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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.08.2018
PRONOUNCED ON : 24.09.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.295 of 2015

Pitchaikaran @ Ayyanar ... Appellant/1st Respondent

Vs.

1. Muniammal
2. Karupayee
3. Manjula
4. Saraswathi
5. Murugan
6. Asothai
7. Kuppusamy
8. Balu

.. Respondents 1to5/Plaintiff

..Respondents 6to8/Defendants 2to4

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 23.12.2014 passed in A.S.No. 77 of 2012 on the file of the Principal Subordinate Judge, Villupuram, reversing the judgment and decree dated 28.06.2012 passed in O.S. No.41 of 2010, on the file of Principal District Munsif, Thirukovilur.

For Appellant	: Mrs.Rita Chandrasekar
For R1 to R5	: Mr.N. Suresh
For R6 to R8	: No apperance
	Set exparte
	vide order dated 23.08.2018

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 23.12.2014 passed in A.S.No. 77 of 2012 on the file of the Principal Subordinate Court, Villupuram, reversing the judgment and decree dated 28.06.2012 passed in O.S. No.41 of 2010, on the file of Principal District Munsif, Thirukovilur.

2. Parties are referred to as per their rankings in the trial Court.



3. Suit for Partition and mesne profits.

4. The case of the plaintiffs, in brief, is that the suit properties originally belonged to Aanaiyakoundar and he had married one Alameluammal and through her, defendants are born and thereafter Alameluammal divorced him totally and married one Nattan Kounder and Aanaiyakoundar had married Kathayee Ammal, who is the mother of the plaintiffs and the plaintiffs are born to Aanaiyakoundar and Kathayee ammal and Aanaiyakoundar died 10 years ago leaving behind the plaintiffs and the defendants and widow Kathayee ammal, who also died 7 years ago and hence the plaintiffs and the defendants are enjoying the suit properties jointly and thereby the plaintiffs are each entitled to 6/40 share and the defendants are each entitled to 5/40 share in the suit properties. While so, the defendants, without allotting the share to the plaintiffs, which the plaintiffs are entitled to, in respect of the suit properties, been making arrangement to sell the suit properties including the share of the plaintiffs and hence according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5. The case of the first defendant, in brief, is that the suit laid by the plaintiffs is not maintainable either in law or on facts. The plaintiffs are not the legal heirs of the deceased Aanaiyakoundar and therefore the plaintiffs cannot claim any relief in respect of the suit properties much less the relief of partition. The suit properties belonged to Aanaiyakoundar ancestrally and the defendants 1 and 2 are born to Aanaiyakoundar through his first wife Alamelu ammal and thereafter, after separation of Alamelu ammal from Aanaiyakoundar, Aanaiyakoundar married one Muniyammal as second wife and lived with her and the said Muniyammal is still alive and during the marital life of Aanaiyakoundar and Muniyammal, Aanaiyakoundar had developed illicit intimacy with the plaintiffs' mother Kathayee ammal and kept her as his concubine and through her the plaintiffs are born and only the defendants 1 and 2 and the second wife Muniyammal are the legal heirs of Aanaiyakoundar and the plaintiffs are not entitled to claim share in the suit properties. The plaintiffs had laid a suit in O.S. No.889 of 1987 on the file of the District Munsif Court, Thirukovilur against the mother of the defendants 1 and 2 and the said suit had been dismissed on 28.03.1996 and as against the same, no appeal has been preferred. Suppressing the same, the plaintiffs have come forward with the present suit and therefore, the plaintiffs' suit is barred by res judicata and the suit is bad for non joinder of Muniyammal, who is the necessary party and on that score alone, the suit is liable to be dismissed. Items 4 and 5 of the suit properties had already



been alienated in favour of the fourth defendant and enjoyed by the fourth defendant and hence the suit is liable to be dismissed.

6. The fourth defendant has also filed a written statement reiterating the defence taken by the first defendant as above stated, put forth that the suit laid by the plaintiffs is barred by limitation and would also state that Item Nos.3 and 4 of the suit properties had been purchased by him from defendants 1 and 2 on 30.06.2008 for a valid consideration by way of a registered sale deed and the sale deed is a valid one and the plaintiffs are not entitled to claim any share in the abovesaid items purchased by the fourth defendant and in case the plaintiffs are held to be entitled to the share in the suit properties, the fourth defendant has prayed that the items purchased by him may be allotted to the share of the Defendants 1 and 2 and hence prayed for the dismissal of the plaintiffs' suit.

7. In support of the Plaintiffs' case, PW1 was examined and Exs.A1 to A12 were marked. On the side of the defendants Dws1 to 3 were examined and EXs.B1 to B10 were marked.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to dismiss the suit. The first appellate court on an appreciation of the materials placed on record, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the plaintiffs, granted the preliminary decree of partition in favour of the plaintiffs. Impugning the same, the present second appeal has been laid by the first defendant.

9. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

- 1) Whether the lower appellate court is right in holding that the plaintiffs-1 to 5 / respondents 1 to 5 are in joint possession of the suit properties along with the appellant and 6th respondent herein?
- 2) Whether the suit is barred by limitation?
- 3) Whether the suit is barred by Order 2 Rule 2 of the Civil Procedure code?
- 4) Whether the plaintiffs 1 to 5 / respondents 1 to 5 are entitled to claim a share in the properties settled in favour of Muniammal?



5) Whether the suit is bad for non joinder of necessary party viz., Muniyammal?

10. The main focus of the first defendant / appellant's counsel for rejecting the plaintiffs' suit is on the point of limitation and non impleadment of Muniyammal as a party to the suit proceeding, who, according to the appellant, is a proper and necessary party.

11. The plaintiffs have come forward with the suit seeking partition in respect of the suit properties on the footing that the suit properties belonged to Aanaiyakoundar and according to the plaintiffs, the defendants 1 and 2 are born to Aanaiyakoundar through his first wife Alameluammal and further according to the plaintiffs, after Alameluammal had separated from Aanaiyakoundar, Aanaiyakoundar had married Kathayee ammal, the mother of the plaintiffs, and out of the said wedlock, the plaintiffs were born to them and accordingly, claiming share in the suit properties, the plaintiffs have come forward with the present suit.

12. The defendants had contested the plaintiffs' case by putting forth the defence that the plaintiffs are not the legal heirs of the deceased Aanaiyakoundar. According to the defendants, only the defendants 1 and 2 are born to Aanaiyakoundar through his first wife Alameluammal and further according to them, thereafter Aanaiyakoundar had married one Muniyammal and therefore it is stated that after the death of Aanaiyakoundar, only the defendants 1 and 2 and Muniyammal are the legal heirs of Aanaiyakoundar and accordingly raised the plea that the suit laid by the plaintiffs without impleading Muniyammal, who is a proper and necessary party, is bad in law and on that score alone, the suit of the plaintiffs is liable to be dismissed. Further defence has also been taken by the defendants that the plaintiffs had suppressed the earlier lis laid by them in O.S. No. 889 of 1987 against Alameluammal and Muniyammal in the file of District Munsif Court, Thirukovilur seeking the reliefs of declaration, recovery of possession and mesne profits and the said suit laid by the plaintiffs ended in dismissal and the plaintiffs had not preferred any appeal challenging the dismissal of their abovesaid suit and therefore according to the defendants, the suit laid by the plaintiffs for partition is barred by limitation.

13. The first defendant's counsel contended that when the plaintiffs had laid the suit in O.S. No. 889 of 1987 alleging that the mother of the defendants 1 and 2 and Muniyammal had trespassed into the suit properties and enjoying the same depriving the right of the plaintiffs and accordingly, thereby, the plaintiff had endeavoured to seek the reliefs of



declaration, recovery of possession and mesne profits against them in the said suit and thereby, the plaintiffs themselves had made it clear that they had been excluded from the possession and enjoyment of the suit properties right from the year 1987 onwards and the plaintiffs having not sought for the relief of partition in the abovesaid suit and on the other hand, had only prayed for the reliefs of declaration, possession and mesne profits, as if the suit properties belong to them absolutely and even after the dismissal of the abovesaid suit on 26.03.1996, even thereafter as the plaintiffs had not laid the suit for partition within the time allowed by law and on the other hand, they having preferred the present suit for partition only on 12.02.2010, their suit for partition is hopelessly barred by time as per Article 110 of the Limitation Act 1963 and according to her, when the plaintiffs themselves have clearly averred that they had been excluded from the possession and enjoyment of the suit properties by the mother of the defendants 1 and 2 and Muniyammal in O.S. No. 889 of 1987 and accordingly when their said suit had ended in dismissal and when the plaintiffs had not placed any material to evidence that they had come into joint possession of the suit properties with Alameluammal and Muniyammal thereafter or with the defendants 1 and 2 or the other defendants thereafter and when the plaintiffs have not averred as to when after 1987, they had come into joint possession and enjoyment of the suit properties along with the defendants as the case may be, according to her, the plaintiffs would not at all be entitled to lay the present suit for partition on the footing that they also remain in the joint possession and enjoyment of the suit properties along with the defendants and therefore, it is put forth by her that the plaintiffs' suit, on their own pleas, raised in O.S. No. 889 of 1987 is hit by law of limitation as the plaintiffs had themselves pleaded ouster in the earlier suit and when they had not established the joint possession of the suit properties thereafter along with the defendants in any manner, it is contended that the plaintiffs had falsely averred as if they are in joint possession and enjoyment of the suit properties, however preferred the suit by valuing the suit under Section 37 (1) of the Tamilnadu Court Fees Act, 1955 and thereby asserting ouster and exclusion and accordingly prayed for the dismissal of the plaintiffs' suit.

14. Furthermore, the first defendant's counsel contended that in the earlier suit in O.S. No. 889 of 1987, the civil court had clearly held that some of the items of the suit properties had already been settled by Aanaiyakoundar in favour of Muniyammal, his declared wife, by way of a deed of settlement dated 19.10.1963 and the said settlement had been upheld by the court in the abovesaid suit proceeding and in the abovesaid proceeding, the court had also declared that the plea



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of cancellation of the abovesaid settlement deed projected by the plaintiffs is invalid and such being the position, according to her, when some of the items of the suit properties had been validly declared to be settled by Aanaiyakoundar in favour of Muniyammal, his declared wife, under the settlement deed above referred to, when the said settlement deed had been upheld by the civil court and when the plaintiffs had not preferred any challenge to the same, according to her, the plaintiffs cannot be allowed to seek partition in respect of the abovesaid properties, particularly, during the life time of Muniyammal and accordingly also putting forth the case that in as much as Muniyammal is the declared wife of Aanaiyakoundar, she also would be entitled to claim share in the properties left behind by Aanaiyakoundar and thereby contended that the plaintiffs' suit without impleading Muniyammal, is bad in law, as according to the defendants, Muniyammal is a proper and necessary party to the suit proceeding. Thus, the suit of the plaintiffs has to be rejected on the above score also.

15. Per contra, it is contended by the plaintiffs' counsel that the defendants have not pleaded any ouster and thereby projected adverse title in respect of the suit properties against the plaintiffs in the present lis and accordingly as the plaintiffs had already been declared as the legal representatives of Aanaiyakoundar in the earlier suit in O.S. No. 889 of 1987, which fact has not been challenged by the defendants by preferring an appeal, according to him, the plaintiffs should be deemed to be the co-owners of the suit properties and accordingly should be deemed to be in the joint possession and enjoyment of the suit properties along with other co-owners and accordingly, it is his contention that the arguments put forth by the first defendant's counsel that the suit is barred by limitation, cannot be countenanced and there is no bar of limitation as far as the suit for partition and the same could be preferred at any point of time against the co-owners and according to him the enjoyment of the co-owners is to be regarded as the enjoyment by and on behalf of all the other co-owners and accordingly it is his contention that the first appellate court is justified in granting the relief of partition in favour of the plaintiffs as prayed for.

16. As per Article 110 of the limitation Act, a suit to enforce the right to share in a joint family property by a person excluded from the same, should be laid by the said person within a period of 12 years, when the exclusion becomes known to the said person. Accordingly, it has to be seen whether Article 110 of the Limitation Act, 1963 would be applicable to the facts and circumstances of the present case.



17. Based on the averments projected in the plaint, it is found that the plaintiffs had suppressed the institution of the suit laid by them and their mother in O.S. No. 889 of 1987 on the file of the District Munsif Court, Tirukovilur against Alameluammal, the mother of the defendants 1 and 2 and Muniyammal. The abovesaid suit has been laid by the plaintiffs and their mother for the reliefs of declaration claiming exclusive title to the suit properties and also for the recovery of possession of the same from Alameluammal and Muniyammal and also sought for the relief of mesne profits. No reason has been given by the plaintiffs as to why they have suppressed the abovesaid suit in the present lis. It is only the defendants who had projected the abovesaid pleas in the written statement and accordingly contended that in the light of the dismissal of the abovesaid suit laid by the plaintiffs and their mother, the present suit laid by the plaintiffs is hit by the principle of Res judicata and accordingly sought for the dismissal of the plaintiffs' suit. The defendants' have filed the certified copy of the judgment passed in O.S. No. 889 of 1987 dated 28.03.1996 and the decree passed in the abovesaid suit as Exs. B4 and B3 respectively. Thus, it is found that the abovesaid suit laid by the plaintiffs for the reliefs aforesaid against Alameluammal and Muniyammal had come to be disposed of on 28.03.1996. On a reading of the judgment passed in the abovesaid suit marked as Ex.B4 as well the decree passed in the abovesaid suit, it is found that the abovesaid suit had been laid on 03.11.1987. In the abovesaid suit, the plaintiffs and their mother had averred very clearly that Alameluammal is the first wife of Aanaiyakoundar and despite the same they had also put forth their case that Alameluammal and Muniyammal had no right whatsoever in the suit properties and had also averred that Alameluammal and Muniyammal had unlawfully encroached into the suit properties on 09.10.1987 and enjoying the same by raising cultivation and that they had also not come forward to hand over the possession of the suit properties despite the intervention of the panchayat and hence according to the plaintiffs and their mother, they had been necessitated to lay the abovesaid suit against them for appropriate reliefs as above noted. The abovesaid suit had been laid by the plaintiffs and their mother for declaration, recovery of possession and mesne profits against Alameluammal and Muniyammal. Thus, it is found that as per the clear averments projected by the plaintiffs in O.S. No. 889 of 1987, they had been excluded from the possession and enjoyment of the suit properties by Alameluammal, the mother of the defendants 1 and 2 herein and Muniyammal, right from 09.10.1987. Various contentions were projected in the abovesaid suit by the plaintiffs as well as Alameluammal and Muniyammal in the said suit proceeding. Finally, the said suit had come to be dismissed on 28.03.1996. Admittedly, neither the plaintiffs and their mother nor Alameluammal, Muniyammal had preferred any



appeal challenging the judgment and decree passed in O.S. No. 889 of 1987. Therefore, it is found that the judgment and decree passed in O.S. No. 889 of 1987 has become final.

18. It is not the case of the plaintiffs in the present suit that during the pendency of O.S. No. 889 of 1987, they had acquired the possession and enjoyment of the suit properties from Alameluammal and Muniyammal or as the case may be, from the defendants. It is also not the case of the plaintiffs that they had obtained the possession and enjoyment of the suit properties from Alameluammal and Muniyammal or from the defendants as the case may be after the dismissal of their suit on 28.03.1996. It is also not the case of the plaintiffs that they had obtained the possession and enjoyment of the suit properties in between the dismissal of their suit in O.S. No. 889 of 1987 and the date of institution of the present suit on 12.02.2010. Therefore, it is seen that the plaintiffs had not raised any plea as to when they had come to acquire the possession and enjoyment of the suit properties along with Alameluammal and Muniyammal or the defendants as the case may be, right from 1987 till the date of the institution of the present suit. On the other hand, the plaintiffs would only aver in the present plaint that they and the defendants are enjoying the suit properties jointly, as to when they had acquired the joint possession and enjoyment of the suit properties along with the defendants, there is no plea projected in the plaint, accordingly, it is found that the plaintiffs had also valued the present suit under Section 37(1) of Tamil Nadu Court Fee Act, 1955. Thus, it is found that the plaintiffs had not laid the present suit within 12 years from the date of dismissal of their suit in O.S. No. 889 of 1987 on 28.03.1996. On the other hand, the present suit has come to be laid well after the expiry of 12 years, belatedly from the date of dismissal of O.S. No. 889 of 1987. As above noted, in O.S. No. 889 of 1987, as could be seen from Ex.B4 judgment, the plaintiffs and their mother had clearly averred that they had been ousted and excluded from the possession and enjoyment of the suit properties and Alameluammal and Muniyammal had claimed and acquired the same unlawfully by using force and accordingly the plaintiffs and their mother having been deprived of the possession and enjoyment of the suit properties right from 1987 onwards and also prayed for the relief of mesne profits from Alameluammal and Muniyammal in the abovesaid suit, thus, it is found that on their own pleas projected in O.S. No. 889 of 1987, the plaintiffs themselves have made clear that they had been totally and completely excluded from the possession and enjoyment of the suit properties to their full knowledge and accordingly it is seen that claiming recovery of possession of the suit properties, they had levied the suit in O.S. No. 889 of 1987. In such view of the matter, as rightly determined by the trial court, when

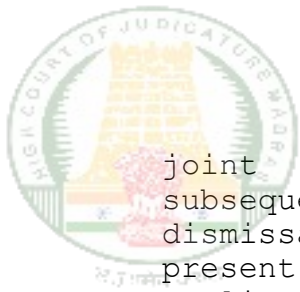


the plaintiffs had not projected any pleas or also placed any materials worth acceptance to evidence that they had since acquired the joint possession and enjoyment of the suit properties after the institution of O.S. No. 889 of 1987 or after the dismissal of the abovesaid suit in the year 1996 and on the other hand, they have themselves admitted in O.S. No. 889 of 1987 that it is only Alameluammal, the mother of the defendants 1 and 2 and Muniyammal, who had been enjoying the suit properties to their exclusion in all aspects and when in the present case, the plaintiffs have not placed any material to show that they are in the possession and enjoyment of the suit properties along with the defendants, which fact has also been accepted by the first appellate court, it is found that the claim of the plaintiffs that they are in joint possession and enjoyment of the suit properties along with the defendants, cannot at all be countenanced in any manner. In such view of the matter, when on their own admission, the plaintiffs had been excluded from the right to share or the right to enforce the share in the suit properties since 1987 onwards, it is obvious that the present suit laid by the plaintiffs is hit by the law of limitation. Even assuming for the sake of arguments that the plaintiffs would be entitled to seek the right to enforce their share in the suit properties after the dismissal of their suit in O.S. No. 889 of 1987, when as above noted, their suit in O.S. No. 889 of 1987 had been dismissed on 28.03.1996, challenging which, no appeal has been preferred by the plaintiffs, atleast thereafter, when it has been made clear by the court also in the said suit that the plaintiffs' claim of entitlement to the suit properties is not sustainable and thereby the exclusion of the plaintiffs from the suit properties had also been approved by the civil court, atleast, as rightly put forth, the plaintiffs should have endeavoured, if at all they have any right of share in the suit properties, to come forward with the present suit of partition within 12 years from the date of dismissal of O.S. No. 889 of 1987. As above noted, when right from 1987, till the date of institution of the present suit, there is no material placed by the plaintiffs to show that they are also in the joint possession and enjoyment of the suit properties and on the other hand, the plaintiffs themselves have admitted their exclusion from the suit properties by Alameluammal and Muniyammal to their knowledge in the earlier suit, accordingly, when the plaintiffs have not laid the present suit within 12 years from the date of dismissal of the suit in O.S.No. 889 of 1987, it is found that the plaintiffs' suit for enforcing the right to share in the suit properties by seeking a share in respect of the same in the present suit is clearly barred by Article 110 of the Limitation Act and in such view of the matter, it is seen that the trial court is justified in all aspects in holding that the plaintiffs' suit is hit by the law of limitation.



19. The plaintiffs' counsel would contend that the defendants in their written statement has not specifically pleaded the ouster and thereby claimed adverse title in respect of the suit properties against the plaintiffs and according to him, when the plaintiffs had been acclaimed to be the legal representatives of the deceased Aanaiyakoundar and when the defendants 1 and 2 are declared to be the legal representatives of Aanaiyakoundar and when there is no material placed to evidence that the suit properties are the ancestral properties of Aanaiyakoundar, the inevitable conclusion that could be arrived is that, the suit properties, being the separate properties of Aanaiyakoundar, according to him, as the legal regal representatives of Aanaiyakoundar, the plaintiffs are entitled to claim partition in respect of the suit properties and therefore, according to him, sans the plea of ouster and adverse title by the defendants in the written statement, the plaintiffs suit cannot be held to be hit by the law of limitation, as according to him, there is no limitation for laying the suit for partition against the co-owners.

20. However, the abovesaid contention, as such, cannot be readily accepted. No doubt, the defendants, in particular, have not pleaded ouster and thereby claimed adverse title in respect of the suit properties against the plaintiffs in the written statement. However, the defendants have projected the case very clerly that the plaintiffs had suppressed the earlier suit laid by them in O.S. No. 889 of 1987 against Alameluammal and Muniyammal and the judgment and decree passed in the abovesaid suit had been exhibited in the present suit. The abovesaid factors are not controverted by the plaintiffs. When the plaintiffs have themselves made clear in the earlier suit that they had been totally and completely excluded from the possession and enjoyment of the suit properties and though they would complain that they had been deprived of the possession and enjoyment of the suit properties by Alameluammal and Muniyammal by using force unlawfully, however, their said plea had been rightly rejected by the court in the said suit and accordingly dismissed the plaintiffs' suit and such being the position, when on their own admission, the plaintiffs had made clear that they had been totally ousted from the possession and enjoyment of the suit properties, it is found that, even if the plea of ouster has not been specifically pleaded in the written statement by the defendants, considering the scope of Article 110 of the Limitation Act, when, as per the same, the person who had been excluded from a joint family property, to enforce the right to share therein, is required to lay a suit within a period of 12 years time, when the exclusion became known to the said person and accordingly, applying the same to the present case, when the plaintiffs have not established to come into the



joint possession and enjoyment of the suit properties, subsequent to the filing of O.S. No. 889 of 1987 or after the dismissal of the said suit or prior to the institution of the present suit and they have themselves had pleaded ouster in the earlier suit as above noted, the plaintiffs, cannot be allowed to project the plea without any basis as if they are also in the joint possession and enjoyment of the suit properties for the purpose of this case. In such view of the matter, it is seen that in the decision reported in 2010(4) CTC 640 (Venkataramana & 6 others Vs. N.Munuswamy Naidu and 4 others), this Court had an occasion to consider a similar point of law, though, on a different context and accordingly held that the suit not having been laid by the plaintiffs within the time allowed under Article 110 of the Limitation Act, though ouster has not been specifically pleaded in the written statement, on that footing, held that the suit of partition laid by the plaintiffs is hit by limitation and the position of law has been elucidated in the abovesaid decision as follows:

Partition Suit - Claim of Defendant that he is in absolute possession of property from 1969 to exclusion of plaintiff - plaintiff filing suit after 23 years - suit not maintainable.

14. The abovesaid documentary evidence would go to show that after the issuance of patta by the settlement Tahsildar in the year 1969, the first defendant has been in possession and enjoyment continuously. It is worthwhile to note that till filing of the suit in the year 1993, the plaintiffs have not moved their little finger claiming any right over the property. They slept over the matter for about 24 years and filed the suit in the year 1993. In this context, the learned senior counsel Mr.S.V.Jayaramana appearing for the first defendant would submit that the suit claim has been miserably barred by time, that there is no evidence to show that earlier to 1993, the plaintiffs advanced their claim to get share in the property and that court may presume ouster from the attending circumstances of the case. Ouster has not specifically been pleaded in the written statement. However, the first defendant has categorically mentioned in his written statement that he is holding exclusive possession over the property, that the plaintiffs are out of possession over 24 years and that the rights of



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Description of suit	Period of Limitation	Time from which period begins to run
110. By a person excluded from a joint family property to enforce a right to share therein	Twelve years	When the exclusion becomes known to the plaintiff .

16. It can be easily inferred and observed that the plaintiffs have been excluded from the enjoyment of the property atleast from 1969. There is no material to show that they had been in joint possession of the property. It is true, that mutation in revenue records would not confer any title to the persons whose name is found in them. But they would serve as an evidence to show that he is enjoying the property. If his enjoyment continues over the statutory period, his right becomes absolute and he becomes absolute owner of the property. In case, if there had been no claim from the other joint owners of the property, the person who claims exclusive possession must show that his possession was continuous, uninterrupted, open and he was holding the right to the knowledge of the other joint owner. The oral evidence on record would indicate that the plaintiffs are residing in the suit village or in the nearby places. Hence they have been having knowledge of possession by the first defendant. By the pleadings and evidence, it could be seen that the fact of exclusion strikes the knowledge of the plaintiffs only in 1993, after 24 years from the date of issuance of patta in the name of the first defendant.

18. There is no pleading nor evidence as to when it was brought to the knowledge of the plaintiffs that they have been excluded from possession. They should have filed suit within twelve years from the date of exclusion.

19. As per Article 110 of the Limitation Act, in view of the abovesaid discussion, it is held that



the suit claim of the plaintiffs is barred by limitation. Point Nos.1 and 2 are answered in the affirmative.

The above decision applies to the facts and circumstances of the case at hand.

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21. In the light of the above discussions, it is found that the first appellant court, without any basis, had proceeded to hold that the plaintiffs should be deemed to be in the joint possession and enjoyment of the suit properties on the footing that they are also the legal representatives of the deceased Aanaiyakoundar. It is not in dispute that the plaintiffs had been declared to be the legal representatives of Aanaiyakoundar in O.S. No. 889 of 1987, equally the defendants 1 and 2 are also declared to be the legal representatives of the deceased Aanaiyakoundar, but, when on their own say, the plaintiffs have admitted that they had been totally excluded from the enjoyment of the suit properties right from 1987 and since then, they had not placed any material to show that they had come into the joint possession and enjoyment of the suit properties, particularly, when despite the dismissal of their suit on 26.03.1996, the plaintiffs had not endeavoured to enforce their right of share in the suit properties even thereafter within the period of 12 years, in all, it is found that the plaintiffs' suit for partition is clearly barred under Article 110 of the Limitation Act. The first appellate court, without analysing the abovesaid aspects in the proper perspective, is found to have erred in holding that the plaintiffs' suit is not barred by the law of limitation.

22. The defendants have also raised the plea that Muniyammal is a proper and necessary party to the suit and the suit laid by the plaintiffs and without impleading Muniyammal in the suit is bad in law and on that score, the plaintiffs' suit should fail. As above noted, the suit in O.S. No. 889 of 1987 laid by the plaintiffs and their mother had been levied against Muniyammal also. From Ex.B4 judgment rendered in O.S. No. 889 of 1987, it is found that in respect of certain items of the suit properties, Aanaiyakoundar himself has settled the same in favour of Muniyammal declaring her as his wife. As to the legal effect of the said declaration, the same remains to be determined one way or the other. However, when it is found that to the knowledge of the plaintiffs, certain items of suit properties had been settled by Aanaiyakoundar himself in favour of Muniyammal by way of a settlement deed dated 19.10.1963, which document has also been come to be exhibited in the present suit as Ex.B1 and when the settlement deed Ex.B1 had been upheld in O.S. No. 889 of 1987 and furthermore, when the plea of cancellation of the said settlement deed had been negatived in the abovesaid suit in toto, in such view of the matter, when to



the knowledge of the plaintiffs the civil court has given a finding that certain items of the suit properties had been validly settled by Aanaiyakoundar in favour of Muniyammal as his declared wife and when as against the said determination of the civil court, the plaintiffs had not preferred any challenge by way of an appeal and the said determination has become final and when it is found that Muniyammal is still alive, in such view of the matter, it does not stand to reason as to how, even thereafter, the plaintiffs would be entitled to seek partition in respect of the abovesaid items of the suit properties already settled in favour of Muniyammal by Aanaiyakoundar himself way back on 19.10.1963 under Ex.B1. Thus, it is found that very basis of the inclusion of the properties settled in favour of Muniyammal by the plaintiffs in the present suit is untenable in the eyes of law. As above noted, the civil court had already declared that the cancellation plea raised by the plaintiffs in respect of the abovesaid settlement deed is not sustainable as per law. Despite the same, it does not stand to reason as to how the plaintiffs could lay the claim of share or right in the said items of the suit properties. On that score also, it is found that the plaintiffs' suit should fail in respect of the abovesaid items of the suit properties already settled in favour of Muniyammal by way of Ex.B1 settlement deed.

23. Now, according to the defendants, Muniyammal is the wife of Aanaiyakoundar. Though the said fact has not been admitted by the plaintiffs, the materials placed on record would go to show that even Aanaiyakoundar had described Muniyammal as his declared wife. Accordingly it is found that when Muniyammal has been treated as the wife of Aanaiyakoundar and also asserted by Aanaiyakoundar in Ex.B1 settlement deed, it is seen that as put forth by the defendants, Muniyammal also would be entitled to lay the claim of share in the other items of the suit properties excluding the items covered under Ex.B1 settlement deed. Though the argument had been put forth by the plaintiffs that Muniyammal had been treated only as a concubine by Aanaiyakoundar and not as his legally wedded wife, however the said issue had not been determined in O.S. No. 889 of 1987. Materials placed on record in the present suit prima facie would go to show that Muniyammal had also lived with Aanaiyakoundar at one point of time and accordingly Aanaiyakoundar, out of love and affection, had settled certain items of the suit properties in her favour by way of Ex.B1 declaring her to be his wife. As to the legal character of the said declaration, whether Muniyammal could be declared to be the legally wedded wife of Aanaiyakoundar or not, the same could be adjudicated only in the presence of Muniyammal. If she is a legally wedded wife of Aanaiyakoundar, as rightly put forth by the defendants, she would also be entitled to claim share in the properties as the legal representative of the Aanaiyakoundar. The suit in O.S. No. 889



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of 1987 had been laid by the plaintiffs and their mother not only against the mother of the defendants 1 and 2 but also against Muniyammal. Therefore, it is found that as the plaintiffs and their mother had the knowledge that Muniyammal had also asserted title in the suit properties on the footing that she is also the wife of Aniakounder, such being the position it is found that the materials placed on record clearly point out that Muniyammal is also a proper and necessary party for the adjudication of the issues involved in the matter. Despite the same, when admittedly Muniyammal is alive, the plaintiffs had not chosen to array as her party in the present suit for the reasons best known to them. In addition to that, despite having knowledge that Aanaiyakoundar himself settled certain properties in favour of Muniyammal under Ex.A1 and despite having knowledge that Ex.B1 settlement deed had been declared to be a valid instrument by the civil court in O.S. No. 889 of 1987 and plaintiffs have not throw any challenge to the said determination, it is seen that suppressing the earlier suit laid by them and suppressing the entitlement of Muniyammal to the suit properties as above discussed, the plaintiffs had come forward with the present suit and in such view of the matter, as rightly contended by defendants, on an appreciation of the facts and circumstances of the present case, as above discussed, it is seen that Muniyammal is also a proper and necessary party for the present suit and hence the suit laid by the plaintiffs without impleading her is bad in law and on the above score alone, it is found that the plaintiffs' suit is bad for non joinder of Muniyammal.

24. The defendants have also raised a plea that the plaintiffs' suit is barred under Order 2 Rule 2 of the Civil Procedure code. However, when there is no specific plea raised by the defendants with reference to the same in the written statement and all that would state is that the plaintiffs having omitted to claim the relief of partition in O.S. No. 889 of 1987, accordingly their present suit should held to be hit by Order 2 Rule 2 of the Civil Procedure code. However, in the absence of any specific plea with reference to the same raised by the defendants in the written statement, in my considered opinion, the abovesaid plea cannot be allowed to be raised by the defendants at the stage of second appeal and accordingly the said point is answered against the defendants.

25. As above noted, the first appellate court, without any material and without any basis, despite the judgment and decree passed in O.S. No. 889 of 1987 and despite the clear pleas made by the plaintiffs in the said suit as to their complete exclusion from the possession and enjoyment of the suit properties right from 1987 and despite the absence of materials placed by the plaintiffs to evidence that they had since then



come into the joint possession and enjoyment of the suit properties, has erred in holding that the plaintiffs should be deemed to be in the joint possession and enjoyment of the suit properties with the defendants, particularly, when the abovesaid determination of the first appellate court is not based on any material placed by the plaintiffs. It is thus found that the first appellate court had erred in holding that the plaintiffs are in the joint possession and enjoyment of the suit properties along with the defendants 1 and 2.

26. The counsel for the plaintiffs in support of his contentions as regards the plea of adverse possession vis-a-vis, co-owners, with reference to the same relied upon the decision reported in 2002 SCC Online Mad 451 (Marappa Gounder Vs. Ramalingam). The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at the hand.

27. In the light of the above discussions, when the plaintiffs' suit is found hit by the law of limitation and also being bad for non joinder of necessary party, i.e., Muniyammal and also the plaintiffs are not entitled to claim share in the items of the suit properties settled in favour of Muniyammal by Aanaiyakoundar under Ex.B1 and the plaintiffs having failed to establish that they are in the joint possession and enjoyment of the suit properties along with the defendants 1 and 2 in any manner, resultantly, the substantial questions of law No.1,2,4 and 5 formulated in this second appeal are answered against the plaintiffs. For want of plea in the written statement, the third substantial question of law is answered against the appellant / first defendant.

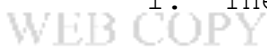
28. For the reasons aforesaid, the judgment and decree 23.12.2014 passed in A.S.No.77 of 2012 on the file of the Principal Subordinate court, Villupuram, are set aside and the judgment and decree dated 28.06.2012 passed in O.S. No.41 of 2010, on the file of the Principal District Munsif, Thirukovilur, are confirmed. Accordingly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

bga



1. The Principal Subordinate Judge, Villupuram,

2. The Principal District Munsif, Thirukovilur

3. The Section Officer,
V.R. Section,
High Court, Madras.

+ 2 ccs to M/s. Rita Chandrasekar, Advocate Sr.65728 & 66159

+ 1 cc to M/s. N. Suresh, Advocate sr.65746

S. A.No.295 of 2015

NRI (CO)
EU 30.11.2018