

**IN THE COURT OF I ADDITIONAL DISTRICT & SESSIONS JUDGE,
CUDDALORE.**

Present : **Tmt.G.Saraswathi, M.L.,**
I Additional District & Sessions Judge,
Cuddalore.

Friday, the 10th day of April 2026

APPEAL SUIT Nos.73 of 2020 and 76 of 2020

(CNR No. TNCD01 - 003338 - 2020 & 003337 - 2020)

A.S.No.73/2020 :

1. Balkis Bi
2. Fathima
3. Kalifulla
4. Sabifulla
5. Jamal Mohamed
6. Abdul Rahim

... Appellants /
Plaintiff 2,3,5,6,9 & 10.

Versus

1. Thangamani
2. Jayakodi
3. Anjugam
4. Anjali Devi
5. Sivakumar

(Represented by Power Agent
Senthamarai Selvi)

6. Shanthi
7. Ameena Begum
8. Kamarunissa Begum

9. Subaida

10. Rasheeda Begaum

... Respondents/Defendants 1 to 6
And Plaintiffs 4,7,8 and 11

An Appeal against the Judgment and Decree, passed in O.S.No.21 of 2015 Dated
24.02.2020, on the file of the Learned II Additional Subordinate Judge, Cuddalore.

BETWEEN:

O.S.No. 21 of 2015

1. Meeranji Ravuthar (died)

2. Balkis Bi

3. Fathima

4. Ameena Begum

5. Kalifulla

6. Sabifulla

7. Kamarunissa Begum

8. Subaida

9. Jamal Mohamed

10. Abdul Rahim

11. Rasheeda Begum

... Plaintiffs

Versus

1. Thangamani

2. Jayakodi

3. Anjugam

4. Anjali Devi

5. Sivakumar

(Represented by Power Agent

Senthamarai Selvi)

6. Shanthi

... Defendants

and

A.S.No.76/2020 :

1. Balkis Bi,
2. Fathima
3. Kalifulla
4. Sabifulla
5. Jamal Mohamed
6. Abdul Rahim

... Appellants /
Plaintiff 2,3,5,6,9 & 10.

Versus

1. Thangamani
2. Jayakodi
3. Anjugam
4. Anjali Devi
5. Sivakumar
(Represented by Power Agent
Senthamarai Selvi)
6. Shanthi
7. Ameena Begum
8. Kamarunissa Begum
9. Subaida
10. Rasheeda Begaum

... Respondents/Defendants 1 to 6
And Plaintiffs 4,7,8 and 11

An Appeal against the Judgment and Decree, passed Counter Claim in O.S.No.21 of 2015 Dated 24.02.2020, on the file of the Learned II Additional Subordinate Judge, Cuddalore.

BETWEEN:

Counter-claim in O.S.No. 21 of 2015

1. Meeranji Ravuthar (died)

2. Balkis Bi

3. Fathima

4. Ameenah Begum

5. Kalifulla

6. Sabifulla

7. Kamarunissa Begum

8. Subaida

9. Jamal Mohamed

10. Abdul Rahim

11. Rasheeda Begum

... Plaintiffs

Versus

1. Thangamani

2. Jayakodi

3. Anjugam

4. Anjali Devi

5. Sivakumar

(Represented by Power Agent

Senthamarai Selvi)

6. Shanthi

... Defendants

Both Appeal Suits came up for final hearing before me on 04.02.2026 in the presence of Mr.J.Venkatraman and Mr.V.Sakthivel, learned counsel for the appellants, and Mr.S.Ram Mohan, learned counsel for respondents 1 to 5 / defendants 1 to 5. The other respondents 6 to 10, though called, remained absent and were set exparte in both

appeals. Upon perusing the appeal memoranda, the evidence, the documents, the decree and judgment of the Trial Court, and the other material records, and having reserved the matters for consideration till this day, this Court passes the following:

COMMON JUDGMENT

NATURE OF APPEAL :

- (i). The appellants have preferred A.S.No.73 of 2020 praying to set aside the judgment and decree dismissing the suit passed by the II Additional Subordinate Judge, Cuddalore, in O.S.No.21 of 2015 dated 24.02.2020. They have also preferred A.S.No.76 of 2020 praying to allow the appeal, reverse the decree passed in the counter-claim, dismiss the counter-claim with costs throughout, and grant such further or other reliefs as this Court may deem fit.
- (ii). The plaintiffs filed O.S.No.21 of 2015 seeking a decree for declaration, partition, and separate possession of the plaintiffs' 1/6th share in the suit property, for delivery of such 1/6th share by defendants 1 to 5, for costs, and for such other suitable reliefs as the Court may deem fit and proper in the circumstances of the case.
- (iii). Defendants 1 to 5 filed a counter-claim in O.S.No.21 of 2015 seeking dismissal of the suit, a declaration that the sale deed executed by the 6th defendant in favour of the plaintiff on 03.08.2009 in respect of her 1/6th share in the suit properties is illegal, null and void, a decree of mandatory injunction directing the 6th defendant to execute a sale deed in favour of the 5th defendant in respect of her 1/6th share in the suit

properties on equitable principles, costs, and such other reliefs as the Court may deem fit and proper.

2. TRIAL COURT FINDINGS :

In the result the suit in O.S.No.21/2015 is dismissed with cost. Counter claim in O.S.No.21/2015 is allowed with cost. Sale deed dated 03.08.2009 in Document No.2490/2009 on the file of Sub Registrar Office, Vadalur is set aside. The 5th defendant shall pay the sale consideration amount of Rs.41,567/- to the 6th defendant within 2 months' time and the 6th defendant shall execute a sale deed in respect of her 1/6th share to the 5th defendant failing which the 5th defendant shall deposit the sale consideration of Rs.41,567/- in the Court and get the sale deed executed by the Court.

3. SUMMARY OF THE PLEADINGS AND EVIDENCE BEFORE THE TRIAL COURT:

3.1 Brief averments of the plaint in O.S.No.21 of 2015:

The suit property and the other properties are the purchased properties of one Chinnasamy Mudaliar under two registered sale deeds, both dated 23.12.1985. The 1st defendant, Thangamani, and the 5th defendant, Sivakumar, are the sons of the said Chinnasamy, and defendants 2 to 4 and 6, namely Jayakodi, Anjugam, Anjalai Devi, and Shanthi, are his daughters. The 6th defendant was married on 05.09.1993, and the said Chinnasamy Mudaliar died intestate in the year 2006 without making any arrangement in respect of the above properties. Hence, the above family members of Chinnasamy, i.e., defendants 1 to 6, are each entitled to a 1/6th share in the suit

properties. The 6th defendant is now permanently settled at Pennadam, and she insisted on partition; but defendants 1 to 5 refused to partition the properties. Therefore, the 6th defendant executed a sale deed in favour of the plaintiff on 03.08.2009 for a valuable consideration of Rs.41,567/- in respect of her 1/6th share in the suit properties. However, defendants 1 to 5, with an ulterior motive, are trying to prevent the plaintiff from taking possession of the suit property from 20.04.2012. As per the Hindu Succession (Amendment) Act, the 6th defendant is entitled to a share in the house property. As defendants 1 to 5 refused to purchase the said share of the 6th defendant when requested by her, she sold the suit property to the plaintiff. Hence, this suit has been filed for declaration of his title to 1/6th share and for delivery of possession of such 1/6th share. Pending suit, the plaintiff died, and his legal heirs were brought on record as plaintiffs 2 to 11.

3.2 Brief averments of Written statement with Counter Claim in O.S.No.21 of 2015 filed by the 5th Defendant and adopted by the Defendants 1 to 4 :

This defendant denies each and every allegation in the plaint except those that are specifically admitted herein. It is admitted that the suit properties originally belonged to his father, Chinnaamy Mudaliar, who purchased them on 23.12.1985 through registered sale deeds. It is also admitted that defendants 1 to 6 are the sons and daughters of Chinnaamy Mudaliar and that the properties were treated and enjoyed as joint family properties. After the death of Chinnaamy Mudaliar, the 5th defendant has been in possession of the property till date. The 5th defendant was, all along, requesting

the 6th defendant to sell her share in the property to him; but the 6th defendant, due to enmity and arrogance, intentionally executed a sale deed in favour of the plaintiff on 03.08.2009 without any right whatsoever, since there had been no partition among defendants 1 to 6. Since the suit properties are house properties and are indivisible in nature, this defendant expressed his willingness to purchase the shares of his brothers and sisters, and defendants 2 to 4 executed a release deed in favour of the 5th defendant on 19.01.2012 relinquishing their shares in respect of the suit property, and the 1st defendant also executed a release deed in favour of the 5th defendant on 31.05.2012 relinquishing his due share in respect of the suit property. As such, the 5th defendant is the major shareholder with a 5/6th share, and he is ready to purchase the share of the 6th defendant. On principles of equity, this defendant is entitled to purchase the share of the 6th defendant. The plaintiff has no right to purchase the undivided share in the Hindu joint family properties. Since the 6th defendant is permanently settled at Pennadam, she was never in exclusive possession of the suit properties. The sale deed executed by the 6th defendant in favour of the plaintiff in respect of the suit properties is illegal, null and void. The 6th defendant was not allotted any definite share in the suit properties. In such circumstances, it is quite astonishing that the 6th defendant has executed a sale deed in respect of the suit properties in favour of the plaintiff. The 5th defendant is ready to purchase the share of the 6th defendant. The suit is barred by limitation. There is no cause of action for the suit, and the alleged cause of action is false and invented for the purpose of this vexatious suit. The 5th defendant has come

forward with a counter-claim praying to declare that the sale deed executed by the 6th defendant in favour of the plaintiff on 03.08.2009 in respect of her 1/6th share in the suit properties is illegal, null and void, and to direct the 6th defendant to execute a sale deed in favour of the 5th defendant in respect of her 1/6th share in the suit properties by an order of mandatory injunction on equitable principles. The cause of action for the counter-claim arose on 03.08.2009, when the 6th defendant executed a sale deed in favour of the plaintiff in respect of her 1/6th share in the suit properties at Periyakurichi Village within the jurisdiction of this Court. Hence, the suit is liable to be dismissed.

3.3 Brief averments of Reply Statement filed by the Plaintiff to the Counter Claim in O.S.No.21 of 2015 made by Defendants 1 to 5 :

The plaintiff specifically denies the truth of the allegations made in paragraph 8 of the written statement-cum-counter-claim of defendants 1 to 5. The plaintiff also denies the contention that the suit property is indivisible. According to the plaintiff, it is divisible; if not, the provisions of the Partition Act would come into play. The 5th defendant's alleged offer to purchase the share of the 6th defendant is false. He was arrogant enough to tell the 6th defendant that she could do whatever she wanted with regard to her share. He even insulted her. A person like the 5th defendant is not entitled to any equity. The contentions of the 5th defendant that the sale by the 6th defendant to the plaintiff is illegal and void are meritless, especially when the 5th defendant had refused to purchase the share of the 6th defendant. The 6th defendant had no option but to sell to the plaintiff, a third party. He arrogantly stated that he was earning well in the

Middle East and that he could buy any amount of property. He also assumed that the 6th defendant could not sell the property. The 5th defendant is not entitled to any of the reliefs sought in the counter-claim. It is therefore prayed that the counter-claim be dismissed.

3.4 On the basis of the above-mentioned pleadings, the following Issues were framed before the Trial Court and after Full-Trial was decided as below:

(i)	வாதி தாவாவில் கண்டுள்ள விளம்புகை மற்றும் ஒப்புவிப்பு பரிகாரம் பெற அருகரா? (i) Whether the plaintiff entitled to the declaratory and delivery remedies sought in the suit?
(ii)	தாவா காவரையறை தோஷத்தால் பாதிக்கப்பட்டுள்ளதா? (ii) Whether the suit affected by the defect of limitation?
(iii)	வாதிக்கு 03.08.2009 அன்று வெது பிரதிவாதியால் ஏற்பட்ட விற்கிரைய ஆவணம் செல்லாது என விளம்புகை பெற எதிர்வாதிகள் அருகரா? (iii) Whether the respondents are entitled to obtain a declaration that the Sale Deed executed in favor of the plaintiff by the 6 th defendant on 03.08.2009 is null and void?

(iv)	வெது பிரதிவாதி தனக்குண்டான தாவாச் சொத்தில் 1/6 பாக சொத்து உரிமை உள்ளதா? 5வது பிரதிவாதி விற்கிறைய பத்திரம் எழுதி தரகோரும் வண்ணம் வலியுறுத்துக்கட்டளைப் பரிகாரம் பெற அருகரா? (iv) Whether does the 6th Defendant possess a 1/6th share in the suit property? Whether the 5th Defendant entitled to the relief of mandatory injunction directing the execution of a sale deed?
(v)	பிரதிவாதிகள் எதிரிடை கோருரிமை செலவுத்தொகையை வாதியிடமிருந்து பெற அருகரா? (Whether the defendants are entitled to recover the costs of the counter-claim from the plaintiff?)
(vi)	வாதிக்கு கிடைக்கும் பரிகாரங்கள் என்ன? What reliefs available to the plaintiff?

3.5 The following issue in Counter Claim was framed on 30.08.2018 :

- (i) Whether the Sale Deed dated 03.08.2009 executed by the 6th defendant in favour of the plaintiff is illegal, null and void?
- (ii) Whether the plaintiff has no locus standi to institute this suit for declaration in respect of 1/6th share of the joint family property?

(iii) Whether the defendant is entitled to the relief of Mandatory Injunction as prayed for?

(iv) What other relief the defendant is entitled to?

3.6 The issues framed were recasted below to avoid repetition:

(i) Whether the Sale Deed dated 03.08.2019 executed by 6th defendant in favour of the plaintiff is valid?

(ii) Whether the plaintiff is entitled to seek declaration of his title to 1/6th share of the suit property and for possession?

(iii) Whether the 5th defendant is entitled to a right of pre-emption to purchase the 1/6th share of the 6th defendant?

(iv) Whether the suit filed by the plaintiff is barred by limitation?

(v) Whether the 5th defendant is entitled to the Counter Claim?

(vi) To what other relief the plaintiff and defendants are entitled to?

3.7. On the side of the plaintiffs, two witnesses were examined and Exs.A1 to A3 were marked. On the side of the defendants, three witnesses were examined and Exs.B1 to B8 were marked. The Trial Court, upon considering the evidence and the arguments advanced, dismissed the suit in O.S.No.21 of 2015 with costs and allowed the counter-claim in O.S.No.21 of 2015 with costs. Aggrieved by the said findings and conclusions, the plaintiffs have preferred these appeals on the following grounds.

4. GROUND OF APPEAL in A.S.No.73 of 2020 & A.S.No.76 of 2020 :

The judgment and decree of the Trial Court are against law, the weight of evidence, and the probabilities of the case. The Trial Court erred in dismissing the suit and failed to properly construe the prayer in the plaint. More precisely, it failed to appreciate that, in a partition suit claiming a share, a declaration regarding an undivided share is also necessary. The finding on issue No.2 is wholly erroneous. The Trial Court further failed to see that the property is capable of division and that, in such a case, the question of exercising any right of pre-emption does not arise. It ought to have held that the 5th defendant never exercised the right of pre-emption and failed to accept the offer allegedly made by the 6th defendant, and that it erred in holding that the 5th defendant had exercised such right in time. The Trial Court also erred in relying on the decisions reported in 2002 (4) CTC 641, AIR 1929 All 213, AIR 1939 All 113, and AIR 1971 SC 2184, which were rendered on different facts and are inapplicable to the present case. It failed to properly understand Article 97 of the Limitation Act and ought to have held that the right of pre-emption had not been exercised in time and that the counter-claim was barred by limitation. It also failed to properly appreciate the evidence on record. For these and other reasons, the Trial Court ought to have decreed the suit as prayed for and dismissed the counter-claim.

5. POINTS FOR DETERMINATION:

Based on the above pleadings and evidence, and upon considering the issues framed by the Trial Court and the grounds of appeal raised by the appellants, and after hearing the

arguments on both sides, this Court is inclined to decide the appeals on the following points for consideration. For the purpose of discussion, the parties are referred to as they were arrayed before the Trial Court.

1. Whether plaintiffs' claim for declaration and possession is maintainable?
2. Whether the sale deed in favour of the plaintiff is against the provision of Section 22 of the Hindu Succession Act and is not valid?
3. Whether the 5th defendant's right of pre-emption is counter claim barred by limitation?
4. Whether the 5th defendant is entitled for right of pre-emption and for mandatory injunction as prayed for?
5. To what other reliefs the parties are entitled?
6. Whether the Judgment in O.S.No.21 of 2015 and Counter claim in O.S.No.21 of 2015, dated 24.02.2020, on the file of Subordinate Court, Panruti is legally sustainable? or to be set aside?
7. Whether the Appeal Suit is to be allowed?

DISCUSSION :

6. Point No.1 :

Whether plaintiffs' claim for declaration and possession is maintainable?

6.1 It is the admitted case of the plaintiff that the suit properties in Item No.1, namely seven tiled houses in Survey No.249/2, Bhuvaneshwari Nagar, Periyakurichi

Village, and the adjacent plot in the same survey number measuring 1260 sq. ft. with well, trees, toilet, and bathroom, belonged to the father of defendants 1 to 6 by virtue of his purchase under Exs.A1 and A2, registered sale deeds both dated 23.12.1985. The original sale deeds were marked as Exs.B1 and B2 on the side of the defendants before the Trial Court; only certified copies of the sale deeds are available in the Trial Court records before this Court. The defendants 1 to 5 have also admitted that they, along with the 6th defendant, are each entitled to a 1/6th share.

6.2 According to the plaintiff who is a third party to the family of defendants 1 to 6, the 6th defendant after death of their father Chinnasamy Mudaliar approached the other defendants to sell her share, as she is residing at Pennadam Town away from the suit property but the defendants were evading to give her share of property and later they entered into an arrangement and the 6th defendant sold her share of property to the plaintiff under Ex.A3 Registered Sale Deed dated 03.08.2009 for a valid sale consideration of Rs.41,567/- and hence, the plaintiff had approached for declaration of the 1/6th share purchased by him and for separate possession of the same.

6.3 According to the plaintiff, who is a third party to the family of defendants 1 to 6, the 6th defendant, after the death of her father Chinnasamy Mudaliar, approached the other defendants to sell her share, as she was residing at Pennadam Town away from the suit property. However, the defendants were evading partition and failed to allot her share of the property. Thereafter, the 6th defendant sold her share in the property to the plaintiff under Ex.A3, registered sale deed dated 03.08.2009, for a valid sale

consideration of Rs.41,567/-. Hence, the plaintiff has approached this Court seeking declaration of the 1/6th share purchased by him and separate possession of the same.

6.4 With the leave of the Trial Court, the 5th defendant's wife Senthamaraiselvi was permitted to act as Power Agent of her husband 5th defendant Sivakumar (Order in I.A.No.37/2019, dated 11.03.2019) and she was examined as DW1 on the side of the defendants and also the 4th defendant was examined as DW2 and Mr.Bhaskar, the attesting witness to Ex.B3 Release Deed dated 19.01.2012 executed by defendants 2 to 4 in favour of the 5th defendant was examined as DW3. The plaintiff (1st plaintiff) was examined as PW1 and the attesting witness to Ex.A3 Sale Deed dated 03.08.2009 in favour of the plaintiff Mr.Mariyappan was examined as PW2.

6.5 The Trial Court considering that the plaintiff has purchased only an undivided share in a joint family property and that there is no severance of joint-ness in the property, concluded that he can seek only partition of his share as he steps into the shoes of his vendor the 6th defendant and that he cannot seek declaration of title and recovery of possession and answered against the plaintiff's claim for declaration and possession. The Learned Counsel for the Appellant / plaintiff would submit that in a partition suit claiming the share by way of relief for declaration of undivided share is also necessary and the Trial Court's finding on the above issue is wholly wrong.

6.6 Section 44 of the Transfer of Property Act, 1882, admittedly creates co-ownership in favour of the transferee of such share from one or more co-owners and

provides a right of joint possession in the place of the transferor and a right to enforce partition, except where such transfer is in respect of a dwelling-house and the transferee is not a member of the family. In the present case, the plaintiff is admittedly a third party and is not a member of the joint family of defendants 1 to 6. However, it is not the case of the defendants that the suit property is a dwelling-house of the defendants. In fact, the 5th defendant's wife, examined as DW1, admitted in her cross-examination that Item No.1 of the suit properties is a row of seven houses with independent doors and windows. Even the photographs of the said row houses were marked on the side of the defendants as Ex.B6, along with Ex.B7 compact disc and Ex.B8 photo receipt, which show that they are independent houses. Further, the second item of the suit properties is a vacant land adjacent to the row houses with well, trees, toilet, and bathroom. Furthermore, it is not denied by defendants 1 to 5 that they are residing elsewhere, especially the 1st and 5th defendants, who are sons of Chinnasamy Mudaliar, and are residing at Thanjavur and Neyveli respectively. The other defendants, including the 6th defendant, being daughters, are married and settled elsewhere.

6.7 It is settled law that without praying for declaration of title partition relief is invalid. In the present case when all the co-sharers are parties in the suit and the plaintiff being a third party his claim to declare title to the 1/6th undivided share to the suit properties cannot be dismissed on the point of maintainability in the light of Section 44 of the Transfer of Property Act. In ***R.Ramesh Vs. Raj (2024) Supreme***

(Mad) 2203 the suit for declaration and possession of a purchaser of an undivided share in a joint property was denied with a direction to file partition suit impleading all the co-sharers as in the said suit all the co-owners to the joint property were not parties before the said suit. In the present case, the Trial Court had failed to consider that all the co-owners to the suit properties are parties in the suit and had bluntly denied the relief of declaration of plaintiff's $1/6^{\text{th}}$ undivided share in the suit properties.

6.8 The plaintiff had only sought consequential relief of $1/6^{\text{th}}$ share in the suit properties on such declaration of his right over $1/6^{\text{th}}$ undivided share in the suit properties. The consequential relief is nothing but a partition and separate possession of plaintiff's $1/6^{\text{th}}$ share and not exclusive possession of entire suit properties or any particular portion of suit properties. Under Ex.A3 Sale Deed dated 03.08.2009 the plaintiff has not purchased any specific extent or specific portion in the suit properties instead it is only a purchase of $1/6^{\text{th}}$ undivided share of the 6th defendant. When the defendants have admitted such $1/6^{\text{th}}$ right of the 6th defendant in the suit properties, as per Section 44 of the Transfer of Property Act, the plaintiff is entitled for declaration and separate possession (implicitly partition). From the frame work of the plaint and the admitted facts on the side of the defendants and from the contents in Ex.A3 Sale Deed, I am of considered opinion that the suit of the plaintiff includes or implies partition and it is maintainable.

This point is decided in favour of the Appellant.

7. Point No.2 :

Whether the sale deed in favour of the plaintiff is against the provision of Section 22 of the Hindu Succession Act and is not valid?

7.1 Section 22 of the Hindu Succession Act - ***Preferential right to acquire property in certain cases.*** (1) *Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.*

(2) *The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.*

(3) *If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.*

Section 22 confers only a preferential right upon an heir to acquire the interest proposed to be transferred; it does not prohibit the other heir from transferring his or

her interest in the property, especially when Section 44 of the Transfer of Property Act provides for the right to transfer such share to a third party. Any preferential right of the 5th defendant cannot, by itself, render the sale deed executed by the 6th defendant invalid. The burden lies upon the 5th defendant to establish his right of pre-emption by proving a valid offer made by him to purchase the property, particularly prior to the sale by the 6th defendant. The Trial Court, while concluding that the 5th defendant had a right of pre-emption, set aside the sale made by the 6th defendant in favour of the plaintiff, though in paragraph 10 of the judgment it held that the plaintiff could seek his remedy by filing a partition suit.

7.2 The 1/6th right of the plaintiff is subject to the right of his vendor the 6th defendant. When the 6th defendant's right to 1/6th share is admitted by the defendants the sale deed cannot be declared not valid and void and is liable to be set aside is unlawful. Hence, setting aside the sale of the 6th defendant in favour of the plaintiff on the mere upholding the right of pre-emption by the Trial Court is illegal.

This point is decided against the respondents 1 to 5 / defendants 1 to 5.

8. Point No.3 :

Whether the 5th defendant's right of pre-emption is counter claim barred by limitation?

8.1 The claim for pre-emption is governed by Article 97 of the Limitation Act, under which enforcement of such right under Section 22 of the Hindu Succession Act must

be sought within one year from the date when the purchaser, namely the plaintiff in the present case, takes physical possession of the whole or part of the property sold, or, where the subject matter of the sale does not admit of such physical possession, from the date when the instrument of sale is registered. As per the written statement-cum-counter-claim of defendants 1 to 5, it is alleged that the 5th defendant had all along been requesting the 6th defendant to sell her share of the property to him, but that due to enmity the 6th defendant intentionally executed the sale deed in favour of the plaintiff. Nowhere in the written statement was it alleged that the 6th defendant had played fraud upon the other defendants and had executed such sale deed in favour of the plaintiff. The Trial Court, while concluding that the plaintiff had not taken possession, held that the second limb of Article 97 of the Limitation Act was applicable. According to that provision, the right of pre-emption ought to have been claimed by the 5th defendant within one year from the date of registration of the sale deed. The sale deed in favour of the plaintiff was registered on 03.08.2009, whereas the counter-claim of the 5th defendant was laid only on 07.08.2012, which is not within one year from the date of such registration. Nevertheless, the Trial Court accepted the submission made by the defendants that they came to know of the alleged fraudulent sale only during November or December 2011, when the plaintiff approached defendants 1 to 4 for purchase of their shares, and applied Article 54 of the Limitation Act by placing reliance upon **2002 (4) CTC 641, B. Ramasubbu Chettiar (died) and six others Vs. N. Ganesan (died) and ten others.**

8.2 The above suit is to enforce a contractual right of pre-emption wherein the defendants had knowledge of such pre-emption clause and despite that the sale was effected without notice to the pre-emptor. As it was based upon contractual right Article 54 of the Limitation Act which provides limitation for specific performance of contract, the date of notice of such refusal was taken into consideration. In the present case, Section 17 of the Limitation Act is the exception to Article 97 of the Limitation Act if such sale is clandestine or suppressed and the limitation begins from the date of knowledge. The defendants 1 to 5 have conveniently remained silent in the Counter claim cum written statement when they came to knowledge about such sale by the 6th defendant in favour of the plaintiff and without any pleadings for the first time in the cross examination of DW1 deposed that in November/December 2011 quarrel arose when the plaintiff offered defendants 2 to 4 to sell their share of property and her husband the 5th defendant was informed that the plaintiff would pay valid money for sale and only the defendants 2 to 4 were offered for such sale and in this regard they lodged complaint before the Police Station. On the side of the defendants no such Police complaint or CSR was produced to establish that the plaintiff offered for purchase from defendants 2 to 4 which led to dispute among the plaintiff and defendants to infer that only then the defendants 1 to 5 came to know about such sale in favour of the plaintiff.

8.3 It is well settled law that a counter claim is an independent claim against the plaintiff and the counter claim must satisfy cause of action against the plaintiff and the

limitation to make such counter-claim. The defendants 1 to 5 did not specifically plead in their written statement – counter-claim the date of knowledge of sale deed in favour of the plaintiff. In Para 18 it has been simply alleged that the cause of action arose on 03.08.2009 when the 6th defendant executed sale deed in favour of the plaintiff. Hence, Section 17 of the Limitation Act will not apply and as such the right of pre-emption of the 5th defendant as per Article 97 of the Limitation Act is barred.

This point is decided against the respondents 1 to 5 / defendants 1 to 5.

9. Point No.4 :

Whether the 5th defendant is entitled for right of pre-emption and for mandatory injunction as prayed for?

The Learned Counsel for the Respondents/ Defendants would rely upon the following decisions of the *Hon'ble High Court of Madras in 2017 (2) CTC 704 between T.B.Venkatachari and others Versus R.Santhana Lakshmi, rep. by Power Agent, S.J.Mani and others in S.A.(MD) No.658 of 2016 & C.M.P.(MD) No.10764 of 2016, dated 30.11.2016 and 2019 (2) CTC 562 between Babu Ram Versus Santokh Singh (deceased) through his LRs and others in C.A. No.2553 of 2019 (S.L.P.(C) No.31039 of 2018), dated 07.03.2019* and would submit that the 5th defendant being the co-sharer has preferential right of succession to acquire the property and hence, the counter-claim for mandatory injunction directing the 6th defendant to execute sale deed in favour of the 5th defendant must be granted. As discussed above Section 22 of the Hindu Succession Act provides preferential rights and not prohibition but such right of

pre-emption must be exercised within the prescribed period of limitation under Article 97 of the Limitation Act, unless fraud is strictly proved. In the present case there is no acceptable evidence of the fraud and hence, the counter-claim is barred by limitation.

This point is decided against the Respondents / Defendants.

10. Point No.5 :

To what other reliefs the parties are entitled?

10.1 It may be contended on the side of the respondents / defendants that, the property being indivisible, the plaintiff, who is a third party, cannot be permitted separate possession. The above contention cannot be sustained, as suit properties Item Nos.1 and 2 are not dwelling-houses of the co-sharers, and it could be seen from the evidence of DW3, the attesting witness to Ex.B3 Release Deed, that she is residing in the suit village and that the plaintiff is her neighbour. This evidence establishes that the plaintiff is a resident of the same village where the suit property is situated, while all other co-sharers are residing in different places. The suit description shows that in Item No.1 there are row houses and in Item No.2 there is a vacant plot with well, trees, toilet, and bathroom, and both are adjacent to each other. It could also be seen from the written statement of the 5th defendant that, just before the filing of the written statement, Ex.B3 Release Deed and Ex.B4 Settlement Deed were executed on 19.01.2012 and 31.05.2012 respectively. Though one of the executants of Ex.B3 Release Deed and the attesting witness to Ex.B3 Release Deed were examined as DW2 and DW3 on the side of the defendants, there is no evidence to show the genuineness

of Ex.B4 Settlement Deed. Even otherwise, when it is the case of the 5th defendant that he had all along been requesting the 6th defendant to sell her share in the property, Exs.B3 and B4 would show that the other co-sharers released their rights in favour of the 5th defendant only just before the filing of the suit, which gives rise to an inference that they were created for the purpose of defeating the rights of the plaintiff.

10.2 As stated above when the right of the vendor of the plaintiff to her 1/6th share is admitted, and transfer by a co-heir in favour of a stranger is not void but only subject to the preferential rights U/s.22 of the Hindu Succession Act and such preferential right if any of the 5th defendant had lapsed and legally barred, the plaintiff is entitled to his 1/6th undivided share. The consequential relief of such 1/6th share claimed by the plaintiff is implied partition. The plaintiff for such declaration and consequential possession had paid Court Fee U/s.25(a) of the Tamil Nadu Court Fees and Suit Valuation Act, valuing the suit at Rs.1,00,000/- and paid Rs.7,500/- for such 1/6th share. However, for a relief partition wherein the plaintiff is out of possession the plaintiff has to pay Court Fee U/s.37(2) of the Tamil Nadu Court Fees and Suit Valuation Act on the market value of the plaintiff's share alone.

10.3 Under Section 25(a) of the Tamil Nadu Court Fees and Suit Valuation Act for declaration with consequential relief the Court Fees is on market value is the entire property or subject matter involved in declaration-infraction if relief is expressly limited. The plaintiff had paid only for such 1/6th share. Technically the Court Fee paid for Rs.7,500/- is correct as Section 37(2) of the Tamil Nadu Court Fees and Suit

Valuation Act provides Court Fee on the market value of the plaintiff's share. The plaintiff for declaration and partition need not pay Court Fee both under Section 37(2) and 25(a) of the Tamil Nadu Court Fees and Suit Valuation Act and it is suffice that he pays Court fee under Section 37(2) of the Tamil Nadu Court Fees and Suit Valuation Act alone. Thus, when the plaintiff had paid the required Court fee for partition, the consequential relief for possession implied as partition can be granted in favour of the plaintiff to avoid multiplicity of suits. Hence, the plaintiff by separate application under Order XX Rule 18 of CPC can seek for such separate possession of his 1/6th share within three months from the date of Appeal decree.

This point is decided accordingly.

11. Point No.6 & 7:

1. Whether the Judgment in O.S.No.21 of 2015 and Counter claim in O.S.No.21 of 2015, dated 24.02.2020, on the file of Subordinate Court, Panruti is legally sustainable? or to be set aside?

2. Whether the Appeal Suit is to be allowed?

In view of the findings recorded on Points Nos.1 to 5, the Judgment and Decree dated 24.02.2020 in O.S.No.21 of 2015 and in the counter-claim on the file of the Subordinate Court, Panruti, are not legally sustainable in their entirety. Accordingly, the appeals deserve to be partly allowed as below.

RESULT:

In the result, the Appeal Suit is partly allowed, declaring in favour of the plaintiffs, their 1/6th undivided share in the suit properties, and the counter-claim of the 5th defendant seeking to declare the sale deed, dated 03.08.2009 of the plaintiff as null and void and mandatory injunction directing the 6th defendant to pay the sale consideration amount and execute sale deed in favour of the 5th defendant are dismissed, and the relief for consequential possession of 1/6th share to the plaintiff is dismissed, with liberty for the plaintiff to seek such separate possession of 1/6th share by separate application under Order XX Rule 18 of CPC within three months from the date of this decree. No costs.

Dictated to the Steno-Typist, written and transcribed by her corrected and pronounced by me in open Court, this the 10th day of April 2026.

**I Additional District & Sessions Judge,
Cuddalore.**

**List of witnesses and
exhibits on both sides:**

Nil

**I Additional District & Sessions Judge,
Cuddalore.**