



A.S. No. 194 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 10.11.2025
PRONOUNCED ON : 30.04.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

A.S. No. 194 of 2019

K.S.Palanisamy

...Plaintiff/Appellant

Vs.

1.Parvathiammal

2.P.A.Madheswaran

3.S.Krishnamurthy

4.V.Palanisamy

5.Muthusamy

Sengodan (Deceased)

6.K.S.Palanisamy

7.Koteeswari

...Defendants 1 to 5, 7 & 8/Respondents

PRAYER:

Appeal Suit filed under Section 96 read with Order 41, Rule 1 of the Code of Civil Procedure, 1908 against the Judgment and decree dated 01.09.2018 made in O.S.No.247 of 2013 on the file of the III Additional District cum Sessions Court, Erode at Gobichettipalayam.

For Appellant : Mr.S.Kaithamalaikumaran.

For Respondents : Mr.K.Dhananjayan for R1.
Mr.D.Gopal – R2.



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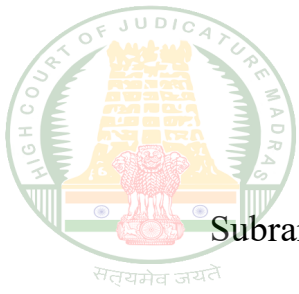
Mr.T.Murugamanickam, Senior Counsel
for M/s.Zeenath Begum for R4
R3, R5, R6 & R7 – served- no appearance.

J U D G M E N T

This Appeal Suit is filed by plaintiff challenging the Judgment and Decree dated 01.09.2018 passed in O.S. No.247 of 2013 on the file of the III Additional District - cum- Sessions Court, Erode at Gobichettipalayam.

2. For the sake of convenience, the parties are referred to in this judgment in the same rank as they were arrayed before the Trial Court

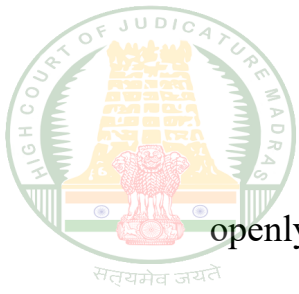
3. The plaintiff's case, in brief, is that the suit properties are the 'B' Schedule properties which fell to the share of Chinnappagounder, the plaintiff's maternal grandfather, under a family partition deed dated 10.07.1956. According to the plaintiff, after the death of Chinnappagounder intestate in 1963, his daughter Kuppayee, who was the plaintiff's mother, and his son Subramaniam jointly enjoyed the suit properties. On the death of Kuppayee in 1977, the plaintiff claims to have succeeded to her interest as her sole legal heir, and on the death of



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Subramaniam in 2003, the 1st defendant, being his wife, succeeded to his interest. The plaintiff further states that he and the 1st defendant thereafter continued in joint possession and enjoyment of the suit properties without partition. It is his further case that, when he demanded partition on 20.07.2013, the 1st defendant refused, and on verification he came to know that portions of the suit properties had been alienated in favour of defendants 2 to 4, which, according to him, are not binding on his share, since he was not a party to those sale deeds. Claiming 1/4th share in the suit properties, the plaintiff has filed the suit for partition and separate possession of his share, permanent injunction, and costs.

4. The 1st defendant resisted the suit contending that, though the relationship between the parties and the fact that Chinnappagounder was the common ancestor are true, the plaintiff has no subsisting right in the suit properties. According to the 1st defendant, after the death of Chinnappagounder in 1963, his son Subramanian alone was in exclusive possession and enjoyment of the family properties, and neither Kuppayee, the plaintiff's mother, nor the plaintiff ever asserted any right over them. It is her specific case that, after the death of Subramanian, she alone continued in exclusive possession and enjoyment of the suit properties,



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openly and to the knowledge of the plaintiff, and therefore she has perfected title by ouster and adverse possession. The 1st defendant denied the plaintiff's plea of joint possession, denied the alleged demand for partition on 20.07.2013, and contended that the alienations in favour of defendants 2 to 4 were valid and were made with the knowledge of the plaintiff. She further pleaded that the suit is bad for partial partition and non-joinder of necessary parties, that the property description is incorrect, that the suit is barred by limitation, that without seeking to set aside the sale deeds the suit is not maintainable, and that the plaintiff, being out of possession, has not properly valued the suit or paid proper court fee. On the above pleadings, the 1st defendant sought dismissal of the suit with costs.

5. The 2nd and 4th defendants, who were the purchasers, resisted the suit contending that the plaintiff has no subsisting right in the suit properties. The 2nd defendant claimed that he is a bona fide purchaser for valuable consideration under the sale deed dated 25.01.2011 executed by the 1st defendant, that his vendor had valid title as the legal heir of Subramaniam, and that he has been in possession and enjoyment of the property from the date of purchase. The 4th defendant contended that he



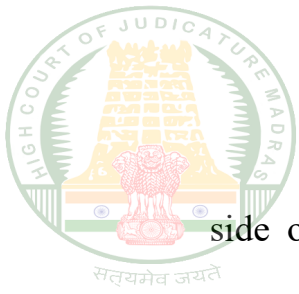
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had purchased the 1st item of the suit property on 27.12.1995 from

Subramaniam under a registered sale deed and has since been in open, exclusive and continuous possession and enjoyment thereof, and further claimed title by adverse possession and ouster. Both defendants denied the plaintiff's plea of joint possession, contended that the alienations in their favour are valid and binding on the plaintiff, asserted that the plaintiff is out of possession and hence not entitled to injunction, questioned the correctness of the court fee, and prayed for dismissal of the suit with costs.

6. On the basis of the above pleadings, the Trial Court framed the issues as to the 1st defendant having perfected title to the plaintiff's alleged 1/4th share in the suit properties by adverse possession and ouster, the present suit being bad for non-joinder of necessary parties, the suit not being maintainable for partial partition as pleaded by the 1st defendant in her written statement, and the other reliefs to which the parties are entitled.

7. In the Trial court, on the side of plaintiff, the plaintiff examined himself as PW1 and other as PW2 and marked Ex.A1 to Ex.A6 . On the 5/20

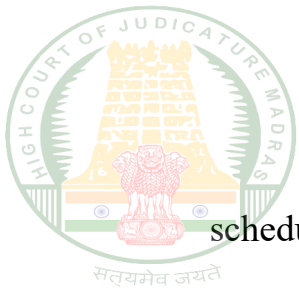


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side of defendants the 1st defendant examined himself as DW1 and others as DW 2 and DW3 and marked Ex.B1 to Ex.B11.

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7. The Trial court on appreciation of oral and documentary evidence held that the suit properties had been allotted to Chinnappagounder under the partition deed dated 10.07.1956 and that, after his death in 1963, his son Subramaniam, namely the husband of the 1st defendant, had been in exclusive possession and enjoyment of the properties and had dealt with them as owner. The trial court further found that neither the plaintiff's mother during her lifetime, nor the plaintiff's father, nor the plaintiff had asserted any right or sought partition for several decades, and that the alienations made by Subramaniam and thereafter by the 1st defendant had also not been objected to. On that basis, the trial court concluded that the plaintiff and his predecessors-in-interest were out of possession and not in joint possession of the suit properties. The trial court further held that the suit was bad for non-joinder of necessary parties, since all the sharers interested in the properties covered under the partition deed had not been impleaded, and also that the suit was bad for partial partition, since all the properties available for partition had not been included in the suit



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schedule. Hence, the trial court held that the plaintiff was not entitled to the relief of partition and dismissed the suit.

8. Aggrieved by the Judgment and Decree passed by the Trial court , the plaintiff filed the present appeal on the grounds : The trial court erred in dismissing the suit for partition on the grounds of ouster, adverse possession and non-joinder of necessary parties. According to the appellant, the alienations made by the 1st defendant and her husband are not binding on him, as he was not a party to those transactions; mutation of revenue records in the names of the defendants, without notice to him, would not by itself establish ouster; and mere long possession of one co-sharer would not ripen into adverse possession or confer exclusive title. It was further contended that the trial court failed to properly appreciate the oral and documentary evidence on record and that the judgment and decree are therefore liable to be set aside.

9. The learned counsel for the appellant/plaintiff submitted that the plaintiff had no knowledge whatsoever about the alleged sale transaction. It was contended that the defendants have not established that the plaintiff



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was aware of the sale or that he had consciously acquiesced in the same.

According to the learned counsel, mere long possession by the first defendant and her husband would not, by itself, amount to ouster, particularly when the parties are co-sharers/co-owners. The learned counsel further submitted that there is no specific, clear, and sufficient pleading with regard to ouster. In a case where one co-sharer claims exclusive title against another co-sharer, the plea of ouster must be strictly proved. It was argued that the first defendant has not proved that she and her husband were in exclusive possession and enjoyment of the suit property in a manner hostile to the rights of the plaintiff and his predecessors-in-interest.

10. It was also submitted that there is no proof of any oral relinquishment of the plaintiff's share or the share of his mother after marriage. In the absence of acceptable evidence showing that the plaintiff or his mother voluntarily gave up their lawful share in the property, the defendants cannot claim exclusive ownership. The learned counsel also pointed out that the plaintiff admittedly continues to reside in the very same village. However, there is no material to show that there was any open denial or unequivocal repudiation of the rights of the plaintiff, his



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mother, or his father, much less to their knowledge. It was further contended that the defence raised regarding partial partition and non-joinder of necessary parties is only a technical plea. In support of the above submissions, the learned counsel relied upon the decisions in **Palanisamy v. Mariammal** (S.A. No. 1396 of 2003, dated 28.01.2015), **R. Mahalakshmi v. A.V. Anantharaman and others**, reported in (2009) 9 SCC 52, and **Balamani and another v. S. Balasundaram**, reported in 2009 (3) CTC 760.

11. The learned counsel for the 1st respondent/1st defendant submits that the suit properties were originally allotted to Chinnappa Gounder under the family partition deed dated 10.07.1956 and that, after his death in 1963, his son Subramani alone took possession and enjoyed the entire suit properties. It was contended that Kuppayee, the plaintiff's mother, never asserted any claim or sought partition during her lifetime and died in 1977, and that even thereafter the plaintiff did not claim any right for decades and filed the suit only in the year 2013. It was further submitted that the plaintiff was residing in the same village and was fully aware of Subramani's possession and enjoyment, and that the revenue records,



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patta, chitta, tax receipts and electricity receipts stood in the name of Subramani / the 1st respondent's side.

12. The learned counsel further contended that the suit is barred by limitation under Article 110 of the Limitation Act, as the date of knowledge of exclusion is the material starting point in a partition suit. In support of the said contention, reliance was placed on **Dhamodhran vs Maruthachalam reported in 2025 (2) MWN (Civil) 382 and R.Rayappan (died) vs Rajammal (died) reported in 2025 (1) CTC 407** to contend that exclusion must be total and absolute and that, in order to infer exclusion, the defendants must have asserted open hostile title to the knowledge of the plaintiffs. Reliance was also placed on **,Venkatramana and others v. N. Munuswamy Naidu and others, 2010 (4) CTC 640 ,Janardhan Prasad v. Ramdas, 2007 (3) MLJ 721 (SC), and B. Suresh Chand v. State of Tamil Nadu**, to contend that registration of documents may itself amount to notice of exclusion and that, once limitation starts running, it cannot be arrested. Accordingly, the 1st respondent prayed for dismissal of the appeal and for confirmation of the judgment and decree passed by the trial court in O.S.No.247 of 2013 dated 01.09.2018.

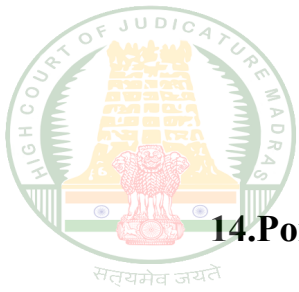
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13. The learned counsel for the 4th respondent submitted that

Chinnappa Gounder was allotted the suit properties under Ex.A1 partition deed dated 10.07.1956 and that, after his death in 1963, there was no proof of joint possession of Kuppayee with her brother Subramani. It was contended that Kuppayee never staked any claim to the suit properties during her lifetime and therefore the plaintiff cannot claim any better right than his mother. With regard to item No.1, it was argued that, out of the total extent of 5.68 acres, one half had been sold by Subramani and the other half by the legal heirs of Ramiah Gounder to the 4th respondent, and that the plaintiff, though living in the same village, did not raise any protest against the sale or even when the property was fenced with barbed wire. It was further submitted that the plaint itself does not disclose who the co-owners of the remaining half share are, and that the plaintiff has admitted that all the properties were not included and that the suit was filed only in respect of the Siruvalur properties. On the above submissions, the 4th respondent contended that the suit is bad for non-joinder of necessary parties and for partial partition, and prayed for dismissal of the appeal and confirmation of the trial court judgment and decree.



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14.Points for Consideration :

1. Whether the plea of ouster and adverse possession claimed by the defendants is proved/ established?
2. Whether the suit is bad for non-joinder of necessary parties
3. Whether the suit is hitby partial partition?
4. Whether the plaintiff/appellant is entitledfor 1/4th share in the suit properties?
5. Whether the judgment and decree of the Trial Court call for interference?

Point No.1:

15. The 1st defendant has pleaded ouster and defendants 2 to 4, being purchasers, have projected their adverse possession on the basis of sale deed. It is not in dispute that the suit properties belongs to the share of Chinnappagounder under the partition deed dated 10.07.1956 and that he died intestate in 1963. It is also admitted that Kuppayee, the plaintiff's mother, died in 1977. However, there is no acceptable evidence to show that, after the death of Chinnappagounder, Kuppayee was in joint



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possession or enjoyment of the suit properties along with her brother

Subramaniam. On the contrary, the materials on record show that

Kuppayee was residing in her matrimonial home, that no patta or revenue record stood in her name, and that there is no document to show that she was in receipt of the income or yield from the suit properties. The plaintiff has also admitted in PW1 Cross that neither his mother nor his father enjoyed the properties sold by his maternal uncle and the 1st defendant, and he had not paid kist in respect of the suit properties. Even after the death of Kuppayee, the plaintiff did not assert any right over the suit properties for about 35 years. These circumstances clearly show that neither Kuppayee nor the plaintiff was in actual possession or enjoyment of the suit properties.

16. On the other hand, the defendants have produced documents showing that Subramaniam had been dealing with the properties as owner from an earlier point of time, including the Ex.B1 sale deed dated 24.05.1970, the subsequent Ex. B2 conveyance dated 05.11.1998, and the house-tax, electricity and kist receipts standing in the name of Subramaniam and the 1st defendant. The revenue extracts relied on by the plaintiff in Ex. A5 Chitta and Ex.A6 'A' Register also stand only in the



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name of the Subramaniam and defendants. The evidence discloses a continuous course of exclusive dealing with the properties by Subramaniam and, after him, by the 1st defendant. The plaintiff's own documents in Ex.A3, Ex.A4 shows that portions of the suit properties were alienated under the sale deed dated 27.12.1995 in favour of the 4th defendant and under the sale deed dated 21.02.2005 in favour of the 3rd defendant, and the plaintiff admits that the purchasers are in enjoyment of the portions purchased by them. Admittedly, though the plaintiff was residing in the same village, no objection was raised either by him or by his parents when these transactions took place or when the properties were being dealt with by the defendants as their own.

17. It is well settled that, as between co-sharers, mere long possession by itself is not sufficient to constitute ouster or adverse possession. To establish such a plea, the party setting it up must prove the point of time from which the possession became hostile to the other party, or the point of time from which the other co-sharer was effectively excluded from possession and enjoyment. As held in **Vidya Devi v. Prem Prakash, (1995) 4 SCC 496**, in the case of a co-owner, the ingredients of ouster are: (a) declaration of hostile animus; (b) long and uninterrupted



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possession; and (c) exercise of exclusive ownership openly and to the knowledge of the other co-owner. In the case on hand, these ingredients stand fully established.

18. In such circumstances, this Court is of the view that, and Ex.B9 the sale deed dated 27.12.1995 constituted an open and hostile assertion of exclusive title against the plaintiff. The suit having been instituted only on 22.10.2013, after the expiry of 12 years prescribed under Article 110 of the Limitation Act, the plaintiff's right over the suit properties stood extinguished under Section 27 of the Limitation Act. Accordingly, from the above discussions this Court holds that the defendants have established the plea of ouster and adverse possession against the plaintiff, and this point is answered against him.

Point No.2:

19. The defendants contended that the suit is vitiated by non-joinder of necessary parties and is therefore liable to be dismissed. In a suit for partition, all persons who have a share or interest in the suit properties, particularly in the common portions sought to be divided, are necessary



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parties, since an effective and binding decree cannot be passed in their absence. In the present case, the plaintiff has sought partition in respect of the larger extent of the suit property and has also claimed a share in the common portion thereof. Therefore, all the co-sharers interested in such common property ought to have been impleaded.

20. So far as the 6th defendant is concerned, it is seen that he died during the pendency of the suit and his legal heirs were brought on record as defendants 7 and 8. Hence, the estate of the deceased 6th defendant is substantially represented. The evidence of P.W.1 and P.W.2 also discloses that, apart from the plaintiff and the 1st defendant, other cosharers who are the 6th defendant Sengodagounder brothers were in joint possession and enjoyment of the property, but those co-sharers were not impleaded as parties to the suit.

21. Thus, the plaintiff's own pleadings and evidence make it clear that the persons who were jointly enjoying the common property along with 6th defendant Sengodagounder, as well as P.W.2 Elangovan who claims a share, were necessary parties to the suit, but were not brought on record.



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22. This Court finds that the persons who were admittedly in joint possession and enjoyment of the common property were not impleaded. Therefore, the suit is clearly bad for non-joinder of necessary parties. Accordingly, this point is answered against the plaintiff.

Point No .3 :

23. The plaintiff himself admits that, under the partition deed dated 10.07.1956, Chinnappagounder was allotted properties not only in Siruvalur, but also in NanjaiPuliyampatti, Seiyampalayam and Chandirapuram. However, the present suit has been laid only in respect of the Siruvalur properties, without including the other properties which, according to the plaintiff's own case, formed part of the allotment made in favour of Chinnappagounder. Thus, the suit has not been framed by bringing into the common hotchpot the entirety of the properties allegedly available for partition. This omission goes to the root of the matter and renders the suit one for partial partition.



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24. It is true that, merely on account of an accidental omission or non-inclusion of some items, a suit for partition need not in every case be thrown out in its entirety. The learned counsel for the plaintiff also submitted that, if this Court were to arrive at the conclusion that the suit is bad for partial partition, an opportunity may be given to the plaintiff to include all the omitted properties. In support of the said submission, reliance was placed on **R. Mahalakshmi v. A.V. Anantharaman and others, (2009) 9 SCC 52**, wherein the Hon'ble Supreme Court held that when the materials on record themselves disclose existence of other properties left out of the partition suit, the matter may be remitted for proper adjudication after including all such properties.

25. The plaintiff's contention is misplaced because in the case on hand, the primary and decisive issue relates to the defendants' plea of ouster, adverse possession, and this Court has already found the said issue in favour of the defendants and against the plaintiff; the plaintiff's right itself stood extinguished and that he has failed to establish a subsisting enforceable share in the suit properties. Therefore, in the facts and circumstances of the case, the suit is clearly hit by partial partition. Accordingly, this point is answered.



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Point Nos. 4 and 5 :

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26. In view of the above discussion, the plaintiff/appellant is not entitled to claim 1/4th share in the suit properties. Since the defendants have established ouster and adverse possession against the plaintiff, and the suit is also hit by partial partition and non jointer of parties , the plaintiff has no subsisting right to seek partition and separate possession. Consequently, this Court finds no reason to interfere with the judgment and decree of the Trial Court, and the same are liable to be confirmed. The points are answered accordingly.

27. In the result, the Appeal Suit is dismissed, confirming the judgment and decree dated 01.09.2018 passed in O.S.No.247 of 2013 on the file of the III Additional District Court, Gobichettipalayam. There shall be no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

30.04.2026

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Index:Yes/No

Speaking Order /Non-speaking order

Neutral citation:Yes/No

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DR. A.D. MARIA CLETE, J

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To

1.The III Additional District cum Sessions Court,
Erode at Gobichettipalayam.

2. The Section Officer,
V.R.Records,
Madras High Court.

PRE DELIVERY JUDGMENT
A.S. No. 194 of 2019

30.04.2026

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