

(2002) 03 AP CK 0059
In the Andhra Pradesh High Court
Case No : A No. 2445 of 1987

Takkali Appalanaidu (died) by LRs.

APPELLANT

Vs

Adari Satyanarayana and Others

RESPONDENT

Date of Decision : 13-03-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (2002) 3 ALD 290 : (2002) 5 ALT 426

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : P. Sriraghuram, for the Appellant; E.V. BHagiratha Rao and Syed Shareef Ahmed, for the Respondent

Final Decision : Allowed

Judgement

G. Bikshapathy, J.—The appeal is filed against the judgment and decree of the learned Subordinate Judge, Anakapalli in OS No. 61 of 1984 dated 5-7-1987. The trial Court tried together and disposed of two suits OS No. 61 of 1984 and 12 of 1987 by the said judgment. As far as this appeal is concerned, it is only filed against judgment and decree in OS No. 61 of 1984.

2. The appeal came to be filed in the following circumstances:

3. One T. Mahalaxamma filed OS No. 204 of 1978 on the file of the Principal Subordinate Judge, Visakhapatnam and subsequently it was transferred to the Court of the Subordinate Judge at Anakapalli and renumbered as OS No. 61 of 1984. Originally the suit was filed for injunction in respect of the suit schedule properties. However, pending the suit the plaintiff i.e., Mahalaxamma died and plaintiffs 2 to 4 came on record as legatees under the Will alleged to have been executed by Smt. Mahalaxamma. Consequent on the other plaintiffs coming on record, amendment was made to the suit plaint seeking the relief of declaration and possession. It is the case of the original plaintiff that she is owner of all the land situate in Munagapaka village, Anakapalli Taluk, more fully

described in the schedule of the properties which are her self-acquired properties and the plaintiff has been in exclusive possession and enjoyment of the suit schedule properties. While so, the plaintiff executed a registered will dated 5-2-1978 bequeathing her properties in favour of the plaintiffs 2 to 5. However, this action of the plaintiff was not liked by the defendant, who is her son and he was bent upon harassing the plaintiff since he has been trying to interfere with the properties belonging to the plaintiff. She filed the suit for permanent injunction restraining the defendant from interfering with the suit schedule properties or to interfere with the crops that were harvested. It was contested by the 1st defendant stating that the 1st plaintiff had not purchased the property out of her own funds and they are all joint family properties acquired by his father Parusnamudu. After filing the suit for permanent injunction the same was amended by order dated 31-8-1994 seeking the relief of declaration and possession on the ground that the suit schedule properties were bequeathed in favour of plaintiffs 2 to 5 and therefore they are entitled for the properties. It was also stated that the first defendant filed suit in OS No. 70 of 1978 before the Principal Subordinate Judge, Visakhapatnam for partition of the suit schedule properties and other properties. After the death of the first plaintiff the first defendant did not bring the legatees under the Will dated 21-5-1978. The suit was ultimately dismissed on 17-4-1981. Therefore, the judgment in the suit operates as res judicata and estoppel. Basing on the respective averments, the trial Court framed the following issues:

- "1. Whether the suit schedule properties are the self-acquired properties of the plaintiff and she has been in exclusive possession of the same?
2. Whether the suit schedule properties are the joint family properties of the defendant and his father?
3. Whether the cause of action alleged in the plaint is true?
4. Whether the Court fee paid is not correct?
5. Whether the plaintiff is entitled to the injunction prayed for?
6. To what relief?"

4. One of the plaintiffs who were brought on record subsequent to the death of the original plaintiff, namely Malla Satyanarayanamma and her two sons filed another suit in OS No. 12 of 1997 seeking declaration and possession in respect of the suit schedule properties on the strength of the settlement deed dated 1-11-1972 (Ex.A.54).

5. Before the trial Court five witnesses were examined for plaintiff and Exs.A1 to A59 were marked. On behalf of defendant 3 witnesses were examined and Exs.B1 to 31 were marked.

6. The trial Court on the basis of the evidence available on record came to the conclusion that the suit schedule properties were acquired by Smt.

Mahalaxamma out of her own funds and therefore decreed both the suit as prayed for by common judgment. Aggrieved by the judgment and decree in OS No. 61 of 1984, the 1st defendant filed the present appeal.

7. The learned Counsel appearing for the appellant-defendant Sri P. Sri Raghuram submits that the findings recorded by the trial Court to the effect that the suit schedule properties are self-acquired by Smt. Mahalaxamma from out of her own funds are absolutely illegal and run counter to the evidence on record. He submits that Mahalaxamma had no personal income at all and there is no evidence as to whether she has got any property from her parents. On the other hand, the parents of Mahalaxamma were always in debts, they have been mortgaging the properties to various persons including the husband of Mahalaxamma i.e., Parusuramudu and they have been redeeming and selling the properties. Thus the position of parents of Mahalaxamma was not so happy to gift away any property to their daughter. On the other hand, the husband of Mahalaxamma i.e., Parusuramudu was having sufficient agricultural lands and he was doing money lending business and in that process the properties of parents of Mahalaxamma was being mortgaged in his favour and as early as in the year 1926 also the mother of Mahalaxamma mortgaged certain agricultural lands in favour of her husband for Rs. 2,000/-. Thus there is no evidence that Mahalaxamma had any personal income or any amount to her credit at any point of time and that she had been purchasing the properties in her name and in the name of her sons and some properties herself and also some properties in the name of her son alone to suit the convenience of the family requirement, but it cannot be said that the properties are self-acquired properties of Mahalaxamma. Thus the trial Court failed to appreciate the documents in proper perspective and rendered an erroneous finding. He also submits that the documents, when thoroughly scrutinized, would clearly and clinchingly establish that the properties belong to joint family and that the appellant alone is entitled to succeed to the properties being joint family properties and Mahalaxamma, being a widow has not enjoyed any property as absolute owner. He relied on some decisions which will be referred in subsequent paragraphs.

8. On the other hand, the learned Counsel for the respondents-plaintiffs submits that the appeal is barred by the principles of res judicata. He submits that one of the plaintiffs namely 5th plaintiff in OS No. 61 of 1984 filed OS No. 12 of 1987 at a later point of time seeking almost similar relief and suit both the suits were tried together and the trial Court recorded the finding that the suit schedule properties are self-acquired properties of Smt. Mahalaxamma and inasmuch as no appeal has been preferred by the appellant herein against the judgment and decree in OS No. 12 of 1987, the appeal is barred by the principles of res judicata and the finding receded in OS No. 12 of 1987 became final and binding on the appellant. Therefore, on this ground alone, the appeal is liable to be rejected. The learned Counsel would rely on the judgment of the Supreme Court in Sheodan Singh Vs. Smt. Daryao Kunwar, , Ram Prakash Vs. Smt. Charan Kaur

and Another, . To this the reply of the learned Counsel for the appellant is that even though the principles of res judicata would apply in a case where even though two suits are tried simultaneously, but since the cause of action is different in two suits the finding recorded in other suit even though no appeal has been filed, would not constitute res judicata. He relied on Narhari and Others Vs. Shankar and Others, . The learned Counsel for the respondent would also submits that inasmuch as the properties were purchased in the name of Mahalaxamma it has to be presumed that they herself acquired properties. It is always open to any lady member in a joint family to acquire properties independently and therefore the finding of the Court on this aspect cannot be said to be illegal and the appeal is liable to be dismissed. The learned Counsel would reply on the passages from Hindu Law by Mayne and also the judgments reported in Nagayasami Naidu and Others Vs. Kochadai Naidu and Others, , Pattusami Padayachi v. Mullaialammal, 1976 (2) MLJ 225, Smt. Jayanthi Bai and Others Vs. Popular Bank Ltd., , Smt. Manohari Devi and Others Vs. Choudhury Sibanava Das and Others, .

9. Basing on the respective contentions the principal issue that arises for considerations is whether the suit schedule properties are self-acquired properties of Smt. Mahalaxamma or it is joint family property even though they stand in the name of Mahalaxamma.

10. It was the case of plaintiff-Mahalaxamma that these properties were acquired by her from out of her own funds and therefore she is entitled to deal with the same as per her own wish and she has also executed a settlement deed and will bequeathing the properties in favour of her relatives and therefore the 1st defendant has no manner of right to interfere with the same. Evidence was let by both parties. The question whether the properties are self-acquired properties of Mahalaxamma or joint family properties is a pure question of fact, which has to be decided basing on the evidence available on record. Since the documents are in favour of Mahalaxamma, the evidence has to be adduced by the defendant that they are not self-acquired properties of Mahalaxamma and they are joint family properties. By the date the suits came up for trial, Mahalaxamma was no more, and only the legatees are pursuing the matter on behalf of Mahalaxamma. It has to be considered whether Smt. Mahalaxamma was having property of her own at the time when she was given in marriage to Parusuramudu or whether she was given any property by her parents at any point of time. The documents which are necessary to be considered are very few Ex.B27 dated 30-4-1920 is a possessory mortgage deed executed by Doddi Pydamma mother of Mahalaxamma in favour of T. Lachanna and Tekkali Parusuramudu. As already stated Parusuramudu is husband of Mahalaxamma. Ex.A2 dated 1-8-1926 is mortgage deed executed by D. Pydamamma, mother of Mahalaxamma for Rs. 2,000/- in favour of Tekkali Parasuramudu. Ex.B7 is sale deed dated 28-2-1939 executed by Doddi Pydamma mother of Mahalaxamma in favour of Mahalaxamma. This sale deed was in discharge of mortgage deed dated

1-8-1926 (Ex.A2) and it was executed in favour of Mahalaxamma during the life time of her husband. He died on 19-4-1939. The other documents are subsequent to the death of Parusuramudu which will not have much bearing on the issue which is to be decided. It is not in dispute that Parusuramudu was doing money-lending business and there are number of documents executed in his favour towards mortgage of properties by the persons who obtain loans from him. So also the mother of Mahalaxamma obtained loan from Parusuramudu by mortgaging the properties in the year 1926 for a sum of Rs. 2,000/-. Apart from this it is also borne out from evidence that he is having agricultural property and house properties. The other documents filed by the parties would show that the properties were purchased in the name of Mahalaxamma as if she has purchased from her own funds and some of the properties are purchased jointly by Mahalaxamma and 1st defendant and some properties are exclusively purchased by 1st defendant. Similarly some of the properties were sold in like fashion. It is also to be noted in this regard that that when Parusuamudu died in the year 1939, 1st defendant was minor aged about 14 years and after the death of Parusuramudu, 1st defendant was virtually brought up by Mahalaxamma and she has been conducting the affairs left over by her husband and she has also been dealing with money-lending business which was hitherto done by her husband prior to his death. 1 st defendant was under the care and protection of her mother and there is no evidence to establish that the 1st defendant was exercising his independent power in respect of the properties. It is for the 1st plaintiff to establish as to how the amounts were brought by her so as to make independent purchase. Ex.B7 is the extract of registered sale deed dated 28-2-1939. The recitals in this document are very much essential to be noted. It is stated in it that Doddi Pydamma who was mother of Mahalaxamma executed sale deed in an extent of Ac.4.82 cents for a sum of Rs. 2,500/- in favour of T. Mahalaxamma which she purchased in the year 1909 from Mallavarapu Chinna Sannaiah and it was already in possession of Mahalaxamma by virtue of registered possessory mortgage executed by her on 1-8-1926 in favour of her husband Parusuramdu for a sum of Rs. 2,000/-. It is stated that Rs. 2,000/- has been received by her by virtue of adjusting the mortgage debt relating to the possessory mortgage and the balance sum of Rs. 500/- has been received from Mahalaxamma, The following is the translated version of relevant extract.

"In respect of the service mam land mentioned in the 3rd para here under which had passed to me by virtue of the sale deed executed in my favour on 31-3-1909 from Mallavarapu Chinna Sannaiah and other residents of Anakapalli village which was registered as document No. 987/1909, in Book I Volume 117 at pages 217 and 218 in the office of the Sub-Registrar, Anakapalli which is now settled upon, had been already in your possession by virtue of the registered possession mortgage and executed by me on 1st August, 1926 in favour of your husband, Parasuramudu which was registered as document No. 2706, in book I, Volume 283 at pages 252 and 253 and the same immovable property is settled be sold to

you by me and the particulars of the receipt of sale consideration fixed as per the prevailing market rate. A sum of Rs. 2,000/- has been received by me from you by virtue of adjusting the said mortgage debt relating to said possessory mortgage deed in your favour, and a sum of Rs. 500/- has been received by me from you on your agreeing to pay the same in the office of the Sub-Registrar, Anakapalli, in all, a sum of Rs. 2,500/- rupees two thousand and five hundred has been received from you as you paid the same. As I have executed this sale deed in your favour in respect of the said Inam wet land after settling all the obstructions from the side of our(n.c) and neighbours."

11. In Ex.A2 registered mortgage deed dated 1-8-1926 it is clearly stated that Doddi Paidamma has taken loan of Rs. 2,000/- by mortgaging the property for discharging a debt covered by decree in OS No. 129 of 1925 for Rs. 1,930/- and balance amount of Rs. 70/- was taken to meet other expenses. It was also stated that the possession of the said mortgaged land was delivered after the deed was executed and after arranging a cist of Rs. 240/- per year. The interest for that amount was Rs. 200/-per year, which the mortgagee shall pay every year from usufruct from out of the said land and he has to pay balance amount of Rs. 40/- on or before 15th December every year towards the Government tax and obtain the receipts. If the amount is not paid interest of 1% has to be paid. The terms and the genuineness of the deed is not in dispute. But the question is whether the amount of Rs. 500/- alleged to have been paid by Smt. Mahalaxamma on the date of execution of sale deed was from her self acquired property or it was an adjustment from out of the interest which is payable by virtue of the mortgage deed. There is a recital that the balance of Rs. 500/- was paid by Smt. Mahalaxamma under Ex.B7 sale deed. It is also to be noted in this regard that Pydamma mother of Mahalaxamma had been mortgaging the properties from time to time and she has also sold away certain properties under the guise of meeting some other obligations and also in some document it was stated that to pay certain amounts to her daughters. But there is no evidence except the recitals in one document Smt. Paidamma was having four daughters, Mahalaxamma being one of the daughters. Evidence has to be necessarily pressed into service to establish that that she was having her own income. If that is established, the remaining task would become easy. It is also not in dispute that she subsequently purchased some of the properties. But when once the nucleus is established the source of income can be understood to enable her to purchase the subsequent properties. But when the initial amount is not all accounted for, then the dispute becomes very difficult and the issue whether the property is self acquired or not becomes crucial issue. The learned Counsel for the appellant Mr. Raghuram submits that a Hindu woman is only entitled to enjoy the joint family property left over by her husband, but she has no power of exercising ownership over the said property. She can also act as beneficiary of the members of the co-parcenary and also to effect alienations for the benefit of the co-parcenar, but she cannot alienate the properties in her individual capacity. He takes assistance from the judgment in *Narasimha v. Venkatadri*, ILR VIII 290,

wherein the Madras High Court after referring to various texts observed as follows:

"Having regard, however, to the extent to which the widow's power of disposition is treated, as restricted in the leading commentaries in the Sought, there appears to be little or no difference in the result. Hence the judicial Committee observed, in the Collector of Masulipatnam v. Kavali Vencate Naranappa (8 MIA 529), that the restrictions on the widow's power of alienation are of the very substance of her heritage. Assuming for a moment that she has a larger power over movable than immovable property, it can by no means be larger than that possessed by the father of a Hindu family under the text of Yajnyavalkya cited in Mitakshara, Ch 1, s.i, sloka 27. It is observed by Mr. Mayne in Section 229 that the power must generally be taken to be limited to such necessary or suitable purpose as would come within the ordinary power of the head of a house-hold. We should prefer to say that the nature of movable property being such that in many cases conversion is essential to its enjoyment, the widow is not precluded from converting it, but must preserve the capital, unless the expenditure of it is necessitated by the insufficiency of the income to provide for her maintenance subject, nevertheless, to a power to dispose of a moderate portion for works of piety. She is not bound to preserve the income, but, owing to her temporary ownership, has a disposing power over it. She may either expend it at her pleasure or may allow it to fall into, and become, part of, her husband's estate, and where she has not made and disposition of the savings of income, they will become part of the husband's estate. The allegation that any portion of the property in suit was acquired out of income, was made for the first time in appeal and is inconsistent with the averment in the plaint. We need not, therefore, consider whether, if she makes savings, it is to be presumed, in the absence of proof of a contrary intention, that she has allowed them to fall into, and become part of, the corpus. We are, therefore, of opinion that, even if the gift set up by the appellant were proved as alleged, the appeal must fail."

He also relies on a judgment of Privy Council in *ISRI Dut Koer v. Hansbutti Koerain* ILR 10 324, wherein the Privy Council observed:

"Widow's savings from her husband's estate are not here stridhan. If she has made no attempt to dispose of them in her life time, there is no dispute but that they follow the estate from which they arose. But it is not always possible to fix the line which separates accretions to the husband's estate from income held in suspense in the widow's hands, as to which she has not determined whether or not she will spend it. Where, however, both the family property, and property purchased by the widow out of savings from her income, were alienated by her, with the object of changing the succession, clearly established and that the after purchases were inalienable by her for any purpose that would not justify alienations of the original estate."

In *Nagayasami's* case (*supra*) the Division Bench of Madras High Court held thus:

"There is an essential distinction as to the scope of the presumption in the case of acquisitions in the names of male members of a joint family and the female members of a joint family, In the case of male members of a joint family, there is a presumption that if the joint family had sufficient ancestral nucleus, the properties standing or acquired in the name of junior members are not joint family properties unless the presumption is rebutted by showing that the properties are the separate properties of the particular member or members in whose names the properties stand or were acquired. There is no such presumption in the case of properties standing in the name of female members. In the latter case, it is for the party who claims properties as joint family properties to specifically plead the particulars and details in the pleadings and establish the same by adducing necessary evidence."

12. The learned Counsel also relied on a judgment of the Madras High Court in Pattusami Padayachi case (supra) wherein a Division Bench of Madras High Court observed that the nomenclature or phraseology used by the parties ought not to be the sole guide to understand a document. The document has to be considered as a whole without taking one or the other of the sentences therein torn out of the context to find the intention of the parties.

It is further observed in paragraph 18 as follows:

"The main contention of the learned Counsel for the appellant is that the properties in Tholuvur which stood in the name of Pattayee Ammal are to be, having regard to the affluence of the family, treated as joint family properties. The argument is attractive. No doubt, Muthusami Padayachi obtained about 18 acres of land in the partition effected as between himself and his brothers. Probably the quantum of the share obtained by Muthusami Padayachi was greater. But that by itself does not lead to the presumption that such a corpus of joint family properties would yield surplus income. The plaintiff has not taken the precaution to prove that the family income from such properties obtained by Muthusami Padayachi was so abundant that it always resulted in a surplus which surplus could be utilized for further annexations to erstwhile joint family properties. It has now become almost axiomatic that properties purchased by one or the other of the members of a coparcenary or joint family when the family is joint cannot be as a matter of course be treated as joint family property. The coparcener who challenges such title in the member and pleads that they should also be brought to the hotch-pot, ought to establish by cogent and mature evidence that there was enough surplus income which was available in the joint family and which positively could be the foundation for such annexures made by one or the other of the members of the joint family. In the absence of such nexus between the purchase price of the purchased properties and the available surplus, of the joint family, the presumption that the properties in the names of the members of a coparcenary should automatically be treated as joint family properties would fail. In all cases definite proof is required that the further purchase in the names of joint family members ought to have been made and

could not have been otherwise than from the surplus income of the family. For a greater reason, the rule is more strict in the case of properties in the name of female members. From time immemorial it has become customary amongst Hindus at any rate for females to have properties of their own. Even our Sastras describe such property of a female as Stridhana property. Therefore, the concept that a female could own properties of her own is an age-long concept. If this concept therefore has been an accepted one from ages, then the fact that a female member in a joint family has properties in her own name would not necessarily lead to the conclusion that the origin of such properties should be traced to the joint family or to the income from the joint family. This principle is well established."

13. The same principles were reiterated in Smt. Manohari Devi's case (supra). In Smt. Jayanthi Bai's case (supra), it was held by the Division Bench of Kerala High Court that the bank deposit in the name of female member of family cannot be presumed to be the joint family funds in the absence of specific pleading and evidence.

14. The tenor of the aforesaid judgments make it clear that there is no presumption that the properties standing in the name of members of joint family belong to joint family. It has to be established by adducing proper evidence. However, in case of property held by a female member in the family, the presumption is that it is her own property and the person objecting has to establish that the property was purchased/acquired from the joint family nucleus.

15. It is also not in dispute, from the judgments as relied on by the learned Counsel for the respondent, it has to be established by evidence that the property was acquired by Smt. Mahalaxamma not from her own funds and from joint family funds. The only question that crops up is as to how the money was acquired by Mahalaxamma for purchase of the initial property in the year 1939 when her husband was alive. There is evidence that she has no property of her own and she was not doing any independent business apart from the business carried out by her husband Parasuramudu and the evidence adduced also show that the parents of Mahalaxamma were not in a satisfactory state of affairs as the documents executed by them would always show that they have been mortgaging the property, selling the properties from time to time. It is sought to be contended that she was having gold and also silver and after selling those ornaments, the property under Ex.B7 was purchased and some other properties were also purchased. But on this aspect there is no iota of evidence and no documentary or oral evidence is available on this aspect. Moreover when the husband of Mahalaxamma was doing financing business, the question of disposing of her ornaments for purchase of property that too from her own mother would not appeal to the conscience of a man of ordinary prudence. No affluent lady would sell her gold ornaments to purchase the other properties more especially when she is affluent, but as can be seen from Ex.A2 the said property purchased was mortgaged in the year 1926 and that was not redeemed

till 1939, that the property was lying under mortgage for a period of 13 years which was mortgaged by the mother of Mahalaxamamma. In such a situation can it be said that Mahalaxamamma was having sufficient money of her own to purchase the property under Ex.B7. More over it is a transaction of adjustment and not a transaction of payment of money at the time of sale. It was only sold in favour of Mahalaxamamma by her own mother redeeming the mortgage adjusting in favour of husband of Mahalaxamamma. There is also no evidence that she was having property either movable or immovable of her own at the time of Ex.B7. There is no dispute that a female Hindu can also own property being a part of member of a joint family though not a co-parcenary. But the evidence should be available to the effect that she was having sufficient funds. The way in which she came to the house of Parusuramudu, the manner in which the parents of Mahalaxamamma were dealing with their property, clinchingly establish that Mahalaxamamma had no property at all when Ex.B7 sale deed was executed in her favour. It is true that when a Hindu female purchases property being a part of a member of joint family, the presumption goes that it is her self-acquired property, but when that question is disputed it has to be established and based on the evidence that she was not in a position to purchase the property. The presumption in favour of Hindu female is rebuttable and the finding has to be recorded on the basis of the evidence adduced. Therefore, basing on these principles taking into consideration the evidence adduced by the parties, it cannot be held that she was having her own money to pay to her mother Rs. 500/-. On the other hand, the possessory mortgage deed itself gives the details of payment of interest also. Thus there is no source whatsoever to Mahalaxamamma to purchase the property under Ex.B7. Merely because it was mentioned that the amount was paid by Mahalakshamma, it cannot be presumed that it is her own money without establishing the source. Further, even assuming that she paid Rs. 500/- from her own funds, the property cannot be said to be owned by her completely as only 1/5th source was contributed by her and 4/5th source was that of her husband. There is no clear identification of own source at any point of time either before the Ex.B7 or subsequently. Therefore, it cannot be said that she has purchased The property under Ex.B7 from out of her own funds. But another contention sought to be pressed into service is that the amount of Rs. 2,000/- which was adjusted while executing the sale deed was subsequently paid by Mahalaxamamma to 1st defendant in 1949 making an endorsement on the mortgage deed. This is a fetched circumstance which cannot be believed under any circumstances. There is no requirement of payment of money after 10 years. The sale deed itself, which was executed in the year 1939 narrates the circumstances under which the sale deed was excepted. Under these circumstances, no credence can be given to the endorsement made to the effect that Rs. 2,000/- was paid by Mahalaxamamma to 1st defendant being the money belonging to Parusuramudu. On the other hand it goes to establish that Mahalakshamma tried to extricate the property under Ex.B7 by making endorsement in 1949. The trial Court has completely misconstrued the evidence on record and come to an erroneous conclusion that Mahalaxamamma was

having sufficient funds to purchase the properties and also to finance the property under Ex.B7. When she is not able to establish that she had possessed Rs. 500/- when Ex.B7 was executed it is unbelievable that she purchased subsequent properties also out of her own funds. It is not in dispute that subsequent to the death of Parusuramudu she has been carrying on the business of money-lending and in that process she has purchased the properties in various names. She also purchased the shares in a sugar company. Even though those documents reveal that she purchased the properties in her individual capacity, but so long as her initial financial capacity is not established, the contention that she purchased the properties from her own funds would fall to ground. The trial Court relied on Ex.B29 under which Pydamma, mother of Mahalakshamma sold property for Rs. 1,500/-. In the said document she recited that she sold the property for her necessities and also for making jewellery to her daughters. It is to be seen that the transaction was in 1944 and there is no evidence that in fact she had given away jewellery to Mahalakshamma after Ex.B29. By this it cannot be inferred that money was paid to her and in turn she purchased properties in her own name.

Under these circumstances, it has to be necessarily held that the properties, which Mahalaxamma purchased are not her self acquired properties and therefore they are joint family properties. The findings given by the Court below in this regard are accordingly set aside.

16. Coming to the question of res judicata, the learned Counsel for the appellant submits that the principles of res judicata would not apply in this case while it is the contention on other side that the principles would apply. Therefore let us consider the contention in extenso. Section 11 of CPC contains the principles of res judicata which are to the effect that no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between the parties under whom they or any of them claim, litigating under the same title in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. This Section postulates two suits and same cause of action with same parties. Once the issue has been decided in earlier suit and became final in the later suit the same issue cannot be allowed to be agitated once again. The principle is that the parties should not be subjected to multiple litigations. It is true in Ram Prakash case (supra) the Supreme Court held that if both suits are tried simultaneously the issue decided in one suit in which any appeal has been filed constitute res judicata. But the question is whether the principles enunciated in Section 11 CPC are complied in this case. I have already extracted the issues which were framed in OS No. 61 of 1984. The issues in OS No. 12 of 1987 are as follows:

"1. Whether the plaintiffs are entitled to the declaration and possession prayed for?

2. Whether the plaintiffs are entitled to any profits or future profits?
3. Whether the defendants are entitled for compensatory costs?
4. To what relief?

17. The cause of action for the suit arises out of Ex.A54 settlement alleged to have been executed by Smt. Mahalaxamma. The issue in OS No. 61 of 1984 was directly relating to the properties in question as to whether they are self-acquired properties or the joint family properties. The cause of action for filing both the suits is quite different. One suit OS No. 61 of 1984, filed earlier was filed by Mahalaxamma seeking permanent injunction on the ground that she was owner of the properties in question. The later suit was filed on the basis of the documents in Ex.A54. Therefore, the cause of action in both the suits is quite different and the issues are different even though they are tried simultaneously. The Supreme Court in such a situation in *Narhari and Others Vs. Shankar and Others*, observed that the question of res judicata arises only when there are two suits. Even when there are two suits, the decision given simultaneously cannot be a decision in former suit.

18. In *Sheodan Singh* case (supra) the Supreme Court held that where the trial Court has decided two suits having common issues on the merits and there are two appeals therefrom and one of them is dismissed on some preliminary ground, like limitation or default in printing, with the result that the trial Court's decision stands confirmed, the decision of the appeal Court will be res judicata and the appeal Court must be deemed to have heard and finally decided the matter and in such a case the result of the decision of the appeal Court is to confirm the decision of the trial Court given on merits and if that is so, the decision of the appeal Court will be res judicata.

19. It is to be noted that no common issues were framed in OS No. 61 of 1984 and OS No. 12 of 1987. Two sets of different issues were framed as extracted above, obviously for the reason that the scope of both the suits was different. While in the former suit the principal issue was whether the suit schedule properties were self acquired properties of Smt. Mahalaxamma or joint family properties. In the later suit filed by the beneficiaries the relief was claimed on the basis of settlement deed Ex.A54. Further, both the suits are not cross-suits filed by the parties claiming similar relief. Therefore, the decision of the Supreme Court does not fit with the facts of this case. Even in *Rami Prakash* case has no application as the claims were laid for damages by both the parties against each other, thereby resulting in common cause of action. The Supreme Court observed in para 2 thus;

"It would be obvious that since the claimants of the petitioner and the respondents have arisen from the same cause of action and the finding of the appellate Court that damages had accrued to the respondents due to misfeasance or malfeasance having been allowed to become final, the decree which is subject-matter of the SLP cannot be assailed. The self same question

was directly in issue and was the subject-matter of both the suits. The same having been allowed to become final, it cannot be gone into since the same had attained finality, the petitioner, having not filed any appeal against the appeal dismissing the suit. In view of this situation, the High Court was right in concluding that the decree of dismissal of the suit against the petitioner would operate as res judicata u/s 11 CPC in the appeal against which the petitioner has filed the second appeal."

20. Admittedly in the instant case, the suits were filed for different reliefs and the evidence was adduced in respect of joint family properties alleged to have been acquired by Smt. Mahalaxamma. As far as the suit OS No. 12 of 1987 was concerned there was no issue relating to joint family properties, but that was filed after the death of Mahalaxamma. Therefore, the suit in OS No. 61 of 1984 is earlier and 1st issue related to the family properties. It went against the 1st defendant against which the present appeal has been filed. Under these circumstances, it cannot be said that the cause of action is same in the two suits even though the parties are same. Further, the relief was also different. Hence, it has to be held that the principles of res judicata would not apply in this case and accordingly I hold that the decision relied on by the learned Counsel for the respondents in Sheodan Singh and Rami Prakash cases (supra) would not be of any assistance to him in this regard.

21. It need not be emphasized when once it is held that the suit schedule properties in OS No. 61 of 1984 are joint family properties and they are not self acquired properties of Mahalaxamma, any subsequent document creating interest over the suit schedule properties will have no bearing. Therefore, the settlement and will alleged to have been executed by Smt. Mahalaxamma cannot have any effect on the properties in question.

22. For the aforesaid reasons, I hold that the judgment and decree of the Court below in OS No. 61 of 1984 is not sustainable in law on facts. It is accordingly set aside and the suit is dismissed. The appeal is accordingly allowed. No costs.