



S.A. No.493 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.493 of 2024

and

C.M.P.Nos.15107 & 20666 of 2024

Mahalakshmi

... Defendant/respondent /Appellant

Vs

1.K.Ponnusamy

2.P.Subramaniam

... Plaintiffs/Appellants/ Respondents

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 19.01.2024 passed in A.S.No.35 of 2022 on the file of the Principal District Court, Tiruppur, reversing the judgment and decree dated 28.02.2022 passed in O.S.No.429 of 2016 on the file of the Subordinate Court, Avinashi.

For Appellant : Mr.V.Venkatasamy
For Respondents : Mr.A.Palaniappan



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JUDGMENT

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The appellant has filed this Second Appeal against the judgment and decree dated 19.01.2024, passed in A.S.No.35 of 2022 on the file of the Principal District Court, Tiruppur, which reversed the judgment and decree dated 28.02.2022 passed in O.S.No.429 of 2016 on the file of the Subordinate Court, Avinashi.

2. Heard Mr. V. Venkatasamy, learned counsel for the appellant, and Mr. A. Palaniappan, learned counsel appearing for the respondents, and perused the materials available on record.

3. For convenience, the parties herein are referred to as they were ranked in the suit.

4. Challenging the reversal findings of the First Appellate Court rendered in A.S.No.35 of 2022, arising out of O.S.No.429 of 2016 on the file of the Subordinate Court, the defendant has preferred this Second Appeal.



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5. The respondents/plaintiffs filed a suit for partition, claiming a 1/3rd share in the suit property, stating that the suit properties belonged to one Pappammal, who was the wife of the 1st plaintiff and the mother of the 2nd plaintiff and defendant. Pappammal died intestate in the year 1966, leaving behind the plaintiffs and the defendant as her legal heirs. The suit properties were the absolute properties of Pappammal, and each of the plaintiffs was entitled to a 1/3rd share. The defendant, daughter of Pappammal was not inclined to settle the issue amicably, the plaintiffs filed the present suit.

6. The appellant/defendant contested the suit, admitting the relationship but denying the plaintiffs' right to the suit properties. The suit properties, as described in the plaint schedule, consist of 5.32 acres of agricultural land that originally belonged to one Kaliammal, the defendant's great-grandmother. Kaliammal had two daughters, Kaliammal and Nanjammal, and one son, Kuppanda Gounder. During her lifetime, she executed a settlement deed on 04.10.1945, giving 1/3rd share to each of her

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daughters and to another granddaughter born through her son. Kaliammal died in 1970.

7. The defendant's mother, Pappammal, was the only daughter of Kaliammal and derived a 1/3rd share through her mother. However, Pappammal predeceased her mother in 1966. Therefore, the defendant was brought up by her grandmother Kaliammal and enjoyed the suit properties along with her grandmother. The defendant claimed that her grandmother orally gifted her entire share in the suit property, and from 1970 onwards, she enjoyed the property as the absolute owner, with the knowledge of the plaintiffs. The defendant further contended that the plaintiffs were not co-owners and had never possessed or enjoyed the properties. On the other hand, the defendant alone had been cultivating the suit property, thus denying the plaintiffs' claim and praying for the dismissal of the suit. To support his contention he relied the judgment of this Court in the case of "*S.A.No.489 of 2009, G.Alagarsamy Vs. R.Seenivasan, reported in 2012(2) CTC 543, and the Judgment reported in AIR 165 SC 295 in the case of S.A.No.493 of 2024.*"



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8. Before the trial court, both parties presented oral and documentary evidence. On the plaintiffs' side, Ex.A1 to Ex.A3 were marked, and the second plaintiff was examined as P.W.1. On the defendant's side, the defendant was examined as D.W.1, and Ex.B1 to Ex.B8 were produced.

9. After considering the oral and documentary evidence on both sides, the learned trial judge framed three issues. The foremost issue is "whether the plaintiffs were entitled to claim a 2/3rd share in the suit properties?". The relationship and the fact that the property originally belonged to the great-grandmother Kaliasammal were accepted by both parties. However, the defendant relied on a previous suit in O.S.No.429 of 1984 on the file of the I Additional District Munsif, Coimbatore, in which the defendant had obtained an ex-parte decree for permanent injunction against her father and brother. This decree was marked as Ex.B3 and Ex.B4.

10. The defendant further argued that she had been in possession and enjoyment of the property all these years, as the absolute owner, her name



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was incorporated in the revenue records. To support this, she produced Ex.B7—Patta Pass Book. Based on these documents, the trial court concluded that the defendant had been in possession of the property since 1987, based on the injunction obtained by her. Furthermore, the plaintiffs' earlier suit for partition, filed in O.S.No.583 of 1993, which was marked as Ex.A2, had been dismissed for default, and they had not filed any suit for nearly 12 years. Consequently, the present suit was barred by limitation. The plea of ouster raised by the defendant was also deemed sustainable since the plaintiffs had not been in possession of the property, whereas the defendant had proved her long and continuous possession of the suit properties as the absolute owner. Therefore, the trial court dismissed the suit.

11. Challenging the findings of the learned trial judge, the plaintiffs preferred Appeal Suit A.S.No.35 of 2022 before the learned Principal District Judge, Tiruppur, and produced additional documents. The learned First Appellate Judge analyzed the evidence on record and finally allowed



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the plaintiffs' claim on the ground of ouster as pleaded by the defendant not proved, also held that the plea of ouster as an alternative, merely relied on the fact that, after the dismissal of the earlier suit filed by the plaintiffs, about 12 years passed without the plaintiffs taking any steps to file a fresh suit. This delay allegedly allowed the defendant to enjoy the property without interference and to have her name entered into the revenue records. However, such entry is not sufficient to assert title over the suit land and does not amount to ouster, nor does it establish title by adverse possession in favour of the defendant, especially when there is no requisite proof of ouster. Furthermore, the earlier suit was dismissed for non-prosecution and not on its merits. Additionally, the injunction order obtained by the defendant does not confirm absolute title. The reasons given by the trial court for dismissing the suit are not sustainable. Likewise, the defendant failed to prove the plea of res judicata or the extinguishment of the plaintiffs' rights. Accordingly, the trial court's findings were set aside, and the appeal was allowed by granting the plaintiffs a 2/3rd share in the suit property.



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12. Challenging these reversal findings, the defendant has now preferred this appeal. The first plaintiff, namely the father of the defendant, is now 104 years old. The learned counsel insisted that the Court take up the appeal at the earliest possible time, considering the age of the first plaintiff, to bring the dispute to a final resolution during his lifetime. The appeal was admitted, and records were called for and taken up for final hearing.

13. Admittedly, the appellant is the daughter of the 1st respondent and the sister of the 2nd respondent, and all are legal heirs of one Papammal. It is an undisputed fact that the suit properties, along with other extents of properties, originally belonged to one Kaliasammal. Kaliasammal had two daughters, namely Kaliasammal (wife of Krishna Gounder) and Nanjammal (wife of Ramana Gounder), and one son, Kuppanada Gounder. The original owner, Kaliasammal, executed a "sreethana" (gift) settlement deed in favor of her two daughters and one granddaughter, Papammal (born to her son Kuppanada Gounder). Accordingly, each was entitled to a 1/3rd



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share in the total extent of properties situated in Survey Nos. 155 and 158, measuring 16.17 acres (6.92 acres and 9.25 acres respectively).

14. The daughter of Kaliammal, another Kaliammal (wife of Krishna Gounder), had only one daughter, Papammal, the mother of the 2nd plaintiff and defendant. Papammal predeceased died in 1966, leaving behind the plaintiffs and the defendant as her legal heirs. Her mother, Kaliammal, died subsequently, intestate. Therefore, after the death of Papammal (daughter of Kaliammal), the plaintiffs and the defendant became equally entitled to the suit properties with an extent of 5.39 acres, which were the absolute properties of the 2nd plaintiff and defendant's grandmother, Kaliammal. Though Papammal predeceased her mother Kaliammal, as her only legal heir, the properties vested in Papammal, and both died intestate. As legal heirs of Papammal, the plaintiffs (her husband and son) and the defendant were each entitled to a 1/3rd share. Accordingly, the plaintiffs, being the husband and son of Papammal, claimed a 2/3rd share.



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15. The learned counsel for the appellant submitted that she denied the plaintiffs' claim to the property on the grounds of limitation, ouster, adverse possession, exclusive possession, and res judicata. all were proved, thus the trial court considered the defenses raised by the defendant and dismissed the plaintiffs' claim. However, the First Appellate Court set aside the trial court's findings, stating that the defenses had not been proven, thereby entitling the plaintiffs to a 2/3rd share in the suit properties as such is unjust, erroneous liable to be set aside.

16. Aggrieved by these findings, the learned counsel for the defendant has now preferred this appeal on several grounds.

i. *The observation of the Lowe Appellate Court that the Trial Court has dismissed the suit for partition on the ground of defendant's claim of oral gift of the suit property and the plea of ouster, is not only erroneous but also perverse one especially when the Trial Court dismissed the suit as barred by Limitation under article 110 of the Law of Limitation.*



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ii. The Lower Appellate Court failed to see that the suit property is not coparcener property but it is the property of a female Hindu dying intestate and so the cause of action is not a continuous one. Hence, the Lower Appellate Court ought to have considered the limitation aspects as the 2nd plaintiff/respondent herein has already invoked the right to sue for his share in the suit property by filing a suit in O.S.No.583 of 1993 for partition and allowed it dismissal for default. Hence the judgment and decree of the Lower Appellate Court is passed without proper application of mind and the same is liable to be set aside as the suit is barred under article 110 of the Law of Limitation.

iii. The Lower Appellate Court failed to see that the suit property belonged to Smt.Kalliammal wife of Krishna Gounder, the maternal grandmother of the appellant and the 2nd respondent herein, who died intestate leaving the appellant and 2nd respondent as her legal heirs to succeed to her property. So the Lower Appellate Court erred in law in allotting 2/3rd share in the suit property to the respondents herein and hence the judgment and decree of the Lower Appellate Court is liable to set aside.



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iv. *The Lower Appellate Court has failed to see that the appellant and the 2nd respondent herein are not co-owners and the appellant/defendant got a decree in O.S.No.434 of 1984 on the file of the 1st Additional District Munsif, Coimbatore restraining the respondents 1 & 2 herein from entering into the suit property. Thus, the exclusion of 2nd respondent from the possession of the suit property, proves the ouster of 2nd respondent and hence, the 2nd respondent had lost his right to enforce a share in the suit property.*

v. *The Lower Appellate Court failed to see that even an ex parte decree is binding on the defendant till it is set aside in the manner known to law and enforceable one and erred in law in holding that the defendants/appellants cannot claim right over the suit property on the ground of ouster.*

vi. *The Lower Appellate Court failed to see the plaint copy filed in suit O.S.No.583/1993 is marked as Ex-B2 wherein the respondents as plaintiffs have categorically stated in Para 7 of the plaint as "In spite of the repeated oral demands and the panchayat, the defendants are not agreeing for an amicable partition of the suit properties. Hence, without any other alternative, the plaintiffs are filing this suit for partition and separate possession of their share in the suit*



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properties". The above pleadings of the respondents herein established that the limitation to enforce a right to share in the suit property commences from the date of filing suit in O.S.No.583 of 1993 i.e. on 05.10.1993 and ends on expiry of the period prescribed. Admittedly and no dispute that the present suit O.S.NO.429 of 2016 was filed after the period prescribed and hence, clearly barred by Limitation.

vii. The Lower Appellate Court failed to see that the cause of action in both suits O.S.No.583 of 1993 abd 429 of 2016 are identical and similar and both suits are filed for partition of the very same property. Hence the principle of res judicata is applicable and the suit is affected by res judicata. Hence, the judgment of the Lower Appellate Court is liable to be set aside.

viii. The Lower Appellate Court failed to consider the averments stated in the plaint marked as Ex-B2 which establish that the 2nd respondent is well aware of the defendant's claim of ouster by adverse possession against him in respect of suit property. Hence the exclusion of the 2nd respondent from over a period of 12 years suit property constitute ouster and not entitled a share in the suit property for his failure to exercise his right to sue within the limitation



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prescribed under the Law of Limitation.

ix. The Lower Appellate Court is not correct in stating that the respondents have vested right in the suit property and erred in holding that the earlier suit failed by the plaintiffs/respondents seeking for the relief of partition was dismissed for default, would not take away vested of the plaintiffs for relief of partition.”

17. The second appeal was admitted by this Court on 12.07.2024, which as follows:

“a). Whether the Lower Appellate Court is correct in law in allowing the suit for partition on the ground that there is no relief of declaration of title to the suit property and so the decree passed in O.S.No.434 of 1984 cannot be considered for the claim of ouster the 2nd respondent from the suit property?

b). Whether the Lower Appellate Court is right in allowing the suit for partition without considering the limitation to file the present suit and pleading of the 2nd respondent stated in para 7 of the plaint in O.S.No.583 of



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1993 regarding the exclusion of 2nd respondent form the suit property?

c). Whether the Lower Appellate Court is correct in law in allotting a share to the 1st respondent herein who is not at all heir to the property of her mother in law and her property alone was sought to be partitioned in the suit?

d). Whether the concept of continuous cause of action for general partition is available for partition of property of a female Hindu dying intestate even after exercising the right to enforce a share in it as prevailing in the present case?"

18. Countering this, the learned counsel for the respondents/plaintiffs argued that, as legal heirs of Papammal, the plaintiffs are claiming a share in the suit properties, which absolutely belonged to Papammal, who was the only daughter of her mother, Kaliasammal. Kaliasammal derived the suit properties from her mother (another Kaliasammal) through the "sreethana" settlement deed dated 04.10.1945, which was marked as Ex.A1. In the total extent of 16.17 acres, Papammal's mother, Kaliasammal, was entitled to a 1/3rd share, amounting to 5.39 acres, which is the suit properties. Although

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Papammal predeceased her mother, as the only daughter, the entire property vested in her. Upon her death, she left behind her husband, son, and daughter, each entitled to a 1/3rd share.

19. The defendant, the daughter of Papammal, denied the plaintiffs' claim, asserting that her grandmother, Kaliammal, raised her from a young age and orally gifted the entire suit property to her from 1970 onwards. She claimed to be in exclusive possession of the property and, when her enjoyment was interfered with, filed a suit in O.S.No.434 of 1984 and obtained a permanent injunction against the plaintiffs. The partition suit filed by the plaintiffs in O.S.No.583 of 1993 was also not prosecuted and was dismissed for default on 27.02.2003. Nearly 12 years later, the present suit was filed, making their claim time-barred.

20. The learned counsel for the respondents / plaintiffs submitted that the plea of limitation does not arise among co-owners. Even though the earlier partition suit was dismissed, the right to claim partition among co-



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owners is a continuing right, and so it constitutes a continuous cause of action.

21. In reply, the learned counsel for the appellant / defendant submitted that under Article 65 of the Limitation Act, the suit was not filed within 12 years from the dismissal of the earlier partition suit in O.S. No. 583 of 1993, which was dismissed for default on 27.02.2003. Nearly 12 years later, in 2016, the plaintiffs filed the present suit for partition based on the same cause of action. Therefore, the suit is barred by limitation as per Article 65 of the Limitation Act, since the plaintiffs' rights were already denied by the defendant in the pleadings of the earlier suit. As a result, the relief sought in the present suit is also barred by limitation.

22. Article 65 of the Limitation Act, in which reads as follows:

“65. For possession of immovable property or any interest therein based on title.

Period of Limitation : 12 years,

Time from which period begins to run: When the possession of the defendant becomes adverse to the plaintiff.

(a) Where the suit is by a remainder man, a reversioner (Other than a landlord) or a devisee , the possession of the defendant shall be deemed



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to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession;

(b).....

©.....”

23. The learned counsel for the respondents countered this by stating that the earlier suit was dismissed for non-prosecution due to the plaintiffs' failure to implead some legal heirs. However, no findings were rendered regarding the plaintiffs' rights in the earlier suit. After the dismissal, the family members attempted to settle the issue amicably, but when that failed, the plaintiffs filed the present suit for partition in 2016. Furthermore, the counsel argued that the right to partition among co-owners is a continuous right, and therefore, the cause of action is ongoing. Additionally, the plea of limitation was not properly raised by the defendant at the trial court, and without specific pleading, the defendant is not entitled to raise this contention on appeal.

24. Upon reviewing the written statement filed by the appellant/defendant at the trial court, it is evident that the plea of limitation was not specifically pleaded, nor any issues regarding limitation framed by



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the trial court.

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25. The learned counsel for the appellant argued that limitation is a question of law, and thus, can be raised at the appellate stage. However, it is not purely a question of law, as contended by the appellant's counsel. Since the defendant denied the plaintiffs' claims on the grounds of ouster and adverse possession, the plea of limitation should have been specifically pleaded in the written statement. Since it was not, the objection raised by the appellant's counsel based on limitation is not acceptable.

26. To support his contention the learned counsel for the respondent relied the following authority, squarely support the respondents.

(i) (1995)2 Supreme Court Cases 543 “*Annasaheb Bapusaheb Patil and others vs. Bai want @ Balasaheb Babusaheb Patil*, in which reads as follows:

"2. Adverse possession means a hostile assertion i.e., a possession which is expressly or impliedly in denial of title of the true owner. Under Article 65, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. Possession was hostile to the real owner and amounted to a



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denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e., possession was hostile to the real owner and amounted to a denial of his title to the property claimed.

.....

(b). Until the character of the land is changed, by operation of the rule of lineal primogeniture, the lands became impartible. Therefore, the plaintiff therein could not claim any right for partition. After the Act has come into force and on making re-grant, cause of action had arisen to file suit for partition. There is no pleading and proof that the defendants asserted their hostile title to the property to the knowledge of the plaintiff and they acquiesced in the same. In its absence the right to claim partition would arise only when the right to partition is denied. The character of the land from impartibility to partibility had been changed under the Act. Thereby, both the Courts have rightly held that they did not acquire title by adverse possession.”

27. Another ground raised by the appellants is the denial of the plaintiffs' rights over the property based on the claim that the defendant has been in exclusive possession of the property through an oral gift made by her grandmother, Kaliasammal, in 1970. The defendant also contended that she had been in uninterrupted possession since that time. However, there



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was no evidence presented by the defendant to substantiate this claim, aside from the averments in the written statement. As pointed out by the respondent's counsel, the alleged oral gift does not satisfy the requirements of the Registration Act, as the property's value exceeds Rs.100, which necessitates valid registration nor she plead specifically when the alleged oral gift made in her favour by her grandmother. This argument was rightly observed by the First Appellate Judge needs no interference by this Court.

28. Although the defendant claimed to have been in possession since 1970, no documentary evidence was provided, aside from Ex.B7 (patta passbook) and Ex.B8 (some kist receipts). These documents were insufficient to establish her claim of exclusive possession, as correctly noted by the First Appellate Judge.

29. The appellant also raised the plea of adverse possession, claiming that the defendant enjoyed the property as an absolute owner since 1970, with the plaintiffs' knowledge. In response, the plaintiffs' counsel argued that adverse possession cannot apply to co-owners unless there is a specific



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plea with sufficient evidence showing when the defendant began exclusive possession, and this possession must be hostile, open, and to the exclusion of the other co-owners. In the present case, the defendant failed to specifically plead adverse possession or provide evidence of uninterrupted, hostile possession. Therefore, the claim of adverse possession and exclusive possession is unsustainable. In support of this argument, the respondents / plaintiffs' counsel referred to relevant judicial precedents support their contention.

i). (2006) 11 Supreme Court cases 600 , Govindammal Vs. R.Perumal Chettiar and others, in which reads as follows:

“C. Property Law-Co-owner – possession by one Co-owner – Nature of – Held, is deemed to be possession of the other(s) unless ouster of the other co-owner(s) is established – Trusts and Trustees – Constructive trust – Instance of

.....

4. In Second Appeals Nos.145 and 146 of 1988, the following substantial questions of law were framed:

(1).Whether the lower appellate court is right in negating the claim of the defendants that they had acquired title by adverse possession?

(2). Whether the lower appellate court was right in overlooking that the plaintiff had been excluded even before the coming into force of Act 30 of 1956 and had thereby lost her right by exclusion and ouster?

(3). Whether the lower appellate court was right in omitting to note the suit instituted 12 years after the issue of



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notice under Ext.B.3 dated 02.11.1955 admitting ouster and dispossession is barred by limitation and the relief of partition would not be available?

15. In Nirmal Chandra Das v.Mohitosh Das their Lordships observed that in order to succeed on the ground of ouster, the person setting up ouster is bound to show that he did set up an adverse or independent title during the period which was beyond the statutory period of 12 years. Their Lordships further observed that there can be no adverse possession by one co-sharer as against others until there is an ouster or exclusion; and the possession of a co-sharer becomes adverse to the other co-sharer from the moment there is ouster. Therefore, what is ouster and what is adverse to the interest of the claimant depends upon each case. In this case, a plea was raised that certain properties were (sic given on) usufructuary mortgage. But that was not in a manner to show that these properties are adverse to the interest of the plaintiff. It was only when B schedule properties were sought to be sold and it came to the knowledge of the plaintiff that her stepsons were not interested in partition of the property and giving her share, she filed the suit in the year 1979.”

ii). 2002(4) CTC 545, Ayesha Bibi and 4 others vs. S.Mohamed Ibrahim and 6 others, in which reads as follows:

“It is settled law that the possession of a co-owner cannot be considered to be adverse to the other co-owner. The entry and possession of a land by one co-owner is not presumed to be adverse. The possession becomes different when the title of some of the members has been denied and their right of enjoyment of the properties has been repudiated to their knowledge. From that moment, the character of the possession of the hostile co-owner changes and it becomes adverse possession who have knowledge of the ouster and the limitation time begins to run against them.”



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30. Upon reviewing Ex.B7 (the patta passbook), it is clear that the patta was issued jointly in favor of all the co-owners, not exclusively in the defendant's name. Even in the revenue records, there is no indication that the defendant enjoyed exclusive possession of the suit property since 1970. Therefore the plea of adverse possession as well as the exclusive possession claimed by the defendant against the another co-owner / plaintiffs is unsustainable one. As per the ration laid down in ***(2016) 4 Supreme Court cases 434: (2016) 2 Supreme Court cases (Civ) 642: 2016 SCC online SC 201, Nagabushanammal (Dead) by legal representatives vs. C.Chandikeswaralingam***, in which reads as follows also support respondents / plaintiffs' case.

“24. This court in vidya Devi V. Prem Prakash held that : (SCC p.505, para 28)

“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



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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-owner. Thus, a 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 possession within time prescribed by law.”

31. Moreover, on considering the earlier suit filed by the defendant in the year 1984, through which O.S.No.583 of 1993, claimed that she obtained interim injunction, which itself shows that there was an interference and the dispute arose among co-owners in respect of enjoyment of the properties, so the uninterrupted possession claimed by the defendant also disproved by his own suit in O.S.No.434 of 1984, but it was not properly appreciated in all these events and was not properly appreciated by the learned trial judge. Moreover, in all aspects, the defendant failed to establish her uninterpreted long possession of the suit property. In fact, the possession of one co-heir is considered by all the co-heirs and it is also to be presumed on the basis of joint title.

32. Considering the joint patta marked as Ex.B7 on the side of



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defendant itself shows that till date in the revenue records patta also issued in favour of all the co-owners, so the defendant's claim of exclusive possession is not coupled with any material evidence.

33. The appellant / defendant also argued that the earlier injunction order in O.S. No. 434 of 1984 demonstrated long possession of the property. However, the decree in that case was obtained ex parte, without framing issues, no adjudication in respect of right of parties, and thus would not constitute res judicata. The lower courts rightly observed this. In all respects, the defendant failed to establish exclusive possession, an oral gift, or ouster. Accordingly, both the law and facts were rightly considered by the First Appellate Judge, and no interference is required.

34. Another objection raised by the appellant is that the first plaintiff, being the son-in-law of Kaliasammal, has no right to claim a share in her properties. However, as rightly pointed out by the counsel for the respondents/plaintiffs, the wife of the first plaintiff, namely Papammal, was vested with rights to the property by birth. Though she predeceased her



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mother, Kaliammal, her legal heirs—her husband (the first plaintiff), her son (the second plaintiff), and her daughter (the defendant)—are each entitled to a 1/3rd share of the property.

35. Admittedly, both Kaliammal and her daughter, Papammal, died intestate. Upon the death of Papammal, her husband, son, and daughter became her legal heirs. Since the original owner, Kaliammal, also died intestate, the three legal heirs—the plaintiffs and the defendant—are each entitled to a 1/3rd share. Accordingly, the suit is liable to be decreed. However, the learned trial judge erroneously dismissed the suit based on a plea of ouster, ignoring the legal principle that possession by one co-owner is deemed to be possession of others unless a plea of ouster is established.

36. As discussed above, the defendant has inconsistently claimed that she had an absolute right to the properties through an oral gift. Contrary to this claim, she also asserted a right over the properties by way of adverse possession against the other co-owners/plaintiffs, which is not permissible under law. Therefore, the first appellate judge rightly allowed the appeal



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and set aside the findings of the trial court, which requires no interference.

Accordingly, question of law C is answered.

37. As further discussed, the decree passed in O.S. No. 434 of 1984, granting the relief of permanent injunction in favor of the defendant through an ex parte decree, is a single-line decree issued without adjudication or the framing of proper issues. As such, it is an invalid decree under law and does not support the claim of ouster made by the defendant. The findings rendered by the first appellate judge are therefore sustainable, and question of law A is answered accordingly.

38. Additionally, the plea of limitation has not been specifically pleaded by the defendant. It is also worth noting that among co-owners, the right to claim partition is a continuing right. Therefore, the plaintiffs are entitled to file the present suit. Considering this, the first appellate judge rightly granted the relief of partition, which requires no interference. Accordingly, questions of law B and D are answered.



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39. The findings of the first appellate judge are confirmed, and the trial court's findings are set aside. Therefore, the suit is decreed, and the plaintiffs are awarded a 2/3rd share in the suit property. Given that the first plaintiff is aged about 104 years, the parties involved are directed to cooperate to ensure possession of the properties as early as possible, in accordance with the law. If any final decree application filed, the learned trial Judge is directed to dispose of the same within 3 months, as 1st plaintiff is aged about 104 years.

40. Accordingly, this Second Appeal is dismissed as devoid of merit. Consequently, the connected miscellaneous petitions are closed. No costs.

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Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order

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To

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- 3.The Section Officer, VR Section, High Court of Madras.



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