

**In the Court of Principal District and Sessions Judge, Pudukkottai.
Present : Thiru.A.Abdul Kadhar, B.A., B.L.,
Principal District Judge.**

Tuesday, the 20th day of December, 2022

O.S.No.50/2017

(CNR No.TNPD010025912017)

1. Mangalam
2. Thavamani

...Plaintiffs

//Versus//

1. Rengaiyah
2. Chinnathal
3. Govindammal
4. Shiyamala Devi
5. Chithra
6. Bhuvaneshwari
7. Radha
8. Manohar
9. Pappa
10. Maliyapuram
11. Kumar
12. Chidhambaram
13. Vallikkannu

...Defendants

This suit came before this court on 04.11.2022, in the presence of Thiru.P.T.Paneer Selvam, Advocate for the plaintiffs and Thiru.M.Rengasamy, Advocate for the Defendants No.1, 3, 10, 11 and 13 and the defendants No.2, 4 to 9 and 12 called absent and set exparte and upon hearing both sides arguments and on perusal of records this court delivers the following

JUDGMENT

This suit is filed by the plaintiff prays to pass a preliminary and final decree infavour of the plaintiffs to allot 1/5 share in the suit schedule property and for costs.

2. The averments in the plaint are briefly as follows :

The suit property was originally belonged to one Mariappan and his sons Rengaiyah, Peraman, Karuppaiah and his daughters Chinnathal and Govindammal being their ancestral joint family property. The kartha of the family Mariappan died on 19.01.1986 and after one year his wife one Kathayi also died. After their demise, his sons and daughters were in joint possession and enjoyment of the properties. In the meanwhile, the said Karuppaiah died on 25.01.2012 and his legal heirs Mangalam and Thavamani who are the plaintiffs herein and the elder son of Mariappan one Rengaiyah is the 1st defendant and the daughters of Mariappan, Chinnathal and Govindammal are the 2nd and 3rd defendants respectively. Another son of Mariappan one Peraman also died before 10 years and his legal heirs were added as defendants No.4 to 8 and the defendants No.9 to 13 are the persons who had approached the revenue authorities and changed patta in their name and obtained sale from the defendants No.1 to 8 and was in possession of the property without any rights. The defendants No.9 to 13 stated that they got sale regarding the suit property

from the 1st defendant Rengaiah and the legal heirs of Peraman and had obtained a patta in their name is not valid as per law. The legal heirs of the said Mariappan - Rengaiah, Chinnathal, Govindammal, Peraman and Karuppaiah have entitled for 1/5 share each in the suit property and after the demise of Karuppaiah his legal heirs also entitled for 1/5 share in the suit property and similarly the legal heirs of Peraman ie., the defendants No.4 to 8 also entitled for 1/5 share in the said property. The suit property was in joint possession of the plaintiffs and defendants No.1 to 8 respectively and there was no partition among them. In this situation, the defendants No.1 to 8 in an intention to grab the plaintiffs share have sold the property to the defendants No.9 to 13. Hence the plaintiffs demanded for 1/5 share in the suit property to the defendants on 27.08.2017 and there was a quarrel between them and the defendants refused to give the plaintiff's share over the suit property. So, the plaintiffs were not interested to be in joint possession with the defendants anymore and hence the plaintiffs have filed this suit prays to pass a preliminary and final decree infavour of the plaintiffs to allot 1/5 share in the suit schedule property and to award the cost of the suit to the plaintiffs.

3. Written statement filed by the 1st defendant which was adopted by the defendants No.3, 10, 11 and 13 in brief as follows :-

The suit filed by the plaintiffs are false, frivolous and not maintainable in

law and has to be dismissed in limine. All the averments made in the plaint are denied except that those which are admitted herein and the plaintiffs are put to strict proof thereof. This defendant states that his father Mariappan has three sons namely, this 1st defendant, Peraman and Karuppaiah and two daughters Chinnathal and Govindammal. Since the daughters of Mariappan did not demanded for any partition in the suit property though they have given lot of sridhana from the source of ancestral property, during the lifetime of the said Mariappan, in front of Adidravidar Colony Panchayatars there was a partition regarding the suit property on 04.03.1985 between (i) Mariappan, (ii) Kathayi, (iii) Rengaiyah, (iv) Peraman and (v) Karuppaiah and they were in separate possession of the property. At the time of partition of the ancestral properties, the tiled house was allotted to the 1st defendant and the hut was allotted to Karuppaiah and a house was allotted to Peraman and they have obtained patta for their own properties and was in possession of the same. The ancestral house was partitioned between Rengaiyah, Peraman and Karuppaiah and they have obtained patta and enjoyment of their own share. Since the land were allotted to Mariappan and his wife Kathayi, the patta stands in the name of Mariappan and Rengaiyah. The suit schedule property was partitioned and the full portion of the 1st item of the property was allotted to Peraman and part portion of 18.5 Hectares of the 5th item and full portion of 7, 8 and 11, 13, 18, 20 and 21 item

of the properties were purchased by Perman in the name of his wife and the well in 28th item of the property and the full portion of 29th item of the properties and 32nd, 33rd item of the properties were allotted to the said Peraman. But the revenue records like Adangal stands in the name of the unknown person K.Silamban. Further the said Perman had obtained 18, 20 and 21 item of the properties in the name of his wife and a house in Pudukottai. After his demise, the 17th item of the property was sold by the 4th defendant being his wife on 12.04.2013. Further the 1st plaintiff's husband Karuppaiah was given 3rd item of the property and a part portion of 23 hectares in 5th item and the full portion of 6th item and 14 hectares and 8.5 hectares of 10th item and his mother Kathayi's 16th item of the property. The 22, 23 and 24 th items of the properties were allotted to said Karuppaiah and after his demise, the plaintiff's No.1 and 2 have given a release deed on 03.02.2016 and they were in possession of the suit properties. Similarly, the 1st defendant Rengaiah was allotted with full portion of 2nd item and 9th item of the properties and a part portion of 3 hectares of 10th item and full portion of 12, 15, 27 items of the properties and a house belongs to 1st defendant. On 26.03.1997, the said Rengaiah has sold the properties infavour of 11th and 12th defendants. Further the 1st defendant's father Mariappan was allotted with 3 hectares of 10th item, 12 hectares of 14th item and full portion of 34th item and he has executed a

settlement deed infavour of this defendant on 10.06.1985. It is false that the 4 schedule of 3 hectares of 10th item was allotted to Mariappan was settled on 10.06.1985 and its new survey number is 487/3 to an extent of 7 hectares. Since the full portion of 14th item of the property belongs to Mariappan the survey number present in the settlement deed as 235/6 is false and it was the 14th item bearing survey numbr 546/26 to an extent of 12 hectares and the revenue records holds for 14 hectares. The 31st item of the property's survey number was not 388/1 it was 381 and the same was mentioned in the settlement deed dated 10.06.1985 also false. Further the 1st defendant was given settlement deed with four boundaries of the property dated 10.06.1985, he was in possession and enjoyment of the same and sold the 14th item of the property to the 13th defendant on 29.09.2006 and 15th item of the property on 06.09.2011 to the 10th defendant and they were in possession of their own properties. The 4th item of the property in S.No.395/14 to an extent of 4 hectares was originally belonged to one P.Rengaiah and his son one Silamban was in possession of the said property. The plaintiffs and the defendants were not entitled for any share in the said property and by mistake the revenue records stands in the name of Mariappan, S/o.Malaiappan for 25th and 26th item of the suit properties and the said properties were left for pathway of 27th item of the property. Further the 19th item of the property was not belongs to the plaintiffs and the defendants

and the survey number was also not mentioned. Further the said Peraman and Karuppaiah have purchased some properties while they were working in the Electricity board, Pudukkottai was not added to the suit. The 1st defendant and his father 4th defendant's husband, 1st plaintiff's husband have partitioned the properties and were in possession of their own properties and obtained patta in their name and it was not the joint family property. The 1st and 4th defendants have sold their properties to the third persons and they were in possession of the said properties and changed patta in their name and built a house therein and given electricity connection. The partition between the plaintiff's husband and the defendants were suppressed by the plaintiffs and the partition note was hidden. The defendants No.9 to 13 while purchasing the property from the 1st and 4th defendants firmly check all the encumbrances and obtained the property and these defendants are a bonafide purchasers. Since this suit properties were already partitioned in the year of 1985, now the plaintiffs' prayer for partition in the suit properties is not maintainable in law. Hence it is prayed to dismiss the petition with costs of this defendants.

4. Defendants No.2, 4 to 9 and 12 called absent and set exparte.

5. On the side of the plaintiff P.W.1 and P.W.2 were examined and Ex.A.1 to Ex.A.15 were marked. On the side of the defendants D.W.1 was examined and there is no documentary evidence on the side of the defendants.

6. The plaintiff has filed the present suit for partition to pass a preliminary decree while dividing the property and to allot 1/5 share to the plaintiffs on the premise, that the suit properties being the punja lands originally belonged to one Mariappan and his sons Rengaiah, Peraman, Karuppaiah and his daughters Chinnathal and Govindammal being their ancestral joint family property. The kartha of the family Mariappan died on 19.01.1986 and after one year his wife one Kathayi also died. After their demise, his sons and daughters were in joint possession and enjoyment of the properties. In the meanwhile, the said Karuppaiah died on 25.01.2012 and another son of Mariappan one Peraman also died before 10 years. The suit property was in joint possession of the plaintiffs and defendants and there was no partition among them. In this situation, the defendants No.1 to 8 in an intention to grab the plaintiffs share have sold the property to the defendants No.9 to 13 and the defendants No.9 to 13 are the persons who had approached the revenue authorities and changed patta in their name and was in possession of the property without any rights. The legal heirs of the said Mariappan - Rengaiah, Chinnathal, Govindammal, Peraman and Karuppaiah have entitled for 1/5 share each in the suit property and after the demise of Peraman, his legal heirs ie., the defendants No.4 to 8 also entitled for 1/5 share in the said property and similarly, the legal heirs of Karuppaiah who are the plaintiffs herein also entitled for 1/5 share in the suit

property. Hence the plaintiff have filed the suit. The defendants No.2, 4 to 9 and 12 have remained absent and the defendants No.1, 3, 10, 11 and 13 alone have contested the case.

7. The defendant No.1 have resisted the suit by saying that defendant No.1 and others have sold the property as the kartha of the family by the consent of the plaintiffs infavour of the defendants No.9 to 13 and it was valid and hence, the suit has to be dismissed. The defendants No.3, 10, 11 and 13 also adapted defendant No.1 and have claimed as bonafide purchasers for valuable consideration and sought for dismissal of the suit.

8. Having considered the above said factors, that the defendant 1, 3, 10, 11 and 13 are not specifically denying the factum of entitlement of the property by the plaintiffs and they are also not disputing that the plaintiffs and having regard to the limited nature of controversy in the suit I have directed both the parties to be present before this court under Order 10 Rule 2 of C.P.C. for oral examination to decide the real controversy in the suit. In spite of repeated adjournment, the defendants were not present. Only the plaintiffs were present. Hence, having regard to the limited scope on considering the materials available on record I deem it fit the judgment can be passed at once under Order 10 Rule 4 (2) of C.P.C.

9. Now from the entire materials available on record and on considering

the testimony of the plaintiffs that the defendants were not present and their written statement do not specifically deny the entitlement of the plaintiffs as class I heirs of deceased Karuppaiah in respect of the property and they have not explained how they are entitled for share in the property and particularly the defence taken by the 1st defendant that he is the kartha of the family cannot be accepted and hence, only an evasive denial by the defendants, which amounts to admission under Order 8 Rule 5 of C.P.C. While holding so, I am only following the Hon'ble Supreme Court in ***AIR 2000 SC 2740 Uttam Singh Dugal and Co.,Ltd Vs Union Bank of India and others*** have held as follows :

11. Learned Counsel for the appeal contended that Order XII, Rule 6 comes under the heading 'admissions' and a judgment on admission could be given only after the opportunity to the other side to explain the admission, if any, made; that such admission should have been made only in the course of the pleadings or else the other side will not have an opportunity to explain such admission, that even though, the provision reads that the Court may at any stage of the suit make such order as it thinks fit effect of admission, if any, can be considered only at the time of trial; that the admission even in pleadings will have to be read along with Order VIII, Rule 5(1) of CPC and Court need not necessarily proceed to pass an order or a judgment on the basis of such admission but call upon the party relying upon such admission to prove its case independently, that during pendency of other suits and the nature of contentions raised in the case, it would not be permissible at all to grant the relief before trial as has been done in the present case; that the expression 'admissions' made in the course of the pleadings or otherwise will have to be read together and the expression 'otherwise' will have to be interpreted ejusdem generis.

12. As to the object of the Order XII , Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended . In the objects and reasons set out while amending the said rule, it is stated that “where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled.” We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed.

10. By following the above judgment having regard to the fact there is no specific denial of the entitlement of the plaintiffs as they are class I heirs of deceased Karuppaiah and the 1st defendant has no individual right exceeding his right to succeed and the evasive denial will amount to admission under Order 8 Rule 5 and the judgment on admission has to be passed in terms of Order 12 Rule 6 of C.P.C. Hence, the suit is to be decreed at once under Order 15 Rule 1 of C.P.C. by dividing the suit properties into 5 equal shares by metes and bounds and one of such shares shall be allotted to the plaintiffs.

11. **In the result**, suit is Decreed with cost. Plaintiffs are entitled to get 1/5 share in the suit properties. Accordingly Preliminary decree passed.

Directly dictated to the Steno-typist and typed by her in computer and corrected and pronounced by me in Open Court on this the 20th day of December, 2022.

Sd/- A. Abdul Kadhar
Principal District Judge,
Pudukkottai.

Plaintiffs Side Witness :

P.W.1 – Tmt.Thavamani

P.W.2 – Tmt.Mangalam

Plaintiffs Side Documents :

Ex.A.1 – Sale deed in document No.271/1958 dated 11.12.1957 – SRO Copy

Ex.A.2 – Settlement deed in document No.456/1985 dated 10.06.1985 – SRO
Copy

Ex.A.3 – Sale deed in document No.3256/1986 dated 14.10.1986 – SRO Copy

Ex.A.4 – Sale deed in document No.172/1986 dated 12.03.1986 – SRO Copy

Ex.A.5 – Sale deed in document No.494/1990 dated 16.08.1990 – SRO Copy

Ex.A.6 – Sale deed in document No.169/1997 dated 26.03.1997 – SRO Copy

Ex.A.7 – Sale deed in document No.1148/2006 dated 29.09.2006 - SRO Copy

Ex.A.8 – Sale deed in document No.1104/2011 dated 06.09.2011 – SRO Copy

Ex.A.9 – Sale deed in document No.474/2013 dated 12.04.2013 – SRO Copy

Ex.A.10 – Natham Land Tax Plan Adangal Register – True Copy

Ex.A.11 - Online Patta (6 Nos.) – Online Copy

Ex.A.12 – Death Certificate of Mariappan – Original

Ex.A.13 – Death Certificate of Karuppaiah – Laminated Copy

Ex.A.14 – Legal Heirship Certificate of Karuppaiah – Laminated Copy

Ex.A.15 - Land Tax Approximate Patta – Laminated Copy

Defendants Side Witness :

D.W.1 – Thiru.Rengaiiah

Defendants Side Documents : Nil

Sd/- A. Abdul Kadhar
Principal District Judge,
Pudukkottai.