

IN THE COURT OF II ADDITIONAL JUDGE,
CITY CIVIL COURT, CHENNAI

Present: **Tmt.J.Floro, M.L.,**
II Additional Judge,

Friday the 1st day of July 2022

O.S.No.2267/2019
C.N.R.TNCH01-011077-2019

Mrs.Metilda Gunamani

... Plaintiff

Vs.

1. Mr.W.Paul Windfred Moses

2. Ms.W.Bernice Dorcas

3. Ms.W.Sharon Junitha

(1 to 3 defendants are legal heirs of deceased Mrs.Elizabeth, daughter of Late Mr.K.C.Moses and Late Mrs.Glory Moses)

4. Mr.Wesley

5. Ms.Daisy Dorathy

... Defendants

This suit is coming on 21-06-2022 before me for final hearing in the presence of M/s.Praveen Alexander, D.Sasikumar and Sathish Kumar, counsel for plaintiff and of M/s.M.Durai Murugan, Y.Solomon and R.Divya Preathika, counsel for 5th defendant and the defendants 1 to 4 were called absent, set exparte and upon perusing the case records, written arguments filed by both sides and having stood over the matter for consideration till this day, this court delivered the following:

JUDGMENT

The suit has been filed under Order VII Rule 1 of CPC by the plaintiff seeking partition of the suit schedule property into four shares, allot 1/4th share to the plaintiff

and put her in possession of the same, to pass a final decree by appointing a Commissioner and dividing the suit property by metes and bounds in accordance with the preliminary decree, to declare that the Settlement Deed dated 15.07.1996 executed by the deceased plaintiff's mother Tmt.Glory Moses in favour of 5th defendant registered as Doc.No.2344 of 1996 as null and void, for the permanent injunction restraining the 5th defendant and anybody acting on behalf of her from in any manner dealing with the suit property and to award costs of the suit.

2). The brief averments made in the plaint read as follows:-

The plaintiff's father K.C.Moses had purchased the suit schedule property on 20.04.1963 measuring about 1213 sq.ft. from Mr.S.Jesudoss and 4 others by way of an unregistered sale deed dated 20.04.1963 and the plaintiff has been in absolute enjoyment of possession in the suit property along with the defendants. The plaintiff's father K.C.Moses died on 16.11.1976 leaving behind his wife Mrs.Glory Moses and his four children namely Elizabeth who is the mother of the defendants 1 to 3, the plaintiff, Wesley the 4th defendant and Daisy Dorathy the 5th defendant as his legal heirs and as such all of them have been dwelling in the schedule property for over the past 50 years. On 12.04.1993, the children of K.C.Moses are permitting the plaintiff's mother to apply for Patta in her name. The plaintiff and defendants are jointly in possession and enjoyment of the suit property till date. The mother of the plaintiff died on 20.02.1999, leaving behind the deceased Elizabeth, the plaintiff and the defendants 4 and 5 as her legal heirs to inherit the suit property, therefore each are entitled to 1/4th share by virtue of inheritance under the Indian Succession Act. The

said Elizabeth also died on 05.08.2014 leaving behind her three children the defendants 1 to 3 as her surviving legal heirs, hence they are entitled to inherit 1/4th share in the suit schedule property. The plaintiff approached the defendants to come forward to effect a partition of the suit property by metes and bounds, but the defendants have remained evasive and have been dragging the issue without coming forward to partition the suit property. The 5th defendant with the connivance of the other defendants are now attempting to mortgage/alienate the suit property to third parties to create lien over the property. The plaintiff had applied for the Encumbrance Certificate on 08.03.2019 and to her shock and surprise she found a fictitious Settlement Deed dated 14.07.1996 registered as Doc.No.2344/1996 as the plaintiff's mother Mrs.Glory Moses had settled the entire schedule property in favour of the 5th defendant. Even assuming for a moment without admitting that the said Settlement Deed is genuine, the said Mrs.Glory Moses has no legal right or title to bequeath the property to the 5th defendant since he is not the owner of the suit property. The plaintiff's mother wanted to settle her share in the suit property amongst her children besides as seen in the document the property tax for the suit property also stands jointly in the name of the plaintiff and her siblings and the plaintiff's mother until 2016. The plaintiff came to understand that the 5th defendant has taken another woman who had impersonated the plaintiff's mother before the Sub-Registrar Officer in getting the illegal fictitious Settlement Deed. The plaintiff issued legal notice on 11.03.2019 calling upon them to come forward to effect a partition of the schedule property and allot 1/4th share to the plaintiff and also to cancel the fictitious

Settlement Deed, the defendants received the same and sent an evasive reply. Hence the suit.

3). The brief averments made in the written statement filed by the 5th defendant read as follows:-

The defendant denied the averments contained in the plaint except those that are specifically admitted by her and the plaintiff is called upon to strictly prove the same. The suit is not maintainable either in law or on facts and the same is liable to be dismissed in limine. The plaintiff has not approached this court with clean hands and suppressed many material and vital facts with ulterior motives. The 5th defendant is the younger sister of the plaintiff. After the death of her father Mr.K.C.Moses, Mrs.Elizabeth, Wesley, the 4th defendant, Metilda Gunamani, the plaintiff got married and settled their life in different town along with their family. The plaintiff's husband was a Government Employee who worked in P.W.3 Department, due to transfers the plaintiff was residing in different towns along with her family since the year 1978. In fact the 5th defendant and her mother Mrs.Glory Moses were in enjoyment and occupation of the said suit premises, even after all others settled in different towns. The 5th defendant is unmarried living with her mother. The 5th defendant is living as a nun, dedicated herself in Christian religion and service for the poor, orphans, church planting etc., with the help of ACA Church, as her father did so. All these social and religious activities takes place in the said suit premises. After the death of her father, the installments of the suit property was regularly paid by her mother and after completion of entire installments, a sale deed was executed by the Perambur Harijan

Welfare Co-operative House Site Society Limited, bearing Registration No.X325 in favour of her mother Glory Moses and the same was registered as Doc.No.2041 of 1994, based on this Patta bearing No.840/94-95 was issued in favour of 5th defendant's mother's name. After the death of 5th defendant's mother Glory Moses in her capacity as the absolute owner of the said suit property, due to natural love and affection decided to settle the suit property to the 5th defendant herein. Thereafter the 5th defendant's mother settled the suit property in favour of 5th defendant by way of registered Settlement Deed vide Doc.No.2344/1996 dated 15.07.1996. Subsequently the 5th defendant applied patta for the said property and after following the procedure laid down in the Patta Pass Book Act, by the concerned Tahsildar issued Patta No.2390/1999-2000 dated 15.03.2000 in the name of 5th defendant. Encumbrance Certificate for the relevant period reflects the above transactions and none else. The plaintiff was never in possession of the said suit property either as an alleged co-sharer or otherwise. All the transactions made by the 5th defendant are genuine, bonafide and valid under the eyes of law. The plaintiff has comes forward to present false and frivolous allegation which cannot be acceptable one and the revenue documents the other original deeds are all in the nae of 5th defendant and the possession, enjoyment is also with the 5th defendant and she is having good title over the property of her own. After conducting a proper enquiry the concerned Tahsildar issued Patta in the name of 5th defendant's mother Mrs.Glory Moses and then in the name of 5th defendant respectively. These documents are having legal sanction as well as legal force. They are not to be declared as null and void. The plaintiff is liable to

prove the same. The suit is hit by the bar provided under Order II Rule 2 of Civil Procedure Code. No objections was raised by the plaintiff and other defendants while issuing the Patta to the 5th defendant. The cause of action for the suit is wrong and does not arise and hence, the plaint has to be dismissed. The 5th defendant alone is having the prescriptive right over the said suit property. Hence the suit is barred by limitation and prays to dismiss the suit with exemplary costs.

4. The defendants 1 to 4 did not evince interest in defending the suit and they were called absent and set exparte on 17-12-2020.

5. The following issues are framed for consideration:

1. Whether the suit is barred by limitation?
2. Whether the plaintiff is in joint possession of the suit schedule property?
3. Whether the plaintiff is entitled for declaration that Settlement Deed dated 15.07.1996 is null and void?
4. Whether the plaintiff is entitled for permanent injunction as prayed for?
5. Whether the plaintiff is entitled for preliminary decree of partition as prayed for?
6. To what other relief?

6). On the side of the plaintiff, she examined herself as P.W.1 and through her Ex.A1 to Ex.A19 have been marked and one Mrs.P.Kaziah Lucy examined as P.W.2 and on the side of the defendants, the 5th defendant examined herself as D.W.1 and Ex.B1 to B20 were marked.

7. Both the counsel for the plaintiff and the defendant submitted written arguments. Further the defendant's counsel placed reliance on the following decisions in support of his contentions:-

- (i) The Judgment of Hon'ble High Court of Patna, dated 30.08.1960 in Brahmanath Singh And Ors. Vs.Chandrakali Kuer And Anr.
- (ii) The Judgment of Hon'ble High Court of Delhi, dated 01.12.2014 in CM(M) No.476 of 2013 And CM.Nos.7181 of 2013 & 7182 of 2013, Hardeep Singh Vs. Baldev Singh & Ors.
- (iii) The Judgment of Hon'ble High Court of Madras, dated 21.08.2017 in C.R.PPD No.3686 of 2016 and C.M.P.No.18699 of 2016, S.N.Balapattabi Vs. Mrs.Balanagalakshmi.
- (iv) The Judgment of Hon'ble High Court of Madras, dated 12.02.2019 in S.A.No.392 of 2007, Florence Lobbs Vs. Paul Fernandes

8. Issue Nos.2, 3, 4 and 5:

These issues are taken up together for consideration to avoid repetition of facts, evidence and convenience.

9. Both plaintiff and 5th defendant in their pleadings and evidence admit the follows facts:

- (i) That the parties to the suit belong to Christian Religion.
- (ii) That K.C.Moses is the father of the plaintiff, 4th and 5th defendant and great grand father of defendants 1 to 3.

- (iii) That K.C.Moses and his wife Glory Moses had three daughters and one son namely Elizabeth, Metilda Gunamani (the plaintiff), Wesley (4th defendant) and Daisy Dorathy (5th defendant).
- (iv) That K.C.Moses died on 16.11.1976.
- (v) That the defendants 1 to 3 are the children of Elizabeth.

10. P.W.1 in her evidence had stated that the suit property was purchased by her father on 20.04.1963 as per Ex.A1, that he died on 16.11.1976 leaving behind his wife Glory Moses, four children and that Glory Moses died on 12.04.1992 vide Ex.A3 the Death Certificate and that all the above said legal heirs of K.C.Moses were dwelling in suit schedule property for the past 50 years that after the death of K.C.Moses being co-owners the said Elizabeth, Metilda Gunamani, Wesley and Daisy Dorathy had signed an affidavit on 12.04.1993 under Ex.A2 stating that they were permitting their mother Glory Moses to apply for Patta in her name and that they do not have objection in any manner for the same. It is pertinent to note that all the four legal heirs of K.C.Moses including the 5th defendant has stated in Ex.A2 that the suit property is still in the name of their late father and therefore had permitted their mother Glory Moses to apply for Patta and that they do not have objection in any manner for the same. According to the plaintiff, after the death of her mother the suit property devolved between the plaintiff, Elizabeth, Wesley and Dairy Dorathy who became co-share holders to the suit property and each entitled to 1/4th share by virtue of inheritance under the Indian Succession Act.

11. On the other hand the 5th defendant claims that after the death of their father K.C.Moses, Elizabeth, the plaintiff and the 4th defendant got married and settled their life in different towns along with their families that she is unmarried and that she and her mother Glory Moses were alone in enjoyment and occupation of the said suit schedule property that after the death of K.C.Moses the suit property installments were regularly paid by Glory Moses the mother and after the completion of the entire installments a registered Sale Deed in Doc.No.2041 of 1999 before the SRO, Purasaiwakkam, Chennai was executed by the Perambur Harijan Welfare Co-operative Housing Site Society Limited on 22.07.1994 as per Ex.B2 that Patta was issued in favour of Glory Moses, thereafter Glory Moses had settled the suit property in favour of the 5th defendant dated 15.07.1996 under Ex.B5 Settlement Deed and subsequently Patta was also issued in her favour and that she is paying the property tax, current consumption charges, water and sewerage charges under Exs.B8 to B12.

12. Regarding the claim of the 5th defendant that the plaintiff did not reside in the suit property, Ex.A10 implicates that in the legal notice issued on behalf of the plaintiff to the defendants and her reply that the plaintiff was in possession of the suit property when she had issued the legal notice and the same has been admitted by the 5th defendant in her cross examination.

13. The main dispute between the parties is that plaintiff claims that the 5th defendant had fabricated certain bogus documents to substantiate her illegal claim over the suit schedule property, that she had executed a fictitious Settlement Deed

dated 15.07.1996 vide Ex.B6 that only when she applied for the Encumbrance Certificate, before the Sub-Registrar office at Purasaiwakkam, she came to know about the same. The Encumbrance Certificate is marked as Ex.A8 dated 08.03.2019.

14. A perusal of the Proof affidavit of the 5th defendant reveals that she has stated that the suit property originally belong to Thiru.Jesudoss and 4 others and that the same was purchased in the way of monthly installment basis by K.C.Moses. However the 5th defendant during the course of cross examination admitted the fact that her father purchased the suit property that there was a superstructure, again she deposed that it is a vacant land again she stated that her father died in the suit property. In fact she admitted the contents of Ex.A2 the Joint Affidavit by the plaintiff and the defendants that she has signed in Ex.A2. The contents in Ex.A2 reads as follows:

" We state that our father K.C.Moses died in the year 1976 leaving the House Property at No.6, Adhishesha Nagar Main Street, Perambur, Madras – 600 012. After the death of our father we became the legal heirs of our late father along with our mother Mrs.Glory Moses.

We further state that the said house property still stands in the name of our late father and we therefore permit our mother Mrs.Glory Moses to apply for patta and obtain the same and all other incidental works thereto with respect to the above property and we have no objection in any manner for the same."

15. As a matter of fact, the 5th defendant had admitted that Patta is not a legal document and only a Revenue document, thereafter stated that the Patta is a legal

document. At this stage, it is stated by the learned counsel for the plaintiff that while recording evidence, only when her counsel prompted her she stated that the Patta is a legal document. Further during cross examination she admitted that her father had neither mortgaged the suit property nor wrote a Will and when she was questioned with regard to the law of inheritance of Christians she replied that when the husband dies the entire property devolves upon the wife as per Christian law. At this juncture it is to be noted that the 5th defendant who is said to be a nun dedicated herself in Christian Religion serving the poor and orphans did not agree and accept that as per Indian Succession Act, the wife and children are entitled to their respective shares though she was aware of the same. During further cross examination D.W.1 had admitted that she is not in possession of the title documents. Whereas in her proof affidavit she had deposed that the documents went missing and she had obtained the Non-Traceable Certificate from the police. The above said circumstances are suspicious circumstances and the 5th defendant had failed to give proper explanation or evidence to overcome the said suspicious circumstance. Thus the demeanor of the witness proves that she is a false witness and hence her evidence lacks confidence.

16. The specific contention of the 5th defendant is that her mother Mrs. Glory Moses in her capacity as the absolute owner of the suit property had settled the suit property in favour of the 5th defendant. The mother of the plaintiff and the 5th defendant has no absolute right to execute the Settlement Deed in respect of the suit schedule property as per Ex.B5 in favour of the 5th defendant and the said Settlement Deed is not binding on the plaintiff. It is pertinent to note that the 5th defendant has

failed to prove the execution of the Settlement Deed as per law. Therefore the 5th defendant has not acquired absolute title over the suit schedule property, consequently the Settlement Deed said to be executed by Glory Moses do not convey absolute title in respect of the suit schedule property in favour of the 5th defendant. Therefore the said Settlement Deed dated 15.07.1996 is null and void and not binding on the share of the plaintiff. Further more the citations relied upon by the learned counsel for the defendant are not applicable to the facts and circumstances of the present case.

17. D.W.1 during her further cross examination admitted that Ex.A19 is the legal heirship certificate of late K.C.Moses and that the same was obtained for the purpose of transfer of property, hence it is quiet clear that the suit schedule property is originally belonged to her father and after his demise, the plaintiff and defendants are entitled to a share in the suit property.

18. The plaintiff being the legal heir of the deceased K.C.Moses is entitled to 1/4th share in the suit schedule property. In the light of the above discussion, I answer issues Nos.2, 3, 4 and 5 in the affirmative.

19. Issue No.1 :-

The 5th defendant in her written statement contended that the suit of the plaintiff is barred by time. It is a settled principle of law that in a suit for partition, it is a recurring cause of action and the suit can be filed at any point of time till the partition is effected. Therefore I am of the opinion that the suit is well within time. Hence, I answered the above issue in the negative.

20. Issue No.6:

In view of my above discussions, the plaintiff is entitled to get 1/4th share in the suit schedule property, the defendants 1 to 3 being the legal heirs of the deceased Elizabeth are jointly entitled to 1 share in the suit property and the defendants 4 & 5 are each entitled to get 1/4th share in the suit schedule property. However the defendants 1 to 4 remained exparte. As stated above, it is hereby declared that the Settlement Deed dated 15.07.1996 registered as Doc.No.2344 of 1996 in the office of the Sub-Registrar in favour of the 5th defendant is null and void and the plaintiff is also entitled to the relief of permanent injunction as prayed for.

In the result, the suit is decreed, a preliminary of partition is passed and the plaintiff is entitled to get 1/4th share in the suit schedule property and it is also hereby declared that the Settlement Deed dated 15.07.1996 registered as Doc.No.2344 of 1996 in the office of the Sub-Registrar in favour of the 5th defendant is null and void and the plaintiff is also entitled to the relief of permanent injunction as prayed for. The plaintiff is at liberty to approach the court for passing of final decree and possession. Having regard to the relationship between the parties, there is no order as to costs.

Directly dictated to the Stenographer, typed by her in the computer, corrected and pronounced by me in open court on this 1st day of July 2022.

II Additional Judge,
City Civil Court, Chennai.

Plaintiffs' side witnesses:-

PW1: Tmt.Metilda Gunamani

PW2: Tmt.P.Kaziah Lucy

Plaintiffs' side exhibits:-

<u>Sl.No.</u>	<u>Date</u>	<u>Particulars</u>
ExA1:	20.04.1963	Sale Deed in favour of plaintiff's father (original)
ExA2:	12.04.1993	Joint Affidavit by plaintiff and defendants (original)
ExA3:	04.05.1999	Death Certificate of Mrs.Glory (Photocopy)
ExA4:	---	Property Tax receipts (originals)
ExA5:	14.09.2010	Electricity Charge receipt (original) and consumption card (Photocopy)
ExA6:	----	Postal cover sent to the plaintiff (original)
ExA7:	30.03.2019	Marriage Certificate of the plaintiff (Photocopy)
ExA8:	08.03.2019	Encumbrance Certificate (Computer Generated copy)
ExA9:	15.07.1996	Settlement Deed in favour of 5 th defendant (Certified copy)
ExA10:	11.03.2019	Legal Notice sent by the plaintiff to the defendants (Photocopy)
ExA11:	----	Acknowledgement Cards (5 nos.) (originals)
ExA12:	20.03.2019	Reply notice from the defendants 1 to 3 (original)
ExA13:	20.03.2019	Reply notice from the defendants 4 and 5 (original)
ExA14:	15.08.2021	Death Certificate of plaintiff's father (computer generated copy)
ExA15:	16.08.2021	Birth Certificate of J.Jacinthclavdia (computer generated copy)
ExA16:	16.08.2021	Birth Certificate of Joshua (computer generated copy)

- ExA17: 16.08.2021 Birth Certificate of Jasper Chimham (computer generated copy)
- ExA18: 21.12.2015 Demand Notice from Chennai Metropolitan Water supply and Sewerage Board (Photocopy)
- ExA19: 07.05.1991 Legal heirship Certificate of late K.C.Moses (Photocopy)

Defendants' side witnesses:

DW1: Ms.Daisy Dorthy

Defendants' side Exhibits:

- Ex.B1: 05.05.1991 Notice-3 from Perambur Harijan Welfare Co-operative House Site Society Limited (original)
- Ex.B2: 22.07.1994 Sale Deed in favour of Glory Moses (Certified copy)
- Ex.B3: 11.11.1994 Permanent Land Register in the name of Glory Moses (original)
- Ex.B4: 15.07.1996 Property/building value receipt (original)
- Ex.B5: 15.07.1996 Settlement Deed in favour of 5th defendant (Certified copy)
- Ex.B6: 25.05.2005 Registration Charges bill
- Ex.B7: 30.04.2019 Extract from the Permanent Land Register (Photocopy)
- Ex.B8: 28.08.2019 Property Tax Receipt (Computer generated copy)
- Ex.B9: --- Current consumption charges receipts (2 nos.) (originals)
- Ex.B10: 06.10.2021 LPG Gas receipt
- Ex.B11: --- Property Tax demand card (photocopy) and tax receipts (original)
- Ex.B12: --- Chennai Metropolitan Water Supply and Sewerage Board Card
- Ex.B13: 02.03.2019 Paper Publication regarding misplaced of original Sale deed (Photocopy)
- Ex.B14: 02.03.2019 Paper Publication regarding misplaced of original Sale deed (Photocopy)

- Ex.B15: 12.04.2019 Certificate issued by the Inspector of Police, Otteri
(original)
- Ex.B16: 29.01.2021 CSR Report
- Ex.B17: --- Aadhaar Card of the 5th defendant (Photocopy)
- Ex.B18: 04.03.2005 Deed of Declaration of Trust (original)
- Ex.B19: 31.03.2006 Proceedings of the Director of Income Tax regarding Tax
exemption (original)
- Ex.B20: --- Family Card of the 5th defendant (Photocopy)

II Additional Judge,
City Civil Court, Chennai.

Draft/Fair : Judgment

O.S.No.2267/2019

Dated: 01-07-2022

II Additional City
Civil Court, Chennai.