

IN THE COURT OF THE I ADDITIONAL DISTRICT JUDGE OF ERODE

Present: Thiru S.Nallathambi, B.A., B.L.,  
I Additional District Judge, Erode

Tuesday the 16<sup>th</sup> day of June 2015

(2046 Thiruvalluvar Andu Manmatha year Aani 1<sup>st</sup>)

ORIGINAL SUIT No. 44 / 2014

A.S.Kalaimani

: Plaintiff

versus

- 1) A. Murugesan
- 2) Rajammal
- 3) Radhamani
- 4) Vedhambal
- 5) S. Dhanalakshmi
- 6) R. Saroja
- 7) L. Sulochana
- 8) K. Jaganathan
- 9) B. Rathinavel
- 10) B. Manickam
- 11) V. Malarselvi
- 12) J. Mallika
- 13) S. Malarselvi
- 14) R. Banumathi
- 15) P. Rathinavel
- 16) P. Nandakumar
- 17) S. Thangavel
- 18) S. Kadhivel
- 19) M. Dhivya
- 20) M. Sakthivel
- 21) M. Sri Senthilvel
- 22) Jeetharam Choudhary
- 23) Avinashi gounder (died)
- 24) A. Shanmugam

: Defendants

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This suit coming up for final hearing on 15.6.2015 before me in the presence of Tvl V. Dhandapani, R. Baskaran and E. Bharanikumar, Advocates for the plaintiff and Tr. E.M. Sivaraman, Advocate for D1, D15 to D18 , and Thiu V. Sankar, Advocate for D24 ,and subsequently set exparte, and D23 being died D2 to |D14 , 19 to 22, and subsequently D1, D15 to D18 set exparte, and after hearing the arguments on the side of the plaintiff and upon perusing the records and having stood over for consideration till this day and this court passed the following:-

### JUDGMENT

This is a suit for Partition and Seperate possession and for cost of the suit.

2) The case of the plaintiff as set out in the plaint averments are as follows:-

The suit properties morefully described in the schedule of property mentioned in item Nos.1 to 5 are situated within the jurisdiction of this Hon'ble court. The suit properties in item Nos. 1,3,4,5 are the ancestral properties of plaintiff's maternal grandfather and grandmother of one late A.Arumuga mudaliar and his wife Kuppayammal which allotted to him as 'A' schedule through a Registered Partition Deed between the said Arumuga Mudaliar and his brother late A.Marimuthu Mudaliar in Reg.Doc.No.948/1957 by District Registrar Office, Erode and item No.2 is purchased by his grand mother Kuppayammal through a Registered Sale deed in Doc.No.219/1958 by Distict Registrar Office, Erode. The said Arumuga Mudaliar and Kuppayammal died intestate in or about, the year 1985 and 1987 respectively leaving behind them 8 legal heirs out of which 5 daughters and 3 sons. The plaintiff is the only son of their 4<sup>th</sup> daughter Saraswathiyammal who died on 30.6.2006. 1<sup>st</sup> defendant Murugesan is the maternal uncle of plaintiff who is the 7<sup>th</sup> son of them and he is

only surveying male member of joint family. The defendants Nos.2 to 4 are sisters of the 1<sup>st</sup> defendant and the plaintiff's mother who are the 5,6 & 8 are only living daughters named Rajammal, Radhamani and Vedhambal of said late Arumuga Mudaliar respectively. The defendants Nos. 5 to 8 are the legal heirs of 1<sup>st</sup> daughter Rukmaniammal who died in or about the year of 1982-83. The defendants Nos.9 to 11 are the legal heirs of Pre-deceased son of said late Rukmaniammal. The defendants Nos.12 to 16 are daughters and sons of Palaniappan who is the 2<sup>nd</sup> son of late Arumuga Mudaliar who died also in or about 1982-83. The defendants Nos. 17 and 18 are sons of Shanmugam who is the 3<sup>rd</sup> sons of Late Arumuga Mudaliar who died in the year 2013. The defendants No.19 and 20 are legal heirs of pre deceased daughter of the said late Shanmugam. The defendant No.21 is the legal heir of the 1<sup>st</sup> defendant who is only added as necessary party of the proceedings. The defendant Nos.22 to 24 are the subsequent purchasers of the undivided, part of the suit property in item Nos. 1 and 4. The genealogical tree of late Arumuga mudaliar is attached with the plaint that shows the relationship between plaintiff and the defendants Nos.1 to 21.

The suit properties are immovable properties originally belonged to one late Arumuga Mudaliar, the 'Karthā' of the family and his wife late Kuppayammal who had constituted a joint family by themselves till their life time and the 'Karthā' died in or about 1985 and the said Kuppayammal also died in or about 1987. Even during their life time, the other male members and females who are since deceased in the course of time and the last male issue one Shanmugam also died leaving behind his legal heirs the defendants Nos. 17 to 20 herein and similarly other legal heirs of deceased male member are also impleaded as defendants Nos. 5 to 11 and disposal in respect of inheritance, succession and line of ancestor nucleus among one and others who are all always treating the entire suit properties as joint family, joint enjoyment and till this date of filing the suit against them by the plaintiff. The plaintiff is the grandson whose birth right

confer definite share in the ancestor nucleus as well as joint family system after the passing of Central Act 39/2005 Amended Hindu Succession Act 2005 on 09.09.2005. The plaintiff demand for actual partition and separate possession for his 1/8<sup>th</sup> share devolves on him after the death of last male member Shanmugam and living male member one Murugesan who is also arrayed as 1<sup>st</sup> defendant. The entire joint family properties now derived in the plaint and some properties already sold by the defendants Nos.D1 & D-15 to D-18 and his deceased father Shanmugam and D-21 infavour of third parties the defendants Nos.21 to 24 in item No.1 and 4. The remaining properties are still in the hands of other members available for partition including plaintiff and other male and female members as they are deemed to be in joint possession, enjoyment and interest in the suit property.

While so, the income from the suit properties especially the item Nos.1,2,3 and 5 also given to plaintiff as his meagre portion until the death of last male member late Shanmugam who died on 2013. Since plaintiff meagre share in the huge said items also stopped denied and deliberately suppressed by the defendants Nos. D1, D-15 to D-18 and his deceased father Shanmugam and D-21 who are all blood related and when the plaintiff question the indifferent attitude of particular defendants in getting meagre income which was also stopped. The defendants Nos. 1 and 15 to 18 and his deceased father Shanmugam and 21 had already executed one alleged 'Agreement of partition Release Deed' dated on 02.06.2010 which is unregistered but notarized only, not acted upon and come into force as per law. The original of the same is kept with any one of the defendants Nos. 1,15 to 18 or 21. The purpose behind the said alleged deed which is reduced into writing is only to convince the plaintiff during that time in 2008, the marriage of plaintiff's elder daughter took place at the time the plaintiff was given a sum amount for the said marriage from the joint family fund and also assured the plaintiff to get another substantial amount for his 2<sup>nd</sup> daughter's marriage in future. So, in 2010 the plaintiff was forced to sign in the alleged release deed

dated 02.06.2010 and he found no other way except to yield to the foul play of the said defendants under the distressed circumstances. In that alleged impugned agreement dated 02.06.2010, the plaintiff was said to have received a cash consideration of Rs.5.00 lakhs from the alleged 'Common family Funds' and also 5 cents to be allotted to plaintiff from the item No.1 of the undivided ancestor landed suit property which offer was accepted but not at all the plaintiff was neither paid the said huge amount of Rs.5 lakh nor allotted 5 cents in his favour. The alleged agreement of partition Release deed dated 02.06.2010 is non-est in the eye of law of compromise as well as in Hindu joint family and very particularly the act of parties in the ancestor property is nothing but 'mere recitals' and not at all binding the plaintiff in so far as his 1/8<sup>th</sup> undivided share in the suit property. The said impuged deed is sham and nominal and it has no evidentiary value under Evidence Act .

The plaintiff has been totally deprived, defeated and deceived by the malafide act of defendants Nos.D1, D15 to D18 and his deceased father Shanmugam and D-21 and the defendant Nos.2 to 4 and 8 who are also parties signed before the notary public officer which is not legally authenticated one and the same is denied by the plaintiff now because other members have colluded, conspired with their own cause and clearly exploited the urgent expenses for the plaintiff's two daughters marriage and family condition and created the alleged release deed. The plaintiff strongly suspect the malafide act of other members, the defendant Nos. 2 to 4 and 8 who signed the alleged agreement of release deed dated 02.06.2010 under the guise and pretext of alleged panchayat. The plaintiff has become a victim of his own because of non-passing of any huge cash consideration of Rs.5 lakh and allotment at all in the undivided landed properties.

As far as plaintiff is concerned, the suit properties and other sales effected by the defendants Nos.D1 & D15 to D18 and D17 & D18's deceased father Shanmugam and D 21 infavour of the defendants Nos.D.22 to D.24 on 20.12.2005

& 06.01.2005 are also arrayed in the suit and the earlier partition deed dated 26.03.2009 which all are shows the fraudulent nature of alienating undivided joint family properties without any notice knowledge and consent from the plaintiff . Those encumbrances are not at all binding the plaintiff's 1/8<sup>th</sup> share in the suit properties. The plaintiff also obtained certified copies of the earlier alleged invalid partition deed and sale deeds for sale on by the said defendants to subsequent buyers. The plaintiff is not aware of any prior invalid partition and sales infavour of third parties before obtaining copies from the Sub-Registrar office, Erode, the same are filed before this Hon'ble Court herein.

The Sl.No. 3 of plaint document, the earlier invalid partition in which the plaintiff is not a party and his 1/8 share is not at all binding since other co-sharers have partitioned sum of the items excluding item Nos. 1 and 3 in the suit property and it is only a piece-meal partition not known to the plaintiff on 26.03.2009, the date of partition and now only come to know the alleged deed after 20.12.2013 the certified copy obtained from the registrar office by the plaintiff. Hence, the alleged deed totally ignored and void in 1/8 share of plaintiff. The alleged deed dated 26.03.2009 executed only between the defendants Nos 1, 15 to 18 and 21 the other legal heirs of said kartha late Arumuga Mudaliar are willfully excluded. The plaintiff has now fully come to understand that the defendants Nos.1, 15 to 18 and 21 are going to further sell, alienate and further encumber the suit properties without plaintiff knowledge and behind the back of plaintiff and hence the plaintiff has already issued a registered statutory legal notice on 23.09.2013 to all defendants and some of them received and some of other returned but no reply from any one, the defendants who are still kept silent and the plaintiff has come to this Hon'ble court with clean hands after 3 months from the date of legal notice.

Hence the plaintiff filed a suit before this Court to pass a preliminary decree dividing the entire suit property into 8 equal shares with reference to good and bad soil by metes and bounds and allot 1/8<sup>th</sup> share separately to the plaintiff and put him in possession in his specific share in the suit property and for costs.

3. Written statement filed by the 16<sup>th</sup> defendant and adopted by the Defendants 1, 15, 17, 18 in brief is as follows:

The suit is false, frivolous and not maintainable either in law and on facts. Excepting the matters that are specifically admitted as true the rest of the allegations are denied as false. The averments contained in para 3, para 4 to 8 and 9 of the plaint are false one. The suit properties are situated at various places. Infact, the plaintiff only to approach the defendants 1, 15 to 18 and requested to pay a sum of Rs.5,00,000/- and only at the option of the plaintiff the amount was paid to the plaintiff. The plaintiff created a false story to get an unlawful gain against the defendants 1,15 to 18 with an intention to get unlawful benefits. Infact, the plaintiff along with other co-sharers signed the release deed on 2.6.2010 with his full consent. Without seeking a prayer for the cancellation of the said release deed the relief of partition as prayed by the plaintiff is not maintainable under law. Infact the defendant prefers to file a detailed written statement after collecting the necessary particulars as against the false allegations made by the plaintiff. Hence the defendant reserves right to file an additional written statement after collecting necessary particulars in this regard.

4. On the basis of the above pleadings, the following issues have been framed by this court:-

- 1 . Whether the plaintiff is not entitled for the relief of partition without asking the prayer for cancellation of the release deed dated 2.6.2010 executed by him?
2. Whether the plaintiff is entitled for partition of 1/8 share in the plaint schedule properties by metes and bounds as prayed for
- 3 . To what other reliefs the plaintiff is entitled to?

5. On the side of the plaintiff, the plaintiff himself examined as PW1 and Ex. A1 to Ex.A8 were marked through him. No oral or documentary evidence on the side the defendants.

6. Issue No.2:

Inorder to prove the contention of the plaint, the plaintiff himself examined as PW1 and deposed about the character of the schedule property which is ancestrally in nature and the same has been allotted to his grand father by virtue of Ex.A1 registered partition deed dated 31.12.1956 and the plaintiff claimed partition as per the Central Act 39/2005 who is the daughters son of his grand father Arumugam and Kuppayammal. Ex.A1 to A8 also marked on the side of the plaintiff. Thus the plaintiff has discharged his initial burden of proof with his oral evidence along with the documentary evidence of Ex.A1 to A8 .

7. Per contra even though the written statement filed by D16 alone and not choose to cross examine the P.W.1 and set exparte and also no oral or documentary evidence put forth to defeat the claim of the plaintiff. In the circumstances after careful consideration of the evidence of P.W.1 along with Ex.A1 to A8 and in the absence of contra evidence put forth by the defendants go to show that the plaintiff is entitled for the partition of 1/8 share in the plaint schedule property by metes and bounds. Issue No.2 is settled accordingly.

8. Issue No.1:

In respect of Issue No. 1 no oral or documentary evidence is available on the side of the defendants . In the circumstances as per the decision arrived in Issue No.2 ,the plaintiff is entitled for the relief of partition as prayed for. Issue No.1 is settled accordingly.

8. Issue No.3:

As per the decisions arrived in Issue No.1 and 2 the plaintiff is not entitled for any other relief. Issue No.3 is settled accordingly.

In result, preliminary decree for partition is passed of 1/8 share infavour of the plaintiff by metes and bounds with cost.

Dictated to stenographer transcribed by her corrected and pronounced by me in the open court this the 16<sup>th</sup> day of June 2015.

Sd/- S. Nallathmbi  
I Additional District Judge,  
Erode.

LIST OF EXHIBITS MARKED

On the side of the plaintiff:-

- Ex.A1 31.12.1956 : Certified copy of partition deed  
Ex.A2 4.2.1958 : Certified copy of sale deed  
Ex.A3 26.3.2009 : Certified copy of Partition deed  
Ex.A4 20.2.2012 : Certified copy of sale deed  
Ex.A.5 6.1.2005 : Certified copy of sale deed  
Ex.A.6 23.9.2013 : Copy of Advocate notice  
  
Ex.A.7 - : Return postal covers  
  
Ex.A8 - : Acknowledgment cards

Defendant side : Nil

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LIST OF WITNESSES EXAMINED

On the side of the plaintiffs:-

P.W.1 : Tr. Kalaimani ( P.W.1)

On the side of the defendants:-

NIL

I A.D.J  
Erode.