

In the Court of the Additional Subordinate Judge at Kanchipuram

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

Additional Subordinate Judge,Kancheepuram

Tuesday the 24th day of January 2023

O.S.No.258/2021

C.N.R.No.TNKP07001603/2021

P.Poongodi

.. Plaintiff

Vs.

G.Venkatesan

.. Defendant

This suit is coming on 12.01.2023 for final hearing before me in the presence of M/s. N.Umasankari, B.Gopinath, T.D.Santhosh Kumar and E.Nagaraj Advocates for plaintiff and defendant called absent set exparte and upon hearing the arguments of Plaintiff side and having stood over for consideration till this day, this court delivered the following

JUDGEMENT

Suit for preliminary decree for partition of the plaint schedule property into four equal shares by metes and bounds by appointing Advocate Commissioner and puts the Plaintiff in separate possession of her 3/4th share in the suit schedule property, permanent injunction restraining the defendant their men, legal heirs, successors in title, executors or assigns from alienating or, mortgaging or letting it out on lease or in any other manner dealing with the suit property and for costs of the suit.

2. Brief averments in the plaint are as follows:

The defendant is the elder brother of the Plaintiff. The Plaintiff and the defendant are from the common ancestor and had an origin from the Plaintiff's father Late.Gengan Naicker. The Plaintiff's father Gengan Naicker is the absolute owner of the suit property and he is in absolute possession and enjoyment of the property during his life time. The Plaintiff's father Gengan Naicker was died intestate on 21.02.2011 leaving behind the Plaintiff, plaintiff's mother Sagunthala, the defendant and Plaintiff's brother G.Thanthoni are the only surviving legal heirs to succeed his estate and after the demise of the father of the plaintiff, all the for legal heirs including the defendant and plaintiff were in absolute ownership, possession and enjoyment of the suit property by mutation of entries in the revenue records and obtained joint patta bearing Patta No.1536. Subsequently the Plaintiff's mother Sagunthala and plaintiff's brother G.Thanthoni had jointly executed a release deed with respect to the suit property and relinquished their respective 2/4th undivided share in the suit property in favour of the Plaintiff by virtue of a registered release deed dated 11.09.2020 and thereafter the Plaintiff and the defendant are the absolute ownership, possession and enjoyment of the suit property without any let or hindrance. The Plaintiff legitimately entitled the 3/4th share in the suit property approached the defendant to divide the suit property to equal share. More over several repeated requests and reminders placed by

Plaintiff's seeking the aforesaid partition plea through the oral mediums and family panchayats were turned negative and the efforts of the Plaintiff felt as futile. Further the Plaintiff issue legal notice to defendant on 06.09.2021. The said notice was received by the defendant on 07.09.2021 and the defendant neither replied nor complied the request of the plaintiff in partitioning the suit property to till date. Hence the Plaintiff is obliged to file this suit for partition by metes and bounds and allocate the 3/4th share in the suit property. Hence this suit.

4. The defendant was remained exparte.

1. Whether the Plaintiff is entitled for 3/4th share in suit property as prayed for?

2. To what other relief plaintiff is entitled to?

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

7. On Issues :

On perusal of records and evidence of the P.W.1 this court found that the suit properties originally belongs to Late.Gengan Naicker. The suit properties are ancestor property of the said Late.Gengan Naicker. The Plaintiff's father Gengan Naicker was died intestate on 21.02.2011 leaving behind the Plaintiff, plaintiff's mother Sagunthala, the defendant and Plaintiff's brother G.Thanthoni are the only surviving legal heirs to succeed

his estate and after the demise of the father of the plaintiff, all the for legal heirs including the defendant and plaintiff were in absolute ownership, possession and enjoyment of the suit property by mutation of entries in the revenue records and obtained joint patta bearing Patta No.1536 as evidenced from Ex.A.1 to A.3. Subsequently the Plaintiff's mother Sagunthala and plaintiff's brother G.Thanthoni had jointly executed a release deed with respect to the suit property and relinquished their respective 2/4th undivided share in the suit property in favour of the Plaintiff by virtue of a registered release deed dated 11.09.2020 as evidenced from Ex.A.4. Hence the Plaintiff get 3/4th share in the suit property. Thereafter the Plaintiff and the defendant are the absolute ownership, possession and enjoyment of the suit property without any let or hindrance. The Plaintiff legitimately entitled the 3/4th share in the suit property approached the defendant to divide the suit property to equal share. The lawful claim of the Plaintiff to effect partition on several requests, remainders and family panchayats were turned negative and all the efforts of the plaintiff felt as futile. Further the Plaintiff issue legal notice to defendant on 06.09.2021 under Ex.A.5. The said notice was received by the defendant on 07.09.2021 as evidenced from Ex.A.6. The defendant neither replied nor complied the request of the plaintiff in partitioning the suit property to till date. Though the defendant received court summon and not come forward to partition the suit properties. On

perusal of the above said Ex.A.1 to A.6 and evidence fo P.W.1 the Plaintiff is entitled for 3/4th share in the plaint schedule mentioned property. The defendant was called absent and set exparte. But the Plaintiff proved her case through the evidence of P.W.1. and Ex.A.1 to A.6. Hence this court decided that the Plaintiff is entitled to get 3/4th share in the suit property.

In the result, suit is decreed by passing preliminary decree for partition. The plaintiff is entitled to get 3/4th share in the suit schedule mentioned property by dividing the same into four equal shares with regard to metes and bounds by appointing an Advocate Commissioner in the final decree proceedings and grant permanent injunction restraining the defendant, their men, legal heirs, successors, in title, executors or assigns from alienating or mortgaging or letting it out on lease or in any other manner dealing with the suit property. No costs.

Directly dictated to the Shorthand writer, typed by her, corrected and pronounced by me in open court, this the 24th day of January 2023.

Sd./P.Thirugnana Sambandam
Additional Subordinate Judge,
Kanchipuram.

Exhibits on Plaintiffs' side:

Ex.A.1	19.02.2019	Joint Patta in the name Plaintiff and defendant
Ex.A.2	07.03.2011	Death certificate of Gengan Naicker

Ex.A.3	03.05.2011	Legal Heir Certificate for Gengan Naicker
Ex.A.4	11.09.2020	Certified copy of Release deed executed by the defendant and his mother in favour of Plaintiff.
Ex.A.5	06.09.2021	Legal Notice to defendant by Plaintiff
Ex.A.6		Postal acknowledgment card

Exhibits on Defendants side: NIL

Witnesses on Plaintiffs' side:

P.W.1 Tmt.Poongodi

Witnesses on Defendant side: NIL

Sd./P.Thirugnana Sambandam

A.S.J.