



A.S.No.80 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 07.11.2023

CORAM

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

**A.S.No.80 of 2021**  
**and**  
**C.M.P.No.5476 of 2021**

Tmt Selvi

... Appellant

**Vs.**

1.Mr.Murugan

2.Mr.Elango

. . . Respondents

**Prayer:-** Appeal is filed under Section 96 of C.P.C to set aside the judgement and decree dated 16.12.2019 made in O.S.No.121 of 2017 on the file of the I Additional District and Sessions Judge, Salem.

For Appellant : M/s.C.Sivanesan

For Respondent : Mr.N.Umapathi [R.1 and R.2]



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## **JUDGEMENT**

The unsuccessful plaintiff before the I Additional District Judge, Salem in O.S.No.121 of 2017 is the appellant herein. The facts are briefly set out herein below and for ease of understanding the parties are referred to in the same ranking as before the Trial Court.

### **Plaintiff's case:-**

2. The plaintiff had filed the above-referred suit seeking a partition and separate possession of her 1/3rd share in the suit schedule property and for an injunction restraining the defendants from in any manner interfering with her peaceful possession and enjoyment of the suit property. The suit property is an extent of 89 cents of agricultural land within specified boundaries comprised in Survey No.176/2, Jagir Aamapalayam Villagem, Salem.



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3. The plaintiff would contend that the property in question belonged to one Mari son of Vaiyapuri who is the father of the plaintiff and the defendants. The suit property belongs to Mari as per the patta passbook by reason of his continuous enjoyment and possession of the land. The said Mari died intestate on 27.12.2011 and thereafter his wife had died intestate on 19.08.2015. Therefore, the plaintiff and the defendants became entitled equally to the property in question.

4. The plaintiff would submit that after the demise of Mari, they were jointly enjoying the suit property without division. Thereafter, misunderstanding in managing and enjoying the suit property arose between the plaintiff and the defendants and despite several request for partition, the defendants were not coming forward to amicably



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settle the issue. Therefore, the plaintiff has come forward with the above suit in question

**Written statement:**

5. The defendants had filed a written statement denying the case of the plaintiff and pleading that the plaintiff was married and settled away from the property and that she had never been in possession and enjoyment of the same. Further, the defendants have perfected title to the property by ouster. They, therefore, sought for the dismissal of the suit.

**Trial Court:-**

6. The learned I Additional District Judge on the basis of the pleadings on either side had framed the following issues which translated from the vernacular would read as follows:-



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- i) Whether the plaintiff is entitled to a 1/3rd share in the suit property?*
- ii) What other reliefs?*

7. The plaintiff had examined herself as P.W.1 and one Raja as P.W.2 and Srinivasan as P.W.3 and Ex.A.1 to Ex.A.10 were marked. As regards the defendants, the 2nd defendant Illango had examined himself as D.W.1 and one Janaki was examined as D.W.2 and Raman as D.W.3 and Ex.B.1 and B.2 were marked.

8. The learned District Judge had observed that at no point in time the plaintiff was in occupation and enjoyment of the suit property and this property has been divided amongst the defendants even during the life time of their father in the year 1998. Further, the father had also purchased a property in the name of the plaintiff which is



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evidenced by Ex.B.1 and B.2 and this would substantiate the contention of the defendants that there was an oral partition in the year 1998. Therefore, the suit came to be dismissed. Aggrieved by the same the plaintiff is before this Court.

**Point for consideration:-**

9. The only point for consideration that arises in this appeal is:

*"Whether the plaintiff is entitled to a 1/3rd share in the suit property?"*

10. The admitted case of both the parties is that the suit property belonged to one Mari, the father of the plaintiff and the defendants and that both Mari and later, his wife had died intestate. Therefore, under Section 8 of the Hindu Successions Act, the plaintiff and the defendants are equally entitled to a share in the suit property being the



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first-class legal heirs of late Mari. The defendants are contending that the plaintiff is not entitled to a share since there was an oral partition in respect of the property in question. The said oral partition is only between the defendants and the plaintiff is not a party to the proceeding. That apart, the contention that the father had purchased the another property in favour of the plaintiff which disentitles her to a share in the suit schedule property has not been satisfactorily proved by the Court below. Once the oral partition is not proved then the property has to devolve on the legal heirs as per Section 8 of the Hindu Succession Act.

11. The Judgement and decree of the Trial Court smacks of special pleadings in favour of the defendants. The defendants have pleaded ouster however none of the ingredients of ouster has been set out in the written statement. There is no plea as to the date from



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which the defendants openly and continuously with the knowledge of the plaintiff enjoying the property. Therefore, even on this ground the defense has to necessarily be negated and the point for consideration is answered in favour of the plaintiff.

12. Consequently, the judgment and decree of the learned I Additional District and Sessions Court, Salem in O.S.No.121 of 2017 is set aside and a preliminary decree for partition of the plaintiff's 1/3rd share in the suit schedule property is granted with costs. Consequently, the connected Miscellaneous Petition is closed.

**07.11.2023**

Index : Yes/No  
Speaking order/non-speaking order  
Neutral Citation: Yes/No  
shr



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To

1. The I Additional District and Sessions Judge, Cuddalore.
2. The Section Officer,  
V.R.Section,  
High Court, Madras.



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**P.T.ASHA, J.,**

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