

In the Court of the Additional Subordinate Judge at Kanchipuram

Present: Thiru.P. Thirugnana Sambandam, B.A.,B.L.,

Principal Subordinate Judge

Additional Subordinate Judge, (FAC)

Wednesday, the 16<sup>th</sup> day of February 2022

O.S.No.62/2013

C.N.R.No.000184/2013

N.S.Parvathy

...Plaintiff

Vs.

V.K.Nagaraj

... Defendant

This suit is coming before me on 08.02.2022 for hearing before me in the presence of M/s. P.K.Thevarajan Advocate for plaintiff and Thiru.S.Janarthanan Advocate for defendant and the defendant being called absent set ex parte and upon hearing the plaintiff side and having stood over for consideration till this day, this court delivered the following

### JUDGMENT

Suit is preliminary decree for partition and separate possession by dividing the suit property into two equal shares and to allot one such share to the plaintiff with regard to the good and bad soil by metes and bounds by appointing an Advocate commissioner in the final decree proceedings and for permanent injunction against the defendant sustaining them and their men and agents from anyway alienating the suit property to any third party or creating any encumbrance over the property and for costs of the suit.

2. Brief averments in the plaint are as follows:-

The plaint schedule property originally belongs to the plaintiff and the defendant father Late.Subbarao Chettiar, having been allotted to him in the family partition under a registered partition deed dated 19.05.1957 between him and his brother. The said Subbarao was in possession and enjoyment as owner. He died leaving behind his wife Venkatasubbamma, son and daughter the plaintiff and the defendant as his only Class-I legal heirs and equally entitled to the property. After demise of Subbarao Chettiar the mother of the plaintiff and the defendant and took custody of the property and it was in complete care of their mother Venkatasubbamma till due to bedridden of her sick. On 31.03.2011 the plaintiff's mother Venkata Subbamma executed an unregistered Will deed in respect of the property described below in a sound and disposing state of mind and thereby directing the property to be taken equally by the plaintiff and the defendant after her life time. In fact, she executed the Will and signed the same. The plaintiff submits that under the Will she and the defendant should take the property equally after her life time. Subsequently, the testator Venkata Subbamma died on 15.04.2011 and the Will became operational. As per Will the plaintiff is entitled to half share in the house property covered under the Will deed. The other remaining half share goes to the defendant. The plaintiff has been residing in Kanchipuram Town and the defendant is the resident of Molachur Village, Sriperumbudur Taluk. The plaintiff is deemed to be in joint possession. Some time later, the plaintiff claimed the division of the suit property into two equal share and she should be put into possession of one such

share. The defendant has been evading the division of the suit property. Being male member and Manager of the joint family, the defendant is bound in law to effect division when demanded by the plaintiff. The claim of ownership over the suit property by the defendant is untenable and uncharitable on his part. Hence the Plaintiff on 30.04.2011 issued legal notice claiming half share in the suit property. The defendant has not chosen to issue any reply notice till date. Further, the defendant is trying to alienate the plaint schedule mentioned property to third party, by suppressing the plaintiff's share in the suit property. Hence the plaintiff is obliged to file this suit for partition and separate possession of the half share in the schedule mentioned property and for a permanent injunction against the defendant restraining him and his men and agents from in any way alienating the plaint schedule mentioned property to third party.

3. Brief averments in the written statement of the defendant are as follows:-

The defendant denied all the averments of the plaintiff. The suit property is the ancestral of Subbarao Chettiar and Adiseshaya Chettiar and they made on partition between themselves on 19.05.1957 and same has been registered. According to the partition deed the said Subbarao Chettiar got the suit property in Thirumangalam Village Survey No.158 to the extent of 1824 sq.ft. The said Late.Subbarao Chettiar had his wife Venkatasubbama, his son Kasi Viswanathan and his daughter Venkata Parvathamma @ N.S.Parvathy the plaintiff herein. During the lifetime of Subbarao Chettiar the marriage was performed for the plaintiff on 10.09.1970 at Sunguvarchathiram between Subbramania Chetty and plaintiff. Thereafter the

plaintiff was settled with her husband. Thereafter the death of Subbarao Chettiar the suit property revenue records muted in favour to the defendant's father Kasi Viswanathan and he was in the absolute and exclusive possession of the suit property. The new patta No.157 was issued in favour of Kasi Viswanathan and the suit property sub divided as new survey No.158/1A10 and he was paid all the house taxes for the suit property building. The said Kasi Viswnathan executed one registered settlement deed in favour to his only son V.K.Nagaraj the defendant herein for the suit property on 16.03.2009 and the same has been registered. The defendant V.K.Nagaraj muted all the revenue records in his favour and patta No.1109 issued in favour to him and he in in the exclusive possession and enjoyment of the suit property. On 29.11.2010 Kasi Viswanathan was expired. During the lifetime of Subbarao Chettiar the plaintiff marriage was performed and she was settled away from the family. After demise of Subbarao Chettiar the Venkatasubbama her wife got the life interest over the suit property and she was spent her life time with her son Kasi Viswanathan and the plaintiff has visited her mother house. The said Venkatasubbama was unconscious mind since before six months of her death on 16.04.2011 and the alleged will in favour of the plaintiff is forged one and the Venkatasubbamma was not in the sound mind on 31.03.2011. Subsequently on 16.04.2011 Venkatasubbama expired. Therefore the alleged will executed by the Venkatasubbama was fabricated document and it is not valid in the eye of law. The said Venkatasubbama was not the full owner of the suit property and she was not entitled for entire property by way of inheritance. Therefore she is not the competent person to execute the will for the entire suit

property. The Venkatasubbama was not in possession and enjoyment of the suit property since from the death of Subbarao Chettiar. But the defendant is in the continuous possession of the suit property. The revenue records are stands in the name of Kasi Viswanathan. Therefore the plaintiff is not entitled for any share in the suit property, the suit is not maintainable and liable to be dismissed.

4. The defendant after filing of written statement and has remained ex parte.

5. The following issues for consideration is

1. Whether the will dated 31.03.2011 is true and valid?

2. Whether the settlement deed dated 16.03.2009 in favour of defendant bind the plaintiff?

3. Whether the Plaintiff is entitled for 2 equal shares in suit property?

4. Whether plaintiff is entitled to relief of permanent injunction?

5. To what other relief plaintiff is entitled to?

6. On the side of the plaintiff, the plaintiff was examined as P.W.1 and Ex.A.1 to A.6 were marked. On the side of the defendant, no oral and documentary evidence adduced.

7. Issue No.1 to 5:

On perusal of records the suit property originally belongs to Subbaroa Chettiar through a partition deed Ex.A.1 executed between the Subbarao Chettiar and Adhisheshaiya chettiar on 19.05.1957. After the demise of the said Subbarao Chettiar the plaintiff and defendant and their mother Venkatasubamma are enjoyed the suit properties as jointly. Subsequently the said Venkatasubamma was executed an

unregistered Will Ex.A.2 in favour of the plaintiff and defendant and they are entitled each 1/2 share in the schedule mentioned properties. After that the said Venaktasubbamma was died on 15.04.2011 leaving behind plaintiff and defendant. The Death Certificate of Venkata Subbamma was marked as Ex.A.3. The plaintiff and defendant are the legal heirs of the above said Subbarao Chettiar and Venkatsubbamma. There is no other legal heirs. The Plaintiff issued a legal notice through Ex.A.4 to the defendant to claim her share and the same received by the defendant through Ex.A.5 but he has not allot the share to the plaintiff till date. Hence as per the Ex.A.1 to A.6, the plaintiff and defendant having 1/2 of share in the suit mentioned properties and claim is proved through the above said documents and evidence of P.W.1. Further the defendant also admitted the relationship between the parties and he has not proved his averments of the written statement either documentary or oral evidence. But the plaintiff has proved his case through Ex.A.1 to A.6 and evidence of P.W.1. Hence, this court decide that the plaintiff is entitled to 1/2 share in the suit property and the plaintiff is entitled to get permanent injunction against the defendant and his men, agent from anyway alienating the suit property till the partition is effected.

In the result, suit is decreed with costs by passing preliminary decree for partition . The plaintiff is entitled to get 1/2 share in the suit property by dividing the same into two equal shares by metes and bounds and good and bad soil by appointing an Advocate commissioner in the final decree proceedings and the relief of

permanent injunction against the defendant and his men, agent from any way alienating the suit property till the partition is effected.

Dictated to the Shorthand writer, typed by her, corrected and pronounced by me in open court, this the 16<sup>th</sup> day of February 2022.

Sd./P.Thirugnanasambandam  
Additional Subordinate Judge,  
Kanchipuram.(FAC)

Exhibits on Plaintiff's side:

Ex.A.1	19.05.1957	Certified copy of registered partition deed between Subbarao Chettiar and his brother.
Ex.A.2	31.03.2011	Unregistered Will executed by Venkata Subbamma in favour of Plaintiff and defendant.
Ex.A.3	15.04.2011	Death certificate of Venkata Subbammal.
Ex.A.4	30.04.2011	Legal Notice by plaintiff to defendant.
Ex.A.5		Postal acknowledgment card.
Ex.A.6		Encumbrance Certificate.

Witnesses on Plaintiff's side:

P.W.1 Tmt.N.S.Parvathy

Exhibits and Witnesses on Defendant's side: NIL.

Sd./P.Thirugnanasambandam  
A.S.J.(FAC)