



S.A. No.265 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 11.11.2025

PRONOUNCED ON : 06.02.2026

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A. No.265 of 2024

and

C.M.P.No.8224 of 2024

1.Rajalakshmi
2.Gopalakrishnan
3.Renuka Easwari
4.Swaminathan

... Appellants

Vs.

Prema

... Respondent

Prayer: This Second Appeal is filed under Section 100 of the code of Civil Procedure, against the Judgment and Decree dated 15.12.2023 in A.S.No.19 of 2022 on the file of the learned District Judge, Mayiladuthurai in reversing the Judgment and Decree dated 12.11.2021 in O.S.No.173 of 2015 on the file of the learned Principal Sub-Ordinate Judge, Mayiladuthurai.

For Appellants : Mr.A.Muthukumar

For R1 to R3 : Mr.K.Elango



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JUDGMENT

This Second Appeal is filed against the judgment and decree dated 15.12.2023 in A.S.No.19 of 2022 on the file of the learned District Judge, Mayiladuthurai in reversing the Judgment and Decree dated 12.11.2021 in O.S.No.173 of 2015 on the file of the learned Principal Sub-Ordinate Judge, Mayiladuthurai.

2.The unsuccessful defendants are on appeal.

3.The respondent as plaintiff has filed the suit in O.S.No.173 of 2015 for partition and separate possession of half share in the suit property. Her specific case is that the suit property belonged to her mother, Janaki Ammal who purchased the same under registered sale deed dated 10.06.1963. Apart from the plaintiff, the said Janaki Ammal had three sons. The two sons of Janaki Ammal died prior to the death of Janaki ammal. The said Janaki Ammal died on 28.10.1994 survived by the plaintiff and her brother Ravindra raj, husband of the 1st defendant and father of the defendants 2 to 4. After the demise of



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Ravindra raj in the year 2008, she demanded for a partition and the same was refused by the defendants. Hence, the plaintiff was constrained to file the above suit for partition.

4.The claim of the plaintiff was resisted by the defendant stating that under the sale deed dated 10.06.1963, the said Janaki Ammal had purchased only 2280 sq. ft., where as, the plaintiff has laid the partition suit for an extent of 3743 sq. ft. After the demise of Janaki Ammal on 28.10.1994, her son Ravindra raj became the absolute owner of the suit property by paying taxes to the property for more than 20 years. Neither the plaintiff nor her mother Janaki Ammal were in joint possession over the suit property. The claim of the plaintiff is extinguished. Further, the defendants 2 to 4 have released their shares in favour of the 1st defendant by virtue of a release deed dated 20.06.2011 and from then onwards the 1st defendant was in exclusive possession and enjoyment of the suit property till she executed a settlement deed on 07.08.2014 in favour of her daughter namely the 3rd defendant in the suit. Thereafter, the 3rd defendant has obtained patta in her favour and also built a RCC roofed building in the suit property. Therefore, the 3rd defendant is the absolute owner of the suit property in which the plaintiff is not entitled for any share and prayed for dismissal of the suit.



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5.The trial Court based on the materials on record, dismissed the suit, against which the plaintiff preferred the appeal suit in A.S.No.19 of 2022. The First Appellate Court reversed the judgment and decree of the trial Court, decreed the suit in favour of the plaintiff. Aggrieved by this, the defendants have preferred the present second appeal.

6.This second appeal is admitted on the following questions of law:

a. When the plaintiff has not assigned any reason in the plaint for not filing the suit for more than 19 years after succession opened on the death of her mother, Janaki Ammal, whether the First Appellate Court erred in law in holding that the plaintiff is entitled to partition despite her long inaction contrary to the judgment of this Court and reported in 2010 (6) MLJ 351?

7.Mr.A.Muthukumar, the learned counsel for the appellants/defendants would submit that the plaintiff has filed the above suit for partition after lapse of 19 years, when the succession opened on the death of her Janaki Ammal on 28.10.1994. He would further contend that there were two registered instruments after the death of Ravindra raj, brother of the plaintiff in favour of the



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defendants 1 & 3. The plaintiff having knowledge about the above documents, filed the above suit for partition belatedly, which is barred by limitation. The long inaction on the part of the plaintiff would establish that her right had extinguished. The suit has been filed by the plaintiff after 19 years after the demise of her mother, when succession opened. The defendants are in possession and enjoyment of the property exclusively adverse to the plaintiff for more than the period prescribed. The plaintiff has not produced any evidence to show that she had animus to possess the property. To support his contention, he has relied upon the following judgments reported in :

1.(2010) 6 MLJ 351

2. 2022-1-LW 902

8.He would further contend that the total extent of property purchased by Janaki Ammal under Ex.A1 was only 2280 sq. ft., where as, the suit has been laid for 3743 sq. ft., and the plaintiff failed to prove that the said Janaki Ammal was in possession and enjoyment of excess land to an extent of 1800 sq. ft.. There is no pleading in this regard and therefore, the First appellate Court erred in holding that the boundaries will prevail over extent. The learned counsel would submit that, where the deed sets out the extent and measurements correctly, there



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can be no difficulty in determining the subject matter of the suit. To support his contention, he has relied upon the judgment reported in :

1. 1984 (97) LW 306

2. 1978 (2) MLJ 620

Hence, prayed for setting aside the judgment and decree passed by the First Appellate Court.

9.On the other hand, Mr.K.Elango, learned counsel appearing for the respondent submits that, the correct legal position is that, possession of a property belonging to several co-sharers by one co-sharer shall be deemed that, he possess the property on behalf of the other co-sharers unless there has been a clear ouster by denying the title of other co-sharer. The mutation in the revenue records in the name of one co-sharer would not amount to ouster unless there is a clear declaration that title of the other co-sharers was denied. He would further contend that possession of co-sharer has to be construed as holding properties as a constructive trustee on behalf of the other co-sharer who is not in possession and mere passage of time does not extinguish the right of the co-owner who has been out of possession of the joint family property. Mere issuance of patta in favour of the 3rd defendant does not determine the character of the suit properties



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and cannot be used to claim absolute right over the suit property against the plaintiff. To support his contention, he has relied upon the judgment reported in :

1.2022 SCC Online SC 420

2.2024 SCC Online SC 2824

3.2025 (3) LW 734

4.2021 (5) LW 692

10.Thus, he would submit that, the First Appellate Court has rightly considered the materials on record and decreed the suit in favour of the plaintiff which warrants any interference by this Court.

11.Heard on both sides and records perused.

12.It is not in dispute that the suit properties were purchased by Janaki Ammal on 10.06.1963. Admittedly, she had purchased 2280 sq. ft.,where as, the suit is laid for 3743 sq. ft., and there is nothing on record to show that the said Janaki Ammal was in possession and enjoyment of 3743 sq. ft. As rightly pointed out by the learned counsel for appellant/defendant, when the sale deed sets out the extent and measurements correctly, the plaintiff cannot claim more



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extent in the suit. Now, it has to be seen whether the plaintiff can claim any share in the suit property to an extent of 2280 sq. ft. No doubt, possession of co-sharer has to be construed as holding properties as a constructive trustee on behalf of the other co-sharer who is not in possession and mere passage of time does not extinguish the right of the co-owner who has been out of possession of the joint family property. According to the defendants, the son Ravindraraj was alone in exclusive possession and enjoyment of the suit property by mutating revenue records in his name. Neither the plaintiff nor Janaki Ammal were in joint possession and enjoyment of the suit property. After his demise, his children namely the defendants 2 to 4 executed a release deed in favour of their mother, the 1st defendant and thereafter, she executed a settlement deed in favour of her daughter namely the 3rd defendant. The settlement deed dated 07.08.2014 in favour of the 3rd defendant is marked as Ex.B1. The revenue records in the name of Ravindra raj were marked as Exs.B2 to B7.

13.Strangely, in this case, the plaintiff has filed the above suit for partition filed after lapse of 19 years after the death of her mother Janaki ammal. No material placed by the plaintiff to show that she was in joint enjoyment, along with her brother and the defendants before and after demise of her mother. Having allowed the defendants to enjoy the properties exclusively without any



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protest or claim for more than 19 years, after opening of succession upon demise of her mother on 28.10.1994, leads to an inference that she had been ousted and with her knowledge, the defendants are in enjoyment of the property exclusively adverse to the plaintiff for more than the period prescribed under Article 65 of the Limitation Act, 1963 which prescribes 12 years period as limitation for possession of immovable property or any interest therein based on title. The time from which the period begins to run, is when the possession of the defendant becomes adverse to the plaintiff. The plaintiff failed to produce any evidence to show that she had animus to possess the property. Therefore, her rights gets extinguished under Section 27 of Limitation Act, 1963. The plaintiff has not assigned tangible reason in the plaint for not filing the suit for more than 19 years after succession opened on the death of her mother Janaki Ammal. While so, the First Appellate Court erred in law in holding that the plaintiff is entitled to partition despite her long inaction contrary to the judgment of this Court reported in **2010 (6) MLJ 351**. The facts of the case in the cited judgments on the side of the respondent/ plaintiff are different and are not applicable to the facts and circumstances of the case on hand. The mutation of records in the present case is done in the year 1994 itself.



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14.The substantial question of law is answered in favour of the appellants/defendants.

15.In the result, this second appeal is allowed, the Judgment and Decree dated 15.12.2023 in A.S.No.19 of 2022 on the file of the learned District Judge, Mayiladuthurai is set aside. No costs. Consequently, connected miscellaneous petition is closed.

06.02.2026

vsn

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

To

1. The District Judge, Mayiladuthurai
2. The Principal Subordinate Judge, Mayiladuthurai
3. The Section Officer,
VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI, J.

vsn

**Pre-delivery Judgment in
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and

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