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S.A.No.685 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. No.685 of 2014

Velusamy
S/o.Chinnaiah Gounder
Kuruncherri Village,
Thenmarapalayam Majara,
Veeralpatti,
Pollachi Taluk.

... Appellant

Versus

1. Radhamani
W/o.Manoharan,
Puravipalayam Village and
Post, Pollachi Taluk.

2. Periyammal
W/o.Chinnaiah Gounder
Kuruncherri Village,
Thenmarapalayam Majara,
Veeralpatti,
Pollachi Taluk.

3. Jeyamani
W/o.Thangavel Gounder,
Kuruncherri Village,
Thenmarapalayam Majara,
Veeralpatti,
Pollachi Taluk.

4. Lingammal
W/o.T.Balusamy
West Street,
Avalcinnam Palayam Village,
Pollachi Taluk.

1/11



S.A.No.685 of 2014

5. V.Jeyaprakash
S/o.Velusamy Gounder,
Kuruncherri Village,
Thenmarapalayam Majara,
Veeralpatti,
Pollachi Taluk.

6. V.Mohana Rukmani
S/o.Velusamy Gounder,
Kuruncherri Village,
Thenmarapalayam Majara,
Veeralpatti, Pollachi Taluk.

... Respondents

PRAYER in S.A.:

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 01.12.2011 made in A.S.No.7 of 2011 on the file of the Principal District Court, Coimbatore in confirming the judgment and decree dated 19.08.2010 made in O.S.No.22 of 2008 on the file of the Sub Court, Pollachi and allow the above revision petition.

APPEARANCE OF PARTIES:

For Appellant : M/s.V.Srimathi

For Respondents : Mr.T.P.Manoharan
for R1
R2 - Died
R3 to R5 served – No appearance

ORDER

Heard

2. This Second Appeal is directed against the concurrent Judgment and Decree whereby the suit filed by the 1st respondent / plaintiff in

2/11



S.A.No.685 of 2014

O.S.No.22 of 2008 on the file of the Sub Court, Pollachi, for partition and separate possession was decreed by Judgment dated 19.08.2010, and the said decree was confirmed by the Principal District Court, Coimbatore, in A.S.No.7 of 2011 by Judgment dated 01.12.2011.

3. The appellant herein is the 1st defendant. For the sake of convenience, the parties referred as they arrayed in the suit.

4. The plaintiff's case is that the suit properties belonged to her father, Chinnaiyah Gounder, who died intestate on 10.01.1989, leaving the plaintiff and the defendants as his legal heirs. She pleaded that the "A" Schedule comprises ancestral/derivative properties, Item No.1 tracing its origin to a registered partition deed dated 13.04.1972 and Item No.2 tracing to a joint purchase of Chinnaiyah Gounder and his brother under sale deed dated 21.11.1971, followed by an alleged oral division—while the "B" Schedule house property was purchased by the plaintiff's father under sale deed dated 10.07.1969. Alleging that the defendants refused to effect partition despite issuance of notice, the plaintiff instituted the suit seeking partition of the "A" Schedule into 15 equal shares and allotment of 6 shares to her, and partition of the "B" Schedule into 5 equal shares.

3/11



S.A.No.685 of 2014

WEB COPY

5. The first defendant resisted the suit, inter alia, by pleading ouster/adverse possession relying upon documents stated as Ex.B1 to Ex.B35, contending that the grant of share in favour of the plaintiff is illegal; by disputing the acceptance of the oral partition pleaded in respect of Item No.2 of 'A' Schedule; and by raising an objection of non-joinder on the footing that Item No.2 stood in the names of the plaintiff's father and paternal uncle.

6. The Trial Court, on appreciation of pleadings and evidence, held that the plaintiff had established her right as a co-heir to seek partition and that the properties were partible. The Trial Court rejected the defence of ouster/adverse possession, holding that the materials relied upon by the appellant did not satisfy the legal requirements to non-suit a co-owner in a partition action. The Trial Court further declined to accept the plea of non-joinder as projected by the appellant on the facts of the case. In the result, the suit was decreed for partition, granting the plaintiff 1/10 share in the suit properties.

7. The defendant preferred First Appellate Court, plaintiff not filed any appeal or cross appeal regarding the ratio of share allotted to her. The



S.A.No.685 of 2014

first appellate court re- appreciated the facts and evidence, confirmed the decree of the Trial Court. The appellate judgment sustained the rejection of the appellant's pleas , including ouster/adverse possession and the objections regarding the inclusion of certain items and maintained the partition decree granting the plaintiff 1/10 share.

8. The defendant filed this second appeal, main contention of the appellant in this second appeal is plea of ouster. It is contended that both courts below are not right in denying the plea of ouster of the defendant. The plaintiff categorically denies the plea of ouster and adverse possession raised by the defendant. The suit property is ancestral/joint family property held by the parties as co-owners/coparceners. In law, the possession of one co-owner is deemed to be on behalf of all co-owners, and there exists a presumption of joint possession. Mere long possession, enjoyment of income, payment of taxes or patta entries in the name of the defendant do not constitute adverse possession against a co-owner. The defendant has not proved, the essential ingredients of ouster, namely (i) clear and unequivocal denial of the plaintiff's title, (ii) hostile assertion of exclusive ownership, (iii) open and hostile acts communicated to the plaintiff, and (iv) continuous possession for twelve years after such hostile assertion.



S.A.No.685 of 2014

WEB COPY

9. The defendant has not produced any notice, communication or overt act informing the plaintiff at any point of time that her title was denied. There is no pleading disclosing the date, month or year from which the alleged adverse possession commenced, nor is there any plea of continuous hostile possession beyond twelve years. In the absence of such foundational facts, the plea is liable to be rejected as vague, evasive and legally unsustainable.

10. It is further submitted that between close family members, particularly between brother and sister, Courts require strict proof of ouster. Possession by the defendant, if any, is permissive and referable to family arrangements and relationship of trust and confidence. The plea of ouster is an afterthought to defeat the lawful share of the plaintiff and is contrary to the well-settled principles laid down in **P. Lakshmi Reddy v. L. Lakshmi Reddy (AIR 1957 SC 314)**.

11. The citation of this Court referred on the appellant side **Venkatramana v. N. Munuswamy Naidu (2010 (6) MLJ 351)** is distinguishable and not applicable to the facts of this case. The said judgment turned on clear and categorical findings of fact establishing

6/11



S.A.No.685 of 2014

ouster, including open exclusion to the knowledge of the plaintiffs and uninterrupted hostile possession for over the statutory period. The said decision does not lay down any proposition that mere delay or long possession by one co-owner would bar a suit for partition.

12. On the contrary, the issue is squarely governed by the law declared by the Hon'ble Supreme Court in **Bonder & Anr. v. Hem Singh (Dead) by LRs. (2009) 5 MLJ 775 SC**, wherein it has been emphatically held that between co-owners, ouster is not to be presumed and must be proved by clear, open and hostile assertion of exclusive title to the knowledge of the other co-owner for a continuous period of twelve years. Mere exclusive possession, enjoyment of income or revenue entries do not constitute ouster.

13. In the present case, as stated supra the appellant has neither pleaded nor proved the essential ingredients of ouster. There is no evidence of any overt act denying the respondent's title, nor any proof of knowledge of such denial. Both the Courts below have concurrently rejected the plea of ouster on sound appreciation of evidence. No substantial question of law arises warranting interference under Section 100 CPC."

7/11



S.A.No.685 of 2014

WEB COPY

14. Therefore, the alleged ouster/adverse possession is denied in toto. The plaintiff continues to have subsisted right, title, interest and joint possession over the suit properties and is entitled for partition as prayed for. The defendant, being a co-owner, cannot prescribe against the plaintiff and the plea of adverse possession is ex facie untenable, liable to be rejected.

15. While parting with the appeal, this Court takes judicial notice of the subsequent authoritative pronouncement of the Hon'ble Supreme Court in: **Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1 : 2020 (5) CTC 302** wherein it is categorically held that the right of a daughter as a coparcener is by birth and does not depend upon, the father being alive on the date of amendment, or the stage of opening of succession. This judgment overruled the earlier decisions in **Prakash v. Phulavati and Mangammal v. T.B. Raju** and has now settled the law.

16. Though in view of *Vineeta Sharma*, the plaintiff would now be legally entitled to parity with sons in coparcenary share, this Court is constrained from granting such relief in the present proceedings because, the Second Appeal is filed only by the defendants. This Court cannot

8/11



S.A.No.685 of 2014

convert the defendant's appeal into a beneficial appeal for a non-appealing party. Order 41 Rule 33 CPC cannot be pressed into service to create jurisdiction where Section 100 CPC bars admission. Power under Order 41 Rule 33 CPC can be exercised only after a valid appeal is admitted, not for enabling admission in the absence of a substantial question of law.

17. Another plea of non-joinder of brother of plaintiff's father as party to the suit, is unsustainable. In fact, in the memorandum of appeal, no question of law, much less any substantial question of law, has been raised. The appellant has raised only factual issues. Accordingly, no substantial question of law arises for admission of this Second Appeal. In the result, the Second Appeal is dismissed at the admission stage. No costs. Consequently, the connected miscellaneous petition(s), if any, are closed.

02.01.2026

dpq

Index:Yes/No

Speaking Order /Non-speaking order

Neutral citation:Yes/No

9/11



S.A.No.685 of 2014

To

1. The Principal District Court,
Coimbatore

2. The Sub Court,
Pollachi

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



WEB COPY



S.A.No.685 of 2014

DR. A.D. MARIA CLETE, J

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S.A. No.685 of 2014

02.01.2026