

IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE
CHENGALPATTU

Present: Selvi. R.Sujatha, B. Sc. B. L
Additional District Judge
Chengalpattu.

Monday, the 21st day of March 2016

O. S. No. 243/2005

- 1.Narayanasamy Naicker(Died)
- 2.Arjuna Naicker
- 3.Murthy(Died)
- 4.Dhanapal
- 5.Meenakshi Ammal
- 6.Varadammal
- 7.M.Mahesh
- 8.M.Jawahar (died)
- 9.M.Prabakaran

5th plaintiff added and plaintiffs 2 to 4 and 1st defendant are recognized as L.Rs. of the deceased 1st plaintiff, as per order dated 21.6.2005 in I.A.No.404/2004. Amended as per order dated 8.1.2007 in I.A.No.23 of 2007.

Plaintiffs 6 to 9 added as L.Rs. of the deceased 3rd Plaintiff as per order in I.A.No.339/2010, dated 14.3.2011 and amended as per order in I.A.No.192 of 2011 dated 6.7.2011.

The 8th plaintiff M.Jawahar died and the 6th plaintiff has been recognized as sole legal representative of the deceased 8th plaintiff, as per order on memo dated 5.1.2012. Amended as per order in I.A.No.66/2012 dated 14.3.2012. ..Plaintiffs

/Vs./

- 1.Puliyendra Naicker(died)
- 2.Dakshinamoorthi
- 3.Jothy
- 4.Nandakumar
- 5.Dasarathan
- 6.Roja(6th defendant impleaded as per order in I.A.87/2007 dated 27.6.2007 and amended as per order dated 30.8.2007 in

I.A.No.518/2007)

7.Samboornammal

(Defendants 2 to 6 are recognised and the 7th defendant is added as Legal representatives of the deceased 1st defendant as per order dated 25.8.2009 in I.A.No.277/2009.

Amended as per order dated 22.2.2010 in I.A.No.506/2009.

.. Defendants

This suit is coming before me on 15.3.2016 for final hearing in the presence of Thiru.P.N.Krishnan, learned counsel for the plaintiffs and the 1st defendant died and Thiru.C.R.Bashyam, learned counsel for the defendants 2 to 6 and the 7th Defendant remained exparte and upon hearing the arguments of both sides, and upon perusing the records and documents, this Court delivered the following:-

JUDGMENT

The suit is for directing the partition of the plaint schedule properties into 25 equal shares and allotment of 19/25th share to the plaintiffs 2 to 5 and for permanent injunction restraining the defendants from alienating the suit properties and directing the defendants to pay the plaintiffs future profits from the date of plaint till delivery of separate possession and for costs.

2.The averments in the plaint in brief:-

The plaintiffs and defendants are members of joint Hindu Family owning the properties described in the Schedule. The family had substantial ancestral properties. The members of the family were cultivating the lands of 3rd parties for waram and the family was

realising substantial income therefrom. The family owned 100 sheep, 10 cows and four buffaloes. The income from the milk trade was substantial. From out of the income and from out of the joint family exertions, substantial properties were purchased in the name of the members of the family. The 1st defendant has been acting as the Manager of the Joint Family from the year 1980. Recently the 1st defendant has taken up a hostile attitude towards the plaintiffs. It was no longer possible to continue the joint family status and therefore the plaintiffs have been requesting the 1st defendant to agree to an amicable division of the joint family properties into 25 equal shares and allotment of 19 such shares to the plaintiffs 2 to 5. The defendant was evading. On 24.9.1996, the plaintiffs issued a registered Notice of demand to the 1st defendant, calling for partition. The 1st defendant gave belated reply dated 17.11.1996 with false allegations. The allegations in the reply notice that there is no joint family or joint family properties, that there was no oral family partition before Panchayathdars, that the properties have been in separate possession and enjoyment that the 1st defendant was owning separate properties, that he did not act as Manager and that the parties have been dealing with the acquiring properties separately are false and are denied. The defendants with an intention to defraud the plaintiffs their due shares, has executed sham settlement deed, in favour of his sons, defendants 2 to 5. The alleged settlement deed is not true and valid since the properties are joint family

properties and the properties continued to be in the possession of the plaintiffs and the defendants. The defendants 2 to 5 are added as parties for effective adjudication. The 1st plaintiff Narayanasami Naicker died after suit, leaving behind plaintiffs 2 to 5 and the 1st defendant as L.Rs., of the 1st plaintiff. It was so recognised by this Hon'ble court as per order dated 21.6.2005 in I.A.No.404/2004. Plaintiffs 2 to 5 and the 1st defendant are each entitled to 6/25th share and the 5th plaintiff, Meenakshi ammal is entitled to 1/25th share in the suit properties. It is claimed by the 1st defendant that the 1st defendant has settled some properties in favour of his daughter Roja, the 6th defendant. It is submitted that the 1st defendant being the member of the joint Hindu family, has no right to settle any of the joint family properties in favour of his daughter, Roja. The alleged settlement deed in favour of his sons viz., defendants 2 to 5 or in favour of the 1st defendant's daughter Roja the 6th defendant are not valid and binding on the plaintiffs. The properties continued to be the joint family properties. The 1st defendant Puliyyendra Naicker died on 7.4.2009 leaving his wife Sambooranammal his sons the defendants 2 to 5 and his daughter 6th defendant as his legal heirs. The defendants 2 to 6 are recognized and the 7th defendant impleaded as L.Rs. of the deceased 1st defendant Puliyyendra Naicker. The 3rd plaintiff Moorthi died on 12.10.2010 leaving behind the plaintiffs 6 to 9 as the L.Rs. of the deceased 3rd plaintiff, Moorthi. The cause of action survives to the plaintiffs 3 to 9

since they are the L.Rs. of the deceased 3rd plaintiff Moorthi. The plaintiffs 6 to 9 also entitled to 19/25 shares along with the other plaintiffs. The 8th plaintiff M.Jawahar died on 19.11.2011 as a bachelor, leaving behind him his mother Varadammal the 6th plaintiff. Hence Varadammal is entitled to the share left by the 8th plaintiff M.Jawajar and a memo to the effect was filed and recorded to that effect. Hence the suit.

3. The Written Statement averments filed by the 1st defendant in brief:-

The suit is not maintainable. The allegations stated in the plaint para 3 to 5 are specifically denied. There is no joint family properties available for partition. The suit properties are not joint family properties as alleged nor in joint possession. The suit properties are not purchased or acquired with the alleged source of joint exertion cultivation of third parties lands on waram basis and milk vending business. The suit properties not acquired with the alleged joint family income. The defendant did not manage the alleged joint family from 1980. This defendant is not the eldest member of the alleged joint family and he never acted as manager of the alleged joint family. The ancestral and joint family properties of the plaintiff and the 1st defendant have been divided during the month of Thai 1981 by way of oral family partition before panchayatdors. The plaintiffs and the first defendant

are already divided. The partition is true, valid and acted upon. Since partition the shares are in separate possession and enjoyment of the respective properties. The sharers have sold some items and also mortgaged certain items including from Bank. The sharers have also purchased certain properties after partition and such properties are the self acquired properties of the sharers. Patta and other Revenue records have been separately obtained. The plaint is vague with regard to the fact that what are all ancestral properties, which properties subsequently purchased with the alleged joint family income from whom etc.. The plaintiffs simply obtained the properties from the revenue records and filed the above suit with incorrect particulars about survey number extent etc., The plaintiffs who claims joint status purposely omitted to include the properties acquired by them after 1981. Properties purchased in the name of members of the family have been allotted to other members in the partition 1981. Item No.15 purchased in the name of this defendant's mother in 1964 fell to the share of fourth plaintiff, who sold the same through power of attorney. So also item No. 19 purchased in the name of first plaintiff allotted to 4th plaintiff who sold through power of attorney. Certain items which are subjected to family partition omitted to include in the suit. Properties purchased in the name of 2nd plaintiff including item No.2 fell to the share of the 3rd defendant who mortgaged the same in favour of Vedagiri of Thandalams. Like items 23, 28 and 30 purchased in the name of this

defendant and the 3rd plaintiff fell to the share of 2nd plaintiff. Items Nos 31,33, 35,37, 38, 41 and 42 purchased in the name of 2nd plaintiff allotted to this defendant and this defendant obtained patta transfer and in separate enjoyment. After partition this defendant purchased properties under different sale deed from various partition from and out of his self income which includes cultivable lands, house site together with houses. Such properties are always treated as self acquired properties of this defendant. The plaintiffs purposely included such items and to long false claim. In family partition the first plaintiff did not take any share except 0-50 cents of grand father and it was agreed that he should be maintained by all sons periodically. The properties obtained by the 1st defendant in the partition have been settled in favour of his sons defendants 2 to 5 and his daughter by way of two different settlement deeds dated 23.8.1995. The settlement deeds are true, valid and acted upon. The settlees are in possession and enjoyment of the settled properties by way of obtaining patta etc. Since the defendants 2 to 5 have made lot of improvements by way of putting up building, dug well, and put up pump set etc in their properties and further this defendant also made more improvements like constructing house, dug well and fixing up motor pump set and since such properties have got more value which is the root cause in failing the false suit. The 2nd plaintiff has got house property worth 10 lakhs at Thandalam apart from 3 acre of lands in the same village abutting touring talkies and he

has got vaalpattarai in 1 acre. He has got tractor and 5 acres at Vengaleri and 1 acre at Thandalam village well, pump set. He has got 12 acres from family partition at vengaleri and he is in possession by way of obtaining patta etc. The 3rd defendant has got 9 acres in the family partition at all 4 villages Tractor allotted to his share. He has also got separate properties after partition. The 4th defendant obtained 9.50 acres in partition in Vengaleri and Thandalam. He has got 2 JCB each worth 15 lakhs which are rented. HE has mortgaged the property obtained in partition. He has also acquired properties after partition including site at Thirupporur worth 3 lakhs. He has purchased 1 acre at Thandalam and also doing finance business. The suit properties are not available for partition and there is no joint family in existence. The joint family properties already divided in 1981 and sharers are in separate possession. All sharers have acquired other properties separately after partition and all other properties of the plaintiffs 2 to 4 are purposely omitted. The plaintiffs are not entitled to partition much less 1/4th share each. They are not entitled to any of the suit relief. The suit properties are not properly described. The Survey numbers and extent incorrectly given. There is no cause of action. There is no merits in the plaint. Hence the suit is liable to be dismissed.

4.The averments in the written statement filed by the defendants

2 to 5 in brief:-

The suit is not maintainable in law and on facts. There is no joint family or joint family properties available for partition. The suit properties are not joint family properties available for partition. Nor the suit properties acquired by joint family from and out of income various sources as alleged. The joint family properties of the plaintiff and the first defendant divided among the plaintiffs 2 to 4 and the 1st defendant during the month of January 1981 in a oral partition before Panchayatdors. The said partition is true, valid and acted upon. Since division the members are in separate and exclusive possession. Patta nad other Revenue records transferred in the name of respective sharers. An extent of 12.69 cents together with well in Survey No.37 and S.No.45 together with 3 H.P. Motor pump set fell to the share of the first defendant has been settled by him in favour of this defendant and the defendants 3 to 5 out of love and affection under a Registered settlement deed dated 23.8.1985. The settlement deed is true valid and acted upon. Since the settlement deed this defendant and the defendants 2 to 4 are in exclusive possession and enjoyment of the said property which are described as items in the suit. The defendants have also made improvements in the properties by way of putting up pucca building, dug well, obtained service connection etc. Patta transferred in the name of the defendants and they are paying kist and paying house

tax also. The defendant by way of their open, hostile, un-interrupted possession and enjoyment of the said property to the knowledge of the plaintiff and hence perfected title to the suit property by way of adverse possession and prescription. The value of the said property increased considerably, which is root cause in filing the suit. The plaintiff also acquired properties separately after partition and they are enjoying the same by obtaining patta etc., The plaintiffs are not entitled to claim for partition of the suit properties. They are not entitled to claim any share in the suit properties settled by the first defendant in the name of the defendants 2 to 4 which are their separate properties. There is no cause of action for the suit. The suit properties are not properly described by way of extent and survey numbers and boundaries. The memo of valuation in the plaint is not correct and there is no merits in the plaint. Hence the suit is liable to be dismissed.

5. The averments in the written statement filed by the 6th defendant in brief:-

The suit is not maintainable in law and on facts. The alleged joint Family, Joint Family properties acquisitions of properties by the alleged Joint Family by various sources, alleged Joint status and Joint possession management by the 1st defendant during the 1980 etc are baseless and ill founded. The allegation that the 1st defendant with a view to defraud the plaintiff's alleged share executed a sham settlement

deed which is untrue, invalid, the properties are continue to be in joint and in joint possession are also false and incorrect. The defendant states that there is no joint family or joint family properties available for partition. The suit properties are not joint family properties available for partition. The joint family properties of the plaintiffs and the first defendant divided among the plaintiffs 2 to 4 and the 1st defendant during the month Jan'1981 in a oral partition before Panchayatdors. The said partition is true valid and acted upon. Since division the members are in separate and exclusive possessions. Patta and Revenue records transferred in the name of respective sharers. The 1st defendant has settled 1.00 cent in S.No.39 in Vengaleri village an item of the suit property sell to his share out of love and affection under a registered Settlement deed dt.23.8.1995. The settlement deed is true valid and accepted and acted upon. Since then this defendant is in exclusive possession and enjoyment of the said property. The plaintiffs are well aware of the said facts. Patta transferred in the name of the defendant and she is paying appropriate taxes. This defendant by way of her open hostile, un-interrupted possession and enjoyment of the said property to the knowledge of the plaintiff and hence perfected title to the said property by way of adverse possession and prescription. The value of the said property increased considerably, which is the root cause in filing the suit. The plaintiff was obtained properties in the family partition dealt with separately. The plaintiff also acquired properties

separately after partition and they are enjoying the same by obtaining patta etc. The plaintiffs are not entitled to claim for partition of the suit properties. They are not entitled to claim any share in the suit properties settled by first defendant in the name of this defendant which is her separate properties. There is no cause of action for the suit. The suit properties are not properly described by way of extent and survey numbers and boundaries. The memo of valuation in the plaint is not correct. There is no merits in the plaint. Hence the suit is liable to be dismissed.

6. The averments in the Additional Written statement filed by the 1st defendant in brief:-

The suit properties are already partitioned between the sharers. The said partition is true, valid and acted upon. Since then the sharers are dealing with allotted items separately. The plaintiffs 1 to 4 are divided brothers of this defendant. Since the 1st plaintiff is not entitled to claim partition, there is no question of his alleged share to be divided as claimed in the plaint. The 5th plaintiff has no interest in prosecuting the suit along with the other plaintiffs. The plaintiffs 2 to 4 are not entitled to any share in the suit properties much less 6/25 share as claimed. The 5th plaintiff is also not entitled to any share in the suit property much less 1/25th share as claimed. None of the plaintiff entitled to any share in the suit properties, since partition has been already effected. The

plaintiffs are not entitled to any relief of the suit as claimed. There is no merits in the suit and hence the suit is liable to be dismissed.

The defendant further states that the suit is not at all maintainable in law and the suit properties are already partitioned and hence not available for partition. This defendant from and out of the allotted share settled an extent of 1.00 acre an item of the suit property in S.No.39 Vengalari Village out of love and affection in favour of 6th defendant and the settlement is true, valid and acted upon. Now the 6th defendant is the owner and in exclusive possession of the settled extent. The plaintiff is not entitled to the relief sought for. They are not entitled to partition as claimed. There is no merits in the suit. Hence the suit is liable to be dismissed.

7. The averments in the Additional Written statement filed by the defendants 2 to 5 in brief:-

The suit filed by the plaintiff for partition of suit properties is not maintainable either in law. The plaintiffs 2 to 4 are not entitled to claim 6/25 share each as alleged. So also the 5th plaintiff is not entitled to claim 1/25th share as alleged. The suit properties are already partitioned between the plaintiffs 1 to 4 and the 1st defendant. The 1st defendant settled properties obtained by him in the family partition in favour of the defendants 2 to 5 and his daughters Roja under two settlement deed dated 23.8.1995 which are true valid and acted upon. The deceased

first plaintiff himself has no share and not entitled to claim partition, there is no question of any increase in share in favour of plaintiffs 2 to 4 and new share in favour of 5th plaintiff. The 5th plaintiff has no interest in conducting the case. The partition already effected between the plaintiffs 1 to 4 and the first defendant is true, valid and acted upon. The settled properties are the absolute and exclusive properties of the settlees and no share can be claimed. The suit is bad for non joinder of Roja. The plaintiffs are not entitled to any of the suit relief.

The Additional Written Statement filed by the Second Defendants and adopted by the defendants 3 to 5 in brief:-

The suit is not maintainable in law. The suit properties are already partitioned among the sharers and they are in separate possession and enjoyment by obtaining mutation of records. Divided properties are separately dealt with and ample evidence available to prove that the plaintiffs are divided members and having separate dealings, including putting up construction, obtaining loan, purchasing properties, entering sale agreements etc. The plaintiffs are not entitled to the relief sought for. They are not entitled to share much less 19/25 as claimed. The conduct of the plaintiff itself proves partition. There is no merits in the amended plaint and liable to be dismissed.

8. The additional Written statement filed by the Third defendant and adopted by defendant 2, 4 and 5 in brief:-

The suit is not maintainable in law and on facts. The sixth defendant is not a necessary party and unnecessary party to the suit. The suit properties are not available for partition since the same are already partitioned among sharers and in separate possession and enjoyment by mutation of records etc. Divided properties are separately dealt with. There is no merits in the suit only to drag the proceedings the partition filed. Hence the suit is liable to be dismissed.

9. On the basis of the above pleadings the following Issues were framed for Consideration: -

1. Whether the suit properties are joint family properties or not?
2. Whether the oral partition pleaded is true?
3. Whether the settlement deed dt.23.8.1985 is true and valid and binding on the parties?
4. Whether the plaintiff is entitled to the partition as prayed for?
5. To What relief?

Additional Issues:

1. To what share the plaintiff is entitled to?
2. Whether the suit is bad for non joinder of parties?
3. Whether the 5th plaintiff has no interest in the suit properties?

Additional Issues:-

1. Whether the 6th defendant is an unnecessary party in the suit?
2. Whether the suit properties have already partitioned?
3. To what relief if any?

At the time of pronouncement of Judgment the issues were recasted as follows:-

1. Whether the suit properties are joint family properties or not?
2. Whether the oral partition pleaded is true?
3. Whether the settlement deed dt.23.8.1985 is true and valid and binding on the parties?
4. Whether the plaintiff is entitled to the partition as prayed for?
5. To What relief?

10. To prove the case of the plaintiffs, the 4th plaintiff was examined as PW1 and one Balarama Naicker was examined as PW2 and one Tickaraman was examined as PW3 and Ex.A1 to Ex.A4 were marked on the side of plaintiffs. To disprove the case of the plaintiffs the 2nd defendant was examined as DW1 and he also filed his additional proof affidavit and Ex.B1 to Ex.B44 were marked on the side of the defendants.

11. Issues No.1 to 4 :-

The deceased Narayanasami Naicker originally filed the above suit against the defendants. 1 to 6. Subsequently, the 3rd defendant died

and plaintiffs 2 to 4 and 1st defendant are recognized as LR's of the deceased 1st Plaintiff. Likewise, the 8th plaintiff also died and 6th plaintiff has been recognized as the legal representative. Subsequently the 1st defendant also died and hence 2 to 6 defendants are recognized as the LR's and 7th defendant is added as legal representative of the deceased 1st defendant.

12. The case of the plaintiffs are that the plaintiffs and defendants are members of Hindu family, owning properties described in the schedule and that the family owned 100 sheeps, 10 cows and four buffaloes and the income from the milk trade was substantial and from out of the income and from out of the joint family exertions, substantial properties were purchased in the name of the members of the family. The 1st defendant acting as the Manager of the Joint family from the year 1980 and recently he has taken hostile attitude towardst he plaintiffs and hence the plaintiffs demanded partition by way of a registered notice of demand to the 1st defendant, calling for Partition on 24.09.1996, but the plaintiffs gave belated reply dated 17.11.1996 with false allegations and stating that there is no joint family properties. The plaintiffs also came to know that the 1st defendant has executed sham settlement deed in favor of his sons 2 to 6 and that the properties being joint family properties, the settlement deeds standing in the name of the defendants are not valid and binding upon the plaintiffs. On the side of the plaintiffs, the copy of the legal notice dated 24.09.1996 is marked as

Ex A1, reply notice of the 1st defendant through his counsel dated 17.11.1996 marked as Ex A2, sale deed standing in the name of the 4th plaintiff Dhanapal Naicker as Ex A3, sale deed standing in the name of the 2nd Plaintiff Arjuna Naicker is marked as Ex A4. PW1 to PW3 were examined on the side of the plaintiffs.

13. On the other hand, the defendants in the written statement and additional written statement contended that during the month and year of Thai 1981 an oral family partition was held in the family and the sharers were allotted their due sharers and that after the said oral partition, the sharers were in separate possession and enjoyment of the respective properties and sold some items and purchased some other items. The plaintiffs are not in joint possession and enjoyment from 1981 and each sharer after the partition obtained patta and W1 to DW3 were examined on the side of the defendants. enjoying their respective share and that the properties obtained by the 1st defendant were settled down in favor of his sons and daughters and the same were true, valid and acted upon and 2 to 5 defendants made a lot of improvement by way of putting up building, dug well and put up pump set in their properties, the 2nd plaintiff is having his separate shares and properties and 4th defendant obtained 9.50 acres in partition and that the suit properties are not available for partition and there is no joint family in existence and the survey numbers and extent incorrectly given and there is no cause of action and prayed dismissal of the suit. On the defendants side photos

showing the houses of them were marked as Ex B1 to B4, copies of various sale deeds and settlement deed as Ex B5 to B16, B18 to B23. Pattas as Ex 17, Ex B24, B27 to B36, Encumbrance Certificates Ex B25 and Ex B26, Tax Receipts as Ex B37 to B39 and Screen report of Vehicle is marked as Ex.B40 to Ex.B44. One witnesses was examined as DW1 on the side of the defendants and DW1 has also filed his proof affidavit.

14. It is admitted fact that the plaintiffs and defendants are previously joint family co-owners. The case of the plaintiffs are that the suit properties are not yet divided so far and hence they issued legal notice and then only they came to know that the 1st defendant has executed various settlement deeds in favor of his sons and daughters. On the defendants side it is argued that the suit properties were already divided by way of oral partition in the year 1981 and from that date the plaintiffs and defendants are residing separate and patta's were also mutated in their names respectively.

15. From the combined reading of the evidence of the oral and documentary evidence relied upon by both sides, the plea of oral partition is not proved by the defendants. Even though they pleaded oral partition, there is no evidence submitted. The party who speaks about the oral partition has to prove it. Even though the DW1 to Dw3 were examined, the evidence is not sufficient to prove the case of the defendants. Further the pattas relied upon by the defendants in Ex B17,

B24, B27 to B26 were all obtained after the filing of the suit which are not helpful to prove the case of the defendants. The plaintiffs has sought for division of the plaint schedule properties in to 25 equal shares and to allotment 19/25 shares to them.

16. The plaintiffs pleaded that the suit properties were purchased in and out of the joint family nexus and income derived from all the family members and further stated that the suit properties were purchased in the name of the 1st defendant as he is the Kartha of the family. On the 1st defendant side only relied upon the oral partition and also relied upon Ex A3 and A4 stating that after the oral partition, shares were allotted to them and some properties were sold and some properties were purchased in their names. But the said contention was not proved. In the absence of any material evidence to prove the oral partition, the contention of the defendants were not acceptable. The possession of one coparcener is deemed to be possession of another coparcener. Even though the defendants stated that 1st defendant purchased out of his own income, the said facts were not proved. Further it is pertinent to note that even though the settlement deeds were executed by the 1st defendant in favor of his sons and daughters there is no mutation of the Revenue Records till the date of filing the suit. Only after filing the suit, separate pattas were obtained by the parties concerned, which itself is sufficient to prove the case of the plaintiffs that the settlement deeds were not at all acted upon.

17. On the defendants side argued that the plaintiffs were never in joint possession and enjoyment and that the defendants are residing in their separate houses and marked Ex B1 to B4 Photos and that the plaintiffs are residing in their share purchased after selling their shares and prayed to dismiss the suit.

18. In Thani Chetti /v/ Dakshinmurthy Mudaliar which was a case arising out of a suit instituted by purchaser of a share of some of the coparceners of a Hindu Joint Family claiming to be put in possession of a definite piece of family property and one of the question was that the suit is barred in Limitation. Further the Hon'ble High Court, Madras upon quoting the Article 144 of Limitation Act stated as below.

On a careful consideration of the question, with respect, we find ourselves in agreement with this view, and the principle of the decision, in our opinion, will with equal force apply to this suit. We shall presently deal with the question as to what will be starting point of limitation and what will constitute adverse possession in a suit of the character such as in question here. So far as the applicability of the proper article to the suit is concerned, we can find no distinction between the nature of a suit in and the instant suit.

19. Further in the said citation also, the Hon'ble High Court, Madras held as below.

“It is only when acts are clearly proved on the part of the co-sharer in possession which would be inconsistent with any other co-sharer being entitled to any possession in interest in any part of the property it can be said that any question of ouster of

the co-sharers not in possession can arise. In the absence of such ouster there will be no room for adverse possession or prescription in favor of the co-sharer in possession”

20. Further on the side of the defendants also argued that since the plaintiffs were not in joint and constructive possession, the suit is improperly valued and that the Court Fees paid is not correct. The learned counsel for the plaintiffs relied upon the following citations :-

Virudambal and others /v/ Kandasamy and others, (2000)II MLJ 287

Tamil Nadu Court Fees and Suits Valuation Act, Sect.37(1) and 37(2) – Distinction between – Applicability petitioner / plaintiff claiming to be co-owners of suit property to paying court fees under Section 37(2) – Defence contention plaintiff excluded from possession so plaintiffs to pay court fee under Section 37(1) – Question of Court-fee to be considered in light of allegations in plaint – To continue to be in joint possession in law, not necessary that plaintiff should be in actual possession of property 0- Not necessary that they got a share of income from property – When plaintiff's right to share and nature of property as joint not disputed, presumption that plaintiff in joint possession – Section 37(1) applicable only when plaintiff ousted or excluded from possession – No specific averment in plaint that plaintiff excluded from possession – Revision Allowed.

Neelvathi /v/ Natarajan, AIR 1980 SC 691

“To continue to be in joint possession in law, it is not necessary that the plaintiff should be in actual possession of the whole or part of

the property. Further it is not necessary that they should be getting a share or income from the property. So long as his right to share and the nature of the property as joint is not disputed, the law presumes that the plaintiff is in joint possession unless they are excluded from such possession”

Further the Hon'ble High Court of Madras held in

Minor Subha and another /v/ Ramu and others,

Tamil Nadu Court Fees and Suits Valuation Act, Sect.37(1) and 37(2) – Relative Scope and Applicability – Partition Suit by plaintiff in joint possession – Proper court fee – Only Section 37(2) is applicable and not Section 37(1) – Joint possession must be construed in the light of averments in the plaint as a whole – Not getting a share of income from the property is not proof of exclusion from possession as to be bring the case under Section 37(1)

21. On the plaintiffs side argued that the settlement deeds being registered documents, it cannot be simply brushed aside and that the settlement deeds are executed and registered properly and hence the settlement deeds have to be relied upon. On the plaintiffs side argued that the plaintiffs who are the coparceners of the properties are not the parties to the settlement deeds and there is no consent deed or release deed obtained from the coparcener and hence the settlement deeds cannot be relied upo and they relied upon the following citations.

Narendra Kante /v/ Anuradha Kante & Others, 2010-2-LW-828

“A Deed of Family Settlement seeking to partition joint family properties cannot be relied upon unless signed by all the co-sharers. Held: Deed of Family settlement seeking to partition joint family properties cannot be relied upon unless signed by all the co-sharers”

22. In view of the above said citations, since the defendants failed to prove the plea of oral partition, since the defendants failed to prove that the settlement deeds were acted upon, the plaintiffs being the joint coparceners of the Hindu undivided joint family, this court is entitled to pass a preliminary decree of partition and hence it is answered to issue no.1 that the suit properties are joint family properties and it is answered to issue no.2 that the oral partition pleaded is not true and it is answered to issue no.3 that the settlement deed dated 23.08.1998 is not true and valid and binding upon the plaintiffs and it is answered to issue no.4 that the plaintiffs are entitled to the partition as prayed for and thus these issues are answered.

23. Issue No.5

In view of the answers arrived to the previous issues, the plaintiffs are not entitled to any other relief.

24. In the result, the plaintiffs are declared for an entitlement of partition of the plaint schedule properties of 19/25 shares and that the plaintiffs are also entitled for the relief of injunction and the plaintiffs

are further permitted to take steps separately in respect of future profits.

Thus preliminary decree is passed as prayed for with costs.

Dictated to the Shorthand writer, and typed by her directly and corrected and pronounced by me in open Court, this the 21st day of March 2016.

sd/-R.Sujatha

Additional District Judge
and Sessions Judge,
Chengalpattu

Plaintiff's Exhibits:-

1.Ex.A1	24.9.1996	Legal Notice to the 1 st defendant
2.Ex.A2	17.11.1996	Reply Notice issued by the defendant's counsel
3.Ex.A3	30.7.1981	Sale deed executed by Rathanchand Chowkar in favour of Dhanapal Naicker
4.Ex.A4	30.7.1981	Sale deed executed by Keeranbai in favour of Arjuna Naicker

Defendants Side Exhibits:

1.Ex.B1	-	Photograph
2.Ex.B2	-	Photographs
3.Ex.B3	-	Photograph
4.Ex.B4	-	Photographs
5.Ex.B5	20.6.1989	Copy of sale deed executed by Rajaram in favour of Dhanapal Naicker
6.Ex.B6	29.9.1996	Copy of sale deed in favour of M.Rathnamma
7.Ex.B7	6.1.1995	Copy of sale deed executed by Dhanapal and another in favour of D.Rajalakshmi
8.Ex.B8	20.6.1989	Copy of sale deed executed by Rajaram in favour of Arjuna Naicker

9.Ex.B9	6.6.2011	Lease deed between Arjuna Naicker M/s.Geetha timber Traders represented by its Managing Partner Dayaram P.Patel
10.Ex.B10	23.9.1988	Copy of sale deed executed by T.S.Rajaram in favour of Pulendran
11.Ex.B11	1.12.2005	Copy of sale deed executed by Power agent T.N.Dhanapal in favour of D.Lakshmi
12.Ex.B12	1.12.2005	Copy of sale deed executed by Power agent T.N.Dhanapal in favour of D.Lakshmi
13.Ex.B13	19.2.2013	Copy of Settlement deed D.Suresh in favour of Kavitha
14.Ex.B14	27.4.1980	Sale deed executed by Radhakrishna Naicker in favour of Dhanapal Naicker
15.Ex.B15	20.3.1989	Consent statement between Arjunan and the Governor of Tamil Nadu
16.Ex.B16	20.3.1989	Consent statement between Pulendran and the Governor of Tamil Nadu
17.Ex.B17	9.7.2004	Patta
18.Ex.B18	23.8.1995	Settlement deed executed by Pulendran in favour of Roja
19.Ex.B19	23.8.1995	Settlement deed executed by Pulendra Naicker in favour of the sons of Pulendra Naicker i.e. Dhatchinamoorthy and 3 others
20.Ex.B20	29.8.1986	Sale deed executed by Nataraja Mudaliar in favour of Pulendra Naicker
21.Ex.B21	22.12.1978	Copy of sale deed executed by T.C.Elumalai Chettiar in favour of Pulendran Naicker and Moorthy Naicker
22.Ex.B22	18.10.2004	Copy of sale deed executed by Pulendra Naicker and Moorthy Naicker in favour of V.Chandran
23.Ex.B23	30.7.1981	Copy of sale deed executed by R.Rajendramal Chowkar and another in favour of Pulendran Naicker
24.Ex.B24	9.7.2004	Patta

25.Ex.B25	20.11.2012	Encumbrance certificate
26.Ex.B26	20.11.2012	Encumbrance certificate
27.Ex.B27	27.11.2014	Patta in favour of N.Arjunan
28.Ex.B28	27.11.2014	Chitta for patta No.1576
29.Ex.B29	2.12.14	Patta No.915 in favour of Arjunan
30.Ex.B30	19.11.2014	Patta No.1 in favour of Arjunan
31.Ex.B31	19.11.2014	Patta No.21 in favour of Arjunan
32.Ex.B32	27.11.2014	Patta No.305 in favour of Dhanapal
33.Ex.B33	27.11.2014	Chitta for patta nO.305
34.Ex.B34	27.11.2014	Patta No.295 in favour of Dhanapal
35.Ex.B35	27.11.2014	Chitta for patta No.295
36.Ex.B36	9.8.2014	House Tax receipt in favour of Dasarathan(D5)
37.Ex.B37	9.8.2014	House tax receipt in favour of Nandakumar(D4)
38.Ex.B38	9.8.2014	House tax receipt in favour of Jothi(D2)
39.Ex.B39	28.11.2014	House tax receipt in favour of Dakshinamoorthy (D2)
40.Ex.B40	-	Screen Report of vehicle for Vehicle No.TN21AX9086
41.Ex.B41	-	Screen Report of vehicle for Vehicle No.TN21AX9139
42.Ex.B42	-	Screen Report of vehicle for Vehicle No.TN21AV4001
43.Ex.B43	-	Screen Report of vehicle for Vehicle No.TN 19B 7714
44.Ex.B44	-	Screen Report of vehicle for Vehicle No.19A 0545

Plaintiff's Witnesses:-

- 1.PW1 : Dhanapal
- 2.PW2: M.P.Balarama Naicker
- 3.PW3: P.Tickaraman

Defendants witnesses:-

1. DW1 : Dakshinamoorthy
- 2.DW2 :Dakshinamoorthy (Additional Proof affidavit filed by DW1)

sd/-R.Sujatha
AD & SJ
Chengalpattu

/TRUE COPY/

WEB COPY

WEB COPY

Draft/Fair Judgment
O.S. No. 243/2005
Dated:21.3.2016
Additional District Court
Chengalpattu(PDF)*
