

IN THE COURT OF THE I ADDITIONAL DISTRICT JUDGE, SALEM

Present: Thiru.L. Abraham Lincoln, B.Sc., LL.M.,

I Additional District Judge,

Salem.

Friday, the 30th day of July 2021

O.S.No.108/2020

(CNR.No: TNSA010027522020)

1. C.Karpagam

2. B.Maragatham

3. Saroja

... Plaintiffs

/Vs/

M.Shanmugasundaram

..... Defendant

This suit is coming before me for final hearing on 29.7.2021 in the presence of Tvl.D.Rajasekaran and R.Pradeep Chandran Advocates for the Plaintiffs and the defendant called absent and set exparte and upon perusing the documents on records and on hearing the plaintiffs side and having stood over for consideration till this day, this court has passed the following:

Judgment.

Suit is filed for Partition and Permanent Injunction; and directing the defendant to divide the suit properties into 4 equal shares and allot 3 shares jointly to the plaintiffs with possession; and to make a provision for appointment of the commissioner for the division of the suit properties by metes and bounds and to pass final decree; and to restrain the defendants by means of permanent injunction from their in any manner alienating encumbering the suit properties till the plaintiffs' shares are allotted separately with cost of the suit.

2. The suit properties morefully described hereunder was the self acquired property of Mariappan son of Muniyagounder. The plaintiffs 1 & 2 and the defendant are the daughters and son of Mariappan. The 3rd Plaintiff is the wife of Mariappan. The said Mariappan has worked in the handloom society and also worked in power loom factory. Out of his personal earnings, the said Mariappan has purchased the suit properties gradually. The said Mariappan has purchased the 1st item of the suit proerty by means of a registered sale deed dated 25.2.1972 from one M.R.K.Rajamanickam and enjoyed the same as absolute owner. The said Mariappan purchased 10 cents of land by means of a registered sale deed dated 14.12.1979 from R.V.Palanisamy and his children and enjoyed the same as absolute owner. In these 10cents of land, the said Mariappan had constructed tiled house and also small terraced house in the southern half portion of the 2nd item of the suit property. In this portion the said Mariappan had also installed 10 power loom machineries. Subsequently the said Mariappan had also constructed terraced building in the northern half portion of the 2nd item of the suit property. In the northern portion also the said Mariappan had installed 11 power loom machineries in the ground floor of the terraced building. The upstairs portion of the building is a residential house in which the defendant is living with his family.

3) The said Mariappan out of love and affection on his wife the 3rd plaintiff, had executed a registered gift settlement deed on 16.7.2010 in respect of the northern portion of the 2nd item of the suit property with specific boundaries measuring 2178 sq feet along with buildings and the power looms installed in it. The 3rd plaintiff had also taken possession of the property gifted to her by her husband and enjoying the same as absolute owner. Therefore excluding

the northern portion covered under the settlement deed the remaining southern portion of the land covered under the sale deed dated 14.12.1979 alone is described as 2nd item of the suit property. The Mariappan purchased the 3rd item of the suit property by means of a registered sale deed dated 5.2.1990 from one T.Chinnandi and his brothers and their family members and enjoyed the same as absolute owner. The said Mariappan was having a savings bank account in Indian Bank, Idappadi Branch, Salem District in Account No.518484574 and at the time of his death there is an amount in it. As on 19.3.2020 a sum of Rs.1,38,926-06 is in the saving bank account of the said Mariappan. The said Mariappan died intestate on 12.10.2018 leaving behind him the plaintiffs and the defendant as his legal heirs. Therefore the plaintiffs and the defendant are jointly entitled to the suit property left by said late Mariappan. In the suit properties the 1st plaintiff is entitled 1/4 -share, the 2nd plaintiff is entitled 1/4 share, the 3rd plaintiff is entitled 1/4 share and the defendant is entitled remaining 1/4 share. The Plaintiffs and the defendant are enjoying the suit properties in common without any division.

4) Further the plaintiffs are also each having 1/4 share, in total the plaintiffs are entitled $\frac{3}{4}$ shares and the defendant is entitled to $\frac{1}{4}$ share in the amount belonged to the deceased Mariappan which is in the savings bank account in Indian Bank, Idappadi Branch, Salem District in Account No.518484574, which is described in 4th item of the suit property. The defendant is also not cooperating in withdrawing the amount by submitting death certificate and legal heirs certificate of deceased Mariappan, though the bank is willing to disburse the amount to the plaintiffs and the defendant if they jointly applied for the same.

5) After the death of Mariappan the defendant alone is running the power looms installed in the 2nd item of the suit property on behalf of the plaintiffs also. But for past few months the defendant refused to give the proportionate shares of the income from the power looms. Therefore there were misunderstanding arose between the plaintiffs and the defendant in the enjoyment of the suit property jointly and so the plaintiffs have decided for amicable division of the suit property. Therefore on 15.3.2020 the plaintiffs approached the defendant through their close relatives for amicable division of the suit property and allotting their shares separately. But the defendant evaded for amicable division of the suit property by saying to get some nominal amount from him and insisted the plaintiffs to release their share in the suit properties. Therefore the plaintiffs have not accepted the illegal demand of the defendant. Therefore it is no longer possible for the plaintiffs to enjoy the suit properties jointly with the defendant. Further the defendant is openly proclaiming that he is going to sell the portion of the suit properties with specific boundaries to third parties with view to coerce the plaintiffs to come his terms. The plaintiffs are jointly entitled $\frac{3}{4}$ shares in the suit properties and the defendant is entitled remaining $\frac{1}{4}$ shares in the suit properties. Unless the suit properties are divided into four equal shares and three shares are jointly allotted to the plaintiffs with possession, the plaintiffs will be put to great loss and hardship. It is also just and necessary to restrain the defendant by means of permanent injunction from him in manner alienating or encumbering the suit properties till the final decree is passed and the plaintiffs shares are allotted separately. Hence the suit.

6) On the side of Plaintiffs, the 1st plaintiff was examined as P.W.1 and one third party witness Subramaniyam, who is brother of the 3rd plaintiff was examined as P.W.2 and Ex.A1

to Ex.A9 were marked.

7) The Point for consideration is:

Whether the Plaintiff is entitled for the relief as prayed for?

8) **Point:-**

The suit is filed for Partition and Permanent Injunction; and directing the defendant to divide the suit properties into 4 equal shares and allot 3 shares jointly to the plaintiffs with possession; and to make a provision for appointment of the commissioner for the division of the suit properties by metes and bounds and to pass final decree; and to restrain the defendants by means of permanent injunction from their in any manner alienating encumbering the suit properties till the plaintiffs' shares are allotted separately with cost of the suit.

9) In order to prove the Plaintiffs' case, the 1st Plaintiff was examined as P.W.1 and to substantiate their case, through P.W.1 Ex.A1 to Ex.A9 were marked. Ex.A1 is the Sale deed in favour of Mariappan executed by M.R.K.Rajamanickam, Ex.A2 is the Sale deed in favour of Mariappan executed by R.V.Palanisamy and four others, Ex.A3 is the Sale deed in favour of Mariappan executed by Chinnandi and eight others, Ex.A4 is the Settlement deed in favour of 3rd plaintiff Saroja executed by Mariappan, Ex.A5 is the Account Pass Book, Indian Bank, Idappadi Branch, Salem A/C.No.518484574 in the name of M.Mariappan, Ex.A6 is the death certificate of Mariappan, Ex.A7 is the Legal heir certificate of Mariappan, Ex.A8 is the Property Tax receipt in the name of Mariappan (2 Numbers), Ex.A9 is the Water supply charges receipt in the name of Mariappan (2 Numbers). To strengthen the case of the 1st Plaintiff, one Subramaniyam 3rd party witness who acquainted with the facts of the case, was examined as

P.W.2.

10) The defendant was not appeared before this court and set exparte.

11) To disprove the case of the Plaintiffs admittedly the defendant has not appeared before this court. As there is no contra evidence available to disprove the case of the Plaintiff, in the considered opinion of this court, the Plaintiffs are entitled for the relief as prayed for. Accordingly, the suit is decreed as prayed for. Thus, the point is answered in favour of the Plaintiff.

In the result the suit is decreed with cost and Preliminary decree of Partition is passed directing the defendant to divide the suit properties into 4 equal shares and allot 3 shares jointly to the plaintiffs with possession; and granting the relief of permanent injunction restraining the defendant from in any manner alienating or encumbering the suit properties till the plaintiffs' shares are allotted separately.

Dictated to the Steno-typist directly and computerized by her, corrected and pronounced by me in the open court, this the 30th day of July 2021.

(Sd/-L.Abraham Lincoln)

I Additional District Judge,
Salem.

Plaintiffs Side Witness:-

P.W.1 –Tmt.Karpagam

P.W.2 -Thiru.Subramaniam

Plaintiffs side Exhibits:-

Ex.A1	25.2.1972	Sale deed in favour of Mariappan executed by M.R.K.Rajamanickam	Registration Copy
Ex.A2	14.12.1979	Sale deed in favour of Mariappan executed by R.V.Palanisamy and four others	Registration Copy
Ex.A3	5.2.1990	Sale deed in favour of Mariappan executed by Chinnandi and eight others	Registration Copy
Ex.A4	16.7.2010	Settlement deed in favour of 3 rd plaintiff Saroja executed by Mariappan	Registration Copy
Ex.A5	19.3.2020	Account Pass Book, Indian Bank, Idappadi Branch, Salem A/C.No.518484574 in the name of M.Mariappan	Original
Ex.A6	12.10.2018	Death certificate of Mariappan	True Copy
Ex.A7	3.12.2019	Legal heir certificate of Mariappan	True Copy
Ex.A8	29.2.2020	Property Tax Receipt in the name of Mariappan (2 Numbers)	Original
Ex.A9	29.2.2020	Water supply Charges receipt in the name of Mariappan (2 Numbers)	Original

(Sd/-L.Abraham Lincoln)

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