

IN THE COURT OF PRINCIPAL CIVIL JUDGE (JUNIOR DIVISION)-CUM-JUDICIAL
FIRST CLASS MAGISTRATE::TIRUPATI

Present: Smt. B.VANISREE,
Principal Civil Judge (Junior Division) -Cum-Judicial
First Class Magistrate, Tirupati

Thursday, the 8th day of May 2025

O.S.No.319/2021

Between:

Shaik Ameer Basha, S/o Late Shaik Ibrahim Saheb, Muslim, aged about 58 years, Agriculturist, residing at D.No.2-42, Bhagya Nagar Village, K.C.Peta Panchayath, Durgasamudram Post, Tirupati Rural Mandal, Chittoor District.

.. Plaintiff.

And:

1. Shaik Mohammad Basha, S/o Late Shaik Ibrahim Saheb, Muslim, aged about 65 years, Business, residing at D.No.18-1-492, Bhavani Nagar, Tirupati, Chittoor District.

2. Shaik Masthan @ Kalam Basha, S/o Late Shaik Ibrahim saheb, Muslim, aged about 56 years, Business/agriculturist, residing at D.No.2-48, K.C.Peta Village, Durgasamudram Post, Tirupati Rural Mandal, Chittoor District.

3. Shaik Ansar Basha, S/o Late Shaik Ibrahim Saheb, Muslim, aged about 52 years, Agriculturist, residing at D.No.2-48, Bhagya Nagar Village, K.C. Peta Panchayath, Durgasamudram Post, Tirupati Rural Mandal, Chittoor District.

4. Shaik Kalesha, S/o Late Shaik Ibrahim Saheb, Muslim, aged about 50 years, Mechanic, residing at D.No.19-7-102/F, Dasarimatam, Tirupati, Tirupati Urban Mandal, Chittoor District.

5. Shaik Zakir Basha, S/o Shaik Ameer Basha, Muslim, aged about 32 years, Business.

6. Smt Shaik Afthab Begam, W/o Shaik zakir Basha, Muslim, aged about 30 years, House wife.

Defendant No.5 and 6 are residing at D.No.2/48, Bhagya Nagar Village, K.C.Peta Panchayath, Durgasamudram Post, Tirupati Rural Mandal, Chittoor District.

.. Defendants.

This suit is coming up before me for hearing in the presence of Sri M.Ravi Kumar, Counsel for the plaintiff and Defendants remained exparte and upon hearing arguments and on perusal of records and having stood over for consideration till this day, this court delivered the following:

J U D G M E N T

This is a suit filed by the plaintiff praying the court (a) for passing preliminary decree by dividing the plaint schedule property in to five (5) equal shares and allot one fifth (1/5th) each such shares to the plaintiffs and defendant Nos.1 to 4 by taking good and bad qualities into consideration by metes and bounds and deliver separate possession of the same to the plaintiff and if the defendants 1 to 4 fail to do so the same may be done through process of law of court and for costs.

2. The brief averments of the plaint are as follows :-

Plaintiff and Defendants 1 to 4 are own brothers and 5th defendant is son and 6th defendant is daughter in law of plaintiff.

(ii) Father of plaintiff and D1 to D4 by name Shaik Ibrahim Saheb died on 21-12-2012 at Kupuchandrapeta, Tirupati Rural Mandal leaving behind him the plaintiff and D1 to D4 as his legal heirs to succeed his estate including suit schedule property and the mother of plaintiff & D1 to D4 Smt Shaik Fathima Bee was predeceased his father Late Shaik Ibrahim Saheb.

(iii) During the lifetime of Shaik Ibrahim Saheb, the Government assigned DKT house site under proceedings No.Roc.No.A/683/2001 dated 31-05-2001 in S.no.362 of Bhagya Nagar Village and that he is in possession and

enjoyment till his death by constructing the house by leaving 3 feet site by way of oral gift on his eastern side to the plaintiff to use as cattle reaching passage to his cattle shed situated backyard of plaintiff's house and after his death suit schedule property is being enjoying as joint family property without partition. Plaintiff is in possession and enjoyment continuously as per Muslim law of succession, as per Shariah Act, 1937 and the said Shaik Ibrahim Saheb died on 21-12-2012.

(iv) D5 and D6 are none other than the son and daughter in law of plaintiff and who are enmical against him, due to their family disputes, hatched a plan to give troubles to plaintiff and his wife, shifted residence and entered suit property without permission of D1 to D4 and that they tried to occupy site and trying to erect structures, as such plaintiff got reported to Tiruchanur police who inturn suggested to approach approach civil court and registered case against D5 in CC No.283/2014 on the file of V ACJ Court, Tirupati. D1 to D4 demanded for partition but D5 and D6 trying to deceive the plaintiff's share. Hence the suit.

3. Summons to defendants 1 to 6 served. Service held sufficient. Defendants called absent, hence they were set exparte on 12-11-2021 and 25-01-2022 by this court.

4. During course of plaintiff's exparte evidence, plaintiff himself got filed chief examination affidavit as PW1, through him Ex.A-1 to Ex.A-4 are

marked. On behalf of plaintiff, plaintiff also got examined one third party to the suit as PW3 and got examined his daughter as PW2.

5. Heard the counsel for plaintiff. Perused the records.

6. Now the point for consideration is

Whether the suit is liable to be decreed as prayed for or not?

7. POINT :

The case of the plaintiff is that Plaintiff and Defendants 1 to 4 are own brothers and 5th defendant is son and 6th defendant is daughter in law of plaintiff and the father of plaintiff and D1 to D4 by name Shaik Ibrahim Saheb died on 21-12-2012 at Kupuchandrapeta, Tirupati Rural Mandal leaving behind him the plaintiff and D1 to D4 as his legal heirs to succeed his estate including suit schedule property and the mother of plaintiff & D1 to D4 Smt Shaik Fathima Bee was predeceased his father Late Shaik Ibrahim Saheb and during the lifetime of Shaik Ibrahim Saheb, the Government assigned DKT house site under proceedings No.Roc.No.A/683/2001 dated 31-05-2001 in S.no.362 of Bhagya Nagar Village and that he is in possession and enjoyment till his death by constructing the house by leaving 3 feet site by way of oral gift on his eastern side to the plaintiff to use as cattle reaching passage to his cattle shed situated backyard of plaintiff's house and after his death suit schedule property is being enjoying as joint family property without partition and now the defendants 5 and 6 are giving trouble to plaintiff and his wife

and that D1 to D4 demanded for partition but D5 and D6 trying to deceive the plaintiff's share. Hence the suit for partition.

8. To prove the case of plaintiffs, plaintiff himself examined as PW1 by reiterating the contents of the plaint. Through him Ex.A-1 to Ex.A-4 are marked. Ex.A-1 is Electricity demand notice issued by APSPDCL, Tirupati Rural in the name of PW1. Ex.A-2 is Information vide Roc.No.2/2022 dated 12-08-2022 furnished by Panchayath Secretary, Kupuchandrapeta gram panchayath, Tirupati Rural Mandal under RTI Act. On perusal of Ex.A-2 it discloses that D.No.2-34, Assessment No.129 of Kupuchandrapeta Grama Panchayat, Tirupati Rural Mandal information was furnished by Panchayat Secretary stating that for the year 2008-09, 2009-2010, 2011-2012, 2014-2015, 2015-2016, 2016-2017 for D.No.2-34 , assessment number 129 name of owner shown as S. Ibrahim Saheb father of plaintiff and defendants 1 to 4. Ex.A-3 is Certified copy of Calendar and Judgment dated 20-01-2016 passed in CC No.283/2014 by VAJMFC, Tirupati. Ex.A-3 discloses that PW1 being complainant filed the above case against D5 and the said case was convicted on 20-01-2015. Ex.A-4 is photographs (7 in number) along with corresponding CD.

9. On perusal of records, Ex.A-2 discloses D.No.2-34, Assessment No.129 of Kupuchandrapeta Grama Panchayat, Tirupati Rural Mandal name of owner shown as S. Ibrahim Saheb who is none other than the father of plaintiff and defendants 1 to 4. Though the plaintiff has not filed any other document other than Ex.A-2 showing that his father was allotted DKT patta,

but the schedule appended to plaint discloses that it is a house site bearing D.No.2/34 and it is tallied with Ex.A-3 wherein owner name mentioned as as Shaik Ibrahim Saheb and that plaintiff and defendants 1 to 4 being sons are entitled for partition. Though the plaintiff failed to file family members certificate but at the same time the defendants having receiving notice failed to submit their contentions by way of written statement and remained exparte. Accordingly an adverse inference was made against the defendants. Further the evidence of plaintiff coupled with the evidence of PW2 and PW3 and documentary evidence more particularly Ex.A-2 is remained unchallenged. However name of father of plaintiff is reflecting in Ex.A-2 as owner of plaint schedule property, the suit is liable to be preliminarily decreed for partition.

10. In the result suit is ***preliminarily*** decreed directing division of plaint schedule property into five equal shares by metes and bounds by taking into consideration good and bad qualities and to allot 1/5th share to the plaintiff and put him in separate possession of the same failing which through process of law.

In the circumstances of the case, each party do bear their own costs.

Typed to my dictation by the Stenographer, corrected, signed and pronounced by me in the open court this the **8th day of May, 2025.**

**Principal Civil Judge (Junior Division),
Cum Judicial Magistrate of I Class,
Tirupati**

APPENDIX OF EVIDENCE.
Witnesses examined on behalf of:

PLAINTIFFS :**DEFENDANTS:**

PW1 : Shaik Ameer Basha.	Exparte.
PW2 : Shaik Rajiya.	
PW3 : T. Murali.	

EXHIBITS MARKED ON BEHALF

	<u>PLAINTIFF:</u>
Ex.A-1	Electricity demand notice issued by APSPDCL, Tirupati Rural in the name of PW1.
Ex.A-2	Information vide Roc.No.2/2022 dated 12-08-2022 furnished by Panchayath Secretary, Kupuchandrapeta gram panchayath, Tirupati Rural Mandal under RTI Act.
Ex.A-3	Certified copy of Calendar and Judgment dated 20-01-2016 passed in CC No.283/2014 by VAJMFC, Tirupati.
Ex.A-4	photographs (7 in number) along with corresponding CD.
	<u>DEFENDANTS:</u>
	Exparte.

PCJ

