

IN THE COURT OF THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, SALEM  
PRESENT: THIRU.S.JEGANATHAN, B.A.,B.L.,D.C.A.,C.J.,

I Additional District Judge, Salem  
Tuesday, the 7<sup>th</sup> day of March, 2023

O.S.No.329/2020

(CNR.No: TNSA010046842020)

Thiru.R.Manickaraj

... Plaintiff

/Vs/

1. Thiru.R.Hari Hara Prabu
2. Thiru. Venkatesh
3. The General Manager,  
BSNL, Salem
4. Tmt.Gunasundari
5. The Branch Manager,  
State Bank of India, Salem
6. The Branch Manager,  
Karnataka Bank, Salem
7. The Chief Educational Officer,  
Salem.

.... Defendants

This suit is coming before me for final hearing on 01.03.2023 in the presence of Tvl.S.Natarajan, B.Com.,B.L., and S.Rajkumar, B.A.,LL.B., Advocates for the Plaintiff and of Thiru.A.Madhanmohan,M.Sc.,M.L.M.Phil, Government Pleader for the 7<sup>th</sup> defendant and the defendants 1 to 6 were called absent and set exparte and the plaintiff filed a memo dated.19.09.2022 and given up the 7<sup>th</sup> Defendant and upon hearing both side and on perusal of the records this court has passed the following

**Judgment.**

The plaintiff filed this suit for partition, directing the defendants to divide the suit 'A' 'B' 'C' Schedule properties into two equal shares with reference to good and

bad soil by metes and bounds and allot one such equal share to the plaintiff by means of preliminary decree and directing the 1<sup>st</sup> defendant to deliver possession; If the defendants fails to comply for partition and the court may divide the suit 'A' 'B' and 'C' Schedule Properties into two equal shares with reference to good and bad soil by metes and bounds and allot one such equal share by appointing an advocate commissioner to divide the suit property as per the preliminary decree and allot one such share to the plaintiff and awarding the costs of the suit.

2. The Plaintiff and the 1<sup>st</sup> defendant are the sons of one M.Ramasamy and R.Kalaiselvi. The said Ramasamy was served as an officer in BSNL. The mother of the plaintiff and 1<sup>st</sup> defendant Tmt. R.Kalaiselvi was served as a Teacher in Gugai Girls Higher Secondary School, Salem-6. The father of the Plaintiff and 1<sup>st</sup> defendant the said Ramasamy during his lifetime had made partition with his paternal family members under the registered partition deed dated. 27.09.1999 which is registered as Document No.1756 of 1999 at SRO, Magudanchavady, Salem. As per the partition deed, "B" Schedule property was allotted to him and he owned and possessed the same. The said property has shown as Item No.1 of the suit "A" Schedule property. The item No.1 of the suit property consists two items of the RCC building and in which the defendants 2 & 3 are the tenants in each item of the said property respectively. Further, the said Ramasamy also purchased the Item No.2 of the suit "A" Schedule property in which the 4<sup>th</sup> defendant resides. The said Ramasamy died intestate on 20.06.2018 leaving behind his wife Kalaiselvi and sons the plaintiff and the 1<sup>st</sup> defendant herein to succeed his estate. Since the defendants 2 and 3 are the

tenants in respect of the Item No.1 of the suit "A" Schedule property and the 4<sup>th</sup> defendant is the tenant in respect of the Item No.2 of the suit "A" Schedule property and the rents are paying to the 1<sup>st</sup> defendant, they are added as party to the proceedings for proper and final adjudications. Thus the plaintiff herein and 1<sup>st</sup> defendant herein each are having half share over the entire "A" Schedule properties.

3. The mother of the Plaintiff and 1<sup>st</sup> defendant during her lifetime had purchased the Item No.1 of the suit "B" schedule property under the registered sale deed dated. 02.02.1999 which is registered as Doc.No.188 of 1999 at SRO, Salem West. Further, the said Kalaiselvi also purchased the half of the share in the Item No.2 of the suit "B" Schedule property under the registered sale deed dated. 28.03.2002 which is registered as Doc.No.619 of 2002 at SRO, Ayothiyapattinam, Salem. The remaining half of the share was purchased in the name of 1<sup>st</sup> defendant herein under the registered sale deed dated 28.03.2002 which is registered as Doc.No.620 of 2002 at SRO, Ayothiyapattinam, Salem. Subsequently, on 11.01.2019 the 1<sup>st</sup> defendant herein settled his half of the share in Item No.2 of the suit "B" Schedule property under the registered settlement deed which is registered as Doc.No.119 of 2019 at SRO, Ayothiyapattinam, Salem. Thus the said Kalaiselvi became the absolute owner of the entire Item No.2 of the suit "B" Schedule property. Further, the said Kalaiselvi also purchased the Item No.3 of the suit "B" Schedule property under the registered sale deed dated 14.07.2009 which is registered as Doc.No.2451 of 2009. The said Kalaiselvi also owned a Maruthi S-Cross CAR TN30 BL 4650 which is shown as Item No.4 of the suit "B" Schedule property. The said car was under the hypothecation with

Shriram Transport Finance Ltd., Salem. The said Kalaiselvi also had a Savings Bank Account with the 5<sup>th</sup> defendant i.e., State Bank of India, Srirangapalayam Branch, Ramakrishna Road, Salem -7 bearing Savings Account No. 20057833277 which is shown as item No.5 of the suit "B" Schedule property and also had a locker with the 6<sup>th</sup> defendant which shown as Item No.6 of the suit "B" Schedule property. The said Kalaiselvi died intestate on 30.09.2019 leaving behind the plaintiff and the 1<sup>st</sup> defendant herein to succeed her estate. It is pertinent to note that the Death Cum Retirement Gratuity Amount and other benefits are not obtained by the plaintiff and the 1<sup>st</sup> defendant. Hence the Chief Educational Officer, Salem had been added for proper and final adjudication.

4. After the death of Kalaiselvi, the 1<sup>st</sup> defendant had wrongfully took the ATM card and withdraw the total amounts of Rs.63600/- by using the ATM Card. The said act of the 1<sup>st</sup> defendant is against law and in which the plaintiff is having half share over the same and the 5<sup>th</sup> defendant is added as party to this proceedings for proper and final adjudication. The 6<sup>th</sup> defendant had not given the proper particulars regarding the locker which was maintained by the deceased Kalaiselvi. The said Kalaiselvi had 125 sovereign of gold and she kept more than 100 sovereign in the said locker. Thus the plaintiff herein and 1<sup>st</sup> defendant herein each are having half share over the entire "B" Schedule properties. On 30.07.2007 the plaintiff herein and the 1<sup>st</sup> defendant herein each purchased half of the share in the suit "C" schedule property under two separate sale deeds which are registered as Doc.No.3443 of 2007 and Doc.No.3444 of 2007 at SRO, Ayothiyapattinam, Salem. It is pertinent to note that

the Highways Department had acquired part of the property and remaining property is in the hands of the plaintiff herein and 1<sup>st</sup> defendant herein. The plaintiff and the 1<sup>st</sup> defendant each entitled half share over the suit “A”, “B” and “C” Schedule properties. It is no longer possible for the plaintiff and the 1<sup>st</sup> defendant to enjoy the suit “A”. “B” and “C” suit properties as commonly. Hence, on 06.07.2020 the plaintiffs caused the legal notice to the defendants and demanded for amicable partition and the same was refused by the 1<sup>st</sup> defendant and the same was returned on 09.07.2020. The plaintiff is in joint and constructive possession of the suit property. Hence, the plaintiff comes forward with this suit for partition and separate possession. Hence the suit.

**5) Written Statement filed by the 7<sup>th</sup> Defendant dated: 16.11.2021 are as follows:-**

The suit is false and not maintainable in law and on facts. This defendant does not admit any of the averments made in the plaint except such of those that are specifically admitted herein and the plaintiff is put to strict proof of rest of the allegations those that are not admitted by the defendant. The averments mentioned in the paragraphs 3 to 9 of the plaint are to be strictly proved by the plaintiff and defendants 1 to 4 in accordance with law with reliable documentary and oral evidence. The Item No.7 of the “B” schedule property is shown as Death Cum Retirement Gratuity amount and other benefits of the said kalaiselvi. The plaintiff's mother deceased R.Kalaiselvi was worked in the Post of P.G.Assistant, Municipal Girls Higher Secondary School and died on

30.09.2019. The 1<sup>st</sup> defendant on 30.11.2020 and the plaintiff on 30.12. 2020 have sent letters to the Head Master, Gugai Higher Secondary School, Salem has paid a sum of Rs.6,11,262/- to the plaintiff and a sum of Rs.6,11,262/- to the 1<sup>st</sup> defendant totally Rs.12,22,524/- through their bank accounts. On the request of the plaintiff and the 1<sup>st</sup> defendant the entire “Death Cum Retirement Gratuity” amount and other benefits of deceased Kalaiselvi are settled. Since, the 7<sup>th</sup> Item of “B” Schedule has been disbursed, the claim against this defendant become infructuous. Hence, this suit may be dismissed against this defendant.

*6) Based on the above pleadings the following issues were framed:-*

1. Whether the Plaintiff is entitled to have 1/2 share in the Suit 'A' 'B' and 'C' Schedule properties as prayed for?
2. Whether the Plaintiff is entitled for delivery of possession as prayed for?
3. Whether the Claim against 7<sup>th</sup> defendant in respect of 7<sup>th</sup> item of 'B' Schedule property becomes infructuous?
4. Whether the Plaintiff is entitled for the relief of preliminary decree as prayed for?
5. To what other relief?

**7) Issues: 1 to 4:**

The plaintiff filed this suit for partition, directing the defendants to divide the suit 'A' 'B' 'C' Schedule properties into two equal shares with reference to good and bad soil by metes and bounds and allot one such equal

share to the plaintiff by means of preliminary decree and directing the 1<sup>st</sup> defendant to deliver possession; If the defendants fails to comply for partition and the court may divide the suit 'A' 'B' and 'C' Schedule Properties into two equal shares with reference to good and bad soil by metes and bounds and allot one such equal share by appointing an advocate commissioner to divide the suit property as per the preliminary decree and allot one such share to the plaintiff and awarding the cost of the suit.

8. In order to prove the Plaintiff's case, the Plaintiff was examined as P.W.1 and through P.W.1 Ex.A1 to Ex.A19 were marked. Ex.A1 is the Partition deed between Natarajan, V.Kandasamy, M.Ramasamy, M.Rajasekaran and M.Chandrasekaran dated. 27.9.1999, Ex.A2 is the Sale deed executed by M.B.C.Ibrahim (through his power of attorney agent S.Prema) in favour of R.Kalaiselvi, Ex.3 is the Sale deed executed by Kandasamy and five others in favour of R.Kalaiselvi dated. 28.03.2002, Ex.A4 is the Gift Settlement Deed executed by 1<sup>st</sup> defendant Harihara Prabu in favour of Kalaiselvi dated. 11.01.2019, Ex.A5 is the Sale deed executed by N.Murugesan and three others in favour of Tmt.Kalaiselvi dated. 14.07.2009, Ex.A6 is the Sale deed executed by Sivagami Ammal and Six others in favour of Manickaraj dated. 30.07.2007, Ex.A7 is the Statement of Account in the name of Tmt.Kalaiselvi, Ex.A8 is the Sale deed executed by Sivagami Ammal and Six others in favour of 1<sup>st</sup>

defendant Harihara Prabu, Ex.A9 is the Death certificate of Ramasamy dated. 20.06.2018, Ex.A10 is the Death Certificate of Tmt.Kalaiselvi dated. 30.09.2019, Ex.A11 is the Legal Heirship Certificate issued by the Tahsildar, Salem for the death of Kalaiselvi, Ex.A12 is the Vehicle Particulars TN 30 BL 4650 Maruti Suzuki India Ltd., Ex.A13 is the Property Tax Receipts in the name of Thiru.Ramasamy dated. 26.11.2022, Ex.A14 is the Legal Notice issued by the plaintiff to the 1<sup>st</sup> defendant and copies were sent to the defendants 2 to 5, Ex.A15 is the Returned Cover of the 1<sup>st</sup> defendant, Ex.A16 to Ex.A19 were Acknowledgement Cards.

9. On 15.09.2022 the Counsel for the Plaintiff filed a Memo stating that, the plaintiff received his share from the 7<sup>th</sup> defendant as stated in the written statement filed by the 7<sup>th</sup> defendant. Hence, the claim against the 7<sup>th</sup> defendant is herewith givenup. Therefore, this court should not looked into the merits of the statement filed by the 7<sup>th</sup> defendant and furthermore he also givenup as no relief claimed against him.

10. To disprove the case of the Plaintiff, admittedly the defendants 1 to 6 were 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 Plaintiff is entitled for the relief as prayed for. Accordingly, the suit is decreed as prayed for. Thus, these issues are answered in favour of the Plaintiff.

## 11. Issue No.5

Since this court has answered to the above issues in favour of the plaintiff and held that the plaintiff is entitled for the suit claim, no other relief is granted. Accordingly this issue is answered.

In the result the suit is decreed with cost and Preliminary Decree is passed in favour of plaintiff and the defendants 1 to 6 are directed to divide the suit 'A' 'B' 'C' Schedule properties into two equal shares and allot one such equal share to the plaintiff by metes and bounds and put his into separate possession within three months from the date of decree and if the defendants failed to do so the Plaintiff is entitled to approach the Court for passing of Final Decree and possession as per Law.

Dictated to the Steno-typist directly and computerized by her, corrected and pronounced by me in the open court, this the 07<sup>th</sup> day of March, 2023.

(Sd/-S.Jeganathan)

I Additional District Judge,  
Salem.

### Annexure:-

#### Plaintiff side Witness:

P.W.1 –Thiru.Manickaraj

#### Plaintiff side Exhibits:-

Ex.A1	27.09.1999	Ex.A1 is the Partition deed between Natarajan, V.Kandasamy, M.Ramasamy, M.Rajasekaran and M.Chandrasekaran dated.	Certified copy
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		27.9.1999,	
Ex.A2	02.02.1999	Sale deed executed by M.B.C.Ibrahim through his power of attorney agent S.Prema in favour of R.Kalaiselvi,	Certified Copy
Ex.A3	28.03.2002	Sale deed executed by Kandasamy and five others in favour of R.Kalaiselvi	Computerized Certified copy
Ex.A4	11.01.2019	Gift Settlement Deed executed by 1 <sup>st</sup> defendant Hari Hara Prabu in favour of Kalaiselvi.	Computerized Certified copy
Ex.A5	14.07.2009	Sale deed executed by N.Murugesan and three others in favour of Tmt.Kalaiselvi.	Computerized Certified copy
Ex.A6	30.07.2007	Sale deed executed by Sivagami Ammal and Six others in favour of Manickaraj.	Computerized Certified copy
Ex.A7	01.11.2019	Statement of Account in the name of Tmt.Kalaiselvi.	Computerized copy
Ex.A8	30.07.2007	Sale deed executed by Sivagami Ammal and Six others in favour of 1 <sup>st</sup> defendant Harihara Prabu	Computerized Certified copy
Ex.A9	20.06.2018	Death certificate of Ramasamy dated. 20.06.2018	Online copy
Ex.A10	30.09.2019	Death Certificate of Tmt.Kalaiselvi dated.	Online copy
Ex.A11	26.12.2019	Legal Heirship Certificate issued by the Tahsildar, Salem for the death of Kalaiselvi.	Online copy
Ex.A12	19.09.2018	Vehicle Particulars TN 30 BL 4650 Maruti Suzuki India Ltd.,	Computerized copy
Ex.A13	26.11.2022	Property Tax Receipts in the name of Thiru.Ramasamy (3 Numbers)	Original
Ex.A14	06.07.2020	Legal Notice issued by the plaintiff to the 1 <sup>st</sup> defendant and copies were sent to the defendants 2 to 5	Office Copy

Ex.A15	07.07.2020	Returned Cover of the 1 <sup>st</sup> defendant	Original
Ex.A16	07.07.2020	Acknowledgement card of the 2 <sup>nd</sup> defendant	Original
Ex.A17	08.07.2020	Acknowledgement card of the 3 <sup>rd</sup> defendant	Original
Ex.A18	-	Acknowledgement card of the 4 <sup>th</sup> defendant	Original
Ex.A19	07.07.2020	Acknowledgement card of the 5 <sup>th</sup> defendant	Original

Defendants side Witness: Nil

Defendants side Exhibits: Nil

(Sd/-S.Jeganathan)

I Additional District Judge,

Salem.