



S.A.No.977 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.01.2025

DELIVERED ON : 30.01.2025

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.No. 977 of 2022 &
C.M.P. No.20910 of 2022

1. Dhamodharan
2. M. Baby
3. Munusamy

.....Appellants

VS

1. Maruthachalam
2. Kalyani
3. Sellammal

.... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 09.08.2021 passed in A.S. No.17 of 2018, on the file of the I Additional District Court, Coimbatore, upholding the decree and judgment dated 05.12.2017 passed in O.S.No.123 of 2016, on the file of the II Additional Subordinate Court, Coimbatore.

For Appellants	: Mr. C. Prabakaran for Mr. V. Anandhamoorthy
For Respondents	: Mr. S. Mukunth, Senior Counsel for Mr.A. Ramkumar



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JUDGMENT

The appellants are the defendants in O.S. No.123/2016 on the file of the II Additional Subordinate Court, Coimbatore. The respondents 1 to 3/plaintiffs filed the said suit for partition of the suit property into 16 equal shares and to allot three such shares to them.

2. For the sake of convenience, the parties are referred to as per their rank in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3.The case of the plaintiffs in a nutshell is as follows :

The suit property morefully described in the plaint originally belonged to one Subbanna Gounder. He got the same through a partition in his family in the year 1936. Subbanna Gounder had a son and a daughter by name Ramasamy and Palaniammal. The plaintiffs are the legal heirs of Palaniammal, while the defendants are the legal heirs of Ramasamy. Subbanna Gounder died intestate during the year 1970 and



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his wife Karupathal died subsequently. The suit property was in joint possession and enjoyment of Ramasamy and Palaniammal. Palaniammal died on 20.01.2002 and Ramasamy predeceased her. Since the plaintiffs felt that they cannot enjoy the suit property jointly with the defendants, they requested the defendants to partition the suit property which was denied by the defendants. They also reliably learnt that the defendants are making arrangements to sell the suit property in favour of the third parties. Hence the suit.

4. The suit was resisted by the defendants 1 and 2 on the following grounds:

- i. The suit property was originally owned by Subbanna Gounder.
- ii. There was an oral partition between Subbanna Gounder and his father Ramasamy during the year 1969 in which the entire suit property was allotted to the share of Ramasamy (since deceased). Ramasamy agreed to pay a sum of Rs.1,000/- towards annual maintenance to his father late Subbanna Gounder.



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- iii. Since this fact was known to Palaniammal (since deceased), she did not claim any right during her life time.
- iv. Ramasamy, the defendants' father was in exclusive possession and enjoyment of the suit property. He also dealt with the suit property by mortgaging the same on 15.06.1971 (Ex.B2) in favour of one Krishna Gounder.
- v. In fact, Palaniammal was given in marriage after selling one of the properties belonging to the family through a sale deed dated 17.02.1966 (Ex.B1). Palaniammal was given streedhana during her marriage and she was also ousted from the suit property.
- vi. The defendants are in exclusive possession and enjoyment of the suit property and also prescribed title to the suit property by way of adverse possession and prescription.
- vii. The defendants have paid necessary tax to the Government in respect of the suit property and in fact mutation of records were made several years prior to the filing of the suit as is seen from Ex.B4 to Ex.B10.



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The third defendant, who is the brother of the plaintiffs, in his written statement admitted that there was an oral partition between Ramasamy and his grand father Subbanna Gounder.

5. On the basis of the above pleadings, the trial Court framed the following issues :

"(i) Whether the plaintiffs are entitled to the relief of partition?

(ii) Whether the plaintiffs are entitled to the relief of Permanent injunction?

(iii) Whether the suit property was allotted to late Ramasamy by way of an oral partition during the year 1969 and, if so, whether it is valid?

(iv) To what other reliefs the plaintiffs are entitled?"

6. In the trial Court, the first plaintiff examined himself and marked Ex.A1 to Ex.A4. The first defendant examined himself and marked Ex.B1 to Ex.B11.



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7. The learned trial court judge, on considering the evidence on record, decreed the suit filed by the plaintiffs, vide his decree and judgment dated 05.12.2017, on the ground that since the defendants have not proved the oral partition between late Subbanna Gounder and late Ramasamy during the year 1969, the plaintiffs are entitled to 1/16 share each in the suit property.

8. Aggrieved over the decree and judgment passed by the trial court judge, the defendants filed an appeal in A.S. No.17 of 2018, before the I Additional District Court, Coimbatore. The learned I Additional District Judge, Coimbatore, after analysing the evidence on record, dismissed the appeal filed by the defendants vide his decree and judgment dated 09.08.2021 on the following grounds:

- i. It is seen from the records that late Ramasamy had dealt with the suit property by executing a mortgage deed and a lease deed. However the same would not be sufficient to hold that there was an oral partition between late Ramasamy and Subbanna Gounder during the year 1969.



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- ii. For pleading adverse possession, a party has to acknowledge the title of the opposite party.
- iii. In a suit for partition, mere production of revenue records would not be sufficient to hold that there was an oral partition in the family.
- iv. Law is settled that between the co-owners there cannot be any adverse possession and therefore, it cannot be concluded that Palaniammal was ousted from the suit property.

9. Aggrieved over the decree and judgement passed by both the courts below, the present second appeal is filed.

10. At the time of admission the following substantial questions of law were framed by my learned predecessor.

“1. Whether the suit instituted 14 years after the death of the mother, seeking partition and separate possession can be still adjudicated overlooking the issue of



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extinguishment of right and the principles of ouster?

2. Whether the plaintiffs can maintain the suit in the teeth of Section 27 of the Indian Limitation Act, 1963?

3. Whether the defendants by continuous possession, perfected title and whether such title had been subsequently recognized by the authorities leading to dis-entitlement to seek partition and separate possession?"

11. Heard Mr. C. Prabakaran, learned counsel for the appellants and Mr. S. Mukunth, learned Senior Counsel assisted by Mr.A. Ramkumar, learned counsel for the respondents.

12. Mr. C. Prabakaran, learned counsel for the appellants contended that the defendants have indeed proved the oral partition between late Subbanna Gounder and late Ramasamy during 1969 by adducing acceptable evidence. His specific contention is that based on the oral partition, the revenue records were also mutated and late Ramasamy had dealt with the suit property independently as is seen from the Registered Mortgage deed dated 15.06.1971 (Ex.B2) and the lease

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deed dated 15.06.1971 (Ex.B3) in favour of one Krishna Gounder.

According to him Palaniammal was given in marriage in the year 1966 after selling one of the family properties through a registered sale deed dated 17.02.1966 (Ex.B1) and these aspects have not at all been considered by both the courts below. His specific contention is that when late Ramasamy was in exclusive possession of the suit property as is seen from the revenue records Ex.B4 to Ex.B11, the legal heirs of late Palaniammal cannot claim any right over the suit property. He relied on the decision of this Court in ***Puniyavathi and others vs. Pachaiaammal and others*** reported in ***MANU/TN/1137/2022*** and contended that the suit filed by the plaintiffs is hit under Article 65 of the Limitation Act which prescribes 12 years period as limitation for possession of immovable property. It is his contention that Palaniammal, the mother of the plaintiffs, died in the year 2002 and they have filed the suit after 14 years of the death of their mother and therefore, the suit is also hit under Section 27 of the Limitation Act, 1963. He therefore, prayed for allowing the present second appeal.



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13. Per contra, Mr. S. Mukunth, learned Senior Counsel assisted by Mr.A. Ramkumar, appearing for the respondents contended that in order to establish adverse possession of one co-heir as against the other, it is not enough to show that one out of them is still in possession and enjoyment of the suit property and that the ouster of non possessing coheir by the coheir in possession who claims his possession to be adverse should prove his case to the hilt. It is also his contention that if ouster is to be pleaded, possession has to be acknowledged. It is his further submission that both the courts below, after analysing the evidence on record, has rightly come to the conclusion that the defendants have not proved the partition between late Ramasamy and late Subbanna Gounder during 1969 and the written statement filed by the third respondent (brother of the plaintiffs) cannot be a ground to accept the oral partition. He also relied on the decision of the Hon'ble Supreme Court in ***Vidya Devi alias Vidya Vati (dead) by Lrs. vs. Prem Prakash and others*** reported in ***(1995) 4 SCC 496*** , wherein it has been held thus:

"21. Normally, where the property is joint, co-sharers are the representatives of each other. The co-sharer who might



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be in possession of the joint property shall be deemed to be in possession on behalf of all the co-sharers. As such, it would be difficult to raise the plea of adverse possession by one co-sharer against the other. But if the co-sharer or the joint owner had been professing hostile title as against other co-sharers openly and to the knowledge of other joint owners, he can, provided the hostile title or possession has continued uninterruptedly for the whole period prescribed for recovery of possession, legitimately acquire title by adverse possession and can plead such title in defence to the claim for partition."

It is his specific contention that Article 110 of the Limitation Act would not apply to the facts of the present case as the suit is filed by the members who have not been excluded from possession or enjoyment of the family property. In this regard, reliance was placed upon the decision in ***Chenniappan vs. Valliammal and others*** reported in (2020)SMLJ537. He therefore, prayed for dismissing the present second appeal.

14. It is an admitted fact that the suit property was owned by late Subbanna Gounder, which was his ancestral property. In a partition



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in his family, the suit property was allotted to his share. Ramasamy and Palaniammal are the children of late Subbanna Gounder and Karupathal. Palaniammal was given in marriage during the year 1966. The contention of the defendants is that one of the family properties was sold for giving streedhana to Palaniammal at the time of her marriage. In order to prove the same, a copy of the sale deed dated 17.02.1966 (Ex.B1) was filed. According to the defendants, there was an oral partition between Ramasamy and his father Subbanna Gounder during the year 1969, in which the entire suit property was allotted to the share of late Ramasamy. Ramasamy also agreed to pay a sum of Rs.1,000/- to Subbanna Gounder towards his annual maintenance. In order to substantiate this, the defendants relied on the oral evidence of the first defendant as well as the written statement filed by the third defendant. The third defendant is none other than the brother of the plaintiffs and he admitted in his written statement that there was an oral partition between Ramasamy and his father Subbanna Gounder and in the said oral partition, the entire suit property was allotted to the share of Ramasamy. This was totally denied by the plaintiffs. According to the plaintiffs Ramasamy and Palaniammal



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were in joint possession and enjoyment of the suit property till their death and after their death the plaintiffs and the defendants are in joint possession and enjoyment of the same.

15. The defendants had specifically stated that late Ramasamy was in possession and enjoyment of the suit property excluding Palaniammal. According to them Palaniammal was ousted from the suit property. In order to substantiate the same, they relied on a copy of a mortgage deed dated 15.06.1971 (Ex.B2) and a lease deed dated 15.06.1971 (Ex.B3). They also relied on the revenue records (Ex.B4 to Ex.B7 and Ex.B10 and Ex.B11). A perusal of Ex.B2 and Ex.B3 clearly shows that late Ramasamy had dealt with the suit property in the year 1971 by mortgaging the same. Late Palaniammal did not subscribe her signature in the said documents. Ex.B4 to Ex.B7 and Ex.B10 and Ex.B11, the revenue records, clearly show that Ramasamy was in possession and enjoyment of the suit property to the exclusion of his sister Palaniammal and after his death the defendants are in possession and enjoyment of the same. It is admitted that Palaniammal died on



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20.01.2002. However, the plaintiffs have filed the suit after 14 years of the death of their mother. At this juncture, it is relevant to extract Section 27 of the Limitation Act, which reads thus:

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.

As already observed, the suit property was in exclusive possession of late Ramasamy and his legal heirs for more than 40 years. In this case, it is not mere a long possession as co-owners, but an exclusive possession with an intent to assert title. The possession is also continuous and long for more than 40 years as on the date of filing of the suit. Apart from this late Ramasamy and his legal heirs have done mutation of records. The plaintiffs admitted that they are living 6-7 kilometers away from the suit property. However, their mother Palaniammal did not claim any right over the suit property and after 14 years of her death, the plaintiffs cannot claim any right in the suit property. It is true that ouster does not mean actual driving out of the co-sharer from the property or mere non



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participation in the profits of the land. However, in the instant case there is sufficient evidence to show that late Ramasamy was in exclusive possession and enjoyment of the suit property as is seen from Ex.B1 to Ex.B11. This fact goes to show there was an oral partition in the family.

16. In a recent decision in ***R.Rayappan (Died) and others vs. Rajammal (Died) and others*** reported in ***2025 (1) CTC 407*** a Division Bench of this Court has held thus :

*"27.On the question of limitation, what assumes importance is Article 110, more particularly the 3rd column of Article 110 that is, the date of knowledge of exclusion in order to hold that a suit for partition is barred by limitation. The exclusion must be total and absolute, there is a long line of decisions of this Court, which deal with the term "knowledge of exclusion" appearing in Article 110. All of them have been referred to by the Hon'ble Mr.Justice Palanivelu in ***Venkatramana and Others Vs. N.Munuswamy Naidu and Others, 2010 (4) CTC 640 : 2010 (2) MWN (Civil) 801***. In order to infer exclusion, it must be shown that the plaintiffs were excluded from enjoyment of the property for quite a long time and the defendants had in fact asserted open hostile title to the*



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28.The Trial Court has fixed the death of the Rangaiya @ Rangappa Gowder some time in 1966. The suit came to be filed 46 years thereafter. In the interregnum, the revenue records were mutated in the name of son of Rangaiya @ Rangappa Gowder, the 1st defendant. The 1st defendant had effected several improvements and put up several constructions in the suit property. He had also entered into a partition deed with his children asserting title to the entire property, except Item 2. These facts would definitely amount to exclusion. The requirement of Article 110 does not stop there because the limitation starts from the date on which the plaintiffs had knowledge of such exclusion.

.....

30.....

The suit was filed on 23.02.2012, well over the period of 12 years allowed under Article 110. We, therefore, conclude that the exclusion by the defendants of the plaintiffs was absolute and to the knowledge of the plaintiffs and therefore, the suit is barred by limitation. Therefore, the 2nd question is also



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17. Both the courts below have not properly appreciated the evidence and law on the point and therefore the findings of the courts below are perverse. In view of the reasons stated by me, the substantial questions of law are answered in favour of the appellants.

18. In the result,

- i. the Second Appeal is allowed. No costs. Consequently connected miscellaneous petition is closed.
- ii. The decree and judgment dated 09.08.2021 passed in A.S. No.17 of 2018, on the file of the I Additional District Court, Coimbatore, and the decree and judgment dated 05.12.2017 passed in O.S.No.123 of 2016, on the file of the II Additional Subordinate Court, Coimbatore, are set aside.
- iii. The suit in O.S. No.123 of 2016, on the file of the II Additional Subordinate Court, Coimbatore, is dismissed with costs.



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

To

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



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R. HEMALATHA, J.
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Predelivery Judgment in
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