to in Exhibit A-1. This is the compromise decree. If really the intentions of the parties were that there is such a misappropriation or appropriation of a sum of Rs. 5,000 by Ramaswami Iyengar, nothing prevented the parties from making a reference to it in the compromise memo. It is significantly silent about it. In fact, the (sic) referred to in Exhibit A-1 compels the first and the second defendants to discharge them. Obviously, Ramaswami Iyengar did not want to take a share in the family properties, as by then he was trying to stand on his own legs by exerting himself. This is clear from the fact that it is the admitted case of the parties that soon after the compromise decree Ramaswami Iyengar shifted to Kumbakonam and began to earn on his own. The recitals in Exhibit A-1 that the money-lending business was carried on in the names of himself and his wife or son and that Srinivasa Iyengar had nothing to do with them give a clue that the father and the brother never attempted to further their self-serving statements made in the written statement that such monies were carved out of the joint family. We are unable to agree with the reasoning of the learned judge that the dominant

intention of Ramaswami Iyengar was to safeguard his assets from the purview of his father and brother, Until it is established that such assets held by Ramaswami Iyengar had anything to do or something to do with the family properties and its income and unless such proof is available, it is difficult to hold that the compromise decree in the above suit should be understood as a mere camouflage and that Ramaswami Iyengar should be deemed to have misappropriated the family funds and the result of the compromise decree is that he severed his connections with the family after taking a substantial sum of about Rs. 5,000 from it. A reference is made to Exhibit B-164 wherein the recital is that Srinivasa Iyengar and Rajagopala Iyengar were selling the share obtained by them in the partition suit of 1898. This is pressed into service by Mr. Chellaswamy who contends that there were an effective partition and a mutual release as between the parties and that, therefore, it cannot be said that Ramaswami Iyengar left the family without taking any benefit from it. Here again it is a matter of speculation. The plaintiff, who spoke in the box, was giving out a story of which he is not personally aware. It is not difficult to conceive that Ramaswami Iyengar, who was shrewd and more dynamic than the other members of the family, wanted to get out of it as early as possible, and he instituted the partition action so that the division in status and by metes and bounds may be put on record. It is also not impossible to conceive that a coparcener, who was able to stand on his own and who was able to earn by his own efforts would give up his rights in the joint family totally and would prefer to come out of it rather than be in it taking no benefit under it, but only liabilities. That Ramaswami Iyengar was having money-lending business is admitted by Srinivasa Iyengar in Exhibit A-4. Exhibit A-93 is yet another document which shows that Ramaswami Iyengar was doing business of his own. It is the common case of all parties that Ramaswami Iyengar was the karnam of the village. This happened at a time when Srinivasa Iyengar was absent from the village. As the office of karnam was hereditary in those days, Ramaswami Iyengar was appointed to that office. Srinivasa Iyengar did not have the authority to transfer that office to Ramaswami Iyengar. On account of the fortuitous circumstances resulting from the absence of Srinivasa Iyengar from the village, the appropriate authority should have thought fit to appoint Ramaswami Iyengar as the karnam, as he was the son of the last holder of the office. The trial Judge himself concedes that Ramaswami Iyengar should have earned handsomely when he was functioning as karnam. He would also characterise him as a person, who was consulted by the villagers and as one who was looked upon as Advocate General by the residents of the village. The lower Court fell into a fallacy when it assumed that Srinivasa Iyengar transferred the office of karnam to Ramaswami Iyengar and that Ramaswami Iyengar was holding the office of karnam as trustee of the family. All the income earned by Ramaswami Iyengar as karnam of the village being the result of gains of learning are his own properties, and cannot be treated as assets belonging to the joint family. We are unable therefore, to agree with the trial Court that all such income earned by Ramaswami Iyengar and which was utilised by him in his money-lending

business, should be deemed to be family properties in which Srinivasa Iyengar and Rajagopala Iyengar had a share. We have already referred to the fact that in the compromise decree or in the proceedings, there was no pointed reference to the fact that all the income earned by Ramaswami Iyengar as karnam should be deemed to be joint family income. Even if it is possible to cull out from the pleadings any such suggestion, they were not furthered and the position would not be as now put forward by the learned Counsel for the respondents. Thus, the reasonable impression gained on a study of the relevant exhibits connected with the partition action of 1898 is that Ramaswami Iyengar, who was by then earning as a karnam and as a money-lender wanted to sever his connections with the family which was not affluent so that he would stand on his own and own properties of his own without the same being shared by his father or his brother. We are unable to hold that at the time when Ramaswami Iyengar left the family in consequence of the partition decree, he left it with substantial joint family nucleus in his hands and which nucleus was the foundation for further earnings and further acquisitions thereafter.

7. This leads on to the question, whether there could have been any surplus income in the family which owned only about 9 acres of land on the whole. Soon after the partition Srinivasa Iyengar and Rajagopala Iyengar began to sell the properties which they took over under the partition decree. Under Exhibit B-160, 21 cents of land were sold for Rs. 20. Under Exhibit B-121 of the year 1902, 73 cents were sold for Rs. 165. Under Exhibit B-162, three acres and 63 cents were sold for Rs. 1,000 to clear off antecedent debts. After selling away a sizable portion of the family properties taken over by them, the balance thereof were divided under Exhibit B-63 between Srinivasa Iyengar and Rajagopala Iyengar. A reading of this document shows that what was divided amongst them were very small extents of land. It is, therefore, fairly clear that in order to discharge very small debts, Srinivasa Iyengar and Rajagopala Iyengar had to sell away the corpus of the family. If really there was considerable income from the family properties taken over by Srinivasa Iyengar and Rajagopala Iyengar, then there was no necessity at all, for the sales under Exhibits B-160, B-161 and B-162. Apart from the bare suggestion made by the plaintiff, who was not in the know of things at the appropriate time, there is no evidence to show that during the time when Ramaswami Iyengar managed the joint family properties, there was such considerable income and necessarily surplus income, which could form the nucleus for the investments made by Ramaswami Iyengar when he was managing the family during the absence of his father. The argument is repeated before us by Mr. Chellaswamy that there was such income. This argument is based on pure speculation as the learned Judge calls it "broad probabilities". We have already expressed the view that the earnings of Ramaswami Iyengar as karnam cannot be added on to the income of the joint family. The probability, therefore, is that such income, which was his own was utilised by Ramaswami Iyengar when he lent monies to third parties either in his own name or in the name of his wife. One other faint argument was that the sales under Exhibits

B-160, B-161 and B-162 were distress sales. There is no warrant for this at all. The sales were made in order to pay off debts; possibly there was no income, and therefore, the corpus had to be sold to pay off debts.

8. Mr. Chellaswamy wants to rely upon the observations of the Supreme Court in *Mallesappa Bandeppa Desai and Others Vs. Desai Mallappa and Others*, These observations are torn out of the context. We do not think that in that case any departure has been made from the well-known rule that proof of the existence of a joint family does not by itself lead to the presumption that the property held by any member of the family is joint and that the burden lies on the one who asserts that any such item of property was joint and he has to establish it. One method by which it could be established that a particular property is joint family property is to prove by acceptable evidence the possession of a nucleus of joint family property or family funds. If the possession of an adequate nucleus is shown, it is then open to the member, who claims the property as his self-acquisition to prove that no portion of the family funds was utilised by him for acquisition. But if the fundamental fact of the existence of available surplus income or adequate nucleus is not established, then the presumption works the other way and the properties standing in the name of a particular member, in such circumstances, would be deemed to be his property, unless the contrary is established in a manner known to law by the challenging member. Having regard to the treatment of the property by Srinivasa Iyengar and Rajagopala Iyengar, we are unable to hold that there was such adequate nucleus or family funds which formed the basis for the further acquisitions of properties by Ramaswami Iyengar after he shifted to Kumbakonam.

9. There are also certain statements made by the plaintiff himself which are against his interest and which also would throw light upon the fact that there was no joint family nucleus. In Exhibit B-37 the plaintiff asked for funds for his further education. There is no whisper about the existence of joint family property. On the other hand, for a paltry sum of Rs. 204 he would request his father to earn it and send it to him. If really the family was possessed of considerable income the plaintiff would not have written such a letter. A suit filed by the husband of one of the daughters of Ramaswami Iyengar against Ramaswami Iyengar and the plaintiff and the second defendant was settled out of Court and the plaintiff and the second defendant were not made liable to the suit claim. This was obviously because there was no joint family property in the hands of Ramaswami Iyengar, which could be proceeded against. In that suit, a written statement which was adopted by the plaintiff herein filed by the second defendant herein, is very significant. The plaintiff would admit that the properties in the possession of Ramaswami Iyengar are his own self-acquisitions and defendants 2 and 3 have no control over the same, and that, therefore, they were at the absolute disposal of Ramaswami Iyengar. He would also add that he and the second defendant herein did not possess any joint family assets and that none of the properties mentioned in the plaint which were by then owned by Ramaswami Iyengar has become blended or merged in the joint family

properties. In Exhibit B-129 of the year 1944, the plaintiff would again categorically refer to the fact that there were no joint family assets or properties in the hands of Ramaswami Iyengar. In this letter he confirms that he has received various sums from his father, who paid the same for his education. The comment is that these letters were written with a motive to Ramaswami Iyengar from his son. The plaintiff is not such a gullible person. He spoke the truth and emphasised the reality. For more than two decades, the plaintiff's consistent case was that there was no joint family property and that everything which was available with Ramaswami Iyengar was his own.

10. The question arose whether the admission in the pleadings made by the plaintiff in Exhibit B-39 with reference to a suit of 1937 was evidence and was admissible in evidence. Though statements in pleadings are not automatically acceptable as evidence, yet statements made by a person against his own interest and at a time when he could have laid threadbare the correct facts would be admissible evidence and the situation arising out of such candid admissions cannot be lightly got over by the person who pleaded in that way. In *Basant Singh Vs. Janki Singh and Others*, the Supreme Court held:

Under the Indian law, an admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits. In other suits, this admission cannot be regarded as conclusive, and it is open to the party to show that it is not true.

The insipid explanation to get over the written statement and the admissions as above by P.W. 1 does not appeal to us at all. It would be difficult to agree with him that he did not sign the written statement, but the advocate adopted it. He is an educated person and he cannot be allowed to say now that he adopted a written statement without knowing its contents.

11. The above admissions and the conduct of the plaintiff spread over a long period of time is an indication to show that at no time the plaintiff felt that there were joint family properties and. income from such properties which could be availed of by him at a later stage.

12. We have already touched upon the fact that the family properties of an extent of 9 acres odd could not have yielded so much income so as to leave a surplus in the hands of the manager for him to utilise the same for the benefit of the members of the family.

13. Mr. Chellaswami, would contend that they were fertile lands and that Ramaswami Iyengar was in management of the family properties for a period of seven years and, therefore he must have retained with him sufficient surplus income of the joint family. Reference is made to Exhibits B-40 and B-41. He would urge that Ramaswami gave up his claim in the family properties because it was advantageous to him. No doubt, he would also advance the argument that the earnings of Ramaswami Iyengar as a karnam should be deemed to be joint family income. All these contentions found favour with the trial Court. But we are

unable to agree with them. The family had to sell almost the entirety of the family properties to discharge paltry debts. There is nothing compelling in the recitals in these deeds which would prompt us to hold that the sales under Exhibits B-160 to B-164 were all distress sales. The burden is very heavy on the plaintiff to establish the existence of joint family nucleus. The mere lapse of time will not relieve him from discharging his obligation. The march and passage of time cannot be taken advantage of by the challenging coparcener and this by itself would not enable him to relieve himself of his legal duty to prove the obvious, namely, that the family was possessed of funds and that there was sufficient joint family Nucleus from which the further accretions were made by the member managing the same.

14. Another interesting contention raised by the plaintiff is that Ramaswami Iyengar should be deemed to have annexed all the suit properties to the joint family and blended them as such and, therefore, he would be entitled to his legitimate share therein notwithstanding the fact that the properties are in the names of Ramaswami Iyengar or his near and dear. Whether in a given case there was such blending leading to the reasonable impression that the member or the coparcener has totally and fully abandoned and relinquished his rights over such properties acquired by him is one of fact and has to be established by acceptable material. It is not mere physical mixing of the income of such properties and not even acts of generosity by which the father or the head of the family allowed others to participate in such income would lead to the presumption that the property has been blended with joint family property. As early as 1936 *Madhavan Nair, J.*, made it clear in *Naina Pillai v. Daivanai Ammal* 43 L.W. 302 : AIR 1936 Mad. 177, thus:

By merely being dealt with as joint family property the self-acquired property of the person who deals with it as such does not necessarily lose its character of separate property. The person who alleges that the property is joint family property must show that the owner has voluntarily thrown the property into the joint stock with the intention of abandoning all separate claims on it.

This principle has been approved by the Supreme Court in *G. Narayana Raju Vs. G. Chamaraju and Others*, as follows:

It is a well established doctrine of Hindu law that property which was originally self acquired may become joint property if it has been voluntarily thrown by the coparcener into the joint stock with the intention of abandoning all separate claims to it. But the question whether the coparcener has done so or not is entirely a question of fact to be decided in the light of all the circumstances of the case. It must be established that there was a clear intention on the part of the coparcener to waive his separate rights and such an intention will not be inferred from acts which may have been done from kindness or affection. The important point to keep in mind is that the separate property of a Hindu coparcener ceases to be his separate property and acquires the characteristics of his joint family or ancestral property, not by mere act of physical mixing with his

joint family or ancestral property, but by his own volition and intention, by his waiving or surrendering his special right in it as separate property. Such intention can be discovered only from his words or from his acts and conduct.

It, therefore follows that until there is clinching proof of relinquishment or abandonment of separate claims over the separate property of a member of a Hindu joint family and until it is shown that as a consequence of such abandonment, he has mixed up the said property inextricably with the joint family funds or other properties so that the quondam independent character of the property as self acquired property is lost the doctrine of blending cannot lightly be invoked. We are, therefore, unable to accept the alternative contention of Mr. Chellaswami that the self-acquired properties of Ramaswami Iyengar were so mixed up so as to lose its character and stamp of self-acquired property and acquired a new status of joint family property.

15. The father executed several wills Exhibits B-1 to B-10 and under Exhibits B-6 and B-7 he has settled valuable properties as set out in the E schedule to the plaint in favour of the plaintiff. He also settled from time to time properties in favour of the first, second third and the fourth defendants. The plaintiff was receiving the income from the E schedule properties and there is no reason to disbelieve D.W. 5 when he says that the plaintiff has entered into possession of such properties settled on him by his father. The father has consistently from 1937 to 1964 treated these properties and described them as his self-acquisitions. The plaintiff never took any objection to such a treatment of the properties. Even if it could be presumed that the plaintiff was helping his father that by itself is not sufficient, as acts of generosity and kindness by a father by which the son was allowed to participate in the administration of his self-acquired properties or enjoy a part of its income by itself would not be evidence to sustain the contention that the self acquisitions of the father are joint family properties. A curious reasoning of the learned Judge is that Ramaswami Iyengar was an independent person and a shrewd person too and, therefore, he brought out all instruments such as wills and settlements. But this would be begging the question. Though the conduct or admissions by one or the other of the members of a joint family to meet a particular contingency or to get an advantage are not of much value in determining jointness or otherwise of the family, yet their assertion in relation to the estate is an important factor, which should be taken into consideration in determining not only the factum of severance in a family but also as regards the character of the property as well. *Mst. Rukhmabai Vs. Lala Laxminarayan and Others*, . The stamps and badges which would ordinarily distinguish self-acquired property from joint family property are very well-known. The property should have been acquired by the member, may be the father by his own exertions and such acquisitions should be without any reference to or with the aid of family funds and lastly, such properties were not mixed up with the family property with the intention of bringing it to the hotchpot of the joint family. In our case, we find that every indicia to badge the suit properties as the self-acquired properties of Ramaswami Iyengar is available. Ramaswami Iyengar

was by himself a very capable person. As a karnam, he ought to have earned by himself. This is also clear from Exhibit A-93. He was convicted u/s 406, Indian Penal Code, for having converted pledged goods. This was in the year 1900. We are referring to this exhibit only to show that as early as 1900 Ramaswami Iyengar was lending money and held himself out as a money lender. After going to Kumbakonam, he was employed in a flourishing concern and it is not in dispute that although he was employed as a clerk, he was independently exercising a vocation of money lending. He used to borrow monies at a smaller rate of interest and lend it for higher rate of interest. The learned Judge himself finds that T.S. Ramaswami Iyengar was very frugal and financially sound. But he fell into an error in assuming that the source of such business was ancestral nucleus. No doubt, he performed the marriages of the female members and was admittedly lending monies on othis and promissory notes and is supposed to have maintained account also. The uncharitable remark of the learned Judge that D.W. 5 should be deemed to have suppressed the accounts is not borne out by evidence. Ramaswami Iyengar was being assessed as an individual to Income Tax. Thus, it is seen that whilst the conduct of the plaintiff in having accepted the settlement deed Exhibit B-7 is not explained satisfactorily by the plaintiff, the other surrounding circumstances of the case are clear pointers to the fact that Ramaswami Iyengar, when he dealt with the suit properties under Exhibits B-1 to B-10, was dealing with his own self-acquisition and not the joint family properties.

16. The question of accounting would arise only if the properties were joint family properties. As in Our view, all the suit properties should be deemed to be and held as the properties of Ramaswami Iyengar, in which the plaintiff did not acquire a right by birth, no such accounting can be directed, as it is not possible.

17. As regards the wills and settlement deeds, no question has been raised before us. There was no argument before us that they were not executed when T.S. Ramaswami Iyengar was in a sound and disposing state of mind. We are not , therefore, referring to this and we accept the finding of the Court below that the wills have been executed validly by Ramaswami Iyengar, when he was in a sound state of mind.

18. In the result, we hold that the suit properties are not joint family properties and that Ramaswami Iyengar had the requisite authority and competence to settle or will away the same, as he did under Exhibits B-1 to B-10 and that the plaintiff is not entitled to a decree for partition and separate possession as claimed by him.

19. The appeal is, therefore, allowed with costs.