

IN THE COURT OF THE DISTRICT AND SESSIONS JUDGE, KARUR.

**PRESENT:- THIRU K.H. ELAVAZHAGAN, B.Sc., M.L.,
DISTRICT AND SESSIONS JUDGE.**

Tuesday, the 10th day of March 2026

ORIGINAL SUIT NO.212/2023
[CNR.No.TNKR-01-002642-2023]

Mahizhmaran

..Plaintiff

/vs./

Tamilselvan

..Defendant

This suit is coming on 27.02.2026 for final hearing before me in the presence of Thiru S.Sudhajar, Advocate for the plaintiff and of Thiru. M.Karikalan Advocate for the defendant and the defendant called absent set exparte, upon hearing the arguments of plaintiff side and upon perusing the records and having stood over till this day for consideration, this Court delivered the following

JUDGMENT:-

This suit has been filed by the plaintiff against the defendant for partition to divide the suit properties into Five equal shares by metes and bounds and to allot 4/5 share to the plaintiff and directing to deliver separate possession of such 4/5 share to the plaintiff and for costs.

2) Brief facts of the plaint would run is as follows:-

2.1. One B.G.Srinivasnaidu and his wife Vathsala got three sons 1) Mahizhmaran (Plaintiff), 2) Thamaraiselvan (Defendant), 3) Gunasekar and two daughters 1) Jayakumari, 2) Manjula. The suit property originally belonged to the

B.G.Srinivasan who is the father of the plaintiff and the defendant. The suit property is a house which is the self acquired property of the above B.G.Srinivasan. The father of the plaintiff and defendant B.G.Srinivasan is entered into a agreement with Kulithalai Co-operative building Society Limited dated on 25.07.1986 for the suit property. The B.G.Srinivasan purchased the suit property under a registered sale deed dated. 20.01.1988 vide Doc No.38/1988 of Kulithalai S.R.O from the Kulithalai Co-Operative Building Society Limited No.926, having registered office at Cauvery Nagar, Kulithalai.

2.2. On the same date of the above said sale deed the B.G.Srinivasan along with plaintiff had executed a mortgage deed to the Kulithalai Co-operative building society on 20.01.1988 and then after the plaintiff and defendant's father B.G. srinivasan has completed the entire loan amount and redemption the mortgage dated on 16.02.2000. But the cell receipt was delivered from the above said society to the plaintiff on 10.07.2013. In fact the B.G. Srinivasan purchased the suit property as vacant land after which he had constructed house and enjoyed the same.

2.3. The plaintiff and defendant's father B.G.Srinivasan is died intestate on 03.11.2005 leaving behind his legal heirs. The above said B.G.srinivasan wife Vathsala is died on 29.01.2006. On 10.07.2013 the other legal heirs of B.G.Srinivasan namely Jayakumari, Manjula and Gunasekaran had executed a relinquishment deed in favour of the plaintiff in respective of their share in the suit vide document no. 1565/2013 of Kulithalai SRO. The property relinquishment deed is filed as Doc No.9. After that plaintiff and the defendant have residing at the suit property along with their family for their convenient of the enjoyment.

2.4. The defendant had collected the sand and construction material likely bricks, stones and others at front side of the suit property. On 27.08.2023 the defendant along with subordinates attempted to demolish the front portion that means entrance of the suit properly and alter the nature and super structure of the suit property by the way of raise the new constructions If the defendant succeeded his

plaintiff shall has been no way to his portion and also the building is to be fully damaged. Hence, this suit.

3) Brief facts of the written statement filed by the defendant would run is as follows:-

3.1. All the allegations made in this suit are false, frivolous, vexatious and highly speculative. The plaintiff is put to strict proof of all the averments made in this suit except those that are specifically admitted or traversed herein by this defendant. The averments set out in the plaint that the father of the plaintiff and the defendant one B.G. Srinivasan has purchased the suit property is true and admitted. The said Srinivasan had constructed a terraced house in the suit property and enjoyed the same also true.

3.2. The allegation that the said Srinivasan died in-testate is false and vehemently denied. Even during the life time of the said Srinivasan executed a will dated 26.04.1998, The said Srinivasan died in 03.11.2005 well after nearly eight years after the said & will executed. In the said will the executor said Srinivasan had clearly avered that "மேலும் எனது பெண்களுக்கு தேவையான சீர் வகைகள் செய்து திருமணம் செய்துவிட்ட படியால் அவர்களுக்கு எனது சொத்தான வீட்டில் எந்தவித பங்கும் கொடுக்கப்படவில்லை" Therefore in his executed will dated 26.04.1998 he has made it very clear that his daughters are not having any share in his House. Moreover in the said will it is well found that "கிழக்குப்புற வீட்டின் முன் பகுதி வராண்டாவும் அதில் உள்ள அறையும் வீட்டின் உள் இருக்கும் பட்டாசாலையும் (நடுக்கூடமும்) இரண்டாவது மகன் தாமரைச்செல்வன் (defendant) அனுபவித்துக் கொள்ள வேண்டியது.

3.3. As such the defendant is residing and enjoying his allotted share as per the will. The allegation set out in the plaint para 10 that the defendant attempted to demolish the front portion that means entrance of the suit property and alter the nature and super structure of the suit property is false and denied and the same is

fertail imagination of the plaintiff and to be strictly proved by the plaintiff. In fact the defendant in his allotted portion constricted a Toilet bath room for his family need. Supressing all these real facts the plaintiff has filed the false and vexatious suit with out any just reasons. In fact the plaintiff acted against the defendant and the recital found in the will and there by tried to encroach and occupy the defendant's portion if possible.

3.4. The is no any cause of action for the suit and the alleged one is false. There suit is not property valued and the necessary court fees are not paid. Hence, prays to dismiss the suit.

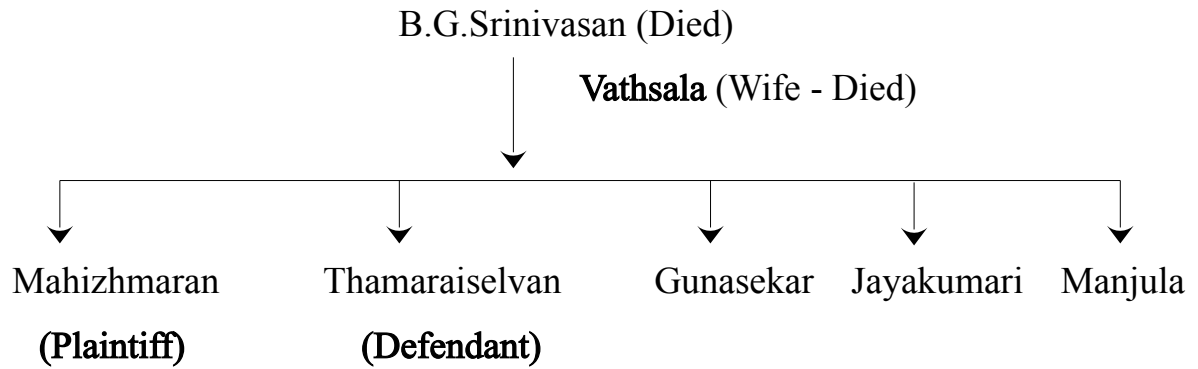
4) Based on the above pleadings, this Court has framed the following issues :-

- 1) Whether the plaintiff has got 4/5 share over the suit properties ?
- 2) Whether the Will dated 26.04.1998 has been truly and validly executed by the testor P.G.Srinivasan with sound state of mind and same has been validly attested ?
- 3) Whether the cause of action for the suit ?
- 4) Whether the suit properties properly valued and proper court fees has been paid ?
- 5) What other relief the parties to the suit are entitled for?

5) On the plaintiffs' side PW.1 has been examined and Ex.A1 to A.12 were marked. The defendant had filed written statement, after that he could not come forward to cross the PW.1. He has been called absent set exparte. Hence, the defendant was set exparte.

6) ANSWERING TO THE ISSUE NO.1 and 2 :-

6.1. Before, going to answer this issues, on perusal of Ex.A1 the genealogical table with regard to the relationship between the parties would shown as below:-



6.2. Further, Ex.A2 Certified copy of Sale agreement dated 25.07.1986 executed between the Kulithalai Co-operative Building Society Ltd and B.G.Srinivasan thereby, the B.G.Srinivasan has applied to the vendor for the allotment of “C” class plot no.44 in the above said Kulithalai Co-operative Building Society Colony, Anna Nagar, Kulithalai, Karur district. Likewise Ex.A3 Certified copy of Sale deed dated 20.01.1988 executed by Kulithalai Co-operative Building Society Ltd in favour of above said B.G.Srinivasan, thereby, as per the sale agreement, “C” class plot no.44 in S.F.No.85/5 Ac.2.09 cents were purchased by above-said B.G.Srinivasan.

6.3. Furthermore, Ex.A4 Certified copy of Mortgage deed dated 20.01.1988 executed by B.G.Srinivasan along with the plaintiff to the Kulithalai Co-operative Building Society Ltd, thereby the “C” class plot no.44 in S.F.No.85/5 Ac.2.09 cents were mortgaged to the Kulithalai Co-operative Building Society Ltd for the redemption period of 216 months.

6.4. Furthermore, Ex.A5 Certified copy of Cell receipt dated 10.07.2013. It goes to show that the plaintiff and his father B.G.Srinivasan has got the cell receipt of mortgage amount of Rs.40000/- in respect of the suit property and the amount settled by the plaintiff and his father to the above said society.

6.5. Ex.A6 Original death certificate of B.G.Srinivasan. It goes to show that he was died on 03.11.2005. Ex.A7 Original death certificate of S.Vathsala wife of B.G.Srinivasan. It goes to show that she was died on 29.01.2006.

6.6. Ex.A8 Legal heirship certificate of B.G.Srinivasan. It goes to show that the Plaintiff, the defendant, Gunasekar and daughters namely Jeyakumari and Manjula are the legal heirs of the deceased B.G.Srinivasan.

6.7. Ex.A9 Certified copy of Release deed dated 10.07.2013 executed by Jeyakumari, Manjula and S.Gunasekaran in favour of plaintiff, thereby the above said Jeyakumari, Manjula and S.Gunasekaran had released their shares in respect of the suit property in favour of plaintiff.

6.8. Ex.A10 The original Electricity bill receipts (6 Nos.) stands in the name of the B.G.Srinivasan. Ex.A11 The original House tax receipts (7 Nos.) stands in the name of the the B.G.Srinivasan. Ex.A12 The original Water tax receipts (7 Nos.) stands in the name of the the B.G.Srinivasan.

7. The defendant contended that in his written statement has taken a specific plea that B.G. Srinivasan executed a Will dated 26.04.1998, whereby certain portions of the property were allotted to him. However, it is pertinent to note that the defendant, after filing the written statement, did not come forward to cross-examine PW.1 nor did he produce the alleged Will before this Court. The defendant also failed to examine any attesting witness to prove the execution and attestation of the alleged Will as required under law.

7.1. As per Section **68 of the Indian Evidence Act**, a Will must be proved by examining at least one attesting witness. In the present case, no attesting witness has been examined and the alleged Will has not been marked before this Court. Therefore, the plea of the defendant regarding the existence of the Will dated 26.04.1998 has not been proved in the manner known to law.

7.2. In the absence of proof of the alleged Will, it has to be held that B.G. Srinivasan died intestate. Consequently, upon his death, the suit property devolved upon his five legal heirs namely Plaintiff, Defendant, Gunasekar, Jayakumari and Manjula. Each would be entitled to 1/5 shares in the suit property.

7.3. Since Gunasekar, Jayakumari and Manjula have executed the Ex.A9 Release Deed dated 10.07.2013 in favour of the plaintiff, their shares have devolved upon the plaintiff. Therefore, Plaintiff share = $1/5 + 1/5 + 1/5 + 1/5 = 4/5$ share; the defendant's share = $1/5$ share. Hence, the plaintiff is entitled to $4/5$ share in the suit property and the defendant is entitled to $1/5$ share. Accordingly issue Nos.1 and 2 are answered.

8) ANSWERING TO THE ISSUE NO.3 :-

8.1. The plaintiff has stated that on 27.08.2023, the defendant attempted to alter the nature of the suit property by collecting construction materials and attempting to demolish the front portion of the house. This apprehension has given rise to the present cause of action for seeking partition and separate possession. Therefore, this Court finds that sufficient cause of action has arisen for filing the suit. Accordingly issue No.3 is answered.

9) ANSWERING TO THE ISSUE NO.4 :-

9.1. The suit is one for partition and separate possession. The plaintiff has valued the suit under 37(2) provision of the Tamil Nadu Court Fees and Suits Valuation Act. No evidence has been let in by the defendant to show that the suit has been improperly valued or that insufficient court fee has been paid. Hence, this Court holds that the suit has been properly valued and proper court fee has been paid. Accordingly issue No.4 is answered.

10) ANSWERING TO THE ISSUES NO. 5 :-

11) As given findings to the above issue No.1 and 2, I hold that the plaintiff is not entitled for any other relief. Accordingly, the issue No.5 is answered.

In Kattukandi Edathil Krishnan and another Vs. Kattukandi Edathil Valsan and others. (Civil Appeal No.(s) 6404 -6407 of 2018 decided on 13.06.2022) The Honourable Supreme Court of India in para 33. held that

“ Once a preliminary decree is passed by the trial court, the court should proceed with the case for drawing up the final decree sue motto. After passing of the preliminary decree, the trial court has to list the matter for taking steps under Or.20 Rule 18 of CPC. The court’s should not adjourned the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. The court should allow the concerned party to file an appropriate application for drawing of the final decree. Needless to state that the suit comes an end only when a final decree is drawing”

Therefore the case is listed for taking steps under Order XX Rule 18 of the CPC or the Court shall suo motu taken up the case for final decree.

In the result, the suit is decreed. A preliminary decree for partition is passed thereby the suit properties are divided into Five equal shares and allot 4/5 shares to the plaintiff and 1/5 share to the defendant. Further, the plaintiff is directed to file an application under order XX rule 18 of CPC for passing final decree within 2 months from this judgment, in case of failure to do so which this Court shall suo motu taken up the case for final decree. Therefore call this case on 30.04.2026 for further steps. Considering the relationship between the parties it is ordered to bear the costs of their own.

Dictated to the Steno typist, typed by him directly on computer, corrected and pronounced by me in the open court on the 10th day of March 2026.

**DISTRICT AND SESSIONS JUDGE,
KARUR.**

PLAINTIFF'S SIDE WITNESS:-

P.W.1 Mahizhmaran (Plaintiff)

PLAINTIFF'S SIDE EXHIBITS:-

- | | | |
|--------|------------|------------------------------------------------------------------------------------------------------------------------------------------|
| Ex.A1. | -- | Genealogy table |
| Ex.A2. | 25.07.1986 | Certified copy of Sale agreement executed between the Kulithalai Co-operative Building Society Ltd |
| Ex.A3. | 20.01.1998 | Certified copy of Sale deed executed by Kulithalai Co-operative Building Society Ltd in favour of B.G.Srinivasan |
| Ex.A4. | 20.01.1998 | Certified copy of Mortgage deed executed by B.G.Srinivasan along with the plaintiff to the Kulithalai Co-operative Building Society Ltd. |
| Ex.A5. | 10.07.2013 | Certified copy of Cell receipt in favour of plaintiff and his father B.G.Srinivasan. |
| Ex.A6 | 07.11.2005 | Original death certificate of B.G.Srinivasan |
| Ex.A7 | 31.01.2006 | Original death certificate of S.Vathsala wife of B.G.Srinivasan |
| Ex.A8 | 23.12.2006 | Original Legal heirship certificate of B.G.Srinivasan. |
| Ex.A9 | 10.07.2013 | Certified copy of Release deed dated 10.07.2013 executed by Jeyakumari, Manjula and S.Gunasekaran in favour of plaintiff |
| Ex.A10 | -- | The original Electricity bill receipts (6 Nos.) stands in the name of the the B.G.Srinivasan. |
| Ex.A11 | -- | The original House tax receipts (7 Nos.) stands in the name of the the B.G.Srinivasan. |
| Ex.A12 | -- | The original Water tax receipts (7 Nos.) stands in the name of the the B.G.Srinivasan. |

DEFENDANT'S SIDE WITNESS AND EXHIBITS:- Nil.

**DISTRICT AND SESSIONS JUDGE,
KARUR.**