



S.A.(MD)No.955 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 29.08.2024

Pronounced On : 13.02.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

S.A.(MD)No.955 of 2014

and

M.P.(MD)No.1 of 2014

&

C.M.P.(MD)No.11708 of 2024

V.Ravi

... Appellant / Appellant / Defendant

**Vs.**

1.Ambigaiammal

2.Vasuki

3.Parimala

4.Krishnaveni

5.Chitra

6.Sumathi

... Respondents / Respondents / Plaintiffs

**Prayer** : Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the Judgment and decree dated 20.08.2013 made in O.S.No.73 of 2011 on the file of the Sub Court, Paramakudi confirmed by the Judgment and decree dated 29.10.2014 made in A.S.No.15 of 2013 on the file of the Principle District Court, Ramanathapuram and dismiss the suit.

For Appellant : Mr.D.Rajagopal

For Respondents : Mr.G.Prabahari



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## **JUDGEMENT**

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The defendant in O.S.No.73 of 2011 on the file of the Sub Court, Paramakudi is the appellant in this second appeal.

2. The suit was filed by the wife and daughters of one Vadamalai Servai seeking partition and separate possession. Each of the plaintiffs claimed 1/7<sup>th</sup> share in the suit schedule properties. The suit schedule contained as many as 20 items. The appellant who was the defendant in the suit was the son of Vadamalai Servai. He opposed the suit prayer by raising very many contentions. The first plaintiff examined herself as P.W.1. One Pitchai was examined as P.W.2. Ex.A1 to Ex.A23 were marked. The defendant examined himself as D.W.1. Ex.B1 to Ex.B26 were marked. After consideration of the evidence on record, the trial Court vide Judgment dated 20.08.2013 passed preliminary decree for partition of 1/7<sup>th</sup> share each for plaintiffs 1 to 6 in Item Nos.1 to 15 & Item Nos.18 to 20 and 1/21<sup>th</sup> share each for plaintiffs 1 to 5 and 8/21<sup>st</sup> share for 6<sup>th</sup> plaintiff in Item Nos.16 & 17. The plaintiffs did not challenge the preliminary decree passed by the trial Court. The defendant filed A.S.No.15 of 2013 before the Principal District Judge, Ramanathapuram. The first appellate Court vide Judgment and decree dated 29.10.2014 dismissed the appeal. Aggrieved by the same, the second appeal came to be filed.



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3. The second appeal was admitted on 08.01.2015 on the following substantial questions of law:-

“1. Have not the courts below erred in granting preliminary decree in respect of items 1 & 2 treating the same as family property for which assignment patta admittedly stands in the name of the defendant?

2. Whether the courts below have erred in not confirming title upon the defendant in respect of items 1 & 2 when admittedly these properties were assigned by the Government in favour of the defendant?

3. Whether the courts below have erred in ignoring Exs.B2, B4, B5 & B6 when admittedly the defendant had dealt the portion of the suit properties exclusively thereby ousting the plaintiffs?

4. Whether the courts below have failed to hold that the suit is hit by doctrine of ouster in spite of the dealing of the suit properties exclusively by the defendant with the knowledge of the plaintiffs?

5. Whether the courts below have erred in ignoring the attestation of the 1<sup>st</sup> plaintiff in Exs.B5 & B6?

6. Whether the 1<sup>st</sup> plaintiff attestation in Ex.B4 and Ex.B5 will constitute an estoppel by attestation?

7. Whether the courts below have erred in ignoring the attestation of the 4<sup>th</sup> plaintiff's husband in Ex.B2 and will it not amount to knowledge of the 4<sup>th</sup> plaintiff?

8. Whether the courts below have erred in holding that the suit properties are the self acquire properties of Vadamalai Servai, especially when admittedly ancestral properties are available and will it not be able to hold that the other properties were purchased out of the income from the joint family properties.”



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4. The learned counsel appearing for the appellant reiterated all the contentions set out in the grounds of appeal and called upon this Court to answer the substantial questions of law in favour of the appellant and set aside the impugned Judgments and decrees. The elaborated written arguments have been submitted on the side of the appellant. The appellant also filed C.M.P. (MD)No.11708 of 2024 for raising additional substantial questions of law. A number of case laws are also relied upon.

5. Per contra, the learned counsel appearing for the plaintiffs submitted that the impugned Judgments and decrees do not call for interference. They pressed for dismissal of the appeal.

6. I carefully considered the rival contentions and went through the evidence on record.

7. One Alagu Servai had three sons namely Chellam Servai, Sangu Servai and Vadamalai Servai. Vadamalai Servai got married to the first plaintiff Ambigai Ammal and through the wedlock, six children were born (5 daughters and 1 son). After the demise of Vadamalai Servai, the wife and daughters called upon the defendant to amicably partition the properties. Since the defendant refused, O.S.No.73 of 2011 seeking partition came to be filed.



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8. The appellant contended that the suit properties were not the exclusive properties of Vadamalai Servai. Certain properties were purchased out of the ancestral income in the name of Vadamalai Servai. Vadamalai Servai had passed away in the year 1993 itself. Since then, the defendant was in possession and enjoyment of the suit properties. The plaintiffs kept quiet for more than 18 years and filed the partition suit only in the year 2011. The suit is liable to be dismissed on the ground of ouster. Some of the properties are the exclusive properties of the appellant. In fact, after the demise of Vadamalai Servai, the legal heirs entered into the oral family arrangement and the suit properties were allotted to the defendant's share. It was also contended that the suit was bad for partial partition. Ex.A1 to Ex.A5 are the sale deeds standing in the name of Vadamalai Servai. The original sale deeds were marked before the court below. Ex.A7 & Ex.A8 are the pattas standing in the name of Vadamalai Servai. Ex.A9-patta is in the name of Alagu Servai father of Vadamalai Servai. Ex.A17 & Ex.A18 are also patta passbook standing in the name of Vadamalai Servai. Ex.A19 - sale deed stands in the name of the first plaintiff pertaining to Item No.13 of the suit schedule.



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9. There is no dispute that Item Nos.16 & 17 are the ancestral properties.

The plaintiffs 2 to 5 got married prior to 1989. Therefore, they are not entitled to the State Amendment or the Central Amendment made to Hindu Succession Act in favour of daughters. Thus, they cannot claim share in these two items. But the 6<sup>th</sup> plaintiff got married subsequent to 1989 and she is entitled to equal share. That is why, the trial Court granted 1/21<sup>th</sup> share for plaintiffs 1 to 5 in respect of those two items and 8/21<sup>st</sup> share for the 6<sup>th</sup> plaintiff. The plaintiffs accepted the said finding and have not questioned the same. But the defendant would claim that out of the earning from items 16 & 17, other items were purchased. In that event, onus lay on the appellant to prove that items 16 & 17 generated income with which other items were purchased. The courts below have concurrently rendered a finding that this onus cast on the defendant has not been discharged. ***I answer the 8<sup>th</sup> substantial question of law against the appellant.***

10. The defendant / appellant had further claimed that the suit schedule properties were allotted to him under family arrangement. Such claim will have to be established only by the claimant. But the appellant has not let in any evidence to substantiate his defence. It is not known when the family



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arrangement propounded by the defendant took place. Merely because the revenue records were mutated in favour of the appellant, one cannot infer that there was a family arrangement. The parties hail from a remote village in Ramanathapuram. The appellant was the only son in the family. Therefore, it is understandable that the wife and daughters of Vadamalai Servai left the management of the properties to the appellant. The appellant made over all the situation and got the revenue records changed in his name. There is nothing on record to show that before effecting mutation, others were put on notice. The Hon'ble Supreme Court in its decision reported in **(2009) 15 SCC 747** (vide *Jai Singh v. Gurmej Singh*) *summarized* the principles related to inter se rights and liabilities of co-sharers as follows:

- (1) A co-owner has an interest in the whole property and also in every parcel of it.
- (2) Possession of joint property by one co-owner is in the eye of the law, possession of all even if all but one are actually out of possession.
- (3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.
- (4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies, that of the other.



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(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to anybody to disturb the arrangement without the consent of others except by filing a suit for partition.

Further, in the decision reported in **(2004) 1 SCC 271 (Md. Mohammad Ali vs Jagadish Kalita)**, the Hon'ble Supreme Court held that mutation in the revenue records in the name of one co-sharer would not amount to ouster unless there has been a clear ouster by denying the title of other co-sharers. Therefore, one cannot infer ouster only because the revenue records are in the name of the appellant. ***I therefore answer the substantial questions of law 3 & 4 against the appellant.***

11. There is also no merit in the contention that the suit is bad for partial partition. If any such items had been left out, the appellant could have very well spelt out the details of the left out properties in his written statement. He has not done so. Raising a general plea that the suit is bad for partial partition is not a sufficient defence. The 6<sup>th</sup> plaintiff got married in the year 1996. To meet the marriage expenses, the first plaintiff (wife of Vadamalai



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Servai) and with the consent of others sold a piece of family property under Ex.B4 and that is why, the said property was not included in the suit schedule.

As regards the property covered under Ex.B5, the plaintiffs state that it is not a joint family property and that they have no claim over the same. Ex.B25 marked by the defendant is a land acquisition notice and it shows the name of Vadamalai Servai as the owner of the properties of Item Nos.8, 9, 10, 11, 12 & 13 of the suit schedule. Vadamalai Servai died in the year 1993 leaving the plaintiffs and the defendant as his legal heirs. The court below had granted 1/7<sup>th</sup> share in favour of the plaintiffs and the defendant in respect of the suit schedule items 16 & 17. In respect of those two items, the defendant has been given a greater share considering its character as the ancestral properties. A very fair decree consistent with law and respecting the legal rights of the parties was passed by the trial Court and the same was also duly confirmed by the first appellate court. Items 1 & 2 are covered under Ex.A3-sale deed standing in the name of Vadamalai Servai. ***Therefore, the first and second substantial question of law are answered against the appellant.***

12. It is true that the defendant had entered into certain transactions. The first plaintiff had attested as witness in Ex.B5 & Ex.B6. The husband of the fourth plaintiff had attested as witness in Ex.B2. But then, the transactions will



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not bind the daughters of Vadamalai Servai. The first plaintiff is an illiterate woman and she cannot be blamed for having signed as witness at the instance of her son. No adverse legal consequence will flow against the daughters of Vadamalai Servai, merely because the first plaintiff had attested in three of the documents executed by the defendant / appellant. ***I therefore answer the substantial questions of law 5, 6 & 7 against the appellant.***

13. There is absolutely no merit in the appeal. The second appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

**13.02.2025**

Index : Yes / No  
Internet : Yes/ No  
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**Note : - Issue order copy immediately.**

To:

1. The Principle District Court, Ramanathapuram.

2. The Sub Court, Paramakudi.

**Copy to:**

The Record Keeper, V.R. Section,  
Madurai Bench of Madras High Court, Madurai.



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**G.R.SWAMINATHAN, J.**

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