



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-03-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

AS No. 963 of 2025

Selvaraj

..Appellant

Vs

1. Saroja

2. Lakshmi

..Respondents

Appeal Suit filed under Section 96 read with Order XLI Rule 1 of CPC against the Judgment and Decree dated 28.03.2025 passed in O.S.No.73 of 2021 on the file of the Principal District Court, Namakkal.

For Appellant: Mr.D.Vairamoorthy

For Respondents: Mr.C.Jagadish for R1
No appearance for R2

JUDGMENT

(Judgment of the Court was delivered by K.Rajasekar J.)

Second defendant in the suit is the appellant.

2. The plaintiff, who is the first respondent herein initiated the suit against her brother and sister seeking partition of the suit properties on the ground that she is also one of the co-parceners in the property which originally belonged to



Nayunda Naidu and his son Ramasamy viz., the plaintiff's father. The suit was resisted by the second defendant, who is the son of Ramasamy on the ground that the plaintiff herein was already ousted from the property hence, she was not entitled to claim any share in the property. Further, it was contended that the plaintiff's father Ramasamy had already relinquished his half share in favour of the second defendant. The plaintiff has claimed a share in the property by invoking the Hindu Succession (amendment) Act, 2005 claiming herself as one of the co-parceners.

3. On the pleadings of the parties, the Trial Court had framed the following issues:-

"i) Whether the plaintiff is entitled for the preliminary decree of partition to divide the suit properties into three equal shares by metes and bounds and to allot one such share in favour of her as prayed for?

ii) Whether the claim of the plaintiff over the suit properties is affected by the principles of 'Ouster' as alleged by the 2nd defendant?

iii) Whether the plaintiff is not in joint possession of the suit properties as alleged by the 2nd defendant?

iv) To what other relief the plaintiff is entitled to?

Additional issue framed on 26.04.2022

i) Whether the 1st defendant is misjoinder of party to



the suit as claimed by her?"

4. Before the Trial Court, the plaintiff examined herself as PW1 and marked Exs.A1 to A18. Defendants 1 and 2 were examined as DWs 1 and 2 respectively. One Narayanasamy, Swaminathan, Ramalingam, Kandhasamy, Murugesan and Selvarasu were examined as DW3 to DW8 respectively and Exs.B1 to B4 and Ex.X1 were marked.

5. On considering the oral and documentary evidence, the Trial Court had decreed the suit in favour of the plaintiff. Aggrieved against the same, the present Appeal Suit has been filed by the second defendant.

6. Learned counsel for the appellant submitted that the Trial Court has not appreciated the facts relating to relinquishment of share made by the plaintiff's father Ramasamy in favour of the second defendant and argued that in this regard, witnesses who had participated in the relinquishment process had been examined. It was further argued that a sum of Rs.7,00,000/- was also paid to Ramasamy for executing the relinquishment deed. He further submitted that the plaintiff herein was ousted from the date of her marriage in the year 1978 and she had not shown any interest in the property and that the second defendant alone was in possession and enjoyment of the same continuously, peacefully, openly and with the knowledge of the plaintiff and therefore, argued that the judgment and decree passed in favour of the plaintiff is liable to be set aside.

7. Learned counsel for the first respondent/plaintiff submitted that though there are pleadings to resist the suit for partition made by the second defendant,



there is no material evidence produced to substantiate the same. The Trial Court, had appreciated the entire evidence and had held that though the witnesses had spoken about the relinquishment of share of Ramasamy, the oral evidence of such witnesses alone is insufficient. It was further held that there was no proof to establish ouster. The Trial Court had rejected the case of the defendant and decreed the suit.

8. We have heard the learned counsels for the parties and perused the entire records available on record.

9. The points that arise for consideration in this Appeal are as under:-

i) Whether the plaintiff has lost her right in the suit properties on the plea of ouster?

ii) Whether the release deed executed by the father of the plaintiff viz., Ramasamy in favour of the second defendant is valid or not?

10. **Points 1 and 2:-** Though the appellant/second defendant claims that the plaintiff has been ousted from the suit properties, the Trial court has held that he had failed to prove the same. To prove ouster, the second defendant had relied on the evidence of D.Ws.3 to 8, who had deposed that the second defendant was in exclusive possession and enjoyment of the suit properties. However, the Trial Court has recorded that all the revenue records and other documents show that the suit properties were handled by the father of the second defendant and also by the second defendant and no document had been produced to show that the second defendant alone was in exclusive possession.



11. In ***Govindammal vs. R.Perumal Chettiar*** (2006(11) SCC 600), the Apex Court, has culled out the essential ingredients for establishing the plea of ouster by referring to the judgment of the Madras High Court in ***Mohaideen Abdul Kadir vs. Mohd. Mahaideen Umma*** (ILR (1970) 2 Mad. 636), as under:-

"In the case of Mohaideen Abdul Kadir & Ors. V. Mohammad Mahaideen Umma & Ors. reported in 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 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



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*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.**" (Emphasis supplied)*

12. After passing of the amendment Act 39/2005, the plaintiff has acquired a right to be considered as a co-parcener. Apart from that fact, though certain documents were produced to show that the father and the second defendant had dealt with the properties by mortgaging them and availing loans, there is no material to show that they had exhibited hostile title towards the plaintiff. Further, there is no material produced to show that there was denial or repudiation brought home by the second defendant against the plaintiff herein.

13. The Trial Court has also recorded that possession of the second defendant as a co-owner cannot be hostile against the other co-owner/plaintiff.

We are in agreement with the reasons given by the Trial Court in this regard and



the finding rendered to the effect that there is no ouster made against the plaintiff is proper and it does not warrant any interference.

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14. As regards the relinquishment is concerned, it is specifically stated that after receiving Rs.7,00,000/- Ramasamy has released his share in favour of the second defendant. However, this fact has not been reduced into writing. The mandate of the law is that whenever a property, which is valued more than Rs.100/-, has to be dealt with only by way of a registered instrument, whereas there is no such instrument having been executed by the parties in respect of the relinquishment claimed. Hence, the evidence adduced in this regard is not sustainable and this point also fails. The Trial Court also considered these points and had given a correct finding. This court holds that there is no reason to interfere with the same.

15. In the result, the Appeal Suit fails and is dismissed. No order as to costs.

(C.V.K.,J.) (K.R.S.,J.)
03-03-2026

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

To

Principal District Judge, Namakkal.



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**C.V.KARTHIKEYAN, J.
AND
K.RAJASEKAR, J.**

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