



S.A.No.1630 of 1999

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.06.2024

CORAM

THE HON'BLE MR.JUSTICE S.SOUNTHAR

S.A.No.1630 of 1999

1.Muthammal (Died)

2.Amalathai Ammal (Died)

... Appellants/
Respondents/Plaintiffs 2&3

3.R.Ramuthai

(A3 brought on record as Lr of A1 vide Court order, dated 20.11.2017 made in M.P(MD)Nos.7 to 9 of 2011)

4.G.Sethuraman

5.G.Mahesh

... Proposed Appellants

(A4 & A5 are brought on record as Lrs of the deceased A2 vide Court order, dated 27.03.2018 made in C.M.P(MD)No.11694 of 2017)

Vs.

1.Thirumalu Ammal (Died)

2.Mayilthai Ammal (Died)

3.Thavamani

4.Vasantha (Died)



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5.Perumal (Died)

6.Mani

7.Andivel (Died)

8.Gurusamy (Died)

9.Dharmaraj (Died)

10.Subbulakshmi

11.Selvaraj

12.Ponniah Gounder

13.Sakthivel

14.Manivel

15.Murugan

16.Lakshmi

... Respondents/Appellants/
Defendants

17.P.Subbuthai (Died)

18.P.Sundaramoorthy (Died)

19.P.Ramalakshmi

20.P.Sivakumar

21.P.Kasthuri

22.G.Rajammal (Died)

23.G.Parameswari



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24.G.Mayilvahanam (Died)

25.G.Karthikeyan

26.G.Selvam

27.D.Saroja

28.D.Deivendran

29.D.Murugan

30.D.Malliga

31.D.Mahesh

32.Subbammal

33.Valliammal (Died)

34.P.Subburaj

35.P.Ramasubbu

36.P.Kannan

37.Muthulakshmi

38.P.Murugan

39.P.Nehruji

40.Skylab

41.Yuvarani

42.Mohan

43.S.Rajamani



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44.S.Vinoth Kannan

45.S.Aravindsamy

46.M.Subbulakshmi

47.M.Yagana

48.Dinesh Kumar

49.Thirumurugan

50.Thirukani

51.Kayarkani

52.Sivakani

53.Selvakani

... Proposed Respondents

(R17 to R21 are brought on record as Lrs of the deceased vide Court order, dated 20.11.2017 made in M.P(MD)Nos.1 to 3 of 2011)

(R22 to R26 are brought on record as Lrs of R8 vide Court order, dated 21.11.2017 made in M.P(MD)Nos.4 to 6 of 2011)

(R27 to R31 are brought on record as Lrs of R9 vide Court order, dated 20.11.2017 made in M.P(MD)Nos.10 to 12 of 2011)

(R32 to R39 are brought on record as Lrs of R1 vide Court order, dated 22.01.2021 made in M.P(MD)Nos. 1 to 3 of 2015)

(R40 to R42 are brought on record as Lrs of R4 vide Court order, dated 08.04.2022 made in C.M.P(MD)Nos.1786, 1788 & 1791 of 2022)



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(R43 to R45 are brought on record as Lrs of R18 vide Court order, dated 08.04.2022 made in C.M.P(MD)Nos.1793 to 1795 of 2022)

(R46 to R48 are brought on record as Lrs of R24 vide Court order, dated 08.04.2022 made in C.M.P(MD)Nos.1783, 1784 & 1792 of 2022)

(R49 to R53 are brought on record as Lrs of R7 vide Court order, dated 08.04.2022 made in C.M.P(MD)Nos.1787, 1789 & 1790 of 2022)

(Memo dated 07.07.2014 filed on 16.07.2014 in USR.No.2601 is recorded as R2 died, and R3, who is already on record, is recorded as Lr of the deceased R2 vide Court order, dated 06.06.2023 made in S.A.No.1630 of 1999)

(Memo dated 20.03.2016 filed on 21.03.2016 in USR.No.1748 is recorded as R22 died, and R23-R26, who are already on record, are recorded as Lr of the deceased R22 vide Court order, dated 06.06.2023 made in S.A.No.1630 of 1999)

(Memo dated 28.02.2022 filed on 01.03.2022 in USR.No.6062 is recorded as R33 died, and R34 - R39, who are already on record, are recorded as Lr of the deceased R33 vide Court order, dated 06.06.2023 made in S.A.No.1630 of 1999)

(Memo dated 19.09.2023 presented before the Court is recorded as R17 died and R19-R21, who are already on record, are recorded as Lrs of the deceased R17 vide Court order, dated 20.09.2023 made in S.A.No.1630 of 1999)

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 24.12.1998 and made in A.S.No.194 of 1996 with Cross Objections on the file of Principal District Judge of Madurai, setting aside the judgment and



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decree, dated 02.08.1995 in O.S.No.217 of 1986 on the file of Subordinate Judge, Periyakulam.

For Appellants : Mr.P.Thiyagarajan

For R11, R14-16 : Mr.S.Kadarkarai

For Respondents 3,6,10,19,
20, 21,23,25 to 32,34, 35 - 52: No appearance

R1,2,4,5,7-9,17,18,22,24 & 35 : Died

R12 & R13 : dispensed with

JUDGMENT

The plaintiffs in the suit are the appellants.

2. The suit is for partition of half share over the suit property. The suit for partition was decreed in respect of items 1, 2 and portion of item 3, items 4, 6 to 10 and 22. The suit was dismissed in respect of other items. The defendants 1 to 3 and 5 to 11 have filed an appeal challenging the partition decree. The plaintiffs also filed a cross appeal in respect of negatived portion. The appeal filed by the defendants 1-3 and 5 to 11 was allowed and the cross appeal was dismissed. Therefore, the entire suit got dismissed by the appellate Court. Aggrieved by the said judgment and decree, the plaintiffs are before this Court.



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3. According to the plaintiffs, the suit property originally belonged to one Valaiya Gounder and he died intestate on 20.11.1962. The 1st plaintiff is the second wife of Valaiya Gounder and the other plaintiffs are daughters of Valaiya Gounder through second wife. The defendants 1 to 3 are the legal heirs of Valaiya Gounder's son Ramasamy Goundar. The defendants 4 to 8 are the legal heirs of Valaiya Gounder's daughter Ramakkal. The defendants 9 to 13 are the legal heirs of Valaiya Gounder's daughter Chennakkammal. It is the case of the plaintiffs that after the death of Valaiya Gounder, each of them are entitled to 1/6th share along with other children of Valaiya Gounder. Thus, they claimed one half share over the suit properties. It was also averred by the plaintiffs that some of the suit properties that stood in the individual name of Valaiya Gounder's son Ramasamy Gounder and other female members of Valaiya Gounder's family were purchased by Valaiya Gounder and hence, those properties were also available for partition.

4. The suit was resisted by the contesting defendants mainly on the ground that the plaintiffs had left the family of Valaiya Gounder in the year 1946 itself. It is the case of the defendants that Valaiya Gounder executed a settlement deed in lieu of maintenance claim of 1st plaintiff.



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The 1st plaintiff also executed a release deed in favour of Valaiya Gounder relinquishing her claim over the other properties of Valaiya Gounder in lieu of Rs.100/- received by her. Therefore, it is the specific case of the defendants that the plaintiffs were ousted from the suit properties in the year 1946 and they never exercised any kind of right over the suit properties.

5. It was claimed by the defendants that Valaiya Gounder died on 20.11.1962 and the plaintiffs never claimed any right over the properties and hence, their right if any extinguished by hostile possession. The defendants also claimed that the properties standing in the name of Ramasamy Gounder and other female members of the family were their self acquired properties and the same were not purchased out of joint family funds.

6. Before the trial Court, the husband of the 3rd plaintiff was examined as P.W.1 and 21 documents were marked as Exhibits A.1 to A. 21. On behalf of the defendants, the defendants 8 & 6 were examined as D.W.1 and D.W.2 respectively and 22 documents were marked on the side of the defendants as Exhibits B.1 to Exhibit B.22.



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7. The trial Court on appreciation of oral and documentary evidence available on record, came to a conclusion that suit items 1 to 4 except 1 acre in item 3 were ancestral properties of Valaiya Gounder and the plaintiffs were entitled to half share in the said properties. The trial Court also found that suit items 6 to 10 and 22 were purchased out of joint family funds and hence, available for partition. Thus, the decree for partition of plaintiffs' 1/4th share was granted by the trial Court in respect of items 1,2,3 (except 1 acre), 4, 6 to 10 and 22. Aggrieved by the same, the defendants 1 to 3, 5 to 11 preferred an appeal in A.S.No.194 of 1996. Challenging the dismissal of the suit in respect of other items, the plaintiffs also have filed a cross appeal. The first appellate Court reversed the findings of the trial Court and allowed the appeal by holding that the properties stand in the name of individual members of the family are their separate properties. The trial Court also found that the plaintiffs were ousted from their properties acquired by Valaiya Gounder in his own. Thus, the entire suit prayer has been dismissed by the first appellate Court. Aggrieved by the same, the plaintiffs are before this Court.

8. At the time of admission, this Court has formulated the following substantial question of law by an order, dated 15.10.1999:



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“Is the learned Principal District Judge right in holding that the rights of the plaintiffs were lost due to extinguishment, limitation and ouster when the evidence clearly show there was no overtact on the side of the defendants to establish unequivocal denial of title and ouster of the co-sharer?”

9. The learned counsel appearing for the appellants submitted that the respondents / defendants failed to establish the plea of ouster by leading any acceptable evidence. The learned counsel by relying on the recitals found in Exhibit B.3 submitted that even after execution of Exhibit B.3 release deed, the personal relationship between the 1st plaintiff and Valaiya Gounder continued and therefore, the first appellate Court committed serious error in coming to the conclusion that the 1st plaintiff and her daughters were ousted from the suit properties.

10. The learned counsel appearing for the respondents submitted that Valaiya Gounder died in the year 1962 and the suit has been filed by the plaintiffs only in the year 1986 after expiry of 24 years and absolutely, there is no evidence available on record to show that after the death of Valaiya Gounder, the plaintiffs exercised any right over the suit properties as a co-owner. Taking into consideration the said fact, the first



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appellate Court has rightly come to the conclusion that the plaintiffs were ousted from the suit properties and dismissed the suit in entirety.

11. The first appellate Court taking into consideration the Exhibits marked by the respective parties came to the conclusion that the properties stand in the name of Valaiya Gounder, Ramasamy Gounder and other female members of the family were their self acquired properties. The first appellate Court has given factual findings that items 1 to 4 are self acquired properties of Valaiya Gounder. The items 6 to 10 were found to be self acquired properties of Ramasamy Gounder. The items 11 to 18 were found to be self acquired properties of Chinnasubammal. The item 19 was found to be self acquired property of Chinnammakka. The item 23 was found to be self acquired property of Mayilthai. The item 5 was found to be self acquired property of Gurusamy Gounder. Though the learned counsel appearing for the appellants submitted that the properties in the name of Ramasamy Gounder and other female members of the family were purchased by Valaiya Gounder out of his earning from items 1-4, there is no evidence to substantiate the same. When the properties are purchased in the name of junior member of family, the presumption is those properties are their



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self acquired properties unless the contrary is proved. In the absence of any evidence to show that the properties purchased in the name of junior members of the family were purchased out of funds provided by Valaiya Gounder, I do not find any reason to interfere with the findings of the first appellate Court that those properties were self acquired properties of the respective parties. Once it is found the suit items 1 to 4 are self acquired properties of Valaiya Gounder, whether the plaintiffs as class-I heir of Valaiya Gounder are entitled to share in the items 1 to 4 is the main question that has to be considered in this appeal. The claim of the plaintiffs was resisted by the defendants on the ground of ouster. In support of the said plea, the defendants relied on Exhibits A.19 settlement deed and B.3 relinquishment deed executed by the 1st plaintiff.

12. Exhibit A.19 is a settlement deed executed by Valaiya Gounder in favour of the 1st plaintiff settling properties for her maintenance. The said document is not useful to support the plea to ouster. However, Exhibit B.3 is a relinquishment deed executed by the 1st plaintiff in favour of Valaiya Gounder relinquishing her claim against other properties of Valaiya Gounder. Exhibit A.19 was executed on 28.12.1945 and within 6 days, Exhibit B.3 was executed on 04.01.1946.



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It was contended by the defendants that since the maintenance right of 1st plaintiff was secured by settlement deed executed under Exhibit A.19, she relinquished her claim in respect of other properties of Valaiya Gounder and thereafter, she lived separately along with other plaintiffs. Therefore, from 1946 onwards, there was no relationship between the plaintiffs and Valaiya Gounder. The suit was filed after 24 years from the date of death of Valaiya Gounder.

13. In Exhibit B.3, it was recited that

“தாங்கள் சுயார்ஜிதமாய் சம்பாதிக்கப்பட்டதும் தங்கள் பேரில் பட்டாவுமான இதனடியில் கண்ட சொத்துக்களில் எனக்கு கிடைக்கக்கூடிய ஜீவனாம்ச பாத்யதைக்காக தங்களிடம் நாளது தேதியில் ரூ.100 நூறு நான் ரொக்கம் பெற்றுக் கொண்டேன். இன்று முதல் நம் முன் உயிர் சொந்தம் தவிர பொருள் சொந்தமில்லை என்றும் நான் எழுதிக் கொடுத்த ஜீவனாம்ச பாத்யதை விடுதலை.□

14. Therefore, the 1st plaintiff relinquished her existing maintenance claim as against the other members of Valaiya Gounder's family by executing Exhibit B.3. However, there is nothing in Exhibit B. 3 to suggest that the 1st plaintiff got separated from the family. If that be



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so, there was no necessity to say that she had no claim against the other properties except living relationship. Therefore, Exhibit B.3 is not useful to support the claim of total ouster of the plaintiffs from the suit property. Moreover, the Hindu Succession Act came into force in the year 1956, the plaintiffs are entitled to share in the estate of Valaiya Gounder as his Class-I legal heirs. Valaiya Gounder died in the year 1962. Therefore, the right to succeed to the estate of Valaiya Gounder accrued to the plaintiffs only in the year 1962. Therefore, by no stretch of imagination it can be said, even in the year 1945, contemplating future statutory right, the 1st plaintiff relinquished her claims against the Valaiya Gounder's estate. Further, the relinquishment of future right as per operation of law is not at all valid in law. Therefore, this Court has come to a conclusion that Exhibit B.3 is not useful to support the plea of ouster pleaded by the defendants.

15. It is settled law that ouster is a plea which has to be established by leading cogent evidence. Open, continuous, uninterrupted possession of the person pleading ouster should be proved by necessary overt act. In the case on hand, the defendants failed to give any evidence to prove the hostile possession excluding the plaintiffs from the estate of Valaiya



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Gounder. The learned counsel for the respondents submitted that there is no explanation on the part of the plaintiffs to file a suit for partition after 24 years. It is settled law, a co-owner is deemed to be in joint possession of the property along with the other co-owners. A co-owner in physical possession of the property is deemed to be in possession not only for himself but also on behalf of other co-owners who are not in physical possession. In such circumstances, to prove the physical exclusion of the plaintiffs from the suit properties, the defendants failed to examine any independent witnesses. Both the defendants' side witnesses D.W.1 and D.W.2 are interested witnesses and in the absence of any independent evidence to support plea of ouster with sufficient overt act, this Court is unable to come to the conclusion that the plaintiffs were excluded from the estate of the deceased Valaiya Gounder. In view of the above said discussion, the conclusion reached by the first appellate Court that the plaintiffs are excluded from the estate of Valaiya Gounder is liable to be set aside and accordingly, the plaintiffs are entitled to a decree for partition of their half share in respect of items 1 to 4. The substantial question of law framed at the time of admission is answered in favour of the appellants in respect of items 1 to 4 except one acre in item 3 .



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WEB COPY 16. In fine,

(a) The Second Appeal is **allowed** by setting aside the judgment and decree passed by the first appellate Court in respect of items 1 to 4.

(b) The plaintiffs are entitled to half share in items 1 to 4 except one acre in item 3 purchased by Mayilthai under Exhibit B.8.

(c) The judgment and decree passed by the first appellate Court in respect of other items are confirmed.

(d) No costs. Connected Miscellaneous Petitions, if any, closed.

11.06.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
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To

1.The Principal District Judge
Madurai.

2.The Subordinate Judge,
Periyakulam.

3.The Section Officer,
V.R.Section,

16/17



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Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR,J.

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Judgment made in
S.A.No.1630 of 1999

Dated:
11.06.2024