

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
KANCHEEPURAM DISTRICT AT CHENGALPATTU.

Present : Thiru R. Selvakumar B.A.M.L.
Principal District Judge,

Thursday the 1st day of December 2016

O.S.NO. 67/2013

1. S. Padmavathi.

2. S. Radha.

3. K. Vijaya.

.. Plaintiffs

//Versus//

1. D. Saroja (Died) (*)

2. D. Ravi.

(*) Amended as per the Orders in
I.A.106/2016 dated 25.1.2016.

.. Defendants

This Suit is coming on 17.11.2016 before me for final hearing in the presence of M/s. P.Paul Selvam, B.Manikam and V.Prasad Advocates for the Plaintiffs, First Defendant died, M/s.M.Anandeeswaran, K.Saravanan Advocates for the defendant No.2 and upon hearing the arguments of both sides, and upon perusing the records, having stood over for consideration till this day and this Court delivered the following

JUDGMENT

This Suit has been filed by the Plaintiffs for Preliminary decree for Partition by metes and bounds of the Plaint schedule properties and to allot 6/25 share each totalling 18/25 share to the

plaintiffs together with separate possession, directing the second defendant to render accounts in respect of the income derived from the plaint schedule properties from April 2010 and future income till the date of handing over possession and for costs.

2. The plaint in brief:

The plaintiffs are the daughters of Thiru.Duraisamy Naidu. The first defendant is the wife and the second defendant is the son. The suit properties are ancestral properties of Thiru.Duraisamy Naidu from his father Thiru.Venkatachala Naidu. The plaintiffs are entitled to equal share in the properties. The plaintiff's father Thiru.Duraisamy Naidu executed Settlement Deed infavour of his son the second defendant on 14.11.2005 in respect of the suit properties. Thiru.Duraisamy Naidu had no such power to settle the property. Hence legal notice was issued on 18.8.2007 to Thiru.Duraisamy Naidu and the second defendant. They failed to give any reply. Thus the plaintiffs filed a suit for declaring that the Settlement Deed dated 14.11.2005 as null and void and for permanent injunction in O.S.425/2007 on the file of District Munsif's Court, Chengalpattu and the same was decreed . The plaintiffs father Thiru.Duraisamy Naidu died intestate on 31.3.2010 leaving the present plaintiffs and the defendants as his Class I legal heirs. Thus the plaintiffs are entitled to 6/25 share and the first defendant is entitled to 1/25 share and the second defendant is entitled to 6/25 shares. In spite of repeated demands the defendants refused to divide the property and hence the suit for partition and separate possession of the plaintiffs 18/25 share each. During the pendency of the suit the first defendant

died. His legal heirs are already on record. Thus the plaintiffs prayed for a decree accordingly.

3. The Written Statement filed by the Second Defendant and adopted by the First Defendant in brief:

The suit is false, vexatious, liable to be dismissed. It is false to allege that the suit property originally belonged to Thiru.Venkatadachala Naidu. The suit properties are not the ancestral properties of Thiru.Duraisamy Naidu. He had every right to settle the property in favour of the second defendant. The plaintiffs are having no share in the suit properties. Suit items 1 and 2 are purchased by Thiru.Adhikesavalu Naidu the brother of Thiru.Duraisamy Naidu. Other two items belongs to him. The plaintiffs father Thiru.Duraisamy Naidu and his brothers divided their shares under a unregistered partition deed. Thiru.Duraisamy Naidu became the absolute owner of the properties allotted to his share. Thiru.Duraisamy Naidu has hold some properties and celebrate the marriages of the plaintiffs in a grand manner and presented stridhanas. So he executed a Settlement Deed infavour of his son the remaining properties. Exparte Decree in O.S.425/2007 is passed without disclosing the death of Thiru.Duraisamy Naidu. Decree is not valid. The plaintiffs never in joint possession of the property. The suit for partition is not maintainable and liable to be dismissed.

4. The following issues are framed for trial:

(1) Whether the Plaintiffs father V.Duraisamy Naidu has no right to execute a Settlement Deed dated 14.11.2005 in favour of the second

defendant?

(2) Whether the said V.Duraisamy Naidu was the absolute owner of the suit property?

(3) Whether the suit property is the ancestral property of Plaintiffs?

(4) Whether the Plaintiffs are entitled to get 18/25th share in the suit property?

(5) Whether the second defendant is liable to render accounts in respect of the suit property from April 2010 onwards?

(7) To what relief the plaintiffs entitled to?

5. In order to prove the claim of the Plaintiffs, one witness was examined as P.W.1, 7 documents were marked as Ex.A1 to Ex.A7. On the side of the defendant, one witness was examined as D.W.1 and 6 documents were marked as Ex.B1 to B6.

6. Issue Nos. 1 to 3:

The relationship between the parties is not in dispute. The plaintiffs are the daughters. The second defendant is the son of Thiru.Duraisamy Naidu. The wife of Thiru.Duraisamy Naidu the first defendant is no more. She died intestate and Thiru.Duraisamy Naidu also died intestate. Thus the plaintiffs 1 to 3 and the second defendant are the Clause I her of Thiru.Duraisamy Naidu. That fact is not at all disputed.

7. Admittedly, Thiru.Duraisamy Naidu during his life time executed a Settlement Deed on 14.11.2005 in respect of the suit properties in favour of the second defendant as evidenced by Ex.A1 and Ex.B6. The point raised by the plaintiffs is that the properties are the

ancestral properties and Thiru.Duraisamy Naidu had no right to execute Settlement Deed in favour of the second defendant. On the other hand it has been alleged that the properties are the absolute properties of Thiru.Duraisamy Naidu, he had every right to settle the property in favour of the second defendant.

8. With reference to the nature of the property the plaintiffs specifically pleaded that Thiru.Duraisamy Naidu got the properties from his father Thiru.Venkatachala Naidu. No document has been filed to show that Thiru.Venkatachala Naidu had some properties. On the other hand Ex.B1 has been filed by the defendants to show that some of the properties were purchased by Thiru.Adhikesava Naidu the brother of the Duraisamy Naidu. In the written statement itself the second defendant admits partition by means of Koor Chit between Duraisamy and his brother. Prima facie it would go to show the existence of the joint family properties. In Ex.A1 Settlement Deed Thiru.Duraisamy Naidu described about the title over the property as follows:

"...உள்ள சொத்தானது என்னுடைய தகப்பனார் வெங்கடாசல நாயுடு அவர்களுக்கு பூர்வீகமாக கிடைக்கப் பெற்று அவர் ஆண்டு அனுபவித்து வந்து பிறகு அவர் காலஞ்சென்றதும் அவருடைய வாரிசுதாரராகிய எனக்கும் என்னுடைய சகோதரருக்கும் கிடைக்கப் பெற்றதில்...."

In Ex.A7 another document viz Sale Deed, executed by the Plaintiffs as well as the defendants along with Duraisamy Naidu on 24.7.2006 in favour of Thiru.Hareesh Vasanji, with reference to the title of the property, it has been mentioned as if the vendors got title by a Koor chit dated 14.4.1967 between the vendor No.1, his brothers

Thiru.Adhikesavalu Naidu and Thiru.Damodhar Naidu. So under Ex.A1 and Ex.A7 the father of the plaintiffs categorically stated that the properties are ancestral in nature. That being the case, the burden is upon the defendants to prove that the properties are not the ancestral properties of Thiru.Duraisamy Naidu. The case of the plaintiffs is strengthened by the documentary evidence with reference to the nature of the property. Thus this Court finds that the properties are ancestral joint family properties.

9. When the properties are found to be joint family properties, Thiru.Duraisamy Naidu had no independent right to settle the property in favour of the second defendant and it can be ignored by the plaintiffs. As per the decision reported in 2013 (10) SCC page 211 the father had no independent right to settle the coparcenary right. Thus this Court finds that the properties are ancestral properties of the plaintiffs, Thiru.Duraisamy Naidu was not the absolute owner of the property and he had no right to execute the Settlement Deed in respect of the suit properties and thus these 3 issues are answered in favour of the plaintiffs.

10. Issue No.4:

The plaintiffs being the daughters claimed as if they are coparceners under the amended Act of 2005. It has been contended that the plaintiffs got married prior to 1989 and thus they are not coparceners and they are not entitled to seek share as coparcener the share claimed by them are not correct. In cross of DW1, the third plaintiff categorically admits that the marriage of herself was in the year 1985. The other two plaintiffs are her elders. So obviously, all the three

plaintiffs got married before 1989. But in this case the father Duraisamy Naidu died after the 2005 amendment. He has executed Settlement Deed infavour of the second defendant on 14.11.2005. He also executed sale deed infavour of the third party along with the plaintiffs under Ex.A7 on 24.7.2006. The Death Certificate Ex.A5 would go to show the date of death as 31.3.2010. It is not in dispute that the father died after commencement of the amended Act 2005. There is no evidence to show that prior to the amendment, there was some partition between Thiru.Duraisamy and his son the second defendant. Under such circumstances, the plaintiffs are co parceners as per the amended act. The learned Counsel for the defendants invites this Court's attention to the decisions reported in 2014 (3) CTC 688, 2010(5) CTC page 51. On close scrutiny of the said decisions, the said decisions are relating to the cases arose before the Central amendment and after the Tamil Nadu State amendment where it has been held as to became a Coparcener by virtue of Tamil Nadu Amendment, daughter of a Coparcener should have remained unmarried on 25.3.1989 and her father should have been alive on the above said date. Here is the case, in which the father was alive till 2010 even after the Central amendment. The date of marriage is immaterial since the father is alive. As laid down by the Amended provisions, on the date of amendment there was no prior partition, father was alive on the date of amendment hence the daughters are also coparceners and they are entitled to the equal share along with the son. So, as on date the plaintiffs and the second defendant are the coparcenors and the legal heirs of deceased Duraisamy and accordingly they are entitled to 1/4 share in the suit

properties and thus this issue is answered.

11. Issue No.5:

This Issue has been framed in respect of rendering accounts. Admittedly, the suit properties are agricultural properties. The plaintiffs are at liberty to file application for mesne profits enquiry in the Final Decree proceedings. Accordingly this issue is answered.

12. Issue No.6

In view of the discussions to the issue No.1 to 5 by this Court, the plaintiffs are entitled to the relief of partition of 3/4th share in the suit properties.

13. In the result Preliminary Decree for Partition is passed for the plaintiffs 3/4 share in the suit properties. The plaintiffs are at liberty to invoke Order 26 Rule 9 C.P.C for mesne profits. There is no order as to costs.

Dictated to the Stenographer, taken down, typed by him, corrected and pronounced by me in the open Court, this the 1st day of December 2016.

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Sd/-R.Selvakumar
Principal District Judge,
Chengalpattu.

Plaintiff's. side Exhibits :-

Ex. A1/14.11.2005 Certified Xerox copy of the Settlement Deed executed by Thiru.V.Duraisamy Naidu infavour of Thiru. D.Ravi

Ex.A2/18.08.2007 Legal Notice sent by Tmt.S.Padmavathi, S.Radha and K.Vijaya to Tvl.V.Duraisamy Naidu and D.Ravi.

- Ex.A3/08.12.2010 Xerox copy of the Judgement passed in O.S.No.425/2007 by the District Munsif of Chengalpattu.
- Ex.A4/ .. Xerox copy of the Decree passed in O.S.No.425/2007 by the District Munsif of Chengalpattu.
- Ex.A5/ 30.04.2010 Xerox Copy of the Death Certificate of Thiru.Duraisamy Naidu
- Ex.A6/ .. Xerox copy of the Legalheirship Certificate of Thiru.Duraisamy Naidu
- Ex.A7/24.7.2006 Certified xerox copy of the Sale Deed executed by Thiru.Duraisamy Naidu, Tmt.Saroja, Thiru.D.Ravi, Tmt.Padmavathi, Tmt. Radha, Tmt.K.Vijaya infavour of Thiru.Rajagopalan Power of Attorney Agent of Thiru.Hareesh Vasanthi.

Defendants side Exhibits:

- Ex.B1/30.10.1956 Sale Deed executed by Thiru.Duraisamy Naidu, Thiru.Govindarajalu Naidu, Minors Chitti and Minor Logan (represented by their father Govindarajalu Naidu) infavour of Thiru.Adhikesava Naidu.
- Ex.B2 series Xerox copy of the 'A' register of Polachery village and other connected papers.
- Ex.B3/ .. True copy of Adangal extract.
- Ex.B4/ .. Patta. .
- Ex.B5/ .. Patta.

Ex.B6/19.11.2005 Settlement Deed executed by Thiru.V.Duraisamy
Naidu infavour of Thiru.D.Ravi.

Plaintiffs side Witness:-

P.W.1/ Tmt.K.Vijaya.

Defendants side witnesses:

D.W.1/ Thiru.D.Ravi.

Sd/R.Selvakumar
Principal District Judge,
Chengalpattu.

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Fair Judgment

O.S.67/2013

Date: 1.12.2016

Principal District Court,
Chengalpattu.