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Appeal Suit No.95 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 29.11.2022

Judgment Delivered on : **06.01.2023**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Appeal Suit No.95 of 2014

1.M.Kumar (Died)

2.M.Mathivanan

3.C.Vasanthi

4.K.Kavin Kumar

5.K.Kishore Kumar

... Appellants

[Appellants 4 & 5 brought on record as Legal representatives of the deceased 1st Appellant viz., M.Kumar, vide Court order dated 17.02.2022, made in CMP.No.1858 of 2022]

Versus

1.Kalaiselvi

2.Anandan

3.Devi

... Respondents

Prayer: Appeal Suit is filed under Section 96 of the Code of Civil Procedure, 1908, against the Judgment and Decree dated 08.01.2013 passed in O.S.No.13641 of 2010 on the file of the XVIII-Additional City Civil Court, at Chennai.



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For Appellants : Mr.V.C.Janardhanan,
for Mr.S.Thankasivan

For Respondents : Mr. B.K.Sreenivasan

JUDGMENT

A.The Appeal Suit :

This Appeal Suit is filed against the Judgment and Decree of the Learned XVIII-Additional Judge, City Civil Court, Chennai, dated 08.01.2013 in O.S. No.13641 of 2010, in and by which the suit filed by the plaintiff was decreed, granting declaration and permanent injunction in respect of the 'B' Schedule Property and a preliminary decree for partition and separate possession of 6/20 shares in 'C' Schedule Property.

B.The Complaint :

2. The case of the plaintiffs is that the first plaintiff is the wife of one *Panneerselvam* and the second and third plaintiffs are his son and daughter. *Pannerselvam* is the son of one *Muthukrishnan* through his first wife *Pankajam Ammal*. After the death of *Pankajam Ammal* in the year 1952, the said *Muthukrishnan* married one *Kamalammal*, and out of the said wedlock they begot two sons, who are the first and second defendants



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and a daughter, the third defendant. Thereafter, the said *Muthukrishnan* died on 21.11.1964. *Kamalammal* also died in the year 1974.

2.1. The property described in 'B' Schedule to the plaint, admeasuring 1260 sq.ft. was purchased by the said *Pankajam Ammal*, when she was a minor being represented by her husband *Muthukrishnan*, from and out of the sale consideration provided by her mother. Thereafter, though the family was initially using the property as cattle shed, subsequently, constructions were put up by the said *Muthukrishnan* and his two brothers. However, ultimately, they released their rights in favour of *Panneerselvam* by a registered release deed dated 31/10/1960. Since *Pankajam Ammal* died in the year 1952, before the Hindu Succession Act, 1956 came into force, as per *Mitakshara Hindu Law*, the *Streedhana* property of a Hindu Woman devolved on her daughter, and in the absence of any daughter, on the son. As such, *Panneerselvam* is the absolute owner of 'B' Schedule property. The plaintiffs being his legal heirs are in exclusive possession and enjoyment of the same. When they claimed for partition in respect of 'C' Schedule Property, the defendants in their reply are vexatiously seeking partition of the 'B' Schedule property and hence, the



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plaintiffs pray for declaration and permanent injunction in respect of the 'B' Schedule Property.

2.2. The suit 'C' Schedule property, is the adjacent property to the 'B' Schedule property admeasuring 2403 sq.ft. The same was purchased by *Muthukrishnan* from the Official Receiver, by a registered sale deed dated 05.04.1950. Subsequently the same was blended with the joint family properties and again by a partition between the said *Muthukrishnan* and his brothers, dated 31.10.1960, it was allotted to the share of *Muthukrishnan*. Therefore, after the death of *Muthukrishnan*, and the said *Panneerselvam*, the first defendant and the second defendant were entitled to 1/4th share each and the 1/4th share of *Muthukrishnan* devolved on his four children and his surviving wife *Kamalammal*. As such, the plaintiffs are entitled to 6/20 shares in the 'C' Schedule property. Therefore, the plaintiffs pray for partition and separate possession of the same.

C. The Written Statement :

3. The defendants admitted the relationships, the dates of marriages of the parties, and the death of the *Muthukrishnan*, *Pankajam*



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Ammal, *Kamalammal* and *Panneerselvam*. It is the contention of the defendants that though the 'B' Schedule property was purchased in the name of *Pankajam Ammal*, after her demise, the said *Muthukrishnan* was vested with $\frac{1}{2}$ share in the same, and the defendants are entitled to their share in the said $\frac{1}{2}$ share of *Muthukrishnan*, therefore, they paid the Court fee in respect of the same, and sought partition and separate possession of the 'B' Schedule Property.

3.1. As far as the 'C' Schedule property is concerned, since *Kamalammal* was to marry the said *Muthukrishnan* as the second wife, by a *Muchalika* dated 25.04.1955, *Muthukrishnan* and his brothers had made a family arrangement agreeing to bestow 'C' Schedule property on her. The said family arrangement has been given effect to even during the lifetime of *Muthukrishnan*, as all the property tax and electricity and other records in respect of the house stood mutated in the name of *Kamalammal*. The defendants are in enjoyment and exclusive possession of the same and even the rents from the tenants were collected and enjoyed only by the said *Kamalammal*. The plaintiffs were living only in the 'B' Schedule Property and even the defendants had put up new construction in 'C' Schedule



property. *Kamalammal* and thereafter, the defendants are in open hostile and notorious possession of the 'C' Schedule property and as such, belatedly now the plaintiffs cannot claim any right in the 'C' Schedule Property.

D. The Issues & the Trial :

4. On the basis of the above pleadings, the Trial Court framed the following issues:-

"1) Whether the plaintiffs are entitled to the declarations of title in respect of plaint 'B' Schedule property?

2) Whether the defendants 1 to 3 are each entitled to 4/30 share in 'B' Schedule property?

3) Whether the plaintiffs are entitled to seek for injunction against the defendants in respect of plaint 'B' Schedule property?

4) Whether the plaintiffs are entitled to claim partition of 6/20 share in plaint 'C' Schedule property?

5) Whether the suit as framed is not maintainable?

6) Whether the plaintiffs are entitled to past and future mesne profits?

7) To what relief the parties are entitled to?"



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4.1. On the above issues, the first plaintiff/*Kalaiselvi* was examined as *P.W.1* and one *Radha* was examined as *P.W.2*. *Exs.A-1 to A-7* were marked on behalf the plaintiff. The first defendant/*Kumar* was examined as *D.W.1* and *Exs.B-1 to B-8* were marked on behalf of the defendants.

E. The findings of the Trial Court :

5. The Trial Court found that 'B' Schedule property was purchased by *Pankajam Ammal* from and out of the money provided by her mother and the said fact is not even disputed by the defendants. Once the 'B' Schedule property is *Streedhana* property and *Pankajam Ammal* died in the year 1952, before the Hindu Succession Act, 1956 came into force, as per Mitakshara Hindu Law, her son *Panneerselvam* alone was entitled to the property and hence, held that the plaintiffs are entitled to the reliefs in respect of 'B' Schedule Property.

5.1. The Trial Court found various factual aspects of exclusive enjoyment like putting up of the building, collection of rents, mutation of



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records in favour of the defendants in respect of the 'C' Schedule property.

However, considering the fact that ultimately in their reply notice in *Ex.A-6*, the defendants only pleaded that they can partition the property after the marriage of the second defendant, held that their defense of ouster is shattered and hence decreed the suit, granting a preliminary decree holding that plaintiffs will be entitled for 6/20 shares in the 'C' Schedule property. Aggrieved by the same, the defendants have filed the present Appeal Suit.

F. The Submissions :

6. *Mr.V.C.Janardhanan*, the Learned Counsel appearing on behalf of the Appellants taking this Court through the pleadings and evidence, would restrict his submissions only in respect of 'C' Schedule property. He would highlight the fact of the family arrangement made by *Muthukrishnan* and his brothers, inasmuch as the rights in the superstructure in the 'B' Schedule property is released to *Panneerselvam* and similarly, the rights in 'C' Schedule property being released in favour of *Kamalammal*. The Learned Counsel would submit that when *Kamalammal*, in the year 1955, came forward to marry *Muthukrishnan*, after the death of his first wife, as a reassurance, the family arrangement



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was made. Therefore, the family arrangement made by the said *Muthukrishnan* and his brothers had to be implemented in totality. The Learned Counsel would submit that the ***Ex.B-1*** family arrangement has been given effect to. The same can be fortified from the fact that all the property records had been mutated in the name of *Kamalammal* coupled with the fact that she was in exclusive possession and enjoyment of the property and was collecting rents from the tenants. The mutation has happened even during the lifetime of *Muthukrishnan*. Being a Hindu Family Arrangement, the same by itself was enough and no further formal registered instrument was necessary.

6.1. In the above background of facts, the learned Counsel would pinpointedly make three propositions. Firstly, all the above facts cumulatively proved by the defendants would amount to ouster of title to the plaintiffs and as such the belated suit is liable to be dismissed. Secondly, even though a plea regarding enlargement of limited estate of women under Section 14 of the Hindu Succession Act, 1956 was not specifically pleaded before the Trial Court, the same being a question of law, can be pleaded in the appellate stage and according to the learned



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counsel the property being given to the said *Kamalammal* by virtue of ***Ex.B-1, Muchalika***, even if it had not conferred absolute title, stood enlarged by operation of law and hence the plaintiffs had no right in 'C' Schedule property. Thirdly, in any event, the apportionment of shares by the Trial Court by not considering the third defendant-daughter as a coparcener is incorrect in view of the Judgment of the Hon'ble Supreme Court of India in ***Vineeta Sharma Vs. Rakesh Sharma***¹, case.

6.2. The Learned Counsel relied upon the following judgments in support of his contentions :

<i>Sl No</i>	<i>Citation</i>	<i>Cause Title</i>	<i>Proposition</i>
1.	L.P.A No.104 of 1962	<i>RangaswamiNaicker vs Chinnammal and another</i>	Page 12 last Para- the intention of the legislature is to enlarge the limited ownership of women in the property whether acquired before or after the Act into absolute one. Section 14 (1) whatever be the mode of acquisition whether it be by inheritance or grant, the limited owner will thereafter have full ownership.
2.	1977 (3) SCC 99	<i>V.Tulasamma and others vs Sessa Reddy</i>	Para 20- Propositions and characteristics of a Hindu women's right to maintenance. Para 31- Principles laid in Section 14 (1) and section 14 (2). Section 14 is to be liberally construed. Section 14 (2) does not refer to transfer which merely recognises a pre-existing right without creating or

¹ (2020) 9 SCC 1 : 2020 SCC OnLine 641



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Sl No	Citation	Cause Title	Proposition
			conferring a new title on the widow. Para 34- before the applicability of Section 14 (2) three conditions must exist.
3.	2011 (1) SCC 68	<i>Sri Ramakrishna Mutt vs M. Maheswaran and others</i>	Claim over the properties of one <i>Kumudammal</i> in Para 4 & Para 13 -all three courts held that <i>Kumudammal</i> had become absolute owner of the property under Section 14(1) of the Hindu Succession Act as she was in possession of those properties on the date when the Hindu Succession Act came on the anvil. The Hindu Succession Act came on the anvil on 17.06.1956.
4.	AIR 1957 SC 314	<i>P.Lakshmi Reddy vs L.Lakshmi Reddy</i>	Principle relied on- The ordinary classical requirement of adverse possession is that it should be <i>nic vi nec clam nec precario</i>
5	1993 (3) LW 742	<i>D.V.Jaganathan and 5 others vs P.R.Srinivasannd 5 others</i>	Para 27 -any acts such as mutation of the Revenue records, payment of tax, long possession of the property etc, by itself may not be sufficient to establish ouster or open assertion of adverse title as against co-owner. Para 30 -the burden of proving ouster and adverse possession is on the parties who plead so.
6.	2005 (3) LW 167	<i>Pappayammal vs Palanisamy and another</i>	Para 33 & 34 -an alternative plea of adverse possession and ouster need not be considered on the findings that the requirements of such plea is not established. Para 44 & 46 -The Hindu female must not only be possessed of the property, but she must have acquired the property & such acquisition must be either by way of inheritance or devise, or at a partition or “in lieu of maintenance or arrears of maintenance.”



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Sl No	Citation	Cause Title	Proposition
7.	1964 (77) LW 629	<i>The Associated Cement Companies Ltd., vs L.S.Ramakrishna Gowder</i>	When a person bonafide thinking himself to be the owner of the land spent money for the improvements upon the land, the true owner standing allowed him to spend money then he would be estopped from asserting his title to the land as against the person bonafide believing the property.
8.	2006 (11) SCC 600	<i>Govindammal vs R.PerumalChettiar and others</i>	Para 10- Adverse possession-No hard and fast rule can be laid down from which it can be inferred that any co-sharer has ousted his co-sharer. That will depend upon facts of each case. Simply long possession is not a factor to oust a co-sharer but something more positive is required to be done.
9.	1976 (3) SCC 119	<i>Kale and others vs Deputy Director of Consolidation and others</i>	Para 10- essentials of family settlement-6 points. Para 35- in compromise or family arrangement the party in whose favour the relinquishment is made would be assumed to have an antecedent title. Para 36- 3 judgments cited is of the view that for the properties of a widow her near relations are entitled.
10.	2016 (8) SCC 705	<i>Subraya M.N vs Vittala M.N. and others</i>	Para 15 & 16- There is no provision of law requiring family settlements to be reduced to writing and registered, though when reduced to writing the question of registration may arise. Binding family arrangements dealing with immovable property worth more than rupees hundred can be made orally and when so made, no question of registration arises.
11.	2022 (3) SCC 757	<i>K.ArumugaVelaiah vs P.R.Ramasamy and another</i>	Para 45- Award or document providing for effectuating a division of joint family properties in the future, would be exempt from registration under Section 17(2)(v).
12.	S.A.No.1033	<i>Serandaya Pillai and</i>	Para 7, 10 & 11- The idea of gifting



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Sl No	Citation	Cause Title	Proposition
	of 1955	<i>another vs Sankaralingam Pillai and another</i>	constituted only the motive and must not be confused with the enforceable contract expressing their intention of the parties. Under Section 9 of the T.P Act transaction accompanied by delivery of possession cannot be nullified by alleging it is void because there is no writing registered.
13.	S.A.No.522 of 1920	<i>Madam Pillai vs BadrakaliAmmal @ Pothia Pillai</i>	A transfer of land of more than 100 Rupees in value effected by a Hindu husband to his wife to be enjoyed by her during her lifetime in discharge of her claim to future maintenance is neither a sale nor exchange nor gift under the Transfer of Property Act and can be made without writing.

6.3. Per contra, *Mr.B.K.Sreenivasan*, taking this Court through the text and details of ***Ex.B-1*** would submit that, at best it was only an agreement and the 'C' schedule property was never conveyed by the same. In any event, ***Ex.B-1*** is highly doubtful and pointing out the answers in the cross examination, the Learned Counsel would submit that the same is only a concocted document created for the purposes of the suit. It is not proved in the manner known to law. The Learned Counsel would submit that ouster has to be specifically pleaded and proved. In this case, the defendants' attempt was only half-hearted, while on one hand they claimed title and on the other hand they pleaded exclusive possession. In their



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reply notice, they only sought for time till the marriage of the second defendant and as such in the absence of categorical pleading of ouster, merely because the property tax and electricity receipts were changed in the name of *Kamalammal*, ouster cannot be pleaded. In any event, after the death of *Muthukrishnan*, she is the senior most member of the family and therefore no exception can be taken for the mutation of the records in her name.

6.4. The Learned Counsel relied upon the following decisions in support of his contentions :

<i>Sl No</i>	<i>Citation</i>	<i>Cause Title</i>	<i>Proposition</i>
1.	CDJ 1969 SC 366	<i>Sham Lal & Others vs Amar Nath & Others</i>	Stridhana Property- Para 4& Para 5- Rules of succession found in Para 147 of Mulla's Principles of Hindu Law, those rules are exhaustive. Stridhana other than shukla passes in the following order: unmarried daughter; married daughter who is unprovided for; married daughter who is provided for; daughter's daughter; daughter's son; son; son's son.
2.	CDJ 2017 APHC 395	<i>Bendapudi Parvatham ma & Others vs Ketaraju Nagabhushan a Rao & Others</i>	Para 13- Succession to Stridhana according to Mitakshara



Sl No	Citation	Cause Title	Proposition
3.	CDJ 2005 MHC 965	<i>Pappayammal vs Palanisamy & Others</i>	Para 32 & 33- Ouster and Adverse Possession- Supreme Court and our High Court has laid down 7 Principles.
4.	CDJ 1995 SC 106	<i>Annasaheb Bapusaheb Patil vs Balwant @ Balasaheb Babusaheb Patil (dead) rep by LRS</i>	Para 12, 13, 14 & 15– In HUF Community of interest and unity of possession. No ouster – Possession of one, is the possession of all. No adverse possession.
5.	CDJ 2003 SC 847	<i>Md. Mohammed Ali (dead) by LRS vs Jagadish Kalita & Others</i>	Para 31- Adverse Possession- Three elements are necessary for establishing the plea of ouster in the case of co-owner. (i) Declaration of hostile animus, (ii) Long and uninterrupted possession of the person pleading ouster, Exercise of the right of exclusive ownership openly and to the knowledge of other co-owner.

G. The Points for Consideration :

7. After considering the elaborate submissions made by the learned Counsel on either side and on a perusal of the material records of the case, it can be seen that the judgment and decree of the Trial Court in respect of 'B' Schedule property is not attacked and from a perusal of the reasons adduced in the Judgment, it is beyond any such attack. Therefore, the points which are to be considered are in respect of the 'C' Schedule



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property. In respect of the 'C' Schedule property, as per the Trial Court's conclusion, in view of *Vineeta Sharma's case* (cited supra), the share of the plaintiffs cannot be 6/20, as the third defendant will also be a coparcener and therefore, the plaintiffs will only be entitled to **6/25** shares and to that extent no counter arguments can be made by the learned Counsel for the Respondents. Therefore, the only points for consideration arise in the Appeal Suit are :-

"(i) Whether the defendants have pleaded and proved ouster of the title of the plaintiffs in respect of 'C' Schedule property ?

(ii) Whether the defendants are entitled to 'C' Schedule property in view of Section 14 of the Hindu Succession Act, 1956 ?"

H. Point No.(i) :

8. Upon perusal of Paragraphs Nos.5, 6 & 7 of the written statement, it is clear that the defendants have pleaded ouster of title. As a matter of fact, the last sentence of the paragraph No.7 reads as follows:-

" the plaintiffs have lost their rights, if any, by ouster and by abandonment "

8.1. The fact that the 'C' Schedule property is in the possession and



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enjoyment of the defendants, is admitted. It can be seen that the 'B' Schedule property was in exclusive possession of the plaintiffs. Similarly, the 'C' Schedule property was in exclusive possession of the defendants. From the oral evidence of P.W.1, it is clear that all along the said *Panneerselvam* lived exclusively in the 'B' Schedule property and similarly, the defendants, namely, *Kumar*, *Mathivanan*, and *Vasanthi* along with their mother were living exclusively in the 'C' Schedule property. As a matter of fact, in respect of 'C' Schedule property, the defendants alone were receiving the rents, even from the tenants. P.W.1 in her cross-examination admitted as follows:-

"1967 லிருந்து 1992 வரை கமலம்மாள் பெயரில் சொத்துவாரி மற்றும் வரிகள் புதிய எண்.29, பழைய எண்.15க்கு கட்டி வரப்பட்டது என்றால் சரிதான். 1992க்கு பின்னர் இன்று வரை எதிர்வாதிகள் சி அட்டவணை சொத்துக்கு வரி செலுத்தி வருகிறார்கள் என்றால் சரிதான் வாடகையில் எனக்கு பாகம் தர மறுத்துவிட்டார்கள். வீட்டை இடித்து கட்டியது எங்களுக்கு தெரியாது. கட்டிடம் முழுவதும் இடிக்கவில்லை."

Thus, it can be seen that the possession was exclusive, long and continuous.

8.2. It is not only exclusive, long and continuous possession, but,

the possession was pursuant to a family arrangement under ***Ex.B-1***.



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Ex.B-1, states that the property will be conveyed to the said *Kamalammal*.

It should be seen that the deceased *Muthukrishnan* had married twice. The 'B' Schedule property, being an extent of 1260 Sq.ft., is enjoyed by the said *Panneerselvam* and thereafter, the plaintiffs, being the legal heirs through the first wife *Pankajam Ammal*. Similarly, the 'C' Schedule property measures about 2403 Sq.ft and there were three children through the second wife/*Kamalammal*, (two sons and one daughter) and therefore, the said *Muthukrishnan* and his family members, gave effect to **Ex.B-1**, family arrangement, by mutating the property tax, electricity and other records, in favour of the second wife/*Kamalam Ammal*, even without executing any further document to **Ex.B-1**.

8.3. The conduct of the parties could categorically portray the intention of the said *Kamalam Ammal*, and the defendants, that they are in exclusive possession duly asserting their rights, open and hostile to the plaintiffs. **Ex.B-1**, family arrangement clearly establishes that the intentions of the defendants to enjoy the property to the detriment of the plaintiffs. As a matter of fact, P.W.2 in her cross-examination admitted as follows:-



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"முத்துகிருஷ்ணன் கமலம்மாளை 2ம் தாரமாக
திருமணம் செய்வதற்காக தாவா சி அட்டவணை சொத்து
(கதவு எண்.29) குடும்ப ஏற்பாடாக கொடுக்கப்பட்டது என்று
சொன்னால் அவ்வாறு சொல்லிக்கொண்டார்கள்.
கேள்விப்பட்டேன்."

Thus, it is clear that there was all along the intention of the defendants to treat the property as their own and asserting denial of rights of the plaintiffs.

8.4. There is yet another factor which is vital in this family arrangement. Though 'B' Schedule property was purchased by *Pankajam Ammal*, out of the money given by her mother, it should be seen that subsequently, the said *Muthukrishnan*, and his two brothers had put up the superstructure on the said property from and out of the joint family funds and income. But pursuant to the family arrangement of giving one property to the said *Panneerselvam*, who is born through the first wife, so that the other property (C Schedule property) can be given to the three other children, born through the second wife, which is 2403 Sq.ft., so as to effect a balance between all the children has to be borne in mind. In that view of the matter, the said *Muthukrishnan* and his two brothers executed Ex-A2 release deed in favour of *Panneerselvam*.



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8.5. *Ex.B-1*, is to be read with *Ex.A-2*/ release deed, and the subsequent conduct of the parties in enjoying their respective properties exclusively for more than 27 years, would clearly prove the assertion of the right, of the one over the other, in respect of the respective B and C Schedule properties. Therefore, in this case, it is not a mere long possession just as a co-owner. But, an exclusive possession with an intent to assert the title and the said possession is continuous and long enough for more than 27 years as on date of filing of the suit.

8.6. This apart, the open hostility is further fortified, not only by the change of the relevant records of the property and collection of the rent, but, the superstructure is also demolished and rebuilt by the defendants. It is very pertinent to see that the plaintiffs and the defendants are neighbours, owning the adjacent properties and therefore, since the assertion was open and hostile, the plaintiffs all the time felt that they had no rights in the 'C' Schedule property and thus, did not even object at the time of demolition and reconstruction. Even though every act of the co-owner will not necessarily drive the plaintiffs to file the suit, but when



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some actions give rise to the compulsory cause of action and if the plaintiffs did not object and sleep over in respect of these acts such as mutation of records, and demolition and reconstruction of the property in the background of the knowledge of **Ex.B-1**, family arrangement, I am of the view that in this case it is not a mere possession as of co-owners but exclusive possession with openness and hostile enough so as to oust the title of the plaintiffs.

8.7. As a matter of fact, the Trial Court after having discussed all these facts, which gave rise to the conduct leading to the ouster, non-suited the defendants only on the ground, of the stand taken in the reply notice in **Ex.A-6**. In **Ex.A-6**, the defendants had pleaded that they were ready for the partition the suit properties, after the marriage of *Mathivanan*. Based on the said averment, the Trial Court had non-suited the defendants and decreed the suit of the plaintiffs. However, I am unable to agree with the said finding of the Trial Court that **Ex.A-6**, reply notice has to be read as a whole and read in the context. When *Muthukrishnan*, even during his life time has seen to it that all the children got equal shares in the properties by making due family arrangements in **Ex.A-2**, **Ex.B-1** and when the



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plaintiffs have got something more than the defendants, and when the plaintiffs have issued legal notice on 22.01.1996 vide **Ex.A-5**, long after the death of *Muthukrishnan*, (Who died in the year 1964, *Kamalammal*, who died in the year 1976, and the said *Panneerselvam*, (who died in the year 1983), as a reaction, the defendants have stated that they are ready to partition after the marriage of the second defendant, praying both the properties to be partitioned. Essentially, they have not given up their exclusive title or their entitlement for equal share in the property and therefore, **Ex.A-6**, has to be read with that context and on the sole basis of **Ex.A-6** alone the entire case of the defendants cannot be discarded. There is absolutely no community of interest between the plaintiff and the defendant families.

8.8. Thus, even going by the Judgments cited by the learned Counsel on behalf of the plaintiffs in ***Pappayammal vs. Palanisamy & Others***, case cited supra, it can be seen that the defendants had firstly admitted that the property belongs to the joint family of the said *Muthukrishnan* and his brothers. Secondly, the possession of the defendants was well over the statutory period of twelve years. There is open assertion



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of hostile title, inasmuch as they enjoyed the properties as per the family arrangement made by the said *Muthukrishnan* and his brothers in respect of both the 'B' and 'C' Schedule properties. The exclusive possession of the plaintiffs in respect of the 'B' Schedule property and the defendants possession in respect of the 'C' Schedule property have been admitted by the parties. Not only the defendants enjoyed the rental income, but also demolished the superstructure and reconstructed the property. The plaintiffs, who are the neighbours, never objected to the same. The defendants have pleaded that so as to re-assure the defendants' mother *Kamalammal*, this property was left to her exclusive possession and enjoyment and therefore, they have pleaded with the clarity as to the starting point of the hostile possession. By demolition and reconstructed the property and collection of rents exclusively, the defendants have were not just in exclusive possession but open and hostile. It is not only the case, where the plaintiffs was not in possession of C Schedule property, on the other hand, the plaintiffs were in exclusive possession of 'B' Schedule property. Even though the 'B' Schedule property was bought by the said *Pankajam Ammal* from and out of the money given by her mother, still the superstructure was put up by the said *Muthukrishnan* and his brothers, and



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Ex.A-2/release deed had been executed. Therefore, the said aspect clearly proves that there was neither any community of interest nor any unity of possession between the parties.

8.9. As rightly contended by the learned Counsel for the Appellants/ the defendants have proved the three elements of *nic vi nec clam and nec procaro* as enunciated by the Hon'ble Supreme Court of India, in **P.Lakshmi Reddy** cited supra. The ratio of the Judgment in **Associated companies** cited supra, whereby if a person allows, another to put up the superstructure, bonafidely thinking that he is the owner of the land, and claims after the statutory period of time, cannot claim the property, also applies in all force in the instant case. As a matter of fact, a cumulative reading of the evidence on record, would clearly prove that the parties were living in peace, as the said *Muthukrishnan* had made adequate arrangements. Considering the fact that the said *Panneerselvam*, was the only son through *Pankajam Ammal*, he was given the 'B' Schedule property admeasuring of 1260 Sq.ft. The defendants being the three children through the said *Kamalammal*, were given the 'C' Schedule property admeasuring 2403 Sq.ft., as a matter of fact, slightly lesser than



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what the said *Panneerselvam* has got. The entire conflict arose suddenly in the year 1996, when *Ex.A-6*/notice has been issued. As a matter of fact, the entire litigation between the family as stated supra in paragraph No.7 cited supra, is about claiming another 576 Sq.ft., in the 'C' Schedule property, while the plaintiffs have been bestowed with 'B' Schedule property with 1260 sq.ft. The Trial Court rejected the counter-claim of the defendants in respect of the 'B' Schedule property and rightly held that the learned Counsel for the appellants did not argue the said question. Thus, considering from any view, I answer the question that the defendants have pleaded and proved the ouster of the title of the plaintiffs in respect of the 'C' Schedule property.

I. Point No.(ii) :

9. In view of my above findings in respect of Point No.(i) that the defendants have succeeded in pleading and proving the ouster of the title of the plaintiffs, the alternative plea of title raised by the defendants by way of question of law, arising under Section 14 of the Hindu Succession Act, need not be gone into and it is not necessary to answer the said question.



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J. Findings on Issues :

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10. In view thereof, I confirm the findings of the Trial Court in respect of issue No.1 to 3 that the plaintiffs are entitled to the declaration of title in respect of the 'B' Schedule property and that the defendants are not entitled to any share in the 'B' Schedule property and the plaintiffs are entitled to injunction against the defendants in respect of the 'B' Schedule property. I disagree with the Trial Court findings in respect of issue No.4 that the plaintiffs are entitled to claim partition of 6/20 share in respect of the 'C' Schedule property and hold that the plaintiffs are not entitled to claim partition in respect of the 'C' Schedule property, in view of ouster of the title. The finding of the Trial Court in respect of issue No.5 that the suit is maintainable, is upheld. The finding of the Trial Court that the past and future mense profits in respect of the 'C' Schedule property can be decided separately is reversed, as it is held that the plaintiffs are not entitled for the share in respect of the 'C' Schedule property.

10.1. As far as the reliefs granted by the Trial Court is concerned, in view of the reversal of the findings in respect of issue No.4 and 6, the reliefs are accordingly modified, partly decreeing the suit of the plaintiffs in



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respect of the 'B' Schedule property, in respect of the prayers of the declaration and injunction and dismissing the suit of the plaintiffs in respect of the 'C' Schedule property in respect of the partition as well as for mense profits.

K. In the Result :

11. In the result,

(i) The Appeal Suit in A.S.No.95 of 2014 is partly allowed;

(ii) The Judgment and decree of the learned XVIII Additional Judge, City Civil Court, Chennai, dated 08.01.2013 in O.S.No.13641 of 2010 is upheld in respect of the 'B' Schedule property and set aside, in respect of the 'C' Schedule property and the suit in O.S.No.13641 of 2010 is decreed on the following terms:

(a) That it is be and is hereby declared that the plaintiffs are entitled to the title in respect of the 'B' Schedule property;

(b) That the defendants, their men, agents or persons claiming under them be and hereby restrained by way of permanent injunction from interfering with the possession and enjoyment of the suit 'B' Schedule property by the plaintiffs;



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(c) That the counter-claim for the partition of the 'B' Schedule property by the defendants is dismissed;

(d) That the claim of the plaintiffs for partition in the 'C' Schedule property and by dividing the 'C' Schedule property into 20 equal shares and allotting 6 shares to the plaintiffs and put them in a separate possession stands dismissed;

(e) The plaintiffs will not be entitled for any division or mense profits in respect of the 'C' Schedule property;

(f) that the parties shall bear their own costs;

(iii) There shall be no order as to costs in the Appeal Suit also;

06.01.2023

Index : yes

Speaking order

Neutral Citation : yes

klt

To

1.The XVIII-Additional City Civil Court, at Chennai.

2.The Section Officer, V.R. Section, High Court of Madras.



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D.BHARATHA CHAKRAVARTHY, J.

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06.01.2023