



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-06-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

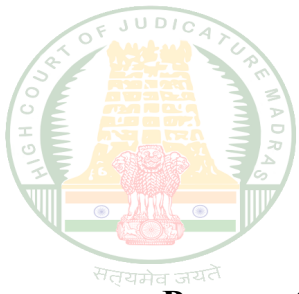
**SA No. 255 of 2024 and
CMP.No.7962 of 2024**

1. Emily
2. Victor
3. Jancy
4. Felix

..Appellant(s)

Vs

1. A.Thamburaj
2. A.Cruz Rajan
Prakasam(Died)
3. A.Salath Ganasoundaram
4. Jesintha Barnabas
5. A.Christopher
6. A.Leema Josphin
7. Amul Raj
8. Britto
9. Sophia
- 10.Mahimai Rani
- 11.Princy Bridgit (Minor)
S/o. Late Ambrose Bakiyanathan, Rep. by her
mother and natural guardian, Smt.Mahimai
Rani,
- 12.Jeas Clement(Minor)
S/o.Late Ambrose Bakiyanathan, Rep. by her
mother and natural guardian, Smt.Mahimai
Rani, No.52,2/12, Papa Nagar, Near Cheran
Chenguttavan, Omalur Taluk, Salem -55
- 13.R. Manjan



..Respondent(s)

Prayer: Second appeal is filed under Section 100 of Code of Civil Procedure, 1908, praying to set aside the Judgment and decree dated 10.08.2023 passed in A.S.No.6 of 2021 on the file of the Court of the District Judge of the Nilgiris at Udthagamandalam, confirming the judgment and decree dated 26.02.2021 passed in O.S.No.45 of 2016 on the file of Court of the Subordinate Judge at Udthagamanadalam by allowing the Second Appeal and thus render justice.

For Appellant(s):	Mr.R.Venkatajalapathy for Mr.S.Kadarkarai
For Respondent(s):	M/s L.Mouli for R1 and R2 R3 to R6, R10 & R13- No appearance R7 to R9- Not ready in notice

JUDGMENT

The unsuccessful defendants 1 to 4 are the appellants. The respondents 1 and 2 filed a suit seeking partition. The suit was decreed by the trial court and the findings of the trial court were affirmed by the first appellate court. Challenging the concurrent findings, the defendants 1 to 4 have come before this Court by way of second appeal.

2. According to the respondents 1 and 2/plaintiffs, the suit property originally belonged to one Rajagiri A.Mathalai Muthu Achary. He had two sons by name Arulswamy and Vincent. The above mentioned Vincent died issueless. Therefore, Arulswamy got the entire property. The said Arulswamy had one son



namely Pankraj and four daughters namely Therasammal, Agnes, Rosa and Prakasam. Agnes, Rosa and Prakasam died issueless. The plaintiffs are sons of Therasammal. The first defendant is the sister of plaintiffs and she got married to her maternal uncle Pankraj S/o. Arulswamy. The defendants 1 to 4 are wife and children of Pankraj. The fifth defendant is one of the sisters of Pankraj and she died issueless. The defendants 6 to 9 are siblings of the plaintiffs. The defendants 10 to 15 are legal representatives of deceased siblings of the plaintiffs.

3. According to the plaintiffs, Arulswamy died intestate and hence, all of his children are entitled to equal share in the estate left by Arulswamy. It is further pleaded by the plaintiffs that parties are Indian Christians and governed by Indian Succession law. On these pleadings, the plaintiffs sought for allotment of 2/27th share in the suit property.

4. The contesting defendants 1 to 4, in their written statement, admitted the relationship between the parties pleaded in the plaint. It was also admitted that Arulswamy died intestate. However, it was claimed that after death of Arulswamy, the property belonged to Pankraj and he executed a Will on 01-09-2003 bequeathing the suit properties in favour of first defendant. The allegation in the plaint that the first defendant was managing the property to the benefit of all co-owners was denied. On these pleadings, the defendants 1 to 4 sought for dismissal of the suit.



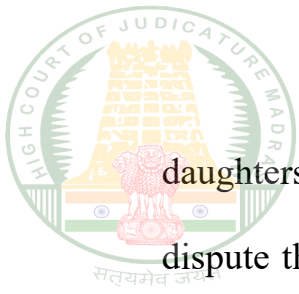
WEB COPY

5. Before the trial court, the second plaintiff was examined as PW1 and 11 documents were marked as Ex.A1 to Ex.A11. The first defendant was examined as DW1. The attesor and scribe of the Will executed by Pankraj were examined as DW2 and DW3. On behalf of the defendants, the Will executed by Pankraj was marked as Ex.B1.

6. The trial court, on appreciation of oral and documentary evidence available on record, came to the conclusion that all sons and daughters of Arulswamy were entitled to equal share as per Section 37 of the Hindu Succession Act and decreed the suit. Aggrieved by the same, the defendants 1 to 4 preferred an appeal in A.S.No.6 of 2021 on the file of the Court of the District Judge, The Nilgiris, Udhagamandalam, The first appellate court also affirmed the findings of the trial court. Aggrieved by the concurrent findings, the defendants 1 to 4 have come before this court by way of this second appeal.

7. The learned counsel for the appellants/defendants 1 to 4 vehemently contended that after the death of Arulswamy, the suit properties had been in exclusive enjoyment of Pankraj for more than statutory period and as an exclusive owner of the property, he executed a registered Will in favour of first defendant. Therefore, the plaintiffs/respondents 1 and 2 are not entitled to claim any share in the suit properties.

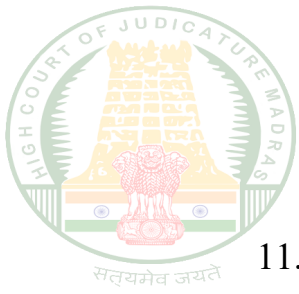
8. As per the admitted case of both the parties, the suit properties originally belonged to Arulswamy and he had one son namely Pankraj and four



daughters including the mother of the plaintiffs, Therasammal. It is not in dispute that other daughters of Arulswamy namely Agnes, Rosa and Prakasam were died without issues. Therefore, Pankraj and Therasammal are entitled to $\frac{1}{2}$ share in the suit properties. The plaintiffs are sons of Therasammal and therefore, they were treated as co-owners of the suit properties along with the contesting defendants 1 to 4, who are claiming right under Pankraj.

9. A perusal of the written statement would indicate that appellants/ defendants 1 to 4 have not pleaded ouster specifically. In the written statement, it was stated that after death of Arulswamy, the property belonged to Pankraj, he executed a registered Will on 01.09.2003 in favour of first defendant and hence, the first defendant was entitled to suit property absolutely. There is nothing in the written statement to explain how Pankraj got exclusive right over the suit property after the death of Arulswamy.

10. It is settled law that the plea of adverse possession or ouster shall be specifically pleaded and meticulously proved by leading cogent evidence. In the case on hand, as rightly pointed out by the courts below, in the written statement, the defendants 1 to 4 have not raised a specific plea of ouster. In such circumstances, when the relationship of the parties are admitted, being a co-owner, the defendants 1 to 4 cannot claim exclusive right over the suit property without raising the plea of ouster. Even assuming the plea of ouster is pleaded, the same shall be proved by leading cogent evidence.



WEB COPY

11. It is seen from the typed set of papers that the defendants marked only one document namely the Will executed by Pankraj in favour of first defendant. Absolutely, there is nothing on record to suggest the exclusive possession of the defendants 1 to 4 over the suit property. Even assuming the defendants 1 to 4 are in physical possession of the suit property, the same shall be treated as one for the benefit of other co-owners unless the plea of ouster is raised and proved by cogent evidence. In the absence of any plea and evidence to show the defendants 1 to 4 enjoyed the property exclusively for more than statutory period to oust the co-owner, the submission made by the learned counsel for the appellants is not appealable to this court. Accordingly, the judgment and decree passed by the courts below are confirmed. The second appeal stands dismissed as devoid of any substantial question of law. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

09-06-2026

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

To

1. The District Judge of the Nilgiris, Udthagamandalam,
2. The Subordinate Judge, Udthagamanadalam



WEB COPY

SA No. 255 of 2



S.SOUNTHAR, J.

nr

**SA No. 255 of 2024 and
CMP.No.7962 of 2024**

09-06-2026