

A.S.No.453 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Appeal Suit. No.453 of 2023

and

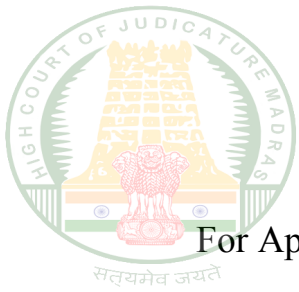
CMP.Nos.16186 of 2023

1. Chenniappan
 2. Kandhasamy
 3. Ramasamy
 4. Yasodha
 5. Minor Vidhya
Rep. By her guardian Mother Yasodha
 6. Minor Dharshini
Rep. By her guardian Mother Yasodha
- ... Appellants

Versus

1. Nanjammal
Chennimalai Gounder (died)
 2. Rangathal
 3. Baby @ Bakiyam
Muthusamy (died)
 4. Thangamani
 5. Minor Kabil
Rep. By mother/guardian Thangamani
- ... Respondents

Prayer:- Appeal Suit filed under Order XLI, Rule 1 r/w. Section 96 of Civil Procedure Code to set aside the Judgment and Decree dated 23.01.2023 made in O.S.No.386 of 2019 on the file of the learned First Additional District Judge, Coimbatore (O.S.No.797 of 2006 – II Additional Sub Court, Coimbatore).



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For Appellants

: Mr.N.Manoharan

For Respondents

: Mr.S.Venkatesh for R1
R2 and R3 Notice served
R4 – Addressee moved
R5 – minor represented by R4.

J U D G M E N T

This Appeal has been filed to set aside the Judgment and Decree dated 23.01.2023 made in O.S.No.386 of 2019 on the file of the learned First Additional District Judge, Coimbatore (O.S.No.797 of 2006 – II Additional Sub Court, Coimbatore).

2. The averments in the amended plaint in short are as follows:-

The suit schedule properties originally belonged to Kandhappa Gounder as self acquired property by virtue of registered sale deed Nos. 2734/1940, 1927/1952, 5779/1957, 3413/1955, 1663/1967 and 1698/1970. Since the date of purchase, Kandhappa Gounder has been in absolute possession and enjoyment of the schedule properties. That Kandhappa Gounder died intestate on 09.05.1970 leaving behind the Plaintiff Nanjammal and the 1st Defendant Chennimalai Gounder to succeed him to his estate. The Plaintiff is the daughter and the 1st Defendant is the son of the deceased Kandhappa Gounder. That after the death of Kandhappa



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Gounder, his legal heirs are each entitled to $\frac{1}{2}$ share in the schedule property. That for past one year the Plaintiff had been demanding the Defendant to agree for an amicable partition but the Defendant has been evading. That the Plaintiff issued a legal notice through her Counsel on 17.11.2006 and it was received by the Defendant on 23.11.2006. Since the Plaintiff did not agree to the partition, the Plaintiff has filed this suit for partition. That during the pendency of the suit the 1st Defendant Chennimalai Gounder died leaving behind the Defendants 2 to 10 as his legal heirs to succeed to his estate. That during the pendency of the suit the 7th Defendant Muthusamy died on 21.07.2017 leaving behind the Defendants 2, 11 and 12 as his legal heirs (Amended as per the order in IA No. 82/2018 dated 21.02.2018). That the parties are co-owners and are in joint and constructive possession of the suit property. That inspite of demands by the Plaintiff, the Defendants had evaded to partition the suit property, and hence the Plaintiff filed this suit for partition of the suit property, cost and other relief.

3. The 1st and 7th Defendants died during the pendency of the case and their death is recorded, and the legal heirs of the deceased 1st Defendant are already parties to the suit and the plaint was amended as per



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the order passed in I.A No. 371/2015 dated 27.01.2016.

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4. The contention in the written statement of the 1st Defendant in short is as follows:-

The suit is not maintainable and is to be dismissed. That the grandfather, Kandhappa Gounder died on 09.05.1970. That the suit property had been divided through a registered partition deed dated 19.09.1979. That since 10.05.1970 the Plaintiff had been openly excluded and the Defendants have ousted her by their continuous and uninterrupted possession and enjoyment from 10.05.1970. They have been exercising all acts of ownership, possession and enjoyment in a manner hostile to the knowledge of Plaintiff, thereby ousting the Plaintiff, and consequently she lost her share in the suit property. That the Plaintiff never exercised any right or title, had the knowledge of the exclusive possession and ouster, and did not protest or deny Defendant's assertion of a hostile title and possession; and that the Defendants have perfected their title through ouster over a period of twelve years. That the suit is not maintainable and is to be dismissed.

5. The contentions in the written statement of the Defendants 3

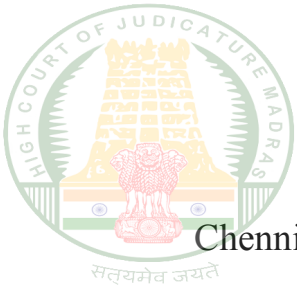


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and 4 in short are as follows:-

WEB COPY The suit is not maintainable, that the averments made in the plaint is

not admitted. That the deceased 1st Defendant Chennimalai Gounder is the brother of the Plaintiff. That Chennimalai had two wives. That the 1st wife is late Mrs Subbathal and 2 wife Rangathal is the 2nd Defendant in the suit. That the Defendants 6 to 10 are the children and grand children of the 2 Defendant Rangathal. That the Defendants 3, 4 and 5 are the sons of late K. Chennimalai Gounder born through his first wife Subbathal. That the suit properties were originally purchased by late Kandhappa Gounder the father of the 1st Defendant Chennimalai Gounder. That late Kandhappa Gounder had two children the Plaintiff Nanjammal and the 1st Defendant Chennimalai Gounder. That after the demise of Kandhappa Gounder the suit properties were under the possession and enjoyment of Chennimalai Gounder. That Kandhappa Gounder's first wife died long back. That the Plaintiff was never in possession and enjoyment of the suit properties That her marriage was solemnized 60 years back and hence the Plaintiff has no right, title or interest in the suit properties. That the suit properties were partitioned on 19.09.1970 itself during the life time of Chennimalai Gounder and that the partition deed was registered as Document No.2876 of 1979 at SRO Gandhipuram. That the partition was effected between K.



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Chennimalai Gounder and the children born to the wife Rangathal and her

grand children who are added as Defendants 6 to 10. That the property covered in A schedule has gone to the share of the children of Rangathal and Chennimalai Gounder That the property covered in B schedule has gone to the share of Defendants 3, 4 and 5/ the sons of first wife Mrs. Subbathal. That the Defendants 3 to 5 commonly enjoyed the B schedule property till 1986. That in the year 1986 the Defendants 3 to 5 partitioned the 'B' schedule properties into three portions and the partition deed of the B schedule property is registered as Document No.1988/1986, dated 28.04.1986 in SRO Gandhipuram. The Defendants 3 to 5 are now having separate patta pass book, Kandhayam receipt, and revenue receipt. That the Defendants 3 to 5 are enjoying their respective shares without any hindrance all these years. That the Plaintiff Nanjammal has no right to claim any right in the suit properties under any pretext. That the suit is to be dismissed with exemplary costs.

6. The contentions in the written statement filed by the 7th Defendant and adopted by Defendants 2 and 6 in short are as follows:-

Kandhappa Gounder died on 09.05.1970 and that the suit properties had been divided by a registered partition deed dated 19.09.1970. That



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ever since 10.05.1970, the Plaintiff had been openly excluded and ousted.

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The deed dated 09.05.1970 amounts to public notice, and the parties have been asserting hostile title and have been in continuous and uninterrupted possession and enjoyment, hostile to the knowledge of Plaintiff. As a result, Plaintiff has been ousted and lost her share. That the Plaintiff never exercised any right or title, and knew of the exclusive possession and enjoyment of the property by the Defendants, and about her ouster, but had not protested or denied the Defendant's assertion of hostile title and possession which commenced from 1970. That the title has been perfected by ouster for over 12 years. That there is no cause of action and that the suit is to be dismissed with costs.

7. Contention in the written statement filed by the 8, 9 and 10 Defendants in short are as follows:

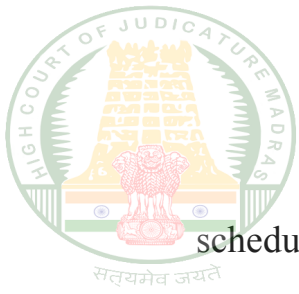
The suit is not maintainable and is to be dismissed. That the Defendants are not aware that the suit properties are the self acquired properties of the deceased Kandhappa Gounder and that the Plaintiff is the daughter and the first Defendant is the son of the Kandhappa Gounder. That the Plaintiff is not aware that the schedule mentioned property originally belonged to Kandhappa Gounder as self acquired property by



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virtue of registered sale deed Nos. 2734/1940, 1927/1952, 5779/1957
3413/1955, 1663/1967 and 1698/1970, and that since the date of purchase,

Kandhappa Gounder has been in absolute possession and enjoyment of the schedule property. That Kandhappa Gounder died intestate on 09.05.1970 leaving behind the Plaintiff and the Defendant to succeed him and his estate. That the first Defendant had partitioned the schedule properties on 19.09.1979 with his sons and they are in possession and enjoyment of their respective shares as per the schedule in the registered partition deed. That the Defendants 8, 9 and 10 are the legal heirs of deceased Arthanareeswaran the son of the deceased first Defendant Chennimalai Gounder through his second wife Rangathal and that the Defendants 8 to 10 are entitled to the respective share of Arthanareeswaran. That the Defendants 6 and 7 namely Baby and Muthusamy, and Arthanareeswaran the husband of the 8th Defendant Yasodha are the legal heirs of Rangathal the second wife of the 1st Defendant Chennimalai. That Kandhappa Gounder, the father of the 1st Defendant Chennimalai died on 09.05.1970 and that the suit properties were partitioned through a registered partition deed dated 19.09.1979. That the Plaintiff is not entitled to any share as claimed. That the first Defendant Chennimalai along with Arthanareeswaran have been allotted an extent of 18.29 $\frac{3}{4}$ acres in 'A'



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schedule of the partition deed dated 19.09.1979 and they are in possession and enjoyment of the same. That the first Defendant's son were vested with their respective shares of the properties as per the partition deed dated 1979 and are in possession and enjoyment of their share for more than 31 years. That the suit is abated and barred by limitation as the death of Kandhappa Gounder was in the year 1970. That Arthanareeswaran with the 1st Defendant Chennimalai and the 7th Defendant Muthusamy, the younger brother of Anthanareeswaran have jointly mortgaged their allotted shares in the suit property as per the partition deed dated 19.09.1979 through mortgage deed dated 18.10.2001 in Document No.2121/2001 for Rs. 15.000 and that the mortgage has not been discharged till date. That the Plaintiff having knowledge about the partition has not been in possession and enjoyment of the suit properties till the date of filing of the suit. That the Plaintiff is ousted out of the possession and does not have any right or title over the suit properties since 1979. That the Plaintiff is not entitled to any share in the suit properties. That the Plaintiff has never demanded for partition at any point of time. That the Defendant did not receive any notice from the Plaintiff. That the Plaintiff has not been in joint and constructive possession with the Defendants at any point of time. That the suit properties has been estimated improperly. That the Plaintiff is not in



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possession of the suit property and as the Plaintiff had not filed the suit seeking declaratory relief, the Plaintiff is not entitled to any relief as prayed for, that the suit is to be dismissed

8. Contentions in the written statement filed by the 11 and 12 Defendants in short are as follows

That the Defendants 11 and 12 are the legal heirs of the deceased 7 Defendant Muthusamy. That the suit properties were partitioned by metes and bounds among the 1st Defendant and Defendants 3, 4 and 5 and late Arthanareeswaran, the husband of the 8th Defendant Yasodha in 1979 and since then the parties have been in absolute and uninterrupted possession of their respective share. That thereafter the Defendants 3,4 and 5 have partitioned the property among themselves through a partition deed in 1979 and are in absolute possession and enjoyment of the suit property for almost 40 years to the knowledge of the Plaintiff. That the Plaintiff was never in possession and enjoyment of the suit properties at any point of time. That she was married off 65 years ago and was given the customary seervarisai. That the Plaintiff has been ousted by partition deed. That the Plaintiff has no right or title over the suit property. That there is no cause of action for filing the suit. That all mutation proceedings have taken place



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and the patta and other revenue records stands in the name of the
Defendants.

9. On the basis of the pleadings the following issues are framed:-

1. Whether the Plaintiff is entitled for a decree of partition and separate possession of share in the suit property as prayed for?

ii. Whether the contention of the Defendants that the Plaintiff has been ousted is correct?

Additional issues:-

iii. Whether the Plaintiff is in possession of the suit property?

iv. Whether the plaintiffs has any cause of action for the suit?

v. Whether the Plaintiff has any locus standi to file the suit?

vi. What other relief the Plaintiff is entitled to?

10. On the side of Plaintiff, the Plaintiff examined herself as P.W-1 and marked documents as Ex.A-1 to Ex.A-16. On the side of Defendants, the Defendants witness examined as D.W-1 to D.W-3 and marked documents as Ex.B-1 to Ex.B-14.



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WEB COPY 11. On hearing both sides, the learned First Additional District Judge, Coimbatore had decreed the Suit. Aggrieved, the Defendants had preferred this Appeal before this Court.

12. The learned Counsel for the Appellants, Mr.N.Manoharan, relied upon the plaint averments claiming that the plaint is vague as it is and it is not in conformity with the reported decision regarding the claim for partition. Further he would submit that on the date of filing of the suit, it is the duty of the Plaintiff to verify whether there had been encumbrances in the properties. Also it is the duty of the Plaintiff to clearly state how the properties devolved on the family.

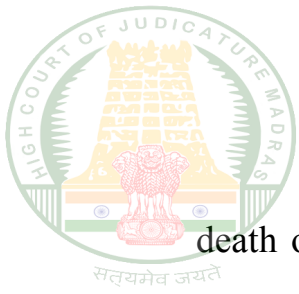
13. As per the submission of the learned Counsel for the Appellants, the properties in Items 1 to 7 were purchased by Kandhappa Gounder through the income derived from items 8 to 10 and 13. Therefore, it is not self-acquired property of Kandhappa Gounder, father of the Plaintiff. Also he relied on the partition deed under Ex.B-1 wherein the suit property was partitioned between Chennimalai Gounder and his sons, after the death of the Kandhappa Gounder.



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WEB COPY 14. Learned Counsel for the Appellants submitted that as per the genealogical tree, Kaliyappa Gounder had two sons, Kandhappa Gounder and Chennimalai Gounder.

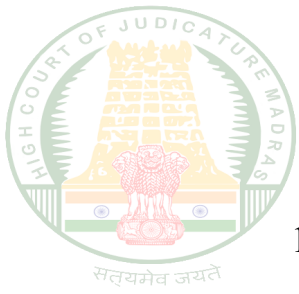
15. The dispute is between the son and daughter of Kandhappa Gounder. Kandhappa Gounder had one daughter, Nanjammal and one son Chennimalai Gounder. Nanjammal was married during the lifetime of Kandhappa Gounder. As per the then prevailing Hindu Succession Act, the women were not given any share in the immovable property particularly daughters. Therefore, the only son of Kandhappa Gounder, Chennimalai Gounder succeeded to his estate. Chennimalai Gounder had three sons through his 1st wife, Subathal. After the death of Subathal, Chennimalai Gounder married Rangathal. Through his 2nd wife, Rangathal, Chennimalai Gounder had daughter Baby @ Bakkiyam, sons Muthusamy, Thangamani, Kabilan and Arthanareeswaran. Arthanareeswaran predeceased. After the death of Kandhappa Gounder, Chennimalai Gounder, the only son of Kandhappa Gounder partitioned the properties through registered partition deed dated 19.09.1979 which was marked as Ex.B-1 during trial on the side of the Defendant, The partition under Ex.B-1 had taken place after the



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death of 1st wife and after the children of the 2nd wife attained the age of majority. Therefore, to avoid future disputes, the son of Kandhappa Gounder. Chennimalai Gounder during his lifetime wanted to amicably settle the properties in the family between the sons of 1st wife Subathal and the sons of 2nd wife Rangathal. Chennimalai Gounder, S/o Chennimalai Gounder through his 1st wife Subathal had three sons, Cheniappan, Kandhasamy and Ramasamy. After the death of Subathal, he married Rangathal. Through 2nd wife Rangathal, he had one daughter Baby @ Bakiyam and sons Muthusamy, Thangamani, Kabilan and Arthanareeswaran. Arthanareeswaran predeceased. Therefore his wife and children were impleaded as parties to the suit. The Plaintiff is the daughter of Kandhappa Gounder. She had filed suit against Chennimalai Gounder, S/o. Kandhappa Gounder. Chennimalai Gounder is the Defendant-1. The sons of Chennimalai Gounder through his first wife are Defendants 3, 4 and 5, Cheniappan, Kandhasamy and Ramasamy. The second wife of Chennimalai Gounder, Rangathal is Defendant-2. The daughter and sons of Chennimalai Gounder through his 2nd wife are the Defendants 6, 7, 11 and 12. The legal heirs of the predeceased son Arthanareeswaran, the wife and children of Arthanareeswaran are the Defendants 8, 9 and 10.

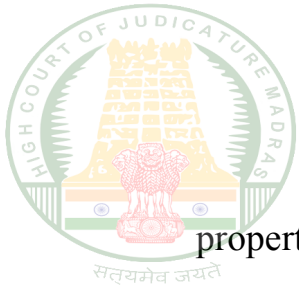


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16. The ancestral properties are Items 8 to 13 of the plaint schedule properties. From and out of the income derived from the properties in Items 8 to 13 that were allotted to Kandhappa Gounder from his ancestral properties, Kandhappa Gounder had purchased Items 1 to 7 through Ex.A-1 to Ex.A-7.

17. Items 1 to 7 were acquired by Kandhappa Gounder, the father of Plaintiff and Defendant-1. The Plaintiff had not stated or pleaded in the plaint regarding the devolution of the properties. She had given vague pleadings that Kandhappa Gounder purchased properties which are self acquired properties. However, it is not so. It is not the truth. In the partition deed under Ex.B-1, which was a registered partition deed among: Chennimalai Gounder (Defendant-1), his sons (Defendants 3-5) through his 1st wife, his 2nd wife (Defendant 2), and his sons through his 2nd wife. he had clearly stated that the properties had devolved upon him as ancestral property and as self acquired properties through his father as *Pithurajitham and swarajitham pathyam*. Therefore it is proof regarding Kandhappa Gounder father of the Plaintiff and Defendant-1 that he was allotted a share of the joint family ancestral property which are items 8 to 13 and out of which he had earned income from which he had acquired



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properties under Ex.A-1 to Ex.A-7 which are items 1 to 7. Subsequently

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Chennimalai Gounder had encumbered some of the properties during his

lifetime. Kandhappa Gounder father of the Plaintiff and Defendant-1 died

in the year 1970, death certificate of which was marked on the side of the

Plaintiff as Ex.A-8. The Defendant-1 Chennimalai Gounder died on

06.08.2009. Ex.B-5 is the death Certificate of Chennimalai Gounder

marked on the side of the Defendant. Subsequent to partition, the

registered partition between Chennimalai Gounder and his sons through 1st

and 2nd wife is marked under Ex.B-1 dated 19.09.1979. The sons of

Chennimalai Gounder had encumbered the properties that fell to their

share. Also in the year 1986, the legal heirs of the Chennimalai Gounder

had also sold few of the properties. The Plaintiff ought to have obtained

details of enjoyment of the property by obtaining encumbrance certificate

from the Sub-Registrar concerned, however, she had not done so. Had she

obtained encumbrance certificate she should have given details of the

enjoyment of the property in the plaint. If she had been diligent, she should

have impleaded the parties who had acquired some of the properties from

legal heirs of Chennimalai Gounder. She had not done so. Therefore, the

pleadings in the plaint is bereft of details. The suit is not at all maintainable

as the properties are not in the joint family. It has been partitioned and



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thus, not available for partition. It had attained the status of individual

property of the Defendants. The Plaintiff was aware of the developments in

the family and her brother Defendant-1. She had not instituted the suit on

the death of her father Kandhappa Gounder in the year 1973 under Ex.A-8.

The cause of action for the suit for partition shall arise on the death of the

Karta of the family. Usually there are no prescribed limitation for filing

suit for partition. As per Article 110 of the Limitation Act, regarding suit

for possession of immovable property the suit has to be instituted within 12

years from the cause of action. The Plaintiff ought to have filed the suit as

per Article 110 of the Limitation Act within 12 years from the date of

death of her father under Ex.A-8 dated 17.07.2006. She had instituted the

suit in the year 2019 on which date the properties were already partitioned

under Ex.B-1 dated 19.09.1979 even during the lifetime of her father.

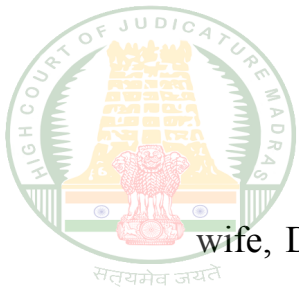
Therefore, the status of the properties had changed during the life time of

the father of the Plaintiff prior to filing of the suit in the year 2019 as the

partition has already been made among Chennimalai Gounder and his sons

through 1st and 2nd wife.

18. In the year 1979 through Ex.B-1, which is registered partition deed dated 19.09.1979, the sons of Chennimalai Gounder through his 1st

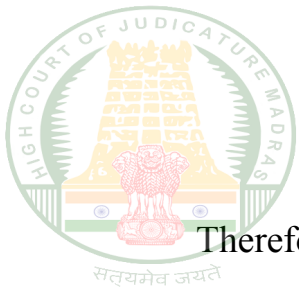


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wife, Defendant-3 and Defendant-5 had partitioned among themselves. A further partition among themselves and their children was carried out through another registered partition deed dated 28.04.1986. The revenue records were mutated as per the partition deed dated 19.09.1979 and 28.04.1986. After the partition in the year 1979, during the lifetime of Kandhappa Gounder and during the lifetime of Defendant-1, Chennimalai Gounder, Chennimalai Gounder himself had sold some of the properties. After the death of Chennimalai Gounder on 06.08.2009, some of the legal heirs had sold some of the properties that devolved upon them. As on the date of filing of the suit, there is no joint family properties available for partition.

19. The plaint pleadings are bereft of details regarding the devolution of the properties of Kandhappa Gounder and subsequently the possession of the Defendant-1 Chennimalai Gounder. During evidence, the Plaintiff as P.W-1, in her cross examination admitted that she had instituted the suit after 30 years after her marriage. Till the date of filing of the suit, she had been cordial with her brother/Defendant-1. She had been visiting her brother and his children regularly. Therefore, she cannot claim ignorance of the partition that took place in the family of her brother.



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Therefore, it is the contention of the learned Counsel for the Appellants that on the date of filing of the suit, the suit for partition is not maintainable.

20. The next contention of the learned Counsel for the Appellants is that the Plaintiff had instituted the suit by playing fraud upon the Defendants as well as the Court. If she had been diligent, she could have sought encumbrance certificate from the Registrar concerned by which she could have come to know about the encumbrance of the properties which was partitioned in the year 1979 and 1986, and about the mutation of records Ex.B-3, Ex.B-4, and Ex.B-9. The Plaintiff has suppressed two partition deeds and therefore she had played fraud on the Defendants and on the Court. On that ground, the suit is liable to be dismissed.

21. In support of his contention, the learned Counsel for the Appellants relied on the reported decision in the case of **S.P. Chengalvaraya Naidu v. Jagannath** reported in **1994(1) SCC 1**, wherein Para 6 it is held as follows:

"6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the

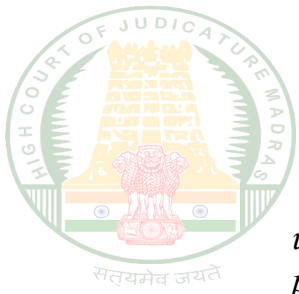


court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non- production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-Defendants could have easily produced the certified registered copy of Ex. B-15 and non- suited the Plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

22. The learned Counsel for the Appellants also relied on the reported decision of the Hon'ble Supreme Court in ***Shasidhar vs. Ashwini Uma Mathad*** reported in **2015(2) MWN 556**. When the Plaint is bereft of details, the suit of such nature is liable to be dismissed for lack of details.

In Paragraph 24 it is held as follows:

"24. We may consider it apposite to state being a well settled principle of law that in a suit filed by a co-sharerer, coparcener, co-owner or Joint owner, as the case may be, for partition and separate possession of his/her share qua others, it is necessary for the Court to examine, in the first instance, the nature and character of the properties in suit such as who was the original owner of the suit properties, how and by which source he/she acquired such properties, whether it was his/her self-acquired property or ancestral property, or joint property or coparcenery property in his/her hand and, if so, who are/were the coparceners or joint owners with him/her as the case may be. Secondly, how the devolution of his/her interest in the property took place consequent



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upon his/her death on surviving members of the family and in what proportion, whether he/she died intestate or left behind any testamentary succession in favour of any family member or outsider to inherit his/her share in properties and if so, its effect. Thirdly whether the properties in suit are capable of being partitioned effectively and if so, in what manner? Lastly, whether all properties are included in the suit and all co-sharerers, coparceners, co- owners or joint-owners, as the case may be, are made parties to the suit? These issues, being material for proper disposal of the partition suit, have to be answered by the Court on the basis of family tree, inter se relations of family members, evidence adduced and the principles of law applicable to the case. (see "Hindu Law" by Mulla 17th Edition, Chapter XVI Partition and Reunion - Mitakshara Law pages 493-547).

23. The next grounds of attack by the learned Counsel for the Appellants is that as per Section 6(1) of the Hindu Succession Act, 1956 as amended in 2005, it is stated as

"Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property, which had taken place before the 20th day of December, 2004."

24. On the date of notification of the Hindu Succession Act, as per the amended Section 6, it had been clearly stated in the Act that all disposition or alienation including any partition or testamentary disposition of the property which had taken place before 20th December 2004 shall not be disturbed. If this proviso is applied then the entire suit properties were partitioned dated 19.09.1979 marked as Ex.B-1 and the Defendants 3 to 5



also entered into another partition deed dated 28.04.1986 marked as Ex. B-

2. Therefore, in the light of non-obstante clause, the suit for partition of

the properties partitioned on 19.09.1979 is not maintainable as on the year

2019, The suit is not maintainable as held by reported decision of the

Hon'ble Supreme Court in the case of *Vineetha Sharma -vs- Rakesh*

Sharma reported in **2020 (9) SCC 1**, as follows:

"56. The daughter is treated as a coparcener in the same manner as a son by birth with the same rights in coparcenary property and liabilities. However, the proviso of sub-section (1) contains a non obstante clause providing that nothing contained in the sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of the property which had taken place before 20-12-2004.

60. The amended provisions of Section 6(1) provide that on and from the commencement of the Amendment Act, the daughter is conferred the right. Section 6(1)(a) makes daughter by birth a coparcener "in her own right" and "in the same manner as the son". Section 6(1)(a) contains the concept of the unobstructed heritage of Mitakshara coparcenary, which is by virtue of birth. Section 6(1)(b) confers the same rights in the coparcenary property "as she would have had if she had been a son". The conferral of right is by birth, and the rights are given in the same manner with incidents of coparcenary as that of a son and she is treated as a coparcener in the same manner with the same rights as if she had been a son at the time of birth. Though the rights can be claimed, w.e.f. 9-9-2005, the provisions are of retroactive application; they confer benefits based on the antecedent event, and the Mitakshara coparcenary law shall be deemed to include a reference to a daughter as a coparcener. At the same time, the legislature has provided savings by adding a proviso that any disposition or alienation, if there be any testamentary disposition of the property or partition which has taken place before 20-12-2004, the date on which the Bill was presented in the Rajya Sabha, shall not be invalidated.



67. *The proviso to Section 6(1) and Section 6(5) saves any partition effected before 20-12-2004. However, Explanation to Section 6(5) recognises partition effected by execution of a deed of partition duly registered under the Registration Act, 1908 or by a decree of a court. Other forms of partition have not been recognised under the definition of "partition" in the Explanation.*

68. *The daughter would step into the coparcenary as that of a son by taking birth before or after the Act. However, daughter born before can claim these rights only with effect from the date of the amendment i.e. 9-9-2005 with saving of past transactions as provided in the proviso to Section 6(1) read with Section 6(5).*

76. *It was argued that in case Parliament intended that the incident of birth prior to 2005 would be sufficient to confer the status of a coparcener, Parliament would need not have enacted the proviso to Section 6(1). When we read the provisions conjointly, when right is given to the daughter of a coparcener in the same manner as a son by birth, it became necessary to save the dispositions or alienations, including any partition or testamentary succession, which had taken place before 20-12-2004. A daughter can assert the right on and from 9-9-2005, and the proviso saves from invalidation the above transactions.*

77. *It was argued that in the eventuality of the death of a father or other coparcener, the parties would have not only partitioned their assets but also acted in pursuance of such partition. However, partitions have been taken care of by the proviso to Sections 6(1) and 6(5). Parliament has not intended to upset all such transactions as specified in the proviso to Section 6(1)."*

25. The above position of law in ***Vineetha Sharma case*** was followed by the Hon'ble Division Bench of this Court in ***P.Hema Malini -vs- Palani malai*** reported in **2022 (5) CTC 639 (DB)**.

26. The learned Counsel for the Appellants also attacked the



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judgment of the learned trial Judge who relied on the evidence of the Plaintiff as P.W-1. She admits that she had been living away from the suit

property for more than 30 years and she used to visit her brother, Defendant-1. In her evidence, she had admitted that her father died in the year 1973 and she used to visit her brother regularly. She admitted that her brother's sons have been cultivating in the properties. To the suggestion that the Defendants had been enjoying the properties as their properties, she claimed that she did not visit them which gives a presumption that she had been ousted from the joint family status.

27. It is the contention of the learned Counsel for the Appellants that even though no specific period of limitation has been provided for filing a suit for partition, the Plaintiff's right is barred by Article 110 of the Limitation Act r/w. 27 of the Limitation Act. The Defendants had exercised their exclusive possession and enjoyment all these years. Thereby ousted the Plaintiff by way of (1) declaration of hostile animus; (2) long and uninterrupted possession (3) exercise of right of exclusive ownership openly to the knowledge of Plaintiff.

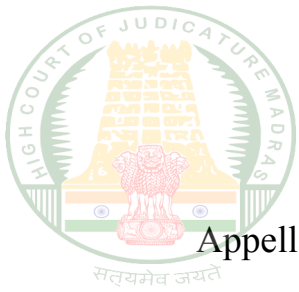
28. It is the contention of the learned Counsel for the Appellants



that first Respondent as Plaintiff had full knowledge about the division of property and encumbrances made therein. In order to conceal the truth, the Plaintiff had not produced encumbrance certificate. The oral and documentary evidence include additional evidence filed in C.M.P.No.28336 of 2024 exposed and exemplified that the Petitioner had lost her right over the properties as she was in deep slumber for three decades and thereby, had lost her right by ouster.

29. It is the contention of the learned Counsel for the Appellants that from the pleadings and evidence on record, the properties were partitioned under Ex.B-1 are ancestral in nature. The recitals in Ex.B-1 reads “காலஞ்சென்ற கந்தப்ப கவுண்டருக்கு பிதுராஜித வரையிலும்”. Admittedly Kandhappa Gounder died on 09.05.1973. The Plaintiff had been out of possession from the date of her marriage in the year 1951 or atleast from the date of death of her father. Roughly for more than 30 – 50 years, she had been out of possession. Therefore it is clear that the Plaintiff had lost her right to the property, because of her default and inaction.

30. In support of the contention of the learned Counsel for the



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Appellants regarding the plea of limitation for filing suit for partition and

for the claim of ouster, the learned Counsel for the Appellants relied on the

following reported decisions in the case of **Pangu @ Apputty -vs-**

Narayani reported in **2014 (15) SCC 432**, wherein it is held as follows:

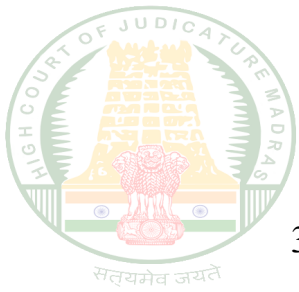
“34. Therefore, based on the abovementioned cases, it is clear that Plaintiff 1 and Defendants 10 to 17 have lost their title to the suit schedule properties essentially because of their default and inaction, which has stretched over a period of more than 50 years. Thus, their rights were lost by operation of law and doctrine of adverse possession.

35. The High Court held that the daughters of Valli alone would be entitled to the suit properties but the trial court has held on the basis of evidence on record that they were excluded from possession by their brothers for more than 50 years from the date of death of Valli. Hence, their rights, if any, are lost by adverse possession and by ouster and their claim is barred by limitation.”

31. And in the case of **Ibramsa Rowther -vs- Sheik Meerasa**

reported in **AIR 1972 MAD 467**, wherein it is held as follows:

"The theory of lost grant is applicable to support long continued possession for a considerable length of time and the most important element in presuming ouster is the time factor or the length of time of sole and exclusive possession by one co-owner. If a co-owner does not assert his rights for a considerable length of time with the result that the other side is handicapped, by lapse of time and disappearance of evidence, from proving that his exclusive possession was coupled with open denial and open repudiation of the title of the other co-owner either at the inception or subsequently, the co-owner who has been inactive must take the consequence for the long delay in bringing the suit which has prejudiced the other side and occasioned the loss of evidence by lapse of time."



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32. The other reported decision relied by the learned Counsel for

the Appellants is ***Thangavel vs Dhanabaghyam*** reported in **2020 (6) CTC**

181 wherein it was observed as:

“28. Now, reverting to the facts of the case in hand the evidence before us clearly show that prior to issuance of pre-suit notice dated 30.06.1993 (Ex. A-7) at no point of time the plaintiffs asserted their right over the estate of the deceased. Between 1967 to 1993 for 26 long years, they were silent and inactive. They did not repudiate the hostile assertion of the Defendants. They did not claim the death benefit of Thangaraj in the year 1967. They did not sought for partition in the year 1976 when the succession opened on the death of PadaikathuOdaiyar. They did not claim any right over the property of Manikathammal soon after her death in the year 1986. They have not placed any evidence before this Court to prove they were in joint enjoyment of the property at some point of time. Contrarily, there are material evidence placed by the Defendants, to assert they were in exclusive enjoyment of the suit properties as their own and dealing it absolutely with the knowledge of the plaintiffs. Few properties mentioned in the plaint schedule were alienated long back but the plaintiffs are not even aware of those alienation. This reinforce the view that the plaintiffs were never in joint enjoyment or administration of the suit properties. Their ouster from possession is both constructive as well as physical. The Defendants over a long period of time been in exclusive possession of the properties open, visible and notorious, adverse to the interest of the plaintiffs.”

33. The same legal position is held in the reported decision in the

case of ***Punyavathi and Others -vs- Pachaiaammal and others*** reported in

2022 (4) CTC 590, in which it is held as follows:

“21. Strangely, in this case, the suit for partition filed by two daughters 31 years after the demise of their father, when succession open. No material placed by the plaintiffs to show that they were in joint enjoyment, along with their four brothers and sister either before the father's demise or after that. The plaintiffs



visit to the brother's house or parents house only indicates the cordial relationship with the brothers and not their animus over the father's property. Having allowed the brothers to enjoy the property exclusively without any protest or claim for more than 12 years, the conduct of the Plaintiff gains significance. The partition deed dated 25.07.1991, among the brothers was effected under Ex. A.1 nearly 13 years after the demise of the father in the year 1978. Thereafter, the present suit is filed 18 years after the partition. Meanwhile, one of the son has divided the property among his legal heirs under Ex. B.2, dated 20.02.2008.

24. Applying the above principles to the instant case, this court finds that the conduct of the plaintiffs approaching the Court 31 years after opening of succession and 18 years after the division of properties among the brothers naturally leads to an inference that they have been ousted and with their knowledge the Defendants were in enjoyment of the property exclusively adverse to the plaintiffs for more than the period prescribed under Article 65 of the Limitation Act which prescribes 12 years period as limitation for possession of immovable property or any interest therein based on title. The time from which the period begins to run, is when the possession of the Defendant becomes adverse to the Plaintiff. Therefore, their right gets extinguished under Section 27 of the Limitation Act, 1963, which reads as below:-

27. Extinguishment of right to property:-

At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."

25. The plaintiffs as co-sharer had not produced any evidence to show that they had animus to possess the property and it is highly improbable to believe that they had no knowledge about the partition effected between the brothers in the year 1991 and the subsequent partition among one of the sharer in the year 2008. Therefore, this Court finds no error in the conclusion of the trial Court judgment in dismissing the partition suit filed by the plaintiffs, the appeal suit is dismissed. Taking into consideration the relationship between the parties, there shall be no order as to costs."

34. The same legal position was held in the reported decision in



the **Vellapandian @ Thanga Arumugasamy naicker v. Duraiyappan and**

Others reported in **2022 (2) MWN 109** wherein it has been held as under:

"8. It is an admitted fact that the suit schedule properties are belonged to one Kathirvelsamy. The relationship between the parties are also admitted. The said Kathirvelsamy died in the year 1972 as per the written statement, but, no death certificate was filed. As per plaint, he died 15 years before from the date of filing of the suit. The 1st respondent/Plaintiff has also not filed death certificate.

9. During the evidence of P.W.1, she has admitted that her grandfather died 15 years before and she got married 50 years before. Her father also died 25 years back and she has also admitted that her father may died in the year 1972.

10. Only, the 1st respondent/Plaintiff has to prove the case that she has jointly enjoyed the properties in common, but, no proof has been filed by the her for possession. Further, the contesting parties before the Court below have pleaded that the rights of the 1st respondent/Plaintiff was ousted. Therefore, it is a bounden duty of the 1st respondent/Plaintiff to prove the joint possession.

11. On the other hand, the contesting respondents herein have possessed separate Patta from the year 1985. But, the 1st respondent/Plaintiff has filed the suit only in the year 2004.

13. The 1st respondent/Plaintiff got married 50 years back. Even during the life time 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 rights. Joint possession has also not proved, but, she has residing in a nearby place.

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 follows:

"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) LR611A 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, 140]). 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.”*

35. As per the reported decision of this Court in the case of **T.A. Yuvaraj -vs- T. Balakrishnan** reported in **2010(7) MLJ 52**, it is held that the suit for partition filed after three decades is barred by limitation. Also, the learned Counsel for the Appellants submitted that the Plaintiff had deliberately undervalued the suit under Section 37(2) of Tamil Nadu Court Fee and Suit Valuation Act, 1955 instead of Section 37(1). It is to be noted that nowhere in the plaint, she had pleaded that she was and is in



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joint constructive possession and enjoyment of the suit property along with the Defendants. Therefore it is to be treated that she was aware that she was excluded from possession as found in Section 37(1). The Plaintiff cannot be permitted to value the suit under Section 37(2). The evidence of the Plaintiff as P.W-1 would expose that she had been excluded for more than 30 – 50 years. Therefore the Plaintiff ought to have been non suited for deliberately undervaluing the suit property. The learned trial Judge had not considered the above legal and factual position on the basis of stray admission made by D.W-1 in cross examination to a suggestion by the learned Counsel for the Plaintiff that the Plaintiff is entitled to half share in the property, replied that the Plaintiff shall pay the mortgaged amount and claim as per law. This statement was relied upon by the learned trial judge to decree the suit, which is not proper, and is perverse. Therefore, the judgment and decree of the learned I Additional Judge, Coimbatore in O.S.No.386 of 2019 dated 23.01.2023 is perverse and is to be set aside. The suit of the Plaintiff is to be dismissed.

36. The learned Counsel for the Respondents submitted that with regard to item Nos.1 to 7 that is Ex.A-1 to Ex.A-7, these were originally filed in the Plaint by the first Respondent in O.S. No.797 of 2006 pending



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before the Sub Court, Coimbatore. During the course of the hearing, the 1st

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Respondent came to know about item Nos.8 to 13 which were also the properties of Kandhappa Gounder. On coming know about the properties of Kandhappa Gounder, the first Respondent immediately filed I.A. No.82 of 2018 including the item Nos.8 to 13 properties belonging to Kandhappa Gounder in the plaint OS No. 797 of 2006 later changed as O.S. No. 386 of 2019. The IA No. 82 of 2018 was filed under Order VI Rule 17 of CPC. The Appellants/Petitioners did not oppose or object the inclusion of Item Nos. 8 to 13 properties as the properties of Kandhappa Gounder. Therefore the trial Court allowed the application No.82 of 2018 in O.S.No.797 of 2006 later changed to No.386 of 2019 on 21.02.2018.

37. The learned Counsel for the Respondents submitted that therefore items 8 to 13 were considered only as the properties of Kandhappa Gounder and this was also not disputed by the appellants in the trial. Therefore the appellants cannot take new plea that these properties were ancestral properties of Kandhappa Gounder, and even assuming these properties are ancestral properties of Kandhappa Gounder, the first Respondent is entitled for half share and the appellants are also entitled for half share. And no prejudice will be caused to the appellants by including



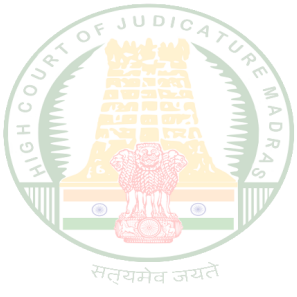
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these properties and further the inclusion of these properties will not change or alter the decree and judgment rendered by the Court below.

Regarding item No.11 provided by the appellants in the schedule, they have mentioned that the property was purchased by D3, D4 & D5 and late Arthanartheeswarar and subsequently 1.10 acres were sold on 30.06.1980 in document No.2450/1980 which is also shown in the list and additional document No.2. The said averment made by the appellants is totally untrue and misleading for the reasons mentioned below.

38. The learned Counsel for the Respondents submitted that item No.11 property which is found in S.Nos.608/2, 609/3, 610/3 to a total extent of 5.27 acres is the property belonging to Kandhappa Gounder. On reading the recitals of sale deed in document No.2450 of 1980

“1980ம் வருடம் சூன் மாதம் 30ந் தேதி கோயமுத்துர் தாலுகா வெள்ளாணைப்பட்டி கிராமம் கஸ்பா 3/5 வீட்டில் வசிக்கும் குடித்தனம் கணபதிக் கவுண்டர் குமாரர்கள் மசக் கவுண்டர் (1) ஆறுமுகம் (2) ஆகிய உங்கள் இருவருக்கும் சையூரிலிருக்கும் 4/9 & B நெ. வீட்டில் வசிக்கும் குடித்தனம் கந்தப்ப கவுண்டர் குமாரர் சென்னிமலைக் கவுண்டர் (1) ஹையார் மக்கள் மைனர்கள் சுமார் 14 வயதுள்ள அத்தனாரி ஈஸ்வரன் (2) சுமார் 8 வயதுள்ள முத்துச் சாமி (3) மேற்படி 2, 3 லக்கமிட்ட மைனர்களுக்கு கார்டியனும் தகப்பனுமான மேற்படி 1 லக்கமிட்ட சென்னிமலைக் கவுண்டர் தனக்காகவும் மைனர்களுக்காகவும் சேர்ந்து எழுதிக் கொடுத்த கிரய சாசனம் எங்களுக்கு 19.09.1979 தேதியில் பாகசாசனம் எழுதி காந்திபுரம் SRO 2876/1979 நெம்பராக ரிஜிஸ்டர் ஆகி இருக்கும் பாக சாசனப்படி பாத்தியப்பட்ட இதனடியில்



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கண்ட சொத்துக்களை தங்களுக்கு ரூ.2420.00க்கு கிரயம் செய்து
கொடுத்து.”

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39. Therefore, from reading the recitals of document No.2450 of 1980 it is quite clear and apparent that the appellants have sold the above mentioned property to Arumugam and Macha Gounder.

40. The learned Counsel for the Respondents submitted that from reading the recitals of the document, it is clear that they have sold the property on the basis of 19.09.1979 partition deed entered among themselves which was registered as document No.2876 of 1979 and the said documents were marked as Ex.B1 to B3. The court below has rightly held that the properties mentioned in the partition deed are the properties belonging to Kandhappa Gounder and further the first Respondent was denied her share and she was also not aware of the partition deed. The said document partition deed was considered as a secret document between the family members Chennimalai Gounder excluding the first Respondent and the document is also not binding on the first Respondent. The Appellants has not produced any document to show that they had purchased item No.11, independently or individually. Therefore the averment that item No.11 was purchased by D3, D5 & D7 is an incorrect statement and



misleading statement. The appellants has mentioned item No.12, in the
WEB CON schedule was purchased by D1 in 1967 in S.No.688/3 and S.No.689/2 and
subsequently it was sold in document No.515/1981 which is mentioned in
additional document No.3. The said statement made by appellants is totally
untrue and misleading for the reasons given below. On reading the recitals
of document No.515/1981 it is extracted below:-

“1980ம் வருடம் பிப்ரவரி மாதம் 10ந் தேதி கோயமுத்துர்
தாலுகா வெள்ளாணைப்பட்டி கிராமம் கஸ்பாவிலிருக்கும் குடித்தனம்
சின்னதம்பிக் கவுண்டர் குமாரர் சுப்பணகவுண்டருக்கு மேற்படி தாலுக்கா
வெள்ளாணைப்பட்டி கிராமம் கஸ்பாவிலிருக்கும் குடித்தனம் கந்தப்ப
கவுண்டர் குமாரர் சென்னிமலைக் கவுண்டர் (1) ஹையார் மக்கள்
மைனர்கள் சுமார் 15 வயதுள்ள அத்தனாரி ஈஸ்வரன் (2) சுமார் 9
வயதுள்ள முத்துச் சாமி (3) மேற்படி 2, 3 லக்கமிட்ட மைனர்களுக்கு
கார்டியனும் தகப்பனுமான மேற்படி 1 லக்கமிட்ட சென்னிமலைக்
கவுண்டர் தனக்காகவும் மைனர்களுக்காகவும் சேர்ந்து எழுதிக்
கொடுத்த கிரய சாசனம் எங்களுக்கு 19.09.1979 தேதியில் பாகசாசனம்
எழுதி காந்திபுரம் SRO 2876/1979 நெம்பராக ரிஜிஸ்டர் ஆகி
இருக்கும் பாக சாசனப்படி பாத்தியப்பட்ட.”

Therefore, from reading the recitals of document No.515 of 1981 it
is quite clear and it is apparent that the appellants have sold the above
mentioned property to Chinnathambi son Subbanna Gounder.

41. The learned Counsel for the first Respondent submitted that
the Appellants had not produced any document to show that the Appellants
had purchased item No.12, independently or individually by D1. Therefore,



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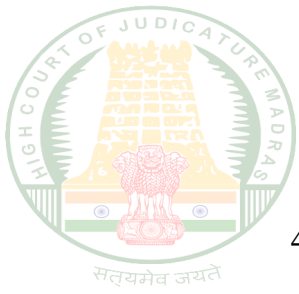
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the averment made that item No.12 was purchased by D1 is an incorrect statement and misleading statement. The Court below has well considered all the items starting from Item No.1 to item No.13 as properties of Kandhappa Gounder for which the share was denied to the first Respondent by the Appellants and court below had rightly granted half share in the entire property belonging to Kandhappa Gounder starting from Item No.1 to 13. The Appellants had mentioned that some of the properties have been sold to third parties and cannot be and need not be agitated in the preliminary decree for determining the share. On seeing the item No.1 to 13 the shares which are entitled for the first Respondent is safe and unaffected.

Point for determination:

Whether the Suit filed by the Plaintiff for partition of the property of the father Kandhappa Gounder is maintainable as per Section 6 of the Hindu Succession Act as amended in 2005?

42. Heard the learned Counsel for the Appellants Mr.N.Manoharan and the learned Counsel for the first Respondent Mr.Venkatesh.



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43. Perused the original records in O.S.No.386 of 2019, previously numbered as O.S.No.797 of 2006 on the file of the learned Second Additional Sub Judge. In a Suit for partition, the Defendants also have the same burden of proof as that of the Plaintiff. The positions are interchangeable. Here, the Plaintiff is an illiterate woman. As per the plaint, the Suit properties are the self-acquired properties of her father, Kandhappa Gounder. He had purchased the Suit properties through registered sale deed vide Doc. No.2734 of 1940, 1927 of 1946, 2341 of 1952, 5779 of 1957, 3413 of 1955, 1663 of 1967, and 1698 of 1970, and he had been in absolute possession and enjoyment of the property. The father of the Plaintiff died intestate on 09.05.1970 but as per Ex.A-8, death certificate of Kandhappa Gounder, the date of death is 09.05.1973, leaving behind the Plaintiff and the Defendant to succeed him and his estate. Therefore, as the legal heir of the deceased, the Plaintiff is entitled to half share in the scheduled mentioned property as it is the self-acquired property of Kandhappa Gounder. The Plaintiff demanded partition, the Defendant denied the same. Therefore, she had instituted the Suit in the year 2006. In the written statement filed by the first Defendant, it is stated that after the death of father/Kandhappa Gounder, the first Defendant had executed a partition deed dated 19.09.1979 whereby he had divided the

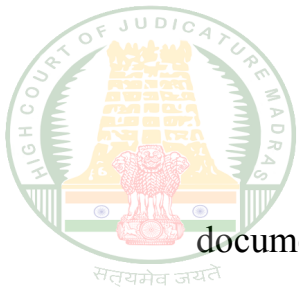


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property between him and his sons on 19.09.1979. He had two wives. The first wife is Subathal and the second wife is Rangathal. The children of the Chennimalai Gounder had again partitioned the property in the year 1986 as per partition deed dated 28.04.1986. Therefore, before filing a Suit, she has to implead the legal heirs of Chennimalai Gounder through his first wife and his second wife. The Suit is filed after the date of partition deed. Therefore, the Suit is not maintainable. The parties to the partition deed had been enjoying the properties as their separate properties and revenue records had been mutated in their names. Now, after 27 years, Suit for partition is not maintainable. The brother of the Plaintiff had two wives namely Subbathal and Rangathal, and immediately, after the death of the father, Chennimalai Gounder had partitioned the property in the year 1979 with the sons of the first wife, his second wife, and sons and daughter of the second wife. Again in the year 1986, the children of the first wife in turn divided the property with specific shares.

44. On perusal of the evidence of the Plaintiff as P.W-1, it is found that she is an illiterate woman. She had deposed evidence reflecting the averments in the Plaint. During her cross-examination, she stated that instructions to the Counsel for the Plaintiff was given by her sons. The



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documents through her are marked as Ex.A-1 to Ex.A-10. The documents marked as Ex. A-1 to Ex. A-7 were obtained by her son viz., certified copies of the sale deeds dated 05.06.1940, 29.04.1946, 23.07.1952, 09.12.1957, 31.08.1955, 24.11.1967, and 31.10.1970. To the suggestion that she had been married off, and that she was not in possession of the Suit properties after the death of her father, and that her elder brother had partitioned the property among his sons through his first wife and second wife, the fact which the Plaintiff knew very well, was denied by her during cross-examination. The suggestion was put to her that she had filed the Suit after a long time after the death of her father and after the partition deed executed among the brother of the Plaintiff along with his sons through first wife and second wife, the Plaintiff denied the suggestion that the properties were partitioned. The suggestion that she was not entitled to file a Suit for partition was denied by her. The first Defendant in the Suit died during pendency of the trial. His son Chenniappan/third Defendant had examined himself as D.W-1. In the course of the evidence, he had filed affidavit as examination-in-chief which are averments already stated in the written statement of first Defendant. D.W-1 was cross-examined by the Plaintiff. In the cross-examination, D.W-1 admits that the properties are self-acquired properties of Kandhappa Gounder, the father of the



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Plaintiff and the first Defendant. On the date of partition, there is no

recitals in the partition that the daughter of Kandhappa Gounder was given

any share or partition document had not been brought to the knowledge of

the Plaintiff Nanjammal had been admitted by him. When it was

suggested that she is also entitled to her share, the answers given by D.W-1

in cross-examination was that if she is entitled, she can get it from the

Court. If she gets it from the Court, she is also liable to pay her share of

the debt. To the suggestion whether the Plaintiff's signature or thumb

impression was obtained in the partition deed, he answered in the negative.

The burden is upon the Defendant equal to that of the Plaintiff in the Suit

for partition. D.W-1 had denied the suggestion and he claimed ignorance

that in self-acquired property, the daughter is also entitled to share as that

of the son. To the specific suggestion that the partition deed under Ex.B-1

was executed behind the back of the Plaintiff, he claims ignorance. To the

specific question, whether the Plaintiff was put on notice regarding

execution of the partition deed seeking mutation of revenue records in the

name of the parties to the partition deed, he had claimed ignorance. The

suggestion was put forth that the partition deed under Ex.B-1 and Ex.B-2

are not binding on the Plaintiff as she has no objection and that it was not

executed with the knowledge of the Plaintiff, his answer was that if she is



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entitled to share, she has the burden to clear the loan obtained by the Defendant. To the pointed question whether the loans were obtained during the lifetime of the father, D.W-1 answered that it was obtained by D.W-1. On the date of partition under Ex.B-1, there were no liabilities and debts. Under those circumstances, the evidence of D.W-1/Chennaiappan, the son of the first Defendant is against the Defendants. From the documents, it is found that the Plaintiff did not have knowledge of the partition. The answer given by D.W-1 was evasive answers.

45. On perusal of the records, it is found that in the partition deed was executed between first Defendant and his sons, he had not allotted any share to his sister.

46. As far as the coparcener joint family properties are concerned, the sons are entitled. But in self-acquired properties, the daughters are also entitled. It is a specific case of the Plaintiff that the properties were self-acquired properties of the father, Kandhappa Gounder.

47. As far as partition is concerned, there is no specific period of limitation. The only contention raised in the written statement by the



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Defendants 1, 3 to 5, 7 who had filed the written statement is that the claim

of the Plaintiff has been ousted. The ouster is a difficult proposition to be

proved before the Court as the party who claims ouster has to prove. Here,

in the cross-examination, D.W-1 was unable to prove that the Plaintiff had

knowledge of the partition either in the year 1979 or in the year 1986. She

had agitated her right in the year 2006, after 27 years. That cannot be a

reason to deny her rightful share. The claim of the Defendants that based

on partition deed under Ex.B-1 and Ex.B-2 and rectification deed under

Ex.B-3, they had encumbered the properties. The purchaser of the property

had instituted the Suit in the year 2024 cannot be held against the Plaintiff.

It is the duty of the first Defendant and his sons to put the Plaintiff on

notice. Even when the notice dated 17.11.2006 was sent by the Plaintiff

prior to the filing of the Suit, it was not replied by the Defendants. As the

Defendants wanted to suppress that after the 2005 amendment, wherein the

Plaintiff as a Hindu woman is entitled to claim share in her father's

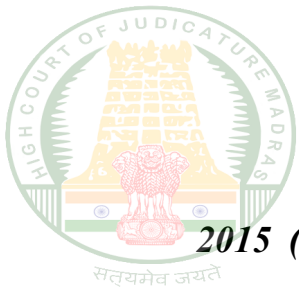
property. The Defendant had without knowledge of the Plaintiff created

partition among themselves which are self-serving documents which will

not bind the Plaintiff. The ruling cited by the learned Counsel for the

Appellants in (i) ***S.P.Chengalvaraya Naidu Vs. Jagannath*** reported in

1994 (1) SCC 1; (ii) ***Shasidhar Vs. Ashwini Uma Mathad*** reported in



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2015 (2) MWN 556; (iii) *P.Hema Malini Vs. Palanimalai* reported in
WEB C 2022 (5) CTC 639 (DB) and (iv) *Ibramsa Rowther Vs. Sheik Meerasa*
reported in ***AIR 1972 MAD 467*** will not help the case of the Defendants herein.

48. The ruling cited by the learned Counsel for the Appellants regarding ouster is not applicable to the facts of this case, as the illiterate woman was under the impression that she is in joint possession of the property. The fact is that the partition took place in the year 1979 was not informed not brought to the knowledge of the Plaintiff, and even after the issuance of notice to the Defendants seeking partition under Ex.A-9, though it was acknowledged by the Defendant but no reply was given. The only defence of the Defendants is that it is a ouster based on partition. When the partition in the year 1979 itself had not been brought to the knowledge of the Plaintiff, the claim of ouster cannot be accepted. The ouster is akin to adverse possession. It is to the knowledge of the party who claims title to the property. The person claiming adverse possession has to prove it that it is hostile to the knowledge of the owner of the property or the rightful claim of the person. As far as family properties are concerned, they are presumed to be in possession. Here the daughter of



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Kandhappa Gounder had filed the Suit for partition. Before filing the Suit,

she had made repeated request to Chennimalai Gounder/elder brother of

the Plaintiff seeking partition. He did not answer or deny it. He evaded it.

Therefore, she was forced to issue notice under Ex.A-9, it was

acknowledged but no reply was sent. Therefore, the claim by the

Defendants that the right accrued on the Defendants had become hostile

under the Ex.B-1 to Ex.B-3 and against the right of the Plaintiff will not

hold good. The reasoning of the learned first Additional District Judge,

Coimbatore is found acceptable. The observation of the learned Judge was

that the secret alienation cannot be taken into ground for deciding

limitation. It is the clear admission of the Defendants 1 to 3 that the

Plaintiff did not have the knowledge regarding partition. She is not a party

to Ex.B-1 and thus, there ends the matter. In the light of specific

admission, the claim of the Defendants relying on the ruling will not help

the Appellants/Defendants before the trial Court. The Judgment of the

learned first Additional District Judge granting preliminary decree of $\frac{1}{2}$

share holds good to the Plaintiff in the light of the Hindu Succession Act,

(Amendment), 2005. If the Defendants had obtained signature or granted a

share to the Plaintiff or money equal to her share at the time of partition,

the Defendants can claim that they had acted fairly. The Defendants in this



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case had not acted fairly. Therefore, the claim that the Suit itself is to be dismissed as it is filed beyond the period of limitation will not hold good in the facts of this case. It is a clear admission of the Defendants 1 to 3, in their evidence that the Plaintiff had no knowledge and the Plaintiff is not a party to Ex.B-1 and Ex.B-2. Under those circumstances, the claim of the Plaintiff cannot be rejected by the Court that she had approached the Court belatedly, when there is no specific time limit for claiming partition.

49. On perusal of the Judgment of the learned first Additional District Judge, Coimbatore in O.S.No.386 of 2019 originally filed as O.S.No.797 of 2006, it is a well-reasoned Judgment and not erroneous or perverse as claimed by the Appellants/Defendants.

50. In the reported ruling in the case of *Vineeta Sharma Vs. Rakesh Sharma reported in 2020 (9) SCC 1*, the first Defendant's claim that the Suit is hit by non-joinder of party as the suit property had been partitioned in the year 1979 between the sons of the Defendant through his first and second wife. Pending suit, the Defendant died. Therefore, all the legal heirs of the sole Defendant were impleaded by the Plaintiff. Therefore, the question of non-joinder will not arise. After impleadment,



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each of them filed written statement. In all the written statements, the claim of the partition is stated but the D.W-1 to D.W-3 had in their cross-examination admitted that the Plaintiff was not a party to the partition deed. The Plaintiff was not informed of the partition. Therefore, the observation by the learned trial Judge granting preliminary decree on the ground that she was not a party to the partition and that she was not informed of the partition by the Defendants holds good. The Plaintiff had sought a partition of her father's self-acquired property and not the ancestral coparcenary property. Therefore, the submissions of the learned Counsel for the Appellants will not hold good to the facts of this case.

51. The argument of the learned Counsel for the Appellants is rejected in the light of the evidence available before the trial Court through D.W-1 to D.W-3.

52. In the light of the above discussions, **the point for determination is answered against the Appellants/Defendants and in favour of the first Respondent/Plaintiff.**

In the result, this *Appeal Suit is dismissed as having no merits.* The



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Judgment and Decree dated 23.01.2023 made in O.S.No.386 of 2019 on

the file of the learned First Additional District Judge, Coimbatore

(previously numbered as O.S.No.797 of 2006 on the file of the II Additional Sub Court, Coimbatore) is confirmed. No costs. Consequently connected Miscellaneous Petition is closed.

30.06.2025

dh

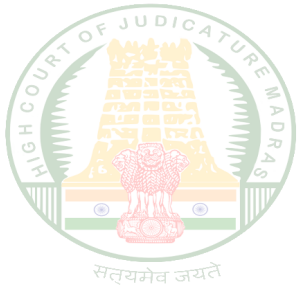
Index : Yes/No

Internet: Yes/No

Speaking/Non-speaking order

To

1. The First Additional District Judge,
Coimbatore.
2. The Second Additional Sub Judge,
Coimbatore.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.,

dh

Judgment made in
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30.06.2025