

IN THE COURT OF SUBORDINATE JUDGE AT VANDAVASI

Present: **Tmt.S.Sharanyaa, M.L.,**

Subordinate Judge, Vandavasi.

(2056 Thiruvalluvar Aandu, Vishvavasu Varudam, Margazhi Maadham 05th day)

Saturday, the 20th day of December-2025.

Original Suit No.23/2023

(CNR.TNTM23000033/2023)

K. Munusamy

.....Plaintiff

//Vs//

1. Venkatesan

2. M. Babu

3. M. Malarvhizhi

4. R. Selvakumar

..... Defendants

This suit was originally filed before Sub-Court, Cheyyar on 23.09.2016 and was taken on file as O.S.115/2016 and thereafter it was transferred to this Court and was renumbered as O.S.23/2023 and coming up on 18.12.2025 for final hearing before me in the presence of Thiru. J. Nethaji, Advocate for the plaintiff and Thiru.G. Viswanathan, Advocate for the defendants, upon hearing the arguments on both sides and perused the evidence and documents and having stood over till this date for consideration, this Court delivered the following,

JUDGMENT

This suit has been filed for the preliminary decree for partition of 3/5th share in the suit properties and for the costs of the suit and other reliefs.

1. Brief averments of the plaintiff are as follows:

1.1) The plaintiff has stated that, the properties more fully described in suit schedule originally belonged to the joint family consisting of Ragavan, his wife Chinnakuzhandai Ammal and three sons, namely Selvakumar, Karunanithi and Rajendran. The suit properties were purchased by the aforesaid Ragavan out of the nucleus and sale proceeds of ancestral properties. This issue was already decided in an earlier suit in O.S.No.526/1981 on the file of District Munsif Court, Arni. Therefore, each of them are entitled to get 1/5th share in the suit properties. The aforesaid Ragavan was living a wayward life and was addicted to all sorts of immoral activities. Due to this, he had deserted his wife Chinnakuzhandai Ammal and his children. Therefore, Ragavan did not provide any basic amenities for the livelihood of his wife and children for several years. The plaintiff has stated that, taking advantage of unpleasant situation prevailing in Ragavan's family, Murugan, son of Varadan had misrepresented to Ragavan and instigated him to execute a sham and nominal document purported to be a sale deed on 28.02.1981 in respect of the entire joint family properties, which did not absolutely belong to Ragavan. The sale deed executed by Ragavan in favour of the aforesaid Murugan was not fully supported by proper, valid and lawful consideration. The sale deed executed by Ragavan in favour of Murugan is not binding on the share of his wife and sons.

1.2) The plaintiff has stated that, Chinnakuzhandai Ammal and her two sons Rajendran and Karunanithi came forward to sell their undivided share in the suit scheduled properties for proper and valid consideration to the plaintiff. The plaintiff had purchased the 3/5th share in the suit properties from Chinnakuzhandai Ammal and his two sons under a registered sale deed dated 07.03.1981. On the date of sale itself, the plaintiff was put in possession of the

suit properties. The plaintiff has stated that, Murugan, father of defendants 1 to 3 had voluntarily filed a vexatious suit in O.S.No. 526/1981 on the file of District Munsif Court, Arni seeking the relief of declaration of title to the entire suit properties and for consequential injunction against the wife and sons of late Ragavan. The plaintiff has stated that, the said suit was transferred to Sub-Court, Arni and it was renumbered as O.S.No.216/1987 and it was dismissed after full contest on 18.06.1992.

1.3) Aggrieved by the decree and judgment of the Trial Court, Murugan preferred an Appeal in A.S.No.64/1992 before the District Court, Vellore. On hearing both sides, the Appellate Court had remanded the matter with some observations and directions for fresh adjudication. Again the suit was restored on the file of Sub-Court Arni. The plaintiff has stated that, during the pendency of the said suit, Murugan, died on 24.02.1999. The 2nd defendant herein had filed an application for himself and on behalf of others to implead themselves as plaintiffs in the said suit. The application was numbered as I.A. No.279/1999 before the Sub-Court,Arni. During the pendency of the suit and the said application, the suit was transferred to Sub-Court,Cheyar due to bifurcation of territorial jurisdiction. Thereafter I.A.No. 272/1999 was assigned with new number as IA No.176/2000 and the suit was renumbered as O.S.No.118/2000 and the matter was pending for long time. The defendants 1 to 3 herein, who were the petitioners in the earlier suit were dragging on the matter with ulterior motive. The defendants 1 to 3 were not ready for enquiry when the matter was taken up for enquiry, hence, the above said application I.A.No.176/2000 was dismissed for default.

1.4) The plaintiff has stated that, the defendants are estopped from denying the plaintiff's title to the suit properties. The plaintiff being the purchaser of undivided 3/5th share from the family members of Ragavan, he is entitled to partition of his share. The plaintiff shall be presumed to be in constructive joint possession with the defendants. The 4th defendant is another son of late Ragavan, as he is also one of the sharer in the suit properties, he has been added as necessary party for proper and effective adjudication.

02) Brief averments of the defendants 1 to 3 are as follows:-

2.1) The defendants 1 to 3 have denied the averments of the plaintiff. They have stated that, it is false to state that the suit properties were the joint family properties of Ragavan, his wife and sons. In fact, the suit properties are not the joint family properties or the properties purchased out of the nucleus of ancestral properties, as alleged by the plaintiff. It is false to state that, the issues were already decided in the earlier suit in O.S.No.526/1981. The father of this defendants 1 to 3 died during the pendency of the said suit, which was renumbered as O.S.No.118/2000, on the file of the Sub-Court, Cheyyar and the defendants herein were not aware of it and after they came to know about the said suit, they had filed petitions to set aside the abatement and to condone the delay under Section 5 of the Limitation Act. But, the said petitions were dismissed. The defendants stated that, it has been falsely stated that, Ragavan was living a wayward life and was addicted to all sorts of immoral activities. In fact, the said Ragavan had divorced his wife through customary divorce and he had married and was living with his second wife. The father of this defendant had purchased the suit properties from the said Ragavan on 28.02.1981 and it is valid, since the properties are the self acquired properties of Ragavan. The patta was also transferred in the name of the father of the defendants 1 to 3. The

father of the defendants 1 to 3 and after him the defendants had perfected their right and title by adverse possession, by their long, continuous and uninterrupted possession and enjoyment of the suit properties from the year 1981 till date. The contra allegations in the plaint that the plaintiff was put in possession after the purchase on 07.03.1981, after the sale to the father of defendants 1 to 3 is false. What had prevented the plaintiff from filing the suit for partition from the year 1981 till 2017, for the past 36 years was not explained. The plaintiff had not whispered anything about the pending of the suit filed by him in O.S.No.331/1997 on the file of the A.D.M Court at Vandavasi.

03) Brief averments of the Additional Written Statement filed by the defendants 1 to 3 are as follows:-

The defendants have stated that the suit is a vexatious one and it is liable to be dismissed. The alleged sale deed of the plaintiff as well as the suit is a false and fabricated one. The suit was filed only on the instigation of the villagers. This suit is a premature one. Only after the disposal of the suit in O.S.No.331/1997, on the file of the District Munsif Court at Vandavasi, in which the trial is in progress, this suit must have been filed. Therefore, this suit is liable to be dismissed.

04.) Based on the rival contentions of both sides, this Court has framed the following issues,

- (i) Whether the plaintiff is entitled for the relief of partition and share of 3/5 in the suit properties?
- (ii) Whether the defendants perfected their title through adverse possession as prayed for?
- (iii) To what other reliefs ?

05.) For the sake of convenience the issue already framed are recast as follows:-

- 1. Whether the plaintiff is entitled to the relief of partition of 3/5 share in the suit properties as prayed for?**
- 2. Whether the suit is barred by the principle of resjudicata?**
- 3. Whether the suit is barred by the Law of Limitation?**
- 4. Whether the defendants have perfected their title by adverse possession?**
- 5. To what other reliefs the plaintiff is entitled to?**

06.) Discussions:-

6.1) This suit has been filed for the preliminary decree for partition of 3/5th share in the suit properties and for the costs of the suit and other reliefs. The plaintiff has stated that, the suit properties were originally the joint family properties of one Ragavan, his wife Chinnakuzhathai Ammal and his three sons Selvakumar, Karunanithi and Rajendiran. The suit properties were purchased by Ragavan by utilizing the nucleus and sale proceeds of his ancestral properties. This was already decided in the earlier suit in O.S.No.526/1981 on the file of the District Munsif Court, Arni. The said Ragavan was living a wayward life and he did not provide for the maintenance of his wife and children. Taking advantage of such attitude of Ragavan, one Murugan had instigated him, and made him execute a sham and nominal document on 28.02.1981 with regard to

the entire joint family properties. Thereafter, Chinnakuzhanthai Ammal, who is the wife of Ragavan, and her two sons Rajendiran and Karunanithi had come forward to execute the sale deed with regard to their undivided 3/5th share in the suit properties in favour of the plaintiff herein. Hence, the said Chinnakuzhanthai Ammal and her two sons had executed the sale deed dated 07.03.1981 in favour of the plaintiff herein with regard to their 3/5th share in the suit properties.

6.2) The above said Murugan had filed a vexatious suit in O.S.No.526/1981 on the file of the District Munsif Court Arni, which was thereafter transferred to Sub-Court Arni, and renumbered as O.S.No.216/1987. The said suit was dismissed after full contest on 18.06.1992. Thereafter, the said Murugan preferred an Appeal before the District Court Vellore, in A.S. No.64/1992 against the said judgment. The Appellate Court had remanded the matter with certain directions for fresh adjudication. When the suit was again pending before Sub-Court Arni, the said Murugan had died on 24.02.1999. The 2nd defendant herein had filed an application to implead himself and the other legal heirs as plaintiffs in the said suit. Even when the said Interlocutory Application was pending before Sub-Court Arni, the said suit was transferred to Sub-Court, Cheyyar, and I.A.No.272/1999 was renumbered as I.A.No.176/2000 and the suit was also renumbered as O.S.No.118/2000. Since the defendants 1

to 3 herein were not ready for enquiry in the said interlocutory application, I.A.No.176/2000 was dismissed for default. Thereafter, I.A.No.419/2009 and I.A.130/2011 were filed to condone the delay in filing petition to set aside the abatement and also to condone the delay in filing petition under Order 9 Rule 9 of the Code of Civil Procedure to restore the suit. But the said interlocutory applications were dismissed on merit on 30.01.2014. No appeal was filed by the defendants against the said order. Hence, the defendants are estopped from denying the title of the plaintiff over 3/5th share in the suit properties. Hence, the plaintiff has come forward with this suit for partition against the defendants herein.

6.3) On the other hand, the defendants 1 to 3 have denied the averments of the plaintiff. They have stated that the father of the defendants 1 to 3 had purchased the suit properties from Ragavan on 28.02.1981 for valid consideration. The said properties were the self acquired properties of Ragavan through the sale deed dated 04.05.1965. Thereafter, the patta was also transferred in the name of the defendant's father. Further, the father of the defendants and after him the defendants had perfected their right and title by adverse possession as they have been in the continuous and uninterrupted possession of the suit properties from 1981 till date. The plaintiff has not produced any revenue records to prove his possession over the suit properties.

The plaintiff has not mentioned anything regarding the suit in O.S.No.331/1997 filed by him before the District Munsif Court, Vandavasi. Further the valuation of the plaint and payment of the Court fees Under Sec. 37(2) of the Court fees Act is also not correct.

6.4) In the Additional Written Statement filed by the defendants 1 to 3, they have stated that, this suit has been filed with malafide intention and the sale deed in the name of the plaintiff is a fabricated one. Hence, the defendants 1 to 3 have stated that the suit is liable to be dismissed.

7.) The 4th defendant has remained exparte in this suit.

8.) Issue Nos.1 and 2 :-

8.1) The plaintiff has stated that the suit properties are the joint family properties of one Ragavan, his wife Chinnakuzhanthai Ammal and his three sons Selvakumar, Karunanithi, and Rajendiran. The plaintiff has also stated that, it was already decided in the earlier suit in O.S.No.526/1991 on the file of District Munsif Court, Arni, that the said properties are only the joint family properties of Ragavan. On the plaintiff's side, the certified copy of the plaint in O.S.No.526/1981 has been marked as Ex.A1. From Ex.A1, it is seen that the father of the defendants 1 to 3 herein, namely Murugan had filed the suit in O.S. 526/1981 against the wife and sons of Ragavan and also against the plaintiff Munusamy herein. The said suit has been filed for the relief of declaration and

consequential injunction. It is seen from Ex.A1 that, the said Murugan had relied upon the sale deed in the name of Ragavan dated 04.05.1965 and the sale deed executed by Ragavan in favour of Murugan on 28.02.1981, to establish that the suit properties are the self acquired properties of Ragavan and he had validly executed the sale deed in favour of the said Murugan. Hence, it is evident from Ex.A1 that the dispute regarding the suit properties started even from the year 1981.

8.2) Since, the said suit in O.S.No.526/1981 was dismissed after full contest on 18.06.1992, the plaintiff therein, namely Murugan had preferred an Appeal before District Court vellore in A.S.No.64/1992. The certified copy of the judgment in A.S.No. 64/1992 has been marked as Ex.A2. As per Ex.A2, the Appellate Court had remanded the suit to the Sub-Court, Arni for fresh adjudication, as the case was already transferred to Sub-Court, Arni and it had been renumbered as O.S.No.216/1987. The plaintiff has also marked Ex.A3, which is the **“B”** Diary in O.S.No.216/1987. From Ex.A3, it is seen that the suit in O.S.No.216/1987 on the file of Sub-Court Arni, was again transferred to Sub-Court Cheyyar and it was renumbered as O.S.No.118/2000. The said suit was also dismissed for default on 10.10.2002. Ex.A4 and Ex.A5 are the affidavit, Petition and Order in I.A.No. 418/2009 and I.A.No.419/2009, which were filed to condone the delay in filing the petition to set aside the abatement and also in

filing the petition under Order 9 Rule 9 of the Code of Civil Procedure to restore the suit, which was dismissed for default. Both these petitions were dismissed. Ex.A6 is the Affidavit, Petition and Order in I.A.No.176/2000, which was filed to implead the legal heirs of deceased Murugan in O.S.No.118/2000. This interlocutory application was also dismissed on 10.10.2002. Therefore, the learned counsel for the plaintiff argued that, the earlier litigation which began in O.S.No.526/1981 had reached its finality. Therefore, the suit properties can be considered only as the joint family properties of Ragavan and his wife and sons.

8.3) On the plaintiff's side, the certified copy of the sale deed dated 07.03.1981 has been marked as Ex.A7. Ex.A7 has been executed by Chinnakuzhanthai, wife of Ragavan and two of the three sons of Ragavan, namely Karunanithi and Rajendiran in favour of the plaintiff Munusamy herein. As per Ex.A7, Chinnakuzhanthai, Karunanithi, and Rajendiran have sold their undivided 3/5th share in the suit properties to the plaintiff herein. In the said sale deed the earlier mortgage of the year 1997 in favour of one Gopal Gounder has been mentioned and in the said sale deed, it has been directed that the vendee shall discharge the said mortgage loan. Therefore, the learned counsel for the plaintiff argued that, already it has been held that the suit properties are the joint family properties of Ragavan and hence, the sale deed executed by his

wife and two sons Karunanithi and Rajendiran with regard to their 3/5th share in the suit properties which has been marked as Ex.A7 is a valid document and therefore, the plaintiff is entitled to claim the relief of partition of his 3/5th share in the suit properties. The plaintiff has also marked Ex.A8, which is the certified copy of the judgment in O.S.No.216/1987 dated 18.06.1992. Only in this judgment, it has been held that the suit properties are the joint family properties of Ragavan and his family members. However, it is pertinent to note that, Ex.A8 judgment has been set aside by the Appellate Court as per the judgment in A.S.No.64/1992, which has been marked as Ex.A2. Hence, Ex.A8 judgment is not in force at present.

8.4) On the other hand, on the defendants' side, it was contended that the suit properties are the self acquired properties of Ragavan and he had executed the sale deed in favour of the father of the defendants 1 to 3 herein. It was also contended by the defendants 1 to 3 that. their father Murugan and thereafter they have been in continuous possession and enjoyment of the suit properties. On the defendants' side, Ex.B1, which is the sale deed dated 23.07.1962 which has been executed by Ragavan in favour of one Poongavanam has been marked. Ex.B1 has been executed with regard to certain other properties other than the suit properties, which has been mentioned as ancestral properties. Ex.B2 is the sale deed dated 04.05.1965 executed by one Poongavanam, Rajarathinam and

Manickkam in favour of Ragavan with regard to the suit properties herein. Ex.B3 is the sale deed dated 28.02.1981 through which Ragavan had sold the suit properties to Murugan, who is the father of the defendants 1 to 3 herein. In Ex.B3, it has been mentioned that there was an earlier mortgage to Gopal Gounder for Rs.4000/- and it has been directed that the purchaser shall discharge the said mortgage loan. In this document, Ragavan has claimed that the suit properties are his self acquired properties. It is to be noted that, Ex.B3 sale deed has been executed by Ragavan on 28.02.1981, within one week from the execution of Ex.B3 sale deed, Chinnkuzhanthai, wife of Ragavan and his two sons had executed Ex.A7 sale deed with regard to their 3/5th share in the suit properties in favour of the plaintiff herein. It was argued by the learned counsel for the defendants that, Ex.B3 sale deed is valid in law and the subsequent sale deed Ex.A7 is not a valid document.

8.5) On the defendants' side, Ex.B.26 which is the mortgage discharge receipt dated 15.03.2001 has been marked. The said Ex.B.26 has been executed by Gopal Gounder in favour of Venkatesan, Babu and Kistan. In the said Ex.B.26 document, the directions as per Ex.B3 sale deed has been carried out and the mortgage loan has been discharged by the sons of the purchaser Murugan. Hence, the learned counsel argued that ExB3 sale deed is only supported by consideration and Ex.A7 sale deed was not supported by

consideration at all.

8.6) In this regard, the main document to be considered is Ex.B27, which is the certified copy of the plaint in O.S.No.331/1997. The said suit has been filed by Munusamy, the plaintiff herein against one V.Munusamy, Annakili, Venkatesan, Babu and Malarvizhi. This suit has been filed for the relief of mesne profits against the defendants 1 to 3 herein and other two persons. It is to be noted that, in Ex.B27, the plaintiff herein has claimed mesne profits with regard to his undivided 3/5th share in the suit properties herein. The main aspect to be considered is that, the plaintiff has not claimed partition of his 3/5th share or declaration of his title or recovery of possession of the properties in that suit. But he has come forward with this suit for partition by alleging joint possession. In the earlier suit, he had claimed mesne profits alone by admitting the possession of the defendants 1 to 3 herein and now he has come forward with this suit for partition. The earlier suit was filed in the year 1997. Hence, the present suit for partition is squarely hit by Order II Rule 2 of the Code of Civil Procedure and also this suit is hit by Explanation IV of Sec 11 of the Code of Civil Procedure which provides for constructive resjudicata.

8.7) Ex.B28 is the Written Statement filed by the 3rd defendant in the suit in O.S.No.331/1997. Ex.B29 is the Additional Written Statement filed by 3rd

defendant in O.S.No.331/1997. It is also pertinent to note that, even when this suit was filed in the year 2016, the earlier suit filed by the plaintiff herein in O.S.No.331/1997 was pending before the District Munsif Court, Vandavasi. But the plaintiff had not stated anything regarding such pendency of suit with regard to the same suit properties in his plaint. Further, the earlier suit in O.S.No.331/1997 has also been dismissed through the judgment dated 11.11.2022. The certified copy of the judgment in O.S.No.331/1997 and the decree in O.S.No.331/1997 have been marked as Ex.B30 and Ex.B31. It is pertinent to note that, in Ex.B30 judgment dated 11.11.2022, there has been an incidental finding regarding the title of the plaintiff over the suit properties. In the Ex.B.30 judgment, the District Munsif Court, Vandavasi has held that Ex.A1 sale deed dated 07.03.1981 marked in that case cannot be considered to be a valid document and the said sale deed has not been acted upon. In the said judgment, it has been mentioned that, “ **Hence, with limited extent, this Court is of the view that, it is the plaintiff who has entered into a subsequent transaction and that, his purchase under ExA1 is doubtful and it cannot be held that Ex.A1 is valid.**” The plaintiff herein has not preferred any Appeal against the judgment and the said judgment has also reached its finality. Hence, the judgment in Ex.B30 shall act as resjudicata to the present suit for partition filed by the plaintiff based on the same sale deed dated 07.03.1981.

8.8) The learned counsel for the plaintiff has mentioned in his Written Arguments that, the earlier suit in O.S.No.526/1981 has reached its finality, as the petition filed to condone the delay in filing the petition to set aside the abatement and the petition filed to implead the legal heirs have been dismissed. Therefore, the learned counsel has argued that, it can be considered only to be a judgment in favour of the defendants and therefore it can only be concluded that the suit properties are the joint family properties of Ragavan and the sale deed Ex.A7 in favour of the plaintiff herein is a valid document. In this regard, the learned counsel for the plaintiff has relied upon the *Judgment reported in (1920) 38 MLJ 266* wherein it has been held that, *“The dictum of the Judicial Committee that an order of abatement operates as a judgment in favour of the defendant shows that in effect no distinction is made between a judgment obtained on merits and a judgment obtained on failure to prosecute the suit.”*

However in the same judgment, the Law laid down in another case has been referred to as follows, *“Mr.Narasimha Aiyangar for the respondent drew our attention to Jaysingh Vs V.gopal 6 Bom L.R. 638 wherein the learned judges held that an order of abatement does not operate as res judicata. In that case, the legal representative of the plaintiff on whose death, the suit abated got into possession of the properties. It was decided that being in possession he was entitled to resist the suit brought to oust him from*

possession and that the previous order of abatement did not preclude him from setting up title. Accepting this judgment as rightly laying down the law, it does not affect the present case.”

In view of the above observations in the citation produced by the plaintiff himself, it cannot be considered that, the earlier suit in O.S.No.526/1981 had been decided on merits.

In this regard, the learned counsel for the defendants has produced the judgment of the *Hon’ble Supreme Court of India in the case of SHEODAM SINGH Vs DARYON KUNWAR* , wherein has been held that, “In order that a matter may be said to have been heard and finally decided, the decision in the former suit must have been on the merits. Where, for example, the former suit was dismissed by the Trial Court for want of jurisdiction, or for default of plaintiff’s appearance or on the ground of non -joinder of parties or misjoinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake or for failure on the part of the plaintiff to produce probate or letters of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree or for failure to furnish security for costs, or on the ground of improper valuation or for failure to pay additional Court -fee on a plaint

which was undervalued or for want of cause of action or on the ground that it is premature and the dismissal is confirmed in appeal, if any the decision not being on the merits would not be res judicata in a subsequent suit.”

8.9) Therefore, in view of the above precedent also, it cannot be considered that the earlier suit in O.S.No.526/1981 was decided on merits. In such circumstances, it can only be concluded that, the validity of the sale deed Ex.A7 in favour of the plaintiff herein could not be considered as decided in the earlier litigation in O.S. No.526/1981. However in the subsequent suit in O.S.No.331/1997, the District Munsif Court, Vandavasi, has decided regarding the validity of the said sale deed and it has been concluded that, the said sale deed is not valid in law. The plaintiff herein has not preferred any Appeal against the said judgment of the District Munsif Court, Vandavasi. Hence, Ex.B.30 shall squarely act as resjudicata against the case at hand and also the plaintiff has not claimed the relief of partition in the earlier suit in O.S.No.331/1997 and hence, this suit is also barred by Order II Rule 2 of the Code of Civil Procedure. In view of the above discussions, the relief as sought for by the plaintiff in this case is barred by the principle of resjudicata and hence, the plaintiff is not entitled to the relief of partition as prayed for by him. **Therefore, Issue Nos.1 and 2 are not answered in favour of the plaintiff.**

9. Issue Nos 3 and 4:-

9.1) The defendants have raised the plea that, this suit is barred by Limitation and they have perfected title through adverse possession. The defendants have stated that, they are in the continuous possession and enjoyment of the suit properties from the year 1981 till date. The plaintiff had not filed the suit for partition from the year 1981 till 2016 for more than 36 years. Hence, the defendants have stated that, this suit is barred by Limitation and the defendants have perfected title by adverse possession. The learned counsel for plaintiff has mentioned in his written arguments that, while computing the period of limitation, the time spent in the earlier litigations must be excluded. In this regard, the learned counsel for the plaintiff has relied upon the judgment of the *Hon'ble Supreme Court of India in Pruni Devi Vs Babu Ram reported in 2024 INSC 259* wherein it has been held that, “ *It has been further submitted that in light of the facts of the present case, the plaintiff is entitled to exclusion of time consumed in pursuing their remedy before the learned Tehsildar, in view of Section 14(2) of the Limitation Act. The filing of the application by the predecessor of the Plaintiff before the Tahsildar , was under a genuine bonafide belief and in good faith that the Tahsildar possess the jurisdiction to execute decrees passed by Civil Court.*”

9.2) Hence, the learned counsel for the plaintiff argued that, the time

spent in the earlier litigation must be excluded while computing the Limitation for the case at hand. Even if the time spent in the earlier litigation in O.S.No.526/1981 and the Appeal filed against the judgment in that case and the pendency of the interlocutory applications are excluded in computing the Limitation for the case at hand, it is pertinent to note that, the plaintiff himself had filed the suit in the year 1997 claiming mesne profits from the defendants 1 to 3 herein with regard to the suit properties. Even if Limitation is computing from the suit of the year 1997, this suit for partition has been filed only in the year 2016, which is more than 19 years from the year 1997. Further, on the defendants' side, the defendants have produced Ex.B4 and Ex.B5 through which the father of the defendants 1 to 3 had purchased portions of the land in the suit Survey Nos from other third persons. In Ex.B4 and Ex.B5, in the description of properties, the boundaries has been mentioned as lands purchased by Murugan. Therefore, Ex.B4 and Ex.B5 also confirms the purchase of the suit properties by Murugan, the father of defendants 1 to 3 and that he had been in the possession and enjoyment of the suit properties from the boundaries recitals of Ex.B4 and Ex.B5. Ex.B6 is the patta for the suit properties in the name of the defendants 1 to 3. However, Ex.B6 is only an after suit document. But the defendants have marked Ex.B7 to Ex.B22 and Ex.B24, which are the kits receipts for the suit properties even from the year 1985 till 2007 in the name of

Murugan and the 1st defendant Venkatesan. Ex.B7 to Ex.B22 and Ex.B24 shows that the father the defendants 1 to 3, namely Murugan and the defendants 1 to 3 have been in the continuous possession and enjoyment of the suit properties. Ex.B23 and Ex.B25 are the notice issued by the Electricity Board and receipt for payment of electricity charges. The defendants have also relied upon the Ex.B23 and Ex.B25 also to establish their possession over the suit properties. It is pertinent to note that, the plaintiff himself has admitted the possession of the defendants 1 to 3 in the suit filed by him in O.S.No.331/1997 and he has only claimed mesne profits from the defendants in that suit. Therefore, it has been admitted by the plaintiff himself that the defendants have been in the possession and enjoyment of the suit properties. In such circumstances, it can only be concluded that, this suit is clearly barred by the Law of Limitation.

9.3) With regard to the plea of adverse possession, the plaintiff has stated that if a person has to claim adverse possession, he must admit the title of the other party. But, in the case at hand, the defendants have not admitted the title of the plaintiff and hence, they cannot claim adverse possession over the suit properties. However, the defendants have established their continuous, uninterrupted possession over the suit properties and hence, this Court has already concluded that the relief of partition as claimed by the plaintiff is barred by the Law of Limitation. In this regard, the learned counsel for the defendants

have relied upon the judgments of *Hon'ble High Court of Madras reported in 1996 1 MLJ Page 118 and AIR 1997 Cal. page 50 and 52*, wherein it has been held that, the plaintiff shall prove his case on his own and he shall not take advantage of the weaknesses of the case of the defendants. Therefore, even if the defendants could not establish that they had perfected title by adverse possession, it can only to be concluded that the relief of partition as claimed by the plaintiff is ousted and it is barred by the Law of Limitation. It is also to be noted that, the plaintiff himself has admitted in the earlier suit in O.S.No.331/1997 that the defendants are in the possession of the suit properties. Therefore, as rightly pointed out by the learned counsel for the defendants, the plaintiff has wrongly paid the Court fees under Sec 37(2) of the Court Fees Act by claiming joint possession over the suit properties. In view of above discussions, this Court concludes that **Issue Nos 3 and 4 are also not answered in favour of the plaintiff.**

10. Issue No.5

The plaintiff is not entitled to any other reliefs.

In the result, This suit is dismissed. No Costs.

Dictated by me to the Steno-Typist and computerized by him, corrected and pronounced by me in the open court on this **20th day of December 2025.**

Subordinate Judge,
Vandavasi

Plaintiff's side Witness:

PW1 - Munusamy (plaintiff)

Plaintiff's side Exhibits:

Ex.A1	--	Plaint	
Ex.A2	15.02.1993	Judgment	
Ex.A3	--	"B" Dairy	
Ex.A4	--	Petition Order I.A.No.48/2009	
Ex.A5	--	Petition I.A.No.419/2000 in O.S.No.118/2006	
Ex.A6	--	Affidavit Petition	
Ex.A7	07.03.1981	Sale deed	Certified copy
Ex.A8	18.06.1992	Judgment	Certified copy

Defendant's side Witnesses:

Dw1 -Venkatesan

Dw2- Natarajan

Defendants' side Exhibits:

Ex.B1	23.07.1962	Sale Deed	Certified Copy
Ex.B2	04.05.1956	Sale Deed	Certified Copy
Ex.B3	28.02.1981	Sale Deed	Certified Copy
Ex.B4	06.07.1987	Sale Deed	Certified Copy
Ex.B5	04.02.1988	Sale Deed	Certified Copy
Ex.B6	--	Patta	Certified Copy
Ex.B7	14.04.1984	Kist receipt	Certified Copy
Ex.B8	07.03.1985	Kist receipt	Certified Copy
Ex.B9	12.03.1986	Kist receipt	Certified Copy
Ex.B10	12.03.1986	Kist receipt	Certified Copy
Ex.B11	07.05.1987	Kist receipt	Certified Copy
Ex.B12	28.05.1988	Kist receipt	Certified Copy
Ex.B13	09.05.1989	Kist receipt	Certified Copy
Ex.B14	29.06.1990	Kist receipt	Certified Copy
Ex.B15	14.08.1992	Kist receipt	Certified Copy
Ex.B16	03.02.1996	Kist receipt	Certified Copy
Ex.B17	17.02.1997	Kist receipt	Certified Copy
Ex.B18	14.02.2000	Kist receipt	Certified Copy
Ex.B19	17.03.2003	Kist receipt	Certified Copy
Ex.B20	17.03.2003	Kist receipt	Certified Copy
Ex.B21	17.03.2003	Kist receipt	Certified Copy
Ex.B22	19.04.2007	Kist receipt	Certified Copy
Ex.B23	29.05.1995	Electricity receipt	Certified Copy
Ex.B24	11.03.2008	Kist receipt	Certified Copy
Ex.B25	--	Electricity receipt	Certified Copy
Ex.B26	15.03.2001	Mortgage debt discharge receipt	Certified Copy
Ex.B27	--	Plaint	Certified Copy

Ex.B28	--	Written Statement	Certified Copy
Ex.B29	--	Additional Written Statement	Certified Copy
Ex.B30	11.11.2022	Judgment	Certified Copy
Ex.B31	11.11.2022	Decree	Certified Copy

Subordinate Judge,
Vandavasi.