

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

Present : **Tmt.J.Mavis Deepika Sundaravadhana, M.A.,M.L.,**
Principal District Judge, Chengalpattu.

Wednesday the 25th day of January 2023

Original Suit No.305/2019

1. Riazuddin Ahmed

2. Fiazuddin Ahmed

. . . Plaintiffs.

/Vs/

1. Shamima

2. Mohamed Sadique

3. Ziauddin Ahmedhera Jabeen

4. Munira Mateen

. . . Defendants.

This suit came up before me in this court for final hearing on 16.12.2022, in the presence of Tvl.V.Muthuraman and S.Pushpalatha, Advocates for the plaintiffs, the 1st defendant set exparte after paper publication, the defendants 2 to 4 set exparte after service of summons, upon perusing the entire records and having stood over for consideration till this day, this court delivers the following,

JUDGMENT

This is a suit filed by the plaintiffs for preliminary decree for partition by appointing an Advocate Commissioner to divide the suit schedule property into 8 equal shares by all metes and bounds and allot 3/8th share to

the plaintiffs together with separate possession to the plaintiffs and for costs of the suit.

2. The case of the plaintiffs in brief :

Originally the schedule mentioned property situated in Kancheepuram District, presently in Sholinganallur Taluk, formerly Saidapet Taluk and then Tambaram Taluk in Palavakkam Village, within the limits of Corporation of Chennai in Bharathi Nagar, 2nd Street, bearing D.No.17/8 comprised in R.S.No.79 part, measuring an extent of 880 sq.ft. The schedule mentioned property originally belongs to one G.S.Ganapathy who sold the same to one Ziauddin Ahmed S/o. Late.Riazuddin Ahmed, for valuable considerations by virtue of registered sale deed dated 8.5.1998 vide document No.925/1998. Ever since the date of purchase the said Ziauddin Ahmed was in absolute possession and enjoyment and also constructed a residential building in the schedule mentioned property and the then local panchayat also assessed property tax in his name for the schedule mentioned property. The said Ziauddin Ahmed died intestate and issue-less on 23.10.2011. The parents of the said Ziauddin Ahmed had predeceased him. He has got one sister namely Razia Begum who is the mother of defendants 2 to 4 and had one brother namely Azizuddin Ahmed, who died intestate on 12.1.2009 leaving behind the plaintiffs and defendants as his legal heirs to succeed his estates. The plaintiffs and the defendants belongs to Sunni Muslim and as per

the Mohammeden law of inheritance if a Sunni Muslim male dies intestate and without children, the wife of the deceased person is entitled to $\frac{2}{8}$ share of his estate. Since the plaintiffs' father namely Azizuddin Ahmed who is the brother of the deceased Ziauddin Ahmed had predeceased him, the plaintiffs are entitled to the category of residuary under the said Mohammeden Law of Inheritance. The sister namely Razia Begum who was entitled to 50% share out of the remaining $\frac{6}{8}$ th of the property subsequently died on 17.3.2018 leaving behind the defendants 2 to 4 to succeed her estates i.e., $\frac{3}{8}$ th of the schedule mentioned property. The plaintiffs together are entitled for the remaining $\frac{3}{8}$ th share jointly in the capacity of residuary under the Mohammed Law of Inheritance. While the facts remain so, due to some confrontations with the plaintiffs and the defendants' family, they could not amicably partition their property and therefore the said Razia Begum filed a suit for partition in OS No.190/2014 before the District Judge at Chengalpattu in respect of schedule mentioned property and prayed to pass preliminary decree for partition and to divide the schedule mentioned property into 8 equal shares and allot 4 such shares to her and the plaintiffs also arrayed as 2nd and 3rd defendants in the suit. The plaintiffs have also engaged counsel and intended to contest the same. While so, the said Razia Begum not persuaded the above said case and wantonly deliberately left the matter for dismiss for default the Hon'ble District Judge at Chengalpattu

dismissed the suit on 28.2.2017 for default. Subsequently Razia Begum died intestate on 17.3.2018 and her legal heirs who are the defendants 2 to 4 have failed to implead themselves as parties in the proceedings of OS No.190/2014 even after dismissal. Therefore the present plaintiffs were unable to contest the case to finalize the issue of partition but vain. In the above said circumstances except no other option the plaintiffs were forced to file the present suit for partition. Hence, the suit.

3. Though paper publication was effected, the 1st defendant did not appear before this court and hence, set aside. Likewise, though service was held sufficient for the defendants 2 to 4 they did not appear before this court and hence, set aside.

4. On the side of the plaintiffs, the 2nd plaintiff has examined himself as PW1. Ex.A1 to Ex.A8 were marked. All the defendants remained aside.

5. Finding in suit :

This suit is filed for preliminary decree of partition to divide the suit properties by metes and bounds and allot 3/8th shares to the plaintiffs. According to the plaintiffs, the suit property originally belonged to G.S.Ganapathy who sold the same to Ziauddin Ahmed by a valid consideration by a registered sale deed dated 8.5.1998. It is further stated according to him he is in possession and enjoyment and thereby he constructed a building

which is assessed for property tax. The said Ziauddin Ahmed died intestate on 23.10.2011. The parents also predeceased the said Ziauddin Ahmed. The said Ziauddin Ahmed got one sister by name Razia Begum and one brother Azizuddin Ahmed who died intestate on 12.01.2009. The plaintiff further states the wife of the deceased entitled to 2/8th share. The Late.Razia Begum who is the sister of Ziauddin Ahmed also now expired on 17.3.2018 leaving behind the defendants 2 to 4 who is entitled 3/8th share in the suit property. Therefore, it is stated the plaintiffs together entitled for 3/8th share in the property. It is further stated due to some contraversies between the families they are not able to amicably partition the property. In the meantime the said Raziya Begum filed a suit for partition in OS 190/2014 and prayed for preliminary decree of partition to divide the schedule mentioned properties into 8 equal shares and allot 4 shares to the plaintiffs in which they are arrayed as 2nd and 3rd defendants. It is further stated she allowed the suit to be dismissed for default deliberately and she died subsequently on 17.3.2018 and failed to implead the defendants 2 to 4 herein. It is stated the legal heirs of Raziya Begum did not choose to take steps to restore the suit. Therefore, the plaintiffs herein state they are unable to finalize the issue and forced to file the suit for partition.

6. When summons was sent to the defendants from court the defendants 2 to 4 remained absent therefore they were set exparte on

7.12.2019. Thereafter summons ordered for 1st defendant through post and privately which was returned unserved. Therefore publication was effected and the 1st defendant was set exparte.

7. Thereafter the 2nd plaintiff was examined as PW1. He marked the sale deed as Ex.A1, the death certificate and the legal heir certificates are marked as Ex.A2 and Ex.A3 respectively and the document under Ex.A4 is death certificate of Ziauddin Ahmed. The document under Ex.A5 is the death certificate of Razia Begum. The document under Ex.A7 is the judgment in O.S.No.190/2014. Since there is no contest the evidence of the plaintiff has to be accepted and suit has to be decreed. Therefore preliminary decree of partition is passed to divide the property into 8 equal shares and allot 3 such shares to the plaintiffs.

8. As the result, Preliminary decree of partition is passed to divide the property into 8 equal shares and allot 3 such shares to the plaintiffs. No costs.

Dictated by me to the steno-typist, computerized by her directly, corrected and pronounced by me in open court, on this the 25th day of January 2023.

Principal District Judge,
Chengalpattu.

Plaintiffs' side witness :

PW1 Thiru.Fiazuddin Ahmed (2nd plaintiff).

Plaintiffs' side exhibits :

Ex.A1	08.05.1998	Certified copy of sale deed executed by G.S.Ganapathy in favour of Ziauddin Ahmed Sahib.
Ex.A2	27.01.2009	Death Certificate of Azizuddin Ahmed.
Ex.A3	02.04.2009	Legalheir certificate of Azizuddin Ahmed.
Ex.A4	11.11.2013	e-copy of death certificate of Ziauddin Ahmed.
Ex.A5	14.12.2022	e-copy of death certificate of Razia Begum.
Ex.A6	---	Copy of plaint in OS 190/2014.
Ex.A7	28.02.2017	Certified copy of decree in OS 190/2014.
Ex.A8	28.02.2017	Certified copy of judgment in OS 190/2014.

Defendants' side witness and exhibits :

Nil.

Principal District Judge,
Chengalpattu.