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AS.No.133 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2025

CORAM

THE HONOURABLE MR.JUSTICE M. JOTHIRAMAN

AS.No.133 of 2021
and C.M.P.Nos.7756 and 20602 of 2021

1.M.Maruthai
2.M.Angusamy
3.S.Valarmathi
4.M.Sathyamoorthy
5.L.Nagarathinam
6.M.Ramesh Kumar

... Appellants / Defendants 5 to 10
V.

1.Karthikeyan
2.M.Prakash
3.Angaleeswari
4.Muruganandam
5.M.Loganathan

... respondents / plaintiffs and the defendants 2 to 4

Prayer : This First Appeal is filed under Section 96 r/w.Order 41 Rule 1 Code of Civil Procedure 1908, against the judgment and decree dated 12.03.2019 in O.S.No.5021 of 2015 on the file of the XVI Additional Judge, City Civil Court, Chennai.

For Appellants : Mr.P.Gopalan



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For Respondents : Mr.c.Venkatesalu

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J U D G M E N T

The unsuccessful defendants 5 to 10 have preferred this appeal against the judgment and decree dated 12.03.2019 passed in O.S.No.5021 of 2015 by the learned XVI Additional Judge, City Civil Court, Chennai.

2. The parties are referred to as per their rankings in the trial Court.

3. Suit filed for partition and to allocate 1/12th share each to the plaintiffs and for permanent injunction. The trial court, decreed the suit that the plaintiffs are entitled to 1/16th share each in the suit property and are entitled for permanent injunction.

4. The case of the plaintiffs is as follows:-

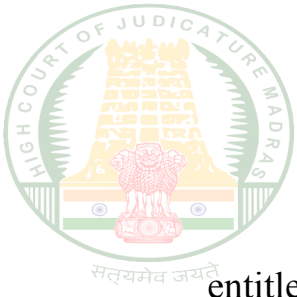
The plaintiffs - Karthikeyan and Prakash are brothers. The first defendant/Murugesan is their maternal uncle. The second defendant is their maternal aunt. The third defendant/ Muruganandam and the fourth defendant/Loganathan are the brothers of the plaintiffs. The suit schedule property measuring to an extent of 3600 sq.ft was originally



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belonged to the plaintiffs' maternal grandfather, namely, Arunachalam Chettiar. The said Arunachalam Chettiar, out of his self-earnings, had purchased the property to an extent of 7200 sq.ft. jointly along with the first defendant/Murugesan, Karuppasamy and K.P.K.Pottiammal, under sale deed dated 04.05.1961. Subsequently, the said Arunachalam Chettiar, the first defendant, Karuppasamy and K.P.K.Pottiammal, entered into a partition deed dated 16.09.1980. Thereby, the said deceased Arunachalam Chettiar and the first defendant, Murugesan, were jointly allotted the suit schedule property to an extent of 3600 sq.ft. The said Arunachalam Chettiar died intestate on 13.05.1987 leaving behind his wife, Valliammal and son, who is the first defendant and two daughters, (i.e.,) the second defendant /Angaleeswari and the plaintiffs' mother, namely, Muthulakshmi as his legal heirs. The said Muthulakshmi died on 16.01.1988. Valliammal also died intestate on 25.06.2005. The plaintiffs and the defendant Nos.3 and 4 are the sons of Late Muthulakshmi and therefore, they are entitled to 1/12th share. The grandparents of the plaintiffs, during their lifetime, had purchased certain other properties situated at Palani District and one vacant land measuring to an extent of 20 acres out of their self-earnings. The plaintiffs are also



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entitled to claim their respective shares in these properties. Hence, the suit.

5. The first defendant has filed a written statement and the same has been adopted by the defendant Nos.4 to 10. The suit schedule property was purchased by the first defendant out of his own funds in his name and in the name of his father/Arunachalam Chettiar along with Karuppuswamy and K.P.K.Pottiammal. Further under partition deed dated 16.09.1980 entered into between them and the suit property was allotted to the first defendant and his father, Arunachalam Chettiar. The first defendant continues to reside in the suit property as absolute owner thereof with exclusion of his sisters. Since the suit property being old and dilapidated and not fit for living conditions, with the permission of Chennai Corporation, the existing building in entirety has been demolished and the new building has been constructed. Therefore, the first defendant had been in possession and enjoyment of the suit property as absolute owner. The factum of demolition of the existing building and the construction of the new building was well known by the plaintiffs and the defendants 2 to 4. It is also known that with the exclusion of the



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plaintiffs and the other defendants, the first defendant is in possession and enjoyment of the suit property. Neither the plaintiffs nor the defendants 2 to 4 are entitled to claim for division of the suit property and consequently, the suit was liable to be dismissed.

6. Based on the above pleadings, the trial Court framed the following issues:

- (i) whether the plaintiffs are entitled for partition of 1/12th share in the suit property?
- (ii) whether the plaintiffs are entitled for permanent injunction?
- (iii) to what other relief, the plaintiffs are entitled to?

7. On the side of the plaintiffs, the second plaintiff /Prakash, was examined as P.W.1, and Ex.A1 to Ex.A5 were marked. On the side of the defendants, the sixth defendant /Angusamy was examined as D.W.1 and Ex.B1 to Ex.B5 were marked.

8. The findings of the trial Court:-



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There had been a partition by which out of the total extent of 7,200 sq.ft, was divided as 3600 sq.ft + 3600 sq.ft and K.P.Karuppasamy and K.P.K.Pottiammal took away 3600 sq.ft. By virtue of Ex.A2, Partition deed dated 16.09.1980, 3600 sq.ft was allotted to the grandfather of the plaintiffs, namely, Arunachalam Chettiar and the first defendant, Murugesan. Admittedly, Arunachalam Chettiar died intestate leaving his $\frac{1}{2}$ share (i.e.,) 1800 sq.ft to his legal heirs and the balance 1,800 sq.ft to the first defendant as he was alive then. Therefore, out of $\frac{1}{2}$ share (i.e.,) 1,800 sq.ft of Arunachalam Chettiar, his daughter, Muthulakshmi and Angaleeswari shall have equal share (i.e.,) $\frac{1}{4}^{\text{th}}$ each to the exclusion of Murugesan as he has already owned $\frac{1}{2}$ share (i.e.,) 1800 sq.ft. As such, the plaintiffs being the legal heirs of Muthulakshmi, shall equally divide the $\frac{1}{4}^{\text{th}}$ share of their deceased mother. As such, they were entitled to $\frac{1}{16}^{\text{th}}$ share each in the suit property.

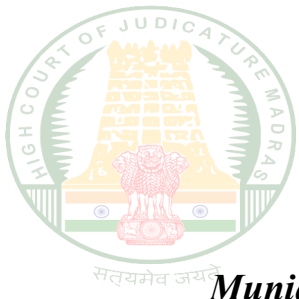
9. The learned counsel appearing for the appellants/defendant Nos.5 to 10 would submit that the plaintiffs were excluded from the suit property for more than the statutory period. The plaintiffs have not pleaded in the plaint that they are in joint possession of the suit property



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along with the first defendant. The title of the plaintiffs and the other defendants got extinguished by delay and laches. After demolishing the existing building in the suit property even in the year 1998, as per Ex.B1, with the knowledge of the plaintiffs and the other defendants, new building has been constructed in the suit property by the first defendant. Therefore, the first defendant is the absolute owner and he has paid the property tax, water tax and water charges etc., till his lifetime under Ex.B2 and Ex.B3. He would submit that P.W.1, in his cross-examination, categorically admitted that the new building has been constructed in the suit property by the first defendant in the year 1998 itself. In the light of admission made by P.W.1, the suit filed for partition only on 27.08.2015 which is after a statutory period of 12 years is barred by limitation. To strengthen his contention, he relies on the judgment of this Court in the case of *Venkataramana and others vs. N.Munusamy Naidu and others* reported in **2010 (6) MLJ 351**, wherein, it has been held that if the suit for partition is not filed within 12 years from the date of exclusion of the plaintiffs, the suit for partition is barred by limitation as contemplated under Article 110 of the Limitation Act. Yet another judgment of this Court was relied on in the case of *Pitchaikaran @ Ayyanar vs.*

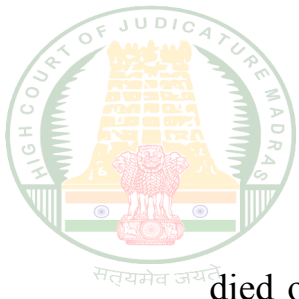


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Muniammal and others reported in **(2018) 8 MLJ 186**, wherein, it has been held that the suit for partition should be filed within 12 years from the date of exclusion of the plaintiffs from the suit property. He also relied on the judgment of this Court reported in **MANU/TN/0444/2022** in the case of **Vellapandian vs. Duraiappan and others**, wherein, it has been held that the first respondent/plaintiff got married 50 years back and even during the lifetime of her father, she has not enjoyed the properties in joint possession. After the death of her father, even as per her case, he died 15 years back, she has not claimed any right. Joint possession has also not been proved, but she was residing in a nearby place.

10. Per contra, the learned counsel appearing for the plaintiffs/respondents would submit that the plaintiffs' maternal grandfather, namely, Arunachalam Chettiar died intestate on 13.05.1987 leaving behind his wife Valliammal, son, namely, the first defendant and two daughters (i.e.,) second defendant and the plaintiffs' mother, Muthulakshmi as his legal heirs. Thus, the mother of the plaintiffs is entitled to a share among the legal heirs of the said Arunachalam Chettiar. He would submit that the plaintiffs' mother, Muthulakshmi,



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died on 16.01.1988 and subsequently, the grandmother of the plaintiffs, namely, Valliammal, died intestate on 25.06.2005. After demise of the said Valliammal, the suit for partition was filed in the year 2015, within 12 years from the date of death, hence, the suit for partition is not barred by limitation as contemplated under Article 110 of the Limitation Act.

11. This Court has considered the submissions made on either side and perused the materials available on records carefully.

12. The point for determination arises in this case is that whether the rights of the plaintiffs are ousted as alleged by the defendants?

13. A perusal of Ex.A1, Sale Deed in Document No.423 of 1961 dated 04.05.1961, shows that the property to an extent of 7200 sq.ft jointly stands in the name of Arunachalam Chettiar and the first defendant/Murugesan, Karuppasamy and K.P.K.Pottiammal, wife of Karuppasamy. Subsequently the said joint owners among themselves under Ex.A2, Partition deed dated 16.09.1980 entered into partition between the said Arunachalam Chettiar, first defendant/Murugesan on



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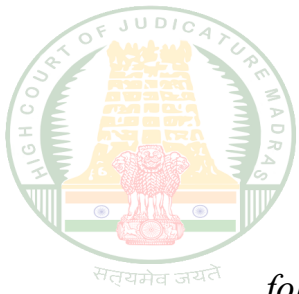
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one side, Karuppasamy and K.P.K.Pottiammal on other side and thereby, Arunachalam Chettiar and the first defendant/Murugesan were jointly allotted the suit schedule property to an extent of 3600 sq.ft, as their share in the total property.

14. It is the specific case of the first defendant/Murugesan that he had been in possession and enjoyment of the suit property in his own absolute right and title, ever since the death of his father, Arunachalam Chettiar on 13.05.1987, the death of Valliammal on 25.06.2005 and the death of Muthulakshmi on 16.01.1988. Since he had acquired right over the suit property as absolute owner thereof to the exclusion of everyone, the suit property cannot be made available for partition.

15. At this juncture, it is relevant to cite the judgment of the Hon'ble Supreme Court in the case of ***Vellapandian vs. Duraiappan and others*** reported in ***MANU/TN/0444/2022***, wherein it has been held as follows:-

“15. In the judgment reported in C.A.No.1858-1859 of 2016 in the case of Nagabhushanammal (D) vs. C.Chandikeswaralingam, the Hon'ble Supreme Court held as



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“4. Now, the ordinary classical requirement of adverse possession is that it should be nec vi nec clam nec precario. [See Secretary of State for India V. Debendra Lal Khan (1993) LR 611A 78, 82]. The possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. (See Radhamoni Debi V. Collector of Khulna MANU/PR/0007/1900 : (1900) LR 27 IA 136, 1401). But it is well-settled that in order to establish adverse possession of one co-heir as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits of the properties. Ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title the co-heir in possession cannot render his possession adverse to the other co-heir not in possession merely by any secret hostile animus on his own part in derogation of the other co-heir's title. (See Cores V. Appuhamy [(1912) AC 230]). It is a settled rule of law that as between co-heirs, there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster. This does not necessarily mean that there must be an express demand by one and denial by the other. This Court in Vidya Devi V. Prem Prakash (7) held that : 28. Ouster does not mean actual driving out of the co-sharer from the property. It will, however, not be complete unless it is coupled with all other ingredients required to constitute adverse possession. Broadly speaking, three elements are necessary for establishing the plea of ouster in the case of co-owner. i) declaration of hostile animus, (ii) long and uninterrupted possession of the



person pleading ouster, and (iii) exercise of right of exclusive ownership openly and to the knowledge of other co-owner”.

16. It is pertinent to mention that plea of ouster taken by the 1st defendant in the case of co-owner, their the burden of proof heavily lies on him. By applying the ratio laid down in the above judgment cited supra MANU/TN/0444/2022, the three elements for establishing the plea of ouster i.e., i) declaration of hostile animus, (ii) long and uninterrupted possession of the person pleading ouster, and (iii) exercise of right of exclusive ownership openly and to the knowledge of other co-owner”, have to be established, but in the instant case on hand, the first defendant has failed to prove the same.

17. It is relevant to extract here the Article 110 of the Limitation Act, 1963 :-

Description of suit	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
By a person excluded from a joint family property to enforce a right to share therein	Twelve years	When the exclusion becomes known to the plaintiffs



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18. The plaintiffs' maternal grandfather, Arunachalam Chettiar died intestate on 13.05.1987, leaving behind his wife, Valliammal, son, the first defendant/Murugesan, two daughters (i.e.,) second defendant, Angaleeswari and the plaintiffs' mother, Muthulakshmi, as his legal heirs. It is not in dispute that the said Muthulakshmi died on 16.01.1988 and consequently, grandmother of the plaintiffs, Valliammal died intestate on 25.06.2005. The suit came to be filed in the year 2015, within 12 years from the date of death of the plaintiffs' grandmother (i.e.,) 25.06.2005, therefore, the suit for partition is not barred by limitation, as contemplated under Article 110 of the Limitation Act, 1963.

19. The plaintiffs, third and fourth defendants are the sons of Late Muthulakshmi and therefore, they are entitled to claim share in the suit schedule property to the extent of 1/4th share pertaining to their mother. The suit schedule property is the self-acquired property of the plaintiffs' deceased grandfather, Arunachalam Chettiar. The contention of the learned counsel for the appellants that the suit is barred by limitation and



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the claim of the plaintiffs from the suit property is ousted are not acceptable one. There is no reason to interfere with the judgment and decree passed by the trial Court. There is no merit in this appeal and the same is liable to be dismissed. The point is answered accordingly.

20. In the result, this Appeal Suit is dismissed. The judgment and the decree dated 12.03.2019 passed in O.S.No.5021 of 2015 by the learned XVI Additional Judge, City Civil Court, Chennai, is hereby confirmed. There shall be no order as to costs. Connected miscellaneous petitions are closed.

13.06.2025

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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To

The learned XVI Additional Judge,
City Civil Court, Chennai.



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M. JOTHIRAMAN, J.

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