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S.A.Nos.713 & 714 of 2000

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2025

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.Nos.713 & 714 of 2000

In S.A.No.713 of 2000

1.Karuppanan

2.Ramathal (died)

3.Kamalam

4.Sellammal

5.Renganathan

... Appellants

(Appellants 1 & 3 to 5 are brought on record as legal representatives of the deceased second appellant vide order dated 16.07.2009 made in CMP.No.697 of 2009)

Vs.

1.Raju (Deceased)

2.Mani (Deceased)

3.Karuppa Navithan

(Exparte in the lower court and hence, given up)

4.Kala (Deceased)

5.Elango

6.Kavitha

7.Sudha

(R4 to R7 brought on record as LR's of the deceased R1 viz., Raju vide order of this Court dated 18.09.2018 made in CMP.Nos.698 to 700 of 2009 in S.A.No.713 of 2000)

8.Vasanthi

9.Sankar

10.Nandhini

(R8 to R10 brought on record as LR's of the deceased R2 viz., Mani vide order of this Court order dated 19.11.2021 made in CMP.Nos.3094, 3096 & 3097 of 2021 in S.A.No.713 of 2000)

... Respondents



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PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the judgement and decree of the learned II Additional District Judge, Erode in A.S.No.228 of 1998 dated 29.06.1999 preferred against the Judgment and Decree of the learned District Munsif cum Judicial Magistrate, Perundurai in O.S.No.197 of 1996 dated 15.09.1998.

For Appellants : Mr.A.K.Kumarasamy,
Senior Counsel for
Mr.S.Kaithamalai Kumaran

For Respondents
5 to 10 : Mr.N.Manoharan

R1, R2 & R4 – Died

R3 - Given up

In S.A.No.714 of 2000

- 1.Karuppanan
- 2.Ramathal (died)
- 3.Kamalam
- 4.Sellammal
- 5.Renganathan

... Appellants

(Appellants 1 & 3 to 5 are brought on record as legal representatives of the deceased second appellant vide order dated 16.07.2009 made in CMP.No.701 of 2009)

Vs.

- 1.Raju (Deceased)
- 2.Mani (Deceased)
- 3.Karuppa Navithan
- 4.Karunaiammal
(R3 & R4 set exparte in the lower court and hence, given up)
- 5.Singaram
- 6.Rakki
- 7.Kala (Deceased)
- 8.Elango
- 9.Kavitha
- 10.Sudha
(R7 to R10 brought on record as



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LRs of the deceased R1, viz., Raju
vide order of this Court dated
18.09.2018 made in CMP.Nos.702
to 704 of 2009 in S.A.No.714 of
2000)

11.Vasanthi

12.Sankar

13.Nandhini

(R11 to R13 brought on record as
LRs of the deceased R2, viz., Mani
vide order of this Court order
dated 22.06.2023 made in
CMP.Nos.21158, 21161 & 21164
of 2021 in S.A.No.714 of 2000)

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil
Procedure against the judgement and decree of the learned II Additional
District Judge, Erode in A.S.No.227 of 1998 dated 29.06.1999 preferred
against the Judgment and Decree of the learned District Munsif cum
Judicial Magistrate, Perundurai in O.S.No.187 of 1995 dated 15.09.1998

For Appellants : Mr.A.K.Kumarasamy,
Senior Counsel for
Mr.S.Kaithamalai Kumaran

For Respondents

8 to 13 : Mr.N.Manoharan

R1, R2, R5 & R7 – Died

R3 & R4 - Given up

R6 – No appearance

COMMON JUDGMENT

These second appeals arise out of the common judgment passed
by the learned II Additional District Judge at Erode in A.S.Nos.227 & 228
of 1998 dated 29.06.1999, in reversing the judgment and decree of the



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Court of District Munsif cum Judicial Magistrate at Perundurai in
O.S.No.187 of 1995 and O.S.No.197 of 1996 dated 15.09.1998.

2. For the sake of convenience, the parties shall be referred to as per their ranks in the suit in O.S.No.197 of 1996.

3. O.S.No.197 of 1996 is a suit for partition. It was originally presented as O.S.No.349 of 1992, on the file of the Sub Court at Erode. Initially, it was decreed declaring the plaintiffs' 2/6th share. Aggreived by the same, the defendants 2 and 3 preferred an appeal. The appeal was allowed and the matter was remanded to the trial court for fresh consideration. Thereafter, the defendants 2 and 3 as plaintiffs, presented O.S.No.1568 of 1994 before the District Munsif Court at Erode. In this suit, the defendants 2 to 3, as plaintiffffs, sought for a declaration that they are the absolute owners of the property, and also sought for permanent injunction restraining the defendants therein, from interfering with their peaceful possession and enjoyment of the property. Subsequently, both the suits were transferred to the file of the learned District Munsif cum Judicial Magistrate at Perundurai for disposal and renumbered as O.S.No.197 of 1996 and O.S.No.187 of 1995.

The facts leading to the appeal



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4. It was the case of the plaintiffs that the suit schedule mentioned property belonged to one, Rama Navithan. The property was his ancestral property. Rama Navithan had two sons, namely, Karuppa Navithan and Chinna Karuppan. Plaintiffs are the sons of Karuppa Navithan, the first defendant. On the death of Rama Navithan, Karuppa Navithan and Chinna Karuppan succeeded to the estate. Chinna Karuppan sold his half share in the suit property in favour of Karuppannan, the second defendant. The plaintiffs claimed that, the suit property being a coparcenary property, and as they are the sons of Karuppa Navithan, they are entitled to 2/6th share of the suit properties in common. The plaintiffs further alleged that the first defendant, their father, had left the family in and about 1969 and had gone to Mysore for eking out his livelihood, leaving the plaintiffs and their mother in lurch. It was only recently, the first defendant had returned to his native village. They alleged that for the sake of convenient enjoyment, they were in possession of the eastern portion of the suit property, while the purchaser, second defendant, was in enjoyment of the western portion. The third defendant is the wife of the second defendant. She claimed that the property came to her through her father, one Muthusamy Gounder. They alleged that the third defendant is not in peaceful possession and enjoyment of the property and that she is an utter stranger to the family. As they found it inconvenient to enjoy the properties in common, and since the second defendant was not amenable to an amicable partition



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outside the Court, they came forth with the suit in O.S.No.197 of 1996.

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5. Summons were served on the defendants. The first defendant, Karuppa Navithan remained *exparte*. The second defendant filed a written statement, which was adopted by the third defendant.

6. In the said statement, the second defendant conceded the fact that Karuppa Navithan and Chinna Karuppan were entitled to equal moieties. However, it was denied that the joint title and possession of the brothers continued till the date of presentation of the plaint. They denied that the first defendant had abandoned his family to go to Mysore. It was asserted that, at all material times, the first defendant and the plaintiffs lived as one joint family.

7. On the aspect of partition, they pleaded that the plaintiffs have suppressed material facts. They pleaded that on 08.06.1963, Karuppa Navithan for himself and as guardian for the first plaintiff (as he was a minor then), mortgaged 1/2 share of the suit property in favour of the second defendant for Rs.700/-. Subsequently, the first defendant borrowed a sum of Rs.500/- evidenced by a promissory note dated 10.08.1968. As the amounts were not returned, the second defendant presented O.S.No.1789 of 1971 on the file of the learned District Munsif at Erode on the foot of the promissory note. The suit came to be decreed



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and as the first defendant did not honour the decree, the second defendant filed EPR.No.98 of 1972 and brought the 1/2 share that belonged to the first defendant for sale.

8. It was pleaded that the 1/2 share referable to the branch of the first defendant included the shares of his minor sons, namely, the plaintiffs herein. They also pleaded that the shares of the sons are liable and answerable even for the personal debts of their father, the first defendant.

9. It was further pleaded that in the sale held on 23.08.1972, 1/2 the share belonging to the first defendant's family was sold. It was purchased by Muthusamy Gounder for a sum of Rs.605/-. The sale was subject to the mortgage dated 08.06.1963. The sale held on 23.08.1972 was confirmed by the court on 26.09.1972. A Sale Certificate was also issued on the same day.

10. They further alleged that the court auction purchaser took out an application in E.A.No.2633 of 1972 and obtained possession of the property on 20.01.1973. The delivery so taken was also delivered on 24.01.1973. Therefore, they pleaded that on and from 23.08.1972, neither the first defendant, nor the plaintiffs have any manner of right, title or interest in and over the suit property.

11. The written statement further added that the court auction



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purchaser Muthusamy Gounder, was the father-in-law of the second defendant and the father of the third defendant. After the lifetime of Muthusamy Gounder, the property devolved on to his legal heirs. The other legal heirs of Muthusamy Gounder executed a release deed relinquishing their rights in favour of the third defendant on 12.05.1992. Hence, the second defendant asserted that the third defendant is not a stranger to the property, but a lawful owner of one 1/2 share referable to the branch of the first defendant. They also added that the plaintiffs are not entitled to ignore the court auction proceedings in E.P.R.No.98 of 1972 in O.S.No.1789 of 1971 on the file of the learned District Munsif at Erode, and since the sale had not been set aside, the plaintiffs are not entitled to any relief.

12. On being served with the written statement, the plaintiffs filed a reply statement. In their reply, they took a plea that, as the court auction purchaser had not filed a suit for partition and taken possession of half share in the suit property within 12 years, he had lost his right to possession of the suit properties. They further pleaded that the plaintiffs, by virtue of their long, uninterrupted, continuous and hostile possession of the property, have perfected their title by adverse possession. In passing, they also attacked the validity of the release deed dated 12.05.1992 in favour of the third defendant.



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13. The defendants filed an additional written statement to the reply statement denying the plea of adverse possession taken by the plaintiffs. They reiterated their contention that the plaintiffs ought to have filed a suit to set aside the court auction sale within 12 years from the date of auction, and the suit filed for partition ignoring the court auction sale, is not maintainable.

14. The defendants 2 and 3 to the first suit, on more or less the same pleas as taken in the written statement filed in the first suit, filed O.S.No.187 of 1995. In this suit, they pleaded that, as the defendants attempted to trespass into the property, they were constrained to present the suit for declaration of title, that the entire suit property is the absolute property of the plaintiffs therein, and also sought for permanent injunction.

15. O.S.No.187 of 1995, summons were served on the defendants. Karuppa Navithan was arrayed as the first defendant. The plaintiffs in O.S.No.197 of 1996 (Previously O.S.No.349 of 1992 on the file of the Sub Court at Erode), were arrayed as defendants 2 and 3. The 4th defendant is the daughter of Karuppa Navithan, and the sister of the defendants 2 and 3. The defendants 5 and 6 were alleged to be strong men in the locality, who were assisting the attempts for illegal trespass.



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16. In this suit, only defendants 2 and 3, who are the plaintiffs in the first suit, filed their written statement. Karuppa Navithan, his daughter, and their alleged assistants remained *exparte* in this suit too.

17. On the basis of these pleadings, the trial court framed the following issues and additional issues in O.S.No.197 of 1996:

"(1) தாவாவில் ' கோரியவாறு வாதிகளுக்கு பாகப்பிரிவினையும், சொத்து சுவாதீனமும் கிடைக்கத்தக்கதா?"

(2) இவ்வழக்கு நிலைக்கத்தக்கதல்ல என்று கூறுவது உண்மையா?"

(3) வழக்கிற்கு சரியான வழக்கு மூலம் இல்லை என்று கூறுவது உண்மையா?"

(4) வாதிகளுக்கு கிடைக்கக்கூடிய வேறு பரிகாரம் என்ன?"

(5) தாவா சொத்தில் வாதிகளுக்கு நீண்டநுபேக உரிமை உள்ளதா?"

(6) நீதிமன்ற ஏலத்தை இரத்து செய்யாமல், வாதிகள் ' பாகப்பிரிவினை கோரியுள்ளது சட்டப்படி நிலைக்கத்தக்கதா?"

(7) தாவா கால வரம்பு , சட்டத்தால் பாதிக்கப்பட்டுள்ளதா?"

and in O.S.No.187 of 1995:

"(1) வாதிகள் கோரியுள்ள விளம்புகை பரிகாரமும், நிலையுறுத்துக்கட்டளை பரிகாரமும் ' அவர்களுக்கு கிடைக்கக்கூடியது தானா?"

(2) வேறு எந்த பரிகாரம்?"



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(3) பிரதிவாதிகளுக்கு நீண்டனுபோக உரிமை

உள்ளதா?"

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18. The partition suit in O.S.No.197 of 1996 was taken as the lead case. On the side of the plaintiffs, the second plaintiff, Mani examined himself as PW1. He marked Ex.A1 to Ex.A12. On the side of the defendants, the second defendant examined himself as DW1 and in addition, they examined three other witnesses as DW2 to DW4. The defendants exhibited Ex.B1 to Ex.B23.

19. As already pointed out, initially the suit was decreed and on appeal, the suit was set aside and remanded. At the time of remand, the appellate court directed the trial court to frame an issue on adverse possession and answer the same.

20. On remand, the learned Trial Judge came to a conclusion that, since the first defendant does not dispute the debts owed to the second defendant, the plaintiffs, being his sons, are bound by the judgement and decree passed in O.S.No.1789 of 1971. It further held that, as the properties had been sold in court auction sale to the deceased Muthusamy Gounder, the plaintiffs are not entitled to challenge the same. It further held that, the plaintiffs have not let in any proof to show that they are in joint possession of the property after the court auction sale in



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favour of the third defendant. It also held that, as there is no prayer to set aside the court auction sale, the suit for simplicitor partition is not maintainable. It rejected the plea of adverse possession. Consequently, it dismissed O.S.No.197 of 1996 and decreed O.S.No.187 of 1995 with cost.

21. On the decrees being carried in appeal, the learned II Additional District Judge at Erode held that the sale certificate and delivery attachi show that the court auction purchaser, Muthusamy Gounder, had taken only symbolic possession of the property and not actual delivery. As the court auction purchaser, Muthusamy Gounder had not filed a suit for partition within 12 years, he lost his right to the suit property by adverse possession. This is because there can be no actual delivery, in purchase of an undivided interest in a joint family property. Therefore, it observed that since Muthusamy Gounder had taken only the symbolic delivery from the Court, he cannot be in joint possession with the other coparceners. It found that the second defendant, having purchased the property from Chinna Karuppan, is entitled to one 1/2 share of the property. Consequently, it allowed both the appeals and decreed O.S.No.197 of 1996 and dismissed the suit in O.S.No.187 of 1995. Against the reversal of judgements, the present second appeals.

22. This court admitted both the second appeals on 25.09.2003, and framed the following substantial questions of law:



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"i) Whether the lower appellate court is justified in holding that plaintiffs are entitled to get a decree on the basis of adverse possession overlooking that no plea of adverse possession raised and proved by the plaintiffs?

ii) When the suit is laid for partition on the basis that plaintiffs are coparceners of a joint family, is it open to them to raise the plea of adverse possession as they could not have the necessary animus to prescribe title?"

23. I heard the matter in part on 23.09.2025 and 24.09.2025 and adjourned the matter to the next day, i.e., on 25.09.2025.

24. I framed the following additional substantial questions of law:

(i) Are not the sons' shares answerable to the debts of the father, including personal debts?

(ii) When the properties of the father had admittedly been sold in court auction sale held in E.P.R.No.98 of 1972 in O.S.No.1789 of 1971 on the file of the District Munsif Court at Erode, do the plaintiffs in O.S.No.197 of 1996 have a cause of action to maintain a suit for partition?

25. For the sake of convenience, all the substantial questions of



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law are taken up together and answered in this judgement.

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26. I brought to the attention of Mr.N.Manoharan, the judgements of the Privy Council on the aforesaid points in ***Girdharee Lall v. Kantoo Lall, (1873-74) 1 Indian Appeals 321***, and ***Mussamut Nanomi Babuasin v. Modun Mohun, (1885-86) 13 Indian Appeal 1*** and requested the counsel to answer on the additional questions of law that have been framed.

27. Mr.N.Manoharan has been extremely fair to the court in bringing to my notice several judgements of the Supreme Court, which have taken a view that the shares of the sons in the ancestral property is answerable to the debts of the father, even if they are personal debts, unless and until, the debts are tainted with immorality. The stand taken by Mr.N.Manoharan is much appreciated.

28. It is not in dispute that the properties are ancestral in character. The relationship between the parties is also not in dispute. The genealogical tree of the parties are hereunder:

Ram Navithan
| (Sons)



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Karuppa Navithan (1st Defendant)
| (sons) | (Court Sale)

Raju (1st Plaintiff) | Mani (2nd Plaintiff)

Muthusamy Gounder (Auction Purchaser)

| (Daughter)
Ramathal - (3rd Defendant)
(Wife of 2nd Defendant)

Chinna Karuppannan

Karuppannan
(Purchaser)
(2nd Defendant)

29. The relationship between the parties, nature of the property, the purchase of the share of the Chinna Karuppannan first defendant by the second defendant, and the auction that had been held for sale of the first defendant's property, are not in dispute.

30. On the date of sale in 1968, the first and second plaintiffs would have been minors, approximately aged about 4 and 6 years. The factum of the mortgage executed by the first defendant in favour of the second defendant is clear from Ex.B17. This is a mortgage deed dated 08.06.1963. Ex.B1 is an execution petition filed in E.P.R.No.98 of 1972 in O.S.No.1789 of 1971. Ex.B3, Ex.B4, Ex.B6, Ex.B7 and Ex.B8 would point out that the property of the first defendant had been brought for auction, and symbolic possession had been taken by Muthusamy Gounder of the undivided half share of the first defendant in the suit property. The relationship between Muthusamy Gounder and the third defendant is not in dispute. Ex.B9 had been produced to substantiate the release deed



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made by the other legal heirs of Muthuswamy Gounder, in her favour.

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31. It is the fundamental principle of civil law that where there is a right, certainly, there is a remedy. This is the literal translation of the Latin maxim '*ubi jus ibi remedium*'. The plaintiffs would have to show that despite the court auction sale, their right to the property continued and hence, they are entitled to seek for partition. It is here that I would refer to the authorities cited above.

Discussion of Authorities

32. First of the judgements, I have to refer to is a classic judgement in ***Hunooman Persaud Panday v. Mussumat Babooee Munraj Koonweree, (1854-57) 6 Moo IA 393***. Lord Justice Knight Bruce, speaking for the Board, held as follows:

"though an estate be ancestral, it may be charged for some purposes against the heir, for the father's debt, by the father, as, indeed, the case above cited from the 6th volume of the Decisions of the Sudder Dewanny Adawlut, North-Western Provinces, incidentally shows. Unless the debt was of such a nature that it was not the duty of the son to pay it, the discharge of it, even though it affected ancestral estate, would still be an act of pious duty in the son. By the Hindu law, the freedom of the son from the obligation to discharge the father's debt, has respect to the nature of the debt, and not to the nature of the estate, whether



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ancestral or acquired by the creator of the debt."

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33. This judgement settled the position of Hindu law on the pious obligation of a son to pay his father's debt. The position laid down in this case was confirmed in **Girdharee Lall's** case, and by the Privy Council in **Mussamut Nanomi Babuasin's** case. **Hunooman Persuad Panday's** case also found affirmation by another Privy Council Bench in **Kantoo Lall v. Muddun Thakur, MANU/PR/0027/1874.**

34. Post independence, the Supreme Court had an occasion to consider the issue as to the liability of the son with respect to the debts of father, even post partition. Answering the liability to be in the affirmative, the Supreme Court in **Pannalal v. Naraini, (1952) 1 SCC 300** held that the sons are liable to pay pre-partition debts of the father, even after partition, unless there was an arrangement for payment of the debts of the father, at the time when partition took place or if the debt was conceived by immoral or illegal means. For ready reference, the relevant portion is extracted here:

"13. It can now be taken to be fairly well settled that the pious liability of the son to pay the debts of his father exists whether the father is alive or dead. [Brij Narain v. Mangla Prasad, (1923-24) 51 IA 129 : 1923 SCC OnLine PC 49] Thus, it is open to the father, during his lifetime, to effect a transfer of any joint family property including the interests of his sons in the same to pay off



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an antecedent debt not incurred for family necessity or benefit, provided it is not tainted with immorality. It is equally open to the creditor to obtain a decree against the father and in execution of the same put up to sale not merely the father's but also the son's interest in the joint estate. The creditor can make the sons parties to such suit and obtain an adjudication from the court that the debt was a proper debt payable by the sons. But even if the sons are not made parties, they cannot resist the sale unless they succeed in establishing that the debts were contracted for immoral purposes."

35. Soon thereafter, in ***Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh, (1953) 2 SCC 265*** another three Judge bench of the Supreme Court, while approving the view taken in ***Pannalal's*** case cited above, held that in a suit filed by the creditor against a father, the sons are not even necessary parties. It observed that if the creditor's right are deemed to be based exclusively upon the father's power of disposition over the son's interest, such right must necessarily come to an end once the father passes away, or it results in a partition between him and his son. It cannot be said as an absolute rule that a creditor's right to recover a debt from the son's share in the joint family property is co-extensive with the father's power of disposal over such interest. The only exception when the son was not held liable for the debt is when the debt is tainted with immorality. Having come to this conclusion, the Supreme Court approved the view of the Board in



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Mussamut Nanomi Babuasin's case. The law laid down by the court is as follows:

*"11. Holding, as we do, that the sons were liable in this case to discharge the decretal debt due by their father, the further question arises as to how this liability could be enforced? Could the interest of the sons in the joint property be attached and sold without making the sons parties to the suit and the execution proceedings? The point does not seem to us to present much difficulty. Strictly speaking, the sons could not be said to be necessary parties to the money suit which was instituted by the creditor against the father on the basis of a promissory note. If a decree was passed against the father and the sons jointly, the latter would have been personally liable for the debt and the decree could have been executed against their separate or personal property as well. No doubt the sons could have been made parties to the suit in order that the question of their liability for the debts of their father might be decided in their presence. Be that as it may, the money decree passed against the father certainly created a debt payable by him. If the debt was not tainted with immorality, **it was open to the creditor to realise the dues by attachment and sale of the sons' coparcenary interest in the joint property on the principles discussed above.**"*

36. The Supreme Court in another three Judge bench in **Faqir Chand v. Sardarni Harnam Kaur, (1967) 1 SCR 68**, after surveying of all the authorities, approved the view of the Privy Council in **Suraj Bansi**



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Koer v. Sheo Prashad Singh [(1878) ILR 5 Cal 148 (PC)] which held as follows:

"That where joint ancestral property has passed out of a joint family either under a conveyance executed by a father in consideration of an antecedent debt, or in order to raise money to pay off an antecedent debt, or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debts, cannot recover that property, unless they shew that the debts were contracted for immoral purposes, and that the purchasers had notice that they were so contracted."

37. I need not add to the authorities except to point out that this view has been followed by the Supreme Court in:-

(i) **Anthony Swamy v. M.R.Chinnaswamy Koundan by Lrs.** (1969) 3 SCC 15;

(ii) **Venkatesh Dhonddev Deshpande v. Sou. Kusum Dattatraya Kulkarni and Others**, (1979) 1 SCC 98;

(iii) **Prasad and Others v. V.Govindaswamy Mudaliar and Others**, (1982) 1 SCC 185; and

(iv) **Manibhai and Others v. Hemraj and Others**, (1990) 3 SCC 68.

and by this court in **Gubbala Suryanarayana (minor) and another v. Gadiyapu Ganesulu and another**, AIR (1954) Mad 203.



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38. The aforesaid position make it clear that the sale of the property of the first defendant in a court auction sale for his antecedent debts binds not only his share, but also the shares of the plaintiffs. If their right to the property had been sold in the court auction sale and purchased by Muthusamy Gounder, the property was no more available for partition by way of a decree. Whatever right the minors had, stood extinguished with the sale that had been held pursuant to E.P.R.No.98 of 1972. Hence, the suit property was not available for partition and consequently, the plaintiffs did not have a right in the suit property on the date of presentation of the suit.

39. Now turning to the next issue, I have to point out that a minor would have to seek to set aside the court auction sale, before suing for partition. The suit presented by the plaintiffs, was one for a bare partition. No relief was sought to set aside the sale that had been held by the court. Unless and until the sale had been set aside, the property is not available for partition. This is because, the sale having been executed in favour of the auction purchaser, Muthusamy Gounder, whatever right, title, or interest that was available with Karuppa Navithan's family, stood transferred to Muthusamy Gounder. I should add here that there is no warranty of title in a court auction sale. The court only brings the interest of the judgement debtor for sale.



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40. When a property has been sold for the debts of the father, the Hindu law, prior to the amendment of Section 6 of the Hindu Succession Act, placed an obligation on the sons to answer the debts. This position has already been settled by a catena of judgements set forth above. If the minors have to reach out to the property and claim partition, then they should have sought for a declaration that the court auction sale was invalid. They, not having sought for the said relief, are not entitled to seek for partition. This is because as long as the court auction sale stands, the plaintiffs do not get the right over the same, as the property ceases to form part of the joint family estate, and the right to claim partition does not survive. The least that Mr.N.Manoharan's client ought to have sought was a declaration that the court auction sale is invalid, or *non est*, or illegal, or at the very least, that the court auction sale is not binding on them. Without seeking for any of the aforesaid reliefs, a suit for mere partition cannot be maintainable with respect to the property covered by court auction sale. When this aspect was pointed out, Mr.N.Manoharan referred to a judgement of Supreme Court in ***Umadevi Nambiar v. Thamarasserai Roman Catholic Diocese, (2022) 7 SCC 90.*** He referred to paragraph No.15 of the said judgement in order to substantiate his case.

41. A careful perusal of the judgement shows that the conclusion in paragraph 15 was arrived at due to a peculiar circumstance



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of that case. The facts would show that the appellant before the Supreme Court and her sister, one Rane, got the property on account of intestate succession of their father. The appellant had executed a power of attorney in favour of her sister in 1971. She cancelled the power of attorney on 31.01.1985. In the mean time, the power agent, her sister, alienated the property in favour of third parties. She filed a suit and obtained a preliminary decree. It was then she came to know that the beneficiaries from her sister had sold the property in favour of the respondent before the Supreme Court. Hence, she filed a suit for partition and separate possession of her share in the suit property. The Supreme Court came to a conclusion that the power of attorney executed by the appellant in favour of her sister, had given the power only to lease out the property, and there had been no authorization empowering the agent to sell the property. The Supreme Court came to the conclusion that as the power of attorney did not contain the clause authorising the agent to sell the property, any alienation made by her is invalid and because no one can confer a better title than what he has himself.

42. In fact, more than a century earlier, a similar view has been expressed by this court in **Unni v. Kunchi Amma, ILR (1891) 14 Mad 26**. This Court held as follows:

"If a person not having authority to execute a deed, or having such authority under certain



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circumstances which did not exist, executes a deed, it is not necessary for persons who are not bound by it to sue to set it aside, for it cannot be used against them. They may treat it as non-existent and sue for their right as if it did not exist."

The same principle had been approved by the Board of the Privy Council in ***Bijoy Gopal Mukerji v. Krishna Mahishi Debi, (1907) 17 MLJ 1454.***

43. The view of Unni's case, also found acceptance in the recent Supreme Court case in ***Hussain Ahmed Choudhury v. Habibur Rahman, 2025 SCC Online SC 892.***

44. The aforesaid authorities cannot be applied to the facts of the present case because, as already concluded, in a sale for the antecedent debt of the father, the share of the son can also be sold, unless and until it is shown that the debt was for immoral purpose. The plaintiffs should have pleaded that the debt incurred by the first defendant in favour of the second defendant was for immoral purpose and therefore, not binding on them. The plaintiffs cannot seek for partition, without challenging the obstacles in form of the court auction sale. That not having been done, even on that ground, the plaintiffs are not entitled to succeed.

45. The Court has to look at the jural bias underlying such



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transaction. If this court were to look at the real nature of the suit and decide what the plaintiffs are asking for, they are asking for possession of their shares in the estate to be calculated, after the court auction sale is set aside. In effect, the plaintiffs are asking the alienation made through court be set aside, and be placed in possession of the share of the properties alienated. For this purpose, they necessarily would have to sue for declaration that a court auction sale is not binding on them. That not having been done, the suit necessarily has to fail.

46. The principle of law being that if a minor's share in a joint family property has been sold in an execution of a decree against the father, the minor cannot sue for partition, including the property sold, without first impeaching the sale. It is not open to the minors to ignore the sale.

Adverse Possession

47. Insofar as the plea of adverse possession is concerned, the plaintiffs have not shown open, hostile, and continuous possession of the property, post the auction sale. PW1 - the second plaintiff alone was examined in the witness box. On the date of sale, PW1 would have been a toddler aged about 4 years. He cannot speak about what transpired when he was minor.

48. It is the fundamental principle of law, that to prove title by



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adverse possession, the plaintiffs must show open, hostile and continuous possession of the property. The documents produced by the plaintiffs do not point out hostility or openness, much less continuity of possession. Even if one of the aforesaid factors is not proved, the plea of adverse possession would have to fail. In fact, the documents under Ex.A4 to Ex.A10 point out that all of them had come into being, a couple of months before the presentation of the plaint. Ex.A5, Ex.A6 and Ex.A7 were all revenue records issued for Fasli 1395 to 1397. They have been issued on the same day. The plaintiffs seemed to have procured the revenue records for Fasli 1395 to 1400 in September 1992. The suit itself came to be filed on 18.6.1992. Post litem motam documents cannot be relied upon for the purpose of plea of adverse possession. To make it abundantly clear, the revenue records produced by the plaintiffs have come into being, three months after the suit had been filed. Hence, this plea necessarily has to fail.

49. Insofar as the suit presented by the defendants 2 and 3 is concerned, the purchase of half share by the second defendant from Chinna Karuppan is not in dispute. Similarly, the court auction sale in E.P.R.No.98 of 1972 in O.S.1789 of 1971 which transferred the half share that fell to the share of the first defendant and his sons in favour of Muthusamy Gounder, is also not in dispute. Muthusamy Gounder's legal heirs have executed a release deed in favour of the third defendant.



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Hence, she became the owner of another half share of the suit property.

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50. The view of the lower appellate court that Muthusamy Gounder should have to file a suit for partition as against his son-in-law is absolutely perverse. The share of the first defendant stood transferred by the court auction sale and being the sons of the first defendant, the plaitniffs are equally answerable to the debts of their father. This deals with one 1/2 of the share, and the other 1/2 share obviously vests with the second defendant. Unless and until, the title was divested from the court auction purchaser Muthusamy Gounder, and re-vested in the plaintiffs' family, they do not have right, title, or interest over the same.

51. When the owners of the property, namely, Muthusamy Gounder and his son-in-law, the second defendant, were not inclined to file a suit for partition, the view of the lower appellate court that only after filing a suit for partition does Muthusamy Gounder get title is erroneous. In this regard, the view taken by the learned Trial Judge is in accordance with law.

52. As the title to the property vested in both the defendants 2 and 3, by two independent alienations, namely, the sale by Chinna Karuppan in favour of the second defendant, and the court auction sale, together with the release deed by Muthusamy Gounder's children in favour of the third defendant, respectively, the suit for title necessarily



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has to be decreed.

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53. Hence, the substantial questions of law are answered on the following terms:

(i) The plaintiffs did not have right in the property after the court auction sale in E.P.R.No.98 of 1972 in O.S.No.1789 of 1971 on the file of District Munsif Court at Erode.

(ii) The plaintiffs are not entitled to maintain a suit for partition without first seeking to set aside the sale executed in favour of Muthusamy Gounder, the court auction purchaser.

(iii) The plaintiffs have failed to prove that they have their right over the property by adverse possession.

(iv) Having come forth with a suit for partition, the plaintiffs are not entitled to the plea of adverse possession.

(v) The view of the learned first Appellate Judge that the court auction purchaser had lost his right and therefore, the plaintiffs had gotten their rights restored is baseless, as well as legally and factually incorrect and hence, perverse.

54. In fine, the substantial questions of law are answered in favour of the appellant and against the plaintiffs.

55. S.A.No.714 of 2000 is allowed and the judgement and decree



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in A.S.No.227 of 1998 dated 29.06.1999 is set aside. The judgement and decree of the learned District Munsif at Perundurai in O.S.No.187 of 1995 dated 15.09.1998 stands restored and the suit is decreed as prayed for.

56. S.A.No.713 of 2000 is allowed. The judgement and decree in A.S.228 of 1998 dated 29.06.1999 is set aside. The judgement in O.S.No.197 of 1996 dated 15.09.1998 stands restored. The suit stands dismissed.

57. On account of the fair submissions made by Mr.N.Manoharan, I am not inclined to impose cost on the plaintiffs in the Second Appeals. However, the defendants 1 and 2 are entitled to costs in the suits, as well as in the Appeal suits.

12.11.2025

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Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No

To

1.The II Additional District Judge, Erode.

2.The District Munsif cum Judicial Magistrate, Perundurai



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V.LAKSHMINARAYANAN, J.

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12.11.2025