



A.S.(MD)No.63 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
19.09.2025	25.09.2025

CORAM:

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**A.S.(MD)No.63 of 2018
and
C.M.P.(MD)Nos.3829 of 2018 and 6582 of 2022**

1.Selvaraj
2.Velladurai

... Appellants / Defendants

vs.

1.Mariammal
2.Kulanthaivel Nachiyar

... Respondents / Plaintiffs

PRAYER : Appeal Suit filed under Section 96 Civil Procedure Code against the judgement and decree dated 29.11.2016 passed in O.S.No.82 of 2013, on the file of IV Additional District Court, Tirunelveli.

For Appellants

: Mr.K.Pragadesh Ganapathy
for Mr.R.J.Karthick



A.S.(MD)No.63 of 2018

WEB COPY

For Respondents

: Mr.H.Arumugam

JUDGMENT

C.V.KARTHIKEYAN, J.

The defendants in O.S.No.82 of 2013 on the file of the IV Additional District Court, Tirunelveli, are the appellants herein.

2. O.S.No.82 of 2013 had been instituted by the respondents/plaintiffs, who are two sisters, seeking partition and separate possession of the suit schedule properties, each claiming 1/4 share therein. The defendants/appellants are the brothers of the plaintiffs/respondents.

3. By judgment dated 29.11.2016, the suit was decreed with respect to Item Nos.1 and 2 of the suit schedule properties, and a preliminary decree was passed, declaring that each of the two plaintiffs are entitled to 1/4 share in the said items.



A.S.(MD)No.63 of 2018

WEB COPY

4. Subsequently, the respondents/plaintiffs filed I.A.No.123 of 2017 seeking passing of a final decree. The appellants/defendants, in turn, filed C.M.P. (MD)No.3829 of 2018 seeking stay of further proceedings in I.A.No.123 of 2017. A Coordinate Bench of this Court, by order dated 27.06.2018, granted an interim stay, specifically restraining the passing of the final decree alone.

5. Thereafter, the respondents/plaintiffs filed C.M.P.(MD)No.6582 of 2022, seeking to vacate the interim stay granted earlier. Both the Civil Miscellaneous Petitions are now pending adjudication.

O.S.No.82 of 2013 [IV Additional District Court, Tirunelveli]:-

6. The plaintiffs, Mariammal and Kulanthaivel Nachiyar are the sisters of the defendants [Selvaraj and Velladurai]. The suit schedule properties originally belonged to their mother, Krishna Mani, who died intestate on 21.05.1952. Upon her demise, she was survived by her husband, Durai Pandiyan, the plaintiffs and defendants, and another son, Poolidurai, all of whom constituted her legal heirs.



A.S.(MD)No.63 of 2018

WEB COPY

7. Durai Pandiyan subsequently died intestate on 13.06.1994, and Poolidurai, who remained unmarried, also died intestate in the year 2009.

8. It is relevant to note that Krishna Mani had inherited the suit schedule properties as the sole legal heir of her father, Subbiah Thalaivanar, who died intestate on 02.07.1972. The said properties had originally been allotted to Subbiah Thalaivanar through a registered partition deed dated 22.01.1915, executed between him and his brothers.

9. The plaintiffs contended that they were in joint possession and enjoyment of the suit schedule properties, and that upon making a demand for partition and separate possession of their respective shares, the defendants failed to comply, thereby necessitating the institution of the present suit seeking partition and separate possession.

10. In their written statement, the defendants contended that they had conducted the marriages of the plaintiffs using both the income derived from the family properties and their personal earnings. They further asserted that the



A.S.(MD)No.63 of 2018

WEB COPY

plaintiffs had relinquished their shares in the suit schedule properties after the demise of their father, Durai Pandiyan.

11. It was also pleaded that the defendants and their brother Poolidurai had been in exclusive enjoyment of the suit schedule properties, and that after the death of Poolidurai in 2009, the defendants alone have continued to enjoy the said properties, to the exclusion of the plaintiffs.

12. Based on the above pleadings, the Trial Court framed the following issues for consideration:-

"(i) Whether the plaintiffs are entitled for partition, for 1/4 share in the plaint first and second schedule properties, with metes and bounds?

(ii) Whether the plaintiffs have lost their right by ouster?

(iii) What are the other reliefs plaintiffs are entitled to?"

13. During the course of trial, the first plaintiff [Mariammal] was examined as P.W.1, and she marked Exhibits A.1 to A.16 in support of her case. These documents included the death certificates of her grandfather and parents (Exs.A.1 to A.3), the pattas pertaining to the suit schedule properties (Exs.A.4 to A.11) and the property tax payment receipts (Ex.A.12).



A.S.(MD)No.63 of 2018

WEB COPY

14. In addition, two registered mortgage deeds, jointly executed by the plaintiffs and the defendants, were marked as Exs.A.13 and A.15, while a registered discharge receipt executed in favour of both the plaintiffs and defendants was marked as Ex.A.14. The first plaintiff's Election Identity Card was marked as Ex.A.16.

15. The defendants, however, did not examine any witnesses nor did they produce any documentary evidence in support of their claims. Nevertheless, P.W.1 was cross-examined on behalf of the defendants.

16. Upon examination of the pleadings and the oral and documentary evidence adduced, the learned Trial Judge recorded a finding of fact that the first plaintiff was actually residing in the second item of the suit schedule property. This conclusion was supported by the address provided in the plaint, as well as the address reflected in Ex.A.13 (Mortgage Deed) and Ex.A.16 (Election Identity Card) of the first plaintiff.

17. It was also found that both the plaintiffs and defendants had executed Exs.A.13 to A.15 in their capacity as joint owners of the suit schedule properties.



A.S.(MD)No.63 of 2018

WEB COPY

In view of these findings, the learned Trial Judge held that the defendants had failed to establish their plea of ouster of the plaintiffs.

18. The Trial Court further observed that the defendants had neither examined any witnesses nor produced any documentary evidence in support of their contention that the plaintiffs had been ousted from joint possession. It was also noted that even during the cross-examination of P.W.1, no suggestion had been put to her either disputing her residence in the second suit schedule property or with reference to the alleged ouster of the plaintiffs.

19. In the light of the above findings, the learned Trial Judge proceeded to decree the suit with respect to the first and second items of the suit schedule properties, and granted a preliminary decree for partition and separate possession of 1/4 share each to the two plaintiffs.

A.S.(MD)No.63 of 2018:-

20. Points for Consideration in this Appeal under Order XLI Rule 31 of the Code of Civil Procedure are as under:-



A.S.(MD)No.63 of 2018

WEB COPY

1. Whether the finding of the Trial Court, based on the pleadings and evidence adduced, that the appellants herein (defendants in the suit) failed to establish the plea of ouster, is sustainable?

2. Whether the consequential finding of the Trial Court that the respondents herein (plaintiffs in the suit) are each entitled to an undivided one-fourth (1/4) share in Item Nos.1 and 2 of the suit schedule properties, is sustainable?

21. Challenging the judgment and decree passed by the learned Trial Judge, the appellants herein / defendants have preferred the present Appeal Suit. Before this Court, the very same contentions have been raised as was urged before the Trial Court namely, that the respondents herein / plaintiffs had been ousted from the suit schedule properties and therefore, they were not entitled to claim partition.

22. However, it must be noted at the outset that no oral or documentary evidence was adduced on behalf of the appellants / defendants before the Trial Court in support of the plea of ouster.



A.S.(MD)No.63 of 2018

WEB COPY

23. In fact, in the plaint, the address of the first plaintiff was shown as Door No.277, K.C.Road, Shenkottai, Tirunelveli District. In Ex.A.13, a registered Mortgage Deed jointly executed by both the plaintiffs and the defendants in favour of one S.Masilamani, the address of the first plaintiff was given as Door No.137, K.C. Road, Shenkottai, which is the old door number for the second suit schedule property. It is also significant that this address was not disputed by the defendants in their written statement.

24. Further, Ex.A.14, being the registered discharge receipt executed by the mortgagee, shows that the discharge was issued jointly in favour of both the plaintiffs and the defendants, thereby, confirming joint ownership. The date of Ex.A.13 is 05.10.2007.

25. Additionally, in Ex.A.16, the Election Identity Card of the first plaintiff, her address is clearly stated as 138–277, K.C. Road, Shenkottai, corresponding to the suit property. The defendants did not either examine themselves or any other witness to rebut this evidence, nor did they cross-examine P.W.1 on the aspect of address of residence or on the plea of ouster.



A.S.(MD)No.63 of 2018

WEB COPY

26. In view of the above evidence, it is amply clear that the first plaintiff continues to reside in the second suit schedule property, and the plea of ouster remains unsubstantiated. Mere assertions without evidence do not discharge the heavy burden of proving ouster in a case of co-ownership.

27. Furthermore, the trace of title of the suit schedule properties clearly establishes that both the plaintiffs and the defendants inherited the properties as legal heirs of their mother, Krishna Mani, who in turn inherited them from her father, Subbiah Thalaivanar. Both the individuals died intestate, and no document of testamentary disposition was produced by the appellants.

28. Findings on the Points for determination:-

28.1. Point No.(i): We hold that the appellants herein have failed to establish the plea of ouster against the respondents. The finding of the Trial Court in this regard is sustainable and is supported by the evidence on record.



A.S.(MD)No.63 of 2018

WEB COPY

28.2. Point No.(ii): In view of the above, we further hold that the Trial Court rightly granted a preliminary decree for partition and separate possession of an undivided 1/4 share each in Item Nos.1 and 2 of the suit schedule properties to the two plaintiffs.

28.3. The points framed for consideration are answered accordingly.

29. In the result, we find no merits in the Appeal Suit. The Appeal Suit stands dismissed. Consequently, C.M.P.(MD)No.3829 of 2018 stands dismissed and the interim stay granted stands vacated and C.M.P.(MD)No.6852 of 2022 stands allowed. Taking into consideration the relationship among the parties, we are not inclined to grant costs.

Index : Yes
NCC : Yes
smn2

[C.V.K., J.] & [R.V., J.]
25.09.2025

To

1.The IV Additional District Judge,
Tirunelveli.

11/13



A.S.(MD)No.63 of 2018

WEB COPY

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



A.S.(MD)No.63 of 2018

C.V.KARTHIKEYAN, J.
and
R.VIJAYAKUMAR, J.

smn2

PRE-DELIVERY JUDGMENT MADE IN
A.S.(MD)No.63 of 2018

25.09.2025