

S.A.NO.415 OF 2018**IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED : 19.10.2024**

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CORAM:**THE HON'BLE MR.JUSTICE R.SAKTHIVEL**

S.A.NO.415 OF 2018
AND CMP NO.11442 OF 2018

1.Subramaniyan
 S/o. Venkatasamy Reddiar
 2.Krishnamurthi (Died)
 3.K.Vanaja
 4.V.Sharmila
 5.S.Rajalakshmi
 (2nd Appellant died. Appellants 3 to 5
 brought on record as LR's of the
 deceased 2nd appellant viz.,
 Krishnamurthy vide Court Order
 dated 27.03.2024 in CMP Nos.4925
 4928 and 4929 of 2023 in
 S.A.No.415 of 2018)

... Appellants /
 Respondents/
 Defendants

Versus

Savithiri (Died)
 2.A.Rajesh Kanna
 (R2 brought on record as LR of the
 deceased sole respondent viz., Savithiri
 vide Court order dated 27.03.2024 made
 in CMP Nos.4993, 4994 and 4996 of
 2023 in S.A.No.415 of 2018)

... Respondent /
 Appellant /
 Plaintiff

PRAYER: Second Appeal filed under Section 100 of Civil Procedure



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Code, 1908 against the Judgment and Decree dated December 6, 2017 made in A.S.No.19 of 2016 on the file of the Sessions Judge, Magila Court, Cuddalore, reversing the Judgment and Decree dated February 2, 2016 in O.S.No.197 of 2012 on the file of the Principal Sub Judge at Cuddalore.

For Appellants : Mr.N.Suresh
For Respondent-1 : Died
For Respondent-2 : Mr.N.Palanikumar

J U D G M E N T

This Second Appeal is directed by the unsuccessful defendants before the First Appellate Court, assailing the Judgment and Decree dated December 6, 2017 made in A.S.No.19 of 2016 on the file of 'Additional District Court (Mahila Court), Cuddalore' ['First Appellate Court' for short], whereby the Judgment and Decree dated February 2, 2016 made in O.S.No.197 of 2012 on the file of 'Principal Sub Court, Cuddalore' ['Trial Court' for short] was reversed.

2. Hereinafter, for the sake of convenience, the parties will be referred to as per their array before the Trial Court.

Plaintiff's Case in Brief:

3. Suit Properties were self-acquired properties of Venkatasamy Reddiar, who passed away on April 18, 1998 leaving behind the plaintiff and the defendants as his legal heirs. The plaintiff is the sister of both defendants. After the demise of Venkatasamy Reddiar, the



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defendants are in possession and enjoyment of the Suit Properties.

Defendants were giving 1/3 share in the income from Suit Properties to plaintiff regularly till the year 2010. Thereafter, the defendants failed to pay her 1/3rd share in income, in spite of repeated demands. Hence, the plaintiff caused Notice dated June 30, 2012 to the defendants claiming her 1/3 share in the Suit Properties. On receipt of the Notice, the defendants issued Reply dated September 1, 2012 containing false allegations. Hence, the Suit for partition and separate possession of 1/3 share in the Suit Properties as well as for rendition of accounts.

Defendant's Case in Brief:

4. The second defendant filed Written Statement. The first defendant adopted the same. The defendants admit that the Suit Properties were self-acquired properties of Venkatasamy Reddiar. They also admit the date of demise of Venkatasamy Reddiar, the relationship between the plaintiff and the defendants, as well as the defendants' possession and enjoyment of the Suit Properties. The defendants deny that the defendants used to give 1/3 share of income from the Suit property to plaintiff.

4.1. According to the defendants, the plaintiff was never given any share either by the defendants or by Venkatasamy Reddiar. The



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plaintiff was married off to one Aadhi Narayanan as second wife. On demand from the plaintiff and the said Aadhi Narayanan before their marriage, father - Venkatasamy Reddiar purchased certain properties situate in Malaiperumal Agaram Village at Cuddalore District, in the name of the plaintiff and Nagalakshmi, who is the first wife of the said Aadhi Narayanan, for the welfare of the plaintiff. There occurred a marital discord in 1972 and the plaintiff has been living estrange from the said Aadhi Narayanan since then. Father's efforts to resolve the marital discord went in vein and therefore, father - Venkatasamy Reddiar restrained the plaintiff from visiting the father's house and excluded her from enjoying the Suit Properties. Venkatasamy Reddiar never intended to give any share to the plaintiff in the Suit Properties since he had already purchased certain properties in the plaintiff's name before her marriage as already alluded to *supra*. Even after the demise of Venkatasamy Reddiar, the plaintiff was excluded from enjoying the Suit Properties.

4.2. First defendant is issueless and has already released his share in the Suit Properties in favour of the second defendant. Ever since the demise of Venkatasamy Reddiar, the second defendant is in exclusive possession and enjoyment of the Suit Properties, for more than the statutory period by ousting and excluding the plaintiff in a continuous and



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open manner without any interruption from anyone including the plaintiff.

Hence, the plaintiff has lost her right, if any, over the Suit Properties. The Suit is barred by limitation. The Court Fee paid by the plaintiff under Section 37 (2) of the 'Tamil Nadu Court-Fee and Suits Valuation Act, 1955' ['TNCF Act' for short] is incorrect as she is not in joint possession and enjoyment of the Suit Properties; the plaintiff ought to have valued the Suit under Section 37 (1) of the TNCF Act. Hence, the Suit is liable to be dismissed.

Trial Court

5. The parties went to trial on these pleadings. The Trial Court framed the following Issues:

- “(1) Whether the plaintiff is entitled to 1/3 share in the Suit Properties?”*
- “(2) Whether the valuation of the Suit under Section 37 (2) of the Tamil Nadu Court Fees Act is correct?”*
- “(3) Whether the plaintiff is entitled to the relief of partition and mesne profits?”*

6. Trial commenced and on the side of the plaintiff, the plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.16 were marked. On the side of the defendants, the second defendant was examined as D.W.1, plaintiff's husband - Aadhi Narayanan was examined as D.W.2, and Ex-



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B.1 to Ex-B.5 were marked.

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7. The Trial Court upon hearing either side and analysing the evidence available on record, concluded that the Suit Properties are self-acquired properties of Venkatasamy Reddiar and after his demise, the plaintiff is entitled to 1/3 share therein as per Section 8 of the 'Hindu Succession Act', 1956 ['H.S.Act' for short] and thus, answered Issue No.1 in favour of the plaintiff.

7.1. As regards Issue No.2, the Trial Court concluded that the plaintiff is not in joint possession and enjoyment of the Suit Properties from the year 1974 and therefore, the Plaint must have been valued under Section 37 (1) of TNCF Act. Further held that, in the absence of specific proof, the Court cannot *suo moto* presume that the plaintiff was receiving her share in the income from the Suit Properties till the year 2010. Hence, the Court fee paid under Section 37 (2) of TNCF Act is incorrect. Accordingly, Issue No. 2 was answered in favour of the defendants.

7.2. As regards Issue No.3, the Trial Court held that though the plaintiff is entitled to 1/3 share in the Suit Properties, she is not entitled to the relief of partition, for the reason that she has foisted a false case before the Trial Court.

7.3. On the above findings, the Trial Court dismissed the Suit



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without costs.

First Appellate Court

8. Dissatisfied with the Judgment and Decree of the Trial Court, the plaintiff preferred the appeal in A.S.No.19 of 2016 before the First Appellate Court. The First Appellate Court after hearing either side and perusing the records, concluded that Ex-A.9 - 'A' Register stands in the name of Venkatasamy Reddiar and the defendants have not established that they are in possession and enjoyment of the Suit Properties for more than 12 years excluding the plaintiff. The very moment Venkatasamy Reddiar passed away, the Suit Properties devolved upon the plaintiff and the defendants as per Section 8 of the H.S.Act and thus, as co-heirs and co-owners, they are entitled to equal share in the Suit Properties. The plaintiff in the Plaint as well as in her evidence has categorically stated that the plaintiff was in joint possession and enjoyment of the Suit Properties along with the defendants by receiving her share in the income therefrom until 2010. In these circumstances, the Trial Court ought to have decided that the plaintiff is in joint possession and enjoyment of the Suit Properties along with the defendants and that the Court Fee paid under Section 37 (2) of TNCF Act is correct. Accordingly, the First Appellate



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Court allowed the appeal, set aside the Judgment and Decree of the Trial Court and decreed the Suit as prayed for without costs.

Second Appeal

9. Feeling aggrieved by the Judgment and Decree of the First Appellate Court, the defendants preferred this Second Appeal. During the pendency of the Second Appeal, the plaintiff - Savithri (first respondent herein) passed away leaving behind her son, namely Rajesh Kanna. Hence, her son was brought on record as second respondent in this Second Appeal. The Appellant No.2 herein also passed away during the pendency of the Second Appeal and hence, his legal heirs were brought on record as Appellant Nos. 3 to 5.

Arguments:

10. Mr.N.Suresh, learned Counsel for the appellants / defendants would argue that Ex-A.13 - Sale Deed coupled with the evidence of D.W.2, who is none other than the plaintiff's husband, would show that father-Venkatasamy Reddiar purchased properties in the name of the plaintiff in the year 1971. Further, D.W.2 has deposed that the plaintiff has been excluded from the Suit Properties from 1972. After the demise of Venkatasamy Reddiar in 1998, the defendants are alone in possession and enjoyment of the Suit Properties excluding the plaintiff.



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10.1. Further that the plaintiff pleaded that she received 1/3rd share in the income from the Suit Properties. Except the *ipse dixit* of the plaintiff, no documentary evidence or any other acceptable form of evidence was adduced to prove her alleged joint possession.

10.2. Further that the Complaint was filed on December 5, 2012 *i.e.*, beyond 12 years from the date of demise of Venkatasamy Reddiar *i.e.*, April 18, 1998. Even assuming that the plaintiff has right to partition, right to sue accrues to her on the date of demise of Venkatasamy Reddiar and the Suit ought to have been filed within three years therefrom as per Article 113 of the Limitation Act, 1963. He further argued that since the plaintiff is not in possession and enjoyment of the Suit properties from the date of demise of Venkatasamy Reddiar, the plaintiff is ousted from the Suit properties. The defendants alone are openly, continuously and uninterruptedly enjoying the Suit property for more than the statutory period excluding the plaintiff in the Suit properties. Hence, the defendants are perfected title by adverse possession also. In this regard, he would rely on the following Judgments:

- a) ***Krishna Pillai's Case*** - Judgment of the Hon'ble Supreme Court in Krishna Pillai Rajasekharan Nair (D) by Lrs. Vs. Padmanabha Pillai (D) by Lrs. &



- Others reported in (2004) 12 SCC 754 ;
- b) ***Sanjay Kaushish's Case*** - Judgment of the Hon'ble High Court of Delhi in Sanjay Kaushish Vs. D.C.Kaushish and Others reported in AIR 1992 Del 118 ;
 - c) ***Puniyavathi's Case*** - Judgment of this Court in Puniyavathi and Another Vs. Pachaiaammal and Others [Appeal Suit No.251 of 2011 decided on 22.02.2022];
 - d) ***Emperuman's case*** – Judgment of this Court in Emperumal and Others Vs. Rangarajan and Others reported in 2017 (1) MWN (Civil) 630.

10.3. Further, he would submit that in the Memorandum of Grounds of Appeal, the appellant have stated the following Substantial Questions of Law:

(A)Whether the First Appellate Court is correct in concluding the joint possession, based on the only fact that “A” register stood in the name of the deceased father of the plaintiff and defendants.

(B)Whether the First Appellate Court is correct in deciding the issue of suit valuation, beyond the facts and case pleaded in the plaint.

(C)Whether the First Appellate Court is correct in arriving conclusion that the plaintiff



entitled to value the suit under Section 37(2) of The Tamil Nadu Court-Fees and Suits Valuation Act, 1955 instead of Section 37(1) of the Act.

10.4. The Trial Court considering the facts and circumstances of the case in the right perspective, dismissed the Suit. The First Appellate Court without appreciating the above facts in the right perspective, erroneously decreed the Suit. The same is liable to be interfered with. Accordingly, he prayed to admit the Second Appeal.

11. Mr.Palanikumar, learned Counsel for the respondents herein, would argue that the Trial Court rightly decided Issue No.1 framed by it in favour of the plaintiff by recording a specific finding that the plaintiff is entitled to 1/3 share in the Suit Properties as per Section 8 of the H.S.Act. But the Trial Court erroneously decided that the plaintiff is not in joint possession and enjoyment of the Suit Properties; that the Court Fee paid under Section 37 (2) of TNCF Act is incorrect; that the plaintiff ought to have valued the Suit under Section 37 (1) of TNCF Act. Even while assuming that the Court Fee paid is wrong, it is a curable defect and the Trial Court ought not to have dismissed the Suit primarily on that ground. Further, the preliminary issue under Section 12 (3) of TNCF Act was not invoked. Further, the decision of the Trial Court on Issue No.3



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framed by it, is untenable in law. When the Trial Court held that the plaintiff is entitled to 1/3 share in the Suit Properties, in view of its decision for Issue No.2 before it, it ought to have decreed the Suit subject to payment of Court Fee. Hence, the dismissal of the Suit by the Trial Court is a completely erroneous approach. The First Appellate Court after an elaborate discussion decreed the Suit setting aside the Trial Court's Judgment and Decree. There is no need to interfere with the First Appellate Court's Judgment and Decree. There is no Substantial Questions of Law involved in the case. He further submitted that there is no cordial relationship between the plaintiff and her husband. Hence, the plaintiff's husband falsely deposed against the plaintiff. Accordingly, he prayed to dismiss the Second Appeal.

Discussion and Decision:

12. This Court has heard either side and perused the available materials *viz.*, memorandum of grounds of appeal, pleadings, Judgment and Decree of the Trial Court and the First Appellate Court, certified copy of Ex-A.13 - Sale Deed dated October 1, 1971, Ex-A.14 – Sale Deed dated March 30, 2000 and evidence of P.W.1, D.W.1 and D.W.2 furnished by the learned counsel for the appellants in the typed set of papers.



Limitation

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13. As regards the question of limitation, the learned Counsel for the appellants / defendants would vehemently contend that Article 113 of the Limitation Act, 1963 would be applicable to the facts of the case on hand and the present Suit is barred by limitation.

14. The learned Counsel for the appellants would refer to Paragraph No. 22 in *Krishna Pillai's Case*, and argue that in a Suit for partition, limitation clock begins to run when the right to sue accrues *i.e.*, when the plaintiff becomes aware that his right to partition has been denied, and hence Article 120 of the Limitation Act, 1908 (now Article 113 of the Limitation Act, 1963) would be applicable. Paragraph No. 22 thereat reads thus:

“22. In our opinion, the suit filed in the present case being a suit for partition primarily and predominantly and the relief of redemption having been sought for only pursuant to the direction made by the High Court in its order of remand, the limitation for the suit would be governed by Article 120 of the Limitation Act, 1908. For a suit for partition the starting point of limitation is — when the right to sue accrues, that is, when the plaintiff has notice of his entitlement to partition being denied. In such a suit, the right of the redeeming co-mortgagor would be to resist the claim of non-redeeming co-mortgagor by pleading his right of contribution and not to part with the property unless the non-redeeming co-mortgagor had discharged his duty to make



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contribution. This equitable defence taken by the redeeming co-mortgagor in the written statement would not convert the suit into a suit for redemption filed by the non-redeeming co-mortgagor.”

14.1. At this juncture, this Court deems fit to cite ***Padma Sundara Rao -vs- State of T.N.***, reported in **(2002) 3 SCC 533**, wherein a Constitutional Bench of the Hon'ble Supreme Court has laid down the law as to how Courts should consider case laws. In Paragraph No. 9 therein, the Hon'ble Supreme Court has held as follows:

“9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.”

(emphasis supplied by this Court)

14.2. In view of the law laid down by the Hon'ble Supreme Court in ***Padma Sundara Rao's Case (supra)***, this Court deems it appropriate to extract the facts of ***Krishna Pillai's Case***. They are set out



in Paragraph No. 2 to 4 thereat, which are as hereunder:

“2. There was a piece of land measuring 1.2 acres in area which belonged to eighteen members of a family of Sripandarachetti Cult. It was mortgaged in 1902. There was a partition amongst different groups. The properties involved in partition were listed as Schedules ‘A’, ‘B’, ‘C’ and ‘D’. The ‘C’ Schedule comprised of 30 cents. The property in dispute herein is referable to this Schedule ‘C’ land. Hereinafter, it is referred to as the “property in suit”.

3. The property in suit was subject to a usufructuary mortgage of the year 1078 Malayalam era. After the partition, ten members out of the eighteen to whom different portions of the mortgaged property were allotted filed the suit, bearing OS No. 464 of 1117 of Malayalam era, for redemption. The suit was decreed in 1950. After the decree one Chellapan Pillai (who died during the pendency of these proceedings and in whose place Defendant 1 stands substituted) got the property in Schedule ‘C’ redeemed by making full payment of mortgage money. He also entered into possession over the property in the year 1953. The appellant-plaintiff is the assignee from certain non-redeeming co-mortgagors of a share in ‘C’ Schedule property. His share in the property is stated to be 9/12th in 25 cents of ‘C’ Schedule property. In the year 1971, the plaintiff filed the present suit seeking relief of declaration of title with recovery of possession, and in the alternative, the relief of partition. On 7-12-1973, the trial court decreed the suit upholding the plaintiff's entitlement to 9/12th share in the suit property but subject to payment of Rs 208 to reimburse the first defendant by way of contribution towards the amount spent by him in redeeming the property. A preliminary decree determining the share of the plaintiff and his entitlement



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to partition was passed. The trial court's decree was upheld by the first appellate court dismissing the appeal preferred by Defendant 1. Defendant 1 preferred a second appeal (No. 1149 of 1976). Vide judgment dated 10-2-1981, the High Court allowed the appeal and set aside the decrees of the two courts below. It was urged before the High Court on behalf of Defendant 1 that the property being subject to mortgage, and Defendant 1 having subrogated himself in place of the original mortgagee, the suit filed by the plaintiff merely for declaration, partition and recovery of possession, was not maintainable and it was necessary for the plaintiff to have sought for the relief of redemption. Even if the relief of redemption of mortgage was not specifically sought for, it was submitted on behalf of Defendant 1 that the suit in substance was one for redemption and construed so it was barred by time under Article 148 of the Limitation Act, 1908. The High Court formed an opinion that this aspect of the case did not appear to have engaged the attention of the courts below and, therefore, the case needed to be remanded for decision afresh. The High Court allowed the appeal, set aside the decree under appeal and remanded the case to the trial court with a direction to allow the parties an opportunity of amending the pleadings, so that the plaintiff could seek the relief of redemption and the defendant could raise the plea as to bar of limitation. Pursuant to the order of remand, the pleadings were amended. The suit was once again decreed by the trial court and the first appellate court.

4. In the second appeal preferred by Defendant 1, it is interesting to note that the High Court formed an opinion that Defendant 1 had redeemed the property on behalf of the entire family, and therefore, after the payment of mortgage money and recovering back the possession from the mortgagee, nothing had



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remained to be redeemed. The plaintiff was entitled to declaration of title and other reliefs prayed for by him. The learned Judge of the High Court entertained serious doubts about the correctness of the view taken by the learned Single Judge in the earlier order of the High Court remanding the case to the trial court but felt bound (and helpless) by the observations and the directions made in the earlier judgment, and rightly so. The learned Judge noted the submission of the learned counsel for the plaintiff that the question of limitation did not arise in the case and all that to which the first defendant was entitled was to have reimbursement for whatever amount he might have spent on redemption. Having said so, the learned Judge observed desperately, "I would have readily agreed with this submission of the learned counsel for the plaintiff if I were free to do so. In fact, according to me, in this case, no question of further redemption of 1078 mortgage arises at all." The learned Judge held that

"the first defendant was not required to claim the status of a redeeming co-mortgagor vis-à-vis the other members of the family on the facts and in the circumstances of the case. But since I am bound by the earlier order of remand in SA No. 1194 of 1976, I am constrained to overrule the contention of the learned counsel for the respondent that the claim of the plaintiff could not be held to be barred by limitation."

Consequently, the learned Single Judge by the judgment dated 22-3-1993 allowed the appeal, set aside the judgments and decrees of the courts below and directed the suit to be dismissed. Feeling aggrieved by the judgment of the High Court the plaintiff has filed this appeal by special leave."



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14.3. *Krishna Pillai's Case* pertains to a Suit for partition and redemption. The facts of that case are distinguishable from that of the case on hand. It is in an entirely different factual context and nature of Suit, the Hon'ble Supreme Court held as set out in Paragraph No. 22 thereat. However, the Hon'ble Supreme Court ultimately held that the Suit filed by the appellant therein is maintainable and the appellant therein is entitled to partition, which shows that the Hon'ble Supreme Court did not propose that residuary Article 120 of the Limitation Act, 1908 (now Article 113 of the Limitation Act, 1963) would be applicable to a Partition Suit like the present Suit. Hence, this Court is of the view that ***Krishna Pillai's Case***, is not applicable to the facts and circumstances of the present case, and even if applicable would not come to the aid of the defendants.

15. The learned Counsel for the appellants would further refer to Paragraph Nos.44 and 45 of ***Sanjay Kaushish's Case*** in support of his aforesaid contentions with respect to limitation. Paragraph Nos. 44 and 45 are as hereunder:

“44.The next question is of limitation. It is evident that if averments in the plaint are to be taken into consideration, then the decree and the other transactions are to be treated as void, sham and fictitious documents. Therefore, it was not necessary



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*for the plaintiff to have sought any declaration for avoiding the said document and the decree and plaintiff could file a suit claiming substantive relief which is a relief of partition and other ancillary reliefs flowing from the same. The limitation for filing the suit for partition starts from the date the right to sue accrues. The right to sue could accrue when the said right is threatened by the opposite side. The residuary Article 113 of the Limitation Act would apply and in the present case, according to the plaintiff, the said right to sue accrued to him when he was tried to be ousted from the joint Hindu family businesses and properties which occurred in 1985 and the suit filed in the year 1986 is within time. The final decision on the point of limitation cannot be given at this stage. If we treat only, averments made in the plaint as correct, then the suit appears to be within time. The learned counsel for the plaintiff has cited a number of judgments to show that in a such a suit residuary article is applicable and not the article dealing with relief of cancellation of the document or decree. (See *Balasundara Pandiam Pillai v. Authimulam Chettiar*, AIR 1919 Mad 679(1), *Mst. Basant Kaur v. Ram Singh*, AIR 1939 Lahore 544, *Appanna v. Jami Venkatappadu*, AIR 1953 Mad 611, *Dalim Kumar Sain v. Smt. Nandarani Dassi*, AIR 1970 Cal 292, *Asaram v. Ludheshwar*, AIR 1938 Nagpur 335 (FB) and *Mst. Aisha Begam v. Mst. Kundan Jan*, AIR 1945 All 367].*

45. So, keeping in view the averments made in the plaint, it cannot be said that the suit is on the face of it barred by time. However, the final decision on the point of limitation would be given after framing issues and recording evidence.”

15.1. In view of *Padma Sundara Rao’s Case (supra)*, this Court deems fit to set out the factual matrix of *Sanjay Kaushish’s Case*.



Relevant extract is as follows:

“3.Facts of the case as averred by the plaintiff, in brief, are that his late grandfather Pt. Lakshmi Chandra constituted a Joint Hindu Family with his two sons, namely, Pratap Chand and D.C. Kaushish defendant No. 1 and owned and possessed moveable and immoveable properties. The immoveable properties are described in Schedule A to the plaint. Pratap Chand is stated to have died issueless in 1916. Pt. Lakshmi Chand had died on February 10, 1934. D.C. Kaushish-defendant No. 1 then became Karta of the Joint Hindu Undivided Family comprising of himself, his wife defendant No. 4, and his three sons, namely, Ajay Kaushish-defendant No. 2 and Uday Kaushish-defendant No. 3 and the plaintiff. It is the case of the plaintiff that defendant No. 1 as Karta of Hindu Undivided Family (for short the ‘HUF’) managed and possessed the HUF properties together with all acquisitions thereof ...

5. ...It is pleaded that this huge income attracted a levy of huge income-tax, wealth-tax and other taxes including house-tax and other charges and cesses and in order to avoid and/or reduce the incidence of tax liabilities etc. which were then leviable and being levied on the HUF, defendant No. 1 devised a scheme of effecting a colourable and sham partition of the assets and properties including businesses and he got filed on December 22, 1962, a collusive and a sham suit for partition. Shri Ajay Kaushish, who was then minor, was shown to be represented by next friend Shri Shiv Narain Vashisht, sister's husband of defendant No. 1, and plaintiff and the other minor son of defendant No. 1 were shown represented through their mother-defendant No. 4.



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11. So, the plaintiff sought a decree for partition of the said assets, properties and businesses of the HUF for separating his share and for getting possession of his share and for rendition of accounts ...”

15.2. From the above, it is clear that in ***Sanjay Kaushish’s Case*** joint family properties were collusively partitioned earlier by way of Arbitral Award backed by Court Decree while the plaintiff was a minor, who after attaining the age of majority filed the Suit praying to declare the partition as collusive, sham and nominal along with other reliefs as found above. Learned Single Judge of Hon’ble Delhi Court observed that final decision on limitation would be made after framing issues and recording evidence. This Court is of the view that the same cannot be considered as a *ratio decedendi*. Further, the factual matrix thereof is also deviant from the factual matrix of the case on hand. Hence, ***Sanjay Kaushish’s Case*** does not come to the aid of the defendants.

16. Further, the learned Counsel for the defendants would rely on ***Puniyavathi’s Case***, wherein learned Single Judge of this Court by relying on the Judgment of the Hon’ble Supreme Court in ***Vidya Devi @ Vidya Vati (Dead) -vs- Prem Prakash & Others***, reported in ***AIR 1995 SC 1789***, has held as follows:

“22. P.W.1/Puniyavathi, who is the 1st plaintiff in this suit has not explained or produced any evidence to show how she was



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in joint enjoyment of the suit property along with her brothers as a co-sharer. Out of three daughters of Balakrishnan Padayachi, the second plaintiff had not even mounted the witness box to depose against the interest of their brothers and yet another daughter has filed the written statement supporting the brothers and the partition deed. The first plaintiff alone plead that the suit properties were in joint possession and enjoyment, but without any evidence to support her plea.

23. In *Vidya Devi @ Vidya Vati (Dead) vs Prem Prakash & Others* reported in (1995 AIR 1789), the Hon'ble Supreme Court has observed:-

“The legislature has not prescribed any period of limitation for filing a suit for partition because partition is an incident attached to the property and there is always a running cause of action for seeking partition by one of the co-sharers if and when he decides not to keep his share joint with other co-sharers. Since the filing of the suit is wholly dependent upon the will of the co-sharer, the period of limitation, specially the date or time from which such period would commence, could not have been possibly provided for by the legislature and, therefore, in this Act also a period of limitation, so far as suits for partition are concerned, has not been prescribed. This, however, does not mean that a co-sharer who is arrayed as a defendant in the suit cannot raise the plea of adverse possession against the co-sharer who has come before the Court as a plaintiff seeking partition of his share in the joint property.

Normally, where the property is joint, co-sharers are the representatives of each another. The co-sharer who might be in possession of the joint property shall be



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deemed to be in possession on behalf of all the co-sharers. As such, it would be difficult to raise the plea of adverse possession by one co-sharer against the other. But if the co-sharer or the joint owner had been professing hostile title as against other co-sharers openly and to the knowledge of others joint owners, he can, provided the hostile title or possession has continued uninterruptedly for the whole period prescribed for recovery of possession, legitimately acquire title by adverse possession and can plead such title in defence to the claim for partition...”

(emphasis supplied by this Court)

16.1. This Court deems fit to set out the factual matrix of

Puniyavathi’s Case by extracting Paragraph No. 2 thereat hereunder:

“2. The plaintiffs are daughters of one Mr.Balakrishnan Padayachi, who died interstate in the year 1978. Their mother Valliammai died in the year 2004. Mr.Balakrishnan Padayachi and Valliammai had four sons and three daughters. While two daughters had joined together and filed suit for partition, alleging that they were in joint possession and enjoyment of the suit property after the demise of Balakrishnan Padayachi, the other daughters and sons have contested the suit for partition alleging that, the plaintiffs have no interest in the estate of their father's property. According to the defendants the properties which are left by Mr.Balakrishnan Padayachi was divided among the male members as per the partition deed dated 25.07.1991 and same has been acted upon. Further alienation of the suit properties has been effected 18 years prior to the suit and the plaintiffs were aware of all those facts, had filed the suit for



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partition with ulterior motive though they have no rights in the properties.”

16.2. The learned Single Judge after relying on *Vidvati's Case* (cited *supra*) held that as far as partition among co-sharers is concerned, the legislature has not prescribed any period of limitation for filing a Suit for partition. Further held that, nonetheless, the defendant can raise a plea of adverse possession against the plaintiff (co-sharer) seeking partition of plaintiff's share in the joint property.

16.3. There is no quarrel with the law proposed in *Puniyavathi's Case*. As a matter of fact, it supports the case of the plaintiff and not the defendants' case.

16.4. The learned counsel relied on a judgment of this Court in *Emperuman and Others Vs. Rangarajan and Others* reported in **2017 (1) MWN (Civil) 630** wherein, in paragraph Nos.39 to 41 it is observed as under:

“39.The learned Senior Counsel has invited the attention of this Court to paragraph No.22 of the affidavit filed in support of the petition, wherein it is stated that on 7.10.1992 the first petitioner/plaintiff had issued a notice to Kuppanna Mudaliar claiming partition and he in turn, had issued a reply, dated 20.10.1992 and thereafter, admittedly, the respondents/plaintiffs had never raised the issue of



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partition.

40.As argued by the learned Senior Counsel, the plaintiffs have slept over for about 19 years from 20.10.1992 and all of a sudden, they came forward with a suit for partition in O.S.No.59 of 2011, which seems to have been filed on 27.4.2011.

41.She has also added that the right to sue accrues for the respondents/plaintiffs on and from 20.10.1992, i.e., from the date of denial of partition. Therefore, the respondents/plaintiffs ought to have filed the suit on or before 19.10.1995. But unfortunately, the suit was not filed within that stipulated period, instead it is filed after the lapse of 19 years.”

To be noted, the aforesaid decision arising out of the order passed in Order VII Rule 11 of CPC. In the said case, plaint had been filed after 19 years from the date of denial i.e., after 19 years of the reply notice denying the plaintiff's right. Hence, the Hon'ble Single Judge of this Court held that the Suit is barred by limitation. Therefore, the said judgment would not help to the case of the defendant.

16.5.To be noted, *Vidyavati's case* referred *supra*, it has been categorically held by the Hon'ble Three Judges that the legislature has not prescribed any period of limitation for filing a suit for partition because partition is an incident attached to the property and there is always a running cause of action. In view of the decision rendered by the Hon'ble



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Supreme Court, this Court is of the considered view that Article 113 of the Limitation Act would not be applicable if a co-sharer seeks partition against another co-sharer. Hence, the judgment of this Court in *Emperuman's case* (cited supra) would not be applicable to the present case on hand.

17.Hence, all the four case laws relied on by the learned Counsel for the appellants / defendants do not come to the aid of the defendants. Article 113 of the Limitation Act, 1963 would not be applicable while one co-owner filed a Suit for partition against other co-owner praying to partition their joint property. Hence, this Court is of the view that the Suit is not barred by limitation as alleged by the defendants.

Ex-A.13 - Sale Deed

18. Learned Counsel for the appellants / defendants would contend that father - Venkatasamy Reddiar executed Ex-A.13 - Sale Deed in favour of the plaintiff in the year 1971; that the plaintiff is excluded from the Suit Properties even during the lifetime of Venkatasamy Reddiar; and that Venkatasamy Reddiar never intended to give the plaintiff any share in the Suit Properties.

19. The aforesaid contentions are untenable in law for the following reasons:



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- a) Father died intestate on April 4, 1998 leaving behind the plaintiff and the defendants as legal heirs as well as the Suit Properties as his self-acquired properties. Succession opens the moment Venkatasamy Reddiar passed away. As stated *supra*, the plaintiff and the defendants are co-heirs and co-owners entitled to equal share in the joint properties (Suit Properties).
- b) If really, as contended by the defendants, the plaintiff's father intended disinherit the plaintiff, he would have left a testament or Will or would have settled the Suit Properties in favour of the defendants during his lifetime. In absence of such actions, the right of the plaintiff over the Suit Properties as a legal heir under Section 8 of the H.S.Act cannot be deprived by citing flimsy reasons. Assuming a moment that Venkatasamy Reddiar during his lifetime never intended to give any property to the plaintiff, even then, given the absence of any testament or Will in favour of the defendants, the plaintiff's rights over the Suit Properties remain unaffected.
- c) If really any property had been purchased / gifted / bequeathed / settled in the name of the plaintiff by the father, in the eyes of law, it is only for the benefit of his daughter - plaintiff, unless the



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contrary is proved. In this case, the defendants relied on Ex-A.13 - Sale Deed. Learned Counsel for appellant / defendants furnished a certified copy of Ex-A.13 before this Court (in the open court). The properties covered under Ex-A.13 was purchased by plaintiff and one Nagalakshmi, who is the first wife of the plaintiff's husband. Nothing contained in Ex-A.13 shows that the property covered thereunder was purchased by father - Venkatasamy Reddiar. Further, the property covered thereunder is not a matter of concern in this case. Notably, the subject matter of the present Suit concerns Section 8 and not Section 6 of the H.S.Act. Hence, the contention of the defendants that father-Venkatasamy Reddiar already gave sufficient property to the plaintiff is no way relevant to this case. The aforesaid contentions of the defendants deserve to be rejected.

Ouster and Adverse Possession

20. With regard to the rights of co-owners, in *Mitra's Co-Ownership & Partition, 8th Edition (Eastern Law House)*, at Page No.2, it is observed as follows:

“All Co-owners have equal rights and co-ordinate interest in the property. But their shares may be either fixed or indeterminate. If the sharers are known they need not be equal.



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But whether the shares are known or indeterminate and whether the shares are equal or unequal, every co-owner has a right of enjoyment and possession equal to that of the other co-owners. Each co-owner is in theory interested in every infinitesimal portion of the subject-matter and each has the right, irrespective of the quantity of his interest, to be in possession of every part and parcel of the property, jointly with the others.”

21. Regarding Adverse Possession by co-sharer, in *Law relating to Partition by M.N.Das, Seventh Edition, Eastern Law House,* at Page Nos.301 to 303, it is observed as follows:

“Adverse Possession by co-sharer:-

The ordinary classical requirement of adverse possession is that it should be nec vi nec calm nec precario. The possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. But, in order to establish adverse possession of one co-heir as against another, it is not enough to show that one out of them is in sole possession and enjoyment of the profits of the properties. Ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title. The burden of making out ouster is on the person claiming to displace the lawful title of the co-heir by his adverse possession. No hard and fast rule can be laid down from which it



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can be inferred that any co-owner/sharer has ousted his co-sharer. It depends upon the facts of each case. Long possession by itself is not a ground to oust a co-sharer but something more positive is required to be done. There must be a hostile open possession, and denial and repudiation of the rights of other co-owners must be brought home. Service of notice by one co-sharer, for partition and possession, and inaction thereunder or failure to promptly file a suit thereafter, was not enough to establish such co-sharers ouster or adverse possession of the other co-owners. The onus to prove the adverse possession is on the person who raises the plea. A suit for possession based on title was filed by a person who had already proved his title in an earlier suit. In such circumstances, the onus to prove acquisition by adverse possession lies on the defendant. The defendant not having raised any plea of adverse possession, the suit is not time barred. In the absence of such a plea the possession of the defendant is devoid of the requisite animus so as to make his possession adverse for the purpose of commencement of the prescription period. Where a co-owner is claiming to have perfected his right on the basis of adverse possession, such a co-owner has to prove the ouster of other co-owner, to the knowledge of all concerned, only then he can claim to have perfected rights on the basis of adverse possession against a co-owner. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all the facts necessary to substantiate his claim of adverse possession. The correct legal position, therefore, is that possession of a property, belonging to several co-sharers, by one co-sharer shall be deemed to be possession on behalf of the other co-sharers unless there has been a clear ouster by denying the title of other co-sharers and mutation in the revenue record in the



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name of one co-sharer would not amount to ouster unless there is a clear declaration that the title of other co-sharers was denied. Ouster is a positive matter; and the hostile animus necessary to constitute ouster must also be a positive matter. It is a matter involving action; it cannot be mere inaction. If the co-owner in possession did not give a share of the income to the other co-owner out of possession merely because the latter did not ask for it, then such animus may only be a negative animus. On the other hand, if the evidence shows that even if the co-owner out of possession demanded his share, the co-owner in possession would not have given him a share, then the animus is positive, in the sense that it is indicative of an animus to exclude.

There must be a clear refusal to allow the other co-owner to participate in the enjoyment of the property. Where there is neither an open denial of title nor any ouster to the knowledge of the co-owner intended to be ousted, it cannot be said that the possession of the co-owner claiming adverse possession creates a title by prescription. An act of mortgage of a piece of land by one co-sharer would not amount to an act of ouster of the other co-sharers. There is no complete prohibition if a co-sharer in exclusive possession sells or mortgages a part of the joint land because that share can be adjusted at the time of partition against the share of the alienating party. No secret hostile animus can create adverse possession in favour of a co-sharer in possession. Again, where some co-sharers in possession of joint property effect a partition of the same by a registered deed without knowledge of the other co-sharers who came to know about it when they were denied the income of those properties, the persons in possession of those properties cannot claim title by adverse possession against the non-participating co-sharers. Exclusive possession of a co-sharer does not amount to adverse



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possession against other co-sharers unless such possession is exercised by ousting the other co-sharers. ...

... Therefore, in order to perfect a title by adverse possession two ingredients are inseparable, i.e. corpus possidendi and animus possidendi. In other words, the physical possession on the one hand and the intention to exclude an adversary from possession overtly and without attempt at any concealment and it must be adequate incontinuity.”

22. This Court in ***D.V.Jegannathan and 5 others -vs- P.R.Srinivasan and 5 others [(1999) 3 LW 742]***, has held as follows:

“Mutation of the Revenue records, payment of taxes, long possession of the property, management of the property, appropriation of income, the other sharers being out of possession of the property etc., each of such acts by a co-owner by itself may not be sufficient to establish ouster or open assertion of adverse title as against another co-owner.”

23. The Hon’ble Supreme Court in ***P.Lakshmi Reddy vs L.Lakshmi Reddy [AIR 1957 SC 314]***, has held as follows:

“4.Now, the ordinary classical requirement of the adverse possession is that it should be nec vi nec clam precario. (See Secretary of State for India V Debendra Lal Khan. 61 Ind App 78 at p 82: (AIR 1934 PC 23 at p.25) (A). The possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. (See Radhamoni Debi v. Collector of Khulna, 27 Ind APP 136 at p. 140 (PC)(B). But it is well-settled that in order to establish adverse possession



*of one co-heir as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits, of the properties. Ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title. The co-heir in possession cannot render his possession adverse to the other co-heir not in possession merely by any secret hostile animus on his own part in derogation of the other coheir's title. (See *Corea v. Appuhamy*, 1912 AC 230(C). It is a settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster."*

24. The Hon'ble Supreme Court in *Vidyavati's Case (supra)*,

has held as follows:

"28. Ouster does not mean actual driving out of the co-sharer from the property. It will, however, not be complete unless it is coupled with all other ingredients required to constitute adverse possession, Broadly speaking, three elements are necessary for establishing the plea of ouster in the case of co-owner. They are (i) declaration of hostile animus (ii) long and uninterrupted possession of the person pleading ouster and (iii) exercise of right of exclusive ownership openly and to the knowledge of other co-owners. Thus co-owner, can under law, claim title by adverse possession against another co-owner who can, of course, file appropriate suit including suit for joint



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possession within time prescribed by law.”

25. Further, this Court in ***Smt.Mamutha Bai and others -vs- G.Ramakrishnan and another***, reported in **2024 (3) CTC 622** has summarized the law in this regard as follows:

“31.This Court deems fit to summarise the law in this regard. Adverse Possession commences with wrongful possession and is asserted against rightful ownership. Essential pleadings include actual, conclusive, open and uninterrupted hostile possession with clear intent to claim ownership of the property in question, contrary to the true owner's rights. In order to claim adverse possession, specific averments as to when and how the possession became adverse to the true owner are necessary for computing the limitation period from thereon. The plea of adverse possession is essentially a factual plea and such plea should be pleaded specifically and proved by adducing substantive legal evidence. Long Possession by itself would not be sufficient to prove adverse possession. Animus Possidendi against the true owner is also necessary. Further, permissive possession would never be adverse to the real owner.”

26. In this case, undisputedly, the Suit Properties are self-acquired properties of Venkatasamy Reddiar. He died intestate on April 4, 1998 leaving behind the plaintiff and the defendants as his Class - I legal



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heirs. The moment he passed away, the Suit Properties devolved upon the legal heirs as per Section 8 of the H.S.Act and hence, the plaintiff and the defendants became co-heirs and co-owners of the Suit Properties. Law presumes that possession and enjoyment of one co-owner is that of other co-owner also. The plaintiff pleaded and deposed that she is in joint possession and enjoyment of the Suit Properties by receiving 1/3rd share out of the income from the Suit Properties. The plaintiff issued Ex-A.11 - Notice on June 30, 2012, for which, the defendants sent Ex-A.12 - Reply on September 1, 2012 denying the plaintiff's right of share in the Suit Properties. Hence, the plaintiff filed the present Suit on December 5, 2012 seeking partition and rendition of accounts. The burden is upon the defendants to prove their plea of adverse possession and ouster. In view of the authorities cited above, it is clear that the plea of ouster and adverse possession have not been satisfactorily established by the defendants in the instant case. The defendants have merely pleaded ouster and adverse possession and have not taken any steps to prove their case. Needless to mention, mere pleadings do not amount to proof.

Valuation of Suit and Court Fees

27. As regards the valuation of Suit, the law in this regard is well settled. In *Neelavathi's case* [*Neelavathi and Others -vs- Natarajan*



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and Others, reported in **AIR 1980 SC 691**], the Hon'ble Supreme Court in

Paragraph No.8 held as follows:-

“The general principle of law is that in the case of co-owners, the possession of one is in law possession of all, unless ouster (or) exclusion is proved. To continue to be in joint possession in law, it is not necessary that the plaintiff should be in actual possession of the whole or part of the property. Equally it is not necessary that he should be getting a share or some income from the property. So long as his right to a share and the nature of the property as joint is not disputed the law presumes that he is in joint possession unless he is excluded from such possession. Before the plaintiffs could be called upon to pay court fee under Sec. 37(1) of the Act on the ground that they had been excluded from possession, it is necessary that on a reading of the plaint, there should be a clear and specific averment in the plaint that they had been “excluded” from joint possession to which they are entitled in law. The averments in the plaint that the plaintiffs could not remain in joint possession as they were not given any income from the joint family property would not amount to their exclusion from possession.”

28. *Ratio decidendi* of **Neelavathi's Case** is in favour of the plaintiff. Hence, this Court is of the view that the Court Fee paid under Section 37 (2) of TNCF is perfectly correct and valid.

28.1. Further, it is apposite to extract hereunder Section 12 of TNCF Act which reads as follows:



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“12. Decision as to proper fee in other Courts. (1) In every suit instituted in any Court other than the High Court, the Court shall, before ordering the plaint to be registered, decide on the materials and allegations contained in the plaint and on the materials contained in the statement, if any, filed under section 10 the proper fee payable thereon, the decision being however subject to review, further review and correction in the manner specified in the succeeding sub-sections.

(2) Any defendant may, by his written statement filed before the first hearing of the suit or before evidence is recorded on the merits of the claim but, subject to the next succeeding sub-section, not later, plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim. If the Court decides that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall fix a date before which the plaint shall be amended in accordance with the Court's decision and the deficit fee shall be paid. If the plaint be not amended or if the deficit fee be not paid within the time allowed, the plaint shall be rejected and the Court shall pass such order as it deems just regarding costs of the suit.

(3) A defendant added after issues have been framed on the merits of the claim may, in the written statement filed by him, plead that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient. All questions arising on such pleas shall be heard and decided before evidence is recorded affecting such defendant, on the



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merits of the claim, and if the Court finds that the subject-matter of the suit has not been properly valued or that the fee paid is not sufficient, the Court shall follow' the procedure laid down in subsection (2).

(4)(a) Whenever a case comes up before a Court of Appeal, it shall be lawful for the Court, either of its own motion or on the application of any of the parties, to consider the correctness of any order passed by the lower Court affecting the fee payable on the' plaint or in any other proceeding in the lower Court and determine the proper fee payable thereon.

(b) If the Court of Appeal decides that the fee paid in the lower Court is not sufficient, the Court shall require the party liable to pay the deficit fee within such time as may be fixed by it.

(c) If the deficit fee is not paid within the time fixed and the default is in respect of r. relief which has been dismissed by the lower Court and which the appellant seeks in appeal, the appeal shall be dismissed, but if the default is in respect of a relief which has been decreed by the lower Court, the deficit fee shall be recoverable as if it were an arrear of land revenue.

(d) If the fee paid in the lower Court is in excess, the Court shall direct the refund of the excess to the party who is entitled to it.

(5) All questions as to value for the purpose of determining the jurisdiction of Courts arising on the written statement of a defendant shall be heard and decided before evidence is recorded affecting such defendant, on the merits of the claim."



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If the Trial Court finds that Court Fee paid by the plaintiff is incorrect, in such a scenario, the Trial Court ought not to have dismissed the Original Suit after conclusion of trial. Instead, the Trial Court ought to have directed the plaintiff to pay the Court Fee and amend the plaint or the Trial Court ought to have passed preliminary decree subject to payment of Court Fee. Hence, the Trial Court approach is erroneous one. Admittedly, the Suit properties are agricultural land. The plaint was filed on December 5, 2012. As per the TNCF Act, 1955 market value to be calculated as per Section 7 of the Act [Before the commencement of Tamil Nadu Court-Fees and Suits Valuation (Amendment) Act, 2017 (TN Act 06 of 2017, with effect from March 1, 2017)] which reads as follows:

“7.Determination of market value.- (1) Save as otherwise provided, where the fee payable under this Act depends on the market value of any property, such value shall be determined as on the date of the presentation of the plaint.

(2)The market value of land in suits falling under Sections 25(a), 25(b), 27(a), 29, 30, 37(1), 37(3), 38, 45 or 48 shall be deemed to be -

(a)Where the land is ryotwari land – thirty times the survey assessment on the land:

... ..



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Admittedly, the Suit properties are agricultural lands. Total assessment of the plaintiff are Rs.58.08. Hence, market value of the Suit properties are $30 \times 58.08 = \text{Rs.}1,742/-$. As per Article I of Schedule-I, the proper Court Fee would be $\text{Rs.}1,742/- \times 7.5\% = \text{Rs.}130.68$. Notably, the plaintiff paid a fixed Court Fee of Rs.750/- as per Section 37(2) of TNCF Act, which is higher than the fee to be calculated under Section 37(1) of TNCF Act. The Trial Court miserably failed to take these aspects into its consideration and erred in holding that the plaintiff has not paid proper Court Fee.



Substantial Questions of Law

29. The appellant in his memorandum of appeal under Section 100 (3) of the Code of Civil Procedure, 1908 has set out the Substantial Questions of Law that arise in this Second Appeal according to him. This Court has perused the same. The Substantial Questions of Law found therein are mere question of facts which the First Appellate Court has rightly dealt with.

30. Further, during the course of arguments, the appellant filed a Memo containing additional Substantial Questions of Law under proviso to subsection 5 of Section 100 of the Code of Civil Procedure, 1908. The Questions of law raised by way of the said Memo are all settled legal positions and hence, they are not valid.

31. In this case, the Trial Court held that the plaintiff is entitled to 1/3 share. The defendants did not prefer an appeal over the Judgment and Decree of the Trial Court. No doubt, it is true that under Order XLI Rule 22 of Code of Civil Procedure, 1908, without filing appeal or cross-objection, the respondents-defendants in order to sustain the impugned part of the decree, may challenge the findings based on which the part of the decree against them was passed. In other words, the respondents-defendants may support the impugned part of the decree by



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asserting that the matters decided against them ought to have been ruled in their favour [See ***Ravinder Kumar Sharma v. State of Assam***, reported in (1999) 7 SCC 435]. However, from the perusal of the available case files, it appears that the defendants did not object the Trial Court's finding that the plaintiff is entitled to 1/3 share, before the First Appellate Court. Be that as it may, the First Appellate Court in Paragraph Nos.14 to 18 has analyzed the evidences and documents in a detailed manner and came to the conclusion that plaintiff is entitled 1/3 share in the Suit property and accordingly, allowed the appeal, set aside the Trial Court's judgment and decree and decreed the Original Suit in favour of the plaintiff.

32. Upon careful consideration of the Judgment of the First Appellate Court, this Court is of the considered view that there is no irregularity or infirmity in it. The First Appellate Court has rightly appreciated the facts and circumstances and allowed the appeal. There is no warrant to interfere with the same.

33. To sum up, this Court is of the considered view that the plaintiff is entitled to seek partition and her claim is not barred under law for the foregoing reasons.

Conclusion:

34. Resultantly, the Second Appeal is dismissed as devoid of



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merit. The Judgment and Decree of the First Appellate Court are hereby confirmed. Considering the facts and circumstances of the case, the parties shall bear their own costs. Connected Civil Miscellaneous Petition is closed.

19.10.2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
TK

To

- 1.The Sessions Judge
Magila Court, Cuddalore.
- 2.The Principal Sub Judge
Cuddalore.



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R.SAKTHIVEL, J.

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19.10.2024