

IN THE COURT OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,  
DHARMAPURI.

Present: Tmt.U.Monica,M.L.,  
Additional District Judge,  
Dharmapuri.

Wednesday, this the 3<sup>rd</sup> day of January 2024.

**I.A.No.3/2023**  
**in**  
**O.S.No.198/2022**  
**(CNR No.TNDP010014952022)**

Jayalakshmi

...Petitioner/plaintiff

/versus/

1. Palaniammal
2. Kamatchi
3. P.Madhaiyan
4. P.Kumar

...Respondents/defendants

This petition is coming on 14.12.2023 for final hearing before me in the presence of Thiru.N.Radha, Advocate the petitioner and Thiru.C.Gandhi, Advocate for the respondents and upon hearing the arguments of both side and on perusal of the entire case records and having stood over till this day, this court pronounced the following:

**ORDER**

This is a petition filed under Order-40, Rule-1 of CPC to appoint the receiver to collect the monthly income from the schedule mentioned property and remit the same to the credit in O.S. No. 198 of 2023, pending disposal of suit .

**2. The case of the petitioner in brief is as follows:**

The petitioner and respondents are daughters and sons of late.Pachiappa chettiar

and late.Kannammal. The father held house properties, agricultural lands and commercial properties and the mother held 50 sovereigns of gold jewels. The father Pachiappa Chettiar acquired properties out of his self earnings as well as through family partition which took place between his brothers by way of Partition deed dated:15.2.1977. During the life time of the father, some of the joint family properties were partitioned in which the father and petitioner were allotted properties. Several properties were left out and subsequently the father also acquired few lands out of his self acquired funds. The father died intestate on 7.5.2019 and mother Kannammal also died intestate on 27.4.2021.The respondents 2 to 4 are residing in the house where father and mother last resided. The respondents have demolished the house without any prior intimation and planning to reconstruct without obtaining permission from the petitioner. The demolition of ancestral house without concurrence of petitioner created suspicion that the respondents are planning to take the entire house properties without giving any share to the petitioner. The petitioner is residing in Chennai. The third respondent married first respondent's daughter and fourth respondent got married second respondent's daughter. Hence the respondents have joined together. The petitioner is in joint possession of the suit properties. The respondents are enjoying the rent, income and revenue arising out of the property without giving any share to the petitioner after the death of father. In spite of legal notice dated:18.1.2022, the respondents did not come forward to partition the properties and issued reply notice dated:2.2.2022 containing false allegations. The

respondents are squatting on suit properties with an ulterior motive to deprive petitioner's share. The respondents are enjoying the rents, income and revenue arising out of the properties left by my father, respondents had not given any share to me in the above income derived from such properties after the death of father from the year 2019. The income from the properties is given below:

- i). KPM Thriumana Mandapam Monthly income : Rs.1,50,000/-
- ii). Press income Monthly : Rs. 2,00,000/-
- iii), Income from 10 shops Near KPM Mandapam  
Monthly : Rs. 30,000/-
- iv). Income from 3 shops in Semmanahalli Road  
Monthly : Rs. 15,000/-
- v). Agriculture Land yearly (Approx) : Rs. 2,00,000/-

It is further submit that the respondents is receiving total monthly income from the property approximately an amount of Rs. 5,00,000/- but respondents never given any share and they have not maintain any account properly. Hence it is necessary to appoint a receiver to take over custody of property any maintain proper accounts as an agent of the court and administers it to the best interests of all concerned. From above narration it is amply clear that prima facie and balance of convenience is squarely in her favour, The court be pleased to pass an order to appoint the receiver to collect the monthly income from the schedule mentioned property and remit same to the credit in O.S. No. 198 of 2023, pending disposal of suit .

**3. The counter filed by the respondents in brief is as follows:**

i) At the time of the marriage of plaintiff in the year 1986, she was given 50 sovereigns of gold jewels and silver vessels etc. She was also given several lakhs of rupees for her family requirements and construction of her house in Villivakkam. The father sold a portion of the property which was allotted to his share in the partition deed, and had given each Rs.5 Lakhs to all his three daughters to provide them a sound financial assistance. They were looking after their parents and that is why at the instance of their father and as per the advice of their paternal uncle M.Latchuman chettiar a family oral partition and arrangement took place in the month of January 2019. In the above said oral partition and family arrangement M.Latchuman chettiar, K.Agilan, P.Govindan, plaintiff, this defendant and their two other sisters were also present and wherein defendants were allotted the properties of their father and other properties which were not mentioned in the partition deed.

ii) As per the family arrangement, this defendant and his brother alone are the absolute owner of the properties of their father and other properties which are not mentioned in the partition deed. Except this defendant none else have got any manner of right, title, interest or possession over the properties stated above and that is why plaintiff did not seek for any such partition soon after the death of their parents and also she never demanded for such partition either in person or through her paternal uncle.

iii) The plaintiff after her marriage in the year 1987 is residing at her house in

Chennai only. The plaintiff never visited the suit property as the co-sharer of the same. Hence the plaintiff is not entitled to seek any partition as she is ousted from the family. The suit is barred by limitation. The description of the suit property is very vague. The value of the suit properties is also not correct. The court fees paid by the plaintiff is also not correct. Hence the petition has to be dismissed.

4. **The point for consideration:**

Whether the petition is liable to be allowed or not?

5. No oral or documentary evidence adduced on both side. Heard both side arguments.

6. **Point:**

a) According to petitioner, suit properties are joint family properties and she is entitled to share in it. The respondents are enjoying the rent, income and revenue arising out of the property without giving any share to the petitioner after the death of father. In spite of legal notice dated:18.1.2022, the respondents did not come forward to partition the properties and issued reply notice dated:2.2.2022 containing false allegations. The respondents are squatting on suit properties with an ulterior motive to deprive petitioner's share. Hence it is necessary to appoint a receiver to take over the custody of property and maintain the proper accounts as an agent of the court and administer it to the best interests of all concerned.

b) The respondent resisted the petition by contending that in oral partition and family arrangement in January 2019, defendants were allotted properties of their father and other properties which were not mentioned in the partition deed, suit is

barred by limitation and plaintiff is ousted from family.

c) This is a suit for partition. Admitted facts in this case are that plaintiff, defendants 1 to 3 are sons and daughters of Pachiappa Chettiar and Kannammal. The plaintiff alleges that the suit properties have not yet been partitioned and she is entitled to equal share in it. On the contrary, the defendants allege that partition has been already taken place and plaintiff is not entitled to any right in the suit properties.

d) This court is of view question whether partition has been already effected or not cannot be decided at this preliminary stage. The fact that the defendants are in possession and enjoyment of the suit properties is not denied by the plaintiff. It is the case of the plaintiff that respondents are squatting on suit properties with an ulterior motive to deprive petitioner's share, respondents are not giving any share or have maintained any account properly, so receiver has to be appointed to take over the custody of property any maintain the proper accounts as an agent of the court and administer it to the best interests of all concerned.

e) This court is of view that the rights of the parties to partition cannot be determined at this stage.

f) In **Rukmani Devi and four others vs. R.M.Lakshmandoss**, reported in 1995(2)LW471, a Division Bench of Honourable Madras High Court at paragraph No.7 had observed as follows:

**7. Insofar as our court is concerned, it has always been the uniform view that no Receiver shall be appointed in a partition suit unless there is a case of**

damage or waste to the properties. In *Krishnan v. Maruvalamma*. AIR1935 Mad 402 : 41 L.W. 353, it was held that in the absence of proof of special circumstances such as waste or mismanagement by the Karnavan, or a reasonable apprehension of the same, or his refusal to maintain some of the members, the mere institution of a suit for partition in favour of the parties is no ground for the appointment of Receiver for such properties. The court has discussed the matter in detail and given sufficient reasons for laying down that proposition. This has been followed in several other cases. The principle was applied in *Venkata Achyuta Rao v. Srinivasaswami* A.I.R. 1948 Mad. 396. by a Division Bench of this Court.

g) It is settled position of law that appointment of a receiver pending a suit is a matter resting in the discretion of the Court which has to take into account all circumstances of case, plaintiff must show a case of adverse and conflicting claims to property and must show some emergency or danger or loss demanding immediate action and of his own right, he must be reasonably clear and free from doubt and an order appointing a receiver will not be made where it has effect of depriving a defendant of a 'de facto' possession since that might cause irreparable wrong. The Court, on the application of a receiver, looks to the conduct of party who makes the application and will usually refuse to interfere unless his conduct has been free from blame.

h) There is no pleadings in the plaint or petition as to case of waste or damage

to properties or mismanagement of properties. The contention of petitioner that she was not given share and accounts properly cannot be a ground for appointment of receiver. The petitioner has not satisfied requirements necessary for appointment of receiver. Hence petitioner is not entitled to any relief in this suit. Hence point for consideration is answered against petitioner.

**In the result, the petition is dismissed. Both the parties are directed to bear their own cost.**

Dictated by me, typed by the Steno-typist, corrected and pronounced by me in Open Court on this the 3<sup>rd</sup> day of January 2024.

Additional District Judge,  
Dharmapuri.

**Petitioners Side Evidence, Exhibits: Nil.**

**Respondents Side Evidence, Exhibits: Nil**

Additional District Judge,  
Dharmapuri.

**Fair Order**

I.A.No.3/2023 in

O.S.No.198/2022

Dated:3.1.2024.

