



S.A.No.1021 of 2019 and C.M.P. No.21940 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	09.07.2025
Pronounced on	02.09.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.1021 of 2019 and
C.M.P. No.21940 of 2019

1. Viswanathan
2. Karuppannan @ Saminathan
3. Arumugam
4. Kalaiselvi
5. Mahalakshmi

...Appellants

Vs.

- 1.Chandra
2. V. Loganathan

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment made in A.S. No.32/2018, dated 27.03.2019, on the file of the I Additional District Court, Salem, confirming the judgment and decree as made in O.S. No.202/2016, dated 22.03.2018, on the file of the Principal Subordinate Court, Salem.



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For Appellants : Mr. S. Vediappan
for Mr. R. Karthikeyan
For Respondents : Ms. G. Sumitra
for Mr. V. Praksah Babu for R1
R2 - No appearance.

JUDGMENT

This appeal is directed against the judgment and decree dated 27.03.2019 made in A.S. No.32/2018 on the file of the I Additional District Court, Salem, confirming the judgment and decree dated 22.03.2018 made in O.S. No.202/2016 on the file of the Principal Sub Court, Salem.

2. The defendants 1 to 5 in O.S. No.202/2016 are the appellants herein. The suit in O.S. No.202/2016 was filed by the plaintiff therein seeking partition and separate possession of her 1/7th share in the suit properties.



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3. For the sake of convenience, the parties are referred to as per their ranking in the trial court.

4. According to the plaintiff her father Vadivel Asari had two wives namely, Angammal and Pachiammal. The first wife Angammal had no issues. The plaintiff and the defendants were born to the said Vadivel Asari and Pachiammal. The suit properties are self acquired properties of Vadivel Asari through a sale deed dated 14.03.1956 and a settlement deed dated 12.10.1959. The said Vadivel Asari died intestate on 25.07.1981. When the plaintiff demanded for partition, the first defendant refused the same by stating that the suit properties were already partitioned on 08.11.1990 through a partition deed (Ex.A1) vide document No.2757/1990. The plaintiff states that the said partition deed was executed excluding the plaintiff and therefore, the same is not binding on the plaintiff. Hence, the plaintiff sent a legal notice (Ex.A2) on 14.03.2016 to the defendants, for which there was no response from the defendants. Hence, the plaintiff was constrained to file the above suit



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5. The defendants together resisted the claim of the plaintiff by stating that after the death of Vadivel Asari, the first defendant took care of the entire family. The plaintiff was married in the year 1971 and at that time the first defendant was only 15 years old. Since Vadivel Asari, the father of the plaintiff and the defendants, was unwell, the 1st defendant had to take care of the family. They have mortgaged the properties in order to maintain the family and the same was redeemed by the first defendant alone. He has conducted the marriage of his younger sister and brothers. In the year 1990, there was a talk in the family about partitioning the properties for which the plaintiff did not agree initially. Later on, by the intervention of one Rathinam, the plaintiff received a sum of Rs.10,000/- towards her share and agreed to sign the document as witness. But, the plaintiff failed to do so. Hence, a partition deed was executed excluding the plaintiff. Therefore, without seeking the above partition deed as null and void, the suit is not maintainable. The plaintiff had knowledge about the partition deed on the date of execution itself,



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which is evident from filing of a suit by the mother of the plaintiff and the plaintiff against the defendants 1 to 3 herein. Hence, the present suit is barred by limitation and the same is liable to be dismissed.

6. The trial court based on the materials on record, vide its judgment dated 22.03.2018, decreed the suit in favour of the plaintiff. Aggrieved by this, the defendants preferred an appeal suit in A.S. No.32/2018 and the same was dismissed confirming the decree and judgment passed by the trial court in O.S. No.202/2016 dated 22.03.2018. Challenging the same, the defendants 1 to 5 filed the above Second Appeal.

7. The second appeal has been admitted on the following substantial questions of law.

"i) Whether the courts below are right in decreeing the suit for partition seeking 1/7 share in the suit property in favour of the plaintiff after 45 years of her marriage and 35 years after the death of the father?"



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ii) Whether the courts below are right in decreeing the suit by disregarding the oral and documentary evidences adduced on the side of the defendants? Wherein the defendants proved that the plaintiff was given a sum of Rs.10,000/- as her value of share in the suit property and after receiving the same she had not come to register office to sign as witness in the partition deed dated 05.11.1990, as per her undertaking given to one Rathinam Achari?

iii) Whether the courts below had properly appreciated the oral evidence of PW-1, wherein it will be evident that the plaintiff had knowledge about the partition done by the defendants through Ex.A1, dated 05.11.1990?

iv) Whether the courts below are right in decreeing the suit when the same was barred by Article 110 of the Limitation Act?

v) Whether the courts below are right in decreeing the suit when the plaintiff had not come to court with unclean



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WEB COPY *hands since she had concealed the legal notice marked as*

Ex.B2, dated 24.03.2008?”

8. I have heard Mr. S. Vediappan, learned counsel appearing for the appellants and Ms. G. Sumitra learned counsel appearing for the 1st respondent. Though the name of the 2nd respondent is printed in the cause list after serving notice on him, there is no representation on behalf of the 2nd respondent.

9. The learned counsel appearing for the appellants/defendants while elaborating the questions of law, would contend that the evidence on record would go to show that the plaintiff has not chosen to assert her rights for a period of 26 years, i.e. from 1990 to 2016. Therefore, the suit is hopelessly barred by limitation. He would further contend that it was not the partition deed by itself that extinguished the plaintiff's right in the property, but her inaction for a period of 12 years which extinguished her right. He would submit that a presumption of ouster may be drawn from long continuous exclusive possession by a co-owner in the light of the



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attendant circumstances of the case and that the principles underline this rule is that if the plaintiff sleeps over to assert her rights for long interval of time, the defendants should not suffer or be handicapped on account of the disappearance of evidence. Therefore, every presumption should be made to support the right or title of the defendants in possession, which means title acquired by adverse possession consequent upon ouster of the other co owner. Therefore, the learned counsel submits that in the case at hand, the suit was filed in the year 2016 after a period of 45 years of her marriage and 35 years after the death of her father, which is barred by limitation.

9.1. He would further submit that since the plaintiff had knowledge about the partition done by the defendants through Ex.A1 dated 08.11.1990, she cannot reignite her rights after sleeping over 26 years, for the reason that the registration of a document gives notice to the World that such a document has been executed. Thus, the suit of the plaintiff was *prima facie* barred by law. The learned counsel further submits that the conduct of the plaintiff in not making any claim for more



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than the statutory period either for any share or income in the properties would amount to passive acceptance on the right of the defendants, lost her rights by ouster and the defendants have thus prescribed title in respect of the share belonging to the plaintiff by ouster and adverse possession. The rights of the plaintiff gets extinguished under Section 27 of the Limitation Act, 1963. The learned counsel submits that Article 65 of the Limitation Act, 1963 comes into play since the defendants have perfected their title by adverse possession and ouster and the same cannot be vitiated in law. The learned counsel further submits that Section 6 of the Hindu Succession Act (Amended Act, 2005) is not applicable in the instant case since succession in favour of the plaintiff had opened as early as in the year 1981 on account of death of her father. Therefore, according to the learned counsel for the appellant, the plaintiff's suit is hopelessly barred by limitation. He would submit that Article 110 of the Limitation Act would apply to the facts of the case and hence the suit filed by the plaintiff after 35 years after the death of her father and after execution of the partition deed in the year 1990, is barred by limitation. To support his contentions he has relied upon the following decided



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- (1) Uma Devi and ors vs. Anand Kumar and ors reported in (2025) 4 S.C.R 521.**
- (2) Judgment of this Court dated 20.03.2015 in the case of Shanmugam vs. Mayilathaal and others in S.A. No.1588 of 1998.**
- (3) Judgment of this Court dated 22.02.2022 in the case of Puniyavathi and another vs. Pachaiaammal and others in S.A. No.251 of 2011.**
- (4) Des Raj and others vs. Bhagar Ram (dead) by LR's and others reported in 2007 (2) CTC 838**
- (5) Pugazhenthai and another vs. Sundari Ammal and others reported in 2013 (2) CTC 160.**

10. Contending contra, Ms. G. Sumitra, learned counsel appearing for the 1st respondent/plaintiff would submit that Article 110 of the Limitation Act itself would not apply to the case on hand. She would



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point out that Article 110 of the Limitation Act would apply only where the co owner or the member of the family alleges that the plaintiff has been excluded from the enjoyment of the joint family property. She would also contend that the limitation contemplated under Article 110 of the Limitation Act would start to run only from the date on which the exclusion becomes known to the plaintiff. She would further submit that ouster of non possessing co owner by the co owner in possession, who claims his possession to be adverse, is a weak defence in a suit for partition of family property and it is strong if the defendant is able to establish consistent and open assertion of denial of title, long and uninterrupted possession and exercise of right of exclusive ownership openly and to the knowledge of the other co-owner. In the absence of sufficient evidence as to 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, the possession of the properties by one co-owner which is presumed to be on the basis of joint title and the possession of one co owner cannot render his possession adverse to the other co owner not in possession. To support her contention she relied



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WEB COPY upon the following judgments.

(1) Chenniappan vs. Valliammal and other reported in 2020(5)

MLJ 537.

(2) Nagabhushanammal (dead) by legal representatives vs. C.

Chandikeswaralingam reported in (2016) 4 SCC 434.

11. Heard on both side. Records perused.

12. It is not in dispute that the suit properties belong to the father Vadivel Asari who died intestate. The defendants mainly contended that the suit for partition was not maintainable as it is barred by limitation. Further the defendants took the specific stand of title by adverse possession stating that the plaintiff did not have any right in the properties and that as to the date of the suit, the defendants have been in exclusive possession of the suit properties for more than 45 years and hence the suit was liable to be dismissed on the ground of adverse possession, ouster and limitation as well. The learned counsel for the

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WEB COPY respondent invited my attention to the judgment of this Court in ***Chenniappan Vs. Valliammal and other*** (cited supra) wherein this Court has considered the scope of ouster and Article 110 of Limitation Act. It was held that ouster cannot be inferred by a mere enjoyment of the properties over a period of 12 years and that in the absence of any evidence to show that the defendants were in possession of properties to exclusion of the plaintiff, one cannot infer exclusion from enjoyment of co sharers in as much as law is well settled to effect that one co sharer's possession is referable to all co sharers. In ***Vidyadevi (dead) by LRs vs. Prem Prakash and others*** reported in (1995) 4 SCC 496 the Hon'ble Apex Court stated the following three necessary elements for establishing the plea of ouster in the case of co owner.

- (i) declaration of hostile animus;
- (ii) long and uninterrupted possession of the person pleading ouster, and;
- (iii) exercise of right of exclusive ownership openly and to the knowledge of other co owner.



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Therefore, in the case of an ouster of a co owner, it must be brought to the knowledge of the co owner concerned, that his/her rights are invaded in open assertion of a hostile title. It is well settled that possession of one co owner is presumed to be on behalf of all the co owners. To constitute ouster, there must be, for an ouster, a hostile open denial and repudiation of the rights of other co owners and this denial or repudiation must be brought home to the co owners. This does not necessarily mean that the co owner sought to be ousted or excluded should be informed or told as such by the other co owners. Therefore, ouster does not mean actually driving out of the co sharer from the property. It will, however, not be complete unless it is coupled with the above mentioned elements required to constitute adverse possession. In the present case, the defendants failed to establish that the plaintiff was excluded from the enjoyment of the properties . A reading of the said Article would show that the commencement of period of limitation is when the exclusion becomes known to the suing coparcener/the plaintiff. Therefore, when the defendants seek protection under Article 110 of Limitation Act, they



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have to establish that the suing co-sharer was excluded from the enjoyment of the properties to her knowledge. It is settled law that possession of one co-sharer is on behalf of the other Cosharers. If the Co-sharer in possession, raises the plea ouster or the bar under Article 110 of the Limitation Act, it is incumbent on such co-sharer to prove that the exclusion was to the knowledge of the other co-sharers. Unfortunately, I find total lack of evidence on the side of the defendants in this regard. Exclusion should be proved by tangible evidence. One cannot infer exclusion from enjoyment of the co-sharers inasmuch as the law is well settled to the effect that one co-sharer's possession is referable to all the co-sharers. Therefore, Article 110 of the Limitation Act cannot be applied.

12.1. Moreover, the plaintiff has issued Ex.B2 legal notice on 24.03.2008 and the suit is filed in the year 2016. Hence, the suit is within limitation. As regards, ouster, the defendants have not made out the case of “ouster” as pleaded by them. In the absence of evidence to



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show that the defendants have exercised title or right over the properties and had excluded the plaintiff from enjoyment of the properties, ouster cannot be inferred.

12.2. One another fact is the execution of partition deed. It is not established on the side of the defendants that the plaintiff had knowledge about execution of the alleged partition deed in the year 1990. Even in Ex.B3 and Ex.B4, the factum of execution of partition deed is not mentioned. Moreover, the plaintiff is not a party to the said partition deed. Furthermore, the courts below has rightly held that the defendants failed to establish that the plaintiff has received a sum of Rs.10,000/- towards her share. No infirmity or perversity is found in the findings of the courts below which warrants interference by this court. All the substantial questions of law are answered against the appellants.



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WEB COPY 13. In the result,

I. The Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

II. The decree and judgment made in A.S. No.32/2018, dated 27.03.2019, on the file of the I Additional District Court, Salem, confirming the judgment and decree as made in O.S. No.202/2016, dated 22.03.2018, on the file of the Principal Subordinate Court, Salem, is upheld.

02.09.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The I Additional District Judge, Salem.
2. The Principal Subordinate Judge, Salem.
3. The Section Officer, VR Section, High Court, Madras.

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K.GOVINDARAJAN THILAKAVADI,J
bga

Pre deliver Judgment in
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