

SA(MD). No.825 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 02.06.2026

Delivered on : 12.06.2026

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

SA(MD). No.825 of 2022

and

CMP(MD)No.12914 of 2022 and 18133 of 2025

and

Cros.Obj(MD)No.10 of 2025

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Poovayee Ammal (Died)

... -----/ 1st Respondent / 1st Plaintiff

1. Palanisamy

2. Mariammal,

... Appellants / Respondents 2&3/

Plaintiffs 2 &3

Vs.

1. Meenakshi,

... 1st Respondent / 1st Appellant /
2nd Defendant

2. Hemalatha,

3.Praveen Kumar



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4. Rajesh Kannan

... Respondents 2 to 4/Appellants 2 to 4/
Defendants 3 to 5

5. Packiam,

... 5th Respondent / 4th Respondent /
1st Defendant

PRAYER :- Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the First Appellate Court passed by the Additional District Judge, Dindigul in A.S.No. 74 of 2019 dated 16.11.2021 by reversing the judgment and decree of the Sub Judge of Sub Court, Veda sandur, Dindigul District in O.S.No. 4 of 2014 dated 12.07.2019.

For Appellants : Mr.P.Vairava Sundaram,

For Respondents : Mr.S.Suresh
for Mr.Pon Senthil Kumaran,

Cros.Obj.(MD). No.10 of 2025

1. N.Meenakshi,

... 1st Cross Appellant / 1st Respondent /
1st Appellant /2nd Defendant

2. N.Hemalatha,

3.N.Praveen Kumar

4.N. Rajesh Kannan

...Cross Appellants 2 to 4/Appellants 2 to 4/
Defendants 3 to 5



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Vs.

Poovayee Ammal (Died)

... 1st Respondent / 1st Plaintiff

1. Palanisamy

2. Mariammal,

... Respondents 1&2/Appellants 1 &2 /
Respondents 2&3/Plaintiffs 2 &3

3. Packiam,

... 3rd Respondent/ 5th Respondent /
4th Respondent / 1st Defendant

PRAYER :- Cross Objection filed under Order XLI Rule 22 r/w. Section 100 of Civil Procedure Code, against the judgment and decree of the First Appellate Court passed by the Additional District Judge, Dindigul, in A.S.No. 74 of 2019 dated 16.11.2021 by reversing the judgment and decree of the Sub Judge of Sub Court, Veda sandur, Dindigul District in O.S.No. 4 of 2014 dated 12.07.2019.

For Cross Objectors : Mr.S.Suresh
for Mr.Pon Senthil Kumaran,

For Respondents : Mr.P.Vairava Sundaram,



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COMMON JUDGMENT

The plaintiffs, aggrieved by the reversal finding rendered by the first appellate Court, are the appellants herein. In the second appeal, the respondents, have filed a cross objection in Cros.Obj.(MD)No.10 of 2025. aggrieved by the findings invalidating Ex.B2-Will dated 07.06.1987.

2. I have heard Mr.P.Vairava Sundaram, learned counsel for the appellants / plaintiffs and Mr.S.Suresh, for Mr.Pon Senthil Kumaran, learned counsel for the respondents / defendants/ cross objectors.

3. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

4. The second appeal was admitted by this Court on 03.01.2023 on the following substantial question of law:

“ I. Whether the learned Judge of the First Appellate Court is right in invoking Article 110 of the Limitation Act by treating the 1st item of suit property as



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joint hindu family property when admittedly the 1st plaintiff claim her right to 1st item of suit property under Section 8 Clause II (II) (4) of the Hindu Succession Act?”

5. Arguments of Mr.P.Vairava Sundaram, learned counsel for the appellants:

5.1. The learned counsel for the appellants, Mr.P.Vairava Sundaram, would invite my attention to the plaint averments, to contend that the suit was filed in relation two items of property. The first item of the property is the self acquired property of Palaniyappan, covered by Ex.A2 = Ex.B1- sale deed. Item No.2 of the suit property, according to the plaintiffs, is an ancestral property and the plaintiffs claiming that Palaniyappan died intestate, as a Bachelor, was entitled to a share in the said property belonging to Palaniyappan as well as item No.2, which is an ancestral property. He would further state that the first defendant, who was also a surviving legal heir, did not choose to file any written statement and it was only the second defendant, who filed a written statement along with the defendants 3 and 4. The fifth defendant filed an independent written statement, though more or less taking the same stand and defence taken by the defendants 2 to 4.



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5.2. Mr.P.Vairava Sundaram, learned counsel for the appellant would invite my attention to Ex.A2-sale deed dated 05.07.1965, in and by which, the 1st item of the property was purchased. Pointing out to Ex.B2, alleged Will dated 07.06.1987, the learned counsel would contend that under the Will, Natesan, who is the husband of the second defendant, claimed to be the sole beneficiary and pursuant to the Will, his LRs, the defendants 2 to 4 claimed benefit that was conferred upon Natesan. The learned counsel would further contend that Palaniyappan died as a Bachelor on 15.08.1988 and his death certificate was marked as Ex.A5. Inviting my attention to patta No.653, which has been exhibited as Ex.B6, Mr.P.Vairava Sundaram, learned counsel would contend that the said Natesan had obtained patta as early as on 31.01.1997 in respect of both items, viz., item No.1 and 2, of the suit property. Further, harping on the fact that subsequently on the demise of Natesan also, his legal heirs have mutated patta in respect of both the items of suit property in their names, he contended that it would clinchingly establish the fact that both the suit items were available for partition and it was not open to the defendants to contend that item No.2 of the suit property was



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belonging to third party and therefore not amendable for partition as ancestral property at the hands of late.Subramaniya Pillai.

5.3. Mr.P.Vairava Sundaram, learned counsel also took me through the various suit documents, including the pre-suit notice and reply notice and the information obtained by the plaintiff under the provisions of the Right To Information Act, relating to the manner in which, Natesan obtained patta in his favour in respect of both items, viz., item No.1 and 2, of the suit property. It is the contention of Mr.P.Vairava Sundaram, learned counsel for the appellant that the husband of the second defendant/ Natesan had played fraud by projecting himself as the only surviving legal heir of Subramaniya Pillai, after the demise of Palaniyappan, suppressing the existence of the plaintiff as well as the first defendant and obtained patta. It is his further contention that the transfer of patta was not based on the alleged Will, which was projected to defeat the claim of the plaintiff.

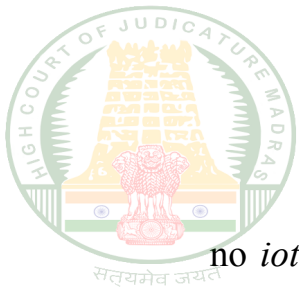
5.4. Referring to CMP(MD)No.18133 of 2025 filed under Order 41 Rule 27 CPC, Mr.P.Vairava Sundaram, learned counsel would state



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that patta transfer proceedings were in fact put to the defendants's witness in cross examination, however, unfortunately, documents were not marked. He would refer to Order 41 Rule 27(b) CPC, to contend that, for substantial cause, the document can be accepted as additional evidence, even pending this appeal, especially when an illiterate plaintiff cannot be blamed, when she had already handed over the document to be Advocate and the counsel had not diligently taken steps to mark the document. He would further state that the authenticity of the document and provisions of the Right To Information have not been disputed by the respondents and hence, no serious prejudice will be caused to the respondents, if the additional evidence is taken on record and considered favourably.

5.5. Referring to the cause of action for filing the suit, Mr.P.Vairava Sundaram, learned counsel for the appellants contended that it was only the legal heirs of Natesan, viz., defendants 2 to 4, who attempted to encumber the suit properties and the plaintiffs became aware of the alleged claim being made by them, as if Natesan himself was the absolute owner and neither the plaintiffs nor the defendants had



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no *iota* of right in the suit property. He would further contend that only after issuance of Ex.A6- notice, the Will has been fabricated to bequeath the right of intestate Succession that opened in favour of the plaintiff, consequent to the demise of her brother Palaniyappan. Pointing out to the denial in the reply notice, Mr.P.Vairava Sundaram contends that the reply notice did not even disclose the date of the alleged Will and therefore all is not well. In any event, it is his contention that the Courts below have rightly held that the Will had not been proved in the manner known to law. However, according to him, the Courts below have erroneously non-suited the plaintiff on the ground of limitation and delay. In this regard, it is the submission of Mr.P.Vairava Sundaram, that the plaintiff was totally in dark and there was no occasion for the plaintiffs to have become aware of the alleged mutation of the patta in favour of Natesan in the year 1997 and thereafter, after his demise in favour of the defendants 2 to 4.

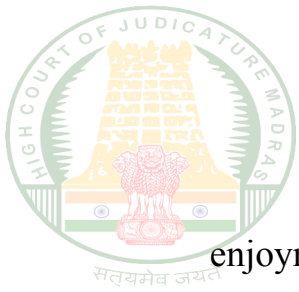
5.6. As regards the pre-suit notice pertaining to item No.1 of the property, Mr.P.Vairava Sundaram, would contend that the notice had to be issued on account of the unlawful attempts being made to alienate



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only one item of the property and therefore, merely because while instituting the suit for partition, the other item has been included, it cannot be held to be fatal to the case of the plaintiffs. He would in any event state that the suit for partition would be barred on account of partial partition, if one of the items of the property available for partition is not included in the suit.

5.7. Mr.P.Vairava Sundaram, learned counsel would further state that the trial Court had rightly decreed the suit as prayed for by the plaintiffs, factoring the pleadings as well as the evidence adduced by the parties, both oral as well as documentary. However, the learned counsel would contend that the first appellate Court had erroneously overturned the said well considered findings of the trial Court by putting delay in instituting the suit against the plaintiffs, without noticing the cause of action, on which, the plaintiffs approached the Court, after issuing the pre-suit notice. He would also point out to the admission of the contested respondent-D.W.1 that admittedly the suit property was “Tharisu lands” and not in physical possession of either of the parties. He would therefore state that the lands can only be deemed to be in joint possession and



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enjoyment of Subramaniya Pillai and the question of ouster or delay will not come in the way of plaintiffs to seek partition. He would therefore attack the findings of the first appellate Court as being perverse and inequitable.

5.8. In support of his submissions, Mr.P.Vairava Sundaram, learned counsel has also relied on a passage from ***Mitra's Law of Joint Property & Partition, Third Edition 1991***, relating to factual or constructive ouster. The relevant passage is extracted for easy reference:

“Actual or constructive ouster.- The ouster may be either actual or constructive. When a co-owner is physically ousted it is an actual ouster. However, such cases of physical ouster are very much rare and when a co-owner is physically ousted, then he rushes to court immediately and does not allow the co-owner forcibly ousting him to ripen his exclusive title to the property by possessing the same for a continuous period of twelve years. However, even when there is no physical ouster, there may be ouster under the law and physical dispossession is not, therefore, essential to constitute ouster. When a co-owner is ousted, there is constructive ouster. But, the constructive ouster would arise when



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there should be some overt act on the part of the co-owner in possession and the other co-owners affected thereby should have either actual or constructive notice of such overt acts. If actual notice is given of such overt act, then from the date on which the notice is given the possession of the co-owner becomes adverse. Even when actual notice is not given, then the co-owner claiming title by adverse possession has to prove that the overt acts done by him are so visibly hostile, notorious and apparently exclusive and adverse so as to justify an inference of knowledge on the part of the other co-owners sought to be ousted. Then if in spite of such knowledge the co-owner ousted out of his own latches fails to discover such ouster and asserts his rights before the title of the co-owner adversely possessing ripens into lawful possession by continuously possessing as such for twelve years then there is ouster. The co-owner so dispossessed will lose his title in the property only when circumstances unequivocally point out that he has been ousted or when he has sufficient knowledge which will put a reasonable man on inquiry and if pursued will unmistakably show that he has been excluded or ousted. However, the knowledge actual or constructive on the part of the person ousted that the other co-owner has really ousted him is essential and it is not sufficient to



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prove by the part asserting that he has acquired hostile title that had the co-owner been sufficiently diligent he would have known that he has been ousted.”

6. Arguments of Mr.S.Suresh, learned counsel for the respondents:

6.1. Per contra, Mr.S.Suresh, learned counsel for the respondents would firstly state that the first appellate Court has rightly interfered with the incorrect findings of the trial Court, decreeing the suit on an erroneous application of law, especially, the law of ouster and limitation. According to Mr.S.Suresh, learned counsel, the plaintiffs having come to Court should have made out a definite case as to when the plaintiffs came to know about the acts of Natesan, with a view to assert the rights of the plaintiff. Taking me through the plaint averments as well as the pre-suit notice, Ex.A6, Mr.S.Suresh, learned counsel for the respondents would contend that the plaintiffs have approached the Court with vague allegations and for not having complied with the provisions of Order VI CPC, the plaintiffs are not entitled to any relief and rightly the first appellate Court has overturned the incorrect and erroneous findings of the trial Court, which do not warrant any interference under Section 100 of the Code of Civil Procedure.



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6.2. Mr.S.Suresh, learned counsel further state that insofar as the claim of joint possession as well, the plaintiffs have not been able to produce any acceptable evidence and when admittedly, even according to the plaintiffs, Natesan had obtained patta wayback in the year 1997 itself, the plaintiffs having not challenged the same for years together, have certainly allowed their rights to be ousted and cannot belatedly claim partition. Insofar as item No.2 of the suit property, it is the contention of Mr.S.Suresh, that in the village, there are several persons bearing the name of Subramaniya Pillai and patta was erroneously issued for the 2nd item of the property as well, which error continued by mutation in favour of Natesan and subsequently, after his demise, in favour of his legal heirs. He would further state that when admittedly it did not belong to the family, fairly the defendants had not chosen to take any undue advantage of mutation in their favour, by coming on record before the competent Court to state that the said property was not belonging to the family and subsequently not available for partition and a non existing right cannot be bestowed upon the plaintiffs.



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6.3. With regard to 1st item of property, it is the contention of Mr.S.Suresh, learned counsel for the respondents as well as cross objectors, that the Courts below have erroneously applied the provisions of the Indian Evidence Act in holding that the Will has not been proved in accordance with law. In this regard, he would invite my attention to the Will, where the scribe has clearly mentioned that he has also attested the Will as an attesting witness, besides pointing out to his chief and cross examination, Mr. Suresh, contended that the evidence of the Scribe would clearly satisfy the requirement of Section 69 of the Indian Succession Act and the Courts below have not considered the evidence of the Scribe in a proper perspective. It is therefore his submission that the findings with regard to the Will not being proved will have to be necessarily set aside, while confirming the findings of the first appellate Court that the plaintiff's right for partition had to be necessarily rejected on the ground of delay and ouster.

6.4. In support of his submissions, Mr.S.Suresh, has relied upon the following decisions:



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1. Judgment of the Hon'ble Supreme Court in ***Madhukar D.Shende v. Tarabai Aba Shedage***, reported in ***2002-1-CTC-244***;
2. Judgment of the Hon'ble Supreme Court in ***Mathew Oommen v. Suseela Methew***, reported in ***2006-1-SCC-519***;
3. Judgment of the Hon'ble Supreme Court in ***Savithiri and others v. Karthyayani Amma and others***, reported in ***2007-11-SCC-621***;
4. Judgment of the Hon'ble Supreme Court in ***Ved Mitra Verma v. Dharam Deo Verma***, reported in ***2014-15-SCC-578***;
5. Judgment of this Court in ***Beryl Dhinakaran v. D. Albert***, reported in ***2015-6-CTC-689***;
6. Judgment of this Court in ***T.Rajeshwari v. P.Karunambigai and others***, reported in ***2026-1-CTC-497***;
7. Judgment of this Court in ***Venkataramana and others v. N.Munuswamy Naidu and others***, reported in ***2010-6-MLJ-351***;
8. Judgment of this Court in ***T.A.Yuvaraj and others v. T.Balakrishna and others***, reported in ***2010-7-MLJ-52***;
9. Judgment of this Court in ***Thangavel and others v. Dhanabagyam and others***, reported in ***2020-6-CTC-181***;



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10. Judgment of this Court in *Puniyavathi and another v.*

Pachaiammal and others, reported in **2022-4-CTC-590**;

11. Judgment of this Court in *Angammal (died) and 12 others v.*

M.Selvaraj, reported in **2026-1-CTC-206**; and

12. Judgment of this Court in *Ramathal v. Chinnasamy Gounder*

and others, reported in **2026-1-CTC-456**.

7. In reply, Mr.P.Vairava Sundaram, learned counsel for the appellants and the respondents in the cross objection, would contend that there is a clear lack of pleadings with regard to execution and attestation of the Will. Further, the Will admittedly is an unregistered Will and contains only left thumb impression of Palaniyappan. He would further state that there is nothing brought on record by the respondents as to whether Palaniyapan was not in the habit of signing and always used to affix only his left thumb impression. He would state that death of the attesting witness has also not been disclosed in the pleadings and in the chief examination and only when confronted in cross examination, the defendants' witnesses admitted the same. He would further state that the



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respondents would have taken steps to examine the first defendant to prove the Will which exercise also has not been undertaken.

8. I have considered the submissions advanced by the learned counsel on either side.

CMP(MD)No.18133 of 2025:

9. This Civil Miscellaneous Petition has been taken out under Order 41 Rule 27 CPC, for receipt of additional evidence. Even according to the plaintiff, the said document was available even during the trial of the suit. The plaintiff conveniently blames her counsel for not having marked the said document. No doubt, there is a reference to the proceedings with regard to the patta transfer in favour of Natesan in cross examination of the defendants' witnesses, viz., D.W.1. However, when the document was very much available in the custody of the appellants / plaintiffs and not even attempted to be produced during the pendency of the first appeal, I am unable to countenance the argument of Mr.P.Vairava Sundaram, that "for substantial case", this Court can admit the additional evidence. The appellants have not complied with the



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mandate of Order 41 Rule 27 CPC for this Court to permit the receipt of additional evidence. Hence, I am not inclined to allow the civil miscellaneous Petition. Accordingly C.M.P.(MD)No.18133 of 2025 is dismissed.

Analysis:

10. Item No.1 of the suit property admittedly belonged to Palaniyappan, brother of the plaintiff, the first defendant and Natesan under whom the defendants 2 to 4 claimed as his legal representatives. Item No.2 is a property which according to the plaintiff is an ancestral property at the hands of her father/Subramaniya Pillai. Though the defendants set up a case that item No.2 of the suit property did not belong to the family and hence, was not available for partition, the conduct of the defendants in this regard needs to be examined. Natesan, even during his life time, after the death of Palaniyappan, obtained patta on 31.01.1997, which has been marked as Ex.B6. The said patta is admittedly in respect of both items of the suit property including item No.2, which according to the defendants 2 to 4, belongs to a third party and not the family. Even after the demise of Natesan, the defendants



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2 to 4 have mutated patta in their joint names. The said patta also includes the item No.2 of the suit property. Therefore, the defendants 2 to 4 had actively taken steps to enjoy item No.2 of the suit property and it is not open to the defendants to thereafter contend that the property belongs to a third party and hence not available for partition. In fact, nothing is brought on record to establish that the said property belongs to a third party or that the defendants 2 to 4 have consciously waived their rights in respect of the said item of the property by approaching the revenue authorities and conceding that the patta has been wrongly mutated in their names. Thus, I am unable to countenance the stand of the contesting respondents that the item No.2 property does not belong to the family and therefore, is not available for partition.

11. This however does not come to the rescue the plaintiffs, their claim has thrown out on the ground of delay and ouster. If the plaintiffs had consciously waived their rights, then irrespective of the fact whether the properties are available for partition or not, the plaintiffs cannot be entitled to any relief. Therefore, I now proceeded to deal with the issues of delay / ouster.



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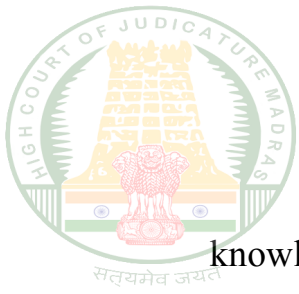
12. The case of the plaintiffs is that the suit properties were in joint possession and enjoyment of the family and therefore, the plaintiffs, being in constructive possession, were entitled to seek the relief of partition. Admittedly, not a single piece of evidence has been produced on the side of plaintiffs to establish the factum of joint possession. No doubt, D.W.1 admitted in cross examination that the lands are “Tharisu lands” which imply that neither the plaintiffs nor the defendants actually enjoy physical possession. However, according to the plaintiff, even during the life time of her brother Natesan way back in the year 1997, Natesan obtained patta in his individual name and staked claim as sole owner to the suit properties. On going through the pre-suit notice as well as the plaint, I am unable to find any averment to support the case of the plaintiffs that they were totally in dark about the alleged mutations in favour of Natesan and subsequent to his demise, in favour of the defendants 2 to 4.



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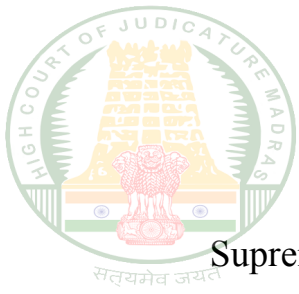
13. Even in the pre-suit notice, the then sole plaintiff asserts that Natesan had played fraud by obtaining patta in his favour as if he is the sole surviving legal heir of Palaniyappan, his brother. Unfortunately, the plaintiff does not disclose as to when the plaintiff came to know of the said mutation of patta in favour of Natesan. Under Order VI Rule 2 CPC, the plaintiff is obliged to state material facts, atleast in a concise manner, in the plaint. Order VI Rule 4 CPC also requires the plaintiff to plead particulars of misrepresentation, fraud, breach of trust etc., with dates. The plaint is totally silent about the same, and when the plaint as well as the pre-suit notice clearly disclose the fact that the plaintiff was aware of the mutation of patta in favour of her brother Natesan on 31.01.1997, in the absence of specific pleadings, leave alone evidence, the Court can only presume that the plaintiff was aware of the mutation even in 1997 itself. Admittedly, the plaintiff has not taken any steps to seek for partition on the demise of her father / Subramaniya Pillai or atleast after the demise of Palaniyappan, the other brother as a Bachelor or immediately, after the demise of Natesan, the other brother. In the absence of the plaintiff even putting forth a plea as to the date of



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knowledge of mutation of revenue records in favour of Natesan and the fact that the plaintiff has been excluded from all enjoyment rights in both items of the property as early as in 1997, I am unable to disturb the findings of the first appellate Court with regard to delay and ouster, especially, when the plaintiff has also miserably failed to establish the factum of joint possession of the suit items and also in the light of an admission of mutation of patta in favour of Natesan in 1997 itself.

14. Though Mr.P.Vairava Sundaram contended that the plaintiff is an illiterate lady and some leverage has to be shown to her on that account, the absence of essential pleadings concerning Palaniyappan and the material facts forming the basis of the claim cannot be overlooked. Even if the plaintiff was an illiterate lady, I am unable to countenance the said submissions. Even during the trial, the plaintiff was wise enough to apply for patta transfer proceeding by invoking proceedings under the Right To Information Act. Therefore, to contend that she being illiterate and despite the document being handed over to the counsel, for the fault of the counsel, the plaintiff should not be made to suffer is not acceptable or justifiable. Insofar as Mofussil pleadings, no doubt, the Hon'ble



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Supreme Court has held that some amount of laxity can be shown, however, when the plaintiff has asserted even in the pre-suit notice that her brother Natesan had played fraud by projecting himself as the only surviving heir of the other brother Palaniyappan, there is absolutely no justification for the plaint being silent with regard to the date of knowledge of mutation of the patta in favour of Natesan, which took place even in the year 1997 and as to when the plaintiff actually got knowledge of the alleged unlawful acts of brother Natesan. In the light of the above this is a case where no laxity can be shown solely on the ground that pleadings are mofussil pleadings.

15. This Court in *Venkataramana*'s case held, applying Article 110 of the Limitation Act, a suit for partition filed after 24 years, after exclusion of enjoyment of the property is barred by limitation. Even in the facts of those cases, the proceedings had been taken before the revenue authorities and there was no indication of joint character of properties for the plaintiff to seek a relief of partition.



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16. In ***T.A.Yuvaraj***'s case, this Court held that when the plaintiff did not approach the Court within 12 years from the date on which possession of the first defendant, became adverse, then a clear case of ouster and adverse possession, extinguishing the right of plaintiff was made out.

17. In ***Thangavel***'s case, this Court held that the defendant was in exclusive possession of the property for a long period of time, openly and adverse to the plaintiff and the plaintiff was silent and did not take any steps to refute such assertion, close to 26 years, it would clearly amount to ouster of the plaintiff's right.

18. In ***Puniyavathi***'s case, this Court held that a delay of 31 years in seeking partition after succession opened would impede the right of partition, on account of delay and laches. This Court further held that a plead of lack of knowledge of the partition in the year 1997 was only to be disbelieved in the absence of any evidence to show joint possession and enjoyment as pleaded in the plaint. This Court invoked Section 27



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of the Limitation Act to hold that the rights of the plaintiff stood extinguished.

19. Even in *Angammal's* case, the Hon'ble Division Bench of this Court held that revenue records standing in the name of one branch, to the exclusion of the others would clearly establish ouster and negate the plea of joint possession.

20. In *Ramathal's* case, I held that mutation of revenue records and supported by long exclusive possession clearly support the plea of ouster, dis-entitling the plaintiff to the relief of partition.

21. Applying to the ratio laid down in the above cases, to the facts of the present case, there can be no doubt that the plaintiff has acquiesced herself to the enjoyment of the suit properties by Natesan right from 1997 onwards and by not taking any steps to question the mutation in favour of Natesan in 1997 and subsequently, in favour of the defendants 2 to 4, after the demise of Natesan, the plaintiff's rights clearly stand ousted. The first appellate Court has rightly held that the plaintiff is not entitled



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to seek the relief of partition and hence, I do not see any grounds arising for interference with the said findings.

Cross Objection(MD)No.10 of 2025:

22. Coming to the cross objection, it is the contention of the respondents that the brother Palaniyappan, who died as Bachelor, had executed an unregistered Will in favour of his brother Natesan, to the exclusion of his two sisters, the plaintiff and the first defendant. Admittedly, the attesting witness to the said Will was not examined as required under Section 68 of the Indian Evidence Act and Section 63 (c) of the Indian Succession Act. The arguments advanced on behalf of the respondents cannot be accepted, as in the present case the scribe himself has categorically mentioned that he has also signed as an attesting witness, besides being a scribe of the Will. However, the proof affidavit filed by the scribe does not even indicate that he has attested the Will. He only speaks about the factum of the Will being executed in his presence and in the presence of two attesting witnesses, who are admittedly no more. Therefore, there is no compliance of Section 63 of the Indian Succession Act read with Section 68 of the Indian Evidence



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Act. No doubt, an avenue was open to the respondents to take advantage of Section 69 of the Indian Evidence Act, especially, when one of the attesting witness is closely related to the scribe. However, the scribe has not even identified the signature of the attesting witness which is a pre-requisite for applying Section 69 of the Indian Evidence Act.

23. Coming to the decision that has been relied on by the learned counsel for the cross objectors, in **Madhukar D.Shende's** case, the Hon'ble Supreme Court upheld the Will based on the evidence adduced by the attesting witness. Unfortunately, for the cross objector, the attesting witnesses have not even been examined to prove the execution.

24. In **Mathew Oommen's** case, the Hon'ble Supreme Court held that what is essential for valid attestation is the intention to attest the execution of the document. There is no quarrel about the ratio laid down. However, I have already held that when the scribe himself did not choose to state even in his chief examination that he has attested the will, this decision cannot be pressed into service by the respondent / cross objector.



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25. In *Savithiri*'s case, the Hon'ble Supreme Court, on facts held that the scribe was an attesting witness. However, for the reasons already assigned herein above, there is absolutely no material to treat the scribe as one of the attesting witnesses, when such a case was not even set up by the scribe himself in his chief examination.

26. In *Ved Mitra Verma*'s case, the Hon'ble Supreme Court gave credences to the evidence of the Sub Registrar, who had registered the Will and was examined as a witness to prove the execution of the Will, in the light of the attesting witness having died. The Hon'ble Supreme Court approved the findings of the High Court with regard to the due execution of the Will, taking into account, the elaborate consideration made by the High Court, to the evidence of the Sub Registrar and in such circumstances, did not find any infirmity or fundamental error requiring correction in exercise of jurisdiction under Article 136 of the Constitution of India. Therefore, this decision also cannot be applied to the facts of the present case.



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27. In **Beryl Dhinakaran's** case, this Court upheld the Will applying Section 69 of the Indian Evidence Act, based on the evidence of the legal heirs of the deceased attesting witness. However, in the present case, Section 69 has not been complied with and therefore, this decision also is no avail to the respondent / cross objector.

28. In **T.Rajeshwari's** case, this Court finding that the propounder had examined the wife of the deceased attesting witness, applied Section 69 of the Indian Evidence Act, to uphold the Will. This decision also therefore does not come to the aid of the respondent / cross objector.

29. For all the above reasons, I do not see any infirmity in the findings of the Courts below and the Courts below have rightly held that Ex.B2 is not passed in accordance with law and the said finding does not called for any interference.

30. In fine, the Second Appeal as well as the Cross Objection are dismissed. The judgment and decree of the First Appellate Court passed by the Additional District Judge, Dindigul in A.S.No. 74 of 2019 dated



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16.11.2021, by reversing the judgment and decree of the Sub Judge of Sub Court, Vendasandur, Dindigul District in O.S.No. 4 of 2014 dated 12.07.2019, are hereby confirmed. C.M.P.(MD)No.18133 of 2025 is also dismissed. C.M.P.(MD)No.12914 of 2022 is closed.

12.06.2026

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
LS

TO

1. The Additional District Judge,
Dindigul.
2. The Sub Court,
Vendasandur,
Dindigul District.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI,J

LS

**Pre- delivery Judgment made in
SA(MD) No.825 of 2022
and Cros.Obj.(MD)No.10 of 2025**

12.06.2026