

IN THE COURT OF THE SUBORDINATE JUDGE, AT MADURANTAKAM.

**Present: Thiru.N.S.Srivathsan,M.L.,
Subordinate Judge,
Maduranthakam
Wednesday, the 18th day of July 2018
O.S.No.23/2015**

Manjumatha

...Plaintiff...

/Vs/

1.Kannammal,

2.Kanniappan,

3.Sulochana

4. T.Mohan,

5.T.Ravichandran

6.T.Balaraman

7.T.Rukamani

8.T.Kumar,

9.T.Jayaraman,

10. Varadhan

11.Bhavani

12.Sathiya

13.Kumar,

14.Bhuvana,

15.Kannayiram

16.Chinnaponnu

17.K.Pandian

...Defendants...

This suit coming before this court for final hearing on 18.06.2018 in the presence of Thiru.S.Subramanian, Counsel for Plaintiff and Defendants being set exparte, having heard the arguments submitted on behalf of Plaintiff and having perused the case records and having stood over the same till date, this court delivers the following

JUDGMENT

The Plaintiff has filed above suit against the defendants praying to pass a preliminary decree for partition by dividing the suit properties A & B schedule of property into 8 equal shares and allotment one such share to plaintiff by metes and bounds and for separate possession and directing the defendants to pay Rs.45,000/- to plaintiff towards past profits and directing the defendants to pay future profits from the date of plaint till the date of delivery and to pay cost of the suit.

1.The brief facts of the Plaint are as follows;

' A' Schedule mentioned properties are the absolute properties of Sadasivam and 'B' schedule mentioned property is the absolute property of Sakunthala, W/o.Sadasivam. They are in possession and enjoyment of their respective properties till their life time as absolute owners. Both of them died intestate leaving two sons Kanniappan and Radhakrishnan, two daughters Saradhammal and Sulochana. Hence, each is entitled to 1/4th share. Saradhammal died intestate leaving defendants 4 to 9 as legal heirs. Radhakrishnan one of the son died leaving his wife Kannammal (2nd defendant) and Plaintiff as legal heirs. Radhakrishnan's 1/4th share devolved on his

widow Kannammal and Plaintiff Manjumatha. Hence, the Plaintiff is entitled to 1/8th share in 'A' and 'B' schedule mentioned properties. There is no partition till today and all are in joint possession and enjoyment. Now the defendants are utilizing the rental income without paying the plaintiff's share and now they are also attempting to alienate with a view to deny plaintiff's share. Hence, it is no longer possible to be in joint possession. Hence, the plaintiff demanded partition of her 1/8th share on 10.02.2015 and the defendants evaded. Hence, this suit is filed for partition of suit A & B schedule mentioned properties into 8 equal shares and allotment of one such share to the plaintiff by metes and bounds and for separate possession. The defendants are getting rental income from the defendants 10 to 7 (i.e) more than Rs.10,000/- per month. Hence, the defendants are liable to pay Rs.45,000/- towards past profits and the defendants are liable to pay future profits.

2. The point for consideration whether the Plaintiff is entitled to partition as prayed for in the suit?

The Plaintiff was examined as PW1. Exhibits A1 to A4 were marked on the side of the Plaintiff. Exhibit A1 is the copy of the computer patta infavour of Sadasivam Mudalaier. Exhibit A2 is the Sale deed dated 16.11.1959 in doc.No.4719/1959 in favour of the Sakunthalammal. Exhibit A3 is the Death Certificate. Exhibit A4 is the Legal heirs certificate.

The Ex.A1, which is the computer patta was issued in the name of Sadasivam Mudaliyar S/o.Velayutha Mudaliyar reveals that the A Schedule mentioned suit property was originally belonging to the Plaintiff's grandfather

Sadasivam Mudaliyar. As per Ex.A2, the Plaintiff's grand mother Sakunthala had purchased 'B' Schedule mentioned property from Bakkiyaammal under the sale deed dated 16.11.1959 registered as Doc.No.4719/1959. Ex.A3 is the Death Certificate of the Plaintiff's father. Ex.A4 is the Legal Heirs Certificate of the Plaintiff's father. As per the Legal heir Certificate the plaintiff is the daughter and one of the legal heir of her father namely Radhakrishnan. By marking Ex.A1 to A4 the plaintiff has proved her contention that she being one of the legal heirs of her father Radhakrishnan and grand father and mother namely Sadasivam Mudaliyar and Sakunthala are entitled to 1/8th share in the suit mentioned properties. The defendants remained exparte and they did not come forward to contest the case of the plaintiff. Therefore, this court comes to the conclusion that the Plaintiffs are entitled to the relief of preliminary decree as prayed for in the suit.

The plaintiff has claimed mesne profits of Rs.45,000/- and future mesne profits from the defendants. The plaintiff's claim is that the suit mentioned properties were originally belonging to her grand father and mother namely Sadasivam Mudaliyar and Sakunthala and after their death she is in joint possession and enjoyment of the same. Further, the Plaintiff has not marked any document with regard to the rent allegedly received by the defendants. The plaintiff has not given the particulars of the property which was let out and the person to whom the property was rented out. There are bare allegations with regard to the rent allegedly received by the defendants. The plaintiff herself has claimed that she is in joint possession and enjoyment of the suit mentioned properties, but she did not specifically state that

defendants were in actual possession of the suit mentioned property and receiving rent thereby. Mesne profits means the profit wrongfully received by the person in actual possession and as such, no question of payment of mesne profits will arise in this case and the plaintiff's claim for the same is liable to be dismissed.

In the result, suit is decreed in part with cost. Preliminary decree is passed in favour of the plaintiff for partition of the suit mentioned properties by dividing the suit properties A & B schedule property into 8 equal shares and allotment of one such share to the plaintiff by metes and bounds by way of appointment of Advocate Commissioner under Order 26 Rule 13 CPC and for separate possession. The Plaintiff's claim for a direction to the defendants to pay Rs.45,000/- to her towards past profits and her claim for future profits from the date of plaint till delivery are dismissed.

Dictated to steno-Typist transcribed and typed by her and corrected and pronounced by me in open Court this 18th day of JULY 2018.

Subordinate Judge,
Madurantakam.

List of Witness on the side of the Plaintiffs

PW1 – Tmt.Manjumatha

List of Documents on the side of the Plaintiffs

Ex.A1		The copy of the computer patta infavour of Sathasivam Mudalaiair.
Ex.A2	16.11.1959	The copy of Sale deed
Ex.A3	22.03.1996	The Original copy of Death Certificate
Ex.A4	26.03.2018	The Original copy of Legal Heir Certificate

List of Witness & Documents on the side of the Defendants

NIL

SJ/MKM

Fair/Draft Judgment

OS 23/2015

DD 03.07.2018

Subcourt/MKM

OS.No.23/2015
Judgment Pronounced
DATED: 18.07.2018

In the result, suit is decreed in part with cost. Preliminary decree is passed in favour of the plaintiff for partition of the suit mentioned properties by dividing the suit properties A & B schedule property into 8 equal shares and allotment of one such share to the plaintiff by metes and bounds by way of appointment of Advocate Commissioner under Order 26 Rule 13 CPC and for separate possession. The Plaintiff's claim for a direction to the defendants to pay Rs.45,000/- to her towards past profits and her claim for future profits from the date of plaint till delivery are dismissed.

S.J/MKM

IN THE COURT OF THE SUBORDINATE JUDGE, AT MADURANTAKAM.

**Present: Thiru.N.S.Srivathsan,M.L.,
Subordinate Judge,
Maduranthakam
Wednesday, the 18th day of July 2018
O.S.No.23/2015**

Manjumatha, aged 32, W/o.Jayaprakash, Hindu, residing at No.31, East Pillaiarkoil Street, Karunguzhi Post, Maduranthakam Taluk, Kancheepuram District.

. . .Plaintiff. . .

/Vs/

1. Kannammal, aged 62, W/o.Radhakrishnan, residing at No.30/24, C.N.Krishnan Street, Bharathy Nagar, Natham, Chengalpattu.
2. Kanniappan, aged 84, S/o.Sadasivam, Hindu, residing at No.19, Munirampandian Street, Old Washermenpet, Chennai.
3. Sulochana, aged 50, W/o.Kuppusamy, D/o.Sadasivam, Hindu, residing at No.31, East Pillaiarkoil Street, Karunguzhi post, Maduranthakam Taluk, Kancheepuram District.
4. T.Mohan, aged 58, S/o.Thiruvankadam, residing at No.22/30 Nethaji Nagar, a Street, Tondiarpet, Chennai.
5. T.Ravichandran, aged 40, S/o.Thiruvankadam, residing at No.31/20 RamaArangannai 2nd Street, Rayapuram, Chennai81.
6. T.Balaraman, aged 52, S/o.Thiruvankadam, residing at No.18, Manickaval Street, Rajaji Nagar, Thiruvathiyur, Chennai19.
7. T.Rukamani, aged 35, W/o.Kannan, D/o.Thiruvankadam, residing at Kamarajar

Street, M.G.R.Nagar, Agaramethem, Madambakkam, Chennai.

8. T.Kumar, aged 30, S/o.Thiruvankadam, residing at No.7/6 Durgadevi Nagar, Tondaiarpet, Chennai-81.
9. T.Jayaraman, aged 42, S/o.Thiruvankadam, residing at No.73/19, Thamilan Nagar, Main Street, Tondiarpet, Chennai-81.
10. Varadhan, aged 63, Son of not known to plaintiff.
11. Bhavani, aged 38, W/o.Babu
12. Sathiya,aged 32, W/o.Sekar
13. Kumar, aged 60, son of not known to plaintiff.
14. Bhuvana, aged 30, W/o.Ravi,
15. Kannayiram, aged 60, Son of not know to plaintiff
16. Chinnaponnu, aged 60, wife of not know to plaintiff
17. K.Pandian, aged 48, S/o.Kanniappan,No.10 to 17 residing at Munirampandian street, Old Washermenpet, Chennai.

. . .Defendants. . .

The Plaintiff has filed above suit against the defendants praying to pass a preliminary decree for partition by dividing the suit properties A & B schedule of property into 8 equal shares and allotment one such share to plaintiff by metes and bounds and for separate possession and directing the defendants to pay Rs.45,000/- to plaintiff towards past profits and directing the defendants to pay future profits from the date of plaint till the date of delivery and to pay cost of the suit.

This plaint was first presented on:25.02.2015

This suit coming before this court for final hearing on 18.06.2018 in the presence of Thiru.S.Subramanian, Counsel for Plaintiff and Defendants being set exparte, having heard the arguments submitted on behalf of Plaintiff and having perused the case records and having stood over the same till date, this court doth order and decree as follows,