



S.A.Nos.593 & 594 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.Nos.593 & 594 of 2003
and M.P.(MD)No.4 of 2012

S.A.No.593 of 2003

- 1.Natchathram Nadachy (Died)
- 2.Anandaraj
- 3.Mohanadas
- 4.Jayasingh Paul (Died)

... Appellants

*(3rd appellant recorded as LR of the deceased
1st appellant as per order of the Court dated
11.12.2012 by ASJ in Memo USR No.3961/12
dated 11.12.2012 in S.A.Nos.593 & 594/2003)*

*(Memo dated 03.12.2021 in USR.No.27216 is
recorded as 4th appellant died and appellants
2 & 3 and 4th respondent who are already on
record are recorded as LRs of the deceased 4th
appellant vide Court order dated 08.12.2021 made
in C.M.P.(MD)Nos.10394, 10396, 10398
and 10399 to 10401 of 2021 in S.A.Nos.593 & 594/2003)*

*(1st appellant deceased Memo USR No.1761/10
recorded & R3 deceased Memo USR No.3676/12
recorded vide Court order dated 26.11.2012
made in S.A.Nos.593 & 594 of 2003)*

Vs

- 1.Subramonian Panicker (Died)
- 2.Lakshmanan Panicker
- 3.Sundaradas (Died)



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4.Jeyanandha Nelson
5.Pushpabai
6.Justin Sobanaraj
7.Saji Kumar
8.Anil Kumar
9.Sain Kumar
10.Sunil Kumar
11.Santha
12.Rajeswari
13.Subbayan
14.Jeyasree
15.Vanisree

... Respondents

(R5 to R10 are brought on record as LR's of the deceased R3 vide order dated 07.12.2013 made in M.P.(MD)Nos.1 to 3/2012 in S.A.No.593/2003))

(R11 to R15 are brought on record as LR's of the deceased 1st respondent vide Court order dated 05.01.2022 made in C.M.P.(MD)Nos.10394, 10396 and 10398 of 2021 in S.A.No.593/2003)

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree in A.S.No.137 of 1998 and A.S.No.142 of 1998 dated 18.06.2002 on the file of the Subordinate Judge, Padmanabhapuram pursuant to the judgment and decree dated 28.08.1998 in O.S.No.196 of 1989 on the file of the Principal District Munsif, Padmanabhapuram.

For Appellants

: Mr.G.Ramanathan for
Mr.K.Sree Kumaran Nair

For Respondents

: Mr.K.N.Thambi for R2
Mr.C.Godwin for R5 to R10
R1 and R3 died
R4 & R11 to R15 No



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Appearance

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- 1.Natchathram Nadachy (Died)
- 2.Anandaraj
- 3.Mohanadas
- 4.Jayasingh Paul (Died)

... Appellants

(3rd appellant recorded as LR of the deceased 1st appellant as per order of the Court dated 11.12.2012 by ASJ in Memo USR No.3961/12 dated 11.12.2012 in S.A.Nos.593 & 594/2003)

(Memo dated 03.12.2021 in USR.No.27216 is recorded as 4th appellant died and appellants 2 & 3 and 4th respondent who are already on record are recorded as LRs of the deceased 4th appellant vide Court order dated 08.12.2021 made in C.M.P.(MD)Nos.10394, 10396, 10398 and 10399 to 10401 of 2021 in S.A.Nos.593 & 594/2003)

(1st appellant deceased Memo USR No.1761/10 recorded & R3 deceased Memo USR No.3676/12 recorded vide Court order dated 26.11.2012 made in S.A.Nos.593 & 594 of 2003)

Vs.

- 1.Subramanian Panicker (Died)
- 2.Lakshmanan Panicker
- 3.Jeyanandha Nelson
- 4.Santha
- 5.Rajeswari
- 6.Subbayyan
- 7.Jeyasree
- 8.Vanisree

... Respondents

(R4to R8 are brought on record as LRs of the deceased 1st respondent vide Court order dated



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*27.01.2022 made in C.M.P.(MD)Nos.10399 to
10401 of 2021 in S.A.No.593/2003)*

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PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree in A.S.No.150 of 1998 dated 18.06.2002 on the file of the Subordinate Judge, Padmanabhapuram pursuant to the judgment and decree dated 28.08.1998 in O.S.No.113 of 1987 on the file of the Principal District Munsif, Padmanabhapuram.

For Appellants	: Mr.G.Ramanathan for Mr.K.Sree Kumaran Nair
For Respondents	: Mr.K.N.Thambi for R2 R1 died R4 to R8 No Appearance

COMMON JUDGMENT

The Second Appeal No.593 of 2003 is arising out of a suit for partition in O.S.No.196 of 1989. The plaintiffs in the suit are the appellants. The suit was partly decreed by the trial Court by granting decree for partition of 5/6th share in favour of the plaintiffs except the portion of the suit property, in which the building constructed by the defendants 1 and 2 are located. Aggrieved by the same, the defendants 1 and 2 preferred an appeal in A.S.No.137 of 1998 and the third defendant in the suit preferred an appeal in A.S.No.142 of 1998. Both the appeals were heard together and the first appellate Court allowed the appeals and



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dismissed the suit. Aggrieved by the same, the plaintiffs have come by way of this Second Appeal.

2. The Second Appeal No.594 of 2003 is arising out of a suit for declaration of title and injunction in O.S.No.113 of 1987 filed by the defendants 1 and 2 in the suit for partition referred above. The suit was filed in respect of 5 cents of property purchased by the defendants 1 and 2 (plaintiffs in the present suit). The trial Court granted declaration and injunction in respect of the portion of the suit property over which building was put up by the defendants 1 and 2 (plaintiffs herein). Aggrieved by the same, the plaintiffs in this suit filed an appeal in A.S.No.150 of 1998 and the same was allowed by the first appellate Court granting declaration and injunction in respect of the entire suit property. Aggrieved by the same, the plaintiffs in O.S.No.196 of 1989 (who are defendants in the present suit) has filed this Second Appeal.

3. In this judgment, for the sake of convenience, the plaintiffs in partition suit in O.S.No.196 of 1989 and the defendants in declaration and injunction suit in O.S.No.113 of 1987 are referred to as plaintiffs. The defendants 1 and 2 in O.S.No.196 of 1989 and plaintiffs in O.S.No. 113 of 1987 are referred to as defendants 1 and 2. The third defendant in



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O.S.No.196 of 1989 is referred to as the third defendant. The fourth defendant in O.S.No.196 of 1989 and second defendant in O.S.No.113 of 1987 is referred to as 4th defendant.

4. According to the appellants/plaintiffs, the total extent of property in Old S.No.4414 in Valvachagoshtam Village is 96 cents and the same belonged to a Elva Tharward by name “Pulluvilagathu Veedu”. The family consists of 9 members. Four of them sold 42.3/4 cents to the first plaintiff's husband Vedhamony Nadar. The above said Vedhamony Nadar filed a suit for redemption of mortgage in respect of the suit property in O.S.No.800 of 1952 and the said suit ended in a compromise. The third defendant in that suit purchased 8.3/8 cents of property. Subsequently, Vedhamony Nadar sold 10.3/4 cents of property to Arumugham Panicker. The said Vedhamony Nadar died on 13.11.1986. Therefore, on his death only 25.5/8 cents was available with the family. The plaintiffs and the 4th defendant Jeyanandha Nelson succeeded to his estate. The parties are covered by Christian Law of Succession. The first plaintiff entitled to 1/3rd of the estate of the deceased equivalent to 7.875 cents out of total 25.5/8 cents. The plaintiffs 2 to 4 and the 4th defendant entitled to 1/4th of 2/3rd share viz., 3.939 cents of land equally. Therefore, the plaintiffs claimed that they were entitled to 19.668 cents



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totally. The 4th defendant sold 2 cents of suit property in favour of one Rachel Nadachy on 01.12.1969. She, in turn, sold the said property in favour of the second defendant. The fourth defendant sold another 3 cents of land in the suit property in favour of the first defendant on 31.12.1969. Thus, he alienated more than 3.93 cents which he was entitled to. Therefore, the defendants 1 and 2 were added as parties in the suit. Since the purchasers attempted to put pup construction in the suit property, the plaintiffs demanded partition and the same was not acceded to. In these circumstances, the suit for partition was filed.

5. The suit was resisted by the contesting defendants 1 and 2 on the ground that there was oral partition in the family. After the death of Vedhamony Nadar, the fourth defendant was allotted with 5 cents of property on the Northern side. The suit property was sold by 4th defendant to the second defendant and Rachel Nadachy under document dated 16.10.1975, marked as Ex.B8 and document dated 01.12.1969, marked as Ex.B3 respectively. The said Rachel Nadachy sold the property purchased by her to the first defendant under document dated 31.12.1969, marked as Ex.B5. The first and the second defendant have been in exclusive possession and enjoyment of the property purchased by



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them and they improved the same by putting up building and planting trees. The plaintiffs are not in joint possession of the 5 cents purchased by the defendants and whatever right the plaintiffs had in respect of the said land is lost by plea of ouster from the date of sale deed executed by the fourth defendant.

6. The third defendant filed a written statement and contended that Vedhamony Nadar during his life time executed a sale deed in respect of 8.3/8 cents in favour of the third defendant and he has been in possession and enjoyment of the same for more than statutory period and hence, the plaintiffs were not entitled to claim partition in respect of the property purchased by him.

7. Before the trial Court, the third plaintiff was examined as P.W.1 and 9 documents were marked as EX.A1 to Ex.A9. The first defendant was examined as D.W.1 and two other witnesses were examined on his side as D.W.2 and D.W.3. The third defendant was examined as D.W.4. On behalf of the defendants, 16 documents were marked as Ex.B1 to Ex.B16. The Advocate Commissioner's plan and report were marked as Ex.C1 and Ex.C2.



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8. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that in respect of the portion of the property purchased by the defendants 1 and 2, they put up building with Door No.11/19-A. The building was put up as early as 1972 and it was also assessed to tax as early as 1972. The defendants 1 and 2 produced tax receipts for the period 1972-1997. Therefore, the trial Court found that the defendants 1 and 2 proved their plea of ouster in respect of the building portion noted by the Advocate Commissioner and dismissed the suit as far as building portion is concerned. In respect of the remaining portion, suit was decreed. Aggrieved by the same, the defendants 1 and 2 preferred an appeal in A.S.No.137 of 1998. As far as 8.3/8 cents of property sold by Vedhamony Nadar in favour of the third defendant is concerned, the trial Court held that the said property was not included in the present suit for partition and hence, third defendant was not a necessary party to the suit. The third defendant had preferred an independent appeal in A.S.No.142 of 1998.

9. The defendants 1 and 2 filed a suit for declaration of title and injunction in respect of Northern 5 cents of property purchased by them. They sought for the relief of declaration and injunction by reiterating the



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plea raised in the written statement in the partition suit. The suit was resisted by the plaintiffs (Defendants in the suit for declaration and injunction) by reiterating their averments in the plaint filed in suit for partition. Both the suits were tried together and the evidence was recorded in the partition suit in O.S.No.196 of 1989. In view of the conclusion reached by the Courts below as mentioned above, the suit was partly decreed and decree for declaration and injunction was granted in respect of the building portion. In respect of the remaining portion, suit was dismissed. Aggrieved by the same, the defendants 1 and 2 (plaintiffs in this suit) preferred an appeal in A.S.No.150 of 1998.

10. All the three appeals viz., A.S.Nos.137 of 1998, 142 of 1998 and 150 of 1998 were heard together and common judgment was delivered by the first appellate Court. The first appellate Court held that the plea of ouster was proved in respect of the entire 5 cents of land purchased by the defendants 1 and 2 and consequently, allowed A.S.Nos. 137 of 1998 and 150 of 1998 filed by them. As a consequence, suit for partition was dismissed and the suit for declaration and injunction was decreed as prayed for. The first appellate Court also allowed the appeal filed by the third defendant while dismissing the suit. Aggrieved by the



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allowing of appeals in A.S.Nos.137 of 1998 and 150 of 1998, the plaintiffs have come by way of 2 second appeals viz., S.A.Nos.593 and 594 of 2003.

11. At the time of admission, this Court formulated the following substantial questions of law by an order dated 17.04.2003:

“a) Whether the lower appellate Court is right in dismissing O.S.No.196 of 1989, which is a suit for partition, in toto even though there was no dispute regarding the title of the plaintiffs except to an extent of 1.5 cents by the defendants?

b) Whether the lower appellate Court is right in holding that there was an oral partition among the children of Vedamoni Nadar even though there was no pleading or evidence for oral partition?

c) Whether the lower appellate Court is right in holding that a co-owner was in adverse possession in the absence of pleadings and proof of ouster?

d) Whether the lower appellate Court is right in overlooking Section 8 of the Transfer of Property Act under which a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property. If the same principle is applied, whether the lower appellate Court is right in granting a decree to the plaintiffs in O.S.No.113 of 1987 for more than what their vendor was legally entitled to?”



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12. The learned counsel for the appellants submitted that the fourth defendant was entitled to only 3.939 cents. However, he sold nearly 5 cents more than that of his share and the Courts below have committed an error in coming to the conclusion that the plea of ouster pleaded by the first and second defendant stood proved. The learned counsel submitted that even assuming putting up construction is an overt act, the portion of land in which building stands alone can be treated as property in respect of which purchasers perfected title and in respect of remaining vacant site, the first appellate Court ought not to have upheld the title of purchasers. The learned counsel further submitted that the first appellate Court committed a grave error in dismissing the entire suit while upholding the plea of ouster in respect of 5 cents purchased by the defendants 1 and 2.

13. The learned counsel for the contesting respondents 1 and 2/defendants 1 and 2 submitted that after purchase, the defendants 1 and 2 entered possession and put up construction to the full knowledge of the plaintiffs and hence, the first appellate Court was justified in upholding the plea of ouster in respect of the entire 5 cents purchased by the



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defendants 1 and 2.

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14. With regard to the relationship of the parties, there is no dispute. After the death of Vedhamony Nadar, his wife viz., the first plaintiff entitled to 1/3rd share of the property and his children viz., plaintiffs 2 to 4 and 4th defendant were entitled to remaining 2/3rd share. Therefore, the 4th defendant is entitled to only 1/4th of the remaining 2/3rd share ie., 4.271 cents. However, he sold more than what he was entitled to. A perusal of the record would suggest that 4th defendant sold 2 cents of property to one Rachel Nadachy under Ex.B3, on 01.12.1969. The said Rachel Nadachy sold the property purchased by her from 4th defendant to the second defendant on 16.10.1975 under Ex.B8. Likewise, the 4th defendant sold another 3 cents in favour of first defendant by sale deed dated 31.12.1969, marked as Ex.B5. Thus, 4th defendant sold 5 cents in the suit property in favour of third parties in the year 1969 itself (01.12.1969 and 31.12.1969). The purchasers had put up building in the property purchased by them as early as 1972 and the same can be gathered from the tax receipts produced in the name of the first defendant for the year 1972 to 1997, marked as Ex.B7. Therefore, the building put up by the purchasers was given Door No.11/19-A and



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assessed to building tax as early as 1972. The act of putting up building in the property purchased by the third parties would amount to clear overt act of adverse possession. If the third party purchaser enters the suit property, which is in joint possession of the co-owners (plaintiffs and 4th defendant) and put up a building and get the assessment in their name, no co-owner is excepted to keep quite without making any objections. The plaintiffs are living in the very same Village viz., Valvachagoshtam Village, Kalkulam Taluk and it is not the case of the plaintiffs that they were not available in the Village at the relevant point of time.

15. In such circumstances, entering the suit property and putting up construction and getting tax assessment in their name by the purchasers, demonstrated their animus to treat the property as that of their own. When the purchasers entered the property and put up a building in the property purchased by them, the natural inference is they are in possession of the entire extent of the property purchased by them with necessary animus. Merely because, they had put up building in a lesser extent, we cannot come to a conclusion that they enjoyed only the portion of the land in which the building was put up by them stands, especially when the remaining extent purchased by them is contiguous to the building. The remaining extent purchased by the defendants 1 and 2



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remains as vacant site and therefore, the first appellate Court was justified in coming to the conclusion that the purchasers proved their adverse possession in respect of the entire 5 cents purchased by them. Therefore, the questions of law “c” and “d” framed at the time of admission are answered against the appellants and in favour of the respondents 1 and 2.

16. We have already come to the conclusion that the first appellate Court was justified in upholding the plea of ouster pleaded by the purchasers of the property from the 4th defendant in respect of 5 cents. While upholding the plea of ouster in respect of 5 cents, the first appellate Court committed an error in dismissing entire suit for partition. The fourth defendant was entitled to only 1/4th of 2/3rd share. He sold 5 cents, more than what he entitled to, to the defendants 1 and 2 and the plea of ouster by defendants 1 and 2 in respect of 5 cents purchased by them is upheld. Therefore, the remaining property passed on to the share of plaintiffs and they are entitled to a decree for partition in respect of the remaining extent of the suit property. Accordingly, the question of law “a” is answered in favour of the appellants and against the respondents.



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17. A perusal of Ex.B3, Ex.B5 and Ex.B8 under which, the defendants 1 and 2 are claiming title would indicate that there were recitals in the documents to show that there was oral partition among the legal heirs of Vedhamony Nadar after his life time. Even assuming the oral partition among the legal heirs of Vedhamony Nadar was not proved, the fact remains that the defendants 1 and 2 purchased 5 cents of properties with specific boundaries under Ex.B3, Ex.B8 and Ex.B5. The enjoyment of defendants 1 and 2 with necessary hostile intention for more than statutory period was already upheld. In such circumstances, even assuming the oral partition is not proved, the defendants 1 and 2 acquired right over 5 cents of property by adverse possession. Therefore, answer to question of law “b” in either way would not have any impact on the final outcome of the Second Appeals. In any event, there is a clear plea in the written statement of defendants that there was oral partition among the legal heirs of Vedhamony Nadar after his death and the same was also recited in the documents Ex.B3, Ex.B5 and Ex.B8. Therefore, the question of law “b” is answered against the appellants and in favour of the respondents.

18. In view of the answer to the questions of law framed at the



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time of admission, the Second Appeal No.593 of 2003 is partly allowed in respect of the suit property, except 5 cents of land purchased by defendants 1 and 2 under Ex.B5 and Ex.B8. The plaintiffs are entitled to a decree for partition by allotting the entire suit property, except 5 cents purchased by the defendants 1 and 2.

19. In view of the answer to the questions of law, the adverse title of the defendants 1 and 2 is upheld and as a consequence, they are entitled to declaration and injunction as prayed for in O.S.No.113 of 1987. Accordingly, S.A.No.594 of 2003 is dismissed.

20. The settlement deed dated 11.02.1997 executed by the first appellant in favour of the third appellant is no way connected to the controversy involved in the suit viz., the plea of ouster raised by the respondents 1 and 2. Therefore, the additional document even if admitted, will not impact the final outcome of the Second Appeal. Accordingly, M.P.(MD)No.4 of 2012 is dismissed. There shall be no order as to costs.



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NCC : Yes/No
Index : Yes/No

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To

- 1.The Subordinate Judge, Padmanabhapuram.
- 2.The Principal District Munsif, Padmanabhapuram.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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