

**IN THE COURT OF DISTRICT MUNSIF, ARAKKONAM, VELLORE DISTRICT.**

**PRESENT: Tmt.R.TAMIL SELVI, B.A.,B.L.,**  
**District Munsif, Arakkonam.**

Wednesday the 19th day of April 2017.

O.S.NO.150/2012

1. Nagaswari
2. Janaki
3. Vijaya
4. Uma
5. Amudha
6. Krishnaveni
7. Bharathi

-Plaintiffs.

/Versus/

1. Kumaresan
2. Ramesh @ Velumani
3. Kamatchi

-Defendants

This suit coming for final hearing before me on 05.04.2017 in the presence of Tr.P.Haroon Rasheeth counsel appearing for the Plaintiffs and all the defendants remained exparte and upon hearing the argument of plaintiff counsel and upon perusal of entire case records having stood over for consideration till this day this court has delivered the following:-

**JUDGMENT**

This suit is filed by the plaintiffs for partition directing the defendant 1 and 2 to divide the suit property in to 9 equal share and to allot and put each plaintiff in separate possession of such share failing through process of court and for granting permanent injunction restraining the defendant 1 to 3 their men agents and servants from in any way alienating the plaintiffs 7/9 share in the suit properties in favour of any persons and with cost.

**The Brief averments made in the Amended Plaint:-**

The case of the plaintiffs is that, the properties more fully described in the 'A' schedule here under is the self acquired property of Gopal S/o. Munian the father of the plaintiffs and defendants 1 & 2. The said Gopal purchased the 1st and 2nd item of the suit 'A' schedule property by virtue of registered sale deed No.795/1975. The said Gopal purchased 3rd and 4th item of the suit 'A' schedule property by virtue of a registered sale deed No.795/1975. The said Gopal purchased 5th item of the suit 'A' schedule property by virtue of a registered sale deed No.2647/1976. The said Gopal purchased 6th and 7th item of the 'A' schedule property by virtue of a registered sale deed No.2247/1977. The suit 'B' schedule property is the self acquired property of the plaintiffs mother Ponnammal, she purchased the same by virtue of a registered sale deed No.3254/1978. From the date of purchase the plaintiffs father Gopal and mother Ponnammal were in possession and enjoyment of the suit properties respectively. The plaintiffs father Gopal died intestate 25 years back leaving behind him his wife Ponnammal and the plaintiffs and the defendants 1 and 2 as legal heirs to succeed the suit "A" schedule property. After the death of the plaintiff father the plaintiffs, defendants 1 and 2 and their Mother Ponnammal were in peaceful possession and enjoyment of the suit properties as Co-owner without making any division in the suit "A" schedule properties. The plaintiffs mother Ponnammal also died intestate on 31.07.2011 leaving behind her the plaintiffs and defendants 1 and 2 as her legal heirs to succeed suit "B" schedule property. After the death of plaintiffs father Gopal and mother Ponnammal the plaintiffs and defendants 1 and 2 are in possession and enjoyment of the suit properties as Co-owner without making any division in the suit properties by metes and bounds.

The plaintiffs demanding the defendants 1 and 2 from March 2012 to divide the suit properties in to equal shares by metes, allot them their respective shares that is 7/9 share for that the defendants 1 and 2 some now managed to postpone the division of suit properties. When they had suspicious about the activities of the defendants 1 and 2 the plaintiffs immediately applied for encumbrance certificate for the suit properties on 04.10.2012 and they were very much shocked to see that the defendants 1 and 2 partitioned the suit properties between them on 23.02.2007 and 21.03.2011 without the consent, knowledge and signature of the plaintiffs and also alienating 6th and 7th items of the suit properties to the 3rd defendant. The plaintiffs are having undivided 7/9 share over the suit properties. The action of the defendants 1 and 2 partitioning the suit properties without giving due share to the plaintiffs are highly illegal and against the provision of law. The partition deed numbers 1435/2007 and 2428/2011 collusively executed between the defendants 1 and 2 is void, not binding on the plaintiffs in respect of their 7/9 share in the suit property. The plaintiffs are entitled to a un-divided 7/9 share over the suit properties. Since they got married and settled in various places they are not in a position to be in joint possession of the suit properties along with defendant 1 and 2 herein. So the defendants 1 and 2 are in actual possession of suit properties and plaintiffs are out of possession of the suit properties. Further the defendants 1 and 2 have alienated 6th and 7th items of the suit properties to the 3rd defendant without consent of the plaintiffs, only to deceive and defraud the plaintiffs 7/9 share over the suit properties. The sale deed executed in favour of the 3rd defendant in respect of the plaintiffs 7/9 share in the suit properties without dividing the suit properties also not valid, void and not binding on the plaintiffs. Further the defendants 1 and 2 are now attempting

to sell the suit properties to 3rd parties. Their action is highly illegal. The defendants 1 and 2 are not amenable to any reasons and they are not law abiding citizens. Hence left with no other alternative the plaintiffs are forced to file suit for partition and permanent injunction against the defendants and for other relief's. There is no maintenance or charge holder over the suit properties and the same has not been dedicated to religious or charitable purpose.

Hence, the suit is filed for relief of partition and Injunction.

**Brief avernments made in the written statement filed by the 1st defendant :-**

The avernment made in the plaint are denied by the defendant. The suit properties are the ancestrally and Hindu joint family properties of the Hindu Joint family consists of this defendant's father , this defendant and 2nd defendant. Though the sale deed for the suit properties stands in the name of this defendants father and mother, they had no any individual income to purchase the suit properties. Since the suit properties were ancestrally and Hindu Joint family properties of this defendant's father , this defendant and 2nd defendant, the plaintiffs have no any right, title and interest over the suit properties to claim the partition. This defendant's father died in the year 22.03.1984 after his death, this defendant and 2nd defendant are alone in absolute possession and enjoyment of the suit properties without any interference from anybody with the knowledge of the plaintiffs. During their possession and enjoyment of the suit properties, they divided the suit properties in the presence of the Panchayators under the registered partition deeds dated 23.02.2007 and 21.03.2011. This defendant and 2nd defendant have been in separate possession and enjoyment of the suit

properties as per the partition deed. This defendant developed the landed properties into house sites and sold several persons. Likewise, this defendant settled some of the properties obtained under the registered partition deed in favour of the plaintiffs under the registered settlement deeds. So the plaintiffs have no any right, title and interest over the other properties. Since this defendant sold as the house sites to several persons with the knowledge of the plaintiffs, the suit for partition is not maintainable. The allegations given in the plaint that the father of the plaintiffs and the defendants 1 and 2 purchased the suit properties under the different sale deeds and they had been in possession and enjoyment of the suit properties and subsequently after their death the plaintiffs and the defendants 1 and 2 are in possession and enjoyment of the suit properties are all false, baseless and concocted for their case. Since this defendant has been in absolute possession and enjoyment of his properties, he is entitled to deal his properties in any manner and so the plaintiffs are not entitled to seek the permanent injunction against the defendants 1 and 2. The suit is bad for non-joinder of necessary parties. Further the plaintiffs filed the suit as they are out of possession and assessed the court fee under the kist value. When there is not Kist receipt filed by the plaintiffs either in their name or any other name, how the court accepts the kist value. So the court fee paid by the plaintiff is not correct on this ground alone, the suit is not maintainable. This defendant raised the preliminary objections about the court fees and the same may be taken as first before the commencing trial. So the suit is not properly valued. Further this defendant already developed his properties into the house sites and there is no landed properties as alleged in the plaint, the suit cannot be valued as landed properties on the basis of the kist. So the suit is

not maintainable. The plaintiffs are having prima facie case and the balance of convenience is also in favour of the defendants.

Hence, prayed for dismissal of suit.

Based on the following issues were framed for trial

1. Whether the plaintiffs are entitled for 7/9 share in the suit schedule property?
2. Whether the plaintiffs are entitled for relief of permanent injunction restraining the defendants from alienating their share in the suit schedule property?
3. To what other reliefs the plaintiffs are entitled to?

On the side of plaintiff, 1st plaintiff and another witness were examined as PW1 and PW2 and Ex.A1 to Ex.A12 marked. The defendants 2 and 3 remained exparte for non appearance on service of summons. D1 remained exparte during the course of trial.

**ISSUE NO.1:-**

The case of the plaintiffs is that the 'A' Schedule property shown in the plaint is self acquired property of their father and "B" schedule property is the self acquired property of their mother. They were in joint possession of suit schedule properties along with the defendant 1 and 2 who are their brothers. After their death of their parents in order to defeat the claim of plaintiffs over the suit schedule Properties the defendant 1 and 2 without the knowledge of the plaintiffs partitioned the suit properties and part of the suit property is sold to 3rd defendant, which is not binding on the plaintiffs. They are entitled for partition.

On careful perusal of documents marked on the side of plaintiff it could be seen that Ex.A1 to Ex.A4 are registered sale deeds standing in the name of their parents. These documents would go to show that they are purchased by their parents for valuable consideration. Though in the written statement filed by the 1st defendant it is stated that the properties are ancestral properties. The same is not proved by the defendants. Based on Ex.A1 to Ex.A4 this court comes to the conclusion that the suit properties are self acquired property of the plaintiffs parents. Ex.A5 and Ex.A6 are registered partition deed executed between 1st and 2nd defendant with respect to suit schedule properties. Ex.A7 is the death certificate of plaintiffs mother. Ex.A8 is the copy of the legal heir certificate. Ex.A9 is the encumbrance certificate. Ex.A10 is the patta in the name of plaintiffs mother. Ex.A11 is also joint patta. Ex.A12 is the certified copy of the sale deed in the name of 3rd defendant. These documents would go to show that the 1st and 2nd defendants partitioned the property between themselves. According to the plaintiffs it was done behind their back. The evidence of PW1 remains unchallenged since the defendants were set exparte. As per Hindu Succession Act the daughters have got equal share over the self acquired properties of their parents. Under such circumstance plaintiffs are entitled for partition. Though the 1st defendant alleged that court fee was not properly paid, on perusal of sale deeds it could be seen that the court fee is arrived on kist value based on the sale deeds. Since the plaintiffs are out of possession they cannot have kist receipts. Issue no.1 is decided in favour of plaintiffs.

**ISSUE No.2:-**

On careful perusal of Ex.A12 it could be seen that part of the suit schedule properties is sold to D3 by D1 and D2.

The plaintiffs have sought relief of permanent injunction as against the defendants with respect to their shares. Having decided the issue No.1 in favour of plaintiff with respect to partition of suit schedule properties, this court comes to the conclusion that the plaintiffs are entitled for permanent injunction as prayed for in the suit.

In the result, suit is decreed as follows:

1) The preliminary decree of partition dividing the suit schedule properties into 9 equal shares is hereby passed and the plaintiffs are allotted with each one share out of 9 share (7/9). The defendants 1 to 2, are entitled for one share each out of 9 shares.

2) Preliminary decree shall be drawn for the defendants respective shares on payment of proper court fees.

3) Permanent injunction is hereby granted restraining the defendants their men and agent from alienating the plaintiffs 7/9 share in the suit properties till the partition is effected.

4) Considering the relationship between the parties there shall be no order as to cost.

Dictated to stenographer directly, typed in his computer, corrected and pronounced by me in the open court on 19th April 2017.

District Munsif,  
Arakkonam.

**Plaintiff's side witnesses:-**

1. PW1 - Nageswari (1<sup>st</sup> Plaintiff)
2. PW2 - Vadivel

**Plaintiff's side Exhibits:-**

- |              |            |   |
|--------------|------------|---|
| 1) Ex. A1 -  | 19.03.1975 | Certified copy of the Registered Sale deed in the name of plaintiffs father       |
| 2) Ex. A2 -  | 19.03.1975 | Certified copy of the Registered Sale deed in the name of plaintiffs father.      |
| 3) Ex. A3 -  | 26.09.1979 | Certified copy of the Registered Sale deed in the name of plaintiffs mother.      |
| 4) Ex. A4 -  | 05.12.1978 | Certified copy of the Registered Sale deed in the name of plaintiffs mother.      |
| 5) Ex. A5 -  | 23.02.2007 | Certified copy of the Registered partition deed in the name of 1 and 2 defendant. |
| 6) Ex. A6 -  | 21.03.2011 | Certified copy of the Registered partition deed in the name of 1 and 2 defendant. |
| 7) Ex. A7 -  |            | Death certificate of Ponnammal  |
| 8) Ex. A8 -  |            | Legal heirs certificate (Xerox)   |
| 9) Ex. A9 -  |            | Encumbrance certificate (Original)  |
| 10) Ex. A10- |            | Computerized Patta  |
| 11) Ex. A11- |            | Computerized Patta  |
| 12) Ex. A12- | 10.10.2007 | Certified copy of the Sale deed in the name of the 3rd defendant                  |

**Defendants side witnesses and Exhibits:-**

-Nil-

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Arakkonam