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A.S.(MD)NO.55 OF 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2026

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MRS.JUSTICE R.KALAIMATHI

A.S.(MD)No.55 of 2018

M.Uma Devi

... Appellant / Plaintiff

Vs.

M.Muthu Kodi Ammal(Died)

1. M.Vasudevan

2. M.Gopalakrishnan

... Respondents/Defendants

Prayer: Appeal suit filed under Section 96 CPC, to call for the records pertaining to the judgment and decree in O.S.No.208 of 2015 dated 23.12.2016 passed by the I Additional District Court, Madurai and set aside the same.

For Appellant : Mr.R.Saravanan

For Respondents : Mr.M.Saravanan

* * *

**J U D G M E N T**

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(Order of the Court was delivered by G.R.SWAMINATHAN, J.)

The plaintiff in O.S.No.208 of 2015 on the file of the Additional District Judge, Madurai is the appellant. The suit was one for partition. The appellant and defendants 2 and 3 (Vasudevan and Gopalakrishnan) were born to Mokkaian and Muthu Kodi Ammal. Mokkaian passed away intestate on 23.12.1993 leaving behind the plaintiff and defendants as his legal heirs. The appellant filed O.S.No. 208 of 2015 claiming 1/3rd share in the suit properties. During the pendency of the suit, mother passed away. The case was contested by the appellant's brothers. Based on the rival pleadings, as many as six issues were framed. They are as follows:-

- “ 1. Whether the plea of ouster has been proved?
2. Whether the Court fee paid is correct and the valuation of the suit is proper?
3. Whether the suit is bad for partial partition?
4. Whether the plaintiff is entitled to the relief of partition as prayed for?
5. Whether the plaintiff is entitled to mesne profits as prayed for?



6. To what other relief? ”

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2. The appellant examined herself as P.W.1. Ex.A.1 to Ex.A9 were marked on the side of the plaintiff. The third defendant examined himself as D.W.1. Ex.B1 registered partition deed dated 10.01.1996 was marked as Ex.B.1 on the side of the defendants. After considering the evidence on record, the trial Court dismissed the suit vide judgment and decree dated 23.12.2016. Questioning the same, this appeal has been filed.

3. The learned counsel appearing for the appellant reiterated all the contentions set out in the grounds of appeal and called upon this Court to set aside the judgment and decree and grant relief as prayed for.

4. Per contra, the learned counsel appearing for the defendant submitted that the judgment and decree of the Court below is well reasoned and it does not call for interference. He pointed out that the suit is bad for partial partition. Partition among two brothers was held as early as on 10.01.1996 and it was also duly registered.



Regarding the amendment to the Hindu Succession Act, he pointed out that since the partition took place before the cut off date, the suit has to necessarily fail.

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

6. The point that calls for determination is as follows:-

Whether the suit is bad for partial partition and the Court below was justified in non-suiting the appellant by citing Ex.B1 registered Partition Deed dated 10.01.1996?

7. As regards the first objection, the learned counsel for the appellant on instructions submitted that the appellant would not institute any other partition suit or make any further claim. A suit is dismissed for seeking partial partition because the defendants cannot be successively vexed with partition claims. In the case on hand, such an approach need not be adopted since the plaintiff had stated that she would not make any more claim against her brothers. Further, nothing stopped the defendants from filing an amendment



petition for including the so-called left out properties in the suit schedule property. Therefore, the appellant could not have been non-suited on this ground. This point is answered accordingly.

8. It is seen that the appellant got married only on 30.01.1990. It is relevant to note that in the meanwhile, on 25.03.1989 the State of Tamil Nadu had introduced the amendment conferring equal rights to the daughters. The said amendment as set out in the Hindu Succession (Tamil Nadu Amendment) Act, 1989 reads as follows:-

“29-A. Equal rights to daughter in coparcenary property

Notwithstanding anything contained in section 6 of this Act,--

(i) in a Joint Hindu Family governed by Mitakshara Law, the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as a son and have the same rights in the coparcenary property as she would have had if she had been a son, inclusive of the right to claim by survivorship; and shall be subject to the same liabilities and disabilities in respect thereto as the son;



(ii) at a partition in such a Joint Hindu Family the coparcenary property shall be so divided as to allot to a daughter the same share as is allottable to a son:

Provided that the share which a pre-deceased son or a pre-deceased daughter would have got at the partition if he or she had been alive at the time of the partition shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter:

Provided further that the share allottable to the pre-deceased child of a predeceased son or of a pre-deceased daughter, if such child had been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the predeceased son or of the pre-deceased daughter, as the case may be;

(iii) any property to which a female Hindu becomes entitled by virtue of the provisions of clause (i) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by will or other testamentary disposition;



(iv) nothing in this Chapter shall apply to a daughter married before the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989;

(v) nothing in clause (ii) shall apply to a partition which had been effected before the date of the commencement of the Hindu Succession (Tamil Nadu Amendment) Act, 1989.”

9. It is true that the Hindu Succession Act was amended by the Central Act 39 of 2005 with effect from 09.09.2005. But even before that as a result of the State amendment in the state of Tamil Nadu, the daughters were conferred with equal rights and status in coparcenary properties. Proviso to Section 6(1) of the Hindu Succession(Amendment) Act, 2005 states that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004. If the appellant had staked her claim that by virtue of the amendment under Section 6(1) of the Hindu Succession Act, it fails in view of Ex.B.1 registered partition deed dated 10.01.1996. When the appellant had staked her claim invoking the State amendment, the



case would stand on a different footing altogether. Faced with this situation, the learned counsel for the respondents would fall back on the theory of ouster. He pointed out that the appellant was a resident of the very same village and she knew fully well that the brothers had partitioned amongst themselves and that she had been clearly out of possession. The Hon'ble Supreme Court in the decision reported in **2009 (15) SCC 747(Jai Singh & Ors V. Gurmej Singh)** held as follows:-

“7. The principles relating to the inter-se rights and liabilities of co-sharers are 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 law, possession of all even if all but one are actually out of possession.

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

(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 any body to disturb the arrangement without the consent of others except by filing a suit for partition.”

10. It is admitted by the defendants that the appellant married on her own and against the wishes of her family. She appears to have been disowned by her family. She cannot be imputed with knowledge



of what was going on in the family. The theory of ouster cannot be applied in this case. In this view of the matter, the judgment and decree passed by the trial Court is set aside. We make it clear that the appellant will be entitled to 1/3rd share in the suit properties. This appeal suit is allowed. We make it clear that while filing Final Decree petition, the appellant cannot include any property not set out in the suit schedule. No costs.

(G.R.SWAMINATHAN, J.) & (R.KALAIMATHI, J.)
3rd February 2026

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

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To:

1. The I Additional District Judge,
Madurai.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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