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A.S.NO.712 OF 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 22 / 08 / 2025

JUDGMENT PRONOUNCED ON : 11 / 12 / 2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.712 OF 2017

Sellammal

... Appellant /Plaintiff

Vs.

1.Palanisamy

2.Vadivel

... Respondents / Defendants

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated August 21, 2017 passed in O.S.No.2 of 2013 by the Additional District Court, Namakkal.

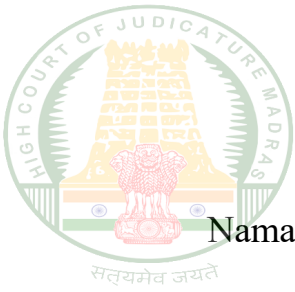
For Appellant : Mr.S.Saravana Kumar

For Respondent-1 : Mr.T.L.Thirumalaisamy

For Respondent-2 : Ms.R.Poornima

J U D G M E N T

Feeling aggrieved by the Judgment and Decree dated August 21, 2017 passed in O.S.No.2 of 2013 by 'the Additional District Court,



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Namakkal' ['Trial Court' for brevity], the plaintiff therein has filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

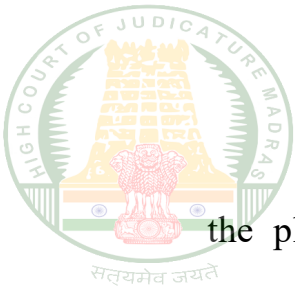
2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. The plaintiff is the sister of the first defendant. Second defendant is the purchaser of the Suit Properties from the first defendant vide Sale Deed dated October 15, 2012. The Suit Properties belonged to the father of plaintiff and first defendant, namely one Muthusamy Gounder, as his self-acquired properties by virtue of a Sale Deed dated September 7, 1940. Father Muthusamy Gounder passed away intestate in or about 1968, leaving behind his wife - Perumayee, the plaintiff and the first defendant as his legal heirs. The plaintiff, first defendant and their mother were in joint possession and enjoyment of the Suit Properties.

3.1. While so, mother Perumayee passed away intestate on July 28, 2012. After the demise of Perumayee, the plaintiff and the first defendant are in continuous possession and enjoyment of the Suit properties. Thus,

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the plaintiff is a co-heir / co-owner entitled to $\frac{1}{2}$ share in the suit properties.

3.2. With a view to defeat and defraud the plaintiff's lawful right over the suit properties, on October 15, 2012, the first defendant executed a Sale Deed in favour of the second defendant in respect of the entire Suit Properties without the consent and knowledge of the plaintiff, for a sale consideration of Rs.8,50,000/-. Though the second defendant acquired the Suit Properties from the first defendant, till date he did not take possession thereof. On coming to know about the execution of the Sale Deed, the plaintiff approached the first defendant for partition of the Suit properties. However, the first defendant refused to do so.

3.3. Therefore, the plaintiff issued a legal notice dated December 17, 2012 to the first defendant seeking partition. The first defendant received the notice and did not come forward to partition the Suit Properties till date. Hence the Suit for partition and declaration that the Sale Deed dated October 15, 2012 executed in favour of the second defendant as null and void.



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FIRST DEFENDANT'S CASE

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4. The first defendant filed a written statement. He admitted the relationship between the parties as stated in the plaint. He contended that the Suit Properties are ancestral properties. Father Muthusamy Gounder owned ancestral properties at Thindamangalam Village. From and out of the income derived therefrom, the Suit Properties were purchased vide Sale Deed dated September 7, 1940 in his name and enjoyed by Muthusamy Gounder and the first defendant as ancestral properties. In 1959, the Thindamangalam property was sold off by Muthusamy Gounder and first defendant. In 1962, Plaintiff entered into a love marriage against the wish of the family and since then, the plaintiff no longer remained a joint family member. Father Muthusamy Gounder passed away in 1968 and since then, the first defendant alone has been enjoying the Suit Properties as his own by ousting the plaintiff. Revenue records were mutated in the name of first defendant. The plaintiff was never in joint possession and enjoyment of the suit properties. Mother Perumaiyee passed away in 2012. After her marriage, the plaintiff never visited her parents and failed to even attend their final rites. The Court Fee paid under Section 37 (2) of 'the Tamil Nadu Court-Fee and Suits Valuation Act, 1955' ['T.N.C.F. Act' for short] is incorrect. On October



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15, 2012, the first defendant sold the Suit Properties to second defendant for a valid consideration of Rs.8,50,000/- and handed over possession.

Accordingly, he prayed to dismiss the Suit.

SECOND DEFENDANT'S CASE

5. The second defendant filed a written statement denying the allegations made by the plaintiff in the plaint. Reiterating the averments made in the first defendant's written statement, he averred that he is a bona fide purchaser with value without notice. The plaintiff was never in joint possession and enjoyment of the Suit Properties since 1962 along with first defendant. Hence, her right, if any has been extinguished by way of ouster. On and after the sale, the second defendant is in actual possession and enjoyment of the suit properties. The Court Fee and the Suit valuation is incorrect. The plaintiff ought to have properly valued the Suit and paid the Court Fee under Section 37 (1) of T.N.C.F. Act. Accordingly, he prayed to dismiss the Suit.

TRIAL COURT

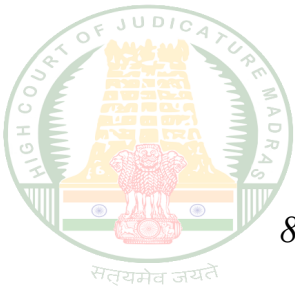
6. Based on the above pleadings, the Trial Court framed issues. Later, the Trial Court on August 21, 2017, the issues were recast as per



the Order made in I.A.No.217 of 2012 in O.S.No.2 of 2013, as follows:

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1. *Whether it is correct as per Sale Deed dated September 7, 1940, the Suit properties are the self acquired properties of the father of the plaintiff and the first defendant Muthusamy Gounder?*
2. *Whether the Sale Deed dated October 15, 2012 executed by the first defendant in favour of the second defendant is fraudulent, invalid and does not bind the plaintiff?*
3. *Whether the plaintiff is entitled to 1/2 share in the Suit properties?*
4. *Whether the plaintiff is entitled to get a Preliminary Decree for 1/2 share in the Suit properties?*
5. *Is it true that Muthusamy Gounder purchased the Suit properties using the income from the ancestral properties?*
6. *Whether the Suit is deemed to be for Partial Partition, due to non-inclusion of Dindamangalam village properties?*
7. *Whether the plaintiff is entitled to the relief of declaration that the Sale Deed dated October 15, 2012 executed by the first defendant in favour of the second defendant is invalid?*



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8. *Whether the Court has pecuniary jurisdiction to adjudicate the Suit?*

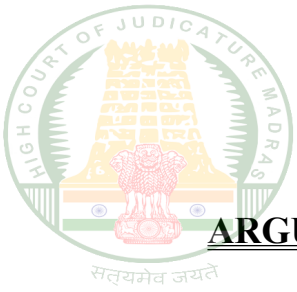
9. *To what other relief, the plaintiff is entitled to?'*

7. At trial, on the side of the plaintiff, plaintiff was examined as P.W.1, her son - Selvakumar was examined as P.W.2 and one Kandhan was examined as P.W.3 and Ex-A.1 to Ex-A.11 were marked. On the side of the defendants, first defendant was examined as D.W.1 and second defendant was examined as D.W.2 and one Paramasivam was examined as D.W.3 and Ex-B.1 to Ex-B.14 were marked.

8. After full-fledged trial, the Trial Court concluded that the Suit Properties are ancestral Properties in the hands of Muthusamy Gounder. The Suit is not bad for partial partition as the alienation took place in the year 1959. The District Court has pecuniary jurisdiction to decide the issue. Tamil Nadu Act No.1 of 1990 is not applicable to the instant case. As the father passed away in 1968, the Central Act No.39 of 2005 is also not applicable. Hence, the plaintiff has no right to seek partition. Accordingly, the Trial Court dismissed the Suit.

9. Feeling aggrieved, the plaintiff has preferred this First Appeal under Section 96 read with Order XLI Rule 1 of the CPC.

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ARGUMENTS:

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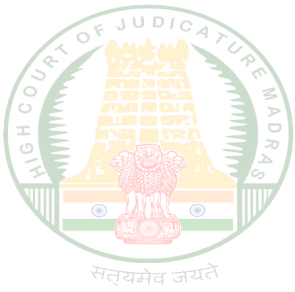
10. Mr.S.Saravana Kumar, learned Counsel for the appellant / plaintiff would argue that the Suit Properties are self-acquired Properties of father - Muthusamy Gounder vide Ex-A.1 - Sale Deed dated September 7, 1940. The defendants did not produce any evidence to show that before Ex-A.1, Muthusamy Gounder had ancestral properties. Similarly, there is no evidence to show that the property covered under Ex-B.1 - Sale Deed dated August 31, 1959 executed by Muthusamy Gounder and first defendant in favour of a third party was originally acquired / purchased by Muthusamy Gounder before Ex-A.1. Father - Muthusamy Gounder passed away in or about 1968, and mother - Perumayee passed away on July 28, 2012. The Suit was filed on January 2, 2013. The plaintiff and the first defendant are co-heirs and co-owners in respect of suit properties. Hence, the plaintiff is entitled to $\frac{1}{2}$ share under Sections 8 and 15 of the Hindu Succession Act, 1956. Though the plaintiff got married to a person of her own choice in 1962, the plaintiff and the defendants are residing in the same locality. The same probablizes the plaintiff's case. Muthusamy Gounder and Perumayee did not execute any testament in favour of first defendant or any other person. Defendants 1 and 2 colluded together and executed Ex-A.2 - Sale



Deed dated October 15, 2012 only with a view to defeat and defraud the rights of the plaintiff. The same would not bind the plaintiff. Further,

Law presumes that the plaintiff *qua* co-owner is in joint possession and enjoyment of the Suit Properties along with other co-owners. The first defendant did not prove the necessary *animus* to oust the plaintiff from the Suit Properties. The Trial Court erred in arriving at a finding that the Suit Properties are ancestral Properties and the plaintiff is not entitled to partition. Even while assuming that the Suit Properties are ancestral in nature, in view of amended Section 6 of the Hindu Succession Act, 1956 (henceforth 'H.S. Act') as amended by the Hindu Succession (Amendment) Act, 2005 (Act No.39 of 2005) and interpreted by the Hon'ble Supreme Court in its Judgment in ***Vineeta Sharma -vs- Rakesh Sharma***, reported in **(2020) 9 SCC 1**, the plaintiff is entitled to ½ share. Accordingly, he would pray to allow the Appeal Suit, set aside the Judgment and Decree of the Trial Court and decree the Original Suit as prayed for. He would rely on the following decisions in support of his contentions:

- (i) Judgment of Hon'ble Supreme Court in ***Darshan Singh -vs- Gujjar Singh***, reported in **(2002) 2 SCC 62**;
- (ii) Judgment of this Court in ***R. Kasthuri -vs- AL. Padmaja***, reported



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in 2018 SCC OnLine Mad 9220.

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11. On the other hand, Mr.T.L.Thirumalaisamy, learned Counsel for the first respondent / first defendant would argue that the Suit Properties are ancestral Properties. Ex-B.1 proves that the joint family consisting of Muthusamy Gounder, first defendant and Perumayee, had owned an extent of 1 Acre 94 Cents. From and out of the joint family nucleus and income, the Suit Properties were purchased by Muthusamy Gounder vide Ex-A.1 - Sale Deed. Hence, the Suit Properties were ancestral and joint family properties in the hands of Muthusamy Gounder. The plaintiff married in the year 1962 on her own choice against the will of her family. On and after her marriage, she was excluded from the joint family and its properties. She did not visit her parents and did not even participate in their funeral ceremony. The first defendant and mother - Perumayee were enjoying the Suit Properties by excluding the plaintiff openly and continuously with the knowledge of plaintiff by mutation of revenue records, mortgaging the property to co-operative bank as well as to third party. Ex-B.5 is the separate Patta issued in the year 1986. Ex-B.7 series contains Kist Receipts pertaining to the Suit Properties from the year 1969. Ex-B.8 is a Mortgage Deed, Exs-B.9, B.12 and B.13 are documents issued by Siluvampatti Co-

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operative society. They would establish that the first defendant was enjoying the Suit Properties with a clear *animus* to oust the plaintiff therefrom. Hence, the rights of the plaintiff if any got extinguished. The first defendant perfected title by way of ouster and adverse possession. Even while assuming that the Suit Properties are separate properties of Muthusamy Gounder, as stated *supra*, the plaintiff was never in joint possession and enjoyment of the Suit Properties along with first defendant and mother - Perumayee and hence, the first defendant perfected title by way of ouster and adverse possession against plaintiff. The Trial Court rightly appreciating the facts and circumstances of the case, dismissed the Original Suit. There is no warrant to interfere with it. Accordingly, he would pray to dismiss the Appeal Suit. He would rely on the following decisions in support of his contentions:

- (i) Judgment of this Court in *Puniyavathi -vs- Pachaiammal*, reported in 2022 (4) CTC 590;
- (ii) Judgment of this Court in *Rayappan -vs- Rajammal*, reported in 2025 (1) CTC 407.

12. Ms.R.Poornima, learned Counsel for the second respondent / second defendant, would adopt the arguments of Mr.T.L.Thirumalaisamy



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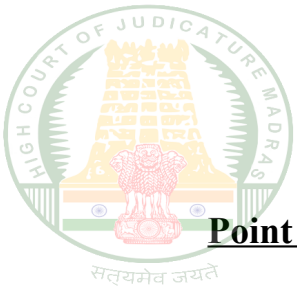
and further argue that the second defendant is a *bona fide* purchaser with value. The second defendant purchased the Suit Properties for a consideration of Rs.8,50,000/- and has been in possession and enjoyment thereof ever since then. Accordingly, she would pray to dismiss the Appeal Suit.

DISCUSSION:

13. Heard on either side. Perused the evidence available on record.

The following points arise for consideration in this Appeal Suit:

- (i) Whether the Suit Properties were ancestral and joint family properties in the hands of Muthusamy Gounder, or whether they are his separate properties ?
- (ii) Whether the plaintiff is ousted from the Suit Properties as claimed by the defendants ?
- (iii) Whether Ex-A.2 - Sale Deed dated October 15, 2012 executed by the first defendant in favour of second defendant in respect of Suit Properties is binding on the plaintiff ?

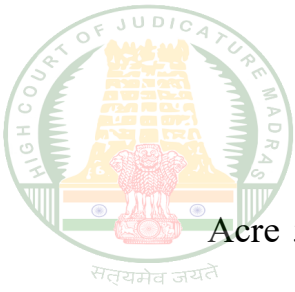


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Point No.(i)

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14. An extent of 3 Acre 52 Cents comprised in Survey Nos.170/2 (Hectare 0.95.0) and 170/5 (Hectare 0.48.0) of Ernapuram Village is described as the Suit Properties in this case. Out of the said 3 Acre 52 Cents, 2 Acre 60 Cents was purchased by Muthusamy Gounder vide Ex-A.1 - Sale Deed dated September 7, 1940. There is no document regarding the remaining 92 Cents. In Ex-B.1 - Sale Deed dated August 31, 1959, Muthusamy Gounder and first defendant sold an extent of 1 Acre 94 Cents in Thindamangalam Village to one Perianna Chetty. It is recited therein by Muthusamy Gounder and first defendant that the property covered therein are their paternal property [பிதூராஜிதமாய் பாத்தியப்பட்டு]. It is recited further therein that they are engaged in agriculture and that the property covered therein was sold to purchase cows and to meet out family expenses. It is an admitted fact that father - Muthusamy Gounder was primarily engaged in agriculture. There appears to be no other source of income for Muthusamy Gounder other than agriculture. Agriculture was their family's foundation. What could be inferred from the above is that, before Ex-A.1 itself, Muthusamy Gounder had ancestral properties viz., the extent of 1 Acre 94 Cents covered under Ex-B.1 and the remaining extent of 92 Cents in the said 3



Acre 52 Cents. In the absence of any other source of income other than agriculture, this Court concludes that the extent of 2 Acre 60 Cents in the Suit Properties purchased vide Ex-A.1 - Sale Deed could have only been purchased from the income derived from the aforesaid ancestral properties. This means the entire Suit Properties are ancestral properties.

Point No.(i) is answered accordingly.

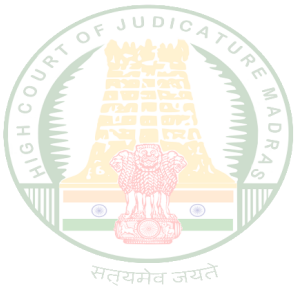
Point No.(ii)

15. It is crucial to understand what ouster is and what are its essential ingredients. In ***P.Ramanatha Aiyar's 'The Law Lexicon'*** [2nd Edition, Lexis Nexis Publication], Ouster has been defined as follows:

"An ouster is the wrongful dispossession or exclusion from real property of a party entitled to the possession thereof. "

16. In ***Black's Law Dictionary*** [4th Edition, West Publishing Co.], Ouster has been defined as *"A species of in-juries to things real, by which the wrong-doer gains actual occupation of the land, and compels the rightful owner to seek his legal remedy in order to gain possession"*.

17. The Hon'ble Supreme Court in ***P.Lakshmi Reddy -vs- L.Lakshmi Reddy***, reported in ***1956 (2) SCC 759***, has held as follows:

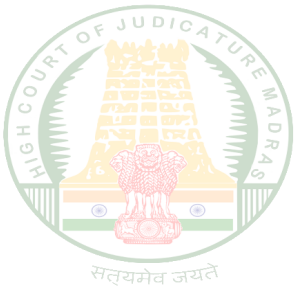


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"8.Now, the ordinary classical requirement of the adverse possession is that it should be *nec vi, nec clam, nec precario*. (See *Secretary of State for India in Council v. Debendra Lal Khan* (1933) LR 61 IA 78, 82: 1933 SCC OnLine PC 65). The possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. [See *Radhamoni Debi v. Collector of Khulna*, 27 IA 136, 140]. But it is well-settled that in order to establish adverse possession of one co-heir as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits, of the properties. **Ouster of the non-possessing co-heir by the co- heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title. The co-heir in possession cannot render his possession adverse to the other co- heir not in possession merely by any secret hostile animus on his own part in derogation of the other co- heir's title. (See *Cores v. Appuhamy*, 1912 AC 230(PC)). It is a settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and**



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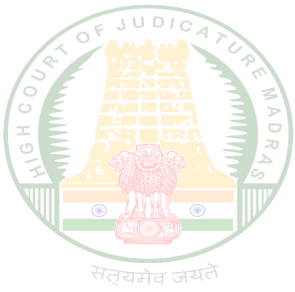
enjoyment by one of them to the knowledge of the other so as to constitute ouster. " ...

[Emphasis supplied by this Court]

18. The Hon'ble Supreme Court in *Vidya Devi -vs- Prem Prakash*, reported in (1995) 4 SCC 496, culled out three essential ingredients for establishing the plea of ouster. Relevant extract is hereunder:

*“28.Ouster does not mean actual driving out of the co- sharer from the property. It will, however, not be complete unless it is coupled with all other ingredients required to constitute adverse possession, **Broadly speaking, three elements are necessary for establishing the plea of ouster in the case of co- owner. They are (i) declaration of hostile animus (ii) long and uninterrupted possession of the person pleading ouster and (iii) exercise of right of exclusive ownership openly and to the knowledge of other co- owners. Thus, a co-owner, can under law, claim title by adverse possession against another co-owner who can, of course, file appropriate suit including suit for joint possession within time prescribed by law.**”*

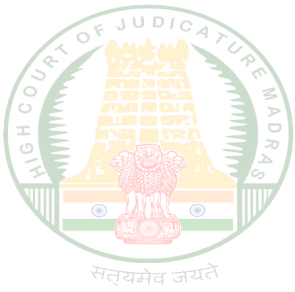
[Emphasis supplied by this Court]



19. Further, Hon'ble Supreme Court in **Govindammal -vs- R.**

Perumal Chettiar, reported in (2006) 11 SCC 600, referring to **Mohaideen Abdul Kadir -vs- Mohd. Mahaideen Umma**, reported in **ILR (1970) 2 Mad 636**, has held thus:

"10. In Mohaideen Abdul Kadir v. Mohd. Mahaideen Umma [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 hard-and-fast rule can be laid down from which it can be inferred that any co-sharer has



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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. ... "

20. This Court in ***D.V.Jegannathan -vs- P.R.Srinivasan***, reported in **(1999) 3 LW 742**, has held as follows:

“27.Mutation of the Revenue records, payment of taxes, long possession of the property, management of the property, appropriation of income, the other sharers being out of possession of the property etc., each of such acts by a co-owner by itself may not be sufficient to establish ouster or open assertion of adverse title as against another co-owner. ”

21. It could be understood from the above legal expositions that there can be no straight jacket, one size fits all formula for proof of ouster, as it may vary, depending on the unique facts and circumstances of each case. But however, some essential ingredients are relevant for

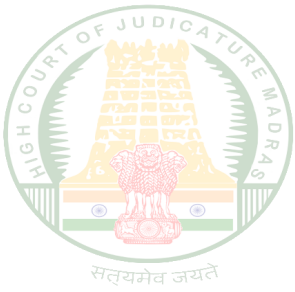
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consideration from a broader perspective. They are (i) exclusive, long, open and uninterrupted possession and enjoyment (ii) hostile to that of the co-owner alleged to be ousted and (iii) to their knowledge.

22. This Court shall now approach the facts of this case bearing in mind the above legal position. Father - Muthusamy Gounder passed away intestate in or around the year 1968. Mother - Perumayee passed away intestate in 2012. Plaintiff married the groom of her choice against the wish of her family in the year 1962. There is no dispute with the aforesaid facts. From the above facts, it could be seen that the Tamil Nadu Act No.1 of 1990 is not applicable to the plaintiff. The Hindu Succession (Amendment) Act, 2005 (Act No.39 of 2005) came into force on September 9, 2005. As per the interpretation of amended Section 6 of the Hindu Succession Act in *Vineetha Sharma's Case* [cited *supra*], the plaintiff is a co-parcener by and from birth, but the enforcement of her co-parcenary rights are with effect from September 9, 2005. The Suit is filed on January 2, 2013. Hon'ble Supreme Court in *Vineeta Sharma's Case* has clearly held that father need not be alive as on September 9, 2005 for the enforcement of the daughter's co-parcenary rights. Hence, the plea of limitation under Article 110 of the Limitation Act, 1963 is also not available to the first defendant.



23. Learned Counsels for the defendants vehemently contended

that the plaintiff is excluded from the family since her marriage in 1962; that succession opened in the year 1968 upon Muthusamy Gounder's demise; that the first defendant and her mother were enjoying the Suit Properties by excluding the plaintiff till the mother's demise, after which the first defendant alone was in exclusive possession and enjoyment excluding the plaintiff; that hence, the plaintiff is ousted from the suit properties.

24. Considered the above argument. Though father - Muthusamy Gounder passed away intestate in or around 1968, mother - Perumayee passed away only on July 28, 2012. In the meantime, Central Act.39 of 2005 came into force. As already stated, the statute conferred co-parcenary right by and from birth which is however exercisable / enforceable only from September 9, 2005. Hence, there ought to have been a denial of the plaintiff's rights after September 9, 2005 and the limitation clock begins to tick from the date of such denial. In this case, there is no evidence or pleadings as to such denial. Even while assuming that the rights of the plaintiff was denied on September 9, 2005 itself, even then the Suit being filed in 2013 is well within limitation (Within 12 years). Hence, the plaintiff's claim is not barred by limitation and the plea



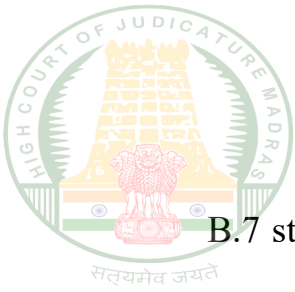
of ouster is not available to the defendants.

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25. The plaintiff's case is that the Suit Properties are separate properties of father - Muthusamy Gounder. Even while assuming that the Suit Properties are separate properties of Muthusamy Gounder, the defendants would not succeed their plea of ouster and adverse possession for the following reasons.

26. Succession opened when Muthusamy Gounder passed away in or about 1968. Upon the death of Muthusamy Gounder, the Suit Properties shall devolve on wife - Perumayee, son - first defendant and daughter - plaintiff under Section 8 of the Hindu Succession Act, 1956. Thus, each of them would be entitled to 1/3 share in the Suit Properties. The defendants' contention is that the plaintiff was never in joint possession with first defendant and mother - Perumayee. The defendants relied on Ex-B.5 - UDR Patta, Ex-B.7 - Kist Receipts, Ex-B.8 - Mortgage Deeds, Exs-B.9, B.12 and B.13 - Documents relating to the loan obtained by first defendant in respect of Suit Properties to prove their contention.

27. In Indian society, that too in agricultural families, it is quite natural for the revenue records to stand in the name of the male heirs after the demise of the father. It is highly probable that Ex-B.5 and Ex-



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B.7 stand in the name of first defendant only in that manner. Even while assuming that the plaintiff was excluded and that is why Ex-B.5 and Ex-B.7 did not have the plaintiff's name, in such a scenario, mother - Perumayee's name ought to have been there. But that is not the case here. Further, there is no evidence available on record to show that the first defendant's name was mutated in Patta after giving due notice to the plaintiff. In the absence of notice and given the societal norms, merely because Patta and Kist Receipts stand in the name of first defendant, and merely because the plaintiff did not raise any objection for the same, the presumption of joint possession of a co-owner cannot be dislodged and it could not be taken to say that the first defendant possessed sufficient *animus* to exclude and oust the plaintiff.

28. As regards Ex-B.8- Mortgage Deed, the first defendant and mother - Perumayee mortgaged the Suit Properties with one Periyasamy in 1973 and obtained Rs.6,000/- as loan, and the same was discharged in 1983. As regards Exs-B.9, B.12 and B.13 - Loan documents, show that the first defendant obtained loans from Siluvampatti Co-operative Bank by mortgaging the suit properties. It is quite natural that, after marriage of the plaintiff, the first defendant and mother - Perumayee were in actual possession and enjoyment of the Suit Properties and were able to obtain



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loan by way of mortgage with bank. In the absence of denial of the plaintiff's rights, other co-heirs / co-owners merely mortgaging the property and obtaining loan for their livelihood, is not sufficient to disrupt the presumption of joint possession by co-heirs / co-owners.

29. Unless the first defendant establishes that he is in possession and enjoyment of the Suit Properties denying the plaintiff's rights over it, in an open and express manner to the notice of the plaintiff, he cannot succeed the plea of ouster and adverse possession. There seems to be no such denial in this case, that too, to the notice of the plaintiff. Moreover, if really there was intention to exclude the plaintiff from the joint family and oust her from the Suit Properties on account of her marriage against the will of the family, then father - Muthusamy Gounder or mother - Perumayee could have very well executed a Will in favour of the first defendant alone in respect of their shares in the suit properties. But that is not the case here. Further, P.W.2 who is the son of the plaintiff and P.W.3 a local villager was examined on the side of the plaintiff to prove joint possession. Their evidence satisfactorily support the case of the plaintiff. The evidence of D.W.-1 to D.W.-3, are not sufficient to prove the defendants case i.e., the plea of ouster and adverse possession. Hence, this Court concludes that the first defendant has failed in his plea of

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ouster and adverse possession. **Point No.(ii) is answered accordingly in favour of plaintiff and against defendants.**

Point No.(iii)

30. It being a Suit for partition, the plea of *bona fide* purchaser is not available to the second defendant [see *R. Rangarajan -vs- K. Ramasamy Naidu*, reported in *2013 SCC OnLine Mad 2693*]. Moreover, as stated *supra*, the defendants and the plaintiff are residing in the same locality and which increases the probability that the second defendant was well aware of the rights of the second defendant. Hence the Ex-A.2 - Sale Deed dated October 15, 2012 would not bind the plaintiff and her $\frac{1}{2}$ share in the suit properties. The plaintiff can simply ignore Ex-A.2 and need not seek declaration in this regard. Therefore, the plaintiff is entitled to $\frac{1}{2}$ share in the suit properties. **Point No.(iii) is answered accordingly in favour of plaintiff.**

31. In *Punniyavathi's Case* [cited *supra*], case of the plaintiffs is that the Suit Property is a separate property of father, who passed away in 1978 leaving behind wife, four sons and three daughters. Wife passed away in 2004. Two among the four daughters filed the suit for partition against the rest of their siblings. Defence was that a registered partition



took place on July 25, 1991 among the sons and further, on February 20,

2008, a registered partition took place among a branch of one among the

two sons. In these circumstances, learned Single Judge of this Court held

that the Plaintiffs' approached the Court 31 years after the succession

became open and 18 years after the partition of properties among

brothers, and the very fact leads to an inference that the Plaintiff's have

been ousted and the possession of the defendants was adverse to that of

the Plaintiffs and the Plaintiffs' right got extinguished under Section 27

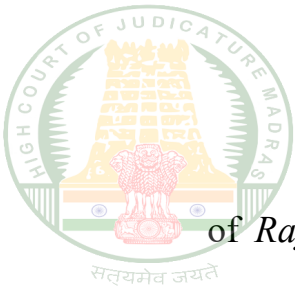
of the Limitation Act, 1963. Whereas, in the case on hand, there is no

such registered Partition Deed or sufficient proof of ouster. Hence,

Punniyavathi's Case is distinguishable from the instant case on facts and

hence not applicable.

32.In *Rayapan's Case* [cited *supra*], sister and her legal heirs filed the Suit against brother and his children. Succession opened upon father's demise in 1966-67 and the brother and his sons entered into partition vide registered Partition Deed dated February 15, 1995. Revenue records were mutated by 1970. Further, large scale improvements were effected over the Suit Property therein. Suit was filed in 2012. It was in these facts and circumstances, a learned Division Bench of this Court held that the plaintiff therein / sister was ousted from the Suit Property. The facts



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of *Rayapan's Case* are deviant from the case on hand and hence, not applicable.

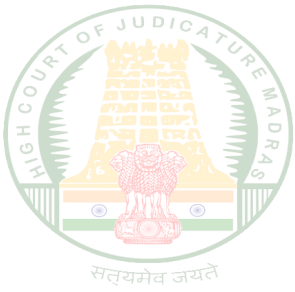
33.The other decisions relied on by the learned Counsels on either side are not applicable to the facts and circumstances of the present case.

34.The Trial Court rightly found that the Suit Properties are ancestral Properties. However, its finding that the father should be alive on September 9, 2005 for the daughter to be able to enforce her co-parcenary right is erroneous. Hence, its Judgment and Decree are liable to be interfered with by this Court.

CONCLUSION:

35.Resultantly, the Appeal Suit stands allowed. The Judgment and Decree of the Trial Court is set aside and the Original Suit is decreed in the following manner:

(a)Plaintiff is entitled to $\frac{1}{2}$ share in the Suit Properties. A preliminary decree is passed in favour of the Plaintiff to the aforesaid extent.



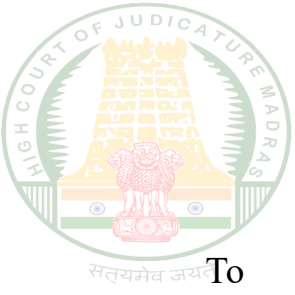
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(b)The Sale Deed dated October 15, 2012 registered as Document No.2160 of 2012 on the file of Sub-Registrar, Velagoundampatti stands in the name of the second Defendant would not bind the Plaintiff and her right (½ share) over the Suit Properties.

(c)Considering the facts and circumstances of the case and taking into consideration the relationship between the parties, there shall be no order as to costs.

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Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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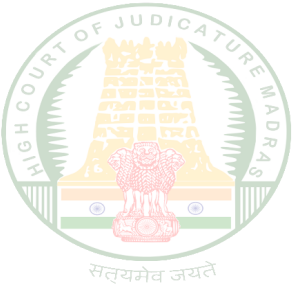


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To

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The Additional District Judge,
Additional District Court,
Namakkal.



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R. SAKTHIVEL, J.

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