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S.A.No.150 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2026

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.150 of 2020
and C.M.P.No.3291 of 2020

N.Maruthachalam

... Appellant

vs.

1.Deivathal
2.K.Maruthachalam
3.M.Manickavasagam
4.M.Thangaraju
5.Mylathal

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 17.1.2018 in A.S.No.39 of 2016 on the file of the V Additional District and Sessions Judge's Court, Coimbatore, confirming the judgment and decree dated 28.03.20156 in O.S.No.919 of 2010 on the file of the First Additional Subordinate Judge's Court, Coimbatore.

For Appellant : Mr.C.R.Prasanan

For Respondents :Mr.S.Mukunth
Senior Advocate
for Mr.N.Krishnakumar
M/s.Sarvabhauman Associates
for R2 to R4
R1-No Appearance



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J U D G M E N T

The unsuccessful first defendant is the appellant.

2. The respondents 1 to 4 filed a suit for partition seeking 2/4 share in the suit property. The suit was decreed by the trial Court. Aggrieved by the same, the first defendant filed an appeal. The First Appellate Court confirmed the findings of the trial Court. Aggrieved by the concurrent findings, the first defendant has come before this Court.

3. The first plaintiff is the daughter of one Nanjappa Gounder . The plaintiffs 2 to 4 are the legal representatives of first plaintiff's deceased sister Rajammal. The first defendant is the brother of first plaintiff and son of Nanjappa Gounder and the second defendant is the sister of first plaintiff and daughter of Nanjappa Gounder.

4. According to the plaintiffs, the suit item 1 consisting of two properties belongs to one Nanjappa Gounder. The suit item 2 belongs to his wife namely Devathal. The said Nanjappa Gounder and Devathal had three daughters namely Rajammal, Deivathal and Mylathal. The legal



representatives of Rajammal, had been shown as plaintiffs 2 to 4. The other two daughters are shown as first plaintiff and second defendant. The only son of Nanjappa Gounder has been shown as the first defendant.

5. It is further stated that Nanjappa Gounder died in the year 1998 and Devathal and his eldest daughter Rajammal died in the year 2000. Since Nanjappa Gounder and Devathal died intestate the first plaintiff is entitled to 1/4 share in the property belongs to them. The first plaintiff, first defendant and the second defendant are entitled to 1/4 share each in their property. The plaintiffs 2 to 4 are collectively entitled to 1/4 share.

6. It is the specific case of the plaintiffs that item 1 of the suit property was purchased by Nanjappa Gounder by virtue of two sale deeds dated 04.04.1979 and 08.04.1976. The item 2 was allotted to Devathal by way of partition deed dated 23.07.1965. Since they died intestate, the plaintiffs claimed right over the suit property and laid the present suit for partition claiming 2/4 share in the suit property.

7. The appellant/first defendant filed a written statement and resisted the suit on the ground that the suit item 1 which consists of two properties

3/14



was purchased by Nanjappa Gounder in the years 1976 and 1979 out of income derived by cultivation of ancestral properties. Therefore, according to the first defendant, the suit item 1 is co-parcenary property.

8. It is also stated that first plaintiff and second defendant executed a release deed on 08.10.2007 releasing their right in the suit item 1. Therefore, they are not entitled to share in the suit property. Further it was stated by the defendants that some of the co-parcenary properties were not included in the plaint. Therefore, the suit is barred by partial partition. It is also stated that the first defendant has been enjoying the suit property for more than 15 years and therefore, the prayer for partition is hit by principle of ouster.

9. Before the trial Court, the 4th plaintiff was examined as PW.1. On behalf of the plaintiffs, five documents were marked as Exs.A1 to A5. The first defendant was examined as DW.1. On behalf of the defendants, seven documents were marked as Exs.B1 to B7.

10. The trial Court came to the conclusion that the suit item 1 were self acquired properties of Nanjappa Gounder and 1st plaintiff and 2nd



defendant released their right in item 1 in favour of the first defendant under Ex.B2. Therefore, the trial Court decreed the suit by holding that the plaintiffs 2 to 4 were collectively entitled to $\frac{1}{4}$ share in the suit item 1. As far as suit item 2 is concerned, the trial Court came to the conclusion that the first plaintiff and plaintiffs 2 to 4 collectively entitled to half share each. Aggrieved by the judgment and decree passed by the trial Court, the first defendant filed an appeal in A.S.No.39 of 2016 on the file of the V Additional District and Sessions Judge, Coimbatore. The first Appellate Court affirmed the findings of the trial Court and dismissed the appeal. Aggrieved by the said judgment and decree, the present second appeal has been filed by the first defendant.

11. At the time of admission, this Court formulated the following substantial questions of law for consideration by order dated 14.02.2020:

a) Whether in law, the Courts below erred in not framing any issue with regard to plea of ouster, when such a plea is specifically raised by the appellant in his written statement and giving a decision on it?

b) Whether in law, the Courts below erred in shifting the burden of proving as to whether the suit properties are separate properties of the deceased Nanjappa Gounder on the appellant,



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especially when ancestral properties are available, as held in the judgment reported in 1982 (2) LW 388.

c) Whether in law, the Courts below erred in overlooking that the suit is bad for partial partition, as held in the judgment reported in 1994 (4) SCC 294?

d) Whether in law, the Courts below erred in overlooking that the suit is not maintainable for partition, especially when the father was not alive on the date of suit to have benefits under Hindu Succession Act 2005 and the Tamil Nadu Hindu Succession Act, when they remained unmarried in 1989, subject to finding of the Courts as to whether the suit properties are ancestral or self-acquired property of father?

12. The judgment of three member Bench of the Apex Court in ***Vineeta Sharma Vs. Rakesh Sharma*** reported in ***AIR 2020 SC 3717*** held that the amendment Act 2005, is retroactive in nature and therefore whether, the father of the plaintiff was alive on the date of coming into force of the Hindu Succession Amendment Act, 2005 is not at all relevant. In view of the law settled by the Apex Court, question of law 'd' is answered against the appellant and in favour of the respondents.



13. The learned counsel appearing for the appellant would submit that under Ex.B1, there was a family partition between Nanjappa Gounder and his brothers. In that partition the properties were allotted to the share of Nanjappa Gounder and out of income from the ancestral properties, item 1 was purchased by Nanjappa Gounder. Hence the same shall be treated as ancestral property. He also submitted that property allotted to Nanjappa Gounder in S.No.332 has not been included in the plaint. It is also submitted that one of the properties allotted to Devathal, the wife of Nanjappa Gounder under Ex.A3 has not been included in the suit property and therefore the suit is liable to be dismissed on the ground of partial partition. He further submitted that the plaintiffs admitted physical possession of the defendants for over the statutory period and hence, the Courts below committed an error in not accepting the plea of ouster by the defendants.

14. The learned counsel further submitted that the plea of ouster has been specifically raised in the written statement but the same has not been considered. The trial Court failed to frame any issue regarding ouster and render a findings on the said point. Therefore, according to him, the judgment of the Courts below are liable to be set aside.



15. In support of his contention, the learned counsel appearing for the appellant relied on the judgment in ***Balamani and another Vs. S.Balasundaram*** reported in **2009 (3) CTC 760**.

16. The learned counsel appearing for the respondents would submit that the first defendant has not produced any evidence to show that the ancestral property allotted to Nanjappa Gounder in the year 1955 was available when he purchased the item 1 of the property and the said property generated surplus income to enable him to purchase. Referring to the plea of partial partition, the learned counsel appearing for the respondents submitted that though the plea of partial partition has been raised in the written statement, the defendants have not mentioned what was the property not included in the plaint and in the absence of specific plea regarding the non inclusion of properties, the plea as if some of the co-parcenary properties were left out would not be sufficient.

17. The learned counsel for the respondents also submitted that as far as plea of ouster is concerned, there is no specific plea regarding ouster in the written statement and in the absence of satisfaction of ingredients of plea of ouster, the Courts below are justified in rejecting the same.



18. Question of law 'a':

A perusal of the written statement particularly paragraph No.14 of the written statement would show that the first defendant stated that he has been enjoying the suit properties for more than 15 years and the same was very well known to the plaintiffs and in such circumstances, the suit prayer is hit by the doctrine of ouster also. Mere enjoyment of the property by one of the co-owners would not amount to ouster unless his enjoyment is exclusive and hostile towards the other co-owners. The first defendant in his written statement has not pleaded any overt act to establish his hostile possession over the suit property.

19. He also failed to produce any document to show that his animus to exclude other co-owner or to establish his overt act. There is no evidence on record to show that he enjoyed the suit property throughout with hostile intention with the knowledge of the plaintiffs. Therefore, based on a mere plea raised by the defendants and also in the absence of evidence to establish hostile possession to exclude other co-owners this Court is not impressed by the arguments made by the learned counsel for the appellant.



20. It is also argued by the learned counsel for the appellant regarding the plea of ouster no issue has been framed and no decision has been rendered by the Court. As already pointed out, the defendants have not pleaded any overt act in order to claim exclusion of the plaintiffs from the suit property. The possession of a co-owner is deemed to be for himself and also for other co-owner, though no issue has been framed by the trial Court, no prejudice has been caused to the first defendant because, he cross examined PW.1 with regard to the plea of ouster.

21. Therefore, it is clear, the defendants understood and participated in the trial to cross examine PW.1 on the question of ouster. In such circumstances, no prejudice caused to the defendants due to non-framing of the issues. In view of the same, the citation relied on by the learned counsel appearing for the appellant in *Balamani* case is not useful to him.

22. As mentioned earlier, except cross examination of PW.1, wherein, he stated that the first defendant has been in enjoyment of the property for the past 12 years, there is no other material to show that the defendants were in the suit property with the hostile intention. Therefore, this Court holds the defendants failed to establish the plea of ouster. The question of law 'a' is answered against the appellant.



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23. Answer the question of law 'b':

Though it is seen from Ex.B1 that the properties were allotted to Nanjappa Gounder in the family partition, there is no evidence available on record to suggest that the said properties were available with Nanjappa Gounder, when he purchased item 1 of the suit properties. The first defendant also failed to produce any evidence to establish that the properties allotted to Nanjappa Gounder yielded surplus income to purchase item 1 of the suit property. Therefore, question of law 'b' is answered against the appellant.

24. Answer the question of law 'c':

In the written statement, the first defendant raised a plea that certain ancestral properties have not been included in the suit property and hence, the suit is bad for partial partition. The Courts below on appreciation of evidence available on record came to the conclusion that item 1 of the suit property was purchased by Nanjappa Gounder under Exs.A1 and A2. Therefore, those properties are separate properties. As far as availability of other coparcenary properties are concerned, the defendants have not raised a specific plea mentioning the details of the co-parcenary property available



for partition on the date of presentation of plaint. As mentioned earlier, there is no evidence available on record to suggest that some other ancestral property was available on the date of presentation of plaint.

In the absence of specific plea with regard to the availability of property in the written statement, the submission regarding partial partition, made by the learned counsel for the appellant is not acceptable to this Court.

25. It is also stated that the property allotted to Devathal, w/o. Nanjappa Gounder under Ex.A3 was not included in the suit property and therefore, the suit is bad for partial partition. As mentioned earlier, in the written statement, there is no whisper about the details of the properties not included in the plaint. Merely raising a plea that the suit is bad for partial partition is not sufficient. The defendants should have specifically mentioned the properties which were not included in the plaint. In fact when DW.1 was examined in chief [in the proof affidavit], the defendants for the first time mentioned about the details of properties allotted to Devathal, which were not included in the plaint. On the other hand, it is the case of the plaintiffs that the said property was sold to third party by all the legal heirs of Devathal on 28.02.2006. In the absence of specific plea with regard to the non-inclusion of the properties allotted to Devathal with details in the



written statement, this Court is not inclined to accept the submission made by the learned counsel for the appellant. Therefore, the question of law 'c' is also answered against the appellant.

26. In view of the answers to questions of law 'a' to 'd', the second appeal stands dismissed by confirming the judgment and decree passed by the First Appellate Court. No costs. Consequently, the connected civil miscellaneous petition is closed.

18.03.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

1.The V Additional District and Sessions Judge's Court,
Coimbatore.

2.The First Additional Subordinate Judge's Court,
Coimbatore.



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S.SOUNTHAR, J.

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