



A.S(MD)No.20 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.04.2026

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

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1.Krishnaveni

2.Govindhammal (Died)

... Appellants /
Plaintiffs

3.Veeralakshmi

4.Veeraragavan

5.Sathiya Sheela

***(A.3 to A.5 are brought on record
as LR's of the deceased 2nd Appellant
vide order of this Court dated
17.11.2025 made in C.M.P(MD)Nos.
18554, 18557 & 18558 if 2025)***

... Appellants

Vs.

1.Baluchamy (Died)

2.Venkatesan

3.Shanthi

4.Kumudhavalli



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5.Kalaiselvi
(R.2 to R.5 are the legal heirs of
Baluchamy)

6.Sugunadevi

7.Anbu Anitha

8.Murugesan

9.Saravanakumar

10.Praveenkumar

11.Thisaikarnan

12.Seenivasan

13.Sivakumar

... Respondents /
Defendants

Prayer: Appeal Suit has been filed under Section 96 of CPC to set aside the judgment and decree in O.S.No.65 of 2014 dated 05.09.2016 on the file of Additional District and Sessions Judge, Theni camp at Periyakulam.

For Appellants : Mr.Anand Chandra Sekar
for Mr.P.Muthu Vijaya Pandian

For Respondents : Mr.Y.Sasikumar for R.5

Mr.G.Prabhu Rajadurai for R.6

Mr.M.Senthil Kumar for R.8 to R.10

Mr.S.Ramasamy for R.11



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R.1 & R.2 – Died

No Appearance for R.4 & R.13

JUDGMENT

(Judgment of the Court was made by G.R.Swaminathan J.)

The plaintiffs in O.S.No.65 of 2014 on the file of the Additional District and Sessions Judge, Theni at Periyakulam are the appellants herein. The suit was one for partition. The suit was dismissed by the judgment and decree dated 05.09.2017. Aggrieved by the same, this first appeal has been filed.

2.The plaintiffs and the first defendant were born to one Venkidasamy Naidu. Defendants 2 to 4 are the children of the first defendant, Baluchamy. The 5th defendant Kalaiselvi is the daughter of the third defendant. Defendants 6 to 13 are purchasers from defendants 1 to 4. The first defendant died during the pendency of the suit. Defendants 1 to 4 remained ex parte. Defendants 7, 11, 12 and 13 also remained ex parte before the Court below. Defendant 5 and 6 filed independent written statements controverting the suit claim. Defendants 8 to 10 filed joint written statements.



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3.The case of the plaintiffs is as follows:

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The suit properties belonged to one Pethusamy Naidu. Pethusamy Naidu had a son by name Venkidasamy Naidu. Both of them entered into a partition in the year 1949 under which the suit items were allotted to Venkidasamy Naidu. Venkidasamy Naidu died in 1958 and his wife Gnanambal died in 1983. Both of them died intestate. The plaintiffs and the first defendant were in joint possession and enjoyment of the suit properties. When the plaintiffs called upon the first defendant to partition and hand over their 2/3rd share in the suit properties, the first defendant declined. Subsequently, the plaintiffs came to know that some of the suit items had also been alienated. They issued a notice dated 13.06.2014 (Ex.A16) calling upon the first defendant to effect partition and hand over their 2/3rd share in the suit properties. The fifth defendant, the granddaughter of the first defendant gave Ex.A18 reply dated 04.07.2014

4.Kalaiselvi (D5) took the stand that the suit properties were not allotted to Venkidasamy Naidu in the partition that took place in the year 1949. She traced her title independently from Pethusamy Naidu. Based on the rival pleadings, the Court below framed the following issues:



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“1) Whether suit properties ancestrally belonged to plaintiffs and the first defendant?

2) Whether the plaintiff and the first defendant enjoyed the suit properties in common as joint family properties?

3) Whether the partition effected between the defendants 1 to 4 and the settlement deeds, power deed, sale deed, sale agreements by the defendants 5 to 13 are shame? Whether, they will bind the plaintiffs?

4) Whether, the plaintiffs were aware about the encumbrance effected with respect to suit properties at that point of time?

5) Whether the suit is barred by limitation?

6) Whether the suit is bad for partial partition?

7) Whether the plaintiffs are entitled to 2/3rd share in the suit properties?

8) Whether the plaintiffs are entitled preliminary decree as prayed for?

9) Whether the plaintiffs are entitled to declaratory reliefs as prayed for?

10) Whether the plaintiffs are entitled to the relief of mandatory injunction as prayed for?

11) To what other reliefs the plaintiffs are entitled?”



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5.The second plaintiff examined herself as PW.1. A relative, by name, Rengaramanujam was examined as PW.2. Exs.A1 to A18 were marked. The sixth defendant's husband examined himself as DW.1. Exs.B1 to B17 were marked. After consideration of the evidence on record, the trial Court dismissed the suit by the judgment and decree dated 05.09.2017. Questioning the same, this appeal has been filed.

6.The learned counsel appearing for the appellant reiterated all the contentions set out in the grounds of appeal. He frankly and fairly conceded that the appellants make no claim in respect of the suit items 4 and 5 held by the fifth defendant, item 6 and part of item 8. The contest revolves only around suit items 1, 2, 3, a portion of the suit item number 8 purchased by the defendants 9 and 10 vide sale deed dated 30.12.2011 (Exs.A7 and A8) and item no.9. The learned counsel submitted that this appeal may have to be substantially allowed in view of the march of law following the pronouncement of the Hon'ble Supreme Court in the decision reported in **(2020) 9 SCC 1 (Vineeta Sharma Vs Rakesh Sharma)**. He also pointed out that the Court below erred in non-suiting the claim of plaintiffs on the ground of limitation.



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7.Per Contra, the learned counsel for all the contesting respondents submitted that the impugned judgment is well reasoned and that it does not call for interference.

8.We carefully considered the rival contentions and went through the evidence on record.

9.The points that arise for determination are as follows:

- a) Whether the plaintiffs are entitled to claim 2/3rd share in suite items 1, 2, 3, 7, 9 and Part of 8 ?
- b) Whether the Court below was justified in non-suiting the plaintiffs on the ground of limitation?
- c) Whether the suit is bad for partial partition?
- d) Whether the suit is hit by the vice of non-joinder of necessary parties?

10.We may at the very outset make it clear that the plaintiffs cannot have any claim over the suit Item No.9 purchased by the sixth defendant under Ex.A2. This is for a very simple reason. The sixth defendant purchased Item No.8 from Baluchamy vide a registered sale



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deed dated 14.12.1994. The plaintiffs have a case for partition only by virtue of the amendment made to the Hindu Succession Act in the year 2005 and in the light of the decision in **Vineeta Sharma's** case. It is seen that the dispositions made before the cut-off date, i.e., 20.12.2004, have been saved. Since the sixth defendant had purchased the property from Baluchamy in the year 1994 itself, suit item No.9 cannot be the subject matter of the partition suit. Therefore, we affirm the dismissal of the suit in respect of suit item no.9.

12.The Court below held that since the plaintiffs were married in the 1970s and their father died in 1958, they had been out of possession for a long time and that the suit was patently hit by limitation. The learned trial Judge did not take note of the decision of the Hon'ble Supreme Court in **(2009) 15 SCC 747 (Jai Singh & Another Vs. Gurmej Singh)**. It reads as follows:

“(1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of joint property by one co-owner is in the eye of the law, possession of all even if all but one are acutally out of possession.

(3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to



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ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession of a co-owner must not only be exclusive but also hostile to the knowledge of the other as, when a co-owner openly asserts his own title and denies, that of the order.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented by the other co-owners, it is not open to anybody to disturb the arrangement without the consent of others except by filing a suit for partition.”

Application of the aforesaid ratio leads us to the conclusion that the plaintiffs must be deemed to be in joint possession of the coparcenary properties along with Baluchamy. If the defendants claimed ouster, it was incumbent upon them to prove the same. It is relevant to note that



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Baluchamy was set ex parte and he died. His legal heirs also did not enter the witness box. When the plea of ouster had not been established, the court below could not have non-suited the plaintiffs on the ground of limitation.

13.As regards Item No.8, it is seen that it pertains to three Survey Nos.2131/2, 2132 and 2131/1A. Survey Nos.2132 and 2131/1A were purchased by Baluchamy and therefore, in respect of that portion, the appellants cannot have any claim. Survey Nos.2132 and 2131/A do not form a part of the items allotted to Venkidasamy Naidu in the partition deed of the year 1949 (Ex.A1). However, Survey No.2131/2 is mentioned as Item Number 4 in the said partition deed and it was allotted to Venkidasamy Naidu. Therefore, the appellants will have 2/3rd share in the property comprised in Survey No.2131/2. Since the defendants 8 to 10 have purchased this item from Baluchamy, they will be entitled to claim equity with respect to Baluchamy's 1/3rd share in the said survey number. Since the defendants 1 to 4 had chosen to remain ex-parte, the Court below ought to have granted preliminary decree in respect of the plaintiffs' 2/3rd share in suit item nos.1, 2, 3, 7 and part of 8th Item comprised in Survey No.2131/2. The impugned judgement and decree are modified accordingly.



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14.This Appeal Suit is partly allowed. No costs.

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[G.R.S., J.] [R.P, J.]
02.04.2026

NCC : Yes / No
Index : Yes / No
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To

The Additional District and Sessions Judge,
Theni camp at Periyakumal.



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