

A.S.NO.618 OF 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 03 / 07 / 2025

JUDGMENT PRONOUNCED ON :09 / 10 / 2025

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.618 OF 2018

1.K.Sakthivel

2.S.Kasthuri

... Appellants /
Defendants 1&2

Vs.

1.J.Deepa

... Respondent /
Plaintiff

2.Dhanalakshmi

3.C.Rathinakumar

... Respondents /
Defendants 3&4

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated March 27, 2018 passed in O.S.No.238 of 2016 by the II Additional District Court, Salem.

For Appellants : Mr.N.Manokaran

For Respondent-1 : Mr.T.Murugamanickam,
Senior Advocate
for Ms.Zeenath Begum

For Respondents 2&3: Served – No appearance



JUDGMENT

Feeling aggrieved by the Judgment and Decree dated March 27, 2018 passed in O.S.No.238 of 2016 by the 'II Additional District Court, Salem' ['Trial Court' for brevity], the defendants 1 and 2 therein have filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. The case of the plaintiff as put forth in the plaint is that A.Kandasamy and Kuppayammal had two daughters and one son, namely Dhanalakshmi (third defendant), Sambugeeswari and K.Sakthivel (first defendant). The plaintiff is the daughter of said Sambugeeswari. The fourth defendant is the son of third defendant and the second defendant is the wife of first defendant.

3.1. Suit property, an extent of 4 Acre 32 Cents, is separate property of A.Kandasamy by virtue of the documents viz, (i) Registered Sale Deed dated May 4, 1964, (ii) Registered Sale Deed dated May 30, 1966, (iii)



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Registered Sale Deed dated May 19, 1966 and (iv) Registered Release Deed dated March 11, 1974.

3.2. A.Kandasamy passed away intestate on January 1, 1983 and later, his wife - Kuppayyammal passed away on April 17, 2005. After the demise of A.Kandasamy, his two daughters and one son alone are in joint possession and enjoyment of the Suit property. As per Section 8 of the Hindu Succession Act, 1956 ['H.S. Act' for short], each of them are entitled to 1/3 share in the Suit property.

3.3. On July 14, 2008, Sambugeeswari executed a registered Gift Settlement Deed in favour of the plaintiff in respect of her undivided 1/3 share in the Suit property, and thereby, the plaintiff got into joint possession with the defendants 1 and 3.

3.4. Then, the first defendant executed registered Gift Settlement Deed dated August 30, 2010 in favour of second defendant in respect of 25 Cents. The first defendant had no legal right to do so without partitioning the Suit property. Further, the registration copy of the Gift Settlement Deed reads that the first defendant is entitled to the entire extent of Suit property viz, 4 Acre 32 Cents. Further, the first defendant



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has used his influence to mutate revenue records in respect of Suit property in his name, without notice to the plaintiff or her mother.

Meanwhile, the third defendant claimed to have executed a Gift Settlement Deed in respect of her 1/3 undivided share in favour of her son / fourth defendant. Further, the defendants 1 and 2 are attempting to alienate the Suit property. Hence, after exchange of notices, the plaintiff filed the present Suit for partition and permanent injunction restraining the defendants 1 and 2 from encumbering the suit property.

DEFENDANTS' CASE

4. The first defendant filed a written statement which was adopted by the second defendant. The third and fourth defendants remained *ex-parte*.

4.1. The sum and substance of the written statement is that the Suit property are joint family properties of A.Kandasamy and the first defendant, not A.Kandasamy's separate properties. After the demise of A.Kandasamy, the first defendant being his only son got the entire property left by A.Kandasamy by survivorship and since then, he alone has been in possession and enjoyment of the suit property as absolute



owner to the knowledge of his sisters and mother.

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4.2. As his sisters had received ample *Streedhana* and as father - A.Kandasamy spent a lot on their education and marriage by obtaining loans which were eventually discharged by first defendant, the sisters viz., third defendant and plaintiff's mother, voluntarily have given up their shares in the suit property in favour of first defendant in 1983 and let the first defendant enjoy them absolutely. In any event, the sisters have been ousted from the suit property in 1983 and the first defendant has perfected title by adverse possession.

4.3. Hence, Sambugeeswari had no right to execute Gift Settlement Deed in respect of her alleged 1/3 share in the suit property and the same is void. Even if she has any share, her claim is barred by limitation.

4.4. The first defendant has every right to execute Gift Settlement Deed in respect of 25 Cents in favour of second defendant as the entire extent of Suit property viz, 4 Acre 32 Cents belongs to first defendant. Mother - Kuppayyammal had executed a Gift Settlement Deed on January 9, 1997 in favour of first defendant wherein it has been stated that the entire 4 Acre 32 Cents belongs to first defendant. Notably, revenue



records were mutated in first defendant's name as early as in 1985.

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4.5. The first defendant had borrowed loans to the tune of Rs.50,00,000/- *inter alia* by pledging the jewels of second defendant, to reclaim the suit property. Further, the first defendant dug out a borewell, deepened the existing well and constructed side walls in the suit property. Further, he constructed a terraced house in the year 2012 in the suit property and obtained service connection in his name. House tax receipt in respect of the said house also stands in his name.

4.6. The plaintiff is not in joint possession with the defendants 1 & 2 and hence the Suit framed is not maintainable. The Suit is liable to be dismissed.

TRIAL COURT

5. Based on the above pleadings, the Trial Court framed the following issues:

"1. Whether the plaintiff is entitled to get preliminary decree for partition as prayed for?"

2. Whether the plaintiff is entitled to get permanent injunction as prayed for?"



3.To what other relief?"

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6. At trial, the plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.19 were marked, plaintiff's mother Ms.Jumbukeswari was examined as P.W.2. on the side of the plaintiff. On the side of the defendants, the first defendant was examined as D.W.1 and Ex-B.1 to Ex. B19 were marked, one Mr.Mani, Village Administrative Officer was examined as D.W.2 and Ex-X.1 to Ex-X.4 were marked.

7. After full-fledged trial, the Trial Court held that the defendants 1 and 2 bears the burden to prove that the suit property are joint family properties. There is no evidence available on record to show the existence of joint family. Further, held that D.W.1 himself has admitted in his evidence that Suit property is a separate property of A.Kandasamy. Further held that mutation of revenue records do not prove oral relinquishment by the sisters and there can be no adverse possession against co-sharers. The Gift Settlement Deed executed by Sambugeeswari in favour of plaintiff in respect of her undivided 1/3 share is valid. Upon these findings, the Trial Court concluded that the plaintiff is entitled to the reliefs of partition and permanent injunction sought for. The Suit was



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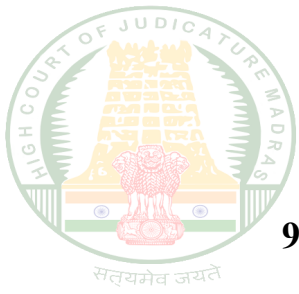
accordingly decreed.

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8. Feeling aggrieved, the defendants 1 and 2 have preferred this First Appeal under Section 96 read with Orders XLI of the CPC.

ARGUMENTS:

9. Mr.N.Manokaran, learned counsel for the appellants / defendants 1 and 2 would argue that the suit property is joint family property. Father - A.Kandasamy during his lifetime conducted the marriages of his daughters - plaintiff's mother and third defendant, in a grand manner. Further, the plaintiff's mother and the third defendant were employed as teachers and thereby earned a good salary. Hence, after the demise of A.Kandasamy, the plaintiff's mother and third defendant voluntarily made an oral relinquishment of their shares in favour of their brother / first defendant in 1983. Since then, the first defendant has been in exclusive possession and enjoyment of suit property by improving the land, constructing a house etc, to the knowledge of the sisters, for more than the statutory period. Thus, the plaintiff's right if any has been extinguished by ouster and adverse possession.



9.1. He would further argue that the plaintiff's mother -

Kuppayyammal purchased land of an extent of 20 Cents in Survey No.64/1, vide Ex-B.1 - Sale Deed. She enjoyed the same along with the suit property as a total extent of 4 Acre 52 Cents and then executed Ex-B.2 - Gift Settlement Deed in favour of first defendant in respect of the 20 Cents purchased by her, wherein it has been specifically recited that the first defendant is the absolute owner of the remaining extent of 4 Acre 32 Cents, the suit property herein. To be noted, Ex-B.2 - Gift Settlement Deed has been admitted by the plaintiff as it could be seen from the plaint description of property, wherein the suit property has been described as the extent of 4 Acre 32 Cents remaining after the gift of 20 Cents by Kuppayyammal in favour of first defendant.

9.2. He would further argue that the Revenue records (Ex-B.3, Ex-B.4, Ex-B.19 and Ex-X.1 to Ex-X.4), Electricity service connection card (Ex-B.5 to Ex-B.9), House tax receipt (Ex-B.10 and Ex-B.11), Jewel loan documents (Ex-B.12 to Ex-B.17), Certificate of agricultural loan waiver (Ex-B.18), all would show that the first defendant alone is in exclusive possession and enjoyment of the suit property for more than three



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decades. Further, the first defendant, being the absolute owner of the suit property, executed Ex-A.7 - Gift Settlement Deed in respect of a portion of suit property within specific four boundaries in favour of his wife / second defendant, which is absolutely valid and the plaintiff cannot question the same. The Trial Court failed to consider the above facts and erred in concluding that the plaintiff's rights have not been extinguished by ouster. The Judgment and Decree of the Trial Court is erroneous and deserves to be interfered with. Accordingly, he would pray to allow the Appeal Suit, set aside the Judgment and Decree of the Trial Court and dismiss the Original Suit.

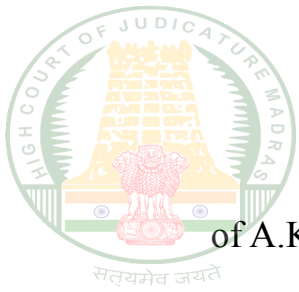
9.3. In support of his contentions *qua* ouster, he would rely on the Judgment of this Court in ***Puniyavathi -vs- Pachaiaammal***, reported in ***2022-1-LW-902***.



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10. In response to the above arguments, Mr.T.Murugamanickam, learned Senior Counsel appearing for the respondent / plaintiff would argue that there is no evidence available on record to show that the suit property is a joint family property. On the other hand, a portion of the suit property was acquired by A.Kandasamy, vide Ex-A.1 to Ex-A.3 - Sale Deeds between the years 1960 and 1966. The remaining portion of suit property was jointly purchased by A.Kandasamy and his sister-in-law (brother's wife) namely Deivanaiammal. Later, Deivanaiammal released her share vide Ex-A.4 - Release Deed in 1974 in favour of A.Kandasamy and he thereby became the absolute owner of not just the remaining portion of the suit property, but the entire suit property.

10.1. Further, he would draw the attention of this Court to the plaint cause title and the deposition of P.W.2 and D.W.1 to argue that at the time of Ex-A.1 to Ex-A.3 - Sale Deeds, the first defendant, who was born in 1962, was a minor. Similarly, the plaintiff's mother who was born in or around 1956 and the third defendant born around 1953 were also minors. Hence, they could not have made any contribution to the purchase of suit property. Further, even at the time of Ex-A.4 - Release Deed, the first defendant was a minor. Thus, the suit property is a self-acquired property

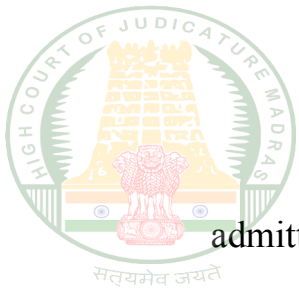


of A.Kandasamy.

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10.2. He would further submit that A.Kandasamy passed away intestate in 1983 leaving behind wife - Kuppayyammal, son - first defendant, daughters - third defendant and plaintiff's mother, as his legal heirs. Hence the suit property would devolve upon them as per Section 8 of the H.S. Act. They were all co-heirs and co-sharers in joint possession and enjoyment of the suit property. Kuppayyammal passed away intestate on April 17, 2005. Upon her demise, the plaintiff's mother, defendants 1 and 3 became entitled to 1/3 share each in suit property. In these circumstances, the plaintiff's mother executed Ex-A.6 - Gift Settlement Deed in favour of the plaintiff in respect of her undivided 1/3 share in suit property. Further, Ex-A.6 - Gift Settlement Deed was proved by examining the executant / plaintiff's mother as P.W.2. Hence, the plaintiff is entitled to seek partition in respect of her 1/3 share in suit property.

10.3. A vital element of ouster is the declaration of hostile animus, which is absent in the present case. Further, Kuppayyammal passed away in 2005, Ex-A.6 - Gift Settlement Deed was executed in 2008 and the Suit was filed in 2016. Hence, no question of ouster would arise. Further, as



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admitted by D.W.1 and D.W.2, there was no notice before mutation of revenue records. It is settled legal position that possession of one co-owner / co-sharer will never be adverse to that of the other. Ex-A.7 - Gift Settlement Deed was executed with a view to defeat and defraud the legitimate rights of the plaintiff, that too in respect of a portion within specific four boundaries. The Trial Court rightly decreed the Suit as prayed for. There is no need to interfere with the Judgment and Decree of the Trial Court. Accordingly, he would pray to dismiss the Appeal Suit.

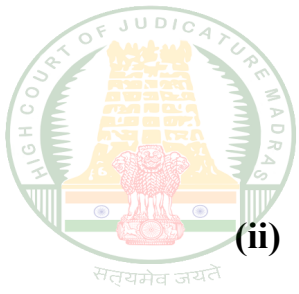
10.4. He would rely on the Judgment of this Court in *Gomathi -vs- Ramayal*, reported in *MANU/TN/5492/2024*.

DISCUSSION:

11. Heard on either side. Perused the evidence available on record.

The following points arise for consideration in this Appeal Suit:

- (i) Whether the suit property is a separate property of A.Kandasamy as alleged by the plaintiff, or a joint family property as alleged by defendants 1 and 2 ?



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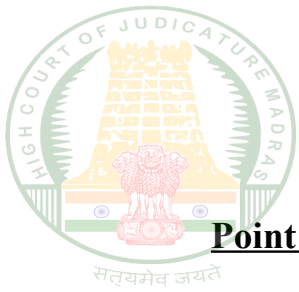
(ii) Whether the plaintiff's mother's rights over the suit property have

been extinguished and whether she has been ousted therefrom as contended by defendants 1 and 2 ?

(iii) Whether Ex-A.6 - Gift Settlement Deed executed by plaintiff's mother in respect of her 1/3 undivided share in suit property in favour of the plaintiff is valid ?

(iv) Whether Ex-A.7 - Gift Settlement Deed executed by first defendant in favour of second defendant in respect of a specific portion of suit property within specific four boundaries, is binding on the plaintiff ?

12. The relationship between the parties as stated in the plaint is admitted. The date of demise of father - A.Kandasamy and that of mother - Kuppayyammal as stated in the plaint is also admitted. There is no dispute with the fact that mother - Kuppayyammal purchased 20 Cents adjacent to suit property vide Ex-B.1 - Sale Deed and later gifted the same to first defendant vide Ex-B.2 - Gift Settlement Deed.



Point No.(i)

WEB COPY 13. A.Kandasamy acquired a portion of suit property vide Ex-A.1 to Ex-A.3 - Sale Deeds between the year 1960 and 1966. The remaining portion was jointly purchased by A.Kandasamy and his brother's wife - Devivanaiammal. There is no evidence as to when the purchase was made and through which document. However, vide Ex-A.4 - Release Deed dated March 11, 1974, sister-in-law - Deivanaiammal released her ½ share in the remaining portion of suit property in favour of A.Kandasamy for a consideration of Rs.5,000/-.

14. In Ex-A.1 to Ex-A.4, there is no reference about the existence of any joint family property / income prior to them. Though the defendants 1 and 2 pleaded that the suit property is a joint family property, they failed to produce evidence to show the existence of joint family property / income.

15. D.W.1 in his evidence deposed that he was born in the year 1962 and that plaintiff's mother was married in 1974. From the deposition of D.W.1, it could be understood that the third defendant also got married one year before or after the plaintiff's marriage. From the plaint cause title



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and the evidence of P.W.2, it is discernible that the plaintiff's mother was

born in or around the year 1956 and the third defendant was born in or

around the year 1953. From the above, it is pellucid that the plaintiff's

mother, defendants 1 and 3 were all minors at the time of Exs-A.1 to A.3

and that the plaintiff's mother and the first defendant were minors even at

the time of Ex-A.4. Further, the plaintiff and third defendant later became

teachers and the first defendant became a police officer, which shows that

they would have been school / college going students at the time of Ex-

A.1 to Ex-A.4. In fact, D.W.1 has admitted in his evidence that he

completed his schooling only in 1985. Being minors and being in

academic pursuit, they could not have made any contribution towards the

purchase of suit property vide Ex-A.1 to Ex-A.3 - Sale Deeds and Ex-A.4

- Release Deed. Hence, this Court is inclined to hold that the suit property

is separate and self-acquired property of A.Kandasamy and not joint

family property as contended by the defendants 1 and 2. The Trial Court is

right in its conclusion that the suit property is a self-acquired property of

A.Kandasamy. There is no need to interfere with the said conclusion.

Point No.(i) is answered accordingly in favour of plaintiff and against

the defendants 1 and 2.



Point No.(ii)

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16. Father - A.Kandasamy passed away intestate in 1983 leaving behind wife - Kuppayyammal, son - first defendant, daughters - third defendant and plaintiff's mother, as his legal heirs. Hence the suit property would devolve upon them as per Section 8 of the H.S. Act. They were all co-heirs and co-sharers in or deemed to be in joint possession and enjoyment of the suit property. Kuppayyammal passed away intestate on April 17, 2005. Upon her demise, the plaintiff's mother, defendants 1 and 3 became entitled to 1/3 share each in suit property.

17. Case of defendants 1 and 2 is that the plaintiff's mother and third defendant orally relinquished their shares in the suit property in favour of first defendant. In Ex-A.13 - Reply Notice dated September 12, 2016 issued by defendants 1 and 2 to plaintiff, it has been stated that the oral relinquishment was made 25 years ago i.e., in or around 1991. Contrary to the same, in their written statement, the defendants 1 and 2 have pleaded that the oral relinquishment was in 1983, immediately after the demise of father - A.Kandasamy. The burden is heavily upon the defendants 1 and 2 who have set up the case of oral relinquishment to prove the same. In this case, there is no clear cut pleadings as to show



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when the alleged oral relinquishment was made, in the presence of whom,
under what circumstances, etc.

18. The defendants 1 and 2 have parallelly set up the plea of ouster. Mr.N.Manoharan, learned counsel, would draw attention of this Court to Ex-B.3 to Ex-B.19 and Ex-X.1 to Ex-X.4, and argue that after the demise of A.Kandasamy, revenue records were mutated in the name of first defendant, and the defendants 1 and 2 obtained jewel loan for the purpose of reclamation of the land, digging borewell, constructing house and deepening the existing well. The above facts would prove the oral relinquishment and that declaration of hostile animus by first defendant against the plaintiff's mother and the third defendant.

19. This Court is unable to be in consensus with the above argument. Firstly, the defendants 1 and 2 pleaded oral relinquishment, which means they are claiming exclusive title through oral relinquishment. At the same time, the defendants 1 and 2 have pleaded ouster and adverse possession. The above pleas are inconsistent pleas, mutually destructive in nature, cannot go together. The defendants 1 and 2 ought to have elected any one of the pleas at the time of trial or at least



during final arguments. It is settled law that there is no bar to set up inconsistent pleas in pleadings, but the party must elect and stick to either one of them at the relevant stage of trial. The plea of adverse possession and the plea of title are mutually inconsistent and destructive in nature and hence, both pleas cannot go together. Secondly, even while assuming otherwise, the defendants 1 and 2 have failed to prove the plea of ouster satisfactorily.

20. At this juncture, it is crucial to understand what ouster is and what are its essential ingredients. In ***P.Ramanatha Aiyar's 'The Law Lexicon'*** [2nd Edition, Lexis Nexis Publication], Ouster has been defined as follows:

"An ouster is the wrongful dispossession or exclusion from real property of a party entitled to the possession thereof."

21. In ***Black's Law Dictionary*** [4th Edition, West Publishing Co.], Ouster has been defined as *"A species of in-juries to things real, by which the wrong-doer gains actual occupation of the land, and compels the rightful owner to seek his legal remedy in order to gain possession."*



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22. The Hon'ble Supreme Court in **P.Lakshmi Reddy -vs-**

L.Lakshmi Reddy, reported in **AIR 1957 SC 314**, has held as follows:

"8.Now, the ordinary classical requirement of the adverse possession is that it should be nec vi, nec clam, nec precario. (See Secretary of State for India in Council V Debendra Lal Khan. 61 Ind App 78 at p 82: (AIR 1934 PC 23 at p.25) (A). 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, 27 Ind APP 136 at p. 140 (PC)(B). 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

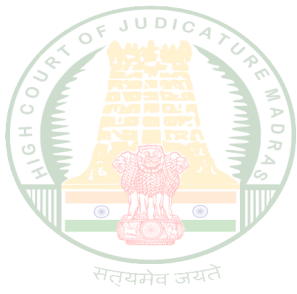


animus on his own part in derogation of the other co-heir's title. (See Corea v. Appuhamy, 1912 AC 230(PC). It is a settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster."

[Emphasis supplied by this Court]

23. The Hon'ble Supreme Court in **Vidya Devi -vs- Prem Prakash**, reported in (1995) 4 SCC 496, culled out three essential ingredients for establishing the plea of ouster. Relevant extract is hereunder:

"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. They are (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-owners. Thus, a co-owner, can under law, claim title by adverse possession against another co-owner who



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can, of course, file appropriate suit including suit for joint possession within time prescribed by law.”

[Emphasis supplied by this Court]

24. Further, Hon'ble Supreme Court in ***Govindammal -vs- R. Perumal Chettiar***, reported in (2006) 11 SCC 600, referring to ***Mohaideen Abdul Kadir -vs- Mohd. Mahaideen Umma***, reported in ***ILR (1970) 2 Mad 636***, has held thus:

"10. In Mohaideen Abdul Kadir v. Mohd. Mahaideen Umma [ILR (1970) 2 Mad 636] their Lordships held that no hard-and-fast rule can be laid down. But the following relevant factors may be taken into consideration: (i) exclusive possession and perception of profits for well over the period prescribed by the law of limitation; (ii) dealings by the party in possession treating the properties as exclusively belonging to him; (iii) the means of the excluded co-sharer of knowing that his title has been denied by the co-owner in possession. There may be cases, where, owing to long lapse of time, it may not be possible for the co-owner in possession to adduce evidence as to when the ouster commenced and how it was brought home to the knowledge of the excluded



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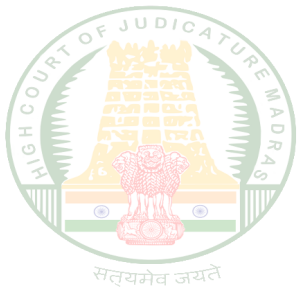


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co-owner. In such a case the law will presume ouster as an explanation of the long peaceful possession of the co-owner in possession. In order to maintain the person in such possession the law presumes a lawful origin of the possession. Therefore, no hard-and-fast rule can be laid down from which it can be inferred that any co-sharer has ousted his co-sharer. That will depend upon facts of each case. Simply long possession is not a factor to oust a co-sharer but something more positive is required to be done. There must be a hostile open possession, denial and repudiation of the rights of other co-owners and this denial or repudiation must be brought home to the co-owners. Simply because a co-sharer gave notice claiming partition of the suit properties and possession and did not pursue the matter further, that will not be sufficient to show that the co-sharer has lost his/her right. ..."

25. This Court in ***D.V.Jegannathan -vs- P.R.Srinivasan***, reported in ***(1999) 3 LW 742***, has held as follows:

"Mutation of the Revenue records, payment of taxes, long possession of the property, management of the property, appropriation of income, the other



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sharers being out of possession of the property etc., each of such acts by a co-owner by itself may not be sufficient to establish ouster or open assertion of adverse title as against another co-owner."

26. It could be understood from the above legal expositions that there can be no straight jacket, one size fits all formula for proof of ouster, as it may vary depending on the unique facts and circumstances of each case. But however, some essential ingredients are relevant for consideration from a broader perspective. They are (i) exclusive, long, open and uninterrupted possession and enjoyment (ii) hostile to that of the co-owner alleged to be ousted (iii) to their knowledge.

27. This Court shall now approach the facts of this case bearing in mind the above legal position. Ex-X.1 is the 'A' Register prepared under the Updating Registry Scheme (UDR Scheme) in 1984. Ex-X.1 shows that Joint Patta in Patta No.650 in respect of an extent of 1.83.0 Hectare in Suit Survey No.64/1A stands in the name of mother - Kuppayyammal and first defendant. Ex-X.2 is the Chitta, from which it could be seen that on October 19, 2010, Kuppayyammal's name was removed and separate patta



was issued in the name of first defendant.

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28. D.W.2 - Village Administrative Officer deposed that he is not aware of whose name the patta stood before the UDR Scheme. Further deposed that he has no knowledge as to whether notice to the plaintiff's mother and third defendant was served at the time of mutation of patta as well as at the time of effecting sub-division in 2010. Further, he deposed that in general, separate patta would be issued in the name of male heirs of deceased pattadhars.

29. D.W.1 / first defendant in his evidence has deposed that patta was mutated in his name in 1985 and when questioned as to whether any enquiry was conducted at the time of mutation, he deposed that he is not aware of the same and only his mother - Kuppayyammal would have knowledge of it. When further questioned about the issuance of notice to plaintiff's mother and third defendant at the time of issuance of patta under UDR Scheme, he deposed that he is not aware of the same. Further, he deposed that before 1985, patta stood in favour of his father - A.Kandasamy's name.

30. The above evidence does not lead this Court to an inference of

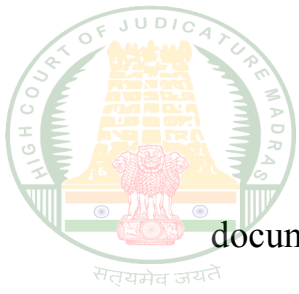


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any of the aforesaid ingredients of ouster. There is nothing to show that first defendant was in exclusive possession of the suit property excluding plaintiff's mother and third defendant with clear declaration of hostile animus against them. In a family, patta being issued in the name of its male heirs after the demise of father is quite natural. The same is also evident from the deposition of D.W.2 - Village Administrative Officer that in general, patta would be issued in the name of male heirs of the family after demise of the pattadhar.

31. As regards the contention that Ex-B.2 - Gift Settlement Deed executed by mother - Kuppayyammal in favour of first defendant contains recital that the entire suit viz., 4 Acre 32 Cents belongs to first defendant, as neither the plaintiff's mother nor the plaintiff is a party to it, the said recitals would not bind them.

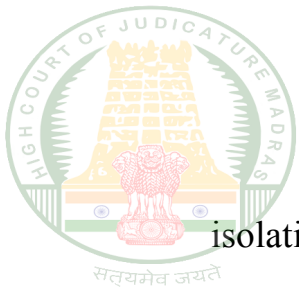
32. Coming to the jewel loan documents in Ex-B.12 to Ex-B.17, they prove nothing more than the fact that defendants 1 and 2 had obtained jewel loan. There is no reference in the said documents with regard to the suit property and even if there is such a reference, it would not aid the case of the defendants 1 and 2 as they are mere jewel loan



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documents and any such reference could only be self-serving. For instance, the purpose of the jewel loan would be what the first defendant had mentioned. Just because he had mentioned that the loan is to improve the suit property (assumption), that does not in any manner extinguish the rights of plaintiff's mother and the third defendant. The factum of jewel loan might have been to the knowledge of the sisters, but there is no reason for them to relate it to the suit property.

33. As regards Ex-B.18 - Certificate of Loan Waiver issued in 2008 by Allahabad Bank for the agricultural loan obtained by first defendant in respect of suit property, as stated *supra*, there is no hard and fast rule for proof of ouster; it has to be considered in light of the unique facts and circumstances of the case. In this case, patta stands in the name of first defendant and that is why the bank would have sanctioned loan in favour of first defendant in respect of the entire suit property. There is every chance that the plaintiff's mother and the third defendant considered the agricultural loan as a benefit for all and let it be in view of the close relationship between the parties. Moreover, it is loan under the Kisan Credit Card (KCC) Scheme which is generally sanctioned without any in-depth verification of records. In these circumstances, Ex-B.18 alone, in



isolation, does not establish any of the ingredients of ouster.

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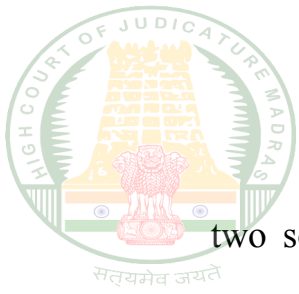
34. There has to be more solid evidence to show clear declaration of hostile animus and exclusive possession excluding the plaintiff's mother and third defendant. In the absence of such hostile animus and exclusive possession, mere payment of kist, mutation of revenue records, mutation of electricity service connection, deepening wells, reclamation of land, construction of a house in a portion of land and obtaining electricity service connection are not sufficient to prove ouster in the facts and circumstances of this case. These acts can only be considered as carried out on behalf of and for the benefit of all the co-owners, given the relationship between them, in the absence of evidence to the contrary.

35. Had the first defendant built the house in the entire extent of the suit property and obtained electricity service connection in his name, had he mortgaged the entire suit property with the knowledge of the sisters for his personal non-agricultural reasons, or had he entered into a Sale Agreement in respect of the entire suit property or any registered document excluding the sisters with their knowledge, the scenario might have been different as it shows signs of some hostile animus against the



sisters and open denial of their title. But that is not the case here. The first defendant is a co-sharer who has built a house in just a portion of the suit property and that alone is not sufficient to say that he denied the rights of his sisters in an open manner and excluded them. Being a co-sharer, he holds undivided 1/3 share in the suit property and he being the brother, the sisters might have been unbothered about the factum of him building a house in a portion of the suit property. In the facts and circumstances of this case, given that there are no pleadings as to any previous hostility between the plaintiff, defendants 1 and 3, these acts cannot be considered as significant acts. These not so significant acts which the sisters may not have questioned owing to sibling bond, love and affection, should not be confused with open declaration of hostile animus and exclusion.

36. In *Punniyavathi's Case* [cited *supra*], case of the plaintiffs is that the Suit Property is a separate property of father, who passed away in 1978 leaving behind wife, four sons and three daughters. Wife passed away in 2004. Two among the four daughters filed the Suit for partition against the rest of their siblings. Defence was that a registered partition took place on July 25, 1991 among the sons and further, on February 20, 2008, a registered partition took place among a branch of one among the



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two sons. In these circumstances, a learned Single Judge of this Court held that the plaintiff's approached the Court 31 years after the succession became open and 18 years after the partition of properties among brothers, and the very fact leads to an inference that the plaintiffs have been ousted and the possession of the defendants was adverse to that of the plaintiffs and the plaintiffs' rights got extinguished under Section 27 of the Limitation Act, 1963. Whereas, in the case on hand, there is no such registered Partition Deed or sufficient proof of ouster. Hence, *Punniyavathi's Case* is distinguishable from the instant case on facts and hence not applicable. Hence, this Court is of the view that the plea of ouster has not been established satisfactorily.

37. In short, even while keeping aside the fact that inconsistent pleas are not permissible, there is no evidence to prove the alleged oral relinquishment and there is no basis to contend that the first defendant openly denied the rights and interests of his sisters and was in exclusive possession of suit property for more than the statutory period excluding them with their knowledge. Hence, neither oral relinquishment nor the plea of ouster has been proved by the defendants 1 and 2. Hence, the rights of the plaintiff's mother and the third defendant over the suit



property were not extinguished. **Point No.(ii) is answered accordingly in favour of plaintiff and against the defendants 1 and 2.**

Point Nos.(iii) and (iv)

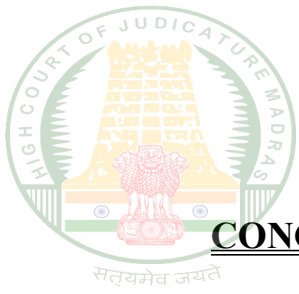
38. As stated *supra*, the plaintiff's mother was not ousted from the suit property nor was the oral relinquishment proved. Hence, the plaintiff's mother is entitled to 1/3 share in the suit property which devolved on her under Sections 8 and 15 of the H.S. Act, upon the demise of her parents. She has every right to execute Gift Settlement Deed in respect of her right in suit property or deal with her share in the manner she desires. The executant / plaintiff's mother herself has deposed before the Trial Court as P.W.2 that she executed Ex-A.6 - Gift Settlement Deed out of her free will. It is true that a co-sharer does not have right to alienate a specific portion of undivided property. Unlike Ex-A.7 - Gift Settlement Deed executed in respect of a specific extent of suit property within specific four boundaries, Ex-A.6 is executed only in respect of the plaintiff's mother's right to 1/3 undivided share in the suit property. Hence, Ex-A.6 - Gift Settlement Deed in respect of her right to undivided 1/3 share in suit property is proved and valid, and on the other hand, Ex-A.7 is not binding on the plaintiff as it has been executed in respect of a



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specific portion of land within specific four boundaries causing prejudice to the interest of the plaintiff. Thus, the plaintiff steps into the shoes of her mother and becomes entitled to seek partition of her 1/3 share in suit property. **Point Nos.(iii) and (iv) are answered accordingly in favour of plaintiff and against the defendants 1 and 2.**

39. Plaintiff and defendants 1 and 3 are co-owners/co-sharers entitled to each 1/3rd share in the suit property. It is settled law that possession of one co-owner / co-sharer is deemed to be that of the other co-owner as well. Hence, the plaintiff is deemed to be in joint possession and enjoyment of Suit Property along with defendant Nos.1 and 3. Hence, the Court Fee paid under Section 37 (2) of the Tamil Nadu Court-Fee and Suits Valuation Act, 1955 is correct and the Suit has been properly valued [See *Neelavathi -vs- N.Natarajan*, reported in *AIR 1980 SC 691*]. The Trial Court rightly held that the plaintiff is entitled to the reliefs sought for. There is no need to interfere with the same. The Appeal Suit must fail as devoid of merits.



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CONCLUSION:

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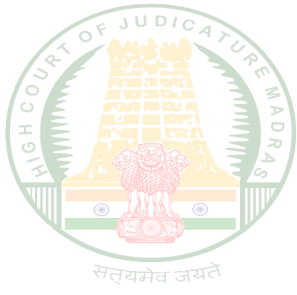
40. Resultantly, the Appeal Suit stands dismissed. The Judgment and Decree of the Trial Court is hereby confirmed. Taking into consideration the relationship between the parties, there shall be no order as to costs.

09 / 10 / 2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK/pam

To

The II Additional District Judge,
Salem.



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A.S.NO.618 OF 2018

R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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