



S.A.No.1412 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	07.12.2023
Pronounced on	01.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

Second Appeal.No.1412 of 2013
and Cross. Obj. No.40 of 2014

1.K.A.Ramasamy

2.K.A.Eswaran

....Appellants

Vs.

Pongodi

....Respondent

Prayer: Second Appeal has been filed under section 100 of Civil Procedure Code against the judgment and decree dated 19.08.2013 passed in A.S.No.32 of 2013 on the file of the learned Principal Distirct Judge, Erode, reversal of the judgement and decree dated 18.01.2013 made in O.S.No.51 of 2008 on the file of the learned Subordinate Judge, Gobichettipalayam, by allowing the second appeal.



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For Appellants : Mr.N.Manokaran
For Respondent : Mr.S.Mukunth,
Senior Counsel
for Mr.P.Chandrasekaran

J U D G M E N T

This Second Appeal is preferred against the judgment and decree dated 19.08.2013 passed in in A.S.No.32 of 2013 on the file of the learned Principal District Judge, Erode, reversal of the judgement and decree dated 18.01.2013 made in O.S.No.51 of 2008 on the file of the leanred Subordinate Judge, Gobichettipalayam,

2. The appellants are the defendants in the suit in O.S.No.51 of 2008 who lost the appeal before the first Appellate Court, has come forward with the present second appeal.

3. The respondent as plaintiff filed the about suit in O.S.No.51 of 2008 on the file of Sub Court, Gopichettipalayam, for partition



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and separate possession of one third share in the suit property. The respondent/plaintiff has stated that the suit property originally belong to one Appachi gounder, the father of the plaintiff and the defendants. The suit property is his self acquired property, purchased vide sale deed dated 23.06.1985. The said Appachi Gounder died intestate on 30.11.1988. The mother of the plaintiff and the defendants namely Chellamal also died on 19.04.1996. After the death of the Apachi Gounder and his wife Chellammal, the plaintiff and the defendants as the legal heirs succeeded to the suit property and are in joint possession and enjoyment of the same. Hence, the plaintiff is entitled to one third share in the suit property.

4. Since there was no cordial relationship between the plaintiffs and the defendants, the plaintiff to have an amicable partition issued a legal notice on 18.11.1998 to the defendants demanding for partition for which the defendants sent a reply notice dated 23.01.1999 with false contentions. The defendants in the said reply notice have stated that the suit property is self acquired properties of Appachi Gounder who executed a Will on 07.07.1988 in



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respect of the suit property in favour of the defendants. The defendants in pursuance of the said Will, after the death of the Appachi Gounder partitioned the suit property in the year 1993 among themselves and the defendants are in possession and enjoyment of their respective shares and thereby denied the one third share of the plaintiff in the suit property.

5. It is further contended that the plaintiff has executed the release deed on 22.06.1979 in favour of the defendants, which is not true. Hence, the plaintiff was constrained to file the above suit for partition and separate possession.

6. The averments in the written statement filed by the defendants is that the suit property is the self acquired property of their father Appachi Gounder. The said Appachi Gounder executed a Will on 07.07.1988 in favour of the defendants and died on 30.11.1988. After his demise the defendants partitioned the suit property among themselves. Hence, the plaintiff is not entitled for any share in the suit property.



7. It is further submitted that the suit filed by the 1st defendant

against the 2nd defendant in O.S.No.61 of 1999 on the file of District Munsif Court, Gopichettipalayam, a compromise decree dated 12.02.1999 was passed. In pursuant to the compromise decree, the suit property were partitioned between the defendants. The plaintiff is well aware of the above facts, hence the plaintiff estopped from claiming the share in the suit property. It is further stated that since the plaintiff married one Rajadurai against the consent of her father Appachi Gounder, the father Appachi Gounder was not willing to give any property to the plaintiff. However, the plaintiff was aware of the facts since she was residing near the suit property and also about the execution of the Will in favour of the defendants. The plaintiff has suppressed the execution of the release deed by her on 22.06.1979 and also executed Vardhammal letter dated 26.08.2005 in favour of the two defendants, wherein, she has acknowledged the above said facts. Hence, the defendants prayed for dismissal of the above suit.

8. The trial Court, after considering the averments both in the plaint and in the written statement has framed necessary issues. After



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considering the oral and documentary evidence, the trial Court dismissed the suit holding that the plaintiff is not entitled to any share in the suit property.

9. As against which an appeal in A.S.No.32 of 2013 has been preferred by the plaintiff before the learned Principal District Judge, Erode.

10. The appellate Court, after considering the materials on record has allowed the appeal in A.S.No.32 of 2013 on 19.08.2013 stating that the plaintiff is entitled to one ninth share in the suit property. The judgment and decree of the appellate Court is extracted as under:

" The decree and judgement passed by the learned Subordinate Judge, Gobichettipalayam, in O.S.No.51 of 2008 dated 18.01.2013 are set aside. The suit filed by the appellant/plaintiff is partly decreed. Preliminary decree is passed for partition of the suit properties into 9 equal shares and allotment of one such share to the plaintiff. The properties sold by the defendants to third parties shall be allotted to the share of the defendants to avoid inconvenience to the purchasers who have not been impleaded as parties in the suit. The parties are directed to bare their respective costs through out."



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11. Against the judgment and decree passed in A.S.No.32 of 2013, the present S.A.No.1412 of 2013 is filed and Cross Obj.No.40 of 2014 has been filed by the plaintiff. At the time of admission, this Court has framed the following substantial questions of law in S.A.No.1412 of 2013

"1. Whether Ex.B3 Will is valid and whether it is proved in compliance with the requirement of Section 96 of the Evidence Act and Section 63 of the Indian Succession Act?

2. Whether the First Appellate Court is correct in disbelieving the Will EX.B.3 on the ground that D.W.1 and D.W.2 have not spoken about the presence of the attestors at the time of execution of the unregistered Will by Appachi Gounder especially when "attestation" does not require their presence and more so no law mandates registration of a Will?

3. Whether the varthaman letter dated 26.08.2005 (Ex.B.1) is invalid for want of registration under Section 17 of the Registration Act particularly when the Ex.B.1 was executed in line with the oral partition and proved through D.W.3 to D.W.5?

4. Whether the suit for partition filed by the respondent/plaintiff is barred by limitation under Article 110



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of the Limitation Act?"

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12. The learned counsel appearing for the appellants in S.A.No.1412 of 2013 would submit that the plaintiff is not entitled to get the decree for one ninth share in the suit property of her father Late. Appachi Gounder, in view of the Will dated 07.07.1988 (Ex.B3) and Varadhammal letter dated 26.08.2008 (Ex.B1). It is submitted that the plaintiff left the family and married one Rajadurai as early as in the year 1979 against the consent of their family. However, the suit was filed only on 02.06.2008 and therefore, the suit is barred by limitation under Article 110 of the Limitation Act. He would further submit that the defendants have duly proved the execution of the Will dated 07.07.1988 by examining D.W6 and D.W7 as contemplated under Section 69 of the Indian Evidence Act.

13. It is further submitted that the first appellate Court disbelieved the testimonies of D.W1 and D.W2 by stating that they have not spoken about the presence of the attestors, at the time of the execution of the Will. It is submitted that no law requires for the presence of attestors at the time of execution and affirming the signature of the attestor in the Will, in view



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of the definition with regard to "attestation".

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14. The further contention of the learned counsel appearing for the appellants is that though the plaintiff had issued a pre suit notice on 08.11.1998 under Ex.A1 and further issuance of reply notice on 23.01.1999 under Ex.A4, the suit was filed only on 02.06.2008. The first appellate Court doubted the execution of the Will in view of the admitted fact between Ex.A1 and Ex.A4 and it is irrelevant factor to decide genuineness of the Will. He would submit that the Will has to be proved independently and it has been proved in this case as per Section 69 of the Indian Evidence Act. Moreover, the findings of the first appellate Court is that the unregistered Will cannot be given weightage which is totally contrary to the settled position of law and against the provisions of the Registration Act.

15. It is further submitted that Ex.B3 Will was executed on 30.11.1988 and parties have let in evidence after a lapse of 24 years i.e., in the year 2010 and therefore, it cannot be said that the Will was not executed. Therefore, the findings of the first appellate Court that the Will has not been proved is incorrect. The learned counsel would further submit that the plaintiff



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failed to let in evidence to establish that the testator of the Will was not in sound state of mind and that the defendants have committed fraud and undue influence at the time of execution of the Will.

16. The learned counsel would further submit that the suit for partition without impleading the purchaser of the property is bad for non-joinder of necessary parties. It is also submitted that the suit for partition is obviously barred by limitation under Article 110 of the Limitation Act and therefore, the apparent silence on the part of the plaintiff from the year 1979 till 2008 would ipso facto prove the latches, acquiescence, ouster and bar of limitation. Therefore, the reasons given by the first appellate Court are incorrect and unsustainable in law and the judgment and decree passed by the learned Principal District Court Erode in A.S.No.32 of 2013 dated 19.08.2013 is liable to be set aside.

17. The plaintiff has preferred the cross objection in Cross Obj.No.40 of 2014 against the judgment and decree of the first appellate Court passed in A.S.No.32 of 2013 dated 18.01.2013 on the file of the Principal



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District Court, Erode.

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18. The learned counsel appearing for Cross Objector would submit that the first appellate Court failed to see that the cross objector and the respondents 1 and 2 being sister and brothers upon whom the suit property had devolved from their father Appachi gounder is entitled to have an equal share. The first appellate Court ought to have decreed the suit by granting one third share to the cross appellant/plaintiff.

19. It is further submitted that the suit property being self acquired property of the cross appellant's father, namely Appachi Gounder who purchased the same under sale deed dated 23.06.1958. It is submitted that the first appellate Court erred in observing that suit properties are the ancestral properties without any proof. It is further submitted that the suit property was purchased by the appellant's father on 23.06.1958 under Ex.A5, whereas, certain ancestral properties were sold only on 04.07.1958 under Ex.B7, which is after the purchase of the suit property and therefore, ought not to have held



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that acquisitions of Appachi Gounder contains joint family nucleus. He would further submit that the first appellate Court erred in coming to the conclusion that the suit properties were subsequently purchased on 23.06.1958 after the ancestral properties were sold.

20. The first Appellate Court relying on the sale dated 07.03.1960 (Ex.B2) observed that sale deed pertains to 2nd item of suit property also contains joint family nucleus and erroneously held that entire suit properties are joint family properties. In that event the first appellate Court ought not to have held that the entire suit properties are joint family properties and Ex.A5 sale deed dated 23.06.1958 also contains ancestral nucleus. It is further submitted that the first Appellate Court based on Ex.B.8 mortgage discharge receipt dated 04.01.2000 (Ex.B.8) jointly executed by the appellant's father and the respondents 1 & 2 erroneously observed that entire suit property contains ancestral nucleus. The first appellate Court and the trial Court erroneously relied on Ex.B.9 (plaint in O.SNo.558/94), a suit instituted by the adjacent owner against Appachi Gounder and respondents 1 & 2 contending that the properties in S.F.No.202/2 and 202/5 is a joint family property in the



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absence of written statement of Appachi Gounder admitting such claim. The respondents 1 & 2 deliberately omitted to file the written statement in O.S.No.558 of 94 or the judgment and decree passed in the above suit. The first appellate Court and the trial Court ought not to have given credence to Ex.B.13, a sale deed executed by the 1st respondent and his son containing a recital that the suit properties are ancestral properties, which is a self proclaimed recital. Hence, Ex.B.13 is not binding on the cross appellant. It is further submitted that the respondents failed to prove that factum of oral partition and the compromise decree arrived between them is a collusive document, which the Courts below failed to take note of it. As per the Hindu Succession (amended) Act 39/2005 the cross appellant is entitled for equal share. Hence, prays for setting aside the judgment and decree dated 19.08.2013 made in A.S.No.32 of 2013 on the file of Principal District Court, Erode.

For the sake of convenience, the parties are referred as ranking in the trial Court.

Substantial Question of Law Nos. 1 & 2:



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21. The respondent as plaintiff filed the suit in O.S.No.51 of 2008 for partition and separate possession in the suit property. It is not in dispute that the defendants 1 and 2 in the suit are the elder brothers of the plaintiff. It is also not in dispute that the suit property originally belong to one Appachi Gounder, the father of the plaintiff and defendants. The case of the plaintiff is that, the suit property is the self acquired property of Appachi Gounder and he died intestate on 30.11.1988. The mother of the plaintiff and the defendants namely Challammal also died on 19.04.96. After the death of their parents, the plaintiff and defendants as legal heirs succeeded to the suit property and they are in joint possession and enjoyment of the same. Since there was no cordial relationship between the plaintiff and the defendants, she demanded for partition. Hence, the defendants failed to come forward for an amicable partition, the plaintiff was constrained to file the present suit for partition and separate possession with regard to her 1/3rd share in the suit property.

22. On the other hand, the contention of the defendant is that their father Appachi Gounder executed a Will dated 07.07.1988 in favour of the



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defendants and the same came into light after the death of their father.

Thereafter, the defendants 1 and 2 entered into a compromise decree dated 12.02.1999 in O.S.No.61/99 on the file of the District Munsif, Gopichettipalayam, and by virtue of the said compromise decree, the suit property was partitioned between the defendants 1 and 2. It is further submitted that the suit property was purchased from the ancestral nucleus and therefore, the father Appachi Gounder executed a Will in respect of his 1/3rd share in the suit property in favour of the defendants. The plaintiff is well aware of the above facts and therefore estopped from claiming any share in the suit property. The plaintiff also executed a Vardhaman letter dated 26.08.2005 in favour of the 2nd defendant, where in she has acknowledged the above said facts.

23. The learned counsel appearing for the appellant/defendants would submit that the plaintiff is not entitled to get a decree for 1/9th share in the property of her father late Appachi Gounder in view of the Will dated 07.07.1988(Ex.B.3) . His further submission is that the execution of the Will was established by the defendants by examining D.W.6 and D.W.7 as per



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Section 69 of the Indian Evidence Act. However, the first Appellate Court and the trial Court erroneously held that the Will is not proved in accordance with law.

24. On the other hand, the learned counsel appearing for the plaintiff would submit that in the absence of evidence regarding attesting witness signing in the presence of Testator, the Will is not proved *[Ref: 2017 (1) CTC 9]*. Mere proof of signature of one attesting witness not sufficient, when signature of Testator not identified by any person *[Ref: 2017 (2) CTC 35]*. Since the defendants as propounder of the Will failed to prove its execution in the manner known to law, the trial Court rightly held that the Will is not proved. He would also submit in his argument that the Will could not be considered as a true and genuine document and if the Will is not found to be true, the plaintiff as legal heir of the deceased Appachi Gounder is entitled to 1/3rd share in the suit property.

25. I have given anxious thoughts to the arguments advanced on either side.

26. Admittedly, Ex.B.3 Will is an unregistered document.



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However, an unregistered Will is valid and it depends on the choice of the

Testator to register a Will or not. Even an unregistered Will is valid if it confirms to the legal requirement of two witnesses who have signed the Will in the presence of the Testator and the Testator has signed the Will in their presence. Therefore, to prove due execution of Will as required under Section 68 of the Evidence Act 1872, at least one attesting witness required to be examined, though this does not rule out examining more than one attesting witness. The attestation must be in conformity with Section 3 of Transfer of Property Act and requirements of Section 63 (1) (c) of Succession Act, 1925, must also be complied with. Therefore, when genuineness of the Will is questioned, it is the duty of propounder to dispel the surrounding suspicious circumstances, if any. If the attesting witnesses have already died as in the present case Section 69 of the Indian Evidence Act, 1872, is applicable. In that event, the Will may be proved in the manner indicated in Section 69 i.e., by examining witnesses who were able to prove the hand writing of the Testator and the attesting witness. In the present case, since the attesting witnesses were dead the defendants have examined D.W.6 and D.W.7, who are the sons of the



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attesting witnesses in Ex.B.3 Will. They have been examined by the defendants

to prove the Will in compliance with Section 69 of the Evidence Act, to prove

the Signatures of the attesting witnesses. However, the mere fact that the

signatures of the attesting witness is proved, is not sufficient to prove the due

execution of the Will [**Ref: Duraisamy Vs. Rathnammal** reported in **AIR 1978**

Madras 78]. D.W.6, son of Sadiappan (one of the attestor) in his evidence has

stated that the Will was brought by Appachi Gounder to his house and signed in

his presence. His further statement is that at the time of signing the Will by

Appachi Gounder, his father Sadaippan and one Subramaniam were alone

present. Though D.W.6 deposed that the Will was hand written, signed by

Appachi Gounder and attested by his father Sadiappan and by one

Subramaniam in the same pen, on perusal of Ex.B.3 Will would establish that it

is a typed document and different ink has been used while signing by the above

mentioned persons. Apart from that, the evidence of D.W.1 and D.W.2 is

contrary to the deposition given by D.W.6. According to D.W.1, at the time of

execution of Will the defendants and their mother were alone present. Where

as, D.W.6 has deposed that except the attesting witness no one was present at



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the time of the execution of Will. Further more, D.W.2 has deposed that at the

time of executing the Will he and his brother were alone present. D.W.1 and

D.W.2(the defendants 1 & 2) have not spoken about the presence of attestors at

the time of execution of the Will by their father. The evidence of D.W.1 and

D.W.2 is that, the Will has been prepared in the house of Appachi Gounder in

their presence and the signature of the attesting witnesses have been obtained

later. Where as the evidence of D.W.6 is that the Will has been signed by the

Testator and the attestors in his house, which is contrary to the evidence of

D.W.1 and D.W.2. The Courts while analyzing the Will is acting as a Court of

conscience [*Ref: 2001 (3) CTC 283*]. The evidence of D.W.1, D.W.2 and

D.W.6 in respect of the execution of the Will cannot be considered to be

reliable because, serious contradictions were found in their evidence. The said

contradictions could have been considered as immaterial in the event, the Will

was a registered one. Even if an unregistered Will could have been relied upon,

the factum of execution and attestation was not proved by the propounder of the

Will. The valid execution and attestation has not been established as required

under Section 63 © of Indian Succession Act. Moreover, no property was



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allotted to the plaintiff in the said Will which would create suspicious circumstances and those circumstances were not cleared by the defendants.

Their only contention is that since the plaintiff married on her own accord, the father was not inclined to give any property to the plaintiff. But this fact is not established by the defendants. No doubt, the Will is a solemn document, to which, the person executed cannot come to Court to speak about its genuineness and about the intention of the testator to exclude the plaintiff. However, the defendants ought to have examined any independent witnesses to speak about the intention of the father that because of her marriage, he was not inclined to give any property to the plaintiff. While so, the evidence adduced by the witnesses on the side of the defendants, who are said to have been connected with the Will must be trustworthy. But, the evidences of D.W.1, D.W.2 & D.W.6 are not trustworthy. Their evidence is not satisfactory to prove the execution of the Will. In the light of the above, the first Appellate Court was justified in doubting the genuineness of the Will and rendering a finding that propounder has not proved the Will in accordance to law.

Substantial question of law Nos.3 & 4



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27. According to the defendants, the plaintiff executed Ex.B.1

Varthaman letter dated 26.08.2005 relinquishing her rights in the suit property.

The 1st appellate Court held that Ex.B.1 is invalid for want of registration under Section 17 of the Registration Act. The defendants have examined D.W.3 to D.W.5 to speak about Ex.B.1 Varthaman letter stating that the said letter was executed by the plaintiff in line with the oral partition between the plaintiff and the defendants and that the plaintiff after receiving a sum of Rs.75000/- from the 2nd defendant and in the presence of attesting witnesses, relinquished her right in the suit property and the defendants orally partitioned the suit property among themselves. The recitals in Ex.B.1 Varthaman letter reads as follows:

. "1லக்கமிட்டவர்கள் குடும்ப சொத்துக்களை பொறுத்து
2லக்கமிட்டவருக்கும் அவருடைய சகோதாரர்
ராமசாமிக்கும் விட்டுவிட்டு ராமசாமியிடமும்
2லக்கமிட்டவரிடமும் ரொக்கம் பெற்றுக் கொள்வதாய்
ஒப்புக்கொண்டு ராமசாமியிடம் பெற்றுக் கொண்ட
சொக்கம் தவிர 2லக்கமிட்டவரிடம் 1லக்கமிட்டவர்
ரூ.76,000/- (ரூபாய் எழுபத்தி ஐயாயிரம் அன்றைய



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தேதியிலேயே பெற்றுக் கொண்டார். மேற்படி
வாய்மூலமான பாகப்பிரிவினையும் உறுதிபடுத்தவும்
ரொக்கமாக ரூ.76,000/-ம் பெற்றுக் கொண்டதை
இதன்மூலம் தெரியப்படுத்துகிறேன்."

28. However, the said document is totally denied by the plaintiff. Moreover, the recitals in the said document clearly show that, the said document has been executed for releasing her right in the suit property and to create right in the suit properties in favour of the defendants. While so, the said document is necessarily be registered under Section 17 of Indian Registration Act. Any non testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property shall be registered. Therefore, the first appellate Court has rightly held that Ex.B.1 cannot be given effect in view of specific bar under Sections 17 & 49 of Indian Registration Act.

29. With regard to limitation, the learned counsel for the



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defendants would submit that the suit is barred under Article 110 of Limitation

Act. The Plaintiff being silent from the year 1979 till 2008 would ipso facto prove the laches, acquiescence, ouster and bar of limitation. With regard to limitation, the learned counsel for the defendants would submit that, the plaintiff was not in joint possession of the suit property along with the defendants 1 & 2 and the plaintiff being aware of the facts of the execution of the Will in favour of the defendants 1 & 2 and about the partition which took place between the defendants 1 & 2 ought to have filed the suit within a period of 3 years. The starting point of limitation is when the plaintiff received notice of denial of his right to partition. He would further submit that, once cause of action is set in motion, the suit ought to have been filed within 3 years from the date of denial of title by the defendants. The defendants over a long period of time been in exclusive possession of the suit properties open, visible and notorious, adverse to the interest of the plaintiff. Since the plaintiff was never in joint in enjoyment of the suit properties, her ouster from possession is both constructive as well as physical. Hence, the present suit is hopelessly barred by limitation. In order to buttress his submission the learned counsel for the



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defendants relied on the following decided cases:

1. 2020 (3) LW 841

2. 2020 (6) CTC 181

3. 2022(4) CTC 590

4. 2022 (2) MLJ 428

30. As rightly pointed out by the first appellate Court, the plea of ouster as well as adverse possession has not been pleaded in the written statement. Therefore, the above contentions cannot be raised in this second appeal. The learned counsel appearing for the plaintiff would submit that suit for partition is a continuous cause of action and therefore, the present suit is not barred by limitation. To support his contention he has relied upon the following case reported in **2016 (6) CTC 798**.

31. The suit for partition is barred by limitation, unless the hostility is pleaded and co-owners excluded from the suit properties. The suit for partition will lie whenever there is a cause of action arose. Only when the co-owner is totally excluded from the joint family properties, the suit will be barred by limitation as provided under 110 of Limitation Act and the limitation



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begins from the date when the exclusion become known to the plaintiff.

Therefore, the suit is well within the period of limitation.

32. Since the alleged Will (Ex.B.3) and the Varthaman letter (Ex.B.1) were not found to be true, genuine and valid document, the first appellate Court following the legal principles, has rightly come to the conclusion of reversing the judgement of the trial Court. Therefore, the judgement and decree passed by the first appellate Court in this regard are not liable to be interfered.

33. With regard to cross objection, the learned counsel for the plaintiff would submit that, the suit properties are the self acquired properties of Appachi Gounder and therefore, the plaintiff is entitled for 1/3 share in the suit properties. However, the trial Court erroneously held that the suit property is ancestral in nature since the same was purchased from the ancestral nucleus, based on Exs.A.5, B.7 & B.8, B.13. He would further submit that the suit



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property was purchased on 23.06.1958 under Ex.A5 where as, the ancestral property was sold on 14.07.1958 under Ex.B.7 and therefore, the ancestral nucleus could not have been utilized for purchasing the suit property by Appachi Gounder. In this case, the existence of ancestral property is not denied. The plaintiff neither in the plaint nor in her evidence stated about the independent income of Appachi Gounder. It is settled law that once the ancestral nucleus is proved and no other source of income is disclosed to establish the self acquisition, the presumption that the property is a joint family property, must prevail. Moreover, the documents produced on the side of the defendants would establish that, the suit properties are joint family properties. Hence, the first appellate Court has rightly held that the plaintiff is entitled only for 1/9th share in the suit properties.

34. For the foregoing discussion, I am of the considered view that the first appellate Court had correctly perceived the evidence and followed the principles and had come to the conclusion of interfering with the judgement and decree passed by the trial Court in O.S.No,51 of 2008 and rightly held that the plaintiff is entitled for 1/9th share in the suit property. Therefore, the same is



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not liable to be interfered.

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35. The questions of law framed are therefore, not decided in favour of the appellants.

36. In fine, I am of the considered view that the Second Appeal and the Cross Objection are not having any merits and therefore, they are liable to be dismissed. Accordingly, the Second Appeal and the Cross Objection are dismissed. No costs.

01.03.2024

dpa/vsn

To

- 1.The Principal Distirct Judge, Erode
- 2.The Subordinate Judge, Gobichettipalayam,



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K.GOVINDARAJAN THILAKAVADI, J.

dpa/vsn

Pre-delivery judgement made in

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01.03.2024