

IN THE COURT OF THE VI ADDITIONAL DISTRICT JUDGE, MADURAI

Present:- Thiru. S. Kirubaharan Mathuram, B.A., L.L.B.,
VI Additional District Judge, Madurai.

Monday, this the 26th day of February 2024

ORIGINAL SUIT No.198 of 2018

CNR No.TNMDO1- 005566 -2018

M.Selvi ... Plaintiff

..Vs..

1.K.Hemalatha
2.V.Prabhakaran
3.S.Venkateshwari
4.V.Sakthirekha
5.M.Mookaiyee
6.M.Kalayanasundaram *(Died)
7.M.Rajasekaran
8.M/s.Bharati Infratel Ltd.,
Rep., through its Secretary,
*9.C.Ganesan
*10.B.Chandrasekaran
*11.R.Velmurugan
*12.B.HariKrishnan
*13.V.Katchammal
*Amended as per order in I.A. No. 425/2022 dated 09.06.2023.

... Defendants

This suit came on 02.02.2024 before this Court for final hearing in the presence of Thiru.S.M.Ananthamurugan Advocate for the plaintiff and of Thiru.S.Nagendran Advocate for the defendants 1 to 4 and of Thiru.Rethinakumar Advocate for defendants 5, 7 and D6 reported died and defendants 8 to 13 were called absent and set exparte and upon hearing argument on both side and having stood over for consideration till this day, this Court passed the following:

JUDGMENT

Suit is for declaration, partition, permanent injunction, mesne profit and for cost.

2) Brief averments of the Amended plaint: -

The plaint schedule property originally belonged to Mokkalai @ Adaikan as ancestral properties who died as intestate. The deceased Adaikan had two sons namely Malaichamy and Vellaisamy and they had joint enjoyment over the plaint schedule properties. Vellaisamy married Vellaimmal and who had children by name D1, D2, D4 and husband of 3rd defendant. Likewise Malaichamy married Mookaiyee and their children are plaintiff, defendants 6 and 7 and deceased Selvam. The said Mookaiyee is arrayed as 5th defendant. All the plaint schedule properties are undivided and under joint enjoyment by the plaintiff, defendants 1 to 7.

3) At this juncture, the plaintiff married another community man and hence the defendants 1 to 7 colluded together and by suppressing the plaintiff as one of the legal representative falsely created partition deed dated 15.10.2010 and registered in the office of Joint Sub Registrar No.I, Madurai South vide document no. 9481 of 2010. The plaintiff got knowledge of the above said partition deed and got encumbrance certificate dated 29.06.2018. The name of the plaintiff is not stated in the above stated partition deed. Since the plaintiff had inter caste marriage, she was ignored as Legal representative and created partition deed. The wife of Vellaisamy, Vellaiammal died and legal representative of Malaichamy by name Selvam also died

without any legal heirs. Therefore the plaintiff and defendants 1 to 7 are entitled to plaint schedule properties. Hence the plaintiff is entitled to 1/8 share over the suit properties. Therefore the defendants 1 to 7 are liable to cancel the above said partition deed and they are bound by partition for allotting each 1/8 share.

4) The 8th defendant erected cellphone tower in item no.2. Hence defendants 5,6,7 along with deceased Selvam had agreement on 10.01.2008. Accordingly 8th defendant has been paying Rs.3750/- per month as rent and 15% rent was increased for every three years. Accordingly the 8th defendant was paying rent of Rs.7000/- per month as on now. More over there was three shops in 6th item. The tenants are paying each Rs.4000/-, thereby the defendants 1 to 7 are getting Rs.12,000/- per month in which also the plaintiff is entitled to 1/8 share. Knowing the partition deed the plaintiffs sent legal notice on 03.07.2018. But the defendants have not sent any reply notice. When the suit is pending the 6th defendant died.

5) Further the defendants 5 and 9 jointly executed sale deed on 02.04.2002 and registered in the office of Joint Sub Registrar No.I, Madurai South vide document no.526/2002, which is not valid in law. On the basis of the above said forged sale deed the 1st defendant executed sale agreement. Further another property in Re Survey no.169/2017 at Valayankulam Village measuring 1 Acre 15 cents is the ancestral property of the plaintiff. On perusal of the sale deed dated 07.07.1999 vide document no.5279/1999 in respect of above stated property the plaintiff came to know that including the plaintiff as legal heir, the sale deed was executed in favour of

11th defendant by deceased Selvan, Alagar, Ilavarasan, Murugan, Prabhakaran, deceased Suresh, deceased Selvam, Kalyani. Further 11th defendant executed sale deed in favour of 12th defendant on 28.11.2002 vide document no.6682/2002 which is not valid in law. Further the another sale deed was executed by the defendants 1 to 7 in favour of 13th defendant in respect of portion of 4th item of property on 20.07.2015 vide document no.4824/2015 which is not valid in law. Therefore the suit is filed for partition by passing preliminary decree by declaring that the plaintiff is entitled to 1/8 share over the plaint schedule properties. Further the plaintiffs sought following documents as null and void.

- i) The Partition deed dated 15.10.2010 vide document no.9481 of 2010 on the file of Joint Sub Registrar Madurai No.I as null and void
- ii) The Sale agreement dated 02.04.2002 vide document no.1918/ 2002 on the file of Joint Sub Registrar Madurai No.I as null and void.
- iii) The Sale deed dated 28.11.2002 vide document no.6682/ 2002 on the file of Joint Sub Registrar Madurai No.I as null and void.
- iv) The Sale deed dated 20.07.2015 vide document no.4824/ 2015 on the file of Joint Sub Registrar Madurai South as null and void.
- v) The general power deed dated 02.04.2002 vide document no.526/ 2002 on the file of Joint Sub Registrar Madurai South as null and void.
- vi) The Sale deed dated 07.07.1999 vide document no.5279/1999 on the file of Joint Sub Registrar Madurai South as null and void.

Further permanent injunction is sought for restraining the defendants from alienating or encumbering the suit properties and the plaintiff is entitled to 1/8 share over the rent. Hence the suit.

6) Brief averments in the written statement of 1st defendant adopted by defendants 2 to 4:

The defendants denied the right of the plaintiff over the suit properties. It is admitted that the plaint schedule properties belonged to Mokkalai @ Adaikan as ancestral properties. During the life time of Adaikan his sons Velaisamy and Malaisamy effected partition orally and they are having separate enjoyment over the respective properties. After dividing the properties two sons have taken care of his father Adaikan. Further the father of the plaintiff, defendants 5 to 7 died in the month of December 1993. Likewise, the father of defendants 1 to 4 died in the month of August 1993. Due to old age the ancestor Adaikan also died in the year 1994. After death of the father of the plaintiff, his legal representative had joint enjoyment over the share of the father Malaichamy. Likewise defendants 1 to 4 had joint enjoyment after death of Vellaichamy over the properties of Vellaichamy. The plaintiff never had joint enjoyment with defendants 1 to 4 in respect of properties of Vellaichamy. Hence the plaintiff can seek partition in respect of properties of her father Malaisamy.

7) Further the plaintiff voluntarily married her husband in the month of August 1996 and residing in her husband house at Gopalpatti, Indira Nagar, Dindigul

district. The plaintiff stopped to come to Valayankulam even for festival. The plaintiff has not participated in the functions of defendants 1 to 4. The plaintiffs have no contact with her mother and brothers. Even the plaintiff was living separately, the defendants 5, 6, 7 along with defendants 1 to 4 and their mother Vellaiyammal executed partition deed on 31.12.2003 vide document no.6817/2003. Accordingly the mother of the plaintiff and her brothers had enjoyment. Further the defendants 1 to 4 along with their mother Vellaiammal executed sale deed in respect of item no.1 in favour of K.Samayarajan on 28.01.2004 vide document no.461/2004 and also another sale deed in favour of Ramkumare on 03.03.2004 vide document no.1394/2004. Further the purchaser has divided the properties into plots and sold to several persons. The purchasers of the plot are having exclusive right and they are also necessary parties to be impleaded. Further the defendants 1 to 4 and their father Vellaichamy, mother of the plaintiff Mookaiyee and the deceased Selvam executed sale deed in favour of Ganesan on 31.05.1995 vide document no.2389/1995. Likewise on 16.10.1997 Vellaiyammal, 2nd defendant brother Suresh executed sale deed in favour of Muthu on 16.10.1997 in respect of item no.2 vide document no.4829/1997. Further the defendants 5 to 7 have given lease of item no.2 in favour of 8th defendant for erection of cell phone tower.

8) Since the plaintiff has resided with her husband separately, the defendants 1 to 7 executed partition deed on 15.10.2010 vide document no.9481/2010 in respect of item 3 to 6. Since those properties are not under joint enjoyment, the

plaintiff cannot seek partition. The defendants 5 to 7 are having enjoyment over item no.2, they are entitled to execute any document in which the plaintiff cannot seek partition. The defendants 1 to 4 have not given rent in respect of item no.6 which was allotted to defendants 5 to 7 as per partition deed dated 15.10.2010. The defendants 1 to 4 have no objection for the share of the plaintiff in respect of $\frac{1}{4}$ share over the rental properties. There is no cause of action as against defendants 1 to 4. The claim of the plaintiff $\frac{1}{8}$ share over the suit properties is unsustainable in law. The plaintiff and the defendants 5 to 7 are entitled to $\frac{1}{4}$ share alone. The filling of the suit in the year 2018 is barred by limitation. The defendants 1 to 4 sold item no.1 in favour of Samayarajan and Ramkumar and they were also divided the properties into plots and sold to other persons. Therefore those purchasers in respect of item no.1 of the suit property are necessary parties. Therefore suit is liable to be dismissed with cost.

9) Brief averments in the written statement of 7th defendant adopted by defendants 5 and 6:

The plaintiff stated false reasons to claim partition and other reliefs. The common ancestor Mookai @ Adaikan died in the year 1994. When he was alive, there was oral partition between his sons namely Vellaichamy and Malaisamy. Accordingly, both the sons are having separate enjoyment. Thereafter Vellaichamy died in the year 1993 and Malaisamy also died in the year 1993. After his death the

plaintiff has married another community person against the will of the defendants 4 to 7 in the year 1996. Hence during the month of August 1996 there was panchayat in the presence of elder people Perumal, Valayankulam Pitchai at Valayankulam Village in which as per the oral partition the plaintiff promised not to claim any right over the suit properties and she will not claim anything in future. Thereby the plaintiff received Rs.5,50,000/- as full settlement. Thereafter the plaintiff had not contacted with the defendants 1 to 7 and resided with her husband at Gopalpatti Village, Dindigul District. The plaintiff never participated in any events in the family of defendants 1 to 7. The plaintiff relinquished her right over the suit properties on receipt of Rs.5,50,000/- as per the oral family settlement.

10) Item no.3 of the plaint schedule property belongs to Ammapillai who was the sister of Vellaichamy and Malaichamy. Item no.5 was already sold by the defendants. Item no.1 is the exclusive property of the defendants as per the document dated 31.12.2003. Since the plaintiff has relinquished her share as entire family settlement she was not included in the partition deed. The plaintiff got knowledge of partition deed in the year 2003 and 2010 and the plaintiff has not objected. But simply to claim the share the plaintiff stated false reasons. The defendants are having exclusive right with the knowledge of the plaintiff without any interpretation for more than the statutory period continuously. Hence the right of the plaintiff is ousted as per Hindu Succession Act. The plaintiff has no right over the plaint schedule properties. The plaintiff never had right and joint enjoyment over the suit properties along with

the defendants. Hence the payment of Court fee is not proper. The suit is barred by limitation. Therefore suit may be dismissed with cost.

11) Brief averments in the Additional written statement of 2nd defendant adopted by defendants 1,3 and 4:

Item no.1 of the suit property in survey no.130/1 measuring 16 Acre 40 cents belonged to Kuppusamy Naidu from whom Agni Veranan Ambalam purchased on 23.07.1943 from the amount of Nallamuthambalam. After his death as legal representative by name Retayanambalam and his wife Nallammal and her Nallamuthambalam wife Ananthayee Ammal got enjoyment and divided the properties on 06.06.1948. Accordingly Chellammal got right of 8 Acre 20 cents in survey no.130/1 from whom Chella Moopnar purchased on 16.03.1950. The Chella Moopnar had children by name Mookai @ Adaikan, Valliyammai, Adaikalam and Veranan. Valliyammai married and died as intestate. The said Mookai @ Adaikan had children by name Vellisamy, Ammapillai, Pappathi, Dhanam and Malaisamy. Chella Moopnar daughters Adaikalam had legal heirs. Likewise Veranan also has legal heirs. But all these persons were not impleaded. The legal representatives of Vellaichamy and Malaisamy alone impleaded as D1 to D4, D5 to D7. But the sisters of Vellaichamy by name Ammapillai, Pappathi and Dhanam were not impleaded. Hence the suit is bad for non joinder of necessary parties. Therefore suit may be dismissed with cost.

12) Brief averments in the Additional written statement of 7th

defendant adopted by 5th defendant:

The allegations leveled by the plaintiff is totally false, The suit was filed in the year 2018 and prior to that sale deeds were executed. Hence relief of declaration is barred by limitation. During the commencement of the suit 6th defendant died leaving behind 5th defendant. Hence the plaintiff has no right over the share of 6th defendant. The plaintiff has no locus standi to challenge the titles as per the family settlement held in the month of August 1996. The plaintiff relinquished her right over the suit properties. Even the plaintiff got any right, it was extinguished by the principle of ouster. The defendants dealt the suit properties as absolute owners for more than statutory period. Hence the patta and revenue records were already mutated in the name of the defendants. Accordingly, the defendants are possession and enjoyment over the suit properties. The defendants alone openly, continuously and unequivocally exclusive possession over the suit properties for 25 years with the knowledge of the plaintiff. Hence the defendants have perfected their title as adverse possession. The plaintiff never demanded partition in the year 1996 to 2018. Now at the inducement of the husband the plaintiff filed the false suit only to black mail the defendants. The family arrangement was effected in the month of August 1996. Hence the plaintiff has not entitled to get relief. The suit itself is barred by limitation. The partition deed, power deed, sale agreement and sale deeds are executed on bonafide for valuable consideration. There is no cause of action to file the suit.

Hence the suit may be dismissed with cost.

13) Out of the pleadings, the following issues were framed on 04.04.2019:

1. வாதி கோரும் பரிகாரங்கள் வாதிக்கு கிடைக்கதக்கதா?
2. வழக்கு கால வரம்பினால் பாதிக்கப்படுகிறதா?
3. வழக்கு அவசிய தரப்பினர்கள் சேர்க்காத தோஷத்தினால் பாதிக்கப்படுகிறதா?
4. பிராது சொத்துகள் பொது அனுபவத்திலிருந்து வருவதாக கூறுவது சரியா?
5. வாதி செலுத்தியிருக்கும் நீதிமன்ற கட்டணம் சரியா?
6. வாதிக்கு கிடைக்கதக்க இதர பரிகாரங்கள் யாது?

14) Additional issues framed on 20.09.2023:

Whether the plaintiff is entitled to get declaration that following documents are null and void?

- a) The Sale agreement dated 02.04.2002 vide document no.1918/ 2002 on the file of Joint Sub Registrar Madurai No.I
- b) The Sale deed dated 28.11.2002 vide document no.6682/ 2002 on the file of Joint Sub Registrar Madurai No.I
- c) The Sale deed dated 20.07.2015 vide document no.4824/ 2015 on the file of Joint Sub Registrar Madurai South
- d) The general power deed dated 02.04.2002 vide document no.526/ 2002 on the file of Joint Sub Registrar Madurai South
- e) The Sale deed dated 07.07.1999 vide document no.5279/1999 on the file of Joint Sub Registrar Madurai South

15) On the side of the plaintiff, PW1, PW2 were examined and Ex.A1 to Ex.A23 were marked. On the side of the defendants, DW1 to DW3 were examined

and Ex.B1 to Ex.B8 were marked.

16) Issue No.1, 2, 4 & Additional issues 1 (a) to (e):

The plaintiff, defendants 1 to 4 and defendants 5 to 7 filed the written argument along with citations. Further the learned Advocate for the plaintiff argued that the plaint schedule properties originally belonged to Mokai @ Adaikan. The plaintiff and defendants 1 to 7 are the legal representatives of Mokai @ Adaikan. Therefore the plaintiff being one of the legal representative is entitled to get due share over the suit properties and rent from the rental properties. But ignoring the plaintiff as one of the legal representative, the defendants executed documents which are challenged by the plaintiff as null and void. The defendants have not denied the right of the plaintiff over the suit properties. Therefore the plaintiff being one of the co-sharer is entitled to get due partition, but without the knowledge of the plaintiff there were transaction which are not binding the right of the plaintiff. Since the plaintiff married another person, her right will not be extinguished. Moreover the alleged family settlement in the month of August 1996 is not real fact and it is imaginary for the purpose of this case created by the defendants. Therefore the suit of the plaintiff may be decreed as prayed.

17) On the other hand the learned Advocate for the defendants 1 to 4 fairly admitted that the plaintiff had right over the share of her father Malaisamy. But she has married voluntarily and left the family in the year 1996. Thereafter she had no contact with either defendants or with plaint schedule properties. The conduct of

the plaintiff clearly revealed her ouster from the suit properties. Therefore the suit is liable to be dismissed.

18) The learned Advocate for the defendants 5 and 7 also argued that the plaintiff voluntarily and against the will of the parents and brothers married another person and settled at Dindigul District. She never came to Valayankulam for having enjoyment over the plaint schedule properties from the year 1996. Hence the suit is barred by limitation and ouster. Apart from that the plaintiff received Rs.5,50,000/- in the month of August 1996 and relinquished her right as per the oral family settlement. Therefore the plaintiff cannot seek any relief as against any of the defendants. Hence the suit is liable to be dismissed.

19) This Court considered the argument of both sides. Admittedly Mokai @ Adaikan is the common ancestor for the parties and he had two sons by name Vellaichamy and Malaisamy. Admittedly the plaintiff is the daughter of Malaisamy. The defendants 5,6,7 and deceased Selvam are the wife and children of deceased Malaisamy. The defendants 1 to 4 are children of deceased Vellaichamy. Hence the plaintiff claim 1/8 share over the plaint schedule properties. The main contention of the defendants is that the plaintiff had share with other children of Malaisamy in respect of properties of Malaisamy. But the plaintiff has relinquished her right over the suit properties in view of plea of ouster. Thereby the plaintiff has left the plaint schedule properties from the year 1996 itself. So this is the main dispute between both the parties. Therefore the defendants admitted that the plaintiff

had share over the suit properties prior to 1996. Thereafter she has abandoned her share thereby she settled at Gopalpatti in Dindigul District.

20) Now this is the material point for consideration to decide the right of the plaintiff over the plaint schedule properties. The defendants raised contention that the suit properties were already divided between Malaisamy and Vellaichamy. Hence the plaintiff cannot claim share over the properties of Vellaichamy.

21) Moreover the defendants raised the contention as non-joinder of necessary parties. Apart from that, this Court intended to find out whether the plaintiff was ousted from the suit properties in the year 1996? Whether the suit is barred by limitation? These are the material issues prior to decide the right of the plaintiff over the suit properties.

22) On this aspect, this Court considered the evidence of PW1 and PW2. But PW2 is the husband of the plaintiff and he did not know about the plaint schedule properties. Therefore the case of the plaintiff fully rests upon the evidence of PW1 alone. At this juncture, the learned Advocate for the defendants relied the citation reported in 2022 (5) CTC 163, **M.Sukumar –vs- Mani Achari & others** in which **the Hon’ble High Court of Madras** held that

“When any of the Co-Sharer has consciously lost his animus over the possession of the property and such relinquishment is manifested in his conduct, the Principle of Ouster, Acquiescence and Extinguishment of Right has to be applied”.

23) On this background, this Court carefully scrutinized the evidence of PW1 Tmt.Selvi who candidly admitted in cross examination that

“நான் தன்னிச்சையாக கலப்பு திருமணம் முடித்து வெளியூரில் வசித்து வருகிறேன். என் தாயார் குடும்பத்துடன் எவ்வித தொடர்பும் இல்லாமல் 27 வருடங்கள் இருந்தேன். அதனால் என் தாயார் சொத்துக்களை விற்ற விவரமும், பாகப்பிரிவினை செய்த விவரமும் எனக்கு தெரியாது. தாவா சொத்துக்களை வெளிநபருக்கு கிரையம் பண்ண விவரம் எனக்கு தெரிந்து நான் போய் பார்த்தேன். பிளாட்கள் எல்லாம் போட்டிருந்தார்கள். நான் வழக்கு தாக்கல் செய்யும் போது வெவ்வேறு நபர்கள் தாவா சொத்து அனுபவித்து வருகிறார்கள்”.

Further in cross examination also PW1 admitted that

“1996லிருந்து இன்று வரை என் குடும்பத்தாருக்கும் எனக்கும் உறவு சொந்தமோ, பொருள் சொந்தமோ கிடையாது”.

So, as per the above crystal clear admission of PW1 / plaintiff that she has left the plaint schedule properties 27 years back. Thereafter she never had any connection with defendants 1 to 7 or plaint schedule properties. Therefore the conduct of the plaintiff clearly revealed that her right over the plaint schedule properties were extinguished. Hence the Principle of Ouster is having clear application in this suit. Moreover the plaintiff as PW1 candidly admitted the long and continuous possession of the defendants over the plaint schedule properties. The plaintiff failed to prove her *animus possidendi*.

24) On this aspect the learned Advocate for the defendants referred citation reported in **2020-5-LW-422 Thangavel & others –vs- Dhanabagyam &**

another in which Hon'ble High Court of Madras held that

“The plaintiffs were never in joint enjoyment or administration of the suit properties. Their ouster from possession is both constructive as well as physical. The defendants over a long period of time been in exclusive possession of the properties open, visible and notorious, adverse to the interest of the plaintiffs.”

Therefore, even in the present case also the plaintiff had no point of time asserted her right over the properties after death of her father Malaisamy and from the year 1996. The plaintiff was silent and inactive for the past 27 years as per the evidence of PW1. Moreover she did not repudiate the hostile assertion of the defendants. The plaintiff failed to establish her claim of share in the plaint schedule properties by showing that the family was joined and she was a coparcener entitled to the share over the properties.

25) Moreover the onus is on the defendants to establish exclusion of the plaintiff for more than 12 years prior to suit. So, the defendants 5 to 7 pleaded that there was family settlement in the month of August 1996 in which Rs.5,50,000/- was given to the plaintiff as full settlement. But except oral evidence of DW3, no other panchayatars were examined nor any document is produced to that effect. However, as per the admission of the plaintiff as PW1 that she had abandoned the plaint schedule properties for the past 27 years and she never had possession and enjoyment over the plaint schedule properties along with her mother and brothers. It is settled law in view of **Sec.58 of Indian Evidence Act**, the admitted fact need not be proved.

The admission of opposite party is the best evidence. Therefore, there is clear admission from the evidence of PW1 that she had relinquished her right over the properties of her father deceased Malaisamy who died in the year 1994. The right of the plaintiff was extinguished by her self conduct.

26) Even the mother of the plaintiff who is arrayed as 5th defendant Tmt.Mookaiyee categorically denied the relationship of the plaintiff from beginning of her cross examination that

“எனக்கு மொத்தம் 3 ஆண் பிள்ளைகள் தான் எனக்கு பெண் பிள்ளை கிடையாது. வழக்கின் வாதி யார் என்று தெரியாது”.

So, such type of evidence of mother of the plaintiff also crystal clear that the plaintiff has not only left the properties of Malaisamy and also she has abandoned her entire relationship. That is the reason the mother of the plaintiff herself denied her relationship with the plaintiff which is unfortunate. Now as per the exhibits, the plaintiff schedule properties were divided through partition in the year 2010 and 2003 as per Ex.A13 dated 15.10.2010 and Ex.A21 dated 31.12.2003. Further on the basis of the partition deed the sale deeds were executed in favour of so many persons. Some of the properties were divided into plots and having enjoyment by subsequent purchasers. This situation is clearly admitted by PW1 in his cross examination which was stated above.

27) Under these circumstances, this Court comes to the conclusion that the plaintiff has voluntarily and against the Will of her parents and brothers married

another person and permanently settled at Gopalpatti in Dindigul District. As rightly argued by the learned Advocate for the plaintiff the marriage of the plaintiff with another person against the will of the persons is nothing wrong. At the same time, when such daughter claim partition over the properties of the family she could have been *animus possidendi* over the suit properties continuously with the knowledge of other coparceners. On the contrary all these long period the plaintiff has abandoned the suit properties for the past 27 years without having any contact with the plaintiff schedule properties with the knowledge of other coparceners. Therefore the conduct of the plaintiff itself clearly disclosed that she was ousted from the suit properties. Now prior to filing the suit only she went and seen the properties and finds that the properties were divided into plots. Therefore, the value of the properties would have been raised and the plaintiff in greedy manner filed the suit after expiry of statutory period. Hence the suit of the plaintiff is non-suited due to barred by limitation. Accordingly, issue nos.1, 2, 4 & Additional issues 1 (a) to (e) are negatived to the plaintiff.

28) Issue Nos.3, 5:

The defendants pleaded that the suit is bad for non-joinder of necessary parties. Of course the properties were sold to several persons and PW1 herself admitted that the properties were divided into plots and purchased by different persons and they are having enjoyment. Further, the name and particulars of non-

joinder of the parties were not specifically pleaded by the defendants. However, as held above the suit is barred by limitation due to Principle of Ouster. Therefore even though the plaintiff had right and share over the properties of Malaisamy prior to 1996, she herself abandoned and relinquished her right from the year 1996. Therefore, there is no requirement to deep analysis of non-joinder of the necessary parties. Moreover the defendants pleaded the payment of Court fee is not proper. Of course the payment of Court fee is the matter between plaintiff and the Court. If at all the suit is decreed in favour of the plaintiff, the necessary Court fee will be collected by giving notice. Here collection of Court fee is not required due to bar of suit. Accordingly Issue nos.3 and 5 are answered.

29) Issue No.6:

Even though the 5th defendant being mother of the plaintiff denied her relationship with plaintiff, this Court considered the relationship of plaintiff with defendants and hence no cost is ordered. Accordingly Issue no.6 is answered.

In the result, the suit is dismissed. No cost.

Dictated to the Steno-typist, transcribed and typed by her in computer, corrected and pronounced by me in Open Court, this the 26th day of February 2024.

Sd./- S.Kirubaharan Mathuram,

VI Additional District Judge,
Madurai.

Appendix:

Plaintiff side witnesses:-

- P.W.1 - Tmt.Selvi (Plaintiff)
P.W.2 - Thiru.Nagarajan (Husband of the plaintiff)

Plaintiff side documents:-

- Ex.A.1 23.03.2017 Computer extract copy for patta no.886
Ex.A.2 27.06.2009 Copy of Patta transfer Order
Ex.A.3 16.10.2007 Copy of Patta transfer Order
Ex.A.4 21.08.2008 Copy of Patta No.1922
Ex.A.5 14.09.2001 Copy of Patta Nos. 1088, 1504, 57, 64
Ex.A.6 -- Sketch of Valayankulam Survey No.168
Ex.A.7 -- Sketch of Valayankulam Survey No.190
Ex.A.8 18.05.2018 Community Certificate for Plaintiff
Ex.A.9 11.04.2018 School Certificate for Plaintiff
Ex.A.10 07.11.2007 Copy of Patta Passbook No.297332
Ex.A.11 29.10.2009 Copy of Patta Passbook No.151798
Ex.A.12 19.06.2018 Legal Heir Certificate for Malaichamy
Ex.A.13 15.10.2010 Certificate copy of Partition deed vide document no. 9481/2010
Ex.A.14 10.01.2008 Copy of Leave and License Agreement
Ex.A.15 03.07.2018 Office copy of Legal notice with Postal Receipt
Ex.A.16 -- Acknowledgment cards (Nos.7)
Ex.A.17 07.07.1999 Certified copy of sale deed vide document no.5279/1999 in favour of R. Velmurugan
Ex.A.18 02.04.2002 Certified copy of General power deed vide document no.526/2002 executed by Mookaiyee, Selvam, Kalyana Sundaram, Rajasekaran in favour of Ganesan.
Ex.A.19 02.04.2002 Certified copy of sale agreement vide document no.1918/2002 between Chandrasekaran and Power agent C. Ganesan.

- Ex.A.20 28.11.2002 Copy of sale deed vide document no.6682-2002 executed by Velmurugan, S/o. Ramachandran in favour of Harikrishna.
- Ex.A.21 31.12.2003 Copy of Copy of Partition deed vide document no.6817/2003
- Ex.A.22 20.07.2015 Certified copy of sale deed vide document no.4824/2015 executed by Vellaiyammal vagaiyara & Mookayi Vagaiyara in favour of Kachammal
- Ex.A.23 20.06.2022 Copy of sale deed vide document no.7196/2022 executed by Mookaiyee & Rajasekar in favour of Udhayakumar.

Defendant's side witnesses:

- D.W.1 - Tmt. Venkateshwari (3rd defendant)
- D.W.2 - Tmt. Mookayi (5th defendant)
- D.W.3 - Thiru.Rajasekaran (7th defendant)

Defence Side Documents:

- Ex.B.1 16.03.1950 Copy of sale deed vide document no.1056/1950
- Ex.B.2 25.07.2023 Computer extract copy for patta no.1592
- Ex.B.3 25.07.2023 Computer extract copy for patta no.1593
- Ex.B.4 25.07.2023 Computer extract copy for patta no.1922
- Ex.B.5 25.07.2023 Computer extract copy for patta no.886
- Ex.B.6 25.07.2023 Computer extract copy for patta no.1504
- Ex.B.7 25.07.2023 Computer extract copy for patta no.64
- Ex.B.8 07.08.2023 Computer extract copy for patta no.6132

Sd./- S.Kirubaharan Mathuram,
VI Additional District Judge,
Madurai.

VI Additional District Court,
Madurai.

O.S. No.198/2018

Fair/Draft Judgment

26.02.2024.