



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 23.02.2026

Judgment pronounced on :
30.03.2026

WEB COPY

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.Nos.667 and 670 of 2024 and
CMP(MD).Nos.21466 and 21449 of 2024**A.S.No.667 of 2024**

Saraswathi (died)

1.Thirunavukarasu

2.Sathya

3.Karthick

.. Appellants

Vs.

1.Palani

2.Senthamarai

3.Bhoopathi

4.Mahesh

5.Suganeshwari

6.Appavu

7.Sub Registrar,
Sub Registrar Office,
Barur Village, Pochampalli Taluk,
Krishnagiri District.8.District Registrar,
District Registrar Office,
Dharmapuri District.9.District Collector,
Collectorate Post,
Dharmapuri Taluk,
Dharmapuri District.

.. Respondents



Prayer: Appeal Suit filed under Section 96 of CPC, to set aside the decree and judgment and Decree made in O.S.No.141 of 2019 on the file of the Additional District Judge, Dharmapuri dated 29.02.2024.

For Appellants : Mr.P. Valliappan
Senior Counsel for Mr.P.M.Jeya Chandran

For Respondent No.1 : Mr. Arun Anbumani
For respondents 7 to 9 : Mr.M.Murali
Government Advocate

A.S.No.670 of 2024

Saraswathi (died)

1.Thirunavukarasu

2.Sathya

3.Dulsirani

4.Karthick

.. Appellants / defendants 2 to 3, 10

Vs.

1.Palani

2.Saravanan

3.Sub Registrar,

Sub Registrar Office,

Barur Village, Pochampalli Taluk,

Krishnagiri District.

4.District Registrar,

District Registrar Office,

Dharmapuri Town,

Dharmapuri Taluk,

Dharmapuri District.

5.District Collector,

Collectorate Post,

Dharmapuri Taluk,

Dharmapuri District.



6.Shanthi

.. Respondents

Prayer: Appeal Suit filed under Section 96 of CPC, against the decree and Judgment passed in O.S.No.40 of 2018 on the file of the Additional District Judge, Dharmapuri dated 29.02.2024.

For Appellants : Mr.P. Valliappan
Senior Counsel for Mr.P.M.Jeya Chandran

For Respondent No.1 : Mr. Arun Anbumani
For respondents 3 to 5 : Mr.M. Murali
Government Advocate

COMMON JUDGMENT

The defendants 6, 7 and 8 in O.S. No.141 of 2019 are the LRs of the deceased first defendant and the appellants in A.S. No.667 of 2024. The appellants in A.S. No.670 of 2024 are the defendants 2 to 4 and 10 in O.S. No.40 of 2018 on the file of the Additional District Judge, Dharmapuri. Both the suits were jointly tried and disposed of by the learned Additional District Judge, Dharmapuri, by common judgment and decree dated 29.02.2024.

2. Pleadings in the plaint in O.S. No.40 of 2018:

(i) The suit properties are ancestral and joint family properties of the plaintiff and the first defendant. The suit properties originally belonged to the plaintiff and the first defendant's grandfather Ponnusamy and, after his death, his



wife Rajathiammal and sons Subramanian, Kullan @ Sachidhanandham (hereinafter referred to as Kullan), Vajjirvelu and Arumugam entered into a partition on 05.03.1977, in and by which the suit properties were allotted to Kullan. He enjoyed the same along with his wife Meenakshiammal, son-plaintiff and daughter – first defendant. The father Kullan, from the income derived from the joint family properties, performed the marriage of the first defendant with his brother-in-law in a grand function. The first defendant, after her marriage, lived in Achalvaid and thereafter in Gudiyatham. The plaintiff was in enjoyment of the suit properties along with his father and resided in the ancestral home with his parents.

(ii) The plaintiff was employed as a driver in a private bus company and he applied the income for the development of the suit properties. The first defendant requested the plaintiff and the parents to permit her to reside in the ancestral house, stating that her husband did not have sufficient income. The first defendant was therefore permitted to reside in the ancestral house. There was a difference of opinion between the father and mother with regard to housing the first defendant and her family in the ancestral home. Because of this, the father left his wife and constructed an independent house on temple land and stayed there for about 15 years. The plaintiff alone took care of his father until his demise in 2007.



WEB COPY

(iii) The first defendant's husband died in 2008. Only because of employment, the plaintiff went to Harur and stayed there in a rented house. Mother Meenakshiammal died in the year 2001. The plaintiff did agriculture and shared the income with his father until his demise, i.e., on 08.08.2007.

(iv) Neither the plaintiff nor the first defendant have any individual right over the suit properties as they are joint family properties. The first defendant filed O.S. No.161 of 2003 on the file of the District Munsif Court, Harur, claiming that the suit properties belong to her, in view of the settlement deed dated 12.04.2002, executed by her father. Such settlement deed is not valid and the same was created by the first defendant and has not come into effect. The suit also ended in favour of the plaintiff. The plaintiff also filed a suit in O.S. No.27 of 2018 for permanent injunction, which is pending on the file of the District Munsif Court, Harur. On obtaining an encumbrance certificate, the plaintiff came to know that the first defendant had executed a sale deed on 10.04.2018 in favour of her son, the second defendant, and the said document is unenforceable. The subsequent sale deed dated 10.04.2018 executed by the fourth defendant in favour of the fifth defendant is also invalid and not binding on the plaintiff. The first defendant had no right to execute any documents in respect of the suit properties. The plaintiff and the first defendant are each

5/33



entitled to half share in the suit properties. Hence, the suit for partition and declaration to declare the settlement deeds and sale deeds as null and void and for permanent injunction to restrain the defendants from creating any encumbrance and also not to interfere with the plaintiff's possession and enjoyment of the suit properties.

3. Written Statement filed by the first defendant:

The written statement filed by the first defendant was adopted by the defendants 2 to 5. The plaint allegations are not true. The first defendant alone took care of her parents and the father executed the settlement deed on 12.04.2002 to the knowledge of the plaintiff. The plaintiff has not included lands in S.Nos.263/5 and 246/2A, which were also belonging to father Kullan.

In so far as the 7th item of suit properties is concerned, the ancestral house belongs to father Kullan and his brothers and no partition has been effected till date in respect of the said property. Hence, the suit is bad for non-joinder of necessary parties. The plaintiff never took care of his parents and was residing in his mother-in-law's house and his only aim to grab the suit properties after the death of his parents.



4. Pleadings in O.S. No.141 of 2019:

The first defendant is the sister of the first plaintiff who got married 45 years ago. The father of the 1st plaintiff and the first defendant Kullan got properties under a partition deed dated 05.03.1977. The father's health was not good and hence the first plaintiff was acting as Karta and maintaining the family properties. The defendants have no right over the suit properties. The first defendant filed a suit in O.S. No.161 of 2003. The suit was dismissed and I.A. No.965 of 2006 to restore the suit was also dismissed on 09.07.2009. All attempts to restore the suit were also foiled with the dismissal of I.A. No.965 of 2006 on 09.07.2009 and I.A. No.222 of 2012 in I.A. No.965 of 2006 on 28.09.2016. Defendants 1 and 2 have trespassed into the suit properties and disturbed the plaintiff's possession. The plaintiff successfully prevented the illegal acts of defendants 1 and 2. Hence, the suit for injunction.

5. Written Statement filed by the first defendant in O.S. No.141 of 2019:



WEB COPY

(i) The suit properties are not joint family properties. The father Kullan was allotted the suit properties and other properties by way of partition deed dated 05.03.1977 and he was in possession and enjoyment of the same. The first plaintiff did not take care of his parents and left the family 35 years ago and settled in Harur. He never resided in the suit properties and it was only the first defendant who took care of the parents till their death. The father executed a registered settlement deed on 12.04.2002 in favour of the first defendant. The first defendant is in absolute possession and enjoyment of the suit properties. The first defendant also came into the house in Survey No.303/4 and is residing there. It is a separate property. In order to grab the suit properties, the plaintiff has already filed a suit in O.S. No.161 of 2003 which is pending. The dismissal of the suit in O.S. No.161 of 2003 was only on account of the advanced age of the first defendant and lack of communication between her advocate and herself. The suit was not dismissed on merits.

(ii) The first defendant has sold the property by sale deed dated 10.04.2018 in favour of her daughter Sathya, sale deed bearing Regn. No.368/2018, in favour of the second defendant's wife Dulasirani, and also sale deed bearing Regn. No.371 of 2018 in favour of son Thirunavukkarasu and sale deed bearing Regn. No.374 of 2018 in favour of Saravanan, and the purchasers



are in possession and enjoyment of the suit properties. The first defendant has already sold the properties and is not in possession of the suit properties.

WEB COPY

6. The written statement of the third defendant:

The Sub-Registrar filed a written statement contending that the duty of the Registrar to register the documents has been properly exercised. Upon verifying the identity of the parties and after the necessary stamp and registration duties had been paid, the documents were registered. Hence, the suit is liable to be dismissed.

7. Based on the pleadings, the trial Court framed the following issues in O.S. No.40 of 2018:

- 1. Whether the plaintiff is entitled to partition as sought for?*
- 2. Whether the plaintiff is entitled to declaration that the settlement deed dated 12.04.2002 executed by Sachidanandam in favour of the first defendant is null and void?*
- 3. Whether the plaintiff is entitled to declaration that the sale deed dated 10.04.2018 executed by the first defendant in favour of the second defendant is null and void?*
- 4. Whether the plaintiff is entitled to declaration that the sale deed dated*



- 10.04.2018 executed by the first defendant in favour of the third defendant is null and void?*
- 5. Whether the plaintiff is entitled to declaration that the sale deed dated 10.04.2018 executed by the first defendant in favour of the second defendant is null and void?*
- 6. Whether the plaintiff is entitled to declaration that the sale deed dated 10.04.2018 executed by the first defendant in favour of the fourth defendant is null and void?*
- 7. Whether the plaintiff is entitled to declaration that the sale deed dated 10.04.2018 executed by the first defendant in favour of the fifth defendant is null and void?*
- 8. Whether the plaintiff is entitled to declaration that the sale deed dated 10.04.2018 executed by the first defendant in favour of the sixth defendant is null and void?*
- 9. Whether the plaintiff is entitled to injunction restraining the defendants from creating any encumbrance in respect of the suit properties?*
- 10. Whether the plaintiff is entitled to injunction as against defendants 2 to 5 from interfering with the plaintiff's possession of the suit property?*
- 11. Whether the plaintiff is entitled to declaration that the settlement deed dated 04.11.2020 executed by the third defendant in favour of the ninth defendant is null and void?*
- 12. Whether the suit is bad for non-joinder of necessary parties?*
- 13. Whether the suit is bad for partial partition?*
- 14. To what other relief is the plaintiff entitled?*
- 15.*

8. Based on the pleadings, the trial Court framed the following issues in

O.S. No.141 of 2019:

- 16. Whether the suit filed by the plaintiffs is maintainable without the prayer for declaration of title of the suit property?*
- 17. Whether the plaintiffs are in possession and enjoyment of the suit property?*



18. Whether the plaintiffs are entitled to the relief of permanent injunction prayed for in the suit?

19. To what other reliefs are the plaintiffs entitled?

20. The joint trial was conducted and evidence was recorded in O.S. No.40 of 2018.

On the side of the plaintiff, PW.1 examined himself as PW.1 and marked Exs.A1 to A20. He also examined PW.2 and PW.3. On the side of the defendants, the third defendant was examined as DW.1 and Exs.B1 to B11 were marked. Through DW.1, one Shanmugasundaram was examined as DW.2.

9. The decision of the trial court:

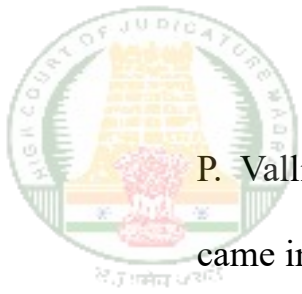
The trial court decreed the suit in respect of half share in items 1 to 6 of the suit properties and also granted the relief of permanent injunction as well as declaration that the settlement deed dated 12.04.2002, sale deeds dated 10.04.2018 and 04.11.2020 are null and void. However, the suit was dismissed in respect of item No.7. Furthermore, as mentioned, restraining the defendants 2 to 6 from interfering with the plaintiff's possession and enjoyment of the properties was also granted. In O.S. No.141 of 2019, the suit was decreed



holding that the plaintiffs were entitled to permanent injunction in respect of the first plaintiff's half share with regard to alienation alone while rejecting the request for the relief of permanent injunction with regard to interfering with the plaintiff's possession and enjoyment.

10. I have heard Mr. P. Valliappan, learned Senior Counsel for Mr. P.M. Jeyachandran, appearing for the contesting defendants who have challenged the judgment and decree in favour of the respondents, and Mr. Arun Anbumani, learned counsel for the first respondent in both the suits. Mr. M. Murali, learned Government Advocate (AS), appears for the respondents 7 to 9 in A.S. No.667 of 2024 and respondents 3 to 5 in A.S. No.670 of 2024.

11. Mr. P. Valliappan, learned Senior Counsel, would firstly contend that the suits were clearly barred by limitation, which the trial court has not properly addressed. In this regard, it is the submission of Mr. P. Valliappan, learned Senior Counsel, that the plaintiff was aware of the settlement deed executed in the year 2002 and, the suit not having been filed challenging the settlement deed and for consequential reliefs of partition within the statutory period, the suit was liable to be dismissed. Taking me through the pleadings, namely the plaint as well as the written statement and the evidence adduced by the parties at trial, Mr.



P. Valliappan, learned Senior Counsel, stated that, admittedly, the properties came into the hands of the father Kullan under a partition deed among the family members, and therefore the suit properties were all ancestral in nature.

12. He would further state that the father had chosen to settle the property in favour of the daughter and the same was not objected to by the plaintiff at any point of time, except by challenging it in the present suit. The plaintiff was estopped not only by acquiescence but also by ouster and limitation. He further stated that the suit was also bad for partial partition. Thus, admittedly, properties in which the father Kullan had a joint interest along with his brothers have also been included in the suit for partition without impleading the other coparceners to the suit. Mr.P.Valliappan, learned Senior Counsel, would therefore state that the trial court clearly fell into error in dismissing the suit only insofar as Item No.7 is concerned, and not dismissing the suit on the grounds of non-joinder of proper and necessary parties. He would also rely on Article 110 of the Limitation Act to contend that, if at all the plaintiff was excluded from the joint family, then the right to enforce the alleged share of the plaintiff should have been exercised within 12 years from the date on which the exclusion became known to the plaintiff.

13. In this regard, Mr.P. Valliappan, learned Senior Counsel, has taken me through the relevant dates to reinforce his arguments that the plaintiff was aware

13/33



of the settlement made by the father in favour of the appellant as early as in the year 2002 itself. He would therefore state that in terms of Article 110 of the Limitation Act the suit was liable to be dismissed at the threshold. In support of his contention he would also rely on the following decisions:

21.The judgment of this Court dated **17.10.2025** made in **A.S. No.588 of 2022** in the case of **M. Murali and others Vs. Venkata Lakshmi @ Valliammal.**

22.The Division Bench judgment of this Court dated **02.01.2023** made in **A.S. No.479 of 2013** in the case of **Govindasamy and another Vs. Rajeshwari Krishna.**

23.The Judgment of the Hon'ble Supreme Court reported in **2022 (11) SCC 520** in the case of **Arunachala Gounder (dead) by Legal representatives Vs. Ponnusamy and others.**

24.The Judgment of the Hon'ble Supreme Court reported in **2025 SCC Online Ker 9593** in the case of **Sivananda Prabu and others Vs. S.N.Govinda Prabu and brothers.**

25.The Judgment of this Court reported in **2025 (5) CTC 130** in the case of **M.Govindarajan Vs. Soodamani and other.**

14. Per contra, Mr. Arun Anbumani, learned counsel appearing for the



WEB COPY

first respondent, would state that though partition was sought for in respect of seven items, the trial court has granted a decree only in respect of Item Nos.1 to

6. While dismissing the suit insofar as the 7th item is concerned, the trial court has held that the other branches have not been impleaded and therefore the necessary parties have not been impleaded in the suit. He would further state that the mother was also made a party to the partition deed only on account of the provisions of Act 18 of 1937, namely the Hindu Women's Right to Property Act, 1937, and therefore the mere inclusion of the mother would not in any manner alter the character of the joint family property. In this Court, Mr. Arun Anbumani, learned counsel, would further state that it is the specific case of the appellants that the property was ancestral property and therefore nothing turns on the fact that the mother joined the execution of the partition deed so as to impose a character of self-acquisition. He would further state that the settlement deed in Ex.A7 was not executed for any pious obligation and admittedly was executed by the father without the consent of the other coparceners, and hence the document is a void document. All subsequent documents following from Ex.A7 are also void and cannot be recognised in the eye of law.

15. As regards limitation, Mr. Arun Anbumani, learned counsel, would state that Article 109 of the Limitation Act alone would apply to the facts of the



present case and not Article 110. In this regard, Mr. Arun Anbumani, learned counsel, would take me through the evidence to contend that only in the year 2014, under Ex.B2, the patta was mutated for the first time, which implies that possession had not been taken by the alienee, and thereby the plaintiff had 12 years from the said date of Ex.B2 to challenge the alienation of the ancestral properties by the father. He would also state that there is no plea of ouster by the appellant in the pleadings and further there is also no plea regarding exclusive possession being with the appellant. When admittedly, till 2014, the revenue records stood only in the name of the father and the properties, even according to the appellants, being ancestral properties, the father could not have proceeded to execute the settlement deed in favour of his daughter. In support of his contention, he would rely on the following decisions in support of his arguments:

26.The Judgemnt of the Hon'ble Supreme Court reported in **1987**

(3) SCC 294 in the case of ***Thamma Venkata Subbamma (dead) by LR Vs. Thamm Rattamma and others.***

27.The Judgment of this Court reported in **2023 (5) CTC 598** in

the case of ***N. Kalavathy Vs. Sriramu Naidu (deceased) and others***



WEB COPY

28.The Judgment of this Court reported in **2019 (5) CTC 110** in the case of ***Arshnoor Singh Vs. Harpl Kaur and others.***

29.The Judgment of the Hon'ble Supreme Court reproted in **2018 (7) SCC 646** in the case of ***Shyam Narayan Prasad Vs. Krishna Prasad and others.***

30.The Judgment of the Hon'ble Supreme Court reproted in **1977 (3) SCC 385** in the case of ***Collector of Estate Duty, Madras Vs. Alladi Kuppuswmay***

31.The Judgment of the Hon'ble Supreme Court reproted in **2022 (18) SCC 489** in the case of ***Kewal Krishnan Vs. Rajeshkumar and others.***

16. I have carefully considered the submissions advanced by Mr. P. Valliappan, learned Senior Counsel for the appellants, and Mr. Arun Anbumani, learned counsel appearing for the contesting respondent in both the appeals.

17. Upon careful consideration of the arguments of the learned Senior Counsel for the appellants and the learned counsel for the contesting respondent, the following points arise for determination:

17/33



32. *Whether the suit properties are ancestral in nature or the self-acquired properties of the father and if the properties are.*

33. *Limitation.*

18. Point No.1:

(i) The categorical case with which the plaintiff came to Court was that the properties are the ancestral properties of the father, namely Kullan. This is evident from the pleading available in paragraph 5 of the plaint. In the written statement filed by the first defendant, however, it is denied that the properties are joint family properties and it is contended that they are the self-acquired properties of the father. Therefore, according to the defendants, the father had every right to execute the settlement deed in favour of the daughter. According to the defendants, the properties fell into the share of the father under a partition deed dated 05.03.1977 and consequently they became the self-acquired and absolute properties of the father, which would devolve under Section 8 of the Hindu Succession Act and not under Section 6.

(ii) The relationship between the parties is not in dispute. It is also not in dispute that the father Kullan became entitled to the suit properties only under the registered partition deed dated 05.03.1977. On the side of the plaintiff, patta,



chitta and kist receipts have been marked as Exs.A1 to A3. Property tax receipt has been marked as Ex.A4. On the side of the defendants, Ex.B2 patta stands in the name of the first defendant in respect of items 1 and 2 of the suit properties.

Exs.B3 to B6 are kist receipts in the name of the first defendant in respect of items 1 and 2. Ex.B7 chitta also stands in the name of the first defendant in respect of Item No.6. Electricity bills in Ex.B10 series and house tax receipts in Exs.B11 and B12 have also been marked. On the side of the plaintiff, PW2 and PW3 were examined to establish that the suit properties are joint family properties. PW2 and PW3 are adjoining landowners. However, on the side of the defendants, DW2, Mr. Shanmugasundaram, has been examined to establish that the plaintiff was not managing the properties and that it was only the first defendant who took care of the parents.

(iii) Ex.A20 is the registered partition deed dated 05.03.1977. It has been entered into between the grandmother of the plaintiff and the first defendant, namely Rajathiammal, and her sons Subramanian, Kullan @ Sachidhanandham, Rajamanickam, Vajjiravelu and Arumugam. It is seen from the registered partition deed that Ponnusamy was originally owning the subject lands and under the said deed the father of the plaintiff and the first defendant, namely Kullan, was allotted the “B” schedule properties. It is therefore contended by the plaintiff that the partition deed having been entered into after the death of

19/33



Ponnusamy prior to the coming into force of the Hindu Succession Act, the only presumption that can be drawn is that the properties are coparcenary properties in which both the plaintiff and the first defendant are entitled to a share.

Ponnusamy admittedly died before the Hindu Succession Act came into force and in such circumstances only his sons would be entitled to succeed to the property, since the right of females to be treated as coparceners was not recognised at that time. However, it is contended by Mr. P. Valliappan, learned Senior Counsel, that the very fact that the mother of Kullan, namely Rajathiammal, joined the partition deed in the year 1977 would clearly impress the character of self-acquisition upon the properties in the hands of Kullan. Consequently, the son, namely the plaintiff, cannot claim to be a coparcener and cannot question the settlement deed executed by the father in favour of the daughter.

(iv) A decision rendered by me in A.S.No.588 of 2022 in the case of **M. Murali and others Vs. Venkata Lakshmi @ Valliammal** has been relied upon by Mr. P. Valliappan, learned Senior Counsel. It was a case where the property was purchased after the coming into force of the Hindu Succession Act, 1956 and the purchaser died only in the year 1983. On his death, succession opened and in such circumstances I held that Section 8 would govern his interest at succession. However, I am unable to apply the said ratio relating to self-acquired

20/33



property to the facts of the present case, since admittedly the father of Ponnusamy died prior to the coming into force of the Hindu Succession Act. The Division Bench judgment of this Court dated 12.01.2023 made in A.S.No.479 of 2013 in the case of **Govindasamy and another Vs. Rajeshwari Krishna** held that the appellants never questioned the character of the properties as joint family properties in the hands of the first appellant. Therefore, the respondent was not obligated to lead any evidence to establish the character of the suit properties in the hands of the first appellant. By taking note of the admission in the pleadings and by finding that the properties were not divided before the amendment in Act 39 of 2005, the Court held that the first appellant was in possession of the properties only as the Karta of the family and therefore the respondent's claim seeking partition could not be denied.

(v) In the facts of that case, a settlement deed had been executed by the first appellant in favour of the second appellant. The Division Bench of this Court held that the settlement deed would bind the appellant only insofar as his share was concerned and would not affect the plaintiff's one-third share in the properties. In fact, subsequent to the pronouncement of the judgment by the Honourable Division Bench, the appeal was listed for being mentioned and at that point of time I was also a member of the Division Bench. By order dated 08.02.2023 it was clarified that since the character of the properties had been

21/33



held to be joint family properties, the settlement deed would be valid only to the extent of the share of the first appellant, namely the father, and the legitimate one-third share of the father alone would go to the second appellant. I do not see how this decision can be pressed into service in the facts of the present case.

vi) The Division Bench judgment of the Kerala High Court in **Sivananda Prabhu's case**, relying on the Privy Council decision in **Kattamma Nachiyar's case (1863 SCC Online PC 11)**, held that the self-acquired estate of a male would descend to his male issue and only in default of such issue would it descend to others. Prior to the enactment of the Hindu Succession Act, 1956, the Honourable Division Bench also took note of recognised texts on Hindu law and held that a wife or daughter of a male would inherit only his separate property, that too if the male died without a male child.

(vii) The Honourable Supreme Court in **Arunachala Gounder (2022 (11) SCC 520)** held that succession in the case of a Hindu male dying intestate would be governed by inheritance rather than survivorship. The Honourable Supreme Court further held that undivided residue is not subject to the ordinary rules of partition of joint family property and if in a general partition any part of the property was left joint, the widow of the deceased brother would not participate



notwithstanding separation. Such undivided residue would go exclusively to the brother and separately acquired property of one member of a united family would exclude other members of the family who have neither community of interest nor unity of possession. It was ultimately held that there are no grounds for postponing the widow's right in favour of any superior right of coparceners in undivided property and that Hindu law is consistent with this principle and also with convenience.

(viii) In **Thamma Venkata Subbamma's case (1987 (3) SCC 294)**, the Honourable Supreme Court held that alienation of coparcenary property by way of gift, renunciation or relinquishment of the donor's undivided coparcenary interest in favour of another coparcener would be valid. However, it was also held that any gift by a coparcener in favour of another coparcener without the consent of the other coparceners would be void. However, having come to the conclusion that the property is only joint family property and not coparcenary property, this decision cannot be applied to the present case. Similarly, the ratio in **Arshnoor Singh's case** states that under Mitakshara law whenever a male ancestor inherits property from his paternal ancestors up to three degrees above him, then his male legal heirs up to three degrees below him would get an equal right as coparceners in that property.



WEB COPY

(ix) In **Shyam Narayan Prasad's case**, the Hon'ble Supreme Court was dealing with a case where property was inherited by a male Hindu from his father and father's father. The Hon'ble Supreme Court held that property inherited by a male Hindu from his father, father's father, or father's father's father is ancestral property and that it is an essential feature of ancestral property according to Mitakshara law that the sons, grandsons and great-grandsons acquire an interest and rights attached to such property at the moment of their birth. The Hon'ble Supreme Court further held that the share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issues and even after the partition the property in the hands of the son will continue to be ancestral property, and the son will take an interest in it by survivorship.

(x) After carefully examining the partition deed, dated 05.03.1997, I find that the parties to the partition deed have categorically admitted that the property has come to their hands “பிருத்தராஜ்நாமா”, therefore, this is a clear admission that the property was the ancestral property of Ponnusamy and devolved on his death, only as co-parcener property. Merely because the widow of Ponnusamy joined the execution of the partition deed, I am unable to hold that the property was the self acquired property of the sons of Ponnusamy on and from the date of partition. As rightly contended by Mr.Arun Anbumanni, at best the widow of

24/33



Ponnusamy, viz., Rajathiammal, joining the execution of partition deed can only be treated on account of her rights under the Hindu Women's Right to Property Act, 1937. Even under the said partition deed only a limited life interest has been given to the said Rajathiammal in the schedule 'A' property and after her life time, it was to only revert to her sons.

(xi) These properties are co-parcenary properties at the hands of the children of Ponnusamy and the partition deed dated 05.03.1977 itself affirms the character of the property and inclusion of the widow of the executors of the partition deed, does not in any manner change the character or nature of the properties.

(xii) There is no dispute with regard to the proposition and ratio laid down in the above referred cases and having already found that the character of the property is only co-parcener properties, there is no difficulty in applying the ratio in those cases, to hold that the property in the name of Kullam was only a co-parcenary property, which could not have been dealt with by him independently, including by way of a settlement deed in favour of his daughter. Point Nos.1 is answered against the appellants.

19. Coming to the question of limitation, two provisions have been
25/33



pressed into service, namely Articles 109 and 110 of the Limitation Act.

According to the learned Senior Counsel for the appellants, Article 110 of the Limitation Act would apply to the facts of the present case. However, per contra, Mr. Arun Anbumani, learned counsel, would contend that the suit has been filed by the son of Kullan, who is admittedly a Hindu governed by Mitakshara law, and he seeks to set aside the alienation of what he claims to be ancestral property and hence, Article 109 alone would apply.

20. Articles 109 and 110 of the Limitation Act extracted for further discussion and ready reference:

*“109. By a Hindu governed by Mitakshara law to set aside his father’s alienation of ancestral property — **Twelve years** — When the alienee takes possession of the property.*

*110. By a person excluded from a joint family property to enforce a right to share therein — **Twelve years** — When the exclusion becomes known to the plaintiff.”*

21. In the present case, in my opinion, both Articles 109 and 110 of the Limitation Act, certainly can be proved into service, since the alienation by the father of co-parcenary property, including by way of settlement would fall within the ambit of Article 109. Similarly, Article 110 deals with exclusion of a person of joint family property, would also equally apply. Now, it remains to be



seen, if the suit have been filed in time, taking into account, the applicability of both Articles 109 and 110 of the Limitation Act. Admittedly, the father Kartha had settled the property on the daughter in the year 2002, which clearly amounts to exclusion of the co-parcener from joint property.

22. According to Mr. Arun Anbumani, the limitation available is 12 years from the date on which the alienee takes possession of the property. In this regard, he has taken me through the deposition and documents to fortify his submission that only in the year 2014, the revenue records were mutated in favour of the daughter pursuant to the settlement deed, and therefore the suit having been filed within a period of 12 years therefore, would be maintainable.

23. I have carefully considered the said submissions. Both Articles 109 and 110 of the Limitation Act deal with exclusion of a person from joint family property and the limitation period for enforcing such rights.

24. The evidence on record also establishes that the plaintiff had knowledge of the settlement deed even in the year 2002. Therefore, applying Article 110 of the Limitation Act, the period of limitation is 12 years, and the challenge made beyond this period cannot be sustained; accordingly, the question of settling cannot now be reopened. In fact, it has come out in evidence



that the plaintiff knew about the settlement deed executed by father in favour of sister in the year 2002 itself. Even in 2003, the plaintiff was fully aware of his exclusion to the property and the suit ought to have been filed within 12 years from 2003 and the suit has not been filed within the said period. In fact, the suit has been filed after a lapse of 16 years, from the date of admittedly, coming to know about the settlement deed. Therefore, in terms of Article 110 of the Limitation Act, the suit is hopelessly barred by limitation.

25. Even if the arguments of Mr.Arun Anbumani, learned counsel, that Article 109 of the Limitation Act, would apply to the facts of the present case is considered, no doubt, the execution of the settlement deed by the father to the daughter would amount to an alienation of ancestral property at the hands of the father. The limitation in such cases would start from the date on which alienee takes possession. It is vehemently contended by Mr.Arun Anbumani, learned counsel, that the daughter effected mutation of records in the year 2014 and therefore, the suit having been filed within 12 years from 2014 is not hit by law of limitation. I am unable to countenance the said argument.

26. As rightly contended by Mr.P.Valliappan, learned Senior Counsel, when the son had knowledge of the settlement deed as early as in 2003, he cannot take advantage of the subsequent mutation of revenue records in the



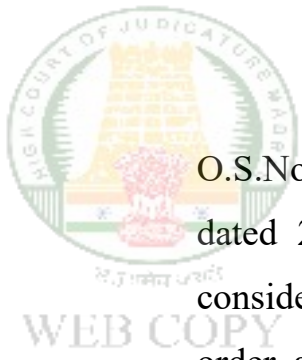
name of the daughter, to bring the suit within the period of limitation, citing Article 109 of the Limitation Act. Once the plaintiff was put on notice about the registered settlement deed executed by the father, in favour of his daughter, the exclusion from co-parcener property became known to the plaintiff. The clock started tickling from that moment and the plaintiff cannot take advantage of the fact that the mutation took place only in 2014 and therefore, contend that the daughter took possession of the property only in 2014. Possession was delivered under the settlement deed in the year 2002 itself and mere postponement of mutation in favour of the daughter does not imply that possession was not delivered under the settlement deed. Therefore, even applying Article 109 of the Limitation Act, the suit ought to have been filed within a period of 12 years from the date of the settlement deed executed by the father.

27. In the judgment reported in **2025 (5) CTC 130 – M. Govindarajan Vs. Soodamani**, it has been held that a challenge to a transaction after a long delay from the date of knowledge would clearly be barred by limitation. In **Punniyavathi's case**, the Court held that a suit for partition filed after a lapse of 18 years was barred by limitation and also under Section 27 of the Limitation Act. In **Rajakumar's case**, the Division Bench applied Article 110 of the Limitation Act and held that the plaintiff had been excluded from enjoyment of the property for a long period and that the defendants had asserted open and hostile title to the knowledge of the plaintiff. The Court held that a suit for



partition filed after several decades would clearly be barred by limitation. The Honourable Division Bench has also applied Section 3 of the Transfer of Property Act and held that a person is said to have notice under Section 3 when the circumstances clearly indicate knowledge. The Hon'ble Supreme Court has also held that ouster can be proved by overt acts indicating that a person is asserting title, adverse to the exclusion of another and that registration of a partition deed within the jurisdiction of the property would amount to notice to the plaintiffs, regarding exclusion from enjoyment of the property. Therefore, the suit for partition was held to be barred by limitation. These decisions would also apply to the facts of the present case, since the appellants have satisfactorily established that the plaintiff had knowledge of the settlement deed executed by Kullan in favour of his daughter in the year 2002, even in 2003. The prolonged silence and inaction on the part of the plaintiff remains unexplained. A mere reference to the pendency of interlocutory applications cannot extend the bar of limitation, which begins to run from the date of knowledge of the settlement deed. Therefore, the suit is hopelessly barred by limitation. Point No.2 is answered in favour of the appellant and the plaintiff is an excluded coparcener who has not sought to enforce his right in time and consequently, is non suited to the relief of partition.

28. For all the above reasons, the appellants are entitled to succeed and the judgment and decree passed in O.S.No.40 of 2018 and



O.S.No. 141 of 2019 on the file of the Additional District Judge, Dharmapuri dated 29.02.2024 are set aside. These Appeal Suits are allowed. However, considering that the parties are brother and sister, there shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

30.03.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
trp

To

1. The Additional District Judge,
Dharmapuri

2.The Sub Registrar,
Sub Registrar Office,
Barur Village, Pochampalli Taluk,
Krishnagiri District.

3.The District Registrar,
District Registrar Office,
Dharmapuri District.

4.The District Collector,
Collectorate Post,
Dharmapuri Taluk,
Dharmapuri District.



WEB COPY



P.B.BALAJI.J,

trp

Pre-delivery Judgmenst made in
A.S.Nos.667 and 670 of 2024 and
CMP(MD).Nos.21466 and 21449 of 2024



WEB COPY



30.03.2026