



WEB COPY



A.S. NOS.623 OF 2018 AND 318 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 29 / 01 / 2026

JUDGMENT PRONOUNCED ON : 6 / 02 / 2026

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

AND

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

A.S. NOS.623 OF 2018 AND 318 OF 2019

AND

C.M.P. NO.10816 OF 2019 IN A.S. NO.318 OF 2019

A.S. NO.623 OF 2018

1.K.Vasantharajan

S/o. Kanakachalam

M.Kaliappan

(7th Defendant passed away)

2.Rajeswari

W/o. Late M.Kaliappan

3.Vijayganesh

S/o. Late M.Kaliappan

4.Naresh Karthick

S/o. Late M.Kaliappan

Appellants-1 to 4 are residing at
9/55A, Arulmurugan Nagar,
Chettipalayam Road, Podhanur,
Coimbatore – 641 023.

... Appellants /
Defendants 8-11

Versus

1.Vijayalakshmi Krishnaswamy

W/o. Mr.Krishnasamy

19706, Buckeye Meadow Lane,

Page No.1 of 57



A.S. NOS.623 OF 2018 AND 318 OF 2019

Northridge, California 91236, USA.
Represented by her Power Agent -
Gayathri Krishnaswamy
D/o.Vijayalakshmi Krishnaswamy
and Krishnasamy
(Power of Attorney Deed
dated April 12, 2011)

... Respondent-1 /
Plaintiff

A.Gopalsamy Gounder
(1st Defendant passed away)

2.Rathinam
W/o.A.Gopalsamy Gounder

3.G.Arunachalam (Passed away)
S/o.A. Gopalsamy Gounder

4.Sethulakshmi
W/o. Late Selvaraj

5.Deepika
D/o. Late Selvaraj

6.Sujitha
D/o. Late Selvaraj

Respondents 2 to 6 are residing at
Solavampalayam, Maniyakarar Thottam,
Arasampalayam Pirivu, Kinathukadavu Via.,
Pollachi Taluk.

...Respondents-2 to 6
/ Defendants 2-6

7.A.Manonmani
W/o.Late G.Arunachalam

8.A.Deepa
D/o. Late G.Arunachalam

...Respondents-7 & 8

Note: Respondent-3 passed away.
Respondents-7 & 8 are brought on

Page No.2 of 57



A.S. NOS.623 OF 2018 AND 318 OF 2019

record as legal representatives of deceased Respondent-3 *vide* Order of this Court dated January 28, 2016 made in C.M.P. No.1850 of 2026 in A.S. No.623 of 2018

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated March 28, 2018 made in O.S. No.196 of 2011 on the file of I Additional District Court, Coimbatore.

For Appellants	:	Mr.E.K.Kumaresan
For Respondent-1	:	Mr.N.Sridhar for M/s.R.Bharath Kumar
For Respondents 2 & 3	:	No appearance
For Respondents 4 to 6	:	Mr.P.Valliappan Senior Counsel for Mr.Nagendra Prasath
For Respondents 7 & 8	:	Mr.K.Rajkumar

A.S. NO.318 OF 2019

1.Sethulakshmi
W/o. Late Selvaraj

2.Deepika
D/o. Late Selvaraj

3.Sujitha
D/o. Late Selvaraj

Appellants 1 to 3 are residing at
Solavampalayam, Maniyakarar Thottam,

Page No.3 of 57



WEB COPY

Arasampalayam Pirivu, Kinathukadavu Via.,
Pollachi Taluk.



A.S. NOS.623 OF 2018 AND 318 OF 2019

... Appellants /
Defendants 4 to 6

Versus

1.Vijayalakshmi Krishnaswamy
W/o. Mr.Krishnasamy
19706, Buckeye Meadow Lane,
Northridge, California 91236, USA.
Represented by her Power Agent -
Gayathri Krishnaswamy
D/o.Vijayalakshmi Krishnaswamy
and Krishnasamy
(Power of Attorney Deed
dated April 12, 2011)

... Respondent-1 /
Plaintiff

2.Rathinam
W/o.Late A.Gopalsamy Gounder

3.G.Arunachalam (Passed away)
S/o.Late A. Gopalsamy Gounder

... Respondents-2&3 /
Defendants 2&3

Respondents 2 & 3 are residing at
Solavampalayam, Maniyakarar Thottam,
Arasampalayam Pirivu, Kinathukadavu Via.,
Pollachi Taluk.

M.Kaliappan (passed away)

4.K.Vasantharajan
S/o. Kanakachalam
9/55-A, Arulmurugan Nagar,
Chettipalayam Road, Podhanur,
Coimbatore – 641 023.

5.Rajeswari
W/o. Late M.Kaliappan

Page No.4 of 57



A.S. NOS.623 OF 2018 AND 318 OF 2019

6.Vijayganesh
S/o. Late M.Kaliappan

7.Naresh Karthick
S/o. Late M.Kaliappan

... Respondents 4 to 7/
Defendants 8-11

Respondents 5 to 7 are residing at
No.9/55-A, Arulmurugan Nagar,
Chettipalayam Road, Podhanur,
Coimbatore – 641 023.

8.A.Manonmani
W/o.Late G.Arunachalam

9.A.Deepa
D/o. Late G.Arunachalam

... Respondents 8 & 9

Note: Respondent-3 passed away.
Respondents - 8 & 9 are brought on
record as legal representatives of
deceased Respondent-3 *vide* Order of
this Court dated January 28, 2016
made in C.M.P. No.1848 of 2026 in
A.S. No.318 of 2019

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule
1 of Code of Civil Procedure, 1908, praying to set aside the Judgment and
Decree dated March 28, 2018 made in O.S. No.196 of 2011 on the file of I
Additional District Court, Coimbatore.

For Appellants	:	Mr.P.Valliappan Senior Counsel for Mr.Nagendra Prasath
For Respondent-1	:	Mr.N.Sridhar for M/s.R.Bharath Kumar
For Respondents 2 & 3	:	No appearance

Page No.5 of 57



A.S. NOS.623 OF 2018 AND 318 OF 2019

For Respondents 4 to 7 : Mr.E.K.Kumaresan

For Respondents 8 & 9 : Mr.K.Rajkumar

COMMON JUDGMENT

R.SAKTHIVEL, J.

Feeling aggrieved by the Judgment and Decree dated March 28, 2018, passed in O.S. No.196 of 2011 on the file of 'I Additional District Court, Coimbatore' (hereinafter 'Trial Court'), the defendants 8 to 11 therein have filed the Appeal Suit in A.S. No.623 of 2018 under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ('CPC' for short) praying to allow the Appeal, set aside the Trial Court's Judgment and Decree, and dismiss the Suit. Similarly, the defendants 4 to 6 therein have filed the Appeal Suit in A.S. No.318 of 2019 with the same prayer.

2. These Appeal Suits arise out of one and the same Judgment and Decree. Hence they shall be governed by this Common Judgment.

3. In order to ensure brevity, convenience and clarity, the parties to these Appeal Suits will hereinafter be referred to as per their array in the Original Suit.

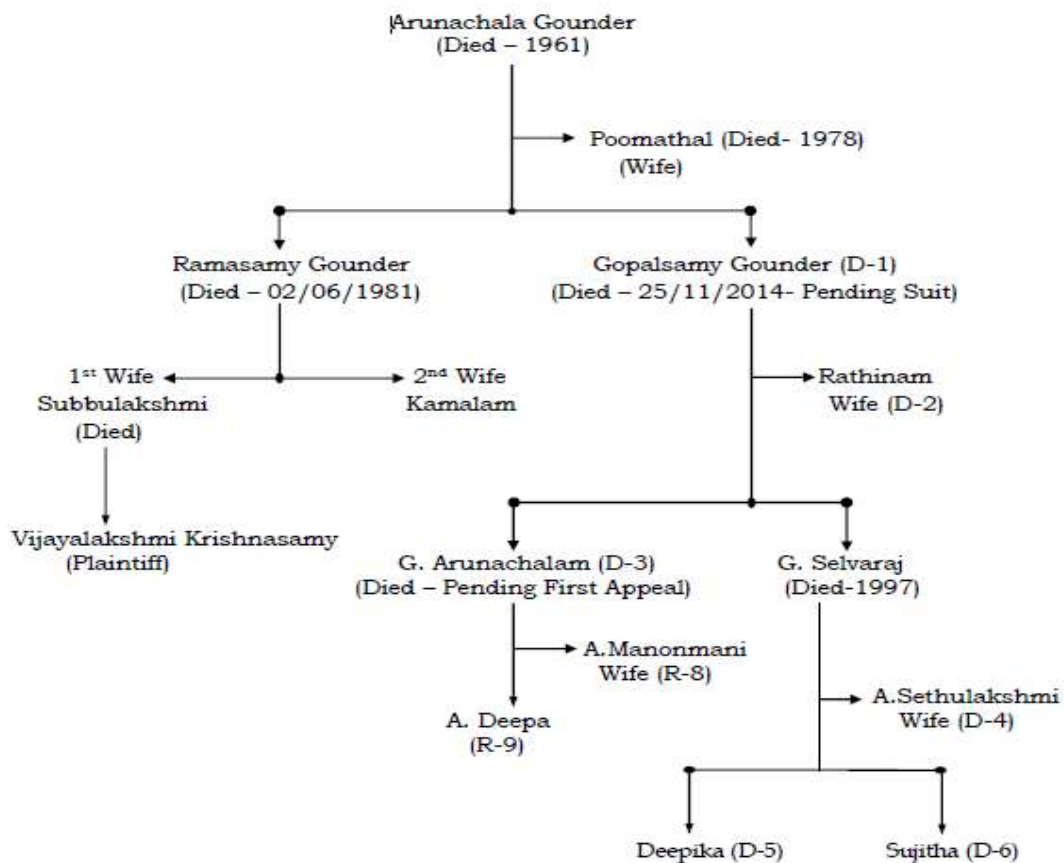
4. The plaintiff is the daughter of one Ramasamy Gounder. The said Ramasamy Gounder and first defendant are brothers and they both are sons

Page No.6 of 57



A.S. NOS.623 OF 2018 AND 318 OF 2019

of one Arunachala Gounder. The second defendant is the wife of the first defendant and the third defendant is their son. Defendants 1 and 2 had another son by name Selvaraj, who passed away in 1997 leaving behind his wife - fourth defendant and his children - defendants 5 and 6, apart from his mother - 2nd defendant as his legal heirs. The relationship between the parties is admitted and the same is depicted through the following genealogy chart for better appraisal of the facts of the case :





PLAINTIFF'S CASE

WEB COPY

5. Arunachala Gounder and his two sons - Ramasamy Gounder and Gopalsamy Gounder entered into Partition Deed dated December 25, 1959 in respect of their joint family properties. *Vide* the said Partition Deed, land measuring 30 Acres 62 Cents morefully described in 'A' Schedule of Properties therein was allotted in favour of father - Arunachala Gounder. Further, an extent of 28 Acres 54 Cents morefully described in 'B' Schedule of Properties therein was allotted to son - Ramasamy Gounder (plaintiff's father) and an extent of 29 Acres 75 Cents morefully described in 'C' Schedule of Properties therein was allotted to another son - Gopalsamy Gounder (first defendant).

5.1. Post the demise of father - Arunachala Gounder, his two sons being equally entitled to the aforesaid extent of 30 Acres 62 Cents allotted to him, sold an extent of 20 Acres 48 Cents out of the same. The remaining extent of 10 Acres 14 Cents after the said sale is described as Suit 'A' Schedule Property.

5.2. The sons - Ramasamy Gounder and first defendant, were enjoying the properties allotted to them in common, without any actual division or demarcation. They subsequently sold an extent of 4 Acres 54 Cents in Suit



A.S. NOS.623 OF 2018 AND 318 OF 2019

Survey No.172/1 and 4 Acres 47 Cents in Suit Survey No.172/2 *vide* Sale Deed dated March 1, 1961 in favour of one Range Gounder. Even after the said sale, they continued to enjoy the remaining land covered under 'B' and 'C' Schedule Properties of the aforesaid Partition Deed in common until the demise of Ramasamy Gounder. The said remaining land after the sale is shown as Suit 'B' and 'C' Schedule Properties.

5.3. Further, mother - Poomathal (wife of Arunachala Gounder) had earlier purchased certain lands in her name through Sale Deed dated December 14, 1952 and the same has been described as Suit 'D' Schedule Property. Poomathal passed away after Arunachala Gounder in the year 1978, leaving behind her two sons - Ramasamy Gounder and first defendant, to succeed her estate. Upon the demise of father - Arunachala Gounder and mother - Poomathal, the sons - Ramasamy Gounder and first defendant, were in joint possession and enjoyment of Suit 'A' to 'D' Schedule Properties / suit properties.

5.4. Ramasamy Gounder passed away intestate on June 2, 1981 leaving behind the plaintiff and his second wife - Kamalam as his legal representatives to succeed his half share over the suit properties. After the demise of the Ramasamy Gounder, the plaintiff, said Kamalam and the



first defendant were in joint possession and enjoyment of the suit properties.

5.5. The plaintiff, after marriage, left India and settled at USA. In June 2010, the plaintiff sought for amicable partition but the first defendant was evasive. Later, she came to know that the defendants 1, 3 & 4 are attempting to alienate the suit properties to third parties. Hence, the plaintiff issued general notice through newspaper publication dated December 25, 2010 in local Tamil Daily 'Dina Malar' and even approached them directly through her husband, and her daughter (who is her power agent herein through Power Deed dated April 12, 2011), but all went in vain and yielded no fruitful results.

5.6. Subsequently, plaintiff and her stepmother - Kamalam entered into an oral family arrangement on April 2, 2011, whereby undivided half share of Ramasamy Gounder's branch was exclusively allotted to the plaintiff and the same was reduced in writing into a notarized Memorandum dated April 8, 2011.

5.7. In these circumstances, the plaintiff has come up with the Original Suit, seeking partition of the suit properties into two equal shares and allot one such share to the plaintiff by metes and bounds with



A.S. NOS.623 OF 2018 AND 318 OF 2019

reference to good and bad soil and put the plaintiff in separate possession of such share. Further, the plaintiff sought for permanent injunction restraining the defendants 1 to 6 from alienating or encumbering any specific extent of suit properties within defined boundaries until passing of final decree for partition, for costs and other reliefs.

6. After filing of written statement, the plaintiff amended the plaint and impleaded defendants 7 and 8, purchasers of certain portion of suit properties just before the Suit i.e., on February 24, 2011. She further filed a reply statement contending that the Wills allegedly executed by Ramasamy Gounder, Poomathal and first defendant, mentioned in the written statement and additional written statement, are not true, not valid and not binding on the plaintiff. The plaintiff further claimed that the three Sale Deeds in favour of defendants 7 and 8 are nominal, invalid and executed only to defeat and defraud the legitimate rights of the plaintiff.

7. Further, as the seventh defendant passed away during the pendency of the Suit, his legal heirs / legal representatives were impleaded as defendants 9 to 11.



CASE OF DEFENDANT - 1 TO 6

8. The first defendant filed written statement which was adopted by defendants 2 to 6, whereby they admitted the Partition Deed dated December 25, 1959 and the allotment of properties thereunder. They also admitted the purchase of Suit 'D' Schedule Property by Poomathal. However, they deny the plaintiff's contention that, though partition was effected, Suit 'A' to 'D' Schedule Properties were enjoyed in common, without any actual division or demarcation. According to them, no joint family properties existed after the Partition Deed dated December 25, 1959 and the parties remained in good terms.

8.1. According to defendants 1 to 6, the second wife of Ramasamy Gounder - Kamalam deserted him and the plaintiff after her marriage settled in the USA. Ramasamy Gounder was looked after by the first defendant and his family. In these circumstances, Ramasamy Gounder executed Will dated March 31, 1981 voluntarily in a sound and disposing state of mind, bequeathing all his properties in favour of the two sons of first defendant viz., third defendant and late Selvaraj. Further, Ramasamy Gounder had provided in his Will that each of the legatees shall pay Rs.25,000/- to the plaintiff, which condition was satisfied by the legatees soon after the demise of Ramasamy Gounder. The Will covers all the



properties of Ramasamy Gounder, including Suit 'D' Schedule Property.

The plaintiff was well aware of the Will.

8.2. Further, the defendants 1 to 6 sold a portion of suit properties, have been in continuous, exclusive and open possession of the remaining suit properties for over 30 years, and have made considerable improvements in the suit properties.

8.3. Further, the third defendant filed a Suit for partition against defendants-1,2, & 4 to 6, in respect of the properties allotted to the first defendant and the properties covered under the Will, in O.S. No.499 of 2006 before the District Munsif Court, Pollachi. A compromise decree was passed on April 10, 2007.

8.4. Thereafter, defendants 1 to 6 entered into registered Partition Deed dated October 22, 2008 and three sales were made *vide* three Sale Deeds even dated February 24, 2011, in respect of portion of Suit 'B' & 'C' Schedule Property, pursuant to the aforesaid Partition Deed dated October 22, 2008. The Suit is bad for non-joinder of necessary parties *viz.*, purchasers of the said portions of suit properties.



A.S. NOS.623 OF 2018 AND 318 OF 2019

8.5. Further, the Suit is not properly valued and proper Court fee is not paid. Further, the relief of partition would not be maintainable; the plaintiff can only file a Suit for recovery of possession. Accordingly, the defendants 1 to 6 sought to dismiss the Suit.

8.6. That apart, the first defendant filed an additional written statement giving explanation about the Will executed by the plaintiff's father. Further, the defendants 2 to 6 filed another additional written statement stating that Poomathal, the plaintiff's grandmother and first defendant's mother, executed Will dated November 22, 1974 bequeathing all her properties to the first defendant, which came into effect after her demise in 1978. Pursuant to Poomathal's Will, the first defendant executed a Will dated January 9, 2009. Furthermore, the fourth defendant filed another written statement stating that the first defendant executed another Will dated February 4, 2013 through which, he cancelled his earlier Will dated January 9, 2009.

CASE OF DEFENDANT-7

9. The seventh defendant filed written statement. Reiterating the averments of the written statement and the additional written statements of defendants 1 to 6, the seventh defendant averred that he is a *bona fide*



A.S. NOS.623 OF 2018 AND 318 OF 2019

purchaser with value, of an extent of 1 Acre 60 Cents in Suit Survey No.106/1A, *vide* Sale Deed dated February 24, 2011. Accordingly, the seventh defendant sought to dismiss the Suit.

CASE OF DEFENDANT-8

10. The eighth defendant filed separate written statement stating that he purchased an extent of 2 Acre 64 Cents in Suit Survey No.107/1, as per Sale Deed dated February 24, 2011. Similarly, he purchased another extent of 1 Acre 50 Cents in Suit Survey No.110/1B through Sale Deed dated February 24, 2011. The eighth defendant reiterated the averments stated by the defendants 1 to 6 in their written statement, contended that he is a *bona fide* purchaser and sought to dismiss the Suit.

CASE OF DEFENDANT-11

11. The eleventh defendant filed written statement, which was adopted by the defendants 9 and 10. To be noted, defendants 9 to 11 are legal heirs / legal representatives of deceased seventh defendant. The eleventh defendant reiterated the averments stated by seventh defendant and sought to dismiss the Suit.



TRIAL COURT

12. On these pleadings, the parties went to trial. The Trial Court initially framed the following issues:

- '1. *Whether the plaintiff got ½ share in the Suit properties?*
2. *Whether the Will dated March 31, 1981 is true, valid and binding upon the plaintiff?*
3. *Whether the plaintiff is in joint possession and enjoyment of the Suit properties?*
4. *Whether the plaintiff has lost right by ouster?*
5. *Whether the Suit is bad for non joinder of necessary parties?*
6. *Whether the plaintiff is entitled to the decree of partition?*
7. *To what other relief?'*

12.1. The Trial Court framed the following additional issues on June 22, 2015:

- '8. *Whether the Will dated November 22, 1974 is true and valid?*
9. *Whether the Will dated January 9, 2009 is true and valid?'*

13. At trial, on the side of the plaintiff, plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.27 were marked. On the side of the Defendants,



A.S. NOS.623 OF 2018 AND 318 OF 2019

defendant Nos.2, 4, 11 and 8 were examined as D.W.1, D.W.4, D.W.7 and D.W.8 respectively. Further, Mr.Palanisamy, Mr.Mohammed, Mr.S.Vivekanandan, Mr.C.Kanagaraj were examined as D.W.2, D.W.3, D.W.5 and D.W.6 respectively and Ex-B.1 to Ex-B.46 were marked.

14. The Trial Court, after analysing the oral and documentary evidence, concluded that Ex-B.40 - Will alleged to have been executed by Ramasamy Gounder and Ex-B.30 - Will alleged to have been executed by Poomathal are not true and not valid. As regards Ex-B.34 - Will dated January 9, 2009 said to have been executed by first defendant as well, the Trial Court held that it is not true and not valid. Further, the Trial Court has held that the plaintiff is in joint possession and enjoyment of the suit properties and hence, the principle of ouster and adverse possession would not apply. Further, the defendants 7 and 8 are purchasers of certain portion of suit properties and they have subsequently been impleaded, and hence, the Suit is not bad for non-joinder of necessary parties. Furthermore, the Trial Court held that the Sale Deeds in favour of defendants 7 and 8 have no legal sanctity and therefore, they are not binding the plaintiff. However, the Trial Court opined that the extent of property purchased by defendants 7 and 8 can be adjusted against the shares of the defendants 1 to 6 in the suit properties. Accordingly, the Trial Court held that the plaintiff is



A.S. NOS.623 OF 2018 AND 318 OF 2019

entitled to ½ share in suit properties and passed a preliminary decree for partition to that effect with costs, while denying the relief of permanent injunction.

15. Feeling aggrieved by the Judgment and Decree dated March 28, 2018, the defendants 8 to 11 therein have filed the Appeal Suit in A.S. No.623 of 2018 and the defendants 4 to 6 therein have filed the Appeal Suit in A.S.No.318 of 2019. As stated *supra*, the prayer in both the Appeal Suits is to set aside the Judgment and Decree passed by the Trial Court in the Original Suit.

ARGUMENTS

16. Mr.P.Valliappan, learned Senior Counsel appearing on behalf of Mr. Nagendra Prasath, learned Counsel on record for the Appellants in A.S. No.318 of 2019 / Respondents 4 to 6 in A.S. No.623 of 2018 / Defendants 4 to 6, would submit that the plaintiff is the only child / daughter of Ramasamy Gounder. Ramasamy Gounder treated his brother's sons, namely the first defendant's sons, as his own sons and was deeply affectionate towards them; likewise, the first defendant treated the plaintiff as his own daughter. The first defendant's wife *viz.*, the second defendant, is also a close relative of Ramasamy Gounder.



16.1. He would further submit that the plaintiff married her cousin, namely her aunt's son, in the year 1979, and the marriage was presided over by both Ramasamy Gounder and the first defendant. As the plaintiff's husband was employed in USA, she relocated to USA soon after her marriage. The plaintiff is presently well settled and financially well-off in USA. Ramasamy Gounder's first wife had passed away and his second wife is living estrange.

16.2. He would submit that in such circumstances, out of love and affection, Ramasamy Gounder voluntarily executed Ex-B.40 - Will in favour of the first defendant, subject to certain provisions. One of the provisions stipulated that the legatees shall provide *seer* in accordance with their caste custom. Another provision required the legatees to pay a sum of Rs.25,000/- each to the plaintiff upon the demise of Ramasamy Gounder. Another provision stated that, after Ramasamy Gounder's demise, in the event of his second wife unwilling to reside with the first defendant's family, she shall be entitled to life interest over the house property situated at Solavampalayam Village, and until her demise, the legatees shall provide her with a monthly maintenance of Rs.100/- each. Yet another provision required the legatees to perform the last rites of Ramasamy Gounder and also the last rites of Kamalam.



16.3. He would submit that Ramasamy Gounder passed away on June 2, 1981. In accordance with his wishes, his last rites were performed by the third defendant, and the legatees duly paid the amounts to the plaintiff. Further, during the puberty function of one of the plaintiff's daughter, the first defendant and his family performed *seer* by providing Rs.10,00,000/- and 40 sovereigns of gold. As a matter of fact, the plaintiff when examined as P.W.1, did not deny but admitted the same to the extent of Rs.1,00,000/- and 10 sovereigns of gold.

16.4. He would further submit that the plaintiff's husband and her two daughters are American citizens, and the plaintiff herself is a green card holder. The plaintiff was fully aware of the existence and contents of Ex-B.40 - Will and did not raise any objection to the same for more than 30 years. The legatees have consistently fulfilled the provisions and wishes expressed by Ramasamy Gounder in Ex-B.40 - Will. The Will has also been duly acted upon, as it could be clearly inferred from the photographs and invitation in Ex-B.1 to Ex-B.9 marked during the cross-examination of P.W.1 / plaintiff. Pursuant to Ex-B.40 - Will, defendants 1 to 6 have been in exclusive possession and enjoyment of the suit properties.



WEB COPY

16.5. He would further submit that the first defendant and his sons, as early as in 1984, sold a portion of the suit properties *vide* Ex-B.15 - Sale Deed dated May 16, 1984, in favour of a co-operative society. Subsequently, in the years 2003 and 2008, the defendants sold certain other portions of the suit properties *vide* Ex-B.16 and Ex-B.17 - Sale Deeds respectively. The plaintiff was well aware of the said sale transactions. These facts would also clearly demonstrate that Ex-B.40 - Will was duly acted upon and that the defendants have been in exclusive possession and enjoyment of the suit properties.

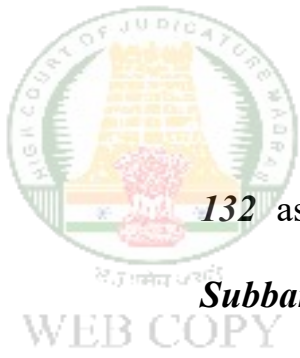
16.6. He would further submit that the Suit 'D' Schedule Property was originally purchased by the plaintiff's grandmother, namely Poomathal, in the year 1952 *vide* Ex-B.14 - Sale Deed. During her lifetime, she executed Ex-B.30 - Will dated November 22, 1974, in favour of the first defendant in respect of the entire Suit 'D' Schedule Property, since the first defendant's wife is her grand-daughter. Poomathal passed away in the year 1978, during the lifetime of Ramasamy Gounder. Ramasamy Gounder and the plaintiff's father-in-law - Rangasamy, were the attesting witnesses to Ex-B.30 - Will executed by Poomathal, and both have passed away.



A.S. NOS.623 OF 2018 AND 318 OF 2019

Though the plaintiff is well aware of Ex-B.30 - Will as well, taking advantage of the fact that the attesting witnesses are no more, she is denying the same.

16.7. He would further submit that one of the attesting witnesses to Ex-B.40 - Will executed by Ramasamy Gounder, namely Rangasamy, has passed away. The other attesting witness, who has been examined as D.W.2, namely Palanisamy, who is also the co-brother of the first defendant, is presently not in good terms with the first defendant's family and has instigated the plaintiff to institute the present Suit. It is further submitted that until the year 2010, the plaintiff maintained cordial relations with the first defendant's family and used to stay at the first defendant's residence whenever she visited India. The plaintiff, as an afterthought and at the instigation of D.W.2 – Palanisamy, has instituted the present Suit. However, she has not denied the testator's signature found in Ex-B.40 - Will nor her father's attestation in Ex-B.30 - Will. He would submit that both Ex-B.30 and Ex-B.40 - Wills have emanated from proper custody and therefore attract the presumption under Section 90 of the Indian Evidence Act, 1872 (corresponding to Section 92 of the Bharatiya Sakshiya Adhiniyam, 2023). He would rely upon the decision of the Privy Council in *Basanth Singh -vs- Brij Rajalakshmi Saran*, reported in *AIR 1935 PC*



132 as well as that of Hon'ble Supreme Court in ***Kalidindi Venkata***

Subbaraju -vs- Chintalapati Subbaraju, reported in ***AIR 1968 SC 947***, to

contend that the Wills attract the statutory presumption.

16.8. He would further submit that the first defendant executed Ex-B.34 and Ex-B.35 - Wills. Ex-B.34 has been duly proved by examining one of the attesting witnesses as D.W.3, namely Mohammed, and Ex-B.35 – Will has been proved by examining the attesting witnesses as D.W.5 and D.W.6. The Trial Court failed to consider Ex-B.1 to Ex-B.9 - Photographs and Invitation, Ex-B.15 to Ex-B.17 - Sale Deeds, other documentary evidence as well as the surrounding facts and circumstances of the case, and erroneously concluded that Ex-B.30 and Ex-B.40 - Wills, as well as Ex-B.34 and Ex-B.35 – Wills, were not proved. The Trial Court also failed to appreciate that the Suit is bad for non-joinder of necessary parties, namely the purchasers of portions of the suit properties under Ex-B.15 to Ex-B.17 - Sale Deeds. Consequently the Trial Court erred in granting a preliminary decree for partition in favour of the plaintiff. Accordingly, he would pray to allow A.S. No.318 of 2019 and set aside the Judgment and Decree of the Trial Court.



16.9. He would rely on the following Judgments in support of his contentions:

- (i) *Bharpur Singh's Case* – Judgment of Hon'ble Supreme Court in *Bharpur Singh -vs- Shamsher Singh* reported in (2009) 3 SCC 687;
- (ii) *B.Venkatamuni's Case* – Judgment of Hon'ble Supreme Court in *B.Venkatamuni -vs- C.J.Ayodhya Ram Singh* reported in (2006) 13 SCC 449;
- (iii) *Ashutosh Samanta's Case* – Judgment of Hon'ble Supreme Court in *Ashutosh Samanta (D) by Lrs. -vs- SM.Ranjan Bala Dasi* reported in 2023 SCC OnLine SC 255;
- (iv) *R.Subramani's Case* – Judgment of Division Bench of this Court in *R.Subramani alias Mani -vs- R.Surendran* reported in 2025 (6) CTC 395;
- (v) *Madhivanan's Case* – Judgment of this Court in *Madhivanan (Died) -vs- Dhanaraj* reported in 2024 (3) MWN (Civil) 648;
- (vi) *S.Varadhan's Case* – Judgment of this Court in *S.Varadhan -vs- S.Rathinam (Died)* in S.A.Nos.448 and 638 of 2013 dated 03.07.2025;
- (vii) *Marathal's Case* – Judgment of this Court in *Marathal (Died) -vs- Kanniammal (Died)* reported in 2024 (3) MWN (Civil) 738;



A.S. NOS.623 OF 2018 AND 318 OF 2019

(viii) *Ramathal's Case* – Judgment of this Court in *Ramathal -vs- Chinnasamy Gounder* reported in 2026 SCC OnLine Mad 368.

WEB COPY

17. Mr.E.K.Kumaresan, learned Counsel appearing for the Appellants in A.S. No.623 of 2018 / Respondents 4 to 7 in A.S. No.318 of 2019 / Defendants 8 to 11, would submit that the seventh defendant purchased a portion of the suit properties *vide* Ex-B.10 - Sale Deed dated February 24, 2011, prior to the institution of the Suit, after due verification of title documents including Ex-B.41 – Compromise Decree, Ex-B.42 – Partition Deed and also after verifying the revenue records and the possession of defendants 4 and 5. Similarly, the eighth defendant purchased a portion of the suit properties from the first and third defendants *vide* two Sale Deeds even dated February 24, 2011, after due verification of all relevant records. Defendants 7 and 8 are *bona fide* purchasers for valuable consideration without notice.

17.1. He would further submit that the Trial Court has rendered an erroneous finding that the Sale Deeds in favour of defendants 7 and 8 lack legal sanctity, and the said finding is liable to be set aside. He would contend that the Suit is liable to be dismissed insofar as the properties covered under Ex-B.10 to Ex-B.12 - Sale Deeds are concerned. Accordingly he would pray for allowing A.S. No.623 of 2018.

Page No.25 of 57



17.2. In the alternative, in any event of this Court sustaining the Judgment and Decree of the Trial Court, he would submit that defendants 7 and 8 are entitled to allotment of share on the grounds of equity at the time of passing final decree.

18. Mr.K.Rajkumar, learned Counsel appearing for Respondents 7 & 8 in A.S. No.623 of 2018 / Respondents 8 & 9 in in A.S. No.318 of 2019 / legal heirs / legal representatives of third defendant would adopt the arguments of Mr.Valliappan, the learned Senior Counsel.

19. On the other hand, Mr.N.Sridhar, learned Counsel appearing on behalf of Mr.R.Bharath Kumar, learned Counsel on record for the Respondent-1 in both the Appeal Suits / plaintiff, would submit that Ramasamy Gounder was affectionate only towards his only daughter, the plaintiff, and that he never executed any Will as alleged by the defendants. He would draw attention of this Court to Ex-A.4 to Ex-A.16 – Letters written by Ramasamy Gounder to the plaintiff and also to Ex-A.17 to Ex-A.21 – Letters written by the first defendant to the plaintiff. The originals of the inland letters sent through aerogramme / postal department have been filed. The plaintiff has specifically pleaded about these letters in



Paragraph No.9 of the plaint. The first defendant, who filed written statement as early as in the year 2011, did not specifically deny the pleadings contained in Paragraph No.9 of the plaint as well as the letters marked as Ex-A.17 to Ex-A.22. Ex-A.17 to Ex-A.22 were marked on October 14, 2014, at which time the first defendant was alive [he died on November 25, 2014 pending Suit]. Further, except Ex-A.10 to Ex-A.12, Ex-A.17, Ex-A.18 and Ex-A.24, the other documents, particularly Ex-A.19 to Ex-A.22, were marked without any objection. There is no reference to any Will in the said letters; on the contrary, the first defendant had agreed for partition. Only after the demise of the first defendant, the defendants have conveniently chosen to deny the documents during cross-examination, which is clearly an afterthought. Ex-A.4 to Ex-A.22 would clearly establish that the alleged Wills said to have been executed by Ramasamy Gounder and Poomathal are not genuine and were created only for the purpose of the case.

19.1. He would further submit that no attesting witness was examined in respect of the alleged Will of Poomathal and the same has not been proved in the manner known to law under Section 68 or Section 69 of the Indian Evidence Act, 1872. Further, in the first written statement filed by the defendants in December 2011, particularly in Paragraph No.5, there is



no mention whatsoever about Poomathal's Will. On the contrary, the defendants had pleaded that the alleged Will and bequest of Ramasamy Gounder covered all the suit properties including the Suit 'D' Schedule Property purchased by Poomathal. Hence, the alleged Will of Poomathal in Ex-B.30 is clearly an afterthought and is not from proper custody. Consequently, Ex-B.30 would not attract the presumption under Section 90 of the Indian Evidence Act, 1872.

19.2. Insofar as Ex-B.40 - alleged Will of Ramasamy Gounder is concerned, the plaintiff denied the testator's signature as well as the attesting witness Rangasamy's signature found therein. Admittedly, one of the attesting witnesses, namely Rangasamy, who is the plaintiff's father-in-law, passed away. The other attesting witness, namely Palanisamy, was examined as D.W.2, but his evidence does not prove due execution of Ex-B.40 - Will. The presumption under Section 90 of Indian Evidence Act, 1872 cannot be applied to Wills, and even otherwise, once resort is made to Section 68, the presumption under Section 90 cannot be invoked. Ex-B.34 and Ex-B.35 - Wills were created only for the purpose of the Suit and that too during the pendency of the Suit; the said documents are self-serving and do not bind the plaintiff in any manner.



WEB COPY

19.3. He would further submit that defendants 7 and 8 were subsequently impleaded and therefore the question of non-joinder of necessary parties does not arise. Drawing attention to Ex-B.10 - Sale Deed dated February 24, 2011, he would submit that it pertains to the property purchased by Poomathal, yet there is no reference to any Will (allegedly) executed by her. On the contrary, the recital therein states that Poomathal died intestate. From this itself, it is evident that Ex-B.30 was created for the purpose of the Suit. The seventh defendant in his written statement has pleaded as though Poomathal executed Ex-B.30 - Will, which is contrary to the recitals in his own Sale Deed. Further, defendants 7 and 8 purchased the properties only after Ex-A.23 - Newspaper Publication dated December 25, 2010, and they are residents of the same locality. Ex-B.10 to Ex-B.12 - Sale Deeds were created only with a view to defeat and defraud the legitimate rights of the plaintiff. The Trial Court was therefore right in holding that Ex-B.10 to Ex-B.12 - Sale Deeds have no legal sanctity and are not binding on the plaintiff, and that defendants 7 and 8 are not *bona fide* purchasers. The properties have been collusively sold in the road frontage portion with a view to obstruct access to the remaining suit properties to the plaintiff. Hence, they are not entitled to claim equity at the



stage of allotment of shares in the final decree proceedings. To that extent alone, the observation of the Trial Court requires interference by this Court.

19.4. He would rely on the following Judgments in support of his contentions:

- (i) *P.T.Munichikkanna Reddy's Case* – Judgment of Hon'ble Supreme Court in *P.T.Munichikkanna Reddy -vs- Revamma* reported in *AIR 2007 SC 1753*;
- (ii) *Dhani Ram's Case* – Judgment of Hon'ble Supreme Court in *Dhani Ram (Died) through L.Rs. -vs- Shiv Singh* reported in *AIR 2023 SC 4787*;
- (iii) *Lalitaben Jayantilal Popat's Case* – Judgment of Hon'ble Supreme Court in *Lalitaben Jayantilal Popat -vs- Pragnaben Jamnadas Kataria* reported in *AIR 2009 SC 1389*;
- (iv) *Raj Kumari's Case* – Judgment of Hon'ble Supreme Court in *Raj Kumari -vs- Surinder Pal Sharma* reported in *2020-3-L.W.645*;
- (v) *Md. Mohammad Ali's Case* – Judgment of Hon'ble Supreme Court in *Md. Mohammad Ali (Dead) by Lrs. -vs- Jagadish Kalita* reported in *2004-1-L.W.612*;
- (vi) *Krishnamurthy S.Sethur's Case* – Judgment of Hon'ble Supreme Court in *Krishnamurthy S.Sethur Dead by Lrs. -vs- O.V.Narasimha*



A.S. NOS.623 OF 2018 AND 318 OF 2019

Setty reported in *AIR 2007 SC 1788*;

(vii) *Vidya Devi's Case* – Judgment of Hon'ble Supreme Court in *Vidya Devi (Dead by L.R's) -vs- Prem Prakash* reported in *AIR 1995 SC 1789*;

(viii) *Doraiswami's Case* – Judgment of Division Bench of this Court in *Doraiswami -vs- Rathnammal* reported in *AIR 1978 Mad 78*.

POINTS FOR CONSIDERATION

20. Upon hearing either side and perusing the evidence available on record, the following points arise for consideration in these Appeal Suits:

- (i) Whether Ex-B.30 - Will dated November 22, 1974 allegedly executed by Poomathal (grandmother of the plaintiff and mother of the first defendant), in favour of first defendant, is true, valid and binding on the plaintiff ?
- (ii) Whether Ex-B.40 - Will dated March 31, 1981 allegedly executed by Ramasamy Gounder who is the plaintiff's father and brother of first defendant, in favour of the sons of first defendant, is true, valid and binding on the plaintiff ?



A.S. NOS.623 OF 2018 AND 318 OF 2019

- (iii) Whether Ex-B.34 - Will dated January 9, 2009 and Ex-B.35 - Will dated February 4, 2013, allegedly executed by the first defendant, are true, valid and binding on the plaintiff ?
- (iv) Whether the plaintiff is in joint possession and enjoyment of the suit properties ?
- (v) Whether the plaintiff is ousted from the suit properties ?
- (vi) Whether the Suit is bad for non-joinder of necessary parties ?
- (vii) Whether the Suit is properly valued and proper Court fee is paid ?
- (viii) Whether the defendants 7 and 8, the purchasers under Ex-B.10 to Ex-B.12, are *bona fide* purchasers and if answered in negative, whether they are entitled to alternate claim of equitable allotment of shares ?



DISCUSSION AND DECISION

Point No.(i) - *Whether Ex-B.30 - Will dated November 22, 1974 allegedly executed by Poomathal (grandmother of the plaintiff and mother of the first defendant), in favour of first defendant, is true, valid and binding on the plaintiff?*

21. The Suit 'D' Schedule Property was purchased by Poomathal *vide* Ex-B.14 - Sale Deed dated December 14, 1952. According to the defendants, Poomathal executed Ex-B.30 - Will dated November 22, 1974 and passed away in the year 1978. The first defendant filed written statement in the month of December 2011, wherein there is no whisper about the alleged Will executed by Poomathal. On the other hand, in Paragraph No.5 of the written statement, it has been stated that Ex-B.40 - Will allegedly executed by Ramasamy Gounder in favour of the sons of first defendant, covers all the suit properties including the Suit 'D' Schedule Property which was purchased by Poomathal *vide* Ex-B.14. Relevant extract reads thus:

'5. . . . The Will and the bequest covers all the properties including the "D" schedule property also. Thus when Ramasamy Gounder had made a bequest through the lawfully executed Will and he had made dispositions of all his properties and these properties devolved on the 3rd defendant and Selvaraj as early as



WEB COPY



A.S. NOS.623 OF 2018 AND 318 OF 2019

in 1981, it is not open to the plaintiff to seek partition and make a claim 30 years thereafter.'

22. This creates serious suspicion about the genuineness of Ex-B.30 - Poomathal's alleged Will. Further, Ex-B.30 was not proved as per Section 63 of Indian Succession Act, 1925 read with Section 68 of the Indian Evidence Act, 1872. One of the attester is the plaintiff's father - Ramasamy Gounder who passed away. The other attester Rangasamy Gounder also passed away. Hence, Mr.Valliappan, learned Senior Counsel would submit that the Trial Court ought to have invoked the presumption under Section 90 of Indian Evidence Act, 1872 and held that Ex-B.30 - Will has been duly proved. Further he would submit that Ex-B.30 - Will came through proper custody *i.e.*, through the defendants. The Trial Court failed to lawfully exercise its discretionary power contemplated under Section 90 of the Indian Evidence Act, 1872. He relied heavily on the Judgment of the Privy Council in ***Basant Singh's Case*** and that of Hon'ble Supreme Court in ***Kalidindi Venkata Subbaraju's Case*** [both are cited *supra*]. He would also rely on ***Marathal's Case*** [cited *supra*].

23. As regards the question whether the presumption under Section 90 of the Indian Evidence Act, 1872 is applicable to Will or not, it is true that the Hon'ble Privy Council as well as the Hon'ble Supreme Court had

Page No.34 of 57



held that it is applicable to Wills as well. However, in the subsequent decisions in *Bharpur Singh's Case* and *Ashutosh Samanta's Case* [cited *supra*], the Hon'ble Supreme Court has held that Section 90 presumption is not applicable to Wills.

24. Be that as it may, this Court is of the view that the question of applicability of presumption under Section 90 of the Indian Evidence Act, 1872 will not arise in this case and we are not inclined to go into the issue for the following reasons:

- (i) Admittedly Ex.B.30 Will has not been admitted as evidence. To admit Ex.B.30 as evidence, mandatory requirements under law has not been complied with. Ex.B.30 has not been proved to admit as a document. In the absence of attesting witnesses, the execution of the Will ought to have been proved by any of the mode under section 69 of the Indian Evidence Act by examining a person who acquainted with the signature of the attesting witnesses. That apart, no attempt has been made whatsoever to prove the Will in any other manner. Therefore, when the document itself cannot be admitted in evidence, we are not inclined to delve to the applicability of the presumption under section 90 of the Indian Evidence Act. Further, the first defendant in para 5 of his written statement has averred that the Will and the bequest covers all the properties including the 'D'



schedule property in Ex.B.30, the alleged Will of Poomathal.

Therefore, when the document itself has not been proved to be valid document to look into, the question of whether the presumption will arise or not is unnecessary to delve on that point.

- (ii) Furthermore, despite plaint pleading with regard to Ex-A.17 to Ex-A.22 - Letters written by first defendant to plaintiff, defendants 1 to 6 did not specifically deny the same in their written statement.
- (iii) Even when Ex-A.17 to Ex-A.22 were marked on October 14, 2014, when first defendant was alive, no objection was raised. To be noted, Ex-A.20 - Letter dated May 9, 1989 and Ex-A.21 - Letter dated August 1, 1989 were sent by first defendant through Aerogramme (postal department) and the postal seal thereon proves the same. This Court is of the considered view that Ex-A.20 and Ex-A.21 are proved. In the said documents, there is no whisper about the alleged Will of Poomathal or of Ramasamy Gounder. On the other hand, the first defendant has agreed for partition of suit properties in the said documents.

25. In these circumstances, this Court is of the view that Ex-B.30 - Poomathal's alleged Will has not been proved as per law. The Trial Court has rightly held so and this Court finds no reason to interfere with the said finding. **Point No.(i) is answered accordingly.**



Point No.(ii) - *Whether Ex-B.40 - Will dated March 31, 1981 allegedly executed by Ramasamy Gounder who is the plaintiff's father and brother of first defendant, in favour of the sons of first defendant, is true, valid and binding on the plaintiff?*

26. As far as Point No.(ii) is concerned, admittedly, one of the attesting witness, namely Palanisamy Gounder was examined as D.W.2. His evidence did not support the case of the defendants. He denied the execution of Ex-B.40 - Will as well as his signature therein. Since D.W.2 – Palanisamy Gounder has denied execution, the defendants ought to have taken steps to prove the Ex-B.40 – Will by “Other evidence” as per Section 71 of Indian Evidence Act, 1872 (Section 70 of Bharatiya Sakshya Adhiniyam, 2023). But the defendants miserably failed to do so. Further, Ex-A.16 - Letter dated May 13, 1981 written by Ramasamy Gounder to plaintiff would show that Ramasamy Gounder was very affectionate towards his daughter. From the contents thereof, it could be inferred that Ramasamy Gounder would not have executed Ex-B.40 - Will excluding the plaintiff, that too without any specific reason. Naturally a person having one and only daughter would not bequeath all his properties to his brother's sons leaving out his own daughter. By following the armchair principle and looking from the perspective of the testator, this Court finds no reason for Ramasamy Gounder to execute Ex-B.40 - Will excluding the



plaintiff completely. Hence, the Will is surrounded by suspicious circumstances. A conjoint reading of the correspondence between the plaintiff and Ramasamy Gounder in Ex-A.4 to Ex-A.16, and between the plaintiff and the first defendant in Ex-A.17 to Ex-A.22 (since silent on the aspect of any Will) would belie not only Ex-B.30, but also Ex-B.40 - alleged Will executed by Ramasamy Gounder in favour of the sons of first defendant. When it comes to proof of Will, Judgment of Hon'ble Supreme Court in *H.Venkatachala Iyengar -vs- B.N. Thimmajamma*, reported in *1958 SCC OnLine SC 31* is regarded as the *locus classicus*. It was *inter-alia* held therein that unlike other documents, a Will speaks from the death of the testator and when it is surrounded by suspicious circumstances, it is the duty of the propounder of the Will to remove the clouds and prove the Will. But the defendants 3 to 6 have failed to do so. The Trial Court rightly concluded that Ex-B.40 was surrounded by suspicious circumstances which the propounder of the Will failed to remove and hence, the Will is not proved as per law. This Court does not find any reason to interfere with the said finding. **Point No.(ii) is answered accordingly.**



Point No.(iii) - *Whether Ex-B.34 - Will dated January 9, 2009 and Ex-B.35 - Will dated February 4, 2013, allegedly executed by the first defendant, are true, valid and binding on the plaintiff?*

27. As regards Ex-B.34 and Ex-B.35 - Wills dated January 9, 2009 and February 4, 2013 respectively, according to the defendants, Ex-B.35 - Will revoked the earlier Will of first defendant in Ex-B.34. The attestor of the Wills were examined. However, the Wills were pressed into service after institution of the Suit. This Court is of the view that the first defendant may have executed the Wills but this Court is of the view that they would not be binding on the plaintiff and hence, there is no need to determine their validity. The Trial Court also rightly arrived at the same conclusion. **Point No.(iii) is answered accordingly.**

Point Nos.(iv) - *Whether the plaintiff is in joint possession and enjoyment of the suit properties ?*

and

Point Nos.(v) - *Whether the plaintiff is ousted from the suit properties ?*

28. Admittedly, *vide* Ex-A.1 - Partition Deed dated December 25, 1959, 'A', 'B' and 'C' Schedule Properties therein were respectively allotted to Arunachala Gounder, Ramasamy Gounder and the first defendant. Arunachala Gounder passed away in 1961 and his wife - Poomathal passed



away in 1978. Hence, as per Sections 8 and 15 of the Hindu Succession Act, 1956, upon demise of Arunachala Gounder and Poomathal, 'A' Schedule Property in Ex-A.1, devolved upon Ramasamy Gounder and the first defendant; they were each entitled to $\frac{1}{2}$ share therein.

29. As regards 'B' and 'C' Schedule Properties therein, though they were allotted to Ramasamy Gounder and first defendant separately, they continued to be in joint possession and enjoyment of the same without any actual division / demarcation by metes and bounds. The said fact was some extent admitted by the defendants 1 to 6 also. As stated *supra*, Ex-B.30 - Poomathal's alleged Will is not proved and hence, the property purchased by her *viz.*, Suit 'D' Schedule Property would devolve upon Ramasamy Gounder and the first defendant and they both would be equally entitled to the same, upon her demise. Thus, Ramasamy Gounder and the first defendant were both entitled to equal share or $\frac{1}{2}$ share in Suit 'A' to 'D' Schedule Properties and they were in joint possession and enjoyment of the same. As stated above, Ex-B.40 - Will executed by Ramasamy Gounder is also not proved. In other words, Ramasamy Gounder passed away intestate.



30. Upon the demise of Ramasamy Gounder, his $\frac{1}{2}$ share in the Suit 'A' to 'D' Schedule Properties devolved upon his daughter - plaintiff and his second wife - Kamalam. The plaintiff and said Kamalam entered into an oral family arrangement on April 2, 2011 whereby the entire $\frac{1}{2}$ share of Ramasamy Gounder in suit properties was allotted exclusively to the plaintiff. Later, the same has been reduced into writing and marked as Ex-A.24. The defendants have not seriously disputed the same and moreover, they have no rights to do so. The competent person to dispute the oral family arrangement is Kamalam and till date, she has not disputed or objected the same. Hence, though the plaintiff is settled in USA, this Court is of the view that the plaintiff being a co-owner is deemed to be in joint possession and enjoyment of the suit properties [See *Neelavathi -vs- N.Natarajan*, reported in *AIR 1980 SC 691* and *Lakshmiammal -vs- Madhavakrishnan*, reported in *AIR 1978 SC 1607*], except the properties covered under Ex-B.15 to Ex-B.17 - Sale Deeds for reasons to be stated *infra*.

31. Coming to Ouster, it is crucial to understand what ouster is and what are its essential ingredients. In *P.Ramanatha Aiyar's 'The Law Lexicon' [2nd Edition, Lexis Nexis Publication]*, Ouster has been defined as follows:



"An ouster is the wrongful dispossession or exclusion from real property of a party entitled to the possession thereof. "

32. In *Black's Law Dictionary [4th Edition, West Publishing Co.]*,

Ouster has been defined as *"A species of in-juries to things real, by which the wrong-doer gains actual occupation of the land, and compels the rightful owner to seek his legal remedy in order to gain possession"*.

33. The Honble Supreme Court in *P.Lakshmi Reddy -vs- L.Lakshmi*

Reddy, reported in ***1956 (2) SCC 759***, has held as follows:

*"8.Now, the ordinary classical requirement of the adverse possession is that it should be nec vi, nec clam, nec precario. (See Secretary of State for India in Council v. Debendra Lal Khan (1933) LR 61 IA 78, 82: 1933 SCC OnLine PC 65). The possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. [See Radhamoni Debi v. Collector of Khulna, 27 IA 136, 140]. But it is well-settled that in order to establish adverse possession of one co-heir as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits, of the properties. **Ouster of the non-possessing co-heir by the co- heir in possession who***



WEB COPY



A.S. NOS.623 OF 2018 AND 318 OF 2019

claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title. The co-heir in possession cannot render his possession adverse to the other co- heir not in possession merely by any secret hostile animus on his own part in derogation of the other co- heir's title. (See Cores v. Appuhamy, 1912 AC 230(PC)). It is a settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster. ..."

[Emphasis supplied by this Court]

34. The Hon'ble Supreme Court in *Vidya Devi -vs- Prem Prakash*, reported in (1995) 4 SCC 496, culled out three essential ingredients for establishing the plea of ouster. Relevant extract is hereunder:

*"28.Ouster does not mean actual driving out of the co- sharer from the property. It will, however, not be complete unless it is coupled with all other ingredients required to constitute adverse possession, **Broadly speaking, three elements are necessary for establishing the plea of ouster in the case of co-***

Page No.43 of 57



owner. They are (i) declaration of hostile animus (ii) long and uninterrupted possession of the person pleading ouster and (iii) exercise of right of exclusive ownership openly and to the knowledge of other co-owners. Thus, a co- owner, can under law, claim title by adverse possession against another co-owner who can, of course, file appropriate suit including suit for joint possession within time prescribed by law."

[Emphasis supplied by this Court]

35. Further, Hon'ble Supreme Court in **Govindammal -vs- R. Perumal Chettiar**, reported in (2006) 11 SCC 600, referring to **Mohaideen Abdul Kadir -vs- Mohd. Mahaideen Umma**, reported in ILR (1970) 2 Mad 636, has held thus:

"10. In Mohaideen Abdul Kadir v. Mohd. Mahaideen Umma [ILR (1970) 2 Mad 636] their Lordships held that no hard-and-fast rule can be laid down. But the following relevant factors may be taken into consideration: (i) exclusive possession and perception of profits for well over the period prescribed by the law of limitation; (ii) dealings by the party in possession treating the properties as exclusively belonging to him; (iii) the means of the excluded co-sharer of knowing that his title has been denied by the co-owner in possession. There may be cases, where, owing to long lapse of time, it may not



WEB COPY



A.S. NOS.623 OF 2018 AND 318 OF 2019

be possible for the co-owner in possession to adduce evidence as to when the ouster commenced and how it was brought home to the knowledge of the excluded co-owner. In such a case the law will presume ouster as an explanation of the long peaceful possession of the co-owner in possession. In order to maintain the person in such possession the law presumes a lawful origin of the possession. Therefore, no hard-and-fast rule can be laid down from which it can be inferred that any co-sharer has ousted his co-sharer. That will depend upon facts of each case. Simply long possession is not a factor to oust a co-sharer but something more positive is required to be done. There must be a hostile open possession, denial and repudiation of the rights of other co-owners and this denial or repudiation must be brought home to the co-owners. Simply because a co-sharer gave notice claiming partition of the suit properties and possession and did not pursue the matter further, that will not be sufficient to show that the co-sharer has lost his/her right. ... "

36. This Court in ***D.V.Jegannathan -vs- P.R.Srinivasan***, reported in ***(1999) 3 LW 742***, has held as follows:

"27.Mutation of the Revenue records, payment of taxes, long possession of the property, management of

Page No.45 of 57



WEB COPY



A.S. NOS.623 OF 2018 AND 318 OF 2019

the property, appropriation of income, the other sharers being out of possession of the property etc., each of such acts by a co-owner by itself may not be sufficient to establish ouster or open assertion of adverse title as against another co-owner. "

37. It could be understood from the above legal expositions that there can be no straight jacket, one size fits all formula for proof of ouster, as it may vary, depending on the unique facts and circumstances of each case. But however, some essential ingredients are relevant for consideration from a broader perspective. They are (i) exclusive, long, open and uninterrupted possession and enjoyment (ii) hostile to that of the co-owner alleged to be ousted and (iii) to their knowledge.

38. This Court shall now approach the facts of this case bearing in mind the above legal position. The person who sets up the plea of ouster must satisfy the above ingredients through clear and cogent evidence. In this case, the correspondence in Ex-A.4 to Ex-A.22, more specifically those in Ex-A.17 to Ex-A.22 wherein the first defendant has agreed for partition with the plaintiff and did not whisper about any Will, would show that there was no open possession with hostile animus, that too to the knowledge of the plaintiff. If really the first defendant had an hostile



animus and had ousted the plaintiff, there was no need for him to agree for partition of the suit properties. As stated *supra*, Ex-A.19 to Ex-A.22 were marked on October 14, 2014, when first defendant was alive, and he raised no objection to the same. In these circumstances and also considering the other facts and circumstances of the case, this Court is of the view that the defendants have not satisfied the essential ingredients of ouster. The defendants have failed to prove the plea of ouster. Hence, no doubt, the plaintiff is in joint possession and enjoyment of the Suit properties except those covered under the Sale Deeds in Ex-B.15 to Ex-B.17. **Point Nos.(iv) and (v) are answered accordingly.**

Point No.(vi) - *Whether the Suit is bad for non - joinder of necessary parties ?*

39. As regards the plea of non-joinder of necessary parties, in *A. Ramachandra Piliyai -vs- Valliammal*, reported in *1983 SCC OnLine Mad 44*, a Division Bench of this Court, after referring to the Judgment of Hon'ble Supreme Court in *Kanakarathanammal -vs- Loganatha Mudaliar*, reported in *1963 SCC OnLine SC 154* as well as the Division Bench Judgment of this Court in *T. Panchapakesan -vs- Peria Thambi Naicker*, reported in *1972 SCC OnLine Mad 112*, has held that in a Suit for partition, all the sharers are necessary parties and the Suit is liable to be



A.S. NOS.623 OF 2018 AND 318 OF 2019

dismissed for non-joinder of even one of the necessary parties. Admittedly, the purchasers of certain portions of suit properties *vide* Ex-B.10 to Ex-B.12 - Sale Deeds even dated February 24, 2011, after the paper publication in Ex-A.23, were subsequently impleaded as defendants 7 and 8. However, the other purchasers, namely the purchasers of certain portion of suit properties under Ex-B.15 to Ex-B.17 are not added as parties, despite the Sale Deeds being marked. The Sale Deeds covered Suit 'B' as well as 'C' Schedule properties, which were allotted to Ramasamy Gounder and first defendant respectively *vide* Ex-A.1 - Partition Deed. Ex-B.15 - Sale Deed was executed by the first defendant and his two sons, as early as in 1984 in favour of a co-operative society in respect of an extent of 18 Cents in Survey No.281/B2B and an extent of 4 Acres 82 Cents in Survey No.282/2. It is learnt that the co-operative society further alienated the property purchased to various persons, who are necessary parties to the Suit and the plaintiff has not added them as parties. Ex-B.16 – Sale Deed was executed by the first defendant and his two sons as early as 2003 in favour of one Muthulakshmi in respect of an extent of 6 Acres 88 Cents within the specified four boundaries. It is learnt that the said Muthulakshmi sold the said lands to various persons. Hence, the Suit is bad for non-joinder of necessary parties *qua* the properties covered under Ex-B.15 to Ex-B.17. The Trial Court failed to consider the said aspect and erred in

Page No.48 of 57



concluding that the Suit is not bad for non-joinder of necessary parties.

Point No.(vi) is answered accordingly.

Point No.(vii) - *Whether the Suit is properly valued and proper Court fee is paid ?*

40. As held under Point No.(iv), the plaintiff is in joint possession and enjoyment of the suit properties except those portions covered under Ex-B.15 to Ex-B.17 - Sale Deeds. Those properties were alienated by the defendants in the year 1984, 2003 and 2008 respectively and it is learnt that they have been through multiple alienations thereafter. In view of the same, the plaintiff is not in possession and enjoyment of those properties covered under Ex-B.15 to Ex-B.17. Hence, the Court fee paid under Section 37 (2) of the Tamil Nadu Court-Fee and Suits Valuation Act, 1955 is incorrect in so far as the relief of partition in respect of the properties covered under Ex-B.15 to Ex-B.17 is concerned. **Point No.(vii) is answered accordingly.**



Point No.(viii) - *Whether the defendants 7 and 8, the purchasers under Ex-B.10 to Ex-B.12, are bona fide purchasers and if answered in negative, whether they are entitled to alternate claim of equitable allotment of shares ?*

41. The seventh defendant *vide* Ex-B.10 - Sale Deed, purchased an extent of 1 Acre 60 Cents in Suit Survey No.106/1A from the fourth and the fifth defendants. Originally, an extent of 1 Acre 76 Cents in the said Suit survey number was purchased by Poomathal *vide* Ex-B.14 Sale Deed dated December 14, 1952. After demise of Poomathal, the aforesaid 1 Acre 76 Cents devolved to Ramasamy Gounder and first defendant equally under Section 15(1) of the Hindu Succession Act, 1956. Hence, the first defendant is entitled to only half of 1 Acre 76 Cents, *i.e.*, 88 Cents. Therefore, the defendants 4 and 5 cannot sell more than 88 Cents. In other words, Ex-B.10 is valid only to an extent of 88 Cents and Ex-B.10 will not affect plaintiff's half share in Survey No.106/1A *i.e.*, 88 Cents. The seventh defendant cannot lay his hands over more than what the first defendant was entitled to.

42. As far as eighth defendant is concerned, *vide* Ex-B.11 - Sale Deed, he purchased an extent of 2 Acres 64 Cents out of the total 4 Acres 55 Cents in Suit Survey No.107/1. Further, *vide* Ex-B.12-Sale Deed, eighth defendant purchased 1 Acre 50 Cents out of the total extent of 4 Acre 19



Cents in Suit Survey No.110/1B. The first defendant is entitled to only half of the total extents in Suit Survey Nos.107/1 and 110/1B, which means he is entitled to only 2 Acres 27 ½ Cents in Suit Survey No.107/1 and 2 Acre 9 ½ Cents in Suit Survey Nos.110/1B. Ex-B.11 and Ex-B.12 are valid only upto the extent of defendants' shares. The extent covered under Ex-B.11 exceeds the defendants' entitlement, while the extent covered under Ex-B.12 remains within their entitlement. In other words, while Ex-B.12 is valid in respect of the entire extent sold, Ex-B.11 is valid only in respect of 2 Acre 27 ½ Cents and not 2 Acres 64 Cents.

43. The Trial Court concluded that Ex-B.10 to Ex-B.12 - Sale Deeds have no legal sanctity. It is to be noted that defendants 7 and 8 are hailing from the same locality where the property is situated, which means there is a high probability that they are aware of the rights and interest of the plaintiff over the suit properties. Further, they purchased the properties after Ex-A.23 - Newspaper Publication in a local daily. Defendants 7 and 8 being from the same locality would have definitely got to know the contents of Ex-A.23 had they taken bare minimum care and caution. With a simple enquiry about the property, they would have come to know the rights of the plaintiff. In these circumstances, they cannot claim to be a *bona fide* purchasers. Hence, their Sale Deeds would not cause prejudice to the share of the plaintiff in any manner.



44. As far as the claim of equity is concerned, it can only be decided at the time of final decree proceedings. At the time of passing final Decree, the defendants 7 and 8 or their legal heirs may claim equity in respect of the extent their vendor is lawfully entitled. **Point No.(viii) is answered accordingly.**

45. As regards the relief of permanent injunction, it cannot be granted against the co-owner and the Trial Court rightly dismissed the Suit *qua* the said relief.

46. As regards the other case laws cited by the learned Counsels, there is no quarrel with them.

47. For convenience, the particulars of properties covered under Ex-B.15 to Ex-B.17 - Sale Deeds are tabulated hereunder:

<i>Sale Deed & Exhibit</i>	<i>Survey No.</i>	<i>Extent (Acres)</i>	<i>Total Extent (Acres)</i>
Ex-B.15 - Sale Deed dated May 16, 1984	281/B2B	0.18	5.00
	282/2	4.82	
Ex-B.16 - Sale Deed dated December 12, 2003	281B/2	6.88	6.88
Ex-B.17 - Sale Deed dated April 28, 2008	313B/2	0.20	0.40
	313/A2B	0.13	
	314/A	0.07	



CONCLUSION

WEB COPY

48. Resultantly, the Appeal Suit in A.S. No.318 of 2019 filed by the defendants 4 to 6 is partly allowed and a preliminary decree for partition is passed in respect of the suit properties except the properties covered under Ex-B.15 to Ex-B.17 - Sale Deeds which are tabulated above. The Appeal Suit in A.S. No.623 of 2018 filed by eighth defendant and the legal heirs of seventh defendant is dismissed. In view of the facts and circumstances of this case, the parties shall bear their own costs in both the Appeal Suits. Consequently, connected Civil Miscellaneous Petition is closed.

[N.S.K., J.]

[R.S.V., J.]

6 / 02 / 2026

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes
TK

To
The I Additional District Court
Coimbatore.



WEB COPY



A.S. NOS.623 OF 2018 AND 318 OF 2019

N.SATHISH KUMAR, J.

AND

R.SAKTHIVEL, J.

TK

PRE-DELIVERY COMMON JUDGMENT MADE IN
A.S. NOS.623 OF 2018 AND 318 OF 2019

6 / 02 / 2026

A.S.Nos.623 of 2018 and 318 of 2019

N.SATHISH KUMAR, J.
and
R.SAKTHIVEL, J.

These cases have been listed under the caption, for being mentioned.

Page No.54 of 57



2. Today, Mr.N.Saridhar, learned counsel and Mr.P.Valliappan, learned Senior Counsel were present before this Court and they seek to incorporate the following modifications in the common judgment dated 06.02.2026 passed by this Court.

3. Accordingly, paragraphs 41, 42 and 48 shall read as follows:-

*41. The seventh defendant vide Ex-B.10 - Sale Deed, purchased an extent of 1 Acre 60 Cents in Suit Survey No.106/1A from the fourth and the fifth defendants. Originally, an extent of 1 Acre 76 Cents in the said Suit survey number was purchased by Poomathal vide Ex-B.14 Sale Deed dated December 14, 1952. After demise of Poomathal, the aforesaid 1 Acre 76 Cents devolved to Ramasamy Gounder and first defendant equally under Section 15(1) of the Hindu Succession Act, 1956. Hence, the first defendant is entitled to only half of 1 Acre 76 Cents, i.e., 88 Cents. Therefore, the defendants 4 and 5 cannot sell more than 88 Cents. In other words, Ex-B.10 is valid only to an extent of 88 Cents **of undivided share** and Ex-B.10 will not affect plaintiff's half share in Survey No.106/1A i.e., 88 Cents. The seventh defendant cannot lay his hands over more than what the first defendant was entitled to.*

42. As far as eighth defendant is concerned, vide Ex-B.11 - Sale Deed, he purchased an extent of 2 Acres 64 Cents out of the total 4 Acres 55 Cents in Suit Survey No.107/1. Further, vide Ex-B.12-Sale Deed, eighth defendant purchased



WEB COPY

*1 Acre 50 Cents out of the total extent of 4 Acre 19 Cents in Suit Survey No.110/1B. The first defendant is entitled to only half of the total extents in Suit Survey Nos.107/1 and 110/1B, which means he is entitled to only 2 Acres 27 ½ Cents in Suit Survey No.107/1 and 2 Acre 9 ½ Cents in Suit Survey Nos.110/1B. Ex-B.11 and Ex-B.12 are valid only upto the extent of **undivided share of vendors**. The extent covered under Ex-B.11 exceeds the **vendors** entitlement, while the extent covered under Ex-B.12 remains within their entitlement. In other words, while Ex-B.12 is valid in respect of **undivided 1.50 acres**, Ex-B.11 is valid only in respect of **undivided 2 Acre 27 ½ Cents** and not 2 Acres 64 Cents.*

*48. Resultantly, the Appeal Suit in A.S. No.318 of 2019 filed by the defendants 4 to 6 is partly allowed and a preliminary decree for partition is passed in respect of the suit properties except the properties covered under Ex-B.15 to Ex-B.17 - Sale Deeds which are tabulated above. **It is clarified that the suit is dismissed in respect of the properties covered under Ex-B.15 to Ex-B.17-sale deeds.** The Appeal Suit in A.S. No.623 of 2018 filed by eighth defendant and the legal heirs of seventh defendant is dismissed. In view of the facts and circumstances of this case, the parties shall bear their own costs in both the Appeal Suits. Consequently, connected Civil Miscellaneous Petition is closed.*

4. Except the above modifications, the common judgment dated 06.02.2026 remains intact. The Registry shall carry out the above



WEB COPY

dhk

modifications and issue order copies afresh.



A.S. NOS.623 OF 2018 AND 318 OF 2019

(N.S.K., J.) (R.S.V., J.)
10.02.2026

N.SATHISH KUMAR, J.
and
R.SAKTHIVEL, J.

dhk

A.S.Nos.623 of 2018 and 318 of 2019

10.02.2026

Page No.57 of 57