

IN THE COURT OF THE FIRST ADDITIONAL DISTRICT JUDGE
COIMBATORE

Present: Tmt. S. Sashirekha M.L.,
First Additional District Judge Coimbatore

Monday the 23rd day of January 2023

Original Suit No.386/2019
(CNR.No.TNCB01-001133-2019)

[O.S No. 797/2006 (In the court of the II Additional Sub Court Coimbatore)]

1. Nanjammal

..... Plaintiff

Vs

1. K. Chennimalai Gounder (dead)
2. Rangathal
3. Chenniappan
4. Kandhasamy
5. Ramasamy
6. Baby
7. Muthusamy (dead)
8. Yasodha
9. Minor Vidhya rep by by mother /natural guardian Yasodha
10. Minor Dharshini represented by mother/natural guardian Yasodha
11. Mrs. Thangamani
12. Minor Kabil represented by it mother Mrs. Thangamani
(Amended as per the order in IA No. 82/2018 dated 21.02.2018)

.....Defendants

This suit came up before me for final hearing on 03.01.2023 in the presence of Tr.B.Muralidharan advocate for the plaintiff and Tr.K. Rangasamy advocate for the defendants 3 to 5 and Tr.C.C. Rajagopal advocate for the defendants 8 to 10 and Ms.N.Anithadevi and Tr.Muthukumar, Advocates for the defendants 11 and 12. The 1st and 7th defendants reported dead and the 2nd and the 6th defendants remained exparte and upon hearing both side and perusing the records and having stood over for consideration till this day, this court delivers the following:

JUDGEMENT

1. This suit is filed for the relief of preliminary decree of partition, cost and other reliefs.

2. The averments in the amended plaint in short is as follows:-

That the suit schedule properties originally belonged to Kandhappa Gounder as self acquired property by virtue of Registered sale deeds No. 2734/1940, 1927/1952, 5779/1957. 3413/1955, 1663/1967, 1698/1970. That since the date of purchase Kandhappa Gounder has been in possession and enjoyment of the schedule properties absolutely. That Kandhappa Gounder died intestate on 09.05.1970 leaving behind the plaintiff Nanjammal and the 1st defendant Chennimalai Gounder to succeed him to his estate. That the plaintiff is the daughter and the 1st defendant is the son of the deceased Kandhappa Gounder. That after the death of Kandappa Gounder his legal heirs are each entitled to $\frac{1}{2}$ share in the schedule property. That for past one year the plaintiff had been demanding the defendant to agree for an amicable partition and that the defendant is evading. That the plaintiff issued a legal notice through his counsel on 17.11.2006 and it was received by the defendant on 23.11.2006. That as the defendant are not agreeable for partition, the plaintiff has filed this suit for partition. That during the pendency of the suit the 1st defendant Chennimalai Gounder died leaving behind the defendants 2 to 10 as his legal heirs to succeed to his estate. That during the pendency of

the suit the 7th defendant Muthusamy died on 21.07.2017 leaving behind the defendants 2, 11 and 12 as his legal heirs. (Amended as per the order in IA No. 82/2018 dated 21.02.2018). That the parties are co-owners and are in joint and constructive possession of the suit property, for cost and other reliefs. That inspite of demand by the plaintiff the defendants are evaded to partition and hence the suit for partition of the suit property, cost and other relief.

3. The 1st and 7th defendant died during the pendency of the case and the death is recorded and the legal heirs of the deceased 1st defendant are already parties to the suit and the plaint was amended as per the order passed in I.A No. 371/2015 dated 27.01.2016.

4. The contention in the written statement of the 1st defendant in short is as follows:-

That ` the suit is not maintainable and is to be dismissed. That the grandfather of Kandappa Gounder died on 09.05.1970. That the suit property had been divided through a registered partition deed dated 19.09.1979. That since 10.05.1970 the plaintiff had been openly excluded and the defendants have ousted by continuous and uninterrupted possession and enjoyment from 10.05.1970 and is exercising all acts of ownership possession and enjoyment asserting hostile to the knowledge of plaintiff and has ousted the plaintiff who lost her share. That the plaintiff never exercised any right, title and had the knowledge of the exclusive and ouster and did not protest or deny the

assertion and hostile title and possession of title and that the defendants have perfected the title through ouster for twelve years. That the suit is not maintainable and is to be dismissed.

5. The contention in the written statement of the defendants 3, 4 and 5 in short is as follows:-

That the suit is not maintainable, that the averments made in the plaint is not admitted. That the deceased 1st defendant Chennimalai Gounder is the brother of the plaintiff. That Chennimalai had two wives, that the 1st wife is late Mrs. Subbathal, 2nd wife Rangathal is the 2nd defendant in the suit. That the defendants 6 to 10 are the children and grand children of the 2nd defendant Rangathal. That the defendants 3, 4 and 5 are the sons of late K. Chennimalai Gounder born through his first wife Subbathal. That the suit properties were originally purchased by late Kandhappa gounder the father of 1st defendant Chennimalai gounder. That late Kandhappa Gounder had two children the plaintiff Nanjammal and the 1st defendant Chennimalai Gounder. That after the demise of Kandhappa Gounder the suit properties were under the possession and enjoyment of Chennimalai Gounder. That Kandappa Gounder's wife died long back that the plaintiff was never in possession and enjoyment of the suit properties. That her marriage was solemnized 60 years back and hence the plaintiff has no right, title or interest in the suit properties. That the suit properties were partitioned on 19.09.1970 itself during the life

time of Chennimalai Gounder and that the partition deed was registered as document number 2876 of 1979 at SRO Gandhipuram. That the partition was effected between K. Chennimalai Gounder and the children born to the 2nd wife Rangathal and her grand children who are added as defendants 6 to 10. That the property covered in 'A' schedule had gone to the share of the children of Rangathal and Chennimalai Gounder. That the property covered in B schedule has gone to the share of defendants 3, 4 and 5 the sons of first wife Mrs. Subbathal. That the defendants 3 to 5 commonly enjoyed the B schedule property till 1986. That in the year 1986 the defendants 3 to 5 partitioned the 'B' schedule properties into three portions and partition deed of the B schedule property registered as document number 1988/1986 dated 28.04.1986 in SRO Gandhipuram. That the defendants 3 to 5 are now having separate patta pass book, Kandhayam receipt, revenue receipt. That the defendants 3 to 5 are enjoying their respective shares without any hindrance all these years. That the plaintiff Nanjammal has no right to claim any right in the suit properties under any pretext. That the suit is to be dismissed with exemplary costs.

6. The contentions in the written statement filed by the 7th defendant and adopted by defendants 2 and 6 in short is as follows:-

That Kandappa Gounder died on 09.05.1970 and that the suit properties had been divided by a registered partition deed dated 19.09.1979. That

eversince 10.05.1970 the plaintiff had been openly excluded and ousted by deed for 09.05.1970 and the document amounts to public notice and by assenting hostile title and in continuous and uninterrupted possession and enjoyment asserting hostile to the knowledge of plaintiff and the plaintiff is ousted and lost her share. That the plaintiff never exercised any right, title and knew of the exclusive and about ouster and had not protested or denied the assertion and hostile title and possession of title commenced from 10.05.1970 and that the title is perfected by ouster and perfected after 12 years. That there is no cause of action and that the suit is to dismissed with costs.

7. Contention in the written statement filed by the 8th, 9th and 10th defendants in short is as follows:-

That the suit is not maintainable and is to be dismissed. That the defendant is not aware that the suit properties are the self acquired properties of the deceased Kandappa Gounder and that the plaintiff is the daughter and the first defendant is the son of the Kandappa Gounder. That the plaintiff is not aware that schedule mentioned property originally belonged to Kandhappa Gounder as self acquired property by virtue of registered sale deeds No. 2734/1940, 1927/1952, 5779/1957. 3413/1955, 1663/1967, 1698/1970 and that since the date of purchase Kandhappa Gounder has been in possession and enjoyment of the schedule property absolutely. That

Kandhappa Gounder died intestate on 09.05.1970 leaving behind the plaintiff and the defendant to succeed him and his estate. That the first defendant had partitioned the schedule properties on 19.09.1979 with his sons and are in possession and enjoyment of their respective shares as per the schedule in the registered partition deed. That the defendants 8, 9 and 10 are the legal heirs of deceased Arthanareeswaran the son of the deceased first defendant Chennimalai Gounder through his second wife Rangathal and that the defendants 8 to 10 are entitled to the respective share of Arthanareeswaran. That the defendants 6 and 7 namely Baby, Muthusamy and Arthanareeswaran the husband of the 8th defendant Yasodha are the legal heirs of Rangathal the second wife of the 1st defendant Chennimalai. That Kandhappa Gounder the father of the 1st defendant Chennimalai died on 09.05.1970 and that the suit properties were partitioned through a registered partition deed dated 19.09.1979. That the plaintiff is not entitled to any share as claimed. That the first defendant Chennimalai along with Arthanareeswaran have been allotted to an extent of 18.29 $\frac{3}{4}$ acres in 'A' schedule of the partition deed dated 19.09.1979 and they are in possession and enjoyment of the same. That the first defendant's son were vested with their respective shares of the properties as per the partition deed since 1979 and are in possession and enjoyment of their share for more than 31 years. That the suit is abated and barred by limitation as the death of Kandappa Gounder is in the year 1970. That

Arthanareeswaran with the 1st defendant Chennimalai and the 7th defendant Muthusamy, the younger brother of Arthanareeswaran have mortgaged their properties allotted as per the partition deed dated 19.09.1979 jointly on 18.10.2001 through mortgage deed in document number 2121/2001 for Rs. 15,000/- and that the mortgage has not been discharged till date. That the plaintiff having knowledge about the partition has not been in possession and enjoyment of the suit properties till the date of filing of the suit. That the plaintiff is ousted out of the possession and does not have any right or title over the suit properties since 1979. That the plaintiff is not entitled to any share in the suit properties. That the plaintiff has never demanded for partition at any point of time. That the defendant did not receive any notice from the plaintiff. That the plaintiff has not been in joint and constructive possession with the defendants at any point of time. That the suit properties has been estimated improperly. That the plaintiff is not in possession of the suit property and as the plaintiff has not filed the suit seeking declaratory relief, the plaintiff is not entitled to any relief as prayed for, that the suit is to be dismissed.

8. Contention in the written statement filed by the 11th and 12th defendants in short is as follows:-

That the defendants 11 and 12 are the legal heirs of the deceased 7th defendant Muthusamy. That the suit properties were partitioned by metes and

bounds among the 1st defendant and defendants 3, 4 and 5 and late Arthanareeswaran the husband of the 8th defendant Yasodha in 1979 and since then the parties are in absolute and uninterrupted possession of their respective share. That thereafter the defendants 3,4 and 5 have partitioned among themselves the property through a partition deed in 1979 and are in absolute possession and enjoyment of the suit property for almost 40 years to the knowledge of the plaintiff. That the plaintiff was never in possession and enjoyment of the suit properties at any point of time, that she was married off 65 years ago and given customary seervarisai. That the plaintiff has been ousted by partition deed. That the plaintiff has no right or title over the suit property. That there is no cause of action for filing the suit. That all mutation proceedings have taken place and the patta and other revenue records stands in the name of the defendants.

9. On the basis of the pleadings the following issues are framed:-

- i. Whether the plaintiff is entitled for a decree of partition and separate possession of $\frac{1}{2}$ share in the suit property as prayed for?
- ii. Whether the contention of the defendants that the plaintiff is an ouster is correct?

Additional issues:-

- iii. Whether the plaintiffs is in possession of the suit property ?
- iv. Whether the plaintiffs has any cause of action for the suit?

v. Whether the plaintiff has any locus standi to file the suit?

vi. What other relief the plaintiffs is entitled to?

10. On the side of plaintiffs PW1 is examined and exhibit A1 to A10 have been marked. On the side of defendant DW1 to DW3 are examined and B1 to B14 are marked on the side of defendants.

11. Both side arguments heard, written argument notes filed on both sides and records perused.

On issue No I :- Whether the plaintiff is entitled for ½ share in the suit property?

i. The suit has been filed by the plaintiff for partition, cost and other relief. She has examined herself as PW1 and exhibits A1 to A10 are marked. The 1st defendant Chennimalai Gounder died during the pendency of the suit and the defendants 2 to 11 claim title under him.

ii. The plaintiff's case is that the suit properties were purchased by Kandappa Gounder through registered sale deeds in document numbers. 2734/1940, 1927/1946, 2341/1952, 5779/1957, 3413/1955, 1663/1967, 1698/1970 and that Kandappa Gounder was in possession of the said properties till his death on 09.05.1970. That the plaintiff and 1st defendant are the legal heirs of the deceased Kandappa Gounder and the plaintiff after the death of Kandappa Gounder, as his legal heir is entitled to ½ share in the schedule properties. That the 1st defendant died during the pendency of the

suit and the defendants 2 to 10 are his legal heirs and the defendants together are entitled to $\frac{1}{2}$ share.

iii. The 1st defendant Chennimalai Gounder is dead. A reading of the written statement filed by him during his life time goes to show that he has not disputed the character of the suit property and has not disputed the claim of the plaintiff that the suit properties is self-acquired property of Kandappa Gounder and has not denied the status of the plaintiff as the sister of the 1st defendant and the daughter of Kandappa Gounder. The 1st defendant claims that the 1st defendant and his sons had partitioned the property as per the partition deed dated 19.09.1979 and as the plaintiff's share was ignored as early as in 1979 and that the plaintiff cannot claim any share. The written statement filed by the 1st defendant during his life time is adopted by defendants 2,6,7. The above defendants contend that since 10.05.1970 the plaintiff had been openly excluded and the plaintiff is ousted by continuous and uninterrupted possession and enjoyment from and the defendants are exercising all acts of ownership possession and enjoyment hostile to the knowledge of plaintiff and has ousted the plaintiff and thereby the plaintiff has lost her share. That the plaintiff never exercised any right, title and had the knowledge of the exclusive possession and ouster and did not protest or deny the assertion and hostile title and possession of title and that the defendants have perfected their title through ouster for twelve years.

iv. The stand taken by the defendants 3, 4 and 5 is that after the demise of Kandhappa Gounder the suit properties were under the possession and enjoyment of Chennimalai Gounder. That the plaintiff was never in possession and enjoyment of the suit properties. That her marriage was solemnized 60 years back and hence the plaintiff has no right, title or interest in the suit properties. That the suit properties were partitioned on 19.09.1979 itself during the life time of Chennimalai Gounder between K. Chennimalai Gounder and the children born to the 2nd wife Rangathal and her grand children namely the defendants 6 to 10. The defendants 8 to 10 also take the same stand as that of the other defendants. The defendants 2 to 10 being the legal heirs of the deceased 1st defendant claim right through the 1st defendant.

v. The plaintiff claim $\frac{1}{2}$ share in the suit properties. The defendants main contention is that the plaintiff is not entitled to any share and that after the death of Kandappa Gounder who is the original owner of the suit properties, the property was in exclusive possession of the 1st defendant and that the marriage of the plaintiff had been solemnized 60 years back. That the suit properties was partitioned on 19.09.1979, that after 31 years the plaintiff cannot claim any share. The 1st defendant claims that the 1st defendant and his sons had partitioned the property as per the partition deed dated 19.09.1979 and as the plaintiff's share was ignored as early as in 1979, the plaintiff cannot claim any share. The said partition deed dated 19.09.1979 is marked as

exhibit A1.

vi. The plaintiff is examined as PW1 by appointing a commissioner and through her exhibits A1 to A10 are marked. Exhibits A1 to A7 are the sale deeds in the name of Kandappa Gounder. Exhibit A8 is the death certificate of Kandappa Gounder, exhibit A9 is the legal notice issued by the plaintiff. Exhibit A10 is the postal acknowledgment card of the 1st defendant for receiving the exhibit A9 legal notice. On the side of the defendants, the 3rd defendant Chenniappan has examined himself as DW1 and through him B1 to B6 are marked. The registration copy of the partition deed dated 19.09.1979 between DW1 and his brothers is marked as exhibit B1. The registration copy of the partition deed dated 28.04.1986 is marked as exhibit B2, the registration copy of the rectification deed dated 10.04.2013 is marked as exhibit B3. The computer chitta in the name of Chenniappan is marked as exhibit B4. The copy of the death certificate of Chenniappan Gounder is marked as exhibit B5 and computer downloaded chitta in the name of Kandasamy, son of Chennimalai Gounder is exhibit B6. The 8th defendant Yasodha is examined as DW2 and through her the legal heir certificate of Arthanareeswaran is marked as exhibit B7. The certified copy of the partition deed dated 19.09.1979 is marked as exhibit B8, the mortgage deed dated 18.10.2001 is marked as exhibit B9 and the Chitta is marked as exhibit B10. The 11th defendant Thangamani is examined as DW3 and through her the

copy of the death certificate of Muthusamy is marked as exhibit B11 and copy of his legal heir certificate is marked as exhibit B12, the copy of DW3 and her son's Aadhar card are marked as exhibits B13, and B14.

vii. The 1st defendant has not disputed that the suit properties originally belonged to his father Kandappa Gounder and that they are the self acquired properties of the said Kandappa Gounder. Exhibits A1 to A7 sale deeds also reveal that the suit properties are purchased by Kandappa Gounder and hence it is decided that the suit properties are the self acquired properties of Kandappa Gounder. Kandappa Gounder is dead is evident from his death certificate exhibit A8. The plaintiff Nanjammal and the 1st defendant Chennimalai Gounder are the only legal heirs of the deceased Kandappa Gounder is not in dispute. The plaintiff being one of the legal heir of the deceased Kandappa Gounder and as Kandappa Gounder who has died intestate claims $\frac{1}{2}$ share in the suit properties.

viii. Originally the suit is filed against the 1st defendant Chennimalai Gounder alone. The 1st defendant is the brother of the plaintiff Nanjammal. It is pertinent to note that he has not denied the relationship between him and the plaintiff and that his father died intestate. The main contention of the 1st defendant and other defendants who claim title under him is that the 1st defendant and his sons have partitioned the suit property through partition deed dated 19.09.1979 ignoring the right of the plaintiff and hence the

plaintiff is not entitled to claim the share. The said partition deed is marked as exhibit B1. The registration copy of the partition deed dated 28.04.1986 is marked as exhibit B2, the registration copy of the rectification deed dated 10.04.2013 is marked as exhibit B3. When the 1st defendant is examined as DW1, he admits the right of the plaintiff and states that the plaintiff was left out of the partition, the stand taken by the defendant is that the plaintiff was given customary seer during her marriage 60 years back. DW1 admits in his cross examination that the plaintiff is entitled to a share in the suit properties and likewise she has to share in the liabilities also and he further admits that there was no liabilities as on the date of death of Kandappa Gounder. The defendants 11 and 12 contend that partition of the suit properties has taken place in 1979 and the suit is filed after 35 years only in 2006, and as per 2002 amendment as the case property is partitioned in 1979 itself, the two conditions that the father should have died and there should have been no change in the suit properties prior to 2004 fails in this case. There is no proof for the alleged giving of seer to the plaintiff at the time of her marriage, The plaintiff who is entitled to a share in the suit property is excluded in the partition deed. DW1 has specifically admitted in his evidence during cross examination that the plaintiff was not aware of the partition and that she was excluded from the partition. The partition deed exhibit B1 and the rectification deed exhibit B3 cannot be held to be binding on the plaintiff

when she is not a party to the document. So the stand of the defendants that as there was a partition as early as 1979, the plaintiff is not entitled to claim share now is held to be not acceptable. Issue No 1 is decided accordingly.

12. On issue number 2 and 3 :- Whether the contention of the defendants that the plaintiff is an ouster is correct and whether the plaintiffs is in possession of the suit property ?

The next contention is that by ouster the right of plaintiff is extinguished. The defendants contend that since 10.05.1970 the plaintiff had been openly excluded and the defendants have ousted by continuous and uninterrupted possession and enjoyment from 10.05.1970 and is exercising all acts of ownership possession and enjoyment hostile to the knowledge of plaintiff and has ousted the plaintiff and thereby the plaintiff has lost her share. That the plaintiff never exercised any right, title and had the knowledge of the exclusive possession and ouster and did not protest or deny the assertion and hostile title and possession of title and that the defendants have perfected the title through ouster for twelve years.

i. The plaintiff's stand is that the concept of ouster is not applicable and that the essentials of the concept of ouster is not proved by the defendants. The defendants having taken the plea of ouster have to prove it.

ii. The 3rd defendant Chenniappan is examined as DW1, the 8th defendant Yasodha and 11th defendant Thangamani is examined as DW2 and

3. DW1 in his evidence has stated that the plaintiff was never in possession of the suit properties at any point of time. DW2 Yasodha in her cross examination has admitted that she does not know whether the plaintiff Nanjammal is the sister of the 1st defendant Chennimalai Gounder and that she has not seen the plaintiff Nanjammal and admits that there is no mention of the name in exhibit B8 the partition deed dated 19.09.1979 and the mortgage deed exhibit P9 in the name of the 4th defendant Kandasamy. DW3 Thangamani is the wife of the deceased 7th defendant Muthusamy who is the son of the 1st defendant through his wife Rangathal, DW3 in her cross examination states that she does not know as to how Kandappa Gounder got entitled to the suit properties. Though DW1 to 3 in their evidence state that the plaintiff Nanjammal was not in possession of the suit properties and has been ousted from the suit properties and rely upon exhibit B1 to B14 to prove the same whether the defendants have made out the essentials of the concept of ouster is to be seen.

iii. To prove ouster there should be exclusive possession, it should be uninterrupted excluding the plaintiff and to the knowledge of the true owner.

In the citation reported in (2004) 1 SCC 271 MD. Mohammad Ali by Lrs Vs Jagadish Kalita and others it is held as follows:- ‘possession of property by a co-sharer - Deemed to be possession on behalf of other co-sharer unless there is a clear ouster by denying title of other co-sharers –

Mere long and continuous possession by itself is not enough – Plea of ouster has to be raised and proved – In a suit for declaration of title to the property, plaintiff has only to prove his title and not his possession – defendant raising plea of adverse possession must prove the same along with his animus possidendi.’

In the citation reported in 1956 SC 548 AIR V 43 C 96 BK. Mohammad Baqar and others vs Naim-un-Nisa- Bibi and others it is held that ‘possession of one co-sharer, it cannot be adverse to them, unless there is a denial of their right to their knowledge by the person in possession and exclusion and ouster following thereon for the statutory period.’

The concept of ouster is discussed in the citation reported in AIR 1971 SC 1337 Shambu Prasad Singh Vs Most Phool kumari and others. It is held that ‘to constitute adverse possession, ouster of the non-possessing co-sharer has to be made out. As between them, there must be evidence of open assertion of a hostile title coupled with exclusive possession and enjoyment by one of them to the knowledge of the other’

In the citation reported in (2006) 7 SCC page 570 it is held that for adverse possession – possession must be hostile, in denial either express or implied, of title of the real owner- For that it is essential that possessor must clearly know the actual owner of the property – Only then the situation of being in hostile possession and question of denying title of true owner would

arise-- Possession must be peaceful, continuous and open, capable of being known by parties interested'

In the citation is reported in 2022-4-LW 46 C.B. Panchakshara Mudaliar and another Vs Valliammal and others it is held claim of adverse possession by defendants – Whether co-sharers can claim adverse possession as against another co-sharer – Both the parties are enjoying the properties -possession of a co-sharer is considered as possession of all co-sharers – Joint title is presumed - co-sharer cannot claim adverse possession as against another co-sharer.

From the above citations it is evident that a co-sharer cannot claim adverse possession as against another co-sharer. 'To constitute adverse possession, ouster of the non-possessing co-sharer has to be made out. As between them, there must be evidence of open assertion of a hostile title coupled with exclusive possession and enjoyment by one of them to the knowledge of the other'. The defendants who claim that the plaintiff has been ousted from the suit properties. The defendants have not proved exclusive possession with animus with the knowledge of true owner, as held in the citation reported in AIR 1957 SC pg 314. There cannot be co-heir ouster as held in AIR 1990 SC 507. The defendants being in secret possession or making secret alienation through exhibit B1 and B2 partition deeds will not amount to ouster. As held in the citations reported in 2007 SC page 204. AIR

2020 SC 46 inaction of co-sharer will not amount to ouster. Hence on the basis of the above discussion it is decided that the defendants have not made out that the plaintiff is ousted from the suit property and hence cannot claim a share in the suit properties. In the exhibit A9 notice the plaintiff has specifically stated that the 1st defendant and the plaintiff are in joint possession of the suit properties and though the 1st defendant having received the legal notice exhibit A9 which is evident from the acknowledgment card exhibit A10 has not chosen to send a reply notice denying the same. Hence it is decided that the plaintiff is not ousted from the suit properties and that the plaintiff as a co-sharer is deemed to be in possession of the suit property.

The defendants also claim that the suit is barred by limitation. That the partition between the 1st defendant and his son has taken place as early as in the year 1979 and that the suit is filed only in the year 2006 and hence the suit is barred by limitation. The secret alienation cannot be taken to be the grounds for deciding the factor of limitation. The defendant side witnesses DW1 to DW3 in their evidence have specifically admitted that the plaintiff is not a party to the exhibit B1 partition deed and that she had knowledge about the exhibit B1 partition deed. Issue No 2 and 3 is decided accordingly.

13. On issues number 4 and 5:- Whether the plaintiffs has any cause of action for the suit and whether the plaintiff has any locus standi to file the suit?

The plaintiff in her pleadings and in her evidence states that after the death of her father she had been seeking for an amicable partition and that on 17.11.2006 she sent exhibit A9 legal notice to the 1st defendant seeking partition and that the defendant had been evading partition. So the stand taken by the defendants that the plaintiff has no cause of action to file the suit is decided to be not acceptable. The plaintiff is admitted to be a legal heir of Kandappa Gounder who is the original owner of the suit properties is not in dispute, the suit properties are the self acquired properties of the said Kandappa Gounder is also not in dispute, the plaintiff as a legal heir of Kandappa Gounder claims $\frac{1}{2}$ share in his suit properties and hence it is decided that plaintiff has locus standi to file the suit. Issue number 4 and 5 is decided accordingly.

14. On issue No. 6. Whether the plaintiff is entitled to any other relief.

On the basis of the above consideration it is decided that the plaintiff is not entitled to any other relief.

15. In the result the suit is decreed as prayed for. Preliminary decree of partition is passed holding that the plaintiff is entitled to $\frac{1}{2}$ share in the suit properties. Parties to bear their own cost.

This judgment is dictated to the steno-typist, directly typed by

her in the computer corrected and pronounced by me in the open court today this the 23rd day of January 2023.

Sd/- S.Sashirekha
First Additional District Judge
Coimbatore.

Annexure

1. Plaintiff side witness:

PW1	Nanjammal (Plaintiff)
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2. Defendant side witness:

DW1	02.08.2022	Chenniappan(3 rd defendant)
DW2	26.09.2022	Yasodha(8 th defendant)
DW3	10.09.2022	Thangamani (11 th defendant)

3. Plaintiff side documents

exhibitA1	05.06.1940	Certified copy of sale deed in favour of Kandappa Gounder Document No.2734 of 1940
exhibitA2	29.04.1946	Certified copy of sale deed in favour of Kandappa Gounder Document No.1927/1946
exhibitA3	23.07.1952	Certified copy of sale deed in favour of Kandappa Gounder Document No.2341 of 1952
exhibitA4	09.12.1957	Certified copy of sale deed in faovur of Kandappa Gounder Document No.5779 of 1957
exhibitA5	31.08.1955	Certified copy of sale deed in favour of Kandappa Gounder Document No.3413/1955.
exhibitA6	24.11.1967	Certified copy of sale deed in favour of Kandappa Gounder Document No.1663/1967
exhibit A7	31.10.1970	Certified copy of sale deed in favour of Kandappa Gounder Document

		No.1698/1970
exhibit A8	17.07.2006	Death Certificate of Kandappa Gounder
exhibit A9	17.11.2006	Office copy of Legal Notice send by the Plaintiff counsel to the defendant
exhibit A10		Acknowledgment card

4. Defendant side documents:

exhibit B1	19.09.1979	Registration copy of Partition deed
exhibit B2	28.04.1986	Registration copy of Partition deed
exhibit B3	10.04.2013	Registration copy of rectification deed
exhibit B4		Computerized copy of Patta No.513 in the name of Chenniappan
exhibit B5	12.08.2009	Xerox copy of Death certificate of Chennimalai Gounder
exhibit B6		Computerized copy of Chitta in the name of Kandasamy
exhibit B7	29.01.2008	Legal heir certificate of Arthanatheeswaran (a)Viswanathan
exhibit B8	19.09.1979	Registration copy of Partition Deed
exhibit B9	18.10.2001	Registration copy of Mortgage Deed
exhibit B10		Computerized copy of Patta No.5205
exhibit B11		Xerox copy of death certificate of S.Muthusamy
exhibit B12	12.12.2017	Copy of Legal Heir Certificate of Muthusamy
exhibit B13		Xerox copy of Aadhar card of Thangamani Muthusamy
exhibit B14		Xerox copy of Aadhar card of Kapil

//True copy//

Sd/- . S.Sashirekha
First Additional District Judge
Coimbatore

Draft/Fair:-
Judgment
O.S.No.386/2019
Dated.23.01.2023
I ADJ CBE.