



WEB COPY



A.S.(MD).No.62 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	16.07.2025
Pronounced On	:	23.10.2025

CORAM:

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

**A.S(MD) No.62 of 2012
and
CMP(MD)No.10148 of 2022**

- 1.Smt.C.Krishnammal (Died)
- 2.Smt.P.Rajeswari ... Appellants/Plaintiffs
- 3.M.Chidambaram
- 4.Ramalingam
- 5.Smt.Amirtham
- 6.Smt.Sundaralakshmi ... Appellants

(The appellants 3 to 6 are brought on record as LR's of the deceased 1st Appellant vide Court order dated 15.12.2022 made in CMP(MD)Nos. 10145 to 10147 of 2022 in AS(MD)No.62 of 2012 by GJJ and SMJ)

Vs.

- 1.1.S.A.Raman (Died)
- 2.P.Kanagavelammal (Died)
- 3.V.N.Kannan (Died)
- 4.N.Brindavan
- 5.N.Prabhu
- 6.N.Balaji



A.S.(MD).No.62 of 2012

7.Sornalatha

8.Jothimani

9.N.Maheswari

... Respondents/Defendants

10. Smt.M.Shenbagam

(10th Respondent is transposed from 2nd Appellant vide Court order dated 22.09.2022 made in CMP(MD)No.4656 of 2021 in AS(MD)No.62 of 2012 by JNBJ & NAVJ)

11.C.Muthuvelayutham

(11th Respondent is brought on record as LR of the deceased 1st Appellant vide Court order dated 15.12.2022 made in CMP(MD)Nos. 10145 to 1017 of 2022 in AS(MD)No.62 of 2012 by GJJ and SMJ)

12.Padma (died)

13.Vairavakrishnan

... Respondents

(The Respondents 12 and 13 are brought on record as LR of the deceased 1st Respondent vide Court order dated 03.07.2024 made in CMP(MD)Nos.8460, 8461 and 8463 of 2024 in AS(MD)No.62 of 2012 by SSYJ)

14.Ishwarya

... Respondent

(14th Respondent is brought on record as LR of the deceased 3rd respondent vide Court order dated 03.07.2024 made in CMP(MD)Nos. 8467 of 2024 in AS(MD)No.62 of 2012 by SSYJ)

(Memo dated 31.10.2022 filed on 02.11.2022, is recorded, as R2 died, and RR 3 to 9 who are already on record, are recorded as LR of the deceased R2, vide Court order dated 03.07.2024 in AS(MD)No.62 of 2012 by SSYJ)

Prayer : This Appeal Suit has been filed under Section 96 of C.P.C., to set aside the judgment and decree dated 01.02.2012 made in O.S.No.4 of 2011 on the file of the Additional District Judge, Fast Track Court, Dindigul.



A.S.(MD).No.62 of 2012

For Appellants : Mr.S.Parthasarathy

For R4 to R8,
R13 & R14 : Mr.H.Lakshmi Shankar
for Mr.L.Siva

: R12 (Died)

R9 to R11 : Notice Served & No Appearance

JUDGMENT

The plaintiffs in O.S.No.4 of 2011 on the file of the Additional District Judge, Fast Track Court, Dindigul, have filed this appeal challenging the dismissal of the suit for partition claiming the share of 3/5 share in the suit schedule property by the impugned judgment dated 01.02.2012.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking before the trial Court.

3. The brief averments made in the plaint are as follows:-

The plaintiffs, the first defendant and the husband of the second defendant and also the father of the remaining defendants namely, Natarajan are the legal heirs of one Vairavannatha Pillai and



A.S.(MD).No.62 of 2012

Sornathamal. Vairavannatha Pillai and Sornathamal jointly purchased the suit scheduled properties and other properties through a registered sale deed dated 27.02.1944. Hence, both Vairavannatha Pillai and Sornathamal had half share in the each suit scheduled properties. From the date of the purchase, they were in common enjoyment of the suit scheduled properties. Thereafter, the said Vairavannatha Pillai died intestate in the year 1956 and hence, the said Sornathamal was in possession and enjoyment of the property and she died in the year 1984. After her demise, the plaintiffs, first defendant and the husband of the second defendant were enjoying the properties commonly as legal heirs. Thereafter, the husband of the second defendant namely, Natarajan died intestate leaving the second defendant and the remaining defendants as legal heirs. On 14.07.2008, the defendants entered into a partition among themselves without knowledge and consent of the plaintiffs. When the same was questioned by the plaintiffs, some dispute arose between the plaintiffs and the defendants. In view of the above partition, the husband of the second defendant namely, the deceased Natarajan, using his position namely, Village Administrative Officer, changed the revenue records in the name of the male members without consent of the female



A.S.(MD).No.62 of 2012

members and also had a registered partition among themselves and hence, the plaintiffs filed a suit in O.S.No.30 of 2009 on the file of the Fast Track Court, Dindigul under Section 8 of Hindu Succession Act, for partition on the ground that the entire extent of the properties mentioned in the suit scheduled properties are the self acquired properties of Vairavanatha Pillai and Sornathammal. The defendants herein filed an application under Order 7 Rule 11 for rejection of the plaint and the same was allowed on 26.10.2009. Challenging the same, the plaintiffs preferred CMA.(MD)No.67 of 2009 before this court and the same was returned for filing an appeal suit in O.S.No.30 of 2009. Hence, the plaintiffs filed the present suit for the same cause of action claiming the share of 3/5 and sought to allow the suit.

4. The brief averments made in the written statement are as follows:-

4.1.The first defendant filed the written statement denying the allegation made in the plaint except admitting the relationship. The first defendant specifically pleaded that the properties were purchased by Vairavanatha Pillai in the name of the Sornathammal and the property



A.S.(MD).No.62 of 2012

was enjoyed by the Vairavannatha Pillai and he was the absolute owner of the properties and he died intestate on 24.01.1956 prior to the commencement of the Hindu Succession Act, 1956 and all the properties are the properties of Vairavannatha Pillai and till the death of Sornathammal in the year 1984, the plaintiffs did not raise any plea of ownership over the suit scheduled properties.

4.2. The defendants further stated that the plaintiffs got married in the year 1963, 1967 & 1970 respectively. At the time of marriage, as per the customary practice huge amount of dowry was given, each plaintiff was also given three acres of land. Now, after a lapse of 25 years after the death of Sornathammal, the plaintiffs filed the present suit claiming partition. The first plaintiff was given 3 acres of land through a registered gift settlement deed dated 02.07.1963, the second plaintiff was given 3 acres of land through a registered gift settlement deed dated 03.05.1968 and the third plaintiff was given 3 acres of land through a registered gift settlement deed dated 02.04.1971. Apart from the execution of the above settlement deeds, now, even as on date, the plaintiffs, the first defendant and the second defendant's family members are participating in all



A.S.(MD).No.62 of 2012

functions of the family and giving all the shares and sridhanas to the plaintiffs. In view of the execution of the settlement deed, the defendants themselves entered into a partition on 14.04.2018 and hence, the plaintiffs have lost their right by the theory of ouster for more than 50 years and the property was under occupation and continuous enjoyment of the first defendant and the second defendant's family members by changing the mutation of records by paying the kist. Hence, the suit was barred by limitation and also barred by theory of ouster.

5. The said written statement was adopted by the remaining defendants except the ninth defendant. The ninth defendant has not appeared before the trial Court and she was set *ex parte*.

6. The learned trial judge, on the basis of the rival pleadings, framed the necessary issues and the plaintiffs to prove the case examined first plaintiff as P.W.1 and marked Ex.A1 & Ex.A2 and also on the side of defendants, the first defendant examined himself as D.W.1 and another witness was examined as D.W.2 and marked Ex.B1 to Ex.B18.



A.S.(MD).No.62 of 2012

WEB COPY

7. The learned trial judge after considering the evidence on record, dismissed the suit by giving a finding that the plaintiffs' properties were purchased by Vairavanatha Pillai on behalf of his wife and the properties were never purchased by Sornathammal, namely, the mother of the plaintiffs. Hence, they are not entitled for the partition in the suit scheduled properties. Apart from that, the findings in O.S.No.30 of 2009 operated as *res judicata*, and they are not allowed to plead contra to the pleadings of O.S.No.30 of 2009, and also the plaintiffs' mother is not entitled to the benefit of Section 14(2) of the Hindu Succession Act. Apart from that, the plaintiffs were not only provided with dowry, but also they were given three acres of land each. Moreover, the pleadings and the order passed in OS.No.30 of 2009, struck off the plaint and also operated as an estoppel. With these findings, the learned trial judge dismissed the suit by the impugned judgement dated 01.02.2012.

8. Challenging the same, the present appeal has been preferred by the appellants.



A.S.(MD).No.62 of 2012

9. The learned counsel for the appellants would submit that the primordial finding of the learned trial judge that the suit scheduled properties, which were purchased in the year 1944 by the contribution of the Vairavanatha Pillai on behalf of the mother of the plaintiffs namely, Sornathammal, is against the record. There is no evidence available on record to prove the fact that the properties were purchased by the contribution of the Vairavanatha Pillai. The finding of the learned trial judge without any evidence from the competent person, relating to the contribution of the amount to purchase the properties in the name of Sornathammal is not correct and the same is perverse.

9.2. The learned counsel for the appellants would further submit that from the perusal of the sale deed, it can be seen that the entire sale consideration except Rs.125/-, all sale consideration was made over to discharge the mortgage. There was no evidence available to show that the mortgage amount was settled by the Vairavanatha Pillai alone. Subsequently, they found that the mortgage amount for the entire property was paid through the document dated 27.02.1944. Therefore, to ease out the burden of the mortgage amount, loan was obtained by



A.S.(MD).No.62 of 2012

Sornathammal. The remaining sons of Sornathammal also filed O.S.Nos. 35 and 36 of 1958 before the District Munsif, Melur, under the Agricultural Recover Debt Relief Act, to ease the debt amount. From the above documents, it is clear that the Vairavanatha Pillai never enjoyed the properties as an absolute owner of the property even though the properties were in the name of the Sornathammal. No document was produced to show that Vairavanatha Pillai enjoyed the properties independently till his death took place in the year 1956. Since the deceased Natarajan, who is the husband of the second respondent and the brother of the appellants & the first respondent, was working as Village Administrative Officer, he made a mutation in the revenue records after the death of Vairavanatha Pillai during the lifetime of Sornathammal in favour of the male members of the family. This is not a circumstance to nullify the claim of the plaintiffs to claim the partition over the suit scheduled properties. Till the date of partition in the year 2008, the plaintiffs were in the common possession and enjoyment of the suit scheduled properties. The respondents only denied the title of the plaintiffs in the year 2008. Immediately, in the year 2009, the suit was filed and the same was rejected on the ground that the suit scheduled



A.S.(MD).No.62 of 2012

properties are self acquired properties of Vairavanatha Pillai without properly considering the documents. Hence, a fresh suit was filed stating correct facts. Hence, there is no bar to file a suit, even after the rejection of the earlier suit in O.S.No.30 of 2009 as per the Order 7 Rule 13 of the CPC.

9.3. The learned counsel for the appellants elaborated his argument by citing the judgment of the Hon'ble Supreme Court in the case of ***Popat and Kotecha Property Vs. State Bank of India Staff Association*** reported in (2005) 4 CTC 489 where the Hon'ble Supreme Court has held that *the rejection of the plaint under Order 7 Rule 11 of CPC., does not preclude the plaintiff from filing the fresh suit.*

9.4. The learned counsel for the appellants would further submit that there was no estoppel against the contents of the deed. In view of the specific provision under Order 7 Rule 13 of CPC., there is no question of either *res judicata* or estoppel.



A.S.(MD).No.62 of 2012

9.5. The learned counsel for the appellants would further elaborate his argument on the ground that there was no estoppel against the contents of the document namely, Ex.A1 where it is stated that both Sornathammal and the Vairavanatha Pillai jointly purchased the properties and hence, both are entitled to half share in the properties covered under Ex.A1 and the same was not properly couched in the earlier plaint and hence, the learned trial judge rejected the plaint on the ground that Hindhu Succession Act, 1956, came into force after the death of the Vairavanatha Pillai and the same is against the law. Hence, the present suit is filed with proper pleadings and claiming relief of the share in the suit scheduled properties.

9.6. The learned counsel for the appellants would further submit that giving dowry to the female members as per the customs and giving the settlement deed relating to the 3 acres of land as sridhanas is not a ground to dismiss the partition suit when there was a legal obligation on the part of the defendants to give the due share in the suit scheduled properties after the demise of both Vairavanatha Pillai and Sornathammal. As per the Act, 2005, as interpreted by the three Judges



A.S.(MD).No.62 of 2012

bench of the Hon'ble Supreme Court three judges bench in the case of ***Vineet Sharma vs. Rakesh Sharma*** reported in ***AIR 2020 SC 3717*** judgment, once the Vairavanatha Pillai died intestate and no partition took place before the commencement of Amendment Act, 2005 the plaintiffs are entitled to Vairavanatha Pillai's properties as a co-parcener.

9.7. The learned counsel for the appellants would also submit that after the death of Sornathammal, the plaintiffs are entitled to the suit scheduled properties for partition and hence, they filed a suit for partition claiming 1/2 share in the total extent of the properties covered under Ex.A.1 as per Sections 8 or 15 of the Hindu Succession Act, 1956. In view of the above circumstances, he seeks to allow this appeal by setting aside the judgment and decree passed by the learned trial Judge.

9.8. The learned counsel for the appellants also made a detailed submission relating to Section 14(1) of the Hindu Succession Act, stating that Sornathammal got the property under a registered sale deed, which blossomed into full ownership under Section 14(1) of the Hindu Succession Act.



A.S.(MD).No.62 of 2012

WEB COPY

9.9. The learned counsel for the appellants would also state that the Hindu Women's Rights to Property Act, 1937, was brought to extend the share of the plaintiffs in the agricultural land. The same was extended by the government by the new Amendment Act, 1947. As per Hindu Women Rights to property (Extension to Agricultural Lands) Act, 1947, the mother namely, Sornathammal has rights and the plaintiffs also have rights. In view of the said legal position, the plaintiffs are entitled for the decree for partition.

9.10. The learned counsel for the appellants would further elaborate on the distinction between the *res judicata* and the rejection of the plaint in the earlier suit. He also elaborated the argument on the principle of estoppel by pleadings and the estoppel against the record.

9.11. The learned counsel for the appellants would further submit that the pleadings made in the earlier plaint is against the contents of the documents and also the same would not operate as *res judicata*. In the previous suit the rejection of the plaint was only on the ground that there



A.S.(MD).No.62 of 2012

is no obligation as per Hindu Succession Act, 1956 and the plaintiffs are not entitled to the suit scheduled properties as per the Act, 1956 in view of the specific pleading that the properties are the properties of the father. Now, the pleadings is entirely different with the different cause of action that the plaintiff's mother is the absolute owner over the half share of the properties covered under Ex.A.1 and hence, they are entitled for the partition of the entire suit scheduled properties among the five legal heirs namely, two brothers and three female members, each is entitled to 1/5 as per the provision of the Hindu Succession Act, 1956 in view of the death of the mother in the year, 1984 and hence, he seeks to decree the suit as prayed for by setting aside the impugned judgment and decree of the learned trial Judge.

10.1. The learned counsel for the respondents would submit that the application filed to receive the additional document under Order 41 Rule 27 with the different pleadings, which has not been pleaded before the Court below has not been received. Earlier they filed a suit for partition and the same was struck off. Even after that, another application was filed, and all documents filed here are already available before the



A.S.(MD).No.62 of 2012

trial Court. But they have not marked the same, and hence, there was no merit in the application to receive the additional documents.

10.2. The learned counsel for the respondent would also submit that the application containing different pleadings in the plaint cannot be accepted.

10.3. The learned counsel for the respondent would further submit that there was no *bona fides* in the reasons stated in the application and hence, he seeks to dismiss the application at the outset.

11. The learned counsel for the appellants would make reply that the learned trial judge gave a finding that the source of money for purchasing the properties by the contribution of Vairavanatha Pillai is on record and it was observed only during the course of the judgment. Hence, to set aside the said finding, these documents are necessary. Hence, they filed the said documents. Therefore, there is every *bona fide* in filing the application to receive the documents to show their case that the properties were purchased by both Sornathammal and Vairavanatha



A.S.(MD).No.62 of 2012

Pillai from their own money cannot be accepted. More particularly, the amount of consideration in the deed is Rs.125/- and the remaining amount was made over to redeem the mortgage.

11.1. The learned counsel for the respondents would submit that there is clear finding in the earlier rejection of the plaint filed by the plaintiffs that the properties were purchased by Vairavanatha Pillai. Per contra, in the present plaint, they pleaded that Vairavanatha Pillai and Sornathammal had purchased the properties from their own income. Hence, the pleading of the appellants is not correct, and hence, they are estopped from making a different case from the earlier pleading, which attained finality by the rejection of the plaint by the order dated 26.10.2010 which has not been challenged before this Court by way of filing an appeal.

11.2. The learned counsel for the respondents would further submit that res judicata is applicable to the present case. The application filed by the defendants to reject the plaint in the earlier suit, the plaintiffs filed counter stating that Vairavanatha Pillai and Sornathammal had



A.S.(MD).No.62 of 2012

jointly purchased the properties and the same were addressed by the learned trial Judge and the learned trial Judge gave a clear finding that Vairavanatha Pillai is the original owner of the properties and hence, the plaintiffs have no right to claim partition in the suit-scheduled properties in view of the Amended Act, 2005 and the Hindu Succession Act came into force only after the death of Vairavanatha Pillai. The said finding operated as *res judicata* even though there were no issues framed in the said case.

12. The learned counsel for the appellants made a reply to the said submission that there was no *res judicata* in this case on the ground that there was a specific provision. Apart from the specific Provision Order 7 Rule 13 of CPC., the cause of action in the suit is entirely different from the cause of action filed in the earlier suit.

13. The learned counsel for the respondents would further submit that the case clearly comes under the category of estoppel by both pleadings and conduct.



A.S.(MD).No.62 of 2012

13.1. Apart from that, the learned counsel for the respondents would submit that there is a clear plea of ouster. The learned trial Judge has not considered the same in view of the specific finding that the plaintiffs have not established their right.

13.2. The learned counsel for the respondents would further submit that the plaintiffs have not raised any claim over the properties from the year 1956 to 1984. Even till her death in the year 1984, the plaintiffs did not raise any title over the suit scheduled property. Hence, in all aspects, the plaintiffs' claim is liable to be rejected by applying the theory of ouster.

13.3. The learned counsel for the respondents finally would submit by placing the reliance of the judgment of the Hon'ble Supreme Court reported in **(1952) 2 SCC 92** that even in the case of consent decree, estoppel comes. In this case also, there was an adjudication in the earlier case. Hence, the suit is to be decreed by estoppel and *res judicata*. In the said circumstances, he seeks to dismiss the appeal by confirming the judgment and decree passed by the learned trial Judge.



A.S.(MD).No.62 of 2012

WEB COPY

13.4. The learned counsel for the respondents would further submit that in the year 1963, 1968 and 1971 respectively, 3 acres of land was given to each plaintiff at the time of marriage as sridhanas. Hence, there was equitable distribution of the wealth at the time of the marriage itself. Hence, the present suit amounts to unjust enrichment on the part of the female members, and by taking the opportunity, the plaintiffs have deviated from the pleading in the earlier suit O.S.No.30 of 2009. Hence, he seeks the dismissal of the appeal.

14. This Court considered the rival submissions and perused the records available on record and also the precedents relied upon by them.

15. The points for determination in this appeal suit is as follows:-

i) Whether the claim of the plaintiffs to get the decree for partition is hit by the principle of res judicata in view of the rejection of the plaint in the earlier suit in O.S.No.30 of 2009 under Order 7 Rule 11 of CPC.,?

ii) Whether the plaintiffs are entitled to claim the benefit under the Amended Act, 2005, or as per Section 8 of the Hindu Succession Act, in respect of the properties



A.S.(MD).No.62 of 2012

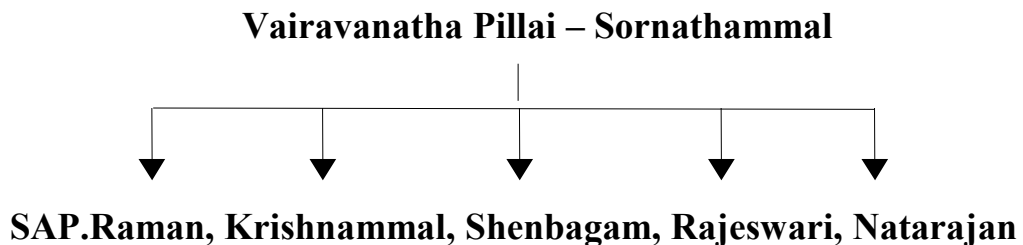
of Vairavanatha Pillai, who died intestate as a co-parcener?

iii) Whether the claim of the plaintiffs in respect of Sornathammal's property as per Section 15 of the Hindu Succession Act is maintainable?

iv) Whether the petition filed by the appellants to receive the additional document under Order 41 Rule 27 of CPC is eligible to be allowed?

16. Discussion on the principle of res judicata:-

There was no dispute over the relationship. For better appreciation, it is relevant to describe the following genealogy:-



17. Sornathammal and Vairavanatha Pillai purchased the properties by virtue of a registered sale deed dated 27.02.1944. Vairavanatha Pillai died intestate in the year 1956 and Sornathammal died intestate in the year 1984. In the year 2001, Natarajan died leaving the defendants 2 to 9 as legal heirs. On 14.07.2008, the first defendant



A.S.(MD).No.62 of 2012

and the remaining defendants, namely, the legal heirs of Natarajan, entered into partition and divided the properties left by Sornathammal and Vairavanatha Pillai after the execution of the settlement deed in favour of the plaintiffs at the time of marriage as sridhanas. The present plaintiffs filed a suit in O.S.No.30 of 2009 claiming partition of 3/5 share in the suit schedule properties. One of the defendants filed an application under Order 7 Rule 11 of CPC., to reject the plaint. The said application was allowed on technical ground. Thereafter, the present partition suit was filed claiming 3/5 share in the suit schedule properties disclosing the above rejection of the plaint with different cause of action and also couching a different prayer. It is settled principle that the rejection of the plaint under Order 7 Rule 11 of CPC., is not a bar to file a fresh suit as per Order 7 Rule 13 and also as per the law laid down by the Hon'ble Supreme Court in the case of *Popat and Kotecha Property Vs. State Bank of India Staff Association* reported in (2005) 4 CTC 489 and claim of share .



A.S.(MD).No.62 of 2012

18. Therefore, there is no question of the application of the principle of *res judicata* or estoppel. The *res judicata* and estoppel cannot apply to the partition suit which is in nature and for the reason that the suit for partition always has a recurring cause of action and claim of the share is entirely different from the plea made in the earlier suit. In this connection, this Court holds that the plaintiff's case clearly comes within the ambit of **2016 4 SCC 434**. Therefore, the contention of the learned counsel for the respondents that the suit was barred by limitation and the said finding of the learned trial Judge is not correct and accordingly, this Court is inclined to set aside the same and the suit filed by the plaintiffs is maintainable.

19. Now, the question is the applicability of Amended Act, 2005. Vairavanatha Pillai was died in the year 1956 and Sornathammal died in the year 1984. Both died intestate. It is not the case of the contesting defendants that Vairavanatha Pillai and Sornathammal executed any testamentary deposition in favour of them. Therefore, as on date of the filing of the suit, the properties were undivided properties and the defendants divided the properties among themselves without bringing the



A.S.(MD).No.62 of 2012

plaintiffs as party to the partition document. Therefore, the said document is not binding on the plaintiffs. Even though, this Court has its own doubt over the applicability of Amended Act, 2005, but, of the firm opinion of the applicability under Section 8 of the Hindu Succession Act. Since the purchase was made by Vairavanatha Pillai and Sornathammal, the plaintiffs' share crystalised on the death of Vairavanatha Pillai in the year 1956 as per Section 8 of the Hindu Succession Act. Therefore, the plaintiffs are entitled to equal share along with the first defendant and the deceased other son namely, Natarajan.

20. Sornathammal's share is concerned, it is the specific case of the defendants that Sornathammal has no independent income and the amount was contributed only by Vairavanatha Pillai. This Court is unable to accept the said argument and also the finding of the learned trial Judge that the properties were purchased by Vairavanatha Pillai in the name of Sornathammal is without any evidence. Further, as rightly argued by the learned counsel for the appellants that on the date of purchase, consideration was only Rs.125/- and the same was paid and the balance consideration was made over to discharge the mortgage made by the



A.S.(MD).No.62 of 2012

vendor. No evidence is available to show that the mortgage amount was settled by Vairavanatha Pillai alone. The amount was paid in the year 1944. Subsequently, to ease the mortgage amount as per the Agricultural Debt Relief Act, a suit was filed by Sornathammal. Further, there were no records produced to show that till the death of Vairavanatha Pillai in the year 1956, the properties were enjoyed by Vairavanatha Pillai as self acquired property or as separate property merely because a mutation entry was made. In the peculiar circumstances of the case, the fact could be that the first defendant as the Village Administrative Officer probably would have made mutation in the name of Vairavanatha Pillai during the lifetime of Sornathammal. The presumption of joint purchase made under the document dated 1944, the sale deed, could not be rebutted. Therefore, Sornathammal also is entitled to $\frac{1}{2}$ share in the properties covered under the sale deed and hence, from the available extent of the land after the settlement deed executed in favour of the plaintiffs at the time of marriage as Sridhana, the plaintiffs are entitled for a share. It is also well settled principle that the land gifted to the female members as sridhana at the time of marriage can not be treated as partition. In view of the above circumstances, the plaintiffs are also entitled to $\frac{1}{2}$ share of



A.S.(MD).No.62 of 2012

Sornathammal's properties as per Section 15 of the Hindu Succession Act. Therefore, this Court finds merits in the appeal. The learned trial Judge without considering the above legal principle relating to Sections 8 and 15 of the Act and also the factual aspects that there is no evidence available on record to show that Vairavanatha Pillai purchased the properties through his own income in the name of Sornathammal and also the case of the defendants that they got the properties under acquired title through the ouster is not proved in accordance with law.

21. When the document Ex.A1 clearly proved the joint purchase, there is no necessity to prove the sale consideration passed by the female in view of the law laid down by this Court and the Hon'ble Supreme Court in various decisions held that *the property stands in the name of the female is the property of female unless there is a strong contra evidence adduced by the contesting parties*. In view of the above circumstances, this Court is inclined to allow this appeal by setting aside the judgment and decree passed by the learned trial Judge.



A.S.(MD).No.62 of 2012

22. The learned counsel for the respondents would submit that the learned trial Judge failed to consider the plea of ouster and therefore, sought this Court to examine the said plea raised by the defendants. It is true that the learned trial Judge has not adverted to the plea of ouster, since the learned Judge has dismissed and gave a finding that the plaintiff is not entitled to the suit schedule property as a co-sharer, particularly in view of the principle of *res judicata* and the bar against partition arising from the dismissed of the earlier suit.

23. It is a well-settled principle of law that a plea of ouster must be specifically pleaded and strictly proved by cogent and convincing legal evidence. The burden of proof in establishing ouster is a heavy one and squarely lies on the party who asserts such a plea. Mere long and continuous enjoyment of the property by one co-sharer, by itself, does not amount to ouster so as to extinguish the rights of the other co-sharers.

24. In the present case, the plea of ouster is sought to be raised on the ground that Sornathammal died in the year 1984 and no claim was made thereafter for a considerable length of time. However, it is equally



A.S.(MD).No.62 of 2012

well settled that mere non-assertion of rights or prolonged exclusive possession cannot deprive a co-sharer of the right to seek partition, unless it is clearly established that such possession was hostile, open, and adverse to the knowledge of the other co-sharers.

25. To succeed in a plea of ouster, there must be evidence of open assertion of hostile title coupled with exclusive possession and enjoyment by one of the co-sharer to the knowledge of the other co-sharer, which is conspicuously absent in the present case. No such evidence has been placed on record to demonstrate that the enjoyment of the property was adverse to the rights of the plaintiff.

26. This principle has been consistently reiterated by the Hon'ble Supreme Court in a catena of decisions, including the judgment reported in *(2016) 4 SCC 434*, wherein it has been held that plea of ouster of co-sharers cannot be normally accepted and same must be proved by strong and compelling evidence on the basis of the proper pleadings. In the case of partition, plea of the limitation is not normally accepted. Therefore, even upon independent consideration of the plea of ouster raised before



A.S.(MD).No.62 of 2012

this Court, this Court finds no merit in the said contention, and accordingly, the plea of ouster stands rejected.

27. The appellants have filed several additional documents under Order XLI Rule 27 of the Code of Civil Procedure to substantiate their claim that Sornathammal had contributed her income towards the purchase of the suit schedule property. This Court has already made detailed discussion and has categorically held that Sornathammal is the absolute owner of the suit schedule property and that the plea that the property was purchased by Vairavanatha Pillai is not acceptable.

28. In view of the findings already rendered on the basis of the evidence available on record, this Court is not inclined to admit the additional documents under Order XLI Rule 27 CPC. The production of such documents is redundant and is neither necessary nor required for the purpose of enabling this Court to pronounce judgment, nor do they have any bearing on the issues already conclusively decided.



A.S.(MD).No.62 of 2012

29. Accordingly, the application filed under Order XLI Rule 27 CPC stands dismissed, as this Court has decided the issues on the basis of sufficient and reliable evidence already available on record.

30. Accordingly, the Appeal Suit is allowed and the judgment and decree passed by the Additional District Judge Fast Track Court, Dindigul, in O.S.No.4 of 2011, dated 01.02.2012, is hereby set aside and the plaintiffs are jointly entitled to 3/5 share in the suit schedule property as prayed for. There shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

23.10.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
dss

To:

- 1.The Additional District Judge,
Fast Track Court, Dindigul.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

30/31



WEB COPY



A.S.(MD).No.62 of 2012

K.K.RAMAKRISHNAN,J.

dss

A.S(MD) No.62 of 2012
and
CMP(MD)No.10148 of 2022

23.10.2025