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A.S.No.996 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.10.2025

Delivered on: 07.11.2025

CORAM

**THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR**

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1. M. Raman,
Near Central Theatre,
Dharmapuri.

2. Dr. Krishnaveni,
No.65/26, R.E.V. Nagar,
nd
2 Street, Kangayam Road,
Tirupur.

... Appellant/Plaintiffs 3 & 5.
/versus/

1. M.Raju, (Died),
No.256-A, Naduvnapalli Road,
Vepampatty Post, Krishnagiri Taluk.

2. D.M.Govindasamy (Died),
Nelli Nagar, Peedamaneeri,
Dharmapuri.

3. Kannammal,
K.Mootoor,
Puliampatty Post, Pechampalli Taluk,
Dharmapuri.

4. M.Gopal Gounder (Died),
No.23-A, Surya Electricals,
Annathurai Road,
Near A.V.Theatre, Dharmapuri.



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5. Sarojini,
C/o.G.Ravi,
No.67, Barathiar Street,
Gandhinagar, Dharmapuri.

6. R.Jayabalan,

7. R.Nagarajan,

8. R.Vijayan,

9. Premavathi,

10. Porkodi,

R6 to R10 are residing at Sitha Veerappa Chetty Street, Dharmapuri.

11. S.Priya,
D/o.Selvaraju

12. S.Ganesan,
S/o. Selvaraju,

13. G.Raja,
S/o.Late D.M.Govindasamy

14. G.Shanthi,
D/o. Late D.M.Govindasamy,

15. G.Chitra,
D/o. Late D.M. Govindasamy,

16. G.Chandra Kumar,
S/o.Late D.M.Govthdasamy,

R11 To R16 Res: No.5/1255, V.P.Singh Street, Lakkiamatti Post,
Dharmapuri 636 705.

17. G.Kumar,
S/o.Late D.M.Govindasamy,



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No.276, Mangai Illam, 1st Cross Pallavan Nagar,
Thiruverkadu, Chennai- 600 077.

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18. G.Velan,
S/o.Late D.M.Govindasamy,

19. G.Mayilan,
S/o. Late D.M.Govindasamy

20. G.Kuyilan,
S/o.Late D.M.Govindasamy,

21. G.Sankar,
S/o.Late D.M.Govindasamy,

22. G.Amudhasurabhi,
D/o.Late D.M.Govindasamy,

23. G.Balamurugan,
S/o.Late D.M.Govindasamy,

R18 to R23 No.5/1255, V.P.Singh Street, Lakkiamatti Post,
Dharmapuri 636 705, Dharmapuri District.

(*)R2 Died, R11 to R23 are brought on record as LR's of deceased R2, vide order of Court dated 02/04/2024 made in CMP.Nos.19456, 19459 and 19463 of 2022 in A.S.No.996 of 2005 (RSMJ And RSVJ)

24. R.Jamuna,
D/o.Late.M.Raju,
R.K.Hospital, Near Muniyappan Koil,
Perumanallur Road, Tiruppur 641 602.

25. R.Vijaya,
D/o.Late M.Raju,
R.K.Hospital, Near Muniyappan Koil,
Perumanallur Road, Tiruppur 641 602.

26. R.Rajeswari,
D/o.Late M.Raju,



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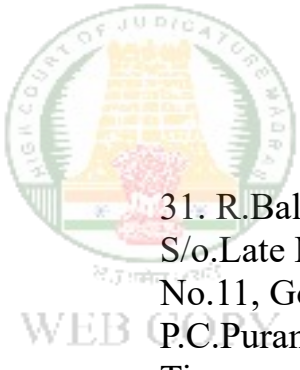
No. 11, Gowtham Complex,
P.C.Puram, Royapuram,
Tiruppur 641 602.

27. R. Palanisamy,
S/o.Lata M.Raju,
R.K.Hospital, Near Muniyappan Koil,
Perumanallur Road,
Tiruppur 641 802.

28. R.Sundaravalli,
D/o.Late Raju,
No.11, Gowtham Complex,
P.C. Puram, Royapuram,
Tiruppur 641 602.

29. R.Gowrishankar,
D/o.Late. Raju,
P.K.Hospital, Near Muniyappan Koil,
Perumanallur Road,
Tiruppur 641 602.

30. R.Krishnaveni,
D/o. Late M.Raju,
No.11, Gowtham Complex,
P.C.Puram, Royapuram,
Tiruppur 641602.



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31. R.Balasubramaniam,
S/o.Late M.Raju,
No.11, Gowtham Complex,
P.C.Puram, Royapuram,
Tiruppur 641602.

32. R.Sivakumar,
S/o.Late M.Raju,
No.11, Gowtham Complex,
P.C.Puram, Royapuram, Tiruppur 641602

(**) R1 Died, R24 to R32 are brought on Record as LR's of deceased vide order of the Court dated 11/06/2024 made in C.M.P.Nos.19455, 19458 and 19465 of 2022 in A.S.No.996 of 2005 (RSMJ & RSVJ)

33. Mrs. Sarada, (68 Years),
W/o.Late Gopal Gounder,
No.4, Munusamy Road,
Kamatchi Amman Koil Street,
Dharmapuri -2

34. Mr.D.G.Ravi (45 Years),
S/o.Late Gopal Gounder,
No.67, Bharathiar Road,
Gandhi Nagar, Dharmapuri -1.

35. Mr.D.G.Saravanan (42 Years),
S/o.Late Gopal Gounder,
No.4, Munusamy Road, Kamatchi Amman Koil Street,
Dharmapuri-2.

36. Mrs.Banumathi (50 Years),
D/o.Late Gopal Gounder,
W/o.Mr. Nagarajan,
Srinivasa Departmental Stores,
Siddha Veerappa Chetty Street,
Dharmapuri -1.



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37. Mrs.Kalarani,
D/o.Late Gopal Gounder,
W/o.Mr.Veeramani,
Mani Paper Mart, Thirupathur Road,
Near. Dr.Viapuri Hospital,
Dharmapuri-2.

... Respondents/Defendants

R4 Died. R33 to R37 are brought on record as LR's of deceased R4 *vide* Court order dated 23.10.2025 made in CMP.Nos.257 to 259 of 2012 in A.S.No.996 of 2005 (GJJ & MSKJ).

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the decree of the Trial Court dated 16.05.2005 and allow this appeal with costs.

For Appellants : Mr.N.Manoharan.
For Respondents : Mr.V.Balakrishnan, for R3
: Mr.N.S.Suganthan, for R11,
: R13 to R23, R26, R27, R29 to R32.
: Not ready notice, for R6
: Died, for R1
: No appearance, for R12 & R7
: Disd, for R2, R4, R5, R8 to R10
: Mr.B.R.Shankaralingam, for R33 to R37

J U D G M E N T

Dr.G.Jayachandran, J.

The appeal is against the judgment and decree passed by the Court below in O.S.No.129 of 2004, on the file of Additional District Judge, Dharmapuri.



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2. The plaintiffs, claiming to be the son of Munusamy Gounder born to his second wife, Kullammal had instituted a suit for partition against the defendants, who are descendants of Munusamy through his first wife, Pappathiammal.

3. Plaint averments in brief:

According to the plaintiffs, their father Munusamy had two wives since the first wife, Pappathiammal, had only daughter, to have a male issue Munusamy Gounder married their mother Kullammal in the year 1928 with the consent of his first wife. The suit properties are ancestral properties devolved upon Munusamy Gounder and were held as joint family properties till his death on 23.11.1975. Since Munusamy Gounder died intestate, the plaintiffs and defendants are entitled for shares in the properties. In spite of repeated demands, the defendants avoiding amicable settlement and hence, a legal notice calling upon the defendants to effect division was issued on 08.08.2002.

4. The first defendant who is the son of Munusamy born through his first wife, Pappathiammal, alone replied, denying the status of the plaintiff and right to claim partition. To the reply notice dated 13.08.2002, the plaintiff sent a rejoinder notice on 26.11.2002, placing the true facts. In his reply notice, the 1st



defendant has stated that Munusamy Gounder (Senior) executed a release deed in favour of his father K.V.Munusamy Gounder, dated 27.04.1953. According to the defendants, the plaintiffs who are not legitimate child of the deceased Munusamy, is not entitled for any share in the properties. It is further contended that after execution of the release deed in favour of his father on 27.04.1953, Munusamy (Junior) had severed his relationship with the family and status as coparcener. The said contention of the 1st defendant as narrated in the reply notice is false. The plaintiffs are, in fact, in joint possession of the properties along with the defendants and till the demise of Munusamy Gounder (Junior), he was in possession and enjoyment of the suit properties. The release deed was brought about to defeat the rights of the plaintiffs pursuant to conspiracy hatched between the defendants and Munusamy Gounder (Senior). The release deed on the face of it reading would clearly prove that it is a concocted document to defeat the rights of the plaintiffs.

5. Written Statement in short:

The 1st defendant, Gopal, filed written statement as well as an additional written statement wherein, elaborating his narrative in the reply notice, had contended that the plaintiffs are not legitimate children of the deceased



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Munusamy and the marriage between Munusamy and the mother of the plaintiffs, Kullammal, in the year 1928 was not at the instance of the first wife, Pappathiammal. Munusamy got separated from his father and the family as early as 27.04.1953 by executing a registered release deed in favour of his father K.V.Munusamy (Senior). Under the release deed, the entire right of Munusamy in the family properties got vested with K.V.Munusamy (Senior). After executing the release deed, Munusamy severed his relationship with the family as well as his status as coparcener. Thereafter, Munusamy who has developed illicit intimacy with Kullammal leading a nucleus family with her unconnected to the defendants. After the death of his father Munusamy (Senior), attempt was made by Munusamy (Junior) to claim share in the immovable properties left by his father Munusamy (Senior). Hence, there was panchayat in the village,

wherein the 1st defendant agreed to pay a sum of Rs.10,000/- to his father Junior Munusamy to forgo any right in the family property. Accordingly, Munusamy (Junior) received Rs.10,000/-, acknowledged the same and executed a registered

release deed dated 15.11.1960. Thereafter, the 1st defendant is in exclusive possession and enjoyment of the immovable properties for more than 50 years. He has spent his efforts to improve the property and dealing the property exclusively, encumbering it and alienating it as absolute property. For all these



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years, the plaintiffs have not made any objection nor claim joint enjoyment.

Hence, the 1st defendant has perfected his title to the properties by the doctrine of ouster. Whatever rights the plaintiffs claims over the suit properties lost due to the principle of ouster.

6. In the additional written statement, the 1st defendant contended that the suit is bad for non-joinder of necessary parties since, in respect of the 2nd item of the suit schedule property, 0.85 cents of land was sold to Nanjappan and 1.53 ½ cents of land was sold to one Kandhamal. Likewise, the properties under 3rd and 5th items alienating to several other persons. These alienations were never objected by the plaintiffs, though they are in full knowledge of the said alienation. They have not even impleaded them as parties, though they are necessary parties. Therefore, for the said reason also, the suit is liable to be dismissed.



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7. The trial Court, based on the pleadings, framed the following issues:-

- (i). Whether the plaintiffs are entitled for partition as prayed?
- (ii) Whether the plaintiffs are legitimate children of the deceased Munusamy (Junior)?
- (iii) Whether the 1st defendant has perfected his title as against the plaintiffs by the principle of ouster?
- (iv) Whether the release deeds dated 27.04.1953 and 15.11.1960 executed by Munusamy (Junior) is genuine and valid
- (v) What other reliefs the plaintiffs entitled to?

8. On the side of the plaintiffs, three witnesses (P.W1 to P.W3) were examined and 10 documents (Ex.P1 to Ex.P10) were marked. On the side of the defendants, 89 documents (Ex.D1 to Ex.D89) were marked and one witness (D.W1) was examined.

9. The following additional issues were framed based on the evidence adduced by the witnesses.

- (i) Whether it is true that late Munusamy Gounder (Junior) married Kullammal in the year 1928 and whether the marriage is legally valid?
- (ii) Whether the suit is bad for non-joinder of necessary parties?
- (iii) Whether the withdrawal of the suit by the plaintiffs 1, 2 & 4 by filing memo on 17.08.2003 and not transposing them as defendants, will render the



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suit to be dismissed?

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10. The trial Court dismissed the suit, holding that the plaintiffs had failed to prove the marriage between Munusamy and Kullammal. It held that the two release deeds executed by Munusamy (Junior) dated 27.04.1953 and 15.11.1960 are genuine, valid and also been acted upon. Therefore, the suit for partition, filed after 50 years of the release deed claiming right through Munusamy found to be unsustainable by applying the principle of ouster.

11. Aggrieved plaintiffs 3 & 5 have preferred the appeal, stating that while there is sufficient evidence to show that Munusamy Gounder (Junior) married Kullammal in the year 1928, much prior to the enactment of the Hindu Marriage Act, 1955, which prohibited bigamous marriages, the plaintiffs cannot be deprived of legitimacy or their right in the property of their father Munusamy (Junior). They further contended that the two release deeds obtained under coercion from Munusamy ought not to have been given much weightage by the Court below.

12. The recital in Ex.B6, the release deed dated 27.04.1953, would clearly establish that the plaintiffs were born to Munusamy through Kullammal, much before statutory bar for bigamous marriage by a Hindu male.



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13. The Court below failed to apply the proper provisions of the Hindu Succession Act, 1956 as well as the Hindu Marriage Act, 1955. The plaintiffs, who are Class-I heirs of Munusamy, ought not to have been deprived of their legitimate rights in the suit property.

14. The Learned Counsel for the appellant submitted that the courts have repeatedly held that even an illegitimate child born through a void marriage cannot be deprived of his right in their father's property and the release deed Ex.B6, dated 27.04.1953 cannot deprive the plaintiffs' share in their father property, who admittedly died only on 23.11.1975, after Hindu Succession Act, 1956 came into force which confers right on the plaintiffs share in the ancestral property as per the Act.

15. In support of his argument, the Learned Counsel for the appellants relied upon the following judgments.

(i). ***Chowdamma (D) by L.R and Ors vs. Venkatappa (D) by L.Rs and Ors*** reported in ***MANU/SC/1162/2025***.

(ii) ***S.Duraisamy (died) vs. D.Srividya***, order of this Court dated 20.06.2025.

(iii) ***L.Sundaram and another vs. Lakshmanan (Died) and 18 others*** reported in



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2002 (4) CTS 710.

(iv). ***C.P.Francis vs. C.P.Joseph*** reported in
2025 INSC 1071.

16. The Learned Counsel for the respondent submitted that even assuming that the mother of the plaintiffs Kullammal married Munusamy in the year 1928, the plaintiffs are not entitled for any share in the suit property since Munusamy himself had no right in the property after he executed the registered release deed Ex.B6 much prior to the Hindu Succession Act, 1956 came into force. That apart, he executed another release deed Ex.B7 dated 15.11.1960, reiterating his intention not to claim any right in the property. While so, Munusamy (Junior) till his lifetime had not challenge the release deeds Ex.B.6 & Ex.B.7. Nor the plaintiffs sought for share in the property till they cause frivolous notice on 08.08.2002. Thus they are acquiescence of the right of the first defendant. Therefore, the Court below has rightly held that the plaintiffs are disentitled to claim share in the property by applying the principle of ouster and also rightly held that since the plaintiffs failed to prove the marriage of Kullammal with Munusamy, they cannot even claim as illegitimate children of Munusamy.

17. Point for determination:-

(i) Whether the judgment of the trial Court



dismissing the suit, holding that the marriage of Kullammal and Munusamy not proved and therefore the plaintiffs are not entitled for claiming share in the property, is sustainable?

(ii) Whether the release deed Ex.B6 and Ex.B7 executed by Munusamy disentitle the plaintiffs to seek partition?

(iii) Whether the right of the plaintiffs to seek partition in the suit property suffers principle of ouster?

18. Though there is no direct evidence to prove the marriage between Kullammal and Munusamy (Junior), the status of the plaintiffs as children of Munusamy can be easily inferred from the recital found in Ex.B.6. It is a release deed executed by Munusamy (Junior) in favour of his father, K.V.Munusamy (Senior). In this deed, he has clearly states that he had developed relationship with a lady of different caste and living with her for about 15 years and having children through her. Hence, he severs the relationship with his first wife family and release all his rights in the ancestral property as well as self-acquired property which are mentioned in the schedule. Particularly he had mentioned that his father, (Senior Munusamy) to enjoy the property absolutely and take care of children born through first wife. Therefore, it is very clear that Munusamy and Kullammal were living as husband and wife even 15 years prior to 1953, when there was no law prohibiting bigamous marriage. They were in



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long cohabitation which is a sufficient proof of marriage.

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19. Only because, the solemnisation of the marriage between Kullammal and Munusamy could not be established due to efflux of time their relationship as husband and wife cannot be doubted more particularly in view of Ex.B6. The fact remains that Munusamy lived with Kullammal and died as her husband in the year 1975, is proved beyond doubt. Therefore, the finding of the Court below regarding the status of the plaintiffs is contrary to the law as well as the judgments cited by the Learned Counsel for the appellant. The plaintiffs are legitimate children of Munusamy and their status has to be recognised in view of Section 16(3) of Hindu Marriage Act, 1955.

20. Regarding the claim in the suit property, this Court holds that the release deeds Ex.B6 & Ex.B7, being registered deeds and acted upon by the parties and never questioned by Munusamy (Junior), deprives the plaintiffs to claim share in the property. The revenue records marked as Ex.B13 to Ex.B16 clearly show that the properties were in exclusive enjoyment of the 1st defendant for more than the statutory period require to prefect the title by adverse possession and ouster.



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21. During the lifetime of Munusamy and even thereafter, the documents

relied by the defendants would clearly show that the 1st defendant been enjoying the property absolutely and dealing it without any interference. The plaintiffs themselves had recognised his right and not disturbed his exclusive peaceful possession and enjoyment in any manner.

22. In view of the said fact, the plaintiffs cannot claim any share in the suit property, which their father, Munusamy (Junior), had already released his right. For the said reason, the judgment of the trial Court dismissing the suit for partition has to be upheld, except pointing the error regarding the failure of the Court below to recognise the legitimacy of the plaintiffs as children of Munusamy.

23. For the above observations, this *Appeal Suit is dismissed*. There shall be no order as to costs.

(Dr.G.J, J.) & (M.S.K, J.)

07.11.2025

Index :Yes.
Neutral Citation :Yes/No.
Internet :Yes.
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To,

1. The Additional District Judge, Dharmapuri.

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Dr.G.JAYACHANDRAN, J.
&
MUMMINENI SUDHEER KUMAR, J.
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Pre-delivery judgment made in
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